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SUPERIOR COURT/LAW DIV.

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JOSEPH DINOTO

Plaintiff,

v.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CAMDEN COUNTY  
DOCKET NO.: CAM-L- 4344 -14

*Civil Action*

MERCHANTVILLE POLICE DEPARTMENT;  
WAYNE BAUER; BOROUGH OF  
MERCHANTVILLE; JOHN/JANE  
DOES 1-100, fictitious persons;  
ABC CORP. 1-100, fictitious entities

Defendants.

COMPLAINT, JURY DEMAND  
DEMANDS FOR PRODUCTION OF  
DOCUMENTS, UNIFORM  
INTERROGATORIES, SUPPLEMENTAL  
INTERROGATORIES, and INSURANCE  
INFORMATION

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Plaintiff, Joseph DiNoto, by and through his attorney, avers the following against the defendants:

**PARTIES**

1. Joseph DiNoto, is an adult individual, who resides at 5 North Clinton Avenue, in the Township of Maple Shade, County of Burlington, and State of New Jersey.
2. Defendant, Merchantville Police Department, is a public and/or municipal entity organized and/or authorized to conduct police investigations and/or law enforcement activities within the State of New Jersey and which maintains its headquarters at 1 West Maple Avenue, Borough Hall, the Township of Merchantville, County of Camden, and State of New Jersey.

3. Defendant, Wayne Bauer (hereinafter referred to as "Bauer"), was at all times material hereto, a sworn officer of the Merchantville Police Department and performed all acts pursuant to his duties as an officer of same. For purposes of litigation, Defendant Bauer's address is in care of the Merchantville Police Department at 1 West Maple Avenue, Borough Hall, the Township of Merchantville, County of Camden, and State of New Jersey.
4. Defendant, Borough of Merchantville is a public and/or municipal entity with a mailing address of: 1 West Maple Avenue, Borough Hall, the Township of Merchantville, County of Camden, and State of New Jersey.
5. Defendants, ABC Corporations 1-100, Entities and/or John/Jane Doe(s) 1-100, fictitious persons, are fictitious names used to designate as of yet unknown or unidentified parties, corporations, municipal entities, and/or individuals to this action who in some manner contributed to the damages and injuries sustained by the plaintiff. Plaintiff hereby reserves the right to substitute the name(s) of the actual party(s) if and when the identity(s) of said individual(s) or business(es) is/are obtained.
6. Upon information and reasonable belief, pursuant to N.J.S.A. Title 59, on or about November 27, 2012, a notice of claim for damages was transmitted to the above-mentioned defendants.

**FIRST COUNT**  
**Assault**

1. Plaintiff hereby incorporates by reference the allegations of the Parties as fully as though the same were set forth herein at length.

2. On or about November 19, 2012, the defendant, Wayne Bauer, confronted plaintiff, Joseph DiNoto, at the Taco Bell parking lot, located at 1061 State Highway 73, Township of Pennsauken, County of Camden, and State of New Jersey, whereby he forced entry into plaintiff's parked vehicle and struck him twice.
3. At all times material hereto, defendant, Wayne Bauer, was on duty as a sworn officer of the law, acting in the capacity of Chief of Police for the Borough of Merchantville Police Department.
4. At all times material hereto, defendant, Wayne Bauer, was on duty as an uniformed officer of the law driving an unmarked Merchantville Police Department vehicle.
5. Defendant, Wayne Bauer, attempted to purposely, knowingly and/or recklessly cause bodily injury to plaintiff, Joseph DiNoto, and in fact did purposely, knowingly and/or recklessly cause bodily injury to plaintiff, Joseph DiNoto.
6. Defendant committed said assault by purposely, knowingly and/or recklessly by striking plaintiff, Joseph DiNoto.
7. Said acts were not consented to by plaintiff, Joseph DiNoto and said acts were not otherwise privileged.
8. As a direct and proximate result of the purposeful, knowingly, reckless, malicious, intentional and outrageous acts of the defendant, aforesaid, plaintiff, Joseph DiNoto suffered severe and permanent disability, significant disfigurement and loss of bodily functions; he suffered pain, mental anguish and emotional distress; he required medical care and attention and will in the future require medical care and attention; he was prevented from engaging in his pursuits and occupations and will in the future be prevented from engaging in his pursuits and occupations; he incurred expenses for

medical care and attention and will in the future incur expenses for medical care and attention; and he has suffered other losses and damages.

**WHEREFORE**, plaintiff, Joseph DiNoto, demands judgment against defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, for compensatory damages, punitive and/or exemplary damages, attorneys' fees, interest and costs of suit.

**SECOND COUNT**  
**Battery**

1. Plaintiff repeats and reiterates each and every allegation contained in the Parties Section as well as the First Count of the Complaint as if fully set forth herein at length.
2. The defendant's actions as set forth above constitute battery upon the plaintiff, Joseph DiNoto.
3. Said actions were done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to the plaintiff, Joseph DiNoto, and said harmful or offensive contact was not consented to by plaintiff, Joseph DiNoto, nor was the defendant's purposeful, knowingly, reckless, intentional, negligent, malicious and outrageous acts otherwise privileged.
4. Defendant, Wayne Bauer's actions were in violation of N.J.S.A. 2C:12-1A(1).
5. As a direct and proximate result of the purposeful, knowingly, reckless, malicious, intentional and outrageous acts of the defendants, aforesaid, plaintiff, Joseph DiNoto, suffered severe and permanent disability, significant disfigurement and loss of bodily functions; he suffered pain, mental anguish and emotional distress; he required medical care and attention and will in the future require medical care and attention; he was prevented from engaging in his pursuits and occupations and will in the future be

prevented from engaging in his pursuits and occupations; he incurred expenses for medical care and attention and will in the future incur expenses for medical care and attention; and he has suffered other losses and damages

**WHEREFORE**, plaintiff, Joseph DiNoto, demands judgment against defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, for compensatory damages, punitive and/or exemplary damages, attorneys' fees, interest and costs of suit.

**THIRD COUNT**  
**Intentional Infliction of Emotional Distress**

1. Plaintiff repeats and reiterates each and every allegation contained in the Parties Section as well as the First and Second Counts of the Complaint as if fully set forth herein at length.
2. The outrageous acts and deeds complained of herein, inclusive of the physical violence, were purposely, knowingly, recklessly, intentionally, negligently, maliciously and/or outrageously done by defendant with the intention of causing plaintiff, Joseph DiNoto, severe emotional distress, and were motivated by defendant's personal animosity toward plaintiff, Joseph DiNoto. Acts and deeds complained of herein, inclusive of the physical violence, were purposely, knowingly, recklessly, intentionally, negligently, maliciously and/or outrageously done by defendant with the intention of causing plaintiff, Joseph DiNoto, severe emotional distress, and were motivated by defendant's personal animosity toward Plaintiff, Joseph DiNoto.
3. The aforesaid conduct on the part of defendant was deliberate, willful, extreme, outrageous, atrocious, malicious, and wrongful, went beyond all bounds of decency, is utterly intolerable in a civilized community, and had a high degree of probability of

producing severe emotional distress in an average person.

4. The defendant caused plaintiff, Joseph DiNoto to suffer severe distress and/or emotional distress that no reasonable person should be expected to endure.
5. By reason of said deliberate, willful, malicious, outrageous, and otherwise tortious acts and deeds complained of herein, plaintiff, Joseph DiNoto has incurred damages, inclusive of special and exemplary damages, severe emotional distress physically manifesting with such sequelae including but not limited to night terrors, as well as other actual, compensatory, consequential and special losses, grievances, damages and injury.

**WHEREFORE**, plaintiff, Joseph DiNoto, demands judgment against defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, for compensatory damages, punitive and/or exemplary damages, attorneys' fees, interest and costs of suit.

**FOURTH COUNT**  
**Negligence**

1. Plaintiff repeats and reiterates each and every allegation contained in the Parties Section as well as the First through Third Counts of the Complaint as if fully set forth herein at length.
2. The above described conduct of defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, was negligent in nature.
3. As a direct and proximate result of the negligence of defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, plaintiff was severely injured, sustained great pain and suffering, was caused to expend monies for his medical care and treatment, and was prevented from attending to his normal duties and activities, all of which are presently continuing and will continue into the future.

**WHEREFORE**, plaintiff, Joseph DiNoto, demands judgment against the defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, for compensatory, special, exemplary and punitive damages, damages in tort and outrage, pre-judgment interest, attorneys' fees and costs of suit.

**FIFTH COUNT**  
**Punitive Damages**

1. Plaintiff repeats and reiterates each and every allegation contained in the Parties Section as well as the First through Fourth Counts of the Complaint as if fully set forth herein at length.
2. The above described conduct of defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, which caused the harm to plaintiff was actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.
3. Defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, knew or recklessly disregarded the fact that the above described conduct would result in serious harm to the plaintiff.
4. Defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department's conduct as described herein above gives rise to a claim for punitive damages as set forth in N.J.S.A. 2A:15-5.9.

**WHEREFORE**, plaintiff, Joseph DiNoto, demands judgment against the defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, for compensatory, special, exemplary and punitive damages, damages in tort and outrage, pre-judgment interest, attorneys' fees and costs of suit.

**SIXTH COUNT**  
**Deprivation of Constitutional Rights**

1. Plaintiff repeats and reiterates each and every allegation contained in the Parties Section as well as the First through Fifth Counts of the Complaint as if fully set forth herein at length.
2. The said assault, detention and/or wrongful threat was entirely unjustified by any actions of the plaintiff and constituted an unreasonable and excessive use of force.
3. This Cause of Action is brought by plaintiff against defendants, Wayne Bauer; Borough of Merchantville, Merchantville Police Department; John/Jane Doe(s) 1-100; ABC Corp., 1-100, for deprivation of constitutional rights within the meaning of 42 U.S.C.A. § 1983 and the Constitution of the State of New Jersey.
4. The above described actions subjected plaintiff to a deprivation of rights and privileges secured to plaintiff by the Constitution and laws of the United States, including the due process clause of the Fourteenth Amendment to the Constitution of the United States, within the meaning of 42 U.S.C.A. § 1983 and the Constitution of the State of New Jersey
5. All defendants are liable, jointly, individually, and severally, for the actions of defendants, since all defendants were present and/or in some manner involved in the events detailed above.
6. Moreover, the abovementioned defendants in this Complaint acted individually and/or agreed and/or conspired and/or acted in concert to subject plaintiff to a Deprivation of his Constitutional Rights.
7. The actions alleged above deprived Plaintiff of the following rights under the New Jersey Constitution and United States Constitution as follows:

- a. Freedom from the use of excessive and unreasonable force;
  - b. Freedom from a deprivation of liberty without due process of law;
  - c. Freedom from summary punishment;
  - d. Equal protection under the law.
8. All defendants subjected plaintiff to such deprivations by either malice or a reckless disregard of plaintiff's rights.
9. The direct and proximate result of all defendants' acts is that plaintiff has suffered severe injuries of both a temporary and permanent nature, and deprivation of his physical liberty and deprivation of his rights as a citizen of the United States.

**WHEREFORE**, plaintiff, Joseph DiNoto, demands judgment against the defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, for compensatory, special, exemplary and punitive damages, damages in tort and outrage, pre-judgment interest, attorneys' fees and costs of suit.

**SEVENTH COUNT**  
**Municipal Liability**

1. Plaintiff repeats and reiterates each and every allegation contained in the Parties Section as well as the First through Sixth Counts of the Complaint as if fully set forth herein at length.
2. On or about November 20, 2012, defendants, Borough of Merchantville and Merchantville Police Department, permitted, encouraged, tolerated and ratified a pattern and practice of:
  - a. unjustified and unreasonable Police Brutality; and/or
  - b. unjustified and unreasonable False Arrests; and/or
  - c. unjustified and unreasonable Assaults and/or Wrongful Threats with a Deadly Weapon; and/or
  - d. Policies and/or conditions that deprived citizens of their constitutional rights; and/or
  - e. Policies and/or conditions that permitted, encouraged, or allowed Malicious Prosecutions and/or abusive police practices to take place.

3. Upon reasonable information and belief, all of the above-mentioned Defendants failed to discipline, prosecute, or in any manner deal with anyone involved in this tragic event.
4. By means of inaction of investigating such occurrences, the above-mentioned defendants encouraged police officers and/or detectives/prosecutors employed by it/them to believe that unreasonable Force and/or Wrongful Threats and/or Actions that Deprive citizens of their constitutional rights and/or Malicious Prosecutions were permissible actions.
5. The above-mentioned defendants have maintained no, or an inadequate system of review of use of physical force. This system has failed to identify instances of improper use of physical force or to discipline, more closely supervise, or retrain officers who in fact improperly used such force.
6. Defendant also maintained a system that had inadequate training in police practices, including training pertaining to the law of permissible use of physical force in that such program, if any existed, failed to protect the plaintiff in this litigation.
7. The foregoing acts, omissions, and systemic deficiencies are policies and customs of all defendants listed in this count of the Complaint caused police officers of the above mentioned defendant to be unaware of the rules and laws governing permissible use of physical force and to believe that the decision to use physical force when threatening Plaintiff was entirely within the discretion of the officer and that improper usage would not be honestly and properly investigated, all with the foreseeable result that officers are more likely to use unnecessary and unwarranted physical force in situations where such force is neither necessary, reasonable under these circumstances, nor legal.

8. As a direct and proximate result of the aforesaid acts, omissions, systemic deficiencies, policies and customs of defendant improperly used unreasonable Force, and/or committed False Arrest, and/or Wrongfully threatened plaintiffs with excessive force and/or depriving plaintiff of his constitutional rights and/or improperly caused a malicious prosecution to occur all to the detriment of plaintiff.

**WHEREFORE**, plaintiff, Joseph DiNoto, demands judgment against the defendants, Wayne Bauer, the Borough of Merchantville, Merchantville Police Department, for compensatory, special, exemplary and punitive damages, damages in tort and outrage, pre-judgment interest, attorneys' fees and costs of suit.

**EIGHTH COUNT**  
**Fictitious Parties**

1. Plaintiff repeats and reiterates each and every allegation contained in the Parties Section as well as the First through Seventh Counts of the Complaint as if fully set forth herein at length.
2. The John/Jane Doe 1-100 and ABC Corp 1-100, legal entity defendants are fictitiously named defendants whose identities have not been learned, despite the exercise of reasonable diligence.
3. The fictitiously named defendants are persons or entities who are responsible for the happening of this incident through negligence and/or deliberate conduct or in other such way as to contribute to the happening of the incident.
4. As a direct and proximate result of the negligent, purposeful, knowingly, reckless, malicious, intentional and outrageous acts of the defendants, aforesaid, plaintiff, Joseph DiNoto suffered severe and permanent disability, significant disfigurement and loss of bodily functions; she suffered pain, mental anguish and emotional distress; she required

medical care and attention and will in the future require medical care and attention; she was prevented from engaging in her pursuits and occupations and will in the future be prevented from engaging in her pursuits and occupations; she incurred expenses for medical care and attention and will in the future incur expenses for medical care and attention; and she has suffered other losses and damages.

**WHEREFORE**, plaintiff, Joseph DiNoto, demands judgment against the defendants, jointly/severally for compensatory damages, punitive and/or exemplary damages, attorney's fees, interest and costs of suit.

#### **JURY DEMAND**

Plaintiff demands a trial by jury of the within issues.

#### **DEMAND FOR PRODUCTION OF DOCUMENTS**

**PLEASE TAKE NOTICE** that pursuant to R.4:18-1, plaintiff demands the production for purposes of inspection and copying at the offices of Liebling Malamut, LLC, 1939 Route 70 East, Suite 220, Cherry Hill, New Jersey 08003, within 45 days after service of the within pleadings, of the following items pertaining to the allegations of this Complaint:

1. A copy of any accident report, incident report or other documentation prepared by any agents, servants or employees of the defendants contemporaneously with the incident which is the subject matter of this complaint.
2. All insurance agreements and policies maintained by defendants effective (date of incident), in accordance with Rule 4:10-2(b).
3. Copies of any and all statements of any party to this lawsuit, or their agents, servants and employees.

4. Copies of any statements by eyewitnesses to the accident.
5. Copies of any and all expert reports on the issue of liability or damages.
6. The names, addresses and current telephone numbers of all guests, agents, servants of the defendants who were present at or near the premises at the time of the accident.
7. Copies of any and all photographs, videotapes, recordings, or any other documentary evidence of the plaintiff and plaintiff's accident whenever recorded since (date of incident), including, but not limited to, security videotapes of the premises on (date of incident) depicting the actual incident.

**DEMAND FOR ANSWERS TO FORM C AND C2 UNIFORM INTERROGATORIES**

PLEASE TAKE NOTICE that pursuant to R.4:17-1(b)(ii) plaintiff(s) demands certified answers to Form C. and C(2) of the Uniform Interrogatories set forth in Appendix to the Rules Governing Civil Practice.

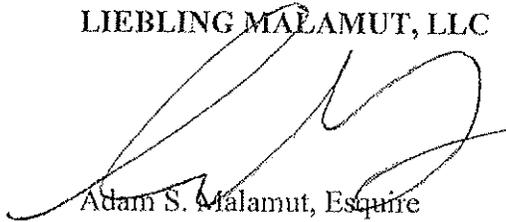
**DEMAND FOR INSURANCE INFORMATION**

PLEASE TAKE NOTICE that pursuant to R. 4:10-2(b), plaintiff hereby demands production of a copy of any and all insurance agreements under which the defendants may be covered to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

This matter in controversy between the parties is not the subject of any other action pending in any court or of a pending arbitration proceeding and no other action in any court or arbitration proceeding is contemplated.

**LIEBLING MALAMUT, LLC**

A handwritten signature in black ink, appearing to read 'AS Malamut', is written over the printed name 'Adam S. Malamut, Esquire'.

Date: 11.11.14