

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MICHAEL VINTZILEOS,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

BOROUGH OF SEASIDE HEIGHTS, ET
AL.,
Defendant

CASE
NUMBER: 3:18-CV-14228-FLW-LHG

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

Borough of Seaside Heights
901 Boulevard
Seaside Heights, NJ 08751

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 2018-09-25 10:03:23, 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 _____ Signature of Server _____
Address of Server _____	

THOMAS J. MALLON, ESQ.
Attorney-at-Law
86 Court Street
Freehold, NJ 07728
(732) 780-0230
Attorney for Plaintiff Michael Vintzileos

MICHAEL VINTZILEOS

Plaintiff,

vs.

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
TRENTON

Civil Action No.:

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
and **JOHN DOES 1-5**, members of the
Seaside Heights Police Department,

Defendants.

COMPLAINT

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 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 and/or John Does 1-10 and responsible by law for the training, supervision and conduct of Defendants Mayberry 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 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 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 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 and/or John Does 1-5 maced Plaintiff after throwing him to the ground.

6. Defendants Mayberry 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 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 and/or John Does 1-5 committed under color of state law, Plaintiff sustained bodily harm and was deprived of his rights 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 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 Mayberry 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 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 and/or John Does 1-5 had a duty to intervene in the unjustified assault of Plaintiff by Defendants Mayberry and/or John Does 1-5.

4. The excessive and unreasonable use of force on Plaintiff by Defendants Mayberry 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 and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified assault of Plaintiff by Defendants Mayberry and/or John Does 1-5 and failed to intervene.

6. As a direct and proximate cause of Defendants Mayberry's 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 Mayberry and 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 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 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 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 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, 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; 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 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 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 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 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: September 24, 2018

/s/ Thomas J. Mallon, Esquire

THOMAS J. MALLON, ESQUIRE