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FILED
TEAM #3
MAY 15 2008
SUPERIOR COURT
OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION

Koles, Burke & Bustillo, LLP
2600 Kennedy Boulevard
Jersey City, New Jersey 07306
(201) 200-0300
Attorney for Richard R. Sedell

Richard R. Sedell,
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

MAY 27 2008
By [Signature]

v.

Officer William Faynter, Officer John Mulvaney, the Weehawken Police Department, the Township of Weehawken, JOHN DOES 1-10 (as yet unknown and unidentified municipal, county or state officials, supervisors, agents or employees or entities) Defendants.

Docket No. **Hvd # L - 2486 - 08**

CIVIL ACTION

COMPLAINT

Plaintiff, RICHARD R. SEDELL, by way of Complaint against defendants, sets forth the following:

FIRST COUNT

1. At all relevant times herein plaintiff Richard R. Sedell was and is a resident of the State of New Jersey, residing at 371 Bergen Blvd., Fairview, New Jersey (hereinafter sometimes referred to as "SEDELL").

2. At all relevant times herein defendant the Township of Weehawken was and is a public entity organized and existing pursuant to the laws of the State of New Jersey, with the Defendant Weehawken Police Department being an agency within the Defendant Township of Weehawken, both with a place of business at 400 Park Avenue in the Township of Weehawken, County of Hudson, State of New Jersey, hereinafter sometimes referred to collectively as "Weehawken".

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3. At all relevant times herein defendant OFFICER JOHN MULVANEY was and is a police officer employed by the defendants Weehawken, acting in his official capacity under color of law (hereinafter sometimes referred to as "Mulvaney").

~~4. At all relevant times herein defendant OFFICER WILLIAM PAYNTER was and is a police officer employed by the defendants Weehawken, acting in his official capacity under color of law (hereinafter sometimes referred to as "Paynter").~~

8. At all relevant times herein Defendants OFFICER JOHN DOE Nos. 1-3, which designation is fictitious as the true identities of these defendants is unknown to date, were and are police officer(s) employed by the defendant Weehawken, acting in his/their official capacity under color of law.

9. At all relevant times herein defendants JOHN DOES 4-10 are as yet unknown and unidentified municipal or county officials, supervisors, agents, employees or entities.

11. On or about June 30, 2006, plaintiff RICHARD R. SEDELL ("SEDELL") was arrested by defendants Weehawken, Mulvaney, Paynter and JOHN DOES 1-10 (hereinafter collectively referred to as the "PUBLIC ENTITY" defendants).

12. On or about June 30, 2006, Plaintiff SEDELL was in the care, custody and control of the PUBLIC ENTITY DEFENDANTS when Officers Mulvaney and Paynter arrested Plaintiff within the Township of Weehawken.

13. At all relevant times herein, defendants John Doe 4-10, upon information and belief, the chief supervisory officials

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or public entity supervisors of the aforementioned defendant entities, with complete authority and control over policymaking, supervision and training of the agents, servants and employees of the aforementioned defendants.

~~14. While in the PUBLIC ENTITY DEFENDANTS' care, custody and control on or about June 30, 2006, Plaintiff SEDELL was caused to be assaulted and battered by the PUBLIC ENTITY DEFENDANTS, without justification of cause, suffering injury in the course of Defendants Paynter and Mulvaney's arresting Plaintiff, including, but not limited to, forcing Plaintiff's previously compromised left shoulder beyond the range of motion that it could tolerate, despite Plaintiff's prior advice and contemporaneous protests to the Defendants Paynter and Mulvaney to the contrary.~~

15. Upon information and belief the aforementioned assault, battery and use of excessive and unjustified force was inflicted upon Plaintiff SEDELL by defendant OFFICER MULVANEY, OFFICER PAYNTER and JOHN DOES 1-3.

16. Upon information and belief the aforementioned assault and battery was inflicted upon SEDELL with the knowledge, either express, implied, or constructive of the PUBLIC ENTITY defendants, their agents, servants and employees.

17. Plaintiff SEDELL institutes this action for compensatory and punitive damages arising out of the unlawful actions and conduct of defendants OFFICER WILLIAM PAYNTER, OFFICER JOHN MULVANEY, THE TOWNSHIP OF WEERAWKEN, THE WEERAWKEN POLICE DEPARTMENT and JOHN DOES 1-10, who, acting under color of state

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law and under authority, custom and usage violated the civil rights of plaintiff protected by and secured under the provisions of the First, Fourth, Sixth, Eighth, Ninth and Fourteenth amendments to the United States Constitution and under the laws of the United States, particularly under the Civil Rights Act, Title 42 of the United States Code, Sections 1981, 1983 and Title 43 of the United States Code, Section 1985 (2) et. seq.

18. At all relevant times herein, defendants OFFICER MULVANEY, OFFICER PAYNTER and JOHN DOES 1-10 were acting under color of state law and within the scope of their authority as employees and/or officers of the PUBLIC ENTITY defendants.

19. Plaintiff also institutes this action pursuant to the laws of the State of New Jersey for damages arising by reason of assault, battery, intentional infliction of mental distress, pain and suffering, negligence, failure to properly hire, train and supervise, abuse of authority, failure to provide adequate medical care and treatment, failure to intervene and failure to protect, among other acts of negligence.

20. Plaintiff timely served Notices of Claims for damages in the form prescribed by New Jersey Statutes Title 59:8-4 and signed by plaintiff's representative upon the PUBLIC ENTITY defendants by certified mail within the statutorily prescribed period.

21. More than six (6) months have elapsed since service of Plaintiff's Notices of Claims and the claims remain unresolved.

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22. This action is commenced within two (2) years from the date of the occurrence. The defendants have made no attempt to settle this matter, nor have they or anyone of them made any attempt to settle or discuss settlement. More than six months has elapsed and Plaintiff has a right to institute suit under Title 59. Plaintiff has suffered such serious and permanent personal injuries such as to meet the threshold requirements of Title 59 and has a right to institute suit

23. During all relevant times herein, the PUBLIC ENTITY defendants, their agents, servants and/or employees acted under color of state law, under the color of the Constitution, statutes, laws, charters, ordinances, rules, regulations, customs, usages, and practices of the subject departments, agencies and entities.

24. During all relevant times herein, the aforementioned defendants acted jointly and in concert with each other, and conspired and agreed between and amongst themselves to commit unlawful assault, battery and violations of civil rights upon plaintiff SEDELL as well as to fail to provide proper medical care to SEDELL.

25. During all relevant times herein the PUBLIC ENTITY defendants, their agents, servants and/or employees acted with deliberate and conscious indifference to SEDELL's constitutional rights which violations arose out of a pattern or custom or policy and practice by each of the PUBLIC ENTITY defendants, in permitting and allowing the use of excessive force, permitting

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and condoning the use of excessive force and lack of adequate medical attention, violation of procedures, inadequate record keeping, maintaining inadequate policies and protocols for use of force and the handling of persons arrested; failing to intervene ~~in the use of unjustified, unnecessary and excessive force,~~ as well as the failure to properly hire, train and supervise PUBLIC ENTITY employees in the proper conduct of their duties, among other acts and omissions.

26. During all relevant times herein the defendant PUBLIC ENTITIES, their agents, servants and/or employees, and JOHN DOES 1-10, by reason of their acts, omissions, deliberate and conscious indifference to the rights of SEDELL, deprived SEDELL of his rights, privileges and immunities secured by the Constitution and laws of the United States, and are liable to plaintiffs pursuant to Title 42 Section 1983, 1981 and 1965 of the United States Code and under state common law.

27. At all relevant times herein the aforescribed acts were committed under color of law within the authority of the agents, servants, and employees of the PUBLIC ENTITY defendants and JOHN DOES 1-10.

28. The PUBLIC ENTITY defendants acted pursuant to official policy and/or custom and to deprive plaintiff of his constitutional rights under 42 U.S. code section 1983.

29. By reason of the foregoing, Plaintiff SEDELL was deprived of his right to due process and equal protection of the

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law guaranteed under the Fourth, Fifth, Sixth and Eight amendments to the Constitution of the United States.

30. By reason of the foregoing, defendants violated the civil rights of SEDELL.

~~31. By reason of the foregoing, and as a direct and proximate result of defendant's negligence and constitutional violations, plaintiff SEDELL sustained serious and severe injuries.~~

32. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff SEDELL was caused to suffer severe, painful and permanent personal injuries, great physical pain, was compelled to undergo medical aid and treatment and was prevented from engaging in his usual activities.

33. By reason of the foregoing plaintiff has been damaged.

34. WHEREFORE plaintiff RICHARD SEDELL demands judgment against Defendants TOWNSHIP OF WEEHAWKEN, WEEHAWKEN POLICE DEPARTMENT, OFFICER WILLIAM PAYNTER, OFFICER JOHN MULVANEY and JOHN DOES 1-10, jointly and severally for compensatory and punitive damages together with interest, costs of suit and attorneys fees.

SECOND COUNT

35. Plaintiff repeats and realleges each and every allegation contained in the FIRST COUNT as if set forth herein at length.

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36. The personal injuries and damages suffered by plaintiff SEDELL were caused solely as a result of the negligence and carelessness of the PUBLIC ENTITY defendants without any fault or negligence of the plaintiff contributing thereto.

~~37. The acts and omissions of the defendants, each and every one of them constituting negligence included the failure to have proper policies and procedures in place for effecting arrests; the use of unjustified and excessive use of force; the failure to intervene and/or prevent the subject occurrence; failure to properly hire, train and supervise staff; failure to provide proper medical treatment, failure to prevent the subject occurrence arising other acts of negligence.~~

38. As a direct and proximate result of the negligence as aforescribed, SEDELL was caused to suffer severe, painful and permanent personal injuries and great physical pain, was compelled to undergo hospital and medical aid and treatment and was prevented from engaging in his usual activities.

39. By reason of the foregoing plaintiff has been damaged.

40. WHEREFORE plaintiff RICHARD R. SEDELL demands judgment against defendants TOWNSHIP OF WEEHAWKEN, WEEHAWKEN POLICE DEPARTMENT, OFFICER WILLIAM PAYNTER, OFFICER JOHN MULVANEY and JOHN DOES 1-10 jointly and severally for compensatory and punitive damages together with interest, costs of suit and attorneys fees.

THIRD COUNT

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41. Plaintiff repeats and realleges each and every allegation contained in the FIRST and SECOND COUNTS as if set forth herein at length.

42. The actions of the Defendants individually and severally as described above constitute ~~a conspiracy to commit an~~ assault and battery, threaten and otherwise intimidate Plaintiff in violation of 42 United States Code Section 1985 (2) et seq.

43. Defendants, their agents, servants and employees without cause or justification and without the consent of Plaintiff did wantonly, recklessly and maliciously batter and engage in unlawful physical contact with and using excessive force on Plaintiff under state law.

44. By reason of the aforesaid occurrence and the intentional, willful and malicious assault and battery by the Defendants and each one individually, Plaintiff was caused to suffer severe, painful and permanent personal injuries with great physical pain, was compelled to undergo medical aid and treatment and was prevented from engaging in his usual activities.

45. By reason of the foregoing plaintiff SEDELL has been damaged.

46. WHEREFORE plaintiff Richard R. Sedell demands judgment against defendants TOWNSHIP OF WEEHAWKEN, WEEHAWKEN POLICE DEPARTMENT, OFFICER WILLIAM PAYNTER, OFFICER JOHN MULVANEY and JOHN DOES 1-10 jointly and severally for compensatory and punitive damages together with interest, costs of suit and attorneys fees.

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FOURTH COUNT

47. Plaintiff repeats and realleges each and every allegation contained in the FIRST, SECOND and THIRD COUNTS as if set forth herein at length.

~~48. During the period that OFFICER WILLIAM PAYNTER,~~
OFFICER JOHN MULVANEY and JOHN DOES 1-3 detained, questioned and arrested plaintiff through the time he remained in and was discharged from their custody and care, the PUBLIC ENTITY defendants and JOHN DOES 4-10, their agents, servants and employees, abused the legal process, which unlawful acts constitute abuse of process.

49. By reason of the foregoing plaintiff SEDELL was caused to suffer severe, painful and permanent personal injuries and great physical pain was compelled to undergo medical aid and treatment and was prevented from engaging in his usual activities.

50. By reason of the foregoing plaintiff SEDELL has been damaged.

51. WHEREFORE plaintiff Richard R. Sedell demands judgment against defendants TOWNSHIP OF WEEHAWKEN, WEEHAWKEN POLICE DEPARTMENT, OFFICER WILLIAM PAYNTER, OFFICER JOHN MULVANEY and JOHN DOES 1-10 jointly and severally for compensatory and punitive damages together with interest, costs of suit and attorneys fees.

FIFTH COUNT

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52. Plaintiff repeats and realleges each and every allegation contained in the FIRST, SECOND, THIRD and FOURTH COUNTS of the Complaint as if set fully herein at length.

53. All the foregoing acts and omissions of the defendants were done in a malicious, wanton, willful and/or grossly negligent manner.

54. By reason of the foregoing plaintiffs are entitled to punitive damages on all previous causes of action against the defendants along with costs and attorney fees.

55. WHEREFORE plaintiff RICHARD R. SEDELL demands judgment against defendants TOWNSHIP OF WEEHAWKEN, WEEHAWKEN POLICE DEPARTMENT, OFFICER WILLIAM PAYNTER, OFFICER JOHN MULVANEY and JOHN DOES 1-10 jointly and severally for compensatory and punitive damages together with interest, costs of suit and attorneys fees.

KOLES, BURKE & BUSTILLO, L.L.P.
Attorneys for Plaintiff

BY: 
JONATHAN KOLES, ESQ.

Dated: May 13, 2008

DEMAND FOR JURY TRIAL

Plaintiffs demands a trial by jury of all issues so triable.

Dated: May 13, 2008

BY: 
JONATHAN KOLES, ESQ.

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DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:24-4, JONATHAN KOLES, ESQ. is hereby designated as trial counsel on behalf of the plaintiff in the within matter.

Dated: May 13, 2008

BY: 
JONATHAN KOLES, ESQ.

CERTIFICATION

JONATHAN KOLES, ESQ., of full age, certifies:

1. KOLES, BURKE & BUSTILLO, L.L.P. has been retained to represent plaintiff, RICHARD R. SEDELL in connection with the within matter. I am the attorney in charge of the case.

2. The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated by plaintiff.

3. There are no other parties who should be joined.

4. 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 willfully false, I am subject to punishment.

DATED: May 13, 2008


JONATHAN KOLES, ESQ.

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RELEASE

This Release, dated November ____, 2009, is given

BY the Releasor(s) Richard R. Sedell, residing at 457 Borough Lane, Palisades Park, New Jersey; 08065;

referred to as "I",

TO the Releasee(s) Officer William Paynter, Officer John Mulvaney, the Weehawken Police Department and the Township of Weehawken;

referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. **Release.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

Any and all claims which were or could have been asserted in the matter of RICHARD R. SEDELL vs. OFFICER WILLIAM PAYNTER, OFFICER JOHN MULVANEY, THE WEEHAWKEN POLICE DEPARTMENT, DOES 1-10 (as yet unknown and unidentified municipal, county or state officials, supervisors, agents or employees or entities), filed in the United States District Court, District of New Jersey, Newark, being Civil Action Number 08-3151 (WJM).

2. **Confidentiality.** I agree that the terms and conditions of this settlement and the claims upon which it was based shall remain confidential in so far as permitted by law. I agree not to discuss this case or settlement with third parties or the media, and I agree to instruct my family members and attorney of this confidentiality requirement.

3. **Payment.** I will be paid a total of \$105,000, inclusive of attorneys' fees and costs on behalf of Defendant in full payment for making this Release. I agree that I will not seek anything further including any other payment from you. This payment is being made without any admission of liability by any of the Releasees.

4. **Taxability.** Releasor further agrees that neither Defendant nor their counsel have made representations to the Releasor concerning the taxability of the amounts to be paid herewith. It is further understood that in the event a taxing entity ultimately determines that any or all of the foregoing amounts constitute income for which any taxes remain due and owing, Releasor shall be responsible for the payment of all such taxes and shall hold Defendant and their counsel and insurance carriers harmless.

5. **Liens.** Releasor agrees that if any claims, suits, or liens are asserted against them in connection with injuries or other losses, either under Workers Compensation laws, or by any provider of medical, dental, or hospital services, or by the State of New Jersey, the United States, or any governmental body, including welfare boards, Releasor will indemnify and hold Releasee(s), their attorneys, and insurance carriers harmless against such claims, suits, or liens.

6. **Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

7. **Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

Heather Bastan

Richard R. Sedell (Seal)
RICHARD R. SEDELL

STATE OF NEW JERSEY, COUNTY OF Hudson SS.:

I CERTIFY that on November 18, 2009:

RICHARD R. SEDELL personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument; and
- (b) executed this instrument as his own act.

Heather L. Bastan
Heather L. Bastan
HEATHER L. BASTAN
NOTARY PUBLIC OF NEW JERSEY
ID# 2320018
My Commission Expires Oct. 06, 2009