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Attorney for Plaintiff  
Derrick Hathaway

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
PHOENIX DIVISION**

DERRICK HATHAWAY,

Plaintiffs,

v.

JOSHUA FISTER, DOMINIC LOPEZ,  
UNITED STATES OF AMERICA and DOES  
1-5,

Defendants.

) Case No.: 2:17-CV-03048 SPL-DMF

) **FIRST AMENDED COMPLAINT for:**

) **1) Excessive Force in Violation of the  
Fourth Amendment Under *Bivens*;**

) **2) Violation of the Federal Tort Claims Act  
28 USC § 1346(b) (for Battery, Assault,  
Negligence and Negligent and Intentional  
Infliction of Emotional Distress)**

) **JURY TRIAL REQUESTED ON *BIVENS***  
) **CLAIM**

COMES NOW the Plaintiff, by and through his undersigned counsel, and complains and  
alleges as follows:

**INTRODUCTION**

This action arises from the use of excessive force by federal police officers employed by  
the United States Department of Veteran Affairs. On September 9, 2015, Plaintiff, who is a  
Marine veteran, went to the Veteran Medical Center at 650 E. Indian School Road in Phoenix,  
Arizona for post-traumatic stress disorder medication. While there, he was taken into police  
custody and arrested. Plaintiff was then handcuffed with his hands behind his back and escorted  
by multiple officers to a holding cell in the station.

1 After the door to the holding cell was opened, two officers, Defendants, Joshua Fister and  
2 Dominic Lopez, took a hold of Plaintiff's upper body from behind and ran him head and face  
3 first into the back of the holding cell. After forcefully pressing him against the back wall, the two  
4 officers then slammed him to the hard floor of the holding cell with aggression and force. As a  
5 result, Plaintiff sustained an approximate 2 inch gash/laceration to his forehead resulting in  
6 permanent scarring. Plaintiff also sustained a complete left ACL tear and multiple tears of his  
7 meniscus requiring a complete ACL reconstruction surgery.

9 After Plaintiff was on the floor with his head gushing with blood, two other officers  
10 joined in. One of the officers involved choked Plaintiff by placing his hands around his throat  
11 until he could no longer breathe. Plaintiff was then "hog-tied" and left on the floor until medical  
12 attention could be rendered.

13 At no time, during the events described above or after, did Plaintiff resist any officer,  
14 strike any officer, threaten any officer or take any other action that could be construed as  
15 aggressive or non-compliant. The actions of the officers were unprovoked, unreasonable,  
16 unnecessary, uncalled for and malicious. The officers used excessive force on Plaintiff while he  
17 was in custody and while his arms were handcuffed behind his back. At the time of the attack, at  
18 least five officers were present, no crime was being committed and Plaintiff was not a flight risk.

20 Plaintiff is suing the officers who used excessive force against him in their individual  
21 capacities. Plaintiff is suing the officers for violating his constitutional right to be free from  
22 excessive force under the Fourth Amendment to the United States Constitution. Plaintiff is  
23 bringing this action pursuant to *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403  
24 U.S. 388; 91 S. Ct. 1999 (1971) to redress the violations perpetrated by the officers while acting  
25 under the color of law.  
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1           14.     With the door to the holding cell open, officers Fister and Lopez grabbed Mr.  
2     Hathaway's shirt from behind, around his shoulder area, with both of their hands on each side.  
3     Fister and Lopez then ran Mr. Hathaway 8-10 feet from the entry door into the back holding wall  
4     of the cell. They did this action with great force and purposefully caused Mr. Hathaway's face,  
5     head and body to slam into the back wall of the holding cell with their full force behind them and  
6     with a running start.

8           15.     Fister and Lopez then held Mr. Hathaway pinned against the back wall of the  
9     holding cell and instead of releasing their hold and exiting, they purposefully and maliciously  
10    threw him to the hard ground of the holding cell head and face first again with their full weight  
11    and force behind them.

12           16.     Two other officers that were present then joined in and placed their weight on Mr.  
13     Hathaway by placing their knees or other body parts on Mr. Hathaway's back and limbs. While  
14     this was happening one of the officers wrapped his hands around Mr. Hathaway's neck and  
15     throat choking him to the point where he was without air and unable to breathe. Upon  
16     information and belief, the officer that choked Mr. Hathaway was Fister.

18           17.     The officers then "hog-tied" Mr. Hathaway and left him bleeding and battered  
19     until medical aid could be rendered.

20           18.     During the above-described events no less than five officers were present and Mr.  
21     Hathaway was in police custody with his hands behind his back.

23           19.     At no time during the above described events did Hathaway resist any officer,  
24     strike any officer, threaten any officer or take any other action that could be construed as  
25     aggressive or non-compliant.

26           20.     The actions of the officers were unprovoked, unreasonable, unnecessary, uncalled  
27     for and done with the malicious intent to injure and punish Mr. Hathaway.  
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1           21.     At the time of the aforementioned events, Mr. Hathaway was not committing a  
2 crime, did not pose a threat of safety to any defendants or civilians, was not actively resisting  
3 arrest and was not a flight risk.

4                                   **STATEMENT OF INJURIES AND DAMAGES**

5           22.     As a result of the severe and unnecessary force used by the defendants, Mr.  
6 Hathaway sustained an approximately 2 inch gash on his forehead resulting in permanent  
7 scarring and suffered a complete ACL tear of his left knee and multiple meniscus tears requiring  
8 a complete reconstruction surgery. Mr. Hathaway has also sustained damages, including, but not  
9 limited to: pain, discomfort, suffering, disability, disfigurement, loss of normal living, medical  
10 expenses, emotional distress, anxiety, humiliation and loss of enjoyment of life.

11                                   **FIRST CLAIM FOR RELIEF**  
12                                   **Violation of Fourth Amendment Rights - Excessive Force Under *Bivens***  
13                                   **(Against Lopez and Fister)**

14           23.     Plaintiff incorporates by reference paragraphs 1 through 22 above as though fully  
15 set forth herein.

16           24.     Pursuant to the Fourth Amendment of the United States Constitution (and as  
17 allowed by *Bivens*), Plaintiff had the right to be free from the unreasonable and excessive use of  
18 force by the Defendants and any other instrumentalities of federal government.

19           25.     In doing the above-mentioned acts, Defendants acted under the color of law and  
20 with the apparent authority of the law to violate Plaintiff's Fourth Amendment right to be free  
21 from the unreasonable and excessive use of force against him.

22           26.     The actions of the defendants were done with malice and with the intent to harm  
23 and punish Plaintiff.

24           27.     As a proximate result of the Defendants' wrongful conduct, Plaintiff suffered  
25 injuries and damages as set forth above and prayed for below.

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**SECOND CLAIM FOR RELIEF**  
**Violation of Federal Tort Claims Act 28 U.S.C. 1346(b)(1)(for battery, assault, negligence**  
**and negligent and intentional infliction of emotional distress)**  
**(Against all Defendants)**

28. Plaintiff incorporates by reference paragraphs 1 through 22 above as though fully set forth herein.

29. On August 31, 2017 and September 7, 2017, Plaintiff gave notice of his complaint and claim (on standard Form 95) to the United States Department of Veteran Affairs and Veteran Health Administration Pacific-South, Office of Chief Counsel located at 650 E. Indian School Road, Bldg. 24, Phoenix, Arizona 85012. The Form 95 was hand delivered, faxed and sent by certified mail. A true and correct copy of the Form 95 with attachments is attached hereto as

**EXHIBIT 1.**

30. Plaintiff received a stamped copy of the Form 95 showing it as received by the United States Department of Veteran Affairs and dated September 7, 2017. A true and correct copy of the Form 95 stamped as received is attached hereto as **EXHIBIT 2.**

31. In October 2017, Plaintiff received a letter from the United States Department of Veteran Affairs, advising that it had received the Form 95 and notice of claim and setting forth that the "VA has six months to consider a claim before you have the option to file suit on behalf of your client." The letter also assigned an adjuster/investigator to the claim and was dated October 17, 2017.

32. As of May 19, 2018, Plaintiff had not received any further correspondence from the United States of America or its Department of Veteran Affairs regarding the claim or advising that the claim had been denied. As such, six months has passed since giving notice of the claim and delivering the Form 95 and Plaintiff has sufficiently exhausted his administrative remedies entitling him to now file a claim pursuant to the Federal Tort Claims Act.

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1           33.     The aforementioned conduct of Fister and Lopez was while they were acting in  
2 their capacities as police officers for the United States Department of Veteran Affairs and under  
3 the color of Federal law.

4           34.     In doing the aforementioned acts, Fister and Lopez assaulted Plaintiff in that they  
5 intended to cause a harmful or offensive contact with Plaintiff and did in fact cause a harmful or  
6 offensive contact with Plaintiff causing the apprehension of such tortious contact.

7           35.     In doing the aforementioned acts, Fister and Lopez battered Plaintiff in that they  
8 intended to cause a harmful or offensive contact with Plaintiff and did in fact cause a harmful or  
9 offensive contact.

10           36.     In doing the aforementioned acts, Fister and Lopez acted negligently in that they  
11 owed a duty to Plaintiff to conform to the standard of care of reasonable police officers handling  
12 a suspect in custody and that they failed to conform to the standard of care breaching that duty  
13 and causing injury to Plaintiff.

14           37.     In doing the aforementioned negligent acts, Fister and Lopez's conduct created  
15 and unreasonable risk of bodily harm to Plaintiff and caused Plaintiff emotional distress which  
16 manifested itself by exacerbating the pre-existing psychological disorders from which Plaintiff  
17 already suffered.

18           38.     In doing the aforementioned acts, Fister and Lopez's conduct was extreme and  
19 outrageous and either intentional or reckless. Said conduct further caused Plaintiff severe  
20 emotional distress and adverse psychological consequences.

21           39.     The aforementioned conduct of Lopez and Fister, was unnecessary, not excused  
22 by any appropriate immunity and not a justified use of force. The aforementioned actions of  
23 Lopez and Fister, if committed by a private party or non-government actor, would constitute the  
24 torts of assault, battery, negligence and negligent and intentional infliction of emotional distress  
25 under Arizona law and give rise to corresponding liability.



1           40.     As a proximate result of the aforementioned acts of Lopez and Fister, Plaintiff  
2 suffered injuries and damages as set forth above and prayed for below.

3           41.     The United States of America by way of the Department of Veteran Affairs is  
4 liable for the conduct of Lopez and Fister as asserted under the Federal Tort Claims Act.

5  
6                               **PRAYER FOR RELIEF**

7           WHEREFORE, Plaintiff prays for relief and demands judgment against Defendants, and  
8 each of them, jointly and severally, as follows:

- 9           1.     For judgment in favor of Plaintiff and against Defendants;
- 10          2.     For all available general and special damages in the amount of \$1,500,000.00 or  
11 according to proof at trial;
- 12          3.     For Punitive damages in the amount of \$3,000,000.00 or an amount sufficient to  
13 punish and deter Defendants from similar conduct in the future;
- 14          3.     For all damages allowed by law;
- 15          4.     For interest at the maximum legal rate pursuant to law;
- 16          5.     For Costs and attorney's fees if allowed by law;
- 17          6.     For any other such relief, whether legal or equitable, that the Court deems just and  
18 appropriate.  
19


20 Dated: July 5, 2018

**PICCUTA LAW GROUP, LLP**

21                               /s/ *C.T. Piccuta*

22                               Charles Tony Piccuta  
23                               Attorneys for Plaintiff  
24                               Derrick Hathaway  
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# **EXHIBIT 1**

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH (AMENDED)</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:  U.S. Department of Veteran Affairs & Veterans Health Admin. Pacific-South, Office of Chief Counsel (644/200), 650 E. Indian School Rd., Bldg. 24, Phoenix, AZ 85012 Fax: (602) 212-2144			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.  Derrick Hathaway, 5440 E. Main St., Apt. 125, Meza, AZ 85205 C/O Piccuta Law Group, LLP-Charles Tony Piccuta, Esq., 400 W. Franklin Street, Monterey, CA 93940		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		4. DATE OF BIRTH 28/11/1980	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 9/9/2015      Wednesday	
7. TIME (A.M. OR P.M.) 10:45 AM (approx)					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).  Hathaway is a veteran who went to the Veteran Medical Center at 650 Indian School Road in Phoenix, Arizona on September 9, 2015 for PTSD medications. While there, he was taken into custody by VA police, handcuffed and escorted to a station holding cell. VA police officers (Fister, Lopez) then took Hathaway, while still handcuffed, and ran him face first into the back wall of the holding cell. They then slammed him to the floor where two other officers joined in and hog-tied him. In the process, an officer choked him with his hand. Hathaway sustained a gash on his forehead and a complete ACL tear. See attachment.					
9. <b>PROPERTY DAMAGE</b>					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).  					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).  					
10. <b>PERSONAL INJURY/WRONGFUL DEATH</b>					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.  Hathaway sustained an approximate 2 inch gash/laceration on his forehead with permanent scarring. Hathaway sustained a complete tear of ACL in left knee and multiple tears to left meniscus requiring complete ACL reconstruction. <b>See Attachments hereto.</b>					
11. <b>WITNESSES</b>					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
Officer Daniel Ross, Officer Joseph Owens  Sgt. Fister  Officer Dominic Lopez			In Possession of VA Police  In Possession of VA Police  In Possession of VA Police		
12. (See instructions on reverse). <b>AMOUNT OF CLAIM (In dollars)</b>					
12a. PROPERTY DAMAGE  0		12b. PERSONAL INJURY  \$1,350,000.00		12c. WRONGFUL DEATH  0	
12d. TOTAL (Failure to specify may cause forfeiture of your rights).  \$1,350,000.00					
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side)   Charles Tony Piccuta Attorney for Claimant Derrick Hathaway  CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM				13b. PHONE NUMBER OF PERSON SIGNING FORM  (949) 933-9883	
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).				14. DATE OF SIGNATURE  Sept. 7, 2017  CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS  Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)	

## INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

## INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in Item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

## PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

- A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. *Principal Purpose:* The information requested is to be used in evaluating claims.
- C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

## PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

**Attachment to Notice of Government Claim Form 95 (Derrick Hathaway)**

On September 9, 2015, Marine veteran, Derrick Hathaway, went to the Veteran Medical Center at 650 Indian School Road in Phoenix, Arizona. While there, he was taken into police custody and arrested. He was handcuffed with his hands behind his back and escorted by multiple officers to a holding cell in the station. After the door to the holding cell was opened, two officers, Sergeant Fister and Officer Lopez, took a hold of his upper body from behind and ran him head and face first into the back of the holding cell. After forcefully pressing him against the back wall, the two officers then slammed Hathaway to the hard floor of the holding cell which aggression and force. As a result, Hathaway sustained an approximate 2 inch gash/laceration to his forehead resulting in permanent scarring. Hathaway also sustained a complete ACL tear and multiple tears of his meniscus requiring a complete ACL reconstruction surgery.

After Hathaway was on the floor with his head gushing with blood, two other officers joined in and put their weight on top of Hathaway. One of the officers choked Hathaway by placing his hands around Hathaway's throat. Hathaway could not breath. Hathaway was then hog-tied and left on the floor until medical attention could be rendered.

At no time during the above described events did Hathaway resist any officer, strike any officer, threaten any officer or take any other action that could be construed as aggressive or non-compliant. The actions of the officers were unprovoked, unreasonable, unnecessary, uncalled for and malicious. The officers used excessive force on Hathaway while he was in custody and while he was handcuffed.

The above action by the officers, gives rise to claims for: 1) assault; 2) battery; 3) negligence; 4) excessive force and 5) intentional infliction of emotional distress.

Hathaway has sustained damages including, but not limited to: pain, discomfort, suffering, disability, disfigurement, loss of normal living, medical expenses, emotional distress, anxiety, humiliation, loss of enjoyment of life and lost earnings, in an amount no less than \$1,350,000.00.

I, Derrick Hathaway, by my signature below, hereby authorize Charles Tony Piccuta and the Piccuta Law Group, LLP, to present any and all claims that I may have to the Department of Veteran Affairs with respect to an incident that occurred at the Veteran Medical Center in Phoenix, Arizona on September 9, 2015. I have retained them to represent me with respect to my claims against the United States and its officers with respect to the same. Specifically, I authorize them to submit a notice of government claim form (Form 95) on my behalf and they are my duly authorized agent and legal representatives for this purpose. They have express authority to act on my behalf.

Executed this 29th day of August, 2017.

DATED: 08/29/2017

  
Derek Hathaway

**LBJ ORTHO CLINIC – DR. EMERSON**

**January 20, 2016**

**Name:** Derrick Hathaway

**Booking:** T211131

**Location:** TOWR

**Subjective:** 34-year-old Derrick Hathaway is seen in followup on 1/20/16 at the LBJ Ortho Clinic. We originally saw him 10/21/15 with a left knee injury that occurred, he stated, "at the VA Hospital." We diagnosed an ACL tear and sent him for MRI. The MRI is abnormal.

**Objective:** He continues to have grossly positive Lachman's and pivot shift with medial and lateral joint line pain, no effusion. Knee is stable medially, laterally and posteriorly. Distal pulses good, capillary refill good. Negative calf pain, negative Homan's. Quadriceps patellar tendons are intact, thigh and calf compartments are soft.

**Assessment:** 1. The MRI is abnormal with a complete tear of the ACL and some meniscus injuries of the left knee.

**Plan:**

1. He needs an ACL reconstruction. We discussed this and he will apparently be leaving the jail within a couple months or so. I suggest that he contact the VA authorities and apparently he has VA benefits, and seek out the orthopedic care and surgery that is appropriate.
2. If his stay is going to be extended here, another year or so, then we will seek outside orthopedic surgeon for this consideration.
3. I injected his knee today. He certainly is a candidate for anti-inflammatories, ibuprofen 800mg, possibly Ultram.
4. We advised him, do not run, jump, or pivot.



Hathaway, Derrick (MR # 0038844338)

**PACS Images**Show images for MRI knee left without IV contrast**External Result Report**External Result Report**Results****MRI knee left without IV contrast (Order 8678150)****Result Information**

Result Status	Signing Physician	Date	Time
Final result	Daniel G. Gridley, MD	Nov 5, 2015	2:15 PM

**Study Result**

EXAM DESCRIPTION:  
MRI KNEE LEFT WO IV CONTRAST  
Accession #2612208

CLINICAL HISTORY:  
Sprain of knee, cruciate ligament, left, initial encounter

COMPARISON:  
None.

TECHNIQUE:  
Multiplanar and multi-sequence MRI images of the LEFT KNEE were obtained without intravenous or intra-articular gadolinium.

FINDINGS:  
MENISCI: There is abnormal intrasubstance signal noted involving the posterior horn of the medial meniscus with oblique component extending to the inferior articular surface. Small vertical tear of the lateral meniscus body extending to the superior articular surface.

COLLATERAL LIGAMENTS: MCL is intact. LCL complex is intact.

CRUCIATE LIGAMENTS: Complete ACL tear. PCL is intact.

EXTENSOR MECHANISM: The medial and lateral patellar retinaculi are intact. Patellar tendon is intact. Quadriceps tendon is intact. Patellofemoral joint alignment is anatomic.

BONE/CARTILAGE: There is no bone marrow edema or fracture line. There is no significant chondral thinning.

MISCELLANEOUS:  
There is a small suprapatellar joint effusion.

IMPRESSION:  
1. Complete ACL tear.  
2. Small lateral meniscus body vertical tear extending to superior articular surface and nondisplaced posterior horn medial meniscal oblique tear extending to the inferior articular surface.

NOTE:  
Report dictated by resident, Jason Young MD, 10459. The attending radiologist's signature indicates that the study has been interpreted and the report approved.

Thank you for making MIHS a part of your patient care.  
MIHS is an ACR Accredited Imaging Facility.

**Other Scans - MRI knee left without IV contrast**Scan on 10/23/2015 2:26 PM by Kristy Mulnix : Referral Note/Form**Imaging**MRI knee left without IV contrast (Order #8678150) on 11/5/2015 - Imaging Information**Result History**



Hathaway, Derrick (MR # 0038844338)

MRI knee left without IV contrast (Order #8678150) on 11/5/2015 - Order Result History Report

**Encounter**[View Encounter](#)**Result Information**

Status

Final result (11/5/2015 2:15 PM)

Provider Status: Open

**Lab Information**

MIHS RAD

**PACS Images**[Show images for MRI knee left without IV contrast](#)**Signed**

Electronically signed by Daniel G. Gridley, MD on 11/5/15 at 1415 MST

**Radiation Exposure Data****Derrick Hathaway**

11/5/2015 7:30 AM MRI Lower Extremity

MRN: 0038844338

Department: Mmc Rad Mri

CSN: 14410137

Description: Male DOB: 11/28/1980

Provider: MRI 1.5T

**ORDER INFORMATION**

Maricopa Integrated Health System

**MRI knee left without IV contrast [IMG1408]**  
(Order 8678150)

Imaging

Order: 8678150

Released By: Mario Yslas

Authorizing: Jeffrey J.  
Alvarez, MD

Date: 11/5/2015

Department: Maricopa Medical  
Center: MRI**Order Information**Order Date/Time  
11/05/15 07:27 AMRelease Date/Time  
11/05/15 07:27 AMStart Date/Time  
11/05/15 07:27 AMEnd Date/Time  
11/5/2015**Order Details**Frequency  
NoneDuration  
1 occurrencePriority  
RoutineOrder Class  
MIHS Performed**Original Order**Ordered On  
10/23/2015 2:25 PMOrdered By  
Kristy Mulnix**Associated Diagnoses**Sprain of knee, cruciate ligament,  
left, initial encounterICD-10-CM  
S83.502AICD-9-CM  
844.2**Comments**

Additional clinical info for Radiologist:

**Order Questions**

Question

Reason for exam:

Answer

Sprain of knee,  
cruciate ligament, left,  
initial encounter

Comment

**Appointments for this Order**

11/5/2015 7:30 AM - 60 min

MRI 1.5T (Resource)

Mmc Rad Mri

**Process Instructions**

Patient should bring pain meds to be able to lie still and/or for pain control.

Remove jewelry, hair pins, loose fitting dentures and other articles containing metal prior to sending patient to procedure.

**Collection Information**

Resulting Agency: MIHS RAD

Hathaway, Derrick (MR # 0038844338)

**Verbal Order Info**

Action	Created on	Order Mode	Entered by	Comment	Responsible Provider	Signed by	Signed on
Ordering	10/23/15 1425	Outreach/Transcribe	Kristy Mulinix			Signature Not Required	

**Additional Information**

[Associated Reports](#)  
[View Parent Encounter](#)  
[Priority and Order Details](#)

**Reprintable Requisition**

[MRI knee left without IV contrast \(Order #8678150\) on 11/5/15](#)

**Additional Details**

[View Order Tracking](#)

Hathaway, Derrick (MR # 0038844338) Printed by Vanessa Garcia [400] at 11/6/15 10:53 AM

**LBJ ORTHO CLINIC – DR. EMERSON**

**October 21, 2015**

**Name:** Derrick Hathaway

**Booking:** T211131

**Location:** TOWR

**Subjective:** 34-year-old Derrick Hathaway is seen 10/21/15 at the LBJ Ortho Clinic with an injury that he sustained to his left knee on 09/09/15.

He states he was at the VA Hospital getting his PTSD medications as he is a United States Marine Corp Veteran having served in Kosovo for five years. He states the VA security police "beat me up." This was in the VA Hospital. He was "jumped and hog tied" and was accused of "trespassing." He states he is going to be here until his release, then he will be going home. He works as a landscaper and carpenter.

**Objective:** He has a grossly positive Lachman's and pivot shift. He has pain medial and lateral joint line. There is no effusion. The knee is stable medially, laterally and posteriorly. Quadriceps patellar tendons are intact. Thigh and calf compartments are soft. Negative calf pain, negative Homan's. Ankle: dorsiflexion and plantar flexion is satisfactory. There is no lymphedema. Distal pulses, capillary refill is good in the lower extremity.

X-rays are normal.

**Assessment:** 1. Torn ACL, probable torn meniscus, left knee.

**Plan:** 1. We will request an MRI.  
2. We told him to notify the VA authorities of the injury that occurred at the VA Hospital. He will require an ACL reconstruction.

# Progress Notes

Printed On Sep 22, 2015

LOCAL TITLE: EMERGENCY DEPT PROGRESS NOTE  
 STANDARD TITLE: EMERGENCY DEPT NOTE  
 DATE OF NOTE: SEP 09, 2015 12:57 ENTRY DATE: SEP 09, 2015 12:57:16  
 AUTHOR: BRENNAN, CAROL B EXP COSIGNER:  
 URGENCY: STATUS: COMPLETED

CC: laceration, left knee pain

HPI: 34 yo male veteran initially seen in the holding area of the VA police Department. Patient was involved in an altercation with the VA police. He was brought to the ED for evaluation prior to transfer to the Phoenix Police Department. The patient reports that his head hit a wall. He denies loss of consciousness. He reports his left knee is painful after hitting the floor.

ROS:

Gen- no fever or chills, fatigue  
 CV- no CF  
 Resp- no dyspnea, cough  
 Abd- no abdominal pain, N, V, D,  
 GU- no urinary sx's  
 Ext- no swelling, pain  
 Neuro- no paresthesias, focal weakness, headache

Active problems - Computerized Problem List is the source for the following:

1. Homeless
2. Chronic post-traumatic stress disorder
3. Mood disorder
4. Knee pain
5. Head injury
6. Sexually transmitted infectious disease
7. Disorganized schizophrenia

Allergy:

KEFLEX

OUTPATIENT MEDICATIONS (per Phoenix VAMC Computer Records):  
 No Outpatient Medications

Physical exam:

DATE/TIME	TEMP	PULSE	RESP	BP	PAIN	WT (LB)	P OX
09/09/15 @ 1108		124	18	135/76	4		98
		94					

gen: AA, NAD, alert oriented x 3  
 heent: head 3cm superficial linear laceration mid right forehead  
 eyes: PERRL conjunctiva without injection  
 sclera without icterus  
 ears: tm's with bulge or erythema

PATIENT NAME AND ADDRESS (Mechanical Impairing, if available)  
 HATHAWAY, DERRICK  
 APT 3  
 1118 E FAIRMONT AVE  
 PHOENIX, ARIZONA 85014  
 DOB: 11/28/1980

VISTA Electronic Medical Documentation  
 Printed at Phoenix VA Health Care System

# Progress Notes

Printed On Sep 22, 2015

oro-pharynx: uvula midline, no erythema  
or exudate.  
neck: supple without nodes, no JVD, non-tender  
card: regular, No M, gallop  
pulm: Clear, no chest wall tenderness  
abd: S, NT, no masses or hsm, no G/R, nl BS  
ext: no edema b/l, no cyanosis  
left knee, no erythema or edema, tender  
to palpation medial and lateral mid patella  
dp/pt +2 bilaterally  
skin: No acute rashes.  
neuro: non-focal. on 2-12 grossly intact, gait without  
abnormality

## CT: FINDINGS:

No mass, mass effect or midline shift.  
Ventricles and sulci are unremarkable.  
Basal cisterns are patent. No hydrocephalus.  
Gray-white matter junction is preserved. Brain parenchyma is  
unremarkable.  
Corpus callosum and sella appear unremarkable.  
Visualized paranasal sinuses and mastoid air cells are  
unremarkable.  
Visualized globes appear unremarkable.  
No depressed calvarial fracture.

## Impression:

No acute intracranial pathology.

## Knee xray: Impression:

3 views of the left knee compared to previous study of 8/24/2015  
show no evidence of fracture.

AST 26  
ALT 39 H  
BUN 9  
GLUCOSE 117 H

PATIENT NAME AND ADDRESS (Mechanical Impression, if available)

HATHAWAY, DERRICK  
APT 3  
1118 E FAIRMONT AVE  
PHOENIX, ARIZONA 85014  
DOB: 11/28/1980

VISTA Electronic Medical Documentation

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# Progress Notes

Printed On Sep 22, 2015

SODIUM 143  
 POTASSIUM 3.6  
 CHLORIDE 110  
 tCO2 22  
 CALCIUM 9.4  
 PROTEIN 7.1  
 ALBUMIN 4.6  
 BILIRUBIN, TOTAL 0.6  
 ALKALINE PHOSPHATASE 57  
 ANION GAP 11.0  
 Creatinine 0.97  
 eGFR 89  
 HEMOLYSIS NO HEMOLYSIS  
 LIPEMIA NO LIPEMIA  
 ICTERUS NO ICTERUS  
 NEEDLESTICK HIV NONREACTIVE

## ED course:

Pt evaluated, examined and chart reviewed. Veteran initially evaluated in the holding cell of VA police. Patient had been involved in an altercation with a VA police officer. The police officer sustained a bite to his right thumb. The officer was sent to occupational health for evaluation and following contact with the Occupational health NP, an HIV, Hep C, Hep B and cmp were advised. The patient had told the triage nurse that he was positive for both HIV and Hep C. Patient was asked if he would give consent for blood work including HIV and hep testing. The veteran verbalized agreement to both this provider and triage nurse Gilbert. Labs were drawn. The patient's heart rate was in the 120's during initial contact, on return to the holding cell, his vital signs were taken and his heart rate was down to 95. He was transferred to the ED for further evaluation. Examination performed. Patient discussed with Dr. Wright. Head ct performed, finding as above. When the patient was advised that his lab result for HIV was non-reactive, he stated he was aware of this, he had only said he was positive as he was upset with the situation. The patient also asked if he said he said he was suicidal would he be able to remain at the VA for care. The patient was informed that he was not eligible for services other than humanitarian and that he would be transferred to a community resource. The patient verbalized understanding of this. Laceration of the patient's forehead was cleaned with chloraprep and steri strips placed. The veteran was advised to leave the steri-strips until they became loose and to monitor for signs of infection.

## Assessment:

1. laceration
2. left knee strain

## Plan:

Pt discharged to Phoenix Police Dept.

## Meds:

## Instructions:

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

HATHAWAY, DERRICK

APT 3

1118 E FAIRMONT AVE

PHOENIX, ARIZONA 85014

DOB: 11/28/1960

WETA Electronic Medical Documentation

Printed at Phoenix VA Health Care System

# Progress Notes

Printed On Sep 22, 2015

Return to ED if sxs worsen or other acute problems.  
Pt verbalized understanding of all above and is discharged in stable condition.

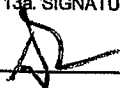
/es/ CAROL B BRENNAN, PA-C  
PHYSICIAN ASSISTANT  
Signed: 09/09/2015 14:50

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)  
HATHAWAY, DERRICK  
APT 3  
1118 E FAIRMONT AVE  
PHOENIX, ARIZONA 85014  
DOB: 11/28/1980

VISTA Electronic Medical Documentation  
Printed at Phoenix VA Health Care System

# **EXHIBIT 2**



<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:  U.S. Department of Veteran Affairs & Veterans Health Admin. Pacific-South, Office of Chief Counsel (644/200), 650 E. Indian School Rd., Bldg. 24, Phoenix, AZ 85012 Fax: (602) 212-2144			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.  Derrick Hathaway, 5440 E. Main St., Apt. 125, Meza, AZ 85205 C/O Piccuta Law Group, LLP-Charles Tony Piccuta, Esq., 400 W. Franklin Street, Monterey, CA 93940		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		4. DATE OF BIRTH 28/11/1980	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 9/9/2015                      Wednesday	
7. TIME (A.M. OR P.M.) 10:45 AM (approx)					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).  Hathaway is a veteran who went to the Veteran Medical Center at 650 Indian School Road in Phoenix, Arizona on September 9, 2015 for PTSD medications. While there, he was taken into custody by VA police, handcuffed and escorted to a station holding cell. VA police officers (Fister, Lopez) then took Hathaway, while still handcuffed, and ran him face first into the back wall of the holding cell. They then slammed him to the floor where two other officers joined in and hog-tied him. In the process, an officer choked him with his hand. Hathaway sustained a gash on his forehead and a complete ACL tear. See attachment.					
9. <b>PROPERTY DAMAGE</b>					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. <b>PERSONAL INJURY/WRONGFUL DEATH</b>					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.  Hathaway sustained an approximate 2 inch gash/laceration on his forehead with permanent scarring. Hathaway sustained a complete tear of ACL in left knee and multiple tears to left meniscus requiring complete ACL reconstruction.  <b>SEE ATTACHMENTS.</b>					
11. <b>WITNESSES</b>					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
Officer Daniel Ross, Officer Joseph Owens Sgt. Fister Officer Dominic Lopez		In Possession of VA Police  In Possession of VA Police  In Possession of VA Police			
12. (See instructions on reverse). <b>AMOUNT OF CLAIM</b> (in dollars)					
12a. PROPERTY DAMAGE  0		12b. PERSONAL INJURY  350000		12c. WRONGFUL DEATH  0	
		12d. TOTAL (Failure to specify may cause forfeiture of your rights).  <b>\$ 350,000 -</b>			
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).   <b>CHARLES TONY PICCUTA</b> <b>ATTORNEY FOR CLAIMANT D. HATHAWAY</b>			13b. PHONE NUMBER OF PERSON SIGNING FORM  (949) 933-9883		14. DATE OF SIGNATURE  31/8/2017
<b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b>  The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			<b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b>  Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

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STANDARD FORM 95 (REV. 2/2007)  
PRESCRIBED BY DEPT. OF JUSTICE  
28 CFR 14.2

95-109

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of July 2018, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Honorable Deborah M. Fine  
United States District Court  
401 West Washington  
Phoenix, Arizona 85003

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Phoenix, Arizona 85004  
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/s/ Michael P. Vazquez  
Michael P. Vazquez