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TELEFAX TRANSMITTAL COVER SHEET

TO: John Markel
Bergen Risk Managers Fax No. 201-825-2230

FROM: Joseph C. Zisa Jr., Esq.
ZISA & HITSCHERICH, ESQS.

DATE: August 30, 2012

RE: Marc Guthartz v. Richard Sellitto Jr., et al.
Case No. 2:12-CV-03428-SDW-MCA

NUMBER OF PAGES BEING TRANSMITTED
(Including Cover Sheet) 16
REMARKS/COMMENTS:

Please see attached. This version is more comprehensive.

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Pam

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COPY

MARC GUTHARTZ,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

COPY

RICHARD SELLITTO JR., ET AL.,
Defendant

CASE NUMBER: 2:12-CV-03428-SDW-MCA

TO: (Name and address of Defendant):

STEPHEN COCHMAN

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

Marie S. Nunes

(By) DEPUTY CLERK

ISSUED ON 2012-08-03 16:06:21.0 Clerk
USDC NJD

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COPY

MARC GUTHARTZ,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

RICHARD SELLITTO JR., ET AL.,
Defendant

CASE NUMBER: 2:12-CV-03428-SDW-MCA

TO: (Name and address of Defendant):

PATROLMAN RICHARD SELLITTO, JR

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

Marie S. Nunes

(By) DEPUTY CLERK

ISSUED ON 2012-08-03 16:06:21.0, Clerk
USDC NJD

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COPY

MARC GUTHARTZ,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

RICHARD SELLITTO JR., ET AL.,
Defendant

CASE NUMBER: 2:12-CV-03428-SDW-MCA

TO: (Name and address of Defendant):

BRYNN ZIEGEL HOFER

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

Marie S. Nunes

DEPUTY CLERK

ISSUED ON 2012-08-03 16:06:21.0, Clerk
USDC NJD

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARC GUTHARTZ,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

RICHARD SELLITTO JR., ET AL.,
Defendant

CASE NUMBER: 2:12-CV-03428-SDW-MCA

TO: (Name and address of Defendant):

PATROLMAN RICHARD SELLITTO, JR

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

Marie S. Nunes

(By) DEPUTY CLERK



ISSUED ON 2012-08-03 16:06:21.0, 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
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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

12-3428
(SDW)

MARC GUTHARTZ, PLAINTIFF

V.

HACKENSACK TOWNSHIP AND THE HACKENSACK TOWNSHIP
POLICE DEPARTMENT, AND UNDER COLOR OF STATE LAW

PATROLMAN RICHARD SELLITTO, JR., INDIVIDUALLY AND
UNDER COLOR OF STATE LAW

PATROLMAN STEPHEN OCHMAN, INDIVIDUALLY AND
UNDER COLOR OF STATE LAW

PATROLMAN BRYAN ZIEGELHOFFER, INDIVIDUALLY AND
UNDER COLOR OF STATE LAW

JOHN DOES 1 THROUGH 20
DEFENDANTS,

CIVIL ACTION NO.

JURISDICTION IS ASSERTED PURSUANT TO:
A: 42 U.S.C. 1983 (APPLIES TO STATE PRISONERS)

I DO NOT WANT TO ASSERT JURISDICTION UNDER
DIFFERENT OR ADDITIONAL STATUTES.

2) I DO NOT HAVE ANY PREVIOUSLY DISMISSED FEDERAL
CIVIL ACTIONS OR APPEALS.

3) PLACE OF CONFINEMENT: SOUTHERN STATE
CORRECTIONAL FACILITY.

4) PARTIES:

A. NAME OF PLAINTIFF: MARC GUTHARTZ

ADDRESS: 4295 ROUTE 47, DELMONT, NEW JERSEY 08314

INMATE NO: SPN 724073 - SBI #: 839100B

B. FIRST DEFENDANT NAME: TOWNSHIP OF HACKENSACK

AND THE HACKENSACK TOWNSHIP POLICE DEPARTMENT

OFFICIAL POSITION: NONE

PLACE OF EMPLOYMENT: 215 STATE STREET, HACKENSACK

NEW JERSEY 07601

WHY THIS DEFENDANT IS INVOLVED IN THIS CASE:

1) DEFENDANT, TOWNSHIP OF HACKENSACK IS AND AT ALL
TIMES MENTIONED IN THIS COMPLAINT WAS LOCATED IN
THE COUNTY OF BERGEN, STATE OF NEW JERSEY. THE
HACKENSACK POLICE DEPARTMENT IS A DULY AUTHORIZED
POLICE DEPARTMENT PROMULGATED PURSUANT TO THE LAW
OF THE STATE OF NEW JERSEY AND IT IS A MUNICIPAL
CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS
OF THE STATE OF NEW JERSEY.

2) IN DOING THE ACTS ALLEGED IN THIS COMPLAINT, DEFENDANTS PATROLMAN RICHARD SELLITTO, JR., PATROLMAN STEPHEN OCHMAN, PATROLMAN BRYAN ZIEGELHOFFER, AND JOHN DOES 1 THROUGH 20, WERE ACTING NOT AS INDIVIDUALS, BUT UNDER THE COLOR AND PRETENSE OF THE STATUTES, ORDINANCES, REGULATIONS, CUSTOMS AND USAGES OF DEFENDANTS TOWNSHIP OF HACKENSACK AND THE STATE OF NEW JERSEY AND UNDER THE AUTHORITY OF THEIR RESPECTIVE OFFICES AS POLICE OFFICERS.

3) DEFENDANT, TOWNSHIP OF HACKENSACK HAS AS A MATTER OF POLICY AND PRACTICE AND WITH DELIBERATE INDIFFERENCE FAILED TO TRAIN OR SEE PERSONS WERE ADEQUATELY TRAINED, SUPERVISED, DISCIPLINED, SANCTIONED OR OTHERWISE DIRECT ITS POLICE OFFICERS, INCLUDING DEFENDANTS NAMED IN THIS COMPLAINT.

4) THE DEFENDANT, KNEW OR SHOULD HAVE KNOWN AND OR PROMOTED AND CONDONED DEFENDANTS TO CONDUCT SUCH CRIMINAL ACTS WITH THE KNOWLEDGE THAT SUCH BEHAVIORS WOULD INJURE THE PLAINTIFF AND FALSELY ACT LIKE INJURIES DONE WERE NOT BY THEM.

5) THE DEFENDANT DID OR SHOULD HAVE KNOWN THAT PLAINTIFF WAS EXPOSED TO OR KNEW THE PLAINTIFF WOULD BE SUBJECT TO A MALEVOLENT ATTACK BY PARTY DEFENDANTS ON JUNE 16TH, 2010, DURING ARREST.

6)

BY REASON OF THE FOREGOING, THE PLAINTIFF

DEMANDS JUDGEMENT AGAINST THE DEFENDANTS

TOWNSHIP OF HACKENSACK OFFICERS, PATROLMAN RICHARD

SELLITTO JR. PATROLMAN STEPHEN OCHMAN, PATROLMAN

BRYAN ZIEGELHOFFER AND JOHN DOES 1 THROUGH 20

IN THE SUM EXCEEDING THE JURISDICTIONAL LIMITS OF

ALL THE LOWER COURTS.

C) SECOND DEFENDANT NAME: PATROLMAN RICHARD SELLITTO JR.

OFFICIAL POSITION: POLICE OFFICER

PLACE OF EMPLOYMENT: HACKENSACK TOWNSHIP POLICE

DEPARTMENT

THIRD DEFENDANT NAME: PATROLMAN STEPHEN OCHMAN

OFFICIAL POSITION: POLICE OFFICER

PLACE OF EMPLOYMENT: HACKENSACK TOWNSHIP POLICE

DEPARTMENT

FOURTH DEFENDANT NAME: PATROLMAN BRYAN ZIEGELHOFFER

OFFICIAL POSITION: POLICE OFFICER

PLACE OF EMPLOYMENT: HACKENSACK TOWNSHIP POLICE

DEPARTMENT

FIFTH DEFENDANT NAME: JOHN DOES 1 THROUGH 20

OFFICIAL POSITION: LAW ENFORCEMENT OFFICERS

PLACE OF EMPLOYMENT: HACKENSACK TOWNSHIP POLICE

DEPARTMENT

WHY THESE DEFENDANTS ARE INVOLVED IN THIS CASE:

1) ON JUNE 16TH, 2010, DEFENDANT, OFFICER STEPHEN OCHMAN AND DEFENDANT, OFFICER BRYAN ZIEGELHOFFER PHYSICALLY ASSAULTED THE PLAINTIFF BY REPEATEDLY STRIKING HIM IN THE HEAD (SKULL) AND ABOVE LEFT EYE WITH A METAL OBJECT CAUSING THE PLAINTIFF TO BE TRANSPORTED TO HACKENSACK UNIVERSITY MEDICAL CENTER AT WHICH TIME PLAINTIFF NECESSITATED STITCHES ABOVE LEFT EYE, LEAVING PERMANENT SCARRING OF APPROXIMATELY ONE AND A HALF TO TWO INCHES IN LENGTH. THIS ALSO RESULTED IN PLAINTIFF NECESSITATING STAPLES TO HEAD (SKULL) TO CLOSE OTHER LACERATIONS. THESE ACTS ARE A CLEAR VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS OF THE 8TH AND 14TH AMMENDMENTS, WHILE DEFENDANT, OFFICER RICHARD SELLITTO, JR AND DEFENDANTS, JOHN DOES 1 THROUGH 20 WATCHED.

A) PLAINTIFF HAS MADE MANY ATTEMPTS TO SEEK AN INVESTIGATION THROUGH INTERNAL AFFAIRS, THE LAW LIBRARY, AND THE PUBLIC DEFENDER'S OFFICE OF BERGEN COUNTY, NEW JERSEY, WITHOUT ANY SUCCESS AT ALL.

B) PLAINTIFF HAS BEEN INCARCERATED FROM JUNE 16TH, 2010, TIME OF THIS INCIDENT STRAIGHT THROUGH THIS PRESENT MOMENT. THIS HAS CAUSED PLAINTIFF TO BE DEPRIVED OF OUTSIDE RESOURCES TO AID WITH THIS CASE.

6) STATEMENT OF CLAIMS:

THE PLAINTIFF'S CLAIMS ARE SUBSTANTIAL AND LENGTHY AND PLAINTIFF ASSERTS SERIOUS ALLEGATIONS. THE DEFENDANTS CLEARLY VIOLATED MY CONSTITUTIONAL RIGHTS, THE 8TH AND 14TH AMMENDMENTS.

7) RELIEF:

I AM REQUESTING THAT THE COURTS PLEASE SUSPEND THE DEFENDANTS FROM EMPLOYMENT UNTIL THIS ACTION IS DISPOSED OF. I AM REQUESTING THIS, DUE TO THE ALLEGATIONS AND DUE TO THE NATURE OF WHICH IS MENTIONED IN THIS CIVIL RIGHTS COMPLAINT. I AM ALSO SEEKING COMPENSATORY AND PUNITIVE DAMAGES TO THE AMOUNT THAT THE COURTS SEE FIT.

8) I AM REQUESTING A JURY TRIAL !CERTIFICATION

I, MARC GUTHARTZ, DO HEREBY CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM FULLY AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE FALSE, I AM SUBJECT TO BE PUNISHED

RESPECTFULLY SUBMITTED,

DATED: JUNE 2ND, 2012

Marc Guthartz

MR. MARC GUTHARTZ DATED 6-2-12

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARC GUTHARTZ,

Civil No. 12-3428 (SDW)

Plaintiff,

v.

ORDER

HACKENSACK TWP., et al.,

Defendants.

Plaintiff, a prisoner incarcerated at Southern State Correctional Facility, seeks to file a Complaint pursuant to 28 U.S.C. § 1915. This Court finds that Plaintiff qualifies for prisoner in forma pauperis status pursuant to 28 U.S.C. § 1915. Having thoroughly reviewed Plaintiff's allegations, this Court finds that the Complaint states an excessive force claim under the Fourth Amendment and 42 U.S.C. § 1983 against defendants OCHMAN, ZIEGELHOFER and SELLITTO. Dismissal of the Complaint against these defendants is not required by 28 U.S.C. § 1915(e)(2)(B) and 1915A(b).

However, Plaintiff also names Hackensack Township Police Department and Hackensack Township as defendants. Hackensack Township Police Department will be dismissed as defendant because a police department is not a "person" that may be found liable under § 1983 pursuant to Monell v. Dep't. of Soc. Services of City of New York, 436 U.S. 658, 688-90 (1978). See PBA Local No. 38 v. Woodbridge Police Dept., 832 F. Supp. 808, 825-26 (D.N.J. 1993).

Although Hackensack Township may be found liable under § 1983, it is only "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government

as an entity is responsible under § 1983." Monell, 436 U.S. at 694. To state a § 1983 claim against a municipality, the complaint "must identify a custom or policy, and specify what exactly that custom or policy was," McTernan v. City of York, PA, 564 F.3d 636, 658 (3d Cir. 2009), and specify facts showing a "direct causal link between a municipal policy or custom and the alleged constitutional deprivation," Jimenez v. All American Rathskeller, Inc., 503 F.3d 247, 249 (3d Cir. 2007) (quoting City of Canton v. Harris, 489 U.S. 378, 385 (1989)). "[A] single incident of police misbehavior . . . is insufficient as sole support for an inference that a municipal policy or custom caused the incident," Brown v. City of Pittsburgh, 586 F.3d 263, 292 (3d Cir. 2009) (quoting City of Oklahoma City v. Tuttle, 471 U.S. 808, 832 (1985) (Brennan, J., concurring)).

Although Plaintiff asserts that Hackensack Township has a policy of failing to train, supervise, discipline, sanction or direct police officers, including defendants, and that Hackensack Township knew or should have known that Plaintiff would be subject to excessive force during arrest on June 16, 2010, Plaintiff does not specify exactly what that policy was, or specify facts showing a direct causal link between a specified municipal policy or custom and the alleged use of excessive force. Accordingly, the Complaint does not state a § 1983 claim against Hackensack Township, and this Court will dismiss the municipality as defendant.

IT IS therefore on this 1st day of August, 2012,

ORDERED that the Clerk shall reopen the file; and it is further

ORDERED that Plaintiff's application to proceed in forma pauperis is granted and the Clerk shall file the Complaint without prepayment of the filing fee; and it is further

ORDERED that the Complaint may proceed to service against defendants RICHARD SELLITTO, STEPHEN OCHMAN, and BRYAN ZIEGELHOFFER; and it is further

ORDERED that HACKENSACK TOWNSHIP POLICE DEPARTMENT is
DISMISSED WITH PREJUDICE as defendant; and it is further

ORDERED that HACKENSACK TOWNSHIP is DISMISSED WITHOUT PREJUDICE
as defendant; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b), the Clerk shall forward a copy of this
Order by regular mail to the Attorney General of the State of New Jersey and the warden of
Southern State Correctional Facility; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(d), the Clerk shall issue summons and the
U.S. Marshal shall serve summons and copies of the Complaint and this Order upon Defendants
who are not dismissed, with all costs of service advanced by the United States; and it is further

ORDERED that, pursuant to 42 U.S.C. § 1997e(g)(2), Defendants shall file and serve a
responsive pleading within the time specified by Fed. R. Civ. P. 12; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(e)(1) and § 4(a) of Appendix H of the
Local Civil Rules, the Clerk shall notify Plaintiff of the opportunity to apply in writing to the
assigned judge for the appointment of pro bono counsel in accordance with the factors set forth
in Tabron v. Grace, 6 F.3d 454 (3d Cir. 1997), and the Clerk shall enclose with such notice a
copy of Appendix H and a form Application for Appointment of Pro Bono Counsel; and it is
further

ORDERED that, if at any time Plaintiff seeks the appointment of pro bono counsel,
pursuant to Fed. R. Civ. P. 5(a) and (d), Plaintiff shall (1) serve a copy of the Application for
Appointment of Pro Bono Counsel by regular mail upon each party at his last known address or,
if the party is represented in this action by an attorney, upon the party's attorney at the attorney's

address, and (2) file a Certificate of Service with the Application for Pro Bono Counsel; and it is further

ORDERED that Plaintiff is assessed a filing fee of \$350.00 which shall be deducted from his prison account pursuant to 28 U.S.C. § 1915(b)(2) in the manner set forth below, regardless of the outcome of the litigation; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b)(1)(A), Plaintiff is assessed an initial partial filing fee equal to 20% of the average monthly deposits to the Plaintiff's prison account for the six month period immediately preceding the filing of the Complaint; when funds exist, the New Jersey Department of Corrections shall deduct said initial fee from Plaintiff's prison account and forward it to the Clerk; and it is finally

ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), until the \$350.00 filing fee is paid, each subsequent month that the amount in Plaintiff's prison account exceeds \$10.00, the New Jersey Department of Corrections shall assess, deduct from the Plaintiff's account, and forward to the Clerk payments equal to 20% of the preceding month's income credited to Plaintiff's prison account, with each payment referencing the docket number of this action.

s/Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.