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201-319-0200  
Attorneys for Plaintiff  
Michael David Evans

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

<hr/>		:
MICHAEL DAVID EVANS,	:	Civil Action No.
	:	09-2462 (JAG/ES)
Plaintiff,	:	
	:	
-vs-	:	Hon.
	:	
	:	
DAVID PINTO, DAN ROMAN,	:	COMPLAINT
TOWNSHIP OF UNION POLICE	:	AND JURY DEMAND
DEPARTMENT, TOWNSHIP OF UNION,	:	
JOHN DOE NOS. 1-10 AND ABC CORP:	:	
NOS. 1-10	:	
Defendant(s)	:	
<hr/>		:

Plaintiffs Michael David Evans, by way of this  
Complaint hereby avers:

I. THE PARTIES

1. Plaintiff Michael David Evans is an adult individual residing at 1126 Stuyvesant Avenue in Irvington, NJ.
2. Defendant David Pinto is an adult individual. At all relevant times, David Pinto was and remains a police

officer, badge number 96/2903, with the Township of Union Police Department, 981 Caldwell Ave, Union, NJ 07083 and may be served at said address. Defendant David Pinto is being sued in his individual and official capacity.

3. Defendant Dan Roman is an adult individual. At all relevant times, Dan Roman was and remains a police officer, badge no. 65/2674, with the Township of Union Police Department, 981 Caldwell Ave, Union, NJ 07083 and may be served at said address. Defendant Dan Roman is being sued in his individual and official capacity.

4. Defendant Township of Union Police Department is a government agency or body with offices at 981 Caldwell Ave, Union, NJ 07083 and may be served at said address through its legal department or the Township of Union Police Department Chief's Office or the Township of Union's Legal Department or the Town Clerk's Office. The Township of Union Police Department is part of the municipal government of the Township of Union and is responsible for providing police services.

5. Defendant Township of Union is a municipal corporation organized under the laws of the State of New Jersey with offices at 1976 Morris Avenue, Union, NJ 07083

and may be served at said address through its law department or the town clerk's office. By duly adopted ordinance, Defendant Township of Union has determined to provide police services through the Township of Union Police Department.

6. Defendants John Doe Nos. 1-10 are fictitious names given to officers or employees of the Township of Union Police Department and/or the Township of Union, whose actual names are currently unknown, who collaborated with Defendants David Pinto and Dan Roman as set forth below. They are sued in their individual and official capacities.

7. Defendants ABC Corp. Nos. 1-10 are fictitious names given to government agencies of the Township of Union whose actual names are currently unknown, who collaborated with Defendants David Pinto and Dan Roman or were deliberately indifferent to the fact that said Defendants were improperly screened, trained, supervised and/or retained.

**II. JURISDICTION**

8. This suit arises under the United States Constitution and the laws of the United States and is brought pursuant to 42 U.S.C. §1983 et. seq., together with the pendent New Jersey State law claims.

9. The Court has jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. §1331, as an action arising under the Constitution of the United States, and 28 U.S.C. §1343(a) (3) to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States, and over Plaintiffs' pendent state law claims pursuant to 28 U.S.C. 1367.

10. The Court has the authority to award costs and attorney's fees pursuant to 42 U.S.C. §1988.

11. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. §1391, because all parties reside in this district and the events giving rise to Plaintiff's claims occurred in this district.

12. This action is brought pursuant to 42 U.S.C. Section 1983 et. seq.; the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et. seq.; the Constitution of the United States; the New Jersey State Constitution and New Jersey Common law.

13. Plaintiff alleges that Defendants violated the rights secured to Plaintiff under the Fourth (unreasonable searches and seizures), Fifth (Equal Protection) Eighth (Cruel and Unusual Punishment) and Fourteenth (Equal Protection / Due Process) Amendments of the United States Constitution.

14. Defendants violated Plaintiff's rights by arresting and searching him without a warrant or probable cause; by incarcerating him without just cause; by using unnecessary and excessive force against Plaintiff; by filing false reports and complaints against Plaintiff in an effort to cover up Defendants' own misconduct; by causing Plaintiff to remain incarcerated for several weeks without just cause and by maliciously prosecuting Plaintiff.

15. Plaintiff seeks compensatory damages, punitive damages, attorney's fees and costs and such other relief as the Court may deem just and proper to compensate Plaintiff

and/or to punish Defendants for their unlawful and outrageous conduct.

**III. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

16. On May 30, 2007, Plaintiff Michael David Evans, an African-American male, was walking along Mill Road in Irvington, NJ, near the border of Union, NJ. Mr. Evans was on his way to visit his friend Brenda Baucum, who resided at 129 Mill Road in Irvington.

17. As Mr. Evans approached Brenda Baucum's home, he turned into the driveway that separates 129 Mill Road from 127 Mill Road.

18. Just then, a Union Township (hereinafter "Union") police car pulled up and one of the officers ordered Mr. Evans to stop. Mr. Evans took a few more steps into the driveway and then stopped.

19. Defendant Union Police Officer David Pinto and Defendant Union Police Officer Dan Roman (collectively referred to hereinafter as "Defendant Officers") exited their vehicle and approached Mr. Evans. Defendant Pinto asked Mr. Evans if he was on probation, to which Mr. Evans

responded that he was. Defendant Officers then patted Mr. Evans down and turned Mr. Evans around so that Mr. Evans was facing the side wall of 129 Mill Road with his back to the Defendant Officers.

20. Defendant Officers took out handcuffs to place them on Mr. Evans. Mr. Evans turned slightly towards the Defendant Officers to ask why he was being arrested. Then one of the officers (upon information and belief Defendant Officer Pinto) punched Mr. Evans in the face, knocking Mr. Evans to the ground.

21. While Mr. Evans was on the ground, Defendant Officers handcuffed Mr. Evans with his hands behind his back. After the Defendant Officers placed Mr. Evans in handcuffs, Defendant Officers lifted Mr. Evans off the ground and slammed him several times into the side wall of 129 Mill Road. Since Mr. Evans's hands were cuffed behind his back, he could not brace himself against the impact and hit the wall with his face, breaking his nose, cutting his face open and denting the aluminum siding.

22. Mr. Evans fell to the ground and Defendant Officers started to punch, stomp and kick him. Defendant Officers

taunted him by telling him to get up as they beat him back down. Finally, Defendant Officers grabbed Mr. Evans by his handcuffs and dragged him to the police car.

23. Mr. Evans had one large laceration on his forehead and another large laceration on his face. Mr. Evans was so badly injured that the police were forced to take him to Union Hospital. At the Hospital, Mr. Evans received sutures to close both wounds. An X-ray confirmed that the police had fractured Mr. Evans's nose. The police beating also cracked Mr. Evans's top denture plate.

24. After Mr. Evans was discharged from the hospital, he was brought to Union police headquarters, processed and charged with false charges of resisting arrest and aggravated assault on the police officers.

25. When the Union Police Department transported Mr. Evans to Union County Jail, the jail would not accept him because he had been beaten so badly. As a result, Mr. Evans was kept in the Union police station lock-up for two or three days.

26. Finally, the Union County Jail accepted Mr. Evans. Mr. Evans spent 10 days in the Union County Jail medical ward before he was saw a judge to have his bail set.

27. As a result of the false charges filed against Mr. Evans by Defendant Officers Pinto and Roman, Mr. Evans spent five weeks in jail before his family could raise the money to post bail.

28. The Union Police Department and the Township of Union had a policy, practice or custom of failing to adequately screen, train, supervise and discipline police personnel. Said policies, practices or customs directly resulted in the harms suffered by Plaintiff.

29. The Union Police Department and the Township of Union were deliberately indifferent to the fact that Defendants Pinto and Roman had histories of not complying with proper police procedure and of violating the law. Said deliberate indifference directly resulted in the harms suffered by Plaintiff.

30. Defendants' conduct against Plaintiff was motivated, in part, because Plaintiff is a member of minority race.

COUNT ONE

**Violations Of Plaintiff's Federal  
Constitutional Rights By Defendants David  
Pinto, Dan Roman And John Doe Nos. 1-10.**

31. Plaintiff Michael David Evans has rights protected by the United States Constitution against unreasonable searches and seizures of his person; the use of excessive force; unreasonable, arbitrary and unnecessarily prolonged imprisonment and malicious and arbitrary prosecution. Plaintiff also has the right to equal protection under the law, including the right to be free from racial discrimination.

32. Said rights are afforded to Plaintiff by the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution. Specifically, the Fourth Amendment prohibits police officers and other government agents acting under color of state authority from carrying out searches, making arrests and filing criminal charges without probable cause. The Fourth, Eighth and Fourteenth Amendments protect against cruel and unusual punishment, including unnecessary force and unreasonably prolonged detentions. The Fifth Amendment affords all citizens equal protection under the law and prohibits racial

discrimination. The Fourteenth Amendment guarantees due process, including the right to a speedy and equitable bail and affords protection against malicious and arbitrary prosecution.

33. Defendants Pinto and Roman are Union Police Officers. These Defendants unlawfully seized, searched and arrested Plaintiff without probable cause.

34. Defendants Pinto and Roman used unnecessary force to seize and arrest Plaintiff both before and after he was handcuffed. The manner in which these Defendants used force was unjustified and amounts to an assault.

35. Defendants filed false aggravated assault charges and resisting arrest charges against Plaintiffs to cover up their own misconduct.

36. Defendants wrongfully incarcerated Plaintiff based on the false charges and caused Plaintiff to remain in jail for 5 weeks.

37. Defendants conduct was motivated, in part, because Plaintiff is a member of a minority race.

38. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff suffered an invasion of

privacy, physical harm, deprivation of liberty, humiliation, mental anguish and distress.

WHEREFORE, Plaintiff demands judgment against all Defendants, jointly and severally, as follows:

- A. Compensatory damages;
- B. Punitive damages;
- C. Attorney's fees;
- D. Costs, fees and all other appropriate relief.

COUNT TWO

**Violations Of Plaintiff's Federal Constitutional Rights By Defendants Union Police Department, Township of Union And ABC Corp Nos. 1-10.**

39. Plaintiff incorporates each and every allegation set forth in this Complaint as if fully set forth herein.

40. The Union Police Department and the Township of Union have a policy, practice or custom of failing to adequately screen, train, supervise and discipline police personnel.

41. The Union Police Department and the Township of Union were deliberately indifferent to the fact that Defendants

Pinto and Roman had histories of not complying with proper police procedure and of violating the law.

42. As a result of said policy, practice, custom and/or deliberate indifference, Plaintiff was deprived of his Federal Constitutional Rights and were harmed.

WHEREFORE, Plaintiff demands judgment against all against Defendants, jointly and severally, as follows:

- E. Compensatory damages;
- F. Punitive damages;
- G. Attorney's fees;
- H. Costs, fees and all other appropriate relief.

**COUNT THREE**

**Violations Of Plaintiff's New Jersey  
Constitutional Rights By All Defendants.**

43. Plaintiff incorporates each and every allegation set forth in this Complaint as if fully set forth herein.

44. Defendants' intentional actions, customs, practices, procedures and/or deliberate indifference deprived Plaintiff of his rights and privileges afforded to him

under Article I, paragraphs 1, 5, 7, 21 and 22, of the New Jersey Constitution.

45. Defendants' actions have deprived Plaintiff of his right to be free from unreasonable searches, seizures and detention, to be free from the unjustified and excessive use of force, to be free from racial discrimination and to procedural and substantive due process under Article I of the New Jersey Constitution.

46. As a direct and proximate result of Defendants' actions, Plaintiff were harmed. Said harm includes, but is not limited to, invasion of privacy, physical pain and suffering, deprivation of freedom, humiliation, mental anguish and emotional distress and harm, and other damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants as follows:

- I. Compensatory damages.
- J. For punitive damages.
- K. For attorneys fees;
- L. For costs, fees and all other appropriate relief including a Civil Penalty under the New Jersey Civil Right Act Section 10:6-2.

COUNT FOUR

**False Arrest And Imprisonment Of Plaintiff As  
To All Defendants Under State Law**

47. Plaintiff incorporates each and every allegation set forth in this Complaint as if fully set forth herein.

48. Either through their intentional conduct, policies, practices, procedures and/or deliberate indifference, Defendants are liable to Plaintiff for the tort of false arrest and false imprisonment by arresting Plaintiff without a warrant or probable cause, by imprisoning him based on false charges and by failing to bring Plaintiff before a magistrate in a timely fashion for the setting of bail.

49. As a direct and proximate result of Defendants' actions, Plaintiff suffered physical harm, deprivation of liberty, humiliation, mental anguish and distress.

WHEREFORE, Plaintiffs demands judgment against all against Defendants, jointly and severally, as follows:

M. Compensatory damages;

N. Punitive damages;

O. Attorneys' fees;

P. Costs, fees and all other appropriate relief.

**COUNT FIVE**

**Assault and Battery Of Plaintiff Under State  
Law As To All Defendants**

50. Plaintiffs repeat each and every allegation in this Complaint as if set forth fully herein.

51. Defendants Pinto and Romano committed the torts of assault and battery upon Plaintiff.

52. Defendant Union Police Department and Defendant Township of Union had a policy, practice or custom of failing to adequately screen, train, supervise and discipline police personnel. Said policies, practices or customs directly resulted in the harms suffered by Plaintiffs.

53. Defendant Union Police Department and Defendant Township of Union were deliberately indifferent to the fact that Defendants Pinto and Roman had histories of not complying with proper police procedure and of violating the

law. Said deliberate indifference directly resulted in the harms suffered by Plaintiffs.

54. As a direct and proximate result of Defendants' conduct, Felix Rosario suffered physical harm, deprivation of liberty, humiliation, mental anguish and distress.

WHEREFORE, Plaintiffs demands judgment against all against Defendants, jointly and severally, as follows:

- Q. Compensatory damages;
- R. Punitive damages;
- S. Attorneys' fees;
- T. Costs, fees and all other appropriate relief.

**COUNT SIX**

**Intentional Infliction of Emotional Distress**

55. Plaintiffs incorporate each and every allegation set forth in this Complaint as if fully set forth herein.

56. The conduct of Defendants Pinto and Roman--in seizing, searching and arresting Plaintiff without probable cause or a warrant, in assaulting Plaintiff, in taunting Plaintiff after he was handcuffed and injured, and in imprisoning

Plaintiff on false charges—were malicious, and so outrageous as to shock the conscience.

57. The Union Police Department and the Township of Union had a policy, practice or custom of failing to adequately screen, train, supervise and discipline police personnel. Said policies, practices or customs directly resulted in the harms suffered by Plaintiff.

58. The Union Police Department and the Township of Union were deliberately indifferent to the fact that Defendants Pinto and Roman had histories of not complying with proper police procedure and of violating the law. Said deliberate indifference directly resulted in the harms suffered by Plaintiffs.

59. As a direct and proximate result of Defendants' conduct, Plaintiff suffered physical harm, deprivation of liberty, humiliation, mental anguish and emotional distress.

WHEREFORE, Plaintiff demands judgment against all Defendants, jointly and severally, as follows:

- U. Compensatory damages;
- V. punitive damages;

- W. Attorneys fees;
- X. Costs, fees and all other appropriate relief.

**DEMAND FOR JURY TRIAL**

Trial by jury is demanded on all issues so triable.

**DESIGNATION OF TRIAL COUNSEL**

Per the Rules of Court, Plaintiff designates Raoul Bustillo, Esq., as trial counsel for this matter.

Dated: May 21, 2009

Koles, Burke & Bustillo, LLP  
100 35th Street  
Union City, NJ 07087




BY: Raoul Bustillo, Esq.

CERTIFICATION

I am not aware of any other case arising out of the facts stated herein, nor any other matter which may be brought as a result of the facts stated herein, nor any other party that should be joined.

Dated: May 21, 2009

  
BY: Raoul Bustillo, Esq.

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Attorneys for Defendant, David Pinto and Dan Roman

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK, NEW JERSEY

Plaintiff,

MICHAEL DAVID EVANS

vs.

Defendants,

DAVID PINTO; DAN ROMAN; TOWNSHIP  
OF UNION POLICE DEPARTMENT;  
TOWNSHIP OF UNION; JOHN DOE NOS.  
1-10 and ABC CORP. NOS. 1-10

CIVIL ACTION NO. 2:09-cv-2462 (JAG/ES)

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is entered into on this 22 day of December, 2010 by and among Plaintiff, Michael David Evans (hereinafter referred to as "Plaintiff"), and the Township of Union through their respective counsel. For purposes of this Settlement Agreement and Release, the term "Plaintiff" shall mean and include Michael David Evans, and any and all of his heirs, representatives, successors and assigns. The term "Township" shall mean and include the Township of Union, present or former departments, its elected and appointed officials, officers, directors, agents, administrators, attorneys, representatives, and past and present employees.

**RECITALS**

**WHEREAS**, Plaintiff commenced this action on or about May 21, 2009 by filing a Complaint captioned Michael David Evans v. Township of Union, Defendants, in the United States District Court, District of New Jersey, bearing Civil Case No. 2:09-cv-2462 (JAG/ES); and,

**WHEREAS**, the Complaint alleged that Officer David Pinto, Officer Dan Roman and the Township of Union, alternatively or collectively engaged in violations of Constitutional rights (First,

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Second, Fourth and Sixth Counts); failure to act (Third and Sixth Counts); and malicious prosecution (Seventh Count); and,

**WHEREAS**, the Township of Union, and the Non-Settling Defendants, through their respective counsel, filed Answers to the Complaint denying all the allegations contained therein and raising numerous affirmative defenses thereto; and,

**WHEREAS**, the Plaintiff's counsel has advised the Defendants' respective counsel that the Plaintiff will voluntarily dismiss the Complaint with prejudice against Officer David Pinto and Officer Dan Roman (hereinafter collectively referred to as the "Non-Settling Defendants"); and,

**WHEREAS**, the Non-Settling Defendants do not admit liability or any wrongdoing of any kind; and,

**WHEREAS**, the Township of Union does not admit liability or any wrongdoing of any kind by itself, its Departments, its elected and appointed officials, officers, directors, agents, administrators and past and present employees; and,

**WHEREAS**, the parties desire to enter into this Settlement Agreement and Release and fully and finally resolve this litigation pursuant to the terms of Judge Wolfson's findings following binding Arbitration. See Exhibit "A", letter award of Judge Wolfson;

**NOW, THEREFORE**, and based upon the foregoing, Plaintiff and the Township of Union agrees as follows:

1. Independent of, and not as consideration for this Settlement Agreement and Release, the Plaintiff shall dismiss this action with prejudice as to the Non-Settling Defendants by executing and filing for these Defendants the Voluntary Dismissals with Prejudice, annexed to this Agreement as Exhibits A, B and C. Copies of the executed and filed Voluntary Dismissals with Prejudice shall be served upon the respective counsel for the Non-Settling Defendants within seven (7) days of their receipt by counsel for the Plaintiff.

2. Independent of, and not as consideration for this Settlement Agreement and Release, the Plaintiff will release any and all claims he asserted or could have asserted against the Non-

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Settling Defendants in this or any other forum by executing this Settlement Agreement and Release.

3. Independent of, and not as consideration for this Settlement Agreement and Release, the Township of Union and Non-Settling Defendants will each release any and all claims they asserted or could have asserted against the Plaintiff in this or any other forum by executing this Settlement Agreement and Release.

4. The total settlement amount is \$(insert amount). The total settlement amount of \$40,728 (insert amount) is in full satisfaction of all claims of the Plaintiff as more fully pleaded in the Complaint filed in this matter and/or alleged in the course of discovery including claims for all attorneys fees and litigation costs and expenses which the Plaintiff incurred in this lawsuit.

5. The Township of Union, through the Garden State Joint Insurance Fund, shall pay the Plaintiff a total lump sum payment of \$40,728 (insert amount) in settlement of this matter. The Garden State Joint Insurance Fund shall tender its settlement check in the amount of \$40,728 (insert amount) made payable to Michael David Evans, and Raoul Bustillo, Esq., Plaintiff's counsel, within thirty (30) days of the full execution of this Settlement Agreement and Release, and Voluntary Dismissals with Prejudice as to Officer David Pinto and Officer Dan Roman.

6. The parties expressly acknowledge and agree that the \$40,728 (insert amount) settlement payment by the Township of Union, through the Garden State Joint Insurance Fund, is for all of the claimed damages, including, but not limited to, the physical, mental, emotional, and psychological injuries, which the Plaintiff has alleged in the Complaint and/or in the course of discovery, and for the attorneys fees and litigation costs and expenses incurred by the Plaintiff in this lawsuit.

7. The Plaintiff expressly acknowledges and agrees that all claims for wages and medical expenses, paid or unpaid, and/or liens asserted for wages and medical expenses, paid or unpaid, will be satisfied from the proceeds of this settlement.

8. Plaintiff is paying to Raoul Bustillo, Esq., from this \$40,728 (insert amount) settlement payment all of his attorneys' fees and litigation costs and expenses which the Plaintiff incurred in this lawsuit.

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The Plaintiff, the Plaintiff's counsel, the Township of Union and the Non-Settling Defendants and their respective counsel expressly waive and release each other from any and all claims for attorneys' fees and costs, including, but not limited to, those claims for attorneys' fees and costs allowed under Title VII of the Civil Rights Act, the Civil Rights Acts of 1871 as amended, 42 U.S.C. Section 1983, and 1991, the Pregnancy Discrimination Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Employee Retirement Income Security Act, the Federal Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, and the Workers' Adjustment and Retraining Notification Act, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* ("LAD"); the New Jersey Family Leave Act, N.J.S.A. 34:11B-1, *et seq.* ("FLA"); the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, *et seq.* ("CEPA"); the New Jersey Workers' Compensation Law, N.J.S.A. 34:15-39.1, *et seq.* ("NJWC"); the New Jersey Wage and Hour Law N.J.S.A. 34:11-4.1, *et seq.* ("NJWH"); the Smoking Rights Law N.J.S.A. 34:6B-1, *et seq.* ("SRL"); the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.* ("NJCRA") and New Jersey Equal Pay Act, N.J.S.A. §34:11-56-1, *et seq.*; and any other law or Statute, Federal or State or local law or ordinance. The Plaintiff and the Plaintiff's counsel and the Township of Union and the Non-Settling Defendants, and their respective counsel shall not bring any action in the United States District Court, the Superior Court of New Jersey, or in any other forum for any attorneys' fees or litigation expenses and costs against each other. This provision fully and finally waives and extinguishes the right of the Plaintiff and Plaintiff's counsel to recovery of attorneys' fees or costs against both the Township of Union and Non-Settling Defendants, and fully and finally waives and extinguishes the right of the Township of Union and the Non-Settling Defendants, and their respective counsel, to recovery of attorneys' fees or costs against Plaintiff. By executing this Settlement Agreement and Release, the Plaintiff certifies that he has complied with the provisions of N.J.S.A. 2A:17-56.23b.

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9. All communications between the parties, whether regarding the execution and implementation of this Settlement Agreement and Release or for any other reason, shall only be

through their respective counsel, with the parties having no direct contact. The parties will make all reasonable efforts to avoid direct contact hereafter, and to the extent that any further contact is necessary, will do so only through their respective counsel.

10. This Agreement does not constitute and shall in no manner be construed as an admission of any wrongdoing or liability by any of the Township of Union or the Non-Settling Defendants, or as an admission by the Township of Union or the Non-Settling Defendants of the validity of any of the Plaintiff's allegations as contained in his Complaint and/or as asserted during the course of discovery. All Defendants continue to maintain the validity of the denials and affirmative defenses set forth in their respective Answers to the Complaint.

11. The Plaintiff, the Township of Union, and the present and former elected and appointed officials, officers, directors, agents, administrators and past and present employees of the Township of Union, and the Non-Settling Defendants expressly acknowledge and agree that they will not hereafter file, institute or claim, or cause to be filed, instituted or claimed, any charge, complaint, or legal and/or administrative proceeding of any kind in any venue or forum against each other, or any of the persons or entities released herein, for anything that has occurred up to and including the date of this Settlement Agreement and Release.

12. The Plaintiff releases and gives up any and all claims, rights, actions and causes of action of any kind, both at law and equity, which he has, had or may have had against the Township of Union, its present and former departments, elected and appointed officials, officers, directors, agents, administrators, attorneys, representatives and past and present employees, and the Non-Settling Defendants and all of their heirs, representatives, successors and assigns. This Settlement Agreement and Release by the Plaintiff of all claims includes those of which he is not aware and those which are not specifically mentioned in this Settlement Agreement and Release. This Settlement Agreement and Release applies to all claims resulting from anything that has happened up to the date of its execution by the Plaintiff. Plaintiff specifically releases both the Township of Union and the Non-Settling Defendants from any and all claims, rights, actions and

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causes of action that were asserted or could have been asserted in the lawsuit captioned Michael David Evans v. Township of Union, the Township of Union, Officer David Pinto and Officer Dan Roman, Defendants, in the Superior Court of New Jersey, Law Division, Union County; bearing Civil Case No. 2:09-cv-2462 (JAG/ES), venued in the United States District Court for the District of New Jersey, including all claims for attorneys' fees and litigation expenses and costs incurred in this lawsuit. Plaintiff further specifically releases and gives up any and all claims, rights, actions and causes of action that he has, had or may have had against the Township of Union and the Non-Settling Defendants, whether known or unknown to him, which arise out of, concern or relate to, either directly or indirectly, Plaintiff's allegations contained in his Complaint and/or asserted during the course of discovery. Without limitation, the Plaintiff expressly waives and releases the Township of Union and the Non-Settling Defendants from any and all causes of action, claims or demands up to the date of this Settlement Agreement, known or unknown, including, but not limited to, violations of Constitutional Rights, both Federal and State, assault and battery, malicious prosecution, unlawful search and seizure, false arrest and false imprisonment and failure to act; in tort, such as for emotional distress, defamation, slander, libel or false imprisonment; in contract, whether express or implied; under any Employer policy, procedure or benefit plan (except vested benefits); for attorneys fees, and under any federal, state or local law or ordinance, including, but not limited to, Title VII of the Civil Rights Act, the Civil Rights Acts of 1871 as amended, 42 U.S.C. Section 1983 and 1991, the Pregnancy Discrimination Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Employee Retirement Income Security Act, the Federal Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, and the Workers' Adjustment and Retraining Notification Act, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* ("LAD"); the New Jersey Family Leave Act, N.J.S.A. 34:11B-1, *et seq.* ("FLA"); the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, *et seq.* ("CEPA"); the New Jersey Workers' Compensation Law, N.J.S.A. 34:15-39.1, *et seq.* ("NJWC"); the New Jersey Wage and Hour Law N.J.S.A. 34:11-4.1, *et seq.* ("NJWH"); the Smoking Rights Law N.J.S.A. 34:6B-1,

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*et seq.* ("SRL"); the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.* ("NJCRA") and New Jersey Equal Pay Act, N.J.S.A. §34:11-56-1, *et seq.*; and for harassment, discrimination and retaliation of any kind, or any other possible cause. The parties expressly acknowledge and agree that certain of Plaintiff's claims were dismissed by way of settlement dated December 2, 2010, prior to the execution and implementation of this Settlement Agreement and Release. Plaintiff acknowledges and agrees that these claims, although dismissed prior to the execution and implementation of this Settlement Agreement and Release, are included in the claims which the Plaintiff releases herein.

12A. The Township of Union, and the Non-Settling Defendants release and give up any and all claims, rights, actions and causes of action of any kind, both at law and equity, which they have, had or may have had, including all claims, rights, actions and causes of action of which they are not aware and those which are not specifically mentioned in this Settlement Agreement and Release against the Plaintiff and all of his heirs, representatives, successors and assigns. This Settlement Agreement and Release applies to all claims resulting from anything that has happened up to the date of its execution by the Township of Union and the Non-Settling Defendants. The Township of Union and the Non-Settling Defendants specifically release the Plaintiff from any and all claims, rights, actions and causes of action that were asserted or could have been asserted in the lawsuit captioned Michael David Evans v. Township of Union, et al., Civil Action No.2:09-cv-2462 (JAG/ES), venued in the United States District Court for the District of New Jersey, including all claims for attorneys' fees and litigation expenses and costs incurred in this lawsuit. The Township of Union and the Non-Settling Defendants specifically release and give up any and all claims, rights, actions and causes of action that they have, had or may have had against the Plaintiff, whether known or unknown to them, which arise out of, concern or relate to, either directly or indirectly, Plaintiff's allegations contained in his Complaint and/or asserted during the course of discovery. Without limitation, the Township of Union and the Non-Settling

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Defendants expressly waive and release the Plaintiff from any and all causes of action, claims or demands up to the date of this Settlement Agreement and Release, known or unknown.

13. In the event the Plaintiff brings a claim against the Township of Union and the Non-Settling Defendants, Plaintiff's right or ability to conduct, seek and/or otherwise obtain discovery as to conduct, occurrences and/or information which occurred, is related to, or arose prior to the execution of this Settlement Agreement and Release, regardless of for whatever purpose, including, but not limited to, the Plaintiff seeking to demonstrate prior bad acts or suggest a motive for the Defendants' allegedly improper actions as part of his claims in another proceeding, shall be determined by the court before which any such claim is pending.

14. By executing this Settlement Agreement and Release, the parties expressly certify, acknowledge, and represent that they have not assigned to any third-party any right or claim that any party has, may have or believes that the party has or may have against each other. The parties further certify that they have no other charges, claims and/or complaints of any kind pending against each other, and further covenant and certify that they will not file or cause to be filed any charge, claim or complaint of any kind against each other seeking civil and/or criminal sanctions, personal recovery and/or injunctive relief based upon any facts leading up to the date of the signing of this Settlement Agreement and Release. The parties certify that they have not assigned any claims and will not file any claims based upon any facts leading up to the date of the signing of this Settlement Agreement and Release.

15. This Settlement Agreement and Release is made and entered into in the State of New Jersey and shall, in all respects, be interpreted, enforced and governed under the laws of this State. The United States District Court for the District of New Jersey shall have exclusive jurisdiction over any and all disputes arising out of or relating to, directly or indirectly, the interpretation, application or alleged violation and enforcement of any provision of this Agreement.

16. The language of this Agreement has been negotiated and is a product of the draftsmanship of all of the parties, and shall, in all cases, be construed as a whole according to its

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objective and fair meaning and shall not be interpreted in favor of or against any party. Not by way of limiting the foregoing, the interpretation of any provision (in part or in whole) of this Settlement Agreement and Release shall not, in any manner, be interpreted against the drafter.

17. Should any provision of this Settlement Agreement and Release be declared or determined by any court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, the validity and enforceability of the remaining provisions shall not be effected and the illegal, invalid or unenforceable provision shall be deemed removed from this Agreement.

18. In the event that any party materially breaches any of the terms and provisions of this Settlement Agreement and Release, the other party or parties shall be entitled to bring an action for breach of this Settlement Agreement and Release. However this entitlement will not accrue until the non-breaching party provides written notice to counsel for the breaching party or parties, who will forward the written notice to the breaching party or parties, and a reasonable opportunity of thirty (30) days has been afforded to the breaching party or parties to remedy the breach. In no event will any party be entitled to bring an action for breach of this Settlement Agreement and Release once the breaching party or parties has remedied the breach.

19. Counsel of record, all of whose signatures appear below, represent and warrant that they have reviewed this Settlement Agreement and Release with their respective clients. The Plaintiff has been advised by his counsel to execute it and all other counsel have been authorized by their respective clients to execute it on their behalf. This Settlement Agreement and Release may be executed in counterpart by the individual counsel for the Township of Union, the Non-Settling Defendants, and Plaintiff.

20. The signature of Plaintiff below shall indicate that Plaintiff had sufficient opportunity to review this Settlement Agreement and Release with his counsel; that he has read and understood the terms and provisions of this Settlement Agreement and Release; that he has agreed to the terms and provisions of this Settlement Agreement and Release; and that he has voluntarily

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executed the Settlement Agreement and Release as a full and final resolution of this matter, with full knowledge of the significance of its terms and provisions.

21. Upon the execution of this Settlement Agreement and Release by the attorneys for all parties, including the Non-Settling Defendants, Plaintiff, through his counsel, shall immediately submit to the Township of Union, through its attorney, a Stipulation of Dismissal with Prejudice in favor of the Township of Union in the form annexed to this Settlement Agreement and Release as Exhibit D, which will be held in escrow pending payment of the settlement amount referenced in Paragraph 4 of this Settlement Agreement and Release.

**IN WITNESS WHEREOF**, the Plaintiff, Michael David Evans, and all other parties, through their counsel, have executed this Agreement on the dates indicated below.

Michael David Evans Dated: 12/22/10  
Michael David Evans

Koles Burke & Bustillo, LLP  
Attorneys for Plaintiff, Michael David Evans

By: Raoul Bustillo Dated: 12/22/10  
Raoul Bustillo, Esq.

Hoagland, Longo, Moran, Dunst & Doukas  
Attorneys for Defendants, Officer David Pinto and Officer Dan Roman

By:  Dated: \_\_\_\_\_  
Christopher J. Killmurray, Esq.

Weiner Lesniak, LLP  
Attorneys for Defendant, Township of Union

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Adam Kenny, Esq.

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*Please Reply to Morristown Office*

December 13, 2010

VIA FACSIMILE AND REGULAR MAIL

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New Brunswick, New Jersey 08903

**Re: Michael David Evans v. David Pinto, et al.  
Civil Action No. 2:09-cv-2462 (JAG) (MCA)**

Dear Counsel:

The parties appeared before me on December 2, 2010 for a binding arbitration in this matter. I have reviewed the materials submitted to me in advance of the arbitration, as well as the testimony, both live and on video. I have also reviewed the post-hearing submissions of Mr. Bustillo and Mr. Killmurray. In accordance with the applicable law with regard to the standards by which I am

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December 13, 2010

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to adhere to in rendering a decision, and in light of the evidence presented, I hereby award the Plaintiff \$15,000.00. As 42 U.S.C. §1983 is a fee-shifting statute, I have reviewed the fee application submitted by the Plaintiff. As the Plaintiff is the prevailing party in this litigation, I award to the Plaintiff \$20,000.00 in counsel fees, plus \$5,728.00 in costs.

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Schwartz Simon  
Edelstein & Celso LLC

*Douglas K. Wolfson/dmc*

Douglas K. Wolfson  
A Member Of The Firm

DKW/dmc



(00502604; 1)