

THOMAS J. MALLON, ESQ.
Attorney-at-Law
86 Court Street
Freehold, NJ 07728
(732) 780-0230
Attorney for Plaintiff Joshua Agosto

JOSHUA AGOSTO;

Plaintiff,

vs.

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
NEWARK

Civil Action No.: - (-)

DAMIEN JOSEPH;
and **JOHN DOES 1-5,**
members of the New Jersey
State Police;

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 Joshua Agosto, 232 Garfield Avenue, Jersey City, New Jersey, 07305, is and was, at all times herein relevant, a citizen of the United States.

3. Defendants Damien Joseph and John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the New Jersey State Police and at all times herein were acting in such a capacity as the agents, servants and/or employees of the New Jersey State

Police and were acting under the color of law.

4. Suit is brought against all individually named Defendants in their personal and official capacities.

FACTUAL ALLEGATIONS

1. On 6/29/12, Plaintiff Joshua Agosto was arrested and charged with 39:4-50 Operating Under Influence of Liquor or Drugs; 39:4-96 Reckless Driving; 39:4-50.2 Consent to Take Samples of Breath; 19:9-1.17 Careless Driving; 39:4-88B Unsafe Lane Change; 39:4-56 Delaying Traffic; 39:3-75 Safety Glass Requirement; and 39:3-33 Improper Display/Unclear Plates.

2. At the Police Station Plaintiff was assaulted without justification and with excessive force by Defendants Damien Joseph and/or John Does 1-5.

3. Specifically, Defendant Damien Joseph verbally assaulted and choked Plaintiff.

4. On November 29, 2012, Plaintiff plead guilty to Operating Under the Influence.

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

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 Damien Joseph and/or John Does 1-5 committed under color of state law, Plaintiff sustained bodily harm and was deprived of his rights 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 Joshua Agosto demands judgment against Defendants Damien Joseph 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.

SUPPLEMENTAL STATE CLAIMS

VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT (NJCR)
COUNT TWO

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force used by Defendants Damien Joseph 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 Damien Joseph 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 Joshua Agosto demands judgment against Defendants

Damien Joseph 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 THREE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Damien Joseph 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 hear 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 State of New Jersey, and/or in their personal capacities, 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 Joshua Agosto demands judgment against Defendants Damien Joseph 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 FOUR

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The actions of Defendants Damien Joseph and/or John Does 1-5 in their use of excessive force upon Plaintiff and their assault and battery of Plaintiff 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, 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 Joshua Agosto demands judgment against Defendants Damien Joseph 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: February 1, 2013

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

RELEASE

This Release, dated as of September 10, 2014, is given

BY the Releasor, JOSHUA AGOSTO, referred to as "I" or the "Releasor",

TO the Releasee TROOPER DAMIEN JOSEPH (Badge #6854), individually and in his official capacity as a Trooper in the New Jersey State Police, and NEW JERSEY TURNPIKE AUTHORITY, as indemnifier of Trooper Damien Joseph, together referred to as "You", "Your" or "Releasee."

1. Release. In consideration of the payment set forth in Paragraph 2 below, I hereby completely release and forever discharge Releasee and Releasee's past, present and future, attorneys, insurers, agents, servants, representatives, employees, affiliates, partners, predecessors and successors in interest, assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and whether for compensatory or punitive damages, which the Releasor now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of a certain accident which occurred on or about June 29, 2012 and for any other claim that was or could have been raised in the action commenced by Releasor in United States District Court, District of New Jersey, bearing civil action number 2:13-cv-00667 (the "Action") (and all related pleadings), including, without limitation, any and all known or unknown claims for bodily and personal injuries; medical expenses; loss of wages; salary, income and/or earning capacity; aggravation and/or exacerbation of any pre-existing personal injuries and/or medical conditions; permanent injuries; loss of services, society or consortium; disability; permanent loss of bodily function; property damage; or any future wrongful death claim of Releasor's representatives, and all other claims whatsoever which have resulted or may result from the alleged acts or omissions of the Releasee (collectively, the "Claims").

Releasor hereby acknowledges and agrees that the release set forth in this Paragraph 1 is a general release and Releasor further expressly waives and assumes the risk of any and all Claims which exist as of this date but of which the Releasor does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Releasor's decision to enter into this Release. The Releasor further agrees that Releasor has accepted payment of the sum specified in Paragraph 2 below as a complete compromise of matters involving disputed issues of law and fact, and Releasor assumes the risk that the facts or law may be otherwise than Releasor believes. This Release shall be a fully binding and complete settlement between the Releasor and Releasee (each, a "Party" and together, the "Parties"), their assigns and successors.

It is expressly understood and agreed that the acceptance of the payment set forth below in Paragraph 2 is in full accord, satisfaction and compromise of any and all Claims and that the payment is not an admission of liability, but made for the purpose of terminating any dispute and litigation between the Parties.

2. Payment. In consideration of the release set forth in Paragraph 1 above, the New Jersey Turnpike Authority, on behalf of Trooper Damien Joseph, hereby agrees to issue an up-front, one-time, payment of Twenty-Five Thousand (\$25,000.00) Dollars payable to Joshua Agosto and the Law Office of Mallon and Tranger, counsel for Plaintiff.

All sums set forth herein constitute damages on account of physical injuries or physical sickness, within the meaning of § 104 (a)(2) of the Internal Revenue Code of 1986, as amended.

As further set forth in Paragraph 4 below, it is understood and agreed that Releasor has no notice or knowledge of any outstanding liens and the Releasor represents and warrants that there are no outstanding liens. In the event of the existence of any outstanding liens, it is understood and agreed that Releasor shall be responsible to satisfy any and all such liens and Releasor and Mallon & Tranger shall indemnify and hold the Releasee harmless from any and all claims made by lien holders, whether such claims have been made, or are in the future made.

As further set forth in Paragraph 4 below, Releasor further represents and warrants that no child support judgment exists against him. Releasor further represents and warrants that a child support judgment search has been conducted as required by N.J.S.A. 2A:17-56.23b, that said search has found no child support judgment(s) outstanding against Releasor, and that the results of said search are being provided to Releasees.

3. Who is bound. I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for Your benefit and all who succeed to Your rights and responsibilities, such as Your heirs or Your estate.

4. Liens. I represent and warrant that I have not received benefits under, enrolled in or otherwise participated in any federal or state government-sponsored or funded health program, including, but not limited to, Medicare, Medicaid, any other healthcare or health insurance program for present or former members of the armed services or their relatives, workers' compensation, charity care, social security, or any other form of public assistance at any time. I further represent and warrant that neither my attorney nor I have received any written or oral communication of any kind from any person or entity that requested, demanded or implied that it is entitled to payment of any kind for any reason in any amount from the settlement proceeds of this case. I represent that there are no liens or obligations of any kind whatsoever, whether valid or invalid, whether statutory or common law, whether public or private, whether recorded or unrecorded, that were, could have been or could in the future be asserted by any private party or governmental body or any other person or entity as being payable out of the settlement proceeds in this case, including, but not limited to, claims for compensation; financial assistance; past, present or future medical care, treatment or testing; child support; social security benefits; taxes; loans; or the payment for any benefits, goods or services provided or paid to me, or paid to any third party on my behalf, or paid by any third party for my benefit.

I represent that if any such liens or obligations become known, I will pay those liens or obligations in full. I acknowledge that the full payment of those liens and obligations are solely my responsibility and in no way is the responsibility of the Releasee.

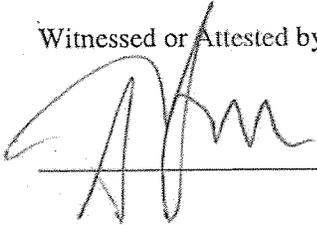
I acknowledge that You rely on the representations set forth in this section as consideration of making the settlement payment. I shall indemnify, defend and hold harmless You and any of Your representatives, agents, employees, attorneys or insurance carriers for any cost and expense of any kind (including legal fees) and for the payment of any claim and/or for damages (including punitive damages) resulting from a claim or demand by any person or entity of a lien or other claim on the proceeds of this settlement, whether valid or not, including, but not limited to, any liens or claims that exist or arise under any federal, state or municipal statute, ordinance or regulation, including, but not limited to, any claim, liability or penalty under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2), et seq., or under any contract, or at common law.

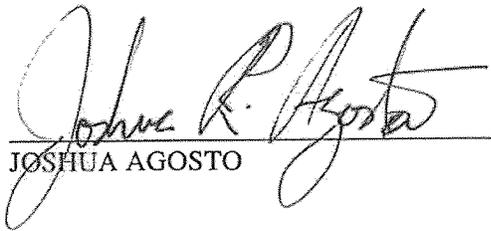
5. Attorneys' Fees. Each Party shall bear all attorneys' fees and costs arising from the actions of its own counsel in connection with the Action, this Release, and all other matters and documents referred to herein including, but not limited to, the preparation and filing of all documents necessary, customary and/or appropriate to accomplish the dismissal of the Action with prejudice and without costs, and all related matters.

6. Delivery of Dismissal with Prejudice. Concurrently with the execution of this Release, Mallon & Tranger, counsel for the Releasor, shall deliver to counsel for the Releasee all appropriate documents necessary to accomplish the dismissal and discontinuance of the Action with prejudice and without costs. Releasor has authorized his attorneys to execute these documents on his behalf and hereby authorizes counsel for the Releasee to file said documents with the Court and enter said dismissal as a matter of record.

7. Signature. I understand and agree to the terms of this Release.

Witnessed or Attested by:





JOSHUA AGOSTO

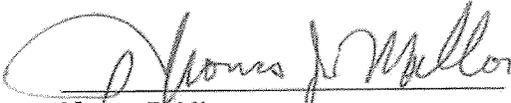
[Notary page follows]

STATE OF NJ)
COUNTY OF Monmouth

ss:

I CERTIFY that on this 10th day of SEPTEMBER 2014, before me, the subscriber, a Notary Public of the State of NEW JERSEY, personally appeared JOSHUA AGOSTO who acknowledged under oath, to my satisfaction, that he is the individual named in the attached document, and that by his signature on the attached document, the individual executed the attached document.

Signed and sworn to before me
on 9/10/, 2014


Notary Public
atty at law NJ