

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

LUIS R. GONZALEZ,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

BOROUGH OF RED BANK, ET AL.,
Defendant

CASE
NUMBER: 3:18-CV-13009-FLW-LHG

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

Detective Paul Perez
Borough of Red Bank Police Dept.
90 Monmouth Street, 1st Floor
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:

Thomas J. Mallon, Esq.
Mallon & Tranger
86 Court Street
Freehold, NJ 07728

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.

s/ WILLIAM T. WALSH
CLERK



ISSUED ON 2018-08-21 10:02:00, 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>		

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LAW OFFICES OF MALLON & TRANGER

86 Court Street
Freehold, NJ 07728
Telephone: (732) 780-0230
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Attorneys for Plaintiff, Luis R. Gonzalez

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON VICINAGE**

LUIS R. GONZALEZ,	: Civil No: TO BE ASSIGNED
	:
Plaintiff,	: Civil Action
	:
v.	:
	: COMPLAINT AND JURY DEMAND
BOROUGH OF RED BANK;	:
DETECTIVE JAMES DePONTE;	:
DETECTIVE PAUL PEREZ;	:
CHIEF OF POLICE DARREN McCONNELL;	:
and JOHN DOES 1-10,	:
	:
Defendants.	:

Plaintiff, Luis R. Gonzalez, by way of Complaint against the Defendants, says:

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. §1983. This Court has jurisdiction over Plaintiff's federal civil rights claims pursuant to 28 U.S.C. §§1331 and 1343, and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367.
2. Venue is proper under 28 U.S.C. §1391 because the events giving rise to Plaintiff's claims occurred in this District

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and the parties reside in this District.

PARTIES

3. Plaintiff, Luis R. Gonzalez, is a resident of the City of Long Branch in Monmouth County, New Jersey.
4. Defendant, Borough of Red Bank, is a municipality within the State of New Jersey and, at all times relevant to the allegations of this Complaint, was the employer of the individual defendants.
5. At all times relevant to the allegations of this Complaint, Defendant, James DePonte, was a police officer assigned to the Red Bank Police Department's Detective Division who acted in the course of his employment and/or under color of state law. He is sued in his official and individual capacity.
6. At all times relevant to the allegations of this Complaint, Defendant, Paul Perez, was a police officer assigned to the Red Bank Police Department's Detective Division who acted in the course of his employment and/or under color of state law. He is sued in his official and individual capacity.
7. At all times relevant to the allegations of this Complaint, Defendant, Darren McConnell, served as Chief of Police for the Borough of Red Bank and was the primary official responsible for the training, discipline, and supervision of its police officers, including without limitation,

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Defendants DePonte and Perez. He is sued in his official and individual capacity.

8. At all times relevant to the allegations of this Complaint, Defendants, John Does 1-10, were supervisory law enforcement officials employed by the Borough of Red Bank responsible for the training, discipline, and supervision of its police officers, including without limitation, Defendants DePonte and Perez. They are sued in their official and individual capacities.

FACTS

9. On April 10, 2017, Plaintiff traveled to Red Bank, New Jersey to sell marijuana and cocaine to his friend.
10. While Plaintiff was parked and waiting for his friend in his vehicle, Defendants, James DePonte and Paul Perez, drove past Plaintiff's vehicle in an unmarked SUV, turned around and pulled over behind Plaintiff.
11. DePonte and Perez both exited the SUV and approached Plaintiff's vehicle - DePonte on the front driver's side and Perez on the front passenger's side.
12. DePonte asked Plaintiff what he was doing in the area, to which Plaintiff replied that he was waiting for someone. When asked, Plaintiff produced his driver's license to DePonte.
13. DePonte then told Plaintiff to turn off his vehicle and step outside.

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14. Plaintiff, who was wearing his seatbelt, asked "why?" In response, Deponte reached through the open driver's side window of Plaintiff's vehicle, grabbed Plaintiff's left arm, and began to pull him.
15. Perez, who had entered Plaintiff's vehicle and was seated in the front passenger's seat, attempted to grab Plaintiff's right arm. He then punched Plaintiff in the face, before pepper spraying him.
16. Following his arrest, Plaintiff was transported to Riverview Medical Center, where he was treated for a closed head injury, nasal bone fracture and facial laceration.
17. Plaintiff was charged with, *inter alia*, Resisting Arrest - a sham charge intended to conceal the fact that Defendants had assaulted Plaintiff. This charge was ultimately dismissed by the State.
18. Plaintiff pled guilty to Fourth Degree Possession with the Intent to Distribute, for which he was sentenced to a term of eighteen months.

CAUSES OF ACTION

COUNT I

42 U.S.C. §1983

EXCESSIVE FORCE

DEFENDANT, DETECTIVE PAUL PEREZ

19. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
20. The Fourth Amendment prohibits law enforcement from using

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excessive force on citizens.

21. By punching Plaintiff in the face, Defendant Perez engaged in the use of force that was excessive and objectively unreasonable under the circumstances.
22. As a direct and proximate cause of Defendant's excessive use of force, Plaintiff has suffered damages, including but not limited to bodily injury, emotional injury, pain and suffering, and/or medical expenses, and will continue to incur same for some time to come.

COUNT II
42 U.S.C. §1983
FAILURE TO INTERVENE
DEFENDANT, DETECTIVE JAMES DePONTE

23. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
24. Defendant DePonte failed to intervene so as to prevent Defendant Perez from using excessive force on Plaintiff's person despite having a reasonable opportunity to do so.
25. As a direct and proximate cause of Defendant's failure to intervene, Plaintiff has suffered damages, including but not limited to bodily injury, emotional injury, pain and suffering, and/or medical expenses, and will continue to incur same for some time to come.

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COUNT III
42 U.S.C. §1983
CONSPIRACY TO VIOLATE FEDERAL CIVIL RIGHTS
DEFENDANTS, DETECTIVES JAMES DePONTE AND PAUL PEREZ

26. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
27. Defendants DePonte and Perez, acting in concert, agreed and/or conspired to use force against Plaintiff that was excessive and objectively unreasonable under the circumstances.
28. In furtherance of this conspiracy, Defendants attempted to cover up their violation of Plaintiff's Fourth Amendment right by (1) charging him with Resisting Arrest - a sham charge intended to conceal the fact that Defendants had assaulted Plaintiff; and (2) falsifying their police reports to state that they were unaware of how Plaintiff sustained his injuries.

COUNT IV
42 U.S.C. §1983
UNLAWFUL POLICY OR CUSTOM
FAILURE TO TRAIN, SUPERVISE AND DISCIPLINE
MONELL CLAIM
DEFENDANT, BOROUGH OF RED BANK

29. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
30. Defendant, Borough of Red Bank, has a duty to train, supervise and discipline police officers, and to institute policies, practices and customs, so as to ensure that police

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officers do not use excessive force.

31. Defendant, Borough of Red Bank, was on actual and/or constructive notice that its police officers were engaged in the practice or custom of using excessive force on citizens.
32. Defendant has knowingly and recklessly failed to fulfill this duty and has failed to institute policies and/or practices to prevent, penalize and cure such abuses.
33. This pattern, practice and/or policy of failing to train reflects deliberate indifference to the rights of persons such as Plaintiff.
34. Paul Perez has been named in at least 2 other lawsuits alleging his violation of citizens' civil rights, including an excessive force claim: Kernahan v. Borough of Red Bank, Civil No. 12-6984 (PGS/DEA); and Rainey v. DePonte, Civil No. 16-1072 (PGS/TJB). James DePonte was named as a defendant in Rainey, which alleged a claim of fabrication of evidence.
35. The injuries suffered by Plaintiff are the proximate result of Defendant's deliberate indifference to properly train on the use of force.
36. As a direct and proximate cause of Defendant's failure to train, supervise and discipline, Plaintiff has suffered damages, including but not limited to bodily injury, emotional injury, pain and suffering, and/or medical

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expenses, and will continue to incur same for some time to come.

COUNT V
42 U.S.C. §1983
FAILURE TO TRAIN, SUPERVISE AND DISCIPLINE
UNCONSTITUTIONAL PRACTICES
SUPERVISORY LIABILITY
DEFENDANTS, CHIEF OF POLICE DARREN McCONNELL
AND JOHN DOES 1-10

37. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
38. Defendants, Chief of Police Darren McConnell and John Does 1-10, have a duty to train, supervise and discipline police officers, and to institute policies, practices and customs, so as to ensure that police officers do not use excessive force.
39. Defendants' failure to train, supervise and discipline police officers who use excessive force amounts to a pattern, practice and/or policy of lax or no supervision of police officers when they engage in conduct that violates the constitutional rights of citizens.
40. This pattern, practice and/or policy of failing to train, supervise and discipline reflects deliberate indifference to the rights of persons such as Plaintiff.
41. Paul Perez has been named in at least 2 other lawsuits alleging his violation of citizens' civil rights, including an excessive force claim: Kernahan v. Borough of Red Bank, Civil No. 12-6984 (PGS/DEA); and Rainey v. DePonte, Civil

No. 16-1072 (PGS/TJB). James DePonte was named as a defendant in Rainey, which alleged a claim of fabrication of evidence.

42. This pattern, practice and/or policy of failing to supervise is likewise evidenced by Defendants' failure to discipline police officers who engage in unconstitutional practices. Specifically, Defendants, Chief of Police Darren McConnell and John Does 1-10, have acquiesced in the misconduct of James DePonte, Paul Perez and other police officers.
43. Despite the clear constitutional prohibitions against using excessive force by state actors, Defendants have taken no action to correct or modify the behavior of its police officers.
44. Defendants, Chief of Police Darren McConnell and John Does 1-10, have had prior notice of similar incidents and violations of the constitutional rights of citizens but have failed to take appropriate corrective action. The failure to take appropriate action to discipline police officers for such conduct condones, encourages and ratifies such unlawful behavior, creates a culture that allows police officers to believe they are immune from the consequences of their actions, and itself constitutes evidence of a pattern, practice and/or policy of deliberate indifference to the constitutional rights of Plaintiff and others.

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45. The injuries suffered by Plaintiff are the proximate result of Defendants' deliberate indifference to properly train, supervise and discipline.
46. As a direct and proximate cause of Defendants' failure to train, supervise and discipline, Plaintiff has suffered damages, including but not limited to bodily injury, emotional injury, pain and suffering, and/or medical expenses, and will continue to incur same for some time to come.

**COUNT VI
VIOLATION OF NEW JERSEY STATE CONSTITUTION
AND/OR NEW JERSEY CIVIL RIGHTS ACT
DEFENDANTS, DETECTIVES PAUL PEREZ AND JAMES DePONTE**

47. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
48. This Court has supplemental jurisdiction to hear and adjudicate state law claims.
49. Defendants' actions, as outlined above, have violated Plaintiff's civil rights under the New Jersey State Constitution and/or New Jersey Civil Rights Act.
50. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered damages, including but not limited to bodily injury, emotional injury, pain and suffering, and/or medical expenses, and will continue to incur same for some time to come.

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RELIEF

WHEREFORE, Plaintiff seeks relief and judgment against the Defendants, including but not limited to:

1. An award of compensatory damages and punitive damages based on the intentional and malicious acts of the Defendants, which are allowed by the statutes pleaded herein or as permitted by common law and rules;
2. An award of reasonable attorney's fees and all costs of suit and interest thereon;
3. An award of damages as allowed under 42 U.S.C. §1983 and 42 U.S.C. §1988;
4. Any other award and equitable relief allowed under statute or pursuant to the law or equitable and just power of this Court to which Plaintiff is entitled; and
5. Any prospective injunctive relief that the Court deems just and appropriate under the circumstances.

JURY DEMAND

Plaintiff hereby demands trial by jury of all issues in this action.

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates Thomas J. Mallon, Esq., as trial counsel in this matter.

s/ Thomas J. Mallon
THOMAS J. MALLON

Dated: August 20, 2018

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JS 44 (Rev. 06/17)

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

LUIS R. GONZALEZ

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

MALLON & TRANGER
86 COURT STREET, FREEHOLD, NJ 07728 (732) 780-0230

DEFENDANTS

BOROUGH OF RED BANK; DET. JAMES DePONTE; DET. PAUL PEREZ; POLICE CHIEF DARREN McCONNELL; JOHN DOES 1-10

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 Federal Question (U.S. Government Not a Party)
☐ 3 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)

- 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)

Click here for: [Names of Suit Code Definitions](#)

☐ 110 Insurance ☐ 120 Marine ☐ 130 Motor 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 ☐ 170 Other Contracts ☐ 185 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	PERSONAL INJURY ☐ 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 ☐ 383 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Writ 28 USC 157 INTELLECTUAL PROPERTY ☐ 420 Copyright ☐ 430 Patent ☐ 435 Patent - Abbreviated New Drug Application ☐ 440 Trademark LABOR/EMPLOYMENT ☐ 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	☐ 422 Appeal 28 USC 158 ☐ 423 Writ 28 USC 157 INTELLECTUAL PROPERTY ☐ 420 Copyright ☐ 430 Patent ☐ 435 Patent - Abbreviated New Drug Application ☐ 440 Trademark LABOR/EMPLOYMENT ☐ 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	☐ 375 False Claims Act ☐ 376 Qui Tam (21 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Racketeering and Racketing ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeering Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 550 Securities/Commodities Exchange ☐ 590 Other Statutory Actions ☐ 591 Agricultural Acts ☐ 592 Environmental Matters ☐ 595 Freedom of Information Act ☐ 596 Arbitration ☐ 599 Administrative Procedure Act/Review of Appeal of Agency Decision ☐ 600 Constitutionality of State Statutes
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V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Pleading ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (approved) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Like the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. SECTION 1983

Brief description of cause:

VIOLATION OF CIVIL RIGHTS

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

08/20/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ THOMAS J. MALLON

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDOL

MAG. JUDGE