

Craig V. O'Connor, Esq.
 20 Park Place
 Suite 201
 Morristown, New Jersey 07960
 973-326-9670
 Attorney for Plaintiffs

Mark Cutalo and Ann Cutalo,
 husband and wife, and Nicholas
 Cutalo,

Plaintiffs,

Vs.

Borough of Lavallette, a
 municipal corporation of the
 State of New Jersey, the
 Borough of Lavallette, a
 subdivision of the Borough of
 Lavallette, Officer Charles
 Russell, a police of the
 Boreugh of Lavallette, Sergeant
 Jon Andrews, a police officer
 of the Borough of Lavallette
 and Officers John Doe 1 through
 10 (fictitious names),

Defendants.

UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY

CIVIL ACTION NO.

COMPLAINT AND JURY DEMAND

Plaintiffs Mark Cutalo and Ann Cutalo, husband and wife,
 and Nicholas T. Cutalo, all residing at 8 Ammerman Way, Chester,
 New Jersey, by way of complaint against the defendants, say:

First Count

1. Subject matter jurisdiction of the within matter is
 based upon 42 U.S.C. § 1983.

2. Venue is proper in the District of New Jersey because
 the Plaintiffs reside in the District of New Jersey and the

Defendant Borough Lavallette is a municipal corporation of the State of New Jersey.

3. On or about July 25, 2009, the Plaintiff Nicholas Cutalo was in the Borough of Lavallette when he was accosted by Sergeant Jon Andrews and Officer Russell Charles of the Borough of Lavallette Police Department.

4. At all relevant times herein, Sergeant Jon Andrews, Officer Russell Charles and Officer John Does 1 through 10 were employed by the Borough of Lavallette as police officers and, as such, were acting under color of state law.

5. Sergeant John Andrews and Officer Russell Charles arrested Plaintiff Nicholas Cutalo without probable cause and took Plaintiff Nicholas Cutalo into custody in violation of the Fourth Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

6. As a direct and proximate cause of the actions complained of above, Plaintiff Nicholas Cutalo was damaged.

Wherefore, Plaintiff Nicholas Cutalo demands judgment against the Defendants for compensatory damages, punitive damages, costs of suit and counsel fees pursuant to 42 U.S.C. § 1988, and such other relief as the Court deems just and proper.

Second Count

7. Plaintiffs repeat and reallege each and every allegation of the prior counts of the complaint as if set forth herein at length.

8. The Borough of Lavallette has enacted a municipal ordinance number 43-6 that is entitled Loud and Unusual Noise that makes criminal certain protected speech in violation of the First Amendment to Constitution of the United States.

9. Municipal Ordinance 43-6 is void for vagueness because it is not sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.

10. Plaintiff Nicholas Cutalo was charged with violating Municipal Ordinance 43-6 of the Borough of Lavallette in violation of the First Amendment, the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Wherefore, Plaintiff Nicholas Cutalo demands judgment against the Borough of Lavallette, Sergeant Jon Andrews, Officer Russell Charles and Officers John Doe 1 to 10 for compensatory damages, punitive damages, costs of suit, counsel fees pursuant to 42 U.S.C. § 1988, and such other relief as the Court deems just and proper.

Third Count

11. Plaintiffs repeat and reallege each and every allegation of the prior counts of the complaint as if set forth herein at length.

12. Mark Cutalo and Ann Cutalo were the lessees of certain real property located in the Borough of Lavallette and more commonly known as 4 Elizabeth Avenue, Lavallette, New Jersey.

13. A juvenile, RS, was staying with Plaintiffs Mark Cutalo and Ann Cutalo from at least between July 24 and July 26, 2009, at the leased premises of 4 Elizabeth Avenue.

14. On or about July 25, 2009, Officers John Doe 1 through 10 of the Borough of Lavallette Police Department entered into the premises of 4 Elizabeth Avenue and seized the juvenile for maliciously damaging property without a warrant and without probable cause.

15. The aforesaid officers failed to notify the Plaintiffs Mark Cutalo and Ann Cutalo that they had seized the juvenile who was in their custody.

16. The aforesaid actions of the police officers were in violation of the Fourth Amendment rights guaranteed to Plaintiffs Mark Cutalo and Ann Cutalo.

17. As a direct result of the officers of the Lavallette Police Department, the Plaintiffs Mark Cutalo and Ann Cutalo were damaged.

Wherefore, Plaintiff Mark Cutalo and Ann Cutalo demand judgment against the Borough of Lavallette, Sergeant Jon Andrews, Officer Russell Charles and Officers John Doe 1 to 10 for compensatory damages, punitive damages, costs of suit, counsel fees pursuant to 42 U.S.C. § 1988, and such other relief as the Court deems just and proper.

Fourth Count

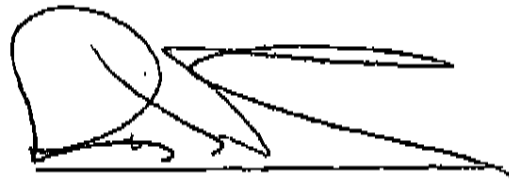
18. The Plaintiffs repeat and reallege each and every allegation of the prior counts of the complaint as if set forth herein at length.

19. The Borough of Lavallette failed to train adequately its police officers concerning search and seizure, probable cause and the necessity for warrants.

20. As a direct and proximate cause of the failure of the Borough of Lavallette to properly train its police officers, the First Amendment, Fourth Amendment, and Fourteenth Amendment rights of the Plaintiffs herein were violated.

21. As a direct and proximate result of the failure of the Defendant Borough of Lavallette to properly train its police officers, the Plaintiffs herein were damaged.

Wherefore, Plaintiff Nicholas Cutalo and Mark and Ann Cutalo demand judgment against the Borough of Lavallette, Sergeant Jon Andrews, Officer Russell Charles and Officers John Doe 1 to 10 for compensatory damages, punitive damages, costs of suit, counsel fees pursuant to 42 U.S.C. § 1988, and such other relief as the Court deems just and proper.



Dated: June 6, 2011

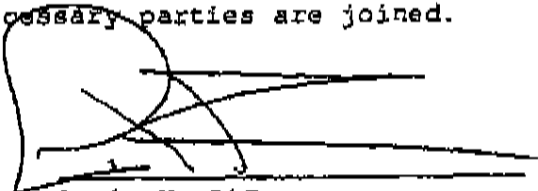
Craig V. O'Connor
Attorney for Plaintiffs

Jury Demand

The Plaintiffs demand a jury of twelve persons on all issues.

Certification

I hereby certify that there are no other actions pending or contemplated; that there are no arbitration proceedings pending or contemplated; and that all necessary parties are joined.



Dated: June 6, 2011

Craig V. O'Connor
An Attorney of New Jersey

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE, dated _____ is given by **MARK CUTALO, ANN CUTALO and NICHOLAS CUTALO**, referred to as "I", to **BOROUGH OF LAVALLETTE, BOROUGH OF LAVALLETTE POLICE DEPARTMENT, OFFICER CHARLES RUSSELL and SERGEANT JON ANDREWS** and their agents and employees, referred to as "You". If more than one person signs this Release, "I" 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 releases any and 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, and to future claims as described below. I specifically release all claims from personal injuries, both physical and emotional, and all other losses and damages, including punitive damages, allegedly arising from acts or omissions by the **BOROUGH OF LAVALLETTE, BOROUGH OF LAVALLETTE POLICE DEPARTMENT, OFFICER CHARLES RUSSELL and SERGEANT JON ANDREWS**, and their agents and employees, for the events occurring on and about July 25, 2009 which is the subject of lawsuit in CUTALO v. THE BOROUGH OF LAVALLETTE ET AL., Civil Action No. 11-3449 (FLW-LHG), and any and all claims for personal injuries and all other damages and losses, including punitive damages, alleged in the future as a result of the acts or omissions of the **BOROUGH OF LAVALLETTE, BOROUGH OF LAVALLETTE POLICE DEPARTMENT, OFFICER CHARLES RUSSELL and SERGEANT JON ANDREWS** alleged in CUTALO v. THE BOROUGH OF LAVALLETTE, ET AL. Civil Action No. 11-3449 (FLW-LHG).

I further understand and agree that by executing this Release and accepting the money paid by you, I acknowledge that I have received fair, just, and adequate consideration for any

and all claims, and I further understand and agree that by executing this Release and accepting the money paid by you I have forever remised, released, discharged, and given up any and all claims that I or others might have against you arising from or alleged to arise from any acts or omissions by the **BOROUGH OF LAVALLETTE, BOROUGH OF LAVALLETTE POLICE DEPARTMENT, OFFICER CHARLES RUSSELL and SERGEANT JON ANDREWS**, and their agents and employees as described above. I further understand and agree that if any claims are made at any time in the future by me, directly or indirectly, or by or on behalf of **MARK CUTALO, ANN CUTALO and NICHOLAS CUTALO's** heirs and/or survivors, or by some person in a representative capacity, for pecuniary losses, injuries or damages arising from the current action against you, that you shall be entitled to be indemnified by **MARK CUTALO, ANN CUTALO and NICHOLAS CUTALO's** heirs, executors, administrators, or personal representatives, for any sums expended in defending against said claims including, but not limited to, attorneys' fees and all costs of suit together with any sum paid by way of judgment, settlement, or otherwise on account of those claims.

It is further understood and agreed that the payment of the money being paid pursuant to this Release is in full accord and satisfaction, and in compromise of, any and all disputed claims, and that the payment of the money is not an admission of liability but is made for the sole purpose of terminating the litigation between the parties.

In the event I have received or shall receive any monies from any person who hereafter seeks to recover the monies from you by way of a claim or action of any type, including but not limited to subrogation actions and claims and actions or claims for contribution and/or indemnification, I shall indemnify and hold you harmless from and against any judgment entered against you or any payment made by you in connection therewith, and also for any money spent in

defending against such claims including, but not limited to, attorney's fees, costs of suit, judgment, or settlement by you.

2. **LIENS.** I hereby certify that if there are any liens against the proceeds of this settlement, they will be paid in full or compromised and released by me out of and from the amount stated in paragraph 4, below. If any liens exist which are not satisfied as required by this Agreement and a claim is made or an action filed against you by anyone to enforce such liens, I agree that I will immediately pay such liens in full. This is intended to include all liens, including but not limited to attorney's liens, liens in favor of hospitals and other medical providers, liens in favor of health and other insurers, Medicare and Medicaid liens, worker's compensation liens, all statutory or common law liens, and judgment liens. My attorney has investigated the existence of such liens, and I am making this statement based upon information known to me and/or supplied to me by my attorney. Therefore, I agree to indemnify and hold you harmless from and against any and all claims made against you by reason of any liens against the proceeds of this settlement. In addition, in the event a claim is hereafter made or an action is hereafter filed against you by anyone seeking payment of liens, I will indemnify and hold you harmless from and against any money spent in defending against such a claim, including but not limited to, attorney's fees, costs of suit, judgment, or settlement by you.

3. **ATTORNEY'S FEES.** Each party shall bear his or her own attorney's fees and costs arising from this action and in connection with the Complaint, the Release, and the matters and documents referred to herein, the filing of a Dismissal of the Complaint, and all related matters. I shall be totally responsible for any attorney's liens arising out of representation of me by any attorney which may have been or will be asserted in connection with this claim or related matters.

4. **PAYMENT.** I have been paid a total of \$7,500 in full payment for making this Release, with said payment represented as follows: \$7,500 from the **BOROUGH OF LAVALLETTE** I agree that I will not seek anything further, including any other payment, from you.

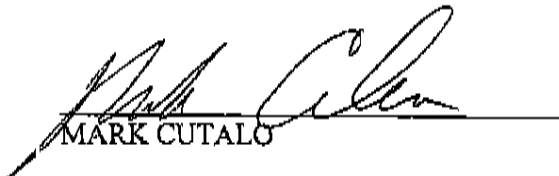
5. **WHO IS BOUND.** I am bound by this release. I specifically understand and agree that all of the terms and conditions of the Release are for the benefit of and are binding upon me, and anyone else who succeeds to our rights and responsibilities. This Release is made for your benefit and for the benefit of all who succeed to your rights and responsibilities, such as your heirs and your estate.

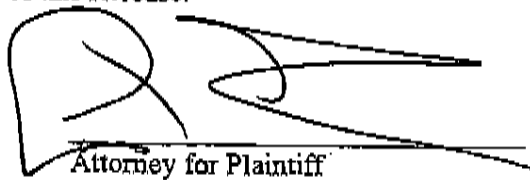
6. **WARRANTY OF CAPACITY TO EXECUTE AGREEMENT.** The person signing this Release represents and warrants that they have the sole right and exclusive authority to execute this Settlement Agreement and receive the sum specified in it, and that he or she had no sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release.

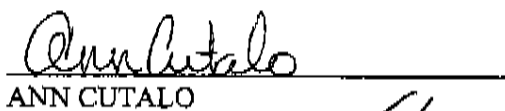
7. **REPRESENTATION OF COMPREHENSION OF DOCUMENT.** In entering into this Release, I represent that I have relied upon the legal advice of my attorney, who is the attorney of my choice, and that I have read this Release in its entirety or had it read to me, and that the terms of this Release have been explained to me by my attorney, and that these terms are fully understood and voluntarily accepted by me.

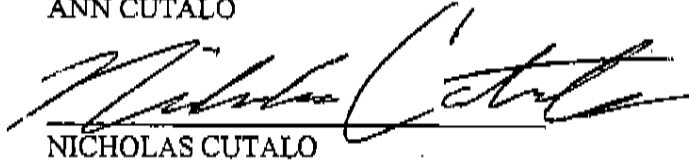
8. **GOVERNING LAW.** This Release shall be construed and interpreted in accordance with the laws of the State of New Jersey.

9. **ADDITIONAL DOCUMENTS.** All parties agree to cooperate fully and to execute any and all supplementary documents and to take all action which may be necessary or appropriate to give full force and effect to the terms and intent of this Release.


MARK CUTALO

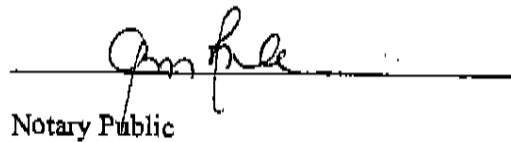

Attorney for Plaintiff


ANN CUTALO


NICHOLAS CUTALO

STATE OF NEW JERSEY
COUNTY OF

I certify that on June 7, 2012, Mark Cutalo + Ann Cutalo, came before me and acknowledge under oath, to my satisfaction, that he/she has the power and authority to execute this release and to bind _____ and that he/she personally signed this document, and that he/she voluntarily signed, sealed, and delivered this document as his/her act or deed, without coercion or undue in influence by any other person(s).


Notary Public

Ann Ponchak
Notary Public of New Jersey
My Commission Expires 02/21/2016