

EMAIL: dan@marchesefirm.com

1. Plaintiff resides at 40 Scott Road, Franklin, New Jersey 07416, County of Sussex and State of New Jersey.
2. Defendant Franklin Borough Police Department (hereinafter also referred to as “Franklin Police”) has an address at: 15 Corkhill Road, Franklin, New Jersey 07416.
3. Defendants Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg, are all Franklin Police Officers of varying rank (Detective, Patrolman and Sergeant, respectively) who also have an address at: 15 Corkhill Road, Franklin, New Jersey 07416.

FACTS COMMON TO ALL COUNTS

4. At all relevant times, Plaintiff had been subject of an ongoing criminal case in Sussex County (State of New Jersey v. Lukas Budzel; bearing Indictment No.: 27-07-000179-I; hereinafter referred to as the “Pending Matter”).

5. In the early evening of December 6, 2021, Plaintiff was lawfully in his home when he went into diabetic shock – a medical emergency.

6. At that time, his parents called 9-1-1 such that an ambulance and emergency medical personnel would be summoned to assist with his medical emergency.

7. Franklin Police were dispatched as were EMTs. Upon arrival, and after having no direct contact with Mr. Budzel, strangely Franklin Police Officer Defendant Moschberger, told the EMTs to leave.

8. Police Officers Moschberger and Gus Protogeropoulos and other Franklin Police Officers then proceeded to search for Mr. Budzel in and around his parents’ house and back yard.

9. Approximately 10-15 minutes later, Mr. Budzel was located in the woods behind his parents’ house and without warning, Defendants Moschberger and Gus Protogeropoulos, among other unnamed Franklin Police Officers, charged him and tackled him to the ground and hand-cuffed him, causing injury.

10. Mr. Budzel told Defendants Moschberger and Gus Protogeropoulos and other Franklin police on the scene that he couldn’t breathe multiple times, but they stayed on top of him while still in cuffs and his face in the dirt.

11. In fact, there was no cause to arrest Mr. Budzel on the evening of December 6, 2021.

12. All charges leveled against him were wholly concocted by Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg.

13. While Defendants Eric Moschberger, and Gus Protogeropoulos and other Franklin Police did appear at his house to investigate Plaintiff's diabetic episode, they first told the ambulance to leave the scene, then they did not attempt to render first aid to Plaintiff at any point, and instead, tracked him down like an animal in the woods behind his house, tackled him, put his face in the dirt and then handcuffed his hands behind his back, arresting him, all without any probable cause for his arrest, as he had not committed, nor was he about to commit, a crime while he was experiencing the aforementioned diabetic shock.

14. Later on, responding Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and others called for an ambulance to again come to the scene to treat him for the injuries they inflicted on him when they illegally arrested him, and Plaintiff was then taken to Newton Medical Center via ambulance from his home to be treated.

15. Thereafter, on December 8, 2021, Plaintiff was charged with various crimes all derivative of the local police "take-down" and arrest of his person as above-described.

16. Due to the fact that he had pending charges against him and caught new charges, when Plaintiff was arrested on December 8, 2021, he was placed at the Morris County Jail, pending a detention hearing.

17. It should be noted that Plaintiff had a Final Pre-Trial Hearing scheduled in the Pending Matter, when the charges were brought against him and he was arrested.

18. Indeed, Defendant the Sussex County Prosecutor's Office then moved to detain Plaintiff in County "lock-up" pending adjudication of the new charges, and in light of the Pending Matter; ultimately, however, Plaintiff was released from County Jail (after spending approximately 13 days incarcerated there) as the State's motion to detain was denied.

19. Immediately thereafter, when Plaintiff's defense counsel moved to "stay" the trial in the Pending Matter pending the resolution of an internal affairs investigation of the local police for their role in the December 6, 2021, "take-down" and arrest of Plaintiff, the Sussex County Prosecutor's Office moved to "remand" all of Plaintiff's new charges save a disorderly conduct charge.

20. From that time until November 30, 2023, the remanded charge against Plaintiff was scheduled to be heard in multiple conflict Municipal Courts, ultimately being finally transferred and heard in the East Hanover Municipal Court.

21. The case was set to be tried in the East Hanover Municipal Court on November 30th, 2023, with no further adjournments, and Plaintiff was ready and able to defend himself on that date.

22. Because the State's chief witness in the case, Defendant Gus Protogeropoulos (who was the "victim" in the solitary disorderly persons offense against Plaintiff), did not appear for trial, when he failed to appear, Plaintiff's Counsel made a motion to dismiss the case against Plaintiff for lack of prosecution, **with prejudice**, which the East Hanover Municipal Court granted.

FIRST COUNT
(Abuse of Process)

23. Plaintiff repeats and reiterates each and every allegation contained in the **"FACTS COMMON TO ALL COUNTS,"** recital of the Complaint and incorporates the same as if more fully set forth herein.

24. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg knew of Plaintiff's Pending Matter when he was again charged as a result of being "taken down" and arrested by local police on December 6, 2021.

25. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg knew that there was no underlying probable cause to arrest Plaintiff

on December 6, 2021, as Plaintiff committed no underlying crime.

26. Despite this, Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg charged Plaintiff with certain indictable crimes on December 8, 2021.

27. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg knew that the new charges would place Plaintiff in jail and said Defendants knew that the Sussex County Prosecutor's Office would move to keep him in jail pending adjudication of the same.

28. Defendant Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg in tandem with the Sussex County Prosecutor's Office had an ulterior motive in charging Plaintiff with certain indictable crimes on December 8, 2021.

29. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg in tandem with the Sussex County Prosecutor's Office knew that Plaintiff had a looming final pre-trial conference in the Pending Matter, and prior thereto the Sussex County Prosecutor's Office offered a "global plea" to the new charges and the Pending Matter (all of which included a mandatory State Prison sentence for Plaintiff).

30. In this way, Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg all assisted in making an improper, illegal and perverted use of the legal procedure, that is to say that said Defendants' resort to the legal process in these respects was neither warranted nor authorized by law, and said Defendants sought to assist the Sussex County Prosecutor's office to gain leverage in the Pending Matter as a consequence of the same (the ulterior motive), all while causing Plaintiff damages by having him incarcerated after being charged on September 8, 2021.

WHEREFORE, Plaintiff demands judgment against the Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg, jointly,

individually, and severally, and in the alternative with the other Defendants named herein, for damages as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, together with interest, costs of suit, attorneys fees, punitive damages and such other legal and equitable relief as the Court deems appropriate.

SECOND COUNT
(Malicious Prosecution)

31. Plaintiff repeats and reiterates each and every allegation contained in the “FACTS COMMON TO ALL COUNTS,” recital and the First Count of the Complaint and incorporates the same as if more fully set forth herein.

32. Plaintiff was facing the Pending Matter at the time he was arrested on the new charges on December 8, 2021.

33. Defendant Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg filed the new charges against the Plaintiff.

34. Thereafter, Defendant Sussex County Prosecutor’s Office withdrew and remanded the new charges against the Plaintiff.

35. There was no probable cause to issue the new charges against Plaintiff.

36. Further, Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg failed to assist the State in prosecuting the remaining charge in the East Hanover Municipal Court.

37. In this way, Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg engaged in malicious prosecution of the Plaintiff causing him damages.

WHEREFORE, Plaintiff demands judgment against the Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg, jointly, individually, and severally, and in the alternative with the other Defendants named

herein, for damages as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, together with interest, costs of suit, attorneys fees, punitive damages and such other legal and equitable relief as the Court deems appropriate.

THIRD COUNT
(Negligence)

38. Plaintiff repeats and reiterates each and every allegation contained in the “FACTS COMMON TO ALL COUNTS,” recital and the First and Second Counts of the Complaint and incorporates the same as if more fully set forth herein.

39. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and other Police Officers violently attacked the Plaintiff and tackled him to the ground causing him injury; further, Defendants aggressive tactics upon arrival at Plaintiff’s home agitated him in the midst of his diabetic episode also causing injury.

40. In the process of the investigation of Plaintiff’s diabetic episode, Defendants’ actions were reckless and negligent.

41. As a direct and proximate result of the negligence, as aforesaid, the Plaintiff sustained great pain and suffering of the mind and body, has and did sustain permanent bodily injuries, has and did incur medical expenses in order to correct the conditions caused by the Defendants, has and was unable to attend to his ordinary routine, employment and affairs and was otherwise severely and significantly damaged.

WHEREFORE, Plaintiff demands judgment against the Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg, jointly, individually, and severally, and in the alternative with the other Defendants named herein, for damages as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, together with interest, costs of suit, attorneys fees, punitive damages and such other legal and equitable relief as the Court deems

appropriate.

FOURTH COUNT
(Negligence as proximate cause of incident/injury)

42. Plaintiff repeats and reiterates each and every allegation contained in the “FACTS COMMON TO ALL COUNTS,” recital and the First, Second and Third Counts of the Complaint and incorporates the same as if more fully set forth herein.

43. The incident, and Plaintiff’s injuries and damages, were proximately caused by the negligence of the Defendant(s) as herein alleged.

44. As a direct and proximate result of the aforesaid negligence of the Defendant(s), the Plaintiff was caused to sustain permanent and debilitating injuries as well as suffering consequential damages.

45. As a further direct and proximate result of the Defendant’s negligence, the Plaintiff has suffered, and will continue to suffer for an indefinite time, great pain, suffering, discomfort, disability, and inconvenience.

WHEREFORE, Plaintiff demands judgment against the Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg, jointly, individually, and severally, and in the alternative with the other Defendants named herein, for damages as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, together with interest, costs of suit, attorneys fees, punitive damages and such other legal and equitable relief as the Court deems appropriate.

FIFTH COUNT
(42 U.S.C. § 1983)

46. Plaintiff repeats and reiterates each and every allegation contained in the “FACTS COMMON TO ALL COUNTS,” recital and the First, Second, Third and Fourth Counts of the Complaint and incorporates the same as if more fully set forth herein.

47. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and other Police Officers at all times relevant to this action were acting under color of state law and violated Plaintiff's constitutional rights by unreasonably seizing him and using excessive force against him, as described herein throughout, which resulted in Plaintiff's injuries.

48. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and other Police Officer's actions violated the constitutional rights guaranteed to Plaintiff by the Fourth Amendment of the United States Constitution.

49. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and other Police Officer's actions were not taken in good-faith and were in violation of clearly established law.

50. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and other Police Officer's used excessive force at the time they unreasonably and unlawfully tackled Plaintiff from in the woods behind his home and aggressively arrested him as aforementioned.

51. Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and other Police Officer's actions were unnecessary, unreasonable, unlawful, and unjustified.

52. As a direct and proximate result of the Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and other Police Officer's unreasonable and unlawful actions, in violation of 42 U.S.C. § 1983 and the United States Constitution the Plaintiff has suffered and continues to suffer substantial past and future damages, both compensatory and general, including, but not limited to, medical bills, loss of income, severe emotional distress, mental anguish, embarrassment, humiliation, disfigurement, and physical pain.

WHEREFORE, Plaintiff demands judgment against the Defendants Franklin Police, Eric Moschberger, Gus Protogeropoulos and Robert Vander Ploeg, jointly, individually, and severally, and in the alternative with the other Defendants named herein, for damages as would reasonably and properly compensate Plaintiff in accordance with the laws of the State of New Jersey, together with interest, costs of suit, attorneys fees, punitive damages and such other legal and equitable relief as the Court deems appropriate.

DESIGNATED COUNSEL

Designated trial counsel in this matter is Daniel G.P. Marchese, Esq.

DEMAND FOR TRIAL BY JURY

The Plaintiff hereby demands a trial by jury of the within cause of action.

CERTIFICATION AS TO RULE 4:5-1

I certify that to my knowledge this matter is not the subject of any other action or arbitration proceeding, pending, however, there may be an amendment to this Complaint to add additional counts against additional parties whose identity has not yet been confirmed.

THE MARCHESE LAW FIRM, LLC
Attorneys for Plaintiff Lukas Budzel



By: DANIEL G.P. MARCHESE, ESQ.
Attorney ID: 004291998

Date: December 6, 2023

Civil Case Information Statement

Case Details: SUSSEX | Civil Part Docket# L-000514-23

Case Caption: BUDZEL LUKAS VS FRANKLIN BOROUGH
POL ICE DEPAR

Case Initiation Date: 12/06/2023

Attorney Name: DANIEL G MARCHESE

Firm Name: THE MARCHESE LAW FIRM, LLC

Address: 93 SPRING ST STE 300

NEWTON NJ 07860

Phone: 9733833898

Name of Party: PLAINTIFF : Budzel, Lukas

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: OTHER abuse of process, malicious prosecution, negligence

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Lukas Budzel? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

12/06/2023

Dated

/s/ DANIEL G MARCHESE

Signed

