

ALGEIER WOODRUFF, P.C.  
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Morristown, NJ 07960  
(973) 539-2600  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

JOSE LUNA,

Plaintiff,

v.

CITY OF ELIZABETH; THE ELIZABETH  
POLICE DEPARTMENT; RAUL  
DeLaPRIDA, individually and in his capacity  
as an Elizabeth Police Officer; John Does (1-  
10), individually and in their capacity as  
Elizabeth Police Officers,

Defendants.

Civil Action No.:

**COMPLAINT AND JURY DEMAND**

**PARTIES**

1. Plaintiff, Jose Luna, was at all times relevant hereto, a citizen of the United States being in the Bronx, New York.
2. The City of Elizabeth is a body politic organized under the laws of the State of New Jersey. It is responsible for funding, supervising, monitoring and staffing the Elizabeth Police Department.
3. The Elizabeth Police Department is charged, inter alia, with the duty to protect and serve members of the public and to properly supervise, train and monitor those officers in their employ.
4. Defendant, Raul DeLaPrida at all times relevant herein, was an Elizabeth Police Officer. He is sued individually and in his official capacity.

5. John Does (1-10) at all times relevant herein, were Elizabeth Police Officers. They are sued individually and in their official capacity. The actual identities are presently unknown.

### **JURISDICTION**

This action is brought pursuant to 42 U.S.C §1983 et seq. and the Fourth and Fourteenth Amendments to the United States Constitution, the Constitution of the State of New Jersey and various claims under New Jersey Law. Jurisdiction is founded upon 28 U.S.C.A. § 1331 and 1343 and the pendant jurisdiction of the Court to consider claims arising under State Law.

### **FACTS**

1. On or about August 21, 2005 at approximately 10:00 p.m., plaintiff was a passenger in a motor vehicle driven by his employer.

2. While the vehicle was in the Borough of Staten Island, New York, the driver engaged New York City Police Officers who wished to speak with him.

3. The driver refused to speak with them and fled from them in the vehicle. Plaintiff did not know why the driver took such actions and was unable to flee from the vehicle.

4. The vehicle drove over the Goethals Bridge and proceeded into New Jersey. The New York City Police did not follow the vehicle.

5. Shortly thereafter while the vehicle was in New Jersey, it was approached by a Police Vehicle who signaled for it to pull over.

6. Plaintiff's employer still behind the wheel, ignored this direction and fled from the police vehicle.

7. As Defendant's vehicle fled from police, it overhated around Exit 14 on the New Jersey Turnpike. The driver of the vehicle, Plaintiff's boss, stopped the vehicle and fled on foot from the scene. Plaintiff remained in the passenger seat.

8. Thereafter, defendant DeLaPrida and/or John Does (1-10) did open the passenger door, dragged plaintiff out and threw him on the ground. Plaintiff did not resist.

9. Defendants DeLaPrida and/or John Does (1-10) then handcuffed plaintiff and dragged him away from the vehicle.

10. Thereafter, while plaintiff was handcuffed, stomach to the ground, defendant DeLaPrida and/or one of the John Does (1-10) did kick plaintiff in the head area. Plaintiff was being held down by DeLaPrida and/or some of the other John Does (1-10) when he was kicked in the head.

11. The Officers holding plaintiff then let go of him and the same officer that had kicked him then grabbed him by the hair and dragged him along the side of the roadway.

12. Thereafter said defendants did pick him up and slammed him into the police car.

13. Plaintiff, who had deliberately chosen not to flee the scene explained to the defendants that he was a veteran of the United States Navy and had no prior involvement with the law. Defendant officers checked the contents of his wallet and confirmed his military service.

14. Thereafter, one of the defendants did punch plaintiff in the stomach twice and sarcastically thanked him for serving his country.

15. Plaintiff was placed into the police car and asked about the driver, his boss. Plaintiff advised what had occurred in Staten Island.

16. Plaintiff was then uncuffed and left in the police vehicle. He was thereafter taken to an Elizabeth Hospital.

17. Plaintiff was told by the defendants who drove him that if he wanted to get treated, he could go inside and if not, he could take the Path Train back to New York.

18. Plaintiff did in fact seek treatment and entered the hospital. None of the officers went with him. Plaintiff was never arrested.

19. As a direct and proximate result of the actions and/or inactions of officers who struck him and those who should have taken actions to stop those who struck/kicked plaintiff, said plaintiff was caused to suffer personal injury, scarring and bruising about the body.

20. The aforementioned use of excessive force upon plaintiff by those noted above, as well as those who failed to deter same did individually and collectively violate the Constitutional Rights of plaintiff as preserved by the Fourth and Fourteenth Amendments to the United States Constitution as made applicable through 42 U.S.C. § 1983 et seq. as well as violating corresponding provisions of the New Jersey State Constitution.

**FIRST CAUSE OF ACTION**

21. Plaintiff repeats each and every allegation in Paragraph 1 through 20 as if set forth at length herein.

22. Defendants actions in particular, the excessive force as noted above, did violate plaintiff's rights as set forth in the United States Constitution as referenced above.

23. As a direct and proximate result of defendants actions, plaintiff did receive severe and permanent injuries.

**SECOND CAUSE OF ACTION**

24. Plaintiff repeats each and every allegation in Paragraph 1 through 23 as if set forth at length herein.

25. Defendants, City of Elizabeth and Elizabeth Police Department did fail to properly train/monitor/supervise those individually named defendants within their employ in violation of their obligations and duties to do such.

26. As a direct and proximate result of said actions, defendants City of Elizabeth and

Elizabeth Police Department, plaintiff did suffer sever and permanent injuries as previously set forth.

27. Said actions/inactions were in violation of plaintiff's Civil Rights as set forth and directly and proximately caused the damages set forth herein.

**THIRD CAUSE OF ACTION**

28. Plaintiff repeats each and every allegation in Paragraph 1 through 4 as if set forth at length herein.

29. Defendants actions as noted above, did constitute an assault and battery upon which did directly and proximately cause the damage set forth herein.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly and severally for:

- A. Compensatory damages;
- B. Punitive Damages;
- C. Attorney fees and litigation; costs pursuant to 42 U.S.C. Section 1988;

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues of the within Complaint.

Dated: January 31, 2006

\_\_\_\_\_  
ROBERT B. WOODRUFF

94293-12-094

LA CORTE, BUNDY, VARADY & KINSELLA

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IN REPLY REFER TO FILE NO.

RICHARD M. BROCKWAY  
JOSEPH L. ROSELLE

November 15, 2006

RECEIVED  
NOV 16 2006

Ms. Jackie Lynch  
Qualcare, Inc.  
PO Box 309  
Piscataway, NJ 08854

Re: Luna vs. City of Elizabeth, et als.  
Civil Action No. 06-500 (KSH)  
D/A: August 21, 2005  
Your Claim No. 44293

Dear Ms. Lynch:

Enclosed please find a release in regard to the above captioned matter. Would you kindly issue the settlement check in the amount of \$10,000 made payable to Robert Woodruff, Esq. and Jose Luna.

I thank you for your cooperation in this matter.

Very truly yours,

LaCorte, Bundy, Varady & Kinsella

By: Robert F. Varady  
Robert F. Varady, Esq.

RFV/sm

Encl.

cc: William Holzapfel, Esq., w/encl.

NOV 16 2006

**RELEASE**

This Release, dated November 16, 2006, is given By, the Releasor(s) **JOSE LUNA**, Individually referred to as "T", **CITY OF ELIZABETH; THE ELIZABETH POLICE DEPARTMENT; RAUL DeLaPRIDA**, individually and in his capacity as an Elizabeth Police Officer referred to as "You. If more than one person signs this Release, "T" shall mean each person who signs this Release.

1. **Release:** I release and give up any and all claims and rights, which I may have against you. This Release all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything, which has happened up to now. I specifically release the following claims:

*Any and all claims present and future arising out of an accident which occurred on or about August 21, 2005 which resulted in a law suit entitled Jose Luna v. City of Elizabeth et als. filed in the United States District Court, for the District of New Jersey, and bearing Civil Action No.: 06-500 (KSH)*

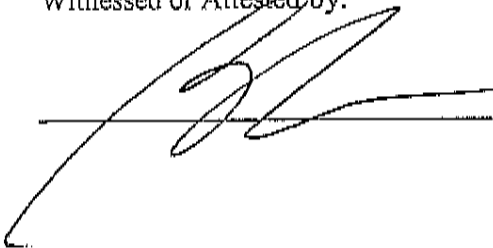
2. **Payment:** I have been paid a total of **\$10,000.00 (TEN THOUSAND DOLLARS)** to be distributed by the law firm of Algeier Woodruff, P.C. Plaintiff will pay any and all outstanding medical bills, or other claims that may constitute a lien on the settlement proceeds. This includes payment of any and all counsel fees accruing on my behalf in this matter. This would include any workers' compensation liens, any liens by any healthcare provider, or any other similar claims. Any payments made by or on behalf of any defendants shall not be deemed an admission of any liability by said defendants either individually or in their official capacity.
3. **Who is Bound:** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all whom succeed to your rights and responsibilities, such as your heirs or the executor of your estate.
4. **Signatures:** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

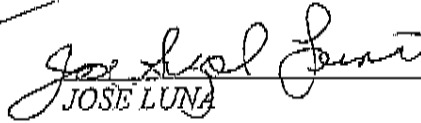
PREPARED BY:

  
ROBERT B. WOODRUFF, ESQ.



Witnessed or Attested By:



  
JOSE LUNA

Dated: 11/06/06

STATE OF \_\_\_\_\_

ss: 0607606357

COUNTY OF \_\_\_\_\_

I CERTIFY that on \_\_\_\_\_, 2006, JOSE LUNA, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one person):

- a. is named in and personally signed this document; and
- b. signed, sealed and delivered this document as his or her act and deed.

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Notary Public