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CITY MANAGER & ATTORNEY

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2015 MAY 29 P 1:11

CITY OF HACKENSACK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LEONARD CAPRA,

Plaintiff,

vs.

OFFICER JOHN KNAPP, DETECTIVE
ALEXANDER LOPEZ-ARENAS,
OFFICER VINCENT SURACE
CITY OF HACKENSACK, COUNTY
OF BERGEN, JOHN DOES 1-10; and
ABC PUBLIC ENTITIES (being fictitious
names of as yet unidentified parties),

Defendants.

CASE NO.:

CIVIL ACTION

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Leonard Capra, by and through undersigned counsel, and files this Complaint and
sues Defendants, and alleges as follows:

JURISDICTIONAL STATEMENT AND PARTIES

1. This action is brought pursuant to 42 U.S.C. Sections 1983 and 1988 and the Fourth
and Fourteenth Amendments to the United States Constitution.

2. The Court has jurisdiction of this action under 42 U.S.C. Section 1983, 28 U.S.C.
Section 1343, and 28 U.S.C. Section 1331 in that this is an action to redress violations of Plaintiff's

federally protected Constitutional rights.

3. At all times material hereto, Plaintiff, Leonard Capra, is and was a permanent legal resident of the United States, and a resident of Bergen County, New Jersey.

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

5. Defendant Detective Alexander Lopez-Arenas ("Lopez") was at all times relevant acting under color of state law as an active and duly appointed Hackensack police officer, and in such capacity, as the agent, servant, and employee of Defendant, City of Hackensack.

6. Defendant Officer Vincent Surace ("Surace") was at all times relevant acting under color of state law as an active and duly appointed Bergen County Sheriff 's officer, and in such capacity, as the agent, servant, and employee of Defendant, County of Bergen. Upon information and belief, Surace was also acting under the authority of Defendant City.

7. Defendant, City of Hackensack ("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 Defendants Lopez, Surace and Knapp.

8. Defendant, County of Bergen ("County"), 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 Defendant Surace.

9. John Does 1-10, are fictitious names for persons unknown at this time but will be substituted when known as associated, affiliated or liable hereunder for the reasons set forth below or inferred therefrom. Each of these parties is incorporated as a defendant in each and

every count listed below. John Does are supervisors, employees, managers, agents, assigns and heirs of the County of Bergen and City of Hackensack, and or other individuals unnamed who participated in any conduct concerning the excessive force used against the Plaintiff.

10. ABC Public Entities 1-10, are fictitious names for entities unknown at this time but will be substituted when known as associated, affiliated or liable hereunder for the reasons set forth below or inferred therefrom. Each of these parties is incorporated as a defendant in each and every count listed below. ABC Public Entities are public entities whose custom, policy or practice contributed to the excessive force used against the Plaintiff.

11. The acts and practices constituting the violations alleged below have all occurred within the City of Hackensack, 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 Bergen County, New Jersey. See 28 U.S.C. § 1391(b)(1) and § 1391(b)(2).

12. 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.

13. 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.

14. All defendants are sued in their individual and official capacity.

STATEMENT OF FACTS

15. At all times material hereto, the subject incident arises out of Defendants Knapp,

Lopez and Surace's brutal assault and battery of Plaintiff resulting in serious personal injuries to said Plaintiff which occurred at the Hackensack Police Headquarters, located at 225 State Street, Hackensack, New Jersey.

16. Specifically, on or about February 11, 2014, the Plaintiff was arrested by Defendant City officers on allegations involving distribution of CDS and transported to Hackensack Police Headquarters.

17. Once there, the Plaintiff was confronted by Detective Mark Gutierrez ("Gutierrez") about recent Facebook posts made by the Plaintiff regarding corruption in the Hackensack Police Department.

18. Gutierrez is a member of the Hackensack Police Department and has a history with the Plaintiff. Upon information and belief, in or around July, 2013, Gutierrez arrested the Plaintiff on allegations involving CDS which were ultimately dismissed several months later by the prosecutor after it was suspected, by the defense, that Gutierrez had provided false testimony at the grand jury proceeding.

19. Shortly thereafter, Plaintiff was brought into a processing room by Defendants Knapp, Lopez, and Surace (collectively as "defendant officers").

20. Once there, Plaintiff's handcuffs were removed and he was asked to sit down to which he fully complied without incident.

21. After Plaintiff sat down, the Defendant officers began to make several disparaging comments to the Plaintiff. It should be noted that the Plaintiff has been receiving SSDI for approximately the last ten (10) years after being diagnosed with a neurological disorder.

22. Nearly seconds later, all three Defendant officers grabbed the Plaintiff by the arms,

dragged him to his feet, and then proceeded to violently throw the Plaintiff to the hard tile floor.

23. Once on the floor, the Defendant officers proceeded to strike the Plaintiff twice in the face despite the Plaintiff not resisting the officers.

24. After about a full minute of being brutally beaten, the Defendant officers noticed the Plaintiff's breathing was extremely shallow warranting said officers to contact EMS.

25. The Plaintiff remained motionless on the ground for several minutes until EMS arrived and transported him to Bergen Regional Medical Center.

26. At the hospital, Plaintiff was diagnosed with a broken left humerus, tore tendons in his left arm, nerve damage to his left hand as well as contusions and abrasions to his face.

27. As a result of said injuries, the Plaintiff has undergone surgery to repair his left arm as well as having to complete months of physical therapy.

Additional Facts Surrounding Liability

28. Hackensack Police Department ("HPD") 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 HPD, including Defendant officers. Further, it is the entity legally responsible for the hiring, retention, supervision, and training of employees of the HPD, as well as administering any discipline to said employees.

29. On information and belief, Defendant City delegates to the Chief of Police of the HPD the authority to develop, direct, and implement policies for all sworn law enforcement officers, compiled in part in the Hackensack Standard Operating Procedures Manual, which set

forth purported “guidelines” controlling the interaction between HPD law enforcement officers (including Defendant officers) and the general public.

30. Defendant City has been placed on notice that there is a pervasive and systemic pattern, custom and practice within HPD 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 HPD 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.

31. 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.

32. Thus, Defendant City is also on notice of the fact a systemic and pervasive pattern and practice of excessive force exists within the HPD 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.

33. Defendant Officers are comfortable in the knowledge that any acts of excessive force that he commits will not result in discipline by the Defendant City even when the act of excessive force occurs within HPD. Thus, the lack of discipline for excessive force allowed Defendant Officers to commit excessive force against the Plaintiff because Defendant Officers knew that there would be no official reprisals for his actions against Plaintiff.

34. Bergen County Sheriff's Department ("BCSD") is an administrative subdivision of Defendant County. Defendant County, acting through its Board of Trustees, is the ultimate policymaking authority for all officially-adopted policies and procedures implemented by employees of BCSD, including Defendant officers. Further, it is the entity legally responsible for the hiring, retention, supervision, and training of employees of the BCSD, as well as administering any discipline to said employees.

35. On information and belief, Defendant County delegates to the Chief of BCSD the authority to develop, direct, and implement policies for all sworn law enforcement officers, compiled in part in the Bergen County Standard Operating Procedures Manual, which set forth purported "guidelines" controlling the interaction between BCSD law enforcement officers (including Defendant Officers) and the general public.

36. Specifically, the notice to the County of the unconstitutional conduct of its officers and employees has occurred through notices of intent to sue, lawsuits, internal affairs investigations, and media reports.

37. Thus, Defendant County is also on notice of the fact a systemic and pervasive pattern and practice of excessive force exists within the BCSD and that members of the citizenry are the victims of excessive force committed by sheriff officers of the Defendant County in violation of the

Fourth Amendment. Defendant County sheriff 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 County.

38. Defendant Surace are comfortable in the knowledge that any acts of excessive force that he commits will not result in discipline by the Defendant County even when the act of excessive force occurs within BCSD. Thus, the lack of discipline for excessive force allowed Defendant Officers to commit excessive force against the Plaintiff because Defendant Surace knew that there would be no official reprisals for his actions against Plaintiff.

COUNT I – 42 U.S.C. § 1983 – EXCESSIVE FORCE
(AGAINST DEFENDANT KNAPP)

39. Plaintiff, Leonard Capra, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 38 as if set forth fully herein, and further states as follows:

40. This cause of action is brought by Plaintiff against Defendant Knapp 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.

41. 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.

42. Defendant Knapp violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary in violation of his rights under the Fourth Amendment to the United States Constitution.

43. Defendant Knapp, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally use excessive force by forcefully and violently throwing the Plaintiff to the hard tile and then proceeding to strike the Plaintiff in the face twice.

44. Defendant Knapp, 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.

45. As a direct and proximate result of the illegal acts of Defendant Knapp, Plaintiff has in the past and will continue to receive medical treatment for the injuries sustained to his left arm.

46. As a direct and proximate result of the illegal acts of Defendant Knapp, 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.

47. The acts of Defendant Knapp 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 LOPEZ)

48. Plaintiff, Leonard Capra, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 47 as if set forth fully herein, and further states as follows:

49. This cause of action is brought by Plaintiff against Defendant Lopez 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.

50. 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.

51. Defendant Lopez violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary in violation of his rights under the Fourth Amendment to the United States Constitution.

52. Defendant Lopez, while acting in his capacity as a police officer for Defendant City and under the color of law, did intentionally use excessive force by forcefully and violently throwing the Plaintiff to the hard tile and then proceeding to strike the Plaintiff in the face twice.

53. Defendant Lopez, 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.

54. As a direct and proximate result of the illegal acts of Defendant Lopez, Plaintiff has in the past and will continue into the future receive medical treatment for the injuries sustained to his left arm.

55. As a direct and proximate result of the illegal acts of Defendant Lopez, 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.

56. The acts of Defendant Lopez 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 SURACE)

57. Plaintiff, Leonard Capra, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 53 as if set forth fully herein, and further states as follows:

58. This cause of action is brought by Plaintiff against Defendant Surace 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.

59. 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.

60. Defendant Surace violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary in violation of his rights under the Fourth Amendment to the United States Constitution.

61. Defendant Surace, while acting in his capacity as a sheriff's officer for Defendant County and under the color of law, did intentionally use excessive force by forcefully and

violently throwing the Plaintiff to the hard tile and then proceeding to strike the Plaintiff in the face twice.

62. Defendant Surace, while acting in his capacity as a sheriff's officer for Defendant County and under the color of law, did intentionally engage in an unlawful search and seizure by his conduct toward the Plaintiff.

63. As a direct and proximate result of the illegal acts of Defendant Knapp, Plaintiff has in the past and will continue into the future receive medical treatment for the injuries sustained to his left arm.

64. As a direct and proximate result of the illegal acts of Defendant Surace, 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.

65. The acts of Defendant Surace 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 CITY)

66. Plaintiff, Leonard Capra, 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. This cause of action is brought by Plaintiff against Defendant City for deprivation by its agent, servant, and employee, namely Defendants Knapp and Lopez, of constitutional rights within the meaning of 42 U.S.C. § 1983 in violation of the Fourth Amendment to the United States Constitution.

68. Defendants Knapp and Lopez were acting under the color of law, as authorized agents of Defendant City, while arresting Plaintiff in the furtherance of his duties.

69. The constitutional deprivation was caused by Defendant City's numerous areas of deliberate indifference.

70. 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 HPD police officers to their duties in the City of Hackensack.

71. 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 HPD officers, including but not limited to Defendant Knapp and Lopez, for dangerous propensities, lack of training and skill, and other identifiable characteristics making said HPD officers unfit to perform their lawful duties.

72. Defendant City was deliberately indifferent to the rights of the public, including the Plaintiff, in that it failed to determine whether members of the HPD, including Defendant Knapp and Lopez, 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.

73. Defendant City, through its deliberate indifference, failed to ensure that HPD officers, including Defendants Knapp and Lopez, did not violate the constitutional and statutory rights of

citizens of the State of New Jersey, including the Plaintiff, while said HPD officers were acting under color of state law for Defendant City.

74. 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 HPD officers, including Defendants Knapp and Lopez, who were inadequately trained, supervised, and disciplined.

75. Defendant City was deliberately indifferent in the selection, retaining, training, and supervising of Defendants Lopez and Knapp, as HPD 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 position of authority as HPD officer 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 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.

76. 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 HPD officers, and that deliberate indifference was widespread as to the

use of excessive force, illegal behavior, and widespread incompetence throughout Defendant City including the HPD. This pattern, custom, and practice includes not only the failure to identify and discipline the unlawful and excessive use of force and seizures by HPD personnel, but additionally, the failure to re-train, supervise, or otherwise remove HPD 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 HPD officers.

77. 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.

78. As a direct and proximate result of the illegal acts of Defendants Knapp and Lopez, 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 Knapp and Lopez.

79. As a direct and proximate result of the illegal acts of Defendants Lopez and Knapp, while 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 V – 42 U.S.C. § 1983 – EXCESSIVE FORCE
(AGAINST DEFENDANT COUNTY)

80. Plaintiff, Leonard Capra, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 79 as if set forth fully herein, and further states as follows:

81. This cause of action is brought by Plaintiff against Defendant County for deprivation by its agent, servant, and employee, namely Defendant Surace, of constitutional rights within the meaning of 42 U.S.C. § 1983 in violation of the Fourth Amendment to the United States Constitution.

82. Defendant Surace was acting under the color of law, as authorized agents of Defendant County, while arresting Plaintiff in the furtherance of his duties.

83. The constitutional deprivation was caused by Defendant City's numerous areas of deliberate indifference.

84. Moreover, at all times material hereto, Defendant County was responsible for implementing the rules and regulations in regard to hiring, retaining, screening, training, supervising, controlling, disciplining and assigning BCSD officers to their duties in the County of Bergen.

85. Defendant County 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 sheriff officers, including but not limited to

Defendant Surace, for dangerous propensities, lack of training and skill, and other identifiable characteristics making said sheriff officers unfit to perform their lawful duties.

86. Defendant County was deliberately indifferent to the rights of the public, including the Plaintiff, in that it failed to determine whether members of the BCSD, including Defendant Surace, 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.

87. Defendant County, through its deliberate indifference, failed to ensure that BCSD officers, including Defendants Surace, did not violate the constitutional and statutory rights of citizens of the State of New Jersey, including the Plaintiff, while said BCSD officers were acting under color of state law for Defendant County.

88. The deliberate indifference of Defendant County 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 BCSD officers, including Defendant Surace, who were inadequately trained, supervised, and disciplined.

89. Defendant County was deliberately indifferent in the selection, retaining, training, and supervising of Defendant Surace, as a BCSD officer in that Defendant County: (a) hired and retained Defendant when Defendant County knew, or in the exercise of reasonable care should have known, of the disposition of Defendant to engage in such unlawful conduct including excessive force and the unlawful conduct complained of herein; (b) failed to remove Defendant from their position of authority as BCSD officer despite the fact it knew or should have known of the disposition of Defendant 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 Defendant despite

the fact it knew or should have known of the disposition of Defendant 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 Defendant to engage in such unlawful conduct including excessive force and the unlawful conduct complained of herein.

90. 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 BCSD officers, and that deliberate indifference was widespread as to the use of excessive force, illegal behavior, and widespread incompetence throughout Defendant County including the BCSD. This pattern, custom, and practice includes not only the failure to identify and discipline the unlawful and excessive use of force and seizures by BCSD personnel, but additionally, the failure to re-train, supervise, or otherwise remove BCSD officers who engage in such unlawful conduct as the de facto policy and custom of Defendant County to tolerate, encourage, and even protect such acts by BCSD officers.

91. The deliberate indifference of the Defendant County violated the constitutional rights of its citizenry, including the Plaintiff, for which 42 U.S.C. § 1983 provides the appropriate remedies as requested herein.

92. As a direct and proximate result of the illegal acts of Defendant Surace, while Defendant were an agent, servant, and employee of Defendant County, and the unconstitutional policies, customs and practices of Defendant County, 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 Surace.

93. As a direct and proximate result of the illegal acts of Defendants Surace, while Defendant was an agent, servant, and employee of Defendant County, and the unconstitutional policies, customs and practices of Defendant County, 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 County:

- e. An award of compensatory damages;
- f. An award of punitive damages;
- g. An award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- h. An award of such other and further relief the Court deems just and appropriate.

COUNT VI – STATE TORT OF BATTERY
(AGAINST DEFENDANT OFFICERS)

94. Plaintiff re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 93 as if set forth fully herein, and further states as follows

95. Plaintiff was arrested by Defendants who did unlawfully batter, touch, and strike Plaintiff without his consent and against his will.

96. As a direct and proximate result of said acts of Defendants, Plaintiff has been damaged, including but not limited to permanent physical injuries which were caused, activated or otherwise aggravated by the subject incident.

97. As a direct and proximate result of said acts of Defendants, Plaintiff has undergone

painful and extensive medical care and treatment; and has incurred medical bills and expenses attendant to his aforesaid injuries.

98. As a direct and proximate result of said acts of Defendants, 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 CITY)

99. Plaintiff, 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. Plaintiff was arrested by Defendants Officers who did unlawfully batter, touch, and strike Plaintiff without his consent and against his will.

101. Defendants Officers were acting in the course and scope of their duties as an agent, servant, and employee of Defendant City.

102. As a direct and proximate result of said acts of Defendants Officers 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.

103. As a direct and proximate result of said acts of Defendants Officers , 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.

104. As a direct and proximate result of said acts of Defendant Officers, 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.

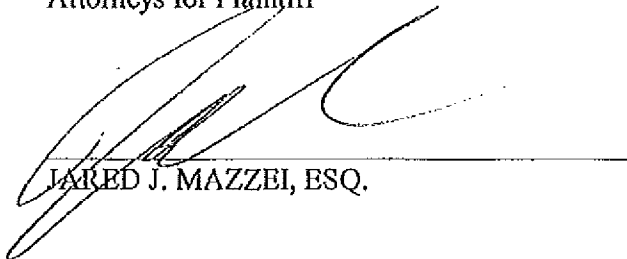
WHEREFORE, Plaintiff demands the following relief against Defendant:

- 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

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues

BROOKE M. BARNETT & ASSOCIATES, P.C.
Attorneys for Plaintiff



JARED J. MAZZEI, ESQ.

Dated: May 7, 2015

JS 44 (Rev. 12/12)

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

Leonard Capra

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Brooke M. Barnett & Associates, P.C.
60 Park Place, Suite 1000, Newark, NJ 07102
973-693-4444

DEFENDANTS

Officer John Knapp, Detective Alexander Lopez-Arenas, Officer Vincent Surface, City of Hackensack, County of Bergen, John Does 1-10, ABC Public Entities

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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CLERK'S OFFICE

2015 MAY 29 P 1:11

CITY OF HACKENSACK

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)

- | | 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)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 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 Veterans' Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	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	☐ 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	☐ 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	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395f) ☐ 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	☐ 375 False Claims Act ☐ 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 ☐ 990 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 ☐ 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

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, 1988

Brief description of cause:
Excessive force

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$
500,000.00

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

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

05/07/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAJ. 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LEONARD CAPRA,
Plaintiff

V.

OFFICER JOHN KNAPP, ET AL.,
Defendant

SUMMONS IN A CIVIL CASE

CASE NUMBER: 2:15-CV-03215-ES-JAD

RECEIVED
CLERK'S OFFICE

2015 MAY 29 P 1:11

CITY OF HACKENSACK

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

City of Hackensack
Municipal Clerk's Office
65 Central Ave
Hackensack, NJ

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

Christine Melillo

(By) DEPUTY CLERK



ISSUED ON 2015-05-08 09:29:56, Clerk
USDC NJD

RETURN OF SERVICE		
Service of the Summons and complaint was made by me(1)	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
☐ 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 _____ <i>Signature of Server</i> _____ <i>Address of Server</i>		