



Englewood

P.O. Box 228 • Englewood, N.J. 07631 • (201) 871-6660 • Fax (201) 541-5424

QUAL-LYNX
100 Decadon Drive
Egg Harbor Twp, NJ 08234

RE: Francesco Pisarchiz

Date of Loss: 8/12/10

Enclose is claim for an incident that occurred on or about the above referenced date.

Thank you.

JoAnna Galluzzo
Administration

67 21 41 111 201

SECURITY NUMBER

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**FRANCESCO PISERCHIA,**
Plaintiff

V.

**SUMMONS ON AMENDED
COMPLAINT****BERGEN COUNTY POLICE DEPT., ET AL.,**
Defendant

CASE NUMBER: 2:12-CV-02520-CCC-JBC

TO: *(Name and address of Defendant):*Englewood Police Department
75 South Van Brunt Street
Englewood, New Jersey 076312014 MAY 14 P 12:29
HUMAN RESOURCES

A lawsuit has been filed against you.

Unless otherwise prescribed by rule, 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 amended 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:

Robert L. Podvey, Esq.
Podvey, Meanor, Catenacci, Hildner, Coccoziello & Chattman, PC
One Riverfront Plaza – Suite 800
Newark, New Jersey 07102

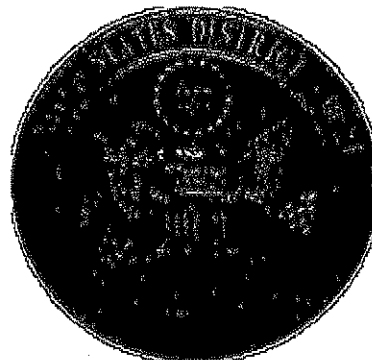
If you fail to respond, judgment by default will be entered against you for the relief demanded in the amended complaint. You also must file your answer or motion with the court.

WILLIAM T. WALSH

CLERK

SHEREE RAIMO

(By) DEPUTY CLERK

ISSUED ON 2014-05-06 14:41:18.0, Clerk
USDC NJD

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCESCO PISERCHIA,

Plaintiff,

v.

OFFICE OF THE BERGEN COUNTY
POLICE, POLICE CHIEF BRIAN HIGGINS,
CAPTAIN UWE MALAKAS, OFFICER
SAHEED BAKSH, OFFICER JEFFREY
ROBERTS, SERGEANT ROBERT CARNEY,
OFFICER LESZEK LORENC, OFFICER
THOMAS MUCCI, OFFICER NIAMH
MCGUINNESS, ENGLEWOOD POLICE
DEPARTMENT, OFFICER JOHN
PETERSON, and, SEVERAL AS-OF-YET
UNKNOWN POLICE OFFICERS
DESCRIBED HEREIN AS JOHN DOE
OFFICERS

Defendant.

Civil Action No. 2:12-cv-02520-CCC-JBC

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Francesco Piserchia, ("Plaintiff") by and through undersigned counsel, brings
this Amended Complaint against defendants, the Office of the County of Bergen Police, Police

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Chief Brian Higgins, Captain Uwe Malakas, Officer Saheed Baksh, Officer Jeffrey Roberts, Sergeant Robert Carney, Officer Leszek Lorenc, Officer Thomas Mucci, Officer Niamh McGuinness, the Englewood Police Department, Officer John Peterson, and John Doe Officers, collectively, ("Defendants"), and states as follows:

PRELIMINARY STATEMENT

1. This is a lawsuit for the unlawful use of force and evidence tampering in violation of the United States Constitution, 42 U.S.C. § 1983, the New Jersey Constitution, and New Jersey state law.
2. Members of the Office of the Bergen County Police ("BCP") and the Englewood Police Department ("EPD") committed unlawful acts of force and/or attempted to cover up the same by tampering with evidence and/or acquiescing to the tampering of evidence.
3. Plaintiff has been harmed by Defendants' violation of his Constitutional, statutory, and common law rights and seeks relief from this Court.

JURISDICTION AND VENUE

4. Plaintiff brings this action against Defendants to redress the deprivation of rights secured to Plaintiff by the United States Constitution, 42 U.S.C. § 1983, the New Jersey Constitution, and New Jersey state law.
5. This Court has jurisdiction over the matter in controversy pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

6. Plaintiff invokes supplemental jurisdiction of this Court over Plaintiff's state claims against the Defendants for violations of New Jersey state law pursuant to 28 U.S.C. § 1367 as the state law claims form part of the same case or controversy.

7. This Court has personal jurisdiction over the Defendants.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

9. Plaintiff is a New Jersey resident currently located in Northern State Prison, 168 Frontage Road, Newark, NJ 07114.

10. At all relevant times herein, Defendant BCP was a public entity (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

11. At all relevant times herein, Defendant, Brian Higgins, was a public employee employed by the Defendant BCP (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

12. At all relevant times herein, Defendant, Uwe Malakas, was a public employee employed by the Defendant BCP (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

13. At all relevant times herein, Defendant, Saheed Baksh, was a public employee employed by the Defendant BCP (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

14. At all relevant times herein, Defendant, Jeffrey Roberts, was a public employee employed by the Defendant BCP (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

15. At all relevant times herein, Defendant, Robert Carney, was a public employee employed by the Defendant BCP (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

16. At all relevant times herein, Defendant, Leszek Lorenc, was a public employee employed by the Defendant BCP (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

17. At all relevant times herein, Defendant, Thomas Mucci, was a public employee employed by the Defendant BCP (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

18. At all relevant times herein, Defendant, Niamh McGuinness, was a public employee employed by the Defendant BCP (located at 327 E. Ridgewood Ave., Paramus, NJ 07652).

19. At relevant times herein, Defendant EPD was a public entity (located at 75 South Van Brunt Street, Englewood, NJ 07631).

20. At all relevant times herein, Defendant, John Peterson, was a public employee employed by the EPD (located at 75 South Van Brunt Street, Englewood, NJ 07631).

21. The John Doe Defendants participated in the wrongdoing at issue in this proceeding. Their individual identities are not yet known to the Plaintiff.

22. At all relevant times herein, each individual defendant acted under the authority and color of State law.

FACTUAL ALLEGATIONS

Vehicle Pursuit and Acts of Force

23. On August 12, 2010, Plaintiff was involved in a car chase and was pursued by police officers from at least three police departments including but not limited to the Ridgefield Police Department, EPD, and the BCP.

24. Near the end of the pursuit, the Plaintiff's vehicle was steered towards a wooded area, and the Plaintiff alighted from the vehicle.

25. Without putting his vehicle in park, Defendant Baksh exited his vehicle and ducked between his door frame and the column of his vehicle. From his protected position and

without delaying, he fired his weapon two times at the Plaintiff.

26. Defendant Baksh's shots missed the Plaintiff.

27. At all relevant times, Plaintiff was unarmed and made no threatening actions or gestures to either the officer or anyone else. Fearing for his safety, Plaintiff fled into the woods.

28. The police continued their pursuit of the Plaintiff into the wooded area, where they eventually reached the Plaintiff and initiated his arrest.

29. During and after the arrest of the Plaintiff, Defendant Baksh, Defendant Carney, and as-of-yet unidentified Defendants, John Doe Officers, abused and injured the Plaintiff by shoving mud down the Plaintiff's throat causing suffocation and extreme pain and by subjecting the Plaintiff to physical abuse including but not limited to punching, kicking, and beating the Plaintiff, especially in the areas of his wrist and face.

30. The officers deliberately placed handcuffs on the Plaintiff in a manner calculated to induce a significant amount of pain and suffering. While in handcuffs, Plaintiff had his wrist kicked by a John Doe officer.

31. Defendants' acts humiliated, degraded, and injured the Plaintiff.

32. The officers then brought the Plaintiff to a nearby parking lot and placed him in the back of a patrol car.

33. Defendant Roberts' communications with other officers demonstrates a callous disregard for the pain inflicted on Plaintiff and acceptance within the BCP of inflicting pain on suspects.

34. Defendant BCP has implemented a culture, policy, and custom of treating suspects in a degrading and inhumane manner.

35. After his arrest, Plaintiff was transported to the hospital for medical treatment.

36. Defendant BCP improperly supervised and trained the officers who apprehended the Plaintiff, including but not limited to Defendant Baksh and Defendant Carney.

Evidence Tampering

37. On August 12, 2010, there were two crime scenes relating to the arrest of the Plaintiff: one where the suspects bailed out of their cars ("bailout scene") and one where the suspects were apprehended ("apprehension scene").

38. Defendant Carney was the ranking officer at both the bailout scene and apprehension scene, and he was responsible for supervising, directing, maintaining, preserving, and overseeing both crime scenes. Deft. Carney spent most of his time at the apprehension scene.

39. Deft. Roberts was the most senior officer at the bailout scene.

40. Deft. Lorenc, according to his statement, was directed by Deft. Carney to maintain and supervise the bailout scene.

41. Deft. Carney, Deft. Roberts, and Deft. Lorenc were policymakers whose acts represent official policy.

42. Shortly after Deft. Baksh fired his weapon, Defendants Baksh and Roberts began an effort to clear the bailout scene of any evidence that Deft. Baksh had fired his weapon. The evidence included shell casings and in-car video footage of the gun firing.

43. At the moment, Defendants Baksh and Roberts were the only two officers with personal knowledge of the firing. Later, upon the discovery of shell casings, other officers learned of the shooting.

44. Defendants Baksh and Roberts failed to inform Deft. Carney of the firing

directly after the apprehension of the suspects. They did not reveal that a firing occurred for more than two hours after the discharge of the weapon and only did so because they were unable to clear the in-car video footage.

45. After the discharge of the weapon, Defendants Baksh and Roberts knew that when a BCP officer fires his gun, the BCPO must be notified, so that the BCPO can conduct an investigation. Despite being aware of this obligation, neither Deft. Baksh nor Deft. Roberts notified the BCPO.

46. Instead, Defendants Baksh and Roberts both resolved to prevent the BCPO from learning about the firing and from investigating the firing. By preventing their investigation, they could remove evidence of the firing.

47. In addition, at this time, Deft. Carney ordered a tow for Deft. Baksh's car, which was problematic for Deft. Baksh's plan to dispose of the in-car video footage. Deft. Roberts would later cancel the tow, and Deft. Baksh would attempt to drive his vehicle.

48. On August 12, 2010, Defendants Lorenc, Peterson, Mucci, and McGuiness observed the presence of shell casings on the ground in the area of Deft. Baksh's vehicle.

49. Later, Defendants Baksh and Roberts returned to the bailout scene and met with Defendants Mucci, Lorenc, and Peterson.

50. After the shell casings were observed, Deft. Lorenc disabled the video camera on his patrol car.

51. At some point after the video camera was disabled, the shell casings were removed. The defendant officers who were at the scene and knew about the existence and disappearance of the spent shell casings neither reported that information to any other BCP officers, including Deft. Carney, nor investigated why the casings were missing until after they

left the scene.

52. Instead, Defendants Baksh, Roberts, and Lorenc discussed other topics including a conversation about a newspaper photographer and why the photographer was taking pictures of the bailout scene.

53. When Defendant Carney gave specific orders to have Deft. Baksh's vehicle towed and impounded as evidence, Defendants Roberts and Baksh attempted to frustrate this standard procedure. Defendant Roberts called off the tow truck, and Defendant Baksh drove the vehicle to the apprehension scene to advise Deft. Carney that the vehicle did not need to be towed. Deft. Carney ordered Deft. Baksh out of the car and called the tow company, who towed the vehicle.

54. Deft. Baksh also disobeyed Deft. Carney's orders to accompany the suspects to the hospital and to keep watch over them while the hospital treated them for their injuries. Instead, Defendant returned to headquarters.

55. Deft. Carney was informed of the shooting by Deft. Roberts when Deft. Carney went to the hospital to personally deliver a blood kit.

56. Deft. Carey, then, alerted the BCPO that a firing occurred.

Policies and Practices of the BCP

57. Upon information and belief, Deft. Carney was subjected to acts of intimidation and harassment by other employees after he reported the shooting to the BCPO.

58. The purpose of the harassment and intimidation was to prevent disclosure of the use of force and to encourage a subsequent cover-up. The harassment further shows a departmental practice of discouraging the reporting of gun firings and the investigating of acts of force. These acts are the subject of a separate lawsuit filed by Sgt. Carney.

59. During the BCPO investigation into the firing, numerous officers from the BCP gave false statements to investigators.

60. Defendants Baksh and Roberts were both indicted for lying under oath in statements to the BCPO.

61. Deft. Baksh lied under oath in a statement he gave to detectives conducting an investigation into the shooting.

62. Deft. Roberts lied under oath in a statement he gave to detectives conducting an investigation into the shooting.

63. A Grand Jury charged Defendants Baksh and Roberts with conspiracy to commit Official Misconduct.

64. Defendants Baksh, Roberts, Lorenc, Mucci, McGuinness and Peterson all knew about the firing and acted in concert to prevent Deft. Carney and the BCPO from finding out that a firing occurred and from making a timely investigation.

65. Defendants Lorenc, Mucci, McGuinness and Peterson all had substantial knowledge that Defendants Baksh and Roberts were attempting to cover-up the firing, and they acquiesced to that plan.

66. Ofc. Roberts was the ranking officer at the bailout scene and he failed to supervise and maintain the crime scene.

67. Defendants Baksh and Lorenc both had responsibilities to maintain the bailout scene and to collect evidence from the scene, but failed to do so.

68. The foregoing acts and failures to act demonstrate that there was a policy, practice, and custom of covering-up and hiding acts of force or gun firings at the BCP.

69. Deft. Carney was responsible for maintaining and supervising both scenes, and

failed to properly supervise and exercise control of his subordinates, and failed to maintain control over evidence demonstrating the unlawful use of force.

70. Deft. Carney was responsible for supervising the arrest scene and joined Defendants Baksh and John Doe in the post-arrest abuse of the Plaintiff.

71. Deft. Brian Higgins is ultimately responsible for the training, supervising, investigating, and disciplining of the officers of the BCP.

72. Deft. Uwe Malakas was responsible for investigating and disciplining officers involved in this incident.

73. Defendants Higgins and Malakas failed to conduct adequate investigations into the conduct of the Defendants, and failed to discipline the other named individual Defendants for their conduct.

74. Defendants Higgins and Malakas, are policymakers or individuals whose acts represent official policy.

75. Defendant Higgins' and Malakas' failure to investigate and discipline shows an accepted policy, culture, or custom permitting and encouraging the use of unlawful force against suspects.

COUNT I

(Unlawful Use of Force)

76. Plaintiff repeats and realleges paragraphs 1 through 89 hereof, as if fully set forth herein.

77. The conduct of Police Chief Brian Higgins, BCP, Captain Uwe Malakas, BCP, Officer Saheed Baksh, BCP, Officer Jeffrey Roberts, BCP, Sergeant Robert Carney, BCP,

Officer Leszek Loren, BCP, Officer Thomas Mucci, BCP, Officer Niamh McGuinness, BCP, and John Does Officers, acting in their individual and official capacities, and John Peterson in his individual capacity ("Unlawful Force Defendants") proximately caused a deprivation of the Plaintiff's rights under the New Jersey Constitution and under the Fourth, Eighth, and Fourteenth Amendments of the United States Constitution, including his right to be secure in his person and free from unreasonable seizure.

78. The Unlawful Force Defendants deprived the Plaintiff of his rights as stated in the previous paragraphs and specifically as follows:

- a. The conduct of the Unlawful Force Defendants in using deadly force constitutes a seizure under the Fourth Amendment, and that seizure was unreasonable. Plaintiff posed no threat of death or serious physical injury to the Defendants or any others. Defendants should have known that their actions violated the Plaintiff's clearly established Constitutional rights. As a result, the use of deadly force was an unlawful use of force.
- b. The conduct of the Unlawful Force Defendants during and after arrest, including their physical and emotional abuse of the Plaintiff, was an unlawful seizure of the Plaintiff that was unreasonable. As a result, the conduct of the Unlawful Force Defendants constitutes an unlawful use of force.

79. The Unlawful Force Officers were (1) following an official policy of the BCP, (2) following a custom or practice of the BCP, and/or (3) demonstrating inadequate training, supervision, or discipline.

80. At all relevant times herein, the Unlawful Force Defendants were acting under the color of law and under the authority of the BCP and EPD.

81. By reason of the foregoing, the Unlawful Force Defendants are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT II

(Civil Conspiracy)

82. Plaintiff repeats and realleges paragraphs 1 through 96 hereof, as if fully set forth herein.

83. The conduct of Police Chief Brian Higgins, BCP, Captain Uwe Malakas, BCP, Officer Saheed Baksh, BCP, Officer Jeffrey Roberts, BCP, Sergeant Robert Carney, BCP, Officer Leszek Lorenc, BCP, Officer Thomas Mucci, BCP, Officer Niamb McGuinness, BCP, and John Does Officers, acting in their individual and official capacities, and John Peterson in his individual capacity ("Conspiring Defendants") proximately caused a deprivation of the Plaintiff's rights under the New Jersey Constitution and under the Fourth and Fourteenth Amendments of the United States Constitution by acting in concert to commit an unlawful act.

84. The Conspiring Defendants deprived the Plaintiff of his rights as stated in the previous paragraphs and specifically as follows:

- a. The joint conduct of the arresting officers in inflicting abuse upon the Plaintiff;
- b. The failure to investigate the conduct of the officers involved in effecting the arrest of the Plaintiff;
- c. The coordinated plot of the Conspiring Defendants to tamper with and remove evidence of unlawful force from the crime scene (Defendants Roberts and Baksh are currently under indictment for Conspiracy to Commit Official Misconduct, among

other charges);

- d. The failure to investigate the shooting which involved the collaboration of various officers in covering up and tampering with evidence of unlawful use of force.

85. The Conspiring Officers were (1) following an official policy of the BCP, (2) following a custom or practice of the BCP, and/or (3) demonstrating inadequate training, supervision, or discipline.

86. At all relevant times herein, the Conspiring Defendants were acting under the color of law and under the authority of the BCP and the EPD.

87. By reason of the foregoing, the Conspiring Defendants are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT III

(Access to Courts)

88. Plaintiff repeats and realleges paragraphs 1 through 103 hereof, as if fully set forth herein.

89. The conduct of Police Chief Brian Higgins, BCP, Captain Uwe Malakas, BCP, Officer Saheed Baksh, BCP, Officer Jeffrey Roberts, BCP, Sergeant Robert Carney, BCP, Officer Leszek Lorenc, BCP, Officer Thomas Mucci, BCP, Officer Niamh McGuinness, BCP, and John Does Officers, acting in their individual and official capacities, and John Peterson in his individual capacity ("Tampering Defendants") proximately caused a deprivation of the Plaintiff's rights to compulsory process and access to the courts under the New Jersey Constitution and under the First, Fifth, Sixth, and Fourteenth Amendments of the United States

Constitution as well as the Privilege and Immunities Clause of the United States Constitution.

90. The Tampering Defendants deprived the Plaintiff of his rights as stated in the previous paragraphs and specifically as follows:

- a. Tampering Defendants deprived Plaintiff of the opportunity to present evidence in his favor. The evidence was material both to his defense and to determining the credibility of various witnesses. The deprivation was arbitrary or disproportionate to any legitimate evidentiary or procedural purpose.
- b. Tampering Defendants further deprived Plaintiff of his right to fully prosecute his civil claims against the Defendants. By removing evidence from the scene and failing to investigate conduct involving unlawful force, Tampering Defendants prevented the Plaintiff from presenting evidence in support of his unlawful force civil rights claim.
- c. Finally, Tampering Defendants deprived the Plaintiff of his right to seek a criminal complaint against Defendants Baksh, Carney, and John Doe Officers for their unlawful use of force against the Plaintiff. By removing the evidence necessary to prosecute such a claim, the Defendants have prevented the Plaintiff from seeking justice for the abuse caused.

91. The Tampering Officers were (1) following an official policy of the BCP, (2) following a custom or practice of the BCP, and/or (3) demonstrating inadequate training, supervision, or discipline.

92. At all relevant times herein, the Tampering Defendants were acting under the color of law and under the authority of the BCP and EPD.

93. By reason of the foregoing, Tampering Defendants are liable for compensatory

and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT IV

(Failure to Train, Supervise, or Discipline)

94. Plaintiff repeats and realleges paragraphs 1 through 110 hereof, as if fully set forth herein.

95. The conduct of Police Chief Brian Higgins, BCP, Captain Uwe Malakas, BCP, Officer Saheed Baksh, BCP, Officer Jeffrey Roberts, BCP, Sergeant Robert Carney, BCP, Officer Leszek Lorenc, BCP, acting in their individual and official capacities, ("Supervising Defendants") proximately caused a deprivation of the Plaintiff's rights under the New Jersey Constitution and under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments.

96. The Supervising Defendants deprived the Plaintiff of his rights as stated in the previous paragraphs and specifically as follows:

- a. Supervising Defendants failed to supervise or control their subordinates, thereby creating a policy or practice which encouraged and promoted the type of conduct experienced by the Plaintiff.
- b. Supervising Defendants knew that various Defendants sought to tamper with evidence and allowed or acquiesced in the conduct of the Tampering Defendants.
- c. Deft. Roberts was the ranking officer at the bailout scene, and Deft. Lorenc was charged with securing the bailout scene. Defendants Roberts and Lorenc allowed evidence to be removed from the bailout scene.
- d. Deft. Carney was responsible for the entire crime scene and failed to exercise

appropriate supervision and control of the other officers and the evidence at the crime scene. Deft. Carney allowed officers to use unlawful force, to delay notification of the BCPO, and to tamper with evidence at the crime scene.

- e. Defendants Malakas and Higgins were all responsible for the ultimate supervision, investigation, and discipline of the officers. Both failed to exercise their responsibilities to supervise, investigate, and discipline the officers involved in the gun firing the arrest. Their actions created an atmosphere that fostered unlawful force and evidence tampering.

97. The Supervising Officers were (1) following an official policy of the BCP, (2) following a custom or practice of the BCP, and/or (3) demonstrating inadequate training, supervision, or discipline.

98. At all relevant times herein, the Supervising Defendants were acting under the color of law and under the authority of the BCP or the EPD.

99. By reason of the foregoing, Supervising Defendants are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT V

(Failure to Intervene to Prevent Misconduct)

100. Plaintiff repeats and realleges paragraphs 1 through 117 hereof, as if fully set forth herein.

101. The conduct of Police Chief Brian Higgins, BCP, Captain Uwe Malakas, BCP, Officer Saheed Baksh, BCP, Officer Jeffrey Roberts, BCP, Sergeant Robert Carney, BCP,

Officer Leszek Lorenc, BCP, Officer Thomas Mucci, BCP, Officer Niamh McGuinness, BCP, and John Does Officers, acting in their individual and official capacities, and John Peterson, in his individual capacity, ("Intervening Defendants") proximately caused a deprivation of the Plaintiff's rights under the New Jersey Constitution and under the Fourth and Fourteenth Amendments.

102. The Intervening Defendants deprived the Plaintiff of his rights as stated in the previous paragraphs and specifically as follows:

- a. Intervening Defendants failed to intervene to prevent the misconduct of other officers;
- b. Intervening Defendants had ample opportunity to intervene to prevent misconduct;
- c. Intervening Defendants, instead of intervening, facilitated further misconduct.

103. The Intervening Defendants were (1) following an official policy of the BCP, (2) following a custom or practice of the BCP, and/or (3) demonstrating inadequate training, supervision, or discipline.

104. At all relevant times herein, the Intervening Defendants were acting under the color of law and under the authority of the BCP or EPD.

105. By reason of the foregoing, Intervening Defendants are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT VI

(Assault)

106. Plaintiff repeats and realleges paragraphs 1 through 124 hereof, as if fully set

forth herein.

107. Defendant Baksh, BCP, did knowingly, intentionally, maliciously, or recklessly commit assault on the Plaintiff by firing two (2) rounds from his service firearm at the Plaintiff.

108. Defendant Baksh intended to cause harmful contact or imminent apprehension of a harmful contact.

109. The conduct of Defendant Baksh exceeded the normal standard of decent conduct. Baksh's behavior was willful, malicious, oppressive, outrageous, and unjustifiable.

110. Defendant's conduct put the Plaintiff in imminent apprehension of a harmful contact.

111. By reason of the foregoing, Defendants are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT VII

(Battery)

112. Plaintiff repeats and realleges paragraphs 1 through 131 hereof, as if fully set forth herein.

113. Defendants Baksh, BCP, Carney, BCP, and John Doe Officers did knowingly, intentionally, maliciously, and/or recklessly commit battery on the Plaintiff by punching, kicking, and beating the Plaintiff, especially in the areas of his wrist and face.

114. Defendants Baksh, Carney, and John Doe Officers did knowingly, intentionally, maliciously, and/or recklessly commit battery on the Plaintiff by shoving mud down his throat.

115. Defendants Ofc. Baksh, Sgt. Carney, and John Doe Officers intended to cause

harmful contact.

116. Their conduct caused serious pain and injury to the Plaintiff.

117. By reason of the foregoing, Defendants are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT VIII

(Negligence by Defendants Baksh, Roberts, Carney, Lorenc, Mucci, McGuinness, Officer Peterson, and John Does Officers)

118. Plaintiff repeats and realleges paragraphs 1 through 137 hereof, as if fully set forth herein.

119. Defendants Baksh, BCP, Roberts, BCP, Carney, BCP, Lorenc, BCP, Mucci, BCP, McGuinness, BCP, Peterson, EPD, and John Does Officers had a duty to maintain and preserve the crime scene.

120. Defendants Baksh, Roberts, Carney, Lorenc, Mucci, McGuinness, Peterson, and John Does Officers breached that duty by failing to properly collect evidence, i.e. shell casings, by failing to maintain the crime scene, and by failing to follow orders given by a superior.

121. Defendants Baksh, Roberts, Carney, Lorenc, Mucci, McGuinness, Peterson, and John Does Officers were the but-for and proximate causes of the breach.

122. The Plaintiff suffered damages as a result of the Defendants.

123. By reason of the foregoing, Defendants Baksh, Roberts, Carney, Lorenc, Mucci, McGuinness, Peterson, and John Does Officers are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other

relief that the Court deems just and appropriate.

COUNT IX

(Intentional Infliction of Emotional Distress)

124. Plaintiff repeats and realleges paragraphs 1 through 143 hereof, as if fully set forth herein.

125. Defendant Baksh, BCP, did knowingly, intentionally, and/or maliciously fire two (2) rounds from his service firearm at the Plaintiff.

126. Defendants Baksh, BCP, Carney, BCP, and John Does did knowingly, intentionally, or maliciously abuse the Plaintiff.

127. Defendants' conduct was intentional and outrageous. The Defendants intended to cause, or was in reckless disregard of the probability that their conduct would cause severe emotional distress, depression, anxiety, estrangement, alienation, and other losses as set forth above, to the Plaintiff.

128. Defendants' conduct proximately caused the Plaintiff's emotional distress.

129. Plaintiff suffered emotional distress that no reasonable person could be expected to endure.

130. By reason of the foregoing, Defendants Baksh, Carney, and John Does are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT X

(Negligent Infliction of Emotional Distress)

131. Plaintiff repeats and realleges paragraphs 1 through 150 hereof, as if fully set forth herein.

132. Defendant Baksh, BCP, did recklessly and/or negligently fire two (2) rounds from his service firearm at the Plaintiff.

133. Defendant had a duty to use only reasonable force in apprehending the Plaintiff.

134. Defendant breached that duty.

135. Defendant's breach proximately caused genuine and substantial emotional distress to the Plaintiff.

136. Plaintiff has suffered severe emotional distress.

137. By reason of the foregoing, Defendant is liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT XI

(Intentional Spoliation)

138. Plaintiff repeats and realleges paragraphs 1 through 156 hereof, as if fully set forth herein.

139. Defendants Higgins, BCP, Malakas, BCP, Baksh, BCP, Roberts, BCP, Carney, BCP, Lorenc, BCP, Mucci, BCP, McGuinness, BCP, Peterson, EPD, and John Does Officers, knew, allowed, or deliberately acted to allow the destruction of evidence.

140. The Defendants knew that litigation involving the Plaintiff was likely.

141. The Defendants' acts disrupted the Plaintiff's case.

142. The Defendants' acts proximately caused damages to the Plaintiff.

143. By reason of the foregoing, Defendants are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT XII

(Respondeat Superior)

144. Plaintiff repeats and realleges paragraphs 1 through 163 hereof, as if fully set forth herein.

145. Defendants Higgins, BCP, Malakas, BCP, Baksh, BCP, Roberts, BCP, Carney, BCP, Lorenc, BCP, Mucci, BCP, McGuinness, BCP, and John Does Officers Officer were at all relevant times employed by the Office of the Bergen County Police, a public entity located at 327 E. Ridgewood Ave., Paramus, NJ 07652. At all relevant times, a master-servant relationship existed between the Defendants and the Office of the Bergen County Police.

146. Defendant John Peterson was at all relevant times employed by the Englewood Police Department, a public entity located at 75 South Van Brunt Street, Englewood, NJ 07631. At all relevant times, a master-servant relationship existed between the Officer Peterson and the Englewood Police Department.

147. The tortious acts committed by the Defendants occurred within the scope of their employment. As a result, the BCP and EPD are responsible for the tortious acts of their employees while acting within the scope of their duties.

148. By reason of the foregoing, the BCP and EPD are liable for compensatory and punitive damages including damages for injury, pain, suffering, and emotional distress, and any other relief that the Court deems just and appropriate.

COUNT XIII**(Punitive Damages)**

149. Plaintiff repeats and realleges paragraphs 1 through 169 hereof, as if fully set forth herein.

150. Defendants while acting jointly and individually, under color of law, and within the scope of their employment, deprived the Plaintiff of his Constitutional rights under both the New Jersey and United States Constitution and violated Plaintiff's rights under New Jersey state tort law.

151. Defendants' misconduct was objectively unreasonable or willfully indifferent to the rights of the Plaintiff.

152. Defendants' actions resulted in a serious risk of death or bodily injury to the Plaintiff. Defendants showed a conscious disregard for the safety of others.

153. Defendants' actions also resulted in the indictment of two police officers.

154. Defendants' conduct in tampering with evidence is egregious and warrants punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment in his favor and against the Defendants on Counts One through Twelve, awarding compensatory and punitive damages for injury, pain, suffering, and emotional distress, and also awarding court costs, attorney's fees, and any other relief that the Court deems just and appropriate.

JURY TRIAL DEMANDED

Plaintiff requests a jury trial on all claims.

Respectfully submitted,

Dated: April 16, 2014

By: s/ Robert L. Podvey, Esq.

Robert L. Podvey, Esq.

Peter J. Mitchell, Esq.

PODVEY, MEANOR, CATENACCI,

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Attorneys for Plaintiff

W0442011

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Robert L. Podvey, Esq., of full age, states:

I hereby certify that on this day, 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. It is my understanding that BER-L-002753-12 before the Hon De La Cruz, and involving Robert Carney, the Office of the Bergen County Police, Brian Higgins, Uwe Malakas, A. Wyatt, and J. Cipriani, covers a different matter in controversy, namely an employment dispute.

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

Respectfully submitted,

Dated: April 16, 2014

By: s/ Robert L. Podvey, Esq.

Robert L. Podvey, Esq.

Peter J. Mitchell, Esq.

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Attorneys for Plaintiff

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 201.1

I hereby certify that the above-captioned matter is not subject to compulsory arbitration because the Plaintiff's claims are based on an alleged violation of a right secured by the Constitution of the United States and Plaintiff's damages are in excess of \$150,000.

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

Respectfully submitted,

Dated: April 16, 2014

By: s/ Robert L. Podvey, Esq.

Robert L. Podvey, Esq.

Peter J. Mitchell, Esq.

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