

SUMMONS

Attorney(s) Forman, Cardonsky & Tsinman

Office Address 701 Westfield Ave

Town, State, Zip Code Elizabeth, NJ 07208

Telephone Number 908 353 6500

Attorney(s) for Plaintiff Samuel Tsinman, Esq.

Robert Garth

Plaintiff(s)

vs.

The City of Orange Township, et al.

Defendant(s)

**Superior Court of
New Jersey**

Essex County

Law Division

Docket No: ESX-L-6306-19

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CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

Orange Police Department

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.

Michelle Smith
Clerk of the Superior Court

DATED: 09/04/2019

Name of Defendant to Be Served: Orange Police Department

Address of Defendant to Be Served: 29 Park Street, Orange NJ 07050

Samuel Tsinman, Esq. (00829-2011)
FORMAN, CARDONSKY & TSINMAN
701 Westfield Avenue
Elizabeth, New Jersey 07208
(908) 353-6500

Attorney for Plaintiff Robert Garth

ROBERT GARTH

Plaintiff

vs.

**THE CITY OF ORANGE TOWNSHIP,
ORANGE POLICE OFFICERS 1 and 2
and/or ORANGE POLICE OFFICERS 3
through 10, whose actual identities are
unknown to Plaintiffs, individually and in
their official capacity, CITY OF ORANGE
POLICE DEPARTMENT**

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : ESSEX COUNTY

DOCKET NO.: ESX-L-6306-19

Civil Action

**AMENDED COMPLAINT AND JURY
DEMAND**

Plaintiff, **Robert Garth** residing at 125 Lincoln Avenue, in the City of Newark, County of Essex and State of New Jersey by way of Complaint against the Defendants herein, say:

Factual Allegations

1. On or about August 29, 2017 at approximately 5 p.m. Defendants, City of Orange Police Officers 1 and 2 and/or Orange Police Officers 3 through 10, whose names at this time are unknown to the Plaintiff, approached the Plaintiff, Robert Garth, on or around 44 Tremont Avenue, in the City of Orange Township, County of Essex and State of New Jersey, and proceeded without probable cause or justification to assault him, harass him, handcuff him, and detain him for 3 hours.

2. The Plaintiff is a 63-year-old veteran in poor health and was returning from the emergency room as a patient at the Lyons Veterans Hospital. Upon leaving the hospital, he was talking on his cellphone while waiting for the bus at 44 Tremont Ave.
3. At that time, City of Orange Police Officers 1 and 2 and/or Orange Police Officers 3 through 10, whose names at this time are unknown to Plaintiff at this time, pulled up in a police vehicle, ran towards Plaintiff, and proceeded without probable cause or legal justification, to handcuff the Plaintiff in an improper manner.
4. Specifically, Officers 1 and 2 grabbed Plaintiff's cell phone from his hand, confiscated a large bag of medicine that Plaintiff was carrying home from the hospital, and forcefully handcuffed him so tightly around his wrists that the cuffs were cutting into his bone. Plaintiff immediately alerted the officers that he was sick and returning from the hospital, and asked them to be careful with him.
5. After Plaintiff was handcuffed, Officers 1 and 2 conducted a search of his person looking for a weapon to no avail. The search demonstrated that Plaintiff was not in possession of any weapon.
6. Officers 1 and 2 positioned their bodies on both sides of Plaintiff, began screaming at Plaintiff with their faces very close to Plaintiff's face, and forcefully and repeatedly pushed him, demanding to know where Plaintiff had put the weapon. One of the officer's faces was very red he was so angry and agitated. One of the officers kept his body turned sideways, in a stance that indicated that he was going to punch Plaintiff. The other officer repeatedly motioned his hands towards the holster holding his gun, as they continued to scream at, assault, and harass Plaintiff in an effort to obtain an admission as to where Plaintiff had hidden the gun.

7. During this time, that Officers 1 and 2 were screaming and pushing Plaintiff, Plaintiff repeatedly explained that he was returning home from the Veterans Hospital and that he did not possess a gun or hide a gun.
8. Officers 1 and 2 kept Plaintiff standing and handcuffed for approximately 2 hours.
9. Plaintiff repeatedly pleaded with the officers to loosen his handcuffs, indicating that he was sick and felt that he was going to pass out. The officers refused to loosen his handcuffs or allow him to sit down in the police car. In response to Plaintiffs pleas, one of the officers smiled at Plaintiff and said, "Yeah those handcuffs are tight huh".
10. After 2 hours of standing, the officers placed him in the police car, still handcuffed, for an additional hour before releasing him.
11. The actions of Officers 1 and 2 were unnecessarily and unreasonably aggressive in the manner in which Plaintiff was handcuffed to cause him to suffer serious injuries in and about his head, limbs and body because of their use of excessive force.
12. Upon returning home, Plaintiff's wrists were severely swollen and dripping with blood. Plaintiff was in severe pain in his hands, wrists and arms and experienced no feeling in his fingertips. He immediately called the police department, an ambulance was sent for him, and he was taken to Clara Mass Hospital for treatment for his injuries, which resulted from the excessive force used by the police.
13. The following day, on August 30, 2019, Plaintiff reported the incident to the City of Orange Police Department Internal Affairs Office. Internal Affairs took no disciplinary action against City of Orange Police Officers 1 and 2 and/or Orange Police Officers 3 through 10, whose names at this time are unknown .

COUNT I
(NEW JERSEY CIVIL RIGHTS ACT – EXCESSIVE FORCE)

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. Plaintiff has been at all times material hereto a lawful citizen of the United States of America, a resident of the State of New Jersey and a resident of the City of Newark.
3. The individual Defendants herein, Police Officers 1 and 2, were at all times relevant hereto employees of the Defendants Orange Police Department and the City of Orange Township, and were acting under color of State and Municipal Law.
4. Defendants Police Officers 1 and 2 are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
5. Defendants, Police Officers 1 and 2 acted knowingly, recklessly, and willfully, without good faith and without actual or apparent justification in using excessive force against the Plaintiff, in violation of Plaintiff's right to be free from unreasonable seizure as guaranteed by Article I, Section 7 of the New Jersey State Constitution, and in violation of his civil rights under Article 1, Section 1 of the New Jersey State Constitution, and in violation the New Jersey Civil Rights Act (N.J.S.A. 10:6-2).
6. As a direct and proximate result of the actions of the Defendant Officers 1 and 2, Plaintiff, was caused to suffer serious injuries in or about his limbs and body; has in the past and will in the future endure pain and suffering; has in the past and will in the future be caused in incur medical expenses; has in the past and will in the future be caused to lose time from his usual pursuits and occupations.
7. Defendant's actions as described above were willful, wanton, malicious, and/or an intentional disregard of his rights as a lawful citizen.

WHEREFORE, Plaintiff, Robert Garth, demands judgment against Defendants Police Officers 1 and 2, individually and in their official capacity, City of Orange, and Orange Police Department, pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT II

(NEW JERSEY CIVIL RIGHTS ACT-FALSE ARREST)

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1 and Article I, Section 7 of the New Jersey State Constitution.
3. Plaintiff has been at all times material hereto a lawful citizen of the United States of America, a resident of the State of New Jersey and a resident of the City of Newark.
4. Defendant Police Officers 1 and 2 were at all times relevant hereto employees of Defendants Orange Police Department and the City of Orange, and were acting under color of State and Municipal Law.
5. Defendant Police Officers 1 and 2 are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
6. Defendant Police Officers 1 and 2 acted knowingly, recklessly, and willfully, without good faith and without actual or apparent justification in improperly detaining and falsely arresting Plaintiff in violation of Plaintiff's right to be free from unreasonable seizure as guaranteed by Article I, Section 7 of the New Jersey State Constitution, in violation of his civil rights under Article 1, Section 1 of the New Jersey State Constitution, and in violation the New Jersey Civil Rights Act (N.J.S.A. 10:6-2).

7. As a direct and proximate result of the tortuous actions of the Defendants, as aforesaid, Plaintiff was falsely arrested and was caused to suffer serious injuries in or about his limbs and body and emotional distress; has in the past and will in the future endure pain and suffering; has in the past and will in the future be caused to incur medical expenses; has in the past and will in the future be caused to lose time from his usual pursuits and occupations.

WHEREFORE, Plaintiff, Robert Garth, demands judgment against Defendants Police Officers 1 and 2, individually and in their official capacity, City of Orange, and Orange Police Department, pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT III

(NEW JERSEY CIVIL RIGHTS ACT – UNREASONABLE SEARCH)

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1 and Article I, Section 7 of the New Jersey State Constitution.
3. Plaintiff has been at all times material hereto a lawful citizen of the United States of America, a resident of the State of New Jersey and a resident of the Township of Newark.

4. The individual Defendants, Police Officers 1 and 2, were at all times relevant hereto employees of the City of Orange Police Department and the City of Orange, and were acting under color of State and Municipal Law.
5. Defendant Police Officers 1 and 2 are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
6. Defendants, City of Orange Police Officers 1 and 2, acted knowingly, recklessly, and willfully, without good faith and without actual or apparent justification, in searching Plaintiff, in violation of Plaintiff's right to be free from unreasonable search and seizure as guaranteed by Article I, Section 7 of the New Jersey State Constitution, in violation of their civil rights under Article 1, Section 1 of the New Jersey State Constitution and in violation the New Jersey Civil Rights Act (N.J.S.A. 10:6-2).
7. As a direct and proximate result of the tortuous actions of the Defendants, Police Officers 1 and 2, Plaintiff was unreasonably searched and caused to suffer, serious injuries in or about his limbs and body; has in the past and will in the future endure pain, suffering and emotional distress; has in the past and will in the future be caused in incur medical expenses; has in the past and will in the future be caused to lose time from his usual pursuits and occupations.

WHEREFORE, Plaintiff, Robert Garth, demands judgment against Defendants Police Officers 1 and 2, individually and in their official capacity, City of Orange, and Orange Police Department, pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT IV
(NEW JERSEY CIVIL RIGHTS ACT - CRUEL AND UNUSUAL PUNISHMENT)

1. Plaintiff repeats and realleges the allegations set forth in the previous paragraphs as if set forth at length herein.
2. This Count is brought pursuant to N.J.S.A. 10:6-2, also known as the New Jersey Civil Rights Act, and Article I, Section 12 of the New Jersey Constitution.
3. At all times relevant hereto, Defendant police officers 1 and 2 were acting under color of state law and are persons within the meaning of the New Jersey State Constitution.
4. Defendants' acted willfully and/or recklessly in their actions towards Plaintiff and caused Plaintiff to suffer cruel treatment including serious injuries about Plaintiff's limbs and body, grievous pain, agony, mental anguish, placing him in fear of impending death.
5. The above-described Defendants violated Plaintiff's right to be free from the infliction of cruel and unusual punishment including the unnecessary and wanton infliction of pain.

WHEREFORE, Plaintiff, Robert Garth, demands judgment against Defendants Police Officers 1 and 2, individually and in their official capacity, City of Orange, and Orange Police Department, pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT V
(NEW JERSEY CIVIL RIGHTS ACT - IMPROPER TRAINING)

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1; Article I, Section 7 of the New Jersey State Constitution.

3. Plaintiff has been at all times material hereto a lawful citizen of the United States of America, a resident of the State of New Jersey and a resident of the City of Newark.
4. The Defendant Police Officers 1 and 2 were at all times relevant hereto employees of Defendants City of Orange and City of Orange Police Department and were acting under color of State and Municipal Law.
5. Defendants are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
6. Defendants, City of Orange and/or the City of Orange Police Department are vested by State law with the authority to make policy on the use of force, effectuation of arrests and police-citizen encounters and were responsible for the training and supervision of the individual Defendants named herein. Specifically, the City of Orange and/or the City of Orange Police Department are responsible for training police officers in the use of force and are responsible for conducting internal affairs investigations.
7. Defendants City of Orange and/or City of Orange Police Department had the authority and responsibility to prevent or aid in preventing the commission of said wrongs, could have done so by reasonably diligence, and intentionally, knowingly, recklessly, and/or with deliberate indifference failed to do so.
8. The individual Defendant Police Officers 1 and 2 were at all times relevant hereto acting under the direction and control of the City of Orange and/or the City of Orange Police Department and were acting pursuant to the official policy, practice or custom of said Defendants.
9. Acting under state law, Defendants City of Orange and/or the City of Orange Police Department intentionally, knowingly, recklessly and/or with deliberate indifference

failed to screen prior to hiring, train, instruct, supervise, control, and discipline, on a continuing basis, the individual defendants herein in their duties to refrain from (1) assaulting, restraining and harassing citizens, (2) using unreasonable and excessive force, (3) unreasonable seizures and false arrests, and (4) inflicting cruel and unusual punishment. .

10. Said Defendants had knowledge of, or, had they diligently exercised their duties to screen, instruct, train, supervise, control, and discipline the individual Defendants on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.
11. Said Defendants had the authority and responsibility to prevent or aid in preventing the commission of said wrongs, and could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.
12. Said Defendants directly or indirectly, under color of State law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of the individual Defendants heretofore described.
13. The lack of proper training and supervision resulted in the violation of Plaintiffs, civil rights under Article 1, Section 1 of the New Jersey State Constitution and in violation the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and his right to be free from unreasonable seizure, excessive force, false arrest, and cruel and unusual punishment, as guaranteed by Article I, Section 7 of the New Jersey State Constitution.
14. As a direct and proximate result of the tortuous actions of the Defendants City of Orange and/or City of Orange Police Department Plaintiff was caused to suffer serious injuries in or about his limbs and body; has in the past and will in the future endure pain and

suffering; has in the past and will in the future be caused to incur medical expenses; has in the past and will in the future be caused to lose time from his usual pursuits and occupations

WHEREFORE, the Plaintiff demands judgment against the Defendants City of Orange and/or City of Orange Police Department pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT VI
(ASSAULT AND BATTERY)

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. Defendants City of Orange Police Officers 1 and 2, during their course of employment with Defendants the City of Orange Police Department and the City of Orange, did commit an assault and battery upon the Plaintiff, causing him to suffer injuries.
3. The actions of Defendant Police Officers 1 and 2, were intentional and meant to cause immediate apprehension of harmful and/or offensive contact in Plaintiff, and did in fact cause such harmful and/or offensive contact.
4. Defendants City of Orange Police Officers 1 and 2 assaulted and/or physically made contact with the Plaintiff, as a direct and proximate result of the negligent and improper manner Defendants, City of Orange Police Department and City of Orange supervised, trained and/or controlled their employees, as well as negligently and inadequately training and supervising their employees who have authority to arrest individuals.
5. As a result of the conduct of Defendant Police Officers 1 and 2, Plaintiff has been caused to sustain significant injuries which have continued to the present and which will in the future so continue, causing Plaintiff great pain and suffering and to incur significant

medical expenses which he will continue to incur, loss of past, present and future income and hedonic damages for which the defendant should be held liable.

6. As a direct and proximate result of the negligent actions of the Defendant Police Officer 1 and 2 as agents, servants and/or employees of Defendant, City of Orange Police Department, in the manner in which they supervised, trained and/or controlled their employees, the Plaintiff was caused to suffer serious injuries in and about his head, limbs and body; has in the past and will in the future be caused to incur pain and suffering; has in the past and will in the future be caused to incur medical expenses; has in the past and will in the future be caused to lose time from his usual pursuits and occupations.

WHEREFORE, the Plaintiff, demands judgment against the Defendants, Police Officers 1 and 2, city of Orange, and Orange Police Department pursuant to the New Jersey Tort Claim Act, for compensatory damages, together with interest, costs of suit and counsel fees.

COUNT VII

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

1. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if the same were set forth herein at length.
2. Defendants' actions were done with malice and/or a wanton disregard of the Plaintiffs' rights and/or with a foreseeability of unintended harmful consequences.
3. As a direct and proximate result of the Defendants' intentional and/or reckless actions, Plaintiff has been caused to sustain significant and permanent injuries which have continued to the present and which will in the future so continue, causing Plaintiff great pain and suffering and to incur significant medical expenses which he will continue to

incur, loss of past, present and future income and hedonic damages for which the defendant should be held liable.

WHEREFORE, Plaintiff demands judgment against Defendants, Police Officers 1 and 2, individually and in their official capacities as employees, servants and/or agents of Defendants City of Orange and City of Orange Police Department, jointly and severally for compensatory damages, punitive damages, attorney fees, interest, costs and such other relief as the Court deems just and equitable.

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiff hereby demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Samuel Tsinman, Esq., is hereby designated as trial counsel of the within matter.

Forman, Cardonsky & Tsinman
Attorneys for Plaintiff

By: /s/ Samuel Tsinman
Samuel Tsinman, Esq.

DATED: August 29, 2019

CERTIFICATION

I certify that there is no other action pending before any Court involving or regarding the subject matter in controversy set forth in the within Complaint, nor is there pending before any tribunal any arbitration proceeding involving said subject matter, nor is any such action or

arbitration proceeding contemplated. There are no other parties to this action known to us who should be or might be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

Forman, Cardonsky & Tsinman
Attorneys for Plaintiff

By: /s/ Samuel Tsinman
Samuel Tsinman, Esq.

DATED: August 29, 2019

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-006306-19

Case Caption: GARTH ROBERT VS CITY OF ORANGE

Case Initiation Date: 08/28/2019

Attorney Name: SHMUEL TSINMAN

Firm Name: FORMAN CARDONSKY TSINMAN LLC

Address: 701 WESTFIELD AVE

ELIZABETH NJ 07208

Phone: 9083536500

Name of Party: PLAINTIFF : Garth, Robert

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: CIVIL RIGHTS

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

08/28/2019
Dated

/s/ SHMUEL TSINMAN
Signed