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Attorney for Plaintiffs Sean and Dorothy Hosey

**SEAN and DOROTHY
HOSEY**

Plaintiffs,

vs.

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
TRENTON

Civil Action No.: - (-)

**BOROUGH OF OCEAN GATE;
REESE J. FISHER, Chief of Police;
JOHN DOES 6-10, Personnel of the
Ocean Gate Police Department in
supervisory capacities;
KEVIN FRIZZIOLA, ANDREW WELSH,
GEORGE KEMPKER and JOHN DOES 1-5,
members of the Ocean Gate
Police Department,**

Defendants.

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.

PARTIES

2. Plaintiffs Sean and Dorothy Hosey, residing at 20 East Chelsea Avenue, Ocean Gate, New Jersey, 08740, is and was, at all times herein relevant, a citizen of the United States.

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3. Defendants Kevin Frizziola, Andrew Welsh; George Kempker, and John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the Ocean Gate Police Department and at all times herein were acting in such a capacity as the agents, servants and/or employees of the Borough of Ocean Gate and were acting under the color of law.

4. Defendants Chief of Police Reece J. Fisher and/or John Does 6-10 were at all times mentioned herein duly appointed and acting members of the Borough of Ocean Gate Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of the Borough of Ocean Gate and were acting under the color of law.

5. Defendants Chief of Police Reece J. Fisher and/or John Does 6-10 were acting in supervisory capacities over Defendants Fisher; Frizziola; Welsh; Kempker and/or John Does 1-10 and responsible by law for the training, supervision and conduct of Defendants Fisher; Frizziola; Welsh; Kempker, and/or John Does 1-10.

6. Defendant Borough of Ocean Gate 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 Ocean Gate employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Fisher; Frizziola; Welsh; Kempker, and/or John Does 1-10.

8. Suit is brought against all individually named Defendants in their personal and official capacities.

FACTUAL ALLEGATIONS

1. On 6/25/10, Plaintiff Sean Hosey hosted a graduation party for his son at his home, during which fireworks were ignited.

2. Defendants Frizziola; Welsh; Kempker, and/or John Does 1-5 arrived at Plaintiff

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home to investigate the fireworks.

3. Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 commenced an aggressive and abusive police citizen encounter with the entire Hosey family.

4. Defendants ordered Plaintiff to sit down during the encounter and Plaintiff complied.

5. Defendants were specifically rude toward the Hosey's 15 year old daughter and toward his wife, Plaintiff Dorothy Hosey.

6. Plaintiff got out of his chair to calm his wife down and was assaulted and arrested without justification and with excessive force by Defendants Frizziola; Welsh; Kempker, and/or John Does 1-5.

7. During his arrest, Defendants Frizziola; Welsh; Kempker, and/or John Does 1-5 intentionally, recklessly and/or negligently applied inordinate pressure in handcuffing Plaintiff.

8. Specifically, the restraints applied by Defendants were tightened to such an extent that they injured Plaintiff's wrists.

9. Throughout the course of his arrest, Plaintiff complained that the handcuffs were too tight and were causing him pain.

10. Defendants yanked on Plaintiff's handcuffs and pushed him forward as they brought him down the stairs of his deck and down his driveway toward a police car.

11. Plaintiff suffers from epileptic seizure disorders which can be triggered by stressful situations, a fact known to Ocean Gate police officers, who had responded to the Hosey residence on prior occasions when Plaintiff was in the midst of seizure related medical emergencies.

12. Plaintiff feared that the incident, including the pain he was suffering from excessive handcuffing, would cause the onset of an epileptic seizure.

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13. Plaintiff was put into the police car and transported to police headquarters without being seat belted.

14. Plaintiff complained to Defendant Frizziola that the hand cuffs were too tight and that he was not seat belted.

15. Defendant Frizziola refused to loosen the handcuffs.

16. Plaintiff complained again at police headquarters that the handcuffs were too tight and causing him pain, but officers refused to loosen the handcuffs.

17. Plaintiff experienced pre-seizure aura symptoms while handcuffed at police headquarters.

18. Plaintiff was released and issued summonses for Disorderly Conduct, 2C: 33-2 (A) 2, and Obstruction of the Administration of Law, 2C: 29-1 (A).

19. The criminal charges brought against Plaintiff are pending.

20. Plaintiff sustained various injuries related to this incident all caused by the excessive force utilized by Defendants Frizziola; Welsh; Kempker, and John Does 1-5.

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 Plaintiff by Defendants Frizziola; Welsh; Kempker 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, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Kevin Frizziola; Andrew Welsh; George Kempker, 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.

SECTION 1983 FALSE ARREST / IMPRISONMENT
COUNT TWO

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The aforementioned acts of Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 in arresting and/or imprisoning Plaintiff was without probable cause and lacking in any justification under the Fourth and Fourteenth Amendments of the Constitution of the United States.
3. The criminal charges brought against Plaintiff are pending.
4. The aforementioned acts were in violation of Plaintiff's right to be free from unreasonable seizure under the Fourth Amendment of the Constitution of the United States, and the right to be free of the deprivation of liberty under the Fourteenth Amendment of the Constitution of the United States, protected by 42 U.S.C. Section 1983.
5. By reason of the above, Plaintiff was greatly injured, suffered great mental anguish preventing him from attending to his business and was deprived of his constitutional rights as described above.

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6. As a direct and proximate cause of the malicious and outrageous conduct of Defendants as set forth above, Plaintiff suffered bodily injuries, legal fees to defend the false charges brought against him by Defendants, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Frizziola; Welsh; Kempker 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.

SECTION 1983 MALICIOUS PROSECUTION
COUNT THREE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 initiated criminal process against Plaintiff with malice to create a subterfuge protecting themselves from criminal and civil liability and justifying the injuries they caused Plaintiff to suffer.
3. The charges were not based upon probable cause.
4. More specifically, Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 knew initiation of criminal proceedings against Plaintiff would serve an unlawful purpose, including, but not limited to, limiting their exposure to liability for their unlawful actions on 6/25/10 in assaulting, beating and falsely arresting Plaintiff.
5. The criminal charges brought against Plaintiff are pending.
6. As a direct and proximate cause of the actions initiated by Defendants Frizziola; Welsh; Kempker and/or John Does 1-5, Plaintiff suffered a deprivation of liberty consistent with the concept of seizure as a consequence of the legal proceeding.

6. Plaintiff suffered physical injury; medical expenses; legal fees to defend the false charges brought against him by Defendants; mental anguish, and will suffer additional special damages in the future in an amount which cannot yet be determined, 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 Sean Hosey demands judgment against Defendants Frizziola; Welsh; Kempker 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.

SECTION 1983 FAILURE TO INTERVENE
COUNT FOUR

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 were Borough of Ocean Gate Police Officers and at all times mentioned herein were acting under color of state law.
3. Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 had a duty to intervene in the unjustified assault of Plaintiff by Defendants Frizziola; Welsh; Kempker and/or John Does 1-5.
4. The unjustified assault of Plaintiff by Defendants Frizziola; Welsh; Kempker 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 Frizziola; Welsh; Kempker and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified assault of Plaintiff by Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 and failed to intervene.

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6. As a direct and proximate cause of Defendants Frizziola; Welsh; Kempker and/or John Does 1-5's failure to intervene, Plaintiff suffered physical injury, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Kevin Frizziola, Andrew Welsh; George Kempker, 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.

SECTION 1983 SUPERVISORY LIABILITY
COUNT FIVE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants 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 John Doe 2 and/or John Does 6-10 had a duty to prevent subordinate officers Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.
4. Defendants John Doe 2 and/or John Does 6-10 either directed Defendants Frizziola, Welsh; Kempker, 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 Frizziola, Welsh; Kempker, John Doe 2 and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined, 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

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U.S.C. Section 1983.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants 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.

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

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Borough of Ocean Gate Police Department; Fisher, and/or John Does 6-10, are vested by state law with the authority to make policy on : (1) the use of force; internal affairs investigations and/or administrative reviews pursuant to Borough of Ocean Gate Police Department policies, practices and/or customs and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines; (2) effectuating arrests; (3) police citizen encounters, and/or (4) disciplining officers. Defendants Fisher and/or John Does 6- 10 are responsible for training Police Officers in the use of force and/or were officers in charge when Plaintiff Sean Hosey was assaulted.
3. At all times mentioned herein, Defendants Fisher; Frizziola; Welsh; Kempker, and/or John Does 1- 10, as police officers, agents, servants and/or employees of Defendant Borough of Ocean Gate, were acting under the direction and control of Defendants Borough of Ocean Gate Police Department; Fisher, and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the Borough of Ocean Gate Police Department.
4. Acting under color of law pursuant to official policy, practice, or custom, Defendants Borough of Ocean Gate; Fisher, 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

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basis, Defendants Fisher; Frizziola; Welsh; Kempker, 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 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 Ocean Gate, Fisher and/or John Does 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 Ocean Gate, Fisher, and/or John Does 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 Fisher, John Doe 2 and/or John Does 6-10 failed to adequately track departmental excessive force complaints, administrative complaints and/or use of force incidents in violation of Borough of Ocean Gate Police Department policies, practices, customs and/or guidelines and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines, and/or failed to discipline officers for such violations.

7. Defendants Borough of Ocean Gate; Fisher; and/or John Does 6-10 were aware of numerous similar police citizen encounters involving, and/or Internal Affairs complaints filed against, Defendants Frizziola; Welsh; Kempker; John Does 1-10, and/or other Borough of Ocean Gate 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;

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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.

8. Despite their awareness, Defendants Borough of Ocean Gate, Fisher and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Fisher; Frizziola; Welsh; Kempker; John Does 1-10, and/or other Borough of Ocean Gate Police Officers.

9. Defendants Borough of Ocean Gate; Fisher, and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants Fisher; Frizziola; Welsh; Kempker, 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.

10. Defendants Borough of Ocean Gate, Fisher 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.

11. Defendants Borough of Ocean Gate, Fisher and/or John Does 6-10, directly or indirectly, under color of state law, approved and/or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Defendants Fisher; Frizziola; Welsh; Kempker, and/or John Does 1-10 heretofore described.

12. As a direct and proximate result of the acts of Defendants Borough of Ocean Gate; Fisher, and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined 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.

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Section 1983.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Borough of Ocean Gate, Reece Fisher 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 SEVEN

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 includes, but is not limited to, the following:

a. An order permanently restraining and enjoining Defendants Borough of Ocean Gate; Reece J. Fisher; Kevin Frizziola; Andrew Welsh; George Kempker, and John Does 1-10 from engaging in, encouraging, teaching, promoting or training Borough of Ocean Gate 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 Ocean Gate 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 Ocean Gate to provide regular and consistent training sessions to Borough of Ocean Gate Police Officers.

d. An order compelling Defendant Borough of Ocean Gate to implement a system whereby prompt, appropriate action is taken against any Borough of Ocean Gate 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.

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

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f. An order permanently restraining and enjoining Defendant Borough of Ocean Gate from employing Defendants Frizziola; Welsh; Kempker 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 Frizziola; Welsh; Kempker and/or John Does 1-10 from any patrol duty, and enjoining Defendants Frizziola; Welsh; Kempker and/or 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 Sean Hosey demands judgment against Defendants Borough of Ocean Gate; Reece Fisher; Kevin Frizziola; Andrew Welsh; George Kempker, 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 EIGHT

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force used; failure to intervene, false arrest/false imprisonment, and malicious prosecution, by Defendants Frizziola; Welsh; Kempker 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.
4. As a direct and proximate result of the aforesaid acts of Defendants Frizziola; Welsh; Kempker and/or John Does 1-5, Plaintiff suffered physical injury, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

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WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Kevin Frizziola, Andrew Welsh; George Kempker, 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 NINE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Frizziola; Welsh; Kempker 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, and Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
4. As a result of the intentional, reckless, negligent and/or objectively unreasonable assault and battery committed in the course of their official duties as police officers and/or agents, servants and/or employees of the Borough of Ocean Gate, and/or in their personal capacities, as specifically alleged above, Plaintiff sustained diverse substantial and permanent physical and emotional injuries; medical expenses; pain and suffering, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Kevin Frizziola; Andrew Welsh; George Kempker; The Borough of Ocean Gate, 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.

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FALSE ARREST / IMPRISONMENT
COUNT TEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The aforementioned acts of Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 in arresting and/or imprisoning Plaintiff was without probable cause, lacking in any justification and in violation of the laws of the State of New Jersey, and Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
3. The criminal charges brought against Plaintiff are pending.
4. The aforementioned acts were in violation of Plaintiff's right to be free from unreasonable seizure under the Fourth Amendment of the Constitution of the United States, and the Constitution of the State of New Jersey.
5. By reason of the above, Plaintiff was greatly injured, suffered great mental anguish preventing him from attending to his business and was deprived of his constitutional rights as described above.
6. As a direct and proximate cause of the malicious and outrageous conduct of Defendants as set forth above, Plaintiff suffered bodily injuries, legal fees to defend the false charges brought against him by Defendants, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Frizziola; Welsh; Kempker 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.

MALICIOUS PROSECUTION
COUNT ELEVEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 initiated criminal process against Plaintiff with malice to create a subterfuge protecting themselves from criminal and civil liability and justifying the injuries they caused Plaintiff to suffer.
3. The charges were not based upon probable cause.
4. More specifically, Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 knew initiation of criminal proceedings against Plaintiff would serve an unlawful purpose, including, but not limited to, limiting their exposure to liability for their unlawful actions on 6/25/10 in assaulting, beating and falsely arresting Plaintiff.
5. The criminal charges brought against Plaintiff are pending.
6. As a direct and proximate cause of the actions initiated by Defendants Frizziola; Welsh; Kempker and/or John Does 1-5, Plaintiff suffered a deprivation of liberty consistent with the concept of seizure as a consequence of the legal proceeding.
7. Defendants' actions were in violation of the laws of the State of New Jersey, and Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
8. Plaintiff suffered physical injury; medical expenses; legal fees to defend the false charges brought against him by Defendants; mental anguish, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Frizziola; Welsh; Kempker 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.

INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
COUNT TWELVE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The actions of Defendants Frizziola; Welsh; Kempker and/or John Docs 1-5 in their use of excessive force upon Plaintiff; their assault and battery of Plaintiff; false arrest-imprisonment of Plaintiff; their failure to intervene and malicious prosecution, was intentional, extreme and outrageous.
3. As a result of said conduct, Plaintiff sustained severe emotional distress that no person should be expected to endure.
4. As a result of said conduct, as specifically alleged above, Plaintiff sustained diverse substantial and permanent emotional injuries, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.
5. The acts of the Defendants were in violation of the law of the State of New Jersey, and Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.

WHEREFORE, Plaintiff Sean Hosey demands judgment against Defendants Kevin Frizziola; Andrew Welsh; George Kempker, 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.

LOSS OF CONSORTIUM/SOCIETY/SERVICES
COUNT THIRTEEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. At all times relevant herein, Plaintiff Dorothy Hosey was the wife of Plaintiff

Sean Hosey and, as such, was entitled to his services, society and consortium.

3. As a result of the Defendants' aforesaid actions, Plaintiff Dorothy Hosey was deprived of the services, society and consortium of her husband, Plaintiff Sean Hosey, and will be so deprived for some time to come.

4. The acts of the Defendants were in violation of the laws of the State of New Jersey, and Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.

WHEREFORE, Plaintiff Dorothy Hosey hereby demands judgment against Defendants Frizziola; Welsh; Kempker, and/or John Does 1-10 on this Count together with compensatory and punitive damages, interest and costs of suit incurred and for any such further relief as the court deems proper and just.

NEGLIGENCE
COUNT FOURTEEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 had a duty to the Plaintiff to not expose him to an unreasonable risk of injury.
3. Through the acts and omissions set forth at length above, Defendants Frizziola; Welsh; Kempker and/or John Does 1-5 breached that duty.
4. The acts of the Defendants were in violation of the common law of the State of New Jersey, and Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
5. As a direct and proximate result of their breach of duty to plaintiff, Plaintiff was caused to suffer significant and permanent physical and emotional injury; medical expenses; pain and suffering, and will continue to incur same in the future for some time to come along with additional

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special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Sean Hlosey demands judgment against Defendants Kevin Frizziola, Andrew Welsh; George Kempker, 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: June 19, 2012

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

RELEASE and SETTLEMENT AGREEMENT

his Release dated 9/4/13, is given

BY the Releasor(s) **Sean and Dorothy Hosey** referred to as "I",

TO BOROUGH OF OCEAN GATE; REESE J. FISHER, Chief of Police; KEVIN FRIZZIOLA, ANDREW WELSH and GEORGE KEMPKER 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 the following claims:

For any and all claims, including but not limited to claims for personal injuries, both physical and emotional, and any and all other losses and damages, including punitive damages, medical expenses, loss of income and/or loss of consortium, allegedly arising from acts or omissions by the **BOROUGH OF OCEAN GATE; REESE J. FISHER, Chief of Police; KEVIN FRIZZIOLA, ANDREW WELSH and GEORGE KEMPKER**, and their agents and employees, for the events occurring on and about **June 25, 2010** which is the subject of a lawsuit entitled **FRIZZIOLA, ET AL ADS HOSEY** under Docket No. **3:12-cv-03731-FLW**, 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 OCEAN GATE; REESE J. FISHER, Chief of Police; KEVIN FRIZZIOLA, ANDREW WELSH and GEORGE KEMPKER** alleged in **FRIZZIOLA, ET AL ADS HOSEY, Docket No. 3:12-cv-03731-FLW**

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 OCEAN GATE; REESE J. FISHER, Chief of Police; KEVIN FRIZZIOLA, ANDREW WELSH and GEORGE KEMPKER**, 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 **SEAN AND DOROTHY HOSEYS'** 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 **SEAN AND DOROTHY HOSEYS'** 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, attorneys' 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, attorneys' 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, attorneys' 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 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 \$23000.00 in full and final payment for making this Release, with said payment represented as follows: \$23000.00 from the **BOROUGH OF OCEAN GATE; REESE J. FISHER, Chief of Police; KEVIN FRIZZIOLA, ANDREW WELSH and GEORGE KEMPKER.** 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, any anyone else who succeeds to our rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of 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.

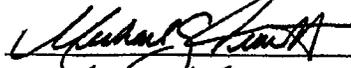
9. **GOVERNING LAW.** This Release shall be construed and interpreted in accordance with the laws of the State of New Jersey.

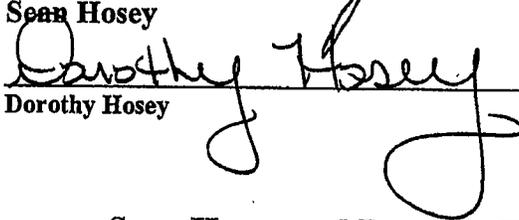
10. **ADDITIONAL DOCUMENTS.** All parties agree to cooperate fully and to execute any and all supplementary documents and to take all action which may be necessary or appropriate to give full force and effect to the terms and intent of this Release.

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.

7. **SIGNATURES.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal affixed.

Witnessed or Attested by:


Michael J. Fioretti
Attorney - State of New Jersey


Sean Hosey (Seal)

Dorothy Hosey (Seal)

STATE OF NEW JERSEY, COUNTY OF _____ SS:

I CERTIFY that on 9/4/13, **Sean Hosey and Dorothy Hosey** personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

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

Prepared by:

PETER J. VAN DYKE, ESQ.
KELAHER, VAN DYKE & MORIARTY