

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

JOSE A. GARCIA-HERNANDEZ
2819 Artic Avenue
Atlantic City, NJ 08109

Plaintiff,

v.

JURY TRIAL DEMANDED

ATLANTIC CITY POLICE DEPARTMENT
2715 Atlantic Avenue
Atlantic City, NJ 08401

and

New Jersey Police Officer
Henry White, III, Badge #836

and

New Jersey Police Officer
Darrin Lorady, Badge # 833

and

New Jersey Police Officer
J. Draper, Badge #817

and

New Jersey Police Officer
Garry Stowe, Badge # L-745

and

New Jersey Police Officer
Amir Hughes, Badge #813

and

New Jersey Police Officer
Douglas Scogno, Badge#J-457

and

New Jersey Police Officer
Jack Verseput, Badge#686

Defendants.

COMPLAINT

Plaintiff Jose A. Garcia-Hernandez ("Mr. Garcia"), by and through his attorneys, Gay Chacker & Mittin, P.C., hereby asserts the following Complaint against defendants, New Jersey Police Officer Henry White, III, Badge#836, New Jersey Police Officer Darrin Lorady,

Badge#817, New Jersey Police Officer Garry Stowe, Badge#L-745, New Jersey Police Officer Amir Hughes, Badge#813, New Jersey Police Officer Douglas Scogno, badge#J-457, New Jersey Police Officer Jack Verseput, Badge#686 (collectively "police officer defendants"), and the Atlantic City Police Department, (collectively "Atlantic City defendants") (collectively "defendants"), as follows:

Parties

1. Plaintiff is and was at all material times a resident of Atlantic City New Jersey.
2. Defendant Atlantic City is a Municipality of the State of New Jersey and owns, operates, manages, directs and controls the Atlantic City Police Department, which employed the defendant police officers.
3. Defendant New Jersey Police Officer Henry White, III, #836 was at all times relevant to this action an officer of the Atlantic City Police Department. He is being sued in his individual capacity as a police officer for Atlantic City.
4. Defendant New Jersey Police Officer Darrin Lorady, Badge # 833 was at all times relevant to this action an officer of the Atlantic City Police Department. He is being sued in his individual capacity as a police officer for Atlantic City.
5. Defendant New Jersey Police Officer J. Draper, Badge #817 was at all times relevant to this action an officer of the Atlantic City Police Department. He is being sued in his individual capacity as a police officer for Atlantic City.
6. Defendant New Jersey Police Officer Garry Stowe, Badge # L-745 was at all times relevant to this action an officer of the Atlantic City Police Department. He is being sued in his individual capacity as a police officer for Atlantic City.

7. Defendant New Jersey Police Officer Amir Hughes, Badge #813 was at all times relevant to this action an officer of the Atlantic City Police Department. He is being sued in his individual capacity as a police officer for Atlantic City.

8. Defendant New Jersey Police Officer Douglas Scogno, Badge#J-457 was at all times relevant to this action an officer of the Atlantic City Police Department. He is being sued in his individual capacity as a police officer for Atlantic City.

9. Defendant New Jersey Police Officer Jack Verseput, Badge#686 was at all times relevant to this action an officer of the Atlantic City Police Department. He is being sued in his individual capacity as a police officer for Atlantic City.

Jurisdiction

10. This action is brought pursuant to 42 United States Code Section 1983. Jurisdiction is based upon 28 United States Code 1331 and 1341 (1), (3) and (4). Plaintiff further invokes the supplemental jurisdiction under 28 United States Code Section 1376(a) to hear and decide claims under state law.

Facts

11. On February 7, 2009, at approximately 1:00 a.m., Mr. Garcia was sleeping in his room and he heard his landlord's son screaming and calling his name.

12. Mr. Garcia came out of his room and saw that there were four police officers assaulting Rudy German in the kitchen.

13. Mr. Garcia tried to explain to the officers that Mr. German suffers from schizophrenia.

14. The defendant officers' response was for Mr. Garcia to "shut up you fucking Hispanic"

15. Mr. Garcia then told the officers he was going to take down their names to report their behavior.

16. As Mr. Garcia turned to get a pen and paper, he was suddenly, without warning or provocation, assaulted and sprayed with pepper spray.

17. The defendant officers threw Mr. Garcia to the floor by the officers, stepped on his neck to hold him down, and officers kicked, stomped on, and punched him in the face.

18. Mr. Garcia was then taken downstairs and outside to be put into the police vehicle, where he was kicked in the back and then thrown inside the car.

19. At no time prior to this incident did Mr. Garcia provoke or resist any officers in any manner.

20. Throughout the course of this beating, none of the police officer defendants made any attempt to interrupt the assault or protect Mr. Garcia from violations of his rights by the police officer defendants.

21. Subsequent to the unlawful detention and assault of Mr. Garcia, the police officer defendants prepared and caused to be prepared paperwork intentionally misrepresenting the events that led to the beating and assault of Mr. Garcia. These misrepresentations were intentional, malicious, in bad faith, deliberately indifferent and recklessly indifferent to Mr. Garcia's rights.

22. At no time during the incident described in this complaint did Mr. Garcia violate the laws of New Jersey or any other jurisdiction or resist in any way as described in the bogus

paperwork prepared by the police officer defendants.

23. As a direct and proximate result of the actions or inactions of the defendants, Mr. Garcia suffered injuries to his head, bruised contusion Hematoma, neck and back, and abrasions to his face, among other injuries.

24. Mr. Garcia continues to suffer from neck and back pain, anxiety, fear, and mental harm.

25. As a direct and proximate result of the defendants' actions, Mr. Garcia was deprived of rights, privileges and immunities under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and in particular the right to be free from excessive force while being detained/arrested and the right to due process of law.

26. The actions and/or inactions of the defendants violated the clearly established federal constitutional rights of Mr. Garcia to freedom from use of excessive, unreasonable and unjustified force against his person the right to be free from malicious prosecution, the right to be free from false arrest and the right to due process of law.

COUNT ONE

42 U.S.C. § 1983 against Police Officer Defendants

27. Mr. Garcia hereby incorporates the allegations contained in paragraphs 1 through 26, inclusive, of his Complaint as if the same were set forth at length herein.

28. Mr. Garcia claims damages for the injuries set forth above under 42 U.S.C. Section 1983 against the police officer defendants for violation of his constitutional rights under color of law.

29. As a result of the above actions, Mr. Garcia suffered the damages as aforesaid.

WHEREFORE, plaintiff, Jose Garcia-Hernandez, demands judgment in his favor and against defendants, New Jersey Police Officers Henry White, III, Badge#836, Darrin Lorady, Badge#817, Officer Gary Stowe, Badge#L-745, Officer Amir Hughes, Badge#813, Officer Douglas Scogno, badge#J-457, and Officer Jack Verseput, Badge#686 (collectively "police officer defendants"), and the Atlantic City Police Department, (collectively "Atlantic City defendants") (collectively "defendants"), as follows: for compensatory damages, reasonable attorney fees and costs, interest; and such other and further relief as appears reasonable and just.

COUNT TWO

Supplemental Claims against Police Officer Defendants

30. Mr. Garcia hereby incorporates the allegations contained in paragraphs 1 through 29, inclusive, of his Complaint as if the same were set forth at length herein.

31. Police officer defendants assaulted and battered Mr. Garcia and intentionally inflicted emotional distress upon Mr. Garcia.

32. Police officer defendants invaded the privacy and/or cast Mr. Garcia in a false light by making it appear to others that Mr. Garcia had violated or was violating the laws of the State of New Jersey or of another jurisdiction.

33. Police officer defendants, acting in concert and conspiracy, committed acts in violation of Mr. Garcia's Constitutional Rights and against the laws of New Jersey. The police officer defendants made statements among themselves and others in order to conceal their unlawful and unconstitutional conduct and in an attempt to deny Mr. Garcia's access to the courts and to due process and to cover-up the wrongful assault and punishing of Mr. Garcia.

34. Police officer defendants performed overt acts in furtherance of the conspiracy.

35. As a result of the above actions, Mr. Garcia suffered the damages as aforesaid.

WHEREFORE, plaintiff, Jose Garcia-Hernandez, demands judgment in his favor and against defendants, New Jersey Police Officers Henry White, III, Badge#836, Darrin Lorady, Badge#817, Officer Garry Stowe, Badge#L-745, Officer Amir Hughes, Badge#813, Officer Douglas Scogno, badge#J-457, and Officer Jack Verseput, Badge#686 (collectively "police officer defendants"), and the Atlantic City Police Department, (collectively "Atlantic City defendants") (collectively "defendants"), as follows: for compensatory damages, reasonable attorney fees and costs, interest; and such other and further relief as appears reasonable and just.

COUNT THREE
Bystander Liability
42 U.S.C. § 1983 Against Police Officer Defendants

36. Mr. Garcia hereby incorporates the allegations contained in paragraphs 1 through 35, inclusive, of his Complaint as if the same were set forth at length herein.

37. Mr. Garcia believes and therefore avers that the police officer defendants encouraged and stood idly by while Mr. Garcia was assaulted and battered which deprived Mr. Garcia of his rights and privileges under the Fourth and Fourteenth Amendments of Constitution of the United States.

38. The police officer defendants failed to fulfill their obligation to intervene when they had an independent and affirmative duty to prevent the assault and battery of Mr. Garcia.

39. By encouraging and failing to intervene, the police officer defendants and effectively assisted each other in assaulting and battering Mr. Garcia and therefore deprived Mr. Garcia of his Constitutional rights and privileges under the Fourth and Fourteenth Amendments to

the Constitution of the United States.

40. As a result of the above actions, Mr. Garcia suffered the damages as aforesaid.

41. The actions of the police officer defendants were so malicious, intentional and reckless, and displayed such a reckless indifference to Mr. Garcia's rights and well being that the imposition of punitive damages is warranted.

42. The police officer made statements among themselves and others in order to conceal their unlawful and unconstitutional conduct and in an attempt to deny Mr. Garcia's access to the courts and to due process and to cover-up the wrongful beating of Mr. Garcia.

WHEREFORE, plaintiff, Jose Garcia-Hernandez, demands judgment in his favor and against defendants, New Jersey Police Officers Henry White, III, Badge#836, Darrin Lorady, Badge#817, Officer Garry Stowe, Badge#L-745, Officer Amir Hughes, Badge#813, Officer Douglas Scogno, badge#J-457, and Officer Jack Verseput, Badge#686 (collectively "police officer defendants"), and the Atlantic City Police Department, (collectively "Atlantic City defendants") (collectively "defendants"), as follows: for compensatory damages, reasonable attorney fees and costs, interest; and such other and further relief as appears reasonable and just.

COUNT FOUR

42 U.S.C. Sections 1983 against Atlantic City and Atlantic City Police Department

43. Mr. Garcia hereby incorporates the allegations contained in paragraphs 1 through 42, inclusive, of his Complaint as if the same were set forth at length herein.

44. Prior to February, 13 2009, Atlantic City and the Atlantic City Police Department developed and maintained policies and/or customs exhibiting deliberate indifference to the constitutional rights of persons in Atlantic City and the Atlantic City Police Department, which

caused the violation of Mr. Garcia's rights.

45. It was the policy and/or custom of Atlantic City and the Atlantic City Police Department to cover-up and to avoid detection of acts of officer abuse by charging victims of abuse with criminal offenses thereby attempting to prevent the victim's access to the courts and to due process.

46. It was the policy and/or custom of Atlantic City and the Atlantic City Police Department to inadequately supervise and train its officers, including the police officer defendants, thereby failing to adequately discourage further constitutional violations on the part of its officers. Atlantic City and the Atlantic City Police Department did not require appropriate in-service training or re-training of officers who were known to have engaged in misconduct.

47. It was the policy and/or custom Atlantic City and the Atlantic City Police Department to inadequately supervise and train its officers, including the police officer defendants, against a code of silence or "blue code" of officers refusing to intervene against or provide truthful information against constitutional violations and misconduct committed by their fellow officers.

48. As a result of the above described policies and customs, officers of Atlantic City and the Atlantic City Police Department, including the police officer defendants, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

49. As a result of the above actions, Mr. Garcia suffered the damages as aforesaid.

WHEREFORE, plaintiff, Jose Garcia-Hernandez, demands judgment in his favor and against defendant, Atlantic City and the Atlantic City Police Department for compensatory damages, punitive damages, reasonable attorney fees and costs, interest, and such other and further relief as appears reasonable and just:



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Attorneys for Plaintiff
Jose Garcia-Hernandez

Date: 5/25/10

GENERAL RELEASE

JOSE GARCIA-HERNANDEZ (hereinafter referred to as "RELEASOR"), for and in consideration of the total sum of one hundred sixty thousand dollars (\$160,000.00) 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, Henry White, III, Justin Draper, Darrin Lorady, Garry Stowe, Amir Hughes, Douglas Scogno, and Jack Versepud, 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, ^{relating} including, but not limited to, any claims which were or could have been asserted in the action entitled Garcia-Hernandez v. Atlantic City Police Department, et al., which was filed in United States District Court under Docket Number 10-cv-2743 (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.

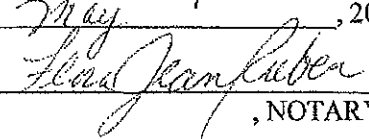
This is a complete General Release. There are no written or oral understandings or agreements directly or indirectly connected with this General Release that are not incorporated herein. This General Release shall be binding upon the heirs, executors, administrators, parents, subsidiaries, affiliates,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

I have carefully read this General Release and understand the contents thereof. I sign this General Release of my 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 15th day of May, 2013.



JOSE GARCIA-HERNANDEZ

SWORN AND SUBSCRIBED
before me this 15th day of May, 2013.


, NOTARY PUBLIC

