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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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LAW DEPARTMENT

KOCTRELL BATTLE,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

THE CITY OF ELIZABETH, ET AL.,
Defendant

CASE NUMBER: **2:15-CV-06737-KM-JBC**

RECEIVED USMS
NEWARK, N.J. 07102
2015 NOV 12 AM 6:57

TO: *(Name and address of Defendant):*

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:

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

ANGELICA RICHARDSON
(By) DEPUTY CLERK

ISSUED ON 2015-11-12 11:03:25, Clerk
USDC NJD

RETURN OF SERVICE

Service of the Summons and complaint was made by me(1)	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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NEWARK, N.J. 07102
2015 NOV 12 AM 6:56

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KOCTRELL BATTLE, Plaintiff, v. ELIZABETH POLICE DEPARTMENT, et al., Defendants.	:	Civ. No. 15-6737 (KM) (JBC) **MEMORANDUM AND ORDER**

The plaintiff, Koctrell Battle, is currently incarcerated at the Union County Jail, in Elizabeth, New Jersey. He is proceeding *pro se* with a civil rights complaint under 42 U.S.C. § 1983, alleging illegal arrest, excessive use of force, and the denial of medical care at the police station. It names as defendants two officers, Alexander Gonzalez and Michael Nicolas, as well as the Elizabeth Police Department.

This Court has screened the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and 1915A to determine whether it should be dismissed as frivolous or malicious, for failure to state a claim upon which relief may be granted, or because it seeks monetary relief from a defendant who is immune from suit. Upon screening the complaint, this Court will permit the complaint to proceed past screening in its entirety against defendants Gonzalez and Nicolas.

The Court construes Mr. Battle's claim that the Elizabeth Police Department should be investigated for the police brutality that "is being practiced there" as a claim under *Monell v. Dep't of Soc. Servs. New York City*, 436 U.S. 658 (1978). This claim shall be permitted to proceed past screening as well at this early stage of the proceedings. The Elizabeth Police Department, however, is not technically the proper entity to be sued. As this Court has noted:

> A New Jersey municipal police department is not an independent entity with the capacity to be sue and be sued, but only "an

> executive and enforcement function of municipal government." N.J. STAT. ANN. § 40A:14–118. The case law under Section 1983 uniformly holds that the proper defendant is therefore the municipality itself, not the police department. *See Jackson v. City of Erie Police Dep't,* 570 F. App'x 112, 114 n.2 (3d Cir. 2014) (per curiam) ("We further agree with the District Court that the police department was not a proper party to this action. Although local governmental units may constitute 'persons' against whom suit may be lodged under 42 U.S.C. § 1983, a city police department is a governmental sub-unit that is not distinct from the municipality of which it is a part.") (citation omitted); *see also Bonenberger v. Plymouth Twp.*, 132 F.3d 20, 25 n.4 (3d Cir.1997) (Court "treat[s] the municipality and its police department as a single entity for purposes of section 1983 liability"); *Michaels v. State of New Jersey,* 955 F.Supp. 315, 317 n. 1 (D.N.J. 1996) (Newark police department not a proper party).

Santa Maria v. City of Elizabeth (N.J.), No. 15-3243, 2015 WL 2414706, at *5 (D.N.J. May 20, 2015). I will therefore direct the clerk to substitute the City of Elizabeth as defendant.

Accordingly, IT IS this 27th day of October, 2015,

ORDERED that the clerk shall replace the Elizabeth Police Department with the City of Elizabeth as a defendant in this action; and it is further

ORDERED that the complaint shall be permitted to proceed against the three defendants named in the complaint: (1) Alexander Gonzalez; (2) Michael Nicolas; and (3) the City of Elizabeth; and it is further

ORDERED pursuant to 28 U.S.C. § 1915(d) that the Clerk shall issue a summons and the U.S. Marshal shall serve the summons and a copy of the complaint and this Order on defendants Gonzalez, Nicolas and the City of Elizabeth, with all costs of service advanced by the United States; and it is further

ORDERED that defendants Gonzalez, Nicolas and the City of Elizabeth shall file and serve a responsive pleading within the time specified by Federal Rule of Civil Procedure 12; and it is further

ORDERED that the Clerk shall serve this Order on plaintiff by regular U.S. mail.

Kevin McNulty

KEVIN MCNULTY
United States District Judge

UNION COUNTY DEPARTMENT OF CORRECTIONS
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

TO: .....

FROM: .....

STREET: .....

CITY: .....

STATE: .....

Koctrell Battle

V

Elizabeth Police Department
1 Police Plaza
Elizabeth, New Jersey 07201

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NEWARK, NJ 07102
2015 NOV 12 AM 6:57

1a.

Jurisdiction is Asserted pursuant to 42 U.S.C §1983.

1B. I AM A [✓] Pretrial Detainee

[ ] OR Convicted and Sentenced State Prisoner.

[ ] OR Convicted But Not Sentenced Detainee.

UNION COUNTY DEPARTMENT OF CORRECTIONS
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

TO: .....

FROM: .....

STREET: .....

CITY: .....

STATE: .....

2. I Have No previous Dismissed Federal Civil Actions or Appeals.

3. I am presently confined Here By the Union County Department of Corrections, 15 Elizabethtown Plaza, Elizabeth, New Jersey 07202.

4. Parties

A. Name of Plaintiff: Koctrell Battle

Address: Union County Corrections
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

B. First Defendant:

NAME: Alexander Gonzalez

OFFICIAL Position: Police Officer

Place of Employment: Elizabeth Police Department 1 Police Plaza, Elizabeth, New Jersey 07201

UNION COUNTY DEPARTMENT OF CORRECTIONS
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

TO: .....

FROM: .....

STREET: .....

CITY: .....

STATE: .....

How is this person involved in the case?

On 2/4/15. I was arrested and accused of 3 charges: unlawful possesion of a weapon, certain person not to have a weapon, and resisting arrest. The incident took place on Irvington Ave in Elizabeth, NJ at 3:50pm. while I was laying in the street handcuffed officer Alexander Gonzalez punched me in my left eye multiple times until my eye was swollen shut! I knew I was being a victim of excessive force so I screamed out "why are you hitting me for im already handcuffed? that's when officer Alexander Gonzalez said "where is the push-rod? I told him that I don't know what he's talking about, then I started getting punched in my face again and kicked in my knees by the other officer. Then I asked these officers to please tell me why im being arrested for something I never possessed? I was then told a confidential informant told them that I may have hide a gun in the area So they stopped me and searched the area. They found a half gun with it's barrell missing and charged me for unlawful possession. My 14th amendment was violated due to no probable cause to stop me from walking home. I was also violated with police brutality, false evidence, excessive force used upon me as well as official misconduct..

UNION COUNTY DEPARTMENT OF CORRECTIONS
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

TO:

FROM:

STREET:

CITY:

STATE:

C. Second Defendant:

Name: Michael Nicolas

Official Position: Police Officer

Place of Employment: Elizabeth Police Department
1 Police Plaza Elizabeth, New Jersey 07201

How is this Person involved in the case?

This incident took place on 2/4/15. At 3:50pm while I was on Irvington Ave and Prince st. in Elizabeth, New Jersey. Officer Michael Nicolas was the other police officer arresting me, who continuously kicked me in my knees and told me to shut up. This again was excessive force, police brutality, false evidence, and official misconduct. Also at this time my 4th Amendment was being violated by these officers, as well as other violations due to the cruel and unusual punishment I was subjected to by them..

UNION COUNTY DEPARTMENT OF CORRECTIONS
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

TO: .....

FROM: .....

STREET: .....

CITY: .....

STATE: .....

5. I Previously Have Sought informal or formal Relief from the Appropriate Administrative officials Reguarding the Acts complained of the Statement of Claims on Page 6.

YES [✓] NO [ ]

While I was in Elizabeth police station I was allowed to use the phone, So I called My Fiance Latonya Parker who was on the scene with My 9 year old daughter witnessing the incident. I made the phone call to Latonya's Cell phone on 2/4/15. And Asked Her to Please come Down to the Police station and make A complaint about How they Violated My Rights And She said O.K. On 2/5/15. She went to 1 Police Plaza (E.P.D.) and Filed A Complaint Against the Arresting officers. Then She was told that she would be later interviewed by internal affairs But to No Avail.. There were No More contact But we still Have the Initial Report that she filed on 2/5/15..

UNION COUNTY DEPARTMENT OF CORRECTIONS
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

TO: .....

FROM: .....

STREET: .....

CITY: .....

STATE: .....

6. Statement of claims :

On 2/4/15. Officers Alexander Gonzalez and Michael Nicolas violated my rights by unlawfully arresting me without any probable cause, which violated my 4th Amendment. These are the same officers who repeatedly punched me in my face and kicked me in my legs while telling me to shut up and don't talk. These acts violated me in numerous way, mainly I was subjected to excessive force by these 2 officers and that is police brutality and official misconduct on there part. Also by officer Michael Nicolas kicking me everytime I talked, and telling me to shut up and don't talk. was a violation of my 1st amendment the freedom of speech. Once I was taken to the Elizabeth Police station on 2/4/15. I asked these officers Alexander Gonzalez and Michael Nicolas can I please get some medical attention. The ignored me and locked me in a cell by myself for 2-days. Once I got here at the Union County Jail I recieved medical attention for my head, my face, my eye, and my legs. It's been 7-months since these incidents on 2/4/15. and I am still limping from my leg injuries. My 14th Amendment/ 1st Amendment/ and 4th Amendment we violated by these officers as well as police brutality was done to me.

UNION COUNTY DEPARTMENT OF CORRECTIONS
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

TO: .....

FROM: .....

STREET: .....

CITY: .....

STATE: RELIEF:

7. I would like for Elizabeth Police Department to Be investergated for the violations of My Rights, Also for the police Brutality that is Being practiced there. I would also like the courts to grant Me Monetary Relief in the Amount of 3-Million Dollars for Everything that was Done to Me By these Elizabeth Police Officers.

8. Do you Request A jury or Non-jury trial?

(✓) Jury ( ) Non-Jury

I Declare under penalty of perjury that the foregoing is true and correct.

Signed this 31st day of August 2015.

Signature of Plaintiff Kactrell Battle

Case 2:15-cv-06737-KM-JBC Document 1 Filed 09/09/15 Page 8 of 8 PageID: 8

MR. Koctrell Battle #220237
15 Elizabethtown Plaza
Elizabeth, New Jersey 07202

Justice FOREVER Equality FOREVER Freedom FOREVER

XRAYED

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SEP - 8 2015
AT 8:30 M
WILLIAM T. WALSH, CLERK

Martin Luther King JR.
Federal Building and U.S. Court House
50 Walnut Street Room 405
Newark, New Jersey 07102

HINSON SNIPES, LLP
Princeton Forrestal Village
116 Village Boulevard, Suite 307
Princeton, New Jersey 08540
By: Tracey C. Hinson, Esquire
Attorney ID#: 034542002
(609) 452-7333 / Fax (609) 452-7332
Attorney for Plaintiff MARCUS BOONE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARCUS BOONE,

Plaintiff,

v.

CITY **OF ELIZABETH**, CHIEF PATRICK **SHANNON**, in his individual and official capacity, JOSE **TORRES**, in his official and individual capacity, RODNEY **DORILUS**, in his individual and official capacity CARMINE **GIANNETTA**, in his individual and official capacity, LIEUTENANT **KILEY**, in his individual and official capacity, SERGEANT **NOWINSKI**, in his individual and official capacity, STATE OF NEW JERSEY, DEPARTMENT OF TREASURY, and **JOHN DOES 1-20**, (names being fictitious),

Defendants.

Civil Action NO.2:18-CV-13994

FIRST AMENDED COMPLAINT & JURY DEMAND

Plaintiff, **MARCUS BOONE** ("**MR. BOONE**" or "**PLAINTIFF**"), residing in **THE CITY OF ELIZABETH**, County of Union and the State of New Jersey, by way of complaint against

Defendants says:

PRELIMINARY STATEMENT

On January 11, 2012, at approximately 6:00 to 6:30 p.m., **MR. BOONE** was falsely arrested and maliciously prosecuted, without probable cause, by members of the Elizabeth Police Department. **MR. BOONE** was charged with unlawful possession of a controlled dangerous substance, to wit: cocaine in violation of N.J.S. 2C:35-10A1; unlawful possession of a controlled dangerous substance, to wit: heroin, in violation of N.J.S. 2C:35-10A1; unlawful possession of a handgun, in violation of N.J.S. 2C:39-5b.

In addition, **MR. BOONE** was with possession of a handgun with for an unlawful purpose, in violation of N.J.S. 2C:39-4; possession of a defaced firearm, in violation of N.J.S. 2C:39-3D; possession of a firearm by a person specifically prohibited from doing do in violation of N.J.S. 2C:39-7.

On July 14, 2016, four years and a half (4 ½) years after **MR. BOONE** was falsely arrested and maliciously prosecuted, the Appellate Division reversed the Order denying **MR. BOONE'S** Motion to Suppress and remanded for further proceedings. On September 19, 2016, the Honorable John M. Deitch dismissed all charges against **MR. BOONE**.

This Complaint arising from the egregious, outrageous, and unlawful acts of members of **THE CITY OF ELIZABETH'S** Police Department, seeks compensatory and punitive damages and other

relief pursuant to applicable state and federal civil rights laws, specifically for the violation of **MR. BOONE'S** rights, privileges and immunities as guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States, and, in violation of U.S.C. § 1983, § 1985, § 1988 and the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to 2. Claims on behalf of **MR. BOONE** are also brought pursuant to N.J.S.A. 59:8-1 et seq., among other common law and statutory rights.

MR. BOONE seeks to vindicate his right to be free from the fabrication of evidence, malicious prosecution, unlawful or mistaken imprisonment, and conspiracy to violate his civil rights.

JURISDICTION

This Court has jurisdiction over this action 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. The Court has pendent or supplemental jurisdiction as to the State law claims. Venue is proper in this District as it is either the District in which Defendants reside or the District in which the claims arose.

PARTIES

1. Plaintiff, **MARCUS BOONE**, is a citizen of the United States. He was, at all relevant times, a resident of **THE CITY OF ELIZABETH** and State of New Jersey.

2. Defendant **CITY OF ELIZABETH ("CITY")**, is a municipal entity duly incorporated and authorized under the laws of the State of New Jersey. **The CITY** is authorized to maintain a Police Department which acts as its law enforcement agent and for which it is ultimately responsible. **The CITY** assumes the risks incidental to the maintenance of its police force and is charged with enforcement of all state and municipal laws within **THE CITY** and the employment of its police officers.

3. **THE CITY** was, at all relevant times, responsible for policy making, hiring, supervision, training, control and retention of the individually named Police Officers. **THE CITY** is a person capable of being sued pursuant to 42 USC § 1983, which serves as a vehicle for those bringing a cause of action for violation of their constitutional rights under color of law.

4. Defendant **CHIEF PATRICK SHANNON ("SHANNON")**, was, at all relevant times, the Chief, agent and employee of the Elizabeth Police Department, a municipal agency of Defendant **CITY OF ELIZABETH**. He is sued in his individual and official capacity.

5. Defendant **JOSE TORRES** ("**TORRES**") was, at all relevant times, an officer, employee, and agent of the Elizabeth Police Department, a municipal agency of Defendant **CITY OF ELIZABETH**. He is sued in his individual and official capacity.

6. Defendant **RODNEY DORILUS** ("**DORILUS**"), was, at all relevant times, an officer, employee, and agent of the Elizabeth Police Department, a municipal agency of Defendant **CITY OF ELIZABETH**. He is sued in his individual and official capacity.

7. **Defendant CARMINE GIANNETTA** ("**GIANNETTA**"), was, at all relevant times, an officer, employee, and agent of the Elizabeth Police Department, a municipal agency of Defendant **CITY OF ELIZABETH**. He is sued in his individual and official capacity.

8. Defendant **LIEUTENANT KILEY** ("**KILEY**"), was, at all relevant times, an officer, employee, and agent of the Elizabeth Police Department, a municipal agency of Defendant **CITY OF ELIZABETH**. He is sued in his individual and official capacity.

9. Defendant **SERGEANT NOWINSKI** ("**NOWINSKI**"), was, at all relevant times, an officer, employee, and agent of the Elizabeth Police Department, a municipal agency of Defendant **CITY OF ELIZABETH**. He is sued in his individual and official capacity.

10. Defendants **JOHN DOES POLICE OFFICERS, SERGEANTS, LIEUTENANTS, CHIEFS, CAPTAINS, SUPERVISORS, DIRECTORS, PROSECUTORS, INVESTIGATORS, and TRAINING OFFICERS 1-20** ("**JOHN DOES 1-20**), were, at all relevant times, officers, sergeants,

lieutenants, chiefs, captains, supervisors, directors, prosecutors, investigators, training officers, principals, partners, employees, representatives, agents or agencies of Defendants **CITY OF ELIZABETH** and any other individual, entity, agency company, or corporation, whose actual identities are presently unknown, who were acting within the scope of their employment, and whose actions assisted and/or contributed to the unlawful, unconstitutional and tortious conduct that resulted in the physical assault and malicious prosecution of **MR. BOONE.** They are sued in their individual and official capacities.

11. Defendants **SHANNON, TORRES, DORILUS, GIANNETTA,** NOWINSKY and **KILEY** and **JOHN DOES 1-20,** were at all relevant times, on duty with **THE CITY OF ELIZABETH'S** Police Department on January 11, 2012.

12. At all relevant times, Defendants **SHANNON, TORRES, DORILUS, GIANNETTA, NOWINSKY and KILEY, and JOHN DOES 1-20,** acted under the color of law with the power and authority vested in them as officers, agents and employees of Defendant **CITY OF ELIZABETH** and incident to the pursuit of their duties as officers, employees and agents of **The CITY.**

13. Defendant officers, sergeants, chiefs, captains, supervisors, directors, prosecutors, investigators, agents, and employees named above shall, at times, be referred to below collectively, as indicated by the attendant facts and circumstances, as "Defendant Officers."

14. Defendant **STATE OF NEW JERSEY, DEPARTMENT OF TREASURY,** is an arm of the State of New Jersey.

FACTUAL ALLEGATIONS

15. On January 11, 2012, at approximately 6:00 to 6:30 p.m., **MR. BOONE** exited 433 Westminister Avenue in Elizabeth, New Jersey onto the porch.

16. An individual, identified by Defendants as Lamont Jones, but who was unknown to **MR. BOONE**, was also on the porch. Jones walked down the steps at which point **MR. BOONE** heard him loudly state "oh shit."

17. As **MR. BOONE** walked down the steps, he observed Jones hurriedly dropped a jacket in front of the building and walked towards several police officers with his hands in the air.

18. **MR. BOONE** did not know Jones and had not seen him before that evening.

19. **MR. BOONE** proceeded to walk in the opposite direction, approximately 75 feet from where the officers were standing. None of the officers spoke to him.

20. Suddenly Defendant **KILEY** ran up behind **MR. BOONE**, grabbed him, and violently pushed him against a parked car. The officer spoke angrily and fast. He then heard one of the officers yell "We got a gun" which the officer(s) retrieved from the jacket that was abandoned by Jones.

21. **MR. BOONE** was arrested without probable cause and charged with unlawful possession of a controlled dangerous substance, to wit: cocaine in violation of N.J.S. 2C:35-10A1; unlawful possession of a controlled dangerous substance, to wit: heroin, in violation of N.J.S. 2C:35-10A1; unlawful possession of a handgun, in violation of N.J.S. 2C:39-5b. In addition, Defendants **TORRES** and **DORILUS** charged **MR. BOONE** with possession of a handgun with for an unlawful purpose, in violation of N.J.S. 2C:39-4; possession of a defaced firearm, in violation of N.J.S. 2C:39-3D; possession of a firearm by a person specifically prohibited from doing do in violation of N.J.S. 2C:39-7.

22. A grand jury returned an indictment charging **MR. BOONE** with third-degree possession of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-10a-1; second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5b; and fourth-degree possession of a defaced firearm, contrary to N.J.S.A. 2C:39-3d.

23. Following the denial of his motion to suppress, **MR. BOONE** pled guilty to second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5b, in exchange for a promise of a five-year/three-year without parole prison term.

24. Defendant **GIANETTA** was the only witness who testified at the suppression hearing.

25. According to **GIANETTA**, on January 11, 2012, Defendant **TORRES** was allegedly stopped by a person on the street who reported (or provided a "tip") that an African-American man in a puffy jacket was in possession of a handgun in a specific rooming house in Elizabeth.

26. **GIANNETTA** admitted he knew nothing about the tipster, whether the tipster was anonymous or known to the police or whether the tipster was reliable.

27. **TORRES** did not have any information about the factual identity of the tipster; did not have any information about the reliability of the tipster; did not have any information that corroborated the information provided by the tipster, including the identity of the individual with the handgun; and did not have any information that the person was waiving a gun around.

28. The only description provided was that the man was "black" and wore a "puffy coat."

29. **GIANNETTA** admitted there was nothing uncommon about an African American man being in that area **OF ELIZABETH** and, at that time of year, it was not uncommon for many to be wearing a puffy jacket, which he interpreted to mean a down jacket, during the winter.

30. At approximately 6:00 p.m., **GIANNETTA** and **TORRES** drove to the area where the rooming house was located, where they were joined by two other officers, Defendants **KILEY** and **NOWINSKI**.

31. After emerging from their respective patrol cars, the four Defendant-officers, all in uniform, walked down the sidewalk toward the rooming house, where they observed Jones and **MR. BOONE**, who are both African-American men, exit the front door of the rooming house and walked down the steps.

32. **GIANETTA** testified Defendant Officers immediately recognized Jones, a "known crip member," from numerous prior encounters and from having recovered handguns that allegedly belonged to Jones from an apartment adjacent to Jones' apartment. He testified Jones began to act nervous.

33. **GIANETTA** admitted he did not recognize **MR. BOONE**.

34. **GIANETTA** claims one of the men exclaimed "oh shit" when they saw the officers and began to walk in opposite directions.

35. Jones was immediately stopped and searched for weapons. **GIANETTA** testified Defendant **KILEY** ran toward **MR. BOONE**, who was merely "walking the other way, not running."

36. **KILEY** grabbed **MR. BOONE** and pinned him against a parked car.

37. **KILEY** then yelled "I've got a gun." **GIANETTA** admitted his focus was on his search of Jones at that time.

38. When asked how it came to be that the gun was discovered, **GIANETTA**, the only witness produced to testify at the suppression hearing, admitted, "I don't know."

39. **MR. BOONE** was not in possession of a gun on January 11, 2012.

40. Aside from exiting the building and walking down the steps, nothing about **MR. BOONE** demeanor or conduct that provided Defendant Officers with a reasonable, particularized, and objective basis to suspect that he had just engaged in, or was about to engage in, criminal activity.

41. More important, neither **GIANNETTA, KILEY, DORILUS, TORRES** nor **NOWINSKI** had any knowledge of **MR. BOONE**, let alone had any knowledge of whether **MR. BOONE** had a criminal history or a proclivity to engage in violence or criminal activity.

42. Despite the lack of probable cause, **KILEY** quickly pursued, stopped, and searched **MR. BOONE.**

43. After aggressively pinning **MR. BOONE** to the car, **KILEY** exclaimed "I've got a gun."

44. At that point, **GIANNETTA** ran over to help **KILEY** handcuff and arrest **MR. BOONE.**

45. Defendant **NOWINSKI** was a secondary officer at the scene.

46. **NOWINSKI** had a duty to but failed to prevent the false arrest which resulted in the malicious prosecution of **MR. BOONE.**

47. **NOWINSKI** conspired with **KILEY, GIANETTA, DORILUS** and **TORRES** to fabricate the charges and falsify the official reports.

48. Defendants **KILEY, GIANETTA, DORILUS, TORRES** and **NOWINSKI,** targeted, followed, physically assaulted, falsely

arrested, fabricated evidence, fabricated their official reports, falsely charged and maliciously prosecuted **MR. BOONE** for offenses he did not commit, based in part on racial bias, racial animus and racial profiling.

49. Defendant Officers unlawfully racially profiled, stereotyped, targeted, arrested, charged, imprisoned, and maliciously prosecuted **MR. BOONE** because he was a black male.

50. **MR. BOONE** had committed no crime.

51. **MR. BOONE** was an innocent person.

52. **MR. BOONE** did not engage in any action that justified the malicious prosecution and unlawful imprisonment by Defendant Officers.

53. **MR. BOONE** was deprived of her liberty without due process.

54. **MR. BOONE** was shocked, traumatized, terrified, and feared for his safety.

55. **MR. BOONE** suffered severe humiliation, embarrassment and private and public shame.

56. Defendant Officers did not have a reasonable suspicion that **MR. BOONE** had committed a crime when they issued the Complaints and instituted the malicious prosecution against him.

57. The unlawful detention, malicious prosecution and unlawful imprisonment of **MR. BOONE** was without provocation, legal authority or justification.

58. The unlawful detention, malicious prosecution, and unlawful imprisonment of **MR. BOONE** was without probable cause.

59. In reversing the trial court's denial of **MR. BOONE'S** motion to suppress, the Appellate Court agreed the evidence failed to show Defendant Officers had the "requisite suspicion that a crime had been or was about to be committed."

60. The Court noted all Defendant Officers "had to go on was the report of a tipster stating that an African-American male in a puffy coat was in possession of a handgun at a rooming house." No "evidence about the identity or reliability of the tipster" was presented, and "the tip was not corroborated."

61. The Court held the "tip was insufficient to warrant a Terry stop and that there was "nothing in [**MR. BOONE'S**] demeanor or conduct that provided [Defendant Officers] with a reasonable, particularized, and objective basis to suspect he had just engaged in or was about to engage in criminal activity.

62. The Court found **KILEY** had no prior knowledge of **MR. BOONE**, let alone had knowledge he had a criminal history or a proclivity to engage in violence.

63. In holding the investigatory stop was an unlawful detention, the Court concluded that **KILEY** did not possess a "reasonable, particularized, and objective basis to suspect [**MR. BOONE**] had just engaged in or was about to engage in criminal activity."

64. The fabrication of false charges resulting in the unlawful detention, malicious prosecution and unlawful imprisonment of **MR. BOONE**, and the resulting conspiracy to cover -up the true nature of the incident by Defendants, caused him to suffer severe and permanent psychological and emotional distress, mental anguish, exacerbation of his prior medical condition, and degradation and public humiliation, which required the care and treatment of physicians, has and will in the future require medical treatment, and has and will in the future cause him to refrain from his daily activities and normal pursuits.

65. The fabrication of false charges resulting in the unlawful imprisonment and the malicious prosecution of **MR. BOONE**, caused him to suffer economic damages and resulted in having to post thousands of dollars in bail, hire lawyers and spend thousands of dollars to defend himself, and pay for medical care.

66. The fabrication of false charges resulting in the malicious prosecution, **MR. BOONE** spent four and a half (4 ½ years in prison for which he is entitled to compensation under the Mistaken Imprisonment Act (Act), N.J.S.A. §§ 52:4C-1 to 52:4C-7.

COUNT I

PATTERN AND PRACTICE ALLEGATIONS

(Municipal and Governmental Liability)

67. Plaintiff, MARCUS BOONE, repeats and realleges the foregoing paragraphs of the Complaint as if fully set forth herein.

68. Police Officers employed by **THE CITY OF ELIZABETH**, have a long, systematic and documented history of aggressive police practices, including falsifying reports, fabrication of evidence, cover-ups, sham Internal Affairs investigations, false arrests, malicious prosecution, retaliation, racial profiling, and use of excessive force against the public and minorities.

69. The **CITY**, through its police department, developed, implemented, enforced, encouraged and sanctioned a de facto policy, practice and/or custom of falsely arresting, racially profiling, maliciously prosecuting and engaging in the use of illegal and excessive force on citizens and cover-up of these incidents. In the past ten (10) years, the **CITY** has received numerous documented incidents of use of force, including use of excessive force, false arrest, false reporting, malicious prosecution, and racial profiling.

70. The unlawful detention, filing of false charges, malicious prosecution of **MR. BOONE**, and the subsequent cover up of the incident by the **CITY** and its Police Department, was not an isolated or aberrational incident. It was the direct result of

systemic deficiencies in the training, supervision and discipline of **THE CITY**'S Police Officers, including **KILEY, GIANETTA, DORILUS, TORRES** and **NOWINSKI**, that began long before the unlawful detention, malicious prosecution and unlawful imprisonment of **MR. BOONE** and continues to this day.

71. Prior to and after the January 11, 2012, unlawful stop, malicious prosecution, and unlawful imprisonment of **MR. BOONE**, the **CITY** was on notice that there was a pervasive and systemic pattern, custom and practice of constitutional violations within its Police Department. There were numerous incidents, complaints, and lawsuits alleging excessive force, illegal searches and seizures, false arrest, falsifying reports, filing of false charges, malicious prosecution, cover-ups, racial profiling and differential bias treatment by **CITY** Police Officers.

72. Specifically, on or about May 2017, a grand jury returned an indictment against Khaseem Greene, a Rutgers All-American, NFL linebacker, father, and a highly-respected man with zero criminal history, allegedly due to the deliberate and wide-ranging conspiracy by members of the Elizabeth Police Department to knowingly, intentionally and falsely implicate him in a shooting outside the All Star Café in Elizabeth.

73. Elizabeth Police Department Officers filed false charges despite incontrovertible evidence—an actual video recording of the

incident in question—that clearly proved that Greene did not commit any crime.

74. Greene was dropped by the Kansas City Chiefs on the same day the indictment was returned.

75. The charges were dismissed against Greene on July 17, 2017, after the prosecution acknowledged there was no probable cause for Greene's arrest. Greene filed a federal lawsuit on May 8, 2018.

76. On June 26, 2013, Jerome Wright sustained severe injuries after he was brutalized during a traffic stop by Elizabeth Police Department Officer Riu Xavier.

77. The **CITY** paid $250,000 in October 2017, to settle Wright's lawsuit after Xavier admitted in court that he fabricated portions of his report and omitted critical facts from his report, i.e., Wright's hands were up in the air and that he struck Wright with a flashlight and kicked him.

78. Elizabeth Police Officer Edward Shields was indicted August 2018, on a simple assault charge by a grand jury after video shows Shields and other officers dragging, choking, hitting and kneeing Raul Tornes in the head as he yelled out, "I am not resisting." The incident occurred September 29, 2017, during the arrest of Tornes, a resident **OF ELIZABETH**.

79. In June 2007, the **CITY** paid $97,500 to settle a false arrest/malicious prosecution and excessive force brought by Yohan Pichardo, stemming from an August 26, 2010, arrest.

80. On February 28, 2017, the **CITY** paid $60,000 to settle a family's lawsuit that claimed that police inflicted excessive force upon them during a gathering of friends and family who came to mourn a family member's recent shooting death. In their suit, Chantal Theodore, David Romilus and Jessica Theodore claimed that on June 13, 2008, friends and family gathered at the Theodore's family home to grieve the death of Chantel's son, Curtis, who had been shot and killed earlier that day.

81. According to the suit, Elizabeth Police Captain Tyrone Tourner, accompanied by a contingent of about twenty police officers, came to the house and ordered the mourners to vacate. Chantal and Romilus claimed that when they objected to Tourner's order, they were arrested.

82. Chantal said that she was "grabbed by several officers, thrown against a fence, lifted off her feet, forcibly handcuffed" and arrested for resisting arrest and obstruction. Romilus, who is Chantal's brother, claimed that Officer Edward J. Pinkevicz sprayed in him in the face with a chemical agent and arrested him for resisting arrest and disorderly conduct. Jessica, who is Chantal's daughter and Romilus' niece, said that when she ran outside barefoot, she "was almost immediately struck in the back

of the head with a nightstick" and was arrested for aggravated assault and resisting arrest. The trio claimed to have been kept in jail overnight and denied medical attention.

83. In a June 30, 2008 opinion, the Appellate Division reversed the disorderly conduct and simple assault charges against Romilus and Jessica.

84. The **CITY**, through its Internal Affairs Department, has engaged in a past practice and policy of exhibiting deliberate indifference to complaints of constitutional violations against its police officers from citizens like **MR. BOONE**, against police officers who were employed by or act as agents of the **CITY** for which the **CITY** has been placed on notice.

85. The **CITY'S** Internal Affairs department is a complete sham, and its long standing systematic, pervasive actual and/or de facto policies and practices create an environment wherein officers are comfortable in knowing they can act unlawfully without any repercussions or discipline. Such past policy and practice are directly linked to the violation of the constitutional rights of **MR. BOONE** because such past policy and practice encourage violations by police officers, such as the individually named Defendants.

86. Defendants, collectively and individually, while acting under the color of law, engaged in conduct that constituted a custom, policy, usage, practice, procedure or rule of Defendant

CITY OF ELIZABETH, which is forbidden by the New Jersey State Constitution.

87. The afore-mentioned customs, policies, usages, practices, procedures and rules of **THE CITY OF ELIZABETH**, and the lack of training and discipline for the unconstitutional actions of its police officers resulted in the unlawful detention, fabrication of evidence, filing of false charges, abuse of process, and malicious prosecution of **MR. BOONE** and other innocent citizens; conspiracy to deprive **MR. BOONE** of his civil rights; creation of false reports, perjury, withholding of evidence and cover up.

88. The **CITY** engaged in a policy, custom and practice of inadequate screening, hiring, retaining, investigating, disciplining, training and supervising its employees, which was the moving force behind the violation of **MR. BOONE'S** constitutional rights described herein.

89. The foregoing customs, policies, usages, practices, procedures and rules constitute deliberate indifference to the safety, well-being and State constitutional rights of **MR. BOONE** and was the direct and proximate cause and the moving force of the constitutional violations suffered by **MR. BOONE**.

90. The **CITY** provided grossly deficient training and supervision to its Police Officers, including the individual named Defendants Officers, concerning for example, searches and seizures, use of force, pursuit, traffic stops and investigations,

report writing, obtaining warrants, false arrest, malicious prosecution, and Internal Affairs Investigations, despite actual and/or constructive notice that its officers were improperly trained, lacked discipline, and were violating minimally accepted police practices.

91. Defendant **CITY OF ELIZABETH** failed to investigate misconduct on the part of its police officers, failed to properly investigate Internal Affairs complaints against its officers, including the named Defendants Officers, failed to report instances of illegal criminal behavior and Official Misconduct to the County Prosecutor, and failed to discipline its officers prior to and including in this case.

92. The **CITY** was negligent and/or reckless in the hiring and retention of Police Officers, including the individual named Defendant Officers.

93. The **CITY** failed to provide its officers, including the individually named Defendants, with the guidance, oversight and resources they need to police safely, constitutionally and effectively.

94. Despite knowing of the false reporting and perjured testimony provided by **KILEY**, **TORRES**, **DORILUS**, **NOWINSKI**, and **GIANETTA**, which clearly revealed official misconduct by these Defendants, the **CITY** failed to conduct an Internal Affairs investigation into Defendant Officers' conduct; failed to take any

disciplinary actions against them; and failed to report their illegal and criminal actions to the County Prosecutor.

95. Likewise, the **CITY** failed to adequately investigate the malicious prosecution which resulted in **MR. BOONE'S** unlawful imprisonment or take appropriate disciplinary action against Defendants **KILEY, TORRES, DORILUS, NOWINSKI,** and **GIANETTA,** despite its knowledge of their illegal conduct and of numerous prior allegations of misconduct and the use of excessive force against these Defendants and other officers employed by **THE CITY.**

96. As a result of Defendant **CITY OF ELIZABETH'S** failure to properly screen, hire, retain, train, supervise, investigate and discipline its employees, the **CITY** explicitly and implicitly authorized, ratified and condoned Defendants **KILEY, TORRES, DORILUS, NOWINSKI,** and **GIANETTA,** and **JOHN DOES 1-20's** illegal conduct, and has been deliberately indifferent to the acts and conduct complained of herein.

97. All the acts and omissions committed by Defendant Officers described herein for which liability is claimed were done unlawfully, maliciously, recklessly, negligently and/or with bad faith, and said acts meet all of the standards for imposition of punitive damages.

98. All the acts and omissions committed by Defendant Officers described herein for which liability is claimed were conducted in their individual and official capacities.

99. Defendant **SHANNON**, is the chief executive officer of **THE CITY OF ELIZABETH**'S Police Department and, therefore, is charged with establishing all policies for its Police Department, either express or de facto.

100. As a direct and proximate result of Defendants' conduct and abuse of authority detailed above, Plaintiff, MARCUS BOONE, was deprived of his liberty and suffered economic loss in the form of loss of his ability to meet his financial obligations, including but not limited to the resultant impact upon his credit, damage to his reputation, invasion of his right to privacy, mental pain and suffering and emotional distress, as well as other non-economic damages for which Defendants are liable.

COUNT II

(42 U.S.C. § 1983 - Malicious Prosecution)

101. Plaintiff, **MARCUS BOONE**, repeat and reallege the foregoing paragraphs of the Complaint as if the same were fully set forth at length herein.

102. Defendants **KILEY**, **TORRES**, **DORILUS**, **NOWINSKI**, **GIANETTA**, and JOHN DOES 1-10, acting in their individual and official capa**CITY** as employees of Defendant **CITY OF ELIZABETH** and within the scope of their employment, filed false charges against and maliciously prosecuted **MR. BOONE**, an innocent person, without probable cause. Defendants **KILEY**, **TORRES**, **DORILUS**, **NOWINSKI**, **GIANETTA**, and JOHN DOES 1-10, engaged in an abuse of process when

they falsely charged and maliciously prosecuted **MR. BOONE**, an innocent person, without reasonable suspicion or probable cause.

103. Despite knowing of the existence of exculpatory evidence that vindicated **MR. BOONE**, and despite knowing that the evidence against him was fabricated and/or did not exist, Defendants continued to maliciously prosecute **MR. BOONE**, which resulted in his incarceration for more than four and a half (4 ½) years.

104. The malicious prosecution of, and damages to **MR. BOONE** resulting from Defendant Officers' conduct as described herein, continued even after Defendant Officers obtained indisputable evidence of **MR. BOONE'S** innocence and only ended when the trial judge dismissed the charges on September 19, 2016, more than four and a half years (4 ½) years after the malicious prosecution was initiated, thus ending the malicious prosecution of **MR. BOONE**.

105. Defendants, including **THE CITY OF ELIZABETH**, are responsible for the false evidence upon which the malicious prosecution was based.

106. Defendants' actions in the presentation of false and fabricated evidence, upon which **MR. BOONE** was arrested, charged and prosecuted, was without probable cause and was negligent, careless, reckless and malicious.

107. By their unlawful conduct and abuse of authority, Defendants Officers, under color of law, deprived **MR. BOONE** of his right to be free from malicious prosecution and abuse of process

under the Fourth and Fourteenth Amendment to the United States Constitution and under the New Jersey State Constitution, thereby depriving him of his liberty without due process of law.

108. Defendant Officers, collectively, are liable for their failure to take any reasonable steps to protect **MR. BOONE** from being maliciously prosecuted, despite having ample evidence, time and opportunity to do so.

109. In all the foregoing, Defendant Officers initiated the prosecution of **MR. BOONE** without probable cause and with reckless, malicious, callous and deliberate indifference to **MR. BOONE'S** constitutionally protected rights.

110. The malicious prosecution was the act of Defendant Officers jointly, and Defendants are jointly and severally liable for damages to **MR. BOONE**.

111. **THE CITY OF ELIZABETH** is liable for creating, implementing and enforcing policies, practices and customs as aforesaid, which resulted in the malicious prosecution of **MR. BOONE**.

112. As a direct and proximate result of Defendants' misconduct and abuse of authority detailed above, Plaintiff, MARCUS BOONE, sustained the damages hereinbefore alleged.

COUNT III

(42 U.S.C. § 1985 Conspiracy)

113. Plaintiff, MARCUS BOONE, repeats and realleges the foregoing paragraphs of the Complaint as if same were fully set forth at length herein.

114. Despite knowing of the existence of fabricated evidence submitted by **KILEY, TORRES, DORILUS, NOWINSKI, GIANETTA,** and **JOHN DOES 1-20,** Defendants conspired to conceal the true nature of the incident by unlawfully creating false reports of the incident in furtherance of their conspiracy to frame **MR. BOONE.**

115. **THE CITY** and members of its Police Department, including the individually named Defendants, engaged in a conspiracy to coverup the true circumstances surrounding the arrest and prosecution of **MR. BOONE;** failed to adequately investigate the malicious prosecution and unlawful imprisonment of **MR. BOONE;** and failed to take appropriate disciplinary action against Defendants **KILEY, TORRES, DORILUS, NOWINSKI,** and **GIANETTA,** despite knowledge of their illegal conduct and despite knowledge of numerous prior allegations of misconduct, including false arrest, malicious prosecution, racial profiling and the use of excessive force against Defendants and other officers employed by **THE CITY.**

116. Defendants **KILEY, TORRES, DORILUS, NOWINSKI,** and **GIANETTA,** and JOHN DOES 1-10, under color of state law, conspired with each other, reached a mutual understanding, and acted to undertake a course of conduct to cover up the true nature of the incident and to injure, oppress, threaten, and intimidate **MR. BOONE** in the free exercise and enjoyment of the rights and privileges and equal protection of the law secured to him by the United States Constitution, including the his clearly established right to be free from unlawful search, seizure, detention and arrest; the right to be free from malicious prosecution; the right to privacy; and the right not to be deprived of his liberty without due process of law.

117. Defendants Officers took numerous overt steps in furtherance of such conspiracy, as set forth above.

118. **THE CITY** is liable for creating, implementing and enforcing policies, practices and customs as aforesaid, that resulted in the conspiracy against **MR. BOONE.**

119. As a direct and proximate result of Defendants' conduct and abuse of authority detailed above, Plaintiff, **MARCUS BOONE,** sustained the damages hereinbefore alleged.

COUNT IV

(42 U.S.C. § 1983 - Supervisor Liability)

120. Defendants **SHANNON** and **JOHN DOES 1-20**, were, at all relevant times, supervisory personnel for **THE CITY'S** Police Department, with oversight responsibility for Defendants **KILEY**, **TORRES**, **DORILUS**, **NOWINSKI**, **GIANETTA**, and **JOHN DOES 1-20**. They were responsible for the hiring and firing, instruction, supervision, correction and discipline, and training of all officers, including the named Defendants, on all aspects of law enforcement procedures, including the use of force, arrest procedures, pursuit, conducting traffic stops, proper investigative techniques, and evaluation of what constitutes a proper determination of probable cause.

121. Defendants **SHANNON** and **JOHN DOES 1-20**, as supervisory personnel in **THE CITY OF ELIZABETH'S** Police Department, owed a duty of care to **MR. BOONE** to prevent the conduct alleged, which foreseeably caused his injuries and violation of his civil rights.

122. Based on prior conduct and complaints against Defendants **KILEY**, **TORRES**, **DORILUS**, **NOWINSKI**, **GIANETTA**, and **JOHN DOES 1-20**, Defendants knew, or in the exercise of due diligence should have known that if they failed to properly supervise and discipline Defendants, the inappropriate, unlawful and tortuous conduct of Defendants against **MR. BOONE** was likely to occur.

123. Defendants failed to take preventive and remedial measures to guard against the constitutional violations committed by Defendants **KILEY, TORRES, DORILUS, NOWINSKI, GIANETTA,** and **JOHN DOES 1-20.** Had they taken the appropriate action, **MR. BOONE** would not have been have illegally stopped, subjected to unreasonable and excessive force, injured, and maliciously prosecuted.

124. Defendants' failure to supervise and discipline Defendants **KILEY, TORRES, DORILUS, NOWINSKI, GIANETTA,** and **JOHN DOES 1-20,** amounted to negligence, gross negligence, deliberate indifference, or reckless misconduct which directly caused and was the moving force behind the constitutional deprivations **MR. BOONE** suffered.

125. **THE CITY OF ELIZABETH** is liable for creating, implementing and enforcing policies, practices and customs as aforesaid, that resulted in the constitutional deprivations **MR. BOONE** suffered.

126. As a direct and proximate result of Defendants' conduct and abuse of authority detailed above, Plaintiff, MARCUS BOONE, sustained the damages hereinbefore alleged.

COUNT V
(Negligent Hiring/Training/Retention/Supervision

127. Plaintiff, MARCUS BOONE, repeats and realleges the foregoing paragraphs of the Complaint as if same were fully set forth at length herein.

128. Defendant, **CITY OF ELIZABETH**, was responsible for the recruiting, hiring, training, retention and ongoing supervision of **THE CITY**'S Police Officers, including Defendant Officers.

129. **THE CITY** had a duty to properly ascertain its employees' fitness to become police officers before they were hired, but failed to do so.

130. **THE CITY** had a duty to properly train the officers in its employ to ensure they did not violate the constitutional rights of citizens, including **MR. BOONE**, but failed to do so.

131. **THE CITY** failed to properly determine the fitness of Defendants **KILEY**, **TORRES**, **DORILUS**, **NOWINSKI**, **GIANETTA**, and **JOHN DOES 1-20**, to be hired as police officers, chiefs, sergeants, lieutenants, supervisors and investigators of **THE CITY** and the COUNTY and failed to properly train these Defendants to ensure they would not violate the civil rights of its citizens, such as **MR. BOONE.**

132. **THE CITY**, or in the exercise of due diligence should have known that Defendants were not fit for duty and that the

inappropriate, unlawful and tortuous conduct of Defendants **KILEY, TORRES, DORILUS, NOWINSKI, GIANETTA**, and **JOHN DOES 1-20**, was likely to occur.

133. **THE CITY** was aware of prior allegations of misconduct involving the use of excessive force, cover-ups, false arrest, falsification of official reports, and malicious prosecution alleged by citizens against members of **THE CITY'S** Police Department, including the named Defendants. Yet, did nothing to prevent the ongoing unlawful actions of its police officers or to terminate these rogue officers.

134. **THE CITY** was aware of prior allegations of misconduct against its officers that should have alerted it to the potential unlawful conduct of Defendants **KILEY, TORRES, DORILUS, NOWINSKI, GIANETTA**, and **JOHN DOES 1-20**, but failed to take reasonable and appropriate steps to properly train, supervise and discipline Defendants to ensure they did not violate the constitutional rights of citizens, including **MR. BOONE.**

135. Defendants **SHANNON** and JOHN DOE 1-20, as supervisory personnel in **THE CITY'S** Police Department, was responsible for the hiring and firing, supervision, corrective or disciplinary actions, and training of all officers on all aspects of law enforcement, including proper investigative techniques and evaluation of what constitute a proper determination of probable cause, owed a duty of care to **MR. BOONE.**

136. Plaintiff avers and believes that, upon obtaining discovery, these Defendants will be identified and shown to have failed in their duties and acted with deliberate disregard for their responsibilities to discipline, adequately supervise and/or train police officers, including the named Defendants, in the investigation of motor vehicle stops, investigation of criminal activity, searches and seizures, pursuits, arrest procedures, preparing arrest reports, proper identification of suspects, Internal Affairs Investigations, as well as the evaluation and reliability of evidence used in the determination of probable cause.

137. Plaintiff avers that discovery will show **THE CITY OF ELIZABETH**, through its Police Department had a de facto policy of allowing its officers to rely upon flawed evidence without adequate training in the investigation of crimes and had a de facto policy which encouraged its officers to use excessive force, to conduct minimal investigation and to accept without further investigation and without question, false and illegally obtained evidence, regardless of the unreliability of such evidence, and that as a direct result of said policies or lack of training the use of force, investigation of traffic violations and crimes, as well as the evaluation and reliability of evidence used in the determination of probable cause, **MR. BOONE'S** right to be free from unreasonable and excessive use of force; malicious prosecution;

his right to privacy; and his right to freedom of association were violated.

138. **THE CITY**'S failure to properly discipline its police officers and to determine and monitor their continued fitness for duty coupled with its negligent retention of Defendants **KILEY, TORRES, DORILUS, NOWINSKI, GIANETTA,** and **JOHN DOES 1-20,** despite actual and/or constructive knowledge that they were not fit to be police officers, chiefs or lieutenants, amounted to gross negligence, deliberate indifference, or reckless misconduct which directly caused and was the moving force behind the deprivations suffered by **MR. BOONE.**

139. As a direct and proximate result of Defendants' conduct and abuse of authority detailed above, Plaintiff MARCUS BOONE sustained the damages hereinbefore alleged.

COUNT VI
(Violation of the New Jersey Civil Rights Act- N.J.S.A. 10:6-1 to 2)

140. Plaintiff **MARCUS BOONE** repeats and realleges the foregoing paragraphs of the Complaint as if same were fully set forth at length herein.

141. Defendants, under color of statute, ordinance, reputation, custom and usage have deprived and caused **MR. BOONE** to be subjected to the deprivations of rights, privileges and immunities secured by the New Jersey Constitution and law of the State of New Jersey, including his right to liberty, his right to

be secure as a person against unreasonable searches and seizures, his right to be free from unlawful detention, his right to be free from false arrest and imprisonment, his right to be free from malicious prosecution, his right to privacy, and his right to freedom of association secured to him by the New Jersey State Constitution.

142. At no time did Defendants have probable cause or any grounds to believe **MR. BOONE** had committed a traffic violation or a crime.

143. Defendants, acting under color of law, intentionally deprived **MR. BOONE** of his civil rights by, inter alia, unlawfully seizing him, physically assaulting him, falsely arresting him, failing to intervene to prevent the unlawful acts against him, maliciously prosecuting him, and violating his right to privacy.

144. Defendants' acts were done in knowing violation of **MR. BOONE'S** legal and constitutional rights and have caused **MR. BOONE** damages, including economic injury, humiliation, mental pain and suffering and emotional distress.

145. Defendants' deprivation of **MR. BOONE'S** civil rights violates the New Jersey Constitution and gives rise to **MR. BOONE'S** claims for redress under N.J.S.A. 10:6-1 et seq.

146. Based on the aforesaid conduct, Defendants, acting under color of law, deprived and interfered with the exercise or

enjoyment by Plaintiff **MARCUS BOONE** of the rights guaranteed to him by the New Jersey Constitution including, but not limited to:

a) The right to enjoy and defend life and liberty;
b) The right to pursue and obtain safety and happiness;
c) The right to due process of law;
d) The right to equal protection of the laws;
e) The right to any other natural and unalienable right retained by the people;
f) The right to privacy; and
g) The right to be free of cruel and unjust punishment.

147. As a direct and proximate result of Defendants' conduct and abuse of authority detailed above, Plaintiff MARCUS BOONE sustained the damages hereinbefore alleged.

COUNT VII
(Negligent and Intentional Infliction of Emotional Distress)

148. Plaintiff **MARCUS BOONE** repeats and realleges the foregoing paragraphs of the Complaint as if same were fully set forth at length herein.

149. When they unlawfully stopped, falsely arrested him, fabricated evidence and false charges against him, and initiated the malicious prosecution against him, without probable cause, Defendant Officers acted intentionally or recklessly with deliberate disregard of a high degree of probability that emotional distress will follow.

150. Defendants' conduct was so extreme and outrageous in character and degree as to go beyond all possible bounds of decency. Defendants' conduct was so atrocious, it is utterly intolerable in a civilized community.

151. As a direct and proximate result of Defendants' conduct and abuse of authority detailed above, Plaintiff MARCUS BOONE sustained the damages hereinbefore alleged.

COUNT VIII
Mistaken Imprisonment

152. Plaintiff **MARCUS BOONE** repeats and realleges the foregoing paragraphs of the Complaint as if same were fully set forth at length herein.

153. As a result of being maliciously prosecuted by Defendants, **MR. BOONE** was imprisoned for in excess of four and a half (4 ½) years, for crimes of which he was truly innocent.

154. Thus, he is entitled to compensation at the rate of twice his salary or $50,000 per year, whichever is greater, pursuant to the Mistaken Imprisonment Act, N. J. S. A. §§ 52:4C-1 to 52:4C-7.

COUNT IX
Punitive Damages

155. Plaintiff **MARCUS BOONE** repeats and realleges the foregoing paragraphs of the Complaint as if same were fully set forth at length herein.

156. The acts of the Defendant Officers as set forth herein, were so willful, wanton, malicious and oppressive, it entitles **MR. BOONE** to an award of punitive damages against Defendants Officers.

WHEREFORE, Plaintiff respectfully prays that this Court:

a. Assume jurisdiction over this action;

b. Award Plaintiff actual damages, expenses and other economic losses;

c. Award Plaintiff general damages for injury, mental anguish and emotional distress, in an amount to be determined by the enlightened conscience of an Impartial jury;

d. Award Plaintiff punitive (exemplary) damages against the individual Defendant Officers, to the extent permitted by law, and award fees and expenses;

e. Declare that Defendants **CITY OF ELIZABETH**, **KILEY**, **TORRES**, **DORILUS**, **NOWINSKI**, **GIANETTA**, and **JOHN DOES 1-20**, violated Plaintiff's rights guaranteed him under the United States Constitution;

f. Award Plaintiff's attorney's fees, pursuant to 42 U.S.C. §1988 and any other applicable provision(s) of state and federal law; and,

g. Award such other and further relief as the Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that attorney TRACEY C. HINSON is hereby designated as trial counsel in the above-captioned litigation for the firm of Hinson Snipes, LLP.

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiff demands a trial by jury as to all issues so triable.

NOTICE OF UTILIZATION OF TIME-UNIT BASIS

PLEASE TAKE NOTICE Plaintiff intends to utilize the time-unit basis for calculating unliquidated damages in Plaintiff's closing statement to the jury and the Court.

HINSON SNIPES, LLP
Attorneys for Plaintiff

By: /s/Tracey C. Hinson
Tracey C. Hinson, Esquire

Dated: October 8, 2018

JS 44 (Rev. 06/17)

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

MARCUS BOONE

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
TRACEY C. HINSON, ESQUIRE/HINSON SNIPES, LLP
116 VILLAGE BLVD, SUITE 307
PRINCETON, NJ 08540 - (609)452-7333

DEFENDANTS

County of Residence of First Listed Defendant UNION
(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)*
(For Diversity Cases Only)

	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
- ☐ 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

TORTS

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

FORFEITURE/PENALTY
- ☐ 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

BANKRUPTCY
- ☐ 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

OTHER STATUTES
- ☐ 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)*:
U.S.C. 1983, 1985, 1988 & 1988

Brief description of cause:
FALSE ARREST/IMPRISONMENT, MALICIOUS PROSECUTION, CONSPIRACY, RACE/GENDER DISCRIM.

VII. REQUESTED IN COMPLAINT:

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

DEMAND $ 2,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/08/2018

SIGNATURE OF ATTORNEY OF RECORD /s/ TRACEY C. HINSON

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Adam J. Elias, Esq. – NJAID 050422014
Schiller McMahon LLC
123 South Avenue East
Second Floor
Westfield, New Jersey 07090
P: (908) 233-4840
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Attorneys for Plaintiff, Robert Brennan, James Kearns and Gerard McDonald

RECEIVED / FILED
Superior Court of New Jersey
NOV 03 2016
CIVIL CASE MANAGEMENT
UNION COUNTY

ROBERT BRENNAN, JAMES KEARNS, GERARD MCDONALD Plaintiff, v. J. CHRISTIAN BOLLWAGE, JAMES COSGROVE, CITY OF ELIZABETH, ELIZABETH POLICE DEPARTMENT, PATRICK SHANNON, TYRONE TORNER, AND JOHN DOES 1 THROUGH 10, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO: UNN-L-3562-16 Civil Action **COMPLAINT**

Plaintiffs, Robert Brennan, James Kearns and Gerard McDonald, by and through their attorneys, Schiller McMahon, LLC, upon information and belief, by way of Complaint against the noted Defendants, aliege as follows:

Jurisdiction and Venue

1. This is an action in a case of actual controversy and is brought pursuant to the *Rules Governing the Courts of the State of New Jersey*. Venue is proper in Union County pursuant to *Rule* 4:2-3 of the *Rules Governing the Courts of the State of New Jersey* inasmuch as the claims arose in said County.

The Parties

2. At all times relevant hereto, Robert Brennan ("Plaintiff Brennan") was an employee of the

City of Elizabeth and Elizabeth Police Department.

3. At all times relevant hereto, James Kearns ("Plaintiff Kearns") was an employee of the City of Elizabeth and Elizabeth Police Department.

4. At all times relevant hereto, Gerard McDonald ("Plaintiff McDonald") was an employee of the City of Elizabeth and Elizabeth Police Department.

5. At all relevant times hereto, Defendant, City of Elizabeth ("City"), was a municipality duly organized and existing under the laws of the state of New Jersey.

6. At all times relevant hereto, Defendant, Elizabeth Police Department ("Department"), was a municipal subdivision and arm of the City located at 1 Police Plaza, Elizabeth, NJ 07201.

7. Plaintiff is an employee of Defendants City and Department within the meaning of the Conscientious Employment Protection Act, *N.J.S.A.* 34:19-1 et seq. ("CEPA")

8. At all times relevant hereto, Defendant, J. Christian Bollwage ("Bollwage"), was employed by the City as Mayor of the City. He is sued in his individual and official capacity.

9. At all times relevant hereto, Defendant, James Cosgrove ("Cosgrove"), was employed by the City as Police Director for the Department. He is sued in his individual and official capacity.

10. At all times relevant hereto, Defendant, Patrick Shannon ("Shannon"), was employed by the City as Chief of Police for the Department. He is sued in his individual and official capacity.

11. At all times relevant hereto, Defendant, Tyrone Torner ("Torner"), was employed by the City as Deputy Chief for the Department. He is sued in his individual and official capacity.

12. At all times relevant hereto, Defendants Cosgrove, Bollwage, Shannon and Torner acted within the scope of their authority and employment as empowered by the City and

Department, were members of upper management of the City and Department and held supervisory powers over Plaintiff within the meaning of CEPA.

13. At all times relevant herein, the City and Department, as employers, delegated upon Cosgrove, Bollwage, Shannon and Torner the authority to [a] execute and/or effect its employment policies promulgated to ensure a safe, productive, and or retaliation-free workplace; [b] conduct, oversee and/or supervise departmental internal affairs investigations of members of the Department; [c] discipline and recommend or suggest the discipline of members of the Department; [d] make decisions and/or recommendations regarding the promotion of members of the Department.

14. At all times relevant hereto, Defendants John Does 1 through 10, being fictitious identities and representing unnamed agents, servants and employees of the City and Department, violated Plaintiff's rights and/or were a proximate cause or substantial factor of Plaintiff's damages. They are sued in their individual and official capacities.

15. The City is a Civil Service jurisdiction in that the operation of the Department including, *inter alia*, the operation of the Department, is governed by applicable Civil Service statutes and regulations.

Facts Common to All Counts

16. Plaintiff Brennan began his employment with the City and Department in 1987. Plaintiff Brennan's current position within the Department is Sergeant. Plaintiff Brennan has held the rank of Sergeant since 2008.

17. Plaintiff Kearns began his employment with the City and Department in 1991. Plaintiff Kearns' current position within the Department is Sergeant. Plaintiff Kearns has held the rank of Sergeant since 1999.

18. Plaintiff McDonald began his employment with the City and Department in 1986. Plaintiff McDonald's current position within the Department is Sergeant. Plaintiff McDonald has held the rank of Sergeant since 2005.

19. In September 2013, each of the Plaintiffs took the Civil Service Lieutenant Exam. Each of the Plaintiffs sat for the Civil Service Lieutenant Exam in order to achieve higher rank within the Department. Some of the benefits of being promoted to Lieutenant include, but are not limited to, increased management responsibilities, increased financial benefits, and the opportunity to continue up the chain of command with future promotions.

20. After achieving the rank of Lieutenant, each of the Plaintiffs intended on sitting for the Civil Service Captain's Exam at the next available exam date. As a result of the many unlawful, retaliatory actions set forth herein, each of the Plaintiffs have been deprived of that opportunity.

21. On February 6, 2014, a new list became active for the rank of Lieutenant (the "Active Lieutenant List"). Plaintiff Kearns, Plaintiff Brennan and Plaintiff McDonald ranked second, third, and fourth, respectively, on the Active Lieutenant List.

22. On February 6, 2014, there was one (1) vacancy for Lieutenant in the Department.

23. On or about the second week of March 2014, Sergeant Todd Kelly ("Kelly"), who was ranked first on the Active Lieutenant List, became aware of a potential misrepresentation and/or violation of a law, or a rule or regulation issued under the law in regards to promotions governed by Title 11A (the "Civil Service Act") and Title 4A of the New Jersey Administrative Code.

24. Specifically, Kelly learned that, as the Appointing Authority, Cosgrove submitted a request for certification to the Civil Service Commission ("CSC") on or about January 13, 2014 (the "Request for Certification"). The Request for Certification was to certify the next three eligible Sergeants in the Department - Jose A. Rodriguez ("Rodriguez"), Michael B. Niewinski ("Niewinski") and Lawrence Gioconda ("Gioconda") - from the Lieutenant list that, at the time, was set to expire February 2, 2014(the "Expired List").

25. Cosgrove indicated on the Request for Certification that there were three (3) vacancies for the rank of Lieutenant.

26. At the time that the Request for Certification was made, the Department had twenty (20) active permanent Lieutenants. The Table of Organization ("T.O.") in effect at that time allowed for a total of twenty-one (21) Lieutenants. As such and contrary to Cosgrove's Request for Certification, there was only one (1) vacancy for the position of Lieutenant in the Department. Thus, Cosgrove's January 13, 2014 certified statement was false and inaccurate.

27. At or around this same time, Kelly learned that it was Cosgrove's intention to promote Rodriguez, Niewinski and Gioconda to the rank of Lieutenant from the Expired Lieutenant List, through obtaining the Certification from the CSC, instead of using the Active Lieutenant List, in which Plaintiff Kearns, Plaintiff Brennan and Plaintiff McDonald were ranked second, third, and fourth, respectively.

28. Kelly then met with the Superior Officer's Association ("SOA") President Lieutenant Richard Shaughnessy ("Shaughnessy") to inform him that Cosgrove would violate Title 4A if he promoted Niewinski and/or Gioconda.

29. *N.J.A.C.* 4A:4-4.8b provides that "[T]he disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy."

30. On or about March 18, 2014, Shaughnessy met with Cosgrove and explained that the first two eligible officers for promotion to Lieutenant, Kelly and Plaintiff Kearns, from the Active Lieutenant List, would appeal the appointments of Niewinski and Gioconda pursuant to *N.J.A.C.* 4A:4-4.8b, should Cosgrove make such appointments.

31. At the meeting on or about March 18, 2014, Shaughnessy provided Cosgrove with a copy of Title 4A. He also made it clear to Cosgrove that Civil Service Laws disallowed the City from promoting any Sergeants from an Expired Lieutenant List where a vacancy did not exist during that list's active period.

32. Despite the law as aforestated, Cosgrove stated that he intended to promote Rodriguez, Niewinski and Gioconda from the Expired Lieutenant List.

33. On or about March 21, 2014, Shaughnessy met with Kelly and Plaintiff Kearns. At that meeting, Shaughnessy stated that he spoke to Bollwage about the upcoming promotions and the proposed appeal intended to be filed by Kelly and Plaintiff Kearns. Bollwage advised Shaughnessy to pass on a message to Kelly and Plaintiff Kearns. Bollwage's message was to make it clear to Kelly and Plaintiff Kearns that if they were to appeal the upcoming promotions, and such appeal results in the demotion of Rodriguez, Niewinski or Gioconda, that Bollwage will, in turn, "freeze" the Active Lieutenant List for three (3) years and demote Captains to fill the vacancies in the Lieutenant position(s). By

"freezing" the Active Lieutenant List for three (3) years, Kelly, as well as each Plaintiff, would be required to re-take the Lieutenant's exam in 2016 in order to have the opportunity to be promoted to the rank of Lieutenant in 2017.

34. On or about March 31, 2014, Cosgrove issued Special Order #2060. Special Order #2060 stated that on April 1, 2014, Rodriguez, Niewinski and Gioconda would be promoted from the rank of Sergeant to Lieutenant.

35. On April 1, 2014, Rodriguez, Niewinski and Gioconda were promoted to Lieutenant.

36. As of April 1, 2014 and pursuant to Special Order #2060, the Department employed twenty-two (22) permanent Lieutenants. This was one over the T.O., which allowed a maximum of twenty-one (21) Lieutenants in the Department. As such, the promotion of Rodriguez filled the one and only genuine vacancy that existed during the active period of the Expired List.

37. The promotions of Niewinski and Gioconda violated *N.J.A.C.* 4A:4-4.8b. The promotion of Gioconda also violated the holding of *Reuter v. Fort Lee*, 167 *N.J.* 38 (2001), in which the Court held that "appointments and promotions to positions that do not exist by an ordinance with a sufficiently detailed, set table of organization will be invalidated."

38. From January 13, 2014, when Cosgrove's Request for Certification was made through April 1, 2014, the date of the promotions, no ordinance existed in the City or Department which increased the number of Lieutenants in the T.O. to twenty-two (22).

39. On or about April 18, 2014, Kelly, along with Plaintiff Kearns and Plaintiff McDonald, filed a Notice of Appeal with the CSC in regards to the April 1, 2014 promotions of

Niewinski and Gioconda to the rank of Lieutenant (the "Appeal"). The Appeal was filed through their attorney at the time, Bruce Leder, Esq. ("Leder").

40. The Appeal asserted that Cosgrove intentionally misled the CSC by claiming that there were three (3) vacancies for the rank of Lieutenant at the time of the Request for Certification on January 13, 2014. The Appeal also asserted that Cosgrove and Bollwage knowingly and purposefully violated *N.J.A.C.* 4A:4-4.8b by promoting Niewinski and Gioconda. Further, the Appeal detailed the threats made by Bollwage to Kelly and Plaintiff Kearns and asserted that such threats clearly violated the declaration of policies provided in *Title* 11A:1-2e, which protects career public employees from political coercion.

41. *N.J.A.C.* 4A:10-2.4 states that it is a crime of the fourth degree for any person to purposefully or knowingly violate or conspire to violate any provision of *Title* 11A and *Title* 4A, *N.J.A.C.*

42. On or about May 16, 2014, as a result of the unlawful promotions of Niewinski and Gioconda, and on advice of counsel, Kelly, Plaintiff Kearns and Plaintiff McDonald filed a Verified Complaint in the Superior Court of New Jersey, Union County. The Verified Complaint named the City and Cosgrove as defendants. Leder represented Kelly, Plaintiff Kearns and Plaintiff McDonald in this action.

43. On or about May 21, 2014, Cosgrove was served with the Verified Complaint.

44. On or about May 27, 2014, Shannon issued Special Order #2064 - Reassignment of Personnel. A total of eleven (11) police officers were included in Special Order #2064, including Plaintiff McDonald, who was transferred from an administrative assignment back to Patrol. An administrative assignment is considered a position outside of Patrol.

Choice assignments typically include more desirable work hours, a take-home vehicle, the opportunity for overtime, and specialized training and enforcement duties.

45. On or about March 1, 2015, Lieutenant Robert Brennan retired, creating one vacancy for the rank of Lieutenant in the Department.

46. On or about April 16, 2015, it was learned that six (6) patrolmen were going to be promoted to Sergeant on April 30, 2015. At this time, there was one (1) vacancy for the rank of Lieutenant.

47. Neither Kelly nor any of the Plaintiffs were promoted to the rank of Lieutenant on April 30, 2015.

48. On or about May 6, 2015, the CSC granted the Appeal. The decision stated that Gioconda's appointment from Sergeant to Lieutenant was rescinded.

49. On or about May 6, 2015, the Department rescinded Gioconda's appointment to Lieutenant and Gioconda returned to the rank of Sergeant. This created a second vacancy for the rank of Lieutenant at the Department.

50. On or about July 1, 2015 a third vacancy in the rank of Lieutenant at the Department occurred with the retirement of Lieutenant John Bastardo.

51. As of July 1, 2015, the Department had a full complement of Deputy Chiefs (3) and Captains (9). The Department was short at Lieutenant (18 with a T.O. of 21) and one (1) over on Sergeants (40 with a T.O. of 39).

52. Due to the shortage of Lieutenants, and instead of promoting eligible Sergeants, the Department was forced to pay Lieutenants overtime, thereby needlessly wasting taxpayer and public monies, to cover the Lieutenant position in Patrol. In doing so, the Department reassigned Shaughnessy from the Training Division to cover the Patrol

Division day shift and alleviate the need to pay overtime. Eventually, Niewinski was transferred from Community Services to Patrol to further alleviate the Patrol Division's need for Lieutenants. Still, the re-assignment of Shaughnessy and transfer of Niewinski did not prevent the Department from having to needlessly pay other Lieutenants overtime and waste taxpayer money in furtherance of their conspiracy to retaliate.

53. On or about July 20, 2015, Cosgrove sent a memo stating that "effective immediately, and until further notice, when a vacancy for a desk supervisor occurs between the hours of 5:00 pm and 8:15 pm, that position will be assumed by a Patrol Division Captain" (the "July 20, 2015 Memo").

54. The July 20, 2015 Memo and its directive flagrantly violated the collective bargaining agreement ("CBA") governing Patrol Lieutenant's assignments. The importance of filling the desk supervisor position was to properly provide for the safety of the citizens of the City and the orderly operation of the Department.

55. On or about September 3, 2015 the SOA filed a grievance with Cosgrove for violating the CBA in regards to desk Lieutenant overtime.

56. In less than one (1) week, on or about September 8, 2015, Cosgrove rescinded the July 20, 2015 Memo, due to the aforementioned grievance, and Lieutenants were paid overtime in order to fill vacant desk Lieutenant positions.

57. In or about the second week of September 2015, SOA President Sergeant Julian Hilongos ("Hilongos") and PBA President Richard Steinke ("Steinke") met with Bollwage to discuss the issues surrounding overtime and solutions to alleviate the Department from wasting money on paying Lieutenants overtime to fill the desk Lieutenant position.

58. At that meeting, Hilongos explained to Bollwage that the desk Lieutenant overtime issue could easily be resolved by promoting Lieutenants. Bollwage rejected the suggestion, because Plaintiffs sued the City and Bollwage could no longer promote as he pleased without regard for the law.

59. Upon information and belief, as a result of not promoting Lieutenants, the City paid in excess of approximately 800 hours (approximately $80,000) in overtime from March 1, 2015 through November 1, 2016, in order to fill the vacancies for desk Lieutenant in the Patrol Division.

60. On or about May 10, 2016, all Lieutenants not assigned to Patrol were called into the conference room for a meeting with Shannon. The meeting was held to speak about a plan to reduce the overtime being paid to cover the Lieutenants position in Patrol. The Lieutenants in attendance were told that starting Memorial Day weekend, they would each begin filling in on the midnight shift on the Patrol Alpha Platoon on a one month rotating basis. This temporary schedule change did not allow the Lieutenants to bid for their shift when reassigned to Patrol, which was contrary to the CBA. A schedule was created and disseminated to Shannon and the heads of the divisions affected by the temporary transfers. The schedule was set to go into effect on Memorial Day weekend 2016. The last tour that was listed on the schedule was February 2-5, 2017.

61. Notably, the end of this tour coincided with the expiration of the Active Lieutenant List on February 5, 2017, whereby Kelly and each of the Plaintiffs remain eligible for promotion to the rank of Lieutenant.

62. On or about May 20, 2016, Shannon issued Personnel Order #2016-6. Special Order #2016-6 stated that effective June 3, 2016 the following change in assignment hours will

go into effect for Patrol Division Lieutenants in both Alpha and Bravo Platoons: Day Shift – 2 Lieutenants 0500 to 1600 hours; Night Shift – 2 Lieutenants 1800 to 0500 hours. During the regular work week, Monday through Friday, administrative and investigative lieutenants will provide coverage at the front desk from 1600 hours to 1800 hours. Administrative and investigative lieutenants shall also provide coverage during those hours on holidays if they are on-duty. On weekends, Saturday and Sunday, the front desk shall be covered on an overtime basis from 1600 hours to 1800 hours by a Patrol lieutenant. In the event that a Patrol lieutenant is not available for the overtime then it shall be filled by a sergeant. Prior to this order going into effect, the opportunity shall be provided for the Patrol Lieutenants to bid on their desired shifts.

63. The improper manipulation of shifts for Lieutenants contained within Special Order #2016-6 violated Article XVIII4b.ii of the SOA CBA. This is the same section of the CBA that Cosgrove previously violated in July 2015 which forced him to rescind his memo of having Captains cover the desk Lieutenant position to avoid paying overtime.

64. Upon information and belief, Personnel Order #2016-6 was issued for two reasons. First, it was issued due to the Appeal filed by Kelly. Second, Cosgrove wanted to punish other Department officers as a method of retaliating against Kelly, Plaintiff Kearns and Plaintiff McDonald for the Appeal and Verified Complaint, whereupon Plainiff Brennan also suffers from said retaliation due to Cosgrove's schemes.

65. Upon information and belief, in addition to retaliating against their enemies directly, Cosgrove and Bollwage, in conspiracy with one another, and perhaps others, utilize a well-honed "divide and conquer" retaliation scheme, which punishes those around their

enemy in an effort to conceal and veil their retaliation, as well as maximize peer pressure for enemies to surrender to Cosgrove and Bollwage's desired demands.

66. On or about July 1, 2016, Police Lieutenant Jose Rodriguez retired. This marked the fourth opening for the position of Lieutenant within the Department.

67. On or about July 25, 2016, Cosgrove issued Personnel Order #2016-8, which stated that on August 15, 2016, Officer Anthony Gural ("Gural") and Officer Kevin Meagher Jr. ("Meagher") would be promoted to Sergeant. There were no Lieutenant promotions listed on Special Order #2016-8 even though there were four (4) openings in the rank of Lieutenant on that date. The promotions of the Patrolmen Gural and Meagher to Sergeant brought the total number of Sergeants in the Department to the full T.O. of thirty-nine (39).

68. On or about July 25, 2016, the police and fire monthly Tables of Organization for calendar years and months 1998 through July 2016 were requested from Bolanowski pursuant to the New Jersey Open Public Records Act ("OPRA").

69. On or about July 27, 2016, the City provided its response to the July 25, 2016 OPRA Request. In response to the request and a review of the records provided in response to same, the Department has never had such a shortfall of Lieutenants below the T.O.

70. Upon information and belief, the City has never allowed an entire Lieutenant's list to expire without promoting a single Sergeant.

71. As of November 1, 2016, there are four (4) vacancies for the rank of Lieutenant at the Department. There are seventeen (17) Lieutenants. The T.O. calls for twenty-one (21) Lieutenants at the Department.

72. Each of the Plaintiffs remain on the eligible list for promotion to the rank of Lieutenant.

employment actions were pre-textual and were advanced in order to mask Defendants' retaliatory intent and conspiratorial schemes, which included deliberate fraud, waste and abuse of taxpayer monies.

79. Defendants Bollwage, Cosgrove, Shannon and Torner acted on behalf of or in the interest of Defendants City and Department with the City and Department's consent.

80. Defendants' collective harassing and retaliatory actions against each of the Plaintiffs constitute violations of CEPA.

81. As a result, each of the Plaintiffs' statutory rights have been violated and their protections under the law have been eviscerated.

82. Each of the Plaintiffs have suffered damages resulting in the loss of compensation and benefits, loss of earning power, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and are incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiffs demands judgment against Defendants, joint and severally, as follows:

(a) Awarding Plaintiffs damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, seniority, wages and rights, including but not limited to front and back pay, as well as all commensurate pension benefits, economic damages to off-set the adverse tax consequences of a lump sum award, instatement, and other benefits with respect to Plaintiffs' employment, and non-economic damages for emotional distress, together with both pre-judgment and post-judgment interest and attorneys' fees and costs of court;

(b) Awarding Plaintiffs damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, seniority, wages and rights, including but not limited to front and back pay, as well as all commensurate pension benefits, economic damages to off-set the adverse tax consequences of a lump sum award, instatement, and other benefits with respect to Plaintiffs' employment, and non-economic damages for emotional distress, together with both pre-judgment and post-judgment interest and attorneys' fees and costs of court with regard to retaliation, disparate treatment, and with regard to adverse employment action(s) and other retaliation as a result of Plaintiffs' protected activities and status;

(c) Awarding Plaintiffs damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, seniority, wages and rights, including but not limited to front and back pay, as well as all commensurate pension benefits, economic damages to off-set the adverse tax consequences of a lump sum award, instatement, and other benefits with respect to Plaintiffs' employment, and non-economic damages for emotional distress, together with both prejudgment and post judgment interest and attorneys' fees and costs of court; for Defendants' violation of Plaintiffs' rights to be free from the injuries which they have suffered due to the Defendants' actions;

(d) Awarding Plaintiffs equitable relief by way of promotion and/or in-statement to the rank of Lieutenant of the Elizabeth Police Department, with all requisite salary, pension and other benefits with regard thereto;

(e) For an Order of the Court retaining jurisdiction over this action until Defendants have fully complied with the Orders of this Court, and that the Court require

Defendants to file such reports as may be necessary to supervise such compliance; and

(f) For such other, further, additional and different relief as this Court deems just and proper.

COUNT TWO

(Violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. as to All Defendants)

83. Plaintiffs repeat and re-allege each and every allegation set forth in ¶¶ 1 through 82 above as if set forth at length herein.

84. The actions of Defendants as alleged herein have deprived not only Sergeant Kelly, but also each of the Plaintiffs as well, of rights and privileges secured to them by the New Jersey Constitution and other laws.

85. Pursuant to Article I, Section 6 of the New Jersey Constitution, every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right.

86. Sergeant Kelly's speech pertained to a matter of public concern as it was of political, social, or other concern to the community and such speech attempted to bring to light actual or potential wrongdoing or breach of public trust on the part of the Defendant government officials, including the fraud, waste and abuse of taxpayer monies.

87. Plaintiffs have also been deprived of these rights and privileges which have also been interfered with by Defendants' actions as set forth herein.

88. The deprivation of, and interference with, Plaintiffs' rights and privileges are the result of the conduct of the Defendants.

89. Defendants' conduct as described herein violated the provisions of the New Jersey Civil Rights Act, *N.J.S.A.* 10:6-1 *et. seq.*

90. Plaintiffs have suffered damages resulting in the loss of compensation and benefits, loss of earning power, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and are incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiffs demand judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

COUNT THREE

(Conspiracy to commit violation of Title 4A:4-4.8b as to All Defendants)

91. Plaintiffs repeat and re-allege each and every allegation set forth in ¶¶ 1 through 90 above as if set forth at length herein.

92. Defendants entered into an agreement or confederation with a common design to willfully and maliciously wrong and to perpetrate a tort(s) against Plaintiffs. Specifically, Conspirator-Defendants Bollwage and Cosgrove unlawfully promoted officers and continue to deny not only Sergeant Kelly, but also each of the Plaintiffs as well, of rights they are entitled to under the laws of the State of New Jersey.

93. Plaintiffs have suffered damages from the conspiracy resulting in the loss of compensation and benefits, loss of earning power, mental injury, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and are incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiffs demand judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

COUNT FOUR

(Vicarious Liability - As to Defendants Department and City)

94. Plaintiffs repeat and re-allege each and every allegation set forth in ¶¶ 1 through 93 above as if set forth at length herein.

95. Defendants City and Department are liable to each of the Plaintiffs by virtue of vicarious liability and respondeat superior for the wrongful acts of the Defendants Bollwage, Cosgrove, Shannon and Torner and John Does 1-10 committed within the scope of their employment.

96. Defendants City and Department are liable, as above, for the wrongful acts of Bollwage, Cosgrove, Shannon and Torner and John Does 1-10, even if committed outside the scope of their employment.

97. As a direct and proximate result of Defendants' actions, each of the Plaintiffs have suffered damages resulting in the loss of compensation and benefits, loss of earning power, mental injury, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and are incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiffs demand judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

COUNT FIVE

(Punitive Damages as to All Defendants)

98. Plaintiffs repeat and re-allege each and every allegation set forth in ¶¶ 1 through 97 above as if set forth at length herein.

99. Defendants' retaliatory actions hereinabove were especially egregious, in that they were motivated by actual malice or that was done with willful and wanton disregard of the rights of Plaintiffs and citizens of the City, whose public safety they have willfully jeopardized in order to further a political vendetta.

100. Upper Management Defendants Bollwage, Cosgrove, Shannon and Torner actually participated in, and/or were willfully indifferent to, the wrongful retaliatory conduct.

101. The conduct engaged in by Defendants constitutes egregious behavior and/or willful and wanton disregard by upper management of the rights of each of the Plaintiffs is sufficient to subject the Defendants to punitive damages under the CEPA.

102. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of each of the Plaintiff's statutory and civil rights, and Plaintiffs are entitled to punitive damages under applicable law.

103. Plaintiffs have suffered damages resulting in the loss of compensation and benefits, loss of earning power, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and are incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiffs demand judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

Designation of Trial Counsel

The Court is advised that, pursuant to Rule 4:25-4, Joshua F. McMahon, Esq. is designated as trial counsel for Plaintiffs in this action.

Jury Demand

Plaintiffs demand a trial by jury on all issues.

Reservation of Rights

Plaintiffs reserve the right to file such specific amendments and/or additional claims as are applicable hereinafter to this action and/or as the same are subsequently discovered.

Certification in Accordance with Rule 4:5-1

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding and no such action or proceeding is contemplated. I know of no other party who should be joined in this action.

SCHILLER MCMAHON LLC
Attorneys for Plaintiffs, Robert Brennan, James Kearns and Gerard McDonald

By: _____
Adam J. Elias, Esq.

Dated: November 1, 2016

Jury Demand

Plaintiffs demand a trial by jury on all issues.

Reservation of Rights

Plaintiffs reserve the right to file such specific amendments and/or additional claims as are applicable hereinafter to this action and/or as the same are subsequently discovered.

Certification in Accordance with Rule 4:5-1

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding and no such action or proceeding is contemplated. I know of no other party who should be joined in this action.

SCHILLER MCMAHON LLC
Attorneys for Plaintiffs, Robert Brennan, James Kearns and Gerard McDonald

By: _____
Adam J. Elias, Esq.

Dated: November 1, 2016

Samuel Tsinman, Esq. (008292011)
FORMAN, CARDONSKY, & TSINMAN
701 Westfield Ave.
Elizabeth, New Jersey 07208
(908) 353-6500
Attorneys for Plaintiff, Wykell Brooks

WYKELL BROOKS, Plaintiff, vs. **CITY OF ELIZABETH, POLICE OFFICER KEVIN ARIAS, POLICE OFFICER BILLY LY, and JOHN DOES 1-5,** Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY **DOCKET NO.** CIVIL ACTION **COMPLAINT AND JURY DEMAND; DESIGNATION OF TRIAL ATTORNEY**

Plaintiff, **Wykell Brooks**, residing at 218 Front Street, in the City of Elizabeth, County of Union and State of New Jersey by way of Complaint against the Defendants herein, says:

Factual Allegations

1. On or about September 1, 2017, Plaintiff, **Brooks** was operating his vehicle, a 2008 gray four door Dodge Charger, making a right turn onto 312 Jefferson Ave in the City of Elizabeth, County of Union, State of New Jersey.
2. As plaintiff parked and was exiting the vehicle Defendant police officers **Arias** and **Ly** and/or **John Does 1-5**, pulled up behind plaintiffs' vehicle and stuck it.
3. **Arias** and **Ly** and/or **John Does 1-5**, pushed plaintiff back into his vehicle and flashed a flashlight into Plaintiff's car and proceeded to unlawfully search the vehicle by opening the glove box and center console.
4. While Plaintiff was seated in the vehicle, defendants demanded he produce his "fucking" license and registration. When plaintiff asked what was going on and demanded a

Supervisor, Defendant **Ly** said "fuck this" and deployed Oleoresin Capsicum (mace) into Plaintiff's mouth.

5. Defendants had no probable cause to stop, detain, mace or arrest plaintiff.
6. Plaintiff was taken to Trinitas hospital and which there, defendants came to see plaintiff and apologized indicating that he was suspect because of the type of vehicle he was operating and its large rims.
7. Plaintiff suffered serious and permanent bodily injury and emotional distress due to Defendant **Arias** and **Ly** and/or **John Does 1-5**, excessive force and unlawful detention and arrest.

Count I

1. Plaintiff repeats and re-alleges all the allegations of the previous paragraphs as if set forth more fully at length herein.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1 and Article I, Section 7 of the New Jersey State Constitution.
3. Plaintiff has been at all times material hereto a lawful citizen of the United States of America, a resident of the State of New Jersey and a resident of the City of Elizabeth.
4. The individual Defendants herein at all times relevant hereto were employees of the City of Elizabeth and were acting under color of State and Municipal Law.
5. Defendants are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
6. Defendants **Arias** and **Ly** and/or **John Does 1-5**, violated Plaintiff's right to be protected against unreasonable seizure as guaranteed by Article I, Section 7 of the New Jersey State Constitution, in violation of his civil rights under Article 1, Section 1 of the New

Jersey State Constitution and in violation the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) by subjecting Plaintiff to excessive force during the course of her seizure/arrest.

7. As a direct and proximate result of the wrongful actions of the Defendants, as set forth above, Plaintiff, **Wykell Brooks** was caused to suffer injuries in or about his limbs and body; has in the past and will in the future endure pain and suffering; has been caused to incur medical expenses; has in the past and will in the future been caused to suffer mental and emotional distress.
8. Defendant's actions as described above were willful, wanton, and/or malicious.

WHEREFORE, the Plaintiff, **Wykell Brooks** demands judgment against the Defendants pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

Count II

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1; Article I, Section 7 of the New Jersey State Constitution.
3. Defendant, **CITY OF ELIZABETH**, is vested by state law with the authority to make policy on the use of force, effectuating arrests and police-citizen encounters and was responsible for the training and supervision of the individual Defendants named herein. Specifically, **CITY OF ELIZABETH** is responsible for training police officers in the use of force and is responsible for conducting internal affairs investigations.

4. The individual Defendants herein were at all times relevant hereto acting under the direction and control **CITY OF ELIZABETH** and were acting pursuant to the official policy, practice or custom of said Defendants.
5. Acting under color of state law, Defendant **CITY OF ELIZABETH** intentionally, knowingly, recklessly and/or with deliberate indifference failed to screen prior to hiring, train, instruct, supervise, control, and discipline, on a continuing basis, the individual defendant herein in his duties to refrain from: (1) assaulting, restraining and harassing citizens; (2) intentionally, recklessly and/or negligently misrepresenting the facts of arrests and/or other police-citizen encounters and/or (3) using unreasonable and excessive force.
6. Defendant **CITY OF ELIZABETH** were provided actual or constructive notice of police-citizen encounters similar to that involved with the instant matter involving the individual Defendants herein and/or other ELIZABETH Police Officers whereby they customarily and frequently subjected citizens to excessive force, recklessly and/or negligently misrepresented the facts of arrests and/or other police-citizen encounters and/or falsified police and/or other official records.
7. Said Defendants had knowledge of, or, had they diligently exercised their duties to screen, instruct, train, supervise, control, and discipline the individual Defendant on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.
8. Said Defendants had the authority and responsibility to prevent or aid in preventing the commission of said wrongs, and could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.

9. Said Defendants directly or indirectly, under color of State law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of the individual Defendants heretofore described.

10. As a direct and proximate result of the acts and omissions of said Defendants as set forth herein, Plaintiff suffered physical and emotional injury, medical expenses, and mental anguish in connection with the deprivation of his constitutional rights.

WHEREFORE, the Plaintiff, **Wykell Brooks**, demands judgment against the Defendants pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

Count III

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.

3. Defendant **Arias** and **Ly** and/or **John Does 1-5**, had a duty to intervene in the unjustified assaults of Plaintiff **Brooks** by each other.

4. The unjustified assault on Plaintiff by Defendant **Arias** and **Ly** and/or **John Does 1-5**, deprived Plaintiff of his right to be free from unreasonable seizure as guaranteed by Article I, Section 7 of the New Jersey State Constitution made actionable through New Jersey Civil Rights Act (N.J.S.A. 10:6-2).

5. Defendants **Arias and Ly** and/or **John Does 1-5**, had a reasonable opportunity to intervene in the unjustified assaults on Plaintiff by each other and failed to intervene.

6. As a direct and proximate cause of Defendant **Arias and Ly** and/or **John Does 1-5** failure to intervene, Plaintiff suffered physical injury, medical expenses, and mental anguish.

WHEREFORE, Plaintiff demands judgment against Defendant, **Arias and Ly** and/or **John Does 1-5,** 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.

Count IV

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length herein.
2. This Count is brought pursuant to N.J.S.A. 10:6-2, also known as the New Jersey Civil Rights Act, and Article I, Section 12 of the New Jersey Constitution.
3. At all times relevant hereto, Defendants **Arias and Ly** and/or **John Does 1-5,** were acting under color of state law and are persons within the meaning of the New Jersey State Constitution.
4. Defendants' acted willfully and/or recklessly in their actions towards Plaintiff and caused Plaintiff to suffer cruel treatment including serious injuries about Plaintiff's limbs and body, grievous pain, agony, mental anguish, placing him in fear of impending death.
5. The above-described Defendants violated Plaintiff's right to be free from the infliction of cruel and unusual punishment including the unnecessary and wanton infliction of pain.

WHEREFORE, Plaintiff, **Brooks**, demands judgment against Defendant officers individually and in their official capacity, City of Elizabeth, pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiff hereby demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4 Samuel Tsinman, Esq., is hereby designated as trial counsel of the within matter.

FORMAN, CARDONSKY & TSINMAN
Attorneys for Plaintiff

By: */s/ Samuel Tsinman*
SAMUEL TSINMAN, ESQ.

DATED: August 30, 2019

CERTIFICATION

I certify that there is no other action pending before any Court involving or regarding the subject matter in controversy set forth in the within Complaint, nor is there pending before any tribunal any arbitration proceeding involving said subject matter, nor is any such action or arbitration proceeding contemplated. There are no other parties to this action known to us who should be or might be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

FORMAN, CARDONSKY & TSINMAN
Attorneys for Plaintiff

By: */s/ Samuel Tsinman*
SAMUEL TSINMAN, ESQ.

DATED: August 30, 2019

ROBERT E. TAYLOR, JR., ESQ.- Attorney ID No.: 038691999
535 Boulevard
Kenilworth, New Jersey 07033
(908) 964-3999
Attorney for Plaintiff:
ANGELA BRUNO

ANGELA BRUNO,

Plaintiff(s),

v.

JEANINE TAYLOR, CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, RICHARD ROE(S) AND/OR XYZ COMPANY(S) (said names being fictitious),

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
DOCKET NO: UNN-L-

CIVIL ACTION

COMPLAINT AND JURY DEMAND

Plaintiff ANGELA BRUNO, residing at 347 Hillside Avenue, Hillside, New Jersey, by way of Complaint says that:

FIRST COUNT

1. On or about January 31, 2017, plaintiff ANGELA BRUNO was a pedestrian walking across Morris Avenue in Elizabeth, New Jersey.

2. At all times relevant hereto, defendant(s) JEANINE TAYLOR, CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, RICHARD ROE(S) AND/OR XYZ COMPANY(S) (said names being fictitious) was/were the owners and/or operators of a vehicle traveling in or about the same area as aforesaid.

3. At all times relevant hereto, defendant(s) JEANINE TAYLOR, RICHARD ROE(S) and/or XYZ COMPANY(S), (said names being

fictitious), operated his/her motor vehicle in such a careless, reckless, and negligent manner so as to cause a collision to occur at the subject location.

4. At all times relevant hereto, defendant(s) JEANINE TAYLOR, CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, RICHARD ROE(S) and/or XYZ COMPANY(S), (said names being fictitious), as owners of the aforesaid vehicle(s), were careless, reckless and/or negligent in their ownership, maintenance and control of their vehicle.

5. At all times relevant hereto, defendant(s) CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, RICHARD ROE(S) and/or XYZ COMPANY(S), (said names being fictitious), was/were employers of defendants, JEANINE TAYLOR, RICHARD ROE(S) and/or XYZ COMPANY(S), (said names being fictitious), and are responsible for the negligent actions of their agents, servants, representatives and/or employees pursuant to the doctrine of *respondeat superior* and/or were careless, reckless and/or negligent in the hiring, retention, training, supervision, oversight and control of these agents, servants, representatives and/or employees.

6. As a result of the carelessness, recklessness, and negligence of the defendant(s) aforesaid, the plaintiff(s), ANGELA BRUNO sustained serious physical injuries, has endured serious mental anguish, has required and will require future extensive medical treatment and/or hospitalization, has incurred and will

continue to incur extensive medical costs, and has endured a significant amount of pain and suffering and will continue to experience same in the future.

7. Plaintiff has filed a timely Notice of Claim against defendant(s) CITY OF ELIZABETH and CITY OF ELIZABETH POLICE DEPARTMENT pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:8-1, et seq., whether it was required by law or not, and has waited the jurisdictional six (6) months before filing this action.

WHEREFORE plaintiff ANGELA BRUNO demands judgment against defendants CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT RICHARD ROE(S) and/or XYZ COMPANY(S), (said names being fictitious), for damages, together with interest, cost of suit, attorneys' fees, and such other relief as the Court may deem just and appropriate.

JURY DEMAND

Plaintiff(s) hereby demand(s) trial by jury.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, notice is hereby given that Robert E. Taylor, Jr., Esq. is designated as trial counsel in the within matter.

NOTICE OF OTHER ACTIONS

Pursuant to R. 4:5-1, I hereby certify that the matter in controversy is not the subject of any other pending or court action or arbitration. Further, I am not presently aware of any other party who should be joined in this action.

ROBERT E. TAYLOR, JR., ESQ.
Attorney for plaintiff(s):
ANGELA BRUNO

By: _____
ROBERT E. TAYLOR, JR., ESQ.

Dated: 1.7.19

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

RECEIVED
JUN 20 2016
AT 8:30
WILLIAM T. WALSH, CLERK

RECEIVED USMS
NEWARK, N.J. 07102
2016 JUL 12 PM 4:51

Jeffrey Campbell

(Enter above the full name of the plaintiff in this action)

COMPLAINT

V.

Civil Action No. _____

(To be supplied by the Clerk of the Court)

Det. Carmine Giannetta
Det. Athanasios Mikros
Union County Prosecutor's office and Mara I. [illegible], Esq.
Armando B. Suarez Esq.
(Public Defender)

(Enter the full name of the defendant of defendants in this action)

INSTRUCTIONS; READ CAREFULLY

1. This complaint must be legibly handwritten or typewritten, signed by the plaintiff and subscribed to under penalty of perjury as being true and correct. All questions must be answered concisely in the proper space on the form. Where more space is needed to answer any question, attach a separate sheet.

2. In accordance with Rule 8 of the Federal Rules of Civil Procedure, the complaint should contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short plain statement of the claim showing that you are entitled to relief, and (3) a demand for judgment for the relief which you seek.

3. You must provide the full name of each defendant or defendants and where they can be found.

4. You must send the original and one copy of the complaint to the Clerk of the District Court. You must also send one additional copy of the complaint for each defendant to the Clerk. Do not send the complaint directly to the defendants.

5. Upon receipt of a fee of $400.00 (a filing fee of $350.00, and an administrative fee of $50.00), your complaint will be filed. You will be responsible for service of a separate summons and copy of the complaint on each defendant. See Rule 4, Federal Rule of Civil Procedure.

6. If you cannot prepay the $400.00 fee, you may request permission to proceed in forma pauperis in accordance with the procedures set forth in the application to proceed in forma pauperis. See 28 U.S.C. §1915. (If there is more than one plaintiff, each plaintiff must separately request permission to proceed in forma pauperis.)

7. If you are given permission to proceed in forma pauperis, the $50.00 Administrative Fee will not be assessed. The Clerk will prepare and issue a copy of the summons for each defendant. The copies of summonses and the copies of the complaint which you have submitted will be forwarded by the Clerk to the United States Marshal, who is responsible for service. The Marshal has USM-285 forms you must complete so that the Marshal can locate and serve each defendant. If the forms are sent to you, you must complete them in full and return the forms to the Marshal.

QUESTIONS TO BE ANSWERED

1a. Jurisdiction is asserted pursuant to (CHECK ONE)

✓ 42 U.S.C. §1983 (applies to state prisoners)

___ Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) and 28 U.S.C. § 1331 (applies to federal prisoners)

If you want to assert jurisdiction under different or additional statutes, list these below:

Union County Jail

1b. Indicate whether you are a prisoner or other confined person as follows:

✓ Pretrial detainee

__ Civilly-committed detainee

__ Immigration detainee

__ Convicted and sentenced state prisoner

__ Convicted and sentenced federal prisoner

__ Other: (please explain)_____

2. Previously Dismissed Federal Civil Actions or Appeals

If you are proceeding in forma pauperis, list each civil action or appeal you have brought in a federal court while you were incarcerated or detained in any facility, that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted. Please note that a prisoner who has on three or more prior occasions, while detained in any facility, brought an action or appeal in a federal court that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted, will be denied in forma pauperis status unless that prisoner is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

a. Parties to previous lawsuit:

Plaintiff(s): _____

_____

Defendant(s): _____

_____

b. Court and docket number: _____

c. Grounds for dismissal: ( ) frivolous ( ) malicious

( ) failure to state a claim upon which relief may be granted

d. Approximate date of filing lawsuit: _____

e. Approximate date of disposition: _____

If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on separate sheets.

3. Place of Present Confinement? Union County Jail

4. Parties

(In item (a) below, place your name in the first blank and place your present address in the second blank. Do the same for additional Plaintiffs, if any.)

a. Name of plaintiff: Jeffrey Campbell

Address: 15 Elizabethtown [illegible] Elizabeth, N.J. 07206

Inmate#: 220900

b. First defendant:

Name: CARMINE GIANNETTA

Official position: Detective

Place of employment: One Police Plaza Elizabeth, N.J. 07201

How is this person involved in the case?

(i.e., what are you alleging that this person did or did not do that violated your constitutional rights?)

Fabricated Evidence, Frivolous claims, False Arrest, False imprisonment, Due Process, Equal Protection and illegal search and seizure. Deliberate Affidavit after search warrant was executed.

c. Second defendant:

Name: Athanasios MINAROS

Official position: Detective

Place of employment: One Police Plaza Elizabeth, N.J. 07201

How is this person involved in the case?

(i.e., what are you alleging that this person did or did not do that violated your constitutional rights?)

Fabricated Evidence, frivolous claims, false Arrest, False imprisonment, Due Process, Equal Protection and illegal search and seizure.

d. If there are more than two defendants, attach a separate sheet. For each defendant specify: (1) name, (2) official position, (3) place of employment, and (4) involvement of the defendant.

Additional Defendants

D1. Third Defendant

NAME: Armando B Suarez
official position: Prosecutor
Place of employment: Union County Prosecutor's office

How is this person involved in the case?
(i.e., what are you Alleging that this person did or did not do that violated your constitutional right?)

Maliciously Prosecuting me knowing the FACTS. Clearly shows my innocence.
Also forging documents. Aiding and abetting officers.

D-2 Fourth Defendant

Name: Mabel Tomassini
Official position: Public Defender
Place of employment: Union County Public Defender's office

How is this person involved in the case?
(i.e., what are you Alleging that this person did or did not do that violated your constitutional right?)

Violated the rules of professional conduct by aiding and abetting the prosecution against me after being appointed to represent me. Also forging documents to me knowingly to cloud my judgment.

5. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in the Statement of Claims on page 6.

___Yes ✓No

If your answer is "Yes," briefly describe the steps taken, including how relief was sought, from whom you sought relief, and the results.

If your answer is "No," briefly explain why administrative remedies were not exhausted.

6. Statement of Claims

(State here as briefly as possible the facts of your case. Describe how each defendant violated your rights, giving dates and places. If you do not specify how each defendant violated your rights and the date(s) and place of the violations, your complaint may be dismissed. Include also the names of other persons who are involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach a separate sheet if necessary.)

ON 3-18-15 officers "Carmine Giannetta" and "Anthanasios Mikros", conspired against me Fraudulent Misrepresentation, Fabricated Evidence and Frivilous Claims ON AN Affidavit to Honorable Judge McDaniels of the Union County Court to issue A NO-KNOCK Search warrant for my person and premises to be searched which violated my rights. The Affidavit is —

defective on the face, because the alleged controlled buys never happened. Also there are misstatements and falsified information, as well as fabricated evidence. Officer Giannetta relied on hearsay information allegedly from A C.I. to get a search warrant from a two week investigation. There's no registration of A C.I., No DAB reports for controll buys, No voucher-receits, and no surveillance records at all. On page 10 of affidavit there is no signature from the Judge, which Allegedly signed the search warrant. After receiving a copy of the complaint during the week of 6-15-15. I informed my appointed public defender that the Affidavit is not signed by A Magistrate. A month later after being indicted during the week of 7-30-15. I raised the same issue with her. "Nothing were addressed." On 8-10-15 an Arraignment/Status conference was held. The STATE ORDER FROM Prosecution submitted A form stating All Discovery has been provided. During a consultation with "MARA Timourian (Public Defender) ON 8-14-15. I told her, I want A suppression motion to address the affidavit. She then went back to the prosecution and informed him of my argument. A month later on 9-11-15, I get an unfiled Affidavit Signed stating that it's the original. The document has no file number and the signatures shows that they were signed at different times in comparison. Knowing this. The prosecution still insist on prosecuting me. Until this is addressed. My Rights will continue to be violated for false Arrest, fabricated evidence, falsified documents, loss of liberty, Due Process, Equal Protection, Malicious Prosecution and Illegally Searched and Sieged.

7. Relief

(State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.)

I want the Court to assist me in getting financially compensated for wrongful incarceration and prosecute all parties who have committed A crime against me.

8. Do you request a jury or non-jury trial? (Check only one)

(X) Jury Trial ( ) Non-Jury Trial

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 14th day of June, 2016

Jeffrey Campbell

Signature of plaintiff*

(*EACH PLAINTIFF NAMED IN THE COMPLAINT MUST SIGN THE COMPLAINT HERE. ADD ADDITIONAL LINES IF THERE IS MORE THAN ONE PLAINTIFF. REMEMBER, EACH PLAINTIFF MUST SIGN THE COMPLAINT).

RECEIVED / FILED
Superior Court of New Jersey
DEC 19 2016
CIVIL CASE MANAGEMENT
UNION COUNTY

Michael D'Agostino
Attorney ID 015221978
Attorney for Plaintiff
702 Prospect Avenue
West Orange, NJ 07052
(212) 752-3380
E-mail: mdag.esq@verizon.net

ORLANDO CARVALLO,

Plaintiff,

-against-

ELIZABETH CITY POLICE DEPARTMENT, CITY OF ELIZABETH and ALFONSO COLON,

Defendants.

STATE OF NEW JERSEY
SUPERIOR COURT
LAW DIVISION
UNION COUNTY

Complaint
CIVIL ACTION
Docket no: UNN-L-4072-16

Plaintiff Orlando Carvallo, residing at 59-40 48th Avenue, Woodside, New York 11377, for his complaint, through his attorney states upon information and belief:

Preliminary allegations:

1. At the time of the commencement of this action, defendant Elizabeth City Police Department [hereinafter "Police Department"] was a department and/or subdivision of the City of Elizabeth, County of Union, State of New Jersey.

2. At the time of the commencement of this action, defendant City of Elizabeth [hereinafter "City"] was a municipal entity within the County of Union, State of New Jersey.

3. At the time of the commencement of this action, defendant Alfonso Colon [hereinafter "Colon"] was a resident of the State of New Jersey.

4. The incident upon which this action is based occurred in the County of Union in the State of New Jersey.

5. Plaintiff has complied with the provisions of the Tort Claims Act (NJSA 59:8-4 *et seq.*) relating to claims against public entities in that on or about March 17, 2015, plaintiff presented his Notice of Claim to defendant Police Department. This is within 90 days of the date of the incident. More than six months have elapsed since the filing of the claim and this defendant has not compromised this claim. This suit is being commenced within two years of the date the incident herein occurred.

6. Plaintiff has complied with the provisions of the Tort Claims Act (NJSA 59:8-4 *et seq.*) relating to claims against public entities in that on or about March 17, 2015, plaintiff presented his Notice of Claim to defendant City. This is within 90 days of the date of the incident. More than six months have elapsed since the filing of the claim and this defendant has not compromised this claim. This suit is being commenced within two years of the date the incident herein occurred.

7. Plaintiff has complied with the provisions of the Tort Claims Act (NJSA 59:9-2 *et seq.*) relating to limitations on claims in that he has sustained permanent injury as a result of this incident, and upon information and belief has had medical expense in excess of $3,600.00.

8. On December 24, 2014, defendant Police Department in whole or in part owned a 2009 Ford motor vehicle bearing license no. YSG 11K (NJ).

9. On December 24, 2014, defendant City in whole or in part owned a 2009 Ford motor vehicle bearing license no. YSG 11K (NJ).

10. On December 24, 2014, defendant Colon was an employee of defendant Police Department.

11. On December 24, 2014, defendant Colon was an employee of defendant City.

12. On December 24, 2014, at approximately 8:50PM, defendant Colon was operating the said 2009 Ford motor vehicle on the roadway of North Avenue, at or near the intersection with Stanton Avenue in Elizabeth, Union County, New Jersey.

13. Defendant Colon was then and there operating the 2009 Ford motor vehicle with the consent and permission of its owner, defendant Police Department.

14. Defendant Colon was then and there operating the 2009 Ford motor vehicle with the consent and permission of its owner, defendant City.

15. Defendant Colon was then and there operating the 2009 Ford motor vehicle in the course of his employment duties with defendant Police Department.

16. Defendant Colon was then and there operating the 2009 Ford motor vehicle in the course of his employment duties with defendant City.

17. On December 24, 2014, at approximately 8:50PM, plaintiff was operating a 1997 Ford pick-up truck bearing license no. 5AT6595 (MD).

18. On December 24, 2014, at approximately 8:50PM, plaintiff was operating the said 1997 Ford pick-up truck on the roadway of North Avenue, at or near the intersection with Stanton Avenue in Elizabeth, Union County, New Jersey.

19. At the above time and place, the said 2009 Ford motor vehicle operated by defendant Colon struck the rear of the said 1997 Ford pick-up truck operated by plaintiff.

20. At the above time and place, there was a physical contact between the motor vehicle operated by plaintiff and the motor vehicle operated by defendant Colon.

21. As a result of the foregoing incident, plaintiff sustained serious and permanent injury and pain and suffering, all to his damage. Plaintiff's injuries surpass any Tort Threshold which

may apply to the instant case.

For a claim against defendant Police Department:

22. The foregoing incident and the resulting injuries and damages to plaintiff were caused by the negligence of defendant Police Department, through its driver, defendant Colon, in that defendant Colon failed to keep an assured safe distance from the rear of plaintiff's vehicle, failed to observe and heed the road and traffic conditions, failed to timely brake his vehicle, operated his vehicle at a rate of speed which was too fast under the circumstances.

23. As a result of the foregoing, plaintiff demands judgment against defendant Police Department for money damages, interest, fees and costs of suit.

For a claim against defendant City:

24. The foregoing incident and the resulting injuries and damages to plaintiff were caused by the negligence of defendant City, through its driver, defendant Colon, in that defendant Colon failed to keep an assured safe distance from the rear of plaintiff's vehicle, failed to observe and heed the road and traffic conditions, failed to timely brake his vehicle, operated his vehicle at a rate of speed which was too fast under the circumstances.

25. As a result of the foregoing, plaintiff demands judgment against defendant City for money damages, interest, fees and costs of suit.

For a claim against defendant Colon:

26. The foregoing incident and the resulting injuries and damages to plaintiff were caused by the negligence of defendant Colon, in that defendant he failed to keep an assured safe distance from the rear of plaintiff's vehicle, failed to observe and heed the road and traffic conditions, failed to timely brake his vehicle, operated his vehicle at a rate of speed which was too fast under

the circumstances.

27. As a result of the foregoing, plaintiff demands judgment against defendant Colon for money damages, interest, fees and costs of suit.

28. Plaintiff was free from contributory negligence.

Jury Demand:

29. Plaintiff demands trial by jury on all counts.

Designation of trial counsel:

30. Pursuant to Rule 4:25-4, Michael D'Agostino, attorney, is designated as trial counsel for the plaintiff in the above matter.

Demand for discovery of insurance coverage:

31. Pursuant to Rule 4:10-2(b), demand is made that defendant disclose to plaintiff's attorney whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment and provide plaintiff's attorney with the true copies of those insurance agreements or policies, including, but not limited to, any and all declaration sheets. This demand shall include and cover not only primary coverage, but also any and all excess, catastrophe and umbrella policy.

Dated: December 7, 2016

Michael D'Agostino
Attorney for Plaintiff

Clarence Barry-Austin, Esq. (ID No.: 004441977)
LAW OFFICE OF CLARENCE BARRY-AUSTIN P.C.
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Attorney for Plaintiff

RECEIVED / Fil
Superior Court of New
JUL 17 2017
CIVIL CASE MANAG
UNION COUNTY

ESTATE OF EDWARD G. COLEMAN, JR., BY THOMASINA R. THORNTON, Limited Administratrix,

Plaintiff,

v.

SURPRIS OPHILIEN, SHANIQAH STREET, CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, CITY OF ELIZABETH OFFICER ALEXANDER VALENCIA, CITY OF ELIZABETH OFFICER FNU PEREIRA, GEICO INDEMNITY COMPANY, PROGRESSIVE INSURANCE COMPANY, JOHN DOES 1-10 (fictitious names) JANE DOES 1-10 (fictitious names) and ABC CORPORATION 1-10, (fictitious names),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
DOCKET NO.: L-2610-17

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, Estate of Edward G. Coleman, Jr., by Thomasina R. Thornton, Limited Administratrix, by way of Complaint against defendants named herein say:

FIRST COUNT

1. At all times relevant to this action, decedent Edward G. Coleman, Jr. was a resident of the City of East Orange, County of Essex, State of New Jersey.

2. On July 14, 2017, Thomasina R. Thornton, Esq. was appointed the Limited Administratrix of the Estate of Edward G. Coleman, Jr., with authority to file a Complaint for injuries or benefits, by Order to Show Cause with Temporary Restraints entered by the Honorable Walter Koprowski, Jr., P.J.Ch., Docket No.: CP-0211-2017.

3. Thomasina R. Thornton, Esq., as Limited Administratrix of the Estate of Edward G. Coleman, Jr., brings the within action on behalf of the heirs-at-law of Edward G. Coleman,

Jr., deceased.

4. On or about July 18, 2015, decedent Edward G. Coleman, Jr. was operating a motor vehicle owned by Christina Pierre, which was traveling east bound on Route 81 in the City of Elizabeth, State of New Jersey.

5. At the above indicated time and place, Defendant Surpris Ophilien, was the operator of a motor vehicle that was owned by Defendant Shaniqah Street (the "Street Vehicle"), which was traveling westbound against traffic on Route 81, near the North Avenue East ramp, in the City of Elizabeth, State of New Jersey.

6. Upon information and belief, at all relevant times, Defendant, Surpris Ophilien, was acting in the capacity of agent, servant or employee of Defendant, Shaniqah Street.

7. Defendant, Surpris Ophilien had a duty to operate his vehicle in a careful and safe manner and to be mindful of other motor vehicles on the roadway.

8. Defendant, Surpris Ophilien, operated his vehicle in a negligent and careless manner which resulted in a collision of the vehicle operated by decedent Edward G. Coleman, Jr., at or near the North Avenue East ramp on Route 81 in Elizabeth, New Jersey.

9. As a result of said collision, decedent Edward G. Coleman, Jr, suffered severe and permanent bodily injuries, which necessitated obtaining medical treatment, caused him great pain, suffering and medical expenses, and ultimately resulted in his death.

WHEREFORE, the Plaintiff hereby demands judgment on this Count for damages, attorneys fees, interest, costs and any other relief permitted by law.

SECOND COUNT

1. Plaintiff repeats, reiterates and realleges each and every allegation contained above as if same were set forth at length herein.

2. Defendant, City of Elizabeth is a Municipal corporation with municipal offices located at 50

Winfield Scott Plaza, City of Elizabeth, in the State of New Jersey.

3. Defendant, City of Elizabeth Police Department is the employer of individual defendants John Does 1-10 and Jane Does 1-10, same being fictitious names for unknown City of Elizabeth Police Officers and/or employees of the City of Elizabeth Police Department and City of Elizabeth Police Officers Alexander Valencia and/or FNU Pereira who were operating City of Elizabeth Police Department vehicle(s), at or about 2:21 a.m. on July 18, 2015, which was (were) involved in a police vehicular pursuit of a vehicle believed to have been owned by defendant Shaniqah Street, and operated by defendant Surpris Ophilien and/or persons unknown.

4. At all times pertinent hereto, the New Jersey Police Vehicular Pursuit Policy (hereinafter referred to as the "PURSUIT POLICY") was in effect in the State of New Jersey and had been adopted by the defendant local municipal entities, City of Elizabeth and/or City of Elizabeth Police Department, and constituted a standing order.

5. At all times pertinent hereto, all officers employed by the Defendant, City of Elizabeth Police Department were required to attend in-service vehicular pursuit training twice annually to familiarize themselves with the statewide pursuit policy, departmental procedures and decision making skills.

6. At all times pertinent and material hereto, all of the acts and/or omissions of defendant City of Elizabeth and/or City of Elizabeth Police Department were committed or not committed by its agents, servants, police officers and/or employees, who were acting within the course and scope of their employment as police officers for the City of Elizabeth.

7. On or about July 18, 2015, defendant City of Elizabeth Police Officers Alexander Valencia and/or FNU Pereira and/or John Does 1-10, and/or Jane Does 1-10 were operating City of Elizabeth Police Department vehicle(s) within the course of their employment as law

enforcement officers for the City of Elizabeth Police Department and/or City of Elizabeth, when he/she/they began a high speed vehicular pursuit of the vehicle operated by defendant Surpris Ophilien, which was traveling on Dowd Avenue, onto the North Avenue East service road, and traveled westbound against traffic on Route 81 in the City of Elizabeth, State of New Jersey, where the Street Vehicle collided with the vehicle operated by decedent Edward G. Coleman, Jr., at or near the North Avenue East ramp.

8. The pursuit of the Street Vehicle was done negligently, recklessly, intentionally and/or willfully, and in violation of established police proceedings.

9. As a direct and proximate result of the negligent, reckless, intentional and/or willful misconduct of defendant City of Elizabeth Police Officers in the operation of their respective vehicle(s), and their continued pursuit, the operator and/or operators of the Street Vehicle collided into the motor vehicle lawfully operated by decedent, Edward G. Coleman, Jr.

10. As a direct and proximate result of the aforesaid collision, decedent Edward G. Coleman, Jr. suffered fatal injuries.

11. On or about July 18, 2015, the within named municipal defendants were subject to the provisions of the Attorney General's for the State of New Jersey vehicular pursuit policy issued December 1985 and revised December 2001, and/or similar vehicular pursuit policies adopted by City of Elizabeth Police Department which policy required City of Elizabeth Police Officers Alexander Valencia and/or FNU Pereira and/or John Does 1-10 and/or Jane Does 1-10, inter alia:

    a. Notify communications and a superior officer once the pursuit has been initiated the reasons for the pursuit, the direction of travel, identifying information concerning the pursuit of the vehicle and its occupants, the speed of the pursuit vehicle, and any other relevant information terminating the pursuit pursuant to N.J. policy or involving

the incident.

12. City of Elizabeth Police Officers Alexander Valencia and/or FNU Pereira and/or John Does 1-10, and/or Jane Does 1-10 failed to immediately notify Communications, and a superior officer concerning the details of the pursuit as required by the vehicular pursuit policy thereby preventing a supervisor from ordering the pursuit terminated as required under the vehicular pursuit policy when the danger to the pursuing officers or the public outweighs the necessity of immediate apprehension of the violator.

13. At all times while in continuation of its high speed chase, City of Elizabeth Police Officers Alexander Valencia and/or FNU Pereira and/or John Does 1-10 and/or Jane Does 1-10 negligently, recklessly, intentionally and/or willfully acted in disregard of the pursuit regulations and/or policy in effect in the State of New Jersey and/or within the City of Elizabeth Police Department continued at a high rate of speed never communicating with their respective supervisors within the City of Elizabeth Police Department, engaging in negligent, reckless, intentional and/or willful misconduct including but not limited to:

a. Failing to secure proper authorization for the pursuit;

b. Pursuing the Street Vehicle without authorization from a superior or commanding officer knowing that their pursuit was in violation of the pursuit policy;

c. Pursuing the Street Vehicle without any reasonable belief that the operator of those vehicles had committed an offense of the 1st or 2nd degree or an offense as enumerated in Appendix A of the State's Pursuit Policy and/or in violations of the pursuit policies of the City of Elizabeth;

d. Continuing in the pursuit knowing that they had undertaken the pursuit improperly and in violation of the pursuit policy, and knowing that the manner in which they were engaging in the pursuit exposed others, including the general public, to an

unnecessary risk of harm;

e. Fabricating or lying about the basis or reasons for the pursuit;

f. Failing to terminate the pursuit in accordance with State Law and Municipal regulations;

g. Fabricating or lying about terminating the pursuit prior to the collision involving the Street Vehicle and the plaintiff's decedent's vehicle;

h. Failing to terminate the pursuit while knowing that the danger to the public outweighed necessity of immediate apprehension of the driver(s) of the Street Vehicle;

i. Failing to terminate the pursuit with knowledge that the pursuit would endanger the public due to the speed of the vehicles;

j. Failing to terminate the pursuit with knowledge that there was a clear and unreasonable danger to the public because the Street Vehicle and their pursuing City of Elizabeth Police Department vehicle(s) were being operated at an excessive speed in a trafficked and populated area;

k. Failing to terminate the pursuit with knowledge that the manner in which the pursuit was engaged exposed the public to a substantial increase risk of safety from the pursuit;

l. Continuing the pursuit with knowledge that the respective City of Elizabeth Police Officers Alexander Valencia and/or FNU Pereira and/or John Does 1-10 and/or Jane Does 1-10 had failed to notify either their respective superior officers or central communications of the-reason for the pursuit, their direction of travel and roadways involved, the speed of the vehicles involved or other material information concerning the manner in which the pursuit was engaged so that supervisor personnel would

have all necessary information to determine of the pursuit should be terminated due to increase risk of safety to the public;

m. Failing to communicate with their respective supervisors so that the pursuit could be monitored, supervised and controlled in accordance with the State Pursuit Policy and/or City of Elizabeth Pursuit Policy;

n. Violating the provisions of the State Pursuit Policy and/or City of Elizabeth pursuit policy that pertain to the role of the pursuing police officer;

o. Violating the provisions of the State Pursuit Policy and/or City of Elizabeth pursuit policy that pertain to the authorization of an officer to pursue an alleged violator;

p. Violating the provisions of the State Pursuit Policy and/or City of Elizabeth pursuit policy that pertain to termination of a pursuit;

q. Violating the provisions of the State Pursuit Policy and/or City of Elizabeth pursuit policy by failing to consider the risks that were created by the pursuit;

r. Failing to follow or obey the "standing orders" of the State Pursuit Policy and/or City of Elizabeth pursuit policy; and

s. Failing to communicate with the City of Elizabeth Police Department superior officers so that they could continue the pursuit unsupervised.

14. As a result of the acts and/or omissions of the defendants named herein, decedent suffered severe and permanent bodily injuries, which necessitated obtaining medical treatment, caused him great pain, suffering and medical expenses, and ultimately resulted in his death.

WHEREFORE, the Plaintiff hereby demands judgment on this Count for damages, attorneys fees, interest, costs and any other relief permitted by law.

THIRD COUNT
(New Jersey Wrongful Death Act)

15. Plaintiff repeats, reiterates and realleges each and every allegation contained above as if same were set forth at length herein.

16. Thomasina R. Thornton, as Limited Administratrix of the Estate of Edward G. Coleman, Jr., deceased brings this action on behalf of the heirs at law of the deceased under and by virtue of the New Jersey Statute, Death by Wrongful Act, N.J.S.A. 2A:31-1, et seq.(known as the New Jersey Wrongful Death Act).

17. Plaintiff's decedent, Edward G. Coleman, Jr., left surviving him as his heirs at law the following persons entitled to recover damages for his death and on whose behalf this action is brought: his three minor children, Autumn Allisha Coleman, Jaylen Isaiah Coleman and Lailah Johnson.

18. As a proximate result of the defendants' negligent, reckless, intentional and/or willful misconduct/actions and violations of New Jersey Law, which have been more fully described above, plaintiff's decedent's dependents, heirs at law and/or next of kin were required to expend monies for hospital, medical and funeral expenses, as well as other expenses in and about endeavoring to treat and care for plaintiff's decedent, all to great damage and loss.

19. As a proximate result of the Defendants' negligent, reckless, intentional and/or willful misconduct/actions and violations of New Jersey Law, which have been more fully described above, the decedent's minor children, Autumn Allisha Coleman, Jaylen Isaiah Coleman and Lailah Johnson, have lost the care, comfort, aid, assistance, tutelage, support, maintenance, companionship, services and/or guidance of their father which they would have received from him for the remainder of his natural life.

20. As a result of the above-described of the defendants' negligent, reckless, intentional and/or willful misconduct/actions and violations of New Jersey Law, which have been more fully

described herein above, plaintiff's decedent, Edward G. Coleman, Jr., suffered a wrongful death with pecuniary losses to his dependents, heirs at law and/or next of kin, who also sustained additional damages and losses.

21. This action has been brought within two (2) years after the death of plaintiff's decedent, Edward G. Coleman, Jr.

22. We have complied with the proper Notice of Tort Claims Act against the municipal defendants.

WHEREFORE Plaintiff demands judgment against all Defendants, individually, jointly and severally for:

a. An award of compensatory damages for the wrongful death of the decedent, Edward G. Coleman, Jr., including loss of pecuniary support for his minor children and damages to compensate his minor children for the loss of care, comfort companionship, instruction, training and attention that they would have received from the decedent had he lived;

b. An award for funeral expenses together with all expenses incurred in the administration of the decedent's estate;

c. An award for punitive damages against all defendants; and

d. Such other relief as the Court may deem just and equitable and in accordance with the laws of the United States and the State of New Jersey.

FOURTH COUNT
(New Jersey Survival Act)

23. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing Count as if same were set forth at length herein.

24. Thomasina R. Thornton, as Limited Administratrix of the Estate of Edward G. Coleman, Jr.,

deceased, also brings this action on behalf of both the Estate of Edward G. Coleman, Jr. and the survivors of Edward G. Coleman, Jr. under and by virtue of the New Jersey Statute, N.J.S.A. 2A:15-3 (known as the New Jersey Survival Act and/or Executor's and Administrator's Act).

25. By reason of the aforementioned injuries suffered by plaintiff's decedent, he was hindered from attending to his normal and usual daily activities, duties, functions and occupations, resulting in his suffering a loss from the instant of the traumatic accident involving the collision up until the time of his death.

26. As a further result of the aforementioned injuries, plaintiff's decedent suffered great inconvenience, humiliation, conscious pain and suffering and psychological pain and was deprived of life's pleasures until and up to the time of his death.

27. By reason of the injuries as aforesaid, plaintiff's decedent was required to expend various sums of money for medical treatment, funeral, and administration expenses.

28. All persons entitled to share in the Estate of Edward G. Coleman, Jr., deceased, and in whose behalf this action is brought are set forth as-follows: decedent's minor children, Autumn Allisha Coleman, Jaylen Isaiah Coleman and Lailah Johnson.

29. By reason of the aforementioned negligent, reckless, intentional and/or willful misconduct/actions and violations of New Jersey Law, the Estate of Edward G. Coleman, Jr. has been deprived of the economic value of the deceased's life during the period of his life and, Thomasina R. Thornton, as Limited Administratrix of the Estate of Edward G. Coleman, Jr., deceased, claims damages for the pecuniary loss that the Estate has incurred as a result of the decedent's death, as well as for the conscious pain and suffering sustained by the decedent up to and including the time of his death.

30. We have complied with the proper Notice of Tort Claims Act against the municipal

defendants.

WHEREFORE, Plaintiff demands judgment against all Defendants, individually, jointly and severally for:

a. An award of compensatory damages, under the survival act, including but not limited to economic losses, pain and suffering, emotional harm, physical harm and embarrassment suffered by the decedent, Edward G. Coleman, prior to his death and the difference in the value of what he would have earned during his lifetime and his costs of maintenance throughout his lifetime;

b. An award for funeral expenses together with all expenses incurred in the administration of the decedent's estate;

c. An award for punitive damages against all defendants; and

d. Such other relief as the Court may deem just and equitable and in accordance with the laws of the State of New Jersey.

FIFTH COUNT
(Against City of Elizabeth and City of Elizabeth Police Department)

31. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing Count as if same were set forth at length herein.

32. Defendants, City of Elizabeth Police Department and/or John Does 1-10 and/or Jane Does 1-10, as a matter of policy and practice, failed to supervise, discipline, train or otherwise sanction its police officers who violate the rights of citizens, including plaintiff's decedent, thus encouraging defendants, City of Elizabeth Police Department Officers Alexander Valencia and/or FNU Pereira and/or John Does 1-10 and/or Jane Does 1-10 to engage in the unlawful and actionable conduct as more fully described above.

33. Defendants, City of Elizabeth and/or City of Elizabeth Police Department, as a further matter of policy, practice and/or procedure, failed to properly train its police officers,

including defendants City of Elizabeth Police Officers Alexander Valencia and/or FNU Pereira and/or John Does 1-10 and/or Jane Does 1-10 with respect to the constitutional, statutory and departmental limits of their authority.

34. At all times herein mentioned, the Defendants City of Elizabeth Police Department and City of Elizabeth Police Officers Alexander Valencia and/or FNU Pereira and/or John Does 1-10 and/or Jane Does 1-10 were acting as the agents, servants, and/or employees of Defendant, City of Elizabeth Police Department , and as a consequence, their actions are directly attributable to Defendant, City of Elizabeth and Defendant, City of Elizabeth Police Department, who are responsible therefor.

WHEREFORE, Plaintiff demands judgment against all Defendants, individually, jointly and severally for:

a. An award of compensatory damages, under the survival act, including but not limited to economic losses, pain and suffering, emotional harm, physical harm and embarrassment suffered by the decedent, Edward G. Coleman, Jr., prior to his death and the difference in the value of what he would have earned during his lifetime and his costs of maintenance throughout his lifetime;

b. An award of compensatory damages for the wrongful death of the decedent, Edward G. Coleman, Jr., including loss of pecuniary support for his minor children and damages to compensate his minor children for the loss of care, comfort, companionship, instruction, training and attention that they would have received from the decedent had he lived.

c. An award for funeral expenses together with all expenses incurred in the administration of the decedent's estate;

d. An award for punitive damages against all defendants; and

e. Such other relief as the Court may deem just and equitable and in accordance with the laws of the State of New Jersey.

SIXTH COUNT
(GEICO Indemnity Company - PIP Benefits)

35. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing Count as if same were set forth at length herein.

36. On July 18, 2015, Plaintiff resided with his sister, Tashana Morman, who was insured under an automobile insurance policy issued by GEICO Indemnity Company, pursuant to which policy, Plaintiff is entitled to PIP Benefits.

37. Plaintiff is making this claim for PIP Benefits pursuant to Tashana Morman's GEICO Indemnity Company policy.

WHEREFORE, the Plaintiff hereby demands judgment on this Count for damages, attorneys fees, interest, costs and any other relief permitted by law.

SEVENTH COUNT
(Progressive Insurance Company - PIP Benefits)

38. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing Count as if same were set forth at length herein.

39. On July 18, 2015, Plaintiff was a permissive user of the automobile owned by Christina Pierre, who was insured under an automobile insurance policy issued by Progressive Insurance Company, pursuant to which policy, Plaintiff is entitled to PIP Benefits.

40. Plaintiff is making this claim for PIP Benefits pursuant to Christina Pierre's Progressive Insurance Company policy.

WHEREFORE, the Plaintiff hereby demands judgment on this Count for damages, attorneys fees, interest, costs and any other relief permitted by law.

EIGHTH COUNT
(UM Claim)

41. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing Count as if same were set forth at length herein.

42. On July 18, 2015, decedent Edward G. Coleman, Jr. was driving a vehicle owned by Christina Pierre, which was insured by Progressive Insurance Company.

43. On July 18, 2015, decedent Edward G. Coleman, Jr. resided with his sister, Tashana Morman, who was insured under an automobile insurance policy issued by GEICO Indemnity Company

44. On the date of the accident, defendant Surpris Ophilien, in the alternative and upon information and belief, had stolen, and was operating, the Street Vehicle, which collided with the vehicle driven by decedent Edward G. Coleman, Jr., resulting in decedent's fatal injuries.

45. As a result, on the date of the accident, defendant Surpris Ophilien was uninsured for any and all claims arising out of automobile accidents.

46. This claim for Uninsured Motorist benefits is being made pursuant to the terms of the GEICO Indemnity Company policy and the Progressive Insurance Company policy.

WHEREFORE, the Plaintiff hereby demands judgment on this Count for damages, attorneys fees, interest, costs and any other relief permitted by law.

NINTH COUNT

47. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing Count as if same were set forth at length herein.

48. Defendants, JOHN DOE 1-10, JANE DOE 1-10 and ABC CORPORATION 1-10 are fictitious names intended to identify any and all parties, including individuals, corporations and/or other entities whose identities are presently unknown to the plaintiff, who individually or together with the named defendants were responsible for the ownership, operation,

control, maintenance, management, supervision, servicing, leasing, use, inspection, repair and/or supervision, training, discipline or otherwise sanctioning the operators of the instrumentalities involved in the incident referred to herein, and/or who in any way caused or contributed to Plaintiff's, individually and/or jointly, injuries or damages.

49. At all times named herein, and prior thereto, the defendants, individually, jointly, severally, alternatively, and/or by their servants, agents, employees and/or representatives, were careless, reckless, negligent, grossly negligent, and/or acted willfully and/or intentionally in the ownership, operation, maintenance, management, control, supervision, disciplining, training, servicing, leasing, use, inspection, repair and/or selection of operators of the instrumentalities involved in the incident referred to herein, and as a direct and proximate result of the foregoing acts and/or omissions, proximately caused the above indicated incident and the resulting injuries and damages.

WHEREFORE, the Plaintiff hereby demand judgment on this Count for damages, attorneys fees, interest, costs and any other relief permitted by law.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

CERTIFICATION OF ATTORNEY

The undersigned certifies that the matter in controversy is not the subject of any other action or arbitration proceedings, now or contemplated, and that I am not aware of any other party who should be joined in this action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Clarence Barry-Austin is hereby designated as trial counsel for the Plaintiff in this matter.

DATED: 7/15/17

CLARENCE BARRY-AUSTIN
Attorney for Plaintiff

F:\Client\Coleman, Estate of Edward Coleman\Complaint.wpd

RECEIVED / FILED
Superior Court of New Jersey
JAN 13 2016
CIVIL CASE MANAGEMENT
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SHAHID M. COOPER Plaintiff. vs. CITY OF ELIZABETH; WALTER PIZA, and JOHN DOES I-X; JANE ROES I-X (all individuals or entities whose identities are unknown at this time) Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION UNION COUNTY Docket No.: UNN-L-0093-16

I. Nature of the Action, Jurisdiction, and Venue

1 Plaintiff Shahid M. Cooper ("Plaintiff" or "Mr. Cooper"), a resident of the State of New Jersey, brings this lawsuit seeking monetary and injunctive relief to redress the injuries she suffered as a result of the outrageous conduct of officers for the City of Elizabeth Police Department, in violation of the rights afforded to her under the New Jersey Constitution.

2. Venue is proper in this County because all claims arose within said County

II. The Parties

3. Plaintiff Shahid M. Cooper is an African American male, and a resident of the State of New Jersey.

4. Mr. Cooper resides at 118 Inslee Place, Elizabeth, New Jersey 07206.

5. Defendant City of Elizabeth ("Elizabeth" or the "City") is a governmental municipality of the State of New Jersey, and provides a number of services for those visiting and residing within its borders, including the provision of police protection.

6. Defendant City of Elizabeth is a person within the meaning of the New Jersey Civil Rights Act. N.J.S.A. 10:6-1, *et seq.* (the "NJCRA").

III. Facts

7. On January 23, 2014, Mr. Cooper was parked in his vehicle eating lunch while on break from work, at the corner of 1st Street and Livingston Street, in the City of Elizabeth.

8. Suddenly, an unmarked car pulled up next to his vehicle.

9. An Elizabeth police officer, Defendant Walter Piza ("Officer Piza"), exited the unmarked vehicle and wrote Mr. Cooper a parking ticket.

10. Another officer, whose identity is unknown at this time, is Officer's Piza's partner, and was present at the scene.

11. Officer Piza asked Mr. Cooper for his driver's license.

12. Following the officer's instruction, Mr. Cooper reached over to obtain his license.

13. Without warning or provocation, Officer Piza grabbed Mr. Cooper, and punched him in the face.

14. Officer Piza then proceeded to choke Mr. Cooper, causing excruciating pain.

15. As Officer Piza assaulted Mr. Cooper, he hurled insults at him.

16. Eventually, Officer Piza handcuffed Mr. Cooper and dragged him into the back of his police vehicle.

17. Once in the back of the police vehicle, numerous police officers arrived at the scene.

18. The officers searched Mr. Cooper's vehicle, dumping his personal belongings throughout the car.

19. Subsequently, Mr. Cooper's mother arrived at the intersection.

20. Mr. Cooper's mother was informed that Plaintiff was being arrested for failing to comply with an officer's order, namely to retrieve his identification.

21. Mr. Cooper was taken to a police station, where he was strip-searched.

22. Mr. Cooper was fingerprinted, and put into a holding cell for over an hour.

23. Mr. Cooper had his driver's license, and was complying with Officer Piza's order when he was assaulted.

24. After Mr. Cooper was finally released, he went to Overlook Medical Center for treatment for his injuries.

25. He was diagnosed with musculoskeletal neck pain, an injury caused by strangulation.

26. Mr. Cooper suffered, and continues to suffer, physical pain from this injury

27. The charges against Mr. Cooper were ultimately dismissed.

28. The judge presiding over his case noted that there existed no reason for Mr. Cooper to defy Officer Piza's supposed order, as he indeed had his driver's license in his vehicle.

29. In or about January 2015, these two Elizabeth officers harassed Mr. Cooper yet again.

30. Plaintiff was driving to pick up his elderly aunt, in order to take her to his nephew's high school basketball game.

31. Officer Piza and his partner, this time in a marked police vehicle, pulled over Mr. Cooper absent any justification.

32. The officers asked Mr. Cooper if he could search the vehicle, and Plaintiff consented.

33. The search revealed nothing unlawful or in any way suspicious.

34. Mr. Cooper's aunt went outside to see why her nephew was being questioned by police officers, and why they were searching his vehicle.

35. One or both of the officers hurled insults at Mr. Cooper's aunt.

36. All charges stemming from this incident were ultimately dismissed.

37. Mr. Cooper continues to be harassed by Elizabeth police officers, and continues to suffer damage thereby.

COUNT I
Violation of Civil Rights – N.J.S.A. 10:6-1, et seq.

38. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

39. Defendants, under color of statute, ordinance, reputation, custom and usage have subjected and caused Plaintiff to be subjected to the deprivation of rights, privileges and immunities secured by the New Jersey Constitution and laws of the State of New Jersey, in the following particulars.

a. Plaintiff's right to liberty protected by the New Jersey Constitution, Article I, Paragraph 1

b. Plaintiff's right to be secure as a person against unreasonable searches and seizures, secured to her by the New Jersey Constitution, Article I; Paragraph 7.

c. Plaintiff's right to be secure in her property against unreasonable searches and seizures, secured to her by the New Jersey Constitution, Art. I, Paragraph 7.

d. Plaintiff's right to be free from unlawful detention and imprisonment as secured by the New Jersey Constitution.

40. At no time was there probable cause, or any ground to believe that a crime had been committed by Plaintiff.

41. Defendants, acting under color of law, intentionally deprived Plaintiff of his civil rights.

42. Defendants' acts were done in knowing violation of Plaintiff's legal and constitutional rights and have directly and proximately caused Plaintiff's injury, including humiliation, mental pain and suffering, and emotional distress.

43. Defendants' deprivation of Plaintiff's civil rights violates the New Jersey Constitution, and gives rise to Plaintiff's claims for redress under N.J.S.A. 10:6-1, et seq.

44. Defendants' are directly and vicariously liable for the acts of the police officers, while they are performing their official duties under the color of State, county, or municipal law.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT II
(Failure to Intervene)

45. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

46. The Defendant police officers at the corner of 1st Street and Livingston Street had an affirmative duty to intervene on behalf of Plaintiff, whose rights were being violated in the presence of the officers.

47. Defendants failed to intervene to protect the unlawful conduct described herein.

48. As a result of the foregoing, plaintiff was injured, and his rights were violated and he suffered serious emotional injury, was put in fear of her safety and was humiliated.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT III
(False Imprisonment)

49. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

50. By the actions taken by the Defendants, they illegally restrained Plaintiff against her will, and caused damage.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT IV
(Intentional Infliction of Emotional Distress)

51. Plaintiff hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

52. As a result of the extreme and outrageous, intentional and/or reckless acts of Defendants, Plaintiff was caused to suffer severe emotional distress.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT V
(Negligent Hiring)

53. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

54. At all times relevant, the City was responsible for the recruiting, hiring training, and ongoing supervision of its officers.

55. The City had a duty to properly ascertain the Defendant officers' fitness to become police officers before the City hired them.

56. Defendant had an ongoing duty to properly supervise these officers.

57. Upon information and belief, Defendants failed to properly determine their officers' fitness to be hired as officers for the City of Elizabeth Police Department to ensure that they would not violate Plaintiffs' civil rights.

58. As a result of Defendant's negligent hiring of the officers of the City of Elizabeth Police Department, Plaintiff was harmed and continues to suffer damage, including emotional distress, mental anguish, and humiliation.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT VI
(Negligent Training)

59. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

60. At all times relevant, the County was responsible for the recruiting, hiring training, and ongoing supervision of the officers of the City of Elizabeth Police Department.

61. Defendant had a duty to properly train the officers of the City of Elizabeth Police Department.

62. Defendant had a duty to ensure that the officers of the City of Elizabeth Police Department were properly trained not to violate the constitutional rights of citizens.

63. Defendant failed to properly train and supervise the employees and officers of the City of Elizabeth Police Department to ensure that they would not engage in the violation of one's constitutional rights.

64. As a result of Defendant's negligent training of the officers of the Essex County Sherriff's Department, Plaintiff was harmed and continues to suffer damage, including emotional distress, mental anguish, and humiliation.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT VI
(Negligent Supervision)

65. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

66. Defendants had a duty to properly supervise their employees, and failed to do so.

67. As a result of Defendants' negligent supervision of the officers of the City of Elizabeth Police Department, Plaintiff was harmed and continues to suffer damage.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT VIII
(Negligent Retention)

68. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

69. Upon information and belief, Defendant knew or should have known that the police officers for the City of Elizabeth Police Department were not qualified to act as police officers.

70. Upon information and belief, Defendant was aware of other incidents that should have alerted them to the potential unlawful conduct of the police officers, including but not limited to those officers who detained and unlawfully and unreasonably searched Plaintiff.

71. Upon information and belief, Defendant failed to take reasonable steps to ensure that the Defendant police officers would act appropriately.

72. Defendant had a duty to Plaintiff to take those steps; they failed to take reasonable and appropriate steps to ensure that the officers would not act unlawfully.

73. As a result of Defendant's negligent retention of the officers of the City of Elizabeth Police Department, Plaintiff was harmed and continues to suffer damage.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1. et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT IX
(False Arrest)

74. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

75. In the course of their employment, officers for the City of Elizabeth Police Department illegally and intentionally detained Plaintiff without reasonable suspicion or probable cause.

76. There was no warrant allowing for the arrest of Plaintiff.

77. Defendants detained Plaintiff for an unreasonable period of time, and against his will.

78. The presently unidentified officers are liable for their improper and illegal actions against Mr. Cooper, in connection with the unlawful detention and arrest of Plaintiff.

79. Defendant City of Elizabeth is directly and vicariously liable for the actions of its employees.

WHEREFORE, Plaintiff requests that this Court;

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

COUNT X
(*Monell* – type Claim – Municipal and Governmental Liability)

80. Plaintiffs hereby re-allege the foregoing Paragraphs as though fully set forth herein and incorporate them herein by reference.

81. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, policy, usage, practice, procedure or rule of the respective municipality/governmental entity, which is forbidden by the Constitution of the State of New Jersey.

82. The aforementioned customs, policies, usages, practices, procedures and rules of the City of Elizabeth and its Police Department included, *inter alia*, false arrest and imprisonment. In addition, these governmental entities engaged in a policy, custom or practice of inadequate screening, hiring, retention, training and supervision of its employees. This was the moving force behind the violation of the Plaintiff's rights described herein. As a result of the governmental entities' failure to properly screen, hire, retrain, train, supervise, and discipline their respective employees, those governmental employees explicitly and implicitly authorized and ratified the officers' illegal conduct, and constituted deliberate indifference to the acts and conduct complained of herein.

83. The foregoing customs, policies, usages, practices, procedures and rules constituted deliberate indifference to the safety, well-being and State constitutional rights of Plaintiff and were the direct and proximate cause and moving force causing the constitutional violations suffered by Plaintiff.

84. Defendants, collectively and individually, were directly and actively involved in violating Plaintiff's constitutional rights.

WHEREFORE, Plaintiff requests that this Court:

(a) Award the Plaintiff compensatory and consequential damages in an amount to be determined at trial, against all Defendants, jointly and severally;

(b) Award Plaintiff punitive damages in an amount to be determined at trial against all Defendants, jointly and severally;

(c) Award Plaintiff's attorneys' fees and costs incurred in bringing this action against all Defendants, jointly and severally, as set forth in N.J.S.A. 10:6-1, et seq.

(d) Award pre-judgment and post-judgment interest against all Defendants, jointly and severally.

(e) Enjoin Defendants from continuing their improper actions in connection with the detainment and unlawful search and seizure of individuals for whom there exists no probable cause to detain, and

(f) Grant such other and further relief as the Court may deem just and proper.

JURY DEMAND

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

DESIGNATION OF TRIAL COUNSEL

Eric S. Pennington, Esquire, is hereby designated as trial counsel.

Respectfully submitted,

ERIC S. PENNINGTON, P.C.
Attorneys for Plaintiff

Eric S. Pennington

Dated: 1/11/16

CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other court, arbitration, or administrative proceeding.

I further certified that confidential personal identifiers have been reacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future.

ERIC S. PENNINGTON, P.C.
Attorneys for Plaintiff

Eric S. Pennington

Dated: 1/11/16

LAW OFFICES OF
BROOKE M. BARNETT & ASSOCIATES, P.C.
60 Park Place, Suite 606
Newark, New Jersey 07102
(973) 693-4444
Attorneys for Plaintiff, Emmanuel Davis

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EMMANUEL DAVIS, Plaintiff, CITY OF ELIZABETH; OFFICER LOUIS DEMONDO; DETECTIVE RAUL DE LA PRIDA; OFFICER PAUL CAMARINHA; OFFICER HOWARD DECKER; JAMES COSGROVE DIRECTOR ELIZABETH POLICE; DEPARTMENT PATRICK SHANNON, CHIEF ELIZABETH POLICE DEPARTMENT; JOHN DOES 1-10 (being fictitious names of as yet unidentified parties; ABC CORPORATIONS (being fictitious names of as yet unidentified parties) Defendants,	:	CASE NO.: 2:14-cv-01538-SDW-SCM JURY DEMAND

AMENDED COMPLAINT

Plaintiff, Emmanuel Davis, by and through undersigned counsel, and files this Amended Complaint and sues Defendants, and alleges as follows:

JURISDICTIONAL STATEMENT AND PARTIES

1. This is an action for damages arising out of one or more violations of federal and state law, and is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth Amendment to the United States Constitution.

2. This Court has jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1331 and § 1343 in that this is an action to redress violations of Plaintiff's federally protected Constitutional rights. Jurisdiction over the state law claims is founded upon the supplemental jurisdiction of this Court, 28 U.S.C. § 1367.

3. At all times material hereto, Plaintiff, Emmanuel Davis (Plaintiff), is and was a permanent legal resident of the United States, and a resident of Essex County, New Jersey.

4. Defendant Officer Louis Demondo (Demondo), was at all times relevant acting under color of state law as an active and duly appointed Elizabeth police officer, and in such capacity, as the agent, servant, and employee of Defendant, City of Elizabeth.

5. Defendant Detective Raul De La Prida (De La Prida), was at all times relevant acting under color of state law as an active and duly appointed Elizabeth police officer, and in such capacity, as the agent, servant, and employee of Defendant, City of Elizabeth.

6. Defendant Officer Paul Camarinha (Camarinha) was at all times relevant acting under color of state law as an active and duly appointed Elizabeth police officer, and in such capacity, as the agent, servant, and employee of Defendant, City of Elizabeth.

7. Defendant Officer Howard Decker (Decker) was at all times relevant acting under color of state law as an active and duly appointed Elizabeth police officer, and in such capacity, as the agent, servant, and employee of Defendant, City of Elizabeth.

8. Defendant, James Cosgrove, Elizabeth Police Director, (Cosgrove) was, at all times referred to herein, Police Director for the City of Elizabeth and as such, he was the commanding officer of the above names defendants, and was responsible for the training, supervision, and conduct of the defendants, as more fully set forth below. Defendant Cosgrove is further responsible by law for enforcing the regulations of the city of Elizabeth and for ensuring

that City of Elizabeth police officers obey the laws of the State of New Jersey and the United States of America.

9. Defendant, Patrick Shannon, Elizabeth Police Chief (Shannon) was, at all times referred to herein, Police Chief for the city of Elizabeth, and as such, he was the commanding officer of the above names defendants, and was responsible for the training, supervision, and conduct of the defendants, as more fully set forth below. Defendant Shannon is further responsible by law for enforcing the regulations of the City of Elizabeth and for ensuring that city of Elizabeth police officers obey the laws of the State of New Jersey and the United States of America.

10. At all times referred to herein, defendants, John Does 1-10, were unknown police officers employed by the City of Elizabeth.

11. Defendant, City of Elizabeth ("City"), is a political subdivision of the State of New Jersey, a New Jersey municipal corporation, and at all times materials hereto, acted through its agents, employees, and servants, including the above mentioned defendants.

12. Plaintiff sues all defendants in their individual capacities.

13. At all times referred to herein, defendants acted under the color of the laws, statutes, ordinances, regulations, policies, customs and usages of the State of New Jersey and the City of Elizabeth.

14. Plaintiff complied with the Notice of Claim provisions of the New Jersey Tort Claims Act, more than six (6) months have elapsed since the claim was received, this suit be being commenced within two years of the claim, and there has been no valid settlement of this claim.

15. The acts and practices constituting the violations alleged below have all occurred

within the City of Elizabeth, which is properly within the jurisdiction of the United States District Court in and for the District of New Jersey. Venue in the District of New Jersey, Newark Division, is proper because the incident which is the subject of this lawsuit occurred in Union County, New Jersey and Defendant City is locating in this venue. See 28 U.S.C. § 1391(b)(1) and § 1391(b)(2).

16. Plaintiff has retained Law Offices of Brooke M. Barnett & Associates, P.C. to represent his interests in prosecuting this action, and said law firm is entitled to its reasonable attorneys' fees and costs incurred in connection therewith.

STATEMENT OF FACTS

17. At all times material hereto, the subject incident arises out of Defendants Camarinha, Decker, De Le Prida, and Demondo brutal assault and battery of Plaintiff resulting in serious personal injuries to said Plaintiff which occurred in the area of 49 Westfield Avenue, City of Elizabeth, and State of New Jersey.

18. Specifically, On or about March 10, 2012, Plaintiff, Emmanuel Davis, was attempting to leave the Malibu Club, located at 49 Westfield Avenue, Elizabeth, New Jersey, because a large fight began to break out among the patrons.

19. Additionally, during the chaos of this large fight, someone in the crowd yelled "gun" which caused even more people to flee the area, including Mr. Davis.

20. At said time, City of Elizabeth police officers arrived on scene.

21. As Mr. Davis was leaving the area, he was confronted by Quamaine Dobbs another patron of the Malibu Club.

22. At that moment, Plaintiff, in response to Mr. Dobbs violent advances, was left with no other option but to fight Mr. Dobbs.

23. Approximately twenty (20) seconds into the fight, Defendants Camarinha, Decker, De Le Prida, and Demondo arrived to the area.

24. Upon observing the police, Plaintiff began to walk away from the area. He was instructed by the above mentioned defendants to stop and "come here" by the police.

25. Despite the Plaintiff obeying the officers' command, said officers began to violently beat the Plaintiff by pepper spraying his eyes and mouth; and striking him with their baton several times in the face and leg.

26. Throughout all the foregoing brutal actions, Plaintiff was unarmed, defenseless, and made no furtive movements or gestures.

27. Subsequently, the Plaintiff was transported to Trinitas Hospital for his injuries.

28. As a result of the Defendants' intentional, violent and excessive conduct, Plaintiff's injuries consisted of the following:

a. Extreme pain and redness of the eyes from pepper spray, unable to open same (required irrigation of the eyes);

b. Lacerations and hematomas on the face and head;

c. Comminuted nasal bridge fracture (required surgery);

d. Vomer fracture (required surgery); and

e. Left medial malleolus fracture with extension to the posterior tibia (required surgery).

29. Plaintiff was ultimately charged with disorderly conduct (2C:33-2a) under summons #2004-G-056300.

30. The defendants' brutal and unlawful use of force against Plaintiff caused him to fear for his life and suffer serious and permanent physical injuries.

Additional Facts Surrounding Liability

31. Elizabeth Police Department ("EPD") is an administrative subdivision of Defendant City. Defendant City, acting through its Mayor, City Commission and City Manager, is the ultimate policymaking authority for all officially-adopted policies and procedures implemented by employees of EPD, including Defendants Camarinha, Decker, De Le Prida, and Demondo. Further, it is the entity legally responsible for the hiring, retention, supervision, and training of employees of the EPD, as well as administering any discipline to said employees.

32. On information and belief, Defendant City delegates to the Chief of Police of the EPD the authority to develop, direct, and implement policies for all sworn law enforcement officers, compiled in part in the Elizabeth Standard Operating Procedures Manual, which set forth purported "guidelines" controlling the interaction between EPD law enforcement officers (including Defendants) and the general public.

33. Defendant City has been placed on notice that there is a pervasive and systemic pattern, custom and practice within EPD to use excessive force by rendering vicious beatings to members of the general public – even those who do not resist arrest, including innocent bystanders and those accused of minor criminal infractions -- and to make great efforts to use such excessive force outside the view of third-party witnesses, and frequently while the person detained is subdued, restrained, or otherwise still in handcuffs. False police reports are rendered, and charges are pursued against the victims of these unconstitutional beatings but then later are dropped in an effort to intimidate the victims. Finally, the investigations into such allegations of excessive force are almost always a virtual whitewash, as EPD officers are rarely if ever punished for such conduct even when investigations reveal conduct that requires action to be undertaken against the officer(s) involved to prevent such occurrences in the future.

34. Specifically, the notice to the City of the unconstitutional conduct of its officers and employees has occurred through notices of intent to sue, lawsuits, internal affairs investigations, and media reports.

35. Thus, Defendant City, and Defendants Shannon and Cosgrove, are also on notice of the fact a systemic and pervasive pattern and practice of excessive force exists within the EPD and that members of the citizenry are the victims of excessive force committed by police officers of the Defendant City in violation of the Fourth Amendment. Defendant City police officers are allowed and indeed encouraged to commit excessive force with impunity knowing that no discipline, much less meaningful discipline, will follow for acts of excessive force. Such illegal conduct is ratified and condoned by the Defendant City.

36. Defendants Camarinha, Decker, De Le Prida, and Demondo are comfortable in the knowledge that any acts of excessive force that they commit will not result in discipline by the Defendant City even when the act of excessive force occurs within EPD. Thus, the lack of discipline for excessive force allowed these Defendants to commit excessive force against the Plaintiff because Defendants knew that there would be no official reprisals for their actions against Plaintiff.

37. Upon information and belief, the discovery phase of this litigation will reveal other instances where Defendants have engaged in excessive force only to receive no discipline for his actions.

COUNT I – 42 U.S.C. § 1983 – EXCESSIVE FORCE
(AGAINST DEFENDANT DEMONDO)

38. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 37 as if set forth fully herein, and further states as follows:

39. This cause of action is brought by Plaintiff against Defendant for his use of excessive force under color of law which deprived Plaintiff of his constitutionally protected rights under the Fourth Amendment to the United States Constitution.

40. At all times material, Plaintiff had the constitutional right to be free from the use of excessive force against his person and to be free from unlawful searches and seizures.

41. Defendant violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary to arrest Plaintiff in violation of his rights under the Fourth Amendment to the United States Constitution.

42. Defendant, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally use excessive force as discussed above.

43. Defendant, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally engage in an unlawful search and seizure by his conduct toward the Plaintiff.

44. As a direct and proximate result of the illegal acts of Defendant, Plaintiff suffered severe and permanent injuries.

45. As a direct and proximate result of the illegal acts of Defendant, Plaintiff has in the past and will in the future suffer great pain and suffering, mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

46. The acts of Defendant as set forth above were intentional, wanton, malicious, and oppressive, thus entitled Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT II– 42 U.S.C. § 1983 – EXCESSIVE FORCE
(AGAINST DEFENDANT CAMARINHA)

47. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 46 as if set forth fully herein, and further states as follows:

48. This cause of action is brought by Plaintiff against Defendant for his use of excessive force under color of law which deprived Plaintiff of his constitutionally protected rights under the Fourth Amendment to the United States Constitution.

49. At all times material, Plaintiff had the constitutional right to be free from the use of excessive force against his person and to be free from unlawful searches and seizures.

50. Defendant violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary to arrest Plaintiff in violation of his rights under the Fourth Amendment to the United States Constitution.

51. Defendant, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally use excessive force as discussed above.

52. Defendant, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally engage in an unlawful search and seizure by his conduct toward the Plaintiff.

53. As a direct and proximate result of the illegal acts of Defendant, Plaintiff suffered severe and permanent injuries.

54. As a direct and proximate result of the illegal acts of Defendant, Plaintiff has in the past and will in the future suffer great pain and suffering, mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

55. The acts of Defendant as set forth above were intentional, wanton, malicious, and oppressive, thus entitled Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT III – 42 U.S.C. § 1983 – EXCESSIVE FORCE
(AGAINST DEFENDANT DE LA PRIDA)

56. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 55 as if set forth fully herein, and further states as follows:

57. This cause of action is brought by Plaintiff against Defendant for his use of excessive force under color of law which deprived Plaintiff of his constitutionally protected rights under the Fourth Amendment to the United States Constitution.

58. At all times material, Plaintiff had the constitutional right to be free from the use of excessive force against his person and to be free from unlawful searches and seizures.

59. Defendant violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary to arrest Plaintiff in violation of his rights under the Fourth Amendment to the United States Constitution.

60. Defendant, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally use excessive force as discussed above.

61. Defendant, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally engage in an unlawful search and seizure by his conduct toward the Plaintiff.

62. As a direct and proximate result of the illegal acts of Defendant, Plaintiff suffered severe and permanent injuries.

63. As a direct and proximate result of the illegal acts of Defendant, Plaintiff has in the past and will in the future suffer great pain and suffering, mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

64. The acts of Defendant as set forth above were intentional, wanton, malicious, and oppressive, thus entitled Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT IV – 42 U.S.C. § 1983 – EXCESSIVE FORCE
(AGAINST DEFENDANT DECKER)

65. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 64 as if set forth fully herein, and further states as follows:

66. This cause of action is brought by Plaintiff against Defendant for his use of excessive force under color of law which deprived Plaintiff of his constitutionally protected rights under the Fourth Amendment to the United States Constitution.

67. At all times material, Plaintiff had the constitutional right to be free from the use of excessive force against his person and to be free from unlawful searches and seizures.

68. Defendant violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary to arrest Plaintiff in violation of his rights under the Fourth Amendment to the United States Constitution.

69. Defendant, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally use excessive force as discussed above.

70. Defendant, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally engage in an unlawful search and seizure by his conduct toward the Plaintiff.

71. As a direct and proximate result of the illegal acts of Defendant, Plaintiff suffered severe and permanent injuries.

72. As a direct and proximate result of the illegal acts of Defendant, Plaintiff has in the past and will in the future suffer great pain and suffering, mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

73. The acts of Defendant as set forth above were intentional, wanton, malicious, and oppressive, thus entitled Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT V – 42 U.S.C. § 1983 – EXCESSIVE FORCE
(AGAINST DEFENDANT CITY)

74. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 73 as if set forth fully herein, and further states as follows:

75. This cause of action is brought by Plaintiff against Defendant City for deprivation by its agent, servant, and employee, namely Defendants Camarinha, Decker, De Le Prida, and

Demondo, of constitutional rights within the meaning of 42 U.S.C. § 1983 in violation of the Fourth Amendment to the United States Constitution.

76. Defendants were acting under the color of law, as authorized agent of Defendant City, while arresting Plaintiff in the furtherance of his duties.

77. The constitutional deprivation was caused by Defendant City's numerous areas of deliberate indifference as outlined in Paragraphs 1 through above, including:

a. Custom of condoning, allowing, and encouraging numerous instances of illegal excessive force and police brutality without punishing its police officers, including Defendants. The above-mentioned actions were not isolated incidents. Defendant City has a history of exonerating officers for allegedly using excessive force against its citizens. Officers within the EPD are secure in knowing that a reported incident (if the incident gets reported by and EPD officers at all as many incidents are intentionally covered up with the assistance and acquiescence of multiple EPD officers) will not result in an meaningful disciplinary proceeding or punishment, even when presented with video evidence, the testimony of independent witnesses, or even the testimony of fellow EPD officers. Defendant City condones an officer's action even when other non-police witnesses have complained that force used was excessive.

78. Moreover, at all times material hereto, Defendant City was responsible for implementing the rules and regulations in regard to hiring, retaining, screening, training, supervising, controlling, disciplining and assigning EPD police officers to their duties in the City of Elizabeth.

79. Defendant City was deliberately indifferent in that it either expressly or impliedly acknowledged and assented to the failure to hire, retain, screen, train, supervise, control, discipline, and otherwise assign employees of Defendant working as EPD officers, including but not limited to Defendants, for dangerous propensities, lack of training and skill, and other identifiable characteristics making said EPD officers unfit to perform their lawful duties.

80. Defendant City was deliberately indifferent to the rights of the public, including the Plaintiff, in that it failed to determine whether members of the EPD, including Defendants, posed a threat to the public as a result of their propensity to commit unlawful acts and to engage in violent activity, including acts of excessive force.

81. Defendant City, through its deliberate indifference, failed to ensure that EPD officers, including Defendants, did not violate the constitutional and statutory rights of citizens of the State of New Jersey, including the Plaintiff, while said EPD officers were acting under color of state law for Defendant City.

82. The deliberate indifference of Defendant City exhibited a reckless, wanton, and callous disregard for the rights of persons, including the Plaintiff, who might be brutally assaulted, injured, battered or otherwise maimed for life by EPD officers, including Defendant Camarinha, Decker, De Le Prida, and Demondo, who were inadequately trained, supervised, and disciplined.

83. Defendant City was deliberately indifferent in the selection, retaining, training, and supervising of Defendant Camarinha, Decker, De Le Prida, and Demondo, as EPD officers in that Defendant City: (a) hired and retained Defendants when Defendant City knew, or in the exercise of reasonable care should have known, of the disposition of Defendants to engage in such unlawful conduct including excessive force and the unlawful conduct complained of herein;

(b) failed to remove Defendants from their positions of authority as EPD officers despite the fact it knew or should have known of the disposition of Defendants to engage in such unlawful conduct including excessive force and the unlawful conduct complained of herein; (c) failed to take any meaningful disciplinary action against Defendants Camarinha, Decker, De Le Prida, and Demondo despite the fact it knew or should have known of the disposition of Defendants to engage in such unlawful conduct including excessive force and the unlawful conduct complained of herein; and (d) failed to protect members of the general public, including the Plaintiff, despite the fact it knew or should have known of the disposition of Defendants to engage in such unlawful conduct including excessive force and the unlawful conduct complained of herein.

84. Additionally, the cited misconduct represents a pattern, custom and practice in which members of the public were savagely beaten, injured, and otherwise endangered by the intentional and reckless misconduct of EPD officers, and that deliberate indifference was widespread as to the use of excessive force, illegal behavior, and widespread incompetence throughout Defendant City including the EPD. This pattern, custom, and practice includes not only the failure to identify and discipline the unlawful and excessive use of force and seizures by EPD personnel, but additionally, the failure to re-train, supervise, or otherwise remove EPD officers who engage in such unlawful conduct as the de facto policy and custom of Defendant City to tolerate, encourage, and even protect such acts by NPD officers.

85. The deliberate indifference of the Defendant City violated the constitutional rights of its citizenry, including the Plaintiff, for which 42 U.S.C. § 1983 provides the appropriate remedies as requested herein.

86. As a direct and proximate result of the illegal acts of Defendants Camarinha, Decker, De Le Prida, and Demondo, while Defendants were an agent, servant, and employee of

Defendant City, and the unconstitutional policies, customs and practices of Defendant City, Plaintiff has been damaged, including but not limited to physical injuries as well as emotional distress which were caused, activated or otherwise aggravated by the subject incident, and Plaintiff shall incur further medical losses and impairments in the future as a direct and proximate result of the illegal acts of Defendants.

87. As a direct and proximate result of the illegal acts of Defendants Camarinha, Decker, De Le Prida, and Demondo, while these Defendants were an agent, servant, and employee of Defendant City, and the unconstitutional policies, customs and practices of Defendant City, Plaintiff has in the past and will in the future suffer great pain and suffering, mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

WHEREFORE, Plaintiff demands the following relief against Defendant City:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT VI – STATE TORT OF BATTERY (AGAINST DEFENDANT DEMONDO)

88. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 87 as if set forth fully herein, and further states as follows

89. On March 10, 2012, Plaintiff was arrested by Defendant who did unlawfully batter, touch, and strike Plaintiff without his consent and against his will.

90. As a direct and proximate result of said acts of Defendant, Plaintiff has been damaged, including but not limited to permanent physical injuries which were caused, activated or otherwise aggravated by the subject incident.

91. As a direct and proximate result of said acts of Defendant, Plaintiff has undergone painful and extensive medical care and treatment; and has incurred medical bills and expenses attendant to his aforesaid injuries.

92. As a direct and proximate result of said acts of Defendant, Plaintiff has in the past and will in the future suffer great pain and suffering, both physical and mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT VII – STATE TORT OF BATTERY
(AGAINST DEFENDANT CAMARINHA)

93. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 92 as if set forth fully herein, and further states as follows

94. On March 10, 2012, Plaintiff was arrested by Defendant who did unlawfully batter, touch, and strike Plaintiff without his consent and against his will.

95. As a direct and proximate result of said acts of Defendant, Plaintiff has been damaged, including but not limited to permanent physical injuries which were caused, activated or otherwise aggravated by the subject incident.

96. As a direct and proximate result of said acts of Defendant, Plaintiff has undergone painful and extensive medical care and treatment; and has incurred medical bills and expenses attendant to his aforesaid injuries.

97. As a direct and proximate result of said acts of Defendant, Plaintiff has in the past

and will in the future suffer great pain and suffering, both physical and mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT VI – STATE TORT OF BATTERY
(AGAINST DEFENDANT DE LA PRIDA)

98. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 97 as if set forth fully herein, and further states as follows

99. On March 10, 2012, Plaintiff was arrested by Defendant who did unlawfully batter, touch, and strike Plaintiff without his consent and against his will.

100. As a direct and proximate result of said acts of Defendant, Plaintiff has been damaged, including but not limited to permanent physical injuries which were caused, activated or otherwise aggravated by the subject incident.

101. As a direct and proximate result of said acts of Defendant, Plaintiff has undergone painful and extensive medical care and treatment; and has incurred medical bills and expenses attendant to his aforesaid injuries.

102. As a direct and proximate result of said acts of Defendant, Plaintiff has in the past and will in the future suffer great pain and suffering, both physical and mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT VIII – STATE TORT OF BATTERY
(AGAINST DEFENDANT DECKER)

103. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 102 as if set forth fully herein, and further states as follows

104. On March 10, 2012, Plaintiff was arrested by Defendant who did unlawfully batter, touch, and strike Plaintiff without his consent and against his will.

105. As a direct and proximate result of said acts of Defendant, Plaintiff has been damaged, including but not limited to permanent physical injuries which were caused, activated or otherwise aggravated by the subject incident.

106. As a direct and proximate result of said acts of Defendant, Plaintiff has undergone painful and extensive medical care and treatment; and has incurred medical bills and expenses attendant to his aforesaid injuries.

107. As a direct and proximate result of said acts of Defendant, Plaintiff has in the past and will in the future suffer great pain and suffering, both physical and mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT VIIII – STATE TORT OF BATTERY
(AGAINST DEFENDANT CITY)

108. Plaintiff, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 107 as if set forth fully herein, and further states as follows

109. On March 10, 2012, Plaintiff was arrested by Defendants Camarinha, Decker, De Le Prida, and Demondo., who did unlawfully batter, touch, and strike Plaintiff without his consent and against his will.

110. Defendants Camarinha, Decker, De Le Prida, and Demondo were acting in the course and scope of their duties as an agent, servant, and employee of Defendant City.

111. As a direct and proximate result of said acts of Defendants Camarinha, Decker, De Le Prida, and Demondo for which Defendant City is responsible, Plaintiff has been damaged, including but not limited to permanent physical injuries which were caused, activated or otherwise aggravated by the subject incident.

112. As a direct and proximate result of said acts of Defendants Camarinha, Decker, De Le Prida, and Demondo, for which Defendant City is responsible, Plaintiff has undergone painful and extensive medical care and treatment; and has incurred medical bills and expenses attendant to his aforesaid injuries.

113. As a direct and proximate result of said acts of Defendants Camarinha, Decker, De Le Prida, and Demondo, for which Defendant City is responsible, Plaintiff has in the past and will in the future suffer great pain and suffering, both physical and mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT X – ABUSE OF POWER
(AGAINST DEFENDANT CAMARINHA)

114. Plaintiff, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 113 as if set forth fully herein, and further states as follows

115. On March 10, 2012, Defendant Camarinha authored an investigation report with regard to the above referenced incident.

116. The aforementioned report contained numerous falsities regarding the above referenced events.

117. In authoring this report, Defendant, made improper, illegal and perverted use of the legal procedure, that is to say, his/her resort to the legal process was neither warranted nor authorized by law.

118. The motivation behind Defendant's improper, illegal and perverted use of the legal procedure was to conceal his and the other Defendants unlawful battery of the Plaintiff, and not in furtherance of his job duties.

119. As a result of Defendant's abuse of power, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands the following relief against Defendant:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs; and

d. An award of such other and further relief the Court deems just and appropriate.

COUNT XI– 42 U.S.C. § 1983 – EXCESSIVE FORCE
(AGAINST DEFENDANTS JOHN DOES 1-10)

120. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 119 as if set forth fully herein, and further states as follows:

121. This cause of action is brought by Plaintiff against Defendants for their use of excessive force under color of law which deprived Plaintiff of his constitutionally protected rights under the Fourth Amendment to the United States Constitution.

122. At all times material, Plaintiff had the constitutional right to be free from the use of excessive force against his person and to be free from unlawful searches and seizures.

123. Defendants violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary to arrest Plaintiff in violation of his rights under the Fourth Amendment to the United States Constitution.

124. Defendant, while acting in their capacity as a police officer for Defendant City and under the color of law, did intentionally use excessive force as discussed above.

125. Defendants while acting in their capacity as police officers for Defendant City and under the color of law, did intentionally engage in an unlawful search and seizure by their conduct toward the Plaintiff.

126. As a direct and proximate result of the illegal acts of Defendants, Plaintiff suffered severe and permanent injuries.

127. As a direct and proximate result of the illegal acts of Defendants, Plaintiff has in the past and will in the future suffer great pain and suffering, mental anguish, as well as shame, humiliation, and the loss of capacity for the enjoyment of life.

128. The acts of Defendants as set forth above were intentional, wanton, malicious, and oppressive, thus entitled Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff demands the following relief against Defendants:

a. An award of compensatory damages;

b. An award of punitive damages;

c. An award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

d. An award of such other and further relief the Court deems just and appropriate.

BROOKE M. BARNETT & ASSOCIATES, P.C.
Attorneys for Plaintiff, Emmanuel Davis

Brooke M. Barnett
BROOKE M. BARNETT, ESQ.

Dated: September 19, 2014

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues

BROOKE M. BARNETT & ASSOCIATES, P.C.
Attorneys for Plaintiff, Emmanuel Davis

Brooke M. Barnett
BROOKE M. BARNETT, ESQ.

Dated: September 19, 2014

LAW OFFICES ROSEMARIE ARNOLD
1386 Palisade Avenue
Fort Lee, NJ 07024
(201) 461-1111
Filing Attorney I.D. No. 012031999
Attorney for Plaintiffs

Plaintiffs, ESTATE OF JOHN DEL VALLE, by his Administrator Ad Prosequendum, JESSE DEL VALLE and JESSE DEL VALLE, Individually, vs. Defendants, CITY OF ELIZABETH, ELIZABETH POLICE DEPARTMENT, OFFICER JORGE HIDALDO and/or JOHN DOE 1-10 (being fictitious designations).	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L- 2920-16 Civil Action **COMPLAINT AND JURY DEMAND**

Plaintiff, ESTATE OF JOHN DEL VALLE, by his Administrator Ad Prosequendum, JESSE DEL VALLE, residing in Bronx Borough, State of New York, by way of Complaint against the Defendants says:

VENUE

1. Plaintiffs, Estate of Del Valle, by his Administrator Ad Prosequendum, Jesse Del Valle and Jesse Del Valle, Individually, hereby file the within Complaint in the County of Essex as there is substantial doubt that a fair and impartial Trial can be had in the County of Union, where venue is laid.

PARTIES

2. On or about December 14, 2015, Letters of Administration Ad Prosequendum were granted by the Surrogate of the County of Union, State of New Jersey, to the Plaintiff JESSE DEL VALLE for the purpose of prosecuting a claim of the heirs-at-law of JOHN DEL VALLE, deceased, against the Defendants for the personal injuries leading to the untimely death of JOHN DEL VALLE.

3. The said, JOHN DEL VALLE, left surviving him as his heirs-at-law his son, JESSE DEL VALLE, who was dependent upon JOHN DEL VALLE and has sustained pecuniary damages from the death of JOHN DEL VALLE.

4. Plaintiff, JESSE DEL VALLE, is and was at all times relevant to this Complaint, a citizen of the United States.

5. This action has been commenced within two (2) years of the death of JOHN DEL VALLE.

6. Defendant, **CITY OF ELIZABETH**, is and was at all times relevant to this Complaint, a municipality organized under the laws of the State of New Jersey.

7. Defendant, **CITY OF ELIZABETH POLICE DEPARTMENT,** is and was at all times relevant to this Complaint a division, agency, department and/or subdivision of the City of Elizabeth charged with enforcing federal, state and local laws and ordinances and engaged in providing public safety services to the general public.

8. Defendant, **JORGE HIDALGO**, is and was at all times relevant to this Complaint, a police officer employed by Defendants, **CITY OF ELIZABETH and CITY OF ELIZABETH POLICE DEPARTMENT,** and acting within the course

and/or scope of his employment and with the indicia of authority in his official capacity as a police officer.

9. John Does 1-10 are fictitious names representing unknown persons who were at all times relevant to this complaint agents, representatives and/or employees of the Defendants, CITY OF ELIZABETH and CITY OF ELIZABETH POLICE DEPARTMENT, involved or in any way responsible for the events described in this complaint sued both individually and in their official capacities.

NOTICE OF CLAIM

10. Plaintiffs repeat, reiterate and reallege the preceding facts and allegations as set forth herein, at length.

11. Plaintiffs served Notices of Claim for damages in the form prescribed by New Jersey Statutes Title 59:8-4, upon the Defendants, **CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT**, by New Jersey Lawyer's Service within the statutorily prescribed time period.

NATURE OF ACTION

12. Plaintiffs repeat, reiterate and reallege the preceding facts and allegations as set forth herein, at length.

13. On or about June 29, 2014, at approximately 11:30 pm, the decedent JOHN DEL VALLE was fatally shot by police officer, Defendant, JORGE HIDALDO and/or JOHN DOE 1-10, on Union Avenue in Elizabeth, New Jersey.

14. Defendant, **JORGE HIDALGO and/or JOHN DOE 1-10,** a police officer, who was on duty and in uniform, and acting within the course and/or scope of

their employment and with the indicia of authority in their official capacity as police officers, instructed Plaintiff to put down his knife.

15. At the aforesaid time and place Plaintiff duly complied with the instructions of the uniformed police officer, Defendant **JORGE HIDALGO and/or JOHN DOE 1-10.**

16. At the aforesaid time and place, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10,** conspired to maim, injure and/or kill the decedent JOHN DEL VALLE.

17. At aforesaid time and place, Defendant, **JORGE HIDALGO and/or JOHN DOE 1-10** did nothing to safeguard, aid, assist or protect the decedent JOHN DEL VALLE after fatally shooting him.

18. The Defendant, **JORGE HIDALGO and/or JOHN DOE 1-10,** had aggressive, violent and/or vicious propensities and/or prior histories of police misconduct of which the Defendants, **CITY OF ELIZABETH AND CITY OF ELIZABETH POLICE DEPARTMENT** knew or should have known.

19. This action is brought pursuant to 42 U.S.C. §§1981, 1983, 1985(3), 1988 and the 4th and 14th amendments to the Constitution of the United States of America as well as NJS 2C:43-61(4).

COUNT I

(Excessive Force)

20. The plaintiff repeats, reiterates and re-alleges each and every allegation set forth with the same force and effect as if more fully set forth herein at length.

21. At the aforesaid time and place, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10** were responsible for the safety and/or security of the decedent JOHN DEL VALLE and had a duty to use due care in carrying out said duty.

22. At the aforesaid time and place, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10** had a further duty to Plaintiff to safeguard his life and property; protect him against violence and excessive force and uphold without prejudice his constitutional rights.

23. At the aforesaid time and place, Defendants, **JORGE HIDALDO and/or JOHN DOE 1-10** breached their duty to decedent JOHN DEL VALLE by negligently, carelessly, recklessly and/or palpably unreasonably refusing and/or failing to exercise due care with respect to the safety, welfare and security of JOHN DEL VALLE.

24. Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10** further breached their duty to the decedent JOHN DEL VALLE by failing and/or refusing to safeguard his life and property, failing to protect him against intimidation and violence and failing to uphold his constitutional rights.

25. As a direct and proximate result of the breach of duty of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10** the decedent JOHN DEL VALLE was shot, sustained severe personal injury, pain and suffering which eventually resulted in his wrongful death.

26. At the aforesaid time and place, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10** knew or should have known that his excessive actions would result in the injury, maiming or death of the decedent JOHN DEL VALLE.

27. At the aforesaid time and place, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10** were police officers on duty and in uniform and acting within the course and scope of their employment with Defendant, **CITY OF ELIZABETH AND CITY OF ELIZABETH POLICE DEPARTMENT**.

28. By virtue of the doctrine of Respondeat Superior, the Defendants, **CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT** are responsible and/or should be held liable for the negligent, careless, reckless and/or palpably unreasonable conduct of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10.**

29. As a direct and proximate result of the negligence and/or carelessness and/or palpable unreasonableness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

30. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

31. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1-10, City of Elizabeth, City of Elizabeth Police Department jointly, severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT II

(Municipality and Supervisory Liability)

32. Plaintiff repeats, reiterate and re-allege each and every allegation set forth with the same force and effect as if more fully set forth herein at length.

33. Defendants, **CITY OF ELIZABETH and CITY OF ELIZABETH POLICE DEPARTMENT,** it's agents, servants and/or employees and **JORGE HIDALGO and/or JOHN DOE 1-10,** were responsible for the safety and/or security of the decedent JOHN DEL VALLE and persons such as Plaintiff on Union Avenue in Elizabeth, New Jersey and had a duty to Plaintiff's and persons such as Plaintiff to use due and/or reasonable care in carrying out said responsibility.

34. Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT and JORGE HIDALGO and/or JOHN DOE 1-10,** had a further duty to "safeguard lives and property; protect against intimidation and violence and uphold without prejudice, the constitutional rights of all people".

35. Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, JORGE HIDALGO and/or JOHN DOE 1-10,** breached their duty to Plaintiff by negligently, carelessly, recklessly and/or palpably unreasonably

failing to exercise due care with respect to the safety, welfare and security of Plaintiff and persons such as Plaintiff.

36. Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT and JORGE HIDALGO and/or JOHN DOE 1-10,** further breached their duty to Plaintiff by failing to safeguard his life and property, failing to protect him against intimidation and violence and failing to uphold his constitutional rights.

37. The complained of occurrence happened wholly and solely as a result of the negligence, carelessness, recklessness and/or palpable unreasonableness of Defendants, **CITY OF ELIZABETH,** it's agents, servants and/or employees, **CITY OF ELIZABETH POLICE DEPARTMENT,** it's agents, servants and/or employees and **JORGE HIDALGO and/or JOHN DOE 1-10,** without any fault, want of care, negligence or culpable conduct on the part of the plaintiff contributing thereto.

38. As a direct and proximate result of the negligence and carelessness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

39. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

40. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1-10, City of Elizabeth, City of Elizabeth Police Department jointly, severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT III

(Negligent Hiring, Training & Retention)

41. Plaintiff repeats, reiterate and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein at length.

42. Plaintiff's injuries as described herein were caused in whole or in part by the Defendants, **CITY OF ELIZABETH**, it's agents, servants and/or employees, **CITY OF ELIZABETH POLICE DEPARTMENT**, it's agents, servants and/or employees, in that at the aforementioned time and place, and prior thereto, they were negligent, careless, reckless, palpably unreasonable, and/or breached a duty to Plaintiff to exercise due care with respect to the and/or hiring, training and/or retention of Defendants **JORGE HIDALGO and/or JOHN DOE 1-10** and/or other agents, servants and/or employees present at the premises.

43. The Defendants **JORGE HIDALGO and/or JOHN DOE 1-10** were

aggressive and/or violent and/or dangerous rendering them unfit for their jobs.

44. Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POICE DEPARTMENT**, it's agents, servants and/or employees knew or should have known of the aggressive and/or violent and/or dangerous propensities of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10**, and/or their prior histories of police misconduct, yet hired and/or improperly trained and/or retained the services of said Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10** and failed to warn Plaintiff of said propensities, and/or inadequately warned Plaintiff of said propensities, and/or failed to protect Plaintiff from said propensities.

45. The complained of occurrence happened wholly and solely as a result of the negligence, carelessness, recklessness and/or palpable unreasonableness of Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT**, without any fault, want of care, negligence or culpable conduct in the part of Plaintiff contributing thereto.

46. As a direct and proximate result of the negligence and carelessness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

47. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

48. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1, City of Elizabeth, City of Elizabeth Police Department jointly, severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT IV

(Negligent Supervision)

49. Plaintiff repeats, reiterate and reallege each and every allegation set forth above with the same force and effect as more fully set forth herein.

50. Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT,** their agents, servants and employees, had a duty to supervise their employees, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10** to ensure the safety and welfare of Plaintiff and to protect him from the actions that were committed upon him as described above.

51. Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT,** their agents, servants and employees, breached their duty of care to Plaintiff by negligently, carelessly, recklessly and/or palpably unreasonably supervising Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10.**

52. Defendants' breach of their supervisory duty was a proximate cause of the Plaintiff's severe and permanent personal injuries, severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury resulting in his wrongful death.

53. As a direct and proximate result of the negligence and carelessness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

54. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

55. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1-10, City of Elizabeth, City of Elizabeth Police Department jointly,

severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT V

56. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth above with the same force and effect, as if more fully set forth herein at length.

57. Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10**, while acting within the course and/or scope of their employment with defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT** and with the indicia of authority negligently, carelessly, recklessly, and/or intentionally, willfully, and maliciously maimed, injured and killed the Plaintiff.

58. The foregoing acts and conduct of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10**, were not in any way brought on by Plaintiff nor did Plaintiff provoke or instigate Defendant, **JORGE HIDALGO and/or JOHN DOE 1-10**, into committing or engaging in said acts or conduct.

59. The foregoing acts and/or conduct of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10**, were not in any way privileged or authorized by Plaintiff and were committed wholly against Plaintiff's will and consent, while Plaintiff was not a harm to the public or the police officer.

60. As a direct and proximate result of the negligence and carelessness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

61. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

62. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

63. At the aforesaid time and place, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10,** were police officers on duty and in uniform and acting within the course and scope of their employment with Defendant, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT.**

64. By virtue of the doctrine of Respondeat Superior, the Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT** are responsible and/or should be held liable for the negligent, careless, reckless and/or palpably unreasonable conduct of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10.**

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1-10, City of Elizabeth, City of Elizabeth Police Department jointly,

severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT VI

65. Plaintiff repeats, reiterates and re-alleges each and every allegation set forth with the same force and effect above, as if more fully set forth herein at length.

66. Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10,** while acting within the course and/or scope of their employment with Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT,** and with the indicia of authority negligently, carelessly, recklessly, palpably unreasonably and/or intentionally, willfully and maliciously did place Plaintiff in fear of imminent harmful or offensive contact or assault and battery.

67. The foregoing acts and conduct of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10**, were not in any way brought on by Plaintiff nor did Plaintiff provoke or instigate Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10**, into committing or engaging in said acts or conduct.

68. The foregoing acts and/or conduct of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10**, were not in any way privileged or authorized by Plaintiff and were committed wholly against Plaintiff's will and consent, while Plaintiff was not a harm to the public or the police officer.

69. As a direct and proximate result of the negligence and carelessness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and

mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

70. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

71. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

72. At the aforesaid time and place, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10,** were police officers on duty and in uniform and acting within the course and scope of their employment with Defendant, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT.**

73. By virtue of the doctrine of Respondeat Superior, the Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT** are responsible and/or should be held liable for the negligent, careless, reckless and/or palpably unreasonable conduct of Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10.**

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1-10, City of Elizabeth, City of Elizabeth Police Department

jointly, severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT VII

74. Plaintiff repeats, reiterates and realleges the preceding facts and allegations as if set forth herein at length.

75. Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, ABC CORPORATION, JORGE HIDALGO and/or JOHN DOE 1** had a duty to uphold the Constitution and laws of the State of New Jersey.

76. Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, ABC CORPORATION, JORGE HIDALGO and/or JOHN DOE 1-10**, breached their duty to Plaintiff, by, inter alia, failing to protect him and/or violating his rights under the Constitution of the State of New Jersey.

77. The actions of Defendants individually, jointly and severally constitute a conspiracy to threaten, deceive and otherwise intimidate Plaintiff in violation of the Constitution of the State of New Jersey.

78. The actions of Defendants individually, jointly and severally as described herein above further constitute a conspiracy for purposes of impeding, hindering, obstructing or defeating the due course of justice with an intent to conspire and deny Plaintiff equal protection of the laws in violation of the Constitution of the State of New Jersey.

79. Defendants, by their agents, servants, and their employees and each of the Defendants individually, and without the consent of Plaintiff, were negligent, careless,

palpably unreasonable, reckless and intentional in their actions and/or inactions, and, did engage in unlawful physical contact with Plaintiff.

80. As a direct and proximate result of the negligence and carelessness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

81. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

82. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1-10, City of Elizabeth, City of Elizabeth Police Department jointly, severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT VIII

83. Plaintiff repeats, reiterates and realleges the preceding facts and allegations as set forth herein at length.

84. Plaintiff, was shot, sustained severe personal injury, pain and suffering which resulted in his wrongful death by **DEFENDANTS JORGE HIDALGO and/or JOHN DOE 1-10** acting as police officers, agents, servants and/or employees of the Defendants **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT.**

85. Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10,** were acting within the scope of their employment at the time of the aforementioned aggressive and/or violent and/or dangerous acts.

86. As a result of the aforementioned negligence and/or carelessness and/or palpable unreasonableness Plaintiff was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death, along with a violation of his civil rights, liberty and freedom.

87. The aforementioned aggressive and/or violent and/or dangerous acts of Defendants, JORGE HIDALGO and/or JOHN DOE 1-10 were negligent, careless, reckless, intentional and without probable cause.

WHEREFORE, Plaintiff demands judgment against Defendants, **CITY OF ELIZABETH, CITY OF ELIZBETH POLICE DEPARTMENT, ABC CORPORATION, JORGE HIDALGO and/or JOHN DOE 1-10,** jointly and severally for compensatory and punitive damages, together with interest, costs of suit and attorneys fees.

COUNT IX

88. Plaintiff repeats, reiterates and realleges the preceding facts and allegations as if set forth herein at length.

89. On the 29th day of June, 2014, Defendants, **JORGE HIDALGO and/or JOHN DOE 1-10,** acting within the scope of their employment and with the indicia of authority and as an agent, servant and/or employee of Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT,** and acting without cause or justification or the consent of Plaintiff did fatally wound the Plaintiff and place him in fear of imminent harm and were negligent, careless, reckless, palpably unreasonable and intentional in their conduct against him.

90. As a direct and proximate result of the above conduct, Plaintiff was caused to suffer severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

91. The aforementioned damages and injuries sustained were caused solely and wholly by the negligent, careless, reckless and intentional assault by Defendants upon Plaintiff without any fault of Plaintiff contributing thereto.

92. As a direct and proximate result of the negligence and carelessness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

93. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

94. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1-10, City of Elizabeth, City of Elizabeth Police Department jointly, severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT X

95. Plaintiff repeats, reiterates and realleges the preceding facts and allegations as if set forth herein at length.

96. The actions and/or inactions of Defendants **JORGE HIDALGO and/or JOHN DOE 1-10** while acting within the scope of their employment with **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT** constitute an improper, illegal and perverted use of the legal procedure and Defendants **JORGE HIDALGO and/or JOHN DOE 1-10,** had ulterior motives in initiating the legal process.

97. The actions and/or inactions of Defendants **JORGE HIDALGO and/or JOHN DOE 1-10** as set forth above constitute malicious abuse of process and/or malicious use of process.

98. As a direct and proximate result of the negligence and carelessness of the aforementioned Defendants, the Plaintiff decedent JOHN DEL VALLE was caused to sustain severe permanent injuries, suffer severe and excruciating pain, great physical and mental torment, conscious pain and suffering and catastrophic injury which ultimately resulted in his wrongful death.

99. As a further result of Defendants' aforesaid negligence, the Plaintiff ESTATE OF JOHN DEL VALLE, has been compelled to spend great and diverse sums of money for medical aid and treatment, funeral expenses and other expenses and/or pecuniary damages as his heir-at-law.

100. As a result of the wrongful death of JOHN DEL VALLE, his heir at law, has sustained pecuniary loss of a monetary and non-monetary nature including loss of support, loss of services, loss of guidance, advice and counsel; loss of nurture and care, loss of companionship, loss of inheritance, medical and funeral expenses and all other damages permitted by law.

WHEREFORE, Plaintiff, Estate of John Del Valle, by his Administrator Ad Prosequendum Jesse Del Valle demands judgment against the defendants, Jorge Hidalgo and/or John Doe 1-10, City of Elizabeth, City of Elizabeth Police Department jointly, severally and/or jointly and severally, for damages, together with interest and costs of suit pursuant to New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1.

COUNT XI

101. Plaintiff repeats, reiterates and realleges the preceding facts and allegations as if set forth herein at length.

102. As a result of the omissions and/or commissions constituted negligence, recklessness and/or willful, wanton and/or gross negligence and/or neglect of the Defendants, Plaintiff decedent, JOHN DEL VALLE, sustained serious personal injuries that resulted in his death including conscious pain and suffering, fear and mental anguish in anticipation of death and loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, JORGE HIDALGO and/or JOHN DOE 1-10**, jointly and severally for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

COUNT XII

103. Plaintiff repeats, reiterates and realleges the preceding facts and allegations as if set forth herein at length.

104. At all times set forth herein, Jesse Del Valle was and is the son of decedent JOHN DEL VALLE.

105. By reason of the foregoing, decedent's son has been damaged and deprived of the support, services, society, care, companionship and guidance of the decedent JOHN DEL VALLE.

106. By reason of the foregoing, Plaintiff suffered pecuniary loss.

107. As a direct and proximate result of the foregoing, Plaintiff suffered loss of enjoyment of life.

108. By reason of the foregoing, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against Defendants, **CITY OF ELIZABETH, CITY OF ELIZABETH POLICE DEPARTMENT, JORGE HIDALGO and/or JOHN DOE 1-10**, jointly and severally for compensatory and punitive damages, together with interest, costs of suit and attorneys fees.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Natalie A. Zammitti Shaw, Esq. is designated as trial counsel.

CERTIFICATION

I hereby certify that this matter is not the subject of any other action pending in any court or arbitration proceeding, that no such other action or arbitration proceeding is contemplated by this Plaintiffs, and that there are no other parties, whom, to the knowledge of the Plaintiffs' counsel, should be joined in this action.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: April 19, 2016

NATALIE A. ZAMMITTI SHAW

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

ABDEL ELGENDY, Plaintiff, v. ELIZBETH POLICE DEPARTMENT; OFFICER VICTOR MATOS; and OFFICER M. HARBA, Defendants.	:	No. _____ COMPLAINT COMPLAINT (JURY TRIAL REQUESTED)

Plaintiff Abgel Elgendy ("Plaintiff"), by and through his undersigned counsel, hereby bring this Complaint against the above-named Defendants, and in support thereof says:

PARTIES

1. The plaintiff is a citizen of the United States, residing at 896 River Road, Piscataway, NJ 08854.

2. The defendant Elizabeth Police Department is a public authority organized and existing under the laws of the States of New Jersey.

3. The defendants, Police Officer Victor Matos and Police Officer M. Harba were, at all times mentioned below, duly appointed, employed, and acting police officers of the defendant Elizbeth Police Department.

JURISDICTION

4. This action arises under the Fourth and Fourteenth Amendments to the United States Constitution, and the Civil Rights Act of 1870, *42 U.S.C.* § 1983 *et seq.*

5. This court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1343.

CLAIMS FOR RELIEF

Factual Background

6. This is an action for illegal seizure.

7. The plaintiff is the owner of Manny Auto Sales & Lease located at 435 Route 1 South, Elizabeth, NJ 07201.

8. Mr. Jairo Hoyos was employed as a sales representative of Plaintiff.

9. Mr. Hoyos was responsible for reporting his sales, including the accurate sale price for each vehicle and the appropriate level of sales tax for each vehicle sold.

10. On several transactions, Mr. Hoyos reported a sale price for vehicles less than the actual sale price, and pocketing the difference in sales tax charged.

11. Without authorization or approval, Mr. Hoyos removed business files and office equipment from the premises of Plaintiff, including a computer, fax machine, printer and safe.

12. Without authorization or approval, Mr. Hoyos took two dealer license plates for his own personal use (Plate No. 524DLO and Plate No. 528DLO).

13. Plaintiff's owns a Reassignment Book for his dealership, which includes official NJDMV documents and ownership titles for each of the vehicles of Plaintiff.

14. Upon learning of Mr. Hoyos' illegal actions, on January 22, 2018 Plaintiff confronted Mr. Hoyos, terminated him and demanded that he vacate the dealership.

15. Mr. Hoyos refused, and as a result, the Elizabeth Police Department was contacted.

16. Upon arriving at the scene, Defendants Police Officer Victor Matos and Police Officer M. Harba first spoke to Mr. Hoyos, who walked out to greet them alone, before Defendants Police Officer Victor Matos and Police Officer M. Harba spoke to Plaintiff.

17. Plaintiff informed Defendants Police Officer Victor Matos and Police Officer M. Harba that the Reassignment Book belonged to him. However, Defendants Police Officer Victor Matos and Police Officer M. Harba seized the Reassignment Book from Plaintiff and gave it to Mr. Hoyos, before

asking Plaintiff to vacate the premises.

18. All of the actions of the defendants were committed with the intention to seize Plaintiff's property without consent or due process.

19. The seizure was not justified by any legal privilege.

20. At all times, the defendants were acting under color of state law.

21. As a result of illegally seizing the Reassignment Book from Plaintiff and giving it to Mr. Hoyos, Mr. Hoyos was able to thereafter fraudulently sell the following vehicles as if owned by him:

a) 2000 Ford Mustang Red VIN#1FAFP4442YF1976

b) 1998 Toyota 4 Runner Gray VIN#JT3HN86R7W0161161

c) 2007 Dodge Caliber Silver VIN#1B3HB48B67D5776

d) 2005 Honda CRV Black VIN#JHLRD78575C017827

e) 2016 Toyota Corolla Exported

f) 2008 Mazda 5 Red VIN#JM1CR29L780327275

g) 2003 Kia Sorato White VIN#KNDJD733035166582

h) 2009 Dodge Journey Red VIN#3D4GG47B39T184300

22. The Reassignment Book was eventually returned to Plaintiff by Mr. Hoyos, however, as a result of the Defendants' illegal seizure committed under color of law, and the subsequent fraudulent sales committed by Mr. Hoyos while in possession of the Reassignment Book, Plainitff lost $30,000.00, which represents the value of the vehicles.

23. As a result of the defendants' actions, the plaintiff suffered damages, including legal fees and other expenses, incurred lost property, mental anguish and suffering, and damage to reputation.

24. All of the defendants acted wantonly, recklessly, willfully, and maliciously, with the intent of injuring and oppressing the plaintiff, as a result of which plaintiff is entitled to an award of punitive damages.

First Claim

25. The seizure of Plaintiff's Reassignment Book by Defendants was in violation of the plaintiff's rights as secured by the Fourth and Fourteenth Amendments to the United States Constitution.

Second Claim

26. The defendant Elizbeth Police Department maintains a pattern and practice of illegal seizure in violation of the plaintiff's rights as secured by the Fourth and Fourteenth Amendments to the United States Constitution.

Third Claim

27. The defendant Elizbeth Police Department failed to train and supervise its employees and police officers with respect to the above provision of the laws against illegal seizure.

28. This failure was the direct and proximate cause of the deprivation of the plaintiff's Constitutional rights.

Supplemental State Claim Against All Defendants

29. All of the defendants are liable to the plaintiff under the New Jersey Civil Rights Act for illegal seizure.

30. At all relevant times, the defendants Police Officer Victor Matos and Police Officer M. Harba were acting within the scope of their duties as employees of the defendant Elizbeth Police Department.

PRAYER

Plaintiff demands judgment against the defendants:

A. For compensatory damages as determined by the trier of fact to adequately compensate the plaintiff for the injuries described in this complaint;

B. For punitive and exemplary damages as determined by the trier of fact to punish each defendant against which they are awarded and to deter future similar conduct by that defendant;

C. For plaintiff's costs and disbursements of this action;

D. For plaintiff's attorney's fees incurred in prosecuting this action pursuant to *42 U.S.C. § 1988*; and

E. For all other relief that is proper.

Dated: August 22, 2018

Respectfully submitted,
/s/ Ahmed Soliman
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CARLOS GONZALEZ, Plaintiff, v. ELIZABETH POLICE DEPARTMENT; JORGE HIDALGO; EPD BADGE #H371; JOHN DOES 1 – 5; JANE DOES 1 – 5, Defendants.	CIVIL ACTION NO.

COMPLAINT

Plaintiff, CARLOS GONZALEZ (hereafter "Plaintiff"), with a residence address of 922 McCandless Place, Linden, New Jersey 07036, by and through undersigned counsel, complain of the defendants and say that:

JURISDICTION STATEMENT AND PARTIES

1. This is an action for damages arising out of one or more violations of federal and state law, and is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendment to the United States Constitution; and, the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.*, and Article I of the New Jersey State Constitution.

2. This Court has jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1331 and § 1343 in that this is an action to redress, among other things, violations of Plaintiff's federally protected Constitutional rights. Jurisdiction over the state law claims is founded upon the supplemental jurisdiction of this Court, 28 U.S.C. § 1367.

3. At all times relevant herein, Plaintiff, Carlos Gonzalez, is and was a legal resident in the United States, and a resident of Union County, New Jersey, and is otherwise *sui juris*.

4. At all times relevant herein, Defendant, Elizabeth Police Department ("EPD"), was a municipal subdivision and arm of the City of Elizabeth, with its principal offices located at 1 Police Plaza, Elizabeth, New Jersey 07201.

5. Jorge Hidalgo ("Hidalgo"), EPD Badge Number H371, was at all times relevant herein employed by Defendant EPD. He is sued in both his individual and official capacity.

6. John Does 1 through 5 and Jane Does 1 through 5 were at all times relevant herein employed by Defendant EPD, and participated in the stop, arrest, detention, search and prosecution of Plaintiff on or about October 16, 2016.

7. Defendants Hidalgo, John Does 1-5, and Jane Does 1-5 are hereafter referred to collectively as the "PO Defendants."

8. PO Defendants were at all times relevant acting under color of state law as active and duly appointed EPD police officers, and in such capacity, as the agent, servant, and employee of Defendant EPD.

9. The acts and practices constituting the violations alleged below have all occurred within the State of New Jersey, which is properly within the jurisdiction of the United States District Court in and for the District of New Jersey. Venue in the District of New Jersey, Newark Division, is proper because the incident which is the subject of this lawsuit occurred in the State

of New Jersey and Defendants are located in this venue. *See* 28 U.S.C. § 1391(b)(1) and § 1391(b)(2).

10. Plaintiff has complied with all conditions precedent to the filing of this lawsuit pursuant to Title 59, New Jersey Statutes; all applicable notices have been provided to Defendants.

11. Plaintiff has retained Schiller McMahon LLC to represent his interests in prosecuting this action, and said law firm is entitled to their reasonable attorneys' fees and costs incurred in connection therewith.

STATEMENT OF FACTS

12. At all times material hereto, the subject incident arises out of the unlawful arrest, detention and prosecution of Plaintiff resulting in serious personal injuries to said Plaintiff which occurred in Elizabeth, New Jersey.

13. Specifically, on or about October 16, 2016, Plaintiff was lawfully operating his blue 1988 Toyota pickup (hereafter the "Toyota") in the area of Chilton Street at the intersection of Rahway Avenue in the City of Elizabeth.

14. At some point during his journey, Plaintiff began to suffer a medical emergency due to complications related to his diagnosis as an insulin-dependent diabetic.

15. In fact, Plaintiff was suffering from severe hypoglycemia, also known as diabetic shock, causing him to lose consciousness.

16. At said time and place, Defendant Hidalgo, while on-duty and undertaking and discharging his assigned duties as an EPD officer that day, approached Plaintiff's Toyota and observed Plaintiff slumped over in the driver's seat.

17. Defendant Hidalgo asked Plaintiff if he was okay and if he had been drinking, but Plaintiff was only able to muster a mumbled response due to his medical condition. Defendant Hidalgo then requested the assistance of another unit.

18. In response to Defendant Hidalgo's request for back-up, EPD police officer Vincent Flatley ("PO Flatley") arrived on scene to assist Defendant Hidalgo.

19. Instead of immediately contacting emergency medical services, Defendant Hidalgo falsely and maliciously claimed that he was able to smell a strong odor of alcohol coming from Plaintiff's mouth and observed Plaintiff with bloodshot eyes.

20. Upon information and belief, the allegation related to the odor of alcohol was a purely pretextual basis for taking Plaintiff into custody on the basis of his race, ethnicity, national origin, or other unlawful reason.

21. There was no reasonable basis, let alone probable cause, for Defendant Hidalgo to arrest Plaintiff for suspicion of being under the influence of alcohol; yet, Plaintiff was nonetheless arrested for same, in violation of state and federal law.

22. Upon information and belief, Defendant Hidalgo ripped Plaintiff out of the Toyota and restrained Plaintiff in handcuffs.

23. After the Plaintiff was in handcuffs, Defendant Hidalgo forcefully held Plaintiff against the Toyota and unlawfully searched Plaintiff's person without a warrant or exception to the warrant requirement.

24. Thereafter, another unknown officer dressed in plain clothes assisted PO Defendant Hidalgo by violently shoving Plaintiff into the back of a police cruiser.

25. Incredibly, and despite Plaintiff clearly being in serious medical distress, at no time during this encounter with police was Plaintiff asked if he needed medical assistance.

26. After Plaintiff was in handcuffs, PO Defendant Hidalgo transported Plaintiff to EPD headquarters for processing and to submit to an Alcotest.

27. While at headquarters, Plaintiff was allegedly monitored by Defendant Hidalgo for twenty minutes for the purpose of conducting an Alcotest. During that observation period, Plaintiff was clearly and definitively in need of medical assistance, but the PO Defendant failed to render any such assistance.

28. Despite Plaintiff's blatant and obvious distress, and with explicit knowledge of Plaintiff's status as an insulin-dependent diabetic, the PO Defendants continued to treat Plaintiff as a common criminal without any probable cause basis for doing so, and failed to render medical assistance.

29. Throughout the entire time Plaintiff interacted with the PO Defendants, including prior to any arrest, Plaintiff advised the PO Defendants that he did not drink and was not drunk.

30. After approximately twenty minutes passed, EPD police officer Grisel Arias ("PO Arias") forced Plaintiff to submit to a breath test four times within a five-minute span. It should be noted that during two of Plaintiff's attempts to provide a breath sample for the Alcotest, the machine registered the error message "MIN. VOL. NOT ACHIEVED". Upon information and belief, the error message received by PO Arias indicated that Plaintiff was unable to provide enough of a breath sample for the machine to register a reading; thereby causing Plaintiff to have to repeatedly blow into the machine and exacerbating his already rapidly deteriorating medical condition.

31. Plaintiff's registered results showed a blood alcohol concentration ("BAC") of 0.00%. Nevertheless, the PO Defendants charged Plaintiff with driving under the influence, despite

zero evidence, and thus no legal justification, to do so. In fact, Defendant EPD intentionally filed a false police report in an effort to conceal the illegality of their unjustified arrest.

32. Sometime thereafter, paramedics were finally called and it was discovered that Plaintiff's sugar level was dangerously low and he was transported to Trinitas Hospital for treatment.

33. Plaintiff was unlawfully arrested without probable cause and mistreated as described above due to his race, ethnicity, national origin, or other unlawful basis, and the illegal practice of profiling engaged in by members of EPD.

34. As a result of the subject incident, the Plaintiff experienced severe pain and suffering due to his physical injuries, including mental anguish, mental and emotional suffering, embarrassment, shame, and humiliation, as well as damages to his constitutional rights due to the unreasonable seizure of his person.

ADDITIONAL FACTS SURROUNDING LIABILITY

35. Defendant EPD is the ultimate policymaking authority for all officially-adopted policies and procedures implemented by employees of Defendant EPD, including all PO Defendants. Further, it is the entity legally responsible for the hiring, retention, supervision, and training of employees of the EPD, as well as administering any discipline to said employees.

36. The EPD has a long-standing de-facto policy of unlawful profiling as has been acknowledged by New Jersey governors, attorneys general and the New Jersey Senate Judiciary Committee, including a Consent Decree wherein the EPD promoted multiple Hispanic and African-American police officers.

37. Defendant EPD has been placed on notice that there is a pervasive and systematic pattern, custom and practice within the EPD to unlawfully stop, search, arrest, and use excessive

force by rendering vicious beatings to members of the general public – even those who do not resist arrest, including innocent bystanders and those accused of minor criminal infractions – and to make great efforts to use excessive force outside the view of third-party witnesses, and frequently while the person detained is subdued, restrained, or otherwise still in handcuffs.

38. False reports are rendered, and prosecutions are officially pursued against the victims of these unlawful stops, searches, arrests, and unconstitutional beatings and excessively forceful arrests.

39. The investigations into such allegations of unlawful stops, searches, arrests, and use of excessive force are almost always a virtual whitewash, as EPD officers are rarely, if ever, punished for such conduct even when investigations reveal conduct that requires action to be undertaken against the officers(s) involved to prevent such civil rights and constitutional violations in the future.

40. Specifically, the notice to the EPD of the unconstitutional conduct of its officers and employees has occurred through notices of intent to sue, lawsuits, internal affairs investigations, and media reports, yet Defendant EPD fails to take any remedial action.

41. Thus, Defendant EPD is also on notice of the fact that a systemic and pervasive pattern and practice of unlawful stops, searches, arrests, and use of excessive force and wrongful and unreasonably forceful arrests exist within the EPD and that members of the citizenry are the victims of these acts committed by EPD officers in violation of the Fourth, Fifth, Eight and Fourteenth Amendments. Defendant EPD officers are allowed and indeed encouraged to commit these wrongful and unconstitutional acts with impunity knowing that no discipline, much less meaningful discipline, will follow for unlawful stops, searches, arrests, and acts of excessive force,

false arrest and malicious prosecution. Such illegal conduct is ratified and condoned by Defendant EPD.

42. PO Defendants Hidalgo, John Does 1 through 5, and Jane Does 1 through 5, are comfortable in the knowledge that any unlawful stop, search, arrest, and act of excessive force, unlawful arrest, and malicious prosecution that they commit will not result in discipline by Defendant EPD even when the unlawful stop, search, arrest, and act of excessive force and/or unlawful arrest occurs. Thus, the lack of discipline for unlawful stops, searches, arrests, and acts of excessive force, unlawful arrests and malicious prosecution allowed PO Defendants to wrongfully stop, arrest and commit excessive and unreasonable force against the Plaintiff because PO Defendants knew that there would be no official reprisals for their actions against Plaintiff.

43. Upon information and belief, the discovery phase of this litigation will further reveal many other instances where Defendant EPD, by and through its officers and employees, has allowed, condoned, and encouraged a systemic, ratified, and sanctioned policy of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests and racial profiling only to fail to discipline personnel for such actions, much less properly supervise and train to prevent further abuses.

CAUSES OF ACTION

COUNT ONE
VIOLATION OF 42 U.S.C. § 1983
(Civil Action for Deprivation of Rights)

44. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 43 as if set forth fully herein, and further states as follows:

45. At all times material, Plaintiff had the constitutional right to be free from the use of excessive and unreasonable force against his person and to be free from unlawful searches and seizures.

46. The PO Defendants individually and as a group participated and conspired with one another, under color of state law, to deprive Plaintiff of his constitutional rights by, among other things:

a. stopping and detaining Plaintiff without reasonable and articulable suspicion;
b. falsely arresting Plaintiff without probable cause;
c. illegally searching Plaintiff's person without probable cause;
d. using excessive and unreasonable force when arresting Plaintiff;
e. falsely imprisoning and/or detaining Plaintiff;
f. improperly denying Plaintiff's right to privacy;
g. denying Plaintiff his right to freedom of travel;
h. depriving Plaintiff of his right to due process;
i. depriving Plaintiff of his right to equal protection of the laws;
j. subjecting Plaintiff to involuntary servitude;
k. subjecting Plaintiff to cruel and unusual punishment.

47. PO Defendants violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary to arrest Plaintiff in violation of his rights under the Fourth, Fifth, Eight, and Fourteenth Amendments to the United States Constitution.

48. PO Defendants, including but not limited to Defendant Hidalgo, while acting in their capacity as police officers for Defendant EPD and under color of law, did intentionally and unlawfully stop, search, arrest, and use excessive and unreasonable force by forcefully removing Plaintiff from his vehicle and restraining him, without the requisite legal justification.

49. PO Defendants subjected Plaintiff to further indignities by filing a false report and causing Plaintiff to be wrongfully detained and prosecuted; specifically, by knowingly, intentionally, and falsely claiming an odor of alcohol could be detected.

50. The above acts constitute a violation of the Civil Rights Act, 42 U.S.C. § 1983 for violation of one's civil and constitutional rights under color of state law.

51. As a proximate result of the aforesaid acts by Defendants, Plaintiff has been damaged and has suffered severe emotional injuries including mental distress and anguish.

COUNT TWO
VIOLATION OF 42 U.S.C. § 1981
(Violation of Equal Rights Under the Law)

52. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 51 as if set forth fully herein, and further states as follows:

53. The acts of the PO Defendants as well as the EPD constitute a violation of the Civil Rights Act, 42 U.S.C. § 1981.

54. The acts of the Defendants were motivated by racial, ethnic, national origin, and/or other unlawful animosity and/or by desire to injure, oppress and intimidate the Plaintiff because of his race, ethnicity, national origin, or other protected attribute.

55. As a proximate result of the above-mentioned acts, Plaintiff has suffered damages including severe emotional distress and mental anguish as well as a deprivation of his rights under § 1981, as well as the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

COUNT THREE
VIOLATION OF 42 U.S.C. § 1985
(Conspiracy to Violate Civil Rights)

56. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 55 as if set forth fully herein, and further states as follows:

57. The acts of PO Defendants as well as Defendants EPD constitute a violation of the Civil Rights Act, 42 U.S.C. § 1985, namely a conspiracy to violate the civil rights of Plaintiff based on his race, ethnicity, national origin, or other unlawful basis.

58. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional distress and mental anguish as well as deprivation of rights under the Civil Rights laws.

COUNT FOUR
VIOLATION OF 42 U.S.C. § 1986
(Failure to Prevent Violations of Civil Rights)

59. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 58 as if set forth fully herein, and further states as follows:

60. The PO Defendants had knowledge of the discrimination/violation of constitutional rights perpetrated on Plaintiff and/or other minorities, including Plaintiff, but neglected and failed to prevent said wrongful and illegal acts when they had power to do so.

61. This neglect, aid and refusal to prevent or rectify is a violation of the Civil Rights Act, 42 U.S.C. § 1986.

62. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress and a deprivation of rights under the Civil Rights laws.

COUNT FIVE
VIOLATION OF 42 U.S.C. § 1983
(Negligent Screening, Hiring, Training, Supervising and Retention Of Dangerous Discriminatory Police Officers)

63. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 62 as if set forth fully herein, and further states as follows:

64. Defendant EPD was negligent in screening, hiring, training, supervising, disciplining and/or retaining the PO Defendants in this matter, who they knew or should have known were dangerous and/or acted in a racially discriminatory manner.

65. Defendant EPD is liable for the aforesaid acts both under the doctrine of *respondeat superior* and because it permitted conditions to exist which facilitated and/or permitted such conduct to occur.

COUNT SIX
NEW JERSEY STATE CIVIL RIGHTS ACTION/STATE CONSITITUTIONAL CLAIM
(N.J.S.A. 10:6-1, *et seq.*)

66. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 65 as if set forth fully herein, and further states as follows:

67. The illegal, unconstitutional and discriminatory acts of the Defendants constituted acts of a *de facto* policy to discriminate, use unlawful force, falsely stop, arrest and detain, and illegally search and assault Plaintiff. The actions of the Defendants aforesaid also represent a *de facto* policy to deny Plaintiff his right to travel, equal protection and privacy. All of these violations contravene Plaintiff's constitutional rights under the New Jersey State Constitution including, but not limited to, Article I, Section 1; Article I, Section 5; and Article I, Section 7 and the New Jersey Civil Rights Act (N.J.S.A. 10:6-2).

68. Each individual Defendant was acting at all times in furtherance of his employer.

69. As a proximate result of the aforesaid conduct, Plaintiff has been damaged, including violation of his civil rights and has suffered severe physical and emotional pain and suffering.

COUNT SEVEN
WILLFUL DISREGARD

70. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 69 as if set forth fully herein, and further states as follows:

71. The conduct of Defendants was outrageous, wanton and willful, in reckless indifference to the rights, safety, and interests of Plaintiffs, and taken with conscious disregard of their duties and obligations.

72. Defendants acted with deliberate indifference to the rights of persons in their domain, including Plaintiff, violating Plaintiff's right to freedom from deprivation of liberty without due process of law in violation of the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act, 42 U.S.C. § 1986.

73. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress and a deprivation of rights under the Civil Rights laws.

COUNT EIGHT
ASSAULT AND BATTERY

74. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 73 as if set forth fully herein, and further states as follows:

75. Defendants intended to cause a harmful or offensive contact with Plaintiff, and/or an imminent apprehension of such a contact.

76. Plaintiff was thereby put in such imminent apprehension.

77. PO Defendants, individually and/or acting in concert, contacted Plaintiff in a harmful and offensive manner without cause and/or legal justification.

78. As a proximate result of the aforesaid conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT NINE
ABUSE OF PROCESS

79. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 78 as if set forth fully herein, and further states as follows:

80. The PO Defendants, and perhaps others, made improper, illegal and perverted use of the legal process and their resort to the legal process was neither warranted nor authorized by law.

81. The PO Defendants, and perhaps others, had ulterior motives in initiating the legal process against Plaintiff by filing a criminal complaint against him.

82. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT TEN
FALSE ARREST

83. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 82 as if set forth fully herein, and further states as follows:

84. The PO Defendants named herein, and perhaps others, wrongfully, unlawfully, maliciously, and without any warrant or pretense of legal process, detained and confined Plaintiff.

85. Plaintiff's confinement was without legal authority or legal justification.

86. The actions of the PO Defendants, and perhaps others, of subjecting Plaintiff to detention were deliberate, willful, malicious, wanton and unlawful.

87. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT ELEVEN
FALSE IMPRISONMENT

88. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 87 as if set forth fully herein, and further states as follows:

89. The PO Defendants named herein, and perhaps others, wrongfully, unlawfully, maliciously, and without any warrant or pretense of legal process, detained and confined Plaintiff.

90. Plaintiff's confinement was without legal authority or legal justification.

91. The actions of the PO Defendants, and perhaps others, of subjecting Plaintiff to detention were deliberate, willful, malicious, wanton and unlawful.

92. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT TWELVE
MALICIOUS PROSECUTION

93. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 92 as if set forth fully herein, and further states as follows:

94. The PO Defendants named herein, and perhaps others, conspired to file a criminal complaint against Plaintiff alleging a violation of N.J.S.A. 39:4-50.

95. The aforestated criminal offense was thereafter dismissed by a neutral and detached magistrate.

96. No reasonable or probable cause existed for the PO Defendants to charge Plaintiff with said offense.

97. The PO Defendants named herein, and perhaps others, were activated by malicious motives in prosecuting the charges lodged against Plaintiff.

98. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT THIRTEEN
NEGLIGENCE

99. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 98 as if set forth fully herein, and further states as follows:

100. At all times relevant hereto, defendants owed a duty to Plaintiff to provide the standard of care that an ordinary prudent person would provide in similar circumstances.

101. Defendants breached their duties of care.

102. As the direct and proximate cause of the defendants' negligence as stated above, Plaintiff has suffered severe injuries.

103. The injuries Plaintiff has sustained are permanent in nature.

104. Plaintiff continues to suffer pain and disability due to the negligent acts of the defendants.

COUNT FOURTEEN
VICARIOUS LIABILITY

105. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 104 as if set forth fully herein, and further states as follows:

106. A public employee is liable in damages to anyone suffering injury proximately caused by the execution or enforcement of any law and such acts are without reasonable good faith.

107. Defendant EPD is liable to Plaintiff by virtue of vicarious liability and/or *respondeat superior* for the wrongful acts of the PO Defendants.

108. At all times relevant hereto, PO Defendant Hidalgo, and perhaps others, acted within the scope of their employment with Defendants EPD.

109. Even if the wrongful acts of the PO Defendants were committed while acting outside the scope of their employment, Defendant EPD is liable, as EPD intended the consequences, was negligent or reckless, the conduct violated a non-delegable duty of EPD, or the PO Defendants purported to act or to speak on behalf of EPD and there was a reliance upon apparent authority, or the PO Defendants were aided in accomplishing the torts by the existence of the agency relation.

110. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against the Defendants, including but not limited to:

111. An award of compensatory damages and punitive damages against Defendants, together with interest, costs of suit and attorneys' fees; for his personal injuries; pain and suffering; past, present and future medical expenses; attorneys' fees; mental anguish; loss of earning capacity; and loss of capacity to enjoy life; as well as his costs, and all other relief the Court deems just and proper.

112. A judgment declaring that the EPD's policy, practice and/or custom of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests and racial profiling challenged herein are unconstitutional in that they violate the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act, 42 U.S.C. § 1986, and the Constitution and laws of the State of New Jersey, and that its implementation,

enforcement and sanctioning by EPD officers is a direct and proximate result of the following policies, practices and/or customs of the EPD:

a. Failing to adequately screen, train and supervise officers;

b. Failing to adequately monitor the EPD officers and discipline those EPD officers who violate the constitutional rights of residents of the communities they patrol; and

c. Encouraging, sanctioning and failing to rectify the EPD's unconstitutional policies.

113. Issue an order for the following injunctive relief:

a. Enjoining the EPD from continuing its policy, practice and/or custom of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests and racial profiling;

b. Requiring the EPD to institute and implement improved policies and programs with respect to training, discipline, and promotion designed to eliminate the EPD's policy, practice and/or custom of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests and racial profiling;

c. Requiring the EPD to deploy EPD officers with appropriate and adequate supervision; and

d. Requiring an independent overseer to monitor stops, searches, arrests, and acts of force to determine whether reported stops, searches, arrests, and acts of force have comported with constitutional requirements.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable under the law.

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates the undersigned as trial counsel.

/s/ Joshua F. McMahon, Esq.
Joshua F. McMahon, Esq.
Attorney for Plaintiff Carlos Gonzalez

Dated: 3/19/2018

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on March 19, 2018, we electronically filed the foregoing with the Clerk of the Court using CM/ECF. We also certify that the foregoing document will be served on all parties either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted

By: /s/ Joshua F. McMahon, Esq.

JS 44 (Rev. 06/17)

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

KHASEEM GREENE

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Schiller McMahon, LLC
123 South Avenue East, Westfield, New Jersey 07090

DEFENDANTS

ELIZABETH POLICE DEPARTMENT, et als.

County of Residence of First Listed Defendant UNION
(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)*

(For Diversity Cases Only)

	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 Description

CONTRACT
- ☐ 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

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
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TORTS

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- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
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- ☐ 950 Constitutionality of State Statutes

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 USC 1983 et seq.

Brief description of cause:
Civil Rights Action against Elizabeth Police Department and Union County Prosecutors Office

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
05/08/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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Attorneys for Plaintiff, Khaseem Greene

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KHASEEM GREENE, Plaintiff, v. ELIZABETH POLICE DEPARTMENT; ALFONSO COLON; JAMES SZPOND; UNION COUNTY PROSECUTOR'S OFFICE; PATRICIA CRONIN; STEPHEN KAISER; DEBORAH WHITE; MARK SPIVEY; JOHN/JANE DOES 1 through 10, Defendants.	:	CIVIL ACTION NO.

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FIRST CAUSE OF ACTION:
DEPRIVATION OF CIVIL RIGHTS IN VIOLATION OF
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COMPLAINT

Plaintiff, KHASEEM GREENE, by and through his attorneys, Schiller McMahon LLC, by way of this Complaint and Jury Demand, seeks compensatory damages, punitive damages, injunctive relief, attorneys' fees, and costs of suit from Defendants, and alleges as follows:

NATURE OF ACTION

1. This is a civil action for damages and injunctive relief arising from one of the most chilling episodes of police and prosecutorial misconduct in modern New Jersey history, which resulted in criminal charges brought and maintained against Plaintiff for several months, including Plaintiff being incarcerated for a period of time, before being dismissed.

2. The most decorated Defensive Player in Rutgers football history, including being Rutgers first and only two-time Big East Defensive Player of the Year, Plaintiff was drafted in 2013 by the Chicago Bears of the National Football League (NFL) following his 2012 AT&T, ESPN, Associated Press and Walter Camp All-American season at Rutgers. Prior to enrolling at Rutgers, Khaseem was a star at Elizabeth High School and known by many as the "Pride of Elizabeth", the City where he was born and raised.

3. From January 4, 2017 to July 17, 2007, Defendants, individually and in concert, maliciously conspired to bring a charge of Unlawful Possession of a Weapon-Firearm against Plaintiff. Defendants knew that this charge was completely and utterly unsupported by probable cause, and a total fabrication contradicted by physical evidence, documentary evidence, other witnesses, and even the former co-Defendant. In their rush to accuse Plaintiff, a highly-respected man within his community and professional athlete with zero criminal history, Defendants willfully ignored and were deliberately indifferent to overwhelming evidence of Plaintiff's actual

innocence whilst simultaneously manufacturing and fabricating false evidence in order to charge Plaintiff with a crime he did not commit.

4. Defendants made, individually and/or in concert with others, demonstrably false statements to obtain complaint-warrants and then, repeating and reiterating those demonstrably false statements under oath, an indictment. Similarly, Defendants conspired to conceal exculpatory evidence in order to charge and convict the Plaintiff on "facts" they knew to be untrue. Defendants' actions evidenced a reckless and callous disregard for and deliberate indifference to Plaintiff's constitutional rights and Defendants' responsibilities to the criminal justice system.

5. As a result of Defendants' actions, Plaintiff has suffered deprivations of the rights guaranteed to him under 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendment to the United States Constitution; the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq*., and Article I of the New Jersey State Constitution; he has suffered economic, emotional, and physical harm; he has suffered irreparable harm to his reputation; and he has incurred thousands of dollars in legal fees defending himself against a criminal prosecution that the Defendants fabricated and knew was baseless.

6. Moreover, because the Defendants' policies, customs, practices, and supervisory misconduct raises a substantial risk of irreparable injury to other persons in the City of Elizabeth, Plaintiff seeks the entry of an Order and Permanent Injunction, as set forth in the Prayer for Relief below, to protect all persons and to prevent such misconduct from ever happening again.

JURISDICTION AND VENUE STATEMENT

7. This is an action for damages arising out of one or more violations of federal and state law, and is brought pursuant to 42 U.S.C. §§ 1981, 1983, 1985 and 1986, and the Fourth and Fourteenth Amendment to the United States Constitution; and, the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq*., and Article I of the New Jersey State Constitution.

8. This Court has jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1331 and § 1343 in that this is an action to redress, among other things, violations of Plaintiff's federally protected Constitutional rights. Jurisdiction over the state law claims is founded upon the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. § 1367.

9. The acts and practices constituting the violations alleged below have all occurred within the State of New Jersey, which is properly within the jurisdiction of the United States District Court in and for the District of New Jersey. Venue in the District of New Jersey, Newark Division, is proper because the incident which is the subject of this lawsuit occurred in the State of New Jersey and Defendants are located in this venue. *See* 28 U.S.C. § 1391(b)(1) and § 1391(b)(2).

10. This action has been commenced within the statute of limitations for all Federal and pendent State causes of action.

11. Plaintiff has complied with all conditions precedent to the filing of this lawsuit pursuant to Title 59, New Jersey Statutes; all applicable notices have been provided to Defendants.

12. Defendants were at all times relevant acting under color of state law as active and duly appointed EPD police officers and/or assistant prosecutors, and in such capacity, as the agents, servants, and employees of Defendant EPD and/or Defendant UCPO.

13. Plaintiff has retained Schiller McMahon LLC to represent his interests in prosecuting

this action, and said law firm is entitled to their reasonable attorneys' fees and costs incurred in connection therewith.

PARTIES

14. At all relevant times hereto, Plaintiff KHASEEM GREENE ("Plaintiff") was an individual residing in the city of Elizabeth, County of Union, State of New Jersey.

15. At all times relevant hereto, Defendant ELIZABETH POLICE DEPARTMENT ("EPD"), was a municipal subdivision and arm of the City located at 1 Police Plaza, Elizabeth, NJ 07201.

16. Defendant ALFONSO COLON ("Colon") was at all times relevant herein employed by Defendant EPD. Colon was the assigned investigator responsible for investigating the All Star Café shooting. He is sued in both his individual and official capacity.

17. Defendant JAMES SZPOND ("Szpond") was at all times relevant herein employed by Defendant EPD. Szpond assisted Colon with the investigation. He is sued in both his individual and official capacity.

18. At all relevant times hereto, UNION COUNTY PROSECUTOR'S OFFICE ("UCPO"), was an office organized pursuant to the laws of the State of New Jersey, with a principal place of business at 32 Rahway Avenue, Elizabeth, New Jersey.

19. Defendant PATRICIA CRONIN ("Cronin") was at all times relevant herein employed by Defendant UCPO. Cronin was assigned to the EPD and responsible for advising and supervising criminal investigations. She is sued in both her individual and official capacity.

20. Defendant STEPHEN KAISER ("Kaiser") was at all times relevant herein employed by Defendant UCPO as an Assistant Prosecutor. He is sued in both his individual and official capacity.

21. Defendant DEBORAH WHITE ("White") was at all times relevant herein employed by Defendant UCPO. White was Kaiser's supervisor and refused to dismiss charges despite acknowledging a lack of probable cause. She is sued in both her individual and official capacity.

22. Defendant MARK SPIVEY ("Spivey") was at all times relevant herein employed by Defendant UCPO as the Director of Communication for Defendant Prosecutor's Office. He is sued in both his individual and official capacity.

23. Defendants JOHN/JANE DOES 1 through 10 are gender-neutral, fictitious individuals meant to represent affiliates, associates, and/or agents of the EPD and/or UCPO who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiff at the present time. As these defendants are identified, Plaintiff shall amend the Complaint to include their known identities.

24. The Defendants may be referred to as "Defendants" in the aggregate. Colon and Szpond may be collectively referred to as "Police Defendants," and Cronin, Kaiser, White and Spivey may be collectively referred to as "Prosecutor Defendants".

25. In addition to being sued individually, said defendants are being sued and judgment sought against them jointly and severally.

FACTUAL ALLEGATIONS

A. All Star Café Shooting & Initial Investigation

26. On or about December 3, 2016, a shooting was reported to EPD in the area of South Park Street and Third Street in Elizabeth in the vicinity of All Star Cafe. Multiple gunshots were fired into a crowd of people, and several shots impacted a taxi cab in the vicinity.

27. Around this time, EPD Officers Mooney ("Mooney") and Haverty ("Haverty") were

on patrol in the area of the 200-block of Magnolia Avenue, when they encountered a dark colored SUV and attempted to stop same. Their efforts to execute a motor vehicle stop failed and the pursuit was terminated. It was later discovered that said vehicle was registered to a romantic affiliate of Jason Sanders ("Sanders"), who was later arrested and remains under indictment for the shooting at All Star Café. Sanders, according to EPD, has at least twenty-one (21) arrests, six (6) felony convictions, and one (1) violation of probation for offenses including gun trafficking, assault, reckless endangerment, kidnapping, robbery, weapons, aggravated assault and narcotics.

28. Upon information and belief, Sanders was the driver of said dark colored SUV and was in the process of escaping his apprehension for the shooting he had just committed.

29. On or about December 3, 2016, following their aborted pursuit, Mooney and Haverty responded to All Star Café and established a crime scene. At said time, Mooney and Haverty were able to meet with All Star Café employee Jorge Santos. Santos displayed video from several surveillance cameras outside the establishment for Mooney and Haverty. Mooney's Investigation Report states that the "video showed the shooting suspect exiting All Star Cafe at 03:53 on their cameras and proceed to walk to the S. Park Str. Side of the building before he starts shooting." Notably, Mooney and Haverty describe one (1) suspect and make zero mention of any actor appearing to hand any object, let alone a gun, to Sanders.

30. On December 5, 2016, along the route said vehicle eluded law enforcement, Port Authority Police recovered a gun which was later confirmed through ballistics testing to be the weapon fired at All Star Café.

31. On or about December 6, 2016, video from All Star Café was recovered and taken into custody.

32. On or about December 19, 2016, a concerned citizen identified the shooter on the All Star Cafe video as "Big J" and, ultimately, Jason Sanders to EPD Detective Carmine Gianetta.

33. On or about December 20, 2016, EPD Sergeant Rodney Dorilus also identified the shooter on the video as Jason Sanders, who he knew from prior encounters.

34. On or about December 20, 2016, Colon conferred with Prosecutor Defendant Cronin regarding the investigation.

35. On or about December 21, 2016, EPD Officer Paul Tillotson created a "Wanted Person" flyer for Sanders to be arrested, and, in same, no mention of a second actor or suspect is mentioned, nor does anyone allege that anyone passed Sanders any object, let alone a gun.

36. On or about December 23, 2016, Cronin approved aggravated assault with a deadly weapon; unlawful possession of a weapon; possession of a weapon for an unlawful purpose; and certain possessions (prior convicted felon) not to possess weapons (handgun) against Sanders.

37. On December 30, 2016, Sanders was arrested on the aforementioned charges in Jersey City, New Jersey. Sanders was observed by an off-duty EPD officer who notified Jersey City Police Department.

B. Sanders Interrogation & Police Defendants Initial Concealment/Fabrication of Evidence

38. On or about December 30, 2016, Colon, with the assistance of Szpond, conducted a video interview of Sanders. According to Colon's supplemental investigation report summarizing the interview, Colon wrote that "Sanders also stated that the gun he (Sanders) used in the shooting was giving (sic) to him by Khaseem Greene." This marks the first time that Khaseem Greene's name was ever mentioned in the investigation.

39. At or near the conclusion of the very same interview, Sanders, who repeatedly lied

throughout his interview and admitted to same, is asked whether the information he provided regarding Plaintiff was true. Sanders told the police that he "lied," and the police, instead of following-up, told Sanders "you can recant at another time. Not tonight."

40. Upon information and belief, not a single member of EPD in a single report indicated that a person handed an object, let alone a gun, to Sanders, save Colon, who states same in his supplemental report only after interviewing Sanders.

41. On or about January 4, 2017, Colon conferred with Cronin regarding the status of the investigation and "advised her of the case [sic] new details." According to Colon's supplemental investigation report, Cronin approved bringing charges against Plaintiff "[a]fter reviewing the new details of the case[.]"

42. On or about January 4, 2017, Colon prepared a Complaint-Warrant (also known as NJ/CDR2) wherein Colon, with Cronin's approval and/or instruction, made two blatantly false statements to manufacture evidence to create probable cause against Plaintiff.

43. Specifically, Colon and/or Cronin knowingly and intentionally or with a reckless disregard for the truth stated that Plaintiff "was observed on surveillance video handing over a handgun" to Sanders, which is categorically false, and that Sanders "admit[ed] that [Plaintiff] handed him the handgun," which is also false because, in the very same statement the self-admitted liar and multi-convicted felon (Sanders), also admitted that he "lied" when he claimed Plaintiff handed him a gun. These two manufactured falsehoods and no other evidence were listed by Colon as his only basis to charge Plaintiff.

44. Notably, in his December 22, 2016, Affidavit of Probable Cause used to obtain a Complaint-Warrant against Sanders, Colon never once mentions either a second suspect and/or anyone handing Sanders a firearm.

45. On or about January 4, 2017, Colon purports to contact Elizabeth Municipal Court Administrator Margaret Gonzalez to approve an arrest warrant for Unlawful Possession of a Weapon against Plaintiff. The information conveyed by Colon to Gonzalez, and the manner (telephonically, in writing, visual demonstration of evidence) it was transmitted, remains unknown, as the Complaint-Warrant purportedly prepared by Colon and provided in criminal discovery possessed neither a probable cause determination nor a judicial signature, but did contain the two (2) fabricated, manufactured falsehoods elucidated above.

46. On or about January 5, 2017, Plaintiff responded to EPD with his attorney. Despite being advised that Greene would not be speaking and Plaintiff turning himself in with counsel present, Colon separated Plaintiff from his attorney and brought him into an interrogation room where Colon sought to take a statement from a represented person. This was done on video.

47. On or about January 31, 2017, Colon closed the case pending Grand Jury.

C. Colon and Prosecutor Defendants Present Manufactured, Fabricated Evidence to Grand Jury; Prosecutor Defendants Defame Plaintiff, Lying to Press; Plaintiff cut by Chiefs

48. On or about May 9, 2017, Kaiser, along with White and/or on White's orders, presented manufactured, fabricated evidence to the Grand Jury, to wit, the aforementioned two (2) lies described above, in order to obtain an indictment against Plaintiff. Because the Prosecutor Defendants presented information to the Grand Jury that was manufactured, fabricated and false, they, individually and/or in concert with Police Defendants, suborned perjury before the Grand Jury in order to obtain an indictment against Plaintiff.

49. During the Grand Jury presentment, Prosecutor Defendants neither played the surveillance video for the Grand Jury, nor did they play the Sanders video statement. Instead, they solicited the two (2) lies delineated in this complaint from Colon.

50. On May 9, 2017, NJ.com reported a story entitled "Khaseem Greene cut by Kansas City Chiefs after indictment in NJ shooting: What you should know". The article begins by stating that "Khaseem Greene's fourth—and likely final—opportunity in the NFL is over. The former Rutgers football star was waived by the Kansas City Chiefs on Tuesday, just hours after NJ.com reported he was indicted in connection with a shooting outside of a nightclub in his native Elizabeth." Plaintiff's former Coach Chet Parlevecchio told NJ Advance Media that he was "flabbergasted" to be informed of Plaintiff's indictment. Coach Parlevecchio went on: "He's one of the greatest kids I've ever coached. He was a leader and everything you wish for in a football player. He was someone who was never in trouble in high school. When he was there, he was a gentleman for us. Never any trouble. He did whatever it took on the field for us to be successful. Just a great kid, and this is news to me."

51. On May 10, 2017, the Kansas City Star, one of the Chiefs local newspapers, reported that "Chiefs waive Khaseem Greene after he's indicted on weapons charges".

52. On or about May 9 through May 11, 2017, numerous outlets, including ESPN, Bleacher Report, the Associated Press, Daily Mail, Chicago Tribune and other news outlets reported on Plaintiff's indictment, each reiterating the false, manufactured lies initiated by Police Defendants and perpetuated by Prosecutor Defendants.

53. On May 9, 2017, upon information and belief, Prosecutor's Office Communication Officer Spivey notified the press of Greene's indictment and conveyed the aforementioned two (2) defamatory statements (Plaintiff is observed on video handing a gun to Sanders and Sanders stated Greene handed same a gun).

54. On or about May 9, 2017, Plaintiff was contacted by Kansas City Chiefs personnel,

while Plaintiff was in Kansas City for Chiefs team workouts and instructed to return his playbook because he was being cut. Plaintiff learned from his agent that same day that Plaintiff was cut due to the indictment released earlier the same day.

55. On or about May 9, 2017, at approximately 6:04 p.m., the Chiefs "Tweeted" that "We have placed LB Khaseem Greene on waivers."

D. Plaintiff Retains New Counsel; Motions for a Probable Cause Hearing, Dismissal of the Indictment, Speedy Trial and to Compel the Production of Discovery are Immediately Filed on Behalf of Plaintiff

56. On or about May 19, 2017, Plaintiff retained Schiller McMahon LLC (the undersigned) to assume representation of Plaintiff in the criminal matter.

57. On or about May 22, 2017, Plaintiff was arraigned before the Honorable Robert Kirsch, J.S.C.

58. Between May 22, 2017 and June 5, 2017, counsel for Plaintiff was in contact with both Kaiser and White via telephone seeking immediate dismissal of the indictment due to the harm being inflicted upon the innocent Plaintiff, and the impending NFL training camp.

59. On or about June 2, 2017, at approximately 6:00 p.m. EST, Plaintiff's counsel, in the presence of Jordan B. Dascal, Esquire, received a telephone call from White, wherein White indicated that then-Acting Prosecutor Grace Park refused to dismiss the case, and was instead expending precious prosecutorial resources needlessly interviewing witnesses, reviewing jailhouse phone calls, and pressuring investigators to sustain the case all the while authorizing thousands of dollars in overtime.

60. Most important, White, when repeatedly challenged to state otherwise, and again in the

presence of Dascal, refused to state that the Government had the requisite probable cause required to proceed in a criminal prosecution, yet White, as Supervisor, proceeded with the prosecution for another six (6) weeks. This conversation lasted more than ¾ of an hour.

61. On or about June 5, 2017, Plaintiff, by and through counsel, filed a motion to dismiss due to government misconduct, or, in the alternative, for an emergent probable cause hearing due to violations of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, as well as Rule of Professional Conduct 3.8 (probable cause requirement).

62. On June 5, 2017, Plaintiff's counsel sent a letter to the Court and Prosecutor Defendants seeking dismissal due to Government misconduct and a lack of probable cause. Counsel further indicated that Plaintiff was cut by the Kansas City Chiefs due solely to the fraudulently obtained indictment, which was obtained based upon manufactured, fabricated evidence.

63. On or about June 21, 2017, Plaintiff, by and through counsel, filed a motion to suppress the unlawful arrest and seizure of Plaintiff's person.

64. On or about June 21, 2017, Plaintiff, by and through counsel, filed a motion to compel the production of discovery or, in the alternative, dismiss the indictment.

65. On or about June 21, 2017, counsel for Plaintiff sent a letter to the Court and Prosecutor Defendants again reiterating the Government misconduct then taking place and requesting an emergent testimonial hearing.

66. On or about June 23, 2017, Plaintiff, by and through counsel, filed a motion seeking an immediate Speedy Trial.

67. On or about June 26, 2017, counsel for Plaintiff sent the Court and Prosecutor Defendants a letter and certification delineating the outstanding discovery and, again, requesting immediate dismissal due to Government misconduct. Counsel also sought an immediate trial date

on behalf of Plaintiff, who, as a professional football player, was being harmed with each passing day wherein the charges remained in place because NFL training camp begins in August of each summer.

E. Prosecutor's Office Changes their "Theory of the Case", Ultimately Dismissing Indictment Against Plaintiff

68. On or about July 12, 2017, Union County Prosecutor's Office, Trial Supervisor Doreen Yanik, contacted Plaintiff's counsel and advised that the State no longer contended that Plaintiff possessed and/or passed Sanders any object, let alone a firearm. The State, in what could only serve to protect its own interests from civil liability, offered Plaintiff admission into the Pre-Trial Intervention ("PTI") diversionary program.

69. On or about July 15, 2017, Plaintiff declined the State's offer for PTI, due to actual innocence.

70. On or about July 17, 2017, the State, *ex parte* and without notice to Plaintiff's counsel, appeared before Judge Kirsch and sought, and were granted, an Order dismissing the indictment against Plaintiff.

71. On or about August 21, 2017, Plaintiff's counsel wrote a letter to Assistant Prosecutor John Esmerado, requesting that EPD and UCPO personnel involved in the investigation and prosecution of Plaintiff be investigated for any misconduct (administrative, criminal or otherwise) and be punished accordingly. As of the date of this filing, the status of any such investigation, and whether any discipline was meted out, remains unknown.

72. On or about April 11, 2018, Sanders pled guilty before the Honorable Robert Kirsch, Judge of the Superior Court of New Jersey, to aggravated assault (second-degree) and unlawful possession of a firearm (second-degree). Sanders is scheduled to be sentenced on June 8, 2018,

wherein he is expected to receive twelve (12) years in New Jersey State Prison for the aggravated assault (shooting) and a concurrent ten (10) years for the possessory gun offense.

73. Plaintiff was unlawfully arrested without probable cause and mistreated as described above due to his race, ethnicity, national origin, or other unlawful basis, and the illegal practices and policies engaged in by members of EPD.

74. As a result of the subject incident, the Plaintiff experienced mental anguish, mental and emotional suffering, embarrassment, shame, and humiliation, as well as damages to his constitutional rights due to the unreasonable seizure of his person.

ADDITIONAL FACTS SURROUNDING LIABILITY

75. Defendant EPD is the ultimate policymaking authority for all officially-adopted policies and procedures implemented by employees of Defendant EPD, including all Police Defendants. Further, it is the entity legally responsible for the hiring, retention, supervision, and training of employees of the EPD, as well as administering any discipline to said employees.

76. The EPD has a long-standing de-facto policy of unlawful stops, arrests and prosecutions attributable to race, ethnicity and/or national origin, as acknowledged by the fact that EPD entered into a Consent Decree wherein the EPD promoted multiple Hispanic and African-American police officers.

77. Defendant EPD has been placed on notice that there is a pervasive and systematic pattern, custom and practice within the EPD to unlawfully stop, search, and arrest.

78. False reports are rendered, and prosecutions are officially pursued against the victims of these unlawful stops, searches, arrests, and unconstitutional beatings and excessively forceful arrests.

79. The investigations into such allegations of unlawful stops, searches, arrests, and use of

excessive force are almost always a virtual whitewash, as EPD officers are rarely, if ever, punished for such conduct even when investigations reveal conduct that requires action to be undertaken against the officers(s) involved to prevent such civil rights and constitutional violations in the future.

80. Specifically, the notice to the EPD of the unconstitutional conduct of its officers and employees has occurred through notices of intent to sue, lawsuits, internal affairs investigations, and media reports, yet Defendant EPD fails to take any remedial action.

81. Thus, Defendant EPD is also on notice of the fact that a systemic and pervasive pattern and practice of unlawful stops, searches, arrests, and use of excessive force exist within the EPD and that members of the citizenry are the victims of these acts committed by EPD officers in violation of the Fourth, Fifth, Eighth and Fourteenth Amendments. Defendant EPD officers are allowed and indeed encouraged to commit these wrongful and unconstitutional acts with impunity knowing that no discipline, much less meaningful discipline, will follow for unlawful stops, searches, arrests, and acts of excessive force, false arrest and malicious prosecution. Such illegal conduct is ratified and condoned by Defendant EPD.

82. Police Defendants are comfortable in the knowledge that any unlawful stop, search, arrest, and act of excessive force, unlawful arrest, and malicious prosecution that they commit will not result in discipline by Defendant EPD even when the unlawful stop, search, arrest, and act of excessive force and/or unlawful arrest occurs. Thus, the lack of discipline for unlawful stops, searches, arrests, and acts of excessive force, unlawful arrests and malicious prosecution allowed Police Defendants to wrongfully stop, arrest and maliciously prosecute the Plaintiff because Police Defendants knew that there would be no official reprisals for their actions against Plaintiff.

83. Upon information and belief, the discovery phase of this litigation will further reveal

many other instances where Defendant EPD, by and through its officers and employees, has allowed, condoned, and encouraged a systemic, ratified, and sanctioned policy of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests, racial profiling and malicious prosecution, only to fail to discipline personnel for such actions, much less properly supervise and train to prevent further abuses.

CAUSES OF ACTION
COUNT ONE
VIOLATION OF 42 U.S.C. § 1983
(Civil Action for Deprivation of Rights)
(All Defendants)

84. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

85. At all times material, Plaintiff had the constitutional right to be free from the use of unlawful seizure, arrest and incarceration of his person.

86. The Defendants individually and as a group participated and conspired with one another, under color of state law, to deprive Plaintiff of his constitutional rights by, among other things:

a. falsely arresting Plaintiff without probable cause;
b. procuring, obtaining, manufacturing and/or fabricating evidence;
c. falsely imprisoning and/or detaining Plaintiff;
d. improperly denying Plaintiff's right to privacy;
e. denying Plaintiff his right to freedom of travel;
f. depriving Plaintiff of his right to due process;
g. depriving Plaintiff of his right to equal protection of the laws;
h. subjecting Plaintiff to involuntary servitude;
i. subjecting Plaintiff to cruel and unusual punishment.

87. Defendants while acting under color of law, did intentionally and unlawfully arrest and incarcerate Plaintiff without the requisite legal justification.

88. Defendants subjected Plaintiff to further indignities by filing a false report, false

affidavit and causing Plaintiff to be wrongfully detained and prosecuted; specifically, by knowingly, intentionally, and falsely claiming in their police reports and the affidavit for probable cause that (1) Plaintiff could be observed on video actually possessing and then transferring a handgun to one Jason Sanders, when, in fact, Plaintiff neither possessed any firearm nor did he transfer any firearm to Sanders or anyone else; and (2) that Sanders, during a statement to police, inculpated Plaintiff by claiming Plaintiff handed Sanders said firearm, when, in reality, Sanders advised Colon and others that he "lied" when he claimed Plaintiff handed Sanders a firearm, but Colon and others withheld same from both police reports and/or the affidavit for probable cause.

89. The above acts constitute a violation of the Civil Rights Act, 42 U.S.C. § 1983 for violation of one's civil and constitutional rights under color of state law.

90. As a proximate result of the aforesaid acts by Defendants, Plaintiff has been damaged and has suffered severe emotional injuries including mental distress and anguish.

COUNT TWO
VIOLATION OF 42 U.S.C. § 1981
(Violation of Equal Rights Under the Law)
(All Defendants)

91. Plaintiff re-alleges and re-avers each and every allegation set forth in in the preceding paragraphs as if set forth fully herein, and further states as follows:

92. The acts of the Defendants constitute a violation of the Civil Rights Act, 42 U.S.C. § 1981, as well as the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

93. The acts of the Defendants were motivated by racial, ethnic, national origin, and/or other unlawful animosity and/or by desire to injure, oppress and intimidate the Plaintiff because of his race, ethnicity, national origin, or other protected attribute.

94. As a proximate result of the above-mentioned acts, Plaintiff has suffered damages

including severe emotional distress and mental anguish as well as a deprivation of his rights under § 1981, as well as the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

COUNT THREE
VIOLATION OF 42 U.S.C. § 1985
(Conspiracy to Violate Civil Rights)
(All Defendants)

95. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

The acts of Defendants constitute a violation of the Civil Rights Act, 42 U.S.C. § 1985, namely a conspiracy to violate the civil rights of Plaintiff based on his race, ethnicity, national origin, or other unlawful basis.

96. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional distress and mental anguish as well as deprivation of rights under the Civil Rights laws.

COUNT FOUR
VIOLATION OF 42 U.S.C. § 1986
(Failure to Prevent Violations of Civil Rights)
(All Defendants)

97. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

98. The Defendants had knowledge of the discrimination/violation of constitutional rights perpetrated on Plaintiff and/or other minorities, including Plaintiff, but neglected and failed to prevent said wrongful and illegal acts when they had power to do so.

99. This neglect, aid and refusal to prevent or rectify is a violation of the Civil Rights Act, 42 U.S.C. § 1986.

100. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress and a deprivation of rights under the Civil Rights laws.

COUNT FIVE
VIOLATION OF 42 U.S.C. § 1983
(Negligent Screening, Hiring, Training, Supervising and Retention of Dangerous Discriminatory Employees)
(As to EPD and UCPO)

101. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

102. Defendants EPD and UCPO were negligent in screening, hiring, training, supervising, disciplining and/or retaining the Police and/or Prosecutor Defendants in this matter, who they knew or should have known were dangerous and/or acted in a racially discriminatory manner.

103. Defendants EPD and UCPO are liable for the aforesaid acts both under the doctrine of *respondeat superior* and because they permitted conditions to exist which facilitated and/or permitted such conduct to occur.

104. As a proximate result of the aforesaid conduct, Plaintiff has been damaged, including violation of his civil rights and has suffered severe mental anguish, emotional pain and suffering.

COUNT SIX
NEW JERSEY STATE CIVIL RIGHTS ACTION/STATE CONSITITUTIONAL CLAIM
(N.J.S.A. 10:6-1, *et seq.*)
(All Defendants)

105. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

106. The illegal, unconstitutional and discriminatory acts of the Defendants constituted acts of a *de facto* policy to discriminate, falsely arrest and maliciously prosecute Plaintiff. The actions of the Defendants aforesaid also represent a *de facto* policy to deny Plaintiff his right to travel, equal protection and privacy. All of these violations contravene Plaintiff's constitutional rights under the New Jersey State Constitution including, but not limited to, Article I, Section 1; Article I, Section 5; and Article I, Section 7; and the New Jersey Civil Rights Act (N.J.S.A. 10:6-2).

107. Each individual Defendant was acting at all times in furtherance of his employer.

108. As a proximate result of the aforesaid conduct, Plaintiff has been damaged, including violation of his civil rights and has suffered severe physical and emotional pain and suffering.

COUNT SEVEN
WILLFUL DISREGARD
(All Defendants)

109. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

110. The conduct of Defendants was outrageous, wanton and willful, in reckless indifference to the rights, safety, and interests of Plaintiff, and taken with conscious disregard of their duties and obligations.

111. Defendants acted with deliberate indifference to the rights of persons in their domain, including Plaintiff, violating Plaintiff's right to freedom from deprivation of liberty without due process of law in violation of the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act, 42 U.S.C. § 1986.

112. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress and a deprivation of rights under the Civil Rights laws.

COUNT EIGHT
ABUSE OF PROCESS
(All Defendants)

113. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

114. The Defendants made improper, illegal and perverted use of the legal process and their resort to the legal process was neither warranted nor authorized by law.

115. The Defendants had ulterior motives in initiating the legal process against Plaintiff by filing a criminal complaint against him.

116. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT NINE
FALSE ARREST AND IMPRISONMENT
(All Defendants)

117. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

118. The Defendants named herein wrongfully, unlawfully, maliciously, and without any lawfully sought and executed warrant or pretense of legal process, detained and confined Plaintiff.

119. Plaintiff's confinement was without proper legal authority or legal justification.

120. The actions of the Defendants subjecting Plaintiff to detention were deliberate, willful, malicious, wanton and unlawful.

121. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT TEN
MALICIOUS PROSECUTION/ CONSPIRACY TO COMMIT MALICIOUS PROSECUTION
(All Defendants)

122. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

123. The Defendants, individually and/or in concert, filed and/or conspired to file a criminal complaint against Plaintiff alleging a violation of N.J.S.A. 2C:39-5.

124. The aforestated criminal offense was thereafter dismissed by a neutral and detached magistrate.

125. No reasonable or probable cause existed for the Defendants to charge Plaintiff with said offense.

126. The Defendants were activated by malicious motives in prosecuting the charges lodged against Plaintiff.

127. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT ELEVEN
NEGLIGENCE
(All Defendants)

128. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

129. At all times relevant hereto, defendants owed a duty to Plaintiff to provide the standard of care that an ordinary prudent person would provide in similar circumstances.

130. Defendants breached their duties of care by fabricating and manufacturing evidence to bring about baseless criminal charges against Plaintiff.

131. As the direct and proximate cause of the defendants' negligence as stated above, Plaintiff has suffered severe emotional pain, suffering, anguish and distress.

132. The injuries Plaintiff has sustained are permanent in nature.

133. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT TWELVE
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(All Defendants)

134. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

135. Defendants acted intentionally or recklessly by their actions aforestated.

136. Defendants conduct was extreme in degree and outrageous in character as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

137. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT THIRTEEN
DEFAMATION
(UCPO; Spivey)

138. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

139. Defendants, individually or in concert, communicated to third parties other than Plaintiff a false and defamatory statement of fact concerning the Plaintiff with actual knowledge

that the statement was false or with reckless disregard of its truth or falsity, and Defendants did so with actual malice.

140. Defendants utterance of a slander constitute slander *per se*, since the utterances charge the commission of a crime.

141. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT FOURTEEN
VICARIOUS LIABILITY
(EPD; UCPO)

142. Plaintiff re-alleges and re-avers each and every allegation set forth in the preceding paragraphs as if set forth fully herein, and further states as follows:

143. A public employee is liable in damages to anyone suffering injury proximately caused by the execution or enforcement of any law and such acts are without reasonable good faith.

144. Defendant EPD is liable to Plaintiff by virtue of vicarious liability and/or *respondeat superior* for the wrongful acts of the Police Defendants.

145. Defendant UCPO is liable to Plaintiff by virtue of vicarious liability and/or *respondeat superior* for the wrongful acts of the Prosecutor Defendants.

146. At all times relevant hereto, Police and Prosecutor Defendants acted within the scope of their employment with Defendants EPD and UCPO.

147. Even if the wrongful acts of the Police and Prosecutor Defendants were committed while acting outside the scope of their employment, Defendants EPD and UCPO are liable, as EPD and UCPO intended the consequences, were negligent or reckless, the conduct violated a non-delegable duty of EPD and UCPO, or the Police and Prosecutor Defendants purported to act or to

speak on behalf of EPD and UCPO and there was a reliance upon apparent authority, or the Police and Prosecutor Defendants were aided in accomplishing the torts by the existence of the agency relation.

148. As a proximate result of the Police and Prosecutor Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

PRAYER FOR RELIEF

149. WHEREFORE, to redress the injuries proximately and directly caused by Defendants' conduct as stated in the preceding paragraphs above, and to prevent the substantial risk of irreparable injury to other persons in the City of Elizabeth as a result of the policies, customs, practices, and supervisory misconduct alleged herein, Plaintiff hereby request the following relief:

a. the issuance of an Order and Permanent Injunction ("Permanent Injunction") that:

i. appoints an independent monitor (the "Monitor"), to be determined by the Court, who shall oversee certain activities of the Elizabeth Police Department for a period of ten (10) years, and who shall report to the Court on an annual basis regarding Defendants' compliance or non-compliance with the terms of the Permanent Injunction;

ii. authorizes the Monitor to establish, review, and enforce all policies applicable to the management of the Elizabeth Police Department;

iii. provides the Monitor with the authority to hire, fire, and promote all Elizabeth Police officials, including the Chief of Police;

iv. establishes an independent citizen Police Review Committee, composed of three members selected by the Court, which shall review and hear publicly complaints of misconduct by Elizabeth residents against Elizabeth Police personnel and make recommendations to the Monitor as to discipline or innocence;

v. orders that the Elizabeth Police Department provide proper training, based on materials and plans approved by the Monitor, to all current and new personnel (the "Remedial Training") on the following matters:

1. the appropriate chain of command in criminal investigations;

2. the issuance of public statements relating to an open investigation;

3. the conduct of eyewitness identification procedures;

4. the standards for police reports, investigator's notes, and other reports of investigations, including the timely and truthful preparation of such documents; and

5. the standards for probable cause;

vi. orders the Elizabeth Police Department to implement a policy requiring Elizabeth Police personnel to present exculpatory evidence when testifying before a grand jury.

vii. requires the City of Elizabeth to pay all costs relating to the Monitor, Police Review Committee, and Remedial Training for the duration of the Permanent Injunction; and

b. damages in an amount to be established at trial as compensation for constitutional

deprivations; past and future economic loss, physical harm, emotional trauma, loss of privacy, and loss of reputation; loss of education; and expenses associated with defending against the criminal proceedings initiated and sustained by Defendants' unlawful conduct;

c. damages in an amount to be established at trial to punish Defendants for outrageous conduct pursued out of actual malice that recklessly and callously disregarded and was deliberately indifferent to Plaintiff' constitutional rights, to discourage them from engaging in similar conduct in the future, and to deter others similarly situated from engaging in similar misconduct;

d. an award of attorneys' fees, including attorneys' fees pursuant to 42 U.S.C. § 1988(b);

e. an award for reasonable and customary costs, expenses, and interest incurred in pursuit of this action; and

f. whatever additional relief the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable under the law.

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates the undersigned as trial counsel.

Respectfully submitted,

/s/ Joshua F. McMahon
Joshua F. McMahon
SCHILLER McMAHON LLC
123 South Avenue East, 2nd Fl.
Westfield, New Jersey 07090
Attorneys for Plaintiff

Dated: May 8, 2018

RESERVATION OF RIGHTS

Plaintiff reserves the right to file such specific amendments and/or additional claims as are applicable hereinafter to this section and/or as the same are subsequently discovered.

SCHILLER MCMAHON LLC
Attorneys for Plaintiff, Khaseem Greene

/s/ Joshua F. McMahon
By: _____
Joshua F. McMahon

Dated: May 8, 2018

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on May 8, 2018, we electronically filed the foregoing with the Clerk of the Court using CM/ECF. We also certify that the foregoing document will be served on all parties either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Joshua F. McMahon
By: _____
Joshua F. McMahon

Dated: May 8, 2018

CITY OF ELIZABETH, NEW JERSEY
DEPARTMENT OF LAW
City Hall
50 Winfield Scott Plaza
Elizabeth, New Jersey 07201-2462
Phone: (908) 820-4009 Fax (908) 352-8658

J. CHRISTIAN BOLLWAGE
Mayor

WILLIAM R. HOLZAPFEL
City Attorney

RAYMOND T. BOLANOWSKI
First Assistant City Attorney

ROBERT J. LENAHAN, JR.
Special Counsel

JORGE A. ESTRADA
Special Counsel

SAMANTHA J. CASTRELOS
Special Counsel

April 16, 2019

Karen Berenato
Qual-Lynx
100 Decadon Drive
Egg Harbor Township, NJ 08234-3821

RE: Tashona Hall
v. City of Elizabeth, et al.
Docket No.: UNN-L-1417-19
Our File No.: CA-7-2019

Dear Karen:

Regarding the above captioned matter, attached for your records please find a copy of a Summons, Complaint and Jury Demand which was filed with the Superior Court of New Jersey, Law Division, Union County, Docket No.: UNN-L-1417-19 and received in the Law Department on April 16, 2019

Our defense attorney, on behalf of the City of Elizabeth, Robert F. Varady, will receive same. Please note there no Notice of Claim filed.

Please handle accordingly. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

William R. Holzapfel
City Attorney

Encl.
WRH/mf
cc: James Cosgrove, Police Director
Robert F. Varady, Esq.

RECEIVED APR 17 2019 LAW DEPARTMENT

THE MAGLIONE FIRM, PC
Dean R. Maglione, Esq. 044761999
186 Clinton Avenue.
Newark, New Jersey 07108
(973) 645-0777
Attorney for Plaintiff, Tashona Hall

TASHONA HALL,

Plaintiff,

v.

CITY OF ELIZABETH; Dir. JAMES COSGROVE, Director of the Elizabeth Police Department; EDWARD J. BENENATI, JR.; OFFICER GAD (first name unknown); OFFICER AMBROISE (first name unknown); OFFICER M. COWAN (first name unknown); OFFICER MENESES (first name unknown); OFFICER ROES 1-10 (hitherto unidentified police officers); JOHN DOES 1-10 (hitherto unidentified individuals); JANE DOES 1-10 (hitherto unidentified individuals); and ABC COMPAINES 1-10 (hitherto unidentified entities),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
DOCKET NO: UNN-L-1417-19

Civil Action

SUMMONS

THE STATE OF NEW JERSEY TO THE DEFENDANT NAMED BELOW:

Dir. James Cosgrove
Elizabeth Police Department
1 Police Plaza
Elizabeth, NJ 07201

The plaintiff named above has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this Summons states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in

the county listed above within 35 days from the date you received this summons, not counting the date you received it. The address of the Deputy Clerk of the Superior Court of Union County, 2 Broad St, Elizabeth, New Jersey.

If the Complaint is in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court. A filing fee of $175.00 for Law Division cases or $175.00 for Chancery Division cases payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and service a written answer or motion (with fee and completed Case Information Statement) if you want the Court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the Court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

DATED: April 16, 2019

Name of Defendant to be served: **SAME AS ABOVE**

Address for Service: **SAME AS ABOVE**

/s/ Michelle M. Smith
Clerk of the Superior Court

THE MAGLIONE FIRM, PC
M. Anthony Barsimanto, Esq. 047562011
186 Clinton Avenue
Newark, New Jersey 07108
(973) 645-0777
Attorney for Plaintiff

TASHONA HALL, Plaintiff, v. CITY OF ELIZABETH; Dir. JAMES COSGROVE, Director of the Elizabeth Police Department; EDWARD J. BENENATI, JR.; OFFICER GAD (first name unknown); OFFICER AMBROISE (first name unknown); OFFICER M. COWAN (first name unknown); OFFICER MENESES (first name unknown); OFFICER ROES 1-10 (hitherto unidentified police officers); JOHN DOES 1-10 (hitherto unidentified individuals); JANE DOES 1-10 (hitherto unidentified individuals); and ABC COMPAINES 1-10 (hitherto unidentified entities), Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO: *Civil Action* **COMPLAINT, DEMAND FOR DISCOVERY, AND DEMAND FOR TRIAL BY JURY**

Plaintiff TASHONA HALL, residing at 134 Sheerer Avenue, City of Newark, County of Essex, State of New Jersey, by and through her undersigned attorneys, hereby complains:

PARTIES

1. Defendant CITY OF ELIZABETH is a municipal corporation and a political subdivision of the State of New Jersey.

2. Defendants EDWARD J. BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name

unknown), and OFFICER MENESES (first name unknown), were employed as police officers by Defendant CITY OF ELIZABETH in its Elizabeth Police Department.

3. Defendants OFFICER ROES 1-10 were employed as police officers by Defendant CITY OF ELIZABETH in its Elizabeth Police Department, and were involved in the incident on May 12, 2017 as described below.

4. Defendant Dir. JAMES COSGROVE, was employed by Defendant CITY OF ELIZABETH as its Director of Police, and, as such, was responsible for supervision and oversight of the Elizabeth Police Department, including the development, promulgation, and implementation of policies, procedures and standards for the police department and more specifically policies, procedures and standards relating to vehicle pursuits, the use of force, arrest procedures, internal affairs investigations, discipline and overall conduct of police officers.

5. Defendants JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10 were unknown persons who ordered, authorized, instigated, shared, abetted, or joined in the actions of Defendants CITY OF ELIZABETH, Dir. JAMES COSGROVE, and EDWARD J. BENENATI, JR., as complained of herein, or who knowingly or negligently failed to prevent or correct the actions of said Defendants when they had the power or authority to do so, or who are otherwise liable for the damages complained of herein.

FACTS COMMON TO ALL COUNTS

6. The Plaintiffs incorporate herein the allegations of all preceding paragraphs of this Complaint.

7. On or about May 12, 2017, Plaintiff TASHONA HALL was working at Trinitas Hospital, when her brother called her and advised her that her daughter had been shot, and asked her to come to the emergency room at Trinitas Hospital.

8. After seeing her daughter's gunshot wound, Plaintiff TASHONA HALL asked a nurse why nothing was being done for her wounded daughter.

9. A nurse then asked either Defendant EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 to make Plaintiff TASHONA HALL leave.

10. Defendant EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and/or OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 grabbed Plaintiff TASHONA HALL's arm.

11. Soon thereafter, Defendant EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 grabbed Plaintiff TASHONA HALL's arm again, ripping off the whole sleeve of her jean jacket and wrestling her to the floor.

12. Defendant Defendant EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name

unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 together held Plaintiff TASHONA HALL to the floor, while the first of them to have grabbed her pulled at her hair, prompting her to scream and to plead with him to stop.

13. The said Defendant officer(s) kept pulling and ripped out a mass of Plaintiff TASHONA HALL's hair.

COUNT ONE:
Officers' liability under the New Jersey Civil Rights Act: Excessive force

14. The Plaintiffs incorporate herein the allegations of all preceding paragraphs of this Complaint.

15. Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers") used excessive force in effecting the detention and/or arrest of Plaintiff TASHONA HALL, in an amount out of proportion to the amount which a reasonable officer would have used under similar circumstances, as known to the said Defendant Officers at the time.

16. The said use of excessive force by Defendant EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10, as described above, was carried out under color of law, and deprived Plaintiff TASHONA HALL of her liberty and constituted an unreasonable seizure of her person, in violation of Article I, Sections 1 and 7 of the Constitution of the State of New Jersey.

17. As a direct, foreseeable, and proximate result of the Defendant Officers' unconstitutional use of excessive force, as aforesaid, Plaintiff TASHONA HALL sustained severe bodily injury, pain and suffering, disability, loss of enjoyment, and medical expenses, and will continue to endure pain, suffering, disability, and loss of enjoyment, and will incur future medical expenses.

WHEREFORE Plaintiff TASHONA HALL, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, demands judgment against Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), OFFICER ROES 1-10, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10 jointly and severally, awarding compensatory damages, punitive damages, attorneys' fees, costs of suit, and such other relief as the Court may find equitable and just.

COUNT TWO:
Officers' liability under the New Jersey Civil Rights Act: Unlawful detention

18. The Plaintiffs incorporate herein the allegations of all preceding paragraphs of this Complaint.

19. Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers") detained Plaintiff TASHONA HALL in circumstances under which a reasonable person in her place would have believed that she was not free to end the encounter, when the said Defendant Officers had no reasonable basis to believe that she committed a crime or was about to commit a crime, and/or they detained her for a

disproportionate length of time without yielding information that would have been probable cause to arrest her.

20. The said detention of Plaintiff TASHONA HALL by Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers"), as described above, was carried out under color of law, and deprived Plaintiff TASHONA HALL of her liberty and constituted an unreasonable seizure of her person, in violation of Article I, Sections 1 and 7 of the Constitution of the State of New Jersey.

21. As a direct, foreseeable, and proximate result of the Defendant Officers' unconstitutional detention of the Plaintiff, as aforesaid, Plaintiff TASHONA HALL sustained serious inconvenience, embarrassment, loss of reputation, severe bodily injury, pain and suffering, disability, loss of enjoyment, and medical expenses, and will continue to endure pain, suffering, disability, and loss of enjoyment, and will incur future medical expenses.

WHEREFORE Plaintiff TASHONA HALL, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, demands judgment against Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), OFFICER ROES 1-10, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10 jointly and severally, awarding compensatory damages, punitive damages, attorneys' fees, costs of suit, and such other relief as the Court may find equitable and just.

COUNT THREE:
Officers' liability under the New Jersey Civil Rights Act: Unlawful arrest

22. The Plaintiffs incorporate herein the allegations of all preceding paragraphs of this Complaint.

23. Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers") arrested Plaintiff TASHONA HALL without having probable cause to believe that she had committed or was committing any crime or misdemeanor.

24. The said arrest of Plaintiff TASHONA HALL by Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers"), as described above, was carried out under color of law, and deprived Plaintiff TASHONA HALL of her liberty and constituted an unreasonable seizure of her person, in violation of Article I, Sections 1 and 7 of the Constitution of the State of New Jersey.

25. As a direct, foreseeable, and proximate result of the Defendant Officers' unconstitutional arrest of the Plaintiff, as aforesaid, Plaintiff TASHONA HALL sustained serious inconvenience, embarrassment, loss of reputation, severe bodily injury, pain and suffering, disability, loss of enjoyment, and medical expenses, and will continue to endure pain, suffering, disability, and loss of enjoyment, and will incur future medical expenses.

WHEREFORE Plaintiff TASHONA HALL, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, demands judgment against Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M.

COWAN (first name unknown), OFFICER MENESES (first name unknown), OFFICER ROES 1-10, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10 jointly and severally, awarding compensatory damages, punitive damages, attorneys' fees, costs of suit, and such other relief as the Court may find equitable and just.

COUNT FOUR:
Officers' liability under the New Jersey Civil Rights Act: Malicious prosecution

26. The Plaintiffs incorporate herein the allegations of all preceding paragraphs of this Complaint.

27. Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers") initiated criminal proceedings against Plaintiff TASHONA HALL for violations of N.J.S.A. 2C:33-2A(1) and N.J.S.A. 2C:29-2(a) without having probable cause to believe that she had committed either offense.

28. The criminal proceedings against Plaintiff TASHONA HALL for the said offenses ended with dismissal of all charges.

29. In initiating the said criminal proceedings against TASHONA HALL, Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers"), acted maliciously or for a purpose other than bringing her to justice.

30. As a consequence of the proceeding thus maliciously initiated by Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES

(first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers"), Plaintiff TASHONA HALL suffered a significant deprivation of her liberty, in violation of Article I, Sections 1 and 7 of the Constitution of the State of New Jersey.

31. As a direct, foreseeable, and proximate result of the Defendant Officers' unconstitutional malicious prosecution of the Plaintiff, as aforesaid, Plaintiff TASHONA HALL sustained serious inconvenience, embarrassment, loss of reputation, severe bodily injury, pain and suffering, disability, loss of enjoyment, and medical expenses, and will continue to endure pain, suffering, disability, and loss of enjoyment, and will incur future medical expenses.

WHEREFORE Plaintiff TASHONA HALL, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, demands judgment against Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), OFFICER ROES 1-10, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10 jointly and severally, awarding compensatory damages, punitive damages, attorneys' fees, costs of suit, and such other relief as the Court may find equitable and just.

COUNT FIVE:
Officers' liability under the New Jersey Civil Rights Act: Failure to intervene

32. The Plaintiffs incorporate herein the allegations of all preceding paragraphs of this Complaint.

33. Plaintiff TASHONA HALL's civil rights under Article I, Sections 1 and 7 of the Constitution of the State of New Jersey were violated by the use of excessive force by Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name

unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers"), as described above.

34. Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers") had a duty to intervene to prevent the use of excessive force by a fellow officer.

35. Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers") had a reasonable opportunity to intervene when some or all of the said Defendant Officers were engaged in the use of excessive force against the person of Plaintiff TASHONA HALL.

36. Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and/or OFFICER ROES 1-10 ("the Defendant Officers") failed to intervene.

37. As a direct, foreseeable, and proximate result of the Defendant Officers' unconstitutional use of excessive force, and/or their failure to intervene to prevent same, as aforesaid, Plaintiff TASHONA HALL sustained severe bodily injury, pain and suffering, disability, loss of enjoyment, medical expenses, and legal expenses, and will continue to endure pain, suffering, disability, and loss of enjoyment, and will incur future medical expenses.

WHEREFORE Plaintiff TASHONA HALL, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, demands judgment against Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), OFFICER ROES 1-10, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10 jointly and severally, awarding compensatory damages, punitive damages, attorneys' fees, costs of suit, and such other relief as the Court may find equitable and just.

COUNT SIX:
City and its officials' liability under the New Jersey Civil Rights Act

38. The Plaintiffs incorporate herein the allegations of all preceding paragraphs of this Complaint.

39. The unconstitutional deprivations of the liberty and seizures of Plaintiff TASHONA HALL by the Defendant Officers, as described in the preceding Counts of this Complaint, manifested a tacit policy, practice, and custom of the CITY OF ELIZABETH authorizing such seizures and deprivations, as evinced by the deliberate indifference of Defendants CITY OF ELIZABETH, Dir. JAMES COSGROVE, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10, insofar as they omitted to adequately supervise, discipline, and train Defendants EDWARD BENENATI, JR., OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), OFFICER MENESES (first name unknown), and OFFICER ROES 1-10, and other Elizabeth Police Officers in proper use of force, arrest procedures, investigation procedures, and/or procedures for initiating criminal proceedings, and failed to properly and fully investigate similar incidents in the past during said officers' employment.

40. This unconstitutional policy, practice, and custom, thus established, implemented, adopted, and accepted by Defendants CITY OF ELIZABETH, Dir. JAMES COSGROVE, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10, tacitly authorized and foreseeably encouraged and/or failed to deter the misconduct of the Defendant Officers as described at length in the preceding Counts of this Complaint, and was thus a substantial factor in causing same.

41. Thus, this unconstitutional policy, practice, and custom of Defendant CITY OF ELIZABETH, established, implemented, and/or accepted by Defendants CITY OF ELIZABETH, Dir. JAMES COSGROVE, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10, as described above, were substantial factors in causing the injuries to Plaintiff TASHONA HALL as described in the preceding Counts of this Complaint.

42. As a direct, foreseeable, and proximate result of the said unconstitutional policy, practice, and custom of Defendants CITY OF ELIZABETH, established, implemented, and accepted by Defendants Dir. JAMES COSGROVE, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10, as described above, Plaintiff TASHONA HALL sustained severe bodily injury, pain and suffering, disability, loss of enjoyment, medical expenses, and legal expenses, and will continue to endure pain, suffering, disability, and loss of enjoyment, and will incur future medical expenses.

WHEREFORE Plaintiff TASHONA HALL, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, demands judgment against CITY OF ELIZABETH, Dir. JAMES COSGROVE, JOHN DOES 1-10, JANE DOES 1-10, and ABC COMPANIES 1-10 jointly and severally,

awarding compensatory damages, punitive damages, attorneys' fees, costs of suit, and such other relief as the Court may find equitable and just.

JURY DEMAND

The Plaintiffs hereby demand a trial by jury as to all issues herein so triable, pursuant to R. 4:35-1.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:18-4, Dean R. Maglione, Esq., is hereby designated as trial counsel in the above captioned matter for the firm of The Law Offices of Dean R. Maglione, attorneys for the plaintiff.

DEMAND FOR ANSWERS TO INTERROGATORIES

Pursuant to Rule 4:17-1, the plaintiffs hereby demand answers to Uniform Interrogatories Form C & C(2) Personal Injury Interrogatories and any attached supplemental interrogatories from all defendants within the time prescribed by the Rules of the Court.

CERTIFICATION

Pursuant to R. 4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other Court or of a pending arbitration proceeding to the best of my knowledge, information and belief. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action.

In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an Amended Certification if there is a change in the facts stated in this original Certification.

I hereby certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: April 15, 2019

M. Anthony Barsimanto, Esq.
Attorney for the Plaintiff

REQUEST FOR DOCUMENTS

Pursuant to Rule 4:18-1, the plaintiff hereby demands that the defendant produce the following documentation within thirty (30) days as prescribed by the Rules of Court. Additionally, please be advised that the following requests are ongoing and continuing in nature and the defendant is therefore required to continuously update its responses thereto as new information or documentation comes into existence.

1. The amounts of any and all insurance coverage covering the defendant, including but not limited to, primary insurance policies, secondary insurance policies and/or umbrella insurance policies. For each such policy of insurance, supply a copy of the declaration page there from.

2. Copies of any and all documentation or reports, including but not limited to, police reports, accident reports and/or incident reports concerning the happening of the incident in question or any subsequent investigation of same.

3. Copies or duplicates of any and all photographs, motion pictures, videotapes, films, drawings, diagrams, sketches or other reproductions, descriptions or accounts concerning the individuals involved in the incident in question, the property damage sustained, the accident scene, or anything else relevant to the incident in question.

4. Copies of any and all signed or unsigned statements, documents, communications, and/or transmissions, whether in writing, made orally or otherwise recorded by any mechanical or electronic means, made by any party to this action, any witness, or any other individual, businesses, corporation, investigative authority or other entity concerning anything relevant to the incident in question.

5. Copies of any and all discovery received from any other parties to the action in question.

6. Copies of any and all evidence, reports, statements, photographs, audio or video recordings, or criminal discovery or investigative materials of any kind whatsoever, created or obtained in connection with Complaint - Summons No. 2004-S-2017-001599, or otherwise in connection with charges against Tashona Hall arising from any alleged offense on or about May 12, 2017 or with charges brought by Edward J. Benenati, Jr against her.

7. Any document which identifies the officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place.

8. Copies of any and all medical information and/or documentation concerning the plaintiff in this matter whether it concerns any medical condition or treatment which took place before, during or after the time of the incident in question.

9. Copies of any and all records of any type subpoenaed by the defendant or received from any other source concerning the plaintiff or the incident in question.

10. Copies of the complete personnel records of Defendants EDWARD BENENATI, JR. OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and OFFICER MENESES (first name unknown), and of all officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place.

11. Copies of the complete academy and/or other training records of Defendants EDWARD BENENATI, JR. OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and OFFICER MENESES (first name unknown), and of all officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place.

12. Copies of all policies and procedures of CITY OF ELIZABETH that address, to any degree, (1) use of force; (2) investigative stops; (3) arrests; (4) criminal complaint procedures.

13. Copies of any and all Internal Affairs investigations pertaining to Defendants EDWARD BENENATI, JR. OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and OFFICER MENESES (first name unknown), and to all officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place, including but not limited to all documents, photographs, and audio or video recordings, for the duration of their employment with CITY OF ELIZABETH.

14. A complete copy of all Internal Affairs investigations conducted by CITY OF ELIZABETH in connection with the detention, arrest, and/or prosecution of Tashona Hall on or about May 12, 2017.

15. Copies of any and all Internal Affairs investigations conducted by the CITY OF ELIZABETH pertaining to instances where *any* officers were investigated in connection with alleged or suspected excessive force, wrongful detention, wrongful arrest, or wrongful prosecution, regardless of the outcome of the investigations, for incidents occurring in the time period of May 12, 2012 until May 12, 2017.

16. All Investigations of Personnel and/or "CAPS" initiated by any supervisor or unit within the Elizabeth Police Department pertaining to alleged or suspected violations by Defendant EDWARD BENENATI, JR. and all other officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place.

17. The concise disciplinary history as maintained by the Elizabeth Police Department in IA Pro or any other indexing system of Defendants EDWARD BENENATI, JR. OFFICER

GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and OFFICER MENESES (first name unknown), and all other officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place, for the entirety of each of their employment with the Elizabeth Police Department.

18. Copies of all dispatch recordings of communications to or from Defendants EDWARD BENENATI, JR. OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and OFFICER MENESES (first name unknown), or any other other officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place, that occurred in connection with the investigation, detention, and/or arrest of Tashona Hall.

19. A complete list of the phone numbers and providers of any cell phone owned personally by Defendants EDWARD BENENATI, JR. OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and OFFICER MENESES (first name unknown), and all other officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place.

20. A complete list of the phone numbers and providers of any cell phone issued by CITY OF ELIZABETH to Defendants EDWARD BENENATI, JR. OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and OFFICER MENESES (first name unknown), and all other officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place.

21. Copies of all training materials utilized in the training of Defendants EDWARD BENENATI, JR. OFFICER GAD (first name unknown), OFFICER AMBROISE (first name unknown), OFFICER M. COWAN (first name unknown), and OFFICER MENESES (first name unknown), and all other officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place, in connection with (1) use of force; (2) investigative stops; (3) arrests; (4) criminal complaint procedures.

22. Copies of sign in/sign off sheets documenting any training on (1) use of force; (2) investigative stops; (3) arrests; (4) criminal complaint procedures received by Defendant EDWARD BENENATI, JR. and all other officers who were present at Trinitas Hospital on or about May 12, 2017 who witnessed and/or participated in the detention and/or arrest of Tashona Hall at that time and place

23. Copies of any and all lawsuits or notices of claim filed naming the City of Elizabeth or putting the City of Elizabeth on notice of alleged or suspected excessive force, wrongful detention, wrongful arrest, or wrongful prosecution, for incidents occurring in the time period of May 12, 2012 until May 12, 2017.

Civil Case Information Statement

Case Details: UNION | Civil Part Docket# L-001417-19

Case Caption: HALL TASHONA VS CITY OF ELIZABETH
Case Initiation Date: 04/15/2019
Attorney Name: DEAN R MAGLIONE
Firm Name: THE MAGLIONE FIRM PC
Address: 186 CLINTON AVENUE
NEWARK NJ 07108
Phone:
Name of Party: PLAINTIFF : Hall, Tashona
Name of Defendant's Primary Insurance Company (if known): Unknown

Case Type: CIVIL RIGHTS
Document Type: Complaint with Jury Demand
Jury Demand: YES - 6 JURORS
Hurricane Sandy related? NO
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

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? YES

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

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)

04/15/2019
Dated

/s/ DEAN R MAGLIONE
Signed

UNION COUNTY SUPERIOR COURT
2 BROAD STREET
CIVIL DIVISION
ELIZABETH NJ 07207

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (908) 787-1650
COURT HOURS 8:30 AM - 4:30 PM

DATE: APRIL 15, 2019
RE: HALL TASHONA VS CITY OF ELIZABETH
DOCKET: UNN L -001417 19

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 3.

DISCOVERY IS 450 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON ROBERT J. MEGA

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002 AT: (908) 787-1650.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: DEAN R. MAGLIONE
THE MAGLIONE FIRM PC
186 CLINTON AVENUE
NEWARK NJ 07108

ECOURTS

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Devin Jefferson
(Enter above the full name of the plaintiff in this action)

v.

Elizabeth Police Department
officer George Kius (L841)
F. Banos (B726)

(Enter above the full name of the defendant or defendants in this action)

COMPLAINT

Civil Action No. _____
(To be supplied by the Clerk of the Court)

INSTRUCTIONS -- READ CAREFULLY

1. This complaint must be legibly handwritten or typewritten, signed by the plaintiff and subscribed to under penalty of perjury as being true and correct. All questions must be answered concisely in the proper space on the form. Where more space is needed to answer any question, attach a separate sheet.

2. In accordance with Rule 8 of the Federal Rules of Civil Procedure, the complaint should contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short plain statement of the claim showing that you are entitled to relief, and (3) a demand for judgment for the relief which you seek.

3. You must provide the full name of each defendant or defendants and where they can be found.

4. You must send the original and one copy of the complaint to the Clerk of the District Court. You must also send one additional copy of the complaint for each defendant to the Clerk. Do not send the complaint directly to the defendants.

5. Upon receipt of a fee of $350.00, your complaint will be filed. You will be responsible for service of a separate summons and copy of the complaint on each defendant. See Rule 4, Federal Rule of Civil Procedure.

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

6. If you cannot prepay the $350.00 filing fee, you may request permission to proceed in forma pauperis in accordance with the procedures set forth in the application to proceed in forma pauperis. See 28 U.S.C. § 1915. **(If there is more than one plaintiff, each plaintiff must separately request permission to proceed in forma pauperis.)**

7. If you are given permission to proceed in forma pauperis, the Clerk will prepare and issue a copy of the summons for each defendant. The copies of summonses and the copies of the complaint which you have submitted will be forwarded by the Clerk to the United States Marshal, who is responsible for service. The Marshal has USM-285 forms you must complete so that the Marshal can locate and serve each defendant. If the forms are sent to you, you must complete them in full and return the forms to the Marshal.

QUESTIONS TO BE ANSWERED

1a. Jurisdiction is asserted pursuant to (CHECK ONE)

√ 42 U.S.C. § 1983 (applies to state prisoners)

____ Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) and 28 U.S.C. § 1331 (applies to federal prisoners)

If you want to assert jurisdiction under different or additional statutes, list these below:

_____

1b. Indicate whether you are a prisoner or other confined person as follows:

____ Pretrial detainee
____ Civilly-committed detainee
____ Immigration detainee
√ Convicted and sentenced state prisoner
____ Convicted and sentenced federal prisoner
____ Other: (please explain) _____.

2. Previously Dismissed Federal Civil Actions or Appeals

If you are proceeding in forma pauperis, list each civil action or appeal you have brought in a federal court while you were incarcerated or detained in any facility, that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted. Please note that a prisoner who has on three or more prior occasions, while detained in any facility, brought an action or appeal in a federal court that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted, will be denied in forma pauperis status unless that prisoner is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

a. Parties to previous lawsuit:

Plaintiff(s): _____

_____

Defendant(s): _____

_____

b. Court and docket number: _____

a. Grounds for dismissal: ( ) frivolous ( ) malicious ( ) failure to state a claim upon which relief may be granted

d. Approximate date of filing lawsuit: _____

e. Approximate date of disposition: _____

If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on separate sheets.

3. Place of Present Confinement? Southern State Correctional Facility
4295 R.T. 47
Delmont, N.J. 08314

4. Parties

(In item (a) below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

a. Name of plaintiff: Devin Jefferson

Address: S.S.C.F. 4295 R.T. 47

Delmont, N.J. 08314

Inmate #: SBI # 310560C State Inmate # 923958

b. First defendant – name: George Hias

Official position: Police officer

Place of employment: Elizabeth Police Department
1 Police Plaza
Elizabeth, N.J. 07201

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

How is this person involved in the case?
(i.e., what are you alleging that this person did or did not do that violated your constitutional rights?)

During a traffic stop I did not pull over for the officer on same night 1/15/14 I was fired upon by officer George bias for No Reason

c. Second defendant -- name: _____

Official position: _____

Place of employment: _____

How is this person involved in the case?
(i.e., what are you alleging that this person did or did not do that violated your constitutional rights?)

d. If there are more than two defendants, attach a separate sheet. For each defendant specify: (1) name, (2) official position, (3) place of employment, and (4) involvement of the defendant.

5. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in the Statement of Claims on page 6.

___ Yes X No

If your answer is "Yes," briefly describe the steps taken, including how relief was sought, from whom you sought relief, and the results.

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

If your answer is "No," briefly explain why administrative remedies were not exhausted.

I tryed to get the proper papers to file but I was locked up on 1/17/14 and placed in Unions Countys Jail on Medical do to the arm injourey I indored when I finally arrived to the State facility I was able to obtain the papers to file

6. Statement of Claims

(State here as briefly as possible the facts of your case. Describe how each defendant violated your rights, giving dates and places. If you do not specify how each defendant violated your rights and the date(s) and place of the violations, your complaint may be dismissed. Include also the names of other persons who are involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach a separate sheet if necessary.)

On 1/15/14 I was involved in a Eluding car chase when officers made an atempt to pull me over and block me in I hit a fire Hydren on Jefferson and Mary in Elizabeth N.J. upon me hitting the Hydren I went to put my truck in Reverse to look at the damage upon doing so I was Shot by officer George bias through my drivers side window For NO Reason after Realizing I was Shot I than drove off and went to Umd Hospital to get treated for the gun shot wound

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

7. Relief

(State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.)

I would like the Court to get Relief on the matter Concerning me & for the pain and Suffering caused by officer George hias who shot me in my arm which caused me. to have servere Nurve and tissue damage and also a metal plate and a bone graft done because of the bone that was shatted out of my arm caused by the gun Shot wound.

8. Do you request a jury or non-jury trial? (Check only one)

(✓) Jury Trial ( ) Non-Jury Trial

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 4 day of Febuary, 2015.

Derin Jefferson
Signature of plaintiff[1]

[1] EACH PLAINTIFF NAMED IN THE COMPLAINT MUST SIGN THE COMPLAINT HERE. ADD ADDITIONAL LINES IF THERE IS MORE THAN ONE PLAINTIFF. REMEMBER, EACH PLAINTIFF MUST SIGN THE COMPLAINT.

Brian S. Schiller, Esq. – NJAID 024722009
Schiller McMahon LLC
123 South Avenue East
Second Floor
Westfield, New Jersey 07090
P: (908) 233-4840
F: (908) 935-0822
Attorneys for Plaintiff, Todd Kelly

RECEIVED
AUG 15 2016
LAW DEPARTMENT
RECEIVED
Superior Court of New Jersey
AUG 12 2016
CIVIL CASE MANAGEMENT
UNION COUNTY

TODD KELLY, Plaintiff, v. J. CHRISTIAN BOLLWAGE, JAMES COSGROVE, CITY OF ELIZABETH, ELIZABETH POLICE DEPARTMENT, PATRICK SHANNON, TYRONE TORNER, AND JOHN DOES 1 THROUGH 10, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO.: Civil Action **COMPLAINT**

Plaintiff, Todd Kelly, by and through his attorneys, Schiller McMahon, upon information and belief, by way of Complaint against the noted Defendants, alleges as follows:

Jurisdiction and Venue

1. This is an action in a case of actual controversy and is brought pursuant to the *Rules Governing the Courts of the State of New Jersey*. Venue is proper in Union County pursuant to *Rule* 4:2-3 of the *Rules Governing the Courts of the State of New Jersey* inasmuch as the claims arose in said County.

The Parties

2. At all times relevant hereto, Todd Kelly ("Plaintiff") was an employee of the City of Elizabeth and Elizabeth Police Department.

3. At all relevant times hereto, Defendant, City of Elizabeth ("City"), was a municipality duly organized and existing under the laws of the state of New Jersey.

4. At all times relevant hereto, Defendant, Elizabeth Police Department ("Department"), was a municipal subdivision and arm of the City located at 1 Police Plaza, Elizabeth, NJ 07201.

5. Plaintiff is an employee of Defendants City and Department within the meaning of the Conscientious Employment Protection Act, *N.J.S.A.* 34:19-1 et seq. ("CEPA")

6. At all times relevant hereto, Defendant, J. Christian Bollwage ("Bollwage"), was employed by the City as Mayor of the City. He is sued in his individual and official capacity.

7. At all times relevant hereto, Defendant, James Cosgrove ("Cosgrove"), was employed by the City as Police Director for the Department. He is sued in his individual and official capacity.

8. At all times relevant hereto, Defendant, Patrick Shannon ("Shannon"), was employed by the City as Chief of Police for the Department. He is sued in his individual and official capacity.

9. At all times relevant hereto, Defendant, Tyrone Torner ("Torner"), was employed by the City as Deputy Chief for the Department. He is sued in his individual and official capacity.

10. At all times relevant hereto, Defendants Cosgrove, Bollwage, Shannon and Torner acted within the scope of their authority and employment as empowered by the City and Department, were members of upper management of the City and Department and held supervisory powers over Plaintiff within the meaning of CEPA.

11. At all times relevant herein, the City and Department, as employers, delegated upon Cosgrove, Bollwage, Shannon and Torner the authority to [a] execute and/or effect its employment policies promulgated to ensure a safe, productive, and or retaliation-free

workplace; [b] conduct, oversee and/or supervise departmental internal affairs investigations of members of the Department; [c] discipline and recommend or suggest the discipline of members of the Department; [d] make decisions and/or recommendations regarding the promotion of members of the Department.

12. At all times relevant hereto, Defendants John Does 1 through 10, being fictitious identities and representing unnamed agents, servants and employees of the City and Department, violated Plaintiff's rights and/or were a proximate cause or substantial factor of Plaintiff's damages. They are sued in their individual and official capacities.

13. The City is a Civil Service jurisdiction in that the operation of the Department including, *inter alia*, the operation of the Department, is governed by applicable Civil Service statutes and regulations.

Facts Common to All Counts

14. Plaintiff began his employment with the City and Department on July 24, 1996. Plaintiff's current position within the Department is Sergeant. Plaintiff has held the rank of Sergeant since February 21, 2005.

15. By way of background, Plaintiff was assigned to the Patrol Division ("Patrol") from the date that he graduated from the John H. Stamler Police Academy until February 1999. During his time in Patrol, and based on Plaintiff's performance, Plaintiff was chosen to work in plain clothes. Only selected officers were chosen to work in plain clothes and were tasked with proactive community policing. The officers selected for this assignment were known as committed and highly competent police officers who arrested dangerous criminals and wrote excellent reports. In February 1999, Plaintiff was assigned to a newly created division in the Department, the Community Services

Division ("Community Services"). He remained in Community Services until August 2000.

16. In August 2000, Plaintiff was assigned to the Street Crimes Unit ("Street Crimes"). He remained in Street Crimes until February 2005. Street Crimes was a proactive unit tasked with handling community level drug trafficking, robberies, burglaries and prostitution, focused on preventing further victimization in the most crime plagued areas of the City. Street Crimes was also a plain clothes unit. During that time, Plaintiff was temporarily assigned to the Union County Narcotics Strike Force ("NSF") to assist in three (3) wiretap investigations.

17. Plaintiff was promoted to the rank of Sergeant in February 2005 and was assigned to Patrol. In February 2006, Plaintiff was transferred to Community Services where he was made the supervisor of Street Crimes. In August 2008, Plaintiff was transferred to the Narcotics Division ("Narcotics") where he remained until being transferred back to Patrol in June 2014. Plaintiff was reassigned to Narcotics in November 2015. As of the date of this Complaint, Plaintiff remains assigned to Narcotics. Said reassignment to Narcotics, however, was never made official by way of a Special Order, which is customary when a transfer of assignment takes place. The message that this was intended to send was to threaten Plaintiff that his assignment could be changed at any time and for any reason.

18. In 2004, Plaintiff was named Union County Prosecutor's Office's Outstanding Municipal Police Officer of the Year. Plaintiff has been commended on two separate occasions by the City Council. Plaintiff has been recognized on two separate occasions for his accomplishments as a supervisor in vigorous narcotics enforcement from the New Jersey Narcotics Enforcement Officer's Association. Plaintiff received the Rotary Club Officer

of the Year Award in 2001. Throughout Plaintiff's career he has received seventy-nine (79) Police Commendations, including a Valor Award from the New Jersey State PBA and a Valor Award from the 200 Club of Union County. Throughout his career, Plaintiff has received numerous letters of appreciation from members of the Union County Prosecutor's Office for his preparation of cases and professional testimony at trials.

19. Plaintiff was also recognized by the late Union County Sheriff Ralph Froehlich for his display of strong leadership skills which proved instrumental in saving the life of a Union County Sheriff's Officer who was involved in a horrific accident in 2008.

20. In his twenty (20) year career, Plaintiff has personally made thousands of arrests and participated in thousands of investigations and arrests made by other officers in the Department. Plaintiff is well respected among his subordinates, peers and supervisors, as is shown by the assignments, duties and responsibilities he has been entrusted with throughout his career.

21. From March 2013 to September 2013, Plaintiff studied for the Civil Service Lieutenant Exam. In September 2013, Plaintiff took the Civil Service Lieutenant Exam. He ranked *first* out of all eligible Elizabeth Police Department Sergeants who sat for the exam. His score was also the *third highest* score in all of New Jersey.

22. Plaintiff sat for the Civil Service Lieutenant Exam in order to achieve higher rank within the Department. Some of the benefits of being promoted to Lieutenant include, but are not limited to, increased management responsibilities, increased financial benefits, and the opportunity to continue up the chain of command with future promotions.

23. After achieving the rank of Lieutenant, Plaintiff intended on sitting for the Civil Service Captain's Exam at the next available. As a result of the many unlawful, retaliatory actions set forth herein, Plaintiff has been deprived of that opportunity.

24. On February 6, 2014, a new list became active for the rank of Lieutenant (the "Active Lieutenant List"). Plaintiff ranked *first* on the Active Lieutenant List.

25. On February 6, 2014, there was one (1) vacancy for Lieutenant in the Department.

26. On or about the second week of March 2014, Plaintiff became aware of a potential misrepresentation and/or violation of a law, or a rule or regulation issued under the law in regards to promotions governed by Title 11A (the "Civil Service Act") and Title 4A of the New Jersey Administrative Code.

27. Specifically, Plaintiff learned that, as the Appointing Authority, Cosgrove submitted a request for certification to the Civil Service Commission ("CSC") on or about January 13, 2014 (the "Request for Certification"). The Request for Certification was to certify the next three eligible Sergeants in the Department - Jose A. Rodriguez ("Rodriguez"), Michael B. Niewinski ("Niewinski") and Lawrence Gioconda ("Gioconda") - from the Lieutenant list that, at the time, was set to expire February 2, 2016 (the "Expired List").

28. Cosgrove indicated on the Request for Certification that there were three (3) vacancies for the rank of Lieutenant.

29. At the time that the Request for Certification was made, the Department had twenty (20) active permanent Lieutenants. The Table of Organization ("T.O.") in effect at that time allowed for a total of twenty-one (21) Lieutenants. As such and contrary to Cosgrove's Request for Certification, there was only one (1) vacancy for the position of Lieutenant in

the Department. Thus, Cosgrove's January 13, 2014 certified statement was false and inaccurate.

30. At or around this same time, Plaintiff learned that it was Cosgrove's intention to promote Rodriguez, Niewinski and Gioconda to the rank of Lieutenant from the Expired Lieutenant List, through obtaining the Certification from the CSC, instead of using the Active Lieutenant List, in which the Plaintiff was ranked first.

31. Plaintiff then met with the Superior Officer's Association ("SOA") President Lieutenant Richard Shaughnessy ("Shaughnessy") to inform him that Cosgrove would violate Title 4A if he promoted Niewinski and/or Gioconda.

32. *N.J.A.C.* 4A:4-4.8b provides that "[T]he disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy."

33. On or about March 18, 2014, Shaughnessy met with Cosgrove and explained that the first two eligible officers for promotion to Lieutenant, Plaintiff and James Kearns ("Kearns"), from the Active Lieutenant List, would appeal the appointments of Niewinski and Gioconda pursuant to *N.J.A.C.* 4A:4-4.8b, should Cosgrove make such appointments.

34. At the meeting on or about March 18, 2014, Shaughnessy provided Cosgrove with a copy of Title 4A. He also made it clear to Cosgrove that Civil Service Laws disallowed the City from promoting any Sergeants from an Expired Lieutenant List where a vacancy did not exist during that list's active period.

35. Despite the law as aforestated, Cosgrove stated that he intended to promote Rodriguez, Niewinski and Gioconda from the Expired Lieutenant List.

36. On or about March 21, 2014, Shaughnessy met with Plaintiff and Kearns. At that meeting, Shaughnessy stated that he spoke to Bollwage about the upcoming promotions and the proposed appeal intended to be filed by Plaintiff and Kearns. Bollwage advised Shaughnessy to pass on a message to Plaintiff and Kearns. Bollwage's message was to make it clear to Plaintiff and Kearns that if they were to appeal the upcoming promotions of Niewinski and Gioconda, and such appeal results in the demotion of Rodriguez, Niewinski or Gioconda, that Bollwage will, in turn, "freeze" the Active Lieutenant List for three (3) years and demote Captains to fill the vacancies in the Lieutenant position(s). By "freezing" the Active Lieutenant List for three (3) years, Plaintiff would be required to re-take the Lieutenant's exam in 2016 in order to have the opportunity to be promoted to the rank of Lieutenant in 2017.

37. On or about March 31, 2014, Cosgrove issued Special Order #2060. Special Order #2060 stated that on April 1, 2014, Rodriguez, Niewinski and Gioconda would be promoted from the rank of Sergeant to Lieutenant.

38. On or about March 31, 2014, Deputy Chief Alexander Sofianakos issued Special Order #2061. Special Order #2061 transferred each of the newly promoted Lieutenants – Rodriguez, Niewinski and Gioconda - to their respective assignments and Lieutenant Robert Keily ("Keily") to Narcotics.

39. On April 1, 2014, Rodriguez, Niewinski and Gioconda were promoted to Lieutenant.

40. As of April 1, 2014 and pursuant to Special Order #2060, the Department employed twenty-two (22) permanent Lieutenants. This was one over the T.O., which allowed a

maximum of twenty-one (21) Lieutenants in the Department. As such, the promotion of Rodriguez filled the one and only genuine vacancy that existed during the active period of the Expired List.

41. The promotions of Niewinski and Gioconda violated *N.J.A.C.* 4A:4-4.8b. The promotion of Gioconda also violated the holding of *Reuter v. Fort Lee,* 167 *N.J.* 38 (2001), in which the Court held that "appointments and promotions to positions that do not exist by an ordinance with a sufficiently detailed, set table of organization will be invalidated."

42. From January 13, 2014, when Cosgrove's Request for Certification was made through April 1, 2014, the date of the promotions, no ordinance existed in the City or Department which increased the number of Lieutenants in the T.O. to twenty-two (22).

43. At the time of the promotions on April 1, 2014, Plaintiff was assigned to Narcotics as the lone supervisor in that unit. Plaintiff held the position of Narcotics Division Sergeant since August 2008. Throughout Plaintiff's tenure as a Narcotics Division Sergeant, he was never counseled for any supervisory problems and remained in that position while several different Captains were transferred in and out of Narcotics.

44. On or about April 18, 2014, Plaintiff, along with Kearns and Gerard McDonald ("McDonald"), filed a Notice of Appeal with the CSC in regards to the April 1, 2014 promotions of Niewinski and Gioconda to the rank of Lieutenant (the "Appeal"). The Appeal was filed through Plaintiff's attorney at the time, Bruce Leder, Esq. ("Leder").

45. The Appeal asserted that Cosgrove intentionally misled the CSC by claiming that there were three (3) vacancies for the rank of Lieutenant at the time of the Request for Certification on January 13, 2014. The Appeal also asserted that Cosgrove and Bollwage

knowingly and purposefully violated *N.J.A.C.* 4A:4-4.8b by promoting Niewinski and Gioconda. Further, the Appeal detailed the threats made by Bollwage to Plaintiff and Kearns and asserted that such threats clearly violated the declaration of policies provided in *Title* 11A:1-2e, which protects career public employees from political coercion.

46. *N.J.A.C.* 4A:10-2.4 states that it is a crime of the fourth degree for any person to purposefully or knowingly violate or conspire to violate any provision of *Title* 11A and *Title* 4A, *N.J.A.C.*

47. On or about May 16, 2014, as a result of the unlawful promotions of Niewinski and Gioconda, and on advice of counsel, Plaintiff, Kearns and McDonald filed a Verified Complaint in the Superior Court of New Jersey, Union County. The Verified Complaint named the City and Cosgrove as defendants. Leder represented Plaintiff in this action.

48. On or about May 21, 2014, Cosgrove was served with the Verified Complaint.

49. Less than twenty-four (24) hours later, on or about May 22, 2014, Cosgrove advised Shaughnessy to tell Plaintiff that Plaintiff was being transferred out of Narcotics and into Patrol, effective June 2, 2014.

50. On or about May 27, 2014, Shannon issued Special Order #2064 - Reassignment of Personnel. A total of eleven (11) police officers were included in Special Order #2064, including Plaintiff and McDonald, who were both transferred from an investigative assignment back to Patrol. An investigative assignment is considered a position outside of Patrol. Choice assignments typically include more desirable work hours, a take-home vehicle, the opportunity for overtime, and specialized training and enforcement duties.

51. Prior to the June 2, 2014 re-assignment, Plaintiff worked Tuesday through Friday from 8:00 AM to 6:00 PM in Narcotics. He wore plain clothes, he was assigned a work car to

take home and received a steady amount of monthly overtime. Upon being reassigned to Patrol, Plaintiff worked nights, four (4) days on and four (4) days off, from 8:15 PM to 7:15 AM. In Patrol, Plaintiff was required to be in full police uniform, his take home vehicle was taken away, and he received a very limited amount of monthly overtime. Plaintiff estimates the overtime reduction to have been approximately a 90% reduction.

52. Special Order #2064 assigned Plaintiff to the Patrol Division Alpha Platoon midnight shift. This re-assignment brought the total number of Sergeants on that shift to four (4). The Patrol Division Bravo Platoon midnight shift had a total of three (3) Sergeants.

53. Plaintiff was never provided an explanation from Cosgrove or Shannon as to why he was being transferred from Narcotics to Patrol.

54. In the beginning of September 2014, Plaintiff became aware that he was being investigated by the Internal Affairs Unit ("Internal Affairs") for allegedly violating the Department's Extra Duty Assignment rules and regulations. Specifically, Plaintiff was being investigated for allegedly leaving an assigned extra duty post early.

55. On or about September 29, 2014, Plaintiff was approached by Internal Affairs Sergeant Stephen Negrey ("Negrey"). Negrey advised Plaintiff that he just spent the past few hours sitting with Cosgrove watching video from the extra duty Elizabeth Housing Authority assignments that Plaintiff worked. Negrey further advised Plaintiff that the video proved that Plaintiff was at his designated assignment for the entire shift and that Plaintiff did not show up late nor did Plaintiff leave early.

56. Negrey, a veteran in Internal Affairs, advised Plaintiff that it was unheard of for the Police Director (Cosgrove) to take an active role in investigating a complaint, especially in light of the fact that Cosgrove served as the Hearing Officer for disciplinary

proceedings within the Department. Negrey also advised Plaintiff that Cosgrove was both verbally and visually disappointed that he did not catch Plaintiff leaving the Extra Duty Assignment early.

57. No explanation for diverting taxpayer resources, to wit, Negrey being diverted from his official public duties to a secret, retaliatory and baseless investigation, has ever been provided to Plaintiff.

58. With respect to Internal Affairs investigations, Department policy states that "the principal shall be notified in writing of the complaint as soon as possible, unless the nature of the investigation requires secrecy." The Internal Affairs Investigation was never made official to Plaintiff in accordance with Departmental policy.

59. On or about November 22, 2014, Plaintiff attended the New Jersey State P.B.A. Valor Awards Dinner, where he received a Valor Award for outstanding service along with Detective Richard Hernandez ("Hernandez"), Detective Raul Delaprida ("Delaprida"), Detective Jose Martinez ("Martinez") and Officer Leonardo Nunes ("Nunes").

60. The Valor Award, for which these officers were being honored, was for performing heroic acts above and beyond the call of duty during an investigation/arrest which they were involved in on April 18, 2014, during which there was a repeated exchange of gunfire.

61. In late April 2015, the Department distributed the annual list for Departmental Commendations (the "2015 Department Commendation List"). The Department Commendation List stated that the Department was giving a Valor Award to Hernandez, Delaprida, Martinez and Nunes for the April 18, 2014 investigation/arrest. Plaintiff was

not given the Valor Award by the Department and was given a lesser 1.0 Merit Award for the April 18, 2014 investigation/arrest. No explanation was ever given to Plaintiff.

62. On or about May 8, 2015, Plaintiff received a Valor Award from the 200 Club of Union County along with Hernandez, Delaprida, Martinez and Nunes for the April 18, 2014 investigation/arrest.

63. On or about January 21, 2015, Gioconda was transferred to the Patrol Division Alpha Midnight Platoon and became Plaintiff's immediate supervisor. At this time, Plaintiff's Appeal with the CSC was still pending. During his time as Plaintiff's supervisor, Gioconda did not acknowledge Plaintiff's presence and did not speak to Plaintiff. To say the least, this course of conduct did not advance the City and Department's goals of providing for the safety of the citizens of the City and the orderly operation of the Department, and it put officer safety in jeopardy.

64. On or about February 3, 2015, Shannon issued Special Order #2079 regarding 2015 Department Work Permits. The Order included a list of officers whose work permits were being denied for 2015 as a result of "a careful review of the attendance records." Plaintiff was one (1) of the forty-eight (48) officers in the Department named in Special Order #2079.

65. Shortly thereafter, Plaintiff learned that forty-three (43) additional Department officers, whose attendance record was worse than Plaintiff's attendance record, were not included in Special Order #2079.

66. Plaintiff submitted a private report requesting an appeal of the decision denying his 2015 work permit pursuant to Special Order #2079. Plaintiff also voiced his concern to Torner that he felt he was included on Special Order #2079 as retaliation for the Appeal he filed

concerning the unlawful promotions of Niewinski and Gioconda. Torner responded to Plaintiff that "it should be expected" and that Plaintiff's career was "dead in the water" for filing the Appeal.

67. On or about February 24, 2015, SOA President Sergeant Julian Hilongos ("Hilongos") went to Cosgrove to offer an appeal of Plaintiff's 2015 Work Permit denial. At that meeting, Cosgrove advised Hilongos that Plaintiff's name should not have been included on the list and that his inclusion on the list was a "mistake."

68. On or about February 25, 2015 Cosgrove advised Plaintiff that Shannon was responsible for putting Plaintiff's name on the 2015 Work Permit denial list, and not Cosgrove, thereby placing the blame on Shannon.

69. In or around February 2015, Plaintiff submitted requests for in-service training for six (6) patrol officers who he supervised. Plaintiff requested two separate schools for each officer. Along with those requests, Plaintiff requested to attend the FBI's Leadership & Ethics for Law Enforcement Supervisors School which was to be held May 11-14, 2015 at the Bergen County Police Academy. There was zero charge for this school for Union County Personnel, which included Plaintiff. At the time of the request, Plaintiff had been a Sergeant for 10 years with the Department and had yet to attend this school.

70. Following Plaintiff's February 2015 request, the six (6) patrol officers were each registered for one of the courses. Plaintiff never received an official response regarding his request to attend the FBI's Leadership & Ethics for Law Enforcement Supervisors School.

71. On or about March 1, 2015, Lieutenant Robert Brennan retired, creating one vacancy for the rank of Lieutenant in the Department.

72. On or about March 18, 2015, Plaintiff became aware that Gioconda had posted disturbing comments on his Facebook account which were detrimental to the unity and safety of Department personnel. Gioconda's Facebook posts were directed at Plaintiff and his Appeal of Gioconda's promotion. Among other things, Gioconda stated, referring to Plaintiff, that there was an "[E]nemy within our walls." Plaintiff submitted a private report that night which detailed safety and other concerns regarding Gioconda's comments.

73. On or about March 20, 2015, Plaintiff walked into the roll-call room at the beginning of his shift. Torner was present and stated, "Here comes the trouble maker." When Plaintiff asked what Torner meant by his comment, Torner advised Plaintiff that he saw Plaintiff's March 18, 2015, Private Report and forwarded it to Shannon. Torner also stated that Gioconda "did nothing wrong" in regards to Gioconda's comments on Facebook.

74. Gioconda remained on the Patrol Division Alpha Midnight Shift as Plaintiff's immediate supervisor for another month before Gioconda was transferred to the Patrol Division Bravo Platoon.

75. On or about April 16, 2015, Plaintiff learned that six (6) patrolmen were going to be promoted to Sergeant on April 30, 2015. At this time, there was one (1) vacancy for the rank of Lieutenant. Plaintiff spoke to Cosgrove in Cosgrove's office and explained that there was an opening for Lieutenant and requested Cosgrove to consider promoting Plaintiff to the rank of Lieutenant at the promotion ceremony on April 30, 2015.

76. During their conversation on or about April 16, 2015, Cosgrove advised Plaintiff that he could not promote Plaintiff because Plaintiff filed the Verified Complaint against the Department and Cosgrove "personally."

77. On or about April 20, 2015, Ray Bolanowski Esq., counsel to the City and Department, advised Leder "that the City would only consider Plaintiff's promotion to the open Lieutenant position if both the Civil Service and Superior Court Verified Complaint were withdrawn by Plaintiff."

78. Plaintiff did not agree to withdraw the Appeal and Verified Complaint.

79. Plaintiff was not promoted to the rank of Lieutenant on April 30, 2015.

80. On or about May 6, 2015, the CSC granted the Appeal. The decision stated that Gioconda's appointment from Sergeant to Lieutenant was rescinded.

81. On or about May 6, 2015, the Department rescinded Gioconda's appointment to Lieutenant and Gioconda returned to the rank of Sergeant. This created a second vacancy for the rank of Lieutenant at the Department.

82. On or about May 8, 2015, Plaintiff attended the 200 Club of Union County Annual Valor Awards Luncheon (the "200 Club Luncheon") with his family, where he received a Valor Award for his involvement in the April 18, 2014 investigation/arrest along with Hernandez, Delaprida, Martinez and Nunes. At the 200 Club Luncheon, Bollwage told Plaintiff's mother that he would "never promote" Plaintiff after Plaintiff went against the City by filing the Appeal.

83. After leaving the 200 Club Luncheon, Bollwage called Hilongos and told him that Plaintiff's mother asked Bollwage when Plaintiff would be promoted to Lieutenant and that Bollwage advised Plaintiff's mother that he never promotes right after a lawsuit.

84. On or about July 1, 2015 a third vacancy in the rank of Lieutenant at the Department occurred with the retirement of Lieutenant John Bastardo.

85. As of July 1, 2015, the Department had a full complement of Deputy Chiefs (3) and Captains (9). The Department was short at Lieutenant (18 with a T.O. of 21) and one (1) over on Sergeants (40 with a T.O. of 39).

86. Due to the shortage of Lieutenants, and instead of promoting eligible Sergeants, the Department was forced to pay Lieutenants overtime, thereby needlessly wasting taxpayer and public monies, to cover the Lieutenant position in Patrol. In doing so, the Department reassigned Shaughnessy from the Training Division to cover the Patrol Division day shift and alleviate the need to pay overtime. Eventually, Niewinski was transferred from Community Services to Patrol to further alleviate the Patrol Division's need for Lieutenants. Still, the re-assignment of Shaughnessy and transfer of Niewinski did not prevent the Department from having to needlessly pay other Lieutenants overtime.

87. On or about July 20, 2015, Cosgrove went further in his actions to ensure that Plaintiff was not promoted to the rank of Lieutenant. Specifically, Cosgrove sent a memo stating that "effective immediately, and until further notice, when a vacancy for a desk supervisor occurs between the hours of 5:00 pm and 8:15 pm, that position will be assumed by a Patrol Division Captain" (the "July 20, 2015 Memo").

88. The July 20, 2015 Memo and its directive flagrantly violated the collective bargaining agreement ("CBA") governing Patrol Lieutenant's assignments. The importance of filling the desk supervisor position was to properly provide for the safety of the citizens of the City and the orderly operation of the Department.

89. On or about September 3, 2015 the SOA filed a grievance with Cosgrove for violating the CBA in regards to desk Lieutenant overtime.

90. In less than one (1) week, on or about September 8, 2015, Cosgrove rescinded the July 20, 2015 Memo, due to the aforementioned grievance, and Lieutenants were paid overtime in order to fill vacant desk Lieutenant positions.

91. In or about the second week of September 2015, Hilongos and PBA President Richard Steinke ("Steinke") met with Bollwage to discuss the issues surrounding overtime and solutions to alleviate the Department from wasting money on paying Lieutenants overtime to fill the desk Lieutenant position.

92. At that meeting, Hilongos explained to Bollwage that the desk Lieutenant overtime issue could easily be resolved by promoting Lieutenants. Bollwage responded by stating that Plaintiff and others sued the City and that he can no longer go over the T.O. to make promotions like he has done in the past. Bollwage voiced his frustration to Hilongos and Steinke about not being able to make promotions over the T.O. Bollwage also stated to Hilongos and Steinke that he would not promote Plaintiff to make him pay the price for filing the Appeal and Verified Complaint.

93. Upon information and belief, as a result of not promoting Lieutenants, the City paid in excess of 700 hours (approximately $70,000) in overtime from March 1, 2015 through August 10, 2016 in order to fill the vacancies for desk Lieutenant in the Patrol Division.

94. On or about October 15, 2015, Plaintiff was asked by Captain William Pinho ("Pinho") if Plaintiff would be interested in being temporarily assigned to NSF for an investigation. Pinho advised Plaintiff that NSF needed an additional Elizabeth Police Supervisor and that Cosgrove agreed to let Plaintiff leave Patrol to assist Union County in the investigation.

95. On or about October 28, 2015, Plaintiff began his assignment with NSF. On that same date, Plaintiff encountered Torner in roll call. Torner advised Plaintiff that he heard Plaintiff would be leaving Patrol to assist NSF. When Plaintiff confirmed to Torner that he was being assigned to NSF, Torner responded that he could not believe the Director (Cosgrove) would let Plaintiff go there and reiterated that Plaintiff's career was over due to the Appeal and Verified Complaint.

96. On or about November 25, 2015, the investigation at NSF ended. At that time, Keily made a request of Cosgrove to allow Plaintiff to remain in the Narcotics Division. Cosgrove advised Keily that his request was approved.

97. On or about December 15, 2015, Plaintiff was walking down the hallway on the second floor of Department headquarters. When he passed Torner's office, Torner said, "Yo!" in an attempt to get Plaintiff's attention. Plaintiff stopped and turned around to address Torner, who had walked out of his office towards Plaintiff. Torner then stated in a loud and angry tone, "Can I fucking expect you back in Patrol before the Christmas holiday? Why the fuck aren't you back yet?" Plaintiff advised Torner that he goes where he is told and that he was told to stay in Narcotics for the time being. Plaintiff then walked away and Torner followed him. Torner then stated, "The fucking wire is over and you need to get back to Patrol."

98. On or about December 16, 2015, Torner approached Plaintiff and stated that Cosgrove told Torner "There aren't going to be any fucking promotions. Those guys sued me and I'm going to send a message that this is what happens when you sue the City so no one thinks about doing it in the future." Torner further advised Plaintiff that he would be

lucky to stay in Narcotics, to just be satisfied with that and forget about ever making Lieutenant as long as he works for the City and Department.

99. Plaintiff continued to work in the Narcotics Division, but a Special Order was never issued officially transferring Plaintiff to that Division.

100. On or about April 22, 2016, Hilongos advised Plaintiff that he had spoken to Bollwage regarding promotions of officers to Sergeant and Lieutenant. Hilongos said that Bollwage told him that he (Bollwage) was not going to promote Plaintiff. Cosgrove also told Hilongos to let him know when the Sergeant's openings occur and that he would promote Sergeants, but not Lieutenants. Cosgrove also advised Hilongos that he was still angry about Plaintiff's Appeal and Verified Complaint and will not agree to set a date to make promotions.

101. On or about May 10, 2016, all Lieutenants not assigned to Patrol were called into the conference room for a meeting with Shannon. The meeting was held to speak about a plan to reduce the overtime being paid to cover the Lieutenants position in Patrol. The Lieutenants in attendance were told that starting Memorial Day weekend, they would each begin filling in on the midnight shift on the Patrol Alpha Platoon on a one month rotating basis. This temporary schedule change did not allow the Lieutenants to bid for their shift when reassigned to Patrol, which was contrary to the CBA. A schedule was created and disseminated to Shannon and the heads of the divisions affected by the temporary transfers. The schedule was set to go into effect on Memorial Day weekend 2016. The last tour that was listed on the schedule was February 2-5, 2017. The end of this tour coincided with the expiration of the Active Lieutenant List on February 5, 2017, whereby Plaintiff is, has been, and remains #1.

102. On or about May 13, 2016, Plaintiff went to Cosgrove's office to speak to him. Plaintiff brought up the proposed schedule of rotating Lieutenants to fill a Patrol position and stated that promoting Plaintiff would eliminate that issue. Cosgrove responded that promoting just one Lieutenant would cause other problems, but he did not elaborate. Cosgrove ended the meeting by stating that he (Cosgrove) had a plan to deal with the lack of Patrol Lieutenants and that people were not going to be happy about it.

103. On or about May 20, 2016, Shannon issued Personnel Order #2016-6. Special Order #2016-6 stated that effective June 3, 2016 the following change in assignment hours will go into effect for Patrol Division Lieutenants in both Alpha and Bravo Platoons: Day Shift – 2 Lieutenants 0500 to 1600 hours; Night Shift – 2 Lieutenants 1800 to 0500 hours. During the regular work week, Monday through Friday, administrative and investigative lieutenants will provide coverage at the front desk from 1600 hours to 1800 hours. Administrative and investigative lieutenants shall also provide coverage during those hours on holidays if they are on-duty. On weekends, Saturday and Sunday, the front desk shall be covered on an overtime basis from 1600 hours to 1800 hours by a Patrol lieutenant. In the event that a Patrol lieutenant is not available for the overtime then it shall be filled by a sergeant. Prior to this order going into effect, the opportunity shall be provided for the Patrol Lieutenants to bid on their desired shifts.

104. The manipulation of shifts for Lieutenants contained within Special Order #2016-6 violated Article XVIII4b.ii of the SOA CBA. This is the same section of the CBA that Cosgrove previously violated in July 2015 which forced him to rescind his memo of having Captains cover the desk Lieutenant position to avoid paying overtime.

105. Upon information and belief, Personnel Order #2016-6 was issued for two reasons. First, it was issued due to the Appeal filed by the Plaintiff. Second, Cosgrove wanted to punish other Department officers as a method of retaliating against the Plaintiff for the Appeal and Verified Complaint.

106. Upon information and belief, in addition to retaliating against their enemies directly, Cosgrove and Bollwage, in conspiracy with one another, and perhaps others, utilize a well-honed "divide and conquer" retaliation scheme, which punishes those around their enemy in an effort to conceal and veil their retaliation, as well as maximize peer pressure for enemies to surrender to Cosgrove and Bollwage's desired demands.

107. In or around the third week of May 2016, Plaintiff's uncle, Dennis Kelly, asked City Councilman Manny Grova as to why Plaintiff had not been promoted. Grova stated that Plaintiff was a "great cop" and one of his "go-to guys." Grova told Dennis Kelly to tell Plaintiff just to take the next Lieutenant test, that Plaintiff is a smart guy and should do well.

108. On or about June 2, 2016, Shannon approached Plaintiff in Plaintiff's office. Shannon stated that he could not understand why Cosgrove and Bollwage hated us (the police) so much. Shannon stated to Plaintiff that he did not understand why Cosgrove keeps making all of these changes instead of just promoting. Shannon further stated that he was going to put Plaintiff in Internal Affairs and spoke to Cosgrove about it. Shannon explained to Cosgrove that he (Shannon) needed four (4) supervisors in Internal Affairs and that Plaintiff is going to be a Lieutenant and that is the rank that he (Shannon) needs to fill in the Internal Affairs Department. Shannon told Plaintiff that Cosgrove was initially on board with the idea of moving Plaintiff to the Internal Affairs Department.

However, when Shannon spoke to Cosgrove the following day to make the change, Cosgrove, perhaps after conferring with co-conspirator Bollwage, had changed his mind. Shannon explained to Cosgrove the Department's need for an extra supervisor in the Internal Affairs Department and that Plaintiff was the best candidate since Plaintiff was going to be a Lieutenant. Cosgrove advised Shannon that Plaintiff was not going to be a Lieutenant.

109. On or about July 1, 2016, Police Lieutenant Jose Rodriguez retired. This marked the fourth opening for the position of Lieutenant within the Department.

110. On or about July 25, 2016, Cosgrove issued Personnel Order #2016-8, which stated that on August 15, 2016, Officer Anthony Gural ("Gural") and Officer Kevin Meagher Jr. ("Meagher") would be promoted to Sergeant. There were no Lieutenant promotions listed on Special Order #2016-8 even though there were four (4) openings in the rank of Lieutenant on that date. The promotions of the Patrolmen Gural and Meagher to Sergeant brought the total number of Sergeants in the Department to the full T.O. of thirty-nine (39).

111. On or about July 25, 2016, the police and fire monthly Tables of Organization for calendar years and months 1998 through July 2016 were requested from Bolanowski pursuant to the New Jersey Open Public Records Act ("OPRA").

112. On or about July 27, 2016, the City provided its response to the July 25, 2016 OPRA Request. In response to the request and a review of the records provided in response to same, the Department has never had such a shortfall of Lieutenants below the T.O.

113. Upon information and belief, the City has never allowed an entire Lieutenant's list to expire without promoting a single Sergeant.

114. As of August 10, 2016, there are four (4) vacancies for the rank of Lieutenant at the Department. There are seventeen (17) Lieutenants. The T.O. calls for twenty-one (21) Lieutenants at the Department.

115. Plaintiff remains first on the eligible list for promotion to the rank of Lieutenant.

COUNT ONE

(Violation of Conscientious Employee Protection Act, *N.J.S.A* 34:19-1 as to All Defendants)

116. Plaintiff repeats and re-alleges each and every allegation set forth in ¶¶ 1 through 98 above as if set forth at length herein.

117. Defendants' collective actions against Plaintiff, including but not limited to, Defendants' failure to promote Plaintiff to the rank of Lieutenant and denying him benefits in retaliation for Plaintiff's whistle-blowing activities described herein.

118. Plaintiff engaged in "whistle-blowing" activities in that he disclosed and objected to Defendants' conduct which he reasonably believed was in violation of law and/or public policy, and/or rules or regulations promulgated pursuant to law and/or public policy.

119. In retaliation for his whistle-blowing activities, Plaintiff suffered adverse employment action(s), including but not limited to Defendants' failure to promote Plaintiff to the rank of Lieutenant, and other retaliatory and harassing acts at the hands of Defendants, as outlined above.

120. Defendants' adverse employment actions against Plaintiff were without any legitimate and/or lawful purpose. The purported rationale for Defendants' adverse employment actions were pre-textual and were advanced in order to mask Defendants' retaliatory intent.

121. Defendants Bollwage, Cosgrove, Shannon and Torner acted on behalf of or in the interest of Defendants City and Department with the City and Department's consent.

122. Defendants' collective harassing and retaliatory actions against Plaintiff constitute violations of CEPA.

123. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated.

124. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and is incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiff demands judgment against Defendants, joint and severally, as follows:

(a) Awarding Plaintiff damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, seniority, wages and rights, including but not limited to front and back pay, as well as all commensurate pension benefits, economic damages to off-set the adverse tax consequences of a lump sum award, instatement, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, together with both pre-judgment and post-judgment interest and attorneys' fees and costs of court;

(b) Awarding Plaintiff damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, seniority, wages and rights, including but not limited to front and back pay, as well as all commensurate pension benefits, economic damages to off-set the adverse tax consequences of a lump sum award, instatement, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, together with both pre-judgment and post-

judgment interest and attorneys' fees and costs of court with regard to retaliation, disparate treatment, and with regard to adverse employment action(s) and other retaliation as a result of Plaintiff's protected activities and status;

(c) Awarding Plaintiff damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, seniority, wages and rights, including but not limited to front and back pay, as well as all commensurate pension benefits, economic damages to off-set the adverse tax consequences of a lump sum award, instatement, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, together with both prejudgment and post judgment interest and attorneys' fees and costs of court; for Defendants' violation of Plaintiff's rights to be free from the injuries which he has suffered due to the Defendants' actions;

(d) Awarding Plaintiff equitable relief by way of promotion and/or in-statement to the rank of Lieutenant of the Elizabeth Police Department, with all requisite salary, pension and other benefits with regard thereto;

(e) For an Order of the Court retaining jurisdiction over this action until Defendants have fully complied with the Orders of this Court, and that the Court require Defendants to file such reports as may be necessary to supervise such compliance; and

(f) For such other, further, additional and different relief as this Court deems just and proper.

COUNT TWO

(Violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. as to All Defendants)

125. Plaintiff repeats and re-alleges each and every allegation set forth in ¶¶ 1 through 107 above as if set forth at length herein.

126. The actions of Defendants as alleged herein have deprived Plaintiff of rights and privileges secured to him by the New Jersey Constitution and other laws.

127. Pursuant to Article I, Section 6 of the New Jersey Constitution, every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right.

128. Plaintiff's speech pertained to a matter of public concern as it was of political, social, or other concern to the community and such speech attempted to bring to light actual or potential wrongdoing or breach of public trust on the part of the Defendant government officials, including the fraud, waste and abuse of taxpayer monies.

129. Plaintiff has been deprived of these rights and privileges which have also been interfered with by Defendants' actions as set forth herein.

130. The deprivation of, and interference with, Plaintiff's rights and privileges are the result of the conduct of the Defendants.

131. Defendants' conduct as described herein violated the provisions of the New Jersey Civil Rights Act, *N.J.S.A.* 10:6-1 *et. seq.*

132. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and is incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

COUNT THREE

(Conspiracy to commit violation of Title 4A:4-4.8b as to All Defendants)

133. Plaintiff repeats and re-alleges each and every allegation set forth in ¶¶ 1 through 115 above as if set forth at length herein.

134. Defendants entered into an agreement or confederation with a common design to willfully and maliciously wrong and to perpetrate a tort against Plaintiff. Specifically, Defendants Bollwage and Cosgrove unlawfully promoted officers and continue to deny Plaintiff the rights he is entitled to under the laws of the State of New Jersey.

135. Plaintiff has suffered damages from the conspiracy resulting in the loss of compensation and benefits, loss of earning power, mental injury, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and is incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

COUNT FOUR

(Vicarious Liability - As to Defendants Department and City)

136. Plaintiff repeats and re-alleges each and every allegation set forth in ¶¶ 1 through 118 above as if set forth at length herein.

137. Defendants City and Department are liable to Plaintiff by virtue of vicarious liability and respondeat superior for the wrongful acts of the Defendants Bollwage, Cosgrove, Shannon and Torner and John Does 1-10 committed within the scope of their employment.

138. Defendants City and Department are liable, as above, for the wrongful acts of the Bollwage, Cosgrove, Shannon and Torner and John Does 1-10 even if committed outside the scope of their employment.

139. As a direct and proximate result of Defendants' actions, Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, mental injury, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and is incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

COUNT FIVE

(Punitive Damages as to All Defendants)

140. Plaintiff repeats and re-alleges each and every allegation set forth in ¶¶ 1 through 122 above as if set forth at length herein.

141. Defendants' retaliatory actions hereinabove were especially egregious, in that it was motivated by actual malice or that was done with willful and wanton disregard of the rights of Plaintiff and citizens of the City.

142. Upper Management Defendants Bollwage, Cosgrove, Shannon and Torner actually participated in, and/or were willfully indifferent to, the wrongful retaliatory conduct.

143. The conduct engaged in by Defendants constitutes egregious behavior and/or willful and wanton disregard by upper management of the rights of Plaintiff sufficient to subject the Defendants to punitive damages under the CEPA.

144. The foregoing actions were knowing, willful and deliberate violations of law and

deprivations of Plaintiff's statutory and civil rights, and Plaintiff is entitled to punitive damages under applicable law.

145. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, the loss of opportunities for prospective employment, the loss of fringe benefits, loss of seniority within the Department, and is incurring legal expenses and other expenses as a result of Defendants' actions.

WHEREFORE, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

Designation of Trial Counsel

The Court is advised that, pursuant to Rule 4:25-4, Joshua F. McMahon, Esq. is designated as trial counsel for Plaintiff in this action.

Jury Demand

Plaintiff demands a trial by jury on all issues.

Reservation of Rights

Plaintiff reserves the right to file such specific amendments and/or additional claims as are applicable hereinafter to this action and/or as the same are subsequently discovered.

Certification in Accordance with Rule 4:5-1

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding and no such action or proceeding is contemplated. I know of no other party who should be joined in this action.

SCHILLER MCMAHON LLC
Attorneys for Plaintiff, Todd Kelly

By: _____
Brian S. Schiller

Dated: 8-12-16

MOLOD SPITZ & DeSANTIS, P.C
David B. Owens, Esq. #047211988
35 Journal Square, Suite 1005
Jersey City, NJ 07306
(201) 795-5400
Attorneys for Plaintiff

GERONIMO LOZANO,

Plaintiff,

v.

STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT, SERGEANT RODNEY DORILUS, OFFICER DAVID HERNANDEZ, POLICE OFFICER TIMOTHY GOLDATE, UNION COUNTY and JOHN & JANE DOE 1-10, ABC CORP. 1-10 (fictitious names for persons, firms, or corporations presently unknown),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

CIVIL ACTION

Docket No.: UNN-L-2964-17

COMPLAINT, JURY DEMAND & DESIGNATION OF TRIAL COUNSEL

The plaintiff, GERONIMO LOZANO, residing in the State of New Jersey, complaining of the defendants, STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT, SERGEANT RODNEY DORILUS, OFFICER DAVID HERNANDEZ, POLICE OFFICER TIMOTHY GOLDATE, UNION COUNTY and/or JOHN DOES 1-10 (fictitious names for persons, firms or corporations presently unknown) says:

FIRST COUNT

1. That at all times hereinafter mentioned, the plaintiff, GERONIMO LOZANO is a natural person residing within the State of New Jersey.

2. That defendant, State of New Jersey is a governmental entity duly authorized and existing under and pursuant to the laws of the State of New Jersey.

3. That defendant, ELIZABETH POLICE DEPARTMENT, is a municipal entity duly authorized and existing under and pursuant to the laws of the State of New Jersey.

4. That defendant, SERGEANT RODNEY DORILUS, is a natural person residing within the State of New Jersey and is, at all times hereinafter mentioned, a law enforcement officer employed with the Elizabeth Police Department.

5. That defendant, POLICE OFFICER DAVID HERNANDEZ, is a natural person residing within the State of New Jersey and is, at all times hereinafter mentioned, a law enforcement officer employed with the Elizabeth Police Department.

6. That defendant, POLICE OFFICER TIMOTHY GOLDATE, is a natural person residing within the State of New Jersey and is, at all times hereinafter mentioned, a law enforcement officer employed with the Elizabeth Police Department.

7. That defendant Union County is a governmental entity and/or subdivision duly authorized and existing under and pursuant to the laws of the State of New Jersey.

8. That on or about October 12, 2016, the plaintiff, GERONIMO LOZANO, was lawfully present within the State of New Jersey, County of Union, at the Wawa located at Spring Street in the Town of Elizabeth.

9. That on or about October 12, 2016, the plaintiff, Geronimo Lozano, was wrongfully arrested, incarcerated and deprived of his freedom, all without just cause, while at the Wawa located on Spring Street.

10. That on or about October 12, 2016, the wrongful arrest, incarceration and deprivation of freedom of plaintiff GERONIMO LOZANO, all without just cause, was performed by defendant SERGEANTRODNEY DORILUS, while acting in his role as a law enforcement officer with and/on behalf of defendant STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT and COUNTY OF UNION.

12. That as a result of the foregoing the plaintiff, GERONIMO LOZANO, was caused to be falsely charged with Driving While Intoxicated.

11. That as a result of the foregoing the plaintiff, GERONIMO LOZANO, was caused to incur expenses for tow, ambulance, hospital and attorneys.

12. That said charges against the plaintiff, GERONIMO LOZANO, were ultimately administratively dismissed without any Grand Jury presentation being made against the plaintiff, GERONIMO LOZANO.

14. That the defendants, STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT, UNION COUNTY, SERGEANT RODNEY DORILUS, POLICE OFFICER DAVID HERNANDEZ, POLICE OFFICE TIMOTHY GOLDATE and/or JOHN DOES 1-10, their agents, servants, or employees, any some or all of them, directly or indirectly, jointly severally or in the alternative, did willfully, wantonly, intentionally, carelessly, recklessly, negligently and/or grossly negligently, arrest, incarcerate, restrain, and deprive the plaintiff, GERONIMO LOZANO his rights under the Constitution and laws of the United States of America, Constitution and laws of the State of New Jersey, as well as his rights under common law.

15. That said acts by the defendant STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT, UNION COUNTY, SERGEANT RODNEY DORILUS, POLICE OFFICER DAVID HERNANDEZ, POLICE OFFICE TIMOTHY GOLDATE and/or JOHN DOES 1-10 did occur without any act, or failure to act, on the part of the plaintiff, GERONIMO LOZANO, contributing thereto.

16. That on February 8, 2017 the plaintiff herein served and filed a Notice of Claim against all the defendants herein, and all jurisdictional pre-requisites to the filing of the instant action have been fulfilled by the plaintiff without and the instant claim being compromised and or resolved.

WHEREFORE, plaintiff GERONIMO LOZANO seeks judgment against defendants, STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT, UNION COUNTY, SERGEANT RODNEY DORILUS, POLICE OFFICER DAVID HERNANDEZ, POLICE OFFICE TIMOTHY GOLDATE and/or JOHN DOES 1-10 some or all of them, jointly, severally, or in the alternative for damages in an amount that exceeds the jurisdictional limits of all lower courts, together with interest, attorney's fees and the costs of suit.

SECOND COUNT

17. The plaintiff, GERONIMO LOZANO, repeats and reasserts the allegations set forth in paragraphs 1-16 of this Complaint as if set forth in the entirety herein.

18. The plaintiff, GERONIMO LOZANO, by virtue of the foregoing, was deprived of his constitutional rights guaranteed under the United States Constitution,

including, but not limited to, those rights granted pursuant to the Fourth Amendment and Fourteenth Amendment.

19. The plaintiff, GERONIMO LOZANO, by virtue of the foregoing, was deprived of his rights under federal law as set forth in Section 1983 of Title 42 of the United States Code.

WHEREFORE, plaintiff GERONIMO LOZANO seeks judgment against defendants, STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT, UNION COUNTY, SERGEANT RODNEY DORILUS, POLICE OFFICER DAVID HERNANDEZ, POLICE OFFICE TIMOTHY GOLDATE and/or JOHN DOES 1-10 some or all of them, jointly, severally, or in the alternative for damages in an amount that exceeds the jurisdictional limits of all lower courts, together with interest, attorney's fees and the costs of suit.

THIRD COUNT

20. The plaintiff, GERONIMO LOZANO, repeats and reasserts the allegations set forth in paragraphs 1-19 of this Complaint as if set forth in the entirety herein.

21. The plaintiff prior to and at all times hereinafter mentioned, the plaintiff, GERONIMO LOZANO, was caused to suffer emotional distress, physical injury, pain and discomfort.

22. That while wrongfully detained and incarcerated the plaintiff, GERONIMO LOZANO, was deprived access to proper medical care and treatment by the defendants, STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT,

UNION COUNTY, SERGEANT RODNEY DORILUS, POLICE OFFICER DAVID HERNANDEZ, POLICE OFFICE TIMOTHY GOLDATE and/or JOHN DOES 1-10, their agents, servants, or employees, any some or all of them, directly or indirectly, jointly severally or in the alternative.

23. The plaintiff, GERONIMO LOZANO, by virtue of the foregoing, was deprived of his constitutional rights guaranteed under the United States Constitution, including, but not limited to, those rights granted pursuant to the Eighth Amendment and Fourteenth Amendment.

24. The plaintiff, GERONIMO LOZANO, by virtue of the foregoing, was deprived of his rights under federal law as set forth in Section 1983 of Title 42 of the United States Code.

WHEREFORE, plaintiff GERONIMO LOZANO seeks judgment against defendants, STATE OF NEW JERSEY, ELIZABETH POLICE DEPARTMENT, UNION COUNTY, SERGEANT RODNEY DORILUS, POLICE OFFICER DAVID HERNANDEZ, POLICE OFFICE TIMOTHY GOLDATE and/or JOHN DOES 1-10 some or all of them, jointly, severally, or in the alternative for damages in an amount that exceeds the jurisdictional limits of all lower courts, together with interest, attorney's fees and the costs of suit.

MOLOD, SPITZ & DeSANTIS, P.C

By: _____
DAVID B. OWENS, ESQ.
Attorneys for Plaintiff

Dated: August 15, 2017

DEMAND FOR JURY

On behalf of plaintiff, demand is hereby made for trial by a jury of six persons on all issues triable as of right by a jury.

DESIGNATION OF TRIAL ATTORNEY

In accordance with R. 4:25-4, David B. Owens, Esquire is hereby designated as trial counsel for plaintiffs in the above matter.

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies that the within matter in controversy is not the subject of any other action pending arbitration proceeding; that no other action or arbitration proceeding is contemplated; and that there are no other parties who should be joined in the within action.

DEMAND FOR FORM C INTERROGATORIES

Demand is made herein that the defendant serve responses to Form C Interrogatories within the time limits provided therefore under the governing Rules of Civil Practice in the State of New Jersey.

MOLOD, SPITZ & DeSANTIS, P.C.

By: _____
DAVID B. OWENS, ESQ.
Attorneys for Plaintiff

Dated: August 15, 2017

Mark C.G. Lawrence, Esq. (Bar #042561997)
Silvia G. Gerges, Esq. (Bar#01622012)
LAWRENCE & GERGES, LLC
140 Mountain Avenue, Suite 204
Springfield, New Jersey 07081
(908) 845-3535
Attorneys for Plaintiff(s), Nikolas Martoe

RECEIVED/FILED
Superior Court of New Jersey
MAR 2 2 2017
CIVIL CASE MANAGEMENT
UNION COUNTY

NICKOLAS MARTOE

Plaintiff,

v.

CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT, OFFICER ALEXANDER BLANCO, LT. MICHAEL NIEWINSKI, OFFICER CARRIE SCHARPNICK, OFFICER GUIDO QUELOPANA, DET. RICHARD SOSO, OFFICER COLON (first name unknown to Plaintiff at this time), SUPERVISORS 1-3 (fictitious names of supervisors unknown to Plaintiff at this time), PROCESSING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time) & MONITORING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time).

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY
Docket No.: UNN-L 1108-17
Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, NICKOLAS MARTOE, residing at 135 Marshall Street, in the City of Elizabeth, County of Union and State of New Jersey by way of this Complaint against the Defendants herein, says:

STATEMENT OF FACTS

1. On or about March 2015, Plaintiff MARTOE was a heavy and habitual user of heroin, was addicted to heroin and was dependent on heroin to the extent that he would suffer severe withdrawal if he did not take it regularly.
2. On or about March 28, 2015, Plaintiff MARTOE was arrested by Defendants BLANCO, NIEWINSKI, SCHARPNICK, and/or QUELOPANA (hereinafter "Arresting Officers") on charges including possession and distribution of heroin as well as possession of drug paraphernalia.
3. At the time of his arrest, Plaintiff MARTOE was found to be in possession of heroin. A search of his home revealed more heroin, numerous hypodermic needles along with Suboxone which is a drug used to treat opioid addiction and withdrawal.
4. Plaintiff was transported to Elizabeth Police headquarters where he was questioned by Defendant DET. SOSO.
5. Plaintiff was processed by Defendant OFFICER COLON (first name unknown to Plaintiff at this time) and/or PROCESSING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time).
6. Plaintiff was then confined to a holding cell where he was monitored or should have been by Defendant OFFICER COLON (first name unknown to Plaintiff at this time) and/or MONITORING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time).
7. At all times relevant hereto, Arresting Officers, Defendant OFFICER COLON (first name unknown to Plaintiff at this time) and/or PROCESSING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time), and/or MONITORING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time) and

Defendant DET. SOSO were supervised by SUPERVISING OFFICERS 1-3 (fictitious names of officers unknown to Plaintiff at this time).

8. Plaintiff told Defendant OFFICER COLON (first name unknown to Plaintiff at this time) and/or PROCESSING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time), and MONITORING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time) that he was likely to become sick from heroin withdrawal while in custody.
9. From approximately 3:00 P.M. on March 28, 2015 until 9:00 A.M. on March 30, 2015, Plaintiff was confined to a holding cell at the Elizabeth Police headquarters where he went through heroin withdrawal.
10. During his time in the holding cell, Plaintiff suffered a seizure or seizures due to withdrawal causing him to lose consciousness. He further vomited, defecated, and urinated on himself.
11. Plaintiff was left to lie unconscious in his bodily fluids including his vomit for several hours.
12. All individual Defendants knew or were recklessly indifferent to the fact that Plaintiff was a habitual heroin user.
13. All individual Defendants knew or were recklessly indifferent to the likelihood that Plaintiff would suffer withdrawal while in custody.
14. All individual Defendants knew or were recklessly indifferent to the fact that heroin withdrawal can be a serious medical condition requiring urgent treatment.
15. All individual Defendants knew or were recklessly indifferent to the fact that Plaintiff did actually suffer serious heroin withdrawal requiring urgent medical treatment while in custody.

16. All individual Defendants were deliberately indifferent to Plaintiff's serious medical needs by failing to provide him with monitoring and/or medical treatment, by failing to contact appropriate medical providers, and/or by failing to ensure others were monitoring Plaintiff or providing him with appropriate medical treatment.

17. Plaintiff was transported to Trinitas Regional Medical Center by ambulance at approximately 9:00 A.M. on March 30, 2015, where he was treated for second degree burns caused by prolonged contact of his skin with vomit as well as various other withdrawal related serious medical conditions.

18. At all times relevant hereto, individual Defendants were acting pursuant to a policy, practice, or custom of the Defendant CITY OF ELIZABETH AND/OR CITY OF ELIZABETH POLICE DEPARTMENT.

19. In the alternative, Defendant CITY OF ELIZABETH AND/OR CITY OF ELIZABETH POLICE DEPARTMENT failed to have in place a policy, practice, or custom with regard to monitoring individuals in custody with heroin drug addiction and/or providing medical care related to heroin withdrawal symptoms.

20. Defendant CITY OF ELIZABETH AND/OR CITY OF ELIZABETH POLICE DEPARTMENT failed to provide training or supervision with regard to monitoring individuals in custody with heroin drug addiction and/or providing medical care related to heroin withdrawal symptoms.

COUNT I

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.

2. This Count is brought pursuant to New Jersey Civil Rights Act, N.J.S.A. 10:6-2 and Article I, Section 1 of the New Jersey State Constitution.

3. Defendants OFFICER ALEXANDER BLANCO, LT. MICHAEL NIEWINSKI, OFFICER CARRIE SCHARPNICK, OFFICER GUIDO QUELOPANA, DET. RICHARD SOSO, OFFICER COLON (first name unknown to Plaintiff at this time), SUPERVISORS 1-3 (fictitious names of supervisors unknown to Plaintiff at this time), PROCESSING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time) & MONITORING OFFICERS 1-5 (fictitious names of officers unknown to Plaintiff at this time) were at all times relevant hereto acting within the scope of their employment with Defendant, CITY OF ELIZABETH AND/OR CITY OF ELIZABETH POLICE DEPARTMENT and were at all times acting under color of State and Municipal Law.

4. Defendants are "persons" within the meaning of New Jersey Civil Rights Ac, N.J.S.A. 10:6-2 and acted under color of State and Municipal Law.

5. Article I, Section 1 of the New Jersey State Constitution guaranteed Plaintiff's right to due process, which included his right to be free from punishment without due process of law.

6. Plaintiff's heroin withdrawal constituted a serious medical need.

7. The wrongful acts and/or omissions of the individual Defendants as set forth above constituted deliberate indifference to Plaintiff's serious medical needs in violation of Plaintiff's rights as guaranteed by the New Jersey State Constitution Article 1, Section 1 and the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

8. As a direct and proximate result of the wrongful actions of the Defendants, as set forth aforesaid, Plaintiff MARTOE, has in the past and will in the future endure pain and suffering; has in the past and will in the future be caused to incur medical expenses; has in the past and will in the future be caused to lose time from his usual pursuits and occupations; has in the past and will in the future suffer mental anguish and emotional distress; and caused to suffer permanent injuries.

9. Defendants' actions as described above were willful, wonton, malicious and/or egregious.

WHEREFORE, the Plaintiff MARTOE, demands judgment against the Defendants pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT II

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act, N.J.S.A. 10:6-2 and Article I, Section 1 of the New Jersey State Constitution.
3. Defendants CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT are "persons" within the meaning of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.
4. Defendants CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT are vested by state law with the authority to make policy monitoring and providing medical care for individuals in custody and were

responsible for the training and supervision of the individual Defendants named herein.

5. The individual Defendants herein were at all times relevant hereto acting under the direction and control of Defendants CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT and were acting pursuant to the official policy, practice or custom of said Defendants.

6. Acting under color of state law, Defendants CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT intentionally, knowingly, recklessly and/or with deliberate indifference failed to screen prior to hiring, train, instruct, supervise, control, and discipline, on a continuing basis, the individual defendants herein in their duties to: (1) monitor individuals in custody and/or (2) provide medical care for individuals in custody.

7. Said Defendants had knowledge of, or, had they diligently exercised their duties to screen, instruct, train, supervise, control, and discipline the individual Defendants on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.

8. Said Defendants had the authority and responsibility to prevent or aid in preventing the commission of said wrongs, and could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.

9. Said Defendants directly or indirectly, under color of State law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of the individual Defendants heretofore described.

10. As a direct and proximate result of the wrongful actions of the Defendants, as set forth aforesaid, Plaintiff MARTOE, has in the past and will in the future endure pain and suffering; has in the past and will in the future be caused to incur medical expenses; has in the past and will in the future be caused to lose time from his usual pursuits and occupations; has in the past and will in the future suffer mental anguish and emotional distress; and caused to suffer permanent injuries.

11. Defendants' actions as described above were willful, wonton, malicious and/or egregious.

WHEREFORE, the Plaintiff MARTOE, demands judgment against the Defendants pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

JURY DEMAND

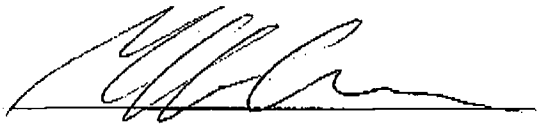
PLEASE TAKE NOTICE that the Plaintiff hereby demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Mark C.G. Lawrence, Esq., is hereby designated as trial counsel of the within matter.

LAWRENCE & GERGES, LLC

Attorneys for Plaintiff

By: 

MARK C.G. LAWRENCE ESQ.

DATED: March 21, 2017

CERTIFICATION

I certify that there is no other action pending before any Court involving or regarding the subject matter in controversy set forth in the within Complaint, nor is there pending before any tribunal any arbitration proceeding involving said subject matter, nor is any such action or arbitration proceeding contemplated. There are no other parties to this action known to us who should be or might be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

By:

MARK C.G. LAWRENCE, ESQ.

DATED: March 21, 2017

CHARLOTTE L. RUBENSTEIN, ESQ. (ATTORNEY ID. NO. 004651994)
JAMES P. NOLAN AND ASSOCIATES, L.L.C.
61 GREEN STREET
WOODBRIDGE, NEW JERSEY 07095
TELEPHONE: (732) 636-3344 FACSIMILE: (732) 636-1175
Attorneys for Plaintiff, James D. McDermott

UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW JERSEY

JAMES D. McDERMOTT, Plaintiff, -v- CITY OF ELIZABEH, CITY OF ELIZABETH POLICE DEPARTMENT, RODNEY DORILUS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, and JOHN DOES 1-10, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES, Defendants.	:	CIVIL ACTION NO COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL

Plaintiff, James D. McDermott, residing at 713 Linden Avenue, City of Elizabeth, County of Union, and State of New Jersey by way of Complaint against the Defendants says:

JURISDICTION AND VENUE

1. This Court has jurisdiction to decide the claims raised by Plaintiff by virtue of 28 U.S.C. Section 1331 which provides for original jurisdiction of all civil actions in the district courts arising under the Constitution, laws, or treaties of the United States. Plaintiff further invokes the pendent jurisdiction of this Court to consider claims under State Law, required notice having been given pursuant to New Jersey Law.

2. Venue is proper under 28 U.S.C Sec. 1391(b) in the District of New Jersey.

THE PARTIES

3. At all times relevant herein, Plaintiff, James D. McDermott, ("Plaintiff") was a resident of the State of New Jersey with his principal place of residence at 713 Linden Avenue, City of Elizabeth, County of Union, and State of New Jersey.

4. At all times relevant herein, Defendant, City of Elizabeth, is a Municipal Corporation with its principal place of business located at 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201.

5. At all times relevant herein, Defendant, City of Elizabeth Police Department, is a Department operated under the jurisdiction of Defendant, City of Elizabeth, and within an apportionment of the City of Elizabeth's total operating budget with its principal place of business located at 1 Police Plaza, Elizabeth, New Jersey 07201.

6. At all times relevant herein, Defendant, Rodney Dorilus, was a Sergeant employed by Defendants, City of Elizabeth and City of Elizabeth Police Department. He is being sued individually, and in his official capacity as a Sergeant.

7. At all times relevant herein, John Does 1-10, were persons whose identities are presently unknown to Plaintiff and who are believed to have been employed by Defendants, City of Elizabeth and City of Elizabeth Police Department, and to have participated as actors, agents, co-conspirators, and/or aiders and abettors in the wrongful conduct described herein and who thereby caused or

contributed to the causing of substantial damage and injury to Plaintiff. They are being sued in their individual and official capacities.

STATEMENT OF FACTS COMMON TO ALL COUNTS

8. On or about January 07, 2017, Plaintiff was lawfully videotaping a fire located at 503 Flora Street, City of Elizabeth, County of Union, State of New Jersey.

9. While across the street lawfully videotaping the fire, Defendant, Sergeant Rodney Dorilus, shouted at Plaintiff to leave the area.

10. Defendant, Sergeant Rodney Dorilus, approach Plaintiff and told him to place his hands behind his back and handcuffed Plaintiff.

11. Defendants, Sergeant Rodney Dorilus and/or John Does 1-10, took Plaintiff's video camera and walked Plaintiff up the street to a Police Vehicle.

12. Defendants, Sergeant Rodney Dorilus and/or John Does 1-10 informed Plaintiff that he was under arrest.

13. Plaintiff asserts that as a direct result of the conduct described herein, he has suffered severe economic, emotional, and physical damages and/or injuries, all of which are alleged to have been caused by the wrongful conduct described herein.

FIRST COUNT

42 U.S.C. SECTION 1983

14. Plaintiff repeats and re-alleges each and every allegation contained within Paragraphs 1 through 13 of Plaintiff's Complaint, as if same were more fully set forth herein at length.

15. This action is brought pursuant to 42 U.S.C. Section 1983 and the Fifth and Fourteenth Amendments to the United States Constitution.

16. At all times relevant hereto, Defendants, Sergeant Rodney Dorilus and/or John Does 1-10, were acting under the color of state law as employees, representatives and/or agents of Defendants, City of Elizabeth and City of Elizabeth Police Department.

17. Defendants are responsible to enforce the laws of the United States of America and to ensure that said Defendants act in accordance with the United States Constitution and New Jersey Constitution.

18. Defendants' conduct, while acting under the color of state law, to wrongfully detain and/or arrest Plaintiff, constitutes a deprivation of Plaintiff's constitutional rights under the United States Constitution, the New Jersey Constitution, 42 U.S.C. 1983, and his Fourteenth Amendment substantive due process rights.

19. Defendants' actions were willful and malicious, and without justification under the law.

20. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and

suffering, psychological injury, injury to his constitutional rights, humiliation, embarrassment and/or damages to reputation.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

a. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, for Defendants' violations of Plaintiff's civil rights;

b. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, as Defendants have violated Plaintiff's rights to be free from the injuries which he has suffered due to Defendants' actions;

c. For such other, further, additional relief as this Court deems just and proper.

SECOND COUNT

42 U.S.C. 1983 - MUNICIPAL LIABILITY

21 Plaintiff repeats and re-alleges each and every allegation contained within Paragraphs 1 through 20 of Plaintiff's Complaint as if same were more fully set forth herein at length

22. At all times mentioned herein, it was the custom, policy, and the practice of Defendants, City of Elizabeth and City of Elizabeth Police Department, to permit wrongful arrest/wrongful detentions under the aforementioned circumstances, which resulted in a violation of Plaintiff's constitutional rights under the United States Constitution, New Jersey Constitution, and 42 U.S.C. 1983 and 1986 *et. seq.*

23. As a direct and proximate result of this custom, policy, and practice on the part of Defendants, City of Elizabeth and City of Elizabeth Police Department, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and suffering, psychological injury, injury to his constitutional rights, humiliation, embarrassment and/or damages to reputation.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

a. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and

back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, for Defendants' violations of Plaintiff's civil rights;

b. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, as Defendants have violated Plaintiff's rights to be free from the injuries which he has suffered due to Defendants' actions;

c. For such other, further, additional relief as this Court deems just and proper.

THIRD COUNT

FAILURE TO ADEQUATELY HIRE, TRAIN, AND SUPERVISE

24. Plaintiff repeats and re-alleges each and every allegation contained within Paragraphs 1 through 23 of Plaintiff's Complaint as if same were more fully set forth herein at length

25. Defendants, City of Elizabeth and City of Elizabeth Police Department, owed a duty to Plaintiff to adequately hire, train, and supervise its Police Officers to ensure that Police Officers did not engage in conduct that involves wrongful arrest and/or wrongful detention.

26. Defendants, City of Elizabeth and City of Elizabeth Police Department, failure to exercise reasonable care in the hiring, training and supervision of Defendant, Rodney Dorilus, violated Plaintiff's constitutional rights under the United States Constitution, New Jersey Constitution, 42 U.S.C. 1983 and 1986 et seq.

27. As a direct and proximate result of the failure to exercise reasonable care in the hiring, training, and supervision of the Defendant, Rodney Dorilus, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and suffering, psychological injury, injury to his constitutional rights, humiliation, embarrassment and/or damages to reputation.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

a. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering,

psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, for Defendants' violations of Plaintiff's civil rights;

b. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, as Defendants have violated Plaintiff's rights to be free from the injuries which he has suffered due to Defendants' actions;

c. For such other, further, additional relief as this Court deems just and proper

FOURTH COUNT

NEW JERSEY CIVIL RIGHTS ACT

28. Plaintiff repeats and re-alleges each and every allegation contained within Paragraphs 1 through 27 of Plaintiff's Complaint as if same were more fully set forth herein at length.

29. The New Jersey Civil Rights Act, *N.J.S.A.* 10:6-1 *et. seq.* creates a private cause of action for violations of a person's civil rights under the United States Constitution and New Jersey

Constitution

30. At all times relevant hereto, Defendants, Rodney Dorilus and/or John Does 1-10, were acting under the color of state law as employees, representatives and/or agents of Defendants, City of Elizabeth and City of Elizabeth Police Department.

31. Defendants are responsible to enforce the laws of the United States of America and the State of New Jersey and to ensure that said Defendants act in accordance with the United States Constitution and New Jersey Constitution.

32. Defendants' conduct, while acting under the color of state law, to wrongfully arrest and/or wrongfully detain Plaintiff constitutes a deprivation of Plaintiff's constitutional rights under the United States Constitution and New Jersey Constitution.

33. Defendants' actions were willful and malicious, and without justification under the law.

34. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and suffering, psychological injury, injury to her constitutional rights, humiliation, embarrassment and/or damages to reputation.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

a. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension

benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, for Defendants' violations of Plaintiff's civil rights;

b. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, as Defendants have violated Plaintiff's rights to be free from the injuries which he has suffered due to Defendants' actions;

c. For such other, further, additional relief as this Court deems just and proper

FIFTH COUNT

NEW JERSEY CIVIL RIGHTS ACT - INDIVIDUAL LIABILITY

35. Plaintiff repeats and re-alleges each and every allegation contained within Paragraphs 1 through 34 of Plaintiff's Complaint as if same were more fully set forth herein at length

36. The New Jersey Civil Rights Act, *N.J.S.A.* 10:6-1 *et seq.* creates a private cause of action for violations of a person's civil rights under the United States Constitution and New Jersey Constitution.

37. At all times relevant hereto, Defendants, Sergeant Rodney Dorilus and John Does 1-10, were acting under the color of state law as employees, representatives and/or agents of Defendants, City of Elizabeth and City of Elizabeth Police Department

38. At all times relevant hereto, Plaintiff was enjoying his constitutional right as a citizen of the State of New Jersey.

39. The conduct of Defendants, Sergeant Rodney Dorilus and John Does 1-10, as stated above violated Plaintiff's constitutional rights under Article I, Paragraph 7 of the New Jersey Constitution which provides in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . "

40. The conduct of Defendants, Sergeant Rodney Dorilus and John Does 1-10 as stated above violated Plaintiff's right to equal protection under the law.

41. Defendants' actions were willful and malicious, and without justification under the law.

42. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and suffering, psychological injury, injury to his constitutional rights, humiliation, embarrassment and/or damages to reputation

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

a. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, for Defendants' violations of Plaintiff's civil rights;

b. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, as Defendants have violated Plaintiff's rights to be free from the injuries which he has suffered due to Defendants' actions;

c. For such other, further, additional relief as this Court deems just and proper.

SIXTH COUNT

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

43. Plaintiff repeats and re-alleges each and every allegation contained within Paragraphs 1 through 42 of Plaintiff's Complaint as if same were more fully set forth herein at length.

44. The conduct of Defendants, Sergeant Rodney Dorilus and/or John Does 1-10, as stated above was intentional and outrageous.

45. The conduct of Defendants, Sergeant Rodney Dorilus and/or John Does 1-10, as stated above was reckless in deliberate disregard of a high degree of probability that Plaintiff would suffer emotional distress from the conduct.

46. The conduct of Defendants, Sergeant Rodney Dorilus and/or John Does 1-10, as stated above exceeded all bounds of decency tolerated by our society, and, as a result, intentionally inflicted emotional distress upon Plaintiff.

47. The conduct of Defendants, Sergeant Rodney Dorilus and/or John Does 1-10, constitutes the intentional infliction of emotional distress, and Plaintiff as been damaged as a result thereof.

48. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

49. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and suffering, psychological injury, humiliation, embarrassment and/or damages to reputation

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages, consequential damages, incidental damages, lost wages, costs of suit, punitive damages, attorney's fees, interest and such other relief as the Court may deem just and proper

SEVENTH COUNT

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

50. Plaintiff repeats and re-alleges each and every allegation contained within Paragraphs 1 through 49 of Plaintiff's Complaint as if same were more fully set forth herein at length.

51. The conduct of Defendants, Sergeant Rodney Dorilus and/or John Does 1-10, as stated above exceeded all bounds of decency tolerated by our society, and, as a result, negligently inflicted emotional distress upon Plaintiff.

52. The conduct of Defendants, Sergeant Rodney Dorilus and/or John Does 1-10, constitutes the negligent infliction of emotional distress, and Plaintiff as been damaged as a result thereof.

53. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

54. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and suffering, psychological injury, humiliation, embarrassment and/or damages to reputation.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages, consequential damages, incidental damages,

lost wages, costs of suit, punitive damages, attorney's fees, interest and such other relief as the Court may deem just and proper

EIGHTH COUNT

JOHN DOE LIABILITY

55. Plaintiff repeats and re-alleges each and every allegation contained within Paragraphs 1 through 54 of Plaintiff's Complaint as if same were more fully set forth herein at length.

56. On information and belief, Defendants, John Does 1-10, individuals, supervisors, and/or employees of Defendants, City of Elizabeth and City of Elizabeth Police Department, whose actions may have caused or contributed to the injuries sustained by the Plaintiff as a result of the aforementioned conduct.

57. As such time as the identities of these fictitiously pleaded individuals are ascertained, Plaintiff shall seek to amend his Complaint so as to substitute the actual identities of these individuals. Plaintiff attributes each and every act alleged against the named Defendants hereto to those who are fictitiously pleaded as if they were more specifically set forth in their entirety.

58. As a direct and proximate result of the Defendants and John Does 1-10, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and suffering, psychological injury, injury to her constitutional rights, humiliation, embarrassment and/or damages to reputation.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

a. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court;

b. Awarding Plaintiff damages, including, but not limited to: equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits, and other benefits regarding Plaintiff's employment, and non-economic damages for emotional distress, pain and suffering, psychological injury, humiliation, and embarrassment, together with both prejudgment and post judgment interest and attorneys' fees and costs of court, as Defendants have violated Plaintiff's rights to be free from the injuries which he has suffered due to Defendants' actions;

c. For such other, further, additional relief as this Court deems just and proper.

JURY DEMAND

PLEASE TAKE NOTICE that pursuant to Rule 38B of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues raised in this Complaint.

TRIAL COUNSEL DESIGNATION

Please be advised that Fredrick L. Rubenstein is hereby designated as trial counsel for the Plaintiff in the above entitled action.

CERTIFICATION

It is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also to the best of our knowledge or belief, no other action or arbitration proceeding is contemplated. Further, other than the parties named herein, we know of no other parties that should be joined in the above action.

JAMES P NOLAN AND ASSOCIATES
Attorneys for Plaintiff

Dated: January 15, 2018

By: _____
Fredrick L. Rubenstein

RECEIVED
Superior Court of New Jersey
OCT 04 2013
CIVIL CASE MANAGEMENT
UNION COUNTY

LAW OFFICE OF
MICHAEL S. HARWIN
BAR NUMBER: 016851995
22-01 Broadway
Fair Lawn, New Jersey 07410
Tel: (201) 791-7575
Fax: (201) 791-7574
Attorney for the Plaintiffs

JEAN PRECOIS, SOJEY MOJICA, ANTONIO MOJICA, through his Guardian Ad Litem, ELIZABETH MOJICA, Plaintiffs, v. WILLIAM J. DILOLLO, LOUIS P. DEMONDO, CITY OF ELIZABETH, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CIVIL PART UNION COUNTY DOCKET NO. UNN-L-3572-13 Civil Action COMPLAINT

Plaintiffs' each residing in the City of Elizabeth, County of Union, and State of New Jersey, hereby state the following:

FIRST COUNT
FOURTH AMENDMENT VIOLATIONS

1. On or about November 1, 2012, Defendant William J. Dilollo and Defendant Louis P. Demondo were employed by the City of Elizabeth as police officers.

2. Plaintiff, Jean Precois, was parked at a convenience store seeking to buy a container to purchase gasoline.

3. Plaintiff, Sojey Mofica, was a passenger in the car operated by Plaintiff Jean Precois.

4. Plaintiff, Antonio Mojica, a minor, and the son of Plaintiff Jean Precois, was a passenger in the car operated by Plaintiff Jean Precois.

5. Plaintiff, Jean Precois, was not able to purchase a gas container since the convenience store was sold out.

6. Plaintiff, Jean Precois, sought information from Defendant police officer William J. Dilollo and or Defendant police officer Louis P. Demondo.

7. An altercation developed between the Plaintiff Jean Precois and Defendant police officer William J. Dilollo and or Defendant police officer Louis P. Demondo.

8. Plaintiff, Jean Precois, left the area in his car.

9. Shortly after the Plaintiff, Jean Precois, left the area, Defendant police officer William J. Dilollo and or Defendant police officer Louis P. Demondo, acting under color of state law, willfully, intentionally, knowingly, and concertedly deprived Plaintiffs of their rights, privileges, and immunities secured by the United States Constitution, the laws of the United States of America, New Jersey Civil Rights Act, and State

of New Jersey Constitution, by stopping the car the Plaintiff Jean Precots was driving.

10. Without reasonable suspicion or probable cause, Defendant William J. Dilollo and or Defendant Louis P. Demondo, stopped the Plaintiff's car in violation of the 42 U.S.C. Section 1983, more specifically a violation of the Fourth Amendment of the United States Constitution, the New Jersey Civil Rights Act, and the New Jersey State Constitution.

11. Without reasonable suspicion or probable cause Defendant police officer William J. Dilollo and or Defendant police officer Louis P. Demondo, searched the Plaintiffs in violation of the 42 U.S.C. Section 1983, and more specifically a violation of the Fourth Amendment of the United States Constitution, Civil Rights Act of the New Jersey State Constitution, and the State of New Jersey Constitution.

Wherefore, Plaintiffs demand judgment for compensatory and consequential damages, attorney fees, expert witness and investigation fees, deposition costs, punitive and or exemplary damages and such other relief the court may deem proper.

SECOND COUNT
FALSE ARREST VIOLATIONS

1. Plaintiffs repeat the allegations in the prior count as if fully set forth herein at length.

2. Defendant police officer William J. Dilollo and or Defendant police officer Louis P. Demondo acting under color of state law, willfully, intentionally, knowingly, and concertedly deprived Plaintiffs of their rights, privileges, and immunities secured by the United States Constitution, the laws of the United States of America, State of New Jersey Constitution, and New Jersey Civil Rights Act, by arresting the Plaintiffs without probable cause in violation of 42 U.S.C. 1983, and more specifically in violation of the Fourth Amendment of the United States Constitution.

3. Defendant police officer William J. Dilollo and or Defendant police officer Louis P. Demondo, arrested the Plaintiffs in violation of N.J.S.A. 10:6-2(c) by issuing an arrest warrant rather than a summons in violation of Section 3:3-1 of the New Jersey Criminal Court Rules and in violation of the New Jersey State Constitution, and Civil Rights Act.

4. Defendant police officer William J. Dilollo and or Defendant police officer Louis P. Demondo arrested the Plaintiffs in violation of the New Jersey State Constitution and New Jersey Civil Rights Act.

Wherefore, Plaintiffs demand judgment for compensatory and consequential damages, attorney fees, expert witness and investigation fees, deposition costs, punitive and or exemplary damages and such other relief the court may deem proper.

THIRD COUNT
EXCESSIVE FORCE CLAIMS

1. Plaintiffs repeat the allegations in the prior counts as if fully set forth herein at length.

2. Defendant, police officer William J. Dilollo and or Defendant police officer Louis P. Demondo, acting under color of state law, willfully, intentionally, knowingly, and concertedly deprived Plaintiff Jean Precots, and Plaintiff Antonio Mojica, of their rights, privileges, and immunities secured by the United States Constitution, the laws of the United States of America, the New Jersey Constitution and the New Jersey Civil Rights Act, by inter alia:

a. Needlessly and unreasonably subjecting them to an unreasonable excessive use of force in the performance of his duties pursuant to Article IV (Fourth Amendment) of the United States Constitution and Article IV of the New Jersey Constitution.

b. Needlessly and unreasonably assaulting the Plaintiffs in the performance of his duties.

3. These aforesaid violations are in violation of 42 U.S.C. 1983, the Constitution and Laws of the United States of America, the State of New Jersey Constitution, and the New Jersey Civil Rights Act.

4. As a direct and proximate cause of the Defendants' excessive use of force, the Plaintiffs suffered serious and painful bodily injuries and psychological injuries which injuries necessitated medical treatment.

5. As result of the Defendants' excessive use of force, the Plaintiffs have been damaged.

Wherefore, Plaintiffs demand judgment for compensatory and consequential damages, attorney fees, expert witness and investigation fees, deposition costs, punitive and or exemplary damages and such other relief the court may deem proper.

FOURTH COUNT
FAILURE TO TRAIN

1. Plaintiff repeats allegations of the prior counts as if fully set forth herein.

2. Defendant City of Elizabeth has grossly negligently failed to train its police officers in the fundamental law of

police procedures and protocol and thereby failed to safeguard the Plaintiffs' rights to be free from unreasonable excessive use of force from William J. Dilollo and Louis P. Demondo in the performance of their duties.

3. Defendants, City of Elizabeth permitted a practice of unreasonable and illegal behavior by its police officers, including officer William J. Dilollo and officer Louis P. Demondo to use unreasonable excessive use of force in the performance of their duties.

5. Defendants City of Elizabeth, failed to discipline or prosecute or in any manner deal with known incidents of wrongful behavior by police officer William J. Dilollo and or Louis P. Demondo and failed to investigate the claim made against police officer William J. Dilollo and or police officer Louis P. Demondo.

6. By means of both action, inaction, and or cover-up of such wrongful actions by its police officers, the Defendants, City of Elizabeth cultivated an environment that the police officers and police officer William J. Diollo and police officer Louis P. Demondo believed that the unreasonable excessive use of force was acceptable behavior in the performance of their duties.

7. The foregoing acts, omissions, and systematic failures are customs and policies of Defendant City of Elizabeth and

caused police officers, including police officer William J. Dilollo and police officer Louis P. Demondo to believe that the use of unreasonable excessive use of force was within their discretion and that it would not be honestly or properly investigated.

8. As a direct and proximate cause of the aforesaid acts, omissions, policies, and customs, the Defendant City of Elizabeth caused the Plaintiffs to suffer severe injuries and emotional harm, which necessitated medical attention and treatment.

9. As a direct and proximate cause of the aforesaid negligent acts, omissions, policies, and customs, the Defendant City of Elizabeth caused the Plaintiffs to suffer severe injuries and emotional distress, which necessitated medical attention and treatment.

Wherefore, Plaintiffs demands judgment for compensatory and consequential damages, attorney fees, expert witness and investigation fees, deposition costs, punitive and or exemplary damages and such other relief the court may deem proper.

SEVENTH COUNT
PUNITIVE DAMAGE CLAIM

1. Plaintiff repeats allegations of the prior counts as if set forth fully herein.

2. The aforesaid actions of the Defendant police officer William J. Dilollo and Defendant police officer Louis P. Demondo were willful, wanton, and reckless so as to permit a jury to consider the awarding of punitive damages and/or exemplary damages to the Plaintiff.

Wherefore, Plaintiffs demand judgment for compensatory and consequential damages, attorney fees, expert witness and investigation fees, deposition costs, punitive and or exemplary damages and such other relief the court may deem proper.

EIGHTH COUNT
COUNSEL FEES

1. Plaintiff repeats allegations of the prior counts as if set forth fully herein.

2. Should any of the Plaintiffs prevail on any of the pled counts, the Plaintiffs are entitled to reasonable attorney fees, costs of suit, expert witness fees, and other litigation costs as mandated by the United States Constitution, Section 1988, and Section 1983 of the United States Code, the New Jersey Civil Rights Act and New Jersey State Constitution.

Wherefore, Plaintiffs demand judgment for attorney fees, expert witness and investigation fees, deposition costs,

punitive and or exemplary damages and such other relief the court may deem proper.

Dated: 10/2/2013

Michael S. Harwin, Esq.
Attorney for the Plaintiffs

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the matters in controversy in this action are not the subject of any other action pending in any other court. Furthermore, no additional court action or arbitration is currently contemplated at the present time. No other parties should be joined in this action.

DESIGNATION OF TRIAL COUNSEL

Michael S. Harwin, Esq. is hereby designated trial counsel for the within matter.

JURY DEMAND

Plaintiff demands trial by jury on all issues.

Dated: 10/2/2013

Michael S. Harwin, Esq.
Attorney for the Plaintiffs

Sharife Roberson #206532
Name

Union County Jail
Address
15 Elizabethtown Plaza
Telephone Number Elizabeth, NJ 07207

RECEIVED / FILED
Superior Court of New Jersey
JAN 25 2013
CIVIL CASE MANAGEMENT
UNION COUNTY

Sharife Roberson
Plaintiff

v.

OFF. P. Szotak, OFF McDonough, OFF. Lawal, Sgt. Polyviou
Defendant (s)

Superior Court of New Jersey
Law Division Union County
Docket No UNN-L-0410-13
(to be filled in by the court)

COMPUTER
FEB 05 2013
SECTION

CIVIL ACTION
Complaint

JURY

418

Plaintiff, Sharife Roberson, residing at
Union County Jail (your name)
15 Elizabethtown Plaza (your address) City of Elizabeth (your city or town),
County of Union (your county).

Civil Rights Act (P)

State Of New Jersey, complaining of defendant, states as follows:

1. On October 11, 2012, OFF. P. Szotak, OFF. McDonough, OFF. LAWAL, Sgt. Polyviou (name of person being sued), Defendant

(Summarize what happened that resulted in your claim against the defendant. Use additional pages if necessary.)

Plaintiff was arrested 10/11/12 by Elizabeth Police officers charging him with 2C:15-1A(1) Robbery & 2C:15-2A(3) carjacking. This was the result that accured between the Plaintiff & (alleged) victim. Victim stated to police that he had been carjacked with a deadly weapon which was a "HANDGUN". As further investigation (alleged) victim cellphone was in the car. Plaintiff was apprehended with No HANDGUN or (ANY other WEAPON). Plaintiff was in possession of (signed) title and keys to same ignition. All completing a (LEGAL) sales of a motor vehicle. Plaintiff didn't attempt to elude or be apprehe which would be a said thing of a carjacker. Plaintiff and (alleged) victim had a (consentual) agreement about seeing & purchasing vehicle. Plaintiff EXPLAINED to police he hadn't robbed the victim but he was ignored and restricted his freedom and forced to except his incarcerati

The defendant in this action resides at OFF. P. Szotak, OFF. Lawal, OFF. McDonough Sgt. Polyvion 1 Police Plaza Elizabeth, NJ
(defendant's address)

In the County of 0 Union , State Of New Jersey.
(name of county where defendant lives)

2. Plaintiff is entitled to relief from defendant under the above facts.

3. The harm that occurred as a result of defendant's acts include:

(list each item of damage and injury),

1. _____

2. _____

3. _____

Wherefore, plaintiff requests judgment agains t defendant for damages, together with attorney's fees, if ap plicable, costs of suit, a nd any other relief a s the co urt may deem proper.

Dated: Jan. 24, 2013. Signature: Shanifa Roberson
Shanifa Roberson

CERTIFICATION OF NO OTHER ACTIONS

I certify that the dispute about whic h I am suing is not the s ubject of any other action pending in any ot her court or a pending ar bitration proceeding to the best of my knowledge and belief. Also, to t he best of my knowledge and belief no other action or arbi tration pr oceeding is contempl ated. Fur ther, ot her than t he parties set forth in this complaint, I know of no other parties that should be made

a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: JAN .24, 2013. Signature: Sharise Peterson

OPTIONAL: If you would like to have a judge decide your case, do not include the following paragraph in your complaint. If you would prefer to have a jury to decide your case, please sign your name after the following paragraph.

JURY DEMAND

The plaintiff demands trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court *Rules* 1:8-2(b) and 4:35-1(a).

Dated: JAN .24, 2013 Signature: Sharise Peterson

Sharife Roberson #206532
Union County Jail
15 Elizabethtown Plaza
Elizabeth, N.J 07207

RECEIVED / FILED
Superior Court of New Jersey
JAN 15 2019
CIVIL CASE MANAGEMENT
UNION COUNTY

Sharife Roberson (Plaintiff)	Superior Court Of New Jersey Law Division Union County Docket No.
V.	Civil Action
OFF. Szotak, OFF. Lawal, OFF. McDonough, Sgt. Polyvion (Defendants)	Complaint

Plaintiff, Sharife M. Roberson, residing at Union County Jail, 15 Elizabethtown Plaza, City Of Elizabeth, New Jersey County of Union.

State Of New Jersey complaining of defendant States as follows:

Wherefore Plaintiff Deposes and says:

1.) On 10/11/12 at approx 14:43 Plaintiff was stopped by Elizabeth Police in front of the (Royal Motel located at 511 Spring St. Elizabeth N.J.) by several Elizabeth Police Officers.

2.) Officers drew their weapons on the Plaintiff due to the "FACT" Plaintiff (suspect) was armed with a HANDGUN. (Id Police Report P.G 1 of 2.) Plaintiff was forced out the vehicle and into (Off. McDonough) vehicle without incident. (Id Police Report).

3.) Plaintiff was extremely afraid because he knows that Elizabeth Police department is known for excessive police brutality setting up people with the filing of false charges racial profiling the planting of drugs upon many people as well as wrongful imprisonment, and he feared for his life.

4.) Plaintiff was asked by an officer about a "HANDGUN" (YET THERE WAS NO HANDGUN RECOVERED) (Id Police Report P.g 2 of 2) As officers searched the vehicle, the (alleged) victim cellphone was in the vehicle and Plaintiff was taken to the precient to be charged and processed. Plaintiff was not read Miranda Warnings before put into cuffs.

5.) Plaintiff was unable to defend himself as he was being restricted of Freedom and his 1st and 14th Amendment Rights of the U.S Constitution was violated as was his 8th, 5th, 4th, Amendment Rights as well as DUE PROCESS and Equal Protection of the laws.

6.) Plaintiff was interviewed by a detective at 1 Police Plaza name (unknown) who threaten Plaintiff that he was going to wear charges and have Plaintiff sign telephone consent. Also threaten Plaintiff that he would get records to cellphone to see who he had been calling.

7.) Plaintiff (At the time had no attorney assigned nor present). Plaintiffs freedom was restricted as he attempted to EXPLAIN that he hadn't robbed the (alleged) victim, but he was ignored and forced to accept his incarceration.

8.) Plaintiff feels this deliberate neglect is a violation of DUE Process persuant to the U.S Constution.

9.) Plaintiff was restricted from seeing his friends family and other free worlds persons, and held captive at the hands of the defendants (listed above).

10.) Plaintiff was admitted to a bail of $50,000 then to a bail of $100,000 as (told by an officer name unknown) at 1 Police Plaza, Elizabeth, N.J. Plaintiff slept two cold nights in 1 Police Plaza. Then transported to Union County Jail.

11.) Plaintiff was moved to Union County Courthouse (on 10-19-12) in front of Judge Gross she then "RAISED" Plaintiff's bail to $200,000 cash or bond in which Plaintiff could not afford to pay for his freedom and was extremely excessive.

12.) (on 10/19/12) Plaintiff recieved two complaint-warrants one "Stating" his charges 2C:15-1A(1) Robbery & 2C:15-2A(3) Car Jacking. The other "States" Warrant Foundation. The officers HAS REASON TO BELIEVE THAT THE PERSON IS A DANGER TO HIMSELF, OTHERS, OR PROPERTY. (PROBABLE CAUSE: VICTIMS STATEMENT AND POLICE REPORT). Plaintiff read reports and notice documents were viewed (as marked) signed and approved by defendants.

13.) Plaintiff at a later date requested the discovery (which was prepared by Elizabeth Police Division) personell which constituted arrest report, investigation report, complaint-warrant, list of witness (which was none), evidence tagged from Plaintiff is $136.00 U.S Currency, Black At$t cellphone, United States currency seizure report EPD PD evidence cover sheet also tagged as evidence is a copy of the title to the (alleged victims vehicle. (10/11/12 OFF P. Szotak) "Stated" "AT THIS TIME NO HANDGUN HAS BEEN RECOVERED AT THIS TIME". (Id Police Report P.G 2 of 2.)

14) Plaintiff viewed the reports and noticed the documents were reviewed (as marked) signed all approved by the defendants Off. P. Szotak, A.P Debbie White and other immediate Superiors that indicate that they are aware of All information within the documents, and the approve of the information within the documents and approved of the information being factual viable, thus making them liable for everything in the reports, pertaining to the Unconstitutional arrest.

15) Off. P. Szotak is a Elizabeth Police Officer his orders are to patrol, enforce (as well) as uphold & obey all laws, bylaws, rules, regulations of the Country, also to protect and serve EVERY Person (regardless of color, nationality, creed, race, or religion according to the U.S Constitution and all of there of).

16) As indicated by Off. P. Szotak and all other immediate Superiors (as having read reviewed and approved) in the documents in the discovery defendant Off. P. Szotak Knew or should have known of the inconsistencies, and false information, including the lack of (Probable Cause to arrest and detain Plaintiff) also all other inquities on part of the defendants.

17) Plaintiff feels he should not been arrested and incarcerated for any extended period of time based on SPECULATION without any HANDGUN or any other weapon to support allegations of Car Jacking or Robbery, as per DUE PROCESS (Probable Cause) And having title and Keys to same ignition. Also Plaintiff and (alleged) victim had a (Consetual) agreement on seeing & purchasing vehicle

18) The illegal arrest, detainment incarceration was not excersed according to legal arrest procedure. Plaintiff feels this is a delibrate act of racial profiling, wrongful imprisonment, discrimination illegally captivity which is in violation of Plaintiffs 1st, 14th, 8th, 5th, 4th Amendment Rights of U.S constitution.

19) As the immediate Superiors of the other defendants (listed above) defendant Szotak #5360 should be held dully responsible and completely liable for all the inquities administered by him.

20) Off. McDonough, Sgt. Polyviou, and Off. Lawal was present at the time and location of the illegal unconstitutional misconduct is also an immediate Superior of the defendant & should also be held responsible and liable as these officers aided and abetted a carjacking.

21) Plaintiff realleges that defendants (listed above) has violated his constitutional rights by wrongfully charging him, wrongfully imprisoning him, restricting his freedom without DUE Process probable cause in violation of Plaintiffs 1st, 14th, 8th, 4th, 5th Amendment Rights of U.S constitution.

22) Plaintiff was arrested (10-11-12 Id complaint-warrant) Probable Cause IS found for the issuance of this complaint (10-12-12 Id complaint warrant). Probable Cause was found because of "victim's Statement and Police Report.

23) Plaintiff was charged with Robbery 2c:15-1A(1) 1st degree, Carjacking 2c:15-2A(3) 1st degree. "It states for 2c:15-1A(1) - Attempting to inflict serious bodily injury upon Wolyeldin Mohammed, in the course of committing a theft, "SPECIFICALLY" by threating the immediate use of a DEADLY WEAPON while being ARMED with a HANDGUN. It states for 2c:15-2A(1) "DID commit offense of carjacking in course of commiting unlawful taking of a Motor Vehicle did USE A DEADLY WEAPON while BEING ARMED with a HANDGUN SPECIFICALLY BY TAKING AT GUN POINT.

24) Plaintiff was found with NO HANDGUN (or any other weapon) Plaintiff never attempted to elude or be apprehended. Plaintiff was in possession of the title (signed by victim) and keys to same in ignition to complete (LEGAL) sales of a vehicle.

25) Defendant Lawal and all other Superiors took a Statement that the victim ~~[illegible]~~ "stated" Plaintiff "HAD PULLED A HANDGUN ON HIM" (Id Report P.G 2 of 2) Report continues. NO HANDGUN RECOVERED AT THIS TIME.

26.) None of the police suggested that the victim sustained any injury, lascerations, contusion, a brasion, loss of a body part or any signs of force being used or a struggle having to had occured to support this allegation yet that did not prevent the defendants from incarceration which without Probable Cause (DUE PROCESS) should not have occured ~~occuring~~ according to the 1st, 14th, & 8th Amendment of the U.S Constitution.

27.) Plaintiff was arrested in front of the Royal Motel located at 511 Spring St. Elizabeth, New Jersey (Id Police reports, police Statements etc.)

28.) Plaintiff recognizes many inconsistancies in the police investigation procedures, reports, incorrect information gathered and the delibrate signing and approving the documents and reports, Statements the immediate Superiors defendant (Off. P. Szotalc, Lawal, McDonough and A/P Debbie White) who supposely read and reviewed the material containing the exact date, time, and location of the alleged incident (robbery, carjacking) and arrest.

29.) Plaintiff read (off. Szotalc) responded to So. Elmora & Edgar Rd. On a report of a "CARJACKING". Defendants (listed above) stopped the vehicle on drew their weapons due to the "EACT" that Suspect was Armed with a HANDGUN.

30.) This false delibrate information was submitted throughout the police Station as TRUE accusation, the Union County Prosecutors office and the Grand Jury in a delibrate attempt to deprive plaintiff of his constitutional Rights to be free from wrongful imprisonment, racial profiling, discrimination, and cruel and unusual punishment as stated in the 8th Amendment of the United States Constitution.

31.) The report also stated the victim just observed the vehicle pass going on 139. (Id at Report Pg. 1 of 1.) A discription of vehicle and carjacker would have to be given.

32) Why would a said to be carjacker make a U-Turn at Bowers St. to get onto 139 North? The report also states Sgt. Polyviou was able to catch up due to "HEAVY TRAFFIC".

33) According to Police records all of this happened in 2 minutes. (Id at date, time, location of (incident) occuring (Carjacking) (14:41hrs - 14:43hrs on 10/11/12).

34) (Id at date, time, location of report) (14:41hrs - 14:43hrs)

35) All plaintiffs allegations are verifyable through police repaits, records, signed sworn as read, reviewed and approved by the defendants, which was turned over to the Union County Prosecutors office & the Superior Court of N.J as well as the State of N.J Grand Jury as correct, factual information with the deliberate intention of having Plaintiff indicted for a crime that he never commited.

36) Plaintiff feels his constitutional Rights have been violated as he has been falsely charged, falsely arrested, racial profiling discrimmated against, wrongfully & unconstitutionally resulting in serve mental anguish and irreparable damages.

37) The defendants failed to conduct a "FACT" finding investigation, instead they delibrately violated plaintiffs, Constitutional Rights to be free from cruel and unusual Punishment based entirely on here say without "FACT" finding investigative Procedures to determine whether or not a Carjacking ever occured.

38) In re Frankel, 20 N.J 588, 120 A.2d 603 (1956). Testimony to be believed must not only proceed from mouth of credible witness but MUST BE CREDIBLE in itself & must be such as common experience and observation of mankind can approve as probable in circumstances. Spagnuolo V. Bonnet, 16 N.J 546, 109 A.2d 623 (1954).

39) Plaintiff believes that the documents that are signed as review and approved contain information that are credible and sworn by the officials (defendants).

40) Plaintiff realleges paragraphs 1 thru 40 and concludes that his Constitutional Rights have been violated by the defendants as he have suffered mental anguish, deprivation of freedom, incarceration racial profiling, false charging of 1st degree criminal offense(s) threaten that he would wear charges.

41) Plaintiff feels that the defendants howe acted with willful, reckless, disregard for Plaintiffs life and Constitutional Rights as they delibrately acted upon victim's statement.

42) It appears that the only (Probable Cause) Justification for arresting the Plaintiff was the fruit of testimony from an victim in which there was no investigation to determine if there was any truth to the victim's testimony.

43) They supported heresay and wrongfully imprisoned Plaintiff thus violating Plaintiffs constitutional Rights to DUE PROCESS and Equal Protection of the laws.

44) Where County Prosecutor willfully refuses to act without just cause, he is guilty of breach of duty rendering him liable to indictment, and prosecutor is indictable for in action and neglect in carrying out his duties without regard to whether his in action and neglect resulted from his corruption. STATE V. WINNE, 12 N.J. 159, 92 A.2d 63 (1953)

45) The defendants (I then exited my vehicle on drew my weapon down on the suspect due to the "FACT" that suspect was armed with a HANDGUN) (Id Police Report Pg. 1 of 2) (Report Continues Pg 2 of 2) ("AT THIS TIME NO WEAPON HAS BEEN RECOVERED).

46) Defendants should known victims statement wasn't true due to the fact title was "signed" and keys were in the ignition in same. All facts to completing (legal) sells of vehicle.

Cont 46.) Also no HANDGUN was recovered.

47) The defendant allowed Plaintiff to suffer from 10/11/12 until this present time of intentional neglect of his Constitutional Rights to be free as a direct delibrate in action on part of the defendants.

48.) Power to act imports duty to act when Public interest suggests to public official that something should be done. STATE vs. Deegan, 126 NJ Super, 475 315 A.2d 686 (A.D 1974), certification denied 65 N.J 283, 321 A.2d 244. Officer & public employee 110.

49.) Plaintiff believes that he was delibertly denied his right to DUE PROCESS equal Protection of the law simply because of the length of time the defendant served as law enforcement officials, their Knowledge and experience deal with legal, effective, lawful, Fact find investigative procedures, Plaintiff feels the defendant Knew that they were ~~violationing~~ violating Plaintiffs Constitutional Rights to Due Process Equal Protection of the law yet they (with delibrate indifference) allowed Plaintiff to be arrested, incarcerated, restricted of freedom, and wrongfully imprisoned from (10/11/12 to present time) Knowingly that they were violating Plaintiffs Constitutional Rights to be "Free from Cruel and unusual Punishment 8th Amendment U.S Constitution.

50.) Plaintiff realleges paragraph 1 through 50 and confers that as a result of the defendants delibrate indifferent inquities (discribed herein) his Constitutional Rights to be free from wrongful imprisonment cruel and unusual punishment, discrimination OFFICIAL MISCONDUCT racial profiling being a victim of illegal searches and seizures, false charging of criminal offenses and all other illegal unconstitutional Misconduct on part of the defendants, Plaintiff has suffered immensely and has also suffered irrepairable damage, including restricted freedom to see his family, mental anguish and believes he stated his claim upon which relief should be granted.

51.) Again after Plaintiff suffered wrongful imprisonment and all other inquities on part of the defendant bail is still $200,000 cash or bond and can not pay for his freedom.

52.) On 10-19-12 defendant recieved complaint-warrant (#2004 W2012.003794) reading 2c:15-1A(1) 1st degree Robbery & 2c:15-2A(3) 1st degree Carjacking. Charges approved by Union County A/P Debbie White.

53.) Plaintiff also request Union County A/P Debbie White be liable for her delibrate willful delibrate indifferent acts and non-action on part of defendants violation of Plaintiffs Constitutional Rights.

54.) All allegations are support, through discovery of (Elizabeth Police). (Id Pg 2 of 2)

55.) Plaintiff realleges 1 through 55, that (defendants) did (with delibrate indifference violate plaintiffs Constitutional Rights of the U.S..

56.) Plaintiff has and will continue to Suffer irreparable damages because of the defendants willful neglect of duties in action on part of the defendants to investigate the (said victims) allegations according to Due Process, equal protection of the laws in accordance to the 1st 14th Amendment of the U.S constitution.

57.) Defendants are also invelation of the Klv Klvx Klan Act of 1871 (Federal Civil Rights Act 17;13, 42 USC, 1983 and other state and local tort laws.

58.) Civil Act of 1871 (Klu Klux Klan Act, 17 Stat. 13. "That any person under color of any law, Statue of any state, Shall subject, cause to be subjected any person, within Jurisdiction of the United States to deprivation of any rights, priviledges or immunities secured by the Constitution of the United States. "Shall only such law, Statue, ordinace, regulation, custom, or usage of the state to the contray not with stancting, he liable to the party injured in any action at law Suit, inequity, or other proper proceeding for redress.... Act of April 20, 1871 Ch. 22, 511 Stat. 13.

59) Plaintiff here by submits his Civil Complaint to this court in his attempt to redress his grievances against the defendants according to his Constitutional Rights and here by states this as his claim upon which relief can be granted, all of these allegations (set forth) are documented through records, material facts, this court has Jurisdiction, venue is proper.

Wherefore Plaintiff requests the following Relief:

A) A judge and declare the defendants did violate Plaintiffs Constitutional Rights with delibrate indifference thus Plaintiff is stating these iniquities thus inflicted upon him causing irreparable damage, mental anguish deprivation of Freedom as claim upon which relief can be granted.

B) Pointive damages in the Amount of $50,000 from each defendant in their individual and official capacity.

C) Monetary damages in the amount of $200,000

D) $500 a day for each day Plaintiff spent in captivity from each defendant.

E) Any other relief the courts deem just and proper.

Jury Demand

Oral argument requested if contestant

Date: JAN 20, 2013.

X Sharife Roberson

Sharife Roberson #206532

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SECTION

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RECEIVED / FILED
Superior Court of New Jersey
JAN 2 0 2015
CIVIL CASE MANAGEMENT
UNION COUNTY

BARBARA SALVERO

Plaintiff,

vs.

CITY OF ELIZABETH, PATRICK SHANNON, JOHN BASTARDO, DANIEL GEDDES, JOSEPH MULARZ, JAMES COSGROVE, JOHN DOES 1-25

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: UNION COUNTY

DOCKET NO.: UNN-L-1023-13

CIVIL ACTION

FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff, residing at 139 Sinclair Avenue, City of Elizabeth, County of Union, State of New Jersey, by way of Complaint against the Defendants, CITY OF ELIZABETH, CHIEF PATRICK SHANNON, JOHN BASTARDO, DANIEL GEDDES, JOSEPH MULARZ, POLICE DIRECTOR JAMES COSGROVE, AND JOHN DOES 1-25 alleges:

This action has been initiated by the Plaintiff for violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. and the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes. As a direct consequence of the Defendants' unlawful actions, the plaintiff suffered harm and seeks equitable relief and damages from the defendants as set forth herein.

PARTIES

1 At all times relevant hereto Defendant CITY OF ELIZABETH was Plaintiff's employer within the meaning of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. and the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes. NDTTD

2 Defendant PATRICK SHANNON was at all times relevant hereto employed by Defendant CITY OF ELIZABETH in upper management, was Plaintiff's "employer" within the definition of the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes, and was vested with actual and/or apparent authority over Plaintiff SALVERO and with the power to affect the terms and conditions of her employment. NDTTD

3 Defendant JOHN BASTARDO was at all times relevant hereto employed by Defendant CITY OF ELIZABETH in upper management, was Plaintiff's "employer" within the definition of the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes, and was vested with actual and/or apparent authority over Plaintiff SALVERO and with the power to affect the terms and conditions of her employment. NDTTD

4 Defendant DANIEL GEDDES was at all times relevant hereto employed by Defendant CITY OF ELIZABETH in upper management, was Plaintiff's "employer" within the definition of the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes, and was vested with actual and/or apparent authority over Plaintiff SALVERO and with the power to affect the terms and conditions of her employment.

5 Defendant JOSEPH MULARZ was at all times relevant hereto employed by Defendant CITY OF ELIZABETH in upper management, was Plaintiff's "employer" within the definition of the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New

Jersey Statutes, and was vested with actual and/or apparent authority over Plaintiff SALVERO and with the power to affect the terms and conditions of her employment.

6 Defendant JAMES COSGROVE was at all times relevant hereto employed by Defendant CITY OF ELIZABETH in upper management, was Plaintiff's "employer" within the definition of the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes, and was vested with actual and/or apparent authority over Plaintiff SALVERO and with the power to affect the terms and conditions of her employment.

FACTS

1. At all times relevant to this complaint, Plaintiff SALVERO was employed with Defendant, CITY OF ELIZABETH. A

2. On or about 2003, Plaintiff filed a complaint New Jersey Superior Court, Law Division, Union County against City of Elizabeth and other individual defendants for a hostile work environment based on pervasive racial and sexually charged harassment within the meaning of New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. MO info

3. During her civil suit, Plaintiff testified that she was targeted by officers and supervisors for having a relationship with an African American male. Plaintiff testified that defendants left notes, pictures, and other materials containing racial slurs and sexual materials around the workplace at places where Plaintiff frequented. Plaintiff testified that she was told by fellow officers that she would not receive back up or assistance if she was in a dangerous situation. MO info

4. On June 13, 2008, a jury verdict found that Plaintiff SALVERO was subjected to a hostile work environment but no monetary damages were awarded. D

5. Plaintiff's civil suit and testimony is "protected activity" within the meaning of the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes.

6. Individual Defendants, some of whom were defendants in her prior civil suit, retaliated against Plaintiff for testifying in civil suit by subjecting her to a series of actions intended to intimidate and exclude her including, but not limited to the following:

A. On two occasions, plaintiff was followed by an unmarked police vehicle with tinted windows in the police parking area. When the vehicle came near plaintiff, the engine was revved up and the car lunged forward towards plaintiff as if it was going to hit her.

B. On August 20, 2009, Plaintiff found nail placed under right front tire of her personal vehicle and valve stem cap missing while parked in police parking deck.

C. On June 29, 2010, Plaintiff found damage to the driver's side door of her personal vehicle as well as another nail in one of the tires and valve stem caps were missing while parked in police officer's parking deck.

D. On or about March 2012, Plaintiff was placed on "light duty" after surgery. Contrary to her request and the previously agreed upon terms, Plaintiff was removed from her regular post at the courthouse and forced to work at the front desk of the police station where she was in constant contact with officers who were defendants in her previous case.

E. On or about March and April 2012, Plaintiff was forced to conduct inmate bail-outs while on "light duty," placing Plaintiff in danger at a time when she was physically unable to make arrests.

F. On March 30, 2012, Lieutenant Saulnier came to the front desk "Kiosk" area where Plaintiff was writing a report and began shouting at Plaintiff and stating he was sick of her and tired of her allowing people to go up to his office although Plaintiff was not responsible for those actions. Plaintiff was yelled at in front of co-workers and civiliane. Lieutenant Saulnier at no time apologized to Plaintiff or acknowledged that he had mistakenly attributed the actions to her although he apologized to others who were present at the time of the incident later that day.

G. On March 30, 2012, when Plaintiff became tearful after being humiliated by Lieutenant Saulnier, Plaintiff overheard supervisor ridiculing her, calling her a liar to her peers and saying "what's next, am I going to have to call an ambulance for her."

H. On April 9, 2012, Plaintiff reported to the front desk for her shift and found an old, dirty and burned baby pacifier placed in the tray under her desk, signifying that Plaintiff was a "cry-baby" who complains about everything. Pacifier was placed in Plaintiff's work area in a tray where such items are not normally left.

I. On or about April and May 2012, officers ridiculed Plaintiff on multiple occasions in the hallway and the parking lot by making the noises of babies crying followed by laughter whenever Plaintiff passed.

7. In addition to the above actions taken against Plaintiff, Defendants have consistently and purposefully excluded her from normal peer interaction, in instances including, but not limited to the following:

A. On multiple occasions, defendants have refused to greet Plaintiff while greeting her partner and have stated that they do not want to be around her.

B. On at least one occasion, fellow officers refused to work with Plaintiff.

8. The hostility towards Plaintiff extended to others who appeared to be supportive of her, as evidenced by the following examples:

A. An Internal Affairs superior telling Plaintiff's friend at a bar: "Don't mention that fucking bitch's name. You don't know what trouble she has caused this police force."

B. Defendant Captain MULARZ harassed former PBA President Bob Morris for advocating for Plaintiff by subjecting Morris to excessive scrutiny and unusual inspections.

9. Plaintiff's efforts to make her concerns known internally were consistently ignored and minimized.

A. On March 30, 2012, Plaintiff placed a call to Anita Pritchards (Human Resources) regarding Lieutenant Saulnier's actions. On April 10, 2012, Plaintiff reported above stated actions as well as the pacifier incident to Human Resources Director Anita Pritchards. Plaintiff received no follow up and the case was transferred to Internal Affairs.

B. On or about April 19, 2012, Plaintiff met with Defendant JOHN BASTARDO, DANIEL GEDDES, and Robert Brennan in the Internal Affairs department to discuss the above stated incidents. During the meeting, Defendants refused to discuss previous incidents of harassment dating back to Plaintiff's 2008 civil case and minimized Lieutenant Saulnier's actions, citing he was simply "correcting" Plaintiff.

C. In spite of repeated requests, Plaintiff received no follow up regarding the Internal Affairs investigation of the two above stated incidents until January 2013.

10. Since the filing of the complaint and jury demand in the present case on or about March 2013, Plaintiff was subjected to increasingly retaliatory and hostile actions intended to exclude and intimidate her as well as compromise her safety including but not limited to:

A. Plaintiff required backup when attempting to prevent two groups of individuals from engaging in assaultive behavior. Plaintiff's backup, Officer Edwards, delayed in arriving on the scene and upon arrival, did not assist Plaintiff.

B. On or about November 2013, Plaintiff requested Officer Frank Fowler to work with her on a day that her partner was not going to be there. Fowler responded by telling Plaintiff, "I know your situation in this place, I can't work with you."

C. Plaintiff overheard a new officer ask Officer Lateef Banks "Who is this?" referring to Plaintiff. Officer Lateef responded, "Oh, you don't want to know who that is. She is nothing but trouble."

D. Plaintiff was assigned to transport a prisoner to the emergency room with Officer Lateef Banks. Plaintiff called Officer Banks repeatedly, and he did not respond. It was not until he was called on the radio that he responded and still delayed in arriving to assist Plaintiff.

E. Plaintiff's repeated calls on the radio for backup while responding to a call about a naked, combative individual who was on PCP were "clicked out" so that no one could hear her request. It was not until Plaintiff's partner, Michael Trapeano, called that two officers responded to the scene.

F. Plaintiff and her partner were locked out of their vehicle while responding to a Domestic Violence call during a snowstorm. Plaintiff's repeated calls were ignored for some time. Thereafter, Sergeant Kerns responded that he would come

from the other side of town to assist them as no one who was closer to Plaintiff's vicinity responded.

G. Plaintiff was in charge of completing a report regarding a homicide crime scene. Officer Andrew Cox conducted an investigation related to the crime but chose to share the information with Plaintiff's partner, to the exclusion of Plaintiff.

H. Plaintiff requested back up after a disorderly individual refused to leave the Elmora Avenue Dunkin Donuts. County police responded to assist Plaintiff after they became aware that none of her peers responded to her call.

I. Plaintiff paged an officer for Court and requested his status repeatedly on the radio but received only a sarcastic response. Plaintiff was forced to call Dispatch and ask them to inquire about the officer. It was not until the dispatcher made the request on the radio that someone answered.

J. Plaintiff's peers consistently move away from her and refuse to sit by her during roll call.

K. On or about December 23, 2013, Officer Leonard made disrespectful noises with his mouth while Plaintiff passed by and all the officers present began to laugh and ridicule Plaintiff.

R+K

COUNT I (LAD: RETALIATORY HOSTILE ENVIRONMENT)

1. Plaintiff repeats and re-alleges all the allegations of the previous paragraphs as if set forth more fully at length herein.

2. Plaintiff engaged in "protected activity" within the meaning of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. by testifying in a civil trial as well as filing Internal Affairs complaints where she alleged unlawful workplace harassment.

D

3. Defendants' pattern of actions and omissions as set forth above was retaliatory due to Plaintiff's protected activity to and complaints about said harassment, and caused Plaintiff to suffer a hostile environment beginning June 18, 2008 to date in violation of the New Jersey Law Against Discrimination.

4. As a direct and proximate result of the Defendant's actions as set forth herein, Plaintiff has been caused to suffer and will in the future be caused to suffer economic loss, humiliation, embarrassment and mental/emotional distress.

WHEREFORE, Plaintiff, SALVERO demands judgment against the Defendant CITY OF ELIZABETH for:

Equitable relief;

Consequential Damages;

Compensatory Damages;

Enhanced attorney's fees and costs as permitted by law;

Such other relief as the Court may deem proper.

COUNT II (CEPA)

1. Plaintiff repeats and re-alleges all the allegations of the previous paragraphs as if set forth more fully at length herein.

2. Plaintiff's testimony in her civil suit for unlawful harassment creating a hostile work environment and her Internal Affairs complaints constituted "protected activity" within the meaning of the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes.

3. Beginning June 13, 2008 to date, Defendants retaliated against Plaintiff SALVERO for engaging in protected activity by creating a pervasively hostile work environment.

4. The Plaintiff's protected activities were a substantial motivating factor in Defendants' retaliatory actions as described above in violation of the Conscientious Employee Protection Act, §§ 34:19-1 et seq. of the New Jersey Statutes.

5. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and will continue in the future to suffer loss of income and benefits, consequential and incidental damages, and severe mental and emotional distress.

6. Defendants' retaliatory actions were willful and malicious and/or in reckless disregard of plaintiff's rights and involved the willful participation of upper management.

WHEREFORE, Plaintiff, SALVERO demands judgment against the Defendant CITY OF ELIZABETH, for:

Equitable relief;

Consequential Damages;

Compensatory Damages;

Enhanced attorney's fees and costs as permitted by law;

civil penalties as prescribed by law;

interest; and,

such other relief as the Court may deem proper.

COUNT III (AIDING AND ABETTING BY DEFENDANT JAMES COSGROVE)

1. Plaintiff repeats and re-alleges all the allegations of the previous paragraphs as if set forth more fully at length herein.

2. Defendant JAMES COSGROVE aided and abetted Defendants JOHN DOES 1-25 in the creation of retaliatory hostile environment for Plaintiff in violation of the Law Against Discrimination.

3. As a direct and proximate result of the Defendant's actions as set forth herein, Plaintiff has been caused to suffer and will in the future be caused to suffer economic loss, humiliation, embarrassment and mental/emotional distress.

WHEREFORE, Plaintiff, SALVERO demands judgment against the Defendant JAMES COSGROVE for:

Equitable relief or front pay;

Consequential Damages;

Compensatory Damages;

Enhanced attorney's fees and costs as permitted by law;

Such other relief as the Court may deem proper.

COUNT IV (AIDING AND ABETTING BY DEFENDANT PATRICK SHANNON)

1. Plaintiff repeats and re-alleges all the allegations of the previous paragraphs as if set forth more fully at length herein.

2. Defendant PATRICK SHANNON aided and abetted Defendants JOHN DOES 1-25 in the creation of retaliatory hostile environment for Plaintiff in violation of the Law Against Discrimination.

3. As a direct and proximate result of the Defendant's actions as set forth herein, Plaintiff has been caused to suffer and will in the future be caused to suffer economic loss, humiliation, embarrassment and mental/emotional distress.

WHEREFORE, Plaintiff, SALVERO demands judgment against the Defendant JAMES COSGROVE for:

Equitable relief or front pay;

Consequential Damages;

Compensatory Damages;

Enhanced attorney's fees and costs as permitted by law;

Such other relief as the Court may deem proper.

COUNT V (EMPLOYER LIABILITY)

1. Plaintiff repeats and re-alleges all the allegations of the previous paragraphs as if set forth more fully at length herein.

2. Plaintiff's employer, Defendant, CITY OF ELIZABETH knew or should have known that harassment such as that experienced by Plaintiff SALVERO was a foreseeable likelihood in her work environment especially since Defendant had previous knowledge of Plaintiff's subjection to a hostile work environment and had a duty to establish, publicize and enforce an anti-harassment policy comprising effective preventative measures including, without limitation: (a) formal written policies prohibiting unlawful harassment; (b) formal and informal complaint structures; (c) mandatory anti-harassment training; (d) effective monitoring mechanisms; and (e) demonstration by the employer of an unequivocal commitment to preventing racial harassment through consistent practice.

3. Defendant CITY OF ELIZABETH were negligent in failing to implement sufficiently effective measures to prevent unlawful harassment which failure was a substantial

factor in the initial creation and subsequent continuation of Plaintiff SALVERO's hostile work environment.

COUNT VI (PUNITIVE DAMAGES)

1. Plaintiff repeats and re-alleges all the allegations of the previous paragraphs as if set forth more fully at length herein.

2. The individual defendants and CITY OF ELIZABETH upper management acted intentionally and with malice in ordering, endorsing, or ratifying the illegal harassment of Plaintiff.

WHEREFORE, Plaintiff, SALVERO demands judgment against the Defendants for punitive damages.

JURY DEMAND

The Plaintiff demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Mark C.G. Lawrence, Esq. is hereby designated as trial counsel in this within matter.

FORMAN, CARDONSKY& LAWRENCE
Attorneys for Plaintiff

By: _____
Mark C.G. Lawrence, Esq.

Dated: November 7, 2014

CERTIFICATION

I hereby certify that matter in controversy is not the subject of any other action pending in any court, arbitration, or administrative proceeding.

Mark C.G. Lawrence, Esq.

Dated: November 7, 2014

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FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Fred Santa Maria, JR.

(Enter above the full name of the plaintiff in this action)

V.

City of Elizabeth (N.J.), Elizabeth Police Department, Det. Jose Martinez, and Det. Raul Delaprida (of the E.P.D.)

(Enter the full name of the defendant of defendants in this action)

COMPLAINT

Civil Action No. 15-3243 (KM)

(To be supplied by the Clerk of the Court)

INSTRUCTIONS; READ CAREFULLY

1. This complaint must be legibly handwritten or typewritten, signed by the plaintiff and subscribed to under penalty of perjury as being true and correct. All questions must be answered concisely in the proper space on the form. Where more space is needed to answer any question, attach a separate sheet.

2. In accordance with Rule 8 of the Federal Rules of Civil Procedure, the complaint should contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short plain statement of the claim showing that you are entitled to relief, and (3) a demand for judgment for the relief which you seek.

3. You must provide the full name of each defendant or defendants and where they can be found.

4. You must send the original and one copy of the complaint to the Clerk of the District Court. You must also send one additional copy of the complaint for each defendant to the Clerk. Do not send the complaint directly to the defendants.

5. Upon receipt of a fee of $400.00 (a filing fee of $350.00, and an administrative fee of $50.00), your complaint will be filed. You will be responsible for service of a separate summons and copy of the complaint on each defendant. See Rule 4, Federal Rule of Civil Procedure.

6. If you cannot prepay the $400.00 fee, you may request permission to proceed in forma pauperis in accordance with the procedures set forth in the application to proceed in forma pauperis. See 28 U.S.C. §1915. (If there is more than one plaintiff, each plaintiff must separately request permission to proceed in forma pauperis.)

7. If you are given permission to proceed in forma pauperis, the $50.00 Administrative Fee will not be assessed. The Clerk will prepare and issue a copy of the summons for each defendant. The copies of summonses and the copies of the complaint which you have submitted will be forwarded by the Clerk to the United States Marshal, who is responsible for service. The Marshal has USM-285 forms you must complete so that the Marshal can locate and serve each defendant. If the forms are sent to you, you must complete them in full and return the forms to the Marshal.

QUESTIONS TO BE ANSWERED

1a. Jurisdiction is asserted pursuant to (CHECK ONE)

X 42 U.S.C. §1983 (applies to state prisoners)

___ Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) and 28 U.S.C. § 1331 (applies to federal prisoners)

If you want to assert jurisdiction under different or additional statutes, list these below:

_____

1b. Indicate whether you are a prisoner or other confined person as follows:

__ Pretrial detainee

__ Civilly-committed detainee

__ Immigration detainee

X Convicted and sentenced state prisoner (Still detained in Union County Jail; Awaiting transfer to State facility.

__ Convicted and sentenced federal prisoner

__ Other: (please explain)_____

2. Previously Dismissed Federal Civil Actions or Appeals (Not Applicable)

If you are proceeding in forma pauperis, list each civil action or appeal you have brought in a federal court while you were incarcerated or detained in any facility, that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted. Please note that a prisoner who has on three or more prior occasions, while detained in any facility, brought an action or appeal in a federal court that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted, will be denied in forma pauperis status unless that prisoner is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

a. Parties to previous lawsuit:

Plaintiff(s): _____

_____

Defendant(s): _____

_____

b. Court and docket number: _____

c. Grounds for dismissal: ( ) frivolous ( ) malicious

( ) failure to state a claim upon which relief may be granted

d. Approximate date of filing lawsuit: _____

e. Approximate date of disposition: _____

If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on separate sheets.

3. Place of Present Confinement? Union County Jail, Elizabeth, NJ

4. Parties

(In item (a) below, place your name in the first blank and place your present address in the second blank. Do the same for additional Plaintiffs, if any.)

a. Name of plaintiff: Fred Santa Maria, JR.

Address: Central Reception and Assignment Facility P.O. Box 745C West Trenton, N 08628-7450

Inmate#: S.B.I. # 173381C

b. First defendant:

Name: City of Elizabeth, N.J.

Official position: City in New Jersey

Place of employment: Elizabeth City Hall, 50 Winfield Scott Pl Elizabeth, N.J. 07202

How is this person involved in the case?

(i.e., what are you alleging that this person did or did not do that violated your constitutional rights?)

The city of Elizabeth is the ultimate employer of the two (2) detectives who beat me while I was handcuffed and otherwise violated my civil rights. It is ultimately responsible for their actions and the E.P.D.

c. Second defendant:

Name: Elizabeth Police Department

Official position: Police Department for the City of Elizabeth

Place of employment: 1 Police Plaza, Elizabeth, N.J. 07202

How is this person involved in the case?

(i.e., what are you alleging that this person did or did not do that violated your constitutional rights?)

The Elizabeth Police Department employs the two (?) detectives who beat me while handcuffed and otherwise violated my civil rights. These detectives have been frequently involved in illegal activities yet the E.P.D. still chooses to employ these men. Also denying my medical care after said beating.

d. If there are more than two defendants, attach a separate sheet. For each defendant specify: (1) name, (2) official position, (3) place of employment, and (4) involvement of the defendant.

D. Third Defendant:

NAME: Detective Jose Martinez

Official Position: Police Detective

Place of Employment: Elizabeth Police Department

Involvement: Mr. Martinez is one(1) of two(2) E.P.D. detectives who assaulted me while I was handcuffed, prone, and fully in custody. I was seriously injured, both physically and mentally/emotionally.

Fourth Defendant:

NAME: Detective Raul Delaprida

Official Position: Police Detective

Place of Employment: Elizabeth Police Department

Involvement: Mr. Delaprida is one (1) of two (2) E.P.D. detectives who assaulted me while I was handcuffed, prone, and fully in custody. Mr. Delaprida officially admitted to some (but by no means all) of this assault. I was seriously injured, both physically and mentally/emotionally.

5. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in the Statement of Claims on page 6.

___Yes X No

If your answer is "Yes," briefly describe the steps taken, including how relief was sought, from whom you sought relief, and the results.

If your answer is "No," briefly explain why administrative remedies were not exhausted.

They were not exhausted because as this is a police brutality / civil rights claim resulting from the actions of two (2) Elizabeth Police Detectives, there are no administrative remedies to address this situation.

6. Statement of Claims

(State here as briefly as possible the facts of your case. Describe how each defendant violated your rights, giving dates and places. If you do not specify how each defendant violated your rights and the date(s) and place of the violations, your complaint may be dismissed. Include also the names of other persons who are involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach a separate sheet if necessary.)

On April 8th, 2014 I was involved in a minor automobile accident at the intersection of Spring St (Rt 1+9) and North Avenue in Elizabeth, N.J. Immediately after this accident I was violently pulled out of the drivers side window of the car I was driving by two (2) undercover Elizabeth Police Detectives who had been briefly

chasing me in an undercover car immediate prior to the auto accident. The two (2) detectives, who I later identified as Detectives Jose Martinez and Raul Delapridia, yanked me out of the open vehicle window, shoved me violently face first into the street and then handcuffed me behind my back, placing me under arrest. As soon as I was cuffed and prone on the road surface, I was then kicked and punched an undetermined amount of times in my face and body by Detectives Martinez and Delapridia. All while I was being berated by racial epithets by these two officers.

As a result of this beating I received a broken nose, a deep laceration on my upper lip, an injured hand and several broken/bruised ribs.

I was then denied any medical treatment whatsoever for these injuries for over 24 hours while I was pleading for help and in unbelievable pain while being held in the Elizabeth Police Department holding cell. My broken nose has resulted in a permanent facial deformity and the lip laceration in a permanent facial scar.

Defs Martinez and Delapridia are directly responsible for my physical and emotional injuries and scarring and the Elizabeth Police Department is responsible for employing these two renegade cops (with histories of violence and misconduct) and also for denying medical care for the over 24 hours after the incident. The City of Elizabeth is responsible as the overall authority over both the Detectives and the E.P.D.

7. Relief

(State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.)

I would like the court to order that all of my over $10,000 of medical bills which resulted from this incident be paid by the Defendants. I also request that the Defendants

be required to pay for reconstructive surgery to fix my deformed nose.

I further seek substantial punitive damages, in an amount deemed appropriate by the court, to compensate me for my pain, suffering, emotional and physical distress and the resultant scarring from my beating and the violation(s) of my civil rights.

I also seek any other relief which the courts deems fit in this situation.

8. Do you request a jury or non-jury trial? (Check only one)

(X) Jury Trial ( ) Non-Jury Trial

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 5th day of May, 2015

J. Scott Munt, JR.

Signature of plaintiff*

(*EACH PLAINTIFF NAMED IN THE COMPLAINT MUST SIGN THE COMPLAINT HERE. ADD ADDITIONAL LINES IF THERE IS MORE THAN ONE PLAINTIFF. REMEMBER, EACH PLAINTIFF MUST SIGN THE COMPLAINT).

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RECEIVED / FILED
Superior Court of New Jersey
SEP 10 2014
CIVIL CASE MANAGEMENT
UNION COUNTY

MARIA STALLWORTH, Plaintiff, vs. RENSE G. SHALEN, JR. and/or JOHN DOE, a fictitious name and THE CITY OF ELIZABETH and/or ABC CORPORATION, a fictitious name, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION : UNION COUNTY DOCKET NO: UNN UNN-L-3405-14 CIVIL ACTION COMPLAINT, DEMAND FOR JURY, DEMAND FOR INSURANCE INFORMATION, DESIGNATION OF TRIAL COUNSEL AND CERTIFICATION

Plaintiff, Maria Stallworth, residing at 547 Maple Avenue, 1st Floor, in the City of Elizabeth, County of Union, and State of New Jersey, by way of Complaint against the Defendant, says:

FIRST COUNT

1. On or about September 11, 2012, the Plaintiff, Maria Stallworth, was operating her motor vehicle at or near 149 Jefferson Avenue in the City of Elizabeth, County of Union and State of New Jersey, in a careful and prudent manner.

2. At the same time and place, Defendant, Rense G. Shalen, Jr. and/or John Doe, a fictitious name, acting as the agent, servant or employee of Defendant, The City of Elizabeth and/or ABC Corporation, a fictitious name, was also operating his motor vehicle at or near 149 Jefferson Avenue in the City of Elizabeth, County of Union and State of New Jersey, and operated his motor vehicle in such a careless and

negligent manner, contrary to N.J.S.A. 39:4-97, as to cause the same to collide with the vehicle that was in front of him and being operated by one Ted Merced. As a result of this impact, the Merced vehicle was pushed forward and caused to strike the rear of the vehicle being operated by the Plaintiff.

3. As a direct and proximate result of the negligent and careless conduct of the Defendant, Rense G. Shalen, Jr. and/or John Doe, a fictitious name, acting as the agent, servant or employee of Defendant, The City of Elizabeth and/or ABC Corporation, a fictitious name, the Plaintiff was caused to suffer severe and painful permanent injuries; she has incurred and will incur in the future medical care and expenses; she has endured great pain and suffering; she has suffered a loss in the quality of her life and suffered other losses thereby.

WHEREFORE, Plaintiff, Maria Stallworth, hereby demands judgment for damages against the Defendants, Rense G. Shalen, Jr. and/or John Doe, a fictitious name and The City of Elizabeth and/or ABC Corporation, a fictitious name, individually, jointly or in the alternative, together with interest and costs of suit.

DEMAND FOR INSURANCE INFORMATION

Pursuant to Rule 4:10-2(b), Plaintiff hereby demands that the Defendants provide to the Plaintiff a copy of any and all insurance policies, or in the alternative, a statement as to the insurance coverages of the Defendants, relative to Plaintiff's claim.

DEMAND FOR JURY

Plaintiff, Maria Stallworth, hereby demands a Trial by Jury on all issues of fact.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is advised that EDWARD BLINDER, ESQ., is hereby designated as trial counsel on behalf of the Plaintiff, Maria Stallworth.

CERTIFICATION

Pursuant to Rule 4:5-1, it is hereby certified that this matter in controversy is not the subject of any other action pending in any Court, is not the subject of a pending arbitration proceeding and none is contemplated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

LAW FIRM OF EDWARD BLINDER, PLLC
ATTORNEYS FOR PLAINTIFF

BY: _____
EDWARD BLINDER, ESQ.

Dated: August 13, 2014

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Attorney ID# 051381992
Attorney for Plaintiff, Sharif Ali Tankard

SHARIF ALI TANKARD	**: UNITED STATES DISTRICT COURT** **: DISTRICT OF NEW JERSEY**
Plaintiff	**: CIVIL ACTION NO:**
v.	
	CIVIL ACTION
CITY OF ELIZABETH, RAUL DELAPRIDA, FRANKLIN IDROVO, JOHN DOES, 1 through 10, individually and in their official capacity and ROBERT DOES 1 through 10, individually and in their official capacity.	**COMPAINT AND JURY DEMAND**
Defendants	

Plaintiff, Sharif Ali Tankard is a citizen of the State of New Jersey, residing in the Township of Piscataway, County of Middlesex and State of New Jersey. By way of Complaint against the **Defendants, Plaintiff** hereby says:

JURISDICTION AND VENUE

1. Jurisdiction of this court is evoked pursuant to 28 U.S.C. Section 1331 inasmuch as this matter involves causes of action arising under 42 U.S.C. Sections 1983, 1986 and the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

2. Jurisdiction of this court is evoked pursuant to 28 U.S.C. 1343 inasmuch as this matter involves causes of action seeking redress for the deprivation under color of state law of rights existing under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983 and 1986.

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

COUNT ONE

VIOLATION OF CIVIL RIGHTS

1. **Plaintiff Sharif Ali Tankard** is a citizen of the State of New Jersey, residing in Piscataway, New Jersey.

2. **Defendant Raul DelaPrida**, at all times alleged was a citizen of the State of New Jersey and was employed by **Defendant City of Elizabeth** as a police officer.

3. **Defendant Franklin Idrovo**, at all times alleged was a citizen of the State of New Jersey and was employed by **Defendant City of Elizabeth** as a police officer.

4. **Defendants John Does 1 through 10** at the times alleged were citizens of the State of New Jersey and were employed by **Defendant City of Elizabeth** as law enforcement officers.

5. **Defendants Robert Does 1 through 10** at the times alleged were citizens of the State of New Jersey and were employed by **Defendant City of Elizabeth** as supervising police officers.

6. **Defendants John Does 1 through 10** are fictitious names of individuals who aided and abetted and/or conspired and/or acted to deprive **Plaintiff** of his civil rights.

7. **Defendants Robert Does 1 through 10** are fictitious names of individuals who aided and abetted and/or conspired and/or acted to deprive **Plaintiff** of his civil rights.

8. **Defendant City of Elizabeth** is a municipal corporation in the State of New Jersey organized under the laws of the State of New Jersey whose principal place of business is 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201-2462.

9. On March 1, 2013, **Plaintiff**, who is an African-American male, was exiting an apartment building in the City of Elizabeth, New Jersey. As **Plaintiff** approached the lobby area of the building to exit the building, he was approached by **Defendants Raul DelaPrida** and **Franklin Idrovo**.

10. **Plaintiff** was unarmed, possessed no weapons and possessed no controlled dangerous substances at the time.

11. **Defendants DelaPrida** and **Idrovo**, acting without probable cause or reasonable suspicion to believe that **Plaintiff** was involved in criminal activity, then pursued **Plaintiff**, assaulted him and beat **Plaintiff** on his head with a hard object.

12. **Defendant Raul DelaPrida** or **Defendant Franklin Idrovo**, then yelled to his partner, "shoot the nigger," "shoot the nigger."

13. **Defendant DelaPrida** then fired his gun and shot **Plaintiff** numerous times.

14. Said actions by **Defendants Raul DelaPrida** and **Franklin Idrovo** constituted an assault and battery.

15. As a result of the actions of **Defendants DelaPrida** and **Idrovo**, **Plaintiff** has sustained serious and permanent injury that included at least 10 surgeries to his right leg leaving **Plaintiff** unable to walk and with a severely deformed leg. **Plaintiff** likewise has sustained other serious and permanent injury, both mental and physical.

16. The intentional assault upon **Plaintiff**, **Sharif Ali Tankard** by **Defendants Raul DelaPrida, Franklin Idrovo and John Does 1 through 10** because he is African-American, violated the rights of **Plaintiff** as guaranteed by the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution the New Jersey Constitution and 42 U.S.C. Sections 1983, 1985 and 1986 in that the **Plaintiff** was subjected to an unreasonable seizure without probable cause. **Plaintiff** was also deprived of his liberty without due process of law, and was subjected to cruel and unusual punishment, for which the **Defendant** officers are individually liable. **Plaintiff** was also denied the equal protection of the laws, insofar as he was targeted by **Defendants** because of his race.

WHEREFORE, Plaintiff, Sharif Ali Tankard requests judgment against **Defendants City of Elizabeth, Raul DelaPrida, Franklin Idrovo, John Does** 1 through 10 and **Robert Does** 1 through 10 for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT TWO

VIOLATION OF CIVIL RIGHTS

1. **Plaintiff** incorporates herein by reference the allegations contained in Count One as though the same were fully set forth at length herein.

2. The intentional assault of **Plaintiff** by **Defendants John Does 1 through 10** because **Plaintiff** is African-American, was done with actual malice toward **Plaintiff** and with willful and wanton indifference to and deliberate disregard for the constitutional rights of **Plaintiff**. **Plaintiff** is therefore entitled to exemplary damages.

WHEREFORE, Plaintiff, Sharif Ali Tankard requests judgment against **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT THREE

VIOLATION OF CONSTITUTIONAL RIGHTS

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One and Two as though the same were fully set forth at length herein.

2. It was the policy and practice of the **City of Elizabeth** to authorize certain officers, including the **Defendants Raul DelaPrida, Franklin Idrovo, John Does 1 through 10** and **Robert Does 1 through 10,** to use excessive force in the arrest of persons who fit a certain profile. This policy and practice of **Defendant City of Elizabeth** encouraged and caused constitutional violations by police officers employed by **Defendant City of Elizabeth,** including the violation of **Plaintiff**'s constitutional rights by **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** described in the foregoing paragraphs.

3. At all times pertinent hereto, **Defendant Robert Does 1 through 10**, and other unknown supervisors who supervised the officers who unlawfully violated **Plaintiff**'s rights, encouraged and tolerated the policies and practices described in the foregoing paragraphs.

4. **Defendants Robert Does 1 through 10** failed to adequately train, supervise, and/or control **Defendant** officers so as to prevent the violations of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, the New Jersey State Constitution, and § 42 U.S.C. 1983, 1985 and 1986.

5. At all times pertinent hereto, **Defendants John Does 1 through 10** were acting within the scope of their employment and pursuant to the aforementioned policies and practices and were enforced by **Defendants City of Elizabeth** and **Robert Does 1 through 10** are therefore liable for the violation of **Plaintiff**'s constitutional rights by **Defendants**.

WHEREFORE, Plaintiff, Sharif Ali Tankard requests judgment against **Defendants City of Elizabeth** and **Robert Does 1 through 10** for damages, together with attorney fees and costs of suit and other further relief as the Court may deem proper and just.

COUNT FOUR

CONSPIRACY TO VIOLATE CIVIL RIGHTS

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Three as though the same were fully set forth at length herein.

2. **Defendants, Raul DelaPrida, Franklin Idrovo, John Does 1 through 10** and/or **Robert Does 1 through 10**, conspired to violate **Plaintiff**'s right to equal protection of laws as more fully described in the foregoing paragraphs because **Plaintiff** is African-American in violation of 42 U.S.C. § 1983, 1985, and 1986, for which **Defendants** are individually liable.

WHEREFORE, Plaintiff, Sharif Ali Tankard requests judgment against **Defendants Raul DelaPrida, Franklin Idrovo, John Does 1 through 10** and **Robert Does 1 through 10**, for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT FIVE

CONSPIRACY TO VIOLATE CIVIL RIGHTS

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Four as though the same were fully set forth at length herein.

2. **Defendant City of Elizabeth** having knowledge that **Defendants Raul DelaPrida, Franklin Idrovo, John Does 1 though 10** and **Robert Does 1 through 10**, conspired to violate the **Plaintiff's** civil rights because he is African-American, and having power to prevent through its agents and assigns the violations of civil rights refused to do so in violation of 42 U.S. Sec. 1983, 1985 and 1986 for which the **Defendants** is liable.

WHEREFORE, Plaintiff, Sharif Ali Tankard requests judgment against **Defendants City of Elizabeth** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT SIX

ASSAULT AND BATTERY

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Five as though the same were fully set forth at length herein.

2. The aggravated assault upon **Plaintiff** by **Defendants** when **Defendants** had no lawful authority to detain **Plaintiff**, when **Plaintiff** was unarmed and did not pose a threat of death or grievous bodily injury to **Defendants Raul DelaPrida, Franklin Idrovo** or **John Does 1 through 10** was without justification or provocation, was excessive and constitutes and aggravated assault for which the **Defendants** are individually liable.

3. As a proximate result of the aggravated assault committed by **Defendants Raul DelaPrida** and **Franklin Idrovo, Plaintiff** has sustained permanent injuries and have incurred medical bills and expenses. These injuries have caused and will continue to cause **Plaintiff** great pain and suffering, both mental, emotional and physical.

WHEREFORE, Plaintiff Sharif Ali Tankard, requests judgment against **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT SEVEN

ASSAULT AND BATTERY

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Six as though the same were fully set forth at length herein.

2. The intentional assault and verbal abuse of **Plaintiff** by **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10**, when **Plaintiff** was unarmed and did not pose a threat of death or grievous bodily injury to **Defendants** or others, when **Defendants** did not have lawful authority to arrest **Plaintiff** or to use deadly or non-deadly force against him, was done with actual malice toward **Plaintiff** and with willful and wanton indifference to and deliberate disregard for human life and the rights of **Plaintiff. Plaintiff** is thus entitled to exemplary damages.

3. As a proximate result of the aggravated assault committed by **Defendants, Plaintiff** has sustained permanent injuries and has incurred medical bills and expenses. These injuries have caused and will continue to cause **Plaintiff** great pain and suffering, both mental, emotional and physical.

WHEREFORE, Plaintiff, Sharif Ali Tankard requests judgment against **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10,** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT EIGHT

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Seven as though the same were fully set forth at length herein.

2. **Defendant, Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10**, intentionally assaulted and/or verbally abused **Plaintiff** in such a manner that was extreme, outrageous, and unjustified, and caused **Plaintiff** to suffer permanent physical and emotional distress that no reasonable person should be expected to endure for which **Defendant, Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** are individually liable.

3. As a proximate result of the intentional infliction of emotional distress committed by Defendants, **Plaintiff** has sustained permanent injuries and has incurred medical bills and expenses. These injuries have caused and will continue to cause **Plaintiff** great pain and suffering, both mental, emotional and physical.

WHEREFORE, Plaintiff, Sharif Ali Tankard requests judgments against **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT NINE

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Eight as though the same were fully set forth at length herein.

2. The actions and/or verbal abuse of **Plaintiff** by **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** were negligently committed and caused **Plaintiff** emotional distress.

3. The **Defendants'** conduct in assaulting the **Plaintiff** put the **Plaintiff** in reasonable fear of imminent bodily injury or death.

4. As a proximate result of the actions assault committed by **Defendants**, **Plaintiff** has sustained permanent injuries and has incurred medical bills and expenses. These injuries have caused and will continue to cause **Plaintiff** great pain and suffering, both mental, emotional and physical.

WHEREFORE, Plaintiff Sharif Ali Tankard requests judgment against **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT TEN

NEGLIGENCE

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Nine as though the same were fully set forth at length herein.

2. **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10**, while acting as agents and employees for **Defendant City of Elizabeth** in their capacity as police officers for **Defendant City of Elizabeth**, owed a duty to **Plaintiff** to perform their police duties without using excessive force. **Defendants'** use of force upon **Plaintiff** when **Plaintiff** was unarmed and did not pose a threat of death or grievous bodily injury to **Defendants** or others constitutes negligence for which **Defendants** are individually liable.

3. As a proximate result of **Defendants'** negligent use of excessive force, **Plaintiff** has sustained permanent injuries and has incurred medical bills and other expenses. These injuries have caused and will continue to cause **Plaintiff** pain and suffering both mental, emotional and physical.

WHEREFORE, Plaintiff Sharif Ali Tankard requests judgments against **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT ELEVEN

NEGLIGENCE

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Ten as though the same were fully set forth at length herein.

2. At all times of the alleged incident **Defendants** were acting within the scope of their employment as officers of the **City of Elizabeth** Police Department.

3. As a proximate result **Plaintiff** has sustained permanent injuries and has incurred medical bills and other expenses. These injuries have caused and will continue to cause **Plaintiff** pain and suffering both mental, emotional and physical.

WHEREFORE, Plaintiff Sharif Ali Tankard requests judgment against **Defendants Raul DelaPrida**, **Franklin Idrovo** and **John Does 1 through 10** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT TWELVE

NEGLIGENCE

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Eleven as though the same were fully set forth at length herein.

2. **Defendant City of Elizabeth's** failure to provide adequate training and supervision to its police officers constitutes a willful and wanton indifference and deliberate disregard for human life and the rights of private citizens, including **Plaintiff**. **Plaintiff** is thus entitled to exemplary damages.

3. As a proximate result **Plaintiff** have sustained permanent injuries and have incurred medical bills and other expenses. These injuries have caused and will continue to cause **Plaintiff** pain and suffering both mental, emotional and physical.

WHEREFORE, Plaintiff, Sharif Ali Tankard requests judgment against **Defendant City of Elizabeth** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT THIRTEEN

FALSE ARREST/FALSE DETENTION

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Twelve as though the same were fully set forth at length herein.

2. **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** falsely detained **Plaintiff**, unlawfully restraining his freedom of movement. As a proximate result of false detention/arrest, **Plaintiff** suffered damages both permanent and financial.

WHEREFORE, Plaintiff Sharif Ali Tankard requests judgment against **Defendants Raul DelaPrida, Franklin Idrovo** and **John Does 1 through 10** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT FOURTEEN

RESPONDEAT SUPERIOR LIABILITY

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Thirteen as though the same were fully set forth at length herein.

2. At all times pertinent hereto, **Defendants Raul DelaPrida, Franklin Idrovo, John Does 1 through 10** and **Robert Does 1 through 10**, were acting within the scope of their employment as an officers of **Defendant City of Elizabeth**.

3. **Defendant City of Elizabeth** is liable for compensatory damages under the doctrine of respondeat superior for the intentional torts and negligence of **Defendants** committed within the scope of their employment.

4. As a proximate result of the **Defendants** conduct, **Plaintiff** has sustained permanent injuries and has incurred medical bills and other expenses. These injuries have caused and will continue to cause **Plaintiff** great pain and suffering, both mental, emotional and physical.

WHEREFORE, Plaintiff Sharif Ali Tankard, requests judgment against **Defendant City of Elizabeth** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT FIFTEEN

EXEMPLARY DAMAGES

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Fourteen as though the same were fully set forth at length herein.

2. **Defendant City of Elizabeth** through its agents expressly authorized **Defendants Raul DelaPrida, Franklin Idrovo, John Does 1 through 10** and **Robert Does 1 through 10** to use excessive force, knew, through its agents, that the **Defendant officers** had a propensity for committing intentional torts, using excessive force in the line of duty, and acquiesced in the **Defendants'** wrongful conduct. **Plaintiff** is thus entitled to exemplary damages against the **City of Elizabeth** for the malicious conduct to **Plaintiff.**

3. As a proximate result **Plaintiff** has sustained permanent injuries and has incurred medical bills and other expenses. These injuries have caused and will continue to cause **Plaintiff** great pain and suffering, both mental, emotional and physical.

WHEREFORE, Plaintiff Sharif Ali Tankard, requests judgment against **Defendant City of Elizabeth** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT SIXTEEN

NEGLIGENCE

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Fifteen as though the same were fully set forth at length herein.

2. At all times of the alleged incident **Defendants John Does 1 through 10**, in their individual and official capacities were acting within the scope of their employment as police officers of the **City of Elizabeth.**

3. As a proximate result of **Defendants** negligence, **Plaintiff** has sustained permanent injuries and has incurred medical bills and other expenses. These injuries have caused and will continue to cause **Plaintiff** pain and suffering, both mental, emotional and physical.

WHEREFORE, Plaintiff Sharif Ali Tankard request judgment against **Defendants Raul DelaPrida, Franklin Idrovo, John Does 1 through 10** and **Robert Does 1 through 10** or damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT SEVENTEEN

VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT OF 2004

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Sixteen as though the same were fully set forth at length herein.

2. **Defendants** each of them, failed to adequately perform or negligently performed an official duty and/or conspired to violate **Plaintiff**'s Civil rights as protected by the New Jersey Civil Rights Act of 2004.

WHEREFORE, Plaintiff Sharif Ali Tankard requests judgment against **Defendants City of Elizabeth, Raul DelaPrida, Franklin Idrovo, John Does 1 through 10** and **Robert Does 1 through 10** for damages, together with attorney fees and costs of suit and any other and further relief as the Court may deem proper and just.

COUNT EIGHTEEN

MALICIOUS PROSECUTION

1. **Plaintiff** incorporates herein by reference the allegations contained in Counts One through Seventeen as though the same were fully set forth at length herein.

2. On or about March 1, 2013, **Defendants** caused a criminal complaint to be filed against **Plaintiff** in the Union County Superior Court.

3. The criminal charges is more specifically set forth in Complaint Numbers: W-2013-000858-2004, W-2013-000859-2004 & Prosecutor's Number 1300832.

4. The complaints charge **Plaintiff** with Aggravated Assault by attempting to cause bodily injury to **Defendant Idrovo** by knowingly under circumstances manifesting extreme indifference to the value of human life, by pointing a firearm at a Law Enforcement Officer, in violation of N.S.J.A.2C:12-1B (9); Unlawfully taking a firearm from a Law Enforcement Officer acting in the performance of his duties, and did threaten to use the firearm against that officer or another in violation N.S.J.A.2C:12-11B(2); Purposely prevent a Law Enforcement Officer, from affecting a lawful arrest through the use of physical force or violence against a Law Enforcement Officer or another in violation of N.S.J.A.2C:29-2A(3)(A); Possession of CDS, to wit cocaine, in violation of N.S.J.A.2C:35-10A(1); Possession of a .45 Calibre handgun with a purpose to use it unlawfully against the person or property of **Defendant Idrovo** or another in violation of N.S.J.A.2C:39-4A and Possession of 45 Calibre handgun without first having obtained a permit to carry same in violation N.S.J.A.2C:39-5B .

5. The filing of the complaints by **Defendants DelaPrida** and **Idrovo** was made solely to harass, injure, and harm **Plaintiff** and was made without probable cause.

6. All of the above-mentioned charges were either dismissed on motion of the Union County Prosecutor's Office or no-billed by the Union County Grand Jury.

7. As a result of the filing of the complaints and **Plaintiff**'s arrest, **Plaintiff** has suffered damages and will continue to incur damages. These damages include but are not limited to legal fees, medical bills and the posting of a large bail.

8. **Defendants DelaPrida** and **Idrovo** instituted the above criminal proceedings against **Plaintiff**.

9. **Defendants** continued the prosecution of the above criminal proceedings against **Plaintiff**.

10. The criminal proceedings terminated favorably to **Plaintiff**.

11. **Defendants** lacked probable cause for the institution and prosecution of the above criminal proceedings against **Plaintiff**.

12. **Defendants** instituted and prosecuted the above criminal proceedings with malice and with specific intent to harm and injure **Plaintiff**.

13. The restraint upon **Plaintiff**'s freedom and liberty was wrongful and was the direct result of the improper filing of the criminal charges by defendants.

14. As a direct and proximate result of **Defendants DelaPrida** and **Idrovo** actions as described above, and particularly of their willful, intentional, false, malicious, reckless, or grossly negligent actions in arresting, detaining and imprisoning **Plaintiff**, **Plaintiff** was greatly humiliated and disgraced, suffered great mental and physical anguish, suffered severe damage to his reputation and standing in the community, was forced to undergo the rigors and strain of a false arrest, detention and imprisonment and has otherwise been damaged and injured, to his great detriment.

WHEREFORE, Plaintiff Sharif Ali Tankard demands judgment for damages against **Defendants DelaPrida** and **Idrovo**, both compensatory and punitive, together with interest, costs of suit and such other relief as the court deems proper.

JURY DEMAND

Pursuant to R.38 of the Federal Rules of Civil Procedure, **Plaintiff** demands a jury trial on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that Randy P. Davenport, Esq., is hereby designated as trial counsel.

CERTIFICATION

Counsel certifies that this pleading is presented in compliance to R.11 of the Federal Rules of Civil Procedure.

Dated: March 3, 2014

RANDY P. DAVENPORT, ESQ., */S/Naf*
RANDY P. DAVENPORT, ESQ.

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
RECEIVED
2015 DEC -1 P 4:02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF NEWARK

RYAN THOMAS,

Plaintiff,

vs.

ELIZABETH POLICE DEPARTMENT; JAMES COSGROVE; RONALD SIMON; J. PEVONIS; B. CLANCY; B. MCDONOUGH; and JOHN DOE AND JANE DOES 1-19.,

Defendant

CIVIL ACTION NO.: _____

COMPLAINT
(42 U.S.C. 1983)

JURY TRIAL DEMANDED

INTRODUCTION

Plaintiff, Ryan Thomas brings an action for violation of his constitutional rights brought pursuant to 42 U.S.C. 1983, by way of the Fourteenth Amendment and Fourth amendment of the United States Constitution against certain police officers and the Police Department of Elizabeth for a pattern, custom, and practice of harassment, false arrest, and assault.

1. JURISDICTION AND VENUE

1. Plaintiff brings these causes and claims against the defendants pursuant to the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983, and federal jurisdiction permissible under 28 U.S.C. § 1331 and 1343 for the deprivation of federal statutes and regulations and the United States Constitution.

2. All defendants are sued in their individual capacity for compensatory damages. Plaintiff also sues all defendants and the Elizabeth Police Department in its official capacity to enjoin the defendants by way of a federal injunction into compliance with federal law and the U.S. Constitution.

3. The district of New Jersey, vicinage of Newark, is an appropriate venue pursuant to 28 U.S.C. § 1391(b)(2) because the violations and injuries given rise to the claims occurred in this vicinage and district of New Jersey.

2. PARTIES

Plaintiff

4. Name of Plaintiff: RYAN THOMAS, who receives his mail at 139 Claremont Ave, Jersey City, New Jersey 07305

Defendants

5. Name of first defendant: J. Pevonis, who is employed at the Elizabeth Police Department as a police officer, located at, 1 police Plaza, Elizabeth, New Jersey 07201.
6. Name of second defendant: B. Clancy, who is employed at the Elizabeth Police Department as a police officer, located at, 1 police Plaza, Elizabeth, New Jersey 07201.
7. Name of third defendant: B. Mcdonough, who is employed at the Elizabeth Police Department as a police officer, located at, 1 police Plaza, Elizabeth, New Jersey 07201.
8. Name of fourth defendant: James Cosgrove, who is employed at the Elizabeth Police Department as the Director of the department, located at 1 Police Plaza,

Elizabeth, New Jersey 07201.

9. Name of fifth defendant: Ronald Simon, who is employed at the Elizabeth Police Department as the Chief of Police, located at 1 Police Plaza, Elizabeth, New Jersey 07201.

3. STATEMENT OF FACTS

10. On August 27th, 2014, plaintiff, Ryan Thomas, was riding his bike cycle by the Elizabeth Train station, and heading to purchase a train ticket. At this point, the plaintiff noticed a police officer that it appeared may have been calling him or someone. Plaintiff wasn't sure if the police officer was calling him, so he had stopped and waved toward the police officer to make sure the officer was not calling him. It was in a populated area and the police officer did not respond to plaintiff's response and thus he rode off toward his destination to obtain a train ticket.

11. Plaintiff remained in the immediate vicinity, as he was not fleeing from anyone. At this point, plaintiff was aggressively and excessively apprehended by the officers; but not limited to, Off. J. Pevonis, Off. B. Clancy, Off. B. McDonough and others.

12. The apprehending officers assaulted plaintiff. He was punched, kicked, and choked.

13. Plaintiff had not physically resisted or assaulted the defendants in any way, and the force used against him was unnecessary, unreasonable and excessive. However, plaintiff was attacked by the officers and arrested and taken

to police head quarters at 1 Police Plaza, Elizabeth, New Jersey.

14. The defendant police officers had no warrant for the arrest of the plaintiff, no probable cause for the arrest of the plaintiff and no legal cause or excuse to seize the person of the plaintiff.

15. At all times during the events described above, the defendant police officers were engaged in a joint venture. The individual officers assisted each other in performing the various actions described and lent their physical presence and support and the authority of their office to each other during the said events.

16. Plaintiff was charged and arrested for numerous criminal offenses. The court dismissed all criminal charges.

17. As a direct and proximate result of the said acts of the defendants officers, the plaintiff suffered the following injuries and damages:

18. Physical pain and suffering and emotional trauma and suffering, requiring the expenditure of money of treatment.

19. Freedom from the use of excessive, unreasonable and unjustified force against his person.

The City of Elizabeth Police Department

20. Prior to August 27th, 2014 the City of Elizabeth developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in Elizabeth, which caused the violation of Plaintiff's rights.

21. It was the policy and/or custom of the City of Elizabeth to inadequately and improperly investigate citizen complaints of police misconduct, and acts of misconduct were instead tolerated by the City of Elizabeth, including, but not limited to, the following incidents:

22. It was the policy and/or custom of the City of Elizabeth to inadequately supervise and train its police officers, including the defendant officers, thereby failing to adequately discourage further constitutional violations on the part of its police officers. The City did not require appropriate in service training or re-training of officers who were known to have engaged in police misconduct.

23. As a result of the above described policies and customs, police officers of the City of Elizabeth, including the defendant officers, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

24. The above-described policies and\customs demonstrated a deliberate indifference on the part of policymakers of the City of Elizabeth to the constitutional rights of persons within the City, and were the cause of the violations of plaintiff's rights alleged herein.

4. CLAIMS FOR RELIEF

Paragraphs (10) through (24) are incorporated herein by reference as though fully set forth.

COUNT I

ASSAULT AND BATTERY AGAINST INDIVIDUAL DEFENDANTS

25. The individual defendant police officers assaulted and battered plaintiff Ryan Thomas.

26. Defendant officers; J. Pevonis, B. Clancy, B. Mcdonough, and Jon Doe and Jane Doe 1-19 all participated by their support and physical assault on plaintiff Ryan Thomas in violation of the Due Process Clause of the 14h Amendment of the U.S. Constitution.

COUNT II

42 U.S.C. 1983 AGAINST THE ELIZABETH POLICE DEPARTMENT

27. By the Elizabeth Police Department's policy or custom of inadequately and improperly investigating citizen's complaints of police misconduct, and acts of misconduct; including, but not limited too, inadequate supervising and training, failing to discourage further constitutional violations of the officers, failure to train and re-train officers who were known to have engaged in police misconduct was a violation of plaintiff's (Ryan Thomas) due process rights under the 14th Amendment of the U.S. Constitution.

Count III

FALSE ARREST AND IMPRISONMENT

28. Defendant officers; J. Pevonis, B. Clancy, B. Mcdonough, and John Doe and Jane Doe illegally arrested and illegally imprisoned Plaintiff Ryan Thomas.

29. As a result of this false arrest and illegal imprisonment, the plaintiff suffered the damages as foresaid; in violation of the 4th Amendment and 14th Amendment's due process rights under the U.S. Constitution.

5. PRAYER FOR RELIEF

30. WHEREFORE, plaintiff request that this court grant the following relief:

31. Declare that all defendants violated plaintiff's Fourteenth Amendment rights when they failed to protect him from a known risk of assault and he was severely assaulted.

32. Issue an injunction requiring the defendants and the Elizabeth Police Department to properly train and follow their internal rules, regulations and police departmental policies to ensure of all persons constitutional rights.

33. Award compensatory damages for plaintiff's physical and emotional injuries, and punitive damages against each defendant, in the amount of four million dollars ($ 4,000,000).

34. Grant plaintiff such other relief, as it may appear plaintiff is entitled to.

6. VERIFICATION

35. Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed this 1 day of 12 2015

By: Ryan Thomas

Ryan Thomas, pro se

7. CERTIFICATION OF NO OTHER ACTION

36. Pursuant to Fed.R.Civ.P., 11.2, I hereby certify that this matter is not the subject of any other action pending in any court, pending arbitration, or administrative proceeding. Plaintiff reserves the right to amend the complaint at the appropriate time to include others that are discovered to be responsible for plaintiff's injuries.

Signed this 1 day of 12 2015

By: Ryan Thomas

Ryan Thomas, pro se

UNITED STATES DISTRICT COURT

for the

District of New Jersey

Division

Shawn Trapp

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

THE STATE OF NEW JERSEY, CITY OF ELIZABETH NEW JERSEY, ELIZABETH MUNICIPAL COURT, ELIZABETH POLICE DEPARTMENT, GEORGE LEUS, ROBERT CARROLL

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case No. 17-10709-FLW-LHG

(to be filled in by the Clerk's Office)

Jury Trial: *(check one)* ☒ Yes ☐ No

RECEIVED

NOV 02 2017

AT 8:30 M

WILLIAM T. WALSH

CLERK

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Shawn Trapp
Street Address	c/o 108 Bank Street
City and County	Red Bank
State and Zip Code	New Jersey
Telephone Number	(732) 687-3610
E-mail Address	trappun@yahoo.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title *(if known)*. Attach additional pages if needed.

Defendant No. 1

Name	STATE OF NEW JERSEY, Christopher S. Porrino
Job or Title *(if known)*	Attorney General for THE STATE OF NEW JERSEY
Street Address	RJ Hughes Justice Complex 25 Market Street, Box 080
City and County	Trenton
State and Zip Code	NJ, 08625-0080
Telephone Number	(609) 292-4925
E-mail Address *(if known)*	

Defendant No. 2

Name	CITY OF ELIZABETH, J. Christian Bollwage
Job or Title *(if known)*	Mayor of the City of Elizabeth
Street Address	50 Winfield Scott Plaza
City and County	Elizabeth
State and Zip Code	NJ 07201
Telephone Number	(908) 820-4000
E-mail Address *(if known)*	

Defendant No. 3

Name	ELIZABETH MUNICIPAL COURT, Roman Montes
Job or Title *(if known)*	Presiding Judge of Elizabeth Municipal Court
Street Address	1 Police Plaza
City and County	Elizabeth
State and Zip Code	NJ 07201
Telephone Number	(908) 558-6800
E-mail Address *(if known)*	

Defendant No. 4

Name	ELIZABETH POLICE DEPARTMENT, John F. Brennan
Job or Title *(if known)*	Chief of Police for Elizabeth Police Department
Street Address	1 Police Plaza
City and County	Elizabeth
State and Zip Code	NJ 07201
Telephone Number	(908) 558-2000
E-mail Address *(if known)*	

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than $75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

☒ Federal question ☐ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

Article III of The UNITED STATES CONSTITUTION, Article 5 of the United States Constitution, Due Process Clause, The Brady Doctrine, 8 U.S.C. 1324c(a), 18 U.S.C. 371, 18 U.S.C. 1621

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, *(name)* _____, is a citizen of the State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant, *(name)* _____, is a citizen of the State of *(name)* _____. Or is a citizen of *(foreign nation)* _____.

b. If the defendant is a corporation

The defendant, *(name)* _____, is incorporated under the laws of the State of *(name)* _____, and has its principal place of business in the State of *(name)* _____.
Or is incorporated under the laws of *(foreign nation)* _____, and has its principal place of business in *(name)* _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy–the amount the plaintiff claims the defendant owes or the amount at stake–is more than $75,000, not counting interest and costs of court, because *(explain)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

George Leus beat me up, by punching me numerous times causing my tooth to get knocked out giving me black eyes and swelled my face while on duty outside of wendys on April 25, 2015 and then illegally arrested me and continued to beat me while in the police station directly under the cameras. George Leus while I was in handcuffs stripped me down in front of other inmates and other officers, George Leus also submitted fraud to the court and committed purjery; Robert Carroll produced fraud on the court and subornation of perjury abuse of process, held a malicious prosecution, selective prosecution, also had ex parte communication with THE COURT(Roman Montes), violating ; Eliabeth Police Department falsely imprisoned me, failed to file my Interal Affairs complaint and failed to turn over the DVD of the in station cameras; Elizabeth Municipal Court failed to provide to any Judge with motions that I have filed and failed to provide Judges Notes to the Judge hearing the case, assist Robert Carroll in conducting a malicious prosecution and abuse of process, also had ex parte communication with Robert Carroll, as well as put out several warrants; The City of Elizabeth failed to provide safeguards so prevent this from happening as well as failed to provide adequate training for the Elizabeth Police Department; THE STATE OF NEW JERSEY is connected to Robert Carroll because Robert Carroll represented the STATE OF NEW JERSEY.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

$3,000,000.00 (three million dollars) for getting beat up by getting punched in the face numerous times causing my tooth to get knock out, black eyes and swelling to occur on my face. I had to go to the emergency room as well to a dentist. Stripped naked in front of inmates and police officers and fasely imprisioned

$3,000,000.00 (three million dollars) for due process violation by being denied Justice, for failing to adhear to Brady v. Maryland and New Jersey Rule 7:7-7 as well as failing to adhear to Jonathan H. Rosenbluth, J.M.C. holup order enter September 16, 2015, dening my right to speedy trial, for allowing perjury and surbonation of perjury to occur, causing great finaincial hardship by issuing warrants and having me appear in court so many times, for cause mental anguish and intentional infliction of emotional distress

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case–related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff _____

Printed Name of Plaintiff _____

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Street Address _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Daniel Shimko
Salem & Shimko, P.C.
446 Avenue P
Brooklyn, NY 11223
(718) 684-6600
dshimko@salemshimko.com

----------X

MICHAEL TRIMIS,

Plaintiff,

COMPLAINT

- against -

Jury Trial Demanded

POLICE OFFICER NUNES,

Defendant.

----------X

Plaintiff, complaining of the defendant, by his attorneys, SALEM & SHIMKO, P.C., alleges for his complaint as follows:

JURISDICTION

1. This action arises under the Constitution of the United States, particularly the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States, and under the laws of the United States, particularly the Civil Rights Act, 42 U.S.C. §§ 1983.

2. The jurisdiction over this court is invoked under the provisions of 28 U.S.C. §§ 1331, 1343, 1367, the latter of which authorizes supplemental and pendant jurisdiction of this court to hear and decide claims arising under New Jersey State Law.

3. Jurisdiction in this Court is also Based upon Diversity of citizenship principles, pursuant to Art. III, Section 2 of the United States Constitution. Furthermore, the amount in controversy exceeds the statutory minimum for jurisdiction based upon diversity of citizenship.

VENUE

4. Venue is placed in this district because it is where the acts complained of occurred, and where parties reside and/or are employed.

PARTIES

5. At the time of the commencement of this action, Plaintiff MICHAEL TRIMS is a legal resident of the United States, residing in the County of Richmond, City and State of New York.

6. May 23, 2013, at the time of the occurrences complained of herein, and at all times relevant hereto, defendant POLICE OFFICER NUNES, in his official capacity as police officer for City of Elizabeth, New Jersey, and within the scope of his employment and under color of state law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the State of New Jersey and City of Elizabeth.

7. Upon information and belief, POLICE OFFICER NUNES is a resident of the State of New Jersey.

INTRODUCTION

8. On May 23, 2013 at approximately 1:05 p.m. Plaintiff was driving south on Elmora Avenue, in the City of Elizabeth.

9. At the intersection of Elmora Avenue and Westfield Avenue, an unmanned police vehicle was stopped with no lights, blocking the right land.

10. No officer was directing traffic at the intersections of Elmora Avenue and Westfield Avenue.

11. Following the car in front of hims, Plaintiff passed in the left lane the unmanned police vehicle and continued to follow the flow of traffic.

12. At the next corner, the intersection of Elmora Avenue and W. Grand Street, Plaintiff was then stopped by Police Officer Szotack.

13. Addressing the plaintiff, Police Officer Szotack yelled "what? Are you fucking stupid? There is a police vehicle at the corner."

14. As a direct result of Officer Szotack's Verbal tirade, Plaintiff felt and feared imminent danger of harm from Police Officer Szotack.

15. Police Officer Szotack then requested his license and registration as well as a military identification that he saw in Plaintiff's possession.

16. Police Officer Nunes then approached the Plaintiff's vehicle and snatched the license, registration, military identification from the plaintiff's hand.

17. Police Officer Nunes then issued Plaintiff a careless driving summons and returned to plaintiff only his license and registration.

18. Plaintiff was not placed under arrest.

19. Plaintiff was not returned his military identification.

20. Plaintiff requested his military identification but was refused its return.

21. With the defendant Officer Nunes wrongfully holding his military identification, the plaintiff felt trapped, denied of liberty, and helpless.

22. As a result of Defendant's wrongfully taking his military identification, plaintiff was not "free to go."

23. Given the importance and clearance associated with military identification cards, plaintiff was trapped until he regained possession of his identity.

24. Plaintiff was required to immediately contact his superior officer, United States Army Reserve Staff Sergeant John Henderson and report that he lost possession of his military identification.

25. SSG Henderson was able to speak with Officer Nunes through the Plaintiff's phone and requested that he return the government issued military identification.

26. Officer Nunes refused SSG Henderson's request.

27. With Police Officer Nunes still refusing to return his military identification, Michael Trimis was required to go to the City of Elizabeth Police Precinct to file an Internal Affairs complaint.

28. At approximately 3:30 p.m., upon filing the complaint with Internal Affairs, Plaintiff was finally returned his military identification card.

AS AND FOR A FIRST CLAIM
42 U.S.C. SECTION 1983 AND NEW JERSEY STATE LAW
FALSE IMPRISONMENT

29. The Plaintiff hereby incorporates by reference each and every statement made in this Complaint, whether above or below, as if each statement is fully rewritten herein.

30. As a result of the Defendants' wrongfully withholding the plaintiff's military identification, the plaintiff was trapped until he obtained the return of his military identification card.

31. The Defendant Police Pfficer, without just cause, negligently, wrongfully, willfully, maliciously and unreasonably seized Plaintiff herein and deprived him of his liberty and subjected plaintiff to unreasonable, unconscionable, unjustified and unprovoked seizure and detention and subjected plaintiff to false imprisonment without process in violation of rights afforded him by the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, 42 U.S.C. §§ 1983 and the common law and Constitution of New Jersey State.

32. The Plaintiff has timely filed a claim pursuant the New Jersey Tort Claims act and his claim has not been resolved.

33. By reason of the foregoing, the Plaintiff was deprived of his liberty, confined, and was subjected to ridicule, scorn and derision by those knowing of his detention and plaintiff has otherwise been caused to suffer.

AS AND FOR A SECOND CLAIM
42 U.S.C. SECTION 1983 AND NEW JERSEY STATE LAW
CONVERSION / INTENTIONAL DEPRIVATION OF PROPERTY

34. The Plaintiff hereby incorporates by reference each and every statement made in this Complaint, whether above or below, as if each statement is fully rewritten herein.

35. The Defendant Police Officer, without just cause, negligently, wrongfully, willfully, maliciously and unreasonably seized Plaintiff's property, his military identification card, in violation of rights afforded him by the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, 42 U.S.C. §§ 1983 and the common law and Constitution of New Jersey State.

36. The return of the Plaintiff's military identification card was not obtained through any established post-deprivation remedy.

37. Although the Plaintiff has received his identification card, he has not been compensated for the period of deprivation.

38. There is no post-deprivation remedy available to the Plaintiff to compensate him for his loss and troubles caused by the unlawful deprivation.

39. The Plaintiff has timely filed a claim pursuant the New Jersey Tort Claims act and his claim has not been resolved. Indeed, plaintiff was told to "file his claim in federal court"

40. By reason of the foregoing, the Plaintiff was deprived of his property, and was subjected to ridicule, scorn and derision by those knowing of his deprivation and plaintiff has otherwise been caused to suffer.

AS AND FOR A THIRD CLAIM
PUNITIVE DAMAGES

41. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs" 1" through "40" of this complaint, with the same force and effect as is fully set forth herein.

42. Defendant's conduct evinces a high degree of moral turpitude and demonstrates such wanton dishonesty as to imply a criminal indifference to civil obligations.

43. Defendant's wrongdoing was deliberate and has the character of outrage frequently associated with crime.

44. The misconduct was exceptional, as the defendant acted maliciously, wantonly, and/or with a recklessness that betokens an improper motive or vindictiveness and have

engaged in outrageous or oppressive intentional misconduct or with reckless or wanton disregard of safety or rights.

45. Plaintiff was subjected to a violation of his civil rights and permanent damage to his reputation and standing in the community.

46. By reason of the foregoing, Plaintiff is entitled to punitive damages in an amount to be determined by the court.

WHEREFORE, the Plaintiff demands judgment against the Defendant in an amount not less than $75,000.00, plus attorneys fees to the extent permitted by law.

Dated: Brooklyn, New York
January 8, 2014

Respectfully submitted,
SALEM & SHIMKO, P.C.
Attorneys for the Plaintiff(s)

by: Daniel Shimko
Daniel Shimko

446 Avenue P
Brooklyn, NY 11223
(718) 684-6600

TO:

Police Officer Nunes
Elizabeth Police Department
1 Police Plaza
Elizabeth, New Jersey 07201

RECEIVED / FILED
Superior Court of New Jersey
JUL 13 2016
CIVIL CASE MANAGEMENT
UNION COUNTY

Mark C.G. Lawrence, Esq. (Bar #042561997)
Silvia G. Getges, Esq. (Bar #01622012)
FORMAN, CARDONSKY, & LAWRENCE
701 Westfield Ave.
Elizabeth, New Jersey 07208
(908) 353-6500
Attorneys for Plaintiff, Ezekiel Villafana

EZEKIEL VILLAFANA, Plaintiff, vs. **CITY OF ELIZABETH, POLICE OFFICER JORGE F. FARINAS, OFFICER A. VALENCIA** Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY **DOCKET NO.** UNN-L-2331-16 CIVIL ACTION **COMPLAINT AND JURY DEMAND**

RECEIVED
Superior Court of New Jersey
JUL 13 2016
CIVIL CASE MANAGEMENT
UNION COUNTY

Plaintiff, EZEKIEL VILLAFANA, residing at 816 South Street, in the City of Elizabeth, County of Union and State of New Jersey by way of Complaint against the Defendants herein, says:

Factual Allegations

1. On or about July 15, 2014, Plaintiff VILLAFANA was sitting in the driver's seat of a parked motor vehicle, a green Honda Accord at the intersection of Elizabeth Ave and Second Street in the City of Elizabeth, County of Union, State of New Jersey.
2. Defendants FARINAS and VALENCIA flashed a flashlight into Plaintiff's car and at Plaintiff's face.

3. Plaintiff asked Defendants FARINAS and VALENCIA not to flash the light because he has a history of seizures.
4. Defendants FARINAS and VALENCIA continued to flash the lights at Plaintiff.
5. While Plaintiff was seated in the vehicle, Defendants FARINAS and VALENCIA attempted to pull Plaintiff out from his vehicle while his seatbelt was still attached.
6. Defendants FARINAS and VALENCIA then struck Plaintiff on the head repeatedly with a flashlight and other hard object after placing him under arrest.
7. Plaintiff suffered serious and permanent bodily injury due to Defendant FARINAS and VALENCIA's excessive force.

Count I

1. Plaintiff repeats and re-alleges all the allegations of the previous paragraphs as if set forth more fully at length herein.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1 and Article I, Section 7 of the New Jersey State Constitution.
3. Plaintiff has been at all times material hereto a lawful citizen of the United States of America, a resident of the State of New Jersey and a resident of the City of Elizabeth.
4. The individual Defendants herein at all times relevant hereto were employees of the City of Elizabeth and were acting under color of State and Municipal Law.

5. Defendants are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
6. Defendants FARINAS and VALENCIA violated Plaintiff's right to be protected against unreasonable seizure as guaranteed by Article I, Section 7 of the New Jersey State Constitution, in violation of his civil rights under Article 1, Section 1 of the New Jersey State Constitution and in violation the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) by subjecting Plaintiff to excessive force during the course of her seizure/arrest.
7. As a direct and proximate result of the wrongful actions of the Defendants, as set forth above, Plaintiff EZEKIEL VILLFANA was caused to suffer injuries in or about his limbs and body; has in the past and will in the future endure pain and suffering; has been caused to incur medical expenses; has in the past and will in the future been caused to suffer mental and emotional distress.
8. Defendant's actions as described above were willful, wanton, and/or malicious.

WHEREFORE, the Plaintiff, EZEKIEL VILLAFANA demands judgment against the Defendants pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

Count II

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1; Article I, Section 7 of the New Jersey State Constitution.
3. Defendant, CITY OF ELIZABETH, is vested by state law with the authority to make policy on the use of force, effectuating arrests and police-citizen encounters and was responsible for the training and supervision of the individual Defendants named herein. Specifically, CITY OF ELIZABETH is responsible for training police officers in the use of force and is responsible for conducting internal affairs investigations.
4. The individual Defendants herein were at all times relevant hereto acting under the direction and control CITY OF ELIZABETH and were acting pursuant to the official policy, practice or custom of said Defendants.
5. Acting under color of state law, Defendant CITY OF ELIZABETH intentionally, knowingly, recklessly and/or with deliberate indifference failed to screen prior to hiring, train, instruct, supervise, control, and discipline, on a continuing basis, the individual defendant herein in his duties to refrain from: (1) assaulting, restraining and harassing citizens; (2) intentionally, recklessly

and/or negligently misrepresenting the facts of arrests and/or other police-citizen encounters and/or (3) using unreasonable and excessive force.

6. Defendant CITY OF ELIZABETH were provided actual or constructive notice of police-citizen encounters similar to that involved with the instant matter involving the individual Defendant herein and/or other ELIZABETH Police Officers whereby they customarily and frequently subjected citizens to excessive force, recklessly and/or negligently misrepresented the facts of arrests and/or other police-citizen encounters and/or falsified police and/or other official records.
7. Said Defendants had knowledge of, or, had they diligently exercised their duties to screen, instruct, train, supervise, control, and discipline the individual Defendant on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.
8. Said Defendants had the authority and responsibility to prevent or aid in preventing the commission of said wrongs, and could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.
9. Said Defendants directly or indirectly, under color of State law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of the individual Defendants heretofore described.

10. As a direct and proximate result of the acts and omissions of said Defendants as set forth herein, Plaintiff suffered physical and emotional injury, medical expenses, and mental anguish in connection with the deprivation of his constitutional rights.

WHEREFORE, the Plaintiff, EZEKIEL VILLAFANA, demands judgment against the Defendants pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

Count III

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
3. Defendant FARINAS and VALENCIA had a duty to intervene in the unjustified assaults of Plaintiff VILLAFANA by each other.
4. The unjustified assault on Plaintiff by Defendant FARINAS and VALENCIA deprived Plaintiff of his right to be free from unreasonable seizure as guaranteed by Article I, Section 7 of the New Jersey State Constitution made actionable through New Jersey Civil Rights Act (N.J.S.A. 10:6-2).
5. Defendants FARINAS and VALENCIA had a reasonable opportunity to intervene in the unjustified assaults on Plaintiff by each other and failed to intervene.

6. As a direct and proximate cause of Defendant FARINAS and VALENCIA'S failure to intervene, Plaintiff suffered physical injury, medical expenses, and mental anguish.

WHEREFORE, Plaintiff demands judgment against Defendant FARINAS and VALENCIA 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.

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiff hereby demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Mark C.G. Lawrence, Esq., is hereby designated as trial counsel of the within matter.

FORMAN, CARDONSKY, & LAWRENCE
Attorneys for Plaintiff

By: _____
MARK C.G. LAWRENCE, ESQ.

DATED: July 12, 2016

CERTIFICATION

I certify that there is no other action pending before any Court involving or regarding the subject matter in controversy set forth in the within Complaint, nor is there pending before any tribunal any arbitration proceeding involving said subject matter, nor is any such action or arbitration proceeding contemplated. There are no other parties to this action known to us who should be or might be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

By: _____
MARK C.G. LAWRENCE, ESQ.

DATED: July 12, 2016

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
RECEIVED
2017 AUG 14 P 3:41

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Danny C. Williams

(Enter above the full name of the plaintiff in this action)

V.

Raul Dale Pride (E.P.D.)
David Chrysler (EPD)

(Enter the full name of the defendant of defendants in this action)

COMPLAINT

Civil Action No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS; READ CAREFULLY

1. This complaint must be legibly handwritten or typewritten, signed by the plaintiff and subscribed to under penalty of perjury as being true and correct. All questions must be answered concisely in the proper space on the form. Where more space is needed to answer any question, attach a separate sheet.

2. In accordance with Rule 8 of the Federal Rules of Civil Procedure, the complaint should contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short plain statement of the claim showing that you are entitled to relief, and (3) a demand for judgment for the relief which you seek.

3. You must provide the full name of each defendant or defendants and where they can be found.

4. You must send the original and one copy of the complaint to the Clerk of the District Court. You must also send one additional copy of the complaint for each defendant to the Clerk. Do not send the complaint directly to the defendants.

5. Upon receipt of a fee of $400.00 (a filing fee of $350.00, and an administrative fee of $50.00), your complaint will be filed. You will be responsible for service of a separate summons and copy of the complaint on each defendant. See Rule 4, Federal Rule of Civil Procedure.

6. If you cannot prepay the $400.00 fee, you may request permission to proceed in forma pauperis in accordance with the procedures set forth in the application to proceed in forma pauperis. See 28 U.S.C. §1915. (If there is more than one plaintiff, each plaintiff must separately request permission to proceed in forma pauperis.)

7. If you are given permission to proceed in forma pauperis, the $50.00 Administrative Fee will not be assessed. The Clerk will prepare and issue a copy of the summons for each defendant. The copies of summonses and the copies of the complaint which you have submitted will be forwarded by the Clerk to the United States Marshal, who is responsible for service. The Marshal has USM-285 forms you must complete so that the Marshal can locate and serve each defendant. If the forms are sent to you, you must complete them in full and return the forms to the Marshal.

QUESTIONS TO BE ANSWERED

1a. Jurisdiction is asserted pursuant to (CHECK ONE)

X 42 U.S.C. §1983 (applies to state prisoners)

___ Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) and 28 U.S.C. § 1331 (applies to federal prisoners)

If you want to assert jurisdiction under different or additional statutes, list these below:

_____

1b. Indicate whether you are a prisoner or other confined person as follows:

X Pretrial detainee

__ Civilly-committed detainee

__ Immigration detainee

__ Convicted and sentenced state prisoner

__ Convicted and sentenced federal prisoner

X Other: (please explain) Shot By Police (Attempted Murder)

2. Previously Dismissed Federal Civil Actions or Appeals

If you are proceeding in forma pauperis, list each civil action or appeal you have brought in a federal court while you were incarcerated or detained in any facility, that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted. Please note that a prisoner who has on three or more prior occasions, while detained in any facility, brought an action or appeal in a federal court that was dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted, will be denied in forma pauperis status unless that prisoner is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

a. Parties to previous lawsuit: Ø

Plaintiff(s): _____

_____

Defendant(s): _____

_____

b. Court and docket number: _____

c. Grounds for dismissal: ( ) frivolous ( ) malicious

( ) failure to state a claim upon which relief may be granted

d. Approximate date of filing lawsuit: _____

e. Approximate date of disposition: _____

If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on separate sheets.

3. Place of Present Confinement? Union County Jail
1500 Elizabeth Town Plaza
Elizabeth, New Jersey 07202

4. Parties

(In item (a) below, place your name in the first blank and place your present address in the second blank. Do the same for additional Plaintiffs, if any.)

a. Name of plaintiff: Danny C. Williams

Address: 15 Elizabeth Town Plaza, Elizabeth New Jersey 07202

Inmate#: #228028

b. First defendant:

Name: Raul Dela Prida

Official position: Det. (Police Officer)

Place of employment: Elizabeth P.D.

How is this person involved in the case?

(i.e., what are you alleging that this person did or did not do that violated your constitutional rights?)

Shot Me

c. Second defendant:

Name: David Chrysler

Official position: Police Officer

Place of employment: Elizabeth P.D.

How is this person involved in the case?

(i.e., what are you alleging that this person did or did not do that violated your constitutional rights?)

Shot Me Twice, AND Shot at Me 23 Times (See Supplemental Police Reports Attached.)

d. If there are more than two defendants, attach a separate sheet. For each defendant specify: (1) name, (2) official position, (3) place of employment, and (4) involvement of the defendant.

5. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in the Statement of Claims on page 6.

X Yes ___No

If your answer is "Yes," briefly describe the steps taken, including how relief was sought, from whom you sought relief, and the results.

Seeking to make Internal Affairs Complaint. (8-1-17) w/ Elizabeth P.D Union County Also w/ the Union County Police Internal Affair For Case Regarding Homero Almazan.

If your answer is "No," briefly explain why administrative remedies were not exhausted.

6. Statement of Claims

(State here as briefly as possible the facts of your case. Describe how each defendant violated your rights, giving dates and places. If you do not specify how each defendant violated your rights and the date(s) and place of the violations, your complaint may be dismissed. Include also the names of other persons who are involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach a separate sheet if necessary.)

On July 09, 2016. Officer D. Chrysker shot at me Several Times in my Moving Vehicle causing me to Crash

On July 09, 2016. Det. (Officer) Raul DeLaPrida Shot me and Shot at my Moving Vehicle causing me to Crash.

Claims under '1983' USC 42

"The Shocks the Conscience Standard"

The US Supreme Court held that in the context of a High Speed Chase (Vehicular Pursuit) a "Substantive Due Process claim Must Be Predicated upon 'Conduct That Shocks the Conscience.' Just as a purpose to Cause Harm is needed for An Eigth Amend. Violet. Liability in a prison Riot Case, it is Also Needed to prevail in a Vehicular Pursuit case base on a Substantive Due Process Violation.

"IN A Vehicular Pursuit (High Speed Chase) there is No Liability for a Substantive Due Process Violation unless the Plaintiff can show that the Police intended To HARM the Plaintiff or to worsen the Plaintiff's Legal Plight! (County of Sac. V Lewis 523 US 833, 854)

⊗ Plaintiff can show: The Court that the Conduct of the Elizabeth Police Dept. (Off. Chrysler, DelePride) was so Offensive and Brutal as to 'Shock the Conscience' as to what is Fair, Traditional, and Decent.

The Projectile Report on ⑤ shows a Lot. The Videos are Definitely Offensive to Our Normal Concept of Police Practices - AND Ultimately they Violate The Attorney General's Guidelines. On June 05, 2017 in Hudson County all those Officers who shot at a Moving Vehicle were charged w/ crimes.

Please Accept my Petition, so that the Court can see the Video's so we can proceed forward with this Case. Respectfully Daniel C Williams

See Back

(1)

Legal Notes to The Court

Civil Rights Violations Claim 42 USC §1983

(*) Page (B) On the Night of July 09, 2016 These Officers Attempt to Justify why they would Shoot Me!"

(*) Please File this Claim so we can show the (*) 'Video's' which will disclaim Any Justification For Them Shooting Me.

And Put the Public At Risk for their Reckless, Negligent Behavior.
Let alone their Repeated Attempt to kill me. (T

(*) (C) Shows a Deliberate Indefference to me and my Constitutional Rights for Due Process. AND an even Greater Indefference towards Public Safet
It Also Contradicts the Statements From Page (B
(D) The Projectile Report: Definitely Shows me "Under Seige" AND Under the Rights of New Jersey Law under Statute 2C:3-4 The Use of Force in Self Protecti
2C:3-4(10) (In St vs Mulvihill 57 NJ 151 (1970) {156-157}
The Case holds, that a person may 'Resist' 'Excessive' Forc
{Unlawful, Deadly}
used by the Arresting Officer, even if the Arrest is Otherwise Legal.
(11) The Self Defense Doctrine Exonerates a Person from Crim
Jicibility for Using Deadly Force (or the Need to Retreat)
where the person had a Reasonable belief that such for
was immediately necessary for Self-Protection against Dead
or Serious Bodily Harm.

(A)

Jose Perez

From:	Jose Perez
Sent:	Friday, July 22, 2016 12:42 PM
To:	John R. Johnson
Cc:	Jose Perez
Subject:	Danny Clyde Williams
Importance:	High

John

In reading some of the newspaper articles regarding this incident, certain points came to mind.

The initial shooting was from an off-duty union county police officer, who would have been in civilian clothing, minus the discovery if he witness a hit and run would not have given him the authorization for the use of deadly force as written in the attorney general guidelines for vehicle pursuits and use of force. To be frank he could have called it in, on his phone.

The report stated he was shot once in the leg or foot, so you would need a ballistic test done and a trajectory test to determine who shoot and the location of the shooter, scenario if the off-duty officer ran his vehicle alongside of him, your client would not have known he was a police officer, and if he fired into the cab. The A/G guide are present to argue. We need to inspect the cab and photograph and have an independent ballistic review the report.

The fact the prosecutor has already subpoena the tape is very crucial since we know they don't move fast unless.

(A). This was Done in July 2016. Since then it's Apparent that the Public Defenders and their Office is in Conflict with where this Case Needs to go.

2.) This is only a minor Incident Compared to the Under Siege situation where The Elizabeth P.D. Took it upon themselves to Shoot at Me 23 more times. AND Cause Accidents in which Innocent People were harmed!

3.) As well as it was their INTent to Violate my Constitutional Rights of Due Process!

4.) No One WAS Hurt Till The Police Shot Me AND Tried to kill Me. CAUSING Me to PANIC AND Flee for my Life!

(B)

Elizabeth Police Department

1 Police Plaza, Elizabeth, NJ 07201
Phone: 908-558-2000 Fax: 908-558-2038 Mun. Code: 2004

Investigation Report

Narrative Continued (Page 2) Details to Be Reviewed	Case Number 16-062346

On 7/9/2016 at 2333hrs, information was relayed via Dispatch to all Officers in the field that shots were being fired near 2 Broad Street. Subsequent information was disseminated suggesting that this altercation had now moved north on Broad Street. 12B(Padlo/J. Chrysler), Power 12(D. Chrysler/Ciano) and Oakwood Plaza Detail Detective DelaPrida all responded to the area of North Broad and Parker Road where they observed a Truck(Indiana Plate #2397682) driven by Mr. Williams strike multiple vehicles. At that point Officers DelaPrida and Chrysler discharged their firearms, however the vehicle proceeded north on North Broad Street. Officers Chrysler and Ciano continued to pursue the vehicle, while Det. DelaPrida remained at the scene and requested medical assistance for the victims of the vehicles that had been struck. The vehicle operated by Mr. Williams continued north and was then involved in a fatal motor vehicle accident at 828 Newark Avenue. Williams was apprehended at that scene by 2-Baker (Arroyave/Goldate), who subsequently transported him to UMDNJ. Further investigation revealed that this incident began with a motor vehicle accident near the intersection of 3rd and E. Jersey Street involving this same truck and a vehicle driven by Mr. Michalczak. it was later discovered that the initial call for shots fired, stemmed from an Off-Duty Union County Officer. Charges against Mr. Williams are pending further investigation by the Union County Prosecutors Office and the EPD Traffic Bureau.

The following EPD Traffic personnel were on scene to assist these officers with processing; Sgt. Morse, P.O. Clancy, and P.O. McDonough. The following Patrol Supervisors were on scene as well; D/C orner, Captain Colon, Lt. Freel, and Sgt. Kearns. The EPD Detective Bureau responded as well led by Lt. Detective D. Geddes, Detectives Hernandez, Spzond, Carratala, Jean-Marie, and Valladares. The EPD Shooting response team comprised of K. Meagher Sr. and Lt. Shaughnessy were responded as well. The Union County Sheriff's Office ID Bureau were on scene, while The Union County Prosecutors Office arrived and assumed control of the investigation.

Multiple NJTR1's are being completed and submitted with this report. They will be written by the following Officers:

(A) This Part of the Narrative is a Lie! Part of their Attempted Justification for their Illegal, Brutal and Unlawful Actions.

- Officer Boone
  1. E. Jersey/3rd Street
  2. Broad & E. Jersey
  3. North Broad & Parker

- Officer Arroyave
  1. 828 Newark Avenue

Officer's D. Chrysler and Ciano were taken to Trinitas Hospital for evaluation, while Det. DelaPrida was taken to Union Overlook. 2B will be submitting a supplemental report regarding the scene at 828 Newark Avenue. Further details regarding this incident will be available pending the completion of the reports by all agencies present. BWR.

(A) Please See (C) Nowhere in (C) Do we see Alleged Accidents Then we see Both Raul DelaPrida & D Chrysler Attempting to Kill Me!

Officer of Record: Date:

(A) (C)

Risk To Bystander! → Justification Different Then FALSE Narrative

INVESTIGATION REPORT OF: VEHICULAR HOMICIDE/SRT RESPONSE/DANNY WILLIAMS
DETECTIVE DENNIS DONOVAN
PAGE 2
SEPTEMBER 1, 2016 Testimony (Officer/Det.) Raul Dale Prida

follow this car, believing that it may have been involved in the "shots fired" call. A marked EPD car then pulled this vehicle over by Parker Road and North Broad Street. As he approached the gray car, a male ran towards him, identified himself as a police officer, and told him that the driver of the gray car was a victim, and that the white truck, which was stuck in traffic behind them, was the vehicle which struck the car. Delaprida then began to walk towards the truck, along with EPD officers Eric Ciano and David Chrysler. He then heard the truck drop into gear, and saw the truck pull out of northbound traffic and begin driving towards him. He stated that he took a few steps back, drew his weapon, and fired two rounds at the driver in order to get the driver to stop. He heard other rounds being fired, but did not know if it was P.O. Chrysler or P.O. Ciano who was firing. He then moved towards the driver's side of the truck, and the truck passed him, and immediately struck a minivan. He saw P.O. David Chrysler near him, but did not see P.O. Ciano, and he believed that Ciano was under the truck or in the wheels of the truck. DelaPrida stated that the minivan contained a family, and he heard screaming, and he did not know if it was P.O. Ciano or the family screaming. He then ran towards the truck, and emptied the remaining rounds from his weapon into the driver's side door of the truck in an attempt to get the truck driver to stop. He also saw P.O. David Chrysler shooting at the driver's side of the truck. He saw the truck push past the minivan and drive away northbound. He instructed P.O. Chrysler to get a car, and Chrysler informed him that P.O. Ciano went to retrieve their car. At this time, DelaPrida realized that P.O. Ciano was not trapped under the truck, and that the screams he heard had come from the minivan. Detective DelaPrida stayed at the scene to assist with the victims in the minivan. For a full recounting of his statement, see the transcript.

At approximately 2:24pm, I began to take a statement from EPD Officer David Chrysler, who was accompanied by his attorney Donald Fraser. P.O. Chrysler stated that on July 8, 2016, he was working the 5:15pm to 4:15am shift in EPD sector 12 with his partner, P.O. Eric Ciano. Sometime after 11pm, they heard a broadcast of "shots fired" in the area of 2 Broad Street. He and Ciano were in the Walgreens parking lot on Newark Avenue, and they began to drive south towards 2 Broad Street. P.O. Ciano was driving. As they passed Parker Road, P.O. Ciano pointed out a gray car with two flat tires and extensive body damage driving northbound on Broad Street. P.O. Ciano made a u-turn and pulled this car over. As he and Ciano approached this car, the driver put his hands out the window, and told them that the white truck behind them was the vehicle they were looking for. He then turned around and saw a white tractor stuck in traffic behind them. It appeared to P.O. Chrysler that this truck had struck the vehicles directly in front of it. He and Detective DelaPrida then began walking towards the truck in the southbound lanes of Broad Street. He and DelaPrida were ordering the truck driver to shut off his vehicle. At this time, P.O. Chrysler heard the truck engine revving, heard the truck drop into gear, and then saw the truck pull into the southbound lanes heading northbound, directly towards him. P.O. Chrysler estimated that he was between four and five car lengths from the truck when it started driving towards him. He heard Detective DelaPrida fire his weapon towards the truck, and he drew his weapon and began firing at the truck as well. He did not recall exactly how many rounds he fired at the truck, but he estimated that he fired four or five rounds, aimed at the driver's side windshield. He then stated that he jumped out of the way of the truck towards the driver's side of the truck, at which time the truck passed him and struck a vehicle pulling out of the Wendy's Restaurant. The truck began pushing this vehicle down the road, and he and Detective DelaPrida began running alongside the driver's side of the truck, ordering the driver to stop. P.O. Chrysler saw Detective DelaPrida empty his weapon into the driver's door of the truck, to no effect. P.O. Chrysler then emptied the remainder of his rounds into the driver's door, in an attempt to stop the driver. At this point, the truck swerved, and disengaged from the

(D) Bullets Shot At Dan. (Self Defense?)

ION COUNTY SHERIFF — CONTINUATION PAGE

Referral No. or Reports	2 Code	3 Trans Disc No.	4 Case Number
Elizabeth Police 16-062346	2004	CAD 16-3046-1	16-1534-2

vehicle was photographed and documented in situ. We positioned the hood/fender assembly, ıcluding the parts that had broken off, on the front portion of the tractor using wood cribbing to reate an approximate reconstruction of the vehicle prior to it having sustained damage. This was hotographed and documented. The front grill had two (2) perforating impact sites (A & B), the ood had two (2) perforating impact sites (C & D), and the passenger side fender had one (1) erforating impact site (E). The driver side fender had no impact sites. The lower passenger side of ıe windshield had one (1) perforating impact site (F) that penetrated the passenger side dashboard F1). The windshield spoiler had one (1) perforating impact site (G) that continued through the roof f the vehicle (G1) into the driver compartment (G2), and through a curtain behind the driver seat rea (G3). A deflection (G4) was visible on the wall behind this curtain. The upper passenger side of he windshield had one (1) perforating impact site (H) that perforated the passenger side visor (H1). The back of the visor was damaged and the visor mirror was missing. The passenger door had one 1) penetrating impact site (I) below the passenger door mirror. The lower body panel on the assenger side of the rear cab had two (2) penetrating impact sites (J & K). The driver door had two 2) penetrating impact sites (L & M) near the driver door mirror and four (4) perforating impact sites N,O,P, & Q) throughout the door. One (1) projectile was visible in penetration M. This was initially ıbeled as item #1, but could not be retrieved from the door. The interior door panel had four (4) erforations (N1,O1,P1, & Q1). A deflection (P2) was photographed and documented in the door mb behind location P1. The lowest body panel below the driver door had one (1) perforating ct site (R).

rajectory rods were placed through impact sites to identify directionality. They were photographed ıd documented using a protractor. Several impact sites could not have trajectory rods placed in em and were photographed and documented without them. A penetration (O2) into the seat shion of the driver seat was cut open and one (1) projectile was retrieved and collected as item #1. ıis projectile was photographed as item #13 in error. The areas of penetrating impact sites could t be accessed without metal cutting tools that were unavailable to us. The retrieval of suspected ojectiles in these areas was scheduled for a later date.

l evidence was turned over to Detective Donovan (UCPO) and we cleared from the garage at 00 hours. All images were downloaded onto the UCSO secure server, onto EvidencePro, and onto k #MFP637TH140852811. The disk was placed into UCSO temporary storage.

w CAD 2016-010321

Name	58 Badge Number	59 Page	60 Date of Report
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AND causing others to be Injured By The Crash.

The Reprehensible Acts are Both Illegal in New Jersey. And are Unconstitutional under the Laws of Seizure and Due Process as Guaranteed upder the 4th, 5th and 14th Amendments.

I was Shot ~~At~~ ~~of~~ over 20 times and Hit Twice, Plus Crashed my Vehicle Hurt Innocent Bystanders and Broke my Neck. There is No Justification for their Illegal and Unconstitutional Actions

7. Relief

(State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.)

To File Charges and Bring these Men to Trial

8. Do you request a jury or non-jury trial? (Check only one)

(x) Jury Trial ( ) Non-Jury Trial

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 1st day of August, 2017

Donny Williams

Signature of plaintiff*

(*EACH PLAINTIFF NAMED IN THE COMPLAINT MUST SIGN THE COMPLAINT HERE. ADD ADDITIONAL LINES IF THERE IS MORE THAN ONE PLAINTIFF. REMEMBER, EACH PLAINTIFF MUST SIGN THE COMPLAINT).

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See Supplemental Police Reports Attached.

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Attorneys for Plaintiff Jerome Wright

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JEROME WRIGHT,

Plaintiff,

v.

CITY OF ELIZABTH, NJ, POLICE OFFICER RUI XAVIER, POLICE OFFICER LUIS FIGUEIREDO, POLICE OFFICER MICHAEL CARRETO, POLICE OFFICER GUIDO QUELOPANA, LT. ROBERT KEILY, SGT. MICHAEL NIEWINSKI, JOHN DOES 1-10, & ABC CORPORATIONS 1-10

Defendants.

Civil Action No

COMPLAINT

Plaintiff, Jerome Wright, by and through his attorneys, complaining against the Defendants, alleges as follows:

PARTIES

1. Plaintiff, Jerome Wright, (hereinafter "Plaintiff") is a resident of Philadelphia, Pennsylvania.

2. The Defendant City of Elizabeth, NJ is a municipality existing under the laws of the State of New Jersey. The City of Elizabeth is the government seat of Union County with its principle location, City Hall, located at 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201.

The City of Elizabeth Police Department is an entity existing wholly within the City of Elizabeth with its principle location, Police Headquarters, located at 1 Police Plaza, Elizabeth, New Jersey 07201.

3. At all times relevant to this matter, Defendant Police Officer Rui Xavier (hereinafter "Xavier") was a Police Officer of the Elizabeth Police Department acting under the color of state law and as an employee of the City of Elizabeth and the City of Elizabeth Police Department. Defendant Xavier is sued individually and in his official capacity as a Police Officer of the Elizabeth Police Department.

4. At all times relevant to this matter, Defendant Police Officer Luis Figueiredo (hereinafter "Figueiredo") was a Police Officer of the Elizabeth Police Department acting under the color of state law and as an employee of the City of Elizabeth and the City of Elizabeth Police Department. Defendant Figueiredo is sued individually and in his official capacity as a Police Officer of the Elizabeth Police Department.

5. At all times relevant to this matter, Defendant Police Officer Michael Carreto (hereinafter "Carreto") was a Police Officer of the Elizabeth Police Department acting under the color of state law and as an employee of the City of Elizabeth and the City of Elizabeth Police Department. Defendant Quelopano is sued individually and in his official capacity as a Police Officer of the Elizabeth Police Department.

6. At all times relevant to this matter, Defendant Police Officer Guido Quelopano (hereinafter "Quelopano") was a Police Officer of the Elizabeth Police Department acting under the color of state law and as an employee of the City of Elizabeth and the City of Elizabeth Police Department. Defendant Quelopano is sued individually and in his official capacity as a Police Officer of the Elizabeth Police Department.

7. At all times relevant to this matter, Defendant Sergeant Michael Niewinski (hereinafter "Niewinski") was a Police Officer of the Elizabeth Police Department acting under the color of state law and as an employee of the City of Elizabeth and the City of Elizabeth Police Department. Defendant Niewinski is sued individually and in his official capacity as a Police Officer of the Elizabeth Police Department.

8. At all times relevant to this matter, Defendant Lieutenant Robert Keily (hereinafter "Kiely") was a Police Officer of the Elizabeth Police Department acting under the color of state law and as an employee of the City of Elizabeth and the City of Elizabeth Police Department. Defendant Keily is sued individually and in his official capacity as a Police Officer of the Elizabeth Police Department.

9. At all times relevant to this matter, Defendants John Does 1-10 are other as yet unknown individuals who violated Plaintiff's rights by using excessive force during his arrest, allowing the use of excessive force during his arrest, maliciously prosecuting Plaintiff, and/or failing to adequately supervise, train, retain, and maintain the above-named individual Defendants in their positions as Police Officers.

10. At all times relevant to this matter, Defendants ABC Corporations 1-10 are other as yet unknown governmental or business entities responsible for the actions of the above-named individual Defendants, and/or responsible for the supervision, training, retention, and maintenance of Elizabeth Police Department Police Officers.

JURISDICTION

11. This action arises under the Fourth and Fourteenth Amendments to the United States Constitution, and under the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985, and 1986,

as amended, together with pendant claims for violations of the New Jersey State Constitution, Article 1, paragraphs 1 and 7, and the New Jersey Civil Rights Act, N.J.S.A. §10:6-2.

12. Jurisdiction in this Court is proper for Plaintiff's Federal Claims pursuant to 28 U.S.C. §§1331, 1343, and 42 U.S.C. §1983 as federal questions, and supplemental jurisdiction extends to Plaintiff's State Claims pursuant to 28 U.S.C. §1367.

13. Venue in this Court is proper for all of Plaintiff's Claims as the acts and omissions alleged occurred in the City of Elizabeth, County of Union, within the District of New Jersey and, upon information and belief, all Defendants reside within the District of New Jersey.

14. This Court has authority to award costs and attorneys' fees pursuant to 42 U.S.C. §1988.

FACTS RELEVANT TO ALL CLAIMS

15. On or about June 26, 2013, Plaintiff Jerome Wright was operating a motor vehicle within the City of Elizabeth, New Jersey.

16. After allegedly observing Plaintiff commit a motor vehicle violation, Defendant Officers Xavier and Figueiredo followed Plaintiff's vehicle and when they caught up to it, they activated the emergency lights on their unmarked vehicle in order to conduct a motor vehicle stop.

17. When Plaintiff realized that the unmarked motor vehicle behind him was in fact a police vehicle trying to pull him over, he came to a stop. Plaintiff did not willfully ignore the emergency lights of Defendants' vehicle.

18. Upon Plaintiff bringing his vehicle to a stop, Defendants Xavier and Figueiredo pulled their vehicle up parallel to Plaintiff's vehicle leaving only a few feet between the vehicles.

19. Defendants exited and placed themselves at either end of the two vehicles. Upon information and belief, Defendant Figueiredo approached from the front of the two vehicles and Defendant Xavier approached from the rear of the two vehicles, with Plaintiff located between the two of them.

20. Officer Xavier drew his firearm ordered Plaintiff out of his vehicle. Plaintiff complied with this order.

21. After Plaintiff exited the vehicle, Defendants approached Plaintiff from either end, and without providing any explanation or warning to Plaintiff, ordered Plaintiff to put his hands behind his back and told him he was under arrest.

22. Without refusing the order or making any aggressive actions, Plaintiff made the reasonable request to know why he was being placed under arrest.

23. Without warning, justification, or cause, Defendant Figueiredo shot Plaintiff in the face with Pepper Spray, not once, or with a quick burst, but with a sustained spray for several seconds.

24. Plaintiff did not react violently or aggressively to this excessive use of force by Defendants. Instead, Plaintiff again asked why he was being arrested and why the Defendants were spraying him without cause. When Defendant Xavier holstered his firearm, and raised his can of Pepper Spray, Plaintiff raised his hands in submission.

25. Despite Plaintiff demonstrating his willingness to surrender, and without warning, justification, or cause, Defendants Xavier and Figueiredo both shot Plaintiff again in the face with a sustained burst of Pepper Spray from both sides at the same time.

26. Contrary to Defendant Xavier's police report, Plaintiff did not lunge at Figueiredo, but stumbled, blinded by the Pepper Spray, away from the spray and in the direction

of the front of the vehicles. He did not move quickly or in a threatening manner. His hands remained in the air throughout.

27. Upon reaching the front of the vehicle, Defendant Figueiredo began kicking Plaintiff about the legs and striking him about the torso.

28. Plaintiff collapsed to the ground with his arms underneath his chest. Defendant Figueiredo immediately placed himself directly over and above Plaintiff, while simultaneously Defendant Xavier approached Plaintiff's right side and kicked him in his ribs while Plaintiff laid prone, face-down on the ground.

29. Following the Xavier's kick to Plaintiff's chest, Defendant Figueiredo placed his full weight on Plaintiff by placing his knee on Plaintiff's back.

30. Fearing for his own safety, Plaintiff attempted to crawl away from the assault by Defendants, at which point, Defendant Xavier circled around from Plaintiff's right to his head and kicked him in the face while Plaintiff lay prone, face-down on the ground with Defendant Figueiredo's full weight on his back.

31. Defendant Xavier then placed his own knee in Plaintiff's back and produced a night stick or flashlight and started repeatedly striking Plaintiff all along the right side of his body, delivering no less than six strikes to Plaintiff's torso and four strikes to Plaintiff's face and head.

32. At this point Defendant Police Officers Carreto and Quezopana arrived on the scene, followed shortly thereafter by Sgt. Niewinski, Lt. Kiely, and John Doe 1, an additional Police Officer not identified in the Elizabeth Police Department Report of this incident.

33. Upon information and belief, Sgt. Niewinski and Lt. Kiely did not engage in physical contact with Plaintiff, nor did they take any action or issue any orders to their

subordinates to refrain from physically striking Plaintiff or refrain from engaging in unsanctioned restraining techniques.

34. Defendants Carreto and Quelopana sprinted to join Defendants Xavier and Figueiredo attack on Plaintiff.

35. Upon information and belief, Defendant Quelopana approached Plaintiff and placed his knee on the back of Plaintiff's head and pushed his full weight down on Plaintiff's skull while Plaintiff laid face-down on the pavement. He then proceeded to punch Plaintiff in the back of the neck at least two times, once while Plaintiff's arms were secured behind his back by the other Defendants.

36. Upon information and belief, at the same time, Defendant Carreto came around behind Plaintiff's lower back, relieved Defendant Xavier of his position over Plaintiff, and proceeded to drop his entire weight down through one knee on to Plaintiff's lower back while he remained face-down on the pavement.

37. While three officers laid their weight down on Plaintiff's back, head and shoulders, Plaintiff was able to get his arms behind his back.

38. After Plaintiff's arms were secured by the other officers behind his back, John Doe 1 approached Plaintiff, kicked him in the face, and pressed his foot down on Plaintiff's face pushing it into the pavement.

39. In an effort to cover-up the unlawful and excessive use of force utilized by Defendants Xavier, Figueiredo, Carreto, Quelopana, and John Doe 1 against Plaintiff, Defendant Xavier, under the supervision and approval of Defendant Kiely, fabricated a police report supporting charges for eluding and resisting arrest and omitting most of the violent actions perpetrated against Plaintiff.

40. At no point during the entire encounter did Plaintiff make any aggressive or violent actions towards the Defendant Police Officers. Plaintiff was, at most, guilty of trying to crawl away from the Defendant's assault while he was laying face-down, and being unable to put his arms behind his back when they were pinned under his chest and being use to protect his face from the blows of the Police Officers.

41. Plaintiff was suffered severe, permanent, and debilitating injuries as a result of the unnecessary and excessive force used by the arresting Police Officers.

COUNT ONE
EXCESSIVE USE OF FORCE IN VIOLATION OF 42 U.S.C. §1983 & THE FOURTH & FOURTEENTH AMENDMENTS
Against Defendants Xavier, Figueiredo, Quelopana, Carreto and John Doe 1

42. Plaintiff repeats and realleges all facts above as if set forth fully herein.

43. Defendants Xavier, Figueiredo, Quelopana, Carreto, and John Doe 1 unreasonably seized Plaintiff by means of excessive force under the color of law.

44. At the time of the complained of events and at all times, Plaintiff had a clearly established right under the Fourth Amendment to be secure in his person from unreasonable seizure through excessive force.

45. Plaintiff also had a clearly established constitutional right under the Fourteenth Amendment to bodily integrity and to be free from excessive force by law enforcement.

46. Any reasonable police officer knows or should have known of these rights at the time of the complained of conduct.

47. Defendants' use of force was objectively unreasonable in light of the facts and circumstances confronting them.

48. Defendants' actions were malicious and involved reckless, callous, and deliberate indifference to Plaintiff's constitutionally protected rights.

49. As a direct and proximate result of Defendants' use of excessive force, Plaintiff suffered permanent bodily injury requiring hospitalization and surgery, resulting in disability, disfigurement, pain and suffering, inconvenience, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical care, and treatment, loss of ability to earn money in the future, and other damages

50. As the injuries are permanent, Plaintiff will suffer further damages in the future and will continue to be hampered in his daily routine

51. These acts constitute a in violation of 42 U.S.C. §1983 and deprived Plaintiff of his rights guaranteed to him under the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff demands judgment against Defendants Raj Xavier, Luis Figueiredo, Michael Carreto, Guido Quelopana, and John Doe 1, individually, jointly, severally for any and all damages, (including, but not limited to severe physical pain and suffering, mental anguish, severe anxiety, loss of life's pleasures, loss of enjoyment of life, and loss of future earning capacity (future earnings and income), as well as punitive damages, together with interest, cost of suit, attorneys' fees, and any other relief the Court deems appropriate.

COUNT TWO
MALICIOUS PROSECUTION
All Defendants

52. Plaintiff reneats and realleges all facts above as if set forth fully herein

53. All Defendants, individually and/or jointly and in conspiracy, falsely, unlawfully, and maliciously initiated a prosecution against Plaintiff

54. Defendants, without probable cause, falsely charged him with Eluding by failing to pull his motor vehicle over, pursuant to N.J.S.A. 2C:29-2B, a crime of the third degree

55. Defendants, without probable cause, falsely charged him with Resisting Arrest by using or threatening physical force or violence against Police Officers and/or by creating a substantial risk of causing physical injury to Police Officers, pursuant to N.J.S.A. 2C:29-2a.

56. This prosecution persists to this day, nearly two years after the incident, and despite exculpatory evidence to the contrary being presented to the State.

57. Defendants' actions in bringing these charges against Plaintiff were undertaken with the purpose of concealing their own unlawful conduct.

58. As a direct and proximate result of this malicious prosecution, Plaintiff suffered a deprivation of freedom, pain and suffering, inconvenience, mental anguish, emotional distress, and other damages, including legal fees to defend himself against these false charges.

WHEREFORE, Plaintiff demands judgment against defendants individually, jointly, severally for compensatory damages, as well as punitive damages, together with interest, cost of suit and attorneys' fees, and any other relief the Court deems appropriate.

COUNT THREE
VIOLATIONS OF THE NEW JERSEY STATE CONSTITUTION AND THE NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. §10:6-2
All Defendants

59. Plaintiff repeats and realleges all facts above as if set forth fully herein.

60. Defendants actions, as described above, deprived Plaintiff of his right to enjoy life, pursue and obtain safety and happiness, to be free from the use of excessive force, and to be secure in his person from unreasonable seizures, as granted to him under Article I of the the New Jersey Constitution and the New Jersey Civil Rights Acts.

61. As a direct and proximate result of these acts, Plaintiff suffered a deprivation of freedom, severe and permanent injuries, pain and suffering, inconvenience, mental anguish,

emotional distress, and other damages, including legal fees to defend himself against these false charges.

WHEREFORE, Plaintiff demands judgment against defendants individually, jointly, severally for compensatory damages, as well as punitive damages, together with interest, cost of suit and attorneys' fees, and any other relief the Court deems appropriate.

COUNT FOUR
CONSPIRACY TO VIOLATE U.S. & N.J. CONSTITUTIONS, AND TO MALICIOUSLY PROSECUTE PLAINTIFF
All Defendants

62. Plaintiff repeats and realleges all facts above as if set forth fully herein.

63. The facts set forth above demonstrate that all Defendants acted with an understanding amongst themselves to conspire to violate the civil rights of Plaintiff through the overt acts of coordinating and fabricating false police reports to incriminate him and justify the acts of violence and mistreatment against Plaintiff and coordinating and fabricating false police reports to conceal the extent of violence perpetrated against him, simultaneously engaging in unnecessary and unlawful use of excessive force against him, and subjecting him to malicious prosecution for over two years.

64. As to all federal rights, Defendants acts constitute a conspiracy to deprive Plaintiff of his rights and privileges in violation of 42 U.S.C. §1985(c).

65. As a direct and proximate result of these acts, Plaintiff suffered a deprivation of freedom, severe and permanent injuries, pain and suffering, inconvenience, mental anguish, emotional distress, and other damages, including legal fees to defend himself against these false charges.

WHEREFORE, Plaintiff demands judgment against defendants individually, jointly, severally for compensatory damages, as well as punitive damages, together with interest, cost of suit and attorneys' fees, and any other relief the Court deems appropriate.

COUNT FIVE
FAILURE TO PREVENT THE USE OF EXCESSIVE FORCE
IN VIOLATION OF THE FOURTH & FOURTEENTH AMENDMENTS
Against Defendants Niewinski, Kiely, City of Elizabeth,
John Does 1-10, and ABC Corporations 1-10

66. Plaintiff repeats and realleges all facts above as if set forth fully herein.

67. Defendants Niewinski and Kiely were present and witnessed the use of unlawful and excessive force by Defendants, were in a position to prevent said conduct, had a reasonable opportunity to do so, but negligently, recklessly, and/or willfully failed to do so, in violation of 42 U.S.C. §1986.

68. Upon information and belief, Defendants City of Elizabeth, by and through its Police Department, Niewinski and Kiely, as well as other as yet unidentified supervising Police Officers within the Elizabeth Police Department, knew or should have know of the propensities of Defendants Xavier, Figueiredo, Carreto, Quciopana, and John Doe 1, to use unnecessary, unlawful, and excessive force against members of the public, such as Plaintiff, prior to this incident and were in a position to prevent said conduct, but negligently, recklessly, and/or willfully failed to do so, in violation of 42 U.S.C. §1986.

69. Upon information and belief, Defendants City of Elizabeth, John Does 1-10, and ABC Corporations 1-10, failed to properly train, supervise, retain, and maintain its Police Department and Police Officers to ensure that the Police Department and its Police Officers' policing activities are conducted in a lawful manner preserving to members of the public the rights, privileges, and immunities guaranteed to them by the U.S. & N.J. Constitutions.

70. The City of Elizabeth, by and through its Police Department, permitted encouraged, tolerated, and/or otherwise acted with deliberate indifference allowing its Police Officers to engage in a pattern, practice and/or custom of violating the constitutional rights of the public such that the actions that are described above came to be accepted and expected of Elizabeth Police Officers

71. As a result of these unjustified, unreasonable, and unconstitutional policies and customs, the City of Elizabeth is directly responsible to Plaintiff for the deprivation of his rights and damages he suffered, as described above.

72. As a direct and proximate result, Plaintiff suffered permanent bodily injury requiring hospitalization and surgery, resulting in disability, disfigurement, pain and suffering, inconvenience, mental anguish, loss of capacity for the enjoyment of life expense of hospitalization, medical care, and treatment, loss of ability to earn money in the future, and other damages

73. As the injuries are permanent, Plaintiff will suffer further damages in the future and will continue to be hampered in his daily routine.

WHEREFORE, Plaintiff demands judgment against Defendants Michael Niewinski, Robert Kiely, City of Elizabeth, John Does 1-10, and ABC Corporations 1-10, individually, jointly, severally for any and all damages, (including, but not limited to severe physical pain and suffering, mental anguish; severe anxiety; loss of life's pleasures, loss of enjoyment of life; and loss of future earning capacity, future earnings and income), as well as punitive damages, together with interest, cost of suit, attorneys' fees, and any other relief the Court deems appropriate

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Facsimile: 201-391-0998
Attorneys for Plaintiff

/s/ Michael Orozco
Michael Orozco, Esq.

Dated: June 25, 2015

REQUEST FOR A JURY TRIAL

Request is hereby made for a trial by jury as to all issues in this action as triable as of right.

/s/ Michael Orozco
Michael Orozco, Esq.

Dated: June 25, 2015

LOCAL RULE 11.2 CERTIFICATION

MICHAEL OROZCO certifies as follows:

I am Of Counsel in the law firm of Price, Meese, Shulman & D'Arminio, P.C., attorneys for Plaintiff. To the best of my knowledge the matter in controversy is not the subject of any other action pending in any Court or of any pending arbitration or administrative proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Michael Orozco
Michael Orozco, Esq.

Dated: June 25, 2015