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Attorney for Plaintiff Franklin Garcia

FRANKLIN GARCIA

Plaintiff,

vs.

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
TRENTON

Civil Action No.: - (-)

CITY OF UNION CITY;
CHARLES EVERETT, Chief of Police;
WILLIAM VARONA; FRANK DEPINTO JR.;
JOHN DOES 1-5, (fictitious individuals)
members of the Union City Police Department;
JOHN DOES 6-10, (fictitious individuals)
Personnel of the Union City Police
Department in supervisory capacities;

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. Plaintiff Franklin Garcia, residing at 2811 Palisade Avenue, Union City, New Jersey, 07087, is and was, at all times herein relevant, a citizen of the United States.

3. Defendants William Varona, Frank DePinto, Jr., and John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the Union City Police Department and at all times herein were acting in such a capacity as the agents, servants and/or employees of Union City and were acting under the color of law.

4. Defendants Chief of Police Charles Everett and/or John Does 6-10 were at all times mentioned herein duly appointed and acting members of the Union City Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of Union City and were acting under the color of law.

5. Defendants Chief of Police Charles Everett and/or John Does 6-10 were acting in supervisory capacities over Defendants Varona; DePinto; and/or John Does 1-10 and responsible by law for the training, supervision and conduct of Defendants Varona; DePinto; and/or John Does 1-10.

6. Defendant Union City 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 Union City employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Everett; Varona; DePinto; 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 10/2/10, Defendants Varona, DePinto, and/or John Does 1-5 arrested and assaulted Plaintiff without justification and with excessive force.

2. Plaintiff was charged by Defendants with Aggravated Assault on a Police Officer 2C:12-1B(5)(A), Resisting Arrest 2C:29-2A(1), and Obstruction of Administration of Laws 2C:29-1A.

3. The criminal charges brought against Plaintiff were dismissed on 12/5/11.

4. Plaintiff sustained bodily injuries as a result of Defendants' unjustified assault and their use of excessive force.

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 Varona, DePinto, and/or John Does 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, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Franklin Garcia demands judgment against Defendants Varona, DePinto, 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 TWO

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Varona, DePinto, and/or John Does 1-5 were Union City Police Officers and at all times mentioned herein were acting under color of state law.
3. Defendants Varona, DePinto, and/or John Does 1-5 had a duty to intervene in the unjustified assault of Plaintiff by Defendants Varona, DePinto, and/or John Does 1-5.
4. The unjustified assault of Plaintiff by Defendants Varona, DePinto, 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 Varona, DePinto, and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified assault of Plaintiff by Defendants Varona, DePinto, and/or John Does 1-5 and failed to intervene.
6. As a direct and proximate cause of Defendants' Varona, DePinto, 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 Franklin Garcia demands judgment against Defendants Varona, DePinto, 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 ILLEGAL SEARCH / SEIZURE
COUNT THREE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The aforementioned acts of Defendants Varona, DePinto, and/or John Does 1-5, committed under color of state law in initiating a seizure of Plaintiff Franklin Garcia's person was unjustified, without probable cause or any other exception to the warrant requirements under the Fourth and Fourteenth Amendments of the Constitution of the United States.
3. The aforementioned acts were in violation of Plaintiff's right to be free from unreasonable search and 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, made actionable through 42 U.S.C. Section 1983.
4. The criminal charges against Plaintiff Franklin Garcia were dismissed.
5. By reason of the above, Plaintiff was greatly injured, suffered great mental anguish 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 Franklin Garcia suffered bodily injuries, medical expenses, incurred legal expenses in connection with defending 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 Franklin Garcia demands judgment against Defendants Varona, DePinto, and John Does 1-5 on this Count, together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SECTION 1983 FALSE ARREST / IMPRISONMENT
COUNT FOUR

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The aforementioned acts of Defendants Varona, DePinto, and/or John Does 1-5 in arresting and/or imprisoning Plaintiff was without probable cause under the Fourth and Fourteenth Amendments of the Constitution of the United States.
3. 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.
4. The criminal charges against Plaintiff Franklin Garcia were dismissed.
5. By reason of the above, Plaintiff was greatly injured, suffered great mental anguish 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 Franklin Garcia demands judgment against Defendants Varona, DePinto, 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 Charles Everett, 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 Charles Everett, John Doe 2 and/or John Does 6-10 had a duty to prevent subordinate officers Defendants Varona, DePinto, and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.
4. Defendants Charles Everett, John Doe 2 and/or John Does 6-10 either directed Defendants Varona, DePinto, 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 by Defendants Charles Everett, 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 U.S.C. Section 1983.

WHEREFORE, Plaintiff Franklin Garcia demands judgment against Defendants Charles Everett, John Doe 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 MALICIOUS PROSECUTION
COUNT SIX

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Varona, DePinto, and/or John Does 1-5 initiated criminal process against Plaintiff with malice and without any probable cause or other Fourth Amendment justification.
3. As a direct and proximate cause of the actions initiated by Defendants Varona, DePinto, 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.
4. The criminal charges against Plaintiff Franklin Garcia were dismissed.
5. Plaintiff suffered physical injury, incurred legal fees to defend the false charges brought against them by Defendants; medical expenses, and 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 Franklin Garcia demands judgment against Defendants Varona, DePinto, 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 UNLAWFUL CUSTOM, PRACTICE, POLICY/ INADEQUATE
TRAINING
COUNT SEVEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants City of Union City; Charles Everett, John Doe 2 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 Union City 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 Everett, John Doe 2 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 Franklin Garcia was assaulted.

3. Specifically, Defendant Charles Everett was the Chief of Police at the time when Plaintiff was assaulted and falsely arrested.

4. At all times mentioned herein, Defendants Everett, John Doe 2 and/or John Does 6-10, as police officers, agents, servants and/or employees of Defendant Union City, were acting under the direction and control of Defendants Union City Police Department; Everett, John Doe 2 and/or John Does 6-10 and were acting pursuant to the official policy, practice or custom of the Union City Police Department.

5. Acting under color of law pursuant to official policy, practice, or custom, Defendants Union City; Everett; 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 Everett; Varona; DePinto, 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.

6. Acting under color of law pursuant to official policy, practice, or custom, Defendants Union City; Everett; 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 Union City, Everett; 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.

7. Defendants Everett, 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 Union City 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.

8. Defendants Union City; Everett, John Doe 2 and/or John Does 6- 10 were aware of numerous similar police citizen encounters involving, and/or Internal Affairs complaints filed against, Defendants Varona; DePinto; John Does 1-10, and/or other Union City 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 citizens/arrestees.

9. Despite their awareness, Defendants Union City; Everett; and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Varona; DePinto; John Does 1-10, and/or other Union City Police Officers.

10. Defendants Union City; Everett; and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants

Varona; DePinto; 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.

11. Defendants Union City; Everett; 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.

12. Defendants Union City; Everett; 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 Varona; DePinto; and/or John Does 1-10.

13. As a direct and proximate result of the acts of Defendants Union City; Everett; 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. Section 1983.

WHEREFORE, Plaintiff Franklin Garcia demands judgment against Defendants Union City; Everett; 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 EIGHT

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 Union City; Charles Everett; William Varona; Frank DePinto, Jr.; and John Does 1-10 from engaging in, encouraging, teaching, promoting or training Union City 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 Union City 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 Union City to provide regular and consistent training sessions to Union City Police Officers.
 - d. An order compelling Defendant Union City to implement a system whereby prompt, appropriate action is taken against any Union City 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 Varona, DePinto 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 Union City from employing Defendants Varona, DePinto 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 Varona, DePinto and/or John Does 1-10 from any patrol duty, and enjoining Defendants and John Does 1-10 from making arrests, assisting in making arrests and using any force in making arrests and/or assisting in making arrests.
 - g. Any other relief as the Court deems proper and just.

WHEREFORE, Plaintiff Franklin Garcia demands judgment against Defendants Union City; Everett; Varona; DePinto; 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 NINE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force used, failure to intervene, illegal search and seizure, false arrest and imprisonment, and malicious prosecution of Plaintiff by Defendants Varona, DePinto, 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 Varona, DePinto 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.

WHEREFORE, Plaintiff Franklin Garcia demands judgment against Defendants Varona, DePinto 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.

ASSAULT AND BATTERY
COUNT TEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Varona, DePinto 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. Defendants' acts were committed in the course of their official duties as police officers and/or agents, servants and/or employees of Defendant City of Union City, and/or in their personal capacities.

4. 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.

5. As a result of the intentional, reckless, negligent and/or objectively unreasonable assault and battery, as specifically alleged above, Plaintiff sustained diverse substantial and permanent physical and emotional injuries; medical expenses; pain and suffering, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Franklin Garcia demands judgment against Defendants Varona; DePinto; City of Union City 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.

NEGLIGENT / INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
COUNT ELEVEN

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

2. The actions of Defendants Varona, DePinto and/or John Does 1-5, in their use of excessive force upon Plaintiff Franklin Garcia; their assault and battery of Plaintiff; their false arrest and imprisonment of Plaintiff; their malicious prosecution of Plaintiff, and their illegal seizure of Plaintiff Franklin Garcia was intentional and 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.

3. Defendants' acts were committed in the course of their official duties as police officers and/or agents, servants and/or employees of Defendant City of Union City, and/or in their personal capacities.

4. As a result of said intentional, reckless and/or negligent acts, Plaintiff sustained severe emotional distress.

WHEREFORE, Plaintiff Franklin Garcia demands judgment against Defendants Varona; DePinto; City of Union City, and/or John Does 1-5, on this Court, together with compensatory and punitive damages, interest and costs of suit incurred and for such further relief as the Court deems proper and just.

NEGLIGENCE
COUNT TWELVE

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

2. Defendants Varona, DePinto, 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 Varona, DePinto, 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. Defendants' acts were committed in the course of their official duties as police officers and/or agents, servants and/or employees of Defendant City of Union City, and/or in their personal capacities.

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

WHEREFORE, Plaintiff Franklin Garcia demands judgment against Defendants Varona, DePinto, City of Union City, 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: September 17, 2012

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

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter referred to as "Agreement") made this 30 day of September, 2013, by and between the New Jersey Intergovernmental Insurance Fund ("NJIF"), with offices located at NJIF c/o Eric J. Nemeth, General Counsel, Eric J. Nemeth, P.C., 55 Madison Avenue, Suite 400, Morristown, New Jersey 07960 on behalf of the City of Union City, municipal corporations of the State of New Jersey, with offices located at the Municipal Building, 3715 Palisades Avenue, County of Hudson, State of New Jersey, together with any and all of its current and former departments, agencies, subdivisions, elected officials, volunteers, contractors, commissions, boards, employees, agents and any other person or entity serving, working for or employed in any capacity by the City of Union City (hereinafter individually and collectively referred to as "Union City"); and Franklin Garcia, residing at 2811 Palisades Avenue, Union City, New Jersey (hereinafter referred to as "Plaintiff").

WITNESSETH

WHEREAS, Plaintiff filed suit against the CITY OF UNION CITY, CHARLES EVERETT, CHIEF OF POLICE, WILLIAM VARONA, FRANK DEPINTO JR, JOHN DOES 1-5 (FICTITIOUS INDIVIDUALS), MEMBERS OF THE UNION CITY POLICE DEPARTMENT, JOHN DOES 6-10 (FICTITIOUS INDIVIDUALS), PERSONNEL OF THE UNION CITY POLICE DEPARTMENT IN SUPERVISORY CAPACITIES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO HEREIN AS "Defendants") in an action venued in United States District Court under docket no. Civil Action No.: 2:12-cv-06044-JLL-MAH and with the caption FRANKLIN GARCIA, plaintiff, v. CITY OF UNION CITY, CHARLES EVERETT, CHIEF OF POLICE, WILLIAM VARONA, FRANK DEPINTO JR, JOHN DOES 1-5 (FICTITIOUS INDIVIDUALS), MEMBERS OF THE UNION CITY POLICE DEPARTMENT, JOHN DOES 6-10 (FICTITIOUS INDIVIDUALS), PERSONNEL OF THE UNION CITY POLICE DEPARTMENT IN SUPERVISORY CAPACITIES (hereinafter referred to as the "Lawsuit"); and

WHEREAS, The Lawsuit includes various allegations against Defendants; and

WHEREAS, Defendants are provided with insurance coverage through the NJIIF for the Lawsuit; and

WHEREAS, the NJIIF, on behalf of its insureds, and Plaintiff (jointly referred to herein as the "Parties" and individually as a "Party") have reached agreement on the resolution of Plaintiff's claims against Defendants and desire and intend to memorialize the settlement by execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

1. **Dismissal of Claims**. Plaintiffs hereby dismiss, with prejudice, in their entirety, any and all claims (including by way of example and not limitation, those included in the Lawsuit) they may have against Defendants, said dismissal being evidenced by execution of the form of Stipulation of Dismissal with Prejudice attached hereto as Exhibit A.

2. **Release and Discharge**. As partial consideration for payment of the Settlement Sum (as that term is defined below), Plaintiff, for himself and on behalf of his successors, heirs, beneficiaries, agents, estates and assigns (individually and collectively referred to herein as "Releasor") does hereby fully and forever release, remit, acquit, remise, hold harmless and discharge (the "Release"), Defendants and the NJIIF, as well as the Defendants' and the NJIIF's past and present officials, agents, attorneys, commissioners, departments, volunteers, officers and employees (for individuals, said Release runs to them in their official and personal capacities), and all of their respective heirs, estates, successors and assigns (hereinafter, individually and collectively referred to as "Releasees"), jointly and individually, from any and all liabilities, claims, causes of action, charges, appeals, complaints, obligations, costs, losses, damages, injuries, attorneys' fees and other legal responsibilities, (collectively, referred to as

"Claims") of any form or kind whatsoever, whether vested or contingent, which Releasor has or may have against Releasees from the beginning of time through the date of this Agreement, including without limitation, any claims in law, equity, contract, tort, public policy, any claims or causes of action for breach of contract, negligence, excessive force, malicious prosecution, conspiracy, negligent hiring, negligent training, failure to intervene, unlawful custom or practice, civil rights violations, retaliation, harassment and/or discrimination based upon, among other things, disability, handicap, sex, age or race, negligent or intentional infliction of emotional distress, defamation, any claims arising under The Civil Rights Act of 1871 as amended by 42 U.S.C. §1983, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the Reconstruction Era Civil Rights Act, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, as amended, the New Jersey Law Against Discrimination, the United States Constitution, the New Jersey Constitution, or any other federal, state or local statute, ordinance or law whether such claims are known or unknown, unforeseen, unanticipated, unsuspected or latent, and any claims which were raised or could have been raised prior to the date of this Agreement, whether known or unknown, unforeseen, unanticipated, unsuspected or latent. Notwithstanding anything set forth herein to the contrary, the Releasees do not waive any defenses or affirmative defenses in any future litigation or claim that might arise between the Releasees and Releasor, including without limitation, the entire controversy doctrine, estoppel or joinder.

3. **Lump Sum Payment.** Within forty five (45) days following delivery to counsel for the NJIIF of (1) a fully executed copy of this Agreement, (2) an executed copy of the Stipulation of Dismissal with Prejudice in Exhibit A (the "Stipulation"), and (3) Plaintiff's social security number, date of birth, current address and his attorney's EIN, the Defendants will pay plaintiff a lump sum of \$25,000.00 (the "Settlement Sum") in satisfaction of all claims, legal fees and costs

of suit associated with the Lawsuit and all other consideration provided in this Agreement. Plaintiff acknowledges and agrees that he shall receive no other payment, compensation or consideration from NJIIF or any other Releasee as a result of the Release, Stipulation or his execution of this Agreement. The Settlement Sum shall be made payable to { “ “ } and mailed to {address}.

4. **Warranty of Capacity To Execute Agreement.** Plaintiff represents and warrants that no other person or entity has any interest in the claims which constitute the Lawsuit, or in any other demands, obligations, or causes of action referred to in this Agreement, and that he has the sole right and exclusive authority to execute this Agreement and receive the benefits specified. Plaintiff further represents that he has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, or any other demands, obligations or causes of action referred to in this Agreement.

5. **Entire Agreement.** This Agreement contains the entire agreement between the Parties concerning the matters set forth in this document, and shall be binding upon each Releasee as if each had executed this Agreement. The Agreement shall also inure to the benefit of each Releasee, each of whom shall be authorized to enforce its provisions as if they were a signatory hereto.

6. **Representation of Comprehension of Document.** In executing this Agreement, Plaintiff represents that he has relied upon the legal advice of his attorney who is the attorney of his own choice, that he has had the full opportunity to review this Agreement with his attorney, that the terms of this Agreement have been completely read and explained by his attorney, and that those terms are fully understood and voluntarily accepted.

7. **No Admission of Liability.** Plaintiff acknowledges and agree that the Lawsuit is being settled by the NJIIF on behalf of Defendants for purposes of economic expediency and

that in settling this matter, no admission of liability is being made by the NJIIF, or Defendants and no such admission shall be construed hereby.

8. **Tax Implication.** NJIIF makes no representations as to the tax consequences or liability arising from any payment made under this Agreement. Moreover, any tax consequences and/or liability arising from payment to Plaintiff in accordance with this Agreement shall be Plaintiff's sole responsibility and obligation, and that neither the NJIIF, Union City shall be held liable for any payment of any taxes or penalties on Plaintiff's behalf. Plaintiff agrees that he will pay any and all income tax that may be determined to be due in connection with the payment of the Settlement Sum. Should the Internal Revenue Service, any State or any other taxing agency or tribunal require Plaintiff to pay any taxes, fines, penalties, interest or any other cost related to taxes on behalf of Plaintiff with regard to the payment of the Settlement Sum, Plaintiff agrees to defend, indemnify and reimburse the NJIIF, their agents, servants or representatives for any taxes they are required to pay as a result of Plaintiff's failure to do so.

9. **Liens.** Plaintiff hereby represents that no liens, including but not limited to any Medicare liens, exist against the proceeds of this settlement, and that if any liens do exist, they will be paid in full, compromised or satisfied and released by Plaintiff. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien, Plaintiff agrees that he will pay that lien in full. This representation and covenant are intended to include all liens, including, but not limited to, attorneys' liens, medical provider liens, Medicare and Medicaid liens, workers' compensation liens, ERISA liens, all statutory or common law liens, and judgment liens. Plaintiff agrees to indemnify and hold the Releasees harmless in connection with any claim made against Plaintiff by reason of liens against or tax obligations associated with the proceeds of this settlement. In the event a claim is hereafter made against any of the Releasees, including but not limited to the NJIIF, by anyone seeking payment of any liens,

Plaintiff will indemnify and hold the Releasees, including the NJIIF, harmless for any money spent in paying any such liens and/or defending against such a claim, including, but not limited to, attorneys' fees, costs of suit, and interest.

10. **Indemnification.** In the event Plaintiff shall recover any monies from any person who thereafter seeks indemnification from any of the Releasees, arising from the claims, embodied in the Lawsuit, Plaintiff shall indemnify and hold the Releasees harmless for any money spent in defending against these claims, including, but not limited to, attorneys' fees, costs of suit, judgment or settlement.

11. **Non-disclosure Agreement.** For \$1.00 in hand and other good and valuable consideration, Plaintiff and his attorney agree and covenant to keep the terms of this Settlement Agreement and Release, and the negotiations leading thereto, confidential and not to disclose same to any person, except to their lawyer, accountant or pursuant to a Court Order or in order to comply with any Federal, State or local government statute, or rule. Disclosure made pursuant to a court order, however, shall be made only after furnishing the NJIIF with notice of the demand or order requiring such disclosure within forty-eight (48) hours if its receipt of said demand or order. Further, as set forth above in this Paragraph 11, Plaintiff, his attorney, or anyone speaking on Plaintiff's behalf, shall not originate, or make any written or oral statement, news release or other announcement or publication to any third party, relating to this Agreement, the claims that form the basis for the Lawsuit, or the negotiation or resolution of the Lawsuit. If, hereinafter, either Plaintiff or his attorney is asked about the Lawsuit or the settlement thereof or the actions, inactions, or conduct of Defendants by any person, or settlement hereof, Plaintiff and his attorney shall state only that the Lawsuit was settled to their satisfaction. In the event Plaintiff breaches the foregoing confidentiality provision of this Agreement, he shall be liable for the NJIIF's enforcement of its terms, including all legal fees

and court costs and shall reimburse to the NJIIF 50% of the Settlement Sum as liquidated damages. Releasor agrees that he shall engage in no act and shall make or publish no statement which is intended, or reasonably may be expected to disparage or harm the reputation, business, prospects, or operations of Releasees.

12. **Related Claims** Plaintiff promises and agrees that he will not file, re-file, appeal, initiate, or cause to be filed, re-filed or initiated any claim, suit, claim or other proceeding based upon, arising out of, or related to any claims and causes of action subsumed within the Release; nor shall he solicit, encourage, participate, assist or cooperate in any claim against any of the Releasees, whether before a court or administrative agency, unless required to do so by law. If a court order or lawful subpoena is served on Plaintiff requiring that he testify in any matter in which Releasees have an interest, he agrees to immediately notify and provide a copy of the court order or subpoena to the NJIIF's General Counsel c/o Eric J. Nemeth, P.C. 55 Madison Avenue, Suite 400, Morristown, New Jersey, 07960, phone (973-539-2122), fax (973)-539-4677 and to the City of Union City. Plaintiff shall provide the NJIIF's General Counsel and the City with a copy of the court order or subpoena as soon as possible and reasonably in advance of his/her appearance and/or compliance with the court order or subpoena. Plaintiff agrees to cooperate with and assist the City and NJIIF in connection with any lawful efforts to quash or limit the scope of the subpoena or court order.

13. **Modification**. This Agreement may not be modified except by an agreement in writing executed by all Parties hereto.

14. **Law**. This Agreement shall be governed in all respects, including validity, interpretation, and effect by the laws of the State of New Jersey without giving effect to the conflicts of laws principle thereof.

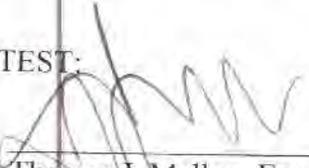
15. **Date of Agreement.** This Agreement shall be dated as of the date it is last signed by any of the Parties to the Agreement, which date shall be incorporated on the face page.

I hereby sign this Agreement in order to confirm my consent to the terms set forth above, including but not limited to my agreement to the dismissal of the Lawsuit and all claims against Defendants, with prejudice, it being my intention to release and discharge any and all claims I have or may have which are referenced in the Agreement.

By: 
FRANKLIN GARCIA

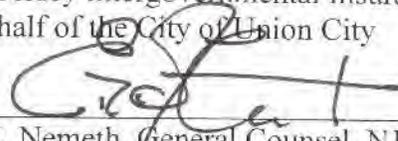
DATED: 9/30/13

ATTEST:

By: 
Thomas J. Mallon, Esq.
Attorneys for plaintiff, only as to Paragraphs 9 and 11

DATED: 9/30/13

The New Jersey Intergovernmental Insurance Fund on
behalf of the City of Union City

By: 
Eric J. Nemeth, General Counsel, NJIF

DATED: 10/21/13