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 By: Justin T. Loughry, Esquire (3473-JTL)
 Attorneys for Earl Whaley

EARL WHALEY,	:	UNITED STATES DISTRICT COURT
	:	DISTRICT OF NEW JERSEY
Plaintiff,	:	
	:	
v.	:	
	:	
BOROUGH OF COLLINGSWOOD AND	:	Civil Action No.
BOROUGH OF WOODLYNE,; Director	:	
and/or Chief of the Collingswood Police	:	
Department THOMAS GARRITY, JR.;	:	
DETECTIVE SGT EDWARD CORRELL;	:	
OFFICER BRIAN EIDMANN.	:	
	:	COMPLAINT AND DEMAND FOR
Defendants.	:	JURY TRIAL
	:	
	:	

Earl Whaley, by way of Complaint against defendants, says:

PRELIMINARY STATEMENT

1. This action is brought to redress intentional violations of the First, Fourth, and Fourteenth Amendment rights of the Plaintiff, committed by the Boroughs of Collingswood and Woodlyne, and its/their Police Department, and one or more of its agents, servants, employees or officers of said department, in effecting an unconstitutional search and/or seizure, an unlawful entry onto the private residential premises of the plaintiff, an illegal arrest and detention, and a wrongful lodging of a charge of disorderly conduct, without basis in law or fact, against the Plaintiff.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331, 1343 and 1367, as one or more causes of action arise under the United States Constitution and federal law; the Court has pendent or supplemental jurisdiction as to the state law claims. Plaintiff brings this action for damages primarily under 42 U.S.C. §§ 1983 and 1988, since the conduct complained of was engaged in under color of state law, and such conduct by the defendants subjected the plaintiff to deprivations of rights, privileges and immunities secured by the United States Constitution under the First, Fourth, and Fourteenth Amendments to the United States Constitution. The Plaintiff also pleads a cause of action under the New Jersey State Civil Rights Act, N.J.S.A. 10:6-1 and N.J.S.A. 10:6-2.

3. Venue is proper in this District as it is the District in which the Plaintiff and the defendants reside and/or the District in which the claims arise.

THE PARTIES

4. Earl Whalcy is an African-American adult male, age 37, and at relevant times, was a citizen and resident of 1816 Woodlymc Ave, Woodlyne, County of Camden, State of New Jersey.

5. Defendant Thomas Garrity, Jr. was, at all relevant times, the Director or Chief of Police of the Collingswood Police Department. Upon information and belief, he was at all relevant times the chief policy maker and supervisor for the Borough of Collingswood Police Department, and the official responsible for the hiring, training, discipline, and/or supervision of employees of the Borough of Collingswood Police

Department. [BOCPD]. Thomas Garrity, Jr. is sued in his individual and official capacities. That Department patrolled and served as the local law enforcement and police agency of the Borough of Woodlyne, pursuant to an contract or other arrangement with Woodlyne, at the times relevant to the present complaint.

6. Defendant Detective / Sergeant Edward Correll was an agent, servant or employee of the BOCPD. Upon information and belief, Edward Correll directed, supervised, condoned and/or acquiesced in the unconstitutional conduct of the defendant Brian Eidmann.

7. Defendant "Borough of Woodlyne" is a municipality or municipal corporation situated within the County of Camden, State of New Jersey, and is a "person" within the meaning of 42 U.S.C. § 1983. At all times relevant hereto, the Borough of Woodlyne contracted with or otherwise utilized the services of the police department of the Borough of Collingswood, to provide police services within Woodlyne. Upon information and belief, Woodlyne thus employed the other defendants, individual defendants, and through its policies, acts or omissions, both express and de facto, directed, supervised, condoned and/or acquiesced in the unconstitutional conduct of the Collingswood defendants.

8. At all times relevant, Defendant Officer Eidmann was an agent, servant or employee of the BOCPD and/or the Borough of Woodlyne. Upon information and belief, Eidman was assigned to patrol or related duties within his assigned jurisdiction and/or municipality that would routinely bring him or her into contact with members of the public in an investigatory or law enforcement capacity and in the context of routine police patrol.

9. Each of the individual defendants was acting within the scope of his/its employment and/or under color of law as agents, servants or employees of Collingswood and/or Woodlyne. Each is sued in both official and individual capacities.

ALLEGATIONS OF FACT

10. Plaintiff re-alleges and, incorporates by reference as if fully stated herein the allegations of all previous paragraphs of the Complaint.

11. On or about August 25, 2008, at approximately one a.m., Earl Whaley was playing cards on the enclosed screened in front porch at his row home residence, 1816 Woodlyne Ave, in the Borough of Woodlyne. He was quietly socializing with his significant other, with a neighbor, and a friend.

12. Plaintiff was on his own property and not creating any disturbance.

13. Neither plaintiff nor his guests were violating any law.

14. Defendant Police Officer Eidmann stopped in front of 1816 Woodlyne Ave, and requested that Plaintiff and his friends "keep it down." Defendant Eidman volunteered--~~falsely~~-- that neighbors had complained about noise. In fact, no neighbors had complained.

15. No records exist of such supposed complaints.

16. Plaintiff had not committed any violation of any law, and there was no reason in law or fact for the arrest or seizure of his person, no articulable, factual basis to suspect him of criminal wrongdoing, and no probable cause to believe that he had committed or was committing any criminal offense.

17. Eidman persisted in his requests that Plaintiff and his friends "keep it down". Plaintiff objected to Eidman's presence and disputed Eidman's assertions that

there had been noise and complaints. Plaintiff voiced his objections forcefully and with occasional profane words but not in a raucous or overly loud manner. When Plaintiff persisted in expressing his view that the police officer had no business bothering with Plaintiff or the activities on his porch, the defendant Eidman decided to invade the front porch and physically assault and seize Plaintiff, without legal or factual justification.

18. Without Plaintiff's permission and over his objections, Defendant Eidman barged through the closed screen door and onto the screened in porch, and without warning or any notice that he was seeking to place Plaintiff under arrest, defendant Eidman ripped the chair out from under Plaintiff, and then struck him one or more times about the face. In the midst of this assault, defendant Eidman purported to declare that Plaintiff was under arrest, although Plaintiff did not hear him.

19. Defendant entered onto the porch and residence of Plaintiff without probable cause, without a search warrant, and in violation of the fourth amendment. Defendant assaulted plaintiff, using excessive and unnecessary force against the person of Plaintiff, without any legal justification. Defendant attempted physically to seize the plaintiff without justification in law or fact.

20. As a proximate result of and as a part of Eidman's conduct, Plaintiff was charged with disorderly conduct without any basis in law and fact. Plaintiff was acquitted of that charge by an order of the superior court in or about June 2009.

21. As a proximate result of Eidman's misconduct, Plaintiff suffered physical and mental pain, injury, loss of privacy, physical arrest, detention, prosecution, loss of employment and other economic loss and personal injury.

FIRST COUNT

Fourth and fourteenth amendments --Eidman

22. Plaintiff incorporates here, as if fully set forth, all previous allegations of the Complaint.

23. The conduct of defendant Officer Eidmann violated Plaintiff's federal constitutional rights to be free from excessive force, unlawful seizure, warrantless invasion of his home, unlawful restraint, unlawful seizure, wrongful arrest and unreasonable searches of his person and property, and malicious prosecution for charging Plaintiff with disorderly conduct.

24. As such, the aforesaid conduct constitutes an intentional and malicious violation of Plaintiff's rights to freedom from unlawful restraint/seizure, freedom from unreasonable search and seizure, and his right to privacy, liberty and bodily integrity, under the Fourth, Ninth and Fourteenth Amendments to the United States Constitution, all in violation of the provisions of 42 U.S.C. § 1983, and the New Jersey Constitution and the New Jersey Civil Rights Act.

WHEREFORE, Plaintiff demands judgment against Defendant Erdmann and an award of compensatory and punitive damages, along with attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and such other and further relief as the Court deems just.

SECOND COUNT

First Amendment -- Eidman

25. Plaintiff incorporates here, as if fully set forth, all previous allegations of the Complaint.

26. Defendant Eidman sought to punish Plaintiff for his constitutionally protected expression of his opinion and view concerning the Officer's conduct on the night in question. Plaintiff's verbal objections to the Officer's conduct and comments was expression protected by the First Amendment. Eidman's invasion of the front porch in response to that protected expression, his assault of Plaintiff and subsequent attempt to seize plaintiff constituted an official's determination to punish a citizen for protected speech, in direct violation of the First Amendment rights of plaintiff, 42 U.S.C. Section 1983, and the New Jersey Constitution and New Jersey Civil Rights Act.

WHEREFORE, Plaintiff demands judgment against Defendant Officer Eidman and an award of compensatory and punitive damages, along with attorneys' fees and costs pursuant to 42 U.S.C. Section 1983 and 1988, and such other and further relief as the Court deems just.

THIRD COUNT

(Versus the Borough of Woodlynne, the Boro of Collingswood, and its/their Police Department, Director Thomas Garrity, Jr. and Detective Sgt Edward Correll).

27. Plaintiff incorporates here, as if fully set forth, all previous allegations of the Complaint.

28. The defendants, Borough of Woodlynne, Borough of Collingswood, its their Police Departments, Collingswood Police Director Thomas Garrity, Jr. and Collingswood Detective Sgt Edward Correll, [collectively, "the supervisory defendants"] have a non-delegable duty to hire, train and supervise, investigate and discipline or sanction members of the municipal police force and to institute policies, practices and customs so as to ensure that no member of the police force conducts unreasonable searches and seizures upon and of the citizens and residents of the municipality and members of public

generally; that the police avoid the use of excessive and unnecessary force, that they not penalize citizens for expressing criticisms of the police, themselves, even if profanely, and the defendants have a duty to ensure that BOCPD officers understand and abide by the requirements of the federal and state Constitutions in their dealings with the citizenry.

29. Upon information and belief, and upon a reasonable belief that discovery will reveal evidence so demonstrating, the supervisory defendants were on actual and/or constructive notice that one or more of their agents, servants or employees, including defendant Eidman, engaged from time to time in the practice or custom of violating the rights of citizens such as Plaintiff to free expression, and to be secure in their homes and to be free from violations of their first and fourth amendment rights, and specifically to be free of retaliation from police officials for expressing objection to police conduct.

30. Discovery will reveal that the supervisory defendants became aware of the violation of Plaintiff's clear rights to be free of assault, excessive force, wrongful arrest and wrongful charging with a criminal offense, and acquiesced in the violations of right.

31. As of August 2008, the conduct of Eidman, in which these supervisory defendants acquiesced, violated clearly established law, and defendants had an obligation to train and supervise so as to prevent such First and Fourth Amendment violations, not to acquiesce in them, and to discipline officers who engage in them. The defendants have knowingly and/or recklessly, with deliberate indifference, failed to fulfill said duty and have failed to institute policies and/or practices to prevent, penalize and cure such abuses. In this case, the constitutional violations were captured on tape, and despite the availability of that tape to the supervisory defendants, upon information and belief, no discipline or corrective action has been taken against the individual defendant.

32. Upon information and belief, the defendants' failure to hire, train and supervise subordinates to refrain from such unconstitutional conduct is a violation of citizens' or suspects' federal and state constitutional rights, amounts to a pattern, practice and/or policy of lax or no supervision and lax or no correction of subordinates when they engage in conduct that violates the constitutional rights of citizens to be free from such unreasonable searches and seizures. The pattern, practice or policy is also exhibited by a failure adequately to train and supervise officers regarding, *inter alia*, the requirements to lawfully detain citizens, and to lawfully search their persons and property, to invade their residences including screened in porches, over their objections, and to utilize force in retaliation for verbal expression of objection to police conduct.

33. The pattern, practice or policy and failure to supervise amounts, at minimum, to deliberate indifference to the rights of persons such as Plaintiff.

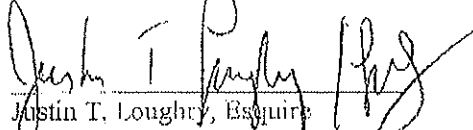
34. The various injuries suffered by Plaintiff all proximately result from the deliberate indifference of the supervisory defendants to the protection of the rights, privileges and immunities of Plaintiff as guaranteed by the United States Constitution and laws of the United States, in violation of 42 U.S.C. § 1983, and the New Jersey State Constitution and State Civil Rights Act. As a result, the Plaintiff has suffered pain, anguish and monetary loss, and will continue to so do in the future.

WHEREFORE, the Plaintiff seeks judgment against the Defendants, an award of punitive and compensatory damages, attorneys' fees and costs of suit pursuant to 42

U.S.C. § 1988 and the New Jersey State Civil Rights Act, and such other and further relief as the Court deems just.

LOUGHRY and LANDSAY, L.L.C.

By:



Justin T. Loughry, Esquire
Attorney for Plaintiff Paul James Ash

Dated: 8/23/10

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Respectfully submitted,


Justin T. Loughry, Esquire
Attorney for Plaintiff Earl Whaley

Dated: 8/23/10

GENERAL RELEASE

KNOW ALL PERSONS, that I, EARL WHALEY, of 1816 Woodlynne Avenue, Woodlynne, New Jersey (**hereinafter “Releasor”**) in consideration of the payment of **FIFTEEN THOUSAND** Dollars (\$15,000.00) and for other valuable consideration, the sufficiency of which is hereby acknowledged, for myself, my heirs, my executors, administrators, successors and assigns, do hereby release and quitclaim unto **BOROUGH OF COLLINGSWOOD, BOROUGH OF WOODLYNNE, DIRECTOR AND/OR CHIEF OF THE COLLINGSWOOD POLICE DEPARTMENT, THOMAS GARRITY, JR., DETECTIVE SGT., EDWARD CORRELL, AND BRIAN EIDMANN**, and all persons acting on behalf of the above mentioned public entities and individuals and in their capacities as employees, agents, or representatives of said public entities and individuals and their attorneys and insurers (**hereinafter “Released Parties”**), all manner of actions, causes of actions, debts, dues, claims and demands, both in law and equity, and in particular any and all claims arising out of that certain incident involving **EARL WHALEY** on or about August 25, 2008 on the premises of 1816 Woodlynne Avenue, Woodlynne, New Jersey, for which plaintiff commenced the legal action pending in the United States District Court for the District of Camden, Civil Action No: 1:10-cv-04343-JHR-AMD, entitled Earl Whaley v. Borough of Collingswood, et al., as well as any other alleged tortious actions or activities arising from this incident which may at this time, or any other time, be complained of by the **Releasor** against the **Released Parties**, their agents, servants, successors or assigns. It is the specific intent and purpose of this instrument to release and discharge any and all claims and causes of action of any kind or nature whatsoever, whether known or unknown and whether specifically mentioned or not, against which the said aforementioned **Releasor**, has now or ever has had, or will ever in the future have against the **Released Parties**, arising out of the incident described above, including but not limited to, alleged violations of the United States and/or New Jersey Constitutions, the New Jersey Civil Rights Act, 42 U.S.C. 1983, 42 U.S.C. 1988, any and all constitutional violations of any kind, past and present pain and suffering, emotional distress, psychiatric disabilities, wrongful death, past and future medical expenses, past and future lost earnings, loss of reputation, embarrassment, or any direct or consequential claims of **Releasor**. This Release is meant to discharge any and all claims or causes of action of any kind

whatsoever which may have arisen or which may arise out of or be derivative of any claim which the **Releasor** may have now or in the future against the **Released Parties** arising out of the above-described incident.

I hereby agree and warrant that I will satisfy any and all present and future liens or debts including liens or debts for medical care, disability claims, Workers' Compensation claims, Medicare or Medicaid liens, ERISA liens, and attorneys' liens arising out of or relating to the incident and/or the injuries allegedly resulting therefrom.


I hereby further agree to defend and hold harmless the **Released Parties** from and against any claims made by third-party payers, lienholders, or debt holders for present claims or claims which have not been brought heretofore and which are derivative of the injuries, pain and suffering, or other derivative causes of action arising out of the incident referred to above, or who otherwise claim an interest in the proceeds paid in settlement of this matter.

Releasor hereby represents that he is not a Medicare recipient and has not applied for or received any Medicare benefits. None of **Releasor's** medical bills, costs or expenses related to any injuries sustained in the above described incident were paid through Medicare. **Releasor** does not anticipate any future medical treatment with respect to this incident will be required, nor has any treating or examining doctor advised **Releasor** that future medical treatment is anticipated or recommended.

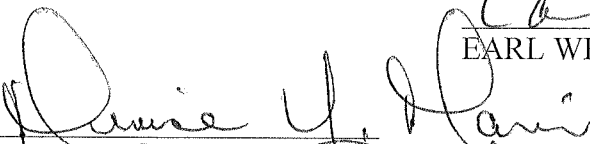
I understand that this settlement is a compromise of a disputed claim and that the payments specified herein are not to be construed as an admission of liability on the part of the aforementioned public entities and individuals; but, on the contrary, liability is expressly denied by them.

I have read this Release, understand it fully, and I am signing it voluntarily after conferring with my counsel.

IN WITNESS WHEREOF, I hereunto set my hand this 5th day of MAY, 2014.


EARL WHALEY

Witness


Notary Public

