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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MATHIAS BOLTON,	:
	: Civil Action No.
	:
Plaintiff,	:
	:
v.	:
	:
CITY OF JERSEY CITY, POLICE OFFICER	:
VICTOR VARGAS, POLICE OFFICER KEVIN	:
HILL, OFFICER DOE NOS. 1-10,	:
	:
Defendants.	:
	:

COMPLAINT
AND JURY DEMAND

Plaintiff Mathias Bolton by way of Complaint, hereby avers:

PARTIES

1. Mathias Bolton is an adult individual who resides at 519 Palisade Avenue, Jersey City, New Jersey.
2. Defendant City of Jersey City is a municipality organized under the Laws of The State of New Jersey, with City Hall located at 280 Grove Street, Jersey City, New Jersey. The City has determined to provide police services through the Jersey City Police Department.
3. Defendant Police Officer Victor Vargas (sometimes hereinafter referred to as “Officer Vargas”) is an adult individual who is employed by the City of Jersey City Police Department. He is sued individually and in his official capacity.

4. Defendant Police Officer Kevin Hill (sometimes hereinafter referred to as “Officer Hill”) is an adult individual who is employed by the City of Jersey City Police Department. He is sued individually and in his official capacity.

5. Defendants Officer Does Nos. 1-10 are fictitious names for ten individuals whose identities are not presently known to the Plaintiff. They are all employed by the City of Jersey City’s Police Department. They are sued individually and in their official capacity.

JURISDICTION AND VENUE

6. This is a civil rights action brought pursuant to 42 U.S.C. Sections 1983 and 42 USC Section 1985(3), together with pendant state claims.

7. Jurisdiction in this Court is invoked pursuant to 28 U.S.C. Sections 1331, and 1343(3) for Plaintiff’s federal claims, and 28 U.S.C. Section 1367 for plaintiff’s pendent state claims.

8. The practices alleged in this Complaint were committed in the District of New Jersey, wherein, upon all reasonable belief, all of the parties reside, govern and operate. Therefore, venue in this Court is proper under 28 U.S.C. Sections 1391.

9. This Court has the authority to award costs and fees under 42 USC Section 1988.

SUBSTANTIVE ALLEGATIONS

10.. Mathias Bolton is a professional worker who works in Manhattan.

11. Mr. Bolton lives at 519 Palisade Avenue, Jersey City on the top floor.

12. On August 20, 2007, Mr. Bolton heard footsteps on the roof of his building and sounds like intruders were trying to break into the apartment building.

13. Mr. Bolton called the Jersey City Police, apparently at the North Precinct.

14. The police personnel that Mr. Bolton spoke to told him that the Police would respond.

15. Mr. Bolton went downstairs to buzz in the police because there is no working buzzer to let the officers in.

16. When Mr. Bolton went down to open the door, two men in civilian clothes rushed in and grabbed him and demanded to know whether he called the police.

17. Mr. Bolton thought these men were the intruders.

18. The men who grabbed Mr. Bolton were Officer Kevin Hill and Officer Victor Vargas.

19. Vargas and Hill did not identify themselves as police nor did they display any badges.

20. Mr. Bolton did not answer Vargas and Hill because he thought they were the intruders. They proceeded to punch and kick him.

21. Mr. Bolton heard sirens responding. Vargas and/or Hill then threw him down the exterior stairs of his building and onto the ground.

22. Vargas and Hill dragged Mr. Bolton along the pavement further injuring him.

23. Mr. Bolton saw uniformed cops approaching and asked them for help to get the men beating him to stop.

24. The uniformed police that responded to the scene include Officer Doe No. 1, Officer Doe No. 2, Officer Doe 3 and Officer Doe No. 4.

25. Officer Doe No. 1, while in a police uniform, proceeded to strike Mr. Bolton with his nightstick as he lay on the ground.

26. One of the assailants, either Victor Vargas, Kevin Hill, Officer Doe No. 1 or Officer Doe No. 2 then took off Mr. Bolton's shoe and twisted his ankle telling him "it will never be the same again."

27. Defendants Hill, Vargas, Officer Doe No. 1 repeatedly assaulted Mr. Bolton with their fists and/or weaponry.

28. After the police were done assaulting Mr. Bolton, he asked the police "Why are you arresting me? Why aren't you arresting them?" At this time, one of the plainclothes assailants identified himself as "a cop" for the first time.

29. Mr. Bolton was placed in a squad-car with handcuffs on.

30. Mr. Bolton lives with his girlfriend.

31. Mr. Bolton's girlfriend came downstairs and asked the police why were they arresting Mathias, as he lives there and he called the police and he did nothing wrong.

32. Despite being given knowledge from an independent source, the Police kept Mr. Bolton in the squad car and took him to the police station.

33. Mr. Bolton saw and felt the panic begin to set in amongst the officers when they realized what they had done (namely mistake him for a burglar and beat him).

34. At the precinct, the police handcuffed Mr. Bolton in the cell and then put one or more of his assailants in the cell with him, which intimidated him further.

35. Victor Vargas, Kevin Hill and/or Officer Doe No. 3 decided to make a horrible situation much worse by charging Mr. Bolton with two counts of aggravated assault on a police officer and one count of resisting arrest.

36. Officers Hill and Vargas and Officer Doe No. 3 created false police reports and records indicating that Mr. Bolton had committed a crime(s).

37. Mr. Bolton did not assault anyone and did not resist arrest.

38. Mr. Bolton was eventually taken to Christ Hospital and treated for his injuries sustained during the beating.

39. After being seen at the hospital, Mr. Bolton was taken to 365 Summit Avenue and spent several more hours being processed and wrongfully detained.

40. Instead of releasing Plaintiff after wrongfully assaulting him, the arresting officers engaged in a conspiracy to deprive Mr. Bolton of his Constitutional and common law rights and attempted to cover up their intentional or negligent and illegal acts.

41. These actions were taken under color of state law and embodied a policy, practice or custom or procedure of the City of Jersey City and the Jersey City Police Department.

42. The actions of the individual defendants were taken in their capacities as officials or employees of the City of Jersey City, and the Jersey City Police Department.

43. On or about February 20, 2008, the news-media reported that the Jersey City Police Department launched an internal investigation into whether numerous members of its department were using steroids and/or testosterone or other performance enhancing prescription drugs.

44. Upon information and belief, the New York City Police Department alerted the Jersey City Police Department that several of its members were abusing or using steroids.

45. The Jersey City Police Department ordered several of its members to give urine samples to its internal affairs department during the course of the steroid probe.

46. The Jersey City Police Department re-assigned personnel and/or restricted one or more of its personnel as a result of its investigation into steroid use among the force.

47. Officer Victor Vargas was investigated by Internal Affairs or was otherwise a target of their investigation during their steroid investigation and/or was tested for steroids.

48. Upon information and belief, Mr. Vargas was using a steroid, testosterone or other prescription substance when he assaulted Mr. Bolton which was a proximate cause of his attacking and beating Mr. Bolton.

COUNT ONE
(Assault and Battery)

49. Plaintiff repeats each and every allegation above as if set forth fully herein.

50. Victor Vargas, Kevin Hill and Officer Doe No. 1 committed the torts of assault and battery upon Mr. Bolton.

51. As a proximate result of the intentional actions of Officers Hill, Vargas and Officer Doe No. 1, Plaintiff Bolton suffered physical harm, mental anguish and distress.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants Officer Doe No. 1, Officer Vargas, Officer Hill and the City of Jersey City as follows:

- A. For Compensatory damages against all defendants;
- B. For punitive damages;
- C. For attorneys fees;
- D. For costs, fees and all other appropriate relief.

COUNT TWO
(False Arrest)

52. Plaintiff repeats each and every allegation set forth above as if fully set forth herein.

53. The words and actions of Officers Vargas, Hill and Officers Doe Nos. 1-4, done either with or without the color of law or the authority of a police officer of the City of Jersey City and State of New Jersey, constituted false arrest of Plaintiff.

54. As a proximate result of Officers Vargas, Hill, Officers Doe Nos. 1-4's actions, Mathias Bolton has been harmed. Said harms include, but is not limited to, a temporary deprivation of freedom, mental anguish and emotional distress and harm, and other damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants Vargas, Hill, Officers Does Nos. 1-10, the City of Jersey City, as follows:

- A. For Compensatory damages;
- B. For punitive damages;
- C. For attorneys fees;
- D. For costs, fees and all other appropriate relief.

COUNT THREE
(State Constitutional Violations)

55. Plaintiff incorporates each and every allegation above as if set forth fully herein.

56. Each and every of the Defendants' actions as set forth above have deprived Mathias Bolton of his rights and privileges afforded to him under Article I, paragraphs 1, 5, 7, 21 and 22, of the New Jersey Constitution.

57. Defendants' actions as set forth above have deprived Bolton of his rights to procedural and substantive due process under Article I, paragraph 1 of the New Jersey Constitution. This includes, but is not limited to his right to be free, independent, and his right to safety and happiness.

58. The Defendants denied Mr. Bolton of his civil rights afforded under Article I, paragraph 5 of the New Jersey State Constitution.

59. The Defendants denied Plaintiff his rights as a victim of a crime as afforded to him under Article I, paragraph 22 of the New Jersey State Constitution. By and through the above actions, defendants violated of the New Jersey Constitution and/or the New Jersey Civil Rights Act, N.J.S.A. Section 10:6-1 et seq.

60. The New Jersey State Constitution forbids the unjustifiable and unconstitutional seizure, assault and arrest of Plaintiff.

61. Each and every Defendant knew that they were violating the rights of Plaintiff as guaranteed to him in the New Jersey State Constitution.

62. As a further proximate result of defendants' unconstitutional conduct, Mr. Bolton sustained emotional anguish and distress, damage to his reputation and other injuries.

63. As a proximate result of Defendant's actions, Mr. Bolton has been harmed. Said harms include, but are not limited to, a temporary deprivation of freedom, mental anguish and emotional distress and harm, physical injury and other damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants Vargas, Hill, Officers Doe Nos. 1-10, and the City of Jersey City, as follows:

A. For Compensatory damages.

B. For punitive damages.

C. For attorneys fees;

D. For costs, fees and all other appropriate relief including a Civil Penalty under the New Jersey Civil Rights Act Section 10:6-2.

COUNT FOUR

(United States Constitutional Violations of the Fourth,
Fifth and Fourteenth Amendments)

64. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

65. Defendants' actions as set forth above violated Mathias Bolton's rights to substantive due process under the Fourteenth Amendment to the United States Constitution by subjecting him to arbitrary, capricious and unjustified detention, assault, battery, illegal search and seizure, and was denied his rights to have the Police Department train and supervise its subject officers.

66. As a proximate result of defendants' actions, Mr. Bolton was denied his due process rights afforded to him under the Fourth and Fifth Amendment of the Constitution, and has suffered damage in the form of constitutional deprivation, emotional anguish and distress, damage to his reputation and other injuries.

67. Defendant Officers Doe No. 1-10 and Officers Vargas and Hill, and the other Defendants, inflicted cruel and unusual punishment on Plaintiff, thereby violating the Eighth Amendment to the Constitution which is actionable under 42 U.S.C. 1983 and affords Plaintiff remedies.

68. Defendants' actions undertaken to deprive Plaintiff Bolton of Substantive Due Process guaranteed to him under the Fifth and Fourteenth Amendments are actionable under 42 U.S.C. Section 1983, and afford Plaintiff remedies.

69. Defendants' actions undertaken to deprive Mr. Bolton of Equal Protection guaranteed to him under the Fifth and Fourteenth Amendments are actionable under 42 U.S.C. Section 1983, and afford Plaintiff remedies. Defendants are liable for punitive damages under 42 U.S.C. Section 1983 because they were motivated by evil motive or intent

and/or they showed a reckless or callous indifference to the federally protected rights of Plaintiff, thereby violating the United States Constitution.

70. Defendants' acts also amounted to an unreasonable seizure of Plaintiff in violation of the Fourth Amendment.

71. The City of Jersey City failed to train and supervise the members of its Police Department. In doing so, the City created a policy or custom in which the responding police personnel were allowed to wrongfully seize, detain Plaintiff. Then they were permitted to and did fabricate details in their reports to try to cover up their illegal and unconstitutional deprivation of Plaintiff's civil rights and charge him with crimes he did not commit.

72. Further, the City of Jersey City failed to adequately train, discipline and wrongly retained Officer Vargas, Hill and Officers Doe Nos. 1-6.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants Officers Vargas, Hill, City of Jersey City, Jersey City Police Officers Doe Nos. 1-10, as follows:

- A. For Compensatory damages.
- B. For punitive damages.
- C. For attorneys fees;
- D. For costs, fees and all other appropriate relief.

COUNT FIVE

(Civil Conspiracy at Common Law and Statutory Law)

73. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

74. Defendants conspired against Bolton to deprive him of the equal protection of the laws by collaborating to create false police reports to attempt to cover up their deprivation of his civil rights. These actions violated both common law and 42 U.S.C 1985(3).

75. False statements were made in the reports, which were approved by supervisors, including but not limited to Officer Doe No. 4.

76. The false statements made in the subject reports, were intended to cover up the Defendants' wrongful acts - to wit the subject Jersey City Police Officers knew full well that the officers at the scene had beaten and assaulted without provocation or justification an innocent man who had the misfortune of calling the police for help.

77. A decision was made by two or more of the Defendants to further violate Plaintiff's rights by sending him to be processed and continuing to detain him and then charging him with crimes.

78. In addition, defendants Officers Vargas, Hill, and Officers Doe Nos. 1-4 participated in and advanced the conspiracy against Bolton by their actions.

79. One or more supervisors, as pled above, decided to keep Mr. Bolton in custody and then to fingerprint and process him knowing full well that he had done nothing wrong.

80. The decision made to continue to detain an innocent man, Mr. Bolton, was made in order to cover up or justify their already illegal and unconstitutional acts.

82. Officer Doe No. 5 is the precinct commander or highest ranking officer who was on-duty at the North Precinct and who oversaw the operations that evening and had actual or constructive notice that Mr. Bolton was wrongfully assaulted, and then was being detained and charged with crimes he did not commit.

83. These actions were taken under color of state law and embodied a policy, practice, custom or procedure of the City of Jersey City.

84. The actions of the individual defendants were taken in their capacities as officials or employees of the City of Jersey City and are therefore attributable to the City.

85. As a proximate result of defendants' actions, Plaintiff was injured as set forth above, and has suffered harm and mental anguish.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants Vargas, Hill, Officers Doe Nos. 1-10, and the City of Jersey City, as follows:

- A. For Compensatory damages.
- B. For punitive damages.
- C. For attorneys fees;
- D. For costs, fees and all other appropriate relief.

COUNT SIX
(Negligence)

86. Plaintiff repeats each and every allegation as if set forth fully herein.

87. The City of Jersey or John Doe No. 7 negligently hired Officer Vargas, Officer Hill and Officers Doe Nos. 1-6.

88. The City of Jersey City, John Doe No. 7 negligently trained, retained or hired Officers Vargas, Officer Hill and Officers Doe Nos. 1-6.

89. The City of Jersey City, and/or the Chief of Police negligently retained Officer Vargas, Hill and Officers Doe Nos. 1-6.

90. The aforesaid acts of the Defendants constitute negligence.

91. The aforesaid acts of negligence proximately caused Plaintiff physical and mental harm.

WHEREFORE, Plaintiff demands judgment, jointly and severally against all Defendants for compensatory damages, punitive damages, attorneys fees and costs.

DEMAND FOR JURY TRIAL

Trial by jury is demanded on all issues so triable.

Respectfully submitted,

Dated: 8/26/08

/s/ John M. Burke
By: John M. Burke, Esq.
Koles, Burke & Bustillo, LLP
2600 Kennedy Boulevard
Suite 1K
Jersey City, NJ 07306

CERTIFICATION

I am not aware of any other case arising out of the facts stated herein or any other matter which may be brought as a result of the facts stated herein.

Dated: 8/26/08

/s/ John M. Burke
John M. Burke, Esq.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
U.S. Government Plaintiff Defendant
Federal Question Diversity
Citizen of This State Another State Foreign Nation
PTF DEF PTF DEF PTF DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 362 Personal Injury - Med. Malpractice
120 Marine 315 Airplane Product Liability 365 Personal Injury - Product Liability
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability
140 Negotiable Instrument 330 Federal Employers' Liability 370 Other Fraud
150 Recovery of Overpayment & Enforcement of Judgment 340 Marine 371 Truth in Lending
151 Medicare Act 345 Marine Product Liability 380 Other Personal Property Damage
152 Recovery of Defaulted Student Loans (Excl. Veterans) 350 Motor Vehicle 385 Property Damage Product Liability
153 Recovery of Overpayment of Veteran's Benefits 355 Motor Vehicle Product Liability
160 Stockholders' Suits 360 Other Personal Injury
190 Other Contract
195 Contract Product Liability
196 Franchise

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions): JUDGE DOCKET NUMBER

Explanation:
DATE SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Provide a brief explanation of why the cases are related.

Date and Attorney Signature. Date and sign the civil cover sheet.