

**IN THE UNITED STATES DISCRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

**DAVID SENA,**

**Plaintiff,**

**v.**

**ADAMS COUNTY,  
ADAMS COUNTY SHERIFF'S OFFICE, and  
DEPUTY TYLER BENJAMIN,**

**Defendants.**

**PLAINTIFF'S COMPLAINT**

**COMES NOW** Plaintiff, DAVID SENA, by and through his attorneys, GERASH STEINER P.C. and the BLANTON LAW FIRM, and submits his Complaint against Defendants ADAMS COUNTY, the ADAMS COUNTY SHERIFF'S OFFICE and DEPUTY TYLER BENJAMIN. In support thereof, Plaintiff states as follows:

**GENERAL ALLEGATIONS**

1. This is an action against Defendants Adams County, the Adams County Sheriff's Office and Deputy Tyler Benjamin (collectively "Defendants") for an incident involving use of excessive force during a traffic stop. Defendants have violated Plaintiff's rights under the United States Constitution.

2. This action arises under the Constitution and laws of the United States and is brought pursuant to Title 42 U.S.C. § 1983. Jurisdiction supporting Plaintiff's claim for attorney fees and costs is conferred by 42 U.S.C. § 1988.

3. David Sena ("Plaintiff") resides at 7234 West 68<sup>th</sup> Avenue, Arvada, Jefferson County, Colorado.

4. At all times pertinent hereto Plaintiff was a citizen of the United States of America and a resident of the State of Colorado.

5. Defendant Adams County is a municipality and responsible for the oversight, supervision and training of the Adams County Sheriff's Office and its employees.

6. Defendant Adams County Sheriff's Office is a governmental entity and responsible for the oversight, supervision and training of its employees, including Defendant Tyler Benjamin.

7. At all times relevant to the subject matter of this litigation, Defendant Tyler Benjamin ("Deputy Benjamin") was a citizen of the United States and resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed by the Adams County Sheriff's Department.

8. At the time of the incidents described herein, Plaintiff had been detained in a traffic stop.

9. At all times relevant to the subject matter of this litigation, Deputy Tyler Benjamin was a citizen of the United States and a resident of the State of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed by the Adams County Sheriff's Office.

10. At all times relevant to the subject matter of this litigation Deputy Tyler Benjamin was acting as the actual, apparent or ostensible agent, servant or employee of Defendant Adams County Sheriff's Office, and all actions taken by Deputy Tyler Benjamin, as described herein, were taken for the benefit of Defendant Adams County Sheriff's Office and were taken pursuant to and in the course and scope of his agency, servitude or employment.

11. At all times relevant to the subject matter of this litigation, Defendant Adams County Sheriff's Office and its employee, Deputy Tyler Benjamin, were acting within the scope of their official duties and employment under color of state law.

### **FACTUAL ALLEGATIONS**

12. On November 18, 2016, Plaintiff was operating a 1996 Chevrolet pickup southbound on Brighton Road in Commerce City, Adams County, Colorado. The vehicle was pulling a flatbed trailer.

13. Deputy Benjamin checked the license plate on the trailer and found no DMV record. He assumed this meant that the trailer was using a license plate that had been previously canceled. There were no issues with the manner in which Mr. Sena was driving, and he was obeying all traffic laws. Deputy Benjamin thereafter initiated a traffic stop. The license plate issue was the only reason for the stop. Deputy Benjamin did not run the plates for any reason, he just did it randomly.

14. Plaintiff pulled over into a parking lot at 5135 E. 74<sup>th</sup> Avenue, Commerce City, Adams County, Colorado.

15. After stopping, Plaintiff exited his vehicle, but did not approach Deputy Benjamin. Deputy Benjamin directed Plaintiff to get back into his vehicle, but Plaintiff was unable to get back into his vehicle because he was locked out of the vehicle.

16. At the direction of Deputy Benjamin, Plaintiff turned around and put his hands behind his back. Deputy Benjamin then requested a cover unit. At this point in time, Plaintiff was detained but not arrested.

17. After calling for a cover unit, Deputy Benjamin approached Plaintiff and noticed a pocket knife clipped to Plaintiff's pocket. Deputy Benjamin then took Plaintiff to the ground.

18. After taking Plaintiff to the ground, Deputy Benjamin struck Plaintiff in the face multiple times. The cover unit arrived shortly thereafter.

19. After Plaintiff had been taken into custody, and his vehicle was being inventoried to be towed, the officers noticed that there was a butterfly knife sitting in the vehicle in plain view. The vehicle was locked, with the keys inside. Officers broke a window in order to get into the vehicle.

20. Plaintiff was arrested on charges of resisting arrest, obstructing a peace officer, eluding a police officer, possession of an illegal weapon, driving under restraint, and operating an unregistered vehicle. These were all misdemeanor charges. The charge for possession of an illegal weapon involved the butterfly knife that was discovered in the locked vehicle after Plaintiff had already been taken into custody.

21. Plaintiff later pled guilty to the charge of possession of an illegal weapon (i.e. the butterfly knife located in the vehicle). All other charges were dropped.

22. Deputy Benjamin had not checked Plaintiff's record for warrants until after the arrest was completed.

23. The blow to Plaintiff's face caused significant injuries to his head, nose and eyes. Plaintiff suffered a broken jaw, retinal detachment on the left side, and traumatic brain injury as a result of the blow to his head with persistent headaches. He also has visions problems, including photophobia.

**1983 CLAIM FOR EXCESSIVE FORCE  
IN VIOLATION OF FOURTH AMENDMENT RIGHTS**

24. Plaintiff incorporates all preceding paragraphs of this Complaint as if fully set forth herein.

25. At all times relevant to the allegations in this Complaint, Deputy Benjamin acted under color of state law.

26. Deputy Benjamin is a person under Title 42 U.S.C. § 1983.

27. Deputy Benjamin used excessive force during the detention of Plaintiff. Specifically, the act of striking Plaintiff in the face repeatedly constituted excess force under the Fourth Amendment to the United States Constitution.

28. At the time of Plaintiff's detention, the only potential crime which was at issue was the possible license plate violation. This crime, and all crimes with which Plaintiff was charged, were misdemeanors. Thus, the severity of the crime at issue was very low.

29. The only crime of which Plaintiff was convicted was the charge of possessing an illegal weapon. That charge involved the butterfly knife which was discovered in Plaintiff's locked

vehicle following the incident. Deputy Benjamin had no knowledge of the butterfly knife at the time of the excessive force incident.

30. At the time of the excessive force incident, Plaintiff did not pose any immediate threat to Deputy Benjamin. While Plaintiff did have a pocket knife on his person, he did not use or attempt to use that pocket knife in any manner. The mere presence of the pocket knife on Plaintiff's person did not warrant the excessive force exercised by Deputy Benjamin.

31. Plaintiff was not actively resisting arrest or attempting to flee at the time of the excessive force incident.

32. The force that Deputy Benjamin used in the detention of Plaintiff (i.e. striking Plaintiff in the face multiple times) was not objectively reasonable under the totality of the circumstances of the detention and arrest.

33. It would have been clear to any reasonable officer that the force that Deputy Benjamin used in the detention of Plaintiff (i.e. striking Plaintiff in the face multiple times) constituted excessive force under the Fourth Amendment to the United States Constitution.

34. Plaintiff had a clearly established constitutional right to be free of the excessive force that Deputy Benjamin used in detaining Plaintiff. Specifically, Courts in the Tenth Circuit have repeatedly recognized that striking or punching a detainee constitutes the use of excessive force under the Fourth Amendment to the United States Constitution. This standard has been recognized in numerous cases including, but not limited to, Lee v. Tucker, 2017 WL 2839650 (D. Colo. 2017); Mwangi v. Norman, 2016 WL 7223270, at \*45 (D. Colo. 2016); and Simmons v. Hinton, 2015 WL 1041583 (D. Colo. 2015).

35. Deputy Benjamin's conduct, as described herein, violated Plaintiff's clearly established constitutional rights.

36. The acts of Deputy Benjamin, as described herein, were conducted within the scope of his official duties and employment.

37. The acts of Deputy Benjamin, as described herein, were the legal and proximate cause of Plaintiff's injuries and permanent disability.

38. The acts of Deputy Benjamin, as described herein, intentionally deprived Plaintiff of due process and of rights, privileges, liberties, and immunities secured by the Constitution of the United States of America and caused his other damages.

**WHEREFORE** Plaintiff, David Sena, respectfully requests that this Court enter Judgment in his favor and against Defendants Adams County, Adams County Sheriff's Office and Deputy Tyler Benjamin, awarding him all relief allowed by law, in an amount to be determined at trial, including fees, costs, pre- and post-judgment interest, attorneys' fees and any other relief this Court deems just and proper.

**PLAINTIFF HEREBY DEMANDS A TRIAL TO  
A JURY ON ALL ISSUES SO TRIABLE.**

Dated this 5<sup>th</sup> day of November, 2018.

By: s/ Daniel P. Gerash

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