

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JULIUS A.H. BALDWIN, IV

CIVIL ACTION

NO.:

v.

JURY TRIAL DEMANDED

CITY OF ATLANTIC CITY
2715 Atlantic Avenue, Suite 240
Atlantic City, New Jersey 08410
and

CHIEF OF POLICE ERNEST JUBILEE (retired)
In his official capacity
2715 Atlantic Avenue, Suite 240
Atlantic City, New Jersey 08410
and

POLICE OFFICER PETER CALABRESE
Individually and in his official capacity
2715 Atlantic Avenue, Suite 240
Atlantic City New Jersey 08410
and

POLICE OFFICER JOHN DEVLIN
Individually and in his official capacity
2715 Atlantic Avenue, Suite 240
Atlantic City New Jersey 08410
and

POLICE OFFICER JAMES KARINS, W-775
Individually and in his official capacity
2715 Atlantic Avenue, Suite 240
Atlantic City New Jersey 08410
and

POLICE OFFICER BRIAN HAMBRECHT
Individually and in his official capacity
2715 Atlantic Avenue, Suite 240
Atlantic City New Jersey 08410
and

POLICE OFFICERS JOHN DOE 1-10
Individually and in their Official Capacities
2715 Atlantic Avenue, Suite 240
Atlantic City New Jersey 08410

Defendants

COMPLAINT

Plaintiff, Julius A.H. Baldwin, IV (hereinafter referred to as 'Julius Baldwin'), by and through his attorney Herbert McDuffy, Jr., does hereby file this Complaint and avers the following:

PRELIMINARY STATEMENT

1. This is a civil rights action brought under 42 U.S.C. 1983 and raising pendant state law claims to redress the intentional and unlawful use of excessive force in the form of the severe beating of and dog bites inflicted upon Mr. Julius Baldwin by defendant police officers before and after he was handcuffed, and for refusing or neglecting to prevent the use of said force. The actions and conduct of the defendant police officers are the result of a policy, practice and deliberate indifference of the City of Atlantic City, New Jersey.

JURISDICTION

2. Jurisdiction is asserted pursuant to 42 U.S.C. Section 1983, Due Process Clause and the Equal Protection Clause of the 14th Amendment of the Constitution of the United States of America, the 4th Amendments to the Constitution of the United States of America, and laws and statutes of the State of New Jersey. This Court has jurisdiction to

redress deprivations of rights secured by the Constitution of the United States pursuant to 28 U.S.C. Sections 1331, and 1343.

3. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. Section 1367.

4. The amount in controversy exclusive of interest and costs exceeds the sum of One Hundred and Fifty Thousand (\$150,000.00) Dollars.

VENUE

5. All the claims herein arose within the jurisdiction of the United States District Court of the District of New Jersey and involve Defendants who reside or are employed within the jurisdictional limits. Venue is invoked pursuant to the dictates of 28 U.S.C. section 1391 (b) and (c).

PARTIES

6. Plaintiff, Julius Baldwin is an adult individual citizen of the State of New Jersey and a resident of the City of Atlantic City, New Jersey, residing therein at

7. Defendant City of Atlantic City is a municipality organized by and through the State of New Jersey. It is responsible for operating the Atlantic City Police Department.

8. Defendant Police Officers Calabrese, Devlin, Karins, Hambrecht and John Does were at all relevant times uniformed police officers on duty in the City of Atlantic City New Jersey.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

9. On May 2, 2013 Defendant Calabrese allegedly observed Julius Baldwin writing

on a metal box attached to a telephone pole located at Florida & Pacific Avenues, Atlantic City, New Jersey.

10. Calabrese saw Baldwin walk away from the pole and ordered him to stop.

11. Calabrese got out of the police car.

12. Baldwin ran because he was afraid of being a victim of excessive force. Calabrese chased him.

13. Other police units in the area joined the pursuit of Baldwin, including but not limited to defendants Devlin, Karins and Hambrecht.

14. Baldwin fell to the ground and surrendered after almost being struck by a pursuing police car.

15. Immediately after falling to the ground and surrendering, Baldwin was beaten by two police officers with fists and clubs.

16. Calabrese arrived at the scene joined the beating frenzy. He hit Baldwin in the shoulder with a club-like device. Baldwin was handcuffed while he was being beaten. An officer put his knee in Baldwin's back.

17. Defendant police officers continued to strike Baldwin after he was handcuffed. A police officer released a K-9 dog to attack Baldwin as he lay handcuffed on the ground. The dog bit Baldwin several times on the back of both of his legs.

18. An independent eyewitness saw the assault on Baldwin by the defendant police officers and the K-9 dog.

19. Baldwin was transported to hospital where he was treated for the dog bites and subsequently released to police custody.

20. Baldwin was falsely charged with aggravated assault on a police officer and

related crimes. Baldwin pleaded guilty to disorderly conduct in the Atlantic City Municipal Court.

21. Baldwin has recovered from soft tissue injuries inflicted by defendants when they used excessive force to take him into custody. His legs are permanently scarred from the bites inflicted by the K-9 dog.

22. For all times relevant herein, Defendant Police Officers acted jointly and in concert with each other. Each Defendant had the duty and the opportunity to protect Plaintiff from the unlawful actions of the other Defendant, but each Defendant failed and refused to perform such duty, thereby proximately causing injuries to Plaintiff.

23. The unwarranted beating and dog bites inflicted upon Mr. Baldwin and the resulting injuries were a direct, proximate and foreseeable result of the City of Atlantic City's policies, customs and practices regarding the Atlantic City Police Department over which former Police Chief Jubilee had responsibility at all relevant times.

21. Plaintiff avers that the injuries that he sustained were caused solely by the joint and several intentional, willful malicious and wanton conduct by the Defendants and that his injuries were caused in no part or by any action or failure to act on the part of the Plaintiff.

23. In the manner described herein, the Defendants acted with reckless and intentional disregard of the Plaintiff's constitutional rights.

24. The Defendants knew or should have known that their actions would inflict extreme injuries and emotional distress upon the Plaintiff.

25. The actions of the Defendants described above were extreme and outrageous.

26. As a direct and proximate result of all defendants' conduct, committed under color of law, plaintiff Julius Baldwin was deprived of his rights as a citizen of the United States of America and the State of New Jersey to be free from unreasonable and excessive violent force.

COUNT I

VIOLATION OF 42 U.S.C. SECTION 1983

27. Plaintiff adopts and incorporates paragraphs 1 through 26 herein as if set for the at length.

28. Defendant Police Officers Calabrese, Devlin, Karins, Hambrecht and John Does used excessive force thereby violating Plaintiff Baldwin's rights under the Constitution of the United States, in particular, the Fourth Amendment and his rights under the Constitution and laws of the State of New Jersey.

29. Defendant police officers willfully and maliciously beat Plaintiff Baldwin while he was on the ground, with a police officer' knee in his back while handcuffed.. Officers then ordered the K-9 dog to attack and bite Baldwin while Baldwin was lying face down on the ground while handcuffed. The dog bite wounds on the back of Baldwin's legs left permanent scars from the amount of tissue that was bitten off.

30. As a direct and proximate result of the aforesaid acts of Defendant Police Officers under color of their authority as Atlantic City Police Officers, Mr. Baldwin suffered grievous bodily harm and permanent scarring; a violation by said Defendants of the laws and Constitution of the United States, in particular, the Fourth Amendment to the United States Constitution and 42 U.S.C. section 1983 and was further in violation of the Statutes of the State of New Jersey all of which make

said Defendants liable to Plaintiff.

31. The acts committed by defendants constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiff which resulted in the previously described injuries to him in violation of his constitutional rights as previously set forth in the aforementioned paragraphs.

WHEREFORE: Plaintiff demands judgment against Defendant Police Officers in an amount in excess of One Hundred and Fifty Thousand Dollars (\$150,000) plus interest, costs, attorney's fees and punitive damages.

COUNT II
BATTERY
PLAINTIFF v. DEFENDANT POLICE OFFICERS
(In Their Individual Capacities)

32. Plaintiff adopts and incorporates paragraphs 1 through 31 herein as if set forth at length.

33. Defendants, without provocation, justification permission or cause, did commit battery upon the person of Plaintiff by punching, kicking and hitting him with batons and attacking him with a K-9 dog after he was in custody, handcuffed and on the ground.

34. As a direct result of Defendants' battery, Plaintiff suffered the injuries aforesaid.

WHEREFORE: Plaintiff demands judgment against Defendant Police Officers in an amount in excess of One Hundred and Fifty Thousand Dollars (\$150,000) plus interest, costs, attorney's fees and punitive damages.

COUNT III
ASSAULT
PLAINTIFF v. DEFENDANT POLICE OFFICERS
(In their Individual Capacities)

35. Plaintiff adopts and incorporates paragraphs 1 through 34 herein as if set forth at length.

36. Defendants, without provocation, justification permission or cause, did commit assault upon the person of Plaintiff by punching, kicking and hitting him with batons.

37. As a direct result of Defendants' battery, Plaintiff suffered the injuries aforesaid.

38. The action and omissions of all defendants exceeded the normal standards of decent conduct and were willful, malicious, oppressive, unjustifiable and therefore, punitive damages are necessary and appropriate.

WHEREFORE: Plaintiff demands judgment against Defendant Police Officers in an amount in excess of One Hundred and Fifty Thousand Dollars (\$150,000) plus interest, costs, attorney's fees and punitive damages.

COUNT IV
VIOLATIONS OF 42 U.S.C. SECTION 1983
FAILURE TO TRAIN
PLAINTIFF v. DEFENDANTS CITY OF ATLANTIC CITY AND
POLICE COMMISSIONER JUBILEE

39. Plaintiff adopts and incorporates paragraphs 1 through 38 herein as if set forth at length.

40. Defendants City of Atlantic City and Police Commissioner Jubilee failed to properly train and supervise Defendant Police Officers Calabrese, Devlin, Karins, Hambrecht and John Does.

41. As a result of the aforementioned failure to train, Defendants were grossly negligent, deliberately indifferent and reckless with respect to the potential violation of Mr. Baldwin's constitutional rights.

42. Defendants' failures were the moving forces behind the actions of defendant police officers resulting in the injuries and permanent disfigurement of Plaintiff.

WHEREFORE: Plaintiff demands judgment against Defendants City of Atlantic City and Police Commissioner Jubilee in an amount in excess of One Hundred and Fifty Thousand Dollars (\$150,000) plus interest, costs, attorney's fees and punitive damages.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted:

/s/Herbert McDuffy, Jr.
HERBERT MCDUFFY, JR., ESQUIRE
200 Campbell Drive
Suite 103E
Willingboro, NJ 08046
856-505-8706
hmcduffy@aol.com

Dated: May1, 2015

CERTIFICATE OF SERVICE

I, Herbert McDuffy, Jr. Esquire, hereby certify that on this date I electronically filed the Plaintiff's Complaint and that it is available for viewing and downloading from the ECF system. Service will be effected in a manner consistent with the Federal Rules of Civil Procedure

Dated: September 30, 2014

/s/ Herbert McDuffy, Jr.
Herbert McDuffy, Jr. Esquire

GENERAL RELEASE

JULIUS BALDWIN (hereinafter referred to as "RELEASOR"), for and in consideration of the total sum of fifty thousand dollars (\$50,000), paid by the City of Atlantic City, receipt of which is hereby acknowledged, and intending to be legally bound, does hereby remise, release, and forever discharge the City of Atlantic City, and its departments, divisions, insurers, present and former employees, including, but not limited to, Ernest Jubilee, John Devlin, Brian Hambrecht, James Karins, and Peter Calabrese, representatives, attorneys, citizens and agents, and each of such person's heirs, successors, assigns, executors, administrators, and beneficiaries (hereinafter collectively referred to as "RELEASEES") from any and all rights, causes of action, suits, debts, dues, accounts, contracts, agreements, judgments, claims, and demands whatsoever (including claims for costs and attorney's fees), in law or equity (collectively, the "Claims"), which RELEASOR and his heirs, executors, administrators, successors, assigns, or any of them, ever had, now have, or hereafter can, shall, or may have, against RELEASEES or any of them, for or by reason of any cause, matter, or thing whatsoever from the beginning of the world to the date of this Agreement, including, but not limited to, any claims which were or could have been asserted in the action entitled Baldwin v. City of Atlantic City, et al., which was filed in the District Court of New Jersey under civil action number 15-cv-3130 (the "Civil Action").

RELEASOR understands that RELEASEES, by reason of agreeing to this compromise payment, neither admit nor deny liability of any sort and have no agreement or promise to do anything not herein set forth, and RELEASOR further understands that this General Release is made as a compromise to terminate all controversy and/or claims for injuries or damages of any nature, known or unknown, including future developments thereof, by RELEASOR against RELEASEES.

It is expressly understood that, by the execution of this General Release, RELEASEES shall not be required to make any further payment to RELEASOR or to any other person or entity by reason of the aforesaid Claims, and that RELEASOR will indemnify and save forever harmless RELEASEES against any loss or damage caused by any and all further claims, demands, or actions against RELEASEES made on behalf of RELEASOR by anyone or any entity.

This is a complete General Release. There are no written or oral understandings or agreements directly or indirectly connected with this General Release that are not incorporated herein. This General Release shall be binding upon the heirs, executors, administrators, parents, subsidiaries, affiliates, successors, assigns, and legal representatives of the respective parties hereto.

This Agreement shall be governed by and conformed in accordance with the laws of the State of New Jersey without regard to its conflict of laws provision.

RELEASOR agrees to fully execute any and all supplemental documents and take any additional action(s) that may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement and General Release.

In the event that any provision contained in this Agreement is declared invalid, illegal, or unenforceable by any court of competent jurisdiction, and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately be null and void, leaving the remainder of this Agreement in full force and effect. Moreover, if any such provision determined to be invalid, illegal, or unenforceable can be made valid, legal, or enforceable by modification thereof, then the party for whose benefit the provision exists may make such modification as necessary to make the provision valid, legal, and enforceable.

RELEASOR agrees that they are responsible for all applicable taxes, if any, as a result of the payments set forth herein. RELEASOR agrees to indemnify RELEASEES and hold RELEASEES harmless for all taxes, penalties and interest, withholding or otherwise, for which RELEASEES may be found liable as a consequence for having paid monies pursuant to this Agreement. RELEASEES shall notify RELEASOR within thirty (30) days, in writing and via certified mail, return receipt requested, of any IRS notification, assessments, or concerns. It is expressly agreed that if RELEASOR is required to provide payments for taxes or interest or penalties to any taxing authority, RELEASOR shall reimburse RELEASEES for such payments to such taxing authority within ten (10) days after RELEASEES notify RELEASOR in writing, via certified mail, return receipt requested, that they have incurred such liability.

RELEASOR agrees to be responsible for any liens, including, but not limited to, liens for any medical provider or attorney, and RELEASOR agrees that in the event any state agency or other authority or person deems any amount to be due from RELEASEES with respect to any lien, RELEASOR will indemnify RELEASEES for any sums RELEASEES may be required to pay to satisfy any such lien or any part thereof; and, RELEASOR further agrees to pay any reasonable and necessary attorney's fees incurred by RELEASEES in defense of any actions brought against RELEASEES as a result of any such lien provided that RELEASOR will have no such obligation to pay any such reasonable and necessary attorney's fees incurred by RELEASEES in defense of any such lien related claims unless RELEASOR is first provided by RELEASEES with notice of any such lien related claim and RELEASOR is provided thirty (30) days of opportunity to pay or otherwise fully resolve any such lien related claim against RELEASEES.

I have carefully read this General Release and understand the contents thereof. I sign this General Release of our own free will, intending to be legally bound by the promises contained

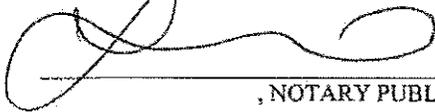
herein forever. I have reviewed this General Release with an attorney and am satisfied with that attorney's services in reviewing this General Release.

IN WITNESS WHEREOF, I have hereunto set my signature this 22 day of DECEMBER, 2015.



JULIUS BALDWIN

SWORN AND SUBSCRIBED
before me this 22 day of
December, 2015



, NOTARY PUBLIC



**ADDITIONAL AGREEMENTS AND REPRESENTATIONS OF
PLAINTIFF REGARDING MEDICARE/MEDICAID/SOCIAL SECURITY
DISABILITY INSURANCE (SSDI)**

The parties hereto, in consideration of the Release executed herewith, and representations contained herein, hereby make the following additional representations and enter into the following agreements:

1. Julius Baldwin (hereinafter designated as "Plaintiff") warrants that his date of birth is [REDACTED]. Plaintiff is currently 34 years old.

Medicare/Medicaid Acknowledgment

2. As of the date of this agreement, Plaintiff acknowledges that he is **not** currently a Medicaid beneficiary and that the Centers for Medicare & Medicaid Services (CMS) does not have a claim for medical services paid on behalf of either Plaintiff related to this claim pursuant to the Medicare Secondary Payer Act (42 U.S.C. §1395y(b)) as amended.

Settlement Agreement

3. The parties have determined through information provided by the Plaintiff, the Plaintiff's counsel, review of Plaintiff's medical bills, or, where the MSPRC has represented in its conditional payment statement, that the conditional payments made on behalf of the Plaintiff related to this claim are approximately \$ Ø. The parties further acknowledge that this is not a final lien amount, and that the MSPRC will not calculate a "final lien demand" until after it receives the final settlement documents regarding this claim.

4. The parties further agree that the Plaintiff and/or the Plaintiff's counsel will be responsible for resolving any conditional payment lien with the MSPRC and that the Defendants have no further obligation, payment and/or otherwise, to the Plaintiff, Plaintiff's counsel, CMS, or the MSPRC.

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5. Any amount owed to the MSPRC in excess of the estimated lien amount will be the sole responsibility of the Plaintiff, and the Plaintiff shall be responsible to CMS for any claim, right, lien, or cause of action that Medicare/Medicaid may assert pursuant to the Medicare Secondary Payer Act (42 U.S.C. §1395y(b)).

Future Medical Expenses

6. It is not the intention of any party to this agreement to shift responsibility of future medical expenses to the Federal Government. It is the parties' intention to comply with the Medicare Secondary Payer Act (42 U.S.C. §1395y(b)) as amended and the relevant regulations contained in C.F.R. §411.

7. After considering the parties' obligations according to the aforementioned statute and regulations, the parties agree that there is no risk of shifting future medical expenses to Medicare/Medicaid because the Plaintiff hereby acknowledges that no further medical treatment is needed, warranted, or required with regard to any alleged injuries sustained or arising out of this claimed incident, occurrence, or claim.

8. Taking into account the various factors of this claim, including the Plaintiff's alleged injuries, claimed economic losses, and claimed pain and suffering, no portion of this settlement is allocated for future medical expenses and is, therefore, not a settlement contemplated by the Medicare Secondary Payer Act.

9. The parties, in good faith, do not believe that Medicare/Medicaid may incur any expense in the future related in any way to the claims asserted in this matter or subject to this agreement, and any expense that Medicare/Medicaid may incur in this matter is too remote to calculate or reasonably foresee at the time of settlement.

10. In addition, any future medical treatment relating to body parts allegedly injured, sustained or arising out of this claimed incident, occurrence, or claim, or expenses incurred by the Plaintiff for like or similar injuries, are the sole responsibility of the Plaintiff.

CAUTION: READ BEFORE SIGNING

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

In Witness whereof the parties hereto have set their hands and seals on this 22 day of DECEMBER, 2015.

Witnessed by:

Charlita Thomas

Julius Baldwin
JULIUS BALDWIN

SWORN AND SUBSCRIBED
before me this 22 day of
December, 2015

Loiraine Montero
, NOTARY PUBLIC

