

**LEGISTAR NO.**

**140225**

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA

RANDALL R. PREVATT,

Plaintiff,

Case No: 2014-CA-2164

vs.

THE CITY OF GAINESVILLE, FLORIDA,  
a municipal corporation,

and

JEREMIAH KELLY and DANIEL ABBOTT, in their individual  
capacities,

Defendants.

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**COMPLAINT**

The Plaintiff, RANDALL PREVATT (Mr. Prevatt), hereby sues the City of Gainesville, Florida, and Officers JEREMIAH KELLY (Ofc. Kelly) and DANIEL ABBOTT (Ofc. Abbott), sworn officers of the Gainesville Police Department, and says;

**PARTIES**

1. Plaintiff, RANDALL PREVATT, hereinafter Mr. Prevatt, is an adult resident of Alachua County, Florida and in all ways sui juris.
2. At all times material herein the City of Gainesville was a municipal corporation, organized under the laws of the State of Florida.
3. At all times material herein the Gainesville Police Department was a municipal department of the City of Gainesville.
4. At all times material herein, Ofc. Kelly was a sworn law enforcement officer employed by the City of Gainesville through the Gainesville Police Department.

5. At all times material herein, Ofc. Abbott was a sworn law enforcement officer employed by the City of Gainesville through the Gainesville Police Department.

6. At the time of the incident complained of herein the City of Gainesville, had the responsibility and obligation to ensure the officers employed by the Gainesville Police Department were properly trained and supervised.

7. At the time of the incident complained of herein the City of Gainesville, had the responsibility and obligation to ensure the actions of the officers employed by the Gainesville Police Department conformed with State and Federal law.

8. Mr. Prevatt's suit against Officers Kelly and Abbott for violation of rights secured under the United States Constitution seeks damages against the officers in their individual capacity.

9. At all times material herein the Defendants were acting under "color of law" which includes statutes, common law ordinances, regulations, policies, customs, usages of the governments of the United States, State of Florida, and municipal entities or departments within the City of Gainesville.

#### JURISDICTION AND VENUE

10. This is an action brought forth based upon a violation of one or more rights secured to Mr. Prevatt by the United States Constitution.

11. This is an action in which Mr. Prevatt seeks damages in excess of the jurisdictional threshold of this Court exclusive of interest, costs and attorneys' fees.

12. This Court has jurisdiction over the claims based upon the violation of Mr. Prevatt's civil rights pursuant to 28 U.S.C. §§1331 and 1343 and 42 U.S.C. §1983.

13. Mr. Prevatt's prayer for the awarding of attorneys' fees is authorized in accordance with 42 U.S.C. §1988.

14. All conditions precedent to the filing of this lawsuit including compliance with F.S. 768.28 have been satisfied. *See Attached Exhibit "A"*.

15. All events giving rise to this claim occurred in Alachua County, Florida.

#### GENERAL ALLEGATIONS

16. In the afternoon of January 2, 2013, Mr. Prevatt was walking on the sidewalk in the area of 500 West 39<sup>th</sup> Avenue, in Gainesville, Florida.

17. Mr. Prevatt was carrying a number of personal belongings including an air rifle.

18. At approximately 2:22 p.m. multiple law enforcement officers responded to Mr. Prevatt's location near the Oasis Car Wash on 39<sup>th</sup> Avenue, apparently in response to a citizen complaint regarding an armed suspect.

19. Upon arriving on scene, Officers Kelly and Abbott ordered Mr. Prevatt at gunpoint to drop the air rifle and lay on the ground.

20. At approximately the same time several other law enforcement officers arrived on scene and surrounded Mr. Prevatt.

21. Mr. Prevatt made no use of physical force, nor did he threaten to do harm to any officer.

22. In response to the commands of the officers Mr. Prevatt dropped his air rifle beside the sidewalk.

23. After dropping the weapon Mr. Prevatt turned away from Officers Kelly and Abbott with his hands in the air and prepared to lay on the ground.

24. Mr. Prevatt took no physical action that would impede, obstruct or interfere with any investigation, detention, or arrest.

25. Suddenly and without warning Officers Kelly and Abbott rushed towards Mr. Prevatt at full speed and tackled him from behind.

26. As a result of Mr. Prevatt raising his arms as instructed, the force of the tackle caused him to strike the pavement in a defenseless posture causing injury to his head, neck, arms, and torso.

27. Immediately thereafter multiple officers piled on top of Mr. Prevatt and applied handcuffs.

28. The incident was captured on a surveillance camera owned by Oasis Car Wash.

29. Mr. Prevatt was transported to Shands Hospital at Starke for emergency treatment prior to admission to the Alachua County Jail.

30. In tackling Mr. Prevatt to the ground Ofc. Kelly and Ofc. Abbott used such excessive, improper and unnecessary force as to cause serious injury to Mr. Prevatt, including but not limited to facial bruising, facial lacerations, knee lacerations, and multiple bone fractures.

31. As a result of the use of excessive, improper and unprovoked force by Deputy Kelly, Mr. Prevatt suffered permanent medical impairment, including but not limited to pain, scarring, and loss of memory.

32. That the Gainesville Police Department, as the policy administrator for Gainesville Police Officers, failed to adequately train and supervise Officers Kelly and Abbott, resulting injury to Mr. Prevatt.

### COUNT I- BATTERY

#### **Plaintiff Sues Officer Kelly**

In addition to the foregoing paragraphs (1-32), which are incorporated herein in a verbatim manner, Mr. Prevatt says;

33. The acts of Officer Kelly in using unnecessary and excessive physical force, including tackling a defenseless Mr. Prevatt face first to the pavement with such force as to cause a fracture, as well

as pain, suffering, and permanent injury, constituted an unlawful touching of the Plaintiff and as such a battery.

34. The actions of Officer Kelly were while he was acting within the scope of his employment as a sworn officer of the Gainesville Police Department.

35. As a direct, foreseeable and proximate result of the battery by Officer Kelly, Mr. Prevatt suffered humiliation, embarrassment, indignity, disgrace, fright, shame, physical pain, and permanent injury.

## COUNT II- BATTERY

### **Plaintiff Sues Officer Abbott**

In addition to the foregoing paragraphs (1-32), which are incorporated herein in a verbatim manner, Mr. Prevatt says;

36. The acts of Officer Abbott in using unnecessary and excessive physical force, including tackling a defenseless Mr. Prevatt face first to the pavement with such force as to cause a fracture, as well as pain, suffering, and permanent injury, constituted an unlawful touching of the Plaintiff and as such a battery.

37. The actions of Officer Abbott were while he was acting within the scope of his employment as a sworn officer of the Gainesville Police Department.

38. As a direct, foreseeable and proximate result of the battery by Officer Abbott, Mr. Prevatt suffered humiliation, embarrassment, indignity, disgrace, fright, shame, physical pain, and permanent injury.

COUNT III – EXCESSIVE FORCE

**Plaintiff Sues Officer Kelly**

In addition to the foregoing paragraphs 1-28, which are incorporated herein as if restated in a verbatim manner the Plaintiff says:

39. The action of Officer Kelly in throwing Mr. Prevatt to the ground while he was surrendering to authority, and displaying such excessive, improper and unprovoked force as to cause laceration and fracturing to his person constituted malicious and excessive force by the Defendant in violation of rights secured to Mr. Prevatt by the Fourteenth Amendment to the U. S. Constitution.

40. As a direct and proximate result of the actions of Officer Kelly, Mr. Prevatt has suffered and still suffers from serious physical pain and suffering, emotional distress and mental anguish.

41. As a direct and proximate result of the actions of Officer Kelly, Mr. Prevatt has been deprived of rights under the Fourth and Fourteenth Amendments to the U.S. Constitution within the meaning of 42 U.S.C. §1983.

42. As a result of the foregoing the Plaintiff has been compelled to retain the services of an attorney to whom he has agreed to pay a reasonable fee for legal services.

COUNT IV – EXCESSIVE FORCE

**Plaintiff Sues Officer Abbott**

In addition to the foregoing paragraphs (1-32), which are incorporated herein as if restated in a verbatim manner the Plaintiff says:

43. The action of Officer Abbott in throwing Mr. Prevatt to the ground while he was surrendering to authority, and displaying such excessive, improper and unprovoked force as to cause laceration and fracturing to his person constituted malicious and excessive force by the Defendant in violation of rights secured to Mr. Prevatt by the Fourteenth Amendment to the U. S. Constitution.

44. As a direct and proximate result of the actions of Officer Abbott, Mr. Prevatt has suffered and still suffers from serious physical pain and suffering, emotional distress and mental anguish.

45. As a direct and proximate result of the actions of Officer Abbott, Mr. Prevatt has been deprived of rights under the Fourth and Fourteenth Amendments to the U.S. Constitution within the meaning of 42 U.S.C. §1983.

46. As a result of the foregoing the Plaintiff has been compelled to retain the services of an attorney to whom he has agreed to pay a reasonable fee for legal services.

#### COUNT V – NEGLIGENT SUPERVISION AND TRAINING

##### **Plaintiff Sues the City of Gainesville**

In addition to the foregoing paragraphs (1-32), which are incorporated herein in a verbatim manner, the Plaintiff says;

47. The actions of Officers Kelly and Abbott, described *supra*, resulted from the carelessness and negligence of the City of Gainesville, by and through its agents, representatives, servants, and employees in hiring and failing to properly train and supervise its law enforcement officers, particularly related to giving adequate training as to the proper use of force necessary to effectuate an arrest or detention.

48. The Defendant Officers' actions and inactions in this matter were direct evidence of a practice, custom and policy of the City of Gainesville's Police Department to permit or condone excessive and malicious use of force.

49. The failure of the City of Gainesville, as policymaker for the Gainesville Police Department, to provide adequate supervision to its officers constituted negligence in supervision of subordinate officers and in enforcement of the law and protection of the public.



50. The City of Gainesville has a legal duty to adequately supervise and discipline employees and to require investigation and reporting of the known mistreatment of a person by an officer. That duty of care was breached and Mr. Prevatt suffered damages as a direct and proximate cause of said breach.

### COUNT VI – EXCESSIVE FORCE

#### **Plaintiff Sues the City of Gainesville**

In addition to the foregoing paragraphs (1-32), which are incorporated herein as if restated in a verbatim manner the Plaintiff says:

51. The action of Officers Kelly and Abbott in tackling Mr. Prevatt to the ground while he was surrendering to authority, while acting as agents, servants, or employees of the Gainesville Police Department, and displaying such excessive, improper and unprovoked force as to cause laceration and fracturing to his person constituted malicious and excessive force by the Defendant in violation of rights secured to Mr. Prevatt by the Fourteenth Amendment to the U. S. Constitution.

52. As a direct and proximate result of the actions of the Defendant Officers, while acting as agents, servants, or employees of the Gainesville Police Department, Mr. Prevatt has suffered and still suffers from serious physical pain and suffering, emotional distress and mental anguish.

53. As a direct and proximate result of the actions of the Defendant Officers, while acting as agents, servants, or employees of the Gainesville Police Department, Mr. Prevatt has been deprived of rights under the Fourth and Fourteenth Amendments to the U.S. Constitution within the meaning of 42 U.S.C. §1983.

54. As a result of the foregoing the Plaintiff has been compelled to retain the services of an attorney to whom he has agreed to pay a reasonable fee for legal services.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff requests for this Court to;

- a) Award all forms of compensatory damages against Defendants, jointly and severally, including, but not limited to, pain and suffering, both physical and emotional, past and future medical expenses, and legal fees and costs incurred as a proximate result of the conduct by Defendants.
- b) Award punitive damages to the Plaintiff as to the counts alleging violations of civil rights and permit upon a prayer an amendment of the complaint to add punitive damages as to the remaining counts in the Complaint.
- c) Award all taxable costs of this action to the Plaintiff, including pre-judgment interest on all liquidated claims.
- d) Award a reasonable attorney fee to the Plaintiff.
- e) Award such other and further relief as this Court may deem appropriate.

**DEMAND FOR JURY TRIAL**

The Plaintiff hereby demands Trial by Jury on all issues deemed so triable.

DATED this 16<sup>th</sup> day of June, 2014

**AVERA & SMITH, LLP**



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**Lance F. Avera**  
Board Certified in Workers' Compensation Law

**Mark A. Avera**  
Board Certified in Civil Trial Law

**William N. Avera (1927-2009)**

**Rod W. Smith**  
Florida State Attorney (1993-2000)  
8th Judicial Circuit

Attorneys at Law

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Benjamin J. Steinberg

Dawn M. Vallejos-Nichols

July 31, 2013

**NOTICE OF INTENT TO INITIATE LITIGATION**  
**PURSUANT TO § 768.28, FLORIDA STATUTE**

**CERTIFIED MAIL/RETURN RECEIPT**

City of Gainesville  
Risk Management  
P.O. Box 490, Station 60,  
Gainesville, Florida 32627-0490

**RE: Our Client : Randall Prevatt**  
**Date of Loss : January 2, 2013**

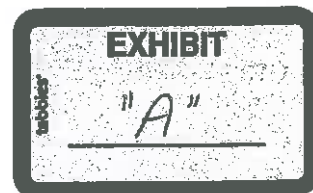
Dear Sir or Madam:

Please be advised that this is a Notice of Intent pursuant to §768.28 Fla. Stat. to file a lawsuit against the City of Gainesville for injuries sustained by Randall Prevatt which were inflicted by members of the Gainesville Police Department on January 2, 2013.

This claim arises out of an incident of excessive force that occurred in Gainesville, Florida, on January 2, 2013. At the time of the incident, our client was detained by several members of the Gainesville Police Department in relation to calls by concerned citizens who were under the mistaken impression the air rifle he was carrying was a firearm. After complying with officer commands to drop the air rifle and raise his hands, Mr. Prevatt was tackled from behind by multiple officers causing him to strike the sidewalk face first. As a direct result Mr. Prevatt suffered multiple fractures, including a skull fracture, requiring emergency medical treatment. He continues to suffer from the effects of his injuries.

The information required by Section 768.28(6)(c), Fla. Stat. is as follows:

Claimant : Randall Prevatt  
Birthdate : 03/19/1965  
Place : Florida  
SS# : xxx-xx-0747



91 7199 9991 7031 9174 1904

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**CERTIFIED MAIL/RETURN RECEIPT**

City of Gainesville

Risk Management

Page -2-

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Claimant is unaware of any prior adjudicated unpaid claims in excess of \$200.

Please govern yourself accordingly and notify the undersigned if you require further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Smith", written in a cursive style.

Jesse Smith


JWS/jp

Date: August 14, 2013

Joyce Parish:

The following is in response to your August 14, 2013 request for delivery information on your Certified Mail™ item number 9171999991703191741904. The delivery record shows that this item was delivered on August 1, 2013 at 8:32 am in GAINESVILLE, FL 32627. The scanned image of the recipient information is provided below.

Signature of Recipient :

Delivery Section	
Signature	
Name	BEN WALKER

Address of Recipient :

Address	490 City
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Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,  
United States Postal Service