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January 26, 2017

**BY EMAIL ONLY TO:** [tdonohue@bhpklaw.com](mailto:tdonohue@bhpklaw.com)

Thomas R. Donohue, Esq.  
BRODY, HARDOON, PERKINS & KESTEN, LLP  
699 Boylston Street, 12th Floor  
Boston, Massachusetts 02116

Re: [George Lott v. Town of Danvers, Justin Ellenton and Peter Shabowich](#)  
United States District Court, Civil Action No. 2016-10753-LTS

**FOR SETTLEMENT PURPOSES ONLY**

Dear Tom:

Thank you for your time during our teleconference on January 13, 2017. Pursuant to our conversation, I am reducing to writing our final proposed offer of settlement to reach an amicable resolution in the above-captioned matter. In recognition of the substance and courteous tone of our teleconference, I will omit the customary re-outlining of the strengths of our client's claims, and based on our mutual depth of experience, I am confident that we each appreciate our positions in this matter.

In order to reach a full settlement and release of claims in connection with this matter, and with the understanding that we intend to file a Voluntary Stipulation of Dismissal With Prejudice, we have advised our client to accept the amount of Fifteen Thousand Dollars and No Cents (\$15,000.00).

This offer will remain open for a period of fourteen (14) business days. Kindly respond at your earliest convenience. I look forward to hearing from you. Thank you.

Yours very truly,

DHAR LAW, LLP

Vikas S. Dhar

VSD/ms  
cc: Mr. George Lott  
Joseph F. Hennessey, Esq.  
Monisha N. Pathria, Esq.  
File Copy 160.0036

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Docket No.: 1:16-cv-10753-LTS

GEORGE LOTT,

Plaintiff,

v.

THE TOWN OF DANVERS, JUSTIN  
ELLENTON AND PETER SHABOWICH, in  
their individual capacities,

Defendants.

**CERTIFICATION PURSUANT TO LOCAL RULE 16.1(D)**

We hereby certify that we have conferred with a view to establishing a budget for the costs of conducting the full course -- and various alternative courses -- of the litigation, and to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in LR 16.4.

 5/5/2016  
The Town of Danvers  
By: Steve Bartha, Town Manager

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Thomas R. Donohue, BBO# 643483  
BRODY, HARDOON, PERKINS & KESTEN, LLP  
699 Boylston Street  
Boston, MA 02116  
(617) 880-7100  
[tdonohue@bhpklaw.com](mailto:tdonohue@bhpklaw.com)

Dated: May \_\_, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the ECF system and will therefore be sent electronically to the registered participants as identified on the Notice of Electric Filing (NEF) and paper copies will be sent this day to those participants indicated as non-registered participants.

*/s/ Thomas R. Donohue*

Thomas R. Donohue, BBO# 643483

DATED: May \_\_\_\_\_, 2016



MIIA Member Services  
15 Cabot Road  
Woburn, MA 01801-1003  
TEL (800) 526-6442  
FAX (781) 376-9907  
[www.emiia.org](http://www.emiia.org)

April 6, 2016

Steve Bartha  
Town Manager  
Town of Danvers  
1 Sylvan Street  
Danvers MA 01923



RE: George Lott vs. Town of Danvers  
MIIA File: M14LE79617  
Date of Loss: February 14, 2013

Dear Steve:

The Massachusetts Property and Casualty Group provided law enforcement liability protection to the Town of Danvers. The above matter has been assigned to me for handling.

This will supplement my correspondence of February 13, 2014.

A complaint has been filed in Suffolk Superior Court, civil action number 1684cv469. The complaint is titled George Lott vs Town of Danvers, Justin Ellenton and Peter Shabowich in their individual capacities.

The complaint alleges that during the arrest of the plaintiff excessive force was used. The complaint contains five (5) counts. They are as follows

Count I-Excessive Force (4<sup>th</sup> and 14<sup>th</sup> amendments to the United States Constitution) (Officer Ellenton).

Count II-Violation of the Massachusetts Civil Rights Act (MCRA) (Officer Shabowich)

Count III-Assault and Battery (Officer Ellenton)

Count IV-Intentional Infliction of Emotional Distress (Officer Ellenton)

Count V-Violation of MGL Ch 258 sec 4 (Town of Danvers)

At time of loss, law enforcement legal liability coverage contract DAN00015-06-12 is in effect. The contract dates are 7/1/2012 to 7/1/2013. The contract is occurrence in nature. The contract provides \$1,000,000 per person limit of liability subject to a \$7500 per person deductible. The contract deductible applies to payments made for either defense or indemnification. The member will be invoiced when either the deductible is exceeded or when the file is closed.

Upon review of all know facts to date, the MIIA Property and Casualty Group Inc. agree to defend and indemnify Officers Justin Ellenton and Peter Shabowich, while acting within the scope of their employment as sworn Danvers Police Officers and the Town of Danvers subject to the terms and conditions of the contract of coverage.

Defense of this matter has been forwarded to Attorney Leonard Kesten. Attorney Kesten can be reached at:

Attorney Leonard Kesten  
Brody, Hardoon, Perkins and Kesten  
1 Exeter Plaza  
Boston MA 02116  
[lkeston@bhpklaw.com](mailto:lkeston@bhpklaw.com)  
(617) 880-7100  
(617) 880-7171

The coverage position described above is not intended to be all inclusive, and in the event the claimant's allegations change or we obtain new information, the MIIA Property and Casualty Group Inc. reserves the right to revise its coverage position under the contract of coverage. MIIA does not waive, but instead expressly reserves all rights, whether enumerated herein or not.

Punitive damages have been plead; it is the position of MIIA Property and Casualty Group that punitive damages are not insurable in Massachusetts as a matter of public policy. MIIA Property and Casualty Group cannot issue payment for any award of punitive damages

Should you have any questions, please feel free to contact me.

Sincerely,



William L. MacKinnon Jr. AIC  
Senior Claims Representative  
(781) 939-6845 (Direct Dial)  
(781) 376-9907 (fax)  
[william.mackinnon@cabotrisk.com](mailto:wiliam.mackinnon@cabotrisk.com)



cc

Acting Chief Patrick Ambrose  
Danvers Police Department  
120 Ash Street  
Danvers MA 01923

Officer Justin Ellenton  
Danvers Police Department  
120 Ash Street  
Danvers MA 01923

Officer Peter Shabowich  
Danvers Police Department  
120 Ash Street  
Danvers MA 01923





**DANVERS POLICE DEPARTMENT  
DANVERS, MA  
Booking Report #TDAN013000172**

ADULT  JUVENILE

<b>Booking Information</b>				
Agency DAN-PD	Booking Number TDAN013000172	Date Of Booking 02/13/2013 21:32:10	Date of Arrest 02/13/2013 18:27:38	Review Status APPROVED
Event Type ARREST	File # 13003129	PCF # 776200	ID Source OTHER	MNI # <a href="#">77230</a>
<b>Basic Information</b>				
Name GEORGE LOTT				
Address 39 BOYLSTON ST 933 BOSTON MA 02116				
DOB 07/01/1944	Age 68			
Social Sec # 016347147	Gender M			

## Charges

Booking # : TDAN013000172

<b>Charge # 1</b>		
Charge Code 266/25/A	Charge Desc LARCENY FROM PERSON c266 S25	Counts
Dt Offense	Charge Notes	
<b>Charge # 2</b>		
Charge Code 265/13A/B	Charge Desc A&B c265 S13A	Counts
Dt Offense	Charge Notes	
<b>Charge # 3</b>		
Charge Code 268/32B	Charge Desc RESISTING ARREST c268 S32B	Counts
Dt Offense	Charge Notes	
<b>Charge # 4</b>		
Charge Code 0090C	Charge Desc DISORDERLY CONDUCT	Counts
Dt Offense	Charge Notes	

**Bail**

Booking # : TDAN013000172

<b>Bail</b>		
Amount 10,000	Bail Set By SULLIVAN	Date Bail Set 02/13/2013 23:43:13
Bail Terms		
Paid By Self Y	Bail Payor (if Not Self)	Date Bail Paid

**Event Information**

Booking # : TDAN013000172

<b>Event Information</b>			
Custody Date 02/13/2013 18:27:38	Street # 103	Street Name HIGH ST	Unit
City DANVERS	State MA	Zipcode 01923	Cross Street
Municipality	Business Name DAILY HARVEST CAFE		Business Phone

**Finger Prints**

Booking # : TDAN013000172

<b>Finger Prints</b>			
SID #	FBI #	Prints Taken?	Print #
Print Officer	Date/Time Taken		State Prob Num

**Authorization**

Booking # : TDAN013000172

<b>Authorization</b>		
Booking Officer 76 LEBRUN, G	Signature	Date/Time Entered
Reviewed By	Signature	Date/Time Reviewed
Approved By 51 STONE, P	Signature	Date/Time Approved 07/17/2013 23:50:44

## Personal Characteristics

Booking # : TDAN013000172

<b>Personal Data / Characteristics</b>			
Home Phone	Work Phone		Cell Phone
Race BLACK	Ethnicity NOT OF HISPANIC ORIGIN		Residency NONRESIDENT
Height 602	Weight 160		Build THIN
Hair Color BLACK	Eye Color BROWN		Complexion BLACK
Marital Status	Spouse		Maiden Name
<b>Mother</b> FINITIA	Mothers Maiden Name SINGLETON		Father EDWARD
Birth City PORTLAND	Birth State ME	Birth Country UNITED STATES	Citizen
License #	Class	State	Expiration Date
Scars Marks and Tattoos			
Occupation	Employer RETIRED		Employer Phone
Employer Address			

## Medical Information

Booking # : TDAN013000172

<b>Medical</b>	
Physician KATHERINE BROOKS	Treatment Location BEVERLY HOSPITAL
<b>Narrative</b>	
ribs, eyes,	

## Questions

Booking # : TDAN013000172

<b>Question Set: RIGHTS</b>	
Question	Answer
ENTER THE TIME (E.G. 1620)	23:22:00
RIGHT TO USE TELEPHONE - HAVE YOU BEEN ADVISED OF YOUR RIGHT TO USE THE TELEPHONE?	YES
ENTER THE TIME (E.G. 1620)	23:22:00
DO YOU WISH TO USE THE TELEPHONE?	NO

**Question Set: SUICIDE**

Question	Answer
ARE YOU PRESENTLY TAKING MEDICATION?	YES
WHAT TYPE?	PERCOET
ARE YOU NOW OR EVEN BEEN UNDER PSYCHIATRIC CARE?	NO
HAVE YOU PREVIOUSLY ATTEMPTED SUICIDE?	NO
ARE YOU NOW CONTEMPLATING SUICIDE?	NO
HAS ANYONE CLOSE TO YOU EVER COMMITTED SUICIDE?	NO
HOW DO YOU FEEL NOW?	IM IN JAIL

**Custody**

Booking # : TDAN013000172

<b>Custody</b>	
Status IN PROGRESS	Location HOLDING AREA
Status Date 02/13/2013 21:32:10	Status Updated By (35) MACDONALD, S
Notes Regarding Custody	
<b>Custody</b>	
Status IN CELL	Location CELL 3
Status Date 02/13/2013 23:43:07	Status Updated By (76) LEBRUN, G
Notes Regarding Custody	
<b>Custody</b>	
Status RELEASED	Location TAKEN TO COURT
Status Date 02/14/2013 09:36:59	Status Updated By (70) TIBBETTS, S
Notes Regarding Custody	

**Property**

Booking # : TDAN013000172

<b>Property #:</b> 1		
Property Type PRISONER	Tag ID	Storage Location 2
<b>Narrative</b>		
Keys, lighter, candy bar, jacket, belt		

**Officer Roles**

Booking # : TDAN013000172

<b>Officers</b>	
Officer	Role
51 STONE, P	APPROVING
35 MACDONALD, S	ARRESTING
43 OUELLETTE, N	ASSISTING
48 SHABOWICH, P	ASSISTING
61 ELLENTON, J	ASSISTING
76 LEBRUN, G	BOOKING
51 STONE, P	OIC
76 LEBRUN, G	SUICIDE



**DANVERS POLICE DEPARTMENT  
DANVERS, MA**

**INCIDENT # / REPORT #**  
13003129 / 1

**OFFICER**  
MACDONALD, S

**RANK**  
OFFICER

**REVIEW STATUS**  
APPROVED

**INCIDENT #13003129 DATA**

As Of 10/03/2013 12:50:10

**BASIC INFORMATION**

**CASE TITLE**  
LARCENY FROM PERSON

**LOCATION**  
103 HIGH ST

**APT/UNIT #**

**DATE/TIME REPORTED**  
02/13/2013 18:27:38

**DATE/TIME OCCURRED**  
On or about 02/13/2013 18:27

**INCIDENT TYPE/OFFENSE**  
LARCENY FROM PERSON c266 S25

**PERSONS**

<b>ROLE</b>	<b>NAME</b>	<b>SEX</b>	<b>RACE</b>	<b>AGE</b>	<b>DOB</b>	<b>PHONE</b>
VICTIM	[REDACTED]	FEMALE	WHITE	22	07/26/1990	(HOME) (CELL) [REDACTED]
	ADDRESS: [REDACTED]					
OWNER	[REDACTED]	FEMALE	WHITE	40	04/12/1972	(HOME) (CELL) [REDACTED]
	ADDRESS: [REDACTED]					
VICTIM	DAILY HARVEST CAFE,					(HOME) (CELL) [REDACTED]
	ADDRESS: 103 HIGH ST DANVERS, MA					
WITNESS	[REDACTED]			39	05/31/1973	(HOME) (CELL) [REDACTED]
	ADDRESS: [REDACTED]					
INVOLVED PARTY	[REDACTED]	FEMALE	WHITE	21	04/22/1991	(HOME) (CELL) [REDACTED]
	ADDRESS: [REDACTED]					
INVOLVED PARTY	[REDACTED]	MALE	WHITE	22	02/13/1991	(HOME) (CELL) [REDACTED]
	ADDRESS: [REDACTED]					

**OFFENDERS**

<b>STATUS</b>	<b>NAME</b>	<b>SEX</b>	<b>RACE</b>	<b>AGE</b>	<b>DOB</b>	<b>PHONE</b>
DEFENDANT	LOTT, GEORGE	MALE	BLACK	68	07/01/1944	(HOME)
	ADDRESS: 39 BOYLSTON ST 933 BOSTON, MA					(CELL)

**[ NO VEHICLES ]**

**PROPERTY**

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>MAKE</u>	<u>MODEL</u>	<u>SERIAL #</u>	<u>VALUE</u>
MONEY	60 CASH FLIM FLAM				60

**OFFICER REPORT: 13003129 - 1 / MACDONALD, S (OFFICER)**

<u>DATE/TIME OF REPORT</u>	<u>TYPE OF REPORT</u>	<u>REVIEW STATUS</u>
02/13/2013 18:27:38	INCIDENT	APPROVED

**NARRATIVE**

On 02/13/2013 Off. MacDonald was dispatched to the area of Walgreens and the Thai Restaurant on Purchase St. for a female getting assaulted. En route to the call it was updated as a robbery from the Daily Harvest Cafe. Updates were given of a black male running towards and down Milton Rd. Off. Shabowich and Off. Ellenton arrived moments later on Milton.

As Off. MacDonald approached the Daily Harvest on High St, Off. Ellenton announced that he had that male in custody and was requesting medical attention for the individual. It appeared at the time he was having trouble breathing. Off. MacDonald went to the scene to check on Off. Ellenton. Once the scene and medical condition was under control Off. MacDonald spoke with the female victim, [REDACTED] gave her a ride back to the Daily Harvest.

Once back at the Daily Harvest Off. MacDonald asked [REDACTED] what had transpired. [REDACTED] stated the black male entered the store and attempted to have [REDACTED] change more and more bills into change, smaller denominations. After a moment [REDACTED] realized what he was doing and told the man he was getting no more change. He left at this time and went to Walgreens. Krista explained to the woman in line she would need to wait because [REDACTED] wanted to count her drawer. [REDACTED] realized her drawer was \$60 short. The lady who initially saw him do this came back and told [REDACTED] was at Walgreens.

[REDACTED] ran over and told him she was going to call the cops. The suspect, later identified as George Lott ran across the street with [REDACTED] following. George got to a fence, turned around and punched Krista in the face. He attempted to climb the fence but was pulled down by [REDACTED] once again punching [REDACTED] in the face. Swung a third time but missed. During this time the blue lights and sirens were approaching and George actually gave Krista back some of the money, \$40. George took off down Milton Rd and was apprehended by Off. Ellenton.

Off. Ellenton gave George some orders which were not done with compliance. During the attempt to handcuff George Lott, George attempted to get off the ground at which time Off. Ellenton punched him in the head. Off. Shabowich arrived and assisted in getting the suspect under control. Due to facial cuts George Lott was transported to Beverly Hospital by Lyons Ambulance accompanied by Off. Shabowich.

While speaking with the victim [REDACTED] at the Daily Harvest, Chief Ouellette arrived. While speaking with the Chief it was determined that one of the charges against George Lott would be Larceny from a Person. Additional charges are A&B, Disorderly Conduct and Resisting Arrest.

Off. MacDonald went to Walgreens to speak with a manager about the possibility they were scammed as well. Off. MacDonald spoke with manager [REDACTED] [REDACTED] stated that George did enter the store and attempted to get change for \$23.00. When she refused he became very angry and left the store. He returned a second time and then left, complaining about possibly missing his bus. Off. MacDonald went to Merchants Liquors and spoke with [REDACTED] Robin stated he came in but only to ask for directions and walking time to Market Basket.

Bail was set at \$10,000 by clerk Brian Sullivan.

**DANVERS POLICE DEPARTMENT  
DANVERS, MA****INCIDENT DATA**

<u>INCIDENT #</u>	<u>DATE/TIME REPORTED</u>	<u>CLASSIFICATION TYPE</u>
13003129	02/13/2013 18:27	GENERAL INCIDENT

**OFFICER REPORT: 13003129 - 1 / MACDONALD, S (OFFICER)**

<u>DATE/TIME OF REPORT</u>	<u>TYPE OF REPORT</u>	<u>REVIEW STATUS</u>
02/13/2013 18:27:38	INCIDENT	APPROVED

**NARRATIVE**

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[REDACTED] ran over and told him she was going to call the cops. The suspect, later identified as George Lott ran across the street with [REDACTED] following. George got to a fence, turned around and punched [REDACTED] the face. He attempted to climb the fence but was pulled down by [REDACTED] once again punching [REDACTED] in the face. Swung a third time but missed. During this time the blue lights and sirens were approaching and George actually gave Krista back some of the money, \$40. George took off down Milton Rd and was apprehended by Off. Ellenton.

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While speaking with the victim [REDACTED] at the Daily Harvest, Chief Ouellette arrived. While speaking with the chief it was determined that one of the charges against George Lott would be Larceny from a Person. Additional charges are A&B, Disorderly Conduct and Resisting Arrest.

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second time and then left, complaining about possibly missing his bus. Off. MacDonald went to Merchants Liquors and spoke with Robin Orechia. Robin stated he came in but only to ask for directions and walking time to Market Basket.

Bail was set at \$10,000 by clerk Brian Sullivan.

#### **OFFICER REPORT: 13003129 - 2 / STONE, P (SERGEANT)**

<b>DATE/TIME OF REPORT</b>	<b>TYPE OF REPORT</b>	<b>REVIEW STATUS</b>
02/13/2013 18:27:38	SUPPLEMENT	APPROVED

#### **NARRATIVE**

At reported date and time Sgt. Stone responded to Milton Rd after a reported robbery. Sgt Stone spoke with a witness to the incident, [REDACTED] of [REDACTED]. [REDACTED] told Sgt. Stone that he is the owner of #110 High St. [REDACTED] lives on the second floor of that building. He stated he observed the altercation from the middle set of windows in the building. He heard sirens and saw blue lights outside his window. He looked outside his window and saw two police officers on top of a person who he described as "giving the officers a hard time". He stated it appeared the officers were trying to arrest the person and the person was resisting. Mr. [REDACTED] stated he thought the person was "throwing elbows" at the officers while they were struggling to handcuff him. He stated he heard one officer say twice, "stop it, stop it" while the person was struggling. He saw the two officers on top of the person trying to control him. He stated the person would not stop struggling with the officers. He then saw one of the officers punch the person twice in the head. He stated the person finally stopped struggling with the officers. He was still being uncooperative on the ground but no longer was throwing elbows at the officers.

Sgt. Stone finished the interview and then photographed the house and window where Mr. Galagher stated he was standing. It was clear that Mr. Galagher had a clear view of where the arrest took place.

#### **OFFICER REPORT: 13003129 - 3 / ELLENTON, J (OFFICER)**

<b>DATE/TIME OF REPORT</b>	<b>TYPE OF REPORT</b>	<b>REVIEW STATUS</b>
02/13/2013 18:27:38	SUPPLEMENT	APPROVED

#### **NARRATIVE**

On 13 February 2013 at approximately 1827hrs dispatch called for area two, Officer MacDonald, to respond to the area of the Daily Harvest on High Street for a robbery.

I was driving on Elm Street toward the center of town at the time of the call and immediately activated my blue lights and started to head that way.

In route dispatch advised that the suspect, a black male, was now running down Milton Road. As I made the turn from High Street onto Milton Road I saw a tall black male and a short white female standing in the middle of the road.

I pulled my cruiser up to them and as I exited, the male looked at me and put both hands into his jacket pockets. I drew my hand gun and ordered him to take his hands out of his pockets and to get on the ground.

After several times yelling these commands loudly and clearly, the suspect slowly took his right hand out of his pocket but left his left hand in his pocket. The suspect slowly started to go down to his knees but would not take his left hand out of his pocket.

Due to the fact that the suspect was not complying to any of my commands and fearing the suspect was armed, I pushed him to the ground with my right foot continuing to yell commands to take his hand out of his pocket. Finally he took his

left hand out of his pocket and as he did several dollar bills came flying out.

Officer Shabowich arrived on scene and came to assist in handcuffing the suspect. The suspect continued to resist and wouldn't put his hands behind his back. Officer Shabowich tried to control the suspect's legs as the suspect was now pushing up and flailing his arms trying to fight his way to his feet. I delivered two quick closed fist strikes to the left side of his head to try and gain control. This proved to be effective and Officer Shabowich and I were able to gain control of his left arm and put a handcuff on it. We then gained control of his right arm and were able to finish the handcuffing procedure.

I was about to search the suspect when I noticed his head, just above his left eye was bleeding. The suspect was breathing heavy and sounded like he was having an asthma attack and I immediately called for an ambulance and asked them to step it up. I was able to sit the suspect up and his breathing became more comfortable. At this time he began to speak and answer some of my questions. I searched the suspect and found no weapons. I did recover the US currency, a set of keys, a candy bar and a lighter from his pockets. I put all of this into a paper evidence bag and gave it to Officer MacDonald.

Danvers Fire and Lyons Ambulance arrived on scene and packaged him up for transportation to Beverly Hospital.

#### **OFFICER REPORT: 13003129 - 4 / SHABOWICH, P (SERGEANT)**

<u>DATE/TIME OF REPORT</u>	<u>TYPE OF REPORT</u>	<u>REVIEW STATUS</u>
02/13/2013 18:27:38	SUPPLEMENT	APPROVED

#### **NARRATIVE**

On 2/13/13 at about 1827 hrs I was dispatched to the area of Milton Rd for a possible assault. Dispatch updated us that a male subject was running down Milton Road. Officer Ellenton stated that he had located the suspect. Upon arrival I began assisting Officer Ellenton in handcuffing the suspect. The suspect, George Lott, began to flail and struggle as we attempted to handcuff him. I tried to take control of his legs by holding his legs down as he was trying to kick us. He kept trying to get his hands inside his jacket. He kept pulling his hands back resisting our efforts to handcuff him. Officer Ellenton struck him a couple of times in his head and he finally began to calm down a bit and he stopped his resisting our efforts to subdue him. We were able to handcuff him. He was initially handcuffed behind his back, but when he was put on the stretcher for transport he was handcuffed, double-locked, in front. I rode in the ambulance with him as he was transported to the Beverly Hospital. At the hospital he told the nurse Tom Mattson that the female, [REDACTED] bowed him twice in the face in encounter. He also related that she chased after him. I asked him if he wanted to make a statement and he stated, "she did what she and to do".

#### **OFFICER REPORT: 13003129 - 5 / STONE, P (SERGEANT)**

<u>DATE/TIME OF REPORT</u>	<u>TYPE OF REPORT</u>	<u>REVIEW STATUS</u>
02/13/2013 18:27:38	SUPPLEMENT	APPROVED

#### **NARRATIVE**

On Thursday, 14 February 2013 Sgt. Stone conducted a second interview of [REDACTED]. This interview was done inside Daily Harvest at 17:45 P.M. [REDACTED] was asked questions about the larceny that had occurred the night before. [REDACTED] told this officer that the suspect, George Lott, had come in and began asking for change. She stated he started out asking for one dollar bills in change for a five dollar bill. He kept asking for more and more exchanges going from fives

to tens and more. He was intentionally trying to confuse her and get more money that he started out with. She finally shut off the exchange routine and Mr. Lott left. She stated she did an inventory of the money in the cash register and found out she was short sixty dollars. She called the owner [REDACTED] and told her what happened. She was then told by someone in the store that Mr. Lott went next door to Walgreens. She left Daily Harvest to go speak with the person, now known as Mr. Lott and retrieve the money that he conned from her. She dialed the Danvers Police as she went over to Walgreens. She saw Mr. Lott leave Walgreens. She confronted him and he ran across the street to #106 High St. She stated he ran towards the blue house on High St. across from Walgreens. She stated she was on the phone with the Danvers Police during the whole incident and was describing the situation as it happened. Mr. Lott then tried to go over the fence between the houses in the driveway at #106 and go into the back yard. There is a short, chain link fence between # 106 and # 108 High St. The fence has sharp edges on the top. A physical confrontation happened and she stated she pulled him down from the fence. She stated "he tried to jump over the fence". She stated "he just punched me and I pulled him down from the fence at the blue house". She stated he threw a punch at her that grazed her face but landed on her shoulder. She stated he threw another punch at her that hit her on the jaw. [REDACTED] stated she thought Mr Lott might have been bleeding when she pulled him down from the fence.

[REDACTED] stated later on after the incident, after she had gone home, she found drops of blood on her left arm. She was not cut and she did not have any further contact with Mr. Lott after the incidence at the fence. She felt the blood belonged to Mr Lott and he may have cut himself at the fence. She thought the blood got on her arm during the confrontation at the fence. She stated when she went home she found, as a result of the confrontation at Milton Rd., her bra strap was ripped. She further stated her hair, which had been braided, had been all dislodged. She fet it was a significant physical confrontation.

[REDACTED] then stated she saw the blue lights of the cruiser and heard the dog barking in the back of the cruiser. She stated Mr. Lott's demeanor then changed as the cruiser was arriving. Mr. Lott pulled paper money out from his pockets and tried to give it to her. She refused the money. Mr Lott had gone down High St. towards Milton Rd. and she continued to follow. She followed Mr. Lott. as he tried to get away. She continued to talk to the police on her cell phone. She stated " he was trying to get away any way he could and she was preventing him from leaving.

[REDACTED] stated she saw the first cruiser arrive and confront Mr. Lott. She stated Mr. Lott was standing in the middle of Milton Rd. when the cruiser arrived. She observed the scene after she had walked further down Milton Rd. She was a little distance away to the left of the officers and Mr. Lott. She stated she saw Mr. Lott try to walk away after the officer confronted him. She stated she heard the officer say "get on the ground" two or three times. She stated Mr. Lott just stood in the street. She stated she saw the officer forcefully put him down on the ground. She stated he was trying to get up. She stated he was not doing what the officer was telling him to do. She stated she did not see Officer Ellenton punch Mr. Lott. (probably because she was to the left of the people involved as she observed the incident). She stated "it wasn't like any punching was going on, even when the second officer came to the scene". "It was like they were just trying to get him (Mr. Lott) to stay still. He just wouldn't stay still and kept trying to get up. She stated he eventually did go still. At that point the officers kept asking him "are you OK, are you OK". It appeared to her they were then trying to take care of him, (Mr. Lott).

[REDACTED] stated that after the subject (Mr. Lott) was handcuffed the officers were no longer aggressively trying to control him and seemed to be more concerned with his physical condition. Krista felt that Mr. Lott appeared very high on something and she didn't know if it was from drinking alcohol or pills.

**OFFICER REPORT: 13003129 - 6 / SULLIVAN, R (DET. SERGEANT)**

**DATE/TIME OF REPORT**  
02/13/2013 18:27:38

**TYPE OF REPORT**  
SUPPLEMENT

**REVIEW STATUS**  
APPROVED

**NARRATIVE**

On Tuesday, February 26, 2013, I (Det. Sullivan) was assigned to follow up with staff at Walgreens.

I spoke to assistant [REDACTED] and register clerk [REDACTED]

[REDACTED] was working on the evening of the incident. He said that a black male came in to the store and approached him at the register. He said he was taking the bus and asked Muhammad to make change. [REDACTED] said that the man put money down on the counter and believed that there were one and five dollar bills. [REDACTED] said that he placed money on the counter as well and when he did so the male mixed all the currency together. [REDACTED] said that he picked up all the money and called the manager. Muhammad said that he could be fired if he was short money and told the man he was calling the manager to count the draw. [REDACTED] said that the man became very angry and threatened him. [REDACTED] said the man said, "nigger if I miss my bus I'm gonna come here and shoot you". [REDACTED] said he was scared by this.

[REDACTED] that Heather checked the cash draw including the money he picked up off the counter and it was found that the draw was \$23.00 over and it was believed that was the money the man had put on the counter. The man was given the \$23.00 and he left the store.

A copy of the surveillance video from Walgreens was obtained and placed in evidence.

50

**HP LaserJet 200 colorMFP M276nw**

## Fax Confirmation

Apr-5-2016 8:14PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
162	4/ 5/2016	8:10:35PM	Send	17813769907	4:16	13	OK

# Commonwealth of Massachusetts

SUFFOLK, ss.



SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION

No. 1684CV469

George Lott

, Plaintiff(s)

v.

The Town of Danvers;  
Justin Ellenton and ~~Paul~~ Peter Shabowich in their individual capacities \_\_\_\_\_, Defendant(s)

## SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon \_\_\_\_\_ DHAR LAW LLP  
Monisha N. Pahuja and Joseph Hennessey

plaintiff's attorney, whose address is \_\_\_\_\_ One Constitution Center, Suite 300 Charlestown, MA 02129, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Boston either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Judith Fabricant, Esquire, at Boston, the 31<sup>st</sup> day of MARCH, in the year of our Lord two thousand sixteen.

*Michael Joseph Donovan*

Clerk/Magistrate

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

3. TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED

- (1) TORT — (2) MOTOR VEHICLE TORT — (3) CONTRACT — (4) EQUITABLE RELIEF — (5) OTHER

**PROOF OF SERVICE OF PROCESS**

I hereby certify and return that on March 31, 2016, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

by certified mail, return receipt, on Town of Danvers through its  
Clerk, treasurer, and managers, pursuant to Mass. R. Cir. P. 4(d)(4),  
addressed to 1 Sylvan St. Danvers MA 01923.

Dated: March 31, 2016

Monish Paliogi, Esq.

N.B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN  
THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

, 201 .

Commonwealth of Massachusetts

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION No. 1684CV469

George Lott \_\_\_\_\_, Plaintiff(s).

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Town of Danvers; Justin Ellenton and  
~~Samuel~~<sup>John</sup> Shablowitch in their individual capacities \_\_\_\_\_, Deft(s).

SUMMONS  
(Mass. R. Civ. P.)

(AFFIX FILING STAMP HERE)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT DEPT.  
SUPERIOR COURT

DOCKET NO. 1684-CV-469

GEORGE LOTT,  
PLAINTIFF,

v.

TOWN OF DANVERS;  
JUSTIN ELLENTON and PETER  
SHABOWICH in their individual capacities,  
DEFENDANTS.

FIRST AMENDED  
COMPLAINT  
AND DEMAND  
FOR JURY TRIAL

INTRODUCTION

1. This is a civil rights action against Danvers Police Officers Justin Ellenton and Peter Shabowich for using unreasonable and excessive force on a compliant and non-threatening George Lott, causing various fractures to his face, including that of his left orbit and to his ribs. Lott, an African-American man, was sixty-eight (68) years old at the time of the assault. Following commands of Defendant officers, who were effectuating his arrest, Mr. Lott was on the ground when Defendant Ellenton proceeded to kick Mr. Lott in the back and punch him in the face with a closed fist. In addition to his physical injuries, the abuse caused Mr. Lott severe emotional distress.

JURISDICTION AND VENUE

2. This action arises, in part, under the Massachusetts Tort Claims Act, M.G.L. c. 258; the Massachusetts Civil Rights Act, M.G.L. c. 12 §11I; Massachusetts Common Law; the

Fourth and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. §1983. Jurisdiction and venue in the Superior Court of Suffolk County are proper pursuant to M.G. L. c. 258 §3.

PARTIES

3. Plaintiff **GEORGE LOTT** is a citizen of the United States and resides in the city of Boston, Suffolk County, Massachusetts. Lott is an African-American male, who, at the time of the excessive force incident was sixty-eight (68) years old and infirmed.

4. Defendant **TOWN OF DANVERS** is a Massachusetts municipality located in Essex County and was, at all times relevant to this complaint, the public employer of Defendants Ellenton and Shabowich.

5. Defendant **JUSTIN ELLENTON** was at all times relevant to this complaint a police officer of the Town of Danvers Police Department. He is sued in his individual capacity.

6. Defendant **PETER SHABOWICH** was at all times relevant to this complaint a police officer of the Town of Danvers Police Department. He is sued in his individual capacity.

FACTS

7. On February 13, 2013, at approximately 6:27 p.m., Defendants Ellenton and Shabowich each responded separately in his patrol car to a dispatch for a possible robbery originating from the Daily Harvest Café on High Street in Danvers.

8. Defendants Ellenton and Shabowich were on duty and in police uniform. The dispatch was updated as Defendants Ellenton and Shabowich were en route to include information that the suspect was on Milton Road.

9. Defendant Ellenton arrived in the area first and observed an African American male, George Lott, standing in the middle of Milton Road with a Caucasian female.

10. Defendant Ellenton exited his vehicle, drew his service firearm from his holster, pointed the firearm at Mr. Lott and ordered him to put his hands up.

11. Mr. Lott complied with Defendant Ellenton's command and showed his hands.

12. Defendant Ellenton closed in to approach with his firearm drawn and ordered Mr. Lott to get down on the ground.

13. Mr. Lott, who suffers from degenerative arthritis, sciatic nerve damage in his spine and has a history of back surgery, immediately complied with Defendant Ellenton's command and got down on his knees.

14. When Mr. Lott was on the ground, Defendant Ellenton, unprovoked and without justification, then violently kicked Lott in his back causing him to fall hard to the ground.

15. Defendant Shabowich arrived on scene to assist in the arrest.

16. With Defendant Shabowich securing Mr. Lott's legs, Defendant Ellenton closed-fist punched Mr. Lott in the face, multiple times, causing Mr. Lott to be knocked unconscious.

17. Mr. Lott was not engaged in any assaultive behavior and was not a danger toward the Defendants or any other person.

18. Defendant Shabowich did nothing to stop Ellenton's violent assault on Lott.

19. Defendants Ellenton and Shabowich handcuffed Mr. Lott.

20. Mr. Lott remained on the ground with his hands cuffed behind his back, bleeding from the face above his left eye and struggling to breathe.

21. Defendant Ellenton called an ambulance to transport Mr. Lott to the Emergency Room.

22. The force used by Defendant Ellenton was unreasonable and excessive; Mr. Lott was not a threat to anyone's safety nor was he attempting to escape; Lott was on his knees with

his hands exposed in compliance with the Defendants' orders.

23. The actions of Defendant Ellenton violated Danvers Police Department policies and procedures of striking an individual in "Red Striking Areas" and without cause.

24. Lyons Ambulance Service responded to the call and, after securing Mr. Lott in a collar on a long board, transported Mr. Lott to Beverly Hospital ("Beverly") with Defendant Shabowich.

25. When Mr. Lott arrived at Beverly under Defendant Shabowich's guard, he was frightened and confused about why he had been assaulted.

26. Defendant Shabowich remained present with Lott during the entirety of his stay at Beverly's Emergency Room, causing Mr. Lott further fear for his wellbeing and his life.

27. When Beverly Emergency Room staff asked Mr. Lott, in the presence of Defendant Shabowich, the cause of his injuries, Mr. Lott, in his continuing fear was intimidated to feign that that the Caucasian female he was found standing with on Milton Road (¶ 8) elbowed him in the face.

28. Defendant Shabowich filed a supplemental report including the statements Mr. Lott made while he was hospitalized in response to questions regarding the cause of his injuries.

29. A computerized axial tomography scan (CT scan) at Beverly revealed that Mr. Lott suffered a fracture of the anterior and lateral and medial wall to the right maxillary sinus and the zygomatic arch; and a comminuted fracture (i.e. that the bone was fractured in multiple pieces) of the posterolateral wall of the right orbit with displacement.

30. Mr. Lott suffered lacerations to both eyes requiring sutures, a fractured rib, and substantial physical pain.

31. Mr. Lott was administered powerful narcotics to help alleviate the severe pain

caused by his injuries.

32. Mr. Lott was discharged from the hospital into the custody of Danvers Police Officer Shabowich at approximately 10:00 p.m. on February 13, 2013.

33. Defendants made false statements in their police report in an effort to cover up the incident of excessive force.

34. Defendant Ellenton falsely claimed Mr. Lott resisted him.

35. In his report, Defendant Ellenton writes that at the point Mr. Lott was on his knees on the ground, Defendant Ellenton kicked Mr. Lott in the back because, according to Ellenton, the kneeling Lott was not complying with any of his commands.

36. In his report, Defendant Ellenton writes that, upon Defendant Shabowich's arrival, an elderly and injured Lott at that point decided to start flailing his arms up in resistance "trying to fight his way to his feet" against the two officers on scene effectuating his arrest.

37. Defendant Ellenton's search of Mr. Lott revealed no weapons; the only items on Lott's person were U.S. currency, keys, candy, and a lighter.

38. Mr. Lott continued to feel pain in his head and ribs for months after the incident for which he sought additional treatment. In addition to his physical injures, Mr. Lott has suffered significant emotional distress and economic harm.

39. Plaintiff made proper presentment pursuant to M.G.L. Ch. 258 § 4 and his Complaint is timely filed.

COUNT I  
*42 U.S.C. § 1983 Excessive Use of Force under the Fourth and Fourteenth Amendments  
(ELLENTON)*

40. The above paragraphs are incorporated by reference.

41. Defendant Ellenton, acting under of color of law, violated Plaintiff's right to be

free from unreasonable seizures as provided by the Fourth and Fourteenth Amendment to the United States Constitution by subjecting Plaintiff to unreasonable and excessive force at the time of his arrest.

42. Defendant Ellenton acted with reckless disregard for Plaintiff's constitutional rights.

43. As a direct and proximate result of Defendant's actions, Plaintiff suffered the injuries described above.

COUNT II  
*Massachusetts Civil Rights Act, M.G.L. c. 12 § 11I*  
(SHABOWICH)

44. The above paragraphs are incorporated by reference.

45. Defendant Shabowich, acting under of color of law, interfered with the exercise and enjoyment of Plaintiff's exercise of his right to participate in seeking adequate medical treatment and his right to be free from threat of harm to his person and his psyche by means of threats, intimidation, and coercion within the meaning of M.G.L.A. c. 12, §§ 11I.

46. As a direct and proximate result of Defendant's actions, Plaintiff suffered the injuries described above.

COUNT III  
*Assault and Battery*  
(ELLENTON)

47. The above paragraphs are incorporated by reference.

48. Defendant Ellenton, by his words and actions, created in the Plaintiff a reasonable apprehension of imminent and offensive contact by drawing his firearm and keeping it trained on Plaintiff as he complied with commands.

49. Defendant Ellenton, without right, privilege or excuse, struck George Lott with

his foot knocking Lott to the ground.

50. Defendant Ellenton, without right, privilege or excuse, struck Lott in the face twice with his closed fists knocking the 68-year-old unconscious.

51. As a direct and proximate result of Defendant's actions, Plaintiff suffered the injuries described above.

COUNT IV  
*Intentional Infliction of Emotional Distress*  
(ELLENTON)

52. The above paragraphs are incorporated by reference.

53. Defendant Ellenton intended, knew, or should have known that emotional distress was the likely result of his excessive escalation of force against the Plaintiff.

54. Such conduct was extreme and outrageous, and caused Plaintiff emotional distress that was severe.

COUNT V  
*Negligence pursuant to M.G.L. c. 258 §4*  
(TOWN OF DANVERS)

55. The above paragraphs are incorporated by reference.

56. In the alternative to Counts I, III, and IV, Defendant Ellenton negligently struck Plaintiff in the back and negligently caused contact with his fist to Plaintiff's face.

57. At the time of these negligent acts, Defendant Ellenton was a public employee of the Town of Danvers and acting within the scope of his employment.

58. As a direct and proximate result of Defendant's negligence, Plaintiff suffered the injuries described above.

RELIEF REQUESTED

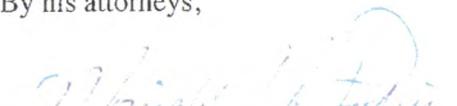
WHEREFORE, Plaintiff requests that this Court award him:

- (1) Compensatory damages;
- (2) Punitive damages against Defendant Ellenton;
- (3) Costs of this action including reasonable attorney's fees; and
- (4) Other such other further relief as this court deems appropriate and necessary.

JURY DEMAND

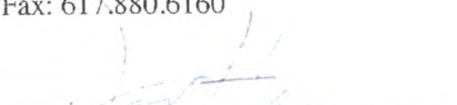
A trial by jury is hereby demanded.

RESPECTFULLY SUBMITTED,  
For the Plaintiff,  
By his attorneys,

  
Monisha N. Pahuja, BBO No. 692202  
[monisha@dharlawllp.com](mailto:monisha@dharlawllp.com)

LAW<sup>llp</sup>

The Charlestown Navy Yard  
One Constitution Center, Suite 300  
Charlestown, Massachusetts 02129  
Office: 617.880.6155  
Mobile: 617.943.0682  
Fax: 617.880.6160

  
Joseph F. Hennessey, BBO No. 669552  
[jfhennessey@dharlawllp.com](mailto:jfhennessey@dharlawllp.com)

## CIVIL ACTION COVER SHEET

1684CV469

## The Superior Court



PLAINTIFF(S):	George Lott
ADDRESS:	39 Boylston Street Boston, MA 02116
ATTORNEY:	Monisha Pahuja, DHAR LAW LLP
ADDRESS:	The Charlestown Navy Yard One Constitution Center, Suite 300 Charlestown, MA 02129
BBO:	692202

COUNTY	Suffolk
DEFENDANT(S):	Town of Danvers; Justin Ellenton and Paul Shabowich in their individual capacities.
ADDRESS:	<i>COPY</i>
TOWN OF DANVERS POLICE DEPARTMENT	120 Ash Street - Danvers, MA 01923

## TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
E17	Civil rights action	A	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

\*If "Other" please describe: \_\_\_\_\_

## STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(attach additional sheets as necessary)

## A. Documented medical expenses to date:

1. Total hospital expenses .....	\$ .....
2. Total doctor expenses .....	\$ .....
3. Total chiropractic expenses .....	\$ .....
4. Total physical therapy expenses .....	\$ .....
5. Total other expenses (describe below) .....	\$ .....
Subtotal (A): \$ .....	

## B. Documented lost wages and compensation to date .....

## C. Documented property damages to date .....

## D. Reasonably anticipated future medical and hospital expenses .....

## E. Reasonably anticipated lost wages .....

## F. Other documented items of damages (describe below) .....

\$ .....
\$ .....
\$ .....
\$ .....
\$ .....
\$ .....

25,000.00

## G. Briefly describe plaintiff's injury, including the nature and extent of injury:

Anticipated damages to exceed \$25,000.00 in an amount to be determined by a jury at trial.

TOTAL (A-F): \$ &gt; 25,000.00

Injuries include personal injuries, emotional distress, and civil rights violations.

CONTRACT CLAIMS

(attach additional sheets as necessary)

Provide a detailed description of claims(s):

TOTAL: \$ &gt; 25,000.00

Signature of Attorney/Pro Se Plaintiff: X

Date: 2/11/16

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

## CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

Date: 2/11/16

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT DEPT.  
SUPERIOR COURT  
DOCKET NO. 1684-CV-469

GEORGE LOTT,  
PLAINTIFF,

v.

TOWN OF DANVERS;  
JUSTIN ELLENTON and PETER  
SHABOWICH in their individual capacities,  
DEFENDANTS.

COPY

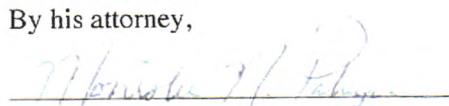
NOTICE OF AMENDMENT TO COMPLAINT AS A MATTER OF COURSE

The Plaintiff, George Lott, hereby gives notice that the complaint in the above-entitled action, timely filed on February 11, 2016, has been amended as a matter of course in accordance with the provisions of Rule 15(a) of the Massachusetts Rules of Civil Procedure as follows:

*The word "Paul" in the caption, in paragraph one (1), and in paragraph six (6), is stricken and replaced with the word "Peter."*

This amendment is made as a matter of course in that no responsive pleading has been served regarding the original complaint, nor has an order of dismissal been entered. The Plaintiff's First Amended Complaint is attached hereto for docketing and filing in this matter.

RESPECTFULLY SUBMITTED,  
For the Plaintiff,  
By his attorney,

  
Monisha N. Pahuja, BBO No. 692202  
[monisha@dharlawllp.com](mailto:monisha@dharlawllp.com)

 Dhar Law LLP

One Constitution Center, Suite 300  
Charlestown, Massachusetts 02129  
Phone: 617.880.6155  
Fax: 617.880.6160

Date: 3/31/16

TOWN OF DANVERS  
ONE SYLVAN STREET  
DANVERS, MA 01923  
978 777 0001  
Fax: 978 777 1025

## F A X C O V E R S H E E T

DATE: April 5, 2016 TIME: 3:54 PM

TO: MIIA CLAIMS PHONE:  
FAX: 781 376 9907

FROM: Judy Smith PHONE: 978 777 0001  
Town of Danvers FAX: 978 777 1025

RE:

CC:

Number of pages including cover sheet: 24

### ***Message***

Please see attached from the Commonwealth of Massachusetts Superior Court Department and advise. Thank you. Judy Smith, Town of Danvers



MIIA Member Services

15 Cabot Road

Woburn, MA 01801-1003

TEL (800) 526-6442

FAX (781) 376-9907

[www.emiiia.org](http://www.emiiia.org)

February 13, 2014

Attorney Joseph Hennessey  
DHARLAW LLP  
Two Atlantic Ave  
Fourth Floor  
Boston MA 02110



RE: George Lott vs. Town of Danvers  
MIIA File: M14LE79617  
Date of Loss: February 14, 2013

Dear Joe:

The Massachusetts Property and Casualty Group provided law enforcement liability protection to the Town of Danvers. The above matter has been assigned to me for handling.

I have reviewed your letter dated February 4, 2014 to the Town of Danvers.

You allege that excessive force was used during the arrest of your client George Lott on or about February 14, 2013. Specifically you allege that the strikes to a so called "red zone" constitute a violation of your clients' federal civil rights.

I should point out from the outset that the police reports and witness statements from the day of the incident paint a very different version of what happened. Statements of independent witness clearly show your client failed to follow the instructions of police at the scene. Reasonable force was used only after your client failed to comply.

In order that I may complete my investigation into the matter, please forward to my attention the following:

- 1) I would welcome the opportunity to sit with your client at a mutually convenient time to listen to his version of what occurred. I would be willing to come to your office.
- 2) The criminal docket showing the disposition of the charges against your client
- 3) The medical records and reports from the Beverly Hospital
- 4) The medical records and reports from the Boston Medical Center
- 5) Any and all medical invoices related to your clients' treatment
- 6) Your expert report demonstrating given the totality of the circumstances excessive force was used.
- 7) Any other information you feel will aid in the determine of damages and liability.

Should you have any questions, please feel free to contact me.

Sincerely,



William L. MacKinnon Jr. AIC  
Senior Claims Representative  
(781) 939-6845 (Direct Dial)  
(781) 376-9907 (fax)  
[william.mackinnon@cabotrisk.com](mailto:wiliam.mackinnon@cabotrisk.com)

cc

Wayne Marquis  
Town Manager  
Town of Danvers  
1 Sylvan Street  
Danvers MA 01923

Chief Neil Ouellette  
Danvers Police Department  
120 Ash Street  
Danvers MA 01923





Joseph Hennessey  
[jhenessey@dharlawllp.com](mailto:jhenessey@dharlawllp.com)

Dhar Law, LLP  
Two Atlantic Avenue, 4th Floor  
Boston, Massachusetts 02110  
T: (617) 880-6155  
F: (617) 880-6160  
[www.dharlawllp.com](http://www.dharlawllp.com)

February 4, 2014

**FIRST CLASS MAILING**  
**AND CERTIFIED MAILING TO ALL LISTED BELOW**

Town Of Danvers  
Town Manager: Wayne Marquis  
Town Hall  
1 Sylvan Street  
Danvers, MA 01923

Town of Danvers  
Attention: Selectmen  
Town Hall  
1 Sylvan Street  
Danvers, MA 01923

Danvers Police Department  
Chief Neil F. Ouellette  
120 Ash Street  
Danvers, MA 01923

Town of Danvers  
Town Meeting Members  
Town Hall  
1 Sylvan Street  
Danvers, MA 01923

RECEIVED  
FEB 10 2014  
DANVERS POLICE DEPT.

To Whom It May Concern:

Pursuant to the Massachusetts Tort Claims Act, no civil action may be instituted against a public employer (here, the Police and Danvers) for any injury caused by the negligence or wrongful conduct of an employee "unless the claimant shall have first presented his claim in writing to the executive officer of such employer within two (2) years after the date upon which the cause of action arose." G.L. c. 258, Section 4. Failure to make proper presentment bars a claim against a public employer for the negligence or wrongful conduct of its employees. See *Richardson v. Dailey*, 424 Mass. 258, 259 (1997).

Please be advised that this office represents George E. Lott. On behalf of Mr. Lott, please consider this letter a formal written *Notice of Claim*, pursuant to M.G.L. Chapter 258 § 4, for the serious personal injuries resulting to our clients which arose from an incident that occurred on or about February 14, 2013.

At this time we are placing you on notice of our intent to file suit due to the negligence, intentional and negligent infliction of emotional distress, excessive use of force, assault and battery, failure to train, failure to supervise. These claims also outlined below are pursuant to a civil rights claim and Mass Torts Claims Act along with other wrongful acts and omissions of the Danvers Police Department and its employees which resulted in the injuries sustained by our client.

On February 14, 2014, at approximately 6:27PM, Danvers Police Officer McDonald was dispatched to the area of Daily Harvest Café for a report of a robbery. Officer Ellenton and Officer Shabowich were also dispatched to the area. Officer Ellenton located Mr. Lott and placed him in custody and requested medical attention for Mr. Lott as a result of injuries sustained. It is the actions of Officer Ellenton are at issue.

Officers spoke with the alleged victim, cashier at the Daily Harvest Café, who told the officers that Mr. Lott had asked for change, then asked for more change and it was at that time she refused to provide him with anymore change. The alleged victim then counted her drawer and discovered that she was short \$60.00 in her drawer. This, if accurate, is a misdemeanor and not an unarmed or armed robbery as alleged in the report. Officers indicated in the report that Mr. Lott attempted to run but was stopped by Officer Ellenton. Officers indicated in their reports that Mr. Lott attempted to get off the ground which time **Officer Ellenton punched him in the head**. Officers then violently slammed their knees in the chest cavity of Mr. Lott causing the rib fracture to the 68 year old. Due to facial cuts Mr. Lott was transported to Beverly Hospital by Lyons Ambulance. Mr. Lott was collared and boarded prior being transported to the hospital. Mr. Lott received stitches in his mouth as a result of the punch to the face by Officer Ellenton and was diagnosed with having chest pain and more importantly, a fractured Orbital bone. Mr. Lott was subsequently charged with Larceny Under and resisting arrest.

Mr. Lott is a 68 years of age African American and suffers from Degenerative Arthritis, has sciatic nerve damage in his spine, and has back surgery in November of 2004. In addition, Mr. Lott has had several surgeries for lung cancer which is currently in remission, pulmonary disease including COPD. He adamantly disputes the facts that are contained in the police reports

that were submitted by the Danvers Police Officers in this case and asserts that the officers are being untruthful. Due to his back surgeries he is incapable of running away from the officers as alleged, and in no condition and powerless to fight any of the much younger officers on scene. More importantly, Officer Ellenton chose to punch a 68 year old man in the head which resulted in Mr. Lott being knocked unconscious and incapable of resisting or fighting back. Officers forcefully pounced on Mr. Lott's chest with their knee causing Mr. Lott to suffer a fracture to his ribs.

The 68 year old Mr. Lott was treated at Beverly Hospital where the medical staff noted a subconjunctival hemorrhage to the right eye, facial trauma, fracture of the anterior and lateral medial wall to the right maxillary sinus, and surgery to repair was recommended. Mr. Lott also received sutures of both left and right eyes for lacerations he sustained. He also complained of right rib pain which was subsequently diagnosed at Boston Medical Center as a fracture. Most important to this diagnosis is that as a result of the punch to the face of the 68 year old Mr. Lott by Officer Ellenton, Mr. Lott suffered a fracture of the left orbit. Not only was Mr. Lott treated at Beverly Hospital, he was also treated at Boston Medical Center, 850 Harrison Avenue, Boston on 3/12/13 by Dr. Ron Medzon where he was diagnosed with having a right 8<sup>th</sup> rib fracture.

Medical records are available upon request by Town Counsel.

In review of the Danvers Police Departments Use of Force Policy and Procedures, it is very clear that the officers involved in this incident used excessive force on George Lott. This fact was supported in the officer's report where he admits to punching Mr. Lott in the face.

An officer should exhaust every reasonable means of employing the minimum amount of force before escalating to a more severe application of force, except where the officer reasonably believes that lesser means would not be adequate in a particular situation and the use of force is necessary to accomplish his lawful objective or to protect himself or another from serious physical injury or death. The order of use of force as recommended by your own policies states, Verbalization, physical strength/hand control, restraint techniques, chemical substance, impact weapons, tear gas, and then deadly force. Officer Ellenton immediately employed the use of deadly force, his fist to the face of Mr. Lott, causing the 68 year African American to be knocked unconscious. Any intentional impact to the area of the face is considered "DEADLY FORCE". The areas of the neck and face areas are considered "Red Striking Areas." The only time that an officer is permitted to use deadly force is when there is no less drastic means available to prevent an attack which he reasonably perceives as immediate threat of death or serious bodily injury or to effect an arrest only when the arrest is for a felony.

The injuries that Mr. Lott sustained were a proximate result of the actions of the Danvers Police Department, the Town of Danvers, the Selectmen of Danvers, the Chief of Danvers Police Department, and the Danvers Police Officers, who were at the scene, both in their official and individual capacities. The humiliation and emotional scars that Mr. Lott suffered and the violation of his civil rights occurred as a result of the unlawful acts, omissions, and procedures of the Danvers Police Department and its officers.

We are placing you on notice of our intent to bring suit against the officers and the Town of Danvers pursuant to 42 U.S.C. §1983 and the Massachusetts Tort Claims Act that the officers

violated Mr. Lott's Fourth Amendment rights by using excessive force in the course of arresting him.

The Individual Police Officers at all times were acting under color of law and as such the first element necessary for a violation of 42 U.S.C. Section 1983, Fourth and Fourteenth Amendments as well as Massachusetts Civil Rights Act, M.G.L. c. 11, § 12 has been established. In this case, the excessive use of the force the officers used was unreasonable and excessive under the circumstances and violated the Danvers Police Department's express rules concerning use of force. As a legal result of such conduct, the Individual Officers deprived Mr. Lott of his clearly established and well-settled rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, to be free from unreasonable force, arbitrary government action, and deprivation of life, liberty or property without due process of law. The Officers' conduct, including but not limited to their use of deadly force in violation of express Danvers Police Department rules requiring officers to refrain from such force in the areas of the face reflects a knowing and/or deliberate indifference to Mr. Lott's rights that is shocking to the conscience. As a direct and proximate result of the Officers' conduct, Mr. Lott both suffered injuries as described above and damages.

It is clear that based upon the Police Reports that were submitted by the officers that Officers' conduct placed Mr. Lott in immediate and imminent fear of death and/or bodily harm. The officers' conduct by violently punching Mr. Lott in the face, knocking him to the ground and violently kneeing him in the chest area, battered, and/or handled our client in a harmful and/or offensive manner. This touching was without consent and/or legal justification and was malicious, oppressive, and/or conducted with reckless disregard for the rights and safety of others, especially Mr. Lott. As a direct and proximate result of the assault and battery by the officers our client has suffered injuries as previously stated. This claim of assault and battery by the officers is supported by the police officer's own reports.

We also intend to file a claim for Intentional and/or Reckless Infliction of Emotional Distress. The police officers on the scene knew or should have known that emotional distress was the likely result of their aforesaid conduct. The Officers' conduct, including but not limited to Officer Ellenton recklessly and intentionally physical attacking our client created the substantial risk both physical and emotional distress to Mr. Lott, and in disregard of police department rules, and in otherwise failing to take reasonable actions pursuant to Department Policies and Procedures was extreme and outrageous. The Officers' actions proximately caused our client severe emotional distress, anxiety, and fear for his life. The emotional distress suffered by our client was severe and of such a nature that no reasonable person could be expected to endure it. This anxiety, distress and fear of retaliation continues today.

Pursuant to Massachusetts Tort Claim Act -M.G.L. c. 258 the individual officers, acting in the course and scope of their employment, owed a duty of care to Mr. Lott and other bystanders to reasonably ensure there was no substantial risk to employing force. In this case and as previously stated, the officers exceed the scope of their training and the Department policies when employing force to place Mr. Lott under arrest. The individual officers breached their duty of care to our clients by employing excessive force, in violation of department policies, and employing a tactic to an area of the face that is considered a deadly force area. The

force employed was excessive and careless under the circumstances. As a proximate result of the Individual Officers' negligence, in particular Officer Ellenton, Mr. Lott suffered significant and permanent physical injuries, severe emotional distress, fear and anxiety, and other damages. Therefore, the Town of Danvers is liable for our client's injuries caused by the negligent or wrongful act or omission of the officers whose conduct herein occurred within the course and scope of their employment.

The Town of Danvers is liable for failure to train officers pursuant to 42 U.S.C. § 1983. The Town of Danvers failed to properly train its police officers, including but not limited to the Individual officers, with respect to use of deadly force, the physical striking to the face (red zone area) as described and thereby failing to adequately discourage constitutional violations on the part of its officers. Additionally, upon information and belief it was the policy and/or custom of the Town of Danvers to inadequately investigate and/or otherwise tolerate violations of departmental rules, including but not limited to Rule regarding the use of force. These policies and/or customs demonstrated a deliberate indifference on the part of policymakers of the Town of Danvers to the constitutional rights of persons including Mr. Lott and as such violated our client's constitutional rights. Even without Mr. Lott's filing a complaint seeking an investigation, it was the duty of the patrol supervisor to request that an investigation be conducted as a result of an assault and battery occurring during his shift which resulted in Mr. Lott being transported to the hospital with a fractured orbital. More importantly, it is the department's policy to require a use of force report whenever force is used in effecting an arrest. This report should have initiated an internal investigation but was ignored by the supervisors of the Danvers Police Department and the Town Manager and Selectmen. Here, the Town of Danvers caused the constitutional violations at issue by failing to train officers in the proper use of force and by failing to supervise, investigate, and discipline the use of excessive force. Most important to this claim is the fact the patrol supervisor ignored the fact that an arrested individual was at the hospital being treated for injuries sustained during an arrest. Under § 1983, courts have treated claims for both failure to supervise and failure to train under the general category of supervisory liability. "Supervisory liability can be grounded on either the supervisor's direct participation in the unconstitutional conduct, or through conduct that amounts to condonation or tacit authorization." *Whitfield v. Melendez-Rivera*, 431 F.3d 1, 14 (1st Cir.2005) (citing *Camilo-Robles v. Zapata*, 175 F.3d 41, 44 (1st Cir.1999)). As stated previously, Mr. Lott was transported to the Hospital as a result of injuries he sustained during the arrest. The patrol supervisors knew or should have known that the injuries were sustained during the arrest and had a duty to investigate and report to the Police Chief all of the events. The Danvers Police Chief in turn failed to protect Mr. Lott and therefore condoned and/or provided authorization to use deadly force.

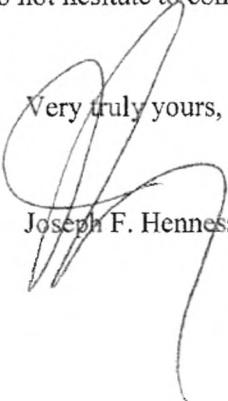
A municipality may be liable under § 1983 for failure to train its police officers if "that failure causes a constitutional violation or injury and 'amounts to deliberate indifference to the rights of persons with whom the [officers] come into contact.'" *DiRico v. City of Quincy*, 404 F.3d 464, 468 (1st Cir. 2005) (citing *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)). Here, the Town of Danvers failed to train its police officers adequately in the use of force, especially in the proper methods for refraining from the use of striking a person in the face, a red zone area of the body that should be avoided. The Town of Danvers failed to train its police officers in the

provisions as expressly stated in the department's policies and procedures—in particular, the use of physical strikes in red zone areas such as the face and neck. This failure to train in the area of use of force deprived Mr. Lott of his Fourth, Eighth, and Fourteenth Amendment rights as a result of these failures. The Town of Danvers, Police Chief, Police Supervisors and the Board of Selectmen failed to take appropriate action in assuring that each and every officer was trained in the area of use of force, especially the use of force, striking to one's face, that was in tantamount to deadly force.

At this time I do not find a demand for \$1,000,000 to be unreasonable for the injuries sustained by our clients as a result of the conduct of the Danvers Police Department, their staff and the Town of Danvers. If, during the course of your investigation, you determine that a person or entity other than you or your employees may have caused or contributed to this incident and to our client's injuries, I would appreciate it if you would so advise and provide the identity of such person and/or entity to me.

I hope that we can resolve this matter short of trial so that my clients will not have to endure further pain for their loss. Please do not hesitate to contact me if you wish to discuss.

Very truly yours,

  
Joseph F. Hennessey, Esq.

/jfh  
Enclosures

# Commonwealth of Massachusetts

SUFFOLK, ss.



SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION

No. 1684CV469

George Lott

, Plaintiff(s)

v.

The Town of Danvers;  
Justin Ellenton and ~~Peter~~ Shabowich in their individual capacities

, Defendant(s)

## SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon DHAR LAW LLP  
Monisha N. Pahuja and Joseph Hennessey plaintiff's attorney, whose address is One Constitution Center, Suite 300 Charlestown, MA 02129, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Boston either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Judith Fabricant, Esquire, at Boston, the 31<sup>st</sup> day of February MARCH, in the year of our Lord two thousand sixteen.

*Michael Joseph Donovan*

Clerk/Magistrate

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED  
(1) TORT — (2) MOTOR VEHICLE TORT — (3) CONTRACT — (4) EQUITABLE RELIEF — (5) OTHER

**Commonwealth of Massachusetts**

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION  
No. \_\_\_\_\_  
1684CV469

George Lott \_\_\_\_\_, Plaintiff(s).

v.

Town of Danvers; Justin Ellenton and  
~~Robert Shabowich~~ in their individual capacities \_\_\_\_\_, Defendant(s).

SUMMONS  
(Mass. R. Civ. P. 4)

(AFFIX FILING STAMP HERE)

\_\_\_\_\_, 201 .

**PROOF OF SERVICE OF PROCESS**

I hereby certify and return that on March 31, 2016, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

by certified mail, return receipt, on Town of Danvers through its Clerk, treasurer, and manager, pursuant to Mass. R. Civ. P. 4(d)(4).  
addressed to 1 Sylvan St. Danvers, MA 01923

Dated: March 31, 2016

Morish Polley, Esq.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT DEPT.  
SUPERIOR COURT

DOCKET NO. 1684-CV-469

GEORGE LOTT,  
PLAINTIFF,

v.

TOWN OF DANVERS;  
JUSTIN ELLENTON and PETER  
SHABOWICH in their individual capacities,  
DEFENDANTS.

FIRST AMENDED  
COMPLAINT  
AND DEMAND  
FOR JURY TRIAL

INTRODUCTION

1. This is a civil rights action against Danvers Police Officers Justin Ellenton and Peter Shabowich for using unreasonable and excessive force on a compliant and non-threatening George Lott, causing various fractures to his face, including that of his left orbit and to his ribs. Lott, an African-American man, was sixty-eight (68) years old at the time of the assault. Following commands of Defendant officers, who were effectuating his arrest, Mr. Lott was on the ground when Defendant Ellenton proceeded to kick Mr. Lott in the back and punch him in the face with a closed fist. In addition to his physical injuries, the abuse caused Mr. Lott severe emotional distress.

JURISDICTION AND VENUE

2. This action arises, in part, under the Massachusetts Tort Claims Act, M.G.L. c. 258; the Massachusetts Civil Rights Act, M.G.L. c. 12 §11I; Massachusetts Common Law; the

Fourth and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. §1983. Jurisdiction and venue in the Superior Court of Suffolk County are proper pursuant to M.G. L. c. 258 §3.

PARTIES

3. Plaintiff **GEORGE LOTT** is a citizen of the United States and resides in the city of Boston, Suffolk County, Massachusetts. Lott is an African-American male, who, at the time of the excessive force incident was sixty-eight (68) years old and infirmed.

4. Defendant **TOWN OF DANVERS** is a Massachusetts municipality located in Essex County and was, at all times relevant to this complaint, the public employer of Defendants Ellenton and Shabowich.

5. Defendant **JUSTIN ELLENTON** was at all times relevant to this complaint a police officer of the Town of Danvers Police Department. He is sued in his individual capacity.

6. Defendant **PETER SHABOWICH** was at all times relevant to this complaint a police officer of the Town of Danvers Police Department. He is sued in his individual capacity.

FACTS

7. On February 13, 2013, at approximately 6:27 p.m., Defendants Ellenton and Shabowich each responded separately in his patrol car to a dispatch for a possible robbery originating from the Daily Harvest Café on High Street in Danvers.

8. Defendants Ellenton and Shabowich were on duty and in police uniform. The dispatch was updated as Defendants Ellenton and Shabowich were en route to include information that the suspect was on Milton Road.

9. Defendant Ellenton arrived in the area first and observed an African American male, George Lott, standing in the middle of Milton Road with a Caucasian female.

10. Defendant Ellenton exited his vehicle, drew his service firearm from his holster, pointed the firearm at Mr. Lott and ordered him to put his hands up.

11. Mr. Lott complied with Defendant Ellenton's command and showed his hands.

12. Defendant Ellenton closed in to approach with his firearm drawn and ordered Mr. Lott to get down on the ground.

13. Mr. Lott, who suffers from degenerative arthritis, sciatic nerve damage in his spine and has a history of back surgery, immediately complied with Defendant Ellenton's command and got down on his knees.

14. When Mr. Lott was on the ground, Defendant Ellenton, unprovoked and without justification, then violently kicked Lott in his back causing him to fall hard to the ground.

15. Defendant Shabowich arrived on scene to assist in the arrest.

16. With Defendant Shabowich securing Mr. Lott's legs, Defendant Ellenton closed-fist punched Mr. Lott in the face, multiple times, causing Mr. Lott to be knocked unconscious.

17. Mr. Lott was not engaged in any assaultive behavior and was not a danger toward the Defendants or any other person.

18. Defendant Shabowich did nothing to stop Ellenton's violent assault on Lott.

19. Defendants Ellenton and Shabowich handcuffed Mr. Lott.

20. Mr. Lott remained on the ground with his hands cuffed behind his back, bleeding from the face above his left eye and struggling to breathe.

21. Defendant Ellenton called an ambulance to transport Mr. Lott to the Emergency Room.

22. The force used by Defendant Ellenton was unreasonable and excessive; Mr. Lott was not a threat to anyone's safety nor was he attempting to escape; Lott was on his knees with

his hands exposed in compliance with the Defendants' orders.

23. The actions of Defendant Ellenton violated Danvers Police Department policies and procedures of striking an individual in "Red Striking Areas" and without cause.

24. Lyons Ambulance Service responded to the call and, after securing Mr. Lott in a collar on a long board, transported Mr. Lott to Beverly Hospital ("Beverly") with Defendant Shabowich.

25. When Mr. Lott arrived at Beverly under Defendant Shabowich's guard, he was frightened and confused about why he had been assaulted.

26. Defendant Shabowich remained present with Lott during the entirety of his stay at Beverly's Emergency Room, causing Mr. Lott further fear for his wellbeing and his life.

27. When Beverly Emergency Room staff asked Mr. Lott, in the presence of Defendant Shabowich, the cause of his injuries, Mr. Lott, in his continuing fear was intimidated to feign that that the Caucasian female he was found standing with on Milton Road (¶ 8) elbowed him in the face.

28. Defendant Shabowich filed a supplemental report including the statements Mr. Lott made while he was hospitalized in response to questions regarding the cause of his injuries.

29. A computerized axial tomography scan (CT scan) at Beverly revealed that Mr. Lott suffered a fracture of the anterior and lateral and medial wall to the right maxillary sinus and the zygomatic arch; and a comminuted fracture (i.e. that the bone was fractured in multiple pieces) of the posterolateral wall of the right orbit with displacement.

30. Mr. Lott suffered lacerations to both eyes requiring sutures, a fractured rib, and substantial physical pain.

31. Mr. Lott was administered powerful narcotics to help alleviate the severe pain

caused by his injuries.

32. Mr. Lott was discharged from the hospital into the custody of Danvers Police Officer Shabowich at approximately 10:00 p.m. on February 13, 2013.

33. Defendants made false statements in their police report in an effort to cover up the incident of excessive force.

34. Defendant Ellenton falsely claimed Mr. Lott resisted him.

35. In his report, Defendant Ellenton writes that at the point Mr. Lott was on his knees on the ground, Defendant Ellenton kicked Mr. Lott in the back because, according to Ellenton, the kneeling Lott was not complying with any of his commands.

36. In his report, Defendant Ellenton writes that, upon Defendant Shabowich's arrival, an elderly and injured Lott at that point decided to start flailing his arms up in resistance "trying to fight his way to his feet" against the two officers on scene effectuating his arrest.

37. Defendant Ellenton's search of Mr. Lott revealed no weapons; the only items on Lott's person were U.S. currency, keys, candy, and a lighter.

38. Mr. Lott continued to feel pain in his head and ribs for months after the incident for which he sought additional treatment. In addition to his physical injuries, Mr. Lott has suffered significant emotional distress and economic harm.

39. Plaintiff made proper presentment pursuant to M.G.L. Ch. 258 § 4 and his Complaint is timely filed.

COUNT I

*42 U.S.C. § 1983 Excessive Use of Force under the Fourth and Fourteenth Amendments  
(ELLENTON)*

40. The above paragraphs are incorporated by reference.

41. Defendant Ellenton, acting under of color of law, violated Plaintiff's right to be

free from unreasonable seizures as provided by the Fourth and Fourteenth Amendment to the United States Constitution by subjecting Plaintiff to unreasonable and excessive force at the time of his arrest.

42. Defendant Ellenton acted with reckless disregard for Plaintiff's constitutional rights.

43. As a direct and proximate result of Defendant's actions, Plaintiff suffered the injuries described above.

COUNT II

*Massachusetts Civil Rights Act, M.G.L. c. 12 § 1II*  
(SHABOWICH)

44. The above paragraphs are incorporated by reference.

45. Defendant Shabowich, acting under of color of law, interfered with the exercise and enjoyment of Plaintiff's exercise of his right to participate in seeking adequate medical treatment and his right to be free from threat of harm to his person and his psyche by means of threats, intimidation, and coercion within the meaning of M.G.L.A. c. 12, §§ 1II.

46. As a direct and proximate result of Defendant's actions, Plaintiff suffered the injuries described above.

COUNT III  
*Assault and Battery*  
(ELLENTON)

47. The above paragraphs are incorporated by reference.

48. Defendant Ellenton, by his words and actions, created in the Plaintiff a reasonable apprehension of imminent and offensive contact by drawing his firearm and keeping it trained on Plaintiff as he complied with commands.

49. Defendant Ellenton, without right, privilege or excuse, struck George Lott with

his foot knocking Lott to the ground.

50. Defendant Ellenton, without right, privilege or excuse, struck Lott in the face twice with his closed fists knocking the 68-year-old unconscious.

51. As a direct and proximate result of Defendant's actions, Plaintiff suffered the injuries described above.

COUNT IV  
*Intentional Infliction of Emotional Distress*  
(ELLENTON)

52. The above paragraphs are incorporated by reference.

53. Defendant Ellenton intended, knew, or should have known that emotional distress was the likely result of his excessive escalation of force against the Plaintiff.

54. Such conduct was extreme and outrageous, and caused Plaintiff emotional distress that was severe.

COUNT V  
*Negligence pursuant to M.G.L. c. 258 §4*  
(TOWN OF DANVERS)

55. The above paragraphs are incorporated by reference.

56. In the alternative to Counts I, III, and IV, Defendant Ellenton negligently struck Plaintiff in the back and negligently caused contact with his fist to Plaintiff's face.

57. At the time of these negligent acts, Defendant Ellenton was a public employee of the Town of Danvers and acting within the scope of his employment.

58. As a direct and proximate result of Defendant's negligence, Plaintiff suffered the injuries described above.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that this Court award him:

- (1) Compensatory damages;
- (2) Punitive damages against Defendant Ellenton;
- (3) Costs of this action including reasonable attorney's fees; and
- (4) Other such other further relief as this court deems appropriate and necessary.

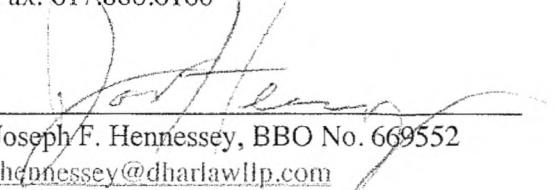
JURY DEMAND

A trial by jury is hereby demanded.

RESPECTFULLY SUBMITTED,  
For the Plaintiff,  
By his attorneys,

  
Monisha N. Pahuja, BBO No. 692202  
[monisha@dharlawllp.com](mailto:monisha@dharlawllp.com)

  
The Charlestown Navy Yard  
One Constitution Center, Suite 300  
Charlestown, Massachusetts 02129  
Office: 617.880.6155  
Mobile: 617.943.0682  
Fax: 617.880.6160

  
Joseph F. Hennessey, BBO No. 669552  
[jhc@hennessey@dharlawllp.com](mailto:jhc@hennessey@dharlawllp.com)

**CIVIL ACTION COVER SHEET**

1684CV469

PLAINTIFF(S):	George Lott
ADDRESS:	39 Boylston Street
	Boston, MA 02116
ATTORNEY:	Monisha Pahuja, DHAR LAW LLP
ADDRESS:	The Charlestown Navy Yard
	One Constitution Center, Suite 300
	Charlestown, MA 02129
BBO:	692202

**TYPE OF ACTION AND TRACK DESIGNATION** (see reverse side)

CODE NO. TYPE OF ACTION (specify) TRACK HAS A JURY CLAIM BEEN MADE?  
E17 Civil rights action A  YES  NO

\*If "Other", please describe:

For other products contact:

**STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A**

**STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A**

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

## TORT CLAIMS

(attach additional sheets as necessary)

A. Documented medical expenses to date:

**Total medical expenses (if any):**

1. Total hospital expenses .....
2. Total doctor expenses .....
3. Total chiropractic expenses .....
4. Total physical therapy expenses .....
5. Total other expenses (describe below) .....

**Subtotal (A):**

- B. Documented lost wages and compensation to date .....
- C. Documented property damages to date .....
- D. Reasonably anticipated future medical and hospital expenses .....
- E. Reasonably anticipated lost wages .....
- F. Other documented items of damages (describe below) .....

25,000.00

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

Anticipated damages to exceed \$25,000.00 in an amount to be determined by a jury at trial.

**TOTAL (A-F):\$** > 25,000.00

Injuries include personal injuries, emotional distress, and civil rights violations.

## **CONTRACT CLAIMS**

(attach additional sheets as necessary)

Provide a detailed description of claim(s):

卷之三

Signature of Attorney/Pro Se Plaintiff: X

Date: 2/11/16

**RELATED ACTIONS:** Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

Date: 2/11/16

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT DEPT.  
SUPERIOR COURT  
DOCKET NO. 1684-CV-469

GEORGE LOTT,  
PLAINTIFF,

v.

TOWN OF DANVERS;  
JUSTIN ELLENTON and PETER  
SHABOWICH in their individual capacities,  
DEFENDANTS.

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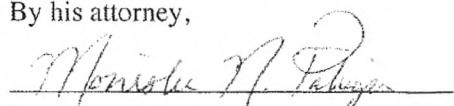
NOTICE OF AMENDMENT TO COMPLAINT AS A MATTER OF COURSE

The Plaintiff, George Lott, hereby gives notice that the complaint in the above-entitled action, timely filed on February 11, 2016, has been amended as a matter of course in accordance with the provisions of Rule 15(a) of the Massachusetts Rules of Civil Procedure as follows:

*The word "Paul" in the caption, in paragraph one (1), and in paragraph six (6), is stricken and replaced with the word "Peter."*

This amendment is made as a matter of course in that no responsive pleading has been served regarding the original complaint, nor has an order of dismissal been entered. The Plaintiff's First Amended Complaint is attached hereto for docketing and filing in this matter.

RESPECTFULLY SUBMITTED,  
For the Plaintiff,  
By his attorney,

  
Monisha N. Pahuja, BBO No. 692202  
[monisha@dharlawllp.com](mailto:monisha@dharlawllp.com)

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Date: 3/31/16