

MALLON & TRANGER, ESQS.
86 Court Street
Freehold, NJ 07728
(732) 780-0230
Attorney for Plaintiff, Ralph Mazza

RALPH MAZZA,

Plaintiff(s),

vs.

CITY OF LONG BRANCH;
ALPHONSE MUOLO, Long Branch
Director of Public Safety
ALFRED K. CISTARO, individually and
in his capacity as a Long Branch Police
Officer; **JOSEPH KENNEDY,** individually
and in his capacity as a Long Branch Police
Officer; **JOHN DOES 1-5,** Long Branch
Police Officers; **JOHN DOES 6-10,**
Long Branch Police Officers in Supervisory
Capacities;

Defendant(s).

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
TRENTON

Civil Action No.: -

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 Ralph Mazza residing at 2 Maple Court, Oceanport, New Jersey, County of Monmouth, 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 Alfred Cistaro, Joseph Kennedy and/or John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the Long Branch Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of the City of Long Branch and were acting under the color of law.

4. Defendants Alphonse Muolo, City of Long Branch Director of Public Safety, and/or John Does 6-10 were at all times mentioned herein duly appointed and acting police officers of the City of Long Branch Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of the City of Long Branch Police Department and were acting under the color of law.

5. Defendants Alphonse Muolo and/or John Does 6-10 were acting in supervisory capacities over Defendants Alfred Cistaro, Joseph Kennedy and/or John Does 1-5 and responsible by law for the training, supervision and conduct of Defendants Cistaro, Kennedy and/or John Does 1-5.

6. Defendant City of Long Branch 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 City of Long Branch employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Alfred Cistaro, Joseph Kennedy and/or John Does 1-10.

8. All Defendants are named in their individual and official capacities.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

1. On 5/25/12 at 11:10 pm, Angelica Hatfield called the Long Branch Police Department to report unwanted guests at her residence, located at 519 Monmouth Place, Long Branch, New Jersey.
2. Defendants Cistaro, Kennedy and/or John Does 1-5 issued Ms. Hatfield a noise ordinance summons.
3. Plaintiff is Ms. Hatfield's brother, and was present when Defendants issued Ms. Hatfield the summons.
4. Plaintiff was assaulted without justification and excessive force by Defendants Cistaro, Kennedy and/or John Does 1-5 as he spoke with his sister about the summons issued to her by Defendants.
5. Plaintiff was transported to Long Branch Police Department where he was processed and charged with Disorderly Conduct, (2C:33-2) and Obstruction of the Administration of Law (2C:29-1A).
6. Plaintiff sustained bodily injuries as a result of Defendant's use of excessive and unjustified force.
7. The criminal charges brought against Plaintiff in Long Branch Municipal Court have all been resolved.

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, malicious and/or reckless physical abuse of Plaintiff by Defendants Cistaro, Kennedy 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, outrageous, unlawful and/or reckless conduct of Defendants as set forth above, Plaintiff suffered bodily injuries, damages in the form of lost wages and medical expenses 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 caused to suffer injuries, extreme emotional distress and a deprivation of his constitutional rights as described above.

WHEREFORE, Plaintiff Ralph Mazza demands judgment against Defendants Cistaro, Kennedy 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 Cistaro, Kennedy and/or John Does 1-5 were Long Branch Police Officers and at all times mentioned herein were acting under color of state law.
3. Defendants Cistaro, Kennedy and/or John Does 1-5 had a duty to intervene in the unjustified assault of Plaintiff by Defendants Cistaro, Kennedy and/or John Does 1-5.
4. The unjustified assault of Plaintiff by Defendants Cistaro, Kennedy 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 Cistaro, Kennedy and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified assault of Plaintiff by Defendants Cistaro, Kennedy and/or John Does

1-5 and failed to intervene.

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

WHEREFORE, Plaintiff Ralph Mazza demands judgment against Defendants Cistaro, Kennedy 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 THREE**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants City of Long Branch; Alphonse Muolo, 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 the City of Long Branch 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 Muolo 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 Ralph Mazza was assaulted.
3. At all times mentioned herein, Defendants Cistaro; Kennedy; and/or John Does 1- 5, as police officers, agents, servants and/or employees of Defendant City of Long Branch, were acting under the direction and control of Defendants City of Long Branch Police Department; Muolo, and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the City of Long Branch Police Department.

4. Acting under color of law pursuant to official policy, practice, or custom, Defendants City of Long Branch; Muolo, 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 Cistaro, Kennedy and/or John Does 1-5 in their duties to refrain from: (1) unlawfully and maliciously assaulting, arresting and harassing citizens; (2) intentionally, recklessly and/or negligently misrepresenting the facts of arrests and/or other police-citizen encounters; (3) falsifying police and/or other official records; (4) withholding and/or mishandling evidence; (5) making false arrests, and/or (6) using unreasonable and excessive force.

5. Acting under color of law pursuant to official policy, practice, or custom, Defendants City of Long Branch, Muolo 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 City of Long Branch, Muolo, and/or John Does 6-10 failed to professionally, objectively and/or expeditiously investigate instances and patterns of police misconduct in violation of the spirit and substance of the New Jersey Attorney General's Guidelines for Internal Affairs Policy and Procedures.

6. Defendants Muolo, 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 City of Long Branch Police Department policies, practices, customs and/or guidelines and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines, and/or failed to discipline officers for such violations.

7. Defendants City of Long Branch; Muolo; and/or John Does 6- 10 were aware of numerous similar police citizen encounters involving, and/or Internal Affairs complaints filed against,

Defendants Cistaro, Kennedy, John Does 1-10, and/or other City of Long Branch 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.

8. Despite their awareness, Defendants City of Long Branch, Muolo and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Cistaro; Kennedy; John Does 1-10, and/or other City of Long Branch Police Officers.

9. Defendants City of Long Branch; Muolo, and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants Cistaro; Kennedy and/or John Does 1-10 on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.

10. Defendants City of Long Branch, Muolo and/or John Does 6-10 had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.

11. Defendants City of Long Branch, Muolo and/or John Does 6-10, directly or indirectly, under color of state law, approved and/or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Defendants Cistaro; Kennedy; and/or John Does 1-10 heretofore described.

12. As a direct and proximate result of the acts of Defendants City of Long Branch; Muolo, and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury, medical expenses, lost wages, 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 Ralph Mazza demands judgment against Defendants City of Long Branch, Alphonse Muolo 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 FOUR

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 City of Long Branch; Alphonse Muolo; Alred K. Cistaro; Joseph Kennedy, and John Does 1-10 from engaging in, encouraging, teaching, promoting or training City of Long Branch 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 City of Long Branch 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 City of Long Branch to provide regular and consistent training sessions to City of Long Branch Police Officers.

- d. An order compelling Defendant City of Long Branch to implement a system whereby prompt, appropriate action is taken against any City of Long Branch 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 Cistaro, Kennedy, 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 City of Long Branch from employing Defendants Cistaro, Kennedy and/or John Does 1-5 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 Cistaro, Kennedy and/or John Does 1-5 from any patrol duty, and enjoining Defendants Cistaro, Kennedy and/or John Does 1-5 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 Ralph Mazza demands judgment against Defendants City of Long Branch; Alphonse Muolo; Alfred K. Cistaro; Joseph Kennedy, 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 FIVE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force used and failure to intervene by Defendants Cistaro, Kennedy and/or John Does 1-5, set forth at length above, deprived plaintiff of his substantive due process right to be free from unlawful seizure of his person and his fundamental right to liberty secured by the Constitution of the United States and the Constitution of the State of New Jersey, in violation of N.J.S.A. 10:6-1, et seq. ("The New Jersey Civil Rights Act")
3. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
4. As a direct and proximate result of the aforesaid acts of Defendants Cistaro, Kennedy and/or John Does 1-5, Plaintiff suffered physical injury, medical expenses, lost wages, and will

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

WHEREFORE, Plaintiff Ralph Mazza demands judgment against Defendants Alfred K. Cistaro; Joseph Kennedy and John Does 1-5, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

ASSAULT AND BATTERY
COUNT SIX

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Cistaro, Kennedy and/or John Does 1-5 committed an assault and battery on Plaintiff by physically injuring him without justification and/or by putting him in reasonable apprehension of serious and imminent bodily harm.
3. The assault and battery committed by Defendants was contrary to the laws of the State of New Jersey, and Plaintiff invokes the supplemental jurisdiction of this court to bear and determine this claim.
4. As a result of the intentional, reckless, negligent and/or objectively unreasonable assault and battery committed in the course of their official duties as police officers and/or agents, servants and/or employees of the City of Long Branch, and/or in their personal capacities, as specifically alleged above, Plaintiff sustained diverse substantial and permanent physical and emotional injuries; medical expenses; lost wages; pain and suffering, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Ralph Mazza demands judgment against Defendants Alfred K. Cistaro; Joseph Kennedy; The City of Long Branch, and/or John Does 1-5, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
COUNT SEVEN

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

WHEREFORE, Plaintiff Ralph Mazza demands judgment against Defendants Cistaro, Kennedy 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.

NEGLIGENCE
COUNT EIGHT

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Cistaro, Kennedy 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 Cistaro, Kennedy and/or John Does 1-5 breached that duty.

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

5. As a direct and proximate result of their breach of duty to plaintiff, Plaintiff was caused to suffer significant and permanent physical and emotional injury; medical expenses; lost wages; 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 Ralph Mazza demands judgment against Defendants Alfred K. Cistaro; Joseph Kennedy and John Does 1-5, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Please be advised that Thomas J. Mallon, Esquire is hereby designated trial counsel in the above captioned matter.

Dated: July 19, 2012

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

MARSHALL, DENNEHEY, WARNER,
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ATTORNEYS FOR DEFENDANT - LONG BRANCH; ALPHONSE MUOLO, ALFRED K. CISTARO
and JOSEPH KENNEDY

**UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY**

RALPH MAZZA,

Plaintiff

v.

CITY OF LONG BRANCH ;
ALPHONSE MUOLO, Long Branch Director
of Public Safety;
ALFRED K. CISTARO, individually and in his
capacity as a Long Branch Police Officer;
JOSEPH KENNEDY, individually and in his
capacity as a Long Branch Police Officer;
JOHN DOES 1-5, Long Branch Police
Officers; JOHN DOES 6-10, Long Branch
Police Officer s in Supervisory Capacities.

Defendants

CASE NO.: 3:12-cv-04535-JAP-DEA

Civil Action

SETTLEMENT AGREEMENT AND RELEASE

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereafter "agreement") is
made between Ralph Mazza ("plaintiff") and Alphonse Mulolo, Alfred Cistaro, Joseph Kennedy, the City
of Long Branch and its agents, servants, and employees ("defendants").

RECITALS

WHEREAS, the plaintiff filed suit against the defendants in the Federal District Court for the District of New Jersey under docket 3:12-cv-04535-JAP-DEA (the "lawsuit") and

WHEREAS, the parties have reached an agreement to fully and finally settle all of the plaintiff's claims, including those asserted and not asserted in the lawsuit, against the defendants and all other actions and claims, which the plaintiff has, had or may have against the defendants up to the date of this agreement.

NOW IN CONSIDERATION, of the payment to the plaintiff, provided for herein, and other good and valuable consideration and the mutual promises and covenants contained herein, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Dismissal of Parties. Plaintiff agrees to dismiss this litigation with prejudice and any and all charges, complaints, claims for attorney's fees, applications and appeals relating to the matter filed in the Federal District Court for the District of New Jersey under docket 3:12-cv-04535-JAP-DEA . Plaintiff acknowledges that the settlement of this matter is contingent upon foregoing the continuation of this, or any, litigation of any and all pending claims of any kind regarding plaintiff's claims against the defendants, or any related entity, which arise out of events which have transpired before the lawsuit and including the date of the executions of this Agreement.

A. In connection with this provision, as a material term of the settlement herein, plaintiff agrees to take whatever steps that shall be necessary in order to have the claims against the defendants dismissed with prejudice including executing and filing with the Court the Stipulations of Dismissal with Prejudice attached hereto as Exhibit A.

B. In connection with this provision, and as a material term of the settlement herein, plaintiff agrees that the Waiver of Attorneys Fees attached hereto as **Exhibit B** will be executed by the plaintiff and his counsel.

2. **Payment.** Following receipt by defense counsel of this agreement, duly executed by the plaintiff and his attorney, payment shall be made to the plaintiff in the amount of \$175,000.00, such payment to be by check made payable as follows: *immediately*

3. **Taxes.** The defendants make no representations regarding the Federal or State tax consequences of any of the payments referred to herein and shall not be responsible for any tax liability, interest or penalty incurred by the plaintiff, which in any way arises out of or is related to said payment. The plaintiff shall pay the Federal or State taxes, if any, which are required by law to be paid by the plaintiff with respect to this settlement.

4. **Release.** It is hereby understood and agreed that plaintiff, for and in consideration of the payment of monies, release of claims, and/or other consideration set forth herein, does hereby irrevocably and unconditionally release and forever discharge for himself, his heirs, executors, administrators, representatives, and assigns, defendants, any related entities, and any and all of their predecessors, successors, assigns, agents, employees, members and representatives and each of their present and former directors, officers, members, executives, employees, attorneys, agents, and all persons acting by, through, under or in concert with them, and all of their executors, administrators, successors, assigns, agents and representatives, of and from all manner of actions(s), cause(s) of action, and suit(s), including but not limited to, any claims, debts, sums of money, accounts, reckonings, bonds, bills, claims for attorney's fees, interest, expenses and costs, and demands of any nature whatsoever, in law or in equity, civil or criminal, vested or contingent, which he ever had, now has or assert, or which he or his

current or former spouse, children, relatives, heirs, executors, representatives, assigns or administrators hereafter can, shall or may have or may assert, for, upon or by reason of any matter, cause or thing whatsoever to the date hereof, it being the intention herein of plaintiff to release defendants from any and all claims of any and every nature, including attorney's fees, up to the date of this Agreement, unrestricted in any way by the nature of the claim, including, though not by way of limitations, all matters which were asserted or could have been asserted in the lawsuit.

5. **No Additional Claims.** The plaintiff covenants and promises that he will not hereafter file or cause to be filed on his behalf any charge, complaint, legal or administrative action of any nature before any court or administrative agency to assert any claim against the defendants, arising out of the claims asserted in the lawsuit, except as may be necessary to enforce this agreement.

6. **No Admissions.** This agreement does not constitute an admission by the defendants of any wrongful action or violation of any Federal or State Statute, policy or procedure, or common law rights, or of any other possible or claimed violation of law or rights. The defendants specifically deny any wrongful action or conduct.

7. **Non-Disparagement.** The parties promise they will not defame or disparage each other of their employees, servants and agents.

8. **No Assignment.** The plaintiff represents that he has not assigned to any third party any claim the plaintiff has, may have or believes he may have against any of the defendants.

9. **Binding on the Parties.** This agreement shall be binding upon and inure to the benefit of the parties and any of their respective heirs, legal or personal representatives, employees, officers, directors, successors and assigns.

10. **Binding Law.** This agreement shall be construed in accordance with the laws of the State of New Jersey.

11. **Authorization to Execute.** The parties' represent that they are fully authorized to execute this agreement and that all formalities attendant to the execution of this agreement have been satisfied.

12. **Voluntary Execution.** The parties acknowledge that they have carefully read and fully understand all of the terms of this agreement, including the general release contained herein, that the parties have had a reasonable amount of time to consider the terms of the agreement, and that they enter into this agreement voluntarily and with the advice of counsel.

13. **No Third-Party Beneficiaries.** This Agreement is intended to confer rights and benefits only on the Parties. Nothing in this Agreement is intended to give nor shall it give to anyone who is not a Party to this Agreement.

14. **Entire Agreement.** The terms and conditions contained herein constitute the entire understanding and agreement among the parties with respect to the settlement of the lawsuit. The Parties acknowledge that in executing this document, they have not relied upon any statement, promise or representation, oral or written, not set forth herein. This Agreement, contains the entire agreement between the Parties as to the settlement of their disputes. No amendment, modification or addendum to this Agreement shall be effective unless in writing and dated subsequent to the date hereof and executed by the individuals and the duly authorized officers of the respective corporate Parties. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this Paragraph and this shall be deemed an essential term of the Agreement.

15. **Severability.** Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability or the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this Agreement.

16. **Notices.** All Notices and other communications required or permitted to be given under this Agreement shall be in writing and delivery shall be deemed to have been made (i) three (3) business days following the date when such notice is deposited in first-class U.S. Mail, postage prepaid, and simultaneously sent by Certified U.S. Mail, postage prepaid, return receipt requested; or (ii) the business day following the date when such notice is deposited with any nationally-recognized overnight courier service to the Party and his/her counsel.

17. **Inadmissibility of Agreement.** This Agreement has been entered into in reliance upon the provisions of Rule 408 of the Federal Rules of Evidence, which precludes the introduction of evidence regarding settlement negotiations in any legal proceeding. Evidence relating to the negotiation, terms, or facts of this Agreement shall not be admissible by any Party in any legal proceeding except to enforce the terms of this Agreement.

18. **Captions.** Any captions to paragraphs or subparagraphs of this Agreement are provided solely for the convenience of the parties. They do not constitute and shall not be construed to constitute part of this Agreement and shall not be used as an aid in the interpretation of the Agreement or the contracting intent of the Parties.

19. **Counterparts.** The parties may execute this Agreement in separate counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

20. **Further Documents.** The Parties agree to execute and deliver any and all further documents which may be required to effectuate this Agreement.

21. **Medicare Information** Pursuant to Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, The Center for Medicare and Medicaid Services must be provided the Plaintiff's full address, Social Security Number (or Plaintiff's refusal to provide their Social Security Number and

the reasons therefore), date of birth, gender, and, if available, their Medicare Health Insurance Claim Number (HICN) (collectively, "Medicare Information"). The Medicare Information shall be provided to counsel for the defendant herein by counsel for the plaintiff, and such information shall be held in strict confidence by counsel and shall be provided only to The Center for Medicare and Medicaid Services and the Parties' insurers. Provision of this information is a condition of this settlement.

a. **Liens – Indemnity and Hold Harmless:** It is expressly understood and agreed, the plaintiff further covenants and agrees that any and all Medicare, Social Security, hospital, medical insurance coverage subrogation claims and/or any and all other type of liens or interest relating to the claims asserted by the plaintiff, that is and/or could be claimed by any person and/or entity, will be fully paid, satisfied and released from the settlement proceeds paid herein, in trust, unless and until such time as said liens and/or claims have been fully paid, satisfied or released. In this regard, plaintiff agrees to indemnify and hold harmless the defendants, their insurance carriers, their attorneys and all others in privity with them, from any claim by, through and/or under plaintiff including, but not limited to, any direct claim by Medicare and/or Social Security for reimbursement of any funds paid by them relating to the claims asserted by the plaintiff.

b. **Medicare Set Aside:** It is further expressly understood and agreed, to the extent applicable, plaintiff covenants that plaintiff will set aside funds necessary in any approved Medicare Set Aside Account, to pay for any anticipated future medical and/or health care needs of the plaintiff, for any injury and/or condition that requires treatment that arises from the claims asserted by the plaintiff. In the alternative, plaintiff shall covenant that she does not presently anticipate that she will require medical and/or health care treatment for the injuries and/or conditions related and/or arising from the claims asserted by the plaintiff the lawsuit. Further, should funds not be placed in an approved Medicare Set Aside Account for plaintiff, and care and

advised to consult with an attorney prior to executing this Agreement, and has had an opportunity to consult with an attorney and has consulted with an attorney.

Plaintiff further acknowledges that he will receive the payment described herein in paragraph 5 only upon the receipt by defendant of a signed original of this Agreement and signed originals of the Releases and Stipulations required hereunder.

Plaintiff acknowledges that the only consideration he has received in connection with this Agreement is that set forth herein. No other promise, inducement, threat, agreement, or understanding of any kind or description has been made with plaintiff in connection with his employment, this litigation or otherwise to cause him to enter into this Agreement.

EACH PARTY HERETO ACKNOWLEDGES RECEIPT OF A TRUE EXECUTED COPY OF THIS AGREEMENT.

Sworn and subscribed to before me
On this 30 day of JULY, 2013

Thomas J. Mallon Atty at law

Ralph J. Mazza
Ralph Mazza- Plaintiff

Sworn and subscribed to before me
On this _____ day of _____, 2014

-----As Authorized Representative
of The City of Long Branch

Sworn and subscribed to before me
On this _____ day of _____, 2014

Alphonse Muolo