

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAN FOX,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

MICHAEL MICHALSKI, ET AL.,
Defendant

CASE
NUMBER: 3:18-CV-06703-BRM-TJB

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

Officer Michael Michalski
Holmdel Township Police Dept.
4 Crawfords Corner Road
Holmdel, NJ 07733

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.

WILLIAM T. WALSH

CLERK

John Moller

(By) DEPUTY CLERK



ISSUED ON 2018-04-16 09:39:32, Clerk
USDC NJD

RETURN OF SERVICE	
Service of the Summons and complaint was made by and (s)	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: _____	

LAW OFFICES OF MALLON & TRANGER
86 Court Street
Freehold, NJ 07728
Telephone: (732) 780-0230
Facsimile: (732) 780-5002
Attorneys for Plaintiff, Dan Fox

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

DAN FOX,	:	Civil No.: TO BE ASSIGNED
	:	
Plaintiff,	:	Civil Action
	:	
v.	:	
	:	COMPLAINT AND JURY DEMAND
OFFICER MICHAEL MICHALSKI;	:	
BAYSHORE COMMUNITY HOSPITAL;	:	
MERIDIAN HEALTH SYSTEMS, INC.; and	:	
JOHN DOE 1,	:	
	:	
Defendants.	:	

Plaintiff, Dan Fox, 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. Plaintiff, Dan Fox, is a resident of the Borough of Keyport in Monmouth County, New Jersey.
4. At all times relevant to the allegations of this Complaint, Defendant, Michael Michalski, was a police officer employed by Holmdel Township and acting in the course of his employment and/or under color of state law. He is sued in his official and individual capacity.
5. Defendant, Bayshore Community Hospital, is owned and/or operated by Defendant, Meridian Health Systems, Inc., and has its principal place of business at 727 North Beers Street in Holmdel Township, New Jersey.
6. Defendant, Meridian Health Systems, Inc., is a company that operates hospitals within the State of New Jersey, including Defendant, Bayshore Community Hospital, and has its principal place of business at Monmouth Shores Corporate Park, 1350 Campus Parkway in Neptune, New Jersey.
7. At all times relevant to the allegations of this Complaint, Defendant, John Doe 1, was a security guard who served as an agent, servant and/or employee of Defendants, Bayshore Community Hospital and/or Meridian Health Systems, Inc.

FACTS

8. On March 13, 2018, Plaintiff went to Bayshore Community Hospital to visit his mother, who had been admitted as a

patient.

9. Plaintiff's sister - Melissa Fox - requested hospital personnel provide her with a list of medications and the names of the doctors treating Plaintiff's mother. Hospital personnel refused to provide Ms. Fox with this information because Plaintiff had Power of Attorney. As a result, she was removed from the hospital.
10. Thereafter, Plaintiff went to his mother's hospital room to obtain this information. When he arrived, he noticed a portable camera in the room.
11. Present in the room were Bayshore Community Hospital's Patient Advocate, Joseph Monica, and a female hospital employee.
12. Plaintiff pulled out his phone to video record the portable camera.
13. The female hospital employee told Plaintiff he could not make any recordings in his mother's room. When Plaintiff replied that he could, Joseph Monica instructed her to get security.
14. The female hospital employee left and returned with Defendants, Officer Michael Michalski and John Doe 1, as well as another security guard.
15. Michalski told Plaintiff that he could not make any video recordings in his mother's room and that he was breaking

HIPAA laws. Plaintiff explained that he was not breaking any HIPAA law and did not want false accusations made against him.

16. Michalski proceeded to tell Plaintiff to step outside. When Plaintiff asked, "for what?" Michalski and John Doe 1 pulled Plaintiff from the chair he was sitting on and threw him to the ground. Michalski then picked Plaintiff up and escorted him from the room.
17. As Plaintiff and Michalski moved down the corridor, Michalski asked Plaintiff, "who do you think you are?" and stated that he could arrest Plaintiff.
18. When Plaintiff did not respond, Michalski grabbed Plaintiff's right arm, forcibly pulled it behind Plaintiff's back and slammed Plaintiff face-first against a wall.
19. As a result of the assault, battery and use of excessive force on his person, Plaintiff was compelled to seek treatment at Monmouth Medical Center.

CAUSES OF ACTION

COUNT I

42 U.S.C. §1983

EXCESSIVE FORCE

DEFENDANT, MICHAEL MICHALSKI

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

22. Defendant Michael Michalski's actions, as outlined above, constitute the use of force that was excessive and objectively unreasonable under the circumstances.
23. As a direct and proximate cause of Defendant's actions, Plaintiff has sustained physical injury, emotional distress, and pain and suffering, and will continue to incur same for some time to come.

COUNT II
VIOLATION OF NEW JERSEY STATE CONSTITUTION
AND/OR NEW JERSEY CIVIL RIGHTS ACT
DEFENDANT, MICHAEL MICHALSKI

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

COUNT III
ASSAULT AND BATTERY
DEFENDANT, JOHN DOE 1

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

29. The actions of Defendant, John Doe 1, as outlined above, were done with the intent to cause a harmful or offensive contact with Plaintiff's person, or an imminent apprehension of such a contact.
30. As a result, Plaintiff was put in such imminent apprehension, and thus assaulted by John Doe 1.
31. The assault of Plaintiff's person and actual, non-consensual contact by John Doe 1 constituted battery.
32. As a direct and proximate cause of Defendant's assault and battery of Plaintiff's person, Plaintiff has sustained physical injury, emotional distress, and pain and suffering, and will continue to incur same for some time to come.

COUNT IV
RESPONDEAT SUPERIOR
DEFENDANT, BAYSHORE COMMUNITY HOSPITAL

33. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
34. A master-servant relationship exists between Defendants, Bayshore Community Hospital and John Doe 1.
35. Bayshore Community Hospital permitted John Doe 1 to act on its behalf.
36. John Doe 1 was acting as an agent, servant and/or employee of Bayshore Community Hospital at time of the incident and his intentional, reckless and/or negligent use of force was done for the purpose of serving Bayshore Community Hospital.

37. John Doe 1's intentional, reckless and/or negligent use of force was not unexpected by Bayshore Community Hospital.
38. John Doe 1's intentional, reckless and/or negligent use of force occurred within the scope of his employment with Bayshore Community Hospital.
39. As a direct and proximate cause, Plaintiff has sustained physical injury, emotional distress, and pain and suffering, and will continue to incur same for some time to come.

COUNT V
RESPONDEAT SUPERIOR
DEFENDANT, MERIDIAN HEALTH SYSTEMS, INC.

40. Plaintiff repeats the allegations of the previous paragraphs as if set forth at length herein.
41. A master-servant relationship exists between Defendants, Meridian Health Systems, Inc. and John Doe 1.
42. Meridian Health Systems, Inc. permitted John Doe 1 to act on its behalf.
43. John Doe 1 was acting as an agent, servant and/or employee of Meridian Health Systems, Inc. at time of the incident and his intentional, reckless and/or negligent use of force was done for the purpose of serving Meridian Health Systems, Inc.
44. John Doe 1's intentional, reckless and/or negligent use of force was not unexpected by Meridian Health Systems, Inc.
45. John Doe 1's intentional, reckless and/or negligent use of

force occurred within the scope of his employment with Meridian Health Systems, Inc.

46. As a direct and proximate cause, Plaintiff has sustained physical injury, emotional distress, and pain and suffering, 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 13, 2018

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

This 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

DAN FOX

(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

OFFICER MICHAEL MICHALSKI; BAYSHORE COMMUNITY
HOSPITAL; MERIDIAN HEALTH SYSTEMS, INC.; JOHN DOE 1

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

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| 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: Nature of Suit Code Descriptions.	
COVERAGE ☐ 110 Insurance ☐ 120 Marine ☐ 130 Motor Vehicle ☐ 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 Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 170 Other Contract ☐ 185 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employees' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 353 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Trust in Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education
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	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Mobility and Migrant Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act
IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	PROPERTY RIGHTS ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 ☐ 820 Copyright ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395m) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSDI Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS - Third Party 26 USC 7602
OTHER SUITS ☐ 375 Public Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Arbitral ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeering Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 530 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

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

VI. CAUSE OF ACTION

Cite 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 last in line):

JUDGE

DOCKET NUMBER

DATE
04/13/2018

SIGNATURE OF ATTORNEY OF RECORD

s/ THOMAS J. MALLON

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FEE

JUDGE

MAJ. JUDGE