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CRAIG A. DEVITO, PROVI I. DEVITO,	)	SUPERIOR COURT OF NEW JERSEY
GABRIELA K. DEVITO, DARYEN F. DEVITO	)	ESSEX COUNTY: LAW DIVISION
and JEREMY M. SCARBROUGH,	)	
Plaintiffs,	)	Docket No.
v.	)	
	)	CIVIL ACTION
BOROUGH OF CALDWELL, SGT. MICHAEL	)	
PELLEGRINO, POLICE CHIEF JAMES H.	)	
BONGIORNO and JOHN DOES 1-5,	)	COMPLAINT
Defendants.	)	

PLAINTIFFS, each residing at 11 Gould Place, Caldwell, in Essex County New Jersey by way of Complaint against the defendants, the Borough of Caldwell, Sgt. Michael Pellegrino; Police Chief James H. Bongiorno; and John Does 1-5, fictitious names of unidentified parties, state as follows:

**FACTS**

1. Craig A. DeVito lives in a two family home at 11 Gould Place with his wife, Provi I. DeVito; daughters Daryen F. DeVito and Gabriela K. DeVito; Gabriela's husband, Jeremy M. Scarbrough; and his two grandsons, Joseph Colon, Jr. and Joshua Scarbrough.
2. Plaintiff Daryen DeVito has a three year old son named Joseph Colon, Jr. (herein J.J.), the father of whom is Joseph Colon Sr. and whom resides in Toms River, New Jersey. Due to a custody dispute between Daryen and Mr. Colon, on at least five occasions from mid-October, 2012 to mid-November 2012, Mr. Colon contacted the Caldwell Police Department to request a so-called "welfare check" on J.J. On each occasion a Caldwell police officer was

dispatched to the DeVito residence at 11 Gould Place and demanded entry to the home to see J.J. and assess his living environment. On each of these occasions, Craig DeVito consented to these searches albeit with increasing reluctance. These police visits caused anxiety and distress and disrupted the otherwise peaceful home life of the DeVito family.

3. On November 16, 2012, Craig DeVito's attorney, the undersigned, called Caldwell Police James H. Bongiorno and told him that Mr. DeVito no longer consents to the search of his home and all future police visits would require a court order.

4. On or about December 13, 2012, a Caldwell police officer, identified here as the John Doe 1 named in this suit, came to the DeVito home on another "welfare check". The officer did not have a warrant. John Doe 1 entered the home without knocking or ringing the bell. No one in the home gave him consent to enter. He walked through the door and into the kitchen area to the shock and alarm of Provi DeVito. Ms. DeVito asked, "What are you doing here?" The officer responded, "We got a call saying to check on Joseph Colon because his father fears something is going on." At that point, Mr. DeVito entered the room and emphatically told the officer to leave. The officer did not immediately leave; instead called for backup. All Plaintiffs were present in the home at that time.

5. On December 17, 2012 the undersigned attorney sent a letter to Police Chief Bongiorno stating in no uncertain terms that the Caldwell Police Department and their officers do not have consent enter the DeVito home and any such future violations of his civil rights would result in Mr. DeVito taking legal action.

6. On May 12, 2013, the DeVito family, including all Plaintiffs named in this action, was at home at 11 Gould Place celebrating Mother's Day. Some time in late morning, Sgt. Michael Pellegrino arrived at the house stating that he was there for a "welfare check" on J.J.

7. Mr. DeVito met the officer at the front door and asked Sgt. Pellegrino if he had a warrant. Sgt. Pellegrino said, "I don't need one." Mr. DeVito stated, "This is my house. Explain to me what right you have to enter without a warrant." Pellegrino responded, "When I'm here, I'm in charge." Mr. DeVito then pointed to the door mat on his porch. The doormat stated in clear, block letters: "COME BACK WITH A WARRANT." Mr. Pellegrino snickered, pushed Mr. DeVito aside and entered the home.

8. Sgt. Pellegrino entered the home and living area of the house. He then entered J.J.'s room without permission and searched the area.

9. Plaintiffs have suffered as a consequence of the aforementioned violation of their civil liberties. Plaintiffs experience anxiety at the sight of local police officers. They fear the local police, have suffered loss of sleep and the sense of security in their neighborhood and their own home.

#### **COUNT ONE**

10. Plaintiff repeats and asserts the allegations contained in the prior paragraphs of the Complaint as though set forth at length herein. Sgt. Michael Pelligrino violated the civil rights of the Plaintiffs by entering their home on May 12, 2013 without consent, without a warrant and without exigent circumstances in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution of the United States causing an affront to the dignity of the Plaintiffs, psychological trauma and loss of the enjoyment of their community.

#### **COUNT TWO**

11. Plaintiffs repeat and assert the allegations contained in the prior paragraphs of the Complaint as though set forth at length herein. Caldwell Police Officer John Doe 1 violated the

civil rights of the Plaintiffs by entering their home on or about December 1, 2012<sup>3</sup> without consent, without a warrant and without exigent circumstances in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution of the United States causing an affront to the dignity of the Plaintiffs, psychological trauma and loss of the enjoyment of their community.

### **COUNT THREE**

12. Plaintiffs repeat and assert the allegations contained in the prior paragraphs of the Complaint as though set forth at length herein. On information and belief Police Chief James H. Bongiorno violated the civil rights of the Plaintiffs by either directing subordinate police officers to—or negligently failing to direct them not to—conduct illegal searches of Plaintiffs' home on dates December 13, 2012 and May 12, 2013 in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution of the United States causing an affront to the dignity of the Plaintiffs, psychological trauma and loss of the enjoyment of their community.

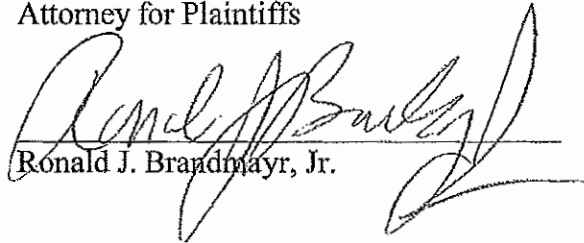
### **COUNT FOUR**

13. Plaintiffs repeat and assert the allegations contained in the prior paragraphs of the Complaint as though set forth at length herein. The Borough of Caldwell is vicariously liable for the tortious conduct of its police chief and officers, who violated the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution of the United States by directing and conducting illegal searches of Plaintiffs' home causing an affront to the dignity of the Plaintiffs, psychological trauma and loss of the enjoyment of their community.

**WHEREFORE**, Plaintiffs demand judgment in the amount of \$75,000 per each Plaintiff, plus punitive damages for willful tortious conduct, against each defendant jointly and severally, plus costs and attorney fees.

RONALD J. BRANDMAYR, JR.  
Attorney for Plaintiffs

By:

  
Ronald J. Brandmayr, Jr.

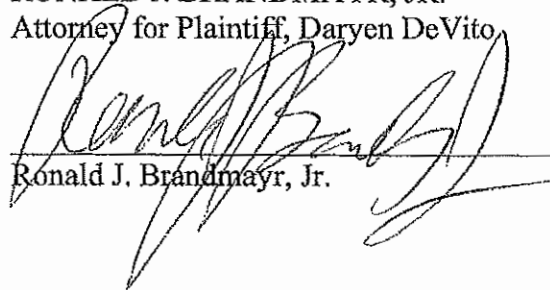
Dated: October 4, 2013

**CERTIFICATION PURSUANT TO R. 4:5-1**

The undersigned hereby certifies that the within controversy is not the subject of any other action pending in any court or arbitration proceeding, there is no other action or arbitration proceeding contemplated, and there are no other parties who should be joined in this action at this time.

RONALD J. BRANDMAYR, JR.  
Attorney for Plaintiff, Daryen DeVito

By:

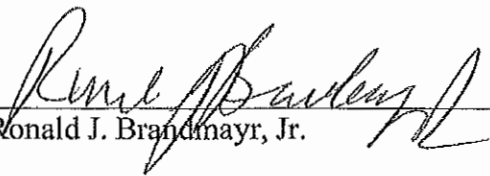
  
Ronald J. Brandmayr, Jr.

Dated: October 4, 2103

**DESIGNATION OF TRIAL COUNSEL**

Please take notice that pursuant to R. 4:25-4, Ronald J. Brandmayr, Jr. is hereby designated trial counsel.

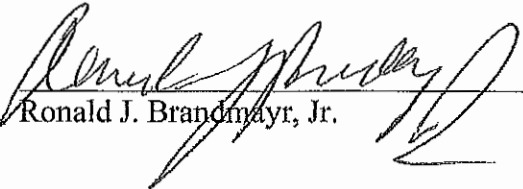
RONALD J. BRANDMAYR, JR.  
Attorney for Plaintiffs

By:   
Ronald J. Brandmayr, Jr.

Dated: October 4, 2103

**JURY DEMAND**

The plaintiffs demand trial by jury of all triable issues in this Complaint per R. 1:8-2(b) and R. 4:35-1(a).

By:   
Ronald J. Brandmayr, Jr.

Dated: October 4, 2103

GSMJIF Claim Number: X65487

GENERAL RELEASE  
(No Medicare Involvement)

**I. Consideration and Release of Claims**

For the sole consideration of Thirty Thousand Dollars (\$30,000.00), the receipt and sufficiency whereof is hereby acknowledged, the undersigned Craig A. DeVito, Provi I. DeVito, and Daryen F. DeVito, ("Releasing Parties"), intending to be legally bound, releases and forever discharges the Borough of Caldwell, and the Garden State Municipal Jersey Joint Insurance Fund, ("Insurer") and any other person, partnership, firm, corporation or other entity charged or chargeable with responsibility or liability and their heirs, executors, administrators, agents, insurers and assigns, and in case of corporations, all of its parents, subsidiaries, and affiliates, and its or their predecessor or successor corporations, and its or their former and current directors, officers, employees, agents, insurers and attorneys (collectively referred to as the "Released Parties") none of whom admit any liability to the Releasing Parties but all expressly deny any liability, from any and all debts, claims, demands, damages, actions, causes of action or suits and liabilities of any kind or nature whatsoever including any claim for attorneys fees and costs and particularly on account of all injuries, known and unknown, both to person and property, which have resulted from or may in the future develop from their contacts with members of the Borough of Caldwell Police Department between October 27, 2012 and September 25, 2013. Craig A. DeVito, Provi I. DeVito and Daryen F. DeVito as Releasing Parties understand that Sergeant Michael Pellegrino and Police Chief James Bongiorno are non-settling defendants, and have agreed to execute a Stipulation of Voluntary Dismissal With Prejudice in favor of Sergeant Michael Pellegrino and Police Chief James Bongiorno.

**II. Warranty as to Medicare Involvement**

The Releasing Party hereby understands and acknowledges that the Medicare, Medicaid and SCHIP Extension Act of 2007 (the "Extension Act") requires the reporting to designated representatives of Medicare any settlement in which all future claims are released and the injured party is either a current Medicare beneficiary or has the potential to be eligible for Medicare benefits within thirty months of the settlement. In further consideration of the settlement agreed to herein, the Releasing Party warrants and represents to the Released Parties, TPA, Insurer and their attorney(s) the following:

- Medicare has made NO CONDITIONAL PAYMENTS for any medical expense or prescription expense on my behalf related to the Occurrence.
- I am not, nor have I ever been a Medicare beneficiary.
- I am not currently receiving Social Security Disability Benefits.
- I have not applied for Social Security Disability Benefits.
- I have not been denied, nor have I appealed from a denial of Social Security Disability Benefits.
- I do not expect to be eligible for Medicare benefits within the next 30 months.
- I am not in End Stage Renal failure.
- No liens, including but not limited to liens for medical treatment by hospitals, physicians, or medical providers of any kind have been filed for the treatment of injuries sustained in the Occurrence.

**III. Other Terms**

The Releasing Party hereby acknowledges and agrees that he will satisfy from these proceeds any liens associated with the Occurrence and that he is solely responsible and liable for satisfaction of all liens and/or subrogation claims arising out of this Occurrence and that he will defend, indemnify and hold harmless the Released Parties should any claim be asserted against the Released Parties or their attorney(s) who are relying upon this representation.

This release shall be binding upon the Releasing Parties and her successors, assigns, heirs, executors, administrators and legal representatives.

The Releasing Parties hereby declare that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromised settlement of any and all present and future claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid occurrence or incident.

The Releasing Parties further state that the foregoing release has been read carefully and the contents are known and this release is signed as his free act and deed as the Releasing Parties intend to be bound by its terms and conditions.

**\*\*\* CAUTION. READ BEFORE SIGNING. THIS IS A RELEASE. \*\*\***

IN WITNESS WHEREOF,

I have hereunto set my hand and seal this 19<sup>th</sup> day of July, 2016.

Ronald J. Branchaw Jr.  
Signature of Witness #1

Ronald J. Branchaw Jr.  
Printed Name of Witness #1

4400 Rt 9 S. Sk 1000  
Freehold NJ 07728  
Address of Witness #1

Ronald J. Branchaw Jr.  
Signature of Witness #2

Ronald J. Branchaw Jr.  
Printed Name of Witness #2

4400 Rt 9 S. Sk 1000  
Freehold NJ 07728  
Address of Witness #2

Craig DeVito  
Signature of Releasing Party #1

Craig DeVito  
Printed Name of Releasing Party #1

11 Gould Pl. Caldwell NJ  
Address of Releasing Party #1

Craig DeVito  
Signature of Releasing Party #2

Craig DeVito  
Printed Name of Releasing Party #2

11 Gould Pl. Caldwell, NJ 07006  
Address Name of Releasing Party #2



Ronald J. Brandmay Jr.  
Signature of Witness #3

Ronald J. Brandmay Jr.  
Printed Name of Witness #3

4400 Rt 9 S. Sh 10W  
Address of Witness #3  
Freehold NJ 07728

Daryen DeVito  
Signature of Releasing Party #3

Daryen DeVito  
Printed Name of Releasing Party #3

11 Gould Pl. Caldwell, NJ 07006  
Address of Releasing Party #3

Subscribed and sworn to before me by Craig A. DeVito, Provi L. DeVito and Daryen F. DeVito

this 19th day of July, 20 16

Ronald J. Brandmay Jr.  
Notary Public

Ronald J. Brandmay Jr.  
Attorney at Law  
State of New Jersey  
# 001182002

My Commission Expires: \_\_\_\_\_

Alan J. Baratz, Esq.  
Attorney I.D. No: 031451982  
WEINER LESNIAK LLP  
629 Parsippany Road  
P.O. Box 438  
Parsippany, New Jersey 07054-0438  
Phone: (973) 403-1100 Fax: (973) 403-0010  
Attorneys for defendants, Borough of Caldwell, Sgt. Michael Pellegrino  
and Police Chief James H. Bongiorno  
File No: 87765

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CRAIG A. DEVITO, PROVI I. DEVITO,  
GABRIELA K. DEVITO, DARYEN F.  
DEVITO and JEREMY M. SCARBROUGH,

Plaintiff

v.

BOROUGH OF CALDWELL, SGT.  
MICHAEL PELLEGRINO, POLICE CHIEF  
JAMES H. BONGIORNO and JOHN DOES  
1-5,

Defendants.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Docket No: 2:13-cv-06786-SRC-CLW

**STIPULATION OF  
VOLUNTARY DISMISSAL  
WITH PREJUDICE**

The matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that all claims of plaintiffs pled in the Complaint as against defendants, Sergeant Michael Pellegrino and Police Chief James H. Bongiorno, be and hereby are voluntarily dismissed with prejudice, and without costs.

Law Office of Ronald J. Brandmayr, Jr.  
Attorneys for plaintiffs

Dated: 7-22-16

By: 

Ronald J. Brandmayr, Jr., Esq.

WEINER  
LESNIAK  
LLP

Attorneys at Law

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PARSIPPANY ROAD

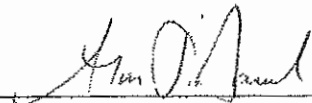
PARSIPPANY, NJ

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873-403-1100

WEINER LESNIAK LLP  
Attorneys for defendants, Borough of Caldwell,  
Sgt. Michael Pellegrino and Police Chief James  
H. Bongiorno

Dated: 8/2/16

By:   
Alan J. Baratz, Esq.  
A Member of the Firm

WEINER  
LESNIAK  
LLP

Attorneys at Law

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PARSIPPANY ROAD

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