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Superior Court of New Jersey

APR 08 2008

CIVIL CASE MANAGEMENT
UNION COUNTY

FORMAN & CARDONSKY, ESQS.
125 Broad Street
Elizabeth, New Jersey 07201
(908) 353-6500
Attorneys for Plaintiff

Plaintiff,
MAURICE MCCULLERS,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

DOCKET NO. UNN-L-1257-08

vs.

CIVIL ACTION

Defendants,
CITY OF ELIZABETH, ELIZABETH
POLICE DEPARTMENT, ELIZABETH
POLICE OFFICER VAZQUEZ,
ELIZABETH POLICE OFFICER
BALTRAN, and ELIZABETH POLICE
OFFICERS 1-10, fictitious names
whose actual identifies are
unknown to Plaintiff at this time.

COMPLAINT AND JURY DEMAND

.....
Plaintiff, Maurice McCullers, residing at 31 Florida Street, in the City of Elizabeth,
County of Union and State of New Jersey by way of Complaint against the Defendants herein,
says:

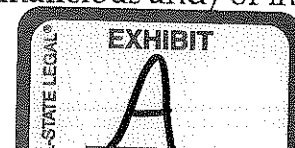
COUNT I

1. At all times relevant hereto, Defendants, Elizabeth Police Department Officers Vazquez and Beltran, and Elizabeth Police Officers 1-10, fictitious names whose actual identities are unknown to Plaintiff at this time, were agents and/or servants of the Defendants, City of Elizabeth and/or Elizabeth Police Department, and were acting within the scope of their respective employments.

2. On or about April 8, 2006 Defendants, Elizabeth Police Department Officers Vazquez and Beltran, in the course of arresting the Plaintiff, Maurice McCullers, violently threw Plaintiff to the ground causing Plaintiff injuries.

3. The Defendant's actions in throwing the Plaintiff to the ground were in bad faith in that they involved the use of force beyond that which was reasonably necessary or justified under the circumstances and which Defendants, Elizabeth Police Department Officers Vazquez and Beltran, knew to be excessive and unjustified.

4. The foregoing actions by Defendants were willful, malicious and/or intentional.



5. As a direct and proximate result of the tortuous actions of the Defendants, as aforesaid, Plaintiff, **Maurice McCullers**, was caused to suffer serious injuries in or about his head, 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; he was caused to suffer permanent injuries.

6. Plaintiff has filed a timely notice pursuant to N.J.S.A. 59:1-1, et seq., the NJ Tort Claims Act.

WHEREFORE, the Plaintiff, **Maurice McCullers**, demands judgment against the Defendants for compensatory damages, together with interest, costs of suit and counsel fees.

COUNT II

1. Plaintiff repeats and realleges each and every allegation contained in Count I of this Complaint as if same were set forth herein at length.

2. Having injured and then seized the Plaintiff such that the Plaintiff was prevented from seeking medical attention on his own behalf, Defendants, **City of Elizabeth, Elizabeth Police Officers Vazquez and Beltran, and Elizabeth Police Officers 1-10, fictitious names whose actual identities are unknown to Plaintiff at this time**, had an affirmative duty to provide the Plaintiff with reasonable medical treatment.

3. Despite numerous requests by the Plaintiff, **Maurice McCullers**, Defendants, **City of Elizabeth, Elizabeth Police Department, Elizabeth Police Officers Vazquez and Beltran, and Elizabeth Police Officers 1-10, fictitious names whose actual identities are unknown to Plaintiff at this time**, denied Plaintiff access to necessary medical care for his injuries for several hours in breach of their duty to provide reasonable access to necessary medical treatment.

4. Defendants knew or should have known that Plaintiff had a need for medical treatment for a serious medical condition and that denying access to medical treatment could cause Plaintiff to suffer injury, pain, suffering, and disability.

5. Defendants' failure to provide Plaintiff with access to medical treatment was intentional, willful, and wanton, and in bad faith.

6. As a direct and proximate result of the Defendants' tortuous acts, as described above, Plaintiff, **Maurice McCullers**, was caused to suffer serious injuries in or about his head, 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; he was caused to suffer permanent injuries.

7. Plaintiff has filed a timely notice pursuant to N.J.S.A. 59:1-1, et seq., the NJ Tort Claims Act.

WHEREFORE, the Plaintiff, **Maurice McCullers**, demands judgment against the Defendants for compensatory damages, together with interest, costs of suit and counsel fees.

COUNT III

1. Plaintiff repeats and realleges each and every allegation contained in Counts I and II of this Complaint as if same were set forth herein at length.

2. This Count is brought pursuant to 42 U.S.C. 1983, et seq. and the Fourth and Fourteenth Amendments to the United States Constitution.

3. Plaintiff has been at all times material hereto a lawful citizen of the United States of America and a resident of the City of Elizabeth.

4. The individual Defendants herein were at all times relevant hereto employees of the Elizabeth Police Department and/or City of Elizabeth and were acting under color of State Law.

5. Defendants, **City of Elizabeth and Elizabeth Police Department**, are "persons" within the meaning of 42 U.S.C.A. 1983 and acted under color of State Law and with a responsibility to provide training and supervision to the individual Defendants named herein.

6. Defendants, **Elizabeth Police Officers Vazquez and Beltran**, acted knowingly, recklessly, and willfully, without good faith and without actual or apparent justification in using excessive force to arrest the Plaintiff, **Maurice McCullers**, in violation of Plaintiff's right

to be free from unreasonable seizure as guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States of America.

7. As a direct and proximate result of the tortuous actions of the Defendants, as set forth aforesaid, Plaintiff, **Maurice McCullers**, was caused to suffer serious injuries in or about his head, 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; he was caused to suffer permanent injuries.

WHEREFORE, the Plaintiff, **Maurice McCullers**, demands judgment against the Defendants pursuant to 42 U.S.C.A. 1983 for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT IV

1. Plaintiff repeats and realleges each and every allegation contained in Counts I, II and III of this Complaint as if same were set forth herein at length.

2. Defendants, **City of Elizabeth, Elizabeth Police Officers Vazquez and Beltran, and Elizabeth Police Officers 1-10, fictitious names whose actual identities are unknown to Plaintiff at this time**, acted with deliberate indifference to Plaintiff's clear, obvious, and knowing medical distress to deny and/or delay Plaintiff necessary medical care, denying Plaintiff the rights guaranteed to him by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States of America.

3. As a direct and proximate result of the tortuous actions of the Defendants, as set forth aforesaid, Plaintiff, **Maurice McCullers**, was caused to suffer serious injuries in or about his head, 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; he was caused to suffer permanent injuries.

4. Plaintiff has filed a timely notice pursuant to N.J.S.A. 59:1-1, et seq., the NJ Tort Claims Act.

5. Plaintiff contends that he is entitled to damages both under NJ Title 59 and 42 U.S.C.A. 1983.

WHEREFORE, the Plaintiff, Maurice McCullers, demands judgment against the Defendants for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

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, Robert J. Cardonsky, Esq., is hereby designated as trial counsel of the within matter.

FORMAN & CARDONSKY, ESQS.
Attorneys for Plaintiff

By: 
ROBERT J. CARDONSKY, ESQ.

DATED: April 7, 2008.

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.

By: 
ROBERT J. CARDONSKY, ESQ.

DATED: April 7, 2008.

RDAP
File

LA CORTE, BUNDY, VARADY & KINSELLA

9-12, 7-33

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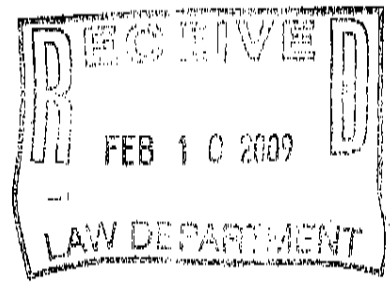
* NY BAR
* CERTIFIED CIVIL TRIAL ATTORNEY

RICHARD M. BROCKWAY

IN REPLY REFER TO FILE NO.

February 4, 2009

Christopher Kascia
Qualcare, Inc.
30 Knightsbridge Road
PO Box 309
Piscataway, NJ 08854



Re: **Maurice McCullers vs. City of Elizabeth**

Dear Mr. Kascia:

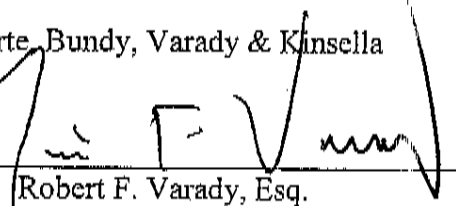
As you are aware Mr. Holzapfel authorized me to settle this case for the sum of \$5,000.00. I enclose a copy of a release executed by the plaintiff, the child support search showing Mr. McCullers did not owe any money to the Union County Probation and Mr. Cardonsky's W-9 form. You should not that the United States District Court has already closed out this matter from its docket based on the representation of counsel that this matter has been settled.

At this time I would ask that you forward a settlement draft made payable in the amount of \$5,000.00 to Forman & Cardonsky at 701 Westfield Avenue Elizabeth, New Jersey 07208.

I will proceed to close my file and forward my final bill to you at the end of February. If you have any questions please do not hesitate to call.

Very truly yours,

LaCorte, Bundy, Varady & Kinsella

By: 
Robert F. Varady, Esq.

RFV/jc

cc: William R. Holzapfel, Esq. (w/encl.)

RELEASE

This Release, dated January 8, 2009, is given

BY the Releasor(s), Maurice McCullers

Referred to as "I",

TO City of Elizabeth, Elizabeth Police Department, Elizabeth Police Officer Vasquez, Elizabeth Police Officer Baltran

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 for personal injuries, pain and suffering, medical expenses and consequential damages sustained by me as a result of an incident that occurred on or about April 8, 2006 as is more particularly set forth in the United States District Court Complaint, District of NJ, under Civil Action No. 2:08-cv-02929, which Complaint is about to be dismissed with prejudice.

All outstanding medical bills or liens, to the extent required to be paid in accordance with law, will be satisfied out of the proceeds of the within settlement.

2. Payment. I have been paid a total of \$5,000.00, in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

3. 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.

4. 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:

ROBERT J. CARDONSKY, ESQ.

Maurice McCullers (Seal) MAURICE MCCULLERS (Seal)

STATE OF NEW JERSEY, COUNTY OF Union SS.:

I CERTIFY that on January 8, 2009,

Maurice McCullers personally came before me and stated to my satisfaction that each person (or if more than one, each person):

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

Robert J. Cardonsky (Print name and title below signature) ROBERT J. CARDONSKY, ESQ. Attorney-at-Law in the State of N.