

Case 2:15-cv-00112-JLL-JAD Document 2 Filed 01/08/15 Page 1 of 2 PageID: 16

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RENE A. BERDUGO,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

WEST NEW YORK, ET AL.,
Defendant

CASE NUMBER: 2:15-CV-00112-JLL-JAD

TO: (Name and address of Defendant):

Town of West New York
428 60th Street
West New York, NJ 07093

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:

Thomas J. Mallon, Esq.
Law Offices of Mallon & Tranger
86 Court Street
Freehold, NJ 07728

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

Christine Melillo

(By) DEPUTY CLERK



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COURT OF THE DISTRICT OF NEW JERSEY

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THOMAS J. MALLON, ESQ.
Attorney-at-Law
86 Court Street
Freehold, NJ 07728
(732) 780-0230
Attorney for Plaintiff Rene A. Berdugo

RENE A. BERDUGO,

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

NEWARK

Plaintiff

vs.

Civil Action No.: - (-)

**WEST NEW YORK; MARCO A. BARRERA,
HECTOR A. RODRIGUEZ, JOHN DOES 1-5,
(fictitious individuals) West New York Police
Officers; MICHAEL E. INDRI, West New York
Police Director; and JOHN DOES 6-10, (fictitious
individuals) members of the West New York Police
Department in supervisory capacities;**

COMPLAINT

Defendants.

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. Section 1983 and in accordance with the First, Fourth and Fourteenth Amendments of the Constitution of the United States of America. Jurisdiction is conferred under 28 U.S.C. Section 1331 and Section 1343(3).

PARTIES

2. Plaintiff Rene A. Berdugo, residing at 7 Porter Street, Hackensack, New Jersey, 07601, is and was, at all times herein relevant, a citizen of the United States and a resident of the State of New Jersey.

3. Defendants Marco A. Barrera, Hector A. Rodriguez and John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the West New York Police

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Department and at all times herein were acting in such capacities as the agents, servants and/or employees of West New York and were acting under the color of law.

4. Defendants Michael E. Indri and John Does 6-10 were at all times mentioned herein duly appointed and acting members of the West New York Police Department and at all times ~~herein were acting in such capacities as the agents, servants and/or employees of West New~~ York and were acting under the color of law.

5. Defendants Michael E. Indri, John Doe 2 and/or John Does 6-10 were acting in supervisory capacities over Defendants Barrera, Rodriguez and John Does 1-10 and responsible by law for the training, supervision and conduct of Defendants Barrera, Rodriguez and John Does 1-10.

6. Defendant West New York is a duly designated municipality of the state of New Jersey under the laws of the state of New Jersey.

7. At all times relevant hereto, Defendant West New York employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Barrera; Rodriguez; Indri, and John Does 1-10.

8. All Defendants are named in their individual and official capacities.

FACTUAL ALLEGATIONS

1. On April 27, 2013, Plaintiff Rene A. Berdugo was a photography student at the School of Visual Arts.

2. On that date Plaintiff was taking photographs of a bodega on 62nd and Monroe Streets in West New York.

3. Plaintiff was approached by Defendants Barrera, Rodriguez and/or John Does 1-5, who asked Plaintiff for identification.

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4. Plaintiff asked why he had to show them identification.
5. Defendants told Plaintiff that they would arrest him if he did not show his identification.
6. Plaintiff took out his phone to record and document the encounter with Defendants.
7. Defendants tried to grab Plaintiff's phone and Plaintiff walked backwards into the bodega continuing to record the encounter.

8. Defendants Barrera, Rodriguez and/or John Does 1-5 then assaulted Plaintiff with unreasonable and excessive physical force, specifically by punching and kicking him.

9. Plaintiff was taken to police headquarters in West New York, processed and released.

10. Following his release, Plaintiff discovered that the recording of his encounter with Defendants had been erased from his phone. Plaintiff also discovered that a necklace and approximately forty dollars which had been on his person prior to his arrest were never returned to him.

11. Plaintiff's encounter with Defendants was recorded on the bodega video surveillance camera system.

12. Plaintiff sustained bodily injuries as a result of Defendant's unjustified assault and their use of excessive and unreasonable physical force on his person.

SECTION 1983 EXCESSIVE FORCE
COUNT ONE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. As a direct and proximate result of the above-referenced unlawful and malicious physical abuse of Plaintiff by Defendants Barrera, Rodriguez and/or John Does 1-5 committed under color of state law, Plaintiff sustained bodily harm and was deprived of his rights to be secure in his person against unreasonable seizure of his person, in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and U.S.C. Section 1983.

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3. As a direct and proximate cause of the malicious and outrageous conduct of Defendants as set forth above, Plaintiff suffered bodily injuries, medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Rene A. Berdugo demands judgment against Defendants Barrera, Rodriguez and/or John Does 1-5, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SECTION 1983 FAILURE TO INTERVENE
COUNT TWO

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Barrera, Rodriguez and/or John Does 1-5 were West New York Police Officers and at all times mentioned herein were acting under color of state law.
3. Defendants Barrera, Rodriguez and/or John Does 1-5 had a duty to intervene in the unjustified assault and arrest of Plaintiff by Defendants Barrera, Rodriguez and/or John Does 1-5.
4. The unjustified assault and arrest of Plaintiff by Defendants Barrera, Rodriguez and/or John Does 1-5 deprived Plaintiff of his right to be secure in his person against unreasonable seizure in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and made actionable through 42 U.S.C. Section 1983.
5. Defendants Barrera, Rodriguez and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified arrest and assault of Plaintiff by Defendants Barrera, Rodriguez and/or John Does 1-5 and failed to intervene.
6. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries along with damages in the form of medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

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WHEREFORE, Rene A. Berdugo demands judgment against Defendants Barrera, Rodriguez and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SECTION 1983 FIRST AMENDMENT RETALIATION
COUNT THREE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The aforementioned acts of Defendants West New York; Barrera; Rodriguez; Indri, and/or John Does 1-10 committed under color of state law and/or in their individual capacities constituted a retaliation in violation of the First Amendment of the United States Constitution.
3. Specifically, Plaintiff's right to take photographs in public was constitutionally protected conduct under the First Amendment.
4. Defendants interfered with Plaintiff's constitutionally protected conduct by assaulting him, using excessive and unreasonable physical force on his person and arresting him.
5. By reason of the above, Plaintiff suffered damages preventing him from attending to his business, was deprived of his constitutional rights as described above and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Rene A. Berdugo demands judgment against Defendants West New York; Barrera; Rodriguez; Indri, and John Does 1-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SECTION 1983 SUPERVISORY LIABILITY
COUNT FOUR

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Police Director Michael E. Indri and/or John Does 6-10 were supervisory officials and/or officers in charge at the time Plaintiff was arrested and assaulted.
3. Defendants Indri and/or John Does 6-10 had a duty to prevent subordinate officers Defendants Barrera, Rodriguez and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.
4. Defendants Indri and/or John Does 6-10 either directed Defendants Barrera, Rodriguez and/or John Does 1-5 to violate Plaintiff's constitutional rights or had knowledge of and acquiesced in his/their subordinate's violations.
5. Specifically, Defendants Indri, John Doe 2 and/or John Does 6-10 failed to adequately track departmental excessive force complaints, administrative complaints and/or use of force incidents in violation of West New York Police Department policies, practices, customs and/or guidelines and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines, and/or failed to discipline officers for such violations.
6. As a direct and proximate result of the acts of Defendants Indri and/or John Does 6-10 set forth herein, Plaintiff suffered physical injury and medical expenses in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.
7. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries along with damages in the form of medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

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WHEREFORE, Rene A. Berdugo demands judgment against Defendants Indri and/or John Does 6-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**SECTION 1983 UNLAWFUL CUSTOM, PRACTICE,
POLICY/ INADEQUATE TRAINING
COUNT FIVE**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants West New York, West New York Police Director Michael E. Indri and/or John Does 6-10 are vested by state law with the authority to make policy on : (1) the use of force; internal affairs investigations and/or administrative reviews pursuant to the West New York Police Department policies, practices and/or customs and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines; (2) effectuating arrests; (3) police citizen encounters, and/or (4) disciplining officers. Defendants Indri and/or John Does 6- 10 are responsible for training Police Officers in the use of force and/or were officers in charge when Plaintiff Rene A. Berdugo was assaulted.
3. At all times mentioned herein, Defendants Barrera, Rodriguez and/or John Does 1- 5, as police officers, agents, servants and/or employees of Defendant West New York, were acting under the direction and control of Defendants West New York's Police Department, Indri and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the West New York Police Department.
4. Acting under color of law pursuant to official policy, practice, or custom, Defendants West New York, Indri and/or John Does 6-10 intentionally, knowingly, recklessly and/or with deliberate indifference failed to train, instruct, supervise, control, and discipline on a continuing

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basis, Defendants Barrera, Rodriguez and/or John Does 1-5 in their duties to refrain from: (1) unlawfully and maliciously assaulting, arresting and harassing citizens; (2) intentionally, recklessly and/or negligently misrepresenting the facts of arrests and/or other police-citizen encounters; (3) falsifying police and/or other official records; (4) withholding and/or mishandling evidence; (5) ~~making false arrests, and/or (6) using unreasonable and excessive force.~~

5. Acting under color of law pursuant to official policy, practice, or custom, Defendants West New York, Indri and/or John Does 6-10 intentionally, knowingly, recklessly and/or with deliberate indifference implemented and/or conducted superficial and shallow Internal Affairs processes which ignored evidence and patterns of police misconduct on individual and departmental levels. Defendants West New York, Indri and/or John Does 6-10 failed to professionally, objectively and/or expeditiously investigate instances and patterns of police misconduct in violation of the spirit and substance of the New Jersey Attorney General's Guidelines for Internal Affairs Policy and Procedures.

6. Defendants West New York, Indri and/or John Does 6-10 failed to adequately track departmental excessive force complaints, administrative complaints and/or use of force incidents in violation of West New York Police Department policies, practices, customs and/or guidelines and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines, and/or failed to discipline officers for such violations.

7. Defendants West New York, Indri and/or John Does 6-10 were aware of numerous similar police citizen encounters involving, and/or Internal Affairs complaints and/or civil lawsuits filed against, Defendants Barrera, Rodriguez, John Does 1-10, and/or other West New York Police Officers whereby they customarily and frequently subjected citizens held in custody to physical and mental abuse; unlawfully and maliciously assaulted, arrested and harassed citizens; intentionally,

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recklessly and/or negligently misrepresented the facts of arrests and/or other police-citizen encounters; falsified police and/or other official records; made false arrests, mishandled and/or withheld evidence and/or used unreasonable and excessive force on citizens/arrestees.

8. Despite their awareness, Defendants West New York, Indri and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Barrera, Rodriguez, John Does 1-10 and/or other West New York Police Officers.

9. Defendants West New York, Indri and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants Barrera, Rodriguez and/or John Does 1-10 on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.

10. Defendants West New York, Indri and/or John Does 6-10 had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.

11. Defendants West New York, Indri and/or John Does 6-10, directly or indirectly, under color of state law, approved and/or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Defendants Barrera, Rodriguez and/or John Does 1-10 heretofore described.

12. As a direct and proximate result of the acts of Defendants West New York, Indri and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff Rene A. Berdugo, demands judgment against Defendants West New York, Michael E. Indri and/or John Does 6-10, on this Count together with compensatory and

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punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SECTION 1983 DEMAND FOR PROSPECTIVE INJUNCTIVE RELIEF
COUNT SIX

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. Pursuant to 42 USC Section 1983, given that there exists no adequate remedy at law, Plaintiff is entitled to prospective injunctive relief against the Defendants.

3. The relief sought by Plaintiff includes, but is not limited to, the following:

- a. An order permanently restraining and enjoining Defendants West New York; Barrera; Rodriguez; Indri, and John Does 1-10 from engaging in, encouraging, teaching, promoting or training West New York Police Officers in falsely arresting, maliciously prosecuting, maliciously abusing process, and/or using excessive force against citizens and/or arrestees.
- b. An order compelling Defendant West New York to take prompt, appropriate and corrective measures to prevent any practices that encourage, teach, engage in, promote or train its officers in falsely arresting, maliciously prosecuting, maliciously abusing process and/or using excessive force against citizens and/or arrestees.
- c. An order compelling Defendant West New York to provide regular and consistent training sessions to West New York Police Officers.
- d. An order compelling Defendant West New York to implement a system whereby prompt, appropriate action is taken against any West New York Police Officer who engages in, teaches and/or condones falsely arresting, maliciously prosecuting, maliciously abusing process and/or using excessive force against citizens and/or arrestees.
- e. An order permanently restraining and enjoining Defendants Barrera, Rodriguez and/or John Does 1-5 from arresting citizens without adequate probable cause, physically abusing and using excessive force against citizens and/or arrestees.
- f. An order permanently restraining and enjoining Defendant West New York from employing Defendants Barrera, Rodriguez and/or John Does 1-5 as police officers or law enforcement personnel in any capacity except for clerical duty, solely and entirely confining them to Police headquarters and limiting them entirely to desk duty; enjoining Defendants Barrera, Rodriguez and/or John Does 1-5 from any patrol duty, and enjoining Defendants Barrera, Rodriguez and/or John Does 1-5 from making arrests, assisting in making arrests and using any force in making arrests and/or assisting in making arrests.
- g. Any other relief as the Court deems proper and just.

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WHEREFORE, Plaintiff Rene A. Berdugo, demands judgment against Defendants West New York; Marco A. Barrera; Hector A. Rodriguez; Michael E. Indri, and John Does 1-10 on this Count, together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SUPPLEMENTAL STATE CLAIMS
VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT (NJCR)
COUNT SEVEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force, failure to intervene and First Amendment retaliation committed by Defendants Barrera, Rodriguez and/or John Does 1-5, set forth at length above, deprived plaintiff of his substantive due process right to be free from unlawful seizure of his person and his fundamental right to liberty secured by the Constitution of the United States and the Constitution of the State of New Jersey, in violation of N.J.S.A. 10:6-1, et seq. ("The New Jersey Civil Rights Act")
3. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
4. As a direct and proximate result of the aforesaid acts of Defendants Barrera, Rodriguez and/or John Does 1-5, Plaintiff suffered physical injury, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Rene A. Berdugo demands judgment against Defendants Barrera, Rodriguez and/or John Does 1- 5, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

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ASSAULT AND BATTERY
COUNT EIGHT

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. Defendants Barrera, Rodriguez and/or John Does 1-5 committed an assault and battery on Plaintiff by physically injuring him without justification and/or by putting him in reasonable apprehension of serious and imminent bodily harm.

3. The assault and battery committed by Defendants was contrary to the laws of the State of New Jersey, and Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.

4. As a result of the intentional, reckless, negligent and/or objectively unreasonable assault and battery committed in the course of their official duties as police officers and/or agents, servants and/or employees of West New York, and/or in their personal capacities, as specifically alleged above, Plaintiff sustained diverse substantial and permanent physical injuries; medical expenses; pain and suffering, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Rene A. Berdugo demands judgment against Defendants Barrera; Rodriguez; West New York, and/or John Does 1-5, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

NEGLIGENCE
COUNT NINE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. Defendants Barrera, Rodriguez and/or John Does 1-5 had a duty to the Plaintiff to not expose him to an unreasonable risk of injury.

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3. Through the acts and omissions set forth at length above, Defendants Barrera, Rodriguez and/or John Does 1-5 breached that duty.

4. The acts of the Defendants were in violation of the common law of the State of New Jersey.

~~5. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this~~
claim.

6. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries along with damages in the form of medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Rene A. Berdugo demands judgment against Defendants Barrera, Rodriguez and/or John Does 1-5, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

DEMAND FOR TRIAL BY JURY

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

DESIGNATION OF TRIAL COUNSEL

Please be advised that Thomas J. Mallon, Esquire is hereby designated trial counsel in the above captioned matter.

Dated: January 7, 2015

/s/ Thomas J. Mallon, Esquire
THOMAS J. MALLON, ESQUIRE