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Attorney for Plaintiff Michael Vintzileos

MICHAEL VINTZILEOS

Plaintiff,

vs.

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
TRENTON

Civil Action No.: 18-14228 (FLW-LHG)

BOROUGH OF SEASIDE HEIGHTS;
THOMAS BOYD, Chief of Police;
JOHN DOES 6-10, Personnel of the
Seaside Heights Police Department in
supervisory capacities;
DETECTIVE LAWRENCE MAYBERRY;
LUIGI VIOLANTE; CHRISTOPHER RENTAS;
THOMAS RACHINSKY; BRIAN RUBINO,
and **JOHN DOES 1-5**, members of the
Seaside Heights Police Department,

AMENDED COMPLAINT

Defendants.

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. Section 1983 and in accordance with the Fourth and Fourteenth Amendments of the Constitution of the United States of America.

Jurisdiction is conferred under 28 U.S.C. Section 1331 and Section 1343(3).

PARTIES

2. Plaintiff Michael Vintzileos, residing at 2019 Beach Boulevard, Point Pleasant, NJ, 08742, is and was, at all times herein relevant, a citizen of the United States and a resident of the State of New Jersey.

3. Defendants Lawrence Mayberry; Luigi Violante; Christopher Rentas; Thomas Rachinsky; Brian Rubino, and John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the Seaside Heights Police Department and at all times herein were acting in such a capacity as the agents, servants and/or employees of the Borough of Seaside Heights and were acting under the color of law.

4. Defendants Chief of Police Thomas Boyd and/or John Does 6-10 were at all times mentioned herein duly appointed and acting members of the Seaside Heights Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of the Borough of Seaside Heights and were acting under the color of law.

5. Defendants Chief of Police Thomas Boyd and/or John Does 6-10 were acting in supervisory capacities over Defendants Lawrence Mayberry; Luigi Violante; Christopher Rentas; Thomas Rachinsky; Brian Rubino, and/or John Does 1-10 and responsible by law for the training, supervision and conduct of Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-10.

6. Defendant Borough of Seaside Heights is a duly designated municipality of the state of New Jersey, under the laws of the state of New Jersey.

7. At all times relevant hereto, Defendant Borough of Seaside Heights employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Boyd, Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-10.

8. Suit is brought against all individually named Defendants in their personal and official capacities.

FACTUAL ALLEGATIONS

1. On June 30, 2018, Plaintiff was riding his bicycle in Seaside Heights on his way home to Ortley Beach.

2. Plaintiff was smoking marijuana, being a medical marijuana patient and having a valid medical marijuana card on his person permitting him to use the substance.

3. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 approached Plaintiff on foot from behind without announcing their identities as police officers or ordering Plaintiff to stop his bicycle.

4. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 grabbed Plaintiff off of his bicycle from the left side and threw him to the ground, where he struck his head.

5. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 maced Plaintiff after throwing him to the ground.

6. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 advised Plaintiff that they were arresting him on marijuana charges and Plaintiff told them that he had a medical marijuana card.

7. Plaintiff was brought to police headquarters where the medical marijuana card was found on Plaintiff's person.

8. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 charged Plaintiff with Obstructing the Administration of Law or Other Government Function, in violation of N.J.S.A. 2C:29-1A; and Resisting Arrest, in violation of N.J.S.A. 2C:29-2A(1).

9. The charges brought against Plaintiff were resolved by way of Plaintiff pleading guilty to a Disorderly Persons Ordinance.

SECTION 1983 EXCESSIVE FORCE
COUNT ONE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. As a direct and proximate result of the above-referenced excessive and unreasonable force used by on Plaintiff's person by Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 committed under color of state law, Plaintiff sustained bodily harm and was deprived of his right to be secure in his person against unreasonable seizure of his person, in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and U.S.C. Section 1983.

3. As a direct and proximate cause of the excessive and unreasonable force used on Plaintiff's person by Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 as set forth above, Plaintiff suffered bodily injuries; emotional distress; medical expenses; lost wages, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Michael Vintzileos demands judgment against Defendants Lawrence Mayberry; Luigi Violante; Christopher Rentas; Thomas Rachinsky; Brian Rubino, and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred and for any such further relief as the court deems proper and just.

SECTION 1983 FAILURE TO INTERVENE
COUNT TWO

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 were Seaside Heights Police Officers and at all times mentioned herein were acting under color of state law.

3. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 had a duty to intervene in the unjustified assault of Plaintiff by Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5.

4. The excessive and unreasonable use of force on Plaintiff by Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 deprived Plaintiff of his right to be secure in his person against unreasonable seizure in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and made actionable through 42 U.S.C. Section 1983.

5. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified assault of Plaintiff by Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 and failed to intervene.

6. As a direct and proximate cause of Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5's failure to intervene, Plaintiff suffered physical injury; emotional distress; lost wages, and medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Michael Vintzileos demands judgment against Defendants Lawrence Mayberry; Luigi Violante; Christopher Rentas; Thomas Rachinsky; Brian Rubino, and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred and for any such further relief as the court deems proper and just.

SECTION 1983 SUPERVISORY LIABILITY
COUNT THREE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. Defendants John Doe 2 and/or John Does 6-10 were supervisory officials and/or officers in charge at the time Plaintiff was arrested and assaulted.

3. Defendants John Doe 2 and/or John Does 6-10 had a duty to prevent subordinate officers Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 from violating the constitutional rights of citizens and/or arrestees.

4. Defendants John Doe 2 and/or John Does 6-10 either directed Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 to violate Plaintiff's constitutional rights or had knowledge of and acquiesced in his/their subordinates violations.

5. As a direct and proximate result of the acts of Defendants John Doe 2 and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury; emotional distress; lost wages, and medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff Michael Vintzileos demands judgment against Defendants John Doe 2 and/or John Does 6-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred and for any such further relief as the court deems proper and just.

SECTION 1983 UNLAWFUL CUSTOM, PRACTICE, POLICY/ INADEQUATE
TRAINING
COUNT FOUR

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. Defendants Borough of Seaside Heights Police Department, Chief of Police Thomas Boyd and/or John Does 6-10 are vested by state law with the authority to make policy on : (1) the use of force; internal affairs investigations and/or administrative reviews pursuant to Seaside Heights Police Department policies, practices and/or customs and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines; (2) effectuating arrests; (3) police citizen encounters, and/or

(4) disciplining officers. Defendants Boyd and/or John Does 6- 10 are responsible for training Police Officers in the use of force and/or were officers in charge when Plaintiff Michael Vintzileos was assaulted. Specifically, Defendant Thomas Boyd is the Chief of Police.

3. At all times mentioned herein, Defendants Boyd, Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1- 10, as police officers, agents, servants and/or employees of Defendant Borough of Seaside Heights, were acting under the direction and control of Defendants Borough of Seaside Heights' Police Department, Boyd and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the Defendant Borough of Seaside Heights' Police Department.

4. Acting under color of law pursuant to official policy, practice and/or custom, Defendants Borough of Seaside Heights, Boyd and/or John Does 6-10 intentionally, knowingly, recklessly and/or with deliberate indifference failed to train; instruct; supervise; control, and discipline on a continuing basis Defendants Boyd, Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-10 in their duties to refrain from: (1) unlawfully and maliciously assaulting, arresting and harassing citizens; (2) intentionally, recklessly and/or negligently misrepresenting the facts of arrests and/or other police-citizen encounters; (3) falsifying police and/or other official records; (4) withholding and/or mishandling evidence; (5) making false arrests, and/or (6) using unreasonable and excessive force.

5. Acting under color of law pursuant to official policy practice and/or custom, Defendants Borough of Seaside Heights, Boyd and/or John Does 6-10 intentionally, knowingly, recklessly and/or with deliberate indifference implemented and/or conducted superficial and shallow Internal Affairs processes which ignored evidence and patterns of police misconduct on individual and departmental levels. Defendants Borough of Seaside Heights, Boyd and/or John Does 6-10 failed to professionally, objectively and/or expeditiously investigate instances and patterns of police misconduct in violation of the spirit and substance of the New Jersey Attorney General's Guidelines

for Internal Affairs Policy and Procedures.

6. Defendants Boyd, John Doe 2 and/or John Does 6-10 failed to adequately track departmental excessive force complaints, administrative complaints and/or use of force incidents in violation of Seaside Heights Police Department policies, practices, customs and/or guidelines and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines, and/or failed to discipline officers for such violations.

7. Defendants Borough of Seaside Heights, Thomas Boyd and/or John Does 6-10 were aware of numerous similar police citizen encounters involving and/or Internal Affairs complaints filed against Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino; John Does 1-10, and/or other Seaside Heights Police Officers whereby they customarily and frequently subjected citizens held in custody to physical and mental abuse; unlawfully and maliciously assaulted, arrested and harassed citizens; intentionally, recklessly and/or negligently misrepresented the facts of arrests and/or other police-citizen encounters; falsified police and/or other official records; made false arrests; mishandled and/or withheld evidence, and/or used unreasonable and excessive force on citizens/arrestees.

8. Despite their awareness, Defendants Borough of Seaside Heights, Boyd and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Boyd; Mayberry; Violante; Rentas; Rachinsky; Rubino; John Does 1-10, and/or other Seaside Heights Police Officers.

9. Defendants Borough of Seaside Heights, Boyd and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct; train; supervise, control and discipline Defendants Boyd, Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-10 on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.

10. Defendants Borough of Seaside Heights, Boyd and/or John Does 6-10 had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.

11. Defendants Borough of Seaside Heights, Boyd and/or John Does 6-10, directly or indirectly, under color of state law, approved or ratified the unlawful; deliberate; malicious, reckless and wanton conduct of Defendants Boyd, Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-10 heretofore described.

12. As a direct and proximate result of the acts of Defendants Borough of Seaside Heights, Boyd and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury; emotional distress; lost wages, and medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff Michael Vintzileos demands judgment against Defendants Borough of Seaside Heights, Thomas Boyd and/or John Does 6-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred and for any such further relief as the court deems proper and just.

SUPPLEMENTAL STATE LAW CLAIMS
VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT (NJCR)
COUNT FIVE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. The excessive force used and failure to intervene by Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5, set forth at length above, deprived plaintiff of his substantive due process right to be free from unlawful seizure of his person and his fundamental

right to liberty secured by the Constitution of the United States and the Constitution of the State of New Jersey, in violation of N.J.S.A. 10:6-1, et seq. ("The New Jersey Civil Rights Act").

3. As a direct and proximate cause of conduct of Defendants set forth above, Plaintiff was deprived of his constitutional rights; sustained bodily injuries; medical expenses; lost wages, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Michael Vintzileos demands judgment against Defendants Lawrence Mayberry; Luigi Violante; Christopher Rentas; Thomas Rachinsky; Brian Rubino, and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

ASSAULT AND BATTERY
COUNT SIX

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. At all times relevant herein, Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 were acting within the scope of their employment as Seaside Heights police officers.

3. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 committed an assault and battery on Plaintiff by using excessive and unreasonable force on his person without justification and/or by putting him reasonable apprehension of serious and imminent bodily harm.

4. The assault and battery committed by Defendants was contrary to the common law of the State of New Jersey.

5. As a result of the intentional, reckless, negligent and/or objectively unreasonable assault and battery, as specifically alleged above, Plaintiff sustained bodily injuries; medical

expenses; lost wages, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Michael Vintzileos demands judgment against Defendants Lawrence Mayberry; Luigi Violante; Christopher Rentas; Thomas Rachinsky; Brian Rubino; Borough of Seaside Heights, and/or and/or John Does 1-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

NEGLIGENCE
COUNT SEVEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. At all times relevant herein, Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 were acting within the scope of their employment as Seaside Heights police officers.
3. Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 had a duty to Plaintiff to not expose him to an unreasonable risk of injury.
4. Through the acts and omissions set forth at length above, Defendants Mayberry; Violante; Rentas; Rachinsky; Rubino, and/or John Does 1-5 breached that duty.
5. The acts and omissions of the Defendants were in violation of the common law of the State of New Jersey.
6. As a direct and proximate result of their breach of duty to Plaintiff, he sustained bodily injuries; medical expenses; lost wages, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Michael Vintzileos demands judgment against Defendants Lawrence Mayberry; Luigi Violante; Christopher Rentas; Thomas Rachinsky; Brian Rubino;

Borough of Seaside Heights, and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Please be advised that Thomas J. Mallon, Esquire is hereby designated trial counsel in the above captioned matter.

Dated: February 28, 2019

/s/ Thomas J. Mallon, Esquire
THOMAS J. MALLON, ESQUIRE