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UNITED STATES DISTRICT COURT

for the

District of New Jersey

JUSTIN MANITTA

Plaintiff(s)

v.

STATE OF NEW JERSEY, et al.

Defendant(s)

Civil Action No. 3:13-cv-00420-MLC-TJB

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Borough of Flemington
38 Park Place
Flemington, New Jersey 08822-1396

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 officer 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:

Kevin T. Flood, Esq.
The Law Office of Kevin T. Flood, Esq., LLC
731 Route 18
East Brunswick, New Jersey 08816

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.

CLERK OF COURT

Date: 02/06/2012

William T. Walsh

Signature of Clerk or Deputy Clerk

12/5/2014 motion for summary judgment
granted on 5 1983 claims;
consent as to all other claims

The Law Office of Kevin T. Flood, Esq., L.L.C.
731 Route 18
East Brunswick, NJ 08816
(908) 705-2623
Attorney for the Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
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Dkt. No.

JUSTIN MANITTA
Plaintiff

COMPLAINT
and JURY DEMAND

v.

STATE OF NEW JERSEY, COUNTY OF HUNTERDON, BOROUGH OF FLEMINGTON,
FLEMINGTON BOROUGH POLICE DEPARTMENT, FLEMINGTON BOROUGH CHIEF
OF POLICE GEORGE A. BECKER, DET. MARIASCHIN, PTL. OFFICER JERRY
ROTELLA, JR., PTL. OFFICER JONATHAN A. SELLNER, FLEMINGTON BOROUGH
POLICE DEPARTMENT MEMBERS "JOHN DOE" I-X, individually and in their official
capacities

PRELIMINARY STATEMENT

This is an action based on the violation of Plaintiff's civil rights brought under federal and New Jersey law based on the false arrest, false imprisonment, and grossly excessive and unjustified use of force which was inflicted on Plaintiff's person during a traffic stop conducted by the Flemington Borough Police Department.

JURISDICTION

1. This Court has jurisdiction over Plaintiff's federal civil rights claims brought under 42 U.S.C. § 1983 pursuant to 28 U.S.C. § 1343, and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiff's State law claims under 28 U.S.C. § 1367.

VENUE

2. Venue is properly laid in the District of New Jersey, where the events sued on took place.

PARTIES

3. Plaintiff, JUSTIN MANITTA, is a citizen of the United States and a resident of New Jersey.

4. Defendant, STATE OF NEW JERSEY, is a state in the United States. At the time of the incidents complained of, each of the individual defendants were employed by the Borough of Flemington, in its police department, and each were acting under the color of the laws of New Jersey based on his authority as a member of the Flemington Borough Police Department and in the course of his employment. The State of New Jersey shared responsibility and oversight with the Borough of Flemington for training and/or promulgating guidelines regarding the conduct of state workers.

5. Defendant, COUNTY OF HUNTERDON, is a municipal corporation organized under the laws of New Jersey. At the time of the incidents complained of, each of the individual defendants were employed by the Borough of Flemington, in its police department, and each were acting under the color of the laws of New Jersey based on his authority as a member of the Flemington Borough Police Department and in the course of his employment. The County of Hunterdon shared responsibility and oversight with the Borough of Flemington for training and/or promulgating guidelines regarding the conduct of state workers.

6. Defendant, BOROUGH OF FLEMINGTON, is a municipal corporation organized under the laws of New Jersey. At the time of the incidents complained of, each of the individual defendants were employed by the BOROUGH OF FLEMINGTON, in its police department, and

each were acting under the color of the laws of New Jersey based on his authority as a member of the Flemington Borough Police Department and in the course of his employment.

7. Defendant, FLEMINGTON BOROUGH POLICE DEPARTMENT, is a municipal entity organized under the laws of New Jersey. At the time of the incidents complained of, each of the individual defendants were employed by the Flemington Borough Police Department and each were acting under the color of the laws of New Jersey based on his authority as a member of the Flemington Borough Police Department and in the course of his employment.

8. Defendant, GEORGE A. BECKER, Chief of Police, was at all times mentioned herein the highest police official of the Flemington Borough Police Department, and as such was responsible for promulgating and for overseeing the implementation of the policies of the Borough of Flemington with respect to its police department's functions, either directly or by delegating responsibility, including but not limited to, the training and supervision of Flemington Borough police officers, policies regarding the maintaining of a visual surveillance and recording of events inside Flemington Borough police stations, and the internal investigation by the Flemington Borough Police Department of allegations of misconduct by Flemington Borough police officers, and policies concerning the discipline of police officers who violate civil rights, use excessive force, or fail to report the use of excessive force.

10. Defendants, DETECTIVE MARIASCHIN and PTL. OFFICERS JERRY ROTELLA, JR. and JONATHAN A. SELLNER were at all times mentioned herein employed by the Borough of Flemington in the Flemington Borough Police Department.

11. Defendants, JOHN DOES I-X were at all times mentioned herein employed by the Borough of Flemington in the Flemington Borough Police Department. The true names of these individuals are presently unknown to Plaintiff.

FACTS

12. On January 14, 2011, it is alleged that members of the Hunterdon County Narcotics Task Force (HCNTF) were conducting an investigation at the Hunter Hills Apartment Complex.
13. Detective Mariaschin of the Flemington Borough Police Department was assisting the HCNTF in their investigation.
14. During this investigation, members of the HCNTF, observed Plaintiff's vehicle dropping off his friend, Abby Ozimek, who members of HCNTF believed to be a "known drug user."
15. It is further alleged that Abby Ozimek entered the apartment that HCNTF had surveillance on.
16. This information was forwarded by Detective Mariaschin to Patrolmen Rotella and Sellner via NEXTEL message, then Detective Mariaschin acting on behalf of the HCNTF "advised" these Patrolmen to stop Plaintiff's vehicle and to only "identify" the occupant(s), he did not order them to remove anyone from the vehicle.
17. Patrolmen Rotella and Sellner then proceeded to the Hunter Hills Apartment Complex, located Plaintiff's vehicle and initiated a motor vehicle stop on Route 130 Southbound near the intersection of East Main Street.
18. After performing the motor vehicle stop, Patrolman Sellner approached the driver's side of Plaintiff's vehicle and ordered Plaintiff to turn over his license, registration, insurance identification card, and to unconstitutionally exit the vehicle and proceed to the rear of the vehicle.
19. Plaintiff asked Patrolman Sellner why he was required to exit the vehicle, and Patrolman Sellner replied: "Cause I am asking you to do so, get out of the vehicle."

20. Patrolman Sellner then asks Plaintiff if he was coming out of the Hunter Hills Apartment Complex and Plaintiff explains that he was there dropping off his friend Abby Ozimek.

21. Patrolman Sellner then asks Plaintiff if he has anything in his pockets and then orders him to put his hands on the hood and proceeds to unconstitutionally pat the Plaintiff down.

22. Plaintiff asks Patrolman Sellner why the pat down is necessary and Patrolman Sellner responds by saying "because it is necessary. Don't worry about it and keep your mouth shut."

23. Plaintiff asks Patrolman Sellner why he is being harassed and Patrolman Sellner responds, "You are not being harassed. Your vehicle has illegally tinted windows, remain at the back of your vehicle."

24. Plaintiff's vehicle did not have illegally tinted windows, Plaintiff's vehicle in fact had factory installed windows.

25. Patrolman Sellner then returns to his vehicle and makes a call into dispatch and informs dispatch that Plaintiff is "a little wise guy" so he is going to write him two tickets.

26. Rather than just obtaining the identity of the occupant(s) of the vehicle, Patrolman Sellner unconstitutionally ordered Plaintiff to exit the vehicle and proceed to the rear of said vehicle and then engaged in an unconstitutional pat down and then told him not to move effectively arresting the Plaintiff and falsely imprisoning him.

27. Patrolman Sellner then wrote Plaintiff 3 tickets and impounded his vehicle.

28. Plaintiff was so distraught by the harassment and clear violations of his constitutional rights that he endured by the hands of Patrolman Sellner that Plaintiff chose to stay in the freezing weather and wait for a ride rather than to accept a ride from members of the Flemington Borough Police Department including Patrolman Sellner and Patrolman Rotella.

29. Upon information and belief, none of the Defendant police officers who were present at the time of the arrest of the Plaintiff reported the false arrest/false imprisonment and/or excessive use of force upon Plaintiff.

30. Plaintiff's false arrest/false imprisonment, Plaintiff's physical injuries at the hands of the police, and his prosecution on charges which were falsely made, were the direct result of the de facto training, policies, and oversight of Defendants STATE OF NEW JERSEY, COUNTY OF HUNTERDON, and BOROUGH OF FLEMINGTON, promulgated by its principal law enforcement policy maker, Defendant FLEMINGTON BOROUGH CHIEF OF POLICE GEORGE A. BECKER, including the failure to adequately investigate and monitor false arrests by police officers, failure to supervise and discipline police officers who were known to have made false arrests, the failure to adequately investigate and monitor the use of force by police officers, failure to supervise and discipline police officers who were known to have used force, which should have been recognized as excessive, failure to supervise and discipline police officers who were known to have violated civil rights and unlawfully required Plaintiff to exit his vehicle, failure to supervise and discipline police officers who were known to have violated civil rights and unlawfully and without warrant searched Plaintiff by performing an unconstitutional pat down, and failure to supervise, investigate, monitor and discipline officers who observed and did not report the use of excessive force or violation of civil rights by Flemington Borough police officers which they were aware of, and failure to investigate the excessive use of force and violation of civil rights during the Plaintiff's false arrest.

31. As a result of the use of force against him, the violation of civil rights against him, the unlawful search and the lodging of false charges against him, *inter alia*, Plaintiff sustained physical and psychological injuries, some of which may be permanent, including, but not limited

to invasion of his right to privacy and seclusion, publicity which placed him in a false light in the public eye, and was required to appear in court and defend against false charges, amongst other things, violations of his civil rights.

FIRST CAUSE OF ACTION: 42 U.S.C. § 1983

32. Defendants' actions and failure(s) to act violated Plaintiff's civil rights guaranteed by the Fourth and Fourteenth Amendments, for which redress is available under 42 U.S.C. § 1983.

33. Defendants knew or should have known of the violation of Plaintiff's rights, and acted and failed to act so as to permit the violation of Plaintiff's rights intentionally and/or recklessly and with deliberate indifference.

SECOND CAUSE OF ACTION: NEW JERSEY CIVIL RIGHTS ACT

34. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-33 of this Complaint.

35. Defendants' actions and failure(s) to act deprived Plaintiff of rights secured by the New Jersey Civil Rights Act, N.J.S.A. 2: 6-2.

THIRD CAUSE OF ACTION: ASSAULT AND BATTERY

36. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-35 of this Complaint.

37. Defendants' actions constitute assault and battery by placing the Plaintiff in reasonable imminent apprehension of physical contact, and intentionally touching the Plaintiff without consent, thereby injuring him.

FOURTH CAUSE OF ACTION: FALSE ARREST

38. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-37 of this Complaint.

39. Defendants' actions constitute a false arrest of the Plaintiff by arresting and detaining the Plaintiff against his will without the proper legal authority, legal justification, and/or probable cause.

FIFTH CAUSE OF ACTION: FALSE IMPRISONMENT

40. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-39 of this Complaint.

41. Defendants' actions constitute false imprisonment of the Plaintiff according to N.J.S.A. 5:12-121[(6)] as the Defendants intentionally confined the Plaintiff, who was aware and harmed by it, without legal justification.

SIXTH CAUSE OF ACTION: EXCESSIVE FORCE

41. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-41 of this Complaint.

42. Defendants' actions and failure(s) to act constituted excessive force and violated Plaintiff's civil rights guaranteed by the Fourth and Fourteenth Amendments, for which redress is available under 42 U.S.C. § 1983.

43. Defendants knew or should have known of the violation of Plaintiff's rights, and acted and failed to act so as to permit the violation of Plaintiff's rights intentionally and/or recklessly and with deliberate indifference.

SEVENTH CAUSE OF ACTION: FAILURE TO TRAIN AND/OR SUPERVISE

44. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-43 of this Complaint.

45. Defendants' actions and failure(s) to act constituted a failure to train and/or supervise which proximately caused Plaintiff's civil rights guaranteed by the Fourth and Fourteenth Amendments to be violated, for which redress is available under 42 U.S.C. § 1983.

46. Defendants knew or should have known of the violation of Plaintiff's rights, and acted and failed to act so as to permit the violation of Plaintiff's rights intentionally and/or recklessly and with deliberate indifference.

EIGHTH CAUSE OF ACTION: FAILURE TO ACT AND/OR DISCIPLINE

47. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-46 of this Complaint.

45. Defendants' actions and failure(s) to act constituted a failure to act and/or discipline which proximately caused Plaintiff's civil rights guaranteed by the Fourth and Fourteenth Amendments to be violated, for which redress is available under 42 U.S.C. § 1983.

46. Defendants knew or should have known of the violation of Plaintiff's rights, and acted and failed to act so as to permit the violation of Plaintiff's rights intentionally and/or recklessly and with deliberate indifference.

NINTH CAUSE OF ACTION: INVASION OF PRIVACY

47. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-46 of this Complaint.

48. Defendants' actions, which would be highly offensive to a reasonable person, constitute an intrusion upon Plaintiff's seclusion.

TENTH CAUSE OF ACTION: FALSE LIGHT

49. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-48 of this Complaint.

50. Defendants' actions and failure(s) to act, which would be highly offensive to a reasonable person, knowingly placed the Plaintiff in a false light before the public eye.

**ELEVENTH CAUSE OF ACTION: INTENTIONAL INFLECTION OF EMOTIONAL
DISTRESS**

51. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-50 of this Complaint.

52. Defendants' actions intentionally directed extreme and outrageous conduct toward the Plaintiff with the intent to produce emotional distress and therefore constitute an intentional infliction of emotional distress.

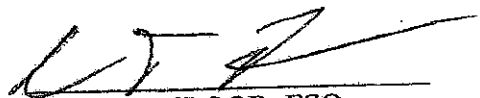
**TWELFTH CAUSE OF ACTION: NEGLIGENT INFLECTION OF EMOTIONAL
DISTRESS**

53. Plaintiff repeats and realleges, as if stated here in full, paragraphs 1-52 of this Complaint.

54. Defendants' actions and failure(s) to act negligently caused the Plaintiff emotional distress by negligently causing the Plaintiff to fear immediate personal injury, followed by such an injury, the fright of which resulted in substantial bodily injury and/or sickness.

Wherefore, Plaintiff respectfully requests that this Court grant Plaintiff compensatory damages on his causes of action against all Defendants in an amount to be determined by the trier of fact, and punitive damages against each individual defendant, in an amount to be determined by the trier of fact, together with reasonable attorney's fees and the costs of this action.

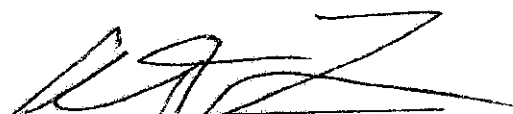
Dated: January 10, 2013


KEVIN T. FLOOD, ESQ.
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury of all issues triable by jury.

Dated: January 10, 2013


KEVIN T. FLOOD, ESQ.
Attorney for Plaintiff

CERTIFICATION

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


KEVIN T. FLOOD, ESQ.
Attorney for Plaintiff

Dated: January 10, 2013