

**LEVINE, STALLER, SKLAR, CHAN
& BROWN, P.A.**
3030 Atlantic Avenue
Atlantic City, NJ 08401
Telephone: 609-348-1300
Attorneys for Plaintiff, Jonathan Preston

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JONATHAN PRESTON,
Plaintiff,

v.

CITY OF ATLANTIC CITY, ATLANTIC
CITY POLICE DEPARTMENT and
MICHELE ZANES, Individually, and in
Her Official Capacity as Atlantic City
Police Officer,

Defendant(s).

AMENDED COMPLAINT

Civil Action No. 1:13-CV-03695 (RMB-JS)

Plaintiff JONATHAN PRESTON, of full age, through his undersigned counsel by way of Complaint against the Defendants, City of Atlantic City, Atlantic City Police Department and Michele Zanes individually and in her official capacity as an Atlantic City police officer, hereby says:

PARTIES, JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 §1331 action arising under the Constitution of the United States.
2. Jonathan Preston ("Preston"/"Plaintiff") is an adult individual who currently resides at 16 Caravel Court, Atlantic City, New Jersey 08401.

3. Defendant, The City of Atlantic City ("The City") is a municipal corporation organization existing under the laws of the State of New Jersey, with a business address located at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401.

4. Defendant, Atlantic City Police Department ("AC Police Department") is a municipal corporation organization existing under the laws of the State of New Jersey, with a business address of 2715 Atlantic Avenue, Atlantic City, New Jersey, 08401.

5. Defendant, Michele Zanes, Badge No. 679 ("Officer Zanes"), is a Caucasian police officer employed by the AC Police Department who stopped and handcuffed Plaintiff on June 16, 2011.

6. Venue is properly laid pursuant to 28 §1391(b) in the District of New Jersey because Plaintiff is located in this district, and the events giving rise to the claim occurred in this district.

FACTUAL ALLEGATIONS

7. On June 16, 2011 at approximately 7:30 PM during daylight hours, Officer Zanes pulled over Mr. Preston at the bottom of the Albany Avenue bridge (near Bader Field) after following him from the intersection of Fairmount Avenue and Missouri Avenue.

8. Preston, the driver of a 2000 black Chevy Malibu LS, had three passengers in his car.

9. All passengers in the car, including Preston, were African American males.

10. Preston had his music low and all of his windows down.

11. Officer Zanes approached the passenger side of Preston's car and told all four men to "drop what [they] were doing and put [their] hands up."

12. When Preston went into his glove box to collect his credentials, Officer Zanes asked Mr. Preston why he went into his glove box when she never requested any information at that time.

13. Officer Zanes told Preston he was "getting smart with her" and that she would take him to jail when he told her he lived in Atlantic City.

14. After running Preston's information in her car, Officer Zanes returned to the vehicle and asked Preston for his social security number.

15. Not feeling comfortable giving her that information with others in his vehicle, Officer Zanes threatened to take him to jail.

16. Preston wrote his security number on a sheet of paper and handed it to Officer Zanes.

17. At this point, approximately 12 back-up officers in cars and on motorcycles had arrived at the scene of the stop.

18. Officer Zanes returned to Preston's car accusing him of providing her with the wrong social security number.

19. Officer Zanes then asked Preston to leave his vehicle with his hands above his head.

20. Officer Zanes proceeded to perform a full body pat down of Preston.

21. Officer Zanes walked Preston to her car and handcuffed him.

22. Officer Zanes told Preston that he was not arrested, but rather she put him in handcuffs for her protection, and that of the other officers.

23. Officer Zanes never asked any of Preston's three other passengers for any information.

24. While handcuffed, another officer told Preston that his social security number was coming back under someone else's name.

25. Preston asked if an officer could retrieve his social security card from his wallet inside his car to verify that he had correctly provided his social security to Officer Zanes.

26. A detective at the scene informed Preston as to what he should do to remedy his stolen identity.

27. Officer Howard Mason, who knew Preston's mother, approached Preston and released him from the handcuffs.

28. Officer Mason told Officer Zanes that Preston did not belong in handcuffs.

29. Preston was handcuffed for approximately ten to fifteen minutes.

30. Preston asked Officer Zanes for her name, badge number and why she had pulled him over in the first place, to which laughed and responded that he had a dim tail light.

31. From the time Preston was stopped by Officer Zanes until the time he left the scene, approximately ninety minutes had passed.

32. Preston was never issued a summons or warning regarding his dim taillight.

33. Within a week of the incident, Preston filed a report against Officer Zanes at the AC Police Department.

34. Atlantic City Internal Affairs conducted an investigation and sustained Preston's report regarding improper search, improper procedure, and demeanor.

35. The Internal Affairs Department's investigation revealed that Officer Zanes violated department rules and regulations, and that she would be subject to appropriate discipline under the agency's procedures.

COUNT I
(FEDERAL CIVIL RIGHTS ACT, 42 U.S.C. §1983)

36. Plaintiff hereby repeats and incorporates all of the preceding paragraphs as if fully set forth herein.

37. Defendants deprived Plaintiff of his liberty rights when Officer Zanes pulled over his vehicle at the bottom of the Albany Avenue Bridge after following him from the intersection of Fairmount Avenue and Missouri Avenue.

38. Also, Defendants deprived Plaintiff of his liberty rights when Officer Zanes handcuffed Plaintiff after asking that he get out of his vehicle with his hands over his head.

39. Defendants violated Plaintiff's rights to due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution.

40. Defendants performed an illegal search and seizure of Plaintiff, which violated his due process rights under the Fourteenth Amendment of the United States Constitution.

41. As a direct and proximate result of Officer Zane's detention and illegal search and seizure of Plaintiff, Plaintiff's liberty rights, privileges and immunities were violated as well as his due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution, and has suffered and continues to suffer damages.

WHEREFORE Plaintiff demands judgment in his favor against the City of Atlantic City, The AC Police Department and Michele Zanes individually and in her capacity as an Atlantic City police officer as follows:

- (a) Compensatory damages;
- (b) Consequential damages;
- (c) Punitive damages;
- (d) Costs of the action;
- (e) Reasonable attorney's fees and costs; and
- (f) Such other and further relief as the Court deems equitable and just.

**COUNT II
(FALSE IMPRISONMENT)**

42. Plaintiff hereby repeats and incorporates all of the preceding paragraphs as if fully set forth herein.

43. Officer Zanes purposefully pulled Plaintiff over on the Albany Avenue Bridge after following him for from the intersection of Fairmount Avenue and Missouri Avenue.

44. Upon asking Plaintiff to get out of his vehicle, Officer Zanes handcuffed Plaintiff, even though he was not under arrest.

45. When Plaintiff asked why he was handcuffed, Officer Zanes responded that he was being handcuffed for the safety of herself and the other officers present.

46. As a direct and proximate result of Officer Zanes's detention of Plaintiff, Preston was deprived of his liberty thereby causing him to suffer and continues to suffer damages.

WHEREFORE, Plaintiff demands judgment in his favor against the City of Atlantic City, AC Police Department and Michele Zanes individually and in her capacity as an Atlantic City police officer as follows:

- (a) Compensatory damages;
- (b) Consequential damages;
- (c) Punitive damages;
- (d) Costs of the action;
- (e) Reasonable attorney's fees and costs; and
- (f) Such other and further relief as the Court deems equitable and just.

COUNT III
(ASSAULT)

47. Plaintiff hereby repeats and incorporates all of the preceding paragraphs as if fully set forth herein.

48. Officer Zanes purposefully asked that Plaintiff get out of his vehicle with his hands over his head to be searched.

49. Officer Zanes proceeded to perform a full body pat down of Plaintiff.

50. The police report does not indicate that Officer Zanes found anything illegal on Plaintiff.

51. As a direct and proximate result of Officer Zanes's full body pat down of Plaintiff, he has suffered and continues to suffer damages.

WHEREFORE Plaintiff demands judgment in his favor against the City of Atlantic City, AC Police Department and Michele Zanes individually and in her capacity as an Atlantic City police officer as follows:

- (a) Compensatory damages;

- (b) Nominal damages in the event no compensatory damages are allowed;
- (c) Punitive damages from the individual defendants;
- (d) Costs of the action;
- (e) Reasonable attorney's fees and costs; and
- (f) Such other and further relief as the Court deems equitable and just.

**COUNT IV
(BATTERY)**

51. Plaintiff hereby repeats and incorporates all of the preceding paragraphs as if fully set forth herein.

52. After Officer Zanes asked Plaintiff to exit his vehicle, Officer Zanes proceeded to physically search Plaintiff.

53. Officer Zanes intended to pat Plaintiff down from head to toe and to search his pockets for any paraphernalia.

54. As a direct and proximate result of Officer Zanes's full body pat down of Plaintiff, he has suffered and continues to suffer damages.

WHEREFORE Plaintiff demands judgment in his favor against the City of Atlantic City, AC Police Department and Michele Zanes individually and in her capacity as an Atlantic City police officer as follows:

- (a) Compensatory damages;
- (b) Nominal damages in the event no compensatory damages are allowed;
- (c) Punitive damages from the individual defendants;
- (d) Costs of the action;
- (e) Reasonable attorney's fees and costs; and
- (f) Such other and further relief as the Court deems equitable and just.

COUNTY
(2004 NEW JERSEY CIVIL RIGHTS ACT – N.J.S.A. 10:6-2)

55. Plaintiff hereby repeats and incorporates all of the preceding paragraphs as if fully set forth herein.

56. Defendants interfered, or attempted to interfere with Plaintiff's substantive due process rights when Officer Zanes pulled over his vehicle.

57. Also, Defendants interfered, or attempted to interfere with Plaintiff's substantive due process rights when Officer Zanes handcuffed Plaintiff after asking that he get out of his vehicle with his hands over his head.

58. As a direct and proximate result of Officer Zanes's detention of Plaintiff, Plaintiff's liberty rights, privileges and immunities were violated as well as his due process rights as guaranteed by this State Constitution, and has suffered and continues to suffer damages.

WHEREFORE Plaintiff demands judgment in his favor against the City of Atlantic City, AC Police Department and Michele Zanes individually and in her capacity as an Atlantic City police officer as follows:

- (a) Compensatory damages;
- (b) Consequential damages;
- (c) Punitive damages;
- (d) Costs of the action;
- (e) Reasonable attorney's fees and costs; and
- (f) Such other and further relief as the Court deems equitable and just.

COUNT VI
(NEGLIGENT SUPERVISION)

59. Plaintiff hereby repeats and incorporates all of the preceding paragraphs as if fully set forth herein.

60. Officer Zanes stopped Plaintiff on June 16, 2011 in her capacity as an Atlantic City police officer.

61. The City and AC Police Department hired Officer Zanes and failed to use reasonable care to supervise Officer Zanes's activities and prevent tortious conduct by Officer Zanes while under their control.

62. By failing to properly train and supervise Officer Zanes, the City and the AC Police Department should have known that Officer Zanes's actions could result in harm to the public at large in the City of Atlantic City.

63. The City and the AC Police Department breached its duty to Plaintiff when they failed to properly train and reasonably supervise Officer Zanes.

64. As a direct and proximate result of Officer Zanes's actions in her capacity as an Atlantic City police officer, Preston has suffered and continues to suffer damages.

WHEREFORE Plaintiff demands judgment in his favor against the City of Atlantic City, AC Police Department and Michele Zanes individually and in her capacity as an Atlantic City police officer as follows:

- (a) Compensatory damages;
- (b) Consequential damages;
- (c) Punitive damages;
- (d) Costs of the action;
- (e) Reasonable attorney's fees and costs; and

(f) Such other and further relief as the Court deems equitable and just.

COUNT VII
(LAW AGAINST DISCRIMINATION – N.J.S.A. 10:5-1)

65. Plaintiff hereby repeats and incorporates all of the preceding paragraphs as if fully set forth herein.

66. The New Jersey Law Against Discrimination ("LAD") prohibits, among other things, discrimination based on race, creed, color, and national origin.

67. The AC Police Department, including Officer Zanes, constitutes a place of public accommodation under LAD.

68. Officer Zanes violated Plaintiff's rights under LAD when she performed a full body pat down of Plaintiff.

69. Officer Zanes violated Plaintiff's rights under LAD when she handcuffed and falsely arrest Plaintiff.

70. Officer Zanes violated Plaintiff's rights under LAD when she failed to accommodate him after finding out that his identity had been stolen.

71. Officer Zanes intentionally discriminated against Plaintiff because he is a male African American.

72. As a direct and proximate result of Defendants' discrimination against Plaintiff, Plaintiff's rights under LAD were violated and he has consequently suffered and continues to suffer damages.

WHEREFORE Plaintiff demands judgment in his favor against the City of Atlantic City, AC Police Department and Michele Zanes individually and in her capacity as an Atlantic City police officer as follows:

(a) Compensatory damages;

- (b) Consequential damages;
- (c) Punitive damages;
- (d) Costs of the action;
- (e) Attorney's fees and costs; and
- (f) Such other and further relief as the Court deems equitable and just.

JURY TRIAL

Plaintiff hereby demands a jury trial as to all issues and claims so triable.

New Jersey Local Civil Rule 11.2 CERTIFICATION

I hereby certify that there are no other actions or arbitrations pending or contemplated involving this subject matter or controversy. I further certify that there are no additional known parties who should be joined in the present action at this time. I certify that the foregoing statements are true. I am aware that if any of the above statements are willfully false, I am subject to punishment.

LEVINE, STALLER, SKLAR, CHAN &
BROWN
Attorneys for Plaintiff

s/David J. Azotea

Dated: June 14, 2013

By: David J. Azotea Esq.

GENERAL RELEASE

JONATHAN PRESTON (hereinafter referred to as "RELEASOR"), for and in consideration of the total sum of fifty thousand dollars (\$50,000.00), paid by the City of Atlantic City, receipt of which is hereby acknowledged, and intending to be legally bound, does hereby remise, release, and forever discharge the City of Atlantic City, and its departments, divisions, insurers, present and former employees, including, but not limited to, Atlantic City Police Officer Michele Zanes, representatives, attorneys, citizens and agents, and each of such person's heirs, successors, assigns, executors, administrators, and beneficiaries (hereinafter collectively referred to as "RELEASEES"), from any and all rights, causes of action, suits, debts, dues, accounts, contracts, agreements, judgments, claims, and demands whatsoever (including claims for costs and attorney's fees), in law or equity (collectively, the "Claims"), which RELEASOR and his heirs, executors, administrators, successors, assigns, or any of them, ever had, now have, or hereafter can, shall, or may have, against RELEASEES or any of them, for or by reason of any cause, matter, or thing whatsoever from the beginning of the world to the date of this Agreement, including, but not limited to, any claims which were or could have been asserted in the action entitled Jonathan Preston v. City of Atlantic City, et al., which was filed in United States District Court under Civil Action Number 12-cv-3695 (the "Civil Action").

RELEASOR understands that RELEASEES, by reason of agreeing to this compromise payment, neither admit nor deny liability of any sort and have no agreement or promise to do anything not herein set forth, and RELEASOR further understands that this General Release is made as a compromise to terminate all controversy and/or claims for injuries or damages of any nature, known or unknown, including future developments thereof, by RELEASOR against RELEASEES.

It is expressly understood that, by the execution of this General Release, RELEASEES shall not be required to make any further payment to RELEASOR or to any third party person or entity by reason of the aforesaid Claims, and that RELEASOR will indemnify and save forever harmless RELEASEES against any loss or damage caused by any and all further claims, demands, or actions against RELEASEES made on behalf of RELEASOR by anyone or any entity.

This is a complete General Release. There are no written or oral understandings or agreements directly or indirectly connected with this General Release that are not incorporated herein. This General Release shall be binding upon the heirs, executors, administrators, parents, subsidiaries, affiliates, successors, assigns, and legal representatives of the respective parties hereto.

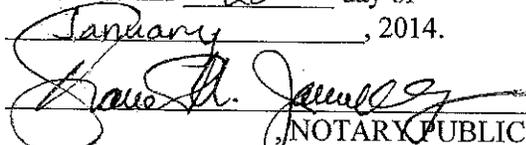
I have carefully read this General Release and understand the contents thereof. I sign this General Release of my own free will, intending to be legally bound by the promises contained herein forever. I have reviewed this General Release with an attorney and am satisfied with that attorney's services in reviewing this General Release.

IN WITNESS WHEREOF, I have hereunto set my signature this 1/28 day of January, 2014.



JONATHAN PRESTON

SWORN AND SUBSCRIBED
before me this 28th day of January, 2014.



NOTARY PUBLIC

DIANA M. JANANSKY
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires 12-2-2014

**ADDITIONAL AGREEMENTS AND REPRESENTATIONS OF
PLAINTIFF REGARDING MEDICARE/MEDICAID/SOCIAL SECURITY
DISABILITY INSURANCE (SSDI)**

The parties hereto, in consideration of the Release executed herewith, and representations contained herein, hereby make the following additional representations and enter into the following agreements:

1. Jonathan Preston (hereinafter designated as "Plaintiff") warrants that his date of birth is 3/11/88. Plaintiff is currently 25 years old.

Medicare/Medicaid Acknowledgment

2. As of the date of this agreement, Plaintiff acknowledges that he is **not** currently a Medicaid beneficiary and that the Centers for Medicare & Medicaid Services (CMS) does not have a claim for medical services paid on behalf of the Plaintiff related to this claim pursuant to the Medicare Secondary Payer Act (42 U.S.C. §1395y(b)) as amended.

Settlement Agreement

3. The parties have determined through information provided by the Plaintiff, the Plaintiff's counsel, review of Plaintiff's medical bills, or, where the MSPRC has represented in its conditional payment statement, that the conditional payments made on behalf of the Plaintiff related to this claim are approximately \$0.00. The parties further acknowledge that this is not a final lien amount, and that the MSPRC will not calculate a "final lien demand" until after it receives the final settlement documents regarding this claim.

4. The parties further agree that the Plaintiff and/or the Plaintiff's counsel will be responsible for resolving any conditional payment lien with the MSPRC and that the Defendants have no further obligation, payment and/or otherwise, to the Plaintiff, Plaintiff's counsel, CMS, or the MSPRC.

5. Any amount owed to the MSPRC in excess of the estimated lien amount will be the sole responsibility of the Plaintiff, and the Plaintiff shall be responsible to CMS for any claim, right, lien, or cause of action that Medicare/Medicaid may assert pursuant to the Medicare Secondary Payer Act (42 U.S.C. §1395y(b)).

Future Medical Expenses

6. It is not the intention of any party to this agreement to shift responsibility of future medical expenses to the Federal Government. It is the parties' intention to comply with the Medicare Secondary Payer Act (42 U.S.C. §1395y(b)) as amended and the relevant regulations contained in C.F.R. §411.

7. After considering the parties' obligations according to the aforementioned statute and regulations, the parties agree that there is no risk of shifting future medical expenses to Medicare/Medicaid because the Plaintiff hereby acknowledges that no further medical treatment is needed, warranted, or required with regard to any alleged injuries sustained or arising out of this claimed incident, occurrence, or claim.

8. Taking into account the various factors of this claim including the Plaintiff's alleged injuries, claimed economic losses, and claimed pain and suffering, no portion of this settlement is allocated for future medical expenses and is, therefore, not a settlement contemplated by the Medicare Secondary Payer Act.

9. The parties, in good faith, do not believe that Medicare/Medicaid may incur any expense in the future related in any way to the claims asserted in this matter or subject to this agreement, and any expense that Medicare/Medicaid may incur in this matter is too remote to calculate or reasonably foresee at the time of settlement.

10. In addition, any future medical treatment relating to body parts allegedly injured, sustained or arising out of this claimed incident, occurrence, or claim, or expenses incurred by the Plaintiff for like or similar injuries, are the sole responsibility of the Plaintiff.

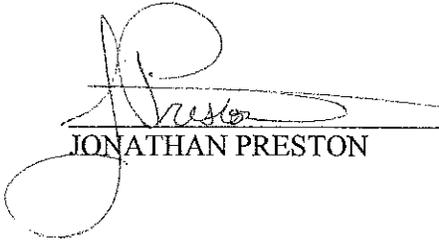
CAUTION: READ BEFORE SIGNING

“Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.”

In Witness whereof the parties hereto have set their hands and seals on this 28 day of

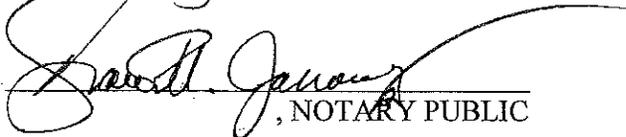
January, 2014.

Witnessed by:



JONATHAN PRESTON

SWORN AND SUBSCRIBED
before me this 28th day of
January, 2014.



, NOTARY PUBLIC

DIANA M. JANANSKY
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires 12-2-2014