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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO. *L-8750-14*
Civil Action

Plaintiff,
ANTHONY TRUCHAN
vs.

COMPLAINT, JURY DEMAND and TRIAL
DESIGNATION

Defendants,
NUTLEY POLICE DEPARTMENT, OFFICER
ANDREW VAN DORN BADGE # 354,
PATROLMAN JOSEPH STEWART BADGE #
299, OFFICER RODRIGUEZ BADGE #
UNKNOWN, TOWNSHIP OF NUTLEY,
OFFICERS JOHN DOES AND JANE DOES,
Individually Named Police Officers Whose
Identities Are Unknown

2011 DEC 11 A 11:32
SUPERIOR COURT OF NJ
CIVIL DIVISION
ESSEX VICINAGE
FINANCE DIVISION
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Plaintiff, Anthony Truchan, by his attorneys, Suarez & Suarez, hereby brings this action to redress his civil and legal rights, and alleges as follows:

PARTIES

1. Plaintiff, Anthony Truchan, is a resident of Nutley, New Jersey.
2. At all times herein, defendant Nutley Police Department ("Nutley PD") was responsible for the hiring, training, supervision, discipline, retention and promotion of the agents, servants and/or employees of the police department.
3. At all times herein, defendant Patrolman Joseph Stewart Badge # 299 was an employee of the Nutley PD and was acting within the scope and authority of his employment. He is sued individually and in his official capacity as a Nutley Police Officer.
4. At all times herein, defendant Officer Andrew Van Dorn Badge # 354 was an employee of the Nutley PD and was acting within the scope and authority of his employment. He is sued individually and in his official capacity as a Nutley Police Officer.
5. At all times herein, defendant Officer Rodriguez Badge # Unknown was an employee of the Nutley PD and was acting within the scope and authority of his/her

employment. He/she is sued individually and in his/her official capacity as a Nutley Police Officer.

6. At all times herein, Defendant Township of Nutley ("the Township") owned and maintained the Nutley Police Department and employed the individual defendants sued herein.

7. At all times herein, Officers John Does and Jane Does were employees at Defendant Nutley PD and were acting within the scope and authority of their employment. They are sued individually and in their official capacities as Nutley Police Officers.

8. Notices of Claim have been served on all defendants herein.

BACKGROUND

9. During the late night of November 14, 2013, while Plaintiff was asleep, the individually named defendant police officers of the Nutley Police Department arrived at Plaintiff's residence, located at 24 Wilmington Drive, Nutley, New Jersey.

10. The individually named defendant police officers were granted access to the residence by Plaintiff's estranged wife, Grace Truchan, who was also living in the residence and with whom defendant Nutley PD was familiar.

11. Upon information and belief, the individually named defendant police officers were at Plaintiff's residence to serve him with a Temporary Restraining Order which had been obtained by Grace Truchan within hours of the defendant police officers going to the subject home.

12. The individually named defendant police officers either used or permitted the use of extreme, excessive, unnecessary and/or unreasonable force to awaken Plaintiff and physically remove Plaintiff from his residence, while Plaintiff was wearing nothing but his underwear and socks, as a result of serving the Temporary Restraining Order upon Plaintiff.

13. The individually named defendant police officers willfully, maliciously, recklessly, and unnecessarily forcibly twisted Plaintiff's arms, forcibly restrained Plaintiff and caused

Plaintiff's head to come into contact with walls as they escorted him outside and into the police vehicle.

14. Plaintiff was then transported to the Nutley PD precinct, where the individually named defendant police officers permitted the use of or used extreme, excessive and/or unnecessary force on Plaintiff.

15. While at the Nutley PD precinct, the individually named defendant police officers assaulted or permitted other officers to assault Plaintiff.

16. As a result of the use of extreme, excessive, unreasonable and/or unnecessary force, Plaintiff suffered bodily injuries and requested medical treatment.

17. Despite his injuries and numerous requests, Plaintiff was denied access to medical treatment for an unreasonable and excessive period of time before being transported to the hospital.

18. As a result of the use of unreasonable, unnecessary and excessive force, and the assault and battery by the defendant police officers, Plaintiff suffered various injuries.

19. Defendants Nutley PD and Township of Nutley have pursued a policy and custom of deliberate indifference to the rights of persons in their domain, including Plaintiff, in their procedures for training, supervising, disciplining, and removing, when appropriate, unstable and violent officers from their duties, including, but not limited to, the fact that defendants Nutley PD and Township of Nutley knew or should have known of the individual police officer defendants' tendencies to use unlawful physical force, use excessive force and otherwise commit unlawful acts. Defendants Nutley PD and Township of Nutley took no steps to correct or prevent the exercise of such unlawful and actionable tendencies displayed by their police officers.

20. Defendants Nutley PD and Township of Nutley knew or should have known of the perpetration of unlawful acts, the use of unreasonable, unnecessary and excessive force and the infliction of bodily injury to persons in their custody by its police officers were occurring,

but Defendants Nutley PD and Township of Nutley failed to take appropriate steps to eliminate such unlawful acts.

21. Defendants Nutley PD and Township of Nutley, among other deficiencies, failed to institute a bona fide procedure in which they investigated the unlawful acts of its police officers or properly investigated reports of their alleged misconduct.

CAUSES OF ACTION

FIRST COUNT: EXCESSIVE FORCE

22. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

23. The conduct and actions of Defendants Officer Andrew Van Dorn Badge # 354, Patrolman Joseph Stewart Badge # 299, Officer Rodriguez Badge # Unknown, Officers John Does and Jane Does, acting in concert and under color of law, in authorizing, directing, permitting and/or causing Plaintiff to be assaulted, deprived Plaintiff of his rights as provided for in the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

24. Defendant police officers deprived Plaintiff of his rights, as stated above, by acting intentionally, willfully, maliciously, with deliberate indifference or with reckless disregard for the natural and probable consequences of their acts, which were done without lawful justification or reason.

25. Defendant police officers acted with deliberated indifference or with reckless disregard as to whether Plaintiff's rights would be violated by their actions.

26. Defendant police officers' actions caused Plaintiff specific physical and emotional pain and suffering in violation of his rights as guaranteed under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and under 42 U.S.C. § 1983, including the right to be free from the use of excessive, unreasonable and unjustified force.

27. As a direct and proximate result of the foregoing, Plaintiff was subjected to physical and emotional pain and humiliation, was deprived of his liberty, and was otherwise damaged and injured.

SECOND COUNT: UNLAWFUL ARREST

28. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

29. Defendants Officer Andrew Van Dorn Badge # 354, Patrolman Joseph Stewart Badge # 299, Officer Rodriguez Badge # Unknown, Officers John Does and Jane Does, acting in concert and under color of law, in authorizing, directing, permitting and/or causing Plaintiff to be unlawfully arrested, deprived Plaintiff of his rights as provided for in the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

30. Defendant police officers deprived Plaintiff of his rights, as stated above, by acting intentionally, willfully, maliciously, with deliberate indifference or with reckless disregard for the natural and probable consequences of their acts, which were done without lawful justification or reason.

31. Defendant police officers acted with deliberate indifference or with reckless disregard as to whether Plaintiff's rights would be violated by their actions.

32. Defendant police officers' actions caused Plaintiff specific physical and emotional pain and suffering in violation of his rights as guaranteed under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and under 42 U.S.C. § 1983, including the right to be free from the use of excessive, unreasonable and unjustified force.

33. As a direct and proximate result of the foregoing, Plaintiff was subjected to physical and emotional pain and humiliation, was deprived of his liberty, and was otherwise damaged and injured.

THIRD COUNT: DENIAL OF MEDICAL CARE

34. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

35. Defendants Officer Andrew Van Dorn Badge # 354, Patrolman Joseph Stewart Badge # 299, Officer Rodriguez Badge # Unknown, Officers John Does and Jane Does, had an affirmative duty to immediately provide Plaintiff with access to medical attention for his injuries.

36. Defendants Officer Andrew Van Dorn Badge # 354, Patrolman Joseph Stewart Badge # 299, Officer Rodriguez Badge # Unknown, Officers John Does and Jane Does, acting under color of law, failed to request or obtain prompt and timely medical attention for Plaintiff. This failure was unreasonable, was done intentionally, willfully, maliciously, with a deliberated indifference and/or with reckless disregard for Plaintiff's medical needs, and was designed to and did cause specific physical and emotional pain and suffering in violation of Plaintiff's substantive due process rights as guaranteed under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and under 42 U.S.C. § 1983.

37. As a direct and proximate result of the foregoing, Plaintiff was subjected to physical and emotional pain and suffering, and was otherwise damaged and injured.

FOURTH COUNT: POLICE DEPARTMENT LIABILITY FOR CONSTITUTIONAL VIOLATIONS

38. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

39. Defendant Nutley PD directly caused the constitutional violations suffered by Plaintiff, and is liable for the damages suffered by Plaintiff, as a result of the conduct of the defendant police officers. The conduct of the defendant police officers were a direct consequence of the policies and practices of Defendant Nutley PD.

40. At all times relevant to this Complaint, Defendant Nutley PD had in effect policies, practices, and customs that condoned and fostered the unconstitutional conduct of the

individual defendant police officers, and were a direct and proximate cause of the damages and injuries complained of herein.

41. Defendant Nutley PD knew or should have known of the defendant police officers' propensity to engage in misconduct of the type alleged herein.

42. It was the policy of Defendant Nutley PD to inadequately and improperly investigate citizen complaints of police misconduct, and acts of misconduct were instead tolerated by Defendant Nutley PD.

43. It was the policy and/or custom of the Defendant Nutley PD to inadequately train, supervise and discipline its police officers, including defendant officers, thereby failing to adequately discourage further constitutional violations on part of the defendant officers. Defendant Nutley PD did not require appropriate training or retraining of officers who were known to have engaged in police misconduct.

44. As the result of the above, Defendant Nutley PD was the proximate and direct cause of Plaintiff's constitutional violations by the defendant police officers as alleged herein.

FIFTH COUNT: MUNICIPAL LIABILITY FOR CONSTITUTIONAL VIOLATIONS

45. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

46. Defendant Township of Nutley directly caused the constitutional violations suffered by Plaintiff, and is liable for the damages suffered by Plaintiff, as a result of the conduct of the defendant police officers. The conduct of the defendant police officers were a direct consequence of the policies and practices of Defendant Township of Nutley.

47. At all times relevant to this Complaint, Defendant Township of Nutley, acting through the Defendant Nutley PD, had in effect policies, practices, and customs that condoned and fostered the unconstitutional conduct of the individual defendant police officers and Defendant Nutley PD, and were a direct and proximate cause of the damages and injuries complained of herein.

48. Defendant Township of Nutley knew or should have known of the defendant police officers' and defendant Nutley PD's propensity to engage in misconduct of the type alleged herein.

49. It was the policy of Defendant Township of Nutley to inadequately and improperly investigate citizen complaints of police misconduct, and acts of misconduct were instead tolerated by Defendant Township of Nutley.

50. It was the policy and/or custom of the Defendant Township of Nutley to inadequately train, supervise and discipline its police officers, including defendant police officers, thereby failing to adequately discourage further constitutional violations on part of Defendant Nutley PD. Defendant Township of Nutley did not require appropriate training or retraining of police officers who were known to have engaged in police misconduct.

51. As the result of the above, Defendant Township of Nutley was the proximate and direct cause of Plaintiff's constitutional violations by the defendant police officers and Defendant Nutley PD as alleged herein.

SIXTH COUNT: CONSPIRACY

52. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

53. Defendants engaged in a conspiracy to violate Plaintiff's civil rights in violation of 42 U.S.C. § 1983 and § 1985, denying him equal protection of the law.

54. Defendants did so by unlawfully conspiring to cover up the use of unreasonable, unnecessary and excessive force against Plaintiff and the unlawful arrest of Plaintiff.

55. As the result of the above, Defendants were the proximate and direct cause of Plaintiff's constitutional violations as alleged herein.

SEVENTH COUNT: FAILURE TO INTERVENE

56. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

57. Defendants failed to intervene to prevent their police officers from violating the civil rights of Plaintiff, both during the assault itself and in failing to make proper reports to law enforcement authorities regarding the incident, in violation of 42 U.S.C. § 1983 and § 1985, denying Plaintiff equal protection of the law.

58. Defendants knew or had reason to know that unreasonable, unnecessary and excessive force was being used against Plaintiff and that other constitutional violations were being committed by their fellow law enforcement officials.

59. Defendants had a realistic opportunity to intervene to prevent harm from occurring to Plaintiff, but they failed to act to prevent harm from occurring to Plaintiff.

60. As the result of the above, Defendants were the proximate and direct cause of Plaintiff's constitutional violations as alleged herein.

EIGHTH COUNT: COMMON LAW ASSAULT AND BATTERY

61. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

62. By the conduct and actions described above, defendant police officers inflicted the torts of assault and battery upon Plaintiff. The acts and conduct of defendant police officers were the direct and proximate cause of injury and damage to Plaintiff and violated Plaintiff's statutory and common law rights as guaranteed by the laws and the Constitution of the State of New Jersey.

63. Defendant police officers' acts constituted an assault upon Plaintiff in that they intentionally attempted to injure, and did cause injury to, Plaintiff or commit a battery upon him, and further that those defendant police officers' acts represented a grievous affront to Plaintiff.

64. Defendant police officers' acts constituted a battery upon Plaintiff in that the above described bodily contacts were intentional, unauthorized, and grossly offensive in nature.

65. The actions of defendant police officers were intentional, reckless and unwarranted, and without any just cause of provocation, and defendant police officers knew, or should have known, that their actions were without the consent of Plaintiff.

66. The injuries sustained by Plaintiff were caused wholly and solely by reason of the conduct described, and Plaintiff did not contribute thereto.

67. As a direct and proximate result of the foregoing, Plaintiff was subjected to physical and emotional pain and humiliation, was deprived of his liberty, and was otherwise damaged or injured.

NINTH COUNT: COMMON LAW INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

68. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

69. Defendant police officers' conduct, in using excessive, unreasonable and unjustified force against Plaintiff, in the unlawful arrest of Plaintiff, and in the withholding of medical treatment, was extreme, outrageous and utterly intolerable in a civilized community, and was conduct which exceeded all reasonable bounds of decency.

70. Defendant police officers' conduct, described above, was intended to and did cause severe emotional distress to Plaintiff.

71. Defendant police officers' conduct was the direct and proximate cause of injury and damage to Plaintiff and violated his statutory and common law rights as guaranteed by the laws and the Constitution of the State of New Jersey.

72. As a result of the foregoing, Plaintiff was deprived of his liberty, was subject to physical and emotional pain and suffering, and was otherwise damaged and injured.

TENTH COUNT: COMMON LAW NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

73. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

74. Defendant police officers' conduct, in using excessive, unreasonable and unjustified force against Plaintiff, in the unlawful arrest of Plaintiff, and in the withholding of medical treatment, was negligent as to the emotional health of Plaintiff, and caused emotional distress to Plaintiff.

75. Defendant police officers' conduct was the direct and proximate cause of injury and damage to Plaintiff and violated his statutory and common law rights as guaranteed by the laws and the Constitution of the State of New Jersey.

76. As a result of the foregoing, Plaintiff was deprived of his liberty, was subject to physical and emotional pain and suffering, and was otherwise damaged and injured.

ELEVENTH COUNT: COMMON LAW NEGLIGENCE

77. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

78. Defendant police officers, while acting as an agent and employee of Defendant Nutley PD and/or Defendant Township of Nutley, owed a duty to Plaintiff to perform their police duties without the use of excessive, unreasonable or unjustified force. Defendant police officers' use of force against Plaintiff, when Plaintiff was unarmed and undressed and did not pose a threat of death or grievous bodily injury to defendant police officers or to others, constitutes negligence for which defendant police officers are individually liable.

79. Defendant police officers' use of force upon Plaintiff, when they had no lawful authority to arrest Plaintiff or to use force against Plaintiff, constitutes negligence for which defendant police officers are individually liable.

80. As a result of the foregoing, Plaintiff was deprived of his liberty, was subject to physical and emotional pain and suffering, and was otherwise damaged and injured.

TWELFTH COUNT: COMMON LAW VICARIOUS LIABILITY

81. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

82. The conduct of defendant police officers alleged herein occurred while they were on duty and in uniform, in and during the course and scope of their duties and functions as officers of Defendant Nutley PD and/or Defendant Township of Nutley, and while Defendant Nutley PD and/or Defendant Township of Nutley were exercising control over defendant police officers. As a result, Defendant Nutley PD and/or Defendant Township of Nutley are liable to Plaintiff pursuant to the common law doctrine of vicarious liability.

THIRTEENTH COUNT: COMMON LAW RESPONDEAT SUPERIOR LIABILITY

83. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

84. The conduct of defendant police officers alleged herein occurred while they were on duty and in uniform, in and during the course and scope of their duties and functions as officers of Defendant Nutley PD and/or Defendant Township of Nutley, and while they were acting as an agent, officer, servant and employee of Defendant Nutley PD and/or Defendant Township of Nutley. As a result, Defendant Nutley PD and/or Defendant Township of Nutley are liable to Plaintiff pursuant to the common law doctrine of respondeat superior.

FOURTEENTH COUNT: COMMON LAW NEGLIGENT SUPERVISION, RETENTION AND TRAINING

85. Plaintiff reiterates and realleges the facts stated in the preceding paragraphs as if stated fully herein.

86. Defendant Nutley PD and/or Defendant Township of Nutley negligently trained, retrained and supervised defendant police officers. The acts and conduct of defendant police officers were the direct and proximate cause of injury and damage to Plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New Jersey.

87. As a result of the foregoing, Plaintiff was deprived of his liberty, was subject to physical and emotional pain and suffering, and was otherwise damaged and injured.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands the follow relief jointly and severally against all the defendants:

1. Compensatory damages in the amount to be determined by a jury;
2. Punitive damages in the amount to be determined by a jury;
3. Attorneys' fees pursuant to 42 U.S.C. § 1983 and § 1985, and pursuant to the statutory law of the State of New Jersey;
4. Costs and interest;
5. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands trial by jury as to all issues herein.

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4, Plaintiff hereby designates Michael D. Suarez as trial counsel for the within matter.

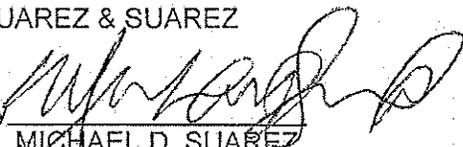
CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

I certify that a Case Information Statement is being filed simultaneously with this Complaint.

CERTIFICATION

I certify that I have no knowledge of any other action or Arbitration involving the matter in controversy, nor have I any knowledge at this time of any additional parties who should be joined in this action.

SUAREZ & SUAREZ

By 
MICHAEL D. SUAREZ

Dated: December 10, 2014