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Attorney for Plaintiff, Salvatore Day

SALVATORE DAY,

Plaintiff,

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
TRENTON

vs.

Civil Action No.: 09- (-)

JACKSON TOWNSHIP;
MATTHEW D. KUNZ, Chief of Police;
SERGEANT JOHN DECKER;
DETECTIVE SCOTT CONOVER;
JOHN DOES 6-10 (fictitious individuals),
Personnel of the Jackson Township
Police Department in supervisory
capacities; JOSEPH CANDIDO;
MICHAEL CAVALLO; JAMES
REYNOLDS; GREGORY VIDALIS
and JOHN DOES 1-5 (fictitious individuals),
members of the Jackson Township 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 pendent state law claims pursuant to 28 U.S.C. Section

1367.

PARTIES

2. Plaintiff Salvatore Day, residing at 77 Hickory Hill Road, Jackson, New Jersey 08527, Ocean County, is and was, at all times herein relevant, a citizen of the United States and a resident of the State of New Jersey.

3. Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis and/or John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the Jackson Township Police Department and at all times herein were acting in such a capacity as the agents, servants and/or employees of Jackson Township and were acting under the color of law.

4. Defendants Chief of Police Matthew D. Kunz, John Decker, Scott Conover and/or John Does 6-10 were at all times mentioned herein duly appointed and acting members of the Jackson Township Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of Jackson Township and were acting under the color of law.

5. Defendants Chief of Police Matthew D. Kunz, John Decker, Scott Conover and/or John Does 6-10 were acting in supervisory capacities over Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 and responsible by law for the training, supervision and conduct of Defendants Decker; Conover and/or John Does 1-5.

6. Defendant Jackson Township 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 Jackson Township employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct

of Defendants Matthew D. Kunz; John Decker; Scott Conover; Candido; Cavallo; Reynolds, Vidalis and/or John Does 1-10.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

1. On 12/20/09, Plaintiff Salvatore Day was home when he looked out of a window and saw Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 approach his home.

2. Plaintiff had earlier been involved in a verbal altercation with a neighbor.

3. Defendants had arrived to investigate a complaint made by the neighbor.

4. Plaintiff opened the door as Defendants approached, and two of Plaintiff's dogs came to the doorway.

5. Plaintiff's dogs began barking at Defendants, and Defendants Candido and/or John Does 1-5 ordered Plaintiff to get the dogs away from the doorway.

6. Plaintiff's wife attempted to close the door momentarily to get the dogs away from the doorway.

7. Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 then pushed open Plaintiff's door, entered his home and assaulted him with excessive force and without any justification.

8. Specifically, Defendants spun Plaintiff's body around; pushed him against the wall; threw him to the floor; kned him in his neck, and yanked his arms behind his back.

9. He was handcuffed and brought to Jackson Township Police Department, where bail was set.

10. Plaintiff requested a phone call so that he could borrow bail money from his brother.

11. Defendants denied Plaintiff's request to call his brother to borrow the money.

12. Plaintiff's wife arrived at headquarters where she was given a pen by a police officer.

13. The pen was embossed with a bail bondsman's name and telephone number.

14. Defendants told Plaintiff's wife to call the bail bondsman quickly to make bail on Plaintiff or he would be sent to the county jail.

15. Plaintiff's wife returned home and called the phone number of the bail bondsman recommended by Defendants.

16. A bail bondsman arrived at Plaintiff's home and pressured her into signing paperwork retaining them.

17. Again, it should be noted that Plaintiff's brother could have provided the full bail amount without Plaintiff's wife having to use the bail bonds company.

18. But for the pressure exerted by Defendants and the bail bondsman, Plaintiff's wife would not have retained the bail bonds company.

19. Upon information and belief, a former Jackson Township police officer either owns or is employed by the bail bonds company used by Plaintiff's wife under duress.

20. As a result of Defendants' unjustified assault, Plaintiff sustained bodily injuries; medical expenses; pain and suffering, and emotional distress.

COUNT ONE
SECTION 1983 USE OF EXCESSIVE FORCE

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 Candido; Cavallo; Reynolds; Vidalis and/or John Des 1-5 committed under color of state law, Plaintiff sustained bodily harm and was deprived of his

right 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.

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, lost wages 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 Salvatore Day demands judgment against Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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.

COUNT TWO
SECTION 1983 FAILURE TO INTERVENE

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

2. Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-10 were Jackson Township Police Officers and at all times mentioned herein were acting under color of state law.

3. Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-10 had a duty to intervene in the unjustified assault and arrest of Plaintiff by Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-10.

4. The unjustified assault and arrest of Plaintiff by Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-10 deprived Plaintiff of his right to be secure in his person

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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 Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-10 had a reasonable opportunity to intervene in the unjustified arrest and assault of Plaintiff by Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-10 and failed to intervene.

6. As a direct and proximate cause of Defendants' Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-10 failure to intervene, 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 made actionable through by 42 USC Section 1983.

WHEREFORE, Plaintiff Salvatore Day demands judgment against Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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.

COUNT THREE
SECTION 1983 ABUSE OF PROCESS

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Decker; Conover; Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5, after the initial issuance of process against Plaintiff, used such "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 Candido; Cavallo; Reynolds; Vidalis; Decker; Conover, and/or John Does 1-10 arrested Plaintiff; caused bail to be posted; denied Plaintiff the opportunity to obtain the bail

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amount from his brother and pressured Plaintiff's wife to use a bail bonds company of Defendants' choosing.

4. Defendants Decker; Conover; Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 also made false statements of fact; maliciously, 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.

5. Defendants Decker; Conover; Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 knew that the complaint initiated was groundless and made misrepresentations 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.

6. As a direct and proximate result of the acts of Defendants Decker; Conover; Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 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 Salvatore Day demands judgment against Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis; John Decker; Scott Conover 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.

COUNT FOUR
SECTION 1983 SUPERVISORY LIABILITY

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants John Decker; Scott Conover; 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 Decker; Conover; John Doe 2 and/or John Does 6-10 had a duty to prevent subordinate officers Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.
4. Defendants Decker; Conover; John Doe 2 and/or John Does 6-10 either directed Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 to violate Plaintiff's constitutional rights or had knowledge of and acquiesced in his/their subordinate's violations.
5. As a direct and proximate result of the acts of Defendants Decker; Conover; John Doe 2 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 Salvatore Day demands judgment against Defendants John Decker; Scott Conover; 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.

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

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

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2. Defendants Jackson Township's Police Department, Matthew D. Kunz and/or John Does 6-10, are vested by state law with the authority to make policy on the use of force, effectuating arrests and police citizen encounters. Specifically, Defendant Matthew D. Kunz is the chief of police. Defendants Decker; Conover, John Does 6-10 are responsible for training Police Officers in the use of force and/or were officers in charge when Plaintiff was assaulted and falsely arrested.

3. At all times mentioned herein, Defendants John Decker; Scott Conover; Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-10, as police officers, agents, servants and/or employees of Defendant Jackson Township, were acting under the direction and control of Defendants Jackson Township Police Department, Matthew D. Kunz and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the Jackson Township Police Department.

4. Acting under color of law pursuant to official policy, practice, or custom, Defendants Jackson Township, Matthew D. Kunz 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 basis Defendants Kunz; John Decker; Scott Conover; Candido; Cavallo; Reynolds; Vidalis 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. Defendants Jackson Township; Kunz and/or John Does 6-10 were aware of numerous

similar police citizen encounters involving Defendants Kunz; John Decker; Scott Conover; Candido; Cavallo; Reynolds; Vidalis ; John Does 1-10 and/or other Jackson Township 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; 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 citizen/arrestees.

6. Despite their awareness, Defendants Jackson Township, Matthew D. Kunz and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Kunz; John Decker; Scott Conover; Candido; Cavallo; Reynolds; Vidalis; John Does 1-10 and/or other Jackson Township Officers.

7. Defendants Jackson Township, Matthew D. Kunz and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants Kunz; John Decker; Scott Conover; Candido; Cavallo; Reynolds; Vidalis 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.

8. Defendants Jackson Township, Matthew D. Kunz 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.

9. Defendants Jackson Township, Matthew D. Kunz 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 Kunz; John Decker; Scott Conover; Candido; Cavallo; Reynolds; Vidalis and/or John Docs 1-10 heretofore described.

10. As a direct and proximate result of the acts of Defendants Jackson Township, Matthew D. Kunz 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 Salvatore Day demands judgment against Defendants Jackson Township, Matthew D. Kunz 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.

COUNT SIX

SECTION 1983 DEMAND FOR PROSPECTIVE INJUNCTIVE RELIEF

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

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.

2. The relief sought by Plaintiff include, but is not limited to, the following:

a. An order permanently restraining and enjoining Defendants John Decker; Scott Conover; Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis; Jackson Township; Matthew D. Kunz and John Does 1-10 from engaging in, encouraging, teaching, promoting or training Jackson Township 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 Jackson Township 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 Jackson Township to provide regular and consistent training sessions to Jackson Township Police Officers.
- d. An order compelling Defendant Jackson Township to implement a system whereby prompt, appropriate action is taken against any Jackson Township 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 Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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 Jackson Township from employing Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis and John Does 1-10 as police officers or law enforcement personnel in any capacity except for clerical duty, solely and entirely confining them to Jackson Township Police headquarters and limiting them entirely to desk duty; enjoining Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis and John Does 1-10 from any patrol duty, and enjoining Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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 Salvatore Day demands judgment against Defendants Jackson Township, Matthew D. Kunz 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.

SUPPLEMENTAL STATE LAW CLAIMS

COUNT SEVEN

ASSAULT AND BATTERY

- 1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
- 2. Defendants Candido; Cavallo; Reynolds; Vidalis 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 common law 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, lost wages, medical expenses, and pain and suffering, and will continue to incur same in the future for some time to come.

WHEREFORE, Plaintiff Salvatore Day demands judgment against Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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.

COUNT EIGHT
ABUSE OF PROCESS

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

2. As set forth above, Defendants Candido; Cavallo; Reynolds; Vidalis 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. Defendants Candido; Cavallo; Reynolds; Vidalis; Decker; Conover, and/or John Does 1-10 arrested Plaintiff; caused bail to be posted; denied Plaintiff the opportunity to obtain the bail

amount from his brother and pressured Plaintiff's wife to use a bail bonds company of Defendants' choosing.

4. Defendants Decker; Conover; Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 also made false statements of fact; maliciously, 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.

5. Defendants' actions and/or omissions were in violation of the common law of the State of New Jersey.

6. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.

7. As a result of Defendants' acts set forth above, Plaintiff sustained various physical and emotional injuries, medical expenses, lost wages and pain and suffering, and will incur same in the future for some time to come.

WHEREFORE, Plaintiff Salvatore Day demands judgment against Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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.

COUNT NINE
VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT (NJ CRA)

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force used and abuse of process by Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Doe Individuals 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. As a direct and proximate result of the aforesaid acts of Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Doe Individuals 1-5, Plaintiff suffered physical injury, medical expenses, and mental anguish.

WHEREFORE, Plaintiff Salvatore Day demands judgment against Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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.

COUNT TEN
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The actions of Defendants Candido; Cavallo; Reynolds; Vidalis and/or John Does 1-5 in their use of excessive force and their assault and battery of Plaintiff and their abuse of process were 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. The acts of the Defendants were in violation of the common law of the State of New Jersey.
5. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.

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WHEREFORE, Plaintiff Salvatore Day demands judgment against Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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.

COUNT ELEVEN
NEGLIGENCE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Candido; Cavallo; Reynolds; Vidalis 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 Candido; Cavallo; Reynolds; Vidalis 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.
6. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
7. 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, lost wages and pain and suffering and will continue to incur same in the future for some time to come.

WHEREFORE, Plaintiff Salvatore Day demands judgment against Defendants Joseph Candido; Michael Cavallo; James Reynolds; Gregory Vidalis 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.

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: August 5, 2010

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

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE, dated 2-19-14 is given by SALVATORE DAY AND JOANNE DAY, referred to as "I", to JACKSON TOWNSHIP, JOSEPH CANDIDO, MICHAEL CAVALLO, GREGORY VIDALIS, JAMES REYNOLDS AND MATTHEW D. KUNZ 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 **JACKSON TOWNSHIP, JOSEPH CANDIDO, MICHAEL CAVALLO, GREGORY VIDALIS, JAMES REYNOLDS AND MATTHEW D. KUNZ**, and their agents and employees, for the events occurring on and about December 20, 2009 which is the subject of lawsuit in DAY v. JACKSON TOWNSHIP, ET AL., Civil Action No.10-4011 (AET-TJB), 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 **JACKSON TOWNSHIP, JOSEPH CANDIDO, MICHAEL CAVALLO, GREGORY VIDALIS, JAMES REYNOLDS AND MATTHEW D. KUNZ** alleged in DAY v. JACKSON TOWNSHIP, ET AL., Civil Action No.10-4011 (AET-TJB).

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 **JACKSON TOWNSHIP, JOSEPH CANDIDO, MICHAEL CAVALLO, GREGORY VIDALIS, JAMES REYNOLDS AND MATTHEW D. KUNZ**, 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 **SALVATORE AND JOANNE DAY'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 **SALVATORE AND JOANNE DAY'S** heirs, executors, administrators, or personal representatives, for any sums expended in defending against said claims including, but not limited to, attorneys' fees and all costs of suit together with any sum paid by way of judgment, settlement, or otherwise on account of those claims.

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

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

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

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

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

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

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

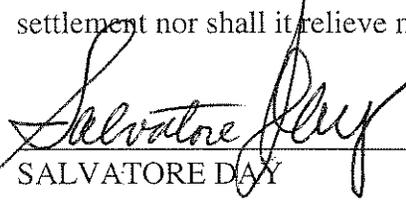
7. **REPRESENTATION OF COMPREHENSION OF DOCUMENT.** In entering into this Release, I represent that I have relied upon the legal advice of my attorney, who is the attorney of my choice, and that I have read this Release in its entirety or had it read to me, and that the terms of this Release have been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

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

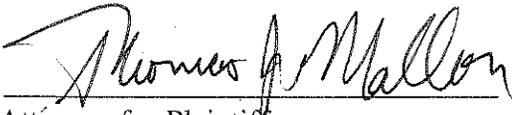
9. **ADDITIONAL DOCUMENTS.** All parties agree to cooperate fully and to execute any and all supplementary documents and to take all action which may be necessary or appropriate to give full force and effect to the terms and intent of this Release.

10. **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.



SALVATORE DAY

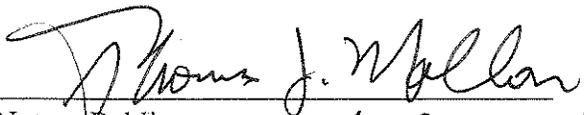


Attorney for Plaintiff



JOANNE DAY
STATE OF NEW JERSEY
COUNTY OF

I certify that on Feb 19, 2014 Salv & Joanne Day 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 them 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 influence by any other person(s).



Notary Public atts at law NJ