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Attorney for plaintiff

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David Jules,

Plaintiff

v.

Borough of Asbury Park; Borough of  
Asbury Park Police Department; Frederick  
J. Schriefer, Chief of Police; Sergeant  
David DeSane; Officer Brian Townsend  
and John Does 1-5,

Defendants.

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

Civil Action No.

**COMPLAINT AND JURY DEMAND**

David Jules, residing at 1827 Bangs Avenue, Apt 3A, Neptune, New Jersey for his complaint alleges:

**JURISDICTION**

1. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 to redress violations of his rights under the First, Fourth and Fourteenth Amendments to the United States Constitution when he was arrested without probable cause on April 11, 2005. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(3).
2. Venue is proper in this court as the claims arose in Monmouth County, New Jersey.

**PARTIES**

3. David Jules is an African American male.

4. The Borough of Asbury Park, (Asbury Park) is a municipality incorporated under the laws of the State of New Jersey.
5. The Borough of Asbury Park Police Department (Police Department) is a department of Asbury Park. The Police Department is responsible for the enforcement of the municipal ordinances of Asbury Park and of the laws of the State of New Jersey.
6. Ernest Schriefer is the Chief of Police of the Police Department. He is responsible for, among other things, the supervision and the training of police officers employed by Asbury Park.
7. David DeSane and Brian Townsend are police officers who were employed by the Police Department at the time of plaintiff's arrest.
8. Schriefer, DeSane and Townsend are sued in their individual capacities.

### **FACTS**

9. Plaintiff was employed by Tactical Security Operation (TCO) at the relevant times.
10. TCO was a private security company that provided security to various sites in Monmouth County.
11. On April 8, 2005 plaintiff was patrolling a construction site when, at about 10:10 p.m. he was approached by Douglas Eschner. Eschner told plaintiff that he should not be driving down that street with his yellow isolating light on and that he had reported plaintiff to the police for so doing.
12. Later that evening plaintiff had a discussion with Townsend. Townsend told plaintiff that Eschner complained that he was being harassed by plaintiff.

13. In the early morning hours of April 11, 2005 plaintiff was patrolling construction sites in Asbury Park as required by his job duties. At about 2:22 a.m. plaintiff was stopped in his vehicle by DeSane and Townsend and told to get out of his vehicle. Plaintiff exited his vehicle as ordered and offered no resistance.
14. Plaintiff was arrested and charged with possession of a controlled dangerous substance (CDS) in violation of N.J.S.A 2C:35-10A(1). He was held in police custody for more than two hours and was released without bail.
15. On information and belief, DeSane and Townsend falsified evidence in order to arrest plaintiff.
16. During the arrest plaintiff's vehicle was searched. His personal property including binoculars, a video monitor and surveillance camera used in the performance of his job were all destroyed.
17. The charges were administratively dismissed on motion of the prosecutor on or about June 11, 2005.
18. The arrest of plaintiff caused him severe mental and emotional distress.
19. The arrest of plaintiff has stigmatized plaintiff professionally and has jeopardized his career choices.

**FIRST CLAIM  
(FALSE ARREST)**

20. Plaintiff incorporates by reference the allegations of paragraphs 1 through 19.
21. There was no probable cause to arrest plaintiff.
22. At the time of plaintiff's arrest the DeSane and Townsend knew that plaintiff was not in

possession of any CDS.

23. A reasonable police officer making a reasonable investigation knew or should have known that there was no probable cause to arrest plaintiff.
24. The arrest of plaintiff without probable cause violated his Fourth and Fourteenth Amendment right to be free of unreasonable seizures.

**SECOND CLAIM  
(MALICIOUS PROSECUTION)**

25. Plaintiff incorporates by reference the allegations of paragraphs one through 19.
26. There was no probable cause to arrest plaintiff.
27. At the time of plaintiff's arrest the DeSane and Townsend knew that plaintiff was not in possession of any CDS.
28. A reasonable police officer making a reasonable investigation knew or should have known that there was no probable cause to arrest plaintiff.
29. The prosecution terminated favorably to plaintiff when the charges were administratively dismissed on June 11, 2005.
30. On information and belief, DeSane and Townsend acted with retaliatory motive because of the incident with Eschner on April 8, 2005.
31. The prosecution of plaintiff in retaliation for his encounter with Eschner violated his rights under the First and Fourteenth Amendments to the United States Constitution.
32. The prosecution of plaintiff as alleged violated his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

**THIRD CLAIM  
(FAILURE TO TRAIN AND SUPERVISE)**

33. Plaintiff incorporates by reference the allegations of paragraphs one through 32.
34. On information and belief Asbury Park and the Police Department have a municipal custom or policy of inadequately training police officers.
35. Asbury Park, the Police Department and Schriefer failed to train and supervise police officers employed by them in proper procedures for investigating incidents and making arrests.
36. The failure to adequately train and supervise DeSane and Townsend deprived plaintiff of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiff prays that this court enter judgment awarding plaintiff

1. Compensatory damages against defendants;
2. Punitive damages against defendants; and
3. The costs of the action including a reasonable attorneys fee.

**JURY DEMAND**

Plaintiff demands trial by jury of all claims so triable.

Dated: April 2, 2007

/s/ Stephen M. Latimer  
Stephen M. Latimer, Esq., 7317  
Loughlin & Latimer  
131 Main Street Suite 235  
Hackensack, N.J. 07601  
201/487-9797  
Attorney for plaintiff

**VERIFICATION AND CERTIFICATION PURSUANT TO L. Civ. R. 11.2**

I hereby certify that, to the best of my knowledge, information and belief formed after a reasonable inquiry, this action is not being presented for any improper purpose; the claims defenses and other legal contentions are warranted by existing law; and the allegations and factual contentions have evidentiary support.

/s/ Stephen M. Latimer  
Stephen M. Latimer

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding.

/s/ Stephen M. Latimer  
Stephen M. Latimer

**CONFIDENTIAL SETTLEMENT AGREEMENT**  
**AND GENERAL RELEASE**

THIS CONFIDENTIAL AGREEMENT AND GENERAL RELEASE (hereinafter "this Release") is entered into by and between DAVID JULES (hereinafter "Plaintiff") and BOROUGH OF ASBURY PARK, BOROUGH OF ASBURY PARK POLICE DEPARTMENT, MARK KIMON, CHIEF OF POLICE; SERGEANT DAVID DESANE; OFFICER BRIAN TOWNSEND (hereinafter "Defendants").

WHEREAS, Plaintiff filed a Complaint against Defendants in the United States District Court for the District of New Jersey, entitled David Jules v. Borough of Asbury Park, Borough of Asbury Park Police Department, Mark Kimon, Chief of Police, Sergeant David DeSane and Officer Brian Townsend, bearing Civil Action No.: 06-cv-509 and have asserted claims against Defendants in connection with alleged events arising out of Plaintiff's arrest; and

WHEREAS, the parties wish to settle all controversies between them, including Plaintiff's claims bearing Civil Action No.: 06-cv-509 and any and all related claims which could have been asserted to date, whether they are presently known or unknown, against all Defendants; and

WHEREAS, Defendants vigorously and wholly deny each and every allegation made by Plaintiff, and enter into this settlement for reasons other than the merits of Plaintiff's claims, including to avoid the cost of litigation; and

WHEREAS, Plaintiff agrees that the merits of the claims against Defendants are disputed and have not been adjudicated by any Court;

NOW, for and in consideration of the agreements, covenants and conditions herein contained, the adequacy and sufficiency of which is hereby expressly acknowledged by the parties hereto and subject to approval by the applicable Municipal Board; it is agreed as follows:

1. The terms of settlement:
  - a. Defendants hereby agree to pay Plaintiff the sum of \$35,000 in full and final satisfaction of any and all claims, raised or which could have been raised based on the underlying facts to the within litigation, up until the date of the within Settlement Agreement, either known or unknown to Plaintiff, wherein said settlement is inclusive of all attorney's fees and costs incurred by counsel for Plaintiff and interest, and represents the sum of counsel fees claimed to have been incurred by Plaintiff's counsel in connection with the prosecution of this litigation.
  - b. The settlement amount shall be paid by Defendants in the form of one or more checks. Payment shall be made by check or checks payable to "David Jules and Loughlin & Latimer, Attorney Trust Account", Federal Tax ID No. 22-3342331. Payment shall be made within thirty (30) days upon receipt by

Douglas V. Sanchez, Esq. of Crusier, Mitchell & Sanchez, LLC of an original of this Release, executed by Plaintiff, along with a signed original of a Stipulation of Dismissal with Prejudice ("Stipulation") and a W-9 executed by Plaintiff's counsel, and a child support judgment search for the Plaintiff as required by applicable statute.

- c. **Tax Consequences.** The parties understand and agree that an IRS Form 1099 designated in a settlement amount as "other income" may be issued. Plaintiff agrees to assume full liability for applicable state, federal and local taxes that may be required by law to be paid with respect to any settlement of payment described herein. Plaintiff further agrees that in the event that the Internal Revenue Service or any other taxing authority deems any tax, interest, penalties or other amounts to be due from Defendants with respect to the settlement, they will fully and completely indemnify and hold harmless Defendants for any sums Defendants may be required to pay, including reasonable attorney's fees and costs. It is the intent of the parties that the payment in paragraph 1 (c) above will be the Defendants' total payment to or for the benefit of Plaintiff.
- d. Plaintiff certifies and warrants to Defendants that he has no outstanding judgments for child support and that an appropriate judgment search has been conducted. Plaintiff agrees to provide a copy of said judgment search to Defendants in accordance with the applicable statute as part of this settlement. In the event Plaintiff has outstanding child support judgments, Plaintiff hereby agrees that he will satisfy all such outstanding judgments out of the proceeds of this settlement and that he will fully and completely indemnify Defendants for any sums Defendants may be required to pay, including reasonable attorney's fees and costs, with respect to any such outstanding judgments.
- e. In recognition of my obligation to satisfy all such liens out of the monies being paid pursuant to this release, I further agree to indemnify, defend and hold harmless, you, your attorney and your liability insurance carriers, as well as any third party administrators, from and against any and all claims made or actions filed against you, your attorney or any insurance or workers compensation carrier or third party administrator for payment of any such liens and/or claims, including subrogation claims of any kind. I further acknowledge that I have specifically discussed this provision of the release with my attorneys.
- f. The mere fact that Plaintiff instituted litigation against Defendants shall not in and of itself cause the Asbury Park Police Department to oppose Plaintiff's proposed request for an expungement of his arrest.
- g. The Asbury Park Police Department shall not otherwise unreasonably object or oppose Plaintiff's proposed expungement of his arrest and shall act

consistently with the Asbury Park Police Department's practices and policies in addressing expungement requests in due course.

2. Dismissal of Action: Plaintiff understands and agrees that Douglas V. Sanchez, Esquire of Crusier, Mitchell & Sanchez, LLC will file the executed original of the Stipulation of Dismissal with Prejudice with the United States District Court for the District of New Jersey. Plaintiff understands and agrees that the terms of the aforementioned dismissal are expressly incorporated by reference within this Release as if fully set forth herein.

3. Release in Consideration for the Payment and Consideration Provided for in This Agreement: Plaintiff irrevocably and unconditionally agrees to remise, release, waive and forever discharge Defendants and/or their respective insurers and/or administrators and/or agents and/or counsel from any and all manner of liabilities, actions, causes of action, contracts, agreements, promises, claims and demands of any kind or nature whatsoever, in law or equity, whether known or unknown, which Plaintiff has ever had or now has against Defendants and/or their insurers and/or administrators and/or agents and/or counsel. Plaintiff further understands and agrees that this Agreement shall act as a complete bar to any claim, demand or action of any kind whatsoever which could be or could have been brought by them and which seeks personal, equitable or monetary relief against Defendants and/or their insurer and/or agents and/or administrators and/or counsel, including, but not limited to: breach of express or implied contract; fraud; discrimination; retaliation; wages; benefits; other compensation; misrepresentation; defamation; liability in negligence or tort; claims of any kind which may be brought in any court of law or equity or an administrative agency; claims for arbitration in any forum; the U.S. Constitution, as amended; and the Constitution of the State of New Jersey:

- (a) Title VII of the U.S. Civil Rights Act of 1964, as amended;
- (b) The New Jersey Department of Personnel; Sections 1981 through 1988 of Title 42 of the United States Code;
- (c) Any anti-retaliation provision of any statute or law; and any other federal, state or local law, regulation or ordinance relating to employment; related torts; any other federal, state or local, civil or human rights law or any other local, state or federal law, regulation or ordinance, any, provision of any federal or state constitution, any public policy, contract, tort or common law, or any losses, injuries or damages (including back pay, front pay, liquidated, compensatory or punitive damages, attorney's fees and litigation costs);
- (d) Any common law claims for negligence, assault, battery, infliction of emotional distress and any and all other common law claims arising out of this litigation;


Plaintiff understands that he is not releasing any claims he may have to enforce the provisions of this Agreement. This release covers both claims that Plaintiff knows about and those he may not know about, except for claims (i) that may arise after the date Plaintiff's execute this Agreement; or (ii) for a breach of this Agreement. Plaintiff further agrees not to file a lawsuit or administrative claim or demand for arbitration to assert any of the claims he has given up, released or waived.

4. Attorneys' Fees and Costs: Plaintiff agrees that Plaintiff will bear his own costs and attorney's fees which have been incurred in connection with the within matter and in connection with the negotiation and preparation of this Release and that no amounts other than the payment to be made pursuant to paragraph 1(a) of this release shall be sought by or owed to Plaintiff or his attorneys in connection with this matter.
5. No Admission of Liability: This Agreement is not and shall not in any way be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of the Defendants, nor of any violation of any federal, state or local statute, rule, regulation or principle of common law or equity. Rather, this Agreement constitutes the good faith settlement and release of disputed claims, and it is acknowledged and agreed by the Parties that this Agreement is being entered into by the Parties solely to avoid the burden, expense, delay and uncertainties of further litigation and to fully and finally resolve, settle and dismiss with prejudice, any and all claims of any kind whatsoever, whether known or unknown, which Plaintiff has ever had or now has against the Defendants. The Defendants expressly deny any wrongdoing of any kind in regard to Plaintiff.
6. Confidentiality: Except to the extent this Agreement is required to be made public by law, all parties agree to maintain the confidentiality of, and refrain from disclosing, making public, or discussing in any way whatsoever, the terms and conditions of this Agreement. Notwithstanding the foregoing, it is understood that as the sole exception to this Confidentiality Provision, Plaintiff may disclose this Agreement (i) with his immediate family; and (ii) with his attorney(s) or tax advisor(s).
7. Entire Agreement: This Release contains the sole and entire agreement between the parties hereto and fully supersedes any and all prior agreements and understandings pertaining to the subject matter hereof. Plaintiff represents and acknowledges that, prior to executing this Release, he consulted his attorney, Stephen M. Latimer, Esq., he had ample time to do so, he obtained the advice of counsel prior to making the decision to execute this Release and that he has not relied upon any representation or statement not set forth in this Release made by any other party thereto, or his counsel or representatives, with regard to the subject matter of this Release. No other promises or agreements shall be binding unless in writing, signed by the parties hereto, and expressly stated to represent an amendment to this Release.
8. Severability: In the event that any provision of this Agreement or the application thereof should be held to be void, voidable, unlawful or, for any reason, unenforceable, the remaining portion shall remain in full force and effect and, to that end, the provisions of this Agreement are declared to be severable.
9. Non-Assignability: Plaintiff agrees that neither this Agreement nor any portion hereof is assignable. Plaintiff represents, warrants and covenants that he has not previously assigned or transferred, or purported to assign or transfer, to any individual or entity, any of the rights, claims, demands or causes of action being released herein, and agree that no such assignment or transfer may occur without a written consent executed by the Defendants, and any attempt to do so shall be void.

10. Applicable Law: This Release shall be construed and interpreted in accordance with the laws of the State of New Jersey. Plaintiff agrees that any action to enforce or interpret this Release shall only be brought in a court of competent jurisdiction of the State of New Jersey.

11. Liens: In accordance with Perreira v. Rediger, 330 N.J. Super. 445 (App. Div. 2000) and all applicable law, Plaintiff personally guarantees and warrants that all liens and/or monetary obligations owed, whether public, private or otherwise, for any medical, wage, or other benefits received by Plaintiff or paid by any third party on Plaintiff's behalf have been satisfied and paid off in their entirety by Plaintiff and/or an authorized agent out of the funds received pursuant to this Release. Plaintiff further agrees and warrants that in the event any third party seeks to recover outstanding liens or judgments from Defendants with regard to the settlement, Plaintiff will fully and completely indemnify Defendants for any sums Defendants may be required to pay, including reasonable attorney's fees and costs.


12. Effective Date: This Release will become effective on the date on which it has been executed.

  
10-15-2009  
DAVID JULES

STATE OF NEW JERSEY,  
COUNTY OF \_\_\_\_\_

I CERTIFY that on OCT 15, 2009, David Jules personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument; and
- (b) executed this instrument as his or her own act.

  
STEPHEN LATIMER  
ATTORNEY-AT-LAW (B.F.N.)