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ARMANDO PENALES,

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

Plaintiff,

vs.

Civil Action No.:

**OCEAN COUNTY;
OCEAN COUNTY DEPARTMENT
OF CORRECTIONS;
TIMOTHY BROWNING, Corrections
Officer; THEODORE HUTLER, Warden;
JOHN DOES 1-10 (unidentified
individuals and officers in the Ocean
County Department of Corrections in
supervisory or subordinate positions);
JOHN DOES 11-20 (unidentified
individuals and employees of the Ocean
County Department of Corrections
responsible for the medical care of inmates
at the Ocean County Jail).**

COMPLAINT

Defendants.

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. Sec. 1983 to assert certain Constitutional rights guaranteed by the Plaintiff pursuant to the Fourth and Eight Amendment of the United States Constitution. Jurisdiction is appropriate pursuant to 28 U.S.C. Section 1331 and Section 1343(3). This Court has supplemental jurisdiction over Plaintiff's pendent state law claims

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pursuant to 28 U.S.C. Section 1367.

PARTIES

2. Plaintiff Armando Penales ("Plaintiff"), is an inmate at Ocean County Correctional Facility and a resident of the State of New Jersey.

3. Defendants Timothy Browning and/or John Does 1-20 were at all times relevant herein Corrections Officers employed by Defendants Ocean County and the Ocean County Department of Corrections ("OCDC") at the Ocean County Jail ("OCJ") and responsible for the security and safety of inmates at OCJ in supervisory or subordinate positions. At all times herein, Defendants Timothy Browning and/or John Does 1-20 were acting as individuals and/or as the agents, servants and/or employees of Defendants Ocean County and OCDC, and were acting under the color of state law.

4. Defendant Warden Theodore Hutler ("Hutler") was at all times relevant the Warden of the OCJ and acting as the agent, servant and/or employee of Ocean County and the OCDC under color of law.

5. Defendant Hutler had supervisory control over Defendants Timothy Browning and/or John Does 1-20. Additionally, he was directly responsible for the implementation of internal policy on all matters concerning the OCJ and ultimately responsible for the hiring, training, oversight, discipline, and conduct of Defendants Browning and/or John Does 1-20.

6. At all times relevant hereto, Defendants Ocean County, OCDC and/or John Does 1-20 were the main custodians of all adult offenders arrested and confined within the County of Ocean. As such, they were and are responsible for the safety, welfare, control, internal security, and well being of inmates confined at the Ocean County Jail, including Plaintiff. Further,

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Defendants were directly responsible for the implementation and execution of policies, practices and procedures with respect to security, prisoner safety, and prisoner medical care concerning the OCJ and ultimately responsible for the hiring, training, oversight, discipline, and conduct of Defendants Warden Theodore Hutler, Timothy Browning and/or John Docs 1-20.

7. Suit is brought against all individually named Defendants in their personal and official capacities.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

1. On December 22, 2012, Plaintiff Armando Penales was an inmate in Ocean County Jail, awaiting sentencing on a robbery charge.
2. On that date, Defendant Browning assaulted Plaintiff without justification and with unreasonable and excessive force.
3. Plaintiff sustained various injuries related to this incident all caused by Defendant Browning.
4. Plaintiff was denied medical treatment for the injuries caused by Defendant Browning, despite numerous requests for same.
5. Defendant Browning filed a Disciplinary Report against Plaintiff charging him with "Refusing to Obey an Order of any Staff Member."
6. The Charge brought by Defendant Browning was administratively dismissed.
7. Following an Internal Affairs investigation, Defendant Browning was found to have used unnecessary and excessive force on Plaintiff.
8. Defendant Browning was charged with Third Degree Aggravated Assault (NJSA 2C:12-1B(7)), and Defendant Browning ultimately entered the Pre Trial Intervention Program.

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COUNT ONE
SECTION 1983 USE OF EXCESSIVE FORCE

1. The previous paragraphs are incorporated herein inlusively as if fully set forth.
2. As a direct and proximate result of the above-referenced unlawful and malicious physical abuse of Plaintiff by Defendant Browning committed under color of state law, Plaintiff sustained bodily harm and was deprived of his right to be secure in his person against unreasonable seizure of his person, in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and U.S.C. Section 1983.
3. As a direct and proximate cause of the conduct of Defendant as set forth above, Plaintiff suffered bodily injuries and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Armando Penales demands judgment against Defendant Timothy Browning on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

COUNT TWO
SECTION 1983 USE OF EXCESSIVE FORCE/CRUEL AND UNUSUAL PUNISHMENT
OF A CONFINED PRISONER

1. The preceding paragraphs are incorporated herein by reference as if set forth in their entirety.
2. The aforementioned acts set forth at length above amount to malicious and sadistic uses of physical force by Defendant Browning which was undertaken for the purpose of causing Plaintiff physical harm, rather than in a good faith effort to maintain or restore discipline

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in violation of Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment.

3. The acts undertaken by Defendant Browning were committed under the color of law.

4. This cause of action is brought pursuant to 42 U.S.C. Sec. 1983 to remedy this

Constitutional violation.

5. As a direct and proximate result of Defendant Browning's unlawful and malicious physical abuse of Plaintiff committed under color of state law, Plaintiff sustained physical injuries and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Armando Penales demands judgment against Defendant Timothy Browning on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

COUNT THREE
SECTION 1983 DENIAL OF ADEQUATE MEDICAL CARE

1. The preceding paragraphs are incorporated herein by reference as if set forth in their entirety.

2. The aforementioned acts and omissions set forth at length above amount to a denial of adequate medical care of a confined prisoner in violation of the Plaintiff's Eighth Amendment rights as follows:

a.) The Plaintiff had a serious medical need in that: (1) a doctor had decided that his condition needed treatment; (2) the problem was so obvious that non-doctors would easily recognize the need for medical attention; (3) denying or delaying his medical care created a risk of permanent physical injury, and/or (4) denying or delaying his medical care caused him needless pain; and

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b.) Defendants were deliberately indifferent to his serious medical need in that they knew or should have known of an excessive risk to Plaintiff's health and that defendants disregarded that risk by failing to take reasonable measures to address it.

3. As a direct and proximate result of the above-referenced deliberate indifference to Plaintiff's serious medical need by Defendants Ocean County; OCDC; Hutler; Browning and/or John Docs 1-20, Plaintiff was deprived of his right to adequate medical treatment, in violation of the Eighth Amendment of the United States Constitution, made actionable through 42 U.S.C. Sec. 1983.

4. As a direct and proximate cause of Defendants Ocean County; OCDC, Warden Theodore Hutler; Timothy Browning, and/or John Does 1-20 deliberate indifference to Plaintiff's serious medical needs, Plaintiff suffered bodily injuries and will suffer additional special damages in the future in an amount which cannot yet be determined.

5. By reason of the above, Plaintiff was injured, suffered needless pain and was deprived of his Constitutional rights as described above.

WHEREFORE, Plaintiff demands judgment against Defendants Ocean County; OCDC; Warden Theodore Hutler; Timothy Browning, and John Does 1-20 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

COUNT FOUR
SECTION 1983 MALICIOUS PROSECUTION

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. Defendant Browning maliciously and unlawfully initiated a false disciplinary report against Plaintiff as a pretext to protecting himself from criminal and civil liability, and/or justifying the injuries he caused Plaintiff to suffer,

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3. The charge was without legal or factual justification, not based upon probable cause and was ultimately dismissed.

4. As a direct and proximate cause of the actions initiated by Defendant Browning, Plaintiff suffered a deprivation of constitutional rights guaranteed to him by the Fourth, Eighth and Fourteenth Amendments to the Constitution of the United States, and made actionable through 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff Armando Penales demands judgment against Defendant Timothy Browning on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SUPPLEMENTAL STATE LAW CLAIMS

COUNT FIVE **ASSAULT AND BATTERY**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendant Browning committed an assault and battery on Plaintiff by physically injuring him without justification and/or by putting him in reasonable apprehension of serious and imminent bodily harm.
3. The assault and battery committed by Defendant was contrary to the common law of the State of New Jersey.
4. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.

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5. As a direct and proximate cause of the conduct of Defendant as set forth above, Plaintiff suffered bodily injuries, significant and permanent injuries, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff demands judgment against Defendant Timothy Browning on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

COUNT SIX
SECTION 1983 MALICIOUS PROSECUTION

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendant Browning maliciously and unlawfully initiated a false disciplinary report against Plaintiff as a pretext to protecting himself from criminal and civil liability, and/or justifying the injuries he caused Plaintiff to suffer.
3. The charge was without legal or factual justification, not based upon probable cause and was ultimately dismissed.
4. As a direct and proximate cause of the actions initiated by Defendant Browning, Plaintiff suffered a deprivation of constitutional rights guaranteed to him by the Fourth, Eighth and Fourteenth Amendments to the Constitution of the United States, the Constitution of the State of New Jersey and the common law of the State of New Jersey.
5. Plaintiff invokes the supplemental jurisdiction of this Court to hear and determine this claim.

WHEREFORE, Plaintiff Armando Penales demands judgment against Defendant Timothy Browning on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

COUNT SEVEN
NEGLIGENCE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. At all times relevant herein, Defendants Hutler, Browning and/or John Does 1-20 were acting within the scope of their employment as agents, servants, employees, and/or officers of Defendants Ocean County and/or the Ocean County Department of Corrections.
3. Defendants Hutler; Browning, and/or John Does 1-20 had a duty to the Plaintiff to not expose him to an unreasonable risk of injury.
4. Through the acts and omissions set forth at length above, Defendants Hutler, Browning, and/or John Does 1-20 breached that duty.
5. The acts of the Defendants were in violation of the common law of the State of New Jersey.
6. As a direct and proximate result of their breach of duty to plaintiff, he was caused to suffer significant and permanent physical injury, pain and suffering and will continue to incur same in the future for some time to come

WHEREFORE, Plaintiff Armando Penales demands judgment against Defendants Ocean County; Ocean County Department of Corrections; Hutler; Browning, and/or John Does 1-20 , on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

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COUNT EIGHT
VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT (NJCR)

1. The preceding paragraphs are incorporated herein by reference as if set forth in their entirety.
2. The acts and omissions set forth at length above deprived Plaintiff of his right to be free from unreasonable seizure of his person and his right to be free from cruel and unusual punishment in violation of the United States Constitution and the Constitution of the State of New Jersey, in violation of N.J.S.A. 10:6-1, et seq. ("The New Jersey Civil Rights Act").
3. As a direct and proximate result of the aforesaid acts of Defendants Ocean County; OCDC; Hutler; Browning, and/or John Does 1-20, Plaintiff suffered physical injury and will incur special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Armando Penales demands judgment against Defendants Ocean County; OCDC; Hutler; Browning, and/or John Does 1-20 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Please be advised that Thomas J. Mallon, Esquire is hereby designated trial counsel in the above captioned matter.

Dated: February 27, 2014

/s/ Thomas J. Mallon, Esq.
THOMAS J. MALLON, ESQUIRE