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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CURTIS A. RICCIARDI AND DOMINIC
J. RICCIARDI,
Plaintiffs,

vs.

ATLANTIC CITY; ATLANTIC CITY
POLICE DEPARTMENT; ATLANTIC CITY
POLICE OFFICER JAMES KNIGHTS,
JR. (A.K.A. ATLANTIC CITY POLICE
OFFICER MICHAEL KNIGHTS);
Defendants.

CASE NO: 07-CV 158 (RBK)

CIVIL ACTION

JOINT FINAL PRE-TRIAL ORDER

The following shall constitute the Final Pre-Trial Order pursuant to Rule 16 of the Federal Rules of Civil Procedure. This Final Pre-Trial Order shall govern the conduct of the trial of this case. Amendments to this order will be allowed only in exceptional circumstances to prevent manifest injustice. Counsel are urged to move to amend in a timely fashion any portion of the order that must be changed or modified between the filing of the order and the trial date.

APPEARANCES:

Joseph C. Grassi, Esquire, and Aaron T. Penrod, Esquire, attorneys for Plaintiffs.

Michael E. Riley, Esquire, attorney for defendants Officer James Knights, Jr. (a.k.a. Atlantic City Police officer Michael Knights); City of Atlantic City; and Atlantic City Police Department.

I. PLAINTIFFS' JURISDICTION AND BRIEF SUMMARY OF THE CASE

In the early morning hours of January 16, 2005, plaintiffs were patrons of the Casbah Night Club at the Trump Taj Mahal Casino Resort in Atlantic City, New Jersey. An intoxicated male patron approached both Dominic and Curt Ricciardi, who were seated near the dance floor, and started a fight with the brothers.

The intoxicated patron struck the plaintiff's non-party brother, Phillip Ricciardi, and a fight broke out. At the time, police officers from the Atlantic County Police Department were working as ACPD officers in the capacity of Special Employment Section ("SES") detail for the Casbah nightclub. These officers were Officers Joseph Rodriguez, James Michael Knights, Jr., Julie Cash, and Donna Green.

After the fight started, the SES detail officers responded. Officer Knights grabbed Dominic Ricciardi, punched him in the mouth causing severe damage to his teeth. He then pulled Dominic over a table and onto the floor.

The SES officers moved the plaintiffs outside the back exit onto a cement patio area.

When Curt followed his brother outside, he was punched by an unknown Atlantic City Police Officer. While outside, some members of plaintiffs' group were choked, restrained, and/or handcuffed by both Atlantic City police officers and casino security personnel.

When he tried to intervene, Curt was thrown head first into a concrete wall by Officer Joseph Rodriguez, and then punched several times in the head. In the course of the assault, officers James Knights, Jr. and Officer Joseph Rodriguez used improper, excessive, and illegal force against plaintiffs, including punching and throwing plaintiffs, causing plaintiffs to suffer serious physical injuries consisting of broken teeth, head/neck/back trauma, and lacerations.

Plaintiff Curtis Ricciardi has required and will require medical treatment for the neck, back, and knee injuries he sustained in this altercation.

Plaintiff Dominic Ricciardi has required and will require medical treatment for the dental injuries he sustained in this altercation.

The plaintiffs filed a complaint on January 20, 2007, and later filed an amended complaint on January 10, 2008. The counts against the City of Atlantic City and the Atlantic City Police Department are as follows: 1.) failure to supervise Special Employment Section by Atlantic City police officers through 42 U.S.C. §1983; 2.) negligent

training and supervision under state law; and 3.) deprivation of their Fourth Amendment right to freedom from unlawful and unreasonable seizure through 42 U.S.C. §1983.

The plaintiff also brings claims against Atlantic City Police Officer James "Michael" Knights, Jr. in his official capacity as follows:

1. deprivation of their Fourth Amendment right to freedom from unlawful and unreasonable seizure through 42 U.S.C. §1983;
2. assault and battery under state law; and
3. a claim through 42 U.S.C. §1983 for participating or failing to intervene during a constitutional violation.

This case was administratively terminated without prejudice on March 4, 2009 due to the bankruptcy filing of defendants Trump Taj Mahal Associates. On March 23, 2011, the Court reinstated this case.

II. DEFENDANTS' STATEMENT OF JURISDICTION AND BRIEF SUMMARY OF THE CASE:

This case arises out of an incident that occurred on January 16, 2005 at the Casbah Nightclub in the Trump Taj Mahal. Plaintiffs and several other individuals were celebrating a friends' birthday on January 15, 2005 in the evening through the early morning of January 16, 2005. Plaintiffs and their friends were at three bars in the Quarter at the Tropicana, drinking alcohol, before arriving at the Casbah. Plaintiffs were also drinking alcohol at the Casbah.

At some point in the evening, plaintiffs came into contact with an unidentified male patron and a physical altercation ensued. This physical altercation was quite large with two groups of individuals fighting. Security for the Casbah, along with four Atlantic City Police Officers, arrived to diffuse the situation and break up the fight.

Officer Knights attempted to remove one male from the fight who appeared to be bleeding from the mouth. This patron was uncooperative and refused to stop fighting. This patron has been identified as Dominic Ricciardi. Once removed from the situation, Dominic Ricciardi refused medical treatment and did not want to file any complaints against other patrons.

Officer Rodriguez was also present during this incident and assisted Officer Green escort one group of patrons out of the front of the club without incident and returned to the rear of the club where Officer Knights attempted to escort plaintiffs' party out the rear of the club. Plaintiffs' group was belligerent and only wanted to go back into the club so they could continue drinking. They demanded free drinks in exchange for not pursuing any complaints against the other patrons in the bar. Officer Rodriguez also offered medical attention to one of the plaintiffs' party, but same was refused.

Officers Green and Cash assisted in removing two females and one male: Rose Orsino, Daphne Fuller, and Joshua Fenwick. All three individuals were at the Casbah with the plaintiffs. While being asked to leave the club, Rose Orsino attempted to assault Officer Cash by throwing punches at her and kicking. Ms. Orsino also grabbed Officer Cash by the hair and made racist remarks. During this time, Joshua Fenwick attempted to grab the police radio from Officer Cash's belt. The other female, Daphne Fuller, attempted to assault Officer Green by throwing a punch at her chest. Ms. Orsino, Ms. Fuller, and Mr. Fenwick were all detained and taken to investigations in the Taj Mahal. Once detained, all three individuals became extremely apologetic and embarrassed, claiming they were unaware that Officer Cash and Green were police officers due to the large altercation. These three individuals were released without charges.

After this incident, an Internal Affairs investigation was initiated based on a letter written by counsel for plaintiffs on March 11, 2005. A thorough investigation was completed, and the charges against all officers were not sustained due to the inconsistent statements given by the plaintiffs which Sgt. Russack of Internal Affairs felt were untruthful.

Plaintiffs subsequently filed a complaint on January 10, 2007, which was amended on January 10, 2008. This Complaint contains five separate Counts.

- Count1: **City of Atlantic City** - Failure to Supervise under §1983
- Officer James Knights - Failure to Intervene and Unreasonable Seizure in violation of the 4th Amendment under §1983
- Count 2: **Officer James Knights** - Common law Assault
- Count 3: Not applicable as was alleged against Trump
- Count 4: **City of Atlantic City** - Negligent training, screening and supervision under State law.
- Count 5: Punitive damages as to all Defendants.

III. STIPULATED FACTS

1. On January 16, 2005, the plaintiffs sustained injuries while patrons of the Casbah nightclub/bar located at the Trump Taj Mahal Casino in Atlantic City, New Jersey.
2. The plaintiffs' party consisted of the following individuals: Rose Orsino, Joshua Fenwick, Daphne Fuller-Ricciardi, Phillip Ricciardi (plaintiffs' brother), and Jennifer Abbruzzese.
3. Also present were members of Trump Casbah security and four Atlantic City Police Officers: Julie Cash, Donna Green, James Michael Knights, and Joseph Rodriguez. The police officers were uniformed as police officers and working in the capacity of Atlantic City Police Officers assigned by the Atlantic City Police Department (ACPD) to work the Casbah nightclub police detail.

4. Atlantic City police officers were acting in their official capacity, the ACPD required all officers working Special Employment Section ("SES") to abide by a general order effective May 11, 2000. The general order reminded SES officers that they notwithstanding their particular detail assignment, they were still "on duty" as Atlantic City police officers and held to the same duties and standards. On January 16, 2005, an altercation occurred between an unknown intoxicated patron and members of plaintiffs' party.
5. This fight occurred on/near the Casbah dance floor.
6. An individual inside the Casbah nightclub punched out Dominic Ricciardi's teeth.
7. Three members of plaintiffs' party were handcuffed, and then released the same night without being charged.
8. The defendant officers noticed plaintiffs' injuries but did not write an injury report nor did they summon medical personnel. Plaintiffs were not arrested but ordered out of the premises.
9. The SES supervisor, Officer Kustek, was never informed of the facts of the incident before being subpoenaed to give deposition testimony.
10. The Atlantic City Police Department, Internal Affairs section, conducted a review of the Atlantic City police records system and found no record of a police response to the Casbah nightclub on January 16, 2005.

IV. PLAINTIFFS' CONTESTED FACTS

A. Facts Concerning Defendants' Liability

1. There was a duty to prevent officers from using excessive force in seizures and to write incident reports on all incidents and injuries arising during their detail shifts.
2. Casbah Security and Atlantic City Police Offices got into a fist fight with plaintiffs and other patrons.
3. After Officer James Michael Knights grabbed Dominic Ricciardi, spun him around and pulled him backwards over a table down to the ground, then punched him in the mouth.
4. Officer Knights punched out some of Dominic Ricciardi's teeth.

5. Dominic stood up and was yelling, "They knocked out my fucking tooth."
6. Officer Knights then pulled Dominic Ricciardi outside the back doors of the Casbah Night Club onto a cement patio.
7. Curtis Ricciardi went onto the back patio.
8. While outside, the plaintiff Curtis Ricciardi sustained injuries to the head neck, back and knee. This resulted from an altercation with Casbah security guards and at least one Atlantic City Police Officer.
9. Casbah security then told the Officers that there were some females in the club that needed to be removed.
10. Officers Cash and Green then re-entered the club to remove the females while Officers Knights and Rodriguez stayed with the plaintiffs on the back patio.
11. As Officers Cash and Green were extracting the other females from the club's interior, Officer Rodriguez went to assist.
12. Officer Rodriguez approached Daphne Ricciardi and forced her into a compliance hold.
13. At or about the same time and within a few feet from Daphne's fight, three Casbah security guards and at least one female SES officer pulled Rose Orsino outside the club and onto a short curved wall forming a planter. Officers handcuffed her hands behind her back.
14. During Rose's handcuffing, her tube-top shirt was pushed down exposing her bare chest.
15. When Curtis saw Officer Rodriguez place Daphne in a compliance hold, he commented in the general direction of Daphne and Rose that the officers could not act the way they were acting.
16. Joshua Fenwick then took out his cell phone and faced it toward Rose. A female police officer took the phone away and started pressing buttons.
17. When Curtis tried to intervene, Officer Rodriguez released Daphne, punched Curtis in the face and said "Mind your fucking business."
18. Curtis then heard someone say, "Get him." He then covered his head as Officer Rodriguez grabbed Curtis's left side and a Casbah security guard grabbed Curtis's right side.
19. While on both side of Curtis, Officer Rodriguez and the security guard turned Curtis around toward a concrete planter. Then, with Officer Rodriguez on the far side away from the crowd and the security guard on the right side closer to the crowd, the pair rammed Curtis, causing him to

- hit his head and then his stomach into the planter. They then rammed him into a nearby concrete wall.
20. While Curtis was wedged stomach-first over the planter wall, Officer Rodriguez and other security started punching Curtis with closed fists while he tried to cover his head.
 21. The other officers and security guards, along with the other individuals in the area of the back patio, stood and watched. No officer intervened to protect Curtis from the abuse.
 22. When the officer and guards were finished, Curtis was lying on the floor.
 23. Plaintiff Curt Ricciardi sustained neck, back, and knee injuries and lacerations from this altercation.
 24. Rose, Daphne, and Joshua were handcuffed, taken back inside the casino, downstairs, processed, evicted from the casino and released without any criminal charges.
 25. The plaintiffs, Phillip Ricciardi, and Jennifer reentered the Casbah nightclub and asked Officer Knights for his badge number. Officer Knights then replied, "Get the fuck outta my face."
 26. When the plaintiffs, Phillip, and Jennifer left the club, they left with injuries. Curtis had lacerations, head/neck/back pain, contusions and torn clothing, Dominic had a broken tooth and blood all over his face. Phillip had a severe contusion over one of his eye sockets/upper cheek area.
 27. The officers made no incident reports that night. They made no injury reports that night. The officers did not summon medical personnel.
 28. It is Officer Knights' opinion that there is a custom of the SES detail not to automatically make a report every time there is an altercation.
 29. It is Officer Knights' custom while on SES detail to make incident reports for aggravated assaults, but not for fist fights.
 30. Officer Knights never documented the fights he was involved in while on SES detail at the Casbah.
 31. Officer Cash was never aware of being required to write reports about the fights that occurred at the Casbah while working on SES detail.
 32. On or about the time of the relevant incident, fights occurred weekly at the Casbah nightclub.

B. Facts Relating To Plaintiffs' Damages

1. As a result of defendants' actions, the plaintiff Curtis Ricciardi sustained significant physical damage and pain to his head, neck, back and knee, and significant emotional/psychological damage.
2. As a result of defendants' action, the plaintiff Dominic Ricciardi sustained severe physical damages for his dental injuries requiring prosthetic treatment, and also sustained emotional/psychological damage.

V. DEFENDANTS' CONTESTED FACTS

1. Plaintiff Dominic Ricciardi was injured during his altercation with patrons at the Casbah and was not struck by Officer Knights.
2. Plaintiffs were offered medical attention but refused same.
3. Plaintiff Curtis Ricciardi was not injured due to any interaction with Atlantic City Police Officers.
4. Plaintiff Curtis Ricciardi was injured either during the altercation with patrons at the Casbah or after he left the establishment.
5. During the subject incident, Dominic Ricciardi resisted Officer Knights' attempt to break up the altercation.
6. Dominic Ricciardi swung his arms and tried to get back into the altercation with patrons at the Casbah after Officer Knights identified himself as a police officer and attempted to break up the fight.
7. Dominic Ricciardi and Curtis Ricciardi were belligerent with ACPD Officers once they were told they could not return into the Casbah to continue drinking.
8. Plaintiffs demanded free drinks at the club in exchange for not signing complaints against the patrons involved in the altercation.
9. Rose Orsino attempted to assault Detective Cash by swinging her arms and kicking as Detective Cash attempted to remove her from the Casbah.
10. Rose Orsino rushed Detective Cash and grabbed her hair while screaming, "I'm gonna fuck you up nigger bitch."
11. Daphne Fuller attempted to assault Detective Green while the Detective was trying to remove her from the premises.
12. Joshua Fenwick attempted to take the radio from Detective Cash's belt during the struggle with Rose Orsino.
13. Rose Orsino, Daphne Fuller and Joshua Fenwick apologized to Detectives Cash and Green once detained.

14. There was no male ACPD Officer present at the Casbah on January 16, 2005 with blonde spiked hair.
15. Plaintiffs were not assaulted by Officer Knights or any other employee of the City of Atlantic City.
16. No employee of the City of Atlantic City failed to intervene in any assault upon the plaintiffs.
17. Plaintiffs had been to three separate bars on the night in question prior to entering the Casbah on January 16, 2005.
18. Plaintiffs had been consuming alcohol prior to arriving at the Casbah and consumed alcohol while at the Casbah on January 16, 2005.
19. The physical altercation that took place inside the Casbah on the night in question involved a large number of patrons.

VI. WITNESSES AND SUMMARY OF TESTIMONY

A. Plaintiffs' witnesses and a summary of their testimony

The plaintiffs intend to call the following witnesses on liability and damages:

<u>Witness Name</u>	<u>Summary</u>
Rose Orsino (217 Cumberland Street, Gloucester City, New Jersey 08030)	Plaintiffs' friend, will testify as to personal observations of Dominic's injuries and their effect on him since the incident
Joshua Fenwick (520A South Eighth Street, Galloway, New Jersey 08205)	Plaintiffs' friend, will testify as to personal observations of both Officer Knights' altercation with Dominic and Curtis's altercation which produced injuries, and their effect on him since the incident; Will also testify as to personal observations of officers' refusal to intervene in Curtis's abuse
Curtis Ricciardi (306 Beach Avenue Apt.A, Atlantic	Plaintiff, will testify as to personal observations of Dominic's injuries and their effect on him since the incident; Will testify as to his own personal observations

City, New Jersey 08401)	of his injuries and their effect on him since the incident; Will testify as to his personal observations of being denied information to make an incident report; Will also testify as to personal observations of officers' refusal to intervene in his abuse
Daphne Ricciardi (306 Beach Avenue Apt.A, Atlantic City, New Jersey 08401)	Plaintiff Curtis's wife. Will testify as to personal observations of both Officer Knights' altercation with Dominic and Officer Rodriguez's altercation with Curtis which produced injuries, and their effect on them since the incident; Will also testify as to personal observations of officers refusal to intervene in Curtis's abuse
Phillip Ricciardi (203 Linda Lane, Galloway Township, New Jersey 08250)	Plaintiffs' brother, will testify as to personal observations of both Officer Knights' altercation with Dominic and Officer Rodriguez's altercation with Curtis which produced injuries, and their effect on them since the incident; Will testify as to his personal observations of being denied information to make an incident report; Will also testify as to personal observations of officers refusal to intervene in Curtis's abuse
Dominic Ricciardi (203 Blue Spruce Avenue, Egg Harbor Township, New Jersey 08232	Plaintiff, will testify as to personal observations of Curtis's injuries and their effect on him since the incident; Will testify as to his own personal observations of his injuries and their effect on him since the incident; Will testify as to his personal observations of being denied information to make an incident report; Will also testify as to personal observations of officers' refusal to intervene in Curtis's abuse
Jennifer Abbruzzese (4906 Winterbury Drive, Mays Landing, New Jersey 08330)	Plaintiffs' friend, will testify as to personal observations of both Officer Knights' altercation with Dominic and Officer Rodriguez's altercation with Curtis which produced injuries, and their effect on them since the incident; Will also testify as to personal observations of officers refusal to intervene in Curtis's abuse

Officer Joseph Rodriguez	Police custom/practice of Special Employment Section detail at the Casbah nightclub
Officer James Knights, Jr. (a.k.a. Michael Knights)	Police custom/practice of Special Employment Section detail at the Casbah nightclub
Officer Julie Cash	Police custom/practice of Special Employment Section detail at the Casbah nightclub
Officer Donna Green	Police custom/practice of Special Employment Section detail at the Casbah nightclub
Billing representative from Ronald L. D'Amore, DDS (901 Route 168, Suite 501, Turnersville, New Jersey 08012)	Proving the D'Amore medical/dental records and photographs for Dominic Ricciardi
Billing representative from Pain Specialist, P.A. (1907 New Road, Northfield, New Jersey 08225)	Proving the Dr. Antebi medical records and billing for Curtis Ricciardi regarding pain management
Billing representative from Kessler CAT Scan Associates (856 South White Horse Pike, August, #C5, Hammonton, Ne4w Jersey 08037)	Proving the Kessler CAT Scan medical bill for Curtis Ricciardi
Billing representative from Shore	Proving the Dr. Godfrey medical bill for Curtis Ricciardi

Surgical, P.A. (705 White Horse Pike, Absecon, New Jersey 08201)	
Billing representative from Hammonton Orthopedic & Sports Physical Therapy (5914 Main Street, Mays Landing, New Jersey 08330)	Proving the Oasis/Hammonton Orthopedic & Sports Physical Therapy medical bill for Curtis Ricciardi
Billing representative from Richard V. Lolla, D.C. (161 West White Horse Pike, Galloway, New Jersey 08205)	Proving the chiropractic medical bills for Curtis Ricciardi
Billing representative from Stephen A. Nurkiewicz, M.D. (120 South White Horse Pike, Broadway Square, Hammonton, New Jersey 08037)	Proving the pain management medical bills for Curtis Ricciardi
Dr. Ronald L. D'Amore, DDS, (901 Route 168 Suite 501, Turnersville, New Jersey 08012)	Medical/dental treatment as to injury received by Dominic Ricciardi

B. Individual Defendants' Objections to Plaintiffs' Witnesses:

Defendants reserve the right to object to the substance of testimony given by any witness listed above pursuant to the Federal

Rules of Evidence, although there is no objection to the calling of any witness listed above.

C. Defendants' witnesses and a brief summary of their testimony:

<u>Witness Name</u>	<u>Proposed Testimony</u>
Sgt. Michael Russack 2715 Atlantic Avenue Atlantic City, NJ 08401	Sgt. Russack will testify as to his Internal Affairs Investigations and his conversations with the plaintiffs
Gregory Green, Trump Taj Mahal 1000 Boardwalk Atlantic City, NJ 08401	Security Officer for Trump - will testify as to the incidents observed on January 16, 2005.
Adam Faris 31 Briarcliff Road Atco, NJ 08004	Security Officer for Trump - will testify as to the incidents observed on January 16, 2005.
Anthony Pitts Trump Taj Mahal 1000 Boardwalk Atlantic City, NJ 08401	Security Officer for Trump - will testify as to the incidents observed on January 16, 2005.
Gregory Santasiero 1332 Vardon Road Brigantine, NJ 08203	Security Officer for Trump - will testify as to the incidents observed on January 16, 2005.
Thomas Barnes Trump Taj Mahal 1000 Boardwalk Atlantic City, NJ 08401	Security Officer for Trump - will testify as to the incidents observed on January 16, 2005.
Anousone Vongphachanh Trump Taj Mahal 1000 Boardwalk Atlantic City, NJ 08401	Security Officer for Trump - will testify as to the incidents observed on January 16, 2005.
Phillip Clahar 33 Iroquois Drive Absecon, NJ 08205	Security Officer for Trump - will testify as to the incidents observed on January 16, 2005.
Troy Cannon	Security Officer for Trump - will testify

Trump Taj Mahal 1000 Boardwalk Atlantic City, NJ 08401	as to the incidents observed on January 16, 2005.
Dawn Anastasio Trump Taj Mahal 1000 Boardwalk Atlantic City, NJ 08401	Club Server at Casbah - will testify as to the incidents observed on January 16, 2005.
Maggy Oberg Trump Taj Mahal 1000 Boardwalk Atlantic City, NJ 08401	Club Server at Casbah - will testify as to the incidents observed on January 16, 2005.
Melissa Hocko Trump Taj Mahal 1000 Boardwalk Atlantic City, NJ 08401	Club Server at Casbah - will testify as to the incidents observed on January 16, 2005.
Shakenah Davenport 18 Idlewood Avenue Egg Harbor Twp, NJ 08234	Club Server at Casbah - will testify as to the incidents observed on January 16, 2005.
Officer Arthur Kustek 2715 Atlantic Avenue Atlantic City, NJ 08401	Officer in Charge of SES during the time the alleged incident occurred. Will testify as to the policies and procedures surrounding SES.
Officer Joseph Rodriguez 2715 Atlantic Avenue Atlantic City, NJ 08401	Officer who was present during the alleged incident and will testify as to the facts of the incident in question.
Officer James Knights, Jr. (a.k.a. Michael Knights) 2715 Atlantic Avenue Atlantic City, NJ 08401	Officer who was present during the alleged incident and will testify as to the facts of the incident in question.
Officer Julie Cash 2715 Atlantic Avenue Atlantic City, NJ 08401	Officer who was present during the alleged incident and will testify as to the facts of the incident in question.

Officer Donna Green 2715 Atlantic Avenue Atlantic City, NJ 08401	Officer who was present during the alleged incident and will testify as to the facts of the incident in question.
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A. Plaintiffs' objections to defendants' witnesses:

- a. Adam Faris
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- b. Anthony Pitts
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- c. Gregory Santasiero
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- d. Thomas Barnes
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- e. Anousone Vongphachanh
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- f. Phillip Clahar
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- g. Troy Cannon
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- h. Dawn Anastasio
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- i. Maggy Oberg
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- j. Melissa Hocko
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.
- k. Shakenah Davenport
 - i. Objection on discovery grounds. Individual was never mentioned in defendants' discovery until today.

VII. EXPERT WITNESSES**A. Plaintiffs' expert witnesses are:**

<u>Expert Name</u>	<u>Summary</u>
Andrew P. Sutor (405 N. Exeter Avenue, Margate, New Jersey 08402)	Security and safety policies and procedures
Dr. John A. Cristini, M.D. (401 New Road Suite 100, Linwood, New Jersey 08221)	Medical treatment as to Curtis Ricciardi's injuries
Donna Flannery (Fairfield Commons, Suite H- 117, 271 Route 46 West, Fairfield, New Jersey 07004)	Vocational employability specialist evaluating Curtis Ricciardi
Prof. Andrew C. Verzilli (411 North Broad Street, Lansdale, Pennsylvania 19446)	Economic analysis and earning capacity of Curtis Ricciardi

B. Defendants' objections to the qualifications of plaintiffs' expert witnesses:

Andrew P. Sutor: Defendants object to this witness testifying as an expert as there has been no Curriculum Vitae provided as was required under the Court's July 5, 2011 Scheduling Order. The Order clearly states that no expert opinion testimony will be permitted without the proper procedures being followed.

Dr. John Cristini: Defendants object to this witness being qualified as an expert or giving any opinions on this matter. However, defendants do not object to this witness being called to testify as to the treatment provided to Curtis Ricciardi.

Donna Flannery: Defendants object to this witness testifying as an expert as there has been no Curriculum Vitae provided as was required under the Court's July 5, 2011 Scheduling Order. The Order clearly states that no expert opinion testimony will be permitted without the proper procedures being followed.

Andrew Verzilli: No objection.

Dr. Ronald D'Amore: Defendants object to this witness being qualified as an expert or giving any opinions on this matter. However, defendants do not object to this witness being called to testify as to the treatment provided to Dominic Ricciardi.

C. Defendants' expert witnesses:

Dr. Robert F. Brill: Medical expert who examined Curtis Ricciardi.

Dr. Todd M. Kelman: Medical expert who examined Curtis Ricciardi.

D. Plaintiffs' objection to the qualifications of defendants' expert witnesses:

Plaintiff objects to the qualifications of Dr. Brill, based upon the failure of defendant to comply with discovery requests regarding the numerous cases Brill testified in, and for which he was sued for malpractice. Plaintiff further objects to Brill's testimony based upon Brill's retirement from the practice of medicine for 10 years, and subsequent devotion to defense advocacy.

Plaintiff objects to the testimony of Dr. Kelman. Dr. Kelman was proffered by Trump as an expert when the case was stayed via bankruptcy. Since the moment the case was reactivated against the current defendants, and Trump is out of the case, this is the first indication from defendant of their reliance on Dr. Kelman.

VIII. EXHIBITS

A. Plaintiffs' Exhibits

Plaintiffs intend to introduce the following exhibits into evidence (list by numbers with a description of each exhibit):

P-1	Video of Ricciardi-Casbah site inspection
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P-2	Witness's diagram of interior of Casbah nightclub (Dep. Ex., Orsino-1)
P-3	Witness's diagram of exterior of Casbah nightclub (Dep. Ex. Orsino-2)
p-4	Witness's diagram of interior of Casbah nightclub (Dep. Ex. Fenwick-1)
P-5	Witness's diagram of interior of Casbah nightclub (Dep. Ex. Abbruzzese-1)
P-6	Witness's diagram of exterior of Casbah nightclub (Dep. Ex. Abbruzzese-2)
P-7	Witness's diagram of interior of Casbah nightclub (Dep. Ex. Abbruzzese-3)
P-8	Atlantic City Police Department Rules Manual of Rules and Regulations eff. date 9/23/91
P-9	Atlantic City Police Department Rules & Regulations: General Order, Special Employment Section, effective dated May 11, 2000
P-10	The Atlantic City Police Department Special Employment Vouchers dated 01/15/05 for the following Atlantic City Police Officers: Cash; Green; Knights, Jr.; Rodriguez
P-11	Answers to Donimic Ricciardi's First Set of Interrogatories on Behalf of Defendant, James Michael Knights
P-12	Curtis Ricciardi 2005 wage information(P128-142) which consists of unemployment check stubs for 2005
P-13	Curtis Ricciardi 2004 wage information (P97-127) which consists of 2004 check stubs as well as state and federal tax returns
P-14	Curtis Ricciardi 2003 wage information (P87-P96) which consists of 2003 check stubs as well as 2003 state and federal tax returns
P-15	Curtis Ricciardi 2002 wage information (P84-P86) which consists of 2002 W-2s
P-16	Medical bill from Dr. Morris Antebi, M.D., on 11/27/06 and 01/03/07 (statement date 01/12/07) for Curtis Ricciardi regarding pain management (one page)

P-17	Medical bill from Dr. George Godfrey, M.D., (Shore Surgical, P.A.) for initial office visit on 02/14/05 (statement date 03/17/05) for Curtis Ricciardi (one page)
P-18	Medical bill from Kessler CAT Scan Associates for (09/01/06) for Curtis Ricciardi (one page)
P-19	Medical bills from Oasis/Hammonton Orthopedic & Sports Physical Therapy for treatment from 01/25/05 to 04/01/05 (statement date 04/13/05) for Curtis Ricciardi (three pages)
P-20	Medical bills from Dr. Richard V. Lolla, D.C., for chiropractic treatment for Curtis Ricciardi from 08/10/05 to 09/26/05 (statement date 06/05/07) for Curtis Ricciardi (one page)
P-21	Medical bills from Dr. Stephen A. Nurkiewicz, M.D., treating physician for back treatment from 03/07/05 to 07/12/06 (statement date 09/07/06) for Curtis Ricciardi (three pages)
P-22	Kessler Memorial Hospital bill for emergency room treatment for Curtis Ricciardi on 01/17/05 (two pages)
P-23	Medical business report from Dr. George Godfrey, M.D., from Shore Surgical Professional Association, for Curtis Ricciardi dated February 14, 2005 (six pages)
P-24	Medical business report of MRI findings of lumbar spine dated 02/23/05 for Curtis Ricciardi (one page)
P-25	Medical business report of MRI findings of cervical and thoracic spine dated 03/09/05 for Curtis Ricciardi (five pages)
P-26	Medical business records of ER/Triage of Kessler Hospital on 01/17/05 for Curtis Ricciardi (15 pages)
P-27	Medical business report from Dr. Richard V. Lolla, D.C. for chiropractic treatment from 08/10/05 to 08/24/05 for Curtis Ricciardi (14 pages)
P-28	X-rays of the cervical, thoracic and lumber of Curtis Ricciardi areas taken at Kessler Memorial Hospital on 01/17/05
P-29	MRI scans of the cervical and thoracic areas of Curtis Ricciardi requested by Dr. Steven Nurkiewicz, M.D. and performed at Kessler Medical Imaging on 03/09/05
P-30	MRI scans of lumbar spine of Curtis Ricciardi requested by Dr. George Godfrey, M.D., and performed on 02/23/05

P-31	X-rays of cervical and lumbar areas of Curtis Ricciardi taken at Lolla Chiropractic on 08/10/05
P-32	Expert report of Dr. Robert Brill
P-33	Curriculum Vitae of Dr. Robert Brill
P-33	Photographs of Dominic Ricciardi depicting dental injuries (2)
P-34	D'Amore medical/dental records for Dominic Ricciardi (P248-P251)
P-35	National CAP Index Report Report on serious crime and assaults in the area of the Taj Mahal prepared by Andrew P. Sutor on 11-25-08
P-36	Publication: "Assaults in and Around Bars," Scott, U.S. Justice Department, (2002)
P-37	Publication: "Preventing Customer Altercations in Nightclubs," Berkley, California State University, (1998)
P-38	Publication: Model Policy, "Use of Force", International Association of Chiefs of Police, (2006)
P-39	Publication: FBI Uniform Crime Reports, U.S. Justice Department, Clarksburg, W. VA (2003);
P-40	Publication: "Police Operations", West Publishing Co., St. Paul, MN (1976)
P-41	Publication: "Handbook: Security Standards for the Hospitality Industry", (2008)
P-42	Publication: Dictionary of Occupational Titles (D.O.T.), last published in 1991 by the U. S. Department of Labor
P-43	Publication: New Jersey Department of Labor, Occupational Employment Statistics Survey (OES) , August, 2007 Edition,
P-44	Publication: Classification of Jobs, Volume 2000, published by Elliot & Fitzpatrick
P-45	Publication: The Revised Handbook for Analyzing Jobs, published by the U. S. Department of Labor
P-46	Publication: Occupational Outlook Quarterly, Fall 2007

Plaintiffs reserve the right to introduce into evidence any exhibit listed by any other party in this order.

B. Defendants' objections to plaintiffs' exhibits

- P-1: Objection, hearsay, relevancy, authentication, and prejudicial.
- P-2: Objection, relevancy and authentication.
- P-3: Objection, relevance and authentication.
- P-4: Objection, relevance and authentication.
- P-5: Objection, relevance and authentication.
- P-6: Objection, relevance and authentication.
- P-7: Objection, relevance and authentication.
- P-8: Objection, hearsay.
- P-9: Objection, hearsay.
- P-10: Objection, hearsay, relevance and authentication
- P-16: Objection, hearsay.
- P-17: Objection, hearsay.
- P-18: Objection, hearsay.
- P-19: Objection, hearsay.
- P-20: Objection, hearsay.
- P-21: Objection, hearsay.
- P-22: Objection, hearsay.
- P-23: Objection, hearsay.
- P-24: Objection, hearsay.
- P-25: Objection, hearsay.
- P-26: Objection, hearsay.
- P-27: Objection, hearsay.
- P-28: Objection, hearsay.
- P-29: Objection, hearsay.
- P-30: Objection, hearsay.
- P-31: Objection, hearsay.
- P-34: Objection, hearsay.
- P-35: Objection, hearsay, relevance and authentication.
- P-36: Objection, hearsay, relevance and authentication.
- P-37: Objection, hearsay, relevance and authentication.
- P-38: Objection, hearsay, relevance and authentication.
- P-39: Objection, hearsay, relevance and authentication.
- P-40: Objection, hearsay, relevance and authentication.
- P-41: Objection, hearsay, relevance and authentication.
- P-42: Objection, hearsay, relevance and authentication.
- P-43: Objection, hearsay, relevance and authentication.
- P-44: Objection, hearsay, relevance and authentication.
- P-45: Objection, hearsay, relevance and authentication.
- P-46: Objection, hearsay, relevance and authentication.

C. Defendants' exhibits

D-1	Expert report of Dr. Robert Brill
D-2	Curriculum Vitae of Dr. Robert Brill
D-3	Expert Report of Dr. Todd Kelman
D-4	Curriculum Vitae of Dr. Todd Kelman
D-5	Plaintiffs' January 10, 2007 Complaint
D-6	Plaintiffs' January 10, 2008 Amended Complaint
D-7	Dominic Ricciardi - Interrogatory Answers Propounded by the City of Atlantic City
D-8	Dominic Ricciardi - Interrogatory Answers Propounded by Trump Taj Mahal
D-9	Curtis Ricciardi - Interrogatory Answers Propounded by the City of Atlantic City
D-10	Curtis Ricciardi - Interrogatory Answers Propounded by Trump Taj Mahal
D-11	March 11, 2005 Letter from Grassi to Chief Snellbaker
D-12	Gregory Green Deposition Transcript
D-13	Trump Incident Report for Rose Orsino
D-14	Trump Incident Report for Joshua Fenwick
D-15	Trump Incident Report for Daphne Fuller
D-16	4/6/1988 Certificate of Commendation to Officer Knights
D-17	7/5/1988 Letter of Commendation from Lynwood Smith regarding Officer Knights
D-18	3/26/1990 Certificate of Commendation to Officer Knights
D-19	5/31/1990 Certificate of Commendation to Officer Knights
D-20	7/19/1993 Certificate of Commendation to Officer Knights
D-21	5/9/2004 Certificate of Commendation to Officer Knights
D-22	10/3/2005 Letter from Deputy Chief Joseph Macellaro to Chief Snellbaker commending Officer Knights
D-23	10/12/2005 Letter from Chief Snellbaker to Officer Knights regarding commendation
D-24	9/17/2007 Certificate of Commendation to Officer Knights
D-25	Recorded Statement of Dominic Ricciardi - IA
D-26	Recorded Statement of Curtis Ricciardi - IA

D-27	Recorded Statement of Daphne Fuller - IA
D-28	Recorded Statement of Rose Orsino - IA
D-29	Recorded Statement of Jennifer Abbruzzese
D-30	Internal Affairs Investigative Report

Defendants reserve the right to introduce into evidence any exhibit listed by any other party in this order.

D. Plaintiffs' objections to defendants' exhibits

D-1: Objection, hearsay
D-2: Objection, hearsay
D-3: Objection, hearsay and discovery grounds. Dr. Kelman was never provided by the defendants as a potential witness for plaintiff's discovery
D-4: Objection, hearsay and discovery grounds. Dr. Kelman was never provided by the defendants as a potential witness for plaintiff's discovery
D-11: Objection, hearsay and relevance
D-12: Objection, hearsay
D-13: Objection, hearsay
D-14: Objection, hearsay
D-15: Objection, hearsay
D-16: Objection, hearsay and relevance
D-17: Objection, hearsay and relevance
D-18: Objection, hearsay and relevance
D-19: Objection, hearsay and relevance
D-20: Objection, hearsay and relevance
D-21: Objection, hearsay and relevance
D-22: Objection, hearsay and relevance
D-23: Objection, hearsay and relevance
D-24: Objection, hearsay and relevance
D-25: Objection, hearsay
D-26: Objection, hearsay
D-27: Objection, hearsay
D-28: Objection, hearsay
D-29: Objection, hearsay
D-30: Objection, hearsay

IX.LAW

I. Plaintiff

a. Individual Officers' Liability under §1983

Successful claims for constitutional violations under §1983 require the plaintiff to prove: 1.) a deprivation of rights secured by the United States Constitution or federal law, and 2.) that the deprivation was proximately caused by a person acting under color of state law. County of Sacramento v. Lewis, 523 U.S. 833 (1998); Kneipp v. Tedder, 95 F. 3d 1199, 1204 (3rd Cir. 1996).

The individual defendants act under color of state law whenever they exercise official power: "The involvement of a state official...plainly provides ... state action whether or not the action ... was officially authorized or lawful." Flagg Bros. v. Brooks, 436 U.S. 149, 157 n.5 (1978). Such conduct "attaches only to those wrongdoers 'who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.'" National Collegiate Athletic Ass'n. v. Tarkanian, 488 U.S. 179, 191 (1988) (quoting Monroe v. Pape, 365 U.S. 167, 172 (1961)). There is no dispute that the individual defendants in this case acted under color of state law.

The individual officers are liable for failure to intervene to prevent the deprivation of a constitutional right when: 1.) the individual officers violated their constitutional right to be free

from excessive force; 2.) the officers had a duty to intervene; 3.) the officers had a reasonable opportunity to intervene; and 4.) the officers failed to intervene. See 3rd Circuit Model Civil Jury Charge 4.6.2, Section 1983 Claims. In *Smith v. Mensinger*, the 3rd Circuit Court held that "a police officer has a duty to take reasonable steps to protect a victim from another officer's use of excessive force, even if the excessive force is employed by a superior." 293 F.3d 641, 650 (C.A.3 Pa. 2002).

The Fourth Amendment permits law enforcement officers engaged in an arrest to use "reasonable force." *Graham v. Connor*, 490 U.S. 386 (1989). Their actual intent or motivation is irrelevant; the standard is whether the decision to deploy the level of force was objectively reasonable under the circumstances. *Estate of Smith v. Marasco*, 318 P.3d 497, 515 (3rd Cir. 2003).

The proofs will demonstrate that the officers acted with excessive force in punching Dominic Ricciardi in the face, knocking out teeth, punching his brother Curtis Ricciardi in the face, grabbing Curtis, ramming Curtis headfirst into a concrete wall, and then punching Curtis until he fell on the floor. The plaintiffs were unarmed and did not resist arrest at the time of the abuse. When Officer Rodriguez beat Curtis Ricciardi, the other officers had an opportunity to intervene but they failed to do so. The proofs will be

that the officers' choice to not intervene in an assault upon an unarmed, non-resisting individual was objectively unreasonable under the circumstances.

b. City Liability under §1983

Atlantic City is liable under §1983 where the plaintiffs' deprivation resulted from: 1.) the custom of inadequate supervision and training of its SES detail officers of Atlantic City Police Department; 2.) the failure to supervise and train amounted to deliberate indifference to the fact that inaction would obviously result in the violation of the right against unreasonable searches and seizures; or 3.) the failure to adequately train and supervise proximately caused the violation of the plaintiffs' constitutional right. Furthermore, the city is liable if the custom is a widespread, well-settled practice that constitutes a standard operating procedure of Atlantic City. See 3rd Circuit Model Civil Jury Charge 4.6.7, Section 1983 Claims.

The United States Supreme Court "has repeatedly refused to extend sovereign immunity to counties" and other political subdivision. Northern Ins. Co. of New York v. Chatham County, Ga., 126 S. Ct. 1689, 1693 (2006).

Notwithstanding a municipality's immunity from a respondeat superior theory of liability, "municipalities and other local

government units [are] included among those persons to whom §1983 applies." Monell v. Department of Social Services of City of New York, 436 U.S. 658, 42 690 (1978) (overruling in relevant part *Monroe v. Pape*, 365 U.S. 167 (1961)).

The Court in Robinson v. Winslow Tp. held that "municipal liability can be imposed under §1983 only when execution of government's policy or custom ... inflicts injury of which plaintiff complains." 973 F.Supp. 461, 467 (D.N.J. 1997) The *Robinson* court further observed that "deliberate indifference ... may be established where harm in question occurred on numerous previous occasions and municipal officials failed to respond appropriately." *Id.*

An official policy or custom "may be inferred 'from informal acts or omissions of supervisory municipal officials.'" Colburn v. Upper Darby Tp., 838 F.2d 663, 671 (3rd Cir. 1988)(emphasis in original)(overruled in part on other grounds) (quoting Estate of Bailey by Oare v. County of York, 768 F. 2d 503, 506 (3d. Cir. 1985). More particularly, a custom of omissions can be established by way of "laxity regarding the supervision and monitoring..." *Id.* The 3rd Circuit observed in Beck v. City of Pittsburgh that "[b]ecause there is no formalized tracking of complaints for individual officers, a jury could find that officers are guaranteed repeated impunity, so long as they do not put themselves in a position to be observed by someone

other than other police officers." 89 F.3d 966, 974 (3rd Cir. 1996). The *Beck* court also cited Bielevicz v. Dubinon in saying "it is logical to assume that continued official tolerance of repeated misconduct facilitates similar unlawful actions in the future." 915 F.2d 845, 851 (3rd Cir. 1990).

The proofs will demonstrate an unreasonable tolerance to file incident and injury reports regarding altercations involving the SES detail at Casbah nightclub. The proofs will also show the lack of diligence and oversight by the Atlantic City Police Department in training its SES detail to file incident and injury reports, thereby creating a dangerous condition that tolerated conduct excessive force.

c. Individual liability under plaintiffs' state law claims of assault and battery

The individual officers are liable for an assault if they made "an attempt or offer to touch or strike the person of another with unlawful force or violence." See State of New Jersey Model Civil Jury Charges, 3.10. The individual officers are liable if they committed an "actual touching or striking of the person, with the intent to do so, with unlawful force or violence." *Id.* The force need not be of a particular degree. State v. Maier, 13 N.J. 235, 242 (1953); State v. Adamo, 9 N.J. Super. 7, 9 (App. Div. 1950); Clayton v. New Dreamland

Roller Skating Rink, Inc., 14 N.J. Super. 390, 398 (App. Div. 1951); Falconiero v. Maryland Gas Co., 59 N.J. Super. 105, 109 (App. Div. 1960).

The proofs will demonstrate that the individual defendants committed assault and battery against the plaintiffs when they used excessive force against them during their apprehension.

d. Atlantic City's negligent training and supervision under State law

Generally, an employer is not liable for an employee's criminal or tortious act, whether negligent or intentional, unless the act was committed during the course of, and within the scope of, employment. An exception exists in the case of a claim of negligent hiring. An employer may be held responsible for the criminal or wrongful acts of its employee, even if those acts occur outside the scope of employment, if the employer was negligent in the manner in which it hired, supervised or retained an inappropriate or unfit employee. DiCosala v. Kay, 91 N.J. 159 , 173 (1982). Liability may be imposed on an employer who fails to perform its duty to train and supervise employees. Tobia v. Cooper Hosp. Univ. Med. Ctr., 136 N.J. 335, 346 (1994).

A negligent supervision claim lies directly against the employer, and an employer may be liable for acts committed by its

employees even if they occur outside the scope of his employment. Hoag v. Brown, 397 N.J. Super. 34, 54 (App.Div. 2007) An employer is liable for negligent supervision if the employer was negligent or reckless in its supervision of the employees' activities. Restatement (Second) of Agency, §213(c) comment a (1957).

Atlantic City is liable for negligence under state civil rights law under N.J.S.A. 10:6-2 if: 1.) the custom of inadequate supervision and training of its SES detail officers of Atlantic City Police Department; 2.) the failure to supervise and train amounted to deliberate indifference to the fact that inaction would result in the violation of the right against unreasonable searches and seizures, and 3.) the failure to adequately train and supervise proximately caused the violation of the plaintiffs' constitutional right.

The proofs will demonstrate an unreasonable tolerance to file incident and injury reports regarding altercations involving the SES detail at Casbah nightclub. The proofs will also show the lack of diligence and oversight by the Atlantic City Police Department in training its SES detail to file incident and injury reports, thereby creating a dangerous condition that tolerated conduct excessive force.

2. Defendants: LAW

1. Qualified Immunity: Good Faith

Courts have determined that qualified immunity will protect police officers, like other governmental officials, from liability for civil damages where their conduct in performing a discretionary function "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)). The reasoning behind this immunity is to provide government officials room for mistakes in judgment and protects "all but the plainly incompetent or those who knowingly violate the law." Orsatti, 71 F.3d at 484.

This doctrine essentially permits officers to perform their duties "without the fear of constantly defending themselves against insubstantial claims for damages" and to allow the public to recover damages where officers "unreasonably invade or violate individual rights under the Constitution and the laws of the United States." Id. at 483 (citing Anderson v. Creighton, 483 U.S. 635, 639, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)).

Therefore, the initial inquiry is whether or not the force used by Officer Knights was objectively reasonable. The 4th Amendment

permits the use of "reasonable" force. Graham v. Connor, 490 U.S. 386, 396 (1989). "[E]ach case alleging excessive force must be evaluated under the totality of the circumstances." Sharrar v. Felsing, 128 F.3d 810, 822 (3d Cir. 1997); see also Rivas v. City of Passaic, 365 F.3d 181, 198 (3d Cir. 2004) ("While some courts 'freeze the time frame' and consider only the facts and circumstances at the precise moment that excessive force is applied, other courts, including this one, have considered all of the relevant facts and circumstances leading up to the time that the officers allegedly used excessive force.").

When a Court is determining reasonableness it "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Graham, 490 U.S. at 396 (emphasis added). Other relevant factors may include "the possibility that the persons subject to the police action are violent or dangerous, the duration of the action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time." Kopec v. Tate, 361 F.3d 772, 777 (3d Cir. 2004). In

the instant matter, the only force used by Officer Knights was an attempt to separate the plaintiffs from the large physical altercation they were involved in with other patrons at the Casbah. Officer Knights did not strike either of the plaintiffs and did not use any force that was unreasonable given the circumstances.

2. Negligent Training, Supervision and Screening under State Law.

Plaintiffs contend that they have filed a claim under The New Jersey Civil Rights Act, but defendants dispute this claim. The applicable law regarding plaintiffs' claims in Count 4 of the Complaint lies under the realm of Title 59 and its provisions regarding immunity, good faith and the threshold necessary to recover for any alleged injury.

The Appellate Division in Denis v. City of Newark, 307 N.J. Super. 304 (App. Div. 1998) addressed this cause of action in connection with Title 59 and said:

"Prior to the enactment of the Tort Claims Act, our highest court observed, in a similar vein, that claims against police departments for negligent training and supervision of police officers furnish separate and independent grounds for liability against a public entity under principles of [***10] vicarious liability. See McAndrew v. Mularchuk, 33 N.J. 172, 184, 162 A.2d 820 (1960). In that case, after a police officer shot an unarmed juvenile in the back during a police pursuit, the plaintiff filed a complaint against the municipality for failing to provide firearm training to the officer. In the course of

its decision, the Supreme Court cited with approval numerous out-of-state cases where liability was imposed upon a municipality for injuries inflicted by police officers, not only for their active wrongdoing, but for the municipality's own independent negligence in hiring and/or retaining an officer knowing he had dangerous propensities. McAndrew v. Mularchuk, supra, 33 N.J. at 187-89, 162 A.2d 820." Denis at 312.

"The Tort Claims Act did not change the well established body of law enunciated in *McAndrew*. Indeed, the Attorney General's Task Force on Sovereign Immunity Report, which accompanied *N.J.S.A. 59:2-2*, indicates that "[t]his provision specifically adopts the general concept of vicarious liability expressed by the New Jersey Supreme Court in *McAndrew*." Margolis & Novack, *Claims Against Public Entities*, 1972 Task Force Comment on *N.J.S.A. 59:2-2* (1997). The report also states that "this section provides a flexible liability provision which will permit the courts to adapt the principles established in this act to the particular circumstances of the cases coming before them." *Ibid.* Denis at 313.

Based on the above, it is clear that a cause of action for negligent hiring and/or training does exist in New Jersey Law and same is subject to the Tort Claims Act if alleged against a public entity or employee. Therefore, Title 59 requires dismissal of this cause of action due to the failure of plaintiffs to file a Tort Claim Notice.

A. Injury Threshold Under Title 59

N.J.S.A. 59:9-2(c) and (d) speak directly to the limitation on damages for pain and suffering in all claims filed against a public entity and public employees.

N.J.S.A. 59:9-2

c. No punitive or exemplary damages shall be awarded against a public entity.

d. No damages shall be awarded against a public entity or public employee for pain and suffering resulting from any injury; provided, however, that this limitation on the recovery of damages for pain and suffering shall not apply in cases of permanent loss of a bodily function, permanent disfigurement or dismemberment where the medical treatment expenses are in excess of \$ 3,600.00. For purposes of this section medical treatment expenses are defined as the reasonable value of services rendered for necessary surgical, medical and dental treatment of the claimant for such injury, sickness or disease, including prosthetic devices and ambulance, hospital or professional nursing service.

The above statute directly defines the verbal threshold for injuries a plaintiff claims was caused by a public entity or public employee. The New Jersey Supreme Court has further defined and interpreted this statute to provide guidelines and principles for state Courts to follow in evaluating whether a plaintiff has met this verbal threshold.

The seminal case in this area is Brooks v. Odom, 150 N.J. 395 (1997). The New Jersey Supreme Court in Brooks has held that in order for a plaintiff to recover damages against a public employee or

entity, they must show a permanent loss of a bodily function that is substantial. The cause of action pled by plaintiffs in Count 4 (State Law negligent training, supervision and screening) is subject to the provisions of Title 59 and the heightened injury threshold.

B. N.J.S.A. 59:3-3 Good Faith

Title 59 provides that a "public employee is not liable if he acts in good faith in the execution or enforcement of any law." N.J.S.A. § 59:3-3. In ascertaining whether good faith immunity exists, the New Jersey Supreme Court opined that "[a] public employee either must demonstrate 'objective reasonableness' or that he behaved with 'subjective good faith.'" Alston v. City of Camden, 168 N.J. 170, (N.J. 2001). This defense, however, is unavailable when a public employee is liable for false arrest. Toto v. Ensuar, 196 N.J. 134, (N.J. 2008) The New Jersey Supreme Court further clarified that "[t]he same standard of objective reasonableness that applies in Section 1983 actions also governs questions of good faith arising under the Tort Claims Act." Wildoner v. Borough of Ramsey, 162 N.J. 375, 744 A.2d 1146, 1153 (N.J. 2000). Therefore, if the alleged tort and alleged constitutional violation arise out of the same conduct, and the Court concludes that no constitutional violation occurred because the public employee's actions were objectively reasonable,

Title 59's good faith provision applies and bars prosecution of the tort claim.

X. MISCELLANEOUS

(Set forth any additional stipulations of counsel and/or motions on other matters which require the action of the court.)

(Set forth any notice required to be given under Rules 404(b), 609(b), and 807, Fed. R. Evid.)

Plaintiffs reserve the right to file motions in limine to preclude items unknown at this time.

Defendants reserve the right to file motions in limine to preclude items unknown at this time.

XI. NON-JURY TRIALS (IF APPLICABLE)

Not applicable

XII. JURY TRIALS (IF APPLICABLE)

No later than seven days before the first scheduled trial date or at such time as the court may direct:

(a) Each party shall submit to the judge and to opposing counsel a trial brief or memorandum with citations and authorities and arguments in support of the party's position on all issues of law.

(b) Each party shall submit to the judge, with a copy to opposing counsel written requests for charge to the jury.

Supplemental requests to charge that could not have been anticipated may be submitted any time prior to the arguments to the jury. All

requests for charge shall be on a separate page or pages plainly marked with the name and number of the case; shall contain citations of supporting authorities, if any; shall designate the party submitting the same; and in the case of multiple requests by a party, shall be numbered in sequence.

(c) IF you have the capability, the Proposed Requests for Charge should be submitted on computer disk, Word Perfect 5.1 format. A paper original, for filing, as well as a paper copy, must be provided in any event.

EACH OF THESE ITEMS IS TO BE FILED PRIOR TO THE FIRST TRIAL DATE EVEN IF THE CASE IS CONTINUED.

COUNSEL ARE ON NOTICE THAT FAILURE TO PROVIDE TIMELY COMPLIANCE WITH THE REQUESTS OF PART X AND PART XI MAY RESULT IN THE POSTPONEMENT OF TRIAL AND THE ASSESSMENT OF JUROR AND OTHER COSTS AND/OR THE IMPOSITION OF SANCTIONS.

XIII. CONCLUDING CERTIFICATION

We hereby certify by the affixing of our signature to this Joint Final Pre-Trial Order that it reflects the efforts of all counsel and that we have carefully and completely reviewed all parts of this order prior to its submission to the court. Further, it is acknowledged that amendments to this Joint Final Pre-Trial Order will not be permitted except where the Court determines that manifest injustice would result if the amendment is not allowed.

Attorneys for Plaintiffs:

Attorney for Defendants
City of Atlantic City and
Officer Knights:



AARON T. PENROD, ESQUIRE



MICHAEL E. RILEY, ESQUIRE

Entry of the foregoing Joint Final Pre-Trial Order is hereby APPROVED
this _____ day of _____, 2012.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES MAGISTRATE JUDGE