

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**JOSEPH GARRO,**
Plaintiff

V.

SUMMONS IN A CIVIL CASE**BOROUGH OF LINDENWOLD, ET AL.,**
*Defendant*CASE
NUMBER: 1:16-CV-02253-JBS-AMDTO: (Name and address of Defendant):
_____**Borough of Lindenwold**
15 N. White Horse Pike
Lindenwold, NJ 08021

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Justin T. Loughry, Esq.
LOUGHRY and LINDSAY, LLC
330 Market Street
Camden, NJ 08102

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

WILLIAM T. WALSH
CLERK

JAIME KASSELMAN
(By) DEPUTY CLERK

ISSUED ON 2016-04-22 08:41:25, Clerk
USDJ NJD

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RETURN OF SERVICE		
Service of the Summons and complaint was made by method	DATE	
NAME OF SERVER (PRINT)	TITLE	
Check one box below to indicate appropriate method of service		
☐ Served personally upon the defendant. Place where served: _____		
☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.		
☐ Name of person with whom the summons and complaint were left: _____		
☐ Returned unexecuted: _____		
☐ Other (specify): _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on	Date	Signature of Server
		Address of Server

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By: Justin T. Loughry, Esq. (3473-JTL)

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Attorneys for Plaintiff, Joseph Garro

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOSEPH GARRO,

Plaintiff,

v.

BOROUGH OF LINDENWOLD; CHIEF
OF POLICE THOMAS J. BRENNAN;
PATROLMAN KYLE KEATING Badge
#88; PATROLMAN MICHAEL HAYDEN,
Badge #56, and John Does 1, 2, and 3,

Defendants.

: Civil Action #

: COMPLAINT AND DEMAND FOR
: JURY TRIAL

Joseph Garro, by way of complaint against the Defendants, says:**PRELIMINARY STATEMENT**

1. This action is brought to redress intentional and wanton violations of the Fourth, Fifth, and Fourteenth Amendment rights of the Plaintiff, committed by the Borough of Lindenwold and its Police Department, and one or more of its agents, servants, employees or officers, in effecting an unreasonable, unconstitutional, physical assault upon the Plaintiff, via the use of excessive force.

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JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331, 1343 and 1367, as one or more causes of action arise under the United States Constitution and federal law. Plaintiff brings this action for damages under 42 U.S.C. §§ 1983 and 1988 since the conduct complained of was engaged in under color of state law, and such conduct by the Defendants subjected Plaintiff to deprivations of rights, privileges and immunities secured by the United States Constitution under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

3. Venue is proper in this District as it is the District in which the Plaintiffs and the Defendants reside and the District in which the claims arise.

PARTIES

4. Plaintiff, Joseph Garro was at all relevant times and remains a citizen and resident of the State of New Jersey and the County of Camden, residing at 1990 Laurel Road, Apartment 351, Lindenwold Borough, New Jersey.

5. Defendant Thomas J. Brennan was at all relevant times, the Director and/or Chief of Police of the Lindenwold Police Department. Brennan was at all relevant times the chief policy maker and supervisor for the Lindenwold Police Department, and the official responsible for the hiring, training, discipline, and supervision of employees of the Department, including without limitation, Defendant Officers Keating and Hayden.

6. Defendant Lindenwold is a municipality or municipal corporation situated within the County of Camden, State of New Jersey, and is a "person" within the meaning of 42 U.S.C. § 1983. At all times relevant hereto, Lindenwold employed, directed, supervised, condoned and/or

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acquiesced in the conduct of the Defendants Brennan, Keating and Hayden.

7. At all times relevant, Defendants Keating and Hayden were agents, servants or employees of the Lindenwold Police Department. Upon information and belief, each was assigned to general patrol duties within the municipality that would routinely bring him into contact with members of the public in an investigatory or law enforcement capacity and in the context of routine police patrol. On April 25, 2014, defendants were either assigned to work together or were in fact working together at or near the location of the residence 1990 Laurel Road, Apartment 351, Lindenwold Borough, New Jersey.

8. Defendant John Doe 3, a member of the Lindenwold Police Department, was present at the scene, was in a position to intervene and stop the ongoing unconstitutional conduct, but failed in his duty to do so.

9. Defendants John Doe 1 and 2 were, upon information and belief, members of the Lindenwold Police Department and had supervisory authority over the patrol division or the part of the police department to which Keating and Hayden were assigned.

10. Each of the Defendants was acting within the scope of his/its employment and/or under color of law as agents, servants or employees of the Lindenwold Police Department. Each is sued in both official and individual capacities.

FIRST COUNT

11. Plaintiff re-alleges and incorporates herein as if fully set forth the allegations of all preceding paragraphs of the Complaint.

12. On or about April 25, 2014, at approximately 12:51 p.m., Defendants Keating and Hayden entered the residence at 1990 Laurel Road, Apartment 351, to respond to a complaint of a domestic dispute.

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13. On April 25, 2014, Plaintiff and his co-habitant Linda Malandruco were present.

14. Plaintiff was not fully dressed; he was in the kitchen, about to take certain medicine orally, and had a glass of water in his hand.

15. Plaintiff is sixty-nine years of age, in poor health, and weighs less than 150 pounds.

There was no violence or other misconduct occurring at the time, indeed, none had occurred.

Plaintiff and Linda Malandruco had earlier argued verbally, but the argument had terminated.

The 911 call to which the officers were responding specified that the domestic dispute involved a verbal argument only, without any allegation of physical abuse or threat of force, all of which was known to the police.

16. Police advanced aggressively on Plaintiff, shouting instructions that he did not understand. They knocked the glass of water out of his hand, grabbed him forcefully and turned and propelled him violently against a wall, when he had not manifested any physical resistance.

17. The responding officers, defendants Keating and Hayden, violently and unnecessarily wrenched plaintiff's arm and shoulder and fractured/broke a bone in his left arm. The officers then dragged plaintiff, still in his underclothes, outside in the rain, and inflicted further injury and pain upon plaintiff by pushing him up against their vehicle and forcing him inside.

18. Plaintiff suffered serious and permanent injury from which he has yet to recover and after almost two years, it is apparently a permanent injury involving the loss of use of his arm for almost all intents and purposes.

19. There was neither legal nor factual necessity nor justification for the use of such force upon Plaintiff, nor was there any justification for or need to seize the persons of Plaintiff in such manner. The seizure and the administration of this level and kind of force was excessive, and was intended and designed to inflict pain and suffering upon Plaintiff, without just cause, and

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with, at minimum, reckless indifference to the rights of Plaintiff. Plaintiff suffered grievous injury to his left arm, and his body, injuries proximately and directly caused by the defendants' use of excessive and unreasonable force.

20. At all times, Defendants Keating and Hayden were acting under color of state law.

21. The conduct of Defendants Keating and Hayden violated Plaintiffs' Federal constitutional right to be free from unreasonable seizure of his/her person and from the administration of excessive force by police officers, and from the wanton and unnecessary infliction of pain and injury by such officers.

22. As such, the aforesaid conduct constitutes an intentional violation of the Plaintiffs' rights to freedom from unlawful restraint/seizure, right to freedom from the use of excessive force, right to freedom from punishment without due process of law, and right to privacy and bodily integrity, under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff demands judgment against Officers Keating and Hayden, an award of compensatory and punitive damages, along with attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and such other and further relief as the Court deems just.

SECOND COUNT

(Versus the Borough of Lindenwold and its Police Department and Police/Director Chief)

23. Plaintiffs incorporates here as if fully set forth the allegations of all previous allegations of the Complaint.

24. The Defendants Borough of Lindenwold, and Director/Chief of Police Thomas J. Brennan and John Doe 1 and 2 [collectively "the supervisory defendants"] have a non-delegable duty to hire, train and supervise, investigate and discipline or sanction members of the municipal police force and to institute policies, practices and customs so as to ensure that no member of the

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police force utilizes excessive force or perpetrates unreasonable seizures or detentions upon the citizens and residents of the municipality.

25. Upon information and belief, the supervisory defendants were on actual and/or constructive notice that their patrol officers had in one or more incidents in recent years administered and inflicted excessive force and grievous injury upon a member of the public for momentary apparent failure to comply with a verbal order even when the member of the public posed no physical threat to the officers and had not threatened or committed any act of aggression or violence toward said officers. As the result of prior incidents, including a notorious attack and infliction of injury on a citizen by Lindenwold officers on or about October 2010, the township/borough had been forced to pay millions of dollars in compensation to one James Black who the police subdued, brutalized and arrested for an alleged failure to immediately obey a police instruction. Defendants Keating and/or Hayden and other members of the Department engaged from time to time in the practice or custom of administering or utilizing such dramatic and unjustified excessive force in police – citizen encounters, including the use of unnecessarily painful and injurious techniques upon physically helpless or vulnerable suspects, such as what was done to Black and what was done to Plaintiff in the present case, wherein the target citizen had committed no violence.

26. As a result of said prior incident or incidents, defendants *were on notice* that any rules, regulations and protocols of the police department that were in place to prohibit such tactics were being ignored, were in practice ignored by patrol officers, and that those officers from time to time inflicted grievous injury on citizens for no more than trifling noncompliance with police orders.

27. The Defendants had and have a duty to hire, train, supervise and discipline the employees

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of the police department to refrain from the use of excessive force and unnecessarily painful and injurious tactics for detaining, immobilizing or otherwise incapacitating citizens that are the subject of on-the-street inquiries or investigations, or who dissent from a police instruction but neither create nor pose any risk of physical harm or jeopardy to officers. The Defendants have knowingly and recklessly failed to fulfill said duty and have failed to institute or enforce policies and/or practices to prevent, penalize and cure such abuses.

28. Upon information and belief, the Defendants' failure to hire, train and supervise subordinates to refrain from use of excessive force and to refrain from the violation of citizens' or suspects' constitutional rights, amounts to a pattern, practice and/or policy of lax or no supervision and lax or no correction of subordinates when they engage in conduct that violates the constitutional rights of citizens to be free from such unreasonable seizures and the use of excessive force during inquiries, investigations or detentions. The pattern, practice or policy is also exhibited by a failure adequately to train and supervise officers regarding, *inter alia*, the requirements to lawfully detain citizens, the requirements to lawfully enter or remain on the private property of a citizen, the appropriate method for conducting any investigative inquiry or "pat down" or temporary detention, the constitutionally permissible methods of conducting temporary physical seizures or detention of a suspect, without resort to barbarous and unduly dangerous tactics such as were utilized in the present case.

29. The Defendants have failed in their duty to supervise employees such as Keating and Hayden, to ensure that they do not utilize excessive force and do not commit unconstitutional seizures.

30. The pattern, practice or policy and failure to supervise amounts, at minimum, to deliberate indifference to the rights of persons such as Plaintiff.

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31. The pattern, practice or policy and the failure to supervise is likewise evidenced by the supervisory Defendants' failures to discipline officers who engage in inappropriate or unlawful activities during their investigative inquiries or encounters with citizens. Specifically, the Defendants have, upon information and belief, acquiesced in the misconduct of Keating and/or Hayden and other officers on occasions prior to and since the events of the present case.

32. Despite the clear requirements of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution regarding search and seizure and the limitations upon the police's use of force, including without limitation, the requirement that only reasonable force be used and the prohibition of excessive force, no defendant that has engaged in such unconstitutional conduct toward Plaintiff or others similarly situated has been disciplined in any manner for the actions described herein, nor have the supervisory Defendants taken any action to correct or modify Defendants' behavior.

33. Upon information and belief, the supervisory defendants have had prior notice of similar incidents and similar violations of citizens' rights by their patrol officers, including without limitation Keating and/or Hayden, in their interactions with the citizenry and residents of the municipality, and have failed to take appropriate corrective action. It is further alleged that discovery will reveal that shortly after the incident above, the supervisory defendants became aware of the present incident and acquiesced in the conduct of officers Keating and Hayden. The failure to take appropriate action to discipline officers for said conduct condones, encourages and ratifies such unlawful behavior, and itself constitutes evidence of a pattern, practice and policy of deliberate disregard for the constitutional rights of Plaintiff and other residents of the city.

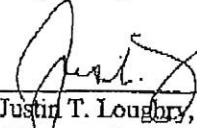
34. The various injuries suffered by Plaintiff all proximately result from the deliberate

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indifference of the supervisory defendants to the protection of the rights, privileges and immunities of Plaintiff as guaranteed by the United States Constitution and laws of the United States, in violation of 42 U.S.C. § 1983. As a result, Plaintiff has suffered great pain, anguish and monetary loss, and will continue to so do in the future.

WHEREFORE, Plaintiff seeks judgment against the Defendants, an award of punitive and compensatory damages, attorneys' fees and costs of suit pursuant to 42 U.S.C. § 1988, and such other and further relief as the Court deems just.

Respectfully submitted,

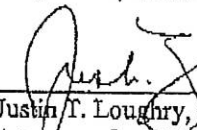

Justin T. Loughry, Esquire
Attorneys for Plaintiff, Joseph Garro

Dated: 4-20-16

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands trial by jury on all Counts.

Respectfully submitted,


Justin T. Loughry, Esquire
Attorneys for Plaintiff, Joseph Garro

Dated: 4-20-16