

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TRAVIS HERMIZ,

Plaintiff,

Case No. 2016-\_\_\_\_\_-NO

v.

Hon. \_\_\_\_\_

CITY OF ROYAL OAK POLICE CHIEF  
CORRIGAN O'DONOHUE, in his official  
and individual capacity, JOHN DOE  
OFFICERS 1-3 and JANE DOE OFFICER 1,  
in their individual capacities,

Defendants.

\_\_\_\_\_/

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff TRAVIS HERMIZ, by and through his attorneys, GIROUX RATTON PC, states the following for his Complaint against the above-named Defendants:

1. This is a civil action for money damages brought pursuant to 42 U.S.C. §§ 1983 and 1988 and the Fourth Amendment to the United States Constitution against Defendant CITY OF ROYAL OAK POLICE CHIEF CORRIGAN O'DONOHUE, in his official and individual capacity, and Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, in their respective individual capacities.

2. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

3. This action likewise asserts a state law claim for wrongful arrest and seizure against Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, over which this Court has supplemental jurisdiction.

4. Venue lies in the Eastern District of Michigan pursuant to 28 U.S.C. §1391(b). The events took place within the City of Royal Oak in Oakland County which is located within the Southern Division of the Eastern District of Michigan.

5. At all relevant times, TRAVIS HERMIZ was a citizen of the United States residing in Farmington Hills in Oakland County, Michigan.

6. Upon information and belief, Defendant CITY OF ROYAL OAK POLICE CHIEF CORRIGAN O'DONOHUE is citizen of the State of Michigan and was at all relevant times employed as the Police Chief for the Royal Oak Police Department.

7. To the extent Defendant O'DONOHUE is sued in his official capacity, this constitutes a claim for municipal liability against the City of Royal Oak pursuant to *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694 (1978).

8. Upon information and belief, Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, are citizens of the State of Michigan and were at all relevant times employed as a police officers for the Royal Oak Police Department.

9. On St. Patrick's Day, March 17, 2016, at the time of the events alleged in this Complaint, Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 were at all times acting in their respective individual capacities and within the scope of their employment as police officers employed by the Royal Oak Police Department and under color of law.

#### **FACTUAL ALLEGATIONS**

10. At approximately 5:00 p.m. on St. Patrick's Day, March 17, 2016, TRAVIS HERMIZ was standing near the bar inside the Black Finn restaurant and bar on Main St. in Royal Oak, Michigan.

11. Between approximately 5:00 p.m. and approximately 7:30 p.m., Mr. Hermiz was inside Black Finn socializing and celebrating with friends.

12. While at Black Finn, shortly before the subject incident, Mr. Hermiz was standing near two women with whom he had been talking because he was friends with their older brother.

13. Mr. Hermiz then saw a person named Stuart engage in an altercation with one of these women.

14. Mr. Hermiz immediately approached and confronted Stuart, who was still engaged verbally with the woman, at which time Stuart head-butted Mr. Hermiz.

15. Mr. Hermiz then began to defend himself against Stuart and to engage physically with him to protect himself and the two women from further assault at which time Mr. Hermiz was grabbed by the Black Finn bouncers, who escorted him to the entrance and handed him into the custody of Royal Oak Police Officers, who were waiting at the door.

16. It appears that the Black Finn bouncers may have mistaken Mr. Hermiz for the individual named Stuart who had attacked the two girls and then head-butted Mr. Hermiz.

17. In fact, Mr. Hermiz had done nothing to be subjected to expulsion from Black Finn or to being seized by the Royal Oak Police, let alone subjected to the unconstitutional excessive use of force by Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 that followed immediately thereafter.

18. Mr. Hermiz being escorted to the front door of Black Finn and turned over into the custody of Royal Oak Police Officers and the use of excessive force upon him by Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 on the sidewalk in front of Black Finn is well-documented on multiple cell phone videos with audio.

19. These cell phone videos uniformly reflect that Hermiz offered no active resistance to the Royal Oak Police Officers upon being turned over to their custody or at any relevant time thereafter.

20. Immediately upon exiting onto the sidewalk in front of Black Finn, while being held and forcefully escorted by Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, JOHN DOE OFFICER 1 had a Taser pressed into the center of Mr. Hermiz's back thereby sending electric current into Mr. Hermiz' body.

21. Simultaneously, while Plaintiff was being tased by JOHN DOE 1, JOHN DOE OFFICER 2 threw his arms around Mr. Hermiz's neck and tried to pull him down to the ground in a horse-collar-type maneuver.

22. As JOHN DOE OFFICER 2 endeavored to spin Mr. Hermiz counter-clockwise down to the ground in a headlock with his right arm around Mr. Hermiz's head, JOHN DOE OFFICER 2's arms slipped over and off his head and this initial takedown attempt was unsuccessful.

23. JOHN DOE OFFICER 2 then immediately grabbed and raised Mr. Hermiz's right leg, which caused Mr. Hermiz to pitch and tumble forward.

24. Simultaneous with JOHN DOE OFFICER 2 grabbing Mr. Hermiz's right leg, JOHN DOE OFFICER 1 (who had initially pressed a Taser into Mr. Hermiz's back and tased him) then threw *his* arms around Mr. Hermiz's neck in an effort to horse-collar him down to the sidewalk.

25. As a result of JOHN DOE OFFICER 1-2's simultaneous actions, Mr. Hermiz pitched forward, face-first onto the ground, landing on top of JOHN DOE OFFICER 1, who went to the ground on his back (supine).

26. As other officers pulled Mr. Hermiz back off and to the side of JOHN DOE OFFICER 1, the electrical clicking and popping of a Taser is heard, and JOHN DOE OFFICER 1 sits up and puts his left arm around Mr. Hermiz's head in a headlock, with Mr. Hermiz's head pressed against JOHN DOE OFFICER 1's left side.

27. In the cell phone video, someone is then heard to say "Taser! Taser! Taser! Taser!," whereupon JOHN DOE OFFICER 3 is seen to point his Taser at the right side of Mr. Hermiz's back, a popping sound is heard as the Taser probes are shot into his back, and Mr. Hermiz is tased yet again and the electrical clicking and popping of a Taser is again heard.

28. At the same time, from video footage captured on a different cell phone, JOHN DOE OFFICER 1 is likewise seen to tase Mr. Hermiz in the right leg and calf.

29. Pinned, unresisting and face-down on the ground with Defendants JOHN DOE OFFICERS 1 and 3 and JANE DOE OFFICER 1 all pressing him to the ground, tazing him or pulling and holding his arms behind his back to handcuff him, Mr. Hermiz is heard to cry out in pain and bystanders are heard to plead "Stop it! He's down!" and "Stop tazing him!"

30. The electrical clicking and popping of a Taser continues to be heard, despite Defendants JOHN DOE OFFICERS 1 and 3 and JANE DOE OFFICER 1 all having their knees pressed into his back, pinning him on his belly to the sidewalk with his arms behind him, while he is being handcuffed.

31. JOHN DOE OFFICERS 1 and 3 then turned Mr. Hermiz, with his arms handcuffed behind him, onto his back.

32. Despite the fact that Mr. Hermiz continued to offer no active resistance and was lying belly up with his arms handcuffed behind his back and hands pressed into the sidewalk, JOHN DOE OFFICER 3 pressed his right knee forcefully into the left side of Hermiz's chest and JOHN DOE OFFICER 1 pressed his left knee forcefully into the center of his abdomen.

33. While in these respective positions, JOHN DOE OFFICER 3 is then heard to yell "Calm down! Calm down!" after which JOHN DOE OFFICER 1 is heard to say "Stop resisting. You are under arrest." despite the fact that at no time in the course of these proceedings does Mr. Hermiz appear to be actively struggling or resisting the officers at all.

34. At the Royal Oak Police Department, Mr. Hermiz was administered a Breathalyzer, which purportedly registered at 0.112.

35. As a result of the use of excessive force upon him by Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 on the sidewalk in front of Black Finn, Mr. Hermiz's left eye was swollen and he had significant pain in his right wrist, right thigh, neck, lower back and right foot.

36. Mr. Hermiz was also photophobic (experiencing pain from light) as a result of the aforescribed excessive use of force, which condition is symptomatic of traumatic brain injury.

37. Mr. Hermiz was released from the Royal Oak Police Department at approximately 10:30 p.m., after which he went to the Royal Oak Beaumont Emergency Room for medical care.

38. Mr. Hermiz was released from Royal Oak Beaumont at approximately 3:00 a.m.

39. The following day, Mr. Hermiz went to the Henry Ford Hospital-West Bloomfield Emergency Room, due to the headache and nausea he was experiencing, and underwent a CT scan and received a referral to investigate a possible closed head injury.

40. The conduct of Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 was and remains extreme and outrageous, subjecting them to punitive damages.

**COUNT I - 42 U.S.C. § 1983 - EXCESSIVE FORCE - JOHN DOE OFFICERS 1-3 AND JANE DOE OFFICER 1**

41. Plaintiff repeats each of the preceding Paragraphs' allegations as if they were fully set forth herein.

42. At all relevant times, with regard to the above-described incident, Mr. Hermiz was entitled to all rights, privileges, and immunities accorded to free citizens of the State of Michigan and of the United States.

43. Pursuant to the Fourth Amendment to the United States Constitution (made applicable to the States via the Fourteenth Amendment), at all times relevant, while Mr. Hermiz was seized and in the Royal Oak Police Department's custody and control, he had a right to be free from the excessive use of force against his person.

44. At all times relevant, as police officers acting under color of law, Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 were required to obey the laws of the United States, including those laws identified under the Fourth Amendment to the United States Constitution.

45. The conduct of Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, as described above, deprived Mr. Hermiz of his clearly established rights, privileges and immunities in violation of the Fourth Amendment to the United States

Constitution.

46. Defendants JOHN DOE OFFICERS 1-3 used physical force which was objectively unreasonable and clearly excessive in light of the circumstances existing at the time as Plaintiff Travis Hermiz was not posing any threat and was not at any time resisting being taken into custody or held in custody by the Royal Oak Police.

47. In fact, no reasonable officer in the position of Defendants JOHN DOE OFFICERS 1-3 and/or JANE DOE OFFICER 1 would find that Mr. Hermiz's actions constituted either an immediate threat of serious physical harm to them or the public at large or the active resistance to being taken into custody by the Royal Oak Police.

48. In particular, but without limitation: (1) the separate efforts to grab Mr. Hermiz around the neck and horse-collar him to the ground by Defendants JOHN DOE OFFICERS 1 and 2; (2) the repeated Taser deployments by at least Defendants JOHN DOE OFFICERS 1 and 3 in a short period of time, while Mr. Hermiz was not resisting and was being controlled by four different Royal Oak Police Officers; and (3) the continued application of the body weight of Defendants JOHN DOE OFFICERS 1 and 3 via their respective knees upon the center of Mr. Hermiz's abdomen and the left side of Mr. Hermiz's chest while he was helpless and unresisting on his back with his arms handcuffed behind his back and his hands pressed into the sidewalk, were each objectively unreasonable uses of excessive force under the totality of the circumstances existing at the time.

49. Further, Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, were each in close physical proximity to Plaintiff Travis Hermiz and one another while the aforementioned use of excessive force occurred and each of their failures to intervene and protect



Mr. Hermiz and stop such excessive use of force while it occurred before them is additionally a violation of 42 U.S.C. § 1983 and the Fourth Amendment.

50. Pursuant to 42 U.S.C. § 1983, Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 are liable for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

51. As a direct and proximate result of the actions and/or omissions of Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, Mr. Hermiz suffered great physical pain, discomfort, loss of mental capacity, humiliation, degradation and anguish.

52. As a direct and proximate result of the willful violation of Mr. Hermiz's constitutionally-protected rights by Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, he has sustained and is entitled to compensation for conscious pain and suffering, as well as for economic loss and/or damages.

53. The conduct of Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 was and remains extreme and outrageous subjecting them to punitive damages.

**COUNT II - FALSE ARREST - JOHN DOE OFFICERS 1-3**  
**AND JANE DOE OFFICER 1**

54. Plaintiff repeats each of the preceding Paragraphs' allegations as if they were fully set forth herein.

55. The seizure and arrest of Plaintiff by Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1 was unlawful and wrongful and not supported by probable cause.

56. Further, Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, in seizing and arresting Plaintiff, did not act in good faith and had no reasonable basis to honestly, subjectively believe that there was probable cause to seize and arrest him.

57. As a direct and proximate result of Mr. Hermiz's false arrest by Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, he suffered great physical pain, discomfort, loss of mental capacity, humiliation, degradation and anguish.

58. As a direct and proximate result of the false arrest of Mr. Hermiz's false arrest by Defendants JOHN DOE OFFICERS 1-3 and JANE DOE OFFICER 1, Mr. Hermiz has sustained and is entitled to compensation for conscious pain and suffering, as well as for economic loss and/or damages.

**COUNT III - 42 U.S.C. § 1983 - EXCESSIVE FORCE - POLICE CHIEF CORRIGAN O'DONOHUE (INDIVIDUAL CAPACITY)**

59. Plaintiff repeats each of the preceding Paragraphs' allegations as if they were fully set forth herein.

60. On information and belief, Defendants JOHN DOE OFFICERS 1-3 and/or JANE DOE OFFICER 1, have a prior record with the City of Royal Oak Police Department involving citizen complaints involving the the unjustified use of excessive force.

61. On information and belief, despite such knowledge, POLICE CHIEF CORRIGAN O'DONOHUE implicitly authorized, approved or knowingly acquiesced in the aforescribed unconstitutional conduct of JOHN DOE OFFICERS 1-3 and/or JANE DOE OFFICER 1, by failing to re-train and re-instruct each and/or all of them on the proper,

constitutional limits on the use of force in response to such citizen complaint.

62. On information and belief, there is accordingly a reasonable basis for a determination that Defendant POLICE CHIEF CORRIGAN O'DONOHUE is personally responsible for and intentionally brought about the excessive use of force exerted by Defendants JOHN DOE OFFICERS 1-3 and/or JANE DOE OFFICER 1 upon Plaintiff TRAVIS HERMIZ as described in this Complaint.

63. As a direct and proximate result of the actions of Defendant POLICE CHIEF CORRIGAN O'DONOHUE, Mr. Hermiz's constitutionally-protected rights have been violated; he has suffered great physical pain, discomfort, loss of mental capacity, humiliation, degradation and anguish; and he has sustained and is entitled to compensation for conscious pain and suffering, as well as for economic loss and/or damages.

**COUNT IV - 42 U.S.C. § 1983 - EXCESSIVE FORCE - POLICE CHIEF CORRIGAN  
O'DONOHUE (OFFICIAL CAPACITY)**

64. Plaintiff repeats each of the preceding Paragraphs' allegations as if they were fully set forth herein.

65. On information and belief, prior to March 17, 2016, Defendant POLICE CHIEF CORRIGAN O'DONOHUE, in his official capacity, developed or maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in the City of Royal Oak, which cause the violation of Plaintiff's rights as alleged herein.

66. On information and belief, it was the policy and/or custom of Defendant POLICE CHIEF CORRIGAN O'DONOHUE, in his official capacity, to inadequately and improperly investigate citizen complaints of police misconduct, and acts of misconduct were instead

tolerated.

67. On information and belief, it was the policy and/or custom of Defendant POLICE CHIEF CORRIGAN O'DONOHUE, in his official capacity, to inadequately and supervise and train its police officers, including the defendant officers, thereby failing to adequately discourage further constitutional violations on the part of its police officers. On information and belief, Defendant POLICE CHIEF CORRIGAN O'DONOHUE, in his official capacity, did not require appropriate in-service training or re-training of officers who were known to have engaged in police misconduct.

68. On information and belief, as a result of the above-described policies and customs, police officers of the City of Royal Oak, including Defendants JOHN DOE OFFICERS 1-3 and/or JANE DOE OFFICER 1, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would instead be tolerated.

69. On information and belief, the above-described policies and customs demonstrated a deliberate indifference on the part of Defendant POLICE CHIEF CORRIGAN O'DONOHUE, in his official capacity, to the constitutional rights of persons within the City of Royal Oak, and were the cause of the violations of Plaintiff's constitutional rights alleged herein.

WHEREFORE, Plaintiff requests the following relief:

- a. Reasonable medical and hospital expenses;
- b. Reasonable compensation for the pain and suffering;
- c. Reasonable compensation for emotional and mental distress;
- d. Punitive and exemplary damages;

- e. Reasonable attorney fees, costs and interest; and
- f. Such other and further relief as appears reasonable and just under the circumstances and otherwise recoverable pursuant to 42 U.S.C. §§ 1983 and 1988; and
- g. Such other and further relief as this Honorable Court deems reasonable and just under the circumstances.

Dated: April 4, 2016

Respectfully submitted,

/s/ Robert M. Giroux  
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**JURY DEMAND**

Plaintiff TRAVIS HERMIZ, by and through his attorneys, GIROUX RATTON PC,  
hereby demands Trial by Jury in this matter.

Dated: April 4, 2016

Respectfully submitted,

/s/ Robert M. Giroux  
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