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Attorney for Plaintiff

RECEIVED
AUG 27 2014
ADMINISTRATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JEFREY B. ECKERT,

Plaintiff

vs.

STEPHEN JONES; TOWN OF
BOONTON; TOWN OF BOONTON
POLICE DEPARTMENT; JOHN DOES 1
- 10 (Fictitious names for the person or
entity responsible for the damages
complained of in plaintiff's complaint)

Defendants

Civil Action No.: 2:14-cv-04807-SDW-MCA

FIRST AMENDED COMPLAINT

Civ. Rule 10.1 Statement

PLAINTIFF

1. The Plaintiff JEFREY B. ECKERT is an individual residing at 429 Green Street, in the Town of Boonton, County of Morris, and State of New Jersey.

DEFENDANTS

2. Defendant STEPHEN JONES is, upon information and belief, a resident of the State of New Jersey and at all times relevant hereto was employed as a police officer by the Town of Boonton Police Department and the Town of Boonton.

3. Defendant TOWN OF BOONTON is a body politic and corporation organized under the laws of the State of New Jersey having its principal place of business located at Washington Street, in the Town of Boonton, County of Morris, and State of New Jersey. It is being sued pursuant to the municipal liability recognized in Monell v. Department of Social Services, 436 U.S. 657 (1978).

4. Defendant TOWN OF BOONTON POLICE DEPARTMENT is a corporation organized under the laws of the State of New Jersey having its principal place of business located at Washington Street, in the Town of Boonton, County of Morris, and State of New Jersey.

JURISDICTION

5. Plaintiff brings these claims against the Defendants to redress violations of both federal law as well as the common law of the State of New Jersey.

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1343.

7. The amount in controversy exceeds \$75,000.00.

FACTS COMMON TO ALL COUNTS

8. On August 2, 2012 at approximately 11:06 PM, the plaintiff was lawfully operating his vehicle on Wootton Street in a generally westerly direction in the Town of Boonton, County of Morris and State of New Jersey.

9. At that same time and in that place defendant Jones was employed as a police officer by the Town of Boonton.

10. At that same time and in that place defendant Jones was a member of the Town of Boonton Police Department.

11. Defendant Jones was operating a Town of Boonton Police Department squad car on Wootton Street in a generally easterly direction in the Town of Boonton, County of Morris and State of New Jersey.
12. At the aforementioned time and place the plaintiff was traveling to his residence which is located at 429 Green Street in the Town of Boonton, County of Morris and State of New Jersey.
13. Defendant Jones contends in his investigative report that he was operating his patrol car in a generally easterly direction on Wootton Street in the area of Church Street in the Town of Boonton, County of Morris and State of New Jersey.
14. Defendant Jones contends in his investigative report that as the plaintiff's vehicle passed his patrol car he was able to read the license plate and manually input that number into the mobile data computer in his patrol car.
15. Defendant Jones further contends in his investigative report that as the plaintiff's vehicle passed his patrol car and he was reading the license plate and manually input that number into the mobile data computer in his patrol car he also was able to observe the driver of plaintiff's vehicle as being a white male.
16. Defendant Jones further contends in his investigative report that the result received from the mobile data computer in his patrol car was that the owner of the vehicle had an expired driver's license. Defendant Jones contends this is what is commonly referred to as a "HIT".
17. The plaintiff continued traveling on Wootton Street and made a left turn onto Green Street and then stopped his car in the area of his residence.
18. Defendant Jones further contends in his investigative report that after receiving the "HIT" he turned his vehicle around and drove to the plaintiff's residence.

19. Defendant Jones further contends in his investigative report that after receiving the "HIT" and turning his vehicle around he activated the patrol cars siren and emergency lights and drove at a high rate of speed to the plaintiff's residence.
20. Defendant Jones, executed a motor vehicle stop in front of the plaintiff's residence.
21. Defendant Jones requested backup and a second police officer from the Town of Boonton arrived at 429 Green Street, in the Town of Boonton, County of Morris, and State of New Jersey.
22. The second police officer on the scene at 429 Green Street, in the Town of Boonton, County of Morris, and State of New Jersey was Officer Steven Kairys.
23. During the pendency of the motor vehicle stop a third party brought two dogs outside from the residence. One dog was on a leash the second dog was not.
24. The plaintiff explained to defendant Jones that the dog off the leash was an old dog who needed to relieve itself when the plaintiff had arrived home.
25. During the pendency of the motor vehicle stop Defendant Jones directed the plaintiff to have the third party get two dogs which had been brought outside of the residence back into the residence.
26. The plaintiff asked Defendant Jones if he could exit the vehicle in order have the third party get the dogs back into the residence.
27. Upon being asked by the plaintiff if he could exit the vehicle in order to get the dogs back into the residence defendant Jones replied "Alright".
28. Officer Steven Kairys testified at the time of the municipal court trial of this matter that he was standing immediately in front of the plaintiff's vehicle and had personally observed that

the plaintiff had exited his vehicle and was standing with two feet on the ground when the altercation began.

29. Defendant Jones testified that the plaintiff never exited his vehicle prior to the altercation beginning.

30. The plaintiff had exited his vehicle and was standing with two feet on the ground prior to any physical contact between himself and defendant Jones.

31. The plaintiff had exited his vehicle and was standing with two feet on the ground when defendant Jones attacked him.

32. Subsequent to the plaintiff exiting the vehicle defendant Jones began to violently strike the plaintiff on the plaintiff's face, head and body.

33. After Defendant Jones began striking the plaintiff, the plaintiff attempted to get away from the attack by re-entering his vehicle.

34. Defendant Jones sprayed the plaintiff with OC spray while the plaintiff was in his vehicle.

35. Defendant Jones violently pulled the plaintiff from his vehicle and continued to strike violent blows upon the plaintiff's face, head and body.

36. Defendant Jones kicked the plaintiff's head into the ground with his feet.

37. Defendant Jones kicked the plaintiff's ribs while he was on the ground.

38. Defendant Jones threatened to shoot the dogs if they were not returned to the residence.

39. Defendant Jones handcuffed the plaintiff and placed him into the rear of his patrol car.

40. At no time did the plaintiff took any offensive or aggressive action towards defendant Jones.

41. Defendant Jones charged plaintiff with violations of N.J.S.A. 2C:29-1A Obstructing, and N.J.S.A. 2C:29-2A(3) Resisting.

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42. Defendant Jones also charged plaintiff with violations of N.J.S.A. 39:3-10 Unlicensed Driver, and N.J.S.A. 39:4-97 Speeding.
43. Thereafter the Morris County Prosecutor's Office presented the case against the plaintiff to the Morris County Grand Jury on January 10, 2013.
44. The sole witness who testified on behalf of the State before the Grand Jury was defendant Jones.
45. Defendant Jones testified that at approximately 11:06 PM he was operating a Town of Boonton police squad car on Wootton Street in a generally easterly direction and that the plaintiff's vehicle was traveling in the opposite direction.
46. Defendant Jones testified that he observed the vehicle approaching him to be an early 1990's four-door Oldsmobile.
47. Defendant Jones testified that his vehicle and the plaintiff's vehicle passed each other approximately at the mid-point of the block - that is halfway between the point where Wootton Street intersects with Boonton Avenue to the west and where it intersects with Church Street to the east.
48. The area of Wootton Street described by defendant Jones in his Grand Jury testimony consists of a steep hill with the easterly traffic heading down the hill and the westerly traffic heading up the hill.
49. Defendant Jones testified that as the vehicle being operated by the plaintiff and his converged upon on another he was able to determine that the plaintiff's vehicle had a sole occupant, that the occupant was a white male and he was also able to obtain the license plate number of that vehicle.

50. Defendant Jones testified that after he obtained the license plate number of the plaintiff's vehicle he input the information into the Mobile Data Computer in his patrol car and was informed in response that the driver's license of the registered owner of that vehicle had expired.
51. Defendant Jones further testified that after receiving the information from the Mobile Data Computer in his patrol car he further observed the plaintiff's vehicle and estimated that it was traveling a few miles per hour over the posted speed limit.
52. The speed limit on Wootton Street in the area where defendant Jones observed the plaintiff's vehicle being operated is 25 miles per hour.
53. Defendant Jones testified that he made a U-turn at the intersection of Wootton Street and Church Street.
54. On or about January 10, 2013 an Indictment was filed against the plaintiff herein by the Morris County Prosecutor's Office. A true copy of that Indictment is attached hereto. **(Exhibit A)**
55. The Indictment lodged against the plaintiff contained two counts, to wit, Third Degree Resisting Arrest and Third Degree Aggravated Assault Upon A Police Officer.
56. Plaintiff vigorously defended himself against the charges which had been lodged against him.
57. Defendants instituted and continued criminal proceedings against the plaintiff with malice and for a purpose other than that of securing the proper adjudication of the claim on which the proceedings were based, namely to justify defendant Jones' unlawful and unwarranted physical attack upon the plaintiff.
58. On January 29, 2014 the Morris County Prosecutor's Office voluntarily dismissed the Indictment which had been brought against the plaintiff. A true copy of the Order dismissing the Indictment is attached hereto. **(Exhibit B)**

59. The Order which dismissed the Indictment against the plaintiff remanded the matter to Municipal Court.

60. A trial in the municipal court matter was held on Monday, August 11, 2014.

FIRST COUNT

(42 U.S.C. §1983 Excessive Force Claim – Defendant Jones)

61. Plaintiff repeats and re-alleges each and every allegation of the FACTS COMMON TO ALL COUNTS as if set forth in full herein.

62. Defendant Jones did directly or indirectly aid in the unlawful seizure of the plaintiff when he committed some or all of the acts that injured plaintiff including striking the plaintiff with multiple fist blows, throwing plaintiff to the ground, kicking plaintiff's body and stomping on plaintiff's head, and otherwise being unnecessarily violent with the plaintiff.

63. Defendant Jones' use of force constituted excessive, unjustified and unnecessary force under the facts and circumstances and caused severe and permanent injuries to the plaintiff.

64. Defendant Jones' use of force upon plaintiff was an objectively unreasonable use of force given the totality of the circumstances, including defendant Jones attacking plaintiff without a compelling need.

- a. Plaintiff was seated in his vehicle as directed by defendant Jones until such time as defendant Jones directed the plaintiff to exit the vehicle.
- b. Plaintiff did not pose any threat to defendant Jones or any other person present because the plaintiff was following all of defendant Jones' commands at the scene.
- c. Plaintiff was unarmed at all times relevant to this matter.

65. The degree of force used by defendant Jones constituted gratuitous violence upon an incapacitated detainee.

66. This cause of action is brought by the plaintiff against defendant Jones for the excessive use of force under the color of law that deprived plaintiff of his constitutionally protected rights under the Fourth Amendment to the United States Constitution.

67. Defendant Jones, while acting in his capacity as an officer for the Town of Boonton Police Department and under color of law, did unlawfully seize and use excessive force on plaintiff in violation of his rights under the Fourth Amendment to the United States Constitution.

68. As a result of the excessive force used by defendant Jones, plaintiff required medical attention for injuries to his face and mouth.

69. As a direct and proximate result of the defendant(s) breach of contract the plaintiff has been damaged.

WHEREFORE, the Plaintiff demands judgment against the Defendants – jointly severally and in the alternative – on the First Count for:

- (a) Compensatory damages;
- (b) Punitive damages;
- (c) Cost of suit and pre-judgment as well as post-judgment interest;
- (d) Attorney's fees;
- (e) For such other relief as the court may deem proper.

SECOND COUNT

(ASSAULT)

70. Plaintiff repeats and re-alleges each and every allegation of the **FACTS COMMON TO ALL COUNTS** as if set forth in full herein.

71. Defendant Jones intentionally struck the plaintiff violently about his head, face and body.

72. Defendant Jones had no justification for striking the plaintiff.

73. Plaintiff had not given defendant Jones consent to strike him.

74. The punching, kicking and discharge of OC spray upon the plaintiff by defendant Jones caused the plaintiff severe and painful injuries.

75. The punching, kicking and discharge of OC spray upon the plaintiff by defendant Jones upon the person of the plaintiff was done with malice and a willful and wanton disregard of the plaintiff's rights and sensitivities.

76. The punching, kicking and discharge of OC spray upon the plaintiff by defendant Jones upon the person of the plaintiff was done with a foreseeability of the painful consequences such actions would have upon the plaintiff.

77. As a direct and proximate result of the defendant Jones' actions as aforestated the plaintiff has been damaged.

WHEREFORE, the Plaintiff demands judgment against the Defendants - jointly severally and in the alternative - on the First Count for:

- (a) Compensatory damages;
- (b) Punitive damages;
- (c) Cost of suit and pre-judgment as well as post-judgment interest;
- (d) Attorney's fees;
- (e) For such other relief as the court may deem proper.

THIRD COUNT

(NEGLIGENCE)

78. Plaintiff repeats and re-alleges each and every allegation of the **FACTS COMMON TO ALL COUNTS** and the **FIRST** and **SECOND COUNTS** as if set forth in full herein.

79. Defendant Jones owed a duty of care to the plaintiff.

80. Defendant Jones through his actions breached the duty of care which he owed to the plaintiff.

81. As a direct and proximate result of the breach of the duty of care owed to the plaintiff by defendant Jones the plaintiff was injured.

WHEREFORE, the Plaintiff demands judgment against the Defendants – jointly severally and in the alternative – on the Second Count for:

- (a) Compensatory Damages;
- (c) Cost of suit and pre-judgment as well as post-judgment interest;
- (d) Attorney's fees;
- (e) For such other relief as the court may deem proper.

FOURTH COUNT

(FALSE IMPRISONMENT)

82. Plaintiff repeats and re-alleges each and every allegation of the FACTS COMMON TO ALL COUNTS the FIRST COUNT and the SECOND COUNT as if set forth in full herein.

83. Defendant Jones intentionally confined the plaintiff first to the back of his patrol car and later in the Town of Boonton Police Departments jail.

84. The confining of the plaintiff by defendant Jones was without legal justification.

85. As a direct and proximate result of the breach of the wrongful confinement the plaintiff was injured.

WHEREFORE, the Plaintiff demands judgment against the Defendants -- jointly severally and in the alternative – on the Fourth Count for:

- a) Compensatory Damages;
- b) Punitive Damages;
- c) Cost of suit and pre-judgment as well as post-judgment interest;
- d) Attorney's fees;
- e) For such other relief as the court may deem proper.

FIFTH COUNT

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

86. Plaintiff repeats and re-alleges each and every allegation of the FACTS COMMON TO ALL COUNTS the FIRST, SECOND, THIRD and FOURTH COUNTS as if set forth in full herein.

87. The actions of defendant Jones caused the plaintiff immediate fear of sustaining personal injuries.

88. The actions of defendant Jones were done intentionally in a fashion intended to produce emotional distress.

89. Defendant Jones acted recklessly in deliberate disregard of a high degree of probability that the plaintiff would suffer emotional distress.

90. No reasonable person could be expected to endure the physical menacing and subsequent attack as was sustained by the plaintiff.

91. As a direct and proximate result of the actions of defendant Jones as aforestated the plaintiff was injured.

WHEREFORE, the Plaintiff demands judgment against the Defendants – jointly severally and in the alternative – on the Fifth Count for:

- (a) Compensatory Damages;
- (b) Punitive Damages;
- (c) Cost of suit and pre-judgment as well as post-judgment interest;
- (d) Attorney's fees;
- (e) For such other relief as the court may deem proper.

SIXTH COUNT

(FALSE ARREST)

92. Plaintiff repeats and re-alleges each and every allegation of the FACTS COMMON TO ALL COUNTS the FIRST, SECOND, THIRD and FOURTH COUNTS as if set forth in full herein.

93. Defendant Jones arrested the plaintiff.

94. The arrest and detention of the plaintiff by defendant Jones was without proper legal authority, and/or legal justification and/or probable cause.

95. As a direct and proximate result of the false arrest of the plaintiff by defendant Jones the plaintiff was injured.

WHEREFORE, the Plaintiff demands judgment against the Defendants – jointly severally and in the alternative – on the Sixth Count for:

- (f) Compensatory Damages;
- (g) Punitive Damages;
- (h) Cost of suit and pre-judgment as well as post-judgment interest;
- (i) Attorney's fees;
- (j) For such other relief as the court may deem proper.

SEVENTH COUNT

(RESPONDEAT SUPERIOR)

96. Plaintiff repeats and re-alleges each and every allegation of the FACTS COMMON TO ALL COUNTS the FIRST, SECOND, THIRD, FOURTH, FIFTH and SIXTH COUNTS as if set forth in full herein.

97. In committing the acts alleged in the preceding paragraphs defendant Jones as well as others were the agents of the Town of Boonton Police Department and the Town of Boonton and were acting within the scope and course of their employment.

98. Defendants the Town of Boonton Police Department and the Town of Boonton are liable principals for all of the torts committed by their agents, who are acting under the color of law.

WHEREFORE, the Plaintiff demands judgment against Defendants Town of Boonton Police Department and the Town of Boonton on the Seventh Count for:

- (k) Compensatory Damages;
- (l) Punitive Damages;
- (m) Cost of suit and pre-judgment as well as post-judgment interest;
- (n) Attorney's fees;
- (o) For such other relief as the court may deem proper.

REQUEST FOR DISCOVERY

Please be advised that pursuant to Federal Rule of Civ. Proc. 26, demand is hereby made for all parties to this action to provide to the Plaintiff all discovery as to all issues.

DESIGNATION OF TRIAL ATTORNEY

Please Take Notice, that Gregg D. Trautmann, Esq. of the law firm of Trautmann & Associates, LLC, is hereby designated as trial attorney for the Plaintiff in the above captioned matter.

Dated: August 20, 2014

By: /s/ Gregg D. Trautmann
Gregg D. Trautmann, Esq.
Attorney for Plaintiff

EXHIBIT A

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—CRIMINAL
MORRIS COUNTY

THE STATE OF NEW JERSEY,

Plaintiff,

vs.

JEFFREY B. ECKERT

Defendant(s).

INDICTMENT NO. 13-01-00030-I

COUNT ONE

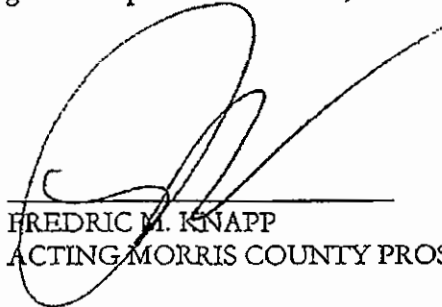
(Resisting Arrest – Third Degree)

The Grand Jurors of the State of New Jersey, for the County of Morris, upon their oaths present that JEFFREY B. ECKERT, on or about August 2, 2012, in the Town of Boonton, in the County of Morris, aforesaid, and within the jurisdiction of this Court, did purposely prevent a law enforcement officer, to wit: Sgt. Stephen Jones of the Town of Boonton Police Department from effecting a lawful arrest by using or threatening to use physical force or violence against Sgt. Jones, a crime of the Third Degree, contrary to the provisions of N.J.S. 2C:29-2a(3), and against the peace of this State, the Government and dignity of the same.

COUNT TWO

(Aggravated Assault on a Law Enforcement Officer – Third Degree)

The Grand Jurors of the State of New Jersey, for the County of Morris, upon their oaths present that JEFFREY B. ECKERT, on or about August 2, 2012, in the Town of Boonton, in the County of Morris, aforesaid, and within the jurisdiction of this Court, did attempt to cause and/or purposely, knowingly or recklessly did cause bodily injury to Sgt. Stephen Jones of Town of Boonton Police Department while the said officer was acting in the performance of his duties while in uniform or exhibiting evidence of his authority, a crime of the Third Degree, contrary to the provisions of N.J.S. 2C:12-1b(5)(a), and against the peace of this State, the Government and dignity of the same.


FREDRIC M. KNAPP
ACTING MORRIS COUNTY PROSECUTOR

SB/mag

CASE NO. 12-1825

SUPERIOR COURT OF NEW JERSEY
(LAW DIVISION – CRIMINAL)
MORRIS COUNTY

November 2012 Session, Panel B

THE STATE OF NEW JERSEY,
Plaintiff,

vs.

JEFFREY B. ECKERT

Defendant(s).

INDICTMENT FOR

Resisting Arrest and Aggravated Assault on a
Law Enforcement Officer

FREDRIC M. KNAPP
ACTING COUNTY PROSECUTOR

A TRUE BILL

(Foreperson)

Presented to Grand Jury: January 10, 2013
Reporter: Audio

EXHIBIT B

Fredric M. Knapp, Esq.
ACTING MORRIS COUNTY PROSECUTOR
Administration & Records Building
Morristown, New Jersey 07963-0900
(973) 285-6200
ATTORNEY FOR THE STATE OF NEW JERSEY

FILED
JAN 29 2014
CLERK OF SUPERIOR COURT
MORRIS COUNTY, N.J.

THE STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
PLAINTIFF	:	LAW DIVISION-MORRIS COUNTY
	:	
	:	Indictment No. 13-01-00030-I
v.	:	
	:	ORDER DISMISSING INDICTMENT
JEFFREY B. ECKERT,	:	AND REMANDING CHARGES TO
	:	MUNICIPAL COURT
	:	
DEFENDANT.	:	

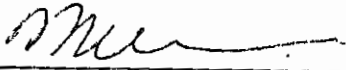
THIS MATTER having been opened to the Court by Fredric M. Knapp, Acting Morris County Prosecutor, and Stephen G. Bollenbach, Esq., Assistant Prosecutor/SDAG, now appearing on behalf of the State on the State's application to dismiss Indictment No. 13-01-00030-I and dismiss Count One, Resisting Arrest a crime of the third degree, in violation of N.J.S.A. 2C:29-2a(3), and remand as a Resisting Arrest, a disorderly persons in violation of N.J.S.A. 2C:29-2a(1), and dismiss Count Two, Aggravated Assault on a Law Enforcement Officer, a crime of the third degree, in violation of N.J.S.A. 2C:12-1b(5)(a), and remand as a Simple Assault, a disorderly person offense, in violation of N.J.S.A. 2C:12-1(a)(1), and the said Prosecutor having shown good cause for dismissal and remand, to the municipal court of the Town of Boonton.

IT IS ON THIS 29th DAY OF January, 2014,

ORDERED: Indictment No. 13-01-00030-I is hereby dismissed in its entirety in the interests of justice, and for reasons stated on the record. The matter will be remanded to the Town of Boonton Municipal Court for disposition on, Resisting Arrest, a disorderly persons offense in violation of N.J.S.A. 2C:29-2a(1), and Simple Assault, a disorderly persons offense, in violation of N.J.S.A. 2C:12-1(a)(1),

ORDERED: Complaint S-2012-000127-1401, one count of Obstruction in violation of N.J.S.A. 2C:29-1a, a disorderly persons offense is hereby remanded to the municipal court.

Case No. 12-1825



Mary Gibbons Whipple, J.S.C.

SETTLEMENT AGREEMENT AND RELEASE

PARTIES

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter referred to as "Agreement") made this ____ day of _____, 2016, by and between the Morris County Municipal Joint Insurance Fund with offices located c/o Fred Semrau, Esq., Dorsey & Semrau LLC, General Counsel, 714 Main Street, P.O. Box 228, Boonton, NJ 07005, State of New Jersey (hereinafter referred to as "MCMJIF"); Town of Boonton, Town of Boonton Police Department, and its employee, Lieutenant Stephen Jones ("Lt. Jones") (hereinafter individually and collectively referred to as the "Town"); and plaintiff Jeffrey B. Eckert (hereinafter referred to as "Eckert"); Eckert, the Town and MCMJIF being referred to herein individually as a "Party" and jointly as the "Parties."

WITNESSETH

WHEREAS, Eckert is the plaintiff herein in a suit captioned Jeffrey B. Eckert v. Stephen Jones, Town of Boonton, Town of Boonton Police Department, John Does 1-10, currently venued in the United States District Court, District of New Jersey, bearing Civil Action No. 2:14-cv-04807-SDW-LDW (the "Lawsuit"); and

WHEREAS, in the Lawsuit, Eckert has made various allegations (collectively referred to herein as the "Claims") against the Town; and

WHEREAS, the Town, at all times relevant hereto, was a member of the MCMJIF, through which it receives insurance coverage;

WHEREAS, the Parties have reached agreement on the resolution of the Claims included in the Lawsuit and desire and intend to memorialize the settlement and release by execution of this Agreement;

WHEREAS, the Town and MCMJIF, in exchange for the consideration paid to Eckert herein and as a condition to settlement, in addition to the other covenants contained herein, require Eckert and his Attorneys to agree to be bound by the Non-Disclosure/Non-Disparagement clause herein, at Paragraph 14, understanding that the agreement to the Non-Disclosure/Non-Disparagement clause herein is a significant inducement for the MCMJIF's agreement to offer the consideration herein;

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

1. **Dismissal of Claims.** As a condition of this Agreement, Eckert hereby dismisses, with prejudice, in its entirety, the Lawsuit and any and all claims that were or could have been brought from the beginning of time until the present against the Town, and all of the past or present police officers, officials, employees, departments, agents, servants, or representatives of the Town, including but not limited to Lt. Jones, individually and in their official capacities, by executing and filing the attached form of Stipulation of Dismissal of the Lawsuit (hereinafter referred to as the "Stipulation"), as to all defendants named therein, with prejudice.

2. **Release and Discharge.** As a condition of this Agreement, Eckert, for himself and his family members, spouses, heirs, representatives, executors, successors, estates and assigns (hereinafter collectively referred to as "Releasers") agrees to release and discharge (hereinafter referred to as the "Release") any and all claims, rights or causes of action, whether known or unknown, which he has and/or may have had from the beginning of time until the present, against the Town, any department thereof, and any past or present officers, officials, employees, volunteers, agents and insurers, including, but not limited to those named herein, officials, employees, or agents or thereof, both individually and in their official capacities, including, but not limited to, the MCMJIF and its agents, servants, or consultants or representatives

(collectively referred to herein as the "Releasees"). The Release shall apply to any and all claims, rights, demands, causes of action, losses, obligations, damages, expenses, compensation, or action of any kind, nature, character or description that Eckert has, had or could have raised against Releasees since the beginning of time through the date of this Agreement. The Release includes, but is not limited to, any claim, demand, cause of action, obligation, damage, complaint, expense, compensation, or action of any kind, nature, character, or description, whatsoever, arising out of or under any Federal, State, or municipal statute, ordinance or other law (whether common law, decisional law, or statute), rule, regulation, contract, executive order, policy, that were or could have been brought in the Lawsuit, including any claim for attorneys' fees and costs.

3. **Lump Sum Payment.** Within sixty (60) days following delivery to General Counsel for the MCMJIF of a fully executed copy of this Agreement and the Stipulation, Eckert shall be paid the sum of seventy-five thousand dollars (\$75,000) as compensation for and in exchange for the consideration provided in this Agreement (the "Settlement Sum") and Releasees shall have no obligation to make any other payment or provide any other consideration to any Releasor, including but not limited to Eckert, in exchange for either the Release, the Stipulation or for any other matter.

4. **Warranty of Capacity to Execute Agreement.** Eckert represents and warrants that no other person or entity has any interest in the Claims, 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. Eckert 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 (except the aforementioned Stipulation), and shall be binding upon and inure to the benefit of the Releasors and Releasees.

6. **Representation of Comprehension of Document.** In executing this Agreement, Eckert 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 he fully understands and voluntarily accepts those terms.

7. **No Admission of Liability.** The parties acknowledge and agree that the Lawsuit is being settled solely for purposes of economic efficiency and that no admission of wrongdoing or improper or negligent conduct by the Town shall be implied or construed as a result of this settlement.

8. **Tax Implication.** The MCMJIF makes no representation as to the tax consequences or liability arising from any payment made under this Agreement. Moreover, Eckert understands that any tax consequences and/or liability arising from payment to him in accordance with this Agreement shall be his sole responsibility and obligation, and that neither the Town nor the MCMJIF shall be held liable for any payment of any taxes on Eckert's behalf. Eckert agrees that he will pay any and all income tax that may be determined to be due in connection with the payment described above. Since Eckert agrees that he is solely responsible for the payment of taxes on any settlement money received under this Agreement, should the Internal Revenue Service, any State or any other taxing agency or tribunal require the Town/MCMJIF to pay any taxes, fines, penalties, interest or any other cost related to taxes on behalf of Eckert with regard to the payment received under this Agreement, then Eckert agrees to indemnify or reimburse MCMJIF.

9. **Liens.** Eckert hereby certifies that no 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 Eckert. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien, Releasors agree that they will pay that lien in full. This representation is intended to include all liens, including, but not limited to, attorneys' liens, medical provider liens, Medicare and Medicaid liens, workers' compensation liens, all statutory or common law liens, and judgment liens. Eckert agrees to indemnify and hold Releasees harmless in connection with any claim made by reason of liens against or tax obligations associated with the proceeds of this settlement. If a claim is hereafter made against Releasees, by anyone seeking payment of the liens, Releasors will defend, indemnify and hold Releasees harmless from and against any such liens and/or claims, including, but not limited to, attorneys' fees, costs of suit, and interest.

10. **Indemnification.** In the event Eckert seeks to recover any monies from any person/entity who thereafter seeks indemnification from the Town or the MCMJIF, arising from the Claims herein, Eckert shall defend, indemnify and hold the Town and the MCMJIF harmless from and against any such claims including, but not limited to, attorneys' fees, costs of suit, judgment or settlement that may be incurred by the Town or MCMJIF.

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

12. **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.

13. **Date of Agreement.** This Agreement shall be dated as of the date it is last signed by any of the parties hereto, which date shall be incorporated on the face page hereof.

14. **NON-DISCLOSURE/NON-DISPARAGEMENT AGREEMENT:** For \$1.00 in hand and other good and valuable consideration not otherwise herein stated, Eckert and his Attorneys agree that they shall not disclose, or cause to be disclosed, the terms of this Agreement, the nature, detail or extent of the negotiations that led to this Agreement, or the fact that this Agreement exists, except the amount of settlement to their accountants and/or tax advisors, or to the extent otherwise required by law. If and when such disclosures occur, Eckert shall bear the responsibility to inform his accountants and/or tax advisors only of said amount as well as to notify his accountants and/or tax advisors that any information Eckert provides shall be kept confidential.

Releasors, including but not limited to Eckert, and Eckert's attorneys, shall not make any disparaging, negative, or derogatory remarks regarding any of the Releasees or the resolution of this Lawsuit to any third party, including any and all communications to the press and to any other media sources. If inquiry is made by any third person concerning the status of the Lawsuit, Releasors, including but not limited to Eckert, and Eckert's attorneys shall respond only by stating that, "The suit has been resolved," and make no further comments whatsoever regarding the Lawsuit or settlement.

Releasors, including but not limited to Eckert, and Eckert's attorneys agree not to communicate, publish or cause to be published, in any public or business forum or context, any statement, whether written or oral, concerning the specific events, facts or circumstances giving rise to the Claims.

Releasors, including but not limited to Eckert, and Eckert's attorneys consent and acknowledge that all the provisions herein are enforceable as applied to the parties notwithstanding the present accessibility of the agreement itself under N.J.S.A. 47:1A-1 et seq. Open Public Records Act or any like statute.

Should Eckert or his Attorneys violate any part of this Non-disclosure/Non-disparagement clause, the MCMJIF, Town or any defendant named herein may institute a suit for damages including, but not limited to, the return of the consideration referenced in Paragraph 3 herein, and that these damages shall include reasonable attorneys' fees and costs of suit.

Eckert's Attorneys shall not be liable for any disclosure/disparagement that they did not cause.

15. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications and to this end the provisions of this Agreement are declared to be severable.

16. No waiver or any breach of any term or provision of this Agreement shall be construed to be, nor shall it be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

17. This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, successors, and assignees of each of the parties to it. Each Releasee not a signatory to this Agreement is intended to be a third-party beneficiary of this Agreement. Each Releasor not a signatory hereto is deemed bound by the covenants and requirements of this Agreement. Each Releasee shall be entitled to enforce this Agreement and each of its terms. In the event of any breach of this Agreement, an aggrieved Releasee may move to enforce the terms hereof and shall be awarded legal fees if it is the prevailing party in such action.

18. **Counterpart Execution.** This Settlement Agreement and Release may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together, shall constitute one in the same instrument.

I hereby sign this Agreement in order to agree to the dismissal of claims, with prejudice, and release and discharge provisions as they may apply, as set forth in this Agreement, it being my intention to release and discharge any and all claims I may have in the matters in dispute which are Referenced in the Agreement.

Jeffrey Eckert
Dated:

Witness
Dated:

Lt. Stephen Jones
Dated:

Witness
Dated:

By:
On behalf of the Town of Boonton Police
Department
Dated:

Witness
Dated:

By:
On behalf of the Town of Boonton
Dated:

Witness
Dated:

Gregg Trautmann, Esq.
Attorney for Plaintiff
Dated:

Witness
Dated:

Fred Semrau, Esq. on behalf of
Morris County Municipal Joint Insurance Fund
Dated:

Witness
Dated: