

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW JERSEY**

**EMILIO RIVERA,**  
*Plaintiff*

V.

**SUMMONS IN A CIVIL CASE**

**KRISTIN ALTIMARI, ET AL.,**  
*Defendant*

CASE  
NUMBER: **3:18-CV-03844-FLW-DEA**

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

SERGEANT DAVID HICKS  
Red Bank Police Department  
90 Monmouth St  
Red Bank, NJ 07701

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:

Jonathan D. Marx, Esq.  
KaplunMarx  
2 Bala Plaza, Suite 300  
Bala Cynwyd, PA 19004  
P: 610-660-7780  
E: jon@kaplunmarx.com

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

**John Moller**

(By) DEPUTY CLERK



ISSUED ON 2018-03-21 08:57:30, Clerk  
USDC NJD

| <b>RETURN OF SERVICE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |          |       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------|
| 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>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |          |       |
| <div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: _____<br/>           _____         </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> 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.         </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Name of person with whom the summons and complaint were left: _____         </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: _____<br/>           _____         </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Other (specify) : _____<br/>           _____<br/>           _____         </div> |          |       |
| <b>STATEMENT OF SERVICE FEES</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |          |       |
| TRAVEL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | SERVICES | TOTAL |
| <b>DECLARATION OF SERVER</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |          |       |
| <p>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.</p><br><div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">           Executed on _____<br/> <div style="text-align: center;">Date</div> </div> <div style="width: 30%;">           _____<br/> <div style="text-align: center;">Signature of Server</div> </div> <div style="width: 30%;">           _____<br/> <div style="text-align: center;">Address of Server</div> </div> </div>                                                                                                                                                                                  |          |       |

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**EMILIO RIVERA**

**Vs.**

**CIVIL ACTION NO.  
JURY TRIAL DEMANDED**

**OFFICER KRISTIN ALTIMARI,  
OFFICER SEAN HAUSCHILDT and  
SERGEANT DAVID HICKS,  
Individually and as police officers for  
Red Bank Police Department**

And

**CALIENTE CANTINA**

And

**ELISHA SCHUMAN**

And

**John Does 1-10, Jane Does 1-10,  
and ABC Corps 1-10.**

**COMPLAINT**

**INTRODUCTION**

1. On December 31, 2016, into the early morning of January 1, 2017, Plaintiff Emilio Rivera had been out with this girlfriend, Tara Anderson, (hereinafter referred to as Anderson) celebrating New Year's Eve.
2. On said date, while on the train to the Red Bank Train Station with Anderson, Plaintiff used cocaine and after he deboarding the train, they went to one or more bars before ending up at the Defendant Caliente Cantina in Red Bank where Plaintiff Rivera was served and consumed copious amounts of alcohol to the point where he was inebriated and visibly intoxicated.

3. Plaintiff and Anderson then returned to the Red Bank Train Station and were intent on going back to his residence via train, but Plaintiff got into an altercation with another passenger, whom he head-butted, while on the platform; Plaintiff also got into an altercation with Anderson, all the while acting in a drunken manner.

4. Around 12:30 a.m. on January 1, 2017, the Red Bank police were called to the Red Bank Train Station at 185 Monmouth Street, Red Bank for report of a fight in progress.

5. At that time, Defendant Officers Kristin Altimar and Sean Hauschildt along with Defendant Sergeant David Hicks, responded to the train station at which point Plaintiff and Anderson were identified as the individuals involved.

6. The responding Officers then stopped Plaintiff Rivera and Anderson and Anderson advised that her boyfriend was acting belligerent and starting fights with other subjects at the train station.

7. At or about that time, Plaintiff Emilio Rivera, who was acting drunk, stumbling and slurring his words was in the care, custody and control of responding Defendant Officers Altimar, Hauschildt and Hicks.

8. At that time, Anderson was taken into custody and charged with various drug and paraphernalia offenses.

9. Anderson asked the Defendant Officers why they were not arresting the Plaintiff, but the Defendant Officers did not take him into custody at that time and indicated that he had to figure out how to get home on his own, even though by that point he had missed the last train for the night, a fact with which Defendant Officers were aware and they had also separated him from his escort, Anderson.

10. Thereafter, Plaintiff began the several mile walk home in his drunken and compromised state.

11. At approximately 1:28 a.m., Plaintiff, who according to the police report, was walking on State Highway 35 in Middletown, in a northerly direction in the southbound lanes, was struck by Defendant Elisha Schuman, who then left the scene of the accident.

12. Prior to being struck, there were 911 calls made by passing motorists to the Middletown Police who indicated that Plaintiff Rivera was stumbling in and out of traffic.

13. As a result of the conduct of each of the Defendants, Cantina Caliente for serving Plaintiff while visibly intoxicated in violation of the New Jersey Dram Shop Act, the responding Police Officers, Altimari, Hauschildt and Hicks for violating Plaintiff's civil rights in the form of a state created danger after having Plaintiff in their care, custody and control while he was intoxicated and clearly a danger to himself, separating him from his escort home and then letting him leave on foot and for Defendant Elisha Schuman for her negligent operation of her vehicle for, amongst other things, not seeing, observing and avoiding the Plaintiff as he walked in and out of traffic, claim is hereby made against each of them as more fully set forth below for the horrific, life altering, permanent injuries that Plaintiff sustained on January 1, 2017.

### **JURISDICTION and VENUE**

14. This action is brought pursuant to 42 U.S.C. Section 1983 & 1988 and the Fourteenth Amendment to the United States Constitution, to redress Plaintiff's rights, privileges and immunities. Jurisdiction is based upon 28 U.S.C. Sections 1331 and 1343, and on the supplemental jurisdiction of the Court under 28 U.S.C. Section 1367 (a) and Venue is proper under 28 U.S.C. Section 1391(b) because all parties reside and/or work in Monmouth County, which is in the Trenton Vicinage of the District Court of New Jersey.

### **PARTIES**

15. Plaintiff is a resident of the District of New Jersey, who at all times relevant to this action resided in Monmouth County, New Jersey.

16. Defendant Kristin Altimari was at all relevant times an officer of the Red Bank Police Department. She is being sued in her individual capacity as a Red Bank police officer.

17. Defendant Sean Hauschildt was at all relevant times an officer of the Red Bank Police Department. He is being sued in his individual capacity as a Red Bank police officer.

18. Defendant David Hicks was at all relevant times an officer of the Red Bank Police Department. He is being sued in his individual capacity as a Red Bank police officer.

19. Defendant Caliente Cantina, at all relevant times was a business of unknown corporate structure, operating a bar/restaurant in Red Bank, Monmouth County, New Jersey.

20. Defendant Elisha Schuman is an individual and who all times relevant to this action resided in Monmouth County, New Jersey

21. Defendant ABC Corps. 1-10 are fictitious corporations, companies, and/or businesses as current identities are currently unknown.

22. Defendant John Does 1-10 and Jane Does 1-10 are fictitious parties, as current names and identities are unknown.

23. All Defendants are jointly and severally liable for the injuries and damages suffered by Plaintiff as more fully set forth in this Complaint.

24. At all times relevant to this action, Defendants Kristin Altimari, Sean Hauschildt and David Hicks were acting under color of state law.

### **FACTUAL ALLEGATIONS**

25. On December 31, 2016, into the early morning of January 1, 2017, Plaintiff Emilio Rivera had been out with this girlfriend, Tara Anderson, (hereinafter referred to as Anderson) celebrating New Year's Eve.

26. On said date, while on the train to the Red Bank Train Station with Anderson, Plaintiff used cocaine and after disembarking the train, they went to one or more bars before ending up at the Defendant Caliente Cantina in Red Bank where Plaintiff Rivera was served and consumed copious amounts of alcohol to the point where he was inebriated and visibly intoxicated.

27. Plaintiff and Anderson then returned to the Red Bank Train Station and were intent on going back to his residence via train, but Plaintiff got into an altercation with another passenger, whom he head-butted, while on the platform; Plaintiff also got into another altercation with Anderson, all the while acting in a drunken manner.

28. Around 12:30 a.m. on January 1, 2017, the Red Bank police were called to the Red Bank Train Station at 185 Monmouth Street, Red Bank for report of a fight in progress.

29. At that time, Defendant Officers Kristin Altimar and Sean Hauschildt along with Defendant Sergeant David Hicks, responded to the train station at which point Plaintiff and Anderson were identified as the individuals involved.

30. The responding Officers then stopped Plaintiff Rivera and Anderson and Anderson advised that her boyfriend was acting belligerent and starting fights with other subjects at the train station.

31. At or about that time, Plaintiff Emilio Rivera, who was acting drunk, stumbling and slurring his words was in the care, custody and control of responding Defendant Officers Altimar, Hauschildt and Hicks.

32. At that time, Anderson was taken into custody and charged with various drug and paraphernalia offenses.

33. Anderson asked the Defendant Officers why they were not arresting the Plaintiff, but the Defendant Officers did not take him into custody at that time and indicated that he had to figure out how to get home on his own, even though by that point he had missed the last train for the night, a fact with which Defendant Officers were aware and they had also separated him from his escort, Anderson.

34. Thereafter, Plaintiff began the several mile walk home in his drunken and compromised state.

35. At approximately 1:28 a.m., Plaintiff, who according to the police report, was walking on State Highway 35 in Middletown, in a northerly direction in the southbound lanes, was struck by Defendant Elisha Schuman, who then left the scene of the accident.

36. Prior to being struck, there were 911 calls made by passing motorists to the Middletown Police who indicated that Plaintiff Rivera was stumbling in and out of traffic.

37. As a result of the conduct of each of the Defendants, Cantina Caliente for serving Plaintiff while visibly intoxicated in violation of the New Jersey Dram Shop Act, the responding Police Officers, Altimari, Hauschildt and Hicks for violating Plaintiff's civil rights in the form of a state created danger after having Plaintiff in their care, custody and control while he was intoxicated and clearly a danger to himself, separating him from his escort home and then letting him leave on foot and for Defendant Elisha Schuman for her negligent operation of her vehicle for, amongst other things, not seeing, observing and avoiding the Plaintiff as he walked in and out of traffic, claim is hereby made against each of them as more fully set forth below for the horrific, life altering, permanent injuries that Plaintiff sustained on January 1, 2017.

38. As a direct and proximate result of the Defendants' actions, Emilio Rivera experienced pain and suffering, as well as injuries including, but not limited to, the following: right tibial plateau fracture with right knee dislocation, lateral meniscus tear, posterior ligament disruption, posterior medial corner disruption, medial collateral ligament disruption and grade II chondromalacia patella all of which necessitated multiple surgeries, left open proximal tibia/fibula fracture requiring surgeries, left foot drop and probable peroneal nerve palsy, right orbital fracture, left 5<sup>th</sup> digit fracture, fracture of the right orbital, zygoma and maxillary sinuses and various other injuries, permanent injuries, scarring, fear, physical injuries, mental anguish, depression, loss of the enjoyment of life, loss of employment and wages and future loss of employment opportunities, all of which continue and are ongoing.

39. As a direct and proximate result of all Defendants' actions, Plaintiff sustained pecuniary loss, including expenses for the costs of medical, surgical, hospital and nursing bills and a lien has been asserted for medical bills paid on his behalf.

40. Plaintiff has not brought any other actions at law against Defendants for damages for the injuries which he sustained.

41. Plaintiff brings this action under 42 U.S.C. Section 1983.

**COUNT I**  
**FEDERAL CIVIL RIGHTS ACTION**  
**Plaintiff vs. Defendants Altimari, Hauschildt and Hicks**

42. Plaintiff incorporates paragraphs 1-41 as if same were set forth at length herein.

43. Defendants Altimari, Hauschildt and Hicks, (responding officers) violated the due process provisions of the Fourteenth Amendment of the United States Constitution, in that they created and/or enhanced a danger that deprived the Plaintiff of his Fourteenth Amendment right to substantive due process.

44. When Defendants Altimari, Hauschildt and Hicks responded to the Red Bank Train Station on January 1, 2017, at around 12:30 a.m., after a report of a fight in progress, they identified Plaintiff as one of the individuals involved, stopped the Plaintiff and learned that the Plaintiff was acting belligerently and starting fights.

45. The responding officers had ample opportunity to observe that Plaintiff was acting drunk, stumbling around, slurring his words, and clearly in a visibly intoxicated state and further proof of this is that at the time of the first blood draw after arrival at the hospital, Plaintiff's toxicology report shows that his blood alcohol content was 0.247, which is more than 3 times the legal limit.

46. The harm to Plaintiff, in this case being struck by a motor vehicle while walking in the middle of the highway, was foreseeable and a direct result of the responding officer's actions: it is clearly foreseeable that sending a highly intoxicated individual to walk home, unescorted, in the middle of the night, with no other available mode of transportation, after having missed the last train for the night and having taken away his escort (Anderson) will lead to him being struck by a motor vehicle, as happened in this case.

47. The Defendant Officers sent the Plaintiff to walk home, unescorted, in a drunken state, in the middle of the night, which shows a deliberate indifference in their actions and furthermore their

actions were willful and grossly negligent and shock the conscience, which was a clear violation of Plaintiff's due process rights.

48. A relationship existed between the Plaintiff and the Defendant Officers in that he was in their care, custody and control at the train station, while intoxicated and their actions of sending him home unescorted, on foot, in a drunken state, placed him in danger of a foreseeable injury: being struck by a car.

49. The Defendant Officers affirmatively used their authority in a way that created a danger to Plaintiff Rivera or that rendered Plaintiff Rivera more vulnerable to danger than if they had not acted at all when they stopped him on the train platform, caused him to miss the last train home, a fact that they were aware of, and then separated him from his safe escort home.

50. After the Defendant Officers took the affirmative act of separating him from his safe escort home, they sent him walking home in a drunken state when they could have done a number of things, including, but not limited to, the following:

- a. detained him until he was sober;
- b. placed him in a "drunk tank",
- c. called a cab, Uber or some other service/individual to transport him home, or
- d. transported him home.

51. As a direct and proximate result of the actions and conduct of Defendants Altimari, Hauschildt and Hicks, committed under color of state law, Emilio Rivera was deprived of his right to be secure in his person and to due process of the law. Plaintiff seeks damages for the violation of his rights under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. Section 1983.

**COUNT II**  
**STATE LAW: DRAM SHOP ACT VIOLATION**  
**Plaintiff vs. Caliente Cantina**

52. Plaintiff incorporates paragraphs 1- 51 as if same were set forth at length herein.

53. On December 31, 2016 and January 1, 2017, Defendant Caliente Cantina negligently served Plaintiff, Emilio Rivera, alcohol when he was visibly intoxicated.

54. Thereafter, Plaintiff Emilio Rivera sustained permanent and life altering injuries when he was walking in the middle of the highway, in and out of traffic, when he was struck by a vehicle operated Defendant Elisha Schuman and the injuries he sustained after being served alcohol by Defendant Caliente Cantina were proximately caused by this service of alcohol.

55. The injuries and damages that Plaintiff sustained were the foreseeable consequence of this service of alcohol.

**COUNT III**  
**STATE LAW: NEGLIGENCE**  
**Plaintiff vs. Elisha Schuman**

56. Plaintiff incorporates paragraphs 1- 55 as if same were set forth at length herein.

57. On or about January 1, 2017, at approximately 1:28 a.m. the Plaintiff, Emilio Rivera was a pedestrian and walking on State Highway 35 in Middletown, in a northerly direction in the southbound lanes when Defendant Elisha Schuman negligently and carelessly stuck him with her vehicle, causing the injuries and damages complained of herein.

58. At all times relevant hereto, the carelessness and negligence of the Defendant Elisha Schuman in the operation of her vehicle was the cause of this accident and subsequent injuries and damages that Plaintiff sustained.

**COUNT IV**  
**STATE LAW: DRAM SHOP ACT VIOLATION**  
**Plaintiff vs. John Does 1-10, Jane Does 1-10, and ABC Corps 1-10**

59. Plaintiff incorporates paragraphs 1- 58 as if same were set forth at length herein.

60. On December 31, 2016 and January 1, 2017, the Defendant bar where Plaintiff was negligently served alcohol when he was visibly intoxicated may have been owned and operated by corporations and/or individuals who have yet to be identified and they are being sued as Defendants John Does 1-10, Jane Does 1-10, and ABC Corps 1-10.

61. Thereafter, Plaintiff Emilio Rivera sustained permanent and life altering injuries when he was walking in the middle of the highway, in and out of traffic, when he was struck by a vehicle operated Defendant Elisha Schuman and the injuries he sustained after being served alcohol by Defendants John Does 1-10, Jane Does 1-10 and ABC Corps, 1-10, were proximately caused by this service of alcohol.

62. The injuries and damages that Plaintiff sustained were the foreseeable consequence of this service of alcohol.

WHEREFORE, Plaintiff, Emilio Rivera, requests the following relief as to each cause and claim:

- a. Compensatory damages as to all Defendants;
- b. Punitive damages as to Defendants Altimari, Hauschildt and Hicks
- c. Reasonable attorney fees and costs as Defendants Altimari, Hauschildt and Hicks and
- d. Such other and further relief as appears reasonable and just.
- e. Plaintiff demands a jury trial as to each Defendant, claim and cause of action.

**CERTIFICATION**

JONATHAN D. MARX, ESQUIRE of full age, certifies:

1. I am a member of KAPLUNMARX, PLLC and am entrusted with the preparation and trial of this case.
2. This case is not the subject of any other court action or arbitration proceeding.

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

Dated: 3/12/18

Respectfully submitted,

By: /s/ Jonathan D. Marx  
Jonathan D. Marx, Esquire  
***KaplunMarx, PLLC***  
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Attorney for Plaintiff

By: /s/ Theodor Kaplun  
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