

March 9, 2016

Via Email and Mail
Opposing Counsel
City, State Zip

Re: Han v. Shoals et al. Case no: 1:12-cv-01234

Counsel:

Pursuant to the Magistrate Judge's Standing Order, I submit the following demand on behalf of Hilton Han. The statements herein are offered solely for the purposes of settlement and are otherwise protected from use in any other circumstances.

I: Overview

Metra officers Alvarez and Shoals violated the civil rights of Hilton Han on March 30, 2010. The officers subjected Mr. Han to a humiliating, painful, and invasive false arrest in violation of his Fourth Amendment rights. In the course of their encounter, the officers also violated state tort law. Mr. Han had not committed a crime nor did he give the officers any reason to believe he was about to commit a crime; he was innocently waiting on the platform. Mr. Han suffered painful physical injuries as a result of the encounter and continues to suffer from mental distress.

II: Factual Background

On May 30, 2010, Hilton Han was waiting for a train at the Joliet Metra stop. He had just walked over to the stop from his son's apartment, and was planning to visit his brother in Chicago, Illinois. He had purchased a weekend Metra pass the day before to visit his sister in the city. When he got to the platform he did not talk to anyone but the conductor, whom he asked about arrival times.

While waiting, he noticed that two Metra police officers, Officer Shoals and Officer Alvarez, were walking purposefully towards him. Mr. Han was the only African American male on the platform. He was minding his own business, and was taken off guard by the officers approaching him. Officer Shoals asked Mr. Han what he was doing on the platform. Mr. Han, confused about the nature of the encounter, simply asked "Why?" They answered by asking for his identification. Mr. Han chose to ignore Officer Shoals, and turned away. Officer Shoals responded by violently grabbing at him, such that he tore Mr. Han's shirt collar. He pinned Mr. Han against the wall, tightly locked his wrists together, and searched him. Officer Shoals searched his pockets and threw Mr. Han's possessions on the ground. He then handcuffed Mr. Han. The handcuffs were on so tight that Mr. Han could not feel his fingers. When Mr. Han complained to Officer Shoals about the handcuffs, he told Mr. Han to "Shut up." He demanded that Mr. Han sit down and when Mr. Han hesitated, Officer Shoals kicked Mr. Han's feet so that he fell to the floor. Officer Shoals told Officer Alvarez to run a background check on Mr. Han while he was forced to wait on the hot concrete platform among other Metra passengers. As a regular Metra user, he recognized several of the commuters who walked past him. At no point

did Officer Shoals or Officer Alvarez tell Mr. Han why he was being detained; nor did Mr. Han have a chance to say anything.

Mr. Han waited on the platform floor for about 10 minutes while Officer Alvarez ran a background check on him. After a while, Officer Alvarez announced that Mr. Han "was clean." Officer Shoals then informed Mr. Han that he was free to go. Mr. Han was in a lot of pain, and commented that he might need an ambulance. Officer Shoals responded angrily, telling Mr. Han that he was planning on letting him go, but was going to send him to jail because Han was playing "that game."

Officer Shoals called the Joliet police, and Officer Mitchell arrived about fifteen minutes later. Mr. Han told Officer Mitchell that he needed an ambulance, but he just laughed and told Mr. Han that he was not going to die. The Joliet officers put Mr. Han into a paddy wagon and forced him to wait in the heat with his hands tied together. Mr. Han had to wait for about 10 minutes, injured and woozy from the heat and pain. He began to hyperventilate, but the officers paid him no attention. Mr. Han still did not know why he was being arrested. Finally, Officer Mitchell took Mr. Han to the Joliet police station. They fingerprinted him and released him on a recognizance bond. He was charged with criminal trespass, but the charge was ultimately dismissed.

After leaving the police station, Hilton Han walked to his son's home. He tried to sleep that night, but had difficulty on account of his anxiety and pain. The next morning he went to the Emergency Room at Silver Cross Hospital in New Lenox, Illinois. He was treated for swollen hands and fingers, deep ligament and tendon soreness, bilateral wrist pain, contusions on his left wrist, bruises on his shoulders, sunburn and heat rash. His visit to the Silver Cross Hospital cost \$527.29. **See attached, Exhibit 1.**

Today, Mr. Han continues to experience wrist pain. Flexing his hand is painful, making it difficult for him to pick up heavy objects. This is especially problematic, as many of Mr. Han's jobs have required him to do heavy lifting. Following the incident, Mr. Han experienced extreme anxiety. He suffers from panic attacks when he sees anyone who resembles Officers Shoals or Alvarez. The whole incident was extremely embarrassing for Mr. Han. He feels that he was targeted for harassment simply on account of the fact that he is a black male.

III: Legal Claims

Mr. Han's complaint set forth a 42 U.S.C. § 1983 claim arising from violations of his Fourth Amendment rights as well as violations of state tort laws. As described below, Mr. Han has strong grounds for his claim and it is likely that his claim will succeed.

A. Officers Shoals and Alvarez Violated Han's Fourth Amendment Rights

Officers Shoals and Alvarez violated Han's Fourth Amendment rights by subjecting him to (1) an illegal seizure, (2) an illegal search, (3) excessive force, and (4) false arrest. Metra is the service mark of the Northeast Illinois Regional Commuter Railroad Corporation and subject to 42 U.S.C. § 1983. Employees of municipal corporations may be subject to liability under §

1983 for violations of an individual's constitutional rights. Bergstrom v. McSweeney, 294 F. Supp. 2d 961, 967 (N.D. Ill. 2003) (denying motion to dismiss claim against a Metra Police Commander). Officers Shoals and Alvarez are liable under § 1983 because they (1) deprived Mr. Han of a federal right, and (2) did so under the color of state law. Gomez v. Toledo, 446 U.S. 635, 640 (1980).

1. *Officers Shoals and Alvarez Subjected Han to an Unlawful Seizure.*

A reasonable person is seized if he does not feel at liberty to ignore police presence and go about his business. Michigan v. Chesternut, 486 U.S. 567 at 573 (1988). By forcibly grabbing Mr. Han and handcuffing him, Officers Shoals and Alvarez seized Mr. Han. The encounter became an investigatory stop when the officers demanded Mr. Han's identification and then aggressively searched and arrested him. See Florida v. Bostick, 501 U.S. 429, 433-34 (1991); Jones v. Clark, 630 F.3d 677, 682 (7th Cir. 2011). Without a warrant, officers may initiate an investigatory stop if they have specific and articulable facts sufficient to raise a reasonable suspicion that an individual committed or is committing a crime. Terry v. Ohio, 392 U.S. 1 at 21 (1968). In this case, there was nothing indicating that Mr. Han committed or was about to commit a crime. He was a lawful Metra customer, keeping to himself while waiting on the platform. There was no reason to believe that Hilton Han was engaged in criminal activity in the first place, thus making the investigatory stop unlawful. See Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt Cnty., 542 U.S. 177 (2004) (stating that an investigatory stop must be justified at its inception).

2. *Officers Shoals and Alvarez Illegally Searched Han*

Officers Shoals and Alvarez violated Hilton Han's Fourth Amendment right when they searched him without probable cause. Officers are entitled to search a person in the course of an investigatory stop if they reasonably believe that the safety of the officer or other persons is in danger. Terry v. Ohio, 392 U.S. 1 (1968). There was no indication that Mr. Han was a security threat. He was carrying very little and standing by himself waiting for the train. Even if the officers had reason to believe that Mr. Han was a danger to the people around him, the frisk went beyond what is lawfully permitted in a protective search by searching through his pockets. See Minnesota v. Dickerson, 508 U.S. 366 (1993) (explaining that if the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid). As there was no safety-related reason to search through Mr. Han's pockets, a simple frisk would have sufficed.

3. *The Officers Used Excessive Force*

The force used to effect an arrest must be objectively "reasonable" under the Fourth Amendment. Abdullahi v. City of Madison, 423 F.3d 763, 768 (7th Cir. 2005). The reasonableness is assessed by balancing the immediate threat posed by the suspect with the quality of the intrusion on the suspect's Fourth Amendment rights. Morfin v. City of E. Chicago, 349 F.3d 989 (7th Cir. 2003). Mr. Han did not present any kind of threat to the officers, he did not resist police action, and was docile and cooperative. Mr. Han did not commit any crime and had not attempted to flee or evade arrest. There was no need for the officers to grab him, handcuff him tightly, push him to the ground, and force him to wait on the hot platform floor. See Chelios v. Heavener, 520 F.3d 678, 690 (7th Cir. 2008) (stating that grabbing and tackling an individual who had not committed a crime and did not present a threat to the officers was an

unreasonable use of force). Mr. Han is still suffering from the injuries of the arrest. Such behavior rises to the level of excessive force, and is a violation of Mr. Han's Fourth Amendment rights.

4. Officers Shoals and Alvarez Falsely Arresting Han

Officers are liable for false arrest in violation of a person's Fourth Amendment rights if they arrest the individual without probable cause or a warrant. *Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751 (7th Cir. 2006). Mr. Han had not committed a crime that day. Even if Officers Alvarez and Shoals suspected him of criminal trespass, an officer acting in his official capacity may not arrest a person for criminal trespass when the owner or the owner's agent has not asked him to leave the premises. See *Pourghoraishi* 449 F.3d at 763. Since Mr. Han did not commit a crime and was never asked to leave the premises, there was no probable cause to arrest him. Therefore the officers are liable for false arrest.

B. Officers Shoals and Alvarez Are Liable for Violating State Tort Law

Officers Shoals and Alvarez violated state tort law throughout their encounter with Hilton Han. They are liable for (1) assault and battery and (2) intentional infliction of emotional distress.

1. Officers Shoals and Alvarez Are Liable for Assault and Battery

An assault is conduct that places another in reasonable apprehension of receiving a battery. *Kijonka v. Seitzinger*, 363 F.3d 645, 647 (7th Cir. 2004) (citing 720 ILCS 5/12-1(a)). Under Illinois law, battery is the "unauthorized touching' of another that 'offends a reasonable sense of personal dignity.'" *Chelios v. Heavener*, 520 F.3d 678 (7th Cir. 2008). Here, the officers went beyond mere touching and actually inflicted injury. His injuries were sufficient to require significant medical care at a hospital.

The Illinois Tort Immunity Act shields public employees from liability for actions committed "in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct." 745 Ill. Comp. Stat. 10/2-202. An officer engages in willful and wanton conduct if he acts with "actual or deliberate intention to harm or with an utter indifference to or conscious disregard for the safety of others." *Cheslio*, 520 F.3d at 293; 720 ILCS 5/12-3(a). Officers Shoals and Alvarez acted with conscious disregard for Mr. Han's safety when they grabbed his collar, pushed him against the wall, and tripped him so that he fell on the floor. They ignored his pleas for help when he complained of being in physical pain. At no point did Mr. Han present a threat. Such behavior clearly rises to the level of assault and battery.

2. Officers Shoals and Alvarez are Liable for Intentional Infliction of Emotional Distress

Under Illinois Law, intentional infliction of emotional distress occurs when: (1) the defendants' conduct was extreme and outrageous; (2) the defendants either intended that their conduct inflict severe emotional distress or knew there was a high probability that their conduct would cause severe emotional distress; and (3) defendants conduct in fact caused severe emotional distress. *Lopez v. City of Chicago*, 464 F.3d 711, 720 (7th Cir. 2006). Officers

Alvarez and Shoals are liable for intentional infliction of emotional distress because their outrageous actions were performed with the intent of inflicting severe emotional distress on Mr. Han. Their actions seriously impacted Mr. Han, such that he panicked every time he saw anyone who resembled the officers.

IV: Legal Basis for Damages

Mr. Han is seeking both compensatory and punitive damages. Under § 1983, a plaintiff can recover compensatory damages upon proof of an actual injury. *Farrar v. Hobby*, 506 U.S. 103, 121 (1992). A plaintiff can recover punitive damages in § 1983 actions where the defendant acted with reckless or callous disregard to the federal-protected rights of the plaintiff. *Woodward v. Correctional Medical Servs.*, 368 F.3d 917, 930 (7th Cir. 2004). Mr. Han can recover compensatory and punitive damages because he suffered physical injuries as a result of the above constitutional violations.

V: Damages

Due to Officer Shoals's and Officer Alvarez's actions, Mr. Han continues to suffer from pain and discomfort. A jury would find that there is ample evidence to demonstrate that Mr. Han suffered significant physical pain, emotional distress, mental distress and humiliation as a result of his encounters with Officer Shoals and Officer Alvarez. We could easily see a jury awarding Mr. Han \$50,000. See *Wells v. City of Chicago*, 896 F. Supp. 2d 725, 744 (N.D. Ill. 2012). The officers' conduct caused Mr. Han physical pain and made him feel victimized, simply on account of being an African American male.

VI: Settlement Position

Although Hilton Han would demand \$50,000 at trial, he is offering to settle this case for \$10,000. We look forward to your response to this settlement offer and we believe this will be a constructive settlement conference.

Sincerely,

Settlement Counsel for Plaintiff