

MICHAEL K. JEANES
Clerk of the Superior Court
By Eva Perez, Deputy
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Description	Amount
CASE# CV2011-013044	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00
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9
10 **IN THE SUPERIOR COURT OF MARICOPA COUNTY**
IN AND FOR THE STATE OF ARIZONA

11 TERRY DANIELS,
12 Plaintiff,

13 vs.

14
15 THE CITY OF PHOENIX, a governmental
16 entity; JACK HARRIS and JANE DOE
17 HARRIS, husband and wife; COREY
SHIBATA and JANE DOE SHIBATA,
18 husband and wife; JASON HAMERNICK
and JANE DOE HAMERNICK, husband
19 and wife; AARON LENTZ and JANE DOE
LENTZ, husband and wife; JOHN AND
20 JANE DOES I-X, inclusive; ROE
CORPORATIONS I-X, inclusive;

21 Defendants.

No. CV2011 013044

CIVIL RIGHTS COMPLAINT
PURSUANT TO 42 U.S.C. § 1983

22 For his complaint against Defendants, Terry Daniels hereby alleges as follows:

23 **JURISDICTIONAL STATEMENT**

24 1. At the time of the incidents alleged herein, the plaintiff, Terry Daniels, was a resident
25 of Maricopa County, Arizona.

26 2. The events alleged herein occurred in Maricopa County, Arizona.
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1 3. Pursuant to A.R.S. § 12-821.01, a Notice of Claim was served on Defendants on or
2 about December 16, 2010. No response was received, and the Notice of Claim was deemed denied
3 after sixty days.

4 4. The City of Phoenix is a municipal corporation organized under the laws of the State
5 of Arizona.

6 5. Public Safety Manager Jack Harris was, at all relevant times, an employee of the City
7 of Phoenix, and he resides in Maricopa County, Arizona.

8 6. Officer Jason Hamernick was, at all relevant times, an employee of the City of
9 Phoenix Police Department, and he resides in Maricopa County, Arizona.

10 7. Officer Corey Shibata was, at all relevant times, an employee of the City of Phoenix
11 Police Department, and he resides in Maricopa County, Arizona.

12 8. Officer Aaron Lentz was, at all relevant times, an employee of the City of Phoenix
13 Police Department, and he resides in Maricopa County, Arizona.

14 9. At all relevant times, Defendants Harris, Shibata, Hamernick and Lentz were acting
15 for and on behalf of their respective marital communities. If Defendants Harris, Shibata, Hamernick
16 and Lentz are married his wife, Jane Doe Harris, Jane Doe Shibata, Jane Doe Hamernick and Jane
17 Doe Lentz are added to this complaint. It is further alleged that if Jane Doe Harris, Jane Doe
18 Shibata, Jane Doe Hamernick and Jane Doe Lentz exist they were at all relevant times residents of
19 Maricopa County, Arizona.

20 10. At all relevant times, Officers Hamernick, Shibata and Lentz were acting under the
21 color of their authority as officers of the Phoenix Police Department.

22 11. That the true names, identities or capacities, whether individual, corporate, political,
23 associate, or otherwise, of the Defendants DOES I through X, are unknown to Plaintiff, who
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1 therefore sues said Defendants by such fictitious names. Plaintiff is informed and does believe, and
2 thereupon alleges, that each of the Defendants designated herein as DOE is responsible in some
3 manner for the events and happenings herein referred to; that Plaintiff will ask leave of this Court to
4 amend this Complaint to insert the true names and capacities of said Defendants DOES I through X
5 when same have been ascertained by Plaintiff, together with appropriate charging allegations, and to
6 join Defendants in this action.
7

8 12. That the true names or capacities, whether individual, corporate, associate, political,
9 or otherwise, of Defendants ROE CORPORATIONS I through X are unknown to Plaintiff, who
10 therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and
11 thereupon alleges that each of the defendants designated herein as ROE CORPORATION is
12 responsible in some manner for the vents and happenings herein referred to; that Plaintiff will ask
13 leave of this Court to amend this Complaint to insert the true names and capacities of said
14 Defendants ROES I through X when same have been ascertained by Plaintiff, together with
15 appropriate charging allegations, and to join Defendants in this action;
16

17 13. That at all times herein mentioned, Defendants, DOES I through X, and/or ROE
18 CORPORATIONS I through X, inclusive, were the agents, partners, servants, employees and
19 contractors of Defendants, and each of them were acting within the course and scope of their
20 agency, employment, or contract
21

22 14. This is an action at law to redress the deprivation under color of statute, ordinance,
23 regulation, custom or usage of a right, privilege and immunity secured to Plaintiff by the Fourteenth
24 Amendment to the United States Constitution and 42 U.S.C. § 1983, and arising under law and
25 statutes of the State of Arizona.
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27 15. Venue is proper in this court.

GENERAL ALLEGATIONS

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2 16. At 9:30 p.m., July 1, 2010, Terry Daniels was riding his bicycle northbound on 11th
3 Avenue, approaching West Grant Street in Phoenix, Arizona.

4 17. Daniels was on his way to American Veterans' Post 65, located two blocks away, at
5 1303 West Grant Street.

6 18. At the same time, Officers Hamernick and Shibata were riding in a two-man patrol
7 car on 11th Avenue. As they passed Daniels, they mistook him for Todd Richardson, Sr.
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9 19. Todd Richardson, Sr., is an individual who was arrested on November 24, 2009, by
10 Officers Hamernick and Shibata. He is a suspected drug dealer.

11 20. After passing Daniels, Officers Hamernick and Shibata executed a U-turn to make
12 contact with him. As the officers approached Daniels the second time, they realized he was not Todd
13 Richardson, Sr.
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15 21. In police report DR2010-00932938, the officers described the events that followed:

16 a. The officers claim Daniels changed direction and began walking southbound
17 on 11th Avenue, after they executed a U-turn.

18 b. The officers claim Daniels was walking in the middle of the road, after they
19 executed a U-turn.

20 c. The officers claim Daniels's arms were "shaking uncontrollably" and that his
21 eyes were "glazed over" as they pulled alongside him.

22 d. The officers claim they believed Daniels was having a medical or drug-
23 related emergency and that they decided to conduct a wellness stop.
24

25 e. The officers claim they attempted to speak with Daniels, but he did not
26 respond.
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1 f. The officers then exited their vehicle and approached Daniels. As they did so,
2 they claim Daniels reached into his pocket and drew a six-inch knife, which he began
3 waiving at them menacingly.

4 g. The officers then drew their firearms and began commanding Daniels to
5 surrender for arrest.

6 h. The officers claim Daniels backed away from them, attempted to hide behind
7 a telephone pole, and then continued backing away toward Grant Street.

8 i. The officers claim Daniels eventually dropped to his knees and got down on
9 his knees. As Officer Hamernick kicked the knife away, Daniels then stood up and began
10 running westbound on Grant Street.

11 j. The officers claim that Officer Hamernick tackled Daniels at the northeast
12 corner of 11th Avenue and Grant Street, that Daniels got back up, and that Hamernick then
13 tackled him a second time.

14 k. The officers claim that Hamernick delivered 4-6 knee strikes to Daniels's
15 upper thigh, while Shibata delivered an additional 6-8 knee strikes. Officer Aaron Lentz then
16 arrived on the scene and assisted them in handcuffing Daniels.

17 22. Officer Lentz arrived on scene after the attack had begun and assisted in the arrest.

18 23. Richard Pinkney witnessed the arrest as he waited at a bus stop at 11th Avenue and
19 Grant Street.

20 24. Richard Pinkney has signed a statement attesting to the following:

21 "The officers...approached the black man from behind near the center of 11th
22 Avenue, near the north curb line of Grant. The two officers began striking the
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1 black man while he was still standing. The black man went to the roadway
2 and assumed a fetal position. The two officers continued striking him and
3 kicking him. Though I could not see what, if anything, was in the hands of the
4 officers, they appeared to be striking him with something other than their fists
5 based on the movement of their arms. In addition, they were striking him with
6 their fists and kicking him. The officers then drug the black man to the
7 northeast corner of 11th Avenue and Grant where they remained until
8 emergency medical personnel arrived.”
9

10
11 25. Officers Hamernick, Shibata and Lentz covered up the details of the attack on
12 Daniels and conspired to present a false description of events in order to evade responsibility for the
13 attack.
14

15 26. Daniels was transported by ambulance to St. Joseph's hospital.

16 27. At St. Joseph's, Daniels was diagnosed with a brain hemorrhage, a fracture to his left
17 eye socket, six fractured ribs, fractures in his lower back, and bruises along his head, face, arms,
18 sides and stomach. His left eye was swollen shut.

19 28. Daniels was subsequently referred to Fusion Rehabilitation, because of ongoing pain
20 in his back.
21

22 29. At his screening with Fusion Rehabilitation, Daniels rated his pain as a "9" on a scale
23 of 1-10, with 10 being the worst pain possible.

24 30. Daniels wore a brace for over a month, to relieve pressure on his back.

25 31. Daniels treated twice a week at Fusion Rehabilitation, from September 21, 2010, to
26 November 30, 2010.
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1 32. During his recovery, Daniels experienced significant physical and emotional pain.

2 33. To date, Daniels's medical bills are as follows:

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4 Provider	Dates of Service	Charges
5 Ambulance	07/01/2010	\$936.31
6 St. Joseph's Hospital	07/01/2010 to 07/02/2010	\$33,427.00
7 Empower Emergency Physicians	07/29/2010	\$379.00
8 Southwest Neuro-Imaging	07/02/2010 to 07/29/2010	\$601.00
9 Hanger Prosthetics	07/01/2010	\$241.00
10 No Appt MD	11/04/2010	\$207.00
11 AZ Otolaryngology Consultants	07/02/2010	\$145.00
12 St. Joseph's Hospital	07/29/2010	\$2,972.00
13 Empower Emergency Physicians	07/29/2010	\$379.00
14 Fusion Rehabilitation	09/21/2010 to 11/30/2010	\$3,665.00
		\$42,952.31

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18 **FIRST CAUSE OF ACTION**
19 **Violation of 42 U.S.C. § 1983 – Excessive Force**
20 **(All Defendants)**

21 34. All previous allegations are incorporated herein by this reference.

22 35. Federal law provides that a plaintiff may recover damages if the defendant, acting
23 under color of state law, deprives him of a right guaranteed by the Constitution. Daniels has a
24 Fourth Amendment right to be secure in his person and free from excessive force.

25 36. The Fourth Amendment is applicable to the state via the Fourteenth Amendment.

26 37. At the time of the attack, Daniels was unarmed.
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1 38. At the time of the attack, Daniels was not a threat to Officers Hamernick, Shibata or
2 Lentz.

3 39. At the time of the attack, Daniels was not a threat to the public.

4 40. At the time of the attack, Daniels was not a threat to himself.

5 41. An officer is only privileged to use such force as a reasonable officer would believe
6 to be necessary under the circumstances.

7 42. A reasonable officer would not have attacked Daniels in the manner employed by
8 Officers Hamernick, Shibata and Lentz.

9 43. Officer Hamernick deprived Daniels of his constitutional rights by subjecting him to
10 excessive force.

11 44. Officer Shibata deprived Daniels of his constitutional rights by subjecting him to
12 excessive force.

13 45. Officer Lentz deprived Daniels of his constitutional rights by subjecting him to
14 excessive force.

15 46. Officers Hamernick, Shibata and Lentz were joint tortfeasors and are secondarily
16 liable for each other's actions.

17 47. The City of Phoenix is liable for the actions of Officers Hamernick, Shibata and
18 Lentz for failing to properly train its officers, failing to discipline its officers after prior incidents of
19 excessive force, and failing to properly investigate claims of excessive force.
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24 SECOND CAUSE OF ACTION
25 Violation of 42 U.S.C. § 1983 – Unreasonable Search and Seizure
26 (All Defendants)

27 48. All previous allegations are incorporated herein by this reference.

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TENTH CAUSE OF ACTION
Aggravated Negligence
(Defendants Hamernick, Shibata and Lentz)

109. All previous allegations are incorporated herein by this reference.

110. Officers Hamernick, Shibata and Lentz had a duty towards Daniels, as law enforcement officers.

111. Officers Hamernick, Shibata and Lentz acted with reckless indifference to the safety of Daniels when they inflicted serious bodily injury upon him.

112. A reasonable person would have recognized that the acts of Officer Hamernick, Shibata and Lentz created an unreasonable risk of harm, and that it was highly probable that harm would result from such actions.

113. As a result of the officers' reckless and wanton conduct, Daniels was injured in an amount to be proven at trial.

ELEVENTH CAUSE OF ACTION
Negligent Training
(Defendants Harris and City of Phoenix)

114. All previous allegations are incorporated herein by this reference.

115. Jack Harris and the City of Phoenix have a duty to provide adequate training to City of Phoenix police officers.

116. Jack Harris and the City of Phoenix breached their respective duties by failing to adequately train Officers Hamernick, Shibata and Lentz on use of force and arrest procedures, among other topics.

117. Officers Hamernick and Shibata were previously involved in another case of excessive force and unlawful arrest against two Sudanese men, Angock Atem and Aluk Bak-Deng. The City of Phoenix settled a subsequent lawsuit brought by the two men for \$150,000.

1 118. Despite the confirmed improprieties of Officers Hamernick and Shibata, Defendants
2 Jack Harris and the City of Phoenix failed to provide adequate training to the two officers, and failed
3 to take any steps to protect the public from the two officers.
4

5 119. The failure of Jack Harris and the City of Phoenix to properly train Phoenix police
6 officers amounts to deliberate indifference toward the rights and safety of citizens of Phoenix.

7 120. Jack Harris and the City of Phoenix have a policy of inadequately investigating
8 citizen complaints of excessive force, failing to give training to officers accused of excessive force,
9 failing to take corrective action against officers who have used excessive force, and failing to
10 supervise officers accused of excessive force.

11 121. As a result of the failures of Jack Harris and the City of Phoenix, Daniels was injured
12 in an amount to be proven at trial.
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14 TWELFTH CAUSE OF ACTION
15 Negligent Supervision
16 (Defendants Harris and City of Phoenix)

17 122. All previous allegations are incorporated herein by this reference.

18 123. Jack Harris and the City of Phoenix have a duty to provide adequate supervision to
19 City of Phoenix police officers.

20 124. Jack Harris and the City of Phoenix breached their respective duties by failing to
21 adequately supervise Officers Hamernick, Shibata and Lentz.

22 125. Officers Hamernick and Shibata were previously involved in another case of
23 excessive force and unlawful arrest against two Sudanese men, Angock Atem and Aluk Bak-Deng.
24 The City of Phoenix settled a subsequent lawsuit brought by the two men for \$150,000.
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1 126. Despite the confirmed improprieties of Officers Hamernick and Shibata, Defendants
2 Jack Harris and the City of Phoenix failed to provide adequate supervision to the two officers, and
3 failed to take any steps to protect the public from the two officers.
4

5 127. The failure of Jack Harris and the City of Phoenix to properly supervise Officers
6 Hamernick and Shibata amounts to deliberate indifference toward the rights and safety of citizens of
7 Phoenix.

8 128. Jack Harris and the City of Phoenix have a policy of inadequately investigating
9 citizen complaints of excessive force, failing to give training to officers accused of excessive force,
10 failing to take corrective action against officers who have used excessive force, and failing to
11 supervise officers accused of excessive force.
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13 129. As a result of the failures of Jack Harris and the City of Phoenix, Daniels was injured
14 in an amount to be proven at trial.
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16 THIRTEENTH CAUSE OF ACTION
17 Intentional Infliction of Emotional Distress
(Defendants Hamernick, Shibata and Lentz)

18 130. All previous allegations are incorporated herein by this reference.

19 131. By repeatedly striking Daniels despite the absence of any threat from Daniels,
20 Officers Hamernick, Shibata and Lentz acted in an extreme and outrageous manger.

21 132. Officers Hamernick, Shibata and Lentz acted intentionally and recklessly.

22 133. The conduct of Officers Hamernick, Shibata and Lentz caused Daniels to suffer
23 severe emotional distress.
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25 134. As a result of the actions of Officers Hamernick, Shibata and Lentz; Daniels was
26 injured in an amount to be proven at trial.
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1 144. As a result of Defendants' conduct, Daniels has been injured in an amount to be
2 proven at trial.

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4 SIXTEENTH CAUSE OF ACTION

5 Aiding and Abetting
6 (All Defendants)

7 145. All previous allegations are incorporated herein by this reference.

8 146. Defendants engaged in tortious conduct for which they are liable to Daniels.

9 147. Each defendant is aware of the tortious actions of the other defendants.

10 148. Each defendant provided substantial assistance or encouragement to each other
11 defendant with the intent of promoting, concealing, or furthering the conduct.

12 149. As a result of Defendants' respective actions, Daniels has been injured in an amount
13 to be proven at trial.

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15 SEVENTEENTH CAUSE OF ACTION

16 Conspiracy
17 (All Defendants)

18 150. All previous allegations are incorporated herein by this reference.

19 151. Defendants engaged in tortious conduct for which they are liable to Daniels.

20 152. Defendants entered into an agreement to participate in, conceal, or assist one another
21 in engaging in such tortious activities.

22 153. As a result of Defendants' collective conspiracy, Daniels has been injured in an
23 amount to be proven at trial.

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1 EIGHTEENTH CAUSE OF ACTION

2 Punitive Damages

3 (All Defendants)

4 154. All previous allegations are incorporated herein by this reference.

5 155. Defendants acted with an evil mind toward Daniels.

6 156. Defendants intended to cause injury to Daniels.

7 157. Defendants' wrongful conduct has been motivated by spite or ill will.

8 158. Defendants engaged in a course of conduct, knowing that it posed a substantial risk
9 of significant harm to others.

10 159. Daniels is entitled to exemplary damages to deter such conduct.

11 JURY DEMAND

12 160. Daniels requests a trial by jury.

13 WHEREFORE, Daniels respectfully prays for the following relief:


14 A. General and special damages in an amount to be proven at trial;

15 B. Punitive damages; and

16 C. Such other relief as the Court deems just and proper.

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21 **RESPECTFULLY SUBMITTED** June 13, 2011.

22 **CURRY, PEARSON & WOOTEN, PLC**

23 
24 _____
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