

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Timothy Batt, Luann Batt, Joseph Batt

Plaintiff(s)

v.

Joseph Buccilli, in his Personal Capacity

Defendant(s)

Civil Action No. 12-cv-01198

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Joseph Buccilli
c/o Town of Orchard Park Police Department
4295 South Buffalo Street
Orchard Park, NY 14127

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kevin T. Saunders, Esq.
Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 12-cv-01198

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

TIMOTHY BATT, LUANN BATT, AND JOSEPH BATT,

Plaintiffs,

v.

JOSEPH BUCCILLI, in his personal capacity,

Defendant.

Civil Action No.

**COMPLAINT**

(Jury Trial  
Demanded)

**INTRODUCTION**

This is a civil action commenced pursuant to 42 U.S.C. § 1983 to redress the deprivation by the Defendant of rights secured to Plaintiffs under the Fourth Amendment to the United States Constitution which occurred when the Defendant entered and searched the Plaintiffs' home without lawful authority.

**JURISDICTION AND VENUE**

1. The Plaintiffs, Timothy and LuAnn Batt, who reside at 3122 Bieler Road, Orchard Park, NY 14127, and their son, Joseph Batt, who resides at 256 Lisbon Avenue, Buffalo, NY 14215, bring this civil rights lawsuit pursuant to 42 U.S.C. § 1983 to redress the deprivation, by the Defendant under color of state law, of rights secured to them under the Fourth Amendment to the United States Constitution.

2. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1343(3) and 1343(4), which provide for original jurisdiction in this court of all suits brought pursuant to 42 U.S.C. §

1983. Jurisdiction is also conferred on this court by 28 U.S.C. § 1331(a), because the cause of action arises under the Constitution and laws of the United States.

3. Venue properly lies in this Court pursuant to 28 U.S.C. § 1391 in that all of the parties reside in this federal district.

### **PARTIES**

4. Timothy and LuAnn Batt are United States citizens who reside in Orchard Park, New York.

5. Joseph Batt is an adult United States citizen who at the time of the incident complained of was residing with his parents in Orchard Park.

6. Defendant Joseph Buccilli is a police officer employed by the Town of Orchard Park Police Department and was at all pertinent times herein on or about its business in the course and scope of his employment.

### **FACTS**

7. LuAnn Batt's father, Fred Puntoriero, suffered from dementia and other age-related infirmities. Until December of 2011, Mr. Puntoriero lived in his own house and was cared for by Mrs. Batt's brother and his wife, who lived with Mr. Puntoriero.

8. In December of 2011, Mrs. Batt's brother and his wife could no longer adequately care for Mr. Puntoriero, so he moved in with the Batts. Mr. Puntoriero has since passed away.

9. On April 17, 2012, the date of the events at issue in this Complaint, Timothy Batt, LuAnn Batt, their 23-year-old son Joseph Batt, and Fred Puntoriero were all residing at 3122 Bieler Road, Orchard Park, New York.

10. Mr. Puntoriero was receiving hospice care from Hospice Buffalo (225 Como Park Blvd., Cheektowaga, NY), because he had dementia, was wheelchair bound, and had been diagnosed as failing to thrive.

11. Mr. Puntoriero received care several times a week from a Registered Nurse and a Home Health Aide. He also had regular and routine visits from a social worker as part of his hospice care.

12. Since Mr. Puntoriero was sick and could not care for himself, Mrs. Batt always had at least one responsible adult family member in the home.

13. After Mr. Puntoriero moved in with the Batts, there were several disputes between Mrs. Batt and her brother regarding the ownership of some of Mr. Puntoriero's property.

14. On Monday, April 16, 2012, Mrs. Batt and her brother had another argument because her brother was retaining significant amounts of Mr. Puntoriero's property.

15. Upon information and belief, on Tuesday, April 17, 2012, a worker from the Erie County Department of Social Services received a false report regarding the welfare of Mr. Puntoriero.

16. On Tuesday morning, Mr. Puntoriero was seen by the nurse's aide Christina Guerra from Hospice Buffalo from 10:30 to about 11:30 a.m.

17. On her daily report, Nurse's Aide Guerra noted nothing out of the ordinary, and she left Mr. Puntoriero sitting up in his chair, with hair and body freshly washed.

18. Mrs. Batt had a doctor's appointment that afternoon, so she arranged for her 23-year-old son Joseph to watch Mr. Puntoriero.

19. At 4:30 p.m., Joseph looked out the front window and noticed two police cars in the driveway.

20. Two police officers were leaning against their cars, one with his back to his closed driver-side door, the other facing him, talking together.

21. The two officers were Lieutenant Joseph Buccilli and Officer Kadi.

22. Upon information and belief, Lt. Buccilli's badge number is 47.

23. Upon information and belief, Officer Kadi's badge number is 46.

24. There was no sense of urgency in their demeanor.

25. Surprised by the presence of two officers and their cars in his driveway, Joseph walked out to the officers and asked them if there was a problem.

26. Lt. Buccilli immediately demanded that Joseph show him a driver's license.

27. Joseph said that he did not have it on his person.

28. Lt. Buccilli demanded Joseph's full name and date of birth.

29. Joseph gave his name and again inquired why they were in the driveway.

30. Lt. Buccilli told Joseph that they were responding to a welfare check filed with Adult Protective Services and demanded access to the home "for only two minutes."

31. Upon information and belief, an Erie County social worker had asked the police to meet her at the house, which is routine when a social worker is asked to conduct a welfare check.

32. Upon information and belief, the officers had been waiting for the social worker and had no intention of entering the house until after she arrived.

33. Upon information and belief, Lt. Buccilli did not know the specifics of the report and only knew that he had been asked to meet a social worker to conduct a welfare check.

34. Joseph told Lt. Buccilli that his grandfather had been seen just four hours earlier by a nurse's aide and that he was fine.

35. Lt. Buccilli angrily told Joseph that if Joseph did not allow him in, he would enter without permission and that he did not need a warrant.

36. Lt. Buccilli then told Joseph that if he obstructed them in any way, he would be arrested.

37. Joseph said that he wanted to call his older brother Daniel Batt, who is a U.S. Secret Service Agent.

38. Lt. Buccilli then threatened a second time that he would arrest Joseph if Joseph obstructed his entry in any way.

39. Lt. Buccilli's demeanor towards Joseph was constantly condescending and belittling.

40. Joseph attempted to go inside to call his brother Special Agent Daniel Batt.

41. Lt. Buccilli and Officer Kadi followed him to the door.

42. Joseph told the officers, "Please don't come in, I am making a private call. You do not have permission to come in."

43. When Joseph tried to close the door behind him, Lt. Buccilli put his foot in the way, forced the door open, and stepped inside.

44. Lt. Buccilli did not have Joseph's consent to enter the house.

45. No other person living in the house had given Lt. Buccilli consent to enter.

46. Except for the call from the Erie County Department of Social Services worker, Lt. Buccilli did not have any other evidence that anyone was in danger of harm in the house.

47. When Joseph objected to the police officers' entry, Officer Kadi left the house, but Lt. Buccilli again claimed that he did not need a warrant to enter.

48. Joseph began using his cell phone to video the encounter.

49. Lt. Buccilli became somewhat less belligerent when he noticed the cell phone video camera.

50. Joseph's brother A.B., who was a minor at the time, then called Special Agent Daniel Batt using the Batts' home telephone and explained what was going on.

51. A.B. handed the telephone to Lt. Buccilli.

52. Lt. Buccilli told Special Agent Daniel Batt that he had a right to enter the house without a warrant and over Joseph's objection based on the complaint filed with Adult Protective Services.

53. Lt. Buccilli then hung up on Special Agent Daniel Batt.

54. After the telephone call, Lt. Buccilli again told Joseph that he had a right to be in the house and they could not obstruct him.

55. Joseph explained that he was not obstructing the police, but that he did not give permission to enter.

56. After ten minutes of Lt. Buccilli lecturing first Special Agent Daniel Batt on the phone and then Joseph that they did not know the law and that he had a right to come in without

a warrant, Lt. Buccilli finally exited the kitchen and went to see Mr. Puntoriero, who was in the next room.

57. Mr. Puntoriero was upset since he had overheard the lecture Lt. Buccilli was giving to Joseph.

58. Lt. Buccilli told Mr. Puntoriero that he was allowed to “forcibly enter, if needed” based only on the request from Adult Protective Services.

59. Joseph politely asked Lt. Buccilli to leave, since he could see for himself that Mr. Puntoriero was not in need of any services.

60. Lt. Buccilli told Joseph that this was not over and that he could come back again.

61. Lt. Buccilli told Joseph that he would “inform Adult Protective Services about your lack of cooperation.”

62. Lt. Buccilli again lectured Joseph that he should not “pretend to know the law.” Lt. Buccilli then exited the house.

63. As he was leaving, Lt. Buccilli again stated that he would be back inside the house “if I have to.”

64. At 4:49 p.m., Special Agent Daniel Batt called his mother, while she was in the car returning from her doctor’s appointment, and told her to go home immediately because two Orchard Park police had forcibly entered her home.

65. Mrs. Batt called her home several times but was unable to reach anyone, so she called her husband Timothy Batt, who was on his way home from work, to inform him of the police entering their home.

66. Mr. Batt arrived home between 5:00 and 5:15 p.m.

67. When Mr. Batt asked what was going on, Lt. Buccilli loudly and forcefully stated that he had entered the home, because he had “full authority to enter the home” due to their office receiving a phoned-in complaint.

68. Chief of Police Andrew Benz arrived at the Batts’ home about this time.

69. Mrs. Batt arrived home between 5:15 and 5:30 p.m.

70. There were now three officers (Lt. Buccilli, Officer Kadi, and Chief Benz) in the driveway with Timothy, LuAnn, and Joseph Batt.

71. Lt. Buccilli told them that Joseph was uncooperative and had tried to obstruct them.

72. Lt. Buccilli claimed that Special Agent Dan Batt “obviously doesn’t know the statutes.”

73. Mrs. Batt explained to Chief Benz that her children had been trained to not let strangers in the house.

74. Nancy Sullivan, a worker with Erie County Department of Social Services, arrived shortly after Mrs. Batt.

75. Ms. Sullivan stated that she had received a call about an adult in need of services and that she was there to check on Mr. Puntoriero.

76. Upon information and belief, the call was an uncorroborated false anonymous tip.

77. Mrs. Batt invited Ms. Sullivan into her house and explained that Mr. Puntoriero was in hospice care and that he had been seen by a registered nurse and a social worker four days ago and by a nurse’s aide that morning.

78. Mrs. Batt showed Ms. Sullivan the Medical Orders for Life-Sustaining Treatment (MOLST) form and hospice contact numbers which were posted on the refrigerator in plain view.

79. When Ms. Sullivan met Mr. Puntoriero, he was upset and wondering what was going on.

80. Ms. Sullivan talked to Mr. Puntoriero for less than five minutes and then left the room, saying "I won't take up anymore of your time."

81. After Ms. Sullivan asked if Mr. Puntoriero was ever left alone, Mrs. Batt answered, "Never."

82. Ms. Sullivan told Mrs. Batt that she was doing a good job with Mr. Puntoriero, gave her a card, and then left.

83. The Batts received a letter from Erie County Department of Social Services dated April 16, 2012, stating, "This is to advise you that the Department of Social Services has determined that you are not eligible for Protective Services for Adults at this time."

#### **FIRST CAUSE OF ACTION**

84. The allegations contained paragraphs 1 through 83 are hereby realleged and incorporated by reference herein.

85. Defendant Buccilli's entry into Plaintiffs' home without a warrant, probable cause, or exigent circumstances violated Plaintiffs' Fourth Amendment right to be secure against unreasonable searches.

86. Plaintiffs allege that as a result of the violations of their civil rights described above each has suffered and will continue to suffer for an as yet undetermined length of time the following:

- a. Mental pain and suffering;
- b. Emotional distress; and
- c. Loss of enjoyment of life.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this court:

- 1) Award compensatory damages in favor of each of the individual Plaintiffs in an amount to be determined by the finder of fact in accordance with the proof, plus interest at the legal rate until paid;
- 2) Award punitive damages against Defendant for his conduct in willful and wanton disregard of the rights of Plaintiffs in an amount to be determined by the finder of fact in accordance with the proof, plus interest at the legal rate until paid;
- 3) Award Plaintiffs costs and attorney's fees pursuant to 42 U.S.C. § 1988;
- 4) Grant Plaintiffs such other relief as may be deemed just and proper; and
- 5) Grant Plaintiffs a trial by jury when the issues are joined.

Dated: December 4, 2012

**NIXON PEABODY LLP**

By: /s/ Kevin T. Saunders  
Kevin T. Saunders

1300 Clinton Square  
Rochester, NY 14604  
(585) 263-1561; Fax: (585)743-2081  
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*Local Counsel*  
*Attorneys for Plaintiffs*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Timothy Batt, LuAnn Batt, Joseph Batt
(b) County of Residence of First Listed Plaintiff Erie County
(c) Attorneys (Firm Name, Address and Telephone Number)
Kevin T. Saunders, Nixon Peabody LLP
1300 Clinton Square, Rochester, NY
(Phone) 585-263-1561; (Fax) 866-743-2081

DEFENDANTS
Joseph Buccilli, in his Personal Capacity
County of Residence of First Listed Defendant Erie County
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983
Brief description of cause:
Suit to recover damages from unreasonable entry into the home, in violation of the Fourth Amendment

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 12/04/2012 SIGNATURE OF ATTORNEY OF RECORD /s/ Kevin T. Saunders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.