

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

7/13/17: St. K. Reinhard
Bouldin/Berg
Joe Helonen
Kevin Starkey
(Township attorney)

FERN LUMPKIN,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

SCOTT SMITH, ET AL.,
Defendant

CASE
NUMBER: 3:17-CV-05021-MAS-TJB

TO: (Name and address of Defendant):

Brick Township Police Officer John Rotondo
401 Chambers Bridge Road
Brick, New Jersey 08723

RECEIVED

JUL 14 2017

SAFETY & INSURANCE

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:

Maria D. Noto, Esq.
Law Office of Maria D. Noto, P.C.
746 Highway 34, Suite 8
Matawan, NJ 07747

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

John Moller

(By) DEPUTY CLERK



ISSUED ON 2017-07-10 16:28:55, Clerk
USDC NJD

Maria D. Noto, Esq.
Law Office of Maria D. Noto, P.C.
746 Highway 34, Suite 8
Matawan, New Jersey, 07747
Attorney for Plaintiff, FERN LUMPKIN
Attorney ID: 029831980

FERN LUMPKIN individually and FERN LUMPKIN as guardian and on behalf of her daughter FREEDOM LUMPKIN, Plaintiff, v. Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO, Brick Township Police Officers JOHN Doe A to F, Individually and as agents of the Brick Township Police Department. Defendants.	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY DOCKET NO.: <u>CIVIL ACTION</u> COMPLAINT AND JURY DEMAND
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Plaintiff, FERN LUMPKIN, individually and as guardian on behalf of her daughter FREEDOM LUMPKIN, both residing at 311 Kentwood Boulevard in the Township of Brick, Ocean County in the State of New Jersey, by way of this Complaint against Defendants herein says:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is evoked pursuant to 28 U.S.C. § 1331 in as much as this matter involves causes of action arising under 42 U.S.C. §§ 1983, 1985, 1986 and the Fourth,

Fifth and Fourteenth Amendments to the United States Constitution.

2. The jurisdiction of the claims based on New Jersey law which are set forth in this Complaint is invoked pursuant to the pendant jurisdiction of this Court.

PARTIES TO THE ACTION

3. Plaintiff, FERN LUMPKIN, an African American female, is a resident of the Township of Brick, New Jersey. She is the mother and sole caretaker of FREEDOM LUMPKIN who was three years old at the time of the incident in this complaint and resided with FERN LUMPKIN at 311 Kentwood Boulevard in the Township of Brick, Ocean County in the State of New Jersey.

4. At all times relevant to this Complaint, Defendants include Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, located at 401 Chambers Bridge Rd, Brick, New Jersey, 08723.

5. At all times relevant to this Complaint, Defendants Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN

Doe A to F, acted under color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the State of New Jersey, Borough of Brick and the Borough of Brick Police Department.

6. At all times relevant to this Complaint, Defendants Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, are sued individually and in their official capacities.

BACKGROUND AND NATURE OF ACTION

7. Defendants, Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, are employees of a public entity of the State of New Jersey and subject to suit under the Tort Claims Act, N.J.S.A. 59:1, et seq. A Notice of Intent pursuant to N.J.S.A. 59:8-1 was filed by the Law Office of Maria D. Noto, P.C.

8. On or about, July 15, 2015, Plaintiff FERN LUMPKIN, an African American female, called the Brick Township Police Department to report a noise complaint regarding another tenant in the building, who habitually made noise late at night and into the early morning hours. The other tenant's conduct habitually

interfered with the sleep of FERN LUMPKIN and her young daughter FREEDOM LUMPKIN.

9. Defendants, Brick Township Police Officers SMITH and ROTONDO arrived at the scene and spoke to FERN LUMPKIN, who advised the officers of the continuing noise problem cause by the other tenant, but the officers refused to issue a summons to the offender or to do anything to stop the offender from continuing her practice of making noise late at night and interfering with the sleep of FERN and FREEDOM LUMPKIN.

10. FERN LUMPKIN verbally expressed her exasperation with the refusal of the officers to assist her and/or issue a summons or complaint to the offending tenant.

11. Defendants, Brick Township Police Officers SMITH and ROTONDO then advised FERN LUMPKIN that, instead of doing anything to stop the cause of the noise complaint, the offending tenant, that they were going to, instead, arrest FERN LUMPKIN.

12. Brick Township Police Officers SMITH and ROTUNDO, illegally and without probable cause arrested FERN LUMPKIN and used excessive force while placing her wrists behind her back and placing her into handcuffs in the presence of the crying FREEDOM LUMPKIN who was very emotionally distraught at being

separated from her mother and observing the actions of the police officers. FERN LUMPKIN expressed concern and fear about her three year old child being left alone at the vestibule of her home with the door wide open, but Brick Township Police Officers SMITH and ROTUNDO ignored her concerns for her child.

13. Further, FERN LUMPKIN fell to the ground and begged the defendants, Brick Township Police Officers not to leave her child alone whereupon the defendants, Brick Township Police Officers dragged FERN to a police vehicle and left her inside with the windows closed and no ventilation for several minutes while they appeared to be doing paperwork, all the while ignoring the physical and emotional well-being of little FREEDOM LUMPKIN.

14. The handcuffs were double locked and FERN LUMPKIN was searched before being placed in Officer SMITH's patrol vehicle.

15. FREEDOM LUMPKIN, who was three years old at the time, was terrified after seeing her mother dragged and handcuffed by the police and being herself abandoned at the vestibule of the residence with the door left wide open.

16. In violation of the New Jersey Attorney General Guidelines FREEDOM LUMPKIN was left abandoned in extreme fear as she watched while her mother was dragged away from her and falsely imprisoned.
17. Plaintiff FERN LUMPKIN was falsely charged with Disorderly Conduct, N.J.S.A. 2C:33-2A(1), and Resisting Arrest, N.J.S.A. 2C:29-2A(1), thereby subjecting her to malicious prosecution in violation of federal and state law. Those charges were dismissed in Brick Township Municipal Court when Ms. Lumpkin pleaded guilty to a township ordinance. Thus, the criminal charges were resolved favorably in favor of Plaintiff, thus constituting malicious prosecution as to the criminal charges.
18. It was not until approximately one hour after FERN LUMPKIN was taken away from her daughter that the officers called an acquaintance of FERN LUMPKIN and told her that if she did not go to FERN LUMPKIN's home and take care of FREEDOM LUMPKIN, they would call the Division of Child Protection and Permanency ("DCPP").

CAUSES OF ACTION

FIRST COUNT

19. FERN LUMPKIN repeats each and re-alleges every allegation contained in the proceeding paragraphs as if set forth at length herein.

20. On or about, July 15, 2015, Defendants, Brick Township Police Officers, as discussed above, used excessive force in arresting FERN LUMPKIN without probable cause and illegally and improperly caused false criminal complaints to be issued against FERN LUMPKIN, which had no basis in fact or law and were issued maliciously and with the motivation to falsely arrest, detain and imprison FERN LUMPKIN.

21. The conduct of Defendants Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F's, acting individually and in conspiracy with each other and others, resulted in FERN LUMPKIN being falsely, maliciously and unlawfully arrested and detained, the deprivation of FERN LUMPKIN's right to be free from unreasonable and unlawful seizure of her person, to the equal protection of law and to due process of law in violation of the 4th, 5th, and 14th Amendments of the United States Constitution, 42 U.S.C. § 1983, § 1985, § 1986, the New Jersey State Constitution, Article I, Section 5 - denial of rights; and Article I, Section 7 and the New Jersey Civil Rights Act (N.J.S.A. 10:6-2).

22. As a direct and proximate result of the Defendants, Brick Township Police Officers' willful, wanton, intentional, false, malicious, reckless, and/or grossly negligent actions described above, FERN LUMPKIN suffered severe emotional distress and anxiety and will continue to suffer severe emotional distress, anxiety, mental anguish and psychological damages.

WHEREFORE, Plaintiff, FERN LUMPKIN, demands judgment against Defendants Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F for compensatory damages including severe emotional distress, mental anguish, punitive damages, attorney's fees, costs of suit, and such other relief as the Court deems just and appropriate.

SECOND COUNT

23. FERN LUMPKIN repeats and re-alleges each and every allegation contained in the proceeding paragraphs as if set forth at length herein.

24. Defendants, Brick Township Police Officers JOHN ROTONDO and SCOTT SMITH conspired with one another to deprived FERN LUMPKIN of her rights as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and having the power to prevent through its agents and assigns the

violation of said rights, refused to do so in violation of 42 U.S.C. §§ 1985 and 1986.

25. Specifically, Defendants, Brick Township Police Officers JOHN ROTONDO and SCOTT SMITH conspired with each other and others, to bring false charges against FERN LUMPKIN in order to cover up the fact that they had subjected her to excessive force and had falsely arrested and detained her.
26. The said conspiracy and acts in furtherance thereof were in direct violation of 42 U.S.C. Section 1983 and 1985, depriving FERN LUMPKIN of her civil rights secured to her by the Constitution of the United States under the provisions of the Fourth, Fifth, and Fourteenth Amendments.
27. As a result of the foregoing deprivations, FERN LUMPKIN has been permanently injured, damaged or otherwise harmed unlawfully, suffered severe emotional distress and anxiety and will continue to suffer severe emotional distress, anxiety, mental anguish, psychological damages, and pecuniary damages.

WHEREFORE, Plaintiff, FERN LUMPKIN, demands judgment against Defendants, Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, for compensatory damages including severe emotional distress and mental anguish, punitive damages, attorney's fees, costs of suit and such other relief as

the Court deems just and appropriate.

THIRD COUNT

28. FERN LUMPKIN repeats and re-alleges each and every allegation contained in the proceeding paragraphs as if set forth at length herein.

29. Defendants, Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F were negligent in causing FREEDOM LUMPKIN's injuries.

30. Each of the Defendant Brick Township Police Officers owed a duty to FREEDOM LUMPKIN and breached it by leaving FREEDOM LUMPKIN without the supervision of a family member or a friend, for approximately one hour and also while she witnessed her mother being brutalized and falsely arrested and taken away by the Defendants. The Defendants' breach actually and proximately caused FREEDOM LUMPKIN's injuries.

31. As a result of Defendants, Brick Township Police Officers' reckless, willful, wanton, intentional, and/or negligent acts, FREEDOM LUMPKIN suffered severe emotional distress and anxiety and will continue to suffer severe emotional distress, anxiety, mental anguish and psychological damages.

WHEREFORE, Plaintiff, FERN LUMPKIN, on behalf of FREEDOM LUMPKIN, demands judgment against Defendants, Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, compensatory damages including severe emotional distress and mental anguish, punitive damages, attorney's fees, costs of suit and such other relief as the Court deems just and appropriate.

FOURTH COUNT

32. FERN LUMPKIN repeats each and re-alleges every allegation contained in the proceeding paragraphs as if set forth at length herein.

33. Defendants, Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, unlawfully and intentionally arrested FERN LUMPKIN after she had called the Brick Police Department to report a noise complaint and caused intentional infliction of emotional distress to FERN LUMPKIN by arresting FERN LUMPKIN and leaving FREEDOM LUMPKIN without the supervision of a family or friend for approximately one hour after witnessing the Defendants arrest her mother, FERN LUMPKIN.

34. Defendants, Brick Township Police Officers acted wantonly,

purposefully, maliciously, and with the intent to cause emotional distress to FERN LUMPKIN. Defendants, Brick Township Police Officers' actions were extreme and outrageous. Intentionally abandoning FERN LUMPKIN's three year-old child at the open front-door of her home, despite FERN LUMPKIN's pleas, is conduct so extreme that it goes outside the bounds of decency and is regarded as atrocious and utterly intolerable in society.

35. As a result of Defendants' wanton, intentional, and malicious conduct, FERN LUMPKIN suffered severe emotional distress and anxiety and will continue to suffer severe emotional distress, anxiety, mental anguish and psychological damages.

WHEREFORE, Plaintiff, FERN LUMPKIN, demands judgment against Defendants, Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, for compensatory damages including severe emotional distress and mental anguish, punitive damages, attorney's fees, costs of suit and such other relief as the Court deems just and appropriate.

FIFTH COUNT

36. FERN LUMPKIN repeats and re-alleges each and every

allegation contained in the proceeding paragraphs as if set forth at length herein.

37. Defendants, Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, unlawfully and intentionally arrested FERN LUMPKIN after she had called the Brick Police Department on a noise complaint and caused intentional infliction of emotional distress to FREEDOM LUMPKIN by arresting her mother, FERN LUMPKIN and leaving FREEDOM LUMPKIN without the supervision of a family member or friend for approximately one hour after witnessing Defendants arrest her mother, FERN LUMPKIN.

38. Defendants' performed their actions wantonly, purposefully, maliciously, and with the intent to cause emotional distress to FREEDOM LUMPKIN. Additionally, Defendants' actions were extreme and outrageous. Leaving a three year-old child at the open front-door of her home, in the middle of the night, without any adult supervision while witnessing her mother being taken away by officers is so extreme that it goes outside the bounds of decency and is regarded as atrocious and utterly intolerable in society.

39. As a result of Defendants' wanton, malicious, and intentional conduct, FREEDOM LUMPKIN suffered severe emotional

distress and anxiety and will continue to suffer severe emotional distress, anxiety, mental anguish and psychological damages.

WHEREFORE, Plaintiff, FERN LUMPKIN, on behalf of her daughter, FREEDOM LUMPKIN, demands judgment against Defendants, Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO and Brick Township Police Officers JOHN Doe A to F, for compensatory damages including severe emotional distress and mental anguish, punitive damages, attorney's fees, costs of suit and such other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Maria D. Noto, Esq. is hereby designated as trial counsel for the Plaintiff.

Dated: 7/9/17

/s/ Maria D. Noto

By: _____
MARIA D. NOTO, ESQ.
Law Office of Maria D. Noto, P.C.
Attorney for Plaintiff FERN LUMPKIN

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FERN LUMPKIN individually and FERN LUMPKIN as guardian and on behalf of her daughter FREEDOM LUMPKIN

(b) County of Residence of First Listed Plaintiff OCEAN COUNTY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Maria D. Noto, Esq., Law Office of Maria D. Noto, P.C.
746 Highway 34, Suite 8, 732-441-9546

DEFENDANTS

Brick Township Police Officer SCOTT SMITH, Brick Township Police Officer JOHN ROTONDO, Brick Township Police Officers JOHN Doe A to F, Individually and as agents of the Brick Township Police Department

County of Residence of First Listed Defendant OCEAN COUNTY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Sections 1983, 1985, 1986

Brief description of cause:

Defendants violated PF's civil rights when they used excessive force and falsely arrested/detained/prosecuted PF

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/10/2017

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____