

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(NEWARK VICINAGE)**

Ida Cambria, Esq.
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Attorney for Plaintiffs

MICHAEL CONDO and
CRAIG DeROCCO,

Plaintiffs,

v.

Civil Action: 2:09-cv-01215-JAG-MCA

CITY OF BAYONNE,
POLICE DET. DAVID MACRE,
POLICE OFFICER DOMINICK LILLO,
POLICE DET. TIMOTHY CAREY,
POLICE SGT. TIMOTHY McAuliffe,
POLICE DET. WILLIAM PETERSON,

Defendants.

COMPLAINT AND DEMAND
FOR TRIAL BY JURY

The Plaintiffs, Michael Condo, residing at 29 East 33rd Street, City of Bayonne, County of Hudson, State of New Jersey, and Craig S. DeRocco, residing at 923 Avenue C, City of Bayonne, County of Hudson, State of New Jersey, say by way of complaint:

JURISDICTION AND VENUE

1. This is a civil action seeking damages against Defendants for committing acts, under color of law, which deprived Plaintiffs of rights secured under the Constitution and laws of the United States. The Court has jurisdiction of this action under 42 U.S.C. §1983, 28 U.S.C. §1331, §1343(3) and the federal statutory and constitutional provisions. The court has supplemental jurisdiction over the

state law claims pursuant to 28 U.S.C. §1367.

2. Venue is proper in this district under 28 U.S.C. §1391(b) in that all claims arose in this district.

PARTIES

3. The Plaintiff, MICHAEL CONDO, is a citizen of the United States and resides at 29 East 33rd Street, City of Bayonne, County of Hudson, New Jersey.

4. The Plaintiff, CRAIG S. DEROCO, is a citizen of the United States and resides at 923 Avenue C, City of Bayonne, County of Hudson, New Jersey.

5. The Defendant City of Bayonne (“Bayonne”) is a municipal corporation existing under the laws of the State of New Jersey maintaining its principal place of business at 630 Avenue C, Bayonne, New Jersey 07002.

6. The Defendants, Police Detective David Macre (“Macre”); Police Officer Dominick Lillo (“Lillo”); Police Detective Timothy Carey (“Carey”); Police Sgt. Timothy McAuliffe (“McAuliffe”); Police Detective William Peterson (“Peterson”); and John Doe I-XX (said names being fictitious), were at all relevant times employed by Defendant Bayonne.

7. Plaintiffs sue each and all Defendants (except the City) in both their individual and official capacities.

8. At all times material to this Complaint, Defendants Macre, Lillo, Carey, McAuliffe and Peterson acted under color of the statutes, customs, ordinances, and usage of the State of New Jersey, the City of Bayonne and the Bayonne Police Department.

9. The Defendants John Doe I-XX (said names being fictitious), are and were at all relevant times persons connected with the Defendants and involved with said Defendants conduct against the Plaintiffs.

STATEMENT OF FACTS

10. On or about March 18, 2007, Plaintiffs Condo and DeRocco exited Fratelli's Bar on Broadway in Bayonne, New Jersey.

11. At the time and place aforesaid, Defendant Macre maliciously assaulted Plaintiff Condo by beating, kicking and throwing said Plaintiff to the ground and cursing at him.

12. At the time and place aforesaid, Defendant Lillo maliciously assaulted Plaintiff DeRocco by tackling said Plaintiff and punching him numerous times in the face and head. Plaintiff DeRocco's sister, witnessing the beating he was receiving from Defendant Lillo, attempted to aid said Plaintiff pleading with Lillo to stop. Defendant Lillo assaulted Plaintiff DeRocco's sister by kicking her.

13. At the time and place aforesaid, Defendants Carey, McAuliffe and Peterson also assaulted other individuals.

14. The Plaintiffs were handcuffed, arrested and detained by the Defendants.

15. At no time did the supervising officer (McAuliffe and/or John Doe) on the scene intervene and stop the illegal seizure and assault.

16. Defendants Macre, Lillo, Carey, McAuliffe and Peterson, jointly, severally or in the alternative, conspired, aided and/or abetted each other in the assaults upon the Plaintiffs as well as the arrest and detention of Plaintiffs.

17. Plaintiffs were transported to the Emergency Room at Bayonne Hospital in handcuffs. Plaintiff DeRocco was handcuffed to the table while a CT scan was performed. The Plaintiffs were then taken back to Police Department, where they were booked, searched and

detained. Plaintiff Condo was transported to the hospital for medical attention a second time and again taken back to the Police Department and detained.

18. Plaintiff Condo was charged (1) by way of Complaint signed by Defendant Macre with one count of aggravated assault and one count of resisting arrest and (2) by way of Complaint signed by Defendant Carey with one count of aggravated assault.

19. Plaintiff DeRocco was charged by way of Complaint signed by Defendant Lillo with aggravated assault and resisting arrest.

20. Defendants delayed in having bail set for the Plaintiffs. Bail was set on March 19, 2007, for each Plaintiff in the amount of \$5,000. Bail was posted for each Plaintiff.

21. There was no probable cause for the Defendants to stop and effectuate a lawful arrest of Plaintiffs or any reasonable basis for the charges filed against Plaintiffs. The Plaintiffs were required to attend court appearances and to expend money to retain counsel to defend them against the unfounded charges. All charges against the Plaintiffs were administratively dismissed by the County Prosecutor on or about December 3, 2007.

22. As a result of the foregoing, Plaintiffs suffered serious physical injuries requiring immediate medical attention, emotional distress, embarrassment and humiliation, economic loss, pain and suffering, deprivation of liberty, violation of constitutional rights and other damages.

COUNT ONE

(Deprivation of Rights under the Fourth Amendment-Excessive Force)

23. Plaintiffs repeat each and every allegation of paragraphs 1 through 19 as if set forth at length herein.

24. The level of force employed by Defendants was objectively unreasonable and in violation of Plaintiffs' constitutional rights under the Fourth and Fourteenth Amendments.

25. As a result of the aforesaid conduct of Defendants, Plaintiffs' constitutional right to be free from excessive force was violated and they sustained physical injuries.

COUNT TWO

(Deprivation of Rights under the Fourth Amendment-Due Process)

26. Plaintiffs repeat each and every allegation of paragraphs 1 through 22 as if set forth at length herein.

27. The Defendants' conduct herein was an abuse of executive power so clearly unjustified by any legitimate objective of law enforcement as to be barred by the Fourteenth Amendment. The actions by defendants deprived the Plaintiffs of substantive and procedural due process in violation of Plaintiffs' constitutional rights under the Fourth and Fourteenth Amendments.

28. As a result of the foregoing, plaintiffs were deprived of their liberty and right to procedural and substantive due process, causing severe and permanent emotional and physical injuries.

COUNT THREE

(Failure to Intervene)

29. Plaintiffs repeat each and every allegation of paragraphs 1 through 28 as if set forth at length herein.

30. Defendants had an affirmative duty to intervene on behalf of Plaintiffs whose constitutional rights were being violated in their presence by other officers.

31. Defendants failed to intervene to prevent the unlawful conduct described herein.

32. As a result of the foregoing, Plaintiffs' liberty was restricted for an extended period of time, they suffered serious physical injury, were put in fear of their safety, were humiliated and were subjected to violation of their state and federal rights.

COUNT FOUR
(Deprivation of Property)

33. Plaintiffs repeat each and every allegation of paragraphs 1 through 32 as if set forth at length herein.

34. The Defendants intentionally, negligently, and/or recklessly destroyed and/or damaged Plaintiffs' property and liberty interest as set forth above and by denying them access to jobs and damaging their reputation and by depriving them of their rights under the Fifth Amendment and under the New Jersey State Constitution.

COUNT FIVE
(*Monell/Municipal Liability*)

35. Plaintiffs repeat each and every allegation of paragraphs 1 through 34 as if set forth at length herein.

36. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

37. The aforementioned customs, policies, usages, practices, procedures and rules of the Bayonne Police Department and Bayonne included, but were not limited to, assaulting and battering innocent individuals, and then fabricating charges in an effort to convict such individuals. In addition, governmental entities engaged in a policy, custom or practice of inadequate screening,

hiring, retaining, training and supervising its employees, which was the moving force behind the violation of plaintiffs rights as described herein. As a result of the failure of Bayonne to properly recruit, screen, train, discipline, and supervise its officers, including the individual defendants, Bayonne has tacitly authorized, ratified, and has been deliberately indifferent to, the acts and conduct complained of herein.

38. The foregoing customs, policies, usages, practices, procedures and rules constituted deliberate indifference to the safety, well-being and constitutional rights of Plaintiffs and were the direct and proximate cause and the moving force of the constitutional violations suffered by Plaintiffs as alleged herein.

39. Defendants, collectively and individually, were directly and actively involved in violating Plaintiffs' constitutional rights.

COUNT SIX
(Deliberate Indifference)

40. Plaintiffs repeat each and every allegation of paragraphs 1 through 39 as if set forth at length herein.

41. Defendants, collectively and individually, while acting under color of state law, intentionally, or with deliberate indifference and callous disregard of the rights of Plaintiffs, assaulted Plaintiffs and deprived them of adequate medical attention and their liberty in violation of their state and federal constitutional rights and 42 U.S.C. §1983.

COUNT SEVEN
(Conspiracy under 42 U.S.C. §1985)

42. Plaintiffs repeat each and every allegation of paragraphs 1 through 41 as if set forth at length herein.

43. The individual defendants conspired to deprive Plaintiffs of their rights as set forth above and, as a result, caused injuries to Plaintiffs.

COUNT EIGHT

(State Law Claim for Abuse of Process/Malicious Prosecution)

44. Plaintiffs repeat each and every allegation of paragraphs 1 through 43 as if set forth at length herein.

45. The Defendants made complaints falsely accusing the Plaintiffs of having committed crimes as set forth above and causing Plaintiffs to be arrested and prosecuted.

46. All charges against both Plaintiffs were dismissed.

47. The prosecutions were commenced and instituted by the Defendants without basis, and were done maliciously and with intent to harm the plaintiffs.

48. As a result of the abuse of process and/or malicious prosecutions by the Defendants, the Plaintiffs were injured, suffered in their business and reputation and were otherwise damaged.

COUNT NINE

(State Law Claim for Wrongful Arrest/False Imprisonment)

49. Plaintiffs repeat each and every allegation of paragraphs 1 through 48 as if set forth at length herein.

50. As a direct and proximate result of the actions of Defendants, Plaintiffs were wrongfully arrested, falsely imprisoned, unlawfully charged with crimes, and were subjected to physical abuse and caused to sustain serious and permanent emotional distress and were otherwise greatly damaged.

COUNT TEN

(State Law Claim for Assault)

51. Plaintiffs repeat each and every allegation of paragraphs 1 through 50 as if set forth at length herein.

52. At the time and place aforesaid, the Defendants did intentionally, recklessly and/or negligently assault and batter the Plaintiffs.

53. As a direct and proximate result of said assault and battery, Plaintiffs suffered physical injury, pain and emotional stress and were prevented from attending to their necessary business and affairs and were, and will be, caused to expend great sums of money to cure and treat their injuries.

COUNT ELEVEN

(Violation of Civil Rights under N.J.S.A. 10:6-2)

54. Plaintiffs repeat each and every allegation of paragraphs 1 through 53 as if set forth at length herein.

55. As a direct and proximate result of the unlawful, willful and malicious conduct of Defendants, Plaintiffs were deprived of rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of the State of New Jersey, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law in violation of NJSA 10:6-2.

56. The Plaintiffs were deprived of the rights including but not limited to the right to be free from unreasonable searches and seizures as provided by the New Jersey Constitution and the United States Constitution.

WHEREFORE, Plaintiffs demand judgment against Defendants Bayonne, Macre, Lillo, Carey, McAuliffe, Peterson and/or John Doe I-XX, jointly, severally and in the alternative, as follows:

- A. For compensatory damages;
- B. For punitive damages;
- C. For interest;
- D. For attorney's fees and costs of suit; and
- E. For such other and further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs demand a trial by jury as to all counts of this Complaint.

Dated: March 17, 2009

By: /s/ Ida Cambria
IDA CAMBRIA, ESQ.
Attorney for Plaintiffs

RELEASE

This Release dated 5/25/11 , is given

BY the Releasor(s) **MICHAEL CONDO** and **CRAIG DEROCCO**, referred to as "I,"

TO: **CITY OF BAYONNE, POLICE DET. DAVID MACRE, POLICE OFFICER DOMINICK LILLO, POLICE DET. TIMOTHY CAREY, POLICE SGT. TIMOTHY MCAULIFFE, POLICE DET. WILLIAM PETERSON**, 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 applied to claims resulting from anything which has happened up to now. I specifically release the following claims:

Plaintiffs, **MICHAEL CONDO** and **CRAIG DEROCCO** alleges liability of **CITY OF BAYONNE, POLICE DET. DAVID MACRE, POLICE OFFICER DOMINICK LILLO, POLICE DET. TIMOTHY CAREY, POLICE SGT. TIMOTHY MCAULIFFE, POLICE DET. WILLIAM PETERSON**, is based on theories of deprivation of rights under the 4th Amendment, failure to intervene, malicious abuse of process, deprivation of property, Monell Liability, deliberate indifference, conspiracy under 42 U.S.C. § 1985, wrongful arrest/false imprisonment, state law claims for assault, civil rights violations under N.J.S.A. 10:6-2 and other grounds, and claims for attorney's fees which is the subject matter pending litigation in the Federal District Court of New Jersey, under Civil Action No: 09-CV-01215.

Plaintiffs, **MICHAEL CONDO** and **CRAIG DEROCCO** will satisfy any and all outstanding medical liens, medical expenses, health insurance payments, workers' compensation liens, Medicare/Medicaid liens, and/or subrogation liens, Child Support Judgment liens, Welfare liens and agree to indemnify and hold harmless the Releasee and its carrier for any claims arising from same, out of the settlement proceeds.

2. **PAYMENT.** I have been paid a total of \$ 95,000.00, in full and final 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. **NON-ADMISSION OF LIABILITY AND COMPROMISE.** The Parties agree and acknowledge that this Agreement is the result of a compromise and shall never be construed as an admission of liability, wrongdoing or responsibility on the part of Releasees, or on the part of their predecessors, successors, assigns, agents, parents, subsidiaries, affiliates, officers, directors, or employees. Indeed, Releasees expressly deny any such liability, wrongdoing or responsibility and intend merely to avoid further and future litigation, and Releasor acknowledges the same.

5. **NON-DISCLOSURE.** The parties whose signatures appear below agree that all settlement negotiations, including any statement made or document prepared by any party or attorney for the negotiations are privileged and shall not be disclosed in any subsequent proceeding or document, or construed for any purpose as an admission against interest. The phrase "document prepared by any party or attorney for the negotiations" shall not be deemed to apply to any settlement agreement that may result from the negotiations between the parties.

Plaintiffs agree that they will not voluntarily assist in any claim or litigation which may be pending or filed in the future against Defendants concerning any incident which has occurred prior to the date that this matter settled, specifically the date the Release is executed by MICHAEL CONDO and CRAIG DEROCCO respectively. All parties to this matter understand and acknowledge that Plaintiffs may be compelled to testify in litigation by court order or process.

The Parties may disclose the terms and conditions hereof to their independent auditors, accountants, and attorneys who shall maintain same as confidential work product, or as required by law.

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

WITNESSED OR ATTESTED BY:

Theresa Wierzbicka

Craig DeRocco
CRAIG DEROCCO

Dated: 5/25/11

STATE OF NEW JERSEY)
)ss:
COUNTY OF HUDSON)

I CERTIFY that on 25th day of May, 2011, **CRAIG DEROCCO** personally came before me and stated to my satisfaction that this person (or if more than one person, each person):

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

Theresa Wierzbicka
NOTARY

THERESA WIERZBICKI
A NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 27, 2011