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Attorneys for Plaintiff, Vincent D. Baker

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

VINCENT D. BAKER,	:	Civil No.: TO BE ASSIGNED
	:	
Plaintiff,	:	Civil Action
	:	
v.	:	
	:	
BOROUGH OF TINTON FALLS;	:	
TINTON FALLS POLICE DEPARTMENT;	:	COMPLAINT AND JURY DEMAND
OFFICER JAMES SAPIA;	:	
OFFICER CHRISTOPHER WHALEN;	:	
CHIEF OF POLICE JOHN SCRIVANIC;	:	
SERGEANT ANTHONY TURSO;	:	
and JOHN DOES 1-5,	:	
	:	
Defendants.	:	

Plaintiff, Vincent D. Baker, 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 Plaintiff

resides in this District and the events giving rise to Plaintiff's claims occurred in this District.

PARTIES

3. At all times relevant to the allegations of this Complaint, Plaintiff, Vincent D. Baker, was a resident of the City of Asbury Park in Monmouth County, New Jersey.
4. Defendant, Borough of Tinton Falls, 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 Sapia, was a police officer assigned to the Tinton Falls Police Department's K-9 Unit 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, Christopher Whalen, was a police officer assigned to the Tinton Falls Police Department's K-9 Unit 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, John Scrivanic, served as Chief of Police for the Tinton Falls Police Department and was responsible for the training, discipline, and/or supervision of its police

officers. He is sued in his official and individual capacity.

8. At all times relevant to the allegations of this Complaint, Defendant, Anthony Turso, was a Sergeant employed by the Borough of Tinton Falls and an official responsible for the training, discipline and/or supervision of police officers assigned to the Tinton Falls Police Department's K-9 Unit, including without limitation, Defendants Sapia and Whalen. He is sued in his official and individual capacity.
9. At all times relevant to the allegations of this Complaint, Defendants, John Does 1-5, were law enforcement officials employed by the Borough of Tinton Falls responsible for the training, discipline and/or supervision of its police officers, including without limitation, Defendants Sapia and Whalen. They are sued in their official and individual capacity.

FACTS

10. On February 10, 2017, Plaintiff, who was 72 years old, was driving through the Borough of Tinton Falls in his Volvo with two friends - Tysanya Taylor and Mandasa Smith.
11. Defendant, Officer Christopher Whalen, noticed Plaintiff's vehicle and performed a plate inquiry. The plate inquiry revealed that Plaintiff had an active warrant for his arrest out of Neptune Township.

12. Whalen proceeded to follow Plaintiff's vehicle and conducted a motor vehicle stop in the parking lot of a Burger King.
13. After reviewing Plaintiff's driving credentials, Whalen informed Plaintiff that he had an active warrant out for his arrest and would be transported to the Tinton Falls Police Department to post bail.
14. Whalen directed Plaintiff to empty his pockets, leave his personal effects in his car and take only his wallet with him. He observed Plaintiff as Plaintiff complied and emptied his pockets.
15. Suddenly, Whalen ordered Plaintiff to stop moving. Whalen grabbed Plaintiff from behind, pinned him against the Volvo, and directed Plaintiff to put both his hands on top of the vehicle. Plaintiff complied with this directive.
16. Whalen used a compliance hold to gain complete control over Plaintiff's person. At no time did Plaintiff resist or pose a threat to Whalen.
17. Whalen then called Defendant, Officer James Sapia, for back-up.
18. Believing Plaintiff had put bags of CDS in his mouth, Whalen jerked Plaintiff's body off the vehicle. As Sapia arrived at the scene, Whalen again pinned Plaintiff against the Volvo.
19. Sapia ran toward Plaintiff and Whalen with his K-9. Giving

no warning to Plaintiff, Sapia deployed his K-9 and issued the verbal commands "get him, get him!" The K-9 repeatedly pounced on Plaintiff, who was subdued and remained under Whalen's control.

20. Plaintiff was pushed to the ground, at which time Sapia allowed the K-9 to viciously bite Plaintiff's left upper arm and lower back. Plaintiff screamed in pain while Sapia sadistically encouraged the K-9 to continue attacking him.
21. Oblivious to Plaintiff's injuries, Sapia took the K-9 back to his patrol car and reprimanded the dog, stating "When I say get him, you f...ing bite. You suck, you suck, you did terrible, you didn't bite him."
22. Plaintiff was criminally charged and indicted for Third Degree Possession of a Controlled Dangerous Substance [Cocaine], in violation of N.J.S.A. 2C:35-10(a)(1); Third Degree Possession of a Controlled Dangerous Substance [Heroin], in violation of N.J.S.A. 2C:35-10(a)(1); Third Degree Possession of a Controlled Dangerous Substance with Intent to Distribute [Heroin], in violation of N.J.S.A. 2C:35-5b(3); Fourth Degree Resisting Arrest, in violation of N.J.S.A. 2C:29-2a(2); Fourth Degree Tampering with Physical Evidence, in violation of N.J.S.A. 2C:28-6(1); and Fourth Degree Unlawful Possession of a Weapon, in violation of N.J.S.A. 2C:39-5d.

23. Thereafter, on October 30, 2017, Plaintiff pled guilty to Third Degree Possession of a Controlled Dangerous Substance [Heroin] and Resisting Arrest, a Disorderly Persons Offense.

CAUSES OF ACTION

COUNT I

42 U.S.C. §1983

EXCESSIVE FORCE

DEFENDANTS, JAMES SAPIA AND CHRISTOPHER WHALEN

24. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
25. The Fourth Amendment prohibits law enforcement from using excessive force.
26. Defendants Sapia and Whalen's actions, as outlined above, constitute the use of force that was excessive and objectively unreasonable under the circumstances.
27. As a direct and proximate cause of Defendants' actions, Plaintiff has sustained permanent physical injury, permanent disfigurement, emotional distress, pain and suffering, and/or attorney's fees, and will continue to incur same for some time to come.

COUNT II

42 U.S.C. §1983

UNLAWFUL POLICY OR CUSTOM

FAILURE TO TRAIN, SUPERVISE AND DISCIPLINE

MONELL CLAIM

DEFENDANT, BOROUGH OF TINTON FALLS

28. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.

29. Defendant, Borough of Tinton Falls, has 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.
30. Defendant, Borough of Tinton Falls, was on actual and/or constructive notice that its police officers were engaged in the practice or custom of using excessive force on citizens.
31. 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.
32. This pattern, practice and/or policy of failing to train reflects deliberate indifference to the rights of persons such as Plaintiff.
33. James Sapia has been named in at least 2 other lawsuits alleging his violation of citizens' civil rights, including excessive force claims: Williams v. Monmouth County Prosecutor, Civil No. 15-2805 (PGS/DEA); and Turpin v. Tinton Falls, Civil No. 15-6613 (BRM/TJB).
34. The injuries suffered by Plaintiff are the proximate result of Defendant's deliberate indifference to properly train on the use of force.
35. As a direct and proximate cause of Defendant's failure to train, Plaintiff has sustained permanent physical injury, permanent disfigurement, emotional distress, pain and

suffering, and/or attorney's fees, and will continue to incur same for some time to come.

COUNT III
42 U.S.C. §1983
FAILURE TO TRAIN, SUPERVISE AND CORRECT
UNCONSTITUTIONAL PRACTICES
SUPERVISORY LIABILITY
DEFENDANTS, CHIEF OF POLICE JOHN SCRIVANIC,
SERGEANT ANTHONY TURSO and JOHN DOES 1-5

36. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
37. Defendants, Chief of Police John Scrivanic, Sergeant Anthony Turso and John Does 1-5, 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.
38. 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.
39. This pattern, practice and/or policy of failing to train, supervise and discipline reflects deliberate indifference to the rights of persons such as Plaintiff.
40. James Sapia has been named in at least 2 other lawsuits alleging his violation of citizens' civil rights, including excessive force claims: Williams v. Monmouth County

Prosecutor, Civil No. 15-2805 (PGS/DEA); and Turpin v. Tinton Falls, Civil No. 15-6613 (BRM/TJB).

41. 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 John Scrivanic, Sergeant Anthony Turso and John Does 1-5, have acquiesced in the misconduct of James Sapia, Christopher Whalen and other police officers.
42. 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.
43. Defendants, Chief of Police John Scrivanic, Sergeant Anthony Turso and John Does 1-5, 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.

44. The injuries suffered by Plaintiff are the proximate result of Defendants' deliberate indifference to properly train, supervise and discipline.
45. As a direct and proximate cause of Defendants' failure to train, supervise and discipline, Plaintiff has sustained permanent physical injury, permanent disfigurement, emotional distress, pain and suffering, and/or attorney's fees, and will continue to incur same for some time to come.

**COUNT IV
VIOLATION OF NEW JERSEY STATE CONSTITUTION
AND/OR NEW JERSEY CIVIL RIGHTS ACT**

46. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
47. This Court has supplemental jurisdiction to hear and adjudicate state law claims.
48. Defendants' actions, as outlined above, have violated Plaintiff's civil rights under the New Jersey State Constitution and/or New Jersey Civil Rights Act.
49. As a direct and proximate cause of Defendants' actions, Plaintiff has sustained permanent physical injury, permanent disfigurement, emotional distress, pain and suffering, and/or attorney's fees, and will continue to incur same for some time to come.

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: April 09, 2018

U.S. District Court
District of New Jersey [LIVE] (Trenton)
CIVIL DOCKET FOR CASE #: 3:18-cv-05707-BRM-LHG

BAKER v. BOROUGH OF TINTON FALLS et al
Assigned to: Judge Brian R. Martinotti
Referred to: Magistrate Judge Lois H. Goodman
Cause: 42:1983 Civil Rights Act

Date Filed: 04/09/2018
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

VINCENT D. BAKER

represented by THOMAS J. MALLON
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ATTORNEY TO BE NOTICED

V.

Defendant

BOROUGH OF TINTON FALLS

Defendant

TINTON FALLS POLICE
DEPARTMENT

Defendant

OFFICER JAMES SAPIA

Defendant

OFFICER CHRISTOPHER
WHALEN

Defendant

JOHN SCRIVANIC
CHIEF OF POLICE

Defendant

SERGEANT ANTHONY TURSO

Defendant

JOHN DOES 1-5

Date Filed	#	Docket Text
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04/09/2018	<u>1</u>	COMPLAINT against BOROUGH OF TINTON FALLS, JOHN DOES 1-5, JAMES SAPIA, JOHN SCRIVANIC, TINTON FALLS POLICE DEPARTMENT, ANTHONY TURSO, CHRISTOPHER WHALEN (Filing and Admin fee \$ 400 receipt number 0312-8623527) with JURY DEMAND, filed by VINCENT D. BAKER. (Attachments: # <u>1</u> Civil Cover Sheet)(MALLON, THOMAS) (Entered: 04/09/2018)
04/09/2018		Judge Brian R. Martinotti and Magistrate Judge Lois H. Goodman added. (jjc,) (Entered: 04/09/2018)
04/09/2018	<u>2</u>	SUMMONS ISSUED as to BOROUGH OF TINTON FALLS, JAMES SAPIA, JOHN SCRIVANIC, TINTON FALLS POLICE DEPARTMENT, ANTHONY TURSO, CHRISTOPHER WHALEN Attached is the official court Summons, please fill out Defendant and Plaintiff's attorney information and serve. Issued By *John Moller* (jem) (Entered: 04/09/2018)
04/23/2018	<u>3</u>	SUMMONS Returned Executed by VINCENT D. BAKER. BOROUGH OF TINTON FALLS served on 4/17/2018, answer due 5/8/2018. (MALLON, THOMAS) (Entered: 04/23/2018)
04/23/2018	<u>4</u>	SUMMONS Returned Executed by VINCENT D. BAKER. TINTON FALLS POLICE DEPARTMENT served on 4/17/2018, answer due 5/8/2018. (MALLON, THOMAS) (Entered: 04/23/2018)
04/23/2018	<u>5</u>	SUMMONS Returned Executed by VINCENT D. BAKER. JOHN SCRIVANIC served on 4/17/2018, answer due 5/8/2018. (MALLON, THOMAS) (Entered: 04/23/2018)
04/23/2018	<u>6</u>	SUMMONS Returned Executed by VINCENT D. BAKER. CHRISTOPHER WHALEN served on 4/17/2018, answer due 5/8/2018. (MALLON, THOMAS) (Entered: 04/23/2018)
04/23/2018	<u>7</u>	SUMMONS Returned Executed by VINCENT D. BAKER. JAMES SAPIA served on 4/17/2018, answer due 5/8/2018. (MALLON, THOMAS) (Entered: 04/23/2018)
04/23/2018	<u>8</u>	SUMMONS Returned Executed by VINCENT D. BAKER. ANTHONY TURSO served on 4/17/2018, answer due 5/8/2018. (MALLON, THOMAS) (Entered: 04/23/2018)

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