

LAW OFFICES OF ROBERT A. JONES
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973-994-3030
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE

TEVIN HENRY,

Plaintiff

v.

JERSEY CITY POLICE DEPARTMENT, CITY OF JERSEY CITY, POLICE CHIEF THOMAS J. COMEY, SERGEANT STEPHEN TROWBRIDGE, CAPTAIN JOHN SABO, SERGEANT ANTHONY TEDESCO, SERGEANT TIMOTHY O'BRIEN, POLICE OFFICER WILLIAM COSTIGAN, POLICE OFFICER CHRISTOPHER DALIANI, POLICE OFFICER MICHAEL J. RIVERA, POLICE OFFICER KEITH O'BRIEN, POLICE OFFICER J. LARKINS, POLICE OFFICER ANTHONY CANCEL, POLICE OFFICER VINCENT ALBERTO, POLICE OFFICER KEVIN LOWRY, POLICE OFFICER BRIAN CULLINANE, COUNTY OF HUDSON, HUDSON COUNTY PROSECUTOR'S OFFICE, HUDSON COUNTY SHERIFF'S OFFICE, NEW JERSEY TRANSIT POLICE, STATE OF NEW JERSEY, JOHN DOES 1-20 (being fictitious persons whose identities are currently unknown) and ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown),

Defendants

Civil Action No. 2:14-cv-05480-LDW-SCM

FIRST AMENDED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. SECTIONS 1982, 1983, 1985, 1988, THE UNITED STATES CONSTITUTION, AND THE NEW JERSEY STATE CONSTITUTION

Plaintiff, Tevin Henry, residing at 32 Ruby Brown Terrace, Jersey City, New Jersey,
by way of Complaint against the Defendants, hereby says:

PARTIES

1. Plaintiff, Tevin Henry is an adult residing at the above address.
2. Defendants, Police Chief Thomas J. Comey ("Comey"), Sergeant Stephen Trowbridge ("Trowbridge"), Captain John Sabo ("Sabo"), Sergeant Anthony Tedesco ("Tedesco"), Sergeant Timothy O'Brien ("Sergeant O'Brien"), Police Officer William Costigan ("Costigan"), Police Officer Christopher Daliani ("Daliani"), Police Officer Michael J. Rivera ("Rivera"), Police Officer Keith O'Brien ("O'Brien"), Police Officer J. Larkins ("Larkins"), Police Officer Anthony Cancel ("Cancel"), Police Officer Vincent Alberto ("Alberto"), Police Officer Brian Cullinane ("Cullinane") and John/Jane Does 1-20 were at all times relevant herein duly appointed superior officers, police officers, detectives, supervisors or agents, servants or employees of Defendants, City of Jersey City and Jersey City Police Department and were acting as agents, servants and/or employees of the aforesaid Defendants. They are sued individually and in their official capacity.
3. At all times mentioned herein, Defendants John Does 1-20 were duly appointed superior officers, supervisors, detectives, officers, or other persons within the Hudson County Prosecutor's office and were acting as agents, servants and employees of the Hudson County Prosecutor's office and Hudson County. They are sued individually and in their official capacity.
4. At all times mentioned herein, Defendants John Does 1-20 were duly appointed superior officers, supervisors, officers, detectives or other agents, servants and employees of Hudson County and the Hudson County Sheriff's Office and were

acting as agents, servants and employees of the aforesaid Defendants. They are sued individually and in their official capacity.

5. At all times mentioned herein, Defendants, John Does 1-20 were duly appointed superior officers, supervisors, police officers, detectives or other agents, servants or employees of the New Jersey Transit Police Department and the State of New Jersey and were acting as agents, servants and employees of the aforesaid Defendants. They are sued individually and in their official capacity.

6. At all times mentioned herein, Defendants John Does 1-20 were duly appointed superior officers, supervisors, officers, detectives or other agents, servants and employees of ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown) and were acting as agents, servants and employees of the aforesaid Defendants. They are sued individually and in their official capacity.

7. Defendants, City of Jersey City, Jersey City Police Department, County of Hudson, Hudson County Prosecutor's Office, Hudson County Sheriff's Office, New Jersey Transit Police, State of New Jersey and ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown) employed the individual Defendants mentioned above as superior officers, supervisors, detectives, officers, and agents, servants or employees of the aforesaid Defendants and are responsible for and vicariously liable for the actions committed herein by the individual Defendants.

8. The aforesaid Defendants are responsible for assuring that the individual officers obey the regulations of the Jersey City Police Department, Hudson County Prosecutor's Office, Hudson County Sheriff's Office, New Jersey Transit Police, ABC

COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown) and the laws of the United States and the State of New Jersey.

9. Defendants, Comey, Sabo, Trowbridge, Tedesco, Sergeant O' Brien and John Does 1-20 are superior officers, supervisors, officers, detectives, agents, servants or employees of the Jersey City Police Department and the City of Jersey City, who were responsible for hiring, training, supervising, controlling and disciplining all of the individual Defendants involved in the subject incident with Plaintiff on November 1, 2012.

10. Defendants John Does 1-20 are superior officers, supervisors, officers, detectives, agents, servants or employees of the County of Hudson, Hudson County Prosecutor's Office, Hudson County Sheriff's Office, State of New Jersey, New Jersey Transit Police and/or ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown) who were responsible for hiring training, supervising, controlling and disciplining all of the individual defendants involved in the subject incident with Plaintiff on November 1, 2012.

FIRST COUNT

1. Plaintiff hereby repeats and incorporates herein each and every allegation set forth in the previous paragraphs as if set forth fully herein.

2. On or about November 1, 2012, Plaintiff was the victim of wrongful and illegal conduct by the Defendants.

3. On the aforesaid date, at approximately 9:30 p.m., Plaintiff was riding on his bicycle on Winfield Avenue in the City of Jersey City, New Jersey.

4. Suddenly and without warning, one of the Defendants flashed headlights at the Plaintiff.

5. Plaintiff then heard someone yell freeze.

6. Plaintiff then saw ten (10) to twelve (12) people run towards him.

7. Plaintiff stopped his bicycle, dropped it on the ground and put his hands up.

8. Plaintiff was immediately assaulted by the Defendants.

9. The Defendants pushed his face into the ground and began hitting him with flashlights and night sticks in the face.

10. Defendants twisted his ankles and kicked and stepped on his chest. Defendants placed him in handcuffs but then did not arrest him.

11. While in custody, Defendants searched Plaintiff. After accusing him of possessing a gun, they realized that it was a flashlight. Defendants broke the flashlight.

12. Plaintiff was released a short time later.

13. Plaintiff was subjected to excessive force, brutality and assault and battery by the individual Defendants.

14. As a result of the use of excessive force, brutality and assault and battery, Plaintiff was caused to sustain severe and grievous permanent injuries resulting in damages for which he makes this claim.

15. As a result of the conduct of Defendants, the Plaintiff was deprived of his rights, privileges and immunities secured by the Constitution and Laws of the United States in violation of the 4th and 14th Amendments of the Constitution and 42 U.S.C. §1982, 1983, 1985 and 1988 and in violation of the New Jersey State Constitution and all applicable New Jersey State Laws.

16. The actions of all Defendants as described in this Complaint were performed under color of State Law.

17. The injuries suffered by Plaintiff were caused by Defendants' deliberate indifference to the protection of the rights, privileges and immunities guaranteed by the Constitution of the United States, the Constitution of New Jersey and the laws of the United States and the State of New Jersey.

18. Such indifference consists of the following:

- a. Failure to exercise due care under the circumstances;
- b. Permitting officers such as the aforesaid individuals to use excessive force under the circumstances;
- c. Failure to properly discipline and control officers known to be dangerous and causing harm to citizens of the community;
- d. Failure to properly hire, retain, supervise, restrain and train the officers who severely injured Plaintiff.

19. The governmental entities named as Defendants, City of Jersey City, Jersey City Police Department, County of Hudson, Hudson County Prosecutor's office, Hudson County Sheriff's Office, State of New Jersey, New Jersey Transit Police and ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown are directly liable and responsible for the acts of the individual Defendants because they failed to adequately hire, retain, train, supervise, discipline or in any way control the individual Defendants who assaulted Plaintiff, thereby demonstrating a policy of condoning this conduct by police officers and by obligating a policy of using force against people outside their home on the night of November 1, 2012.

WHEREFORE, Plaintiff hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

SECOND COUNT

1. Plaintiff repeats and incorporates each and every allegation set forth in the First Count as if set forth fully herein.

2. The aforesaid acts and failures to act by the Defendants were careless, reckless and negligent.

3. As a result thereof, Plaintiff sustained severe and grievous personal injuries resulting in damages for which he makes this claim.

WHEREFORE, Plaintiff hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

THIRD COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in in the First and Second Counts as if fully set forth at length herein.

2. The physical attack of Plaintiff constitutes assault and battery by the Defendants.

3. As a result of the assault and battery, Plaintiff sustained severe and grievous personal injuries resulting in damages for which he makes this claim.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

FOURTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in First, Second and Third Counts as if fully set forth at length herein.

2. Each and every of the Defendants' acts and failures to act as set forth above deprived Plaintiff of his rights and privileges afforded to him under Article I of the New Jersey Constitution.

3. Defendants acts and failures to act as set forth above deprived Plaintiff of his rights to procedural due process under Article I, paragraph 1 of the New Jersey State Constitution. This includes, but is not limited to his right to be free, independent and his right to safety and happiness.

4. The Defendants denied Plaintiff of his civil rights afforded under Article I, paragraph 12 of the New Jersey State Constitution.

5. The Defendants denied Plaintiff of his rights as a victim of a crime as afforded him under Article I, paragraph 22 of the New Jersey State Constitution, which resulted in a violation by Defendants of the New Jersey Constitution and/or the New Jersey Civil Rights Act.

6. As a result of Defendants unconstitutional conduct, Plaintiff sustained severe and grievous personal injuries and emotional anguish and distress resulting in damages for which he makes this claim.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

FIFTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in the First through Fourth Counts as if fully set forth at length herein.

2. Defendants conspired against Plaintiff to deprive him of equal protection laws as guaranteed by the State and Federal Constitution by unlawfully detaining him, beating him, arresting him, and then releasing him.

3. In furtherance of that conspiracy, none of the Defendant governmental entities, with the exception of Defendants, City of Jersey City, Jersey City Police Department, Hudson County and the Hudson County Sheriff's Office, have provided

the results of their investigation, including, without limitation, their internal affairs investigation, to Plaintiff or his attorney, and have not provided the identities of the individual officers involved to the Plaintiff or his attorney.

4. These acts and failures to act were performed under the color of State Law and embodied a policy, practice custom or procedure of the defendant public entities.

5. The acts and failures to act by the Defendants constitute a violation of Plaintiff's constitutional rights pursuant to 42 U.S.C. §1983 et seq.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

SIXTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in the First through Fifth Counts of the Complaint as if fully set forth at length herein.

2. Defendants' acts and failures to act caused Plaintiff to be subject to a state created danger in violation of his substantive due process rights under the United States Constitution and in violation of 42 U.S.C. §1983.

3. Defendants' acts and failures to act were with deliberate indifference to the protection of the rights of Plaintiff.

4. As a result of the Defendants constitutional violations, Plaintiff was caused to sustain severe and grievous personal injuries, deprivation of his constitutional rights and has sustained damages as a result thereof.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

SEVENTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in the First through Sixth Counts of the Complaint as if fully set forth at length herein.

2. Defendants' acts and failures to act caused Plaintiff to be subject to a state created danger in violation of his substantive due process rights under the New Jersey Constitution and in violation of 42 U.S.C. §1983 and all applicable state laws.

3. Defendants' acts and failures to act were with deliberate indifference to the protection of the rights of Plaintiff.

4. As a result of the Defendants constitutional violations, Plaintiff was caused to sustain severe and grievous personal injuries, deprivation of his constitutional rights and has sustained damages as a result thereof.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

EIGHTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in the First through Seventh Counts as if fully set forth at length herein.

2. The acts and failures to act by the Defendants as alleged in the preceding paragraphs constitute intentional misconduct and/or gross negligence which directly caused the harm suffered by Plaintiff.

3. The harm suffered by Plaintiff was a foreseeable consequence of the intentional misconduct and/or gross negligence of the Defendants.

4. The Defendants were grossly negligent, and acted intentionally, willfully, wantonly, maliciously, recklessly and outrageously in their disregard for the rights and safety of the Plaintiff.

5. As a direct result, Plaintiff sustained injuries and damages, including punitive damages, for which he makes this claim.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, punitive damages, attorney's fees, interest and costs of suit.

LAW OFFICES OF ROBERT A. JONES
Attorney for Plaintiff

Dated: 10/15/15

By: /s/Jessica L. Di Bianca
Jessica L. Di Bianca

CERTIFICATION

I hereby certify that to the best of my knowledge, information and belief, the within matter is not the subject of any other pending action in any court or the subject of a pending arbitration proceeding, and no other parties known to the plaintiffs at this time should be joined.

LAW OFFICES OF ROBERT A. JONES
Attorney for Plaintiff

Dated: 10/15/15

By: /s/Jessica L. Di Bianca
Jessica L. Di Bianca

LAW OFFICES OF ROBERT A. JONES
Filing Attorney: Jessica L. Di Bianca, Esq.
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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK VICINAGE

TEVIN HENRY

Plaintiff,

v.

JERSEY CITY POLICE DEPARTMENT, et al.,

Defendants.

HON. SUSAN D. WIGENTON
CIVIL ACTION NO.
2:14-cv-05480-LDW-SCM

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the within First Amended Complaint with the Clerk of the United States District Court and that a copy of these documents will be sent *via* CM/ECF to:

Stephen R. Tucker, Esq., Deputy Attorney General
State of New Jersey, Office of Attorney General
Department of Law and Public Safety
Division of Law
25 Market Street
Trenton, New Jersey 08625

Michael Dougherty, Esq.
City of Jersey City
Dept. of Law/City Hall
280 Grove Street
Jersey City, New Jersey 07302

Michael L. Dermody, Esq.
County Of Hudson, NJ
567 Pavonia Ave
Jersey City, New Jersey 07306

Randall B. Weaver, Esq.
Office of the NJ Attorney General
Division of Law, Tort Litigation Section
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625

I declare under penalty of perjury that the foregoing is true and correct.

LAW OFFICES OF ROBERT A. JONES
ATTORNEY FOR PLAINTIFF

By: s/ JESSICA L. DI BIANCA
JESSICA L. DI BIANCA, ESQ. (ID: 012012006)

Dated: October 15, 2015

GENERAL RELEASE

By this General Release dated July 15 2016, 2016, Tevin Henry, of full age,(known hereinafter as the "Releasor"), as the plaintiff in a Civil Action filed in the United States District Court for the District of New Jersey, Civil Action No. 2:14-cv-05480 does, for himself, his successors, attorneys and assigns, for the consideration described below, hereby forever release, discharge and give up, as against the defendants, City of Jersey City, Jersey City Police Department, Thomas J. Comey, Stephen Trowbridge, John Sabo, Anthony Tedesco, Timothy O'Brien, William Costigan, Christopher Daliani, Michael Rivera, Keith O'Brien, Joseph Larkins, Anthony Cancel, Vincent Alberto, Kevin Lowry, Brian Cullinane and those persons and entities designated as "John Does 1-20" and ABC CO'S 1-20, individually, jointly and severally (hereinafter known as "Releasees") every claim, cause of action, demand and right of every type and kind, known or unknown, raised or which could have been raised in the above mentioned Civil Action, including but not limited to: liens, attorney fees,(including fees pursuant to 42 USC sec. 1988) expenses and costs of suit, and damages of any kind or description.

Releasor acknowledges and agrees that any such liens, attorney's fees and expenses will be paid and satisfied from the settlement proceeds. Further, Releasor consents to a dismissal, with prejudice, of the Civil Action referenced above.

In consideration and exchange for this General Release, the City of Jersey City agrees on behalf of and for the benefit of all Releasees named in this General Release, to pay to Releasor and to his attorney Robert A. Jones, Esq., the sum of Fourteen Thousand Five Hundred Dollars (\$14,500.00.00), subject to approval, as required by law, of the Municipal Council of the City of Jersey City, in full and complete satisfaction of any and all claims made or which could have been made by the Releasor against the Releasees.

Releasor acknowledges that he has read this General Release and is signing it voluntarily. Releasor acknowledges that he has had the opportunity to review the Release with the assistance of counsel. Releasor acknowledges that there have been no promises or representations made which are not contained within this document and that the Releasor signs this General Release as his voluntary act intending to release and discharge any and all claims and obligations between the Releasor and the Releasees.

Releasor acknowledges that this Release is not an admission of liability by the Releasees or any of them.

Tevin Henry 7/15, 2016
Tevin Henry date

Subscribed and Sworn to

before me this 15 day of July

2016
Robert A. Jones

Robert A. Jones, Esq.

Attorney-at-Law, State of New Jersey