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Attorney-at-Law  
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Freehold, NJ 07728  
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Attorney for Plaintiff

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**JEAN C. PEGUERO,**

Plaintiff,

vs.

**UNION CITY, CHARLES EVERETT**  
Chief of Police; **SERGEANT DOMINICK**  
**DEPINTO; SERGEANT M. MICO; JOHN**  
**DOES 6-10,** Personnel of the Union City Police  
Department in supervisory capacities; **ALEX**  
**RUPERTO; DAMIEN DIFAZIO; JOSE**  
**CASTILLO; J. DOWLING; JOHN DOES 1-5,**  
Union City Police Officers;

Defendants.

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UNITED STATES DISTRICT COURT  
DISTRICT COURT OF NEW JERSEY  
NEWARK

Civil Action No.: 10- ( - )

**COMPLAINT**

**JURISDICTION**

I. This action is brought pursuant to 42 U.S.C. Section 1983 and in accordance with the Fourth and Fourteenth Amendments of the Constitution of the United States of America.

Jurisdiction is conferred under 28 U.S.C. Section 1331 and Section 1343(3). This Court has supplemental jurisdiction over Plaintiff's State law claims pursuant to 28 U.S.C. Section 1367.

PARTIES

2. Plaintiff Jean C. Peguero, residing at 514 Third Street, Union City, New Jersey, County of Hudson, is and was, at all times herein relevant herein a resident of the State of New Jersey and a citizen of the United States.

3. Defendants Alex Ruperto; Damien DiFazio; Jose Castillo; J. Dowling, Dominick DePinto and/or John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the Union City Police Department and at all times herein were acting in such a capacity as the agents, servants and/or employees of the Defendant Union City and were acting under the color of law.

4. Defendants Chief of Police Charles Everett, Sergeant Dominick DePinto, Sergeant M. Mico and/or John Does 6-10 were at all times mentioned herein duly appointed and acting members of the Union City Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of Defendant Union City and were acting under the color of law.

5. Defendants Everett; DePinto, Mico and/or John Does 6-10 were acting in supervisory capacities over Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 and responsible by law for the training, supervision and conduct of Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5.

6. Defendant Union City is a duly designated municipality of the state of New Jersey, under the laws of the state of New Jersey.

7. At all times relevant hereto, Defendant Union City employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto; Mico, Everett and/or John Does 1-10.

8. Suit is brought against all defendants in their official and/or individual capacities.

**FACTUAL ALLEGATIONS**

9. On 5/23/09, Plaintiff Jean Peguero went outside to walk his dog when he was approached and surrounded by Defendants Alex Ruperto, Damien DiFazio, Dominick DePinto, Jose Castillo, J. Dowling and/or John Does 1-5.

10. Approximately 15 minutes earlier, Defendants had told one of Plaintiff's friends that they were looking for Plaintiff and that they were going to punch Plaintiff in the face when they saw Plaintiff.

11. Plaintiff asked if he were being arrested and was told by Defendant Ruperto to "shut the f\*\*k up."

12. Defendants drew their weapons and pointed them at Plaintiff and his dog.

13. Defendant DePinto told Plaintiff to tie his dog up to the fence next to the building.

14. Plaintiff attempted to tie his dog to the fence when he was assaulted by Defendants.

15. Specifically, Plaintiff was punched in the mouth by Defendant Ruperto, knocking his head back where it struck a concrete column on Plaintiff's building.

16. Plaintiff was then knocked to the ground and struck in the back by Defendants DePinto, DiFazio and/or John Does 1-5.

17. Plaintiff was arrested by Defendants, brought to Union City Police Headquarters, transferred to Hudson County Correctional Facility, and released on bail.

18. Approximately a week after his assault, Plaintiff suffered a seizure and sought medical treatment.

**§ 1983 EXCESSIVE FORCE**  
**COUNT ONE**

19. The previous paragraphs are incorporated herein inclusively as if fully set forth.

20. As a direct and proximate result of the above-referenced unlawful and malicious physical abuse of Plaintiff by Defendants DePinto; Ruperto, DiFazio and/or John Does 1-5 committed under color of state law, Plaintiff sustained bodily harm and was deprived of his rights to be secure in his person against unreasonable seizure of his person, in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and U.S.C. Section 1983.

21. As a direct and proximate cause of the malicious and outrageous conduct of Defendants as set forth above, Plaintiff suffered bodily injuries, damages in the form of medical expenses, lost wages and will suffer additional special damages in the future in an amount which cannot yet be determined.

22. By reason of the above, Plaintiff was injured, suffered great mental anguish, and was deprived of his constitutional rights as described above.

**WHEREFORE**, Plaintiff Jean Peguero demands judgment against Defendants Ruperto; DiFazio, DePinto and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**§ 1983 MALICIOUS ABUSE OF PROCESS**  
**COUNT TWO**

23. The previous paragraphs are incorporated herein inclusively as if fully set forth.

24. Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 maliciously used a "legal process" to accomplish some ulterior purpose for which it was not

designed or intended, or which was not the legitimate purpose of the particular process employed.

25. Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 made false statements of fact; intentionally, recklessly, and/or negligently misrepresented the facts of their encounter with Plaintiff and his subsequent arrest and detention; falsified police and/or other official records, and mishandled and/or withheld evidence to initiate and/or instigate a criminal prosecution of Plaintiff.

26. Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 knew that the complaint initiated was groundless and made misrepresentations to gain an advantage over Plaintiff's certain constitutional claims and/or to protect their interest in their employment and/or to protect themselves from criminal prosecution and civil liability.

27. As a direct and proximate result of the acts of Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 as set forth herein, Plaintiff suffered physical injury, lost wages, medical expenses and mental anguish in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.

**WHEREFORE**, Plaintiff Jean Peguero demands judgment against Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**§ 1983 CONSPIRACY TO VIOLATE CIVIL RIGHTS**  
**COUNT THREE**

\_\_\_\_\_28. The previous paragraphs are incorporated herein inclusively as if fully set forth.

29. Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 acting under color of state law, conspired to deprive Plaintiff of his right to be secure in his person in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States made actionable through 42 U.S.C. Section 1983, by assaulting Plaintiff.

30. Specifically, on 5/23/09, Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 conspired to deprive Plaintiff of his constitutional rights by assaulting, beating and arresting Plaintiff.

31. Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 agreed to ratify and cover-up their unlawful assault of Plaintiff, and in furtherance of this agreement Defendants Ruperto; DiFazio; Castillo; Dowling, DePinto misrepresented the facts and circumstances of their encounter with Plaintiff, and falsified falsifying police reports and/or other police records.

32. Specifically, Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto and/or John Does 1-5 went to Plaintiff's premises to assault him; purposely did not record the arrest and assault of Plaintiff on their patrol car mobile video recorders in direct violation of Union City Police Department policy and/or destroyed the footage, depriving Plaintiff of the opportunity to review same as part of criminal and civil discovery

33. Further, Defendant Mico, a supervisor, reviewed video footage depicting Plaintiff's arrest and assault and did not retain the footage, depriving Plaintiff of the opportunity to review same as part of criminal and civil discovery.

34. Plaintiff suffered physical injury; medical expenses; lost wages and mental anguish

in connection with the deprivation of his Constitutional Rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States made actionable through 42 U.S.C. Section 1983.

**WHEREFORE**, Plaintiff Jean Peguero demands judgment against Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**§ 1983 SUPERVISORY LIABILITY**  
**COUNT FOUR**

35. The previous paragraphs are incorporated herein inclusively as if fully set forth.

36. Defendants DePinto, Mico, John Doe 2 and/or John Does 6-10 were supervisory officials and/or officers in charge at the time Plaintiff was arrested and assaulted.

37. Defendants DePinto, Mico, John Doe 2 and/or John Does 6-10 had a duty to prevent subordinate officers Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.

38. Defendants DePinto, Mico, John Doe 2 and/or John Does 6-10 either directed Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 to violate Plaintiff's constitutional rights or had knowledge of and acquiesced in his/their subordinates' violations.

39. As a direct and proximate result of the acts of Defendants DePinto, Mico, John Doe 2 and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury, medical expenses, lost wages and mental anguish in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States

and protected by 42 U.S.C. Section 1983.

**WHEREFORE**, Plaintiff Jean Peguero demands judgment against Defendants Dominick DePinto, John Does 2 and/or John Does 6-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**§ 1983 FAILURE TO INTERVENE**  
**COUNT FIVE**

\_\_\_\_ 40. The previous paragraphs are incorporated herein inclusively as if fully set forth.

41. Defendants Ruperto; DiFazio; Castillo; Dowling, DePinto and/or John Does 1-5 were Union City Police Officers and at all times mentioned herein were acting under color of state law.

42. Defendants Ruperto; DiFazio; Castillo; Dowling, DePinto and/or John Does 1-5 had a duty to intervene in the unjustified assault of Plaintiff by Defendants Ruperto; DiFazio, DePinto and/or John Does 1-5.

43. The unjustified assault of Plaintiff by Defendants Ruperto; DiFazio, DePinto and/or John Does 1-5 deprived Plaintiff of his right to be secure in his person against unreasonable seizure of his person in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and made actionable through 42 U.S.C. Section 1983.

44. Defendants Ruperto; DiFazio; Castillo; Dowling, DePinto and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified assault of Plaintiff by Defendants Ruperto; DiFazio, DePinto and/or John Does 1-5 and failed to intervene.

45. As a direct and proximate cause of Defendants' Ruperto; DiFazio; Castillo; Dowling, DePinto and/or John Does 1-5 failure to intervene, Plaintiff suffered physical injury, medical expenses, lost wages and mental anguish in connection with the deprivation of his Constitutional

Rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and made actionable through by 42 USC Section 1983.

**WHEREFORE**, Plaintiff Jean Peguero demands judgment against Defendants Ruperto; DiFazio; Castillo; Dowling, DePinto and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**§ 1983 UNLAWFUL CUSTOM, PRACTICE, POLICY/ INADEQUATE TRAINING**  
**COUNT SIX**

46. The previous paragraphs are incorporated herein inclusively as if fully set forth.

47. Defendants Union City, Charles Everett and/or John Does 6-10 are vested by state law with the authority to make policy on the use of force, effectuating arrests and police citizen encounters. Specifically, Defendant Charles Everett is the Chief of Police.

48. At all times mentioned herein, Defendants Everett; Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1- 10, as police officers, agents, servants and/or employees of Defendant Union City were acting under the direction and control of Defendants Union City Police Department, Charles Everett and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the Union City Police Department.

49. Acting under color of law pursuant to official policy, practice, or custom, Defendants Union City, Charles Everett and/or John Does 6-10 intentionally, knowingly, recklessly and/or with deliberate indifference failed to train, instruct, supervise, control, and discipline, on a continuing basis Defendants Everett; Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-10 in their duties to refrain from: (1) unlawfully and maliciously assaulting, arresting and harassing citizens; (2) intentionally, recklessly and/or negligently misrepresenting the facts of arrests and/or other police-citizen encounters; (3) falsifying police and/or other official records; (4) withholding

and/or misbandling evidence; (5) making false arrests, and/or (6) using unreasonable and excessive force.

50. Defendants Union City, Charles Everett and/or John Does 6-10 were aware of numerous similar police citizen encounters involving Defendants Everett; Ruperto; DiFazio; Castillo; Dowling; DePinto; Mico, John Does 1-10 and/or other Union City Police Officers whereby they customarily and frequently subjected citizens held in custody to physical and mental abuse; unlawfully and maliciously assaulted, arrested and harassed citizens; intentionally, recklessly and/or negligently misrepresented the facts of arrests and/or other police-citizen encounters; falsified police and/or other official records; made false arrests, mishandled and/or withheld evidence and/or used unreasonable and excessive force on citizen/arrestees.

51. Despite their awareness, Defendants Union City, Charles Everett and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Everett; Ruperto; DiFazio; Castillo; Dowling, DePinto; Mico, John Does 1-10 and/or other Union City Police Officers.

52. Defendants Union City, Charles Everett and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto; Everett, Mico and/or John Does 1-10 on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.

53. Defendants Union City and/or John Does 6-10 had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.

54. Defendants Union City, Charles Everett and/or John Does 6-10, directly or indirectly, under color of state law, approved or ratified the unlawful, deliberate, malicious, reckless, and

wanton conduct of Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto; Mico, Everett and/or John Does 1-10 heretofore described.

55. As a direct and proximate result of the acts of Defendants Union City, Charles Everett and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury, lost wages, medical expenses, and mental anguish in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.

**WHEREFORE**, Plaintiff Jean Peguero demands judgment against Defendants Union City, Charles Everett and/or John Does 6-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**§ 1983 DEMAND FOR PROSPECTIVE INJUNCTIVE RELIEF**  
**COUNT SEVEN**

56. The previous paragraphs are incorporated herein inclusively as if fully set forth.

Pursuant to 42 USC Section 1983, given that there exists no adequate remedy at law, Plaintiff is entitled to prospective injunctive relief against the Defendants.

57. The relief sought by Plaintiff includes, but is not limited to, the following:

- a. An order permanently restraining and enjoining Defendants Union City; Charles Everett and John Does 1-10 from engaging in, encouraging, teaching, promoting or training Police Officers in maliciously abusing process, and/or using excessive force against citizens and/or arrestees.
- b. An order compelling Defendants Union City, Charles Everett and John Does 6-10 to take prompt, appropriate and corrective measures to prevent any practices that encourage, teach, engage in, promote or train its officers in maliciously abusing process and/or using excessive force against citizens and/or arrestees.
- c. An order compelling Defendants Union City and Charles Everett to provide regular and consistent training sessions to Union City Police Officers.

d. An order compelling Defendants Union City and Charles Everett to implement a system whereby prompt, appropriate action is taken against any Union City who engages in, teaches and/or condones maliciously abusing process and/or using excessive force against citizens and/or arrestees.

e. An order permanently restraining and enjoining Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and John Does 1-5 from physically abusing and using excessive force against citizens and/or arrestees.

f. An order permanently restraining and enjoining Defendants Union City from employing Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and John Does 1-5 as police officers or law enforcement personnel in any capacity except for clerical duty, solely and entirely confining them to Police headquarters and limiting them entirely to desk duty; enjoining Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and John Does 1-5 from any patrol duty, and enjoining Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and John Does 1-5 from making arrests, assisting in making arrests and using any force in making arrests and/or assisting in making arrests.

g. Any other relief as the Court deems proper and just.

**WHEREFORE**, Plaintiff Jean Peguero demands judgment against Defendants Union City; Ruperto; DiFazio; Castillo; Dowling; DePinto; Mico, Everett and John Does 1-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**SUPPLEMENTAL STATE CLAIMS**  
**VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT (NJCR)**  
**COUNT EIGHT**

\_\_\_\_\_58. The previous paragraphs are incorporated herein inclusively as if fully set forth.

59. The excessive force used, abuse of process, conspiracy, and failure to intervene by Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5, set forth at length above, deprived plaintiff of his substantive due process right to be free from unlawful seizure of his person and his fundamental right to liberty secured by the Constitution of the United States and the Constitution of the State of New Jersey, in violation of N.J.S.A. 10:6-1, *et seq.* ("The New Jersey Civil Rights Act").

60. As a direct and proximate result of the aforesaid acts of Defendants Ruperto; DiFazio;

Castillo; Dowling; DePinto, Mico and/or John Does 1-5, Plaintiff suffered physical injury, lost wages, medical expenses, and mental anguish.

**WHEREFORE**, Plaintiff Jean Peguero demands judgment against Defendants Ruperto; DiFazio; Castillo; Dowling; DePinto, Mico and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury as to all issues.

**DESIGNATION OF TRIAL COUNSEL**

Please be advised that Thomas J. Mallon, Esquire is hereby designated trial counsel in the above captioned matter.

Date: April 6, 2010

/s/Thomas J. Mallon, Esq.  
THOMAS J. MALLON, ESQ.

## **CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE**

This Confidential Settlement Agreement and Release ("Agreement") is made by and between Plaintiff, Jean C. Peguero ("Plaintiff") on the one hand, and, on the other hand, the New Jersey Intergovernmental Insurance Fund ("NJIF") on behalf of the City of Union City, its agents, servants, employees, elected officials, volunteers, and their respective heirs, successors and assigns ("City"), including without limitation the City of Union City Police Department, ("Department"), Chief Charles Everett ("Everett"), Sergeant Dominick DePinto ("DePinto"), Sergeant M. Mico ("Mico"), as Personnel of the Union City Police Department in supervisory capacities; Officer Alex Ruperto ("Ruperto"), Officer Damian DeFazio ("DeFazio"), Officer Jose Castillo ("Castillo"), Sergeant John Dowling ("Dowling"), (all in their official and individual capacities) (the City, Department, Everett, DePinto, Mico, Ruperto, DeFazio, Castillo and Dowling being individually and collectively referred to herein as the "Defendants"). For purposes of this Agreement, the Plaintiff and NJIF are hereinafter referred to individually as a "Party" and jointly as the "Parties". The Agreement shall be deemed entered into as of the date of signature of the last Party or Party representative to sign this Agreement.

### **WITNESSETH**

**WHEREAS**, Plaintiff filed suit against the Defendants on or about April 7, 2010 in a matter listed in the United States District Court for the District of New Jersey, Newark Vicinage under Docket No. 2:10-cv-01768-KSH-PS and titled "Jean C. Peguero v. City of Union City; Charles Everett, Chief of Police; Sergeant Dominick DePinto, Sergeant M. Mico, as Personnel of the Union City Police Department in supervisory capacities; Alex Rupert; Damian DeFazio; Jose Castillo; J. Dowling; John

Does 1-5, Union City Police Officers”, which set forth factual and legal allegations against Defendants (the “Action”); and

**WHEREAS**, Defendants have denied all allegations asserted against them in the Action; and

**WHEREAS**, Defendants are provided with defense of the Action as a result of the membership of the City in the NJIIF; and

**WHEREAS**, the Parties have mutually agreed to resolve the Action and all other claims that Plaintiff has against the Defendants and wish to memorialize the terms of their settlement herein;

**NOW THEREFORE**, in consideration of the mutual promises, agreements and covenants made herein, the Parties hereby covenant and agree as follows:

1. Within thirty (30) days following its receipt of fully executed copies of this Agreement and the Stipulation of Dismissal with Prejudice attached hereto as Exhibit A, the NJIIF shall provide Plaintiff with payment of ONE HUNDRED AND SIX THOUSAND AND FIVE HUNDRED (\$106,500.00) DOLLARS (the “Settlement Sum”). The Settlement Sum shall be made payable to “Jean C. Peguero and the Law Office of Thomas J. Mallon” and shall be delivered to Thomas J. Mallon, Esq. (“Attorney”) at the following address:

Thomas J. Mallon, Esq.  
Mallon & Tranger  
86 Court Street  
Freehold, NJ 07728

2. Plaintiff acknowledges and agrees that all federal and state income taxes and/or penalties relating to the payments set forth in this Agreement are his sole

responsibility. Plaintiff further covenants and agrees that he will indemnify Defendants and the NJIIF for any taxes and/or penalties sought from or assessed to Defendants and/or the NJIIF by any state or federal governmental agency, including without limitation, Social Security payroll taxes ("FICA"), state and/or federal disability payments, unemployment taxes, and/or state and/or federal income taxes.

3. As partial consideration for payment of the Settlement Sum, Plaintiff, for himself and on behalf of his successors, heirs, beneficiaries, agents, estates and assigns (individually and collectively referred to herein as "Releasor") does hereby fully and forever release, remit, acquit, remise, hold harmless and discharge (the "Release"), Defendants and the NJIIF, as well as the Defendants' and the NJIIF's past and present officials, agents, attorneys, commissioners, departments, volunteers, officers and employees (for individuals, said Release runs to them in their official and personal capacities), and all of their respective heirs, estates, successors and assigns (hereinafter, individually and collectively referred to as "Releasees"), jointly and individually, from any and all liabilities, claims, causes of action, charges, appeals, complaints, obligations, costs, losses, damages, injuries, attorneys' fees and other legal responsibilities, (collectively, referred to as "claims") of any form or kind whatsoever, whether vested or contingent, which Releasor has or may have against Releasees from the beginning of time through the date of this Agreement, including without limitation, any claims in law, equity, contract, tort, public policy, any claims or causes of action for breach of contract, negligence, excessive force, malicious prosecution, conspiracy, negligent hiring, negligent training, failure to intervene, unlawful custom or practice, civil rights violations, retaliation, harassment and/or discrimination based upon, among other things,

disability, handicap, sex, age or race, negligent or intentional infliction of emotional distress, defamation, any claims arising under The Civil Rights Act of 1871 as amended by 42 U.S.C. §1983, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the Reconstruction Era Civil Rights Act, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, as amended, the New Jersey Law Against Discrimination, the United States Constitution, the New Jersey Constitution, or any other federal, state or local statute, ordinance or law whether such claims are known or unknown, unforeseen, unanticipated, unsuspected or latent, and any claims which were raised or could have been raised prior to the date of this Agreement, whether known or unknown, unforeseen, unanticipated, unsuspected or latent. Notwithstanding anything set forth herein to the contrary, the Releasees do not waive any defenses or affirmative defenses in any future litigation or claim that might arise between the Releasees and Releasor, including without limitation, the entire controversy doctrine, estoppel or joinder.

4. Plaintiff promises and agrees that he will not file, re-file, appeal, initiate, or cause to be filed, refilled or initiated any claim, suit, claim or other proceeding based upon, arising out of, or related to any claims and causes of action subsumed within the Release; nor shall he solicit, encourage, participate, assist or cooperate in any claim against any of the Releasees, whether before a court or administrative agency, unless required to do so by law. If a court order or lawful subpoena is served on Plaintiff requiring that he testify in any matter in which Releasees have an interest, he agrees to immediately notify and provide a copy of the court order or subpoena to the NJIIF's General Counsel c/o Eric J. Nemeth, P.C. 55 Madison Avenue, Suite 400, Morristown

New Jersey, 07960, phone (973-539-2122), fax (973-539-4677) and to the City of Union City. Plaintiff shall provide the NJIIF's General Counsel and the City with a copy of the court order or subpoena as soon as possible and reasonably in advance of his/her appearance and/or compliance with the court order or subpoena. Plaintiff agrees to cooperate with and assist the City and NJIIF in connection with any lawful efforts to quash or limit the scope of the subpoena or court order.

5. This Agreement is not an admission by the NJIIF and/or Defendants and/or Plaintiff and/or any of their agents, employees or representatives of any wrongdoing or liability and is being entered into solely for the purpose of economic expediency.

6. Releasor agrees that he/they shall engage in no act and shall make or publish no statement which is intended, or reasonably may be expected to disparage or harm the reputation, business, prospects, or operations of Releasees.

7. Plaintiff represents and warrants that no other person or entity has any interest in the claims that comprise or could have been raised in the Action, or in any other demands, obligations, or causes of action referred to in this Agreement, and that he has the sole right and exclusive authority to execute this Agreement and receive the benefits specified. Plaintiff further represents that he has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims which comprise the Action, or any other demands, obligations, or causes of action referred to in this Agreement. Plaintiff further acknowledges that the only consideration for signing this Agreement are the terms stated in this Agreement, and that no other promise or agreement of any kind have been made to him or with him by any person or entity whatsoever to cause him to sign this

Agreement; that he is competent to execute this Agreement; that he has been advised in writing and given the opportunity to consult advisors, legal or otherwise, of his own choosing; and that he fully understands the meaning and intent of this Agreement. No change to or modification of this Agreement shall be valid or binding unless it is in writing and signed by Plaintiff and the NJIIF.

8. The Parties acknowledge and agree that as a governmental entity, the City or NJIIF may be obligated to disclose a copy of this Agreement to persons under the New Jersey Open Public Records Act or at common law. Notwithstanding the foregoing, Releasor and his/their Attorney agree that they shall not disclose, or cause to be disclosed, the terms of this Agreement, the negotiations leading to completion of this Agreement, or the fact that this Agreement exists, except to their accountants and/or tax advisors. In the event that this Agreement is required to be disclosed pursuant to applicable law, Releasor and his/their Attorney agree that their communication with any person or the media regarding the Action shall be limited to the statement that the "claim was resolved to their satisfaction". Plaintiff and his Attorney acknowledge and agree that this confidentiality provision is an express and absolute condition of this Agreement, is bargained for consideration for this Agreement and that any violation of the terms and conditions of this confidentiality provision shall constitute a material breach of this Agreement. In the event any Releasor breaches this Paragraph 8, the NJIIF or City shall be authorized to pursue a summary action for enforcement of this Agreement and will be entitled to recover as liquidated damages 50% of the Settlement Sum, along with court costs and attorneys fees. Further, within thirty days of this Agreement, Plaintiff's Attorney agrees to return to Defendant's defense attorney, or shall certify to their

destruction, originals and copies of all confidential materials provided to Plaintiff during the course of discovery in the Action, including without limitation, the City's internal affairs files, Defendants' personnel files and deposition testimony marked confidential during the Action.

9. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications and to this end the provisions of this Agreement are declared to be severable.

10. No waiver or any breach of any term or provision of this Agreement shall be construed to be, nor shall it be, a waiver of any other term of this Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the breach.

11. This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, successors, and assignees of each of the Parties to it. Each of the Releasees who are not signatories to this Agreement is intended to be third-party beneficiaries of this Agreement. Each such Releasee shall be entitled to enforce this Agreement and each of its terms. Each Releasor who is not a signatory to this Agreement is also intended to be, and is in fact, bound by the provisions hereof. In the event of any breach of this Agreement, an aggrieved Releasee may move to enforce the terms hereof and shall be awarded legal fees if it is the prevailing Party in such action.

12. Each Releasor hereby agrees to jointly and severally indemnify, defend and hold harmless Releasees, jointly and individually, from any and all liabilities, claims, causes of action, charges, appeals, complaints, obligations, costs, losses, damages, injuries, attorneys' fees, and other legal responsibilities of any form or kind whatsoever, whether vested or contingent, which any Party to the Action or any other person or their

successors or assigns has or may have against the Releasees arising from the subject matter of the Action, including without limitation, any claims in law, equity, contract, tort, public policy, any claims or causes of action for breach of contract, negligence, retaliation, harassment and/or discrimination based upon, among other things, disability, handicap, sex, age or race, intentional infliction of emotional distress, defamation, and any claims which were raised or could have been raised in the Action, whether known or unknown, unforeseen, unanticipated, unsuspected or latent.

13. This Agreement represents the entire agreement and understanding between the Parties, constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof, and supersedes and replaces any and all prior agreements and understandings, both written and oral, concerning the subject matter hereof. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be changed or modified, except by a writing signed by the Parties hereto.

14. This Settlement Agreement will be governed by and construed under the laws of the State of New Jersey and shall not be construed for or against any Party based on attribution of drafting to any Party.

15. This Settlement Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

16. Plaintiff and his attorney hereby certify that if any liens exist against the Settlement Sum, they will be paid in full, compromised or satisfied and released by Plaintiff. If a lien exists which is not satisfied as required by this Agreement, and a claim

is made by anyone to enforce that lien, Plaintiff agrees that he will pay that lien in full. This representation is intended to include all liens, including, but not limited to, attorneys' liens, medical provider liens, Medicare and Medicaid liens, ERISA liens, workers' compensation liens, all statutory or common law liens, and judgment liens. Plaintiff agrees to indemnify and hold the Releasees harmless in connection with any claim made by reason of liens against or tax obligations associated with payment of the Settlement Sum. If a claim is hereafter made against the Releasees by anyone seeking payment of the liens, Releasor will indemnify and hold the Releasees harmless for any such liens and/or defending against such a claim, including, but not limited to, attorneys' fees, costs of suit, and interest.

17. Each Party represents that it has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement, and signs this Agreement of its own free will. No Party to the Agreement has relied upon any representations or statements made by any other Party hereto which are not specifically set forth in this Agreement. The Parties each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

18. This Settlement Agreement is executed voluntarily and without any duress coercion or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims asserted in the Claim. The Parties acknowledge that:

- (a) They have read this Agreement;

(b) They have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

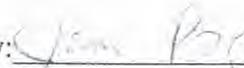
(c) They understand the terms and consequences of this Agreement and of the releases it contains;

(d) They are fully aware of the legal and binding effect of this Agreement.

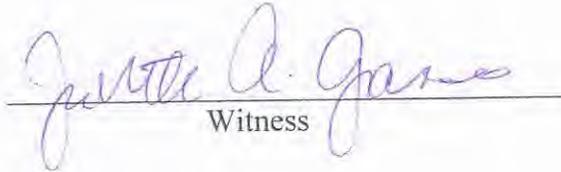
**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the respective dates set forth below.

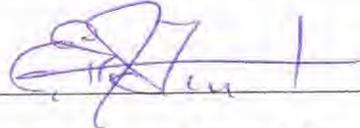
  
\_\_\_\_\_  
Witness  
attorney at law, NJ

Jean C. Peguero

By:   
\_\_\_\_\_  
Date: 2-24-12

The New Jersey Intergovernmental Insurance Fund on Behalf of the City of Union City, Chief Everett, Sgt. DePinto, Sgt. Mico, Officer Ruperto, Officer DeFazio, Officer Castillo, and Sgt. Dowling

  
Witness

By: 

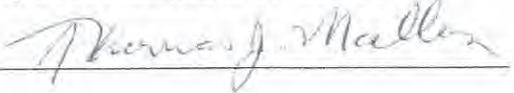
Eric J. Nemeth, Esq. General Counsel  
New Jersey Intergovernmental Insurance Fund  
55 Madison Avenue  
Suite 400  
Morristown, New Jersey 07960

Date: 2/24/12

  
Witness  
Randall L. Tranter  
Attorney at Law  
State of NJ

Thomas J. Mallon, Esq., Attorney for Plaintiff

(Solely as to Paragraphs 8,9 and 16)

By: 

Date: 2-24-12