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Attorney for Plaintiff Gary Joseph

GARYVENS JOSEPH

Plaintiff,

vs.

BOROUGH OF SEASIDE HEIGHTS;
THOMAS BOYD, Chief of Police;
DETECTIVE STEPHEN KORMAN,
SERGEANT JAMES HANS,
LIEUTENANT JON LOMBARDI,
JOHN DOES 6-10, Personnel of the
Seaside Heights Police Department in
supervisory capacities;
JOSEPH PROVAZNIK, MATTHEW
MEYLER and **JOHN DOES 1-5**,
members of the Seaside
Heights Police Department,

Defendants.

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
TRENTON

Civil Action No.: 11-1599 (MLC-LHG)
AMENDED
COMPLAINT

JURISDICTION

1. 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.

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PARTIES

2. Plaintiff Garyvens (hereafter referred to as "Gary") Joseph, residing at 2034 Lamplighter Drive, Toms River, New Jersey 08753, County of Ocean, is and was, at all times herein relevant, a resident of the State of New Jersey and a citizen of the United States.

3. Defendants Joseph Provaznik, Matthew Meyler and John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the Seaside Heights Police Department and at all times herein were acting in such a capacity as the agents, servants and/or employees of the Borough of Seaside Heights and were acting under the color of law.

4. Defendants Chief of Police Thomas Boyd; Stephen Korman; James Hans; Jon Lombardi, and/or John Does 6-10 were at all times mentioned herein duly appointed and acting members of the Seaside Heights Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of the Borough of Seaside Heights and were acting under the color of law.

5. Defendants Chief of Police Thomas Boyd; Stephen Korman; James Hans; Jon Lombardi, and/or John Does 6-10 were acting in supervisory capacities over Defendants Korman; Hans; Lombardi, and/or John Does 1-10 and responsible by law for the training, supervision and conduct of Defendants Korman; Hans; Lombardi, and/or John Does 1-10.

6. Defendant Borough of Seaside Heights 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 Borough of Seaside Heights employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Boyd; Korman; Hans, and/or John Does 1-10.

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

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FACTUAL ALLEGATIONS

1. On 9/19/10, Plaintiff Gary Joseph brought his son to the Seaside Heights Boardwalk to go on amusement rides.
2. Plaintiff and his son had ice cream and waited for Plaintiff's fiancé.
3. A woman confronted Plaintiff and accused him of looking at her friend.
4. Plaintiff told the woman that he was not looking at her friend.
5. Plaintiff walked away from the woman and put his son on an amusement ride.
6. Defendants Provaznik, Meyler and/or John Does 1-5 approached Plaintiff and asked him to leave the amusement park.
7. Plaintiff told Defendants that he could not leave the park while his son was on a ride.
8. Defendants Provaznik, Meyler and/or John Does 1-5 proceeded to assault Plaintiff with excessive force and arrest him without justification.
9. Specifically, Defendants maced Plaintiff and also called him a "f***ing n***er."
10. Defendants brought Plaintiff to Seaside Heights Police Headquarters and charged him with violations of N.J.S. 2C:33-2A(1), Disorderly Conduct, and N.J.S. 2C:29-2, Resisting Arrest.

SECTION 1983 EXCESSIVE FORCE COUNT ONE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. As a direct and proximate result of the above-referenced unlawful and malicious physical abuse of Plaintiffs by Defendants Provaznik, Meyler 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.

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3. 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 lost wages and medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

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

WHEREFORE, Plaintiff Gary Joseph demands judgment against Defendants Joseph Provaznik; Matthew Meyler and 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.

SECTION 1983 FAILURE TO INTERVENE
COUNT TWO

_____1. The previous paragraphs are incorporated herein inclusively as if fully set forth.

2. Defendants Provaznik, Meyler and/or John Does 1-5 were Seaside Heights Police Officers and at all times mentioned herein were acting under color of state law.

3. Defendants Provaznik, Meyler and/or John Does 1-5 had a duty to intervene in the unjustified assault and arrest of Plaintiff by Defendants Provaznik, Meyler and/or John Does 1-5.

4. The unjustified assault and arrest of Plaintiff by Defendants Provaznik, Meyler and/or John Does 1-5 deprived Plaintiff of his right to be secure in his person against unreasonable seizure 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.

5. Defendants Provaznik, Meyler and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified arrest and assault of Plaintiff by Defendants Provaznik, Meyler and/or

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John Does 1-5 and failed to intervene.

6. As a direct and proximate cause of Defendants' Provaznik, Meyler and/or John Does 1-5 failure to intervene, Plaintiff suffered physical injury, 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 made actionable through by 42 USC Section 1983.

WHEREFORE, Plaintiff Gary Joseph demands judgment against Defendants Joseph Provaznik, Matthew Meyler and 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.

SECTION 1983 MALICIOUS ABUSE OF PROCESS
COUNT THREE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Provaznik, Meyler 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.
3. Defendants Provaznik, Meyler 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.
4. Defendants Provaznik, Meyler and/or John Does 1-5 knew that the complaints initiated were groundless and made misrepresentations to gain an advantage over Plaintiff's

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certain constitutional claims and/or to protect their interest in their employment and/or to protect themselves from criminal prosecution and civil liability.

5. As a direct and proximate result of the acts of Defendants Provaznik, Meyler 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 Gary Joseph demands judgment against Defendants Joseph Provaznik, Matthew Meyler and 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.

SECTION 1983 SUPERVISORY LIABILITY
COUNT FOUR

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Jon Lombardi, 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.
3. Defendants Jon Lombardi, John Doe 2 and/or John Does 6-10 had a duty to prevent subordinate officers Defendants Provaznik, Meyler and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.
4. Defendants Jon Lombardi, John Doe 2 and/or John Does 6-10 either directed Defendants Provaznik, Meyler and/or John Does 1-5 to violate Plaintiff's constitutional rights or had knowledge of and acquiesced in his/their subordinates violations.
5. As a direct and proximate result of the acts of Defendants Jon Lombardi, John Doe 2

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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 Gary Joseph demands judgment against Defendants Jon Lombardi, John Does 2 and/or John Does 6-10 on this Court 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.

**SECTION 1983 UNLAWFUL CUSTOM, PRACTICE, POLICY/ INADEQUATE
TRAINING
COUNT FIVE**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Borough of Seaside Heights Police Department; Thomas Boyd; Stephen Korman; James Hans; Jon Lombardi, and/or John Does 6-10 are vested by state law with the authority to make policy on the use of force, Internal Affairs investigations, effectuating arrests and police citizen encounters. Specifically, Defendant Thomas Boyd is the Chief of Police. Defendant Stephen Korman is the Seaside Heights police department Internal Affairs investigator. Defendant James Hans is the Seaside Heights police department Use of Force instructor. Defendant Jon Lombardi was a supervisor and/or the officer in charge at the time of Plaintiff's arrest.
3. At all times mentioned herein, Defendants Boyd; Korman; Hans; Lombardi; Provaznik; Meyler and/or and/or John Does 1-10, as police officers, agents, servants and/or employees of Defendant Borough of Seaside Heights, were acting under the direction and control of Defendants Borough of Seaside Heights Police Department, Boyd; Korman; Hans; Lombardi, and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the Borough of Seaside

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Heights Police Department.

4. Acting under color of law pursuant to official policy, practice, or custom, Defendants Borough of Seaside Heights, Boyd; Korman; Hans; Lombardi, and/or John Docs 6-10 intentionally, knowingly, recklessly and/or with deliberate indifference failed to train, instruct, supervise, control, and discipline on a continuing basis, Defendants Boyd; Korman; Hans; Provaznik, Meyler; Lombardi, and/or John Docs 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 mishandling evidence; (5) making false arrests, and/or (6) using unreasonable and excessive force.

5. Acting under color of law pursuant to official policy, practice, or custom, Defendants Borough of Seaside Heights, Boyd; Korman, and/or John Docs 6-10 intentionally, knowingly, recklessly and/or with deliberate indifference implemented and/or conducted superficial and shallow Internal Affairs processes which ignored evidence and patterns of police misconduct on individual and departmental levels. Defendants Borough of Seaside Heights, Thomas Boyd; Stephen Korman and/or John Docs 6-10 failed to professionally, objectively and/or expeditiously investigate instances and patterns of police misconduct in violation of the spirit and substance of the New Jersey Attorney General's Guidelines for Internal Affairs Policy and Procedures.

6. Defendants Borough of Seaside Heights; Thomas Boyd; Stephen Korman; James Hans; Jon Lombardi, and/or John Docs 6-10 were aware of numerous similar police citizen encounters involving, and/or Internal Affairs complaints filed against, Defendants Provaznik; Meyler; Lombardi, and/or John Docs 1-10 and/or other Seaside Heights Police Officers whereby they customarily and frequently subjected citizens held in custody to physical and mental abuse;

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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 citizens/arrestees.

7. Despite their awareness, Defendants Borough of Seaside Heights; Boyd; Korman; Hans; Lombardi, and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Boyd; Korman; Hans; Provaznik; Meyler; Lombardi; John Does 1-10, and/or other Seaside Heights Police Officers.

8. Defendants Borough of Seaside Heights; Boyd; Korman; Hans; Lombardi, and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants Boyd; Korman; Hans; Provaznik; Meyler; Lombardi, 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.

9. Defendants Borough of Seaside Heights; Boyd; Korman; Hans; Lombardi, 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.

10. Defendants Borough of Seaside Heights; Boyd; Korman; Hans; Lombardi, 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 Boyd; Korman; Hans; Provaznik; Meyler; Lombardi, and/or John Does 1-10 heretofore described.

11. As a direct and proximate result of the acts of Defendants Borough of Seaside Heights; Boyd; Korman; Hans; Lombardi, and/or John Does 6-10 as set forth herein, Plaintiff

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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, Gary Joseph demands judgment against Defendants Borough of Seaside Heights; Thomas Boyd; Stephen Korman; James Hans; Jon Lombardi, 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.

SECTION 1983 DEMAND FOR PROSPECTIVE INJUNCTIVE RELIEF
COUNT SIX

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. 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.
3. The relief sought by Plaintiff include, but is not limited to, the following:
 - a. An order permanently restraining and enjoining Defendants Borough of Seaside Heights; Thomas Boyd; Stephen Korman; James Hans; Joseph Provaznik; Matthew Meyer; Jon Lombardi, and John Does 1-10 from engaging in, encouraging, teaching, promoting or training Seaside Heights Police Officers in falsely arresting, maliciously prosecuting, maliciously abusing process, and/or using excessive force against citizens and/or arrestees.
 - b. An order compelling Defendant Borough of Seaside Heights to take prompt, appropriate and corrective measures to prevent any practices that encourage, teach, engage in, promote or train its officers in falsely arresting, maliciously prosecuting, maliciously abusing process and/or using excessive force against citizens and/or arrestees.
 - c. An order compelling Defendant Borough of Seaside Heights to provide regular and consistent training sessions to Seaside Heights Police Officers.
 - d. An order compelling Defendant Borough of Seaside Heights to implement a system whereby prompt, appropriate action is taken against any Seaside Heights Police Officer who engages in, teaches and/or condones falsely arresting, maliciously prosecuting, maliciously abusing process and/or using excessive force against citizens and/or arrestees.

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e. An order permanently restraining and enjoining Defendants Provaznik, Meyler and/or John Does 1-5 from arresting citizens without adequate probable cause, physically abusing and using excessive force against citizens and/or arrestees.

f. An order permanently restraining and enjoining Defendant Borough of Seaside Heights from employing Defendants Provaznik, Meyler and/or John Does 1-10 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 Provaznik, Meyler and/or John Does 1-10 from any patrol duty, and enjoining Defendants and John Does 1-10 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 Gary Joseph demands judgment against Defendants Borough of Seaside Heights; Thomas Boyd; Stephen Korman; James Hans, Joseph Provaznik; Matthew Meyler; Jon Lombardi, and/or 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 SEVEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force used; failure to intervene, and abuse of process by Defendants Provaznik; Meyler 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")
3. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.

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4. As a direct and proximate result of the aforesaid acts of Defendants Provaznik; Meyler and/or John Does 1-5, Plaintiff suffered physical injury, lost wages, medical expenses, and mental anguish.

WHEREFORE, Plaintiff Gary Joseph demands judgment against Defendants Joseph Provaznik; Matthew Meyler and 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.

ASSAULT AND BATTERY
COUNT EIGHT

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Provaznik, Meyler and/or John Does 1-5 committed an assault and battery on Plaintiff by physically injuring him without justification and/or by putting him in reasonable apprehension of serious and imminent bodily harm.
3. The assault and battery committed by Defendants was contrary to the laws of the State of New Jersey.
4. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
5. As a result of the intentional, reckless, negligent and/or objectively unreasonable assault and battery, as specifically alleged above, Plaintiff sustained diverse substantial and permanent physical and emotional injuries, medical expenses, and pain and suffering, and will continue to incur same in the future for some time to come.

WHEREFORE, Plaintiff Gary Joseph demands judgment against Defendants Joseph Provaznik; Matthew Meyler and/or John Docs 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.

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ABUSE OF PROCESS
COUNT NINE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
 2. As set forth above, Defendants Provaznik, Meyler and/or John Does 1-5 maliciously used a "legal process" to accomplish some ulterior purpose for which it was not designed or intended, and/or which was not the legitimate purpose of the particular process employed.
 3. Specifically, Defendants Provaznik, Meyler and/or John Does 1-5, with knowledge that the criminal proceedings initiated against Plaintiff were groundless, thereafter made misrepresentations of facts relating to their encounter with Plaintiff and his subsequent arrest and detention; falsified police and/or other official records, and mishandled and/or withheld evidence during the investigation and prosecution of the Plaintiff in order 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.
 4. Defendants' actions and/or omissions were in violation of the laws of the State of New Jersey.
 5. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
 6. As a result of Defendants' acts set forth above, Plaintiff sustained various physical and emotional injuries, medical expenses, expenditures to defend maliciously initiated criminal proceedings, and pain and suffering, and will incur same in the future for some time to come.
- WHEREFORE, Plaintiff Gary Joseph demands judgment against Defendants Joseph Provaznik, Matthew Meyler and John Does 1-5, on this Court 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.

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6. As a direct and proximate result of their breach of duty to plaintiff, he was caused to suffer significant and permanent physical and emotional injury, medical expenses, and pain and suffering and will continue to incur same in the future for some time to come

WHEREFORE, Plaintiff Gary Joseph demands judgment against Defendants Joseph Provaznik; Matthew Meyler; Jon Lombardi, and 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.

Dated: April 3, 2012

/s/ Thomas J. Mallon, Esquire
THOMAS J. MALLON, ESQUIRE

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE, dated 7/1/13 is given by **GARYVENS JOSEPH**, referred to as "I", to **BOROUGH OF SEASIDE HEIGHTS, THOMAS BOYD, DETECTIVE STEPHEN KORMAN, SERGEANT JAMES HANS, LIEUTENANT JON LOMBARDI, JOSEPH PROVAZNIK AND MATTHEW MEYLER** 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 SEASIDE HEIGHTS, THOMAS BOYD, DETECTIVE STEPHEN KORMAN, SERGEANT JAMES HANS, LIEUTENANT JON LOMBARDI, JOSEPH PROVAZNIK AND MATTHEW MEYLER**, and their agents and employees, for the events occurring on and about September 19, 2010 which is the subject of lawsuit in JOSEPH v. BOROUGH OF SEASIDE HEIGHTS, ET AL., Civil Action No.11-1599 (MLC-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 SEASIDE HEIGHTS, THOMAS BOYD, DETECTIVE STEPHEN KORMAN, SERGEANT JAMES HANS, LIEUTENANT JON LOMBARDI, JOSEPH PROVAZNIK AND MATTHEW MEYLER** alleged in JOSEPH v. BOROUGH OF SEASIDE HEIGHTS, ET AL., Civil Action No.11-1599 (MLC-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 SEASIDE HEIGHTS, THOMAS BOYD, DETECTIVE STEPHEN KORMAN, SERGEANT JAMES HANS, LIEUTENANT JON LOMBARDI, JOSEPH PROVAZNIK AND MATTHEW MEYLER**, 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 **GARYVENS JOSEPH'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 **GARYVENS JOSEPH'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. **WARRANTY AS TO MEDICARE INVOLVEMENT.** I understand and acknowledge that the Medicare, Medicaid and SCHIP Extension Act of 2007 requires the reporting to designated representatives of Medicare any settlement in which all future claims are released and the injured party is either a current Medicare beneficiary or has the potential to be eligible for Medicare benefits within thirty months of the settlement. In further consideration of the settlement

agreement agreed to herein, I warrant and represent to You the following: 1) Medicare has made no conditional payments for any medical expense or prescription expense on my behalf related to this incident; 2) I am not, nor have I ever been a Medicare beneficiary; 3) I am not currently receiving Social Security Disability Benefits; 4) I have not applied for Social Security Disability Benefits; 5) I have not been denied, nor have I appealed from a denial of Social Security Disability Benefits; 6) I do not expect to be eligible for Medicare benefits within the next 30 months; 7) I am not in End Stage Renal failure; and 8) no liens, including but not limited to liens for medical treatments by hospitals, physicians, or medical providers of any kind have been filed for the treatment of injuries sustained in this incident.

4. **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.

5. **PAYMENT.** I have been paid a total of \$25,000 in full payment for making this Release, with said payment represented as follows: \$25,000 from the **BOROUGH OF SEASIDE HEIGHTS**. I agree that I will not seek anything further, including any other payment, from you.

6. **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.

7. **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.


8. **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.

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

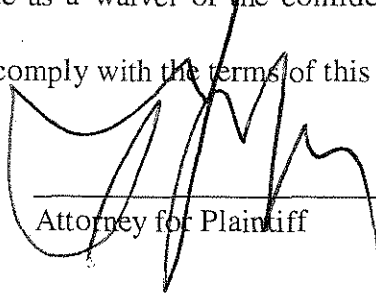
10. **ADDITIONAL DOCUMENTS.** All parties agree to cooperate fully and to execute any and all supplementary documents and to take all action which may be necessary or appropriate to give full force and effect to the terms and intent of this Release.

11. **NON-DISCLOSURE.** I, including my respective counsel, stipulate that the settlement of this action and this Release are **confidential**. I shall not disclose the amount of the settlement or the terms hereof to any person nor discuss or confirm the same with any person, except my counsel, spouse and/or tax professional. I agree that I am responsible for insuring that my spouse and tax professional understand and comply with this confidentiality provision. I and my counsel agree not to contact the media or make any press release regarding the resolution of this matter. In the event I am contacted by any person regarding the within litigation or this settlement, I shall state that "the matter has been resolved" and that I have "no further comment." In the event I receive a

subpoena or court order regarding the terms of this settlement, I shall provide You with at least 10 days notice before complying with said subpoena or court order. I acknowledge that you, may be required to disclose the amount of this settlement, under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1, et seq., or other law or court order. Any such disclosure by you pursuant to OPRA, or other law or court order, shall not operate as a waiver of the confidentiality of this settlement nor shall it relieve me of my obligation to comply with the terms of this paragraph.



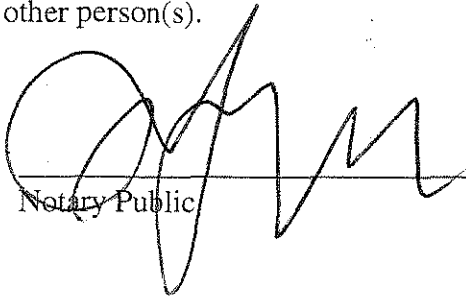
GARYVENS JOSEPH



Attorney for Plaintiff

STATE OF NEW JERSEY
COUNTY OF

I certify that on July 1, _____, 2013, GARYVENS JOSEPH, 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 HIM 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