

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JOSEPH J. SMITH	)	
Plaintiff,	)	
	)	
vs.	)	12 CV 4546
	)	
THE CITY OF CHICAGO,	)	Judge:
CAPTAIN MARK ALTMAN	)	
	)	
Defendants.	)	

**COMPLAINT AT LAW**

NOW COMES the Plaintiff, JOSEPH J. SMITH, by and through their attorneys, Blake Horwitz, Esq. from The Blake Horwitz Law Firm, Ltd., and pursuant to this Complaint at Law, states the following against CAPTAIN MARK ALTMAN, and the CITY OF CHICAGO.

**JURISDICTION**

1. The jurisdiction of this Court is invoked pursuant to the Civil Rights Act, 42 U.S.C. §1983; the Judicial Code 28 U.S.C. §1331 and §1343(a); the Constitution of the United States; and this Court’s supplementary jurisdiction powers.

**PARTIES**

2. JOSEPH J. SMITH is a resident of the State of Illinois and of the United States.
3. CAPTAIN MARK ALTMAN, at all times relevant hereto, was employed by and acting on behalf of the CITY OF CHICAGO Fire Department.
4. The CITY OF CHICAGO is a duly incorporated municipal corporation and is the employer and principal of CAPTAIN MARK ALTMAN, as well as the other officers and/or employees referred to in this Complaint. At all times material to this Complaint,

CAPTAIN MARK ALTMAN was acting under color of state law, ordinance and/or regulation, statutes, custom and usages of the CITY OF CHICAGO.

**FACTS**

5. On or about November 1, 2011, CAPTAIN MARK ALTMAN arrived at or about 1200 ½ W. North Ave., Chicago, Illinois.

6. On or about November 1, 2011 PLAINTIFF was employed as a City of Chicago Marine Unit Officer.

7. PLAINTIFF has extensive training in marine and underwater rescue as a city of Chicago Marine Unit officer.

8. PLAINTIFF arrived on the scene, pursuant to his duties, to rescue two individuals who fell into the Chicago River. PLAINTIFF came to the aforementioned scene to assist with the search and rescue effort.

9. PLAINTIFF arrived at or about 1200 ½ W. North Ave., Chicago, Illinois and PLAINTIFF began to search for the individuals who fell into the Chicago River.

10. During PLAINTIFF'S search, PLAINTIFF came into contact with CAPTAIN MARK ALTMAN, wherein CAPTAIN MARK ALTMAN told PLAINTIFF to "get the fuck out of here, get the fuck back."

11. When CAPTAIN MARK ALTMAN saw the PLAINTIFF on said date, PLAINTIFF was in full uniform as a City of Chicago Marine Unit officer.

12. Subsequently, CAPTAIN MARK ALTMAN, came into physical contact with PLAINTIFF.

13. Without provocation, CAPTAIN MARK ALTMAN from the CITY OF CHICAGO grabbed the PLAINTIFF and threw him down onto the ground.

14. PLAINTIFF while interacting with DEFENDANT ALTMAN was cooperative and respectful to CAPTAIN MARK ALTMAN.

15. DEFENDANT ALTMAN prior to PLAINTIFF landing on the ground, became angry with the PLAINTIFF.

16. CAPTAIN MARK ALTMAN was on duty at all times relevant to this Complaint, and engaged in the complained of conduct in the course and scope of their employment.

17. Specifically, CAPTAIN MARK ALTMAN, without provocation or reason, threw JOSEPH J. SMITH onto his back using significant force. This conduct violated the Fourth Amendment to the United States Constitution.

18. On November 1, 2011, JOSEPH J. SMITH did not

- a. obstruct CAPTAIN MARK ALTMAN;
- b. strike CAPTAIN MARK ALTMAN;
- c. batter CAPTAIN MARK ALTMAN;
- d. violate a law in the presence of CAPTAIN MARK ALTMAN;
- e. violate a law at any time;
- f. use force directed at or against CAPTAIN MARK ALTMAN;
- g. assault CAPTAIN MARK ALTMAN; and
- h. violate a rule and/or procedure in the presence of CAPTAIN MARK ALTMAN.

19. The show of force initiated by and/or the failure to intervene in the use of said force by CAPTAIN MARK ALTMAN was unreasonable.

20. On November 1, 2011, JOSEPH J. SMITH had not committed an act contrary to the laws of the State of Illinois, nor was he at any time the focus or subject of a criminal investigation.

21. Prior to the interaction with CAPTAIN MARK ALTMAN and the PLAINTIFF, the PLAINTIFF was working full time for the CITY OF CHICAGO.

22. Prior to the interaction with CAPTAIN MARK ALTMAN, PLAINTIFF never underwent a surgical procedure to his neck.

23. After the interaction with the PLAINTIFF and CAPTAIN MARK ALTMAN, the PLAINTIFF underwent a surgical procedure.

24. The CITY OF CHICAGO possesses documents indicating that the PLAINTIFF underwent a surgical procedure after the interaction he had with CAPTAIN MARK ALTMAN.

25. PLAINTIFF has not returned to work, due to the injury he sustained from the interaction he had with CAPTAIN MARK ALTMAN.

26. The CITY OF CHICAGO has paid for all of the medical bills for medical treatment that the PLAINTIFF sustained as a result of the interaction the PLAINTIFF had with CAPTAIN MARK ALTMAN.

27. As a direct and proximate result of one or more of the aforesaid acts or omissions of CAPTAIN MARK ALTMAN, PLAINTIFF JOSEPH J. SMITH, suffered severe injuries to his body and himself and was forced to undergo medical treatment, surgery, sustain medical bills, and will continue to sustain medical bills in the future.

28. On or about November 1, 2011, CAPTAIN MARK ALTMAN was on duty at all times relevant to this Complaint and said certain CAPTAIN MARK ALTMAN was duly appointed Captain of the Fire Department for the CITY OF CHICAGO.

29. CAPTAIN MARK ALTMAN engaged in the conduct complained of, on said date, in the course and scope of employment and while on duty.

30. This action is being brought with regard to the individual capacity of CAPTAIN MARK ALTMAN.

**COUNT I**  
**Excessive Force Claim Pursuant to**  
**42 U.S.C. § 1983 and the Fourth Amendment to the U.S. Constitution**

31. PLAINTIFF restates and re-alleges paragraphs 1 – 30 as though fully set forth herein.

32. The actions of the DEFENDANT amounted to an excessive use of force onto the PLAINTIFF.

33. This conduct violated the Fourth Amendment of the United States Constitution.

34. The aforementioned actions of the DEFENDANT were the direct and proximate cause of the constitutional violations set forth above.

WHEREFORE, PLAINTIFF JOSEPH J. SMITH demands compensatory damages from the DEFENDANT. PLAINTIFF JOSEPH J. SMITH also demands punitive damages, costs and attorneys' fees against the DEFENDANT and whatever additional relief this Court deems equitable and just.

**COUNT II**  
**State Law Battery Claim**

35. PLAINTIFF restates and re-alleges paragraphs 1 – 30 as though fully set forth herein.

36. The DEFENDANT threw JOSEPH J. SMITH down to the ground, intentionally, without consent and without justification.

37. JOSEPH J. SMITH suffered injury as a result.

38. The conduct of the DEFENDANT was in violation of the State of Illinois Law.

39. The aforementioned actions of the DEFENDANT were the direct and proximate cause of the violations and injuries set forth above.

WHEREFORE, PLAINTIF JOSEPH J. SMITH demands compensatory damages from the DEFENDANT. PLAINTIFF JOSEPH J. SMITH also demands punitive damages and costs against the DEFENDANT and whatever additional relief this Court deems equitable and just.

**COUNT III**  
**745 ILCS 10/9-102 Claim Against the TOWN OF CICERO**

40. PLAINTIFF restates and re-alleges paragraphs 1 – 30 as though fully set forth herein.

41. DEFENDANT CITY OF CHICAGO is the employer of the DEFENDANT CAPTAIN MARK ALTMAN.

42. CAPTAIN MARK ALTMAN, as alleged above, committed the acts under color of law and in the scope of employment of the CITY OF CHICAGO.

WHEREFORE, should CAPTAIN MARK ALTMAN be found liable for any of the alleged counts in this cause, PLAINTIFF JOSEPH J. SMITH demands that, pursuant to 745 ILCS 10/9-102, the CITY OF CHICAGO pay any judgment obtained against CAPTAIN MARK ALTMAN as a result of this Complaint.

**COUNT IV**  
**Supplementary Claim for *Respondeat Superior***

43. PLAINTIFF restates and re-alleges paragraphs 1 – 30 as though fully set forth herein.

44. The aforesaid acts of CAPTAIN MARK ALTMAN were in the scope of employment and therefore the DEFENDANT CITY OF CHICAGO, as principal, is liable for the actions of its agent(s) under the doctrine of *respondeat superior*.

WHEREFORE should CAPTAIN MARK ALTMAN be found liable for any state claims alleged herein, PLAINTIFF JOSEPH J. SMITH demands judgment against the CITY OF CHICAGO and such other additional relief, as this Court deems equitable and just.

**JURY DEMAND**

45. Plaintiff demands trial by jury.

Respectfully submitted,

s/ Blake Horwitz  
Attorney for the Plaintiff

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