

CITY OF ATLANTIC CITY  
CITY CLERK'S OFFICE

Case 1:14-cv-05520-RMB-AMD Document 1 Filed 09/04/14 Page 1 of 15 PageID: 1

2014 SEP 10 PM 3:15

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Attorney for Plaintiff Tyler Graver

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**TYLER GRAVER,**

UNITED STATES DISTRICT COURT  
DISTRICT COURT OF NEW JERSEY  
CAMDEN

Plaintiff

vs.

Civil Action No.: - ( - )

**ATLANTIC CITY; MATTHEW SCHMIDT,**  
**JOHN DOES 1-5,** (fictitious individuals)  
Atlantic City Police Officers;  
**ERNEST JUBILEE,** Atlantic City Chief of  
Police; **JOHN DOES 6-10,** (fictitious individuals)  
members of the Atlantic City Police Department in  
supervisory capacities;

**COMPLAINT**

Defendants.

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**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).

**PARTIES**

2. Plaintiff Tyler Graver, residing at \_\_\_\_\_ is and was, at all times herein relevant, a citizen of the United States and a resident of the State of New Jersey.
3. Defendant Matthew Schmidt and John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the Atlantic City Police Department and at all times

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herein were acting in such capacities as the agents, servants and/or employees of Atlantic City and were acting under the color of law.

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

5. Defendants Ernest Jubilee, John Doe 2 and/or John Does 6-10 were acting in supervisory capacities over Defendants Schmidt, John Does 1-10 and responsible by law for the training, supervision and conduct of Defendants Schmidt and John Does 1-10.

6. Defendant Atlantic City is a duly designated municipality of the state of New Jersey under the laws of the state of New Jersey.

7. At all times relevant hereto, Defendant Atlantic City employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Schmidt, Jubilee and John Does 1-10.

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

#### FACTUAL ALLEGATIONS

1. On March 9, 2013, Plaintiff Tyler Graver was staying in a Super 8 Motel near the Tropicana Casino in Atlantic City.
2. Plaintiff was in Atlantic City attending the State tournament for High School Wrestling.
3. Defendants Schmidt and/or John Does 1-5 entered Plaintiff's room and assaulted him without justification and with excessive force.
4. Plaintiff was taken to police headquarters in Atlantic City and ultimately released.
5. No juvenile charges were ever filed against Plaintiff.

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6. Plaintiff sustained bodily and emotional injuries as a result of Defendant's unjustified assault, use of excessive force and false arrest of Plaintiff.

**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 Schmidt 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 and emotional injuries, 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 injured, suffered great mental anguish, and was deprived of his constitutional rights as described above.

**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Schmidt 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 FALSE ARREST / IMPRISONMENT**  
**COUNT TWO**

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

2. The aforementioned acts of Defendants Schmidt and/or John Does 1-5 in arresting Plaintiff

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was undertaken without legal or factual justification and without probable cause.

4. The aforementioned acts amount to a violation of Plaintiff's constitutional right to be free from unreasonable seizure under the Fourth and Fourteenth Amendments of the Constitution of the United States, made actionable through 42 U.S.C. Section 1983.

4. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Schmidt 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 THREE**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Schmidt and/or John Does 1-5 were Atlantic City Police Officers and at all times mentioned herein were acting under color of state law.
3. Defendants Schmidt and/or John Does 1-5 had a duty to intervene in the unjustified assault and arrest of Plaintiff by Defendants Schmidt and/or John Does 1-5.
4. The unjustified assault and arrest of Plaintiff by Defendants Schmidt 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 Schmidt and/or John Does 1-5 had a reasonable opportunity to intervene in

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the unjustified arrest and assault of Plaintiff by Defendants Schmidt and/or John Does 1-5 and failed to intervene.

6. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Schmidt and/or John Does 1-5 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**SECTION 1983 SUPERVISORY LIABILITY**  
**COUNT FOUR**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Chief of Police Ernest Jubilee and/or John Does 6-10 were supervisory officials and/or officers in charge at the time Plaintiff was arrested and assaulted.
3. Defendants Jubilee and/or John Does 6-10 had a duty to prevent subordinate officers Defendants Schmidt and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.
4. Defendants Jubilee and/or John Does 6-10 either directed Defendants Schmidt and/or John Does 1-5 to violate Plaintiff's constitutional rights or had knowledge of and acquiesced in his/their subordinate's violations.
5. Specifically, Defendants Jubilee, John Doe 2 and/or John Does 6-10 failed to adequately track departmental excessive force complaints, administrative complaints and/or use of force incidents in violation of Atlantic City Police Department policies, practices, customs

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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.

6. As a direct and proximate result of the acts of Defendants Jubilee and/or John Does 6-10 set forth herein, Plaintiff suffered physical injury, medical expenses and mental anguish 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.

7. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Jubilee 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 UNLAWFUL CUSTOM, PRACTICE,  
POLICY/ INADEQUATE TRAINING  
COUNT FIVE**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Atlantic City, Atlantic City Chief of Police Ernest Jubilee 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 Atlantic City Police Department policies, practices and/or customs and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines; (2) effectuating arrests; (3) police citizen encounters, and/or (4)

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disciplining officers. Defendants Jubilee 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 Tyler Graver was assaulted.

3. At all times mentioned herein, Defendants Schmidt and/or John Does 1- 5, as police officers, agents, servants and/or employees of Defendant Atlantic City, were acting under the direction and control of Defendants Atlantic City Police Department, Jubilee and/or John Does 6- 10, and were acting pursuant to the official policy, practice or custom of the Atlantic City Police Department.

4. Acting under color of law pursuant to official policy, practice, or custom, Defendants Atlantic City, Jubilee 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 Schmidt 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 Atlantic City, Jubilee 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 Atlantic City, Jubilee 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.

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

7. Defendants Atlantic City, Jubilee and/or John Does 6-10 were aware of numerous similar police citizen encounters involving, and/or Internal Affairs complaints and/or civil lawsuits filed against, Defendants Schmidt, John Does 1-10, and/or other Atlantic City Police Officers whereby they customarily and frequently subjected citizens held in custody to physical and mental abuse; unlawfully and maliciously assaulted, arrested and harassed citizens; intentionally, recklessly and/or negligently misrepresented the facts of arrests and/or other police-citizen encounters; falsified police and/or other official records; made false arrests, mishandled and/or withheld evidence and/or used unreasonable and excessive force on citizens/arrestees.

8. Defendant Schmidt has been named in at least one other lawsuit alleging excessive force and/or violations of citizens' civil rights, Montanez v. Atlantic City, et als. Civil Action#: 14-04055 (RBK-JS).

9. Despite their awareness, Defendants Atlantic City, Jubilee and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Schmidt, John Does 1-10 and/or other Atlantic City Police Officers.

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



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

12. Defendants Atlantic City, Jubilee 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 Schmidt and/or John Does 1-10 heretofore described.

13. As a direct and proximate result of the acts of Defendants Atlantic City, Jubilee and/or John Does 6-10 as set forth herein, Plaintiff suffered physical and emotional injury, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.

**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Atlantic City, Ernest Jubilee 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 SIX**

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 Atlantic City; Matthew Schmidt, Ernest Jubilee, and John Does 1-10 from engaging in, encouraging, teaching, promoting or training Atlantic City Police Officers in falsely arresting and/or using

excessive force against citizens and/or arrestees.

b. An order compelling Defendant Atlantic City to take prompt, appropriate and corrective measures to prevent any practices that encourage, teach, engage in, promote or train its officers in falsely arresting and/or using excessive force against citizens and/or arrestees.

c. An order compelling Defendant Atlantic City to provide regular and consistent training sessions to Atlantic City Police Officers.

d. An order compelling Defendant Atlantic City to implement a system whereby prompt, appropriate action is taken against any Atlantic City Police Officer who engages in, teaches and/or condones falsely arresting and/or using excessive force against citizens and/or arrestees.

e. An order permanently restraining and enjoining Defendants Schmidt 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 Atlantic City from employing Defendants Schmidt 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 Schmidt and/or John Does 1-5 from any patrol duty, and enjoining Defendants Schmidt 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 Tyler Graver demands judgment against Defendants Atlantic City; Matthew Schmidt, Ernest Jubilee and 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 SEVEN**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force, false arrest and failure to intervene committed by Defendants Schmidt and/or John Does 1-5, set forth at length above, deprived plaintiff of his substantive due

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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 Schmidt and/or John Does 1-5, Plaintiff suffered physical and emotional injury, medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Schmidt 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 EIGHT**

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

2. Defendants Schmidt 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 Atlantic City, and/or in their personal capacities, as specifically alleged

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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 Tyler Graver demands judgment against Defendants Matthew Schmidt, Atlantic City, and/or John Does 1-5, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

**FALSE ARREST/ IMPRISONMENT**  
**COUNT NINE**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. At all times material and relevant herein, Defendants Schmidt and/or John Does 1-5 were acting within the scope of their authority as police officers of the Defendant Atlantic City.
3. Defendants Schmidt and/or John Does 1-5 arrested and/or imprisoned Plaintiff without probable cause and was contrary to the laws of the State of New Jersey.
4. Defendant's actions deprived Plaintiff of his rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and the Constitution of the State of New Jersey.
6. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.
7. Plaintiff invokes the supplemental jurisdiction of this Court to hear and determine this claim.

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**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Schmidt and/or John Does 1-5 on this Count, together with compensatory and punitive damages, interest and costs of suit incurred.

**INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS**  
**COUNT TEN**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The actions of Defendants Schmidt and/or John Does 1-5, in their false arrest of Plaintiff; use of excessive force upon Plaintiff; failure to intervene, 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. The acts of the Defendants were in violation of the common law of the State of New Jersey.
5. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
6. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily and emotional injuries along with damages in the form of medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Schmidt 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.

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**NEGLIGENCE**  
**COUNT ELEVEN**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Schmidt 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 Schmidt 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.
5. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
6. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

**WHEREFORE**, Plaintiff Tyler Graver demands judgment against Defendants Schmidt 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.

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Dated: September 4, 2014

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

# Resolution of the City of Atlantic City

## No. 918

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers

Business Administrator /s/ Arthur M. Liston

Prepared by City Solicitor's Office

Council Members GILLIAM & SMALL present the following Resolution:

### RESOLUTION AUTHORIZING SETTLEMENT AFTER EXECUTIVE SESSION

**WHEREAS**, Council has reviewed specific cases for settlement purposes in Executive Session; and

**WHEREAS**, Council agrees that it is necessary to resolve several cases discussed in Executive Session.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Atlantic City that the City Solicitor is authorized to settle the following case pursuant to the authority extended in Executive Session:

**Graver, T. v. City of Atlantic City**

**BE IT FURTHER RESOLVED** by the Council of the City of Atlantic City that the City Solicitor and/or the Business Administrator are hereby authorized to execute the legal documents necessary to effectuate such settlements.

Sh February 16, 2016 5:41 PM

DO NOT USE SPACE BELOW THIS LINE

#### RECORD OF COUNCIL VOTE ON FINAL PASSAGE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DELGADO				X			MOORE	X					
MALIK	X					X	RANDOLPH	X					
MANCUSO	X						SMALL	X				X	
MARSH	X						TIBBITT	X					
							GILLIAM, PRESIDENT	X					
X-Indicates Vote    NV-Not Voting    AB-Absent    MOT-Motion    SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: DECEMBER 23, 2015

/s/ Rhonda Williams, City Clerk



**SETTLEMENT AGREEMENT  
And  
GENERAL RELEASE**

THIS SETTLEMENT AGREEMENT and GENERAL RELEASE (hereinafter "this Agreement") is entered into by and between TYLER GRAVER (hereinafter "Plaintiff") and CITY OF ATLANTIC CITY (hereinafter "Defendant")

WHEREAS, Plaintiff filed a Complaint on September 4, 2014 and an amended Complaint on April 30, 2015 against Defendant and other parties in the United States District Court, District of New Jersey, captioned "*Tyler Graver v. City of Atlantic City, Matthew Schmidt, George Adams, John Does 1-5 (fictitious individuals) Atlantic City Police Officers; Ernest Jubilee, Atlantic City Chief of Police; John Does 6-10, (fictitious individuals) members of the Atlantic City Police Department in supervisory capacities; Civil Action Number 1:14-cv-05520 RMB-AMD*" and asserting claims against the City of Atlantic City and aforementioned named Defendant Officers in connection with Plaintiff's arrest on March 9, 2013 (subsequently referred to as the "Action") and

WHEREAS, all claims against Officers Matthew Schmidt, George Adams and former Chief of Police, Ernest Jubilee have been previously dismissed with prejudice via stipulation, and

WHEREAS, Plaintiff and Defendant Atlantic City have agreed to settle all controversies between Plaintiff and Defendant, including Plaintiff's claims in the Action against all parties including John Does and including any and all related claims which could have been asserted as of the effective date of the settlement, whether such claims are presently known or unknown; and,

WHEREAS, all parties acknowledge that the merits of the controversy are in dispute and have not been fully adjudicated, and that no party to this action admits any liability or fault to any other, but all have reasons to desire amicable resolution of the matter to avoid the costs of litigation; and

NOW, for and in consideration of the agreements, covenants and conditions herein contained, the adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, the parties agree as follows:

1. **The Terms of Settlement:** Defendant, City of Atlantic City hereby agrees to pay Plaintiff the settlement amount of One Hundred Ninety Five Thousand Dollars (\$195,000.00) for non-economic damages including pain, suffering, humiliation, embarrassment, loss of enjoyment of life, disability, attorneys' fees and costs, said settlement amount being fully and completely inclusive of all claims of any nature, sort, or variety, including claims for attorneys' fees and costs incurred by counsel for Plaintiff. No part of the payment represents, or is intended to represent, payment for lost income or for punitive damages, it being the intention of the parties that this payment is solely to

compensate the plaintiff for losses in the nature of personal injury. The parties stipulate to this allocation to make it clear that the payment is not intended to represent economic gain to the Plaintiff. Upon the signed return of this Agreement, along with a fully executed form W-9 and child support search, executed by Plaintiff's Counsel, Defendant will place the matter on the next available agenda for payment before City Council and submit the request for payment to its TPA AmeriHealth. Payment will be made by check made payable to Tyler Graver and Thomas J. Mallon, Esquire, as attorneys

2. Dismissal of Action. Plaintiff shall cause to be filed all necessary documents to dismiss with prejudice this Action, in its entirety upon receipt of the above referenced settlement funds.

3. Release in Consideration for Payment and Other Consideration provided for in this Agreement: In consideration of the payment and other consideration provided for in this Agreement, Plaintiff releases and gives up any and all claims, demands, obligations, damages, liabilities, causes of action and rights, in law or in equity, known and unknown, that Plaintiff may have against Defendant and/or Officers Matthew Schmidt, George Adams and former Chief of Police, Ernest Jubilee and their agents, representatives, supervisors and employees (present and former), including but not limited to employees named or unnamed in this Action, and its respective successors and assigns, heirs, executors and personal or legal representatives, based upon any act, event or omission occurring before the execution of this Agreement, including, but not limited to, any events related to, arising from or in connection with the Plaintiff's association with Defendant. Plaintiff specifically waives, releases and gives up any and all claims arising from or relating to Plaintiffs' association with the Defendant based upon any act, event or omission occurring before the date of this Settlement Agreement, including, but not limited to, any claim that was asserted or could have been asserted in the Action and pursuant to any and all Tort Claims Notices, filed by Plaintiff through counsel of record in this Action or any other counsel. Plaintiff specifically waives, releases and gives up any and all claims based upon any act, event or omission occurring before the effective date of the Settlement, including, but not limited to, any claim that was asserted or could have been asserted under any federal and/or state statutes, regulations and/or common law, expressly including, but not limited to, any potential claim relating to the following (along with any amendments thereto):

- a. The United States Constitution
- b. The New Jersey Constitution
- c. The New Jersey Civil Rights Act
- d. Title VII of the Civil Rights Act of 1964;
- e. Sections 1981 through 1988 of Title 42 of the United States Code;
- d. The Americans with Disabilities Act of 1990;
- e. The Age Discrimination & Employment Act of 1967;
- f. Use of Excessive Force
- g. All Claims under NJSA 4:19-16

- h. Malicious Prosecution
- i. False Arrest
- j. Assault and Battery
- k. Intentional Infliction of Emotional Distress
- l. The New Jersey Law against Discrimination;
- m. Any other federal, state or local, civil or human rights law of any other local, state or federal law, regulation or ordinance, any provision of any federal state constitution, any public policy, contract, tort or common law, conversion, spoliation or any losses, injuries or damages (including back pay, front pay, liquidated, compensatory or punitive damages, attorneys' fees and litigation costs.

4. **No Claims Permitted/Covenant Not to Sue:** Plaintiff waives the right to file any charge or complaint on his own behalf and/or participate as a complainant, a plaintiff, or charging party in any charge or complaint which may be made by any other person or organization on their behalf, with respect to anything which has happened up to the execution of this Agreement before any federal, state or local court or administrative agency including the EEOC and the OCR, against the Defendant, except if such a waiver is prohibited by law. Should any charge or complaint be filed, Plaintiff agrees that they will not accept any relief or recovery therefrom. Plaintiff confirms that no such charge, complaint or action exists in any forum or form other than the complaint bearing Civil Action Number 1:14-cv-05520 (RMB-AMD), and hereby covenants not to file any charge, complaint or action in any forum or form against Defendant based upon anything which is encompassed by the terms of this Agreement. Except as prohibited by law, in the event that any such charge, complaint or action is filed by Plaintiff, it shall be dismissed with prejudice upon presentation of this Agreement.

5. **Attorneys' Fees and Costs and Cross Claims:** The Parties agree that neither Party shall be deemed a prevailing party, and Plaintiff agrees that Plaintiff will bear Plaintiff's own costs and attorneys' fees which have been incurred in connection with the within matter and in connection with the negotiation and preparation of this Agreement and that no amounts other than the payments to be made pursuant to ¶1 of this Agreement shall be sought by or owed to Plaintiff or his attorneys by Defendant in connection with this matter. Plaintiff further agrees to seek nothing further from Atlantic City and will indemnify and hold Atlantic City, Officers Matthew Schmidt and George Adams, harmless from any jury award.

6. **No Admission of Liability:** It is expressly understood that neither the execution of this Agreement nor any other action taken by Defendant in connection with Plaintiff's alleged claims or this Settlement, constitutes an admission by Defendant of any violation of any law, duty or obligation, or that any decisions or actions taken in connection with this Action were unwarranted, unjustified, retaliatory, discriminatory, wrongful or otherwise unlawful.

7. **Entire Agreement:** This Agreement contains the sole and entire agreement between the parties hereto and fully supersedes any and all prior agreements and understandings pertaining to the subject matter hereof, and is intended to memorialize the settlement of Plaintiff's claims. Plaintiff represents and acknowledges that, prior to executing this Agreement, Plaintiff consulted his attorney, that they had ample time to do so, that Plaintiff obtained the advice of counsel prior to making the decision to execute this Agreement and that Plaintiff has not relied upon any representation or statement not set forth in this Agreement made by Defendant hereto or Defendant's counsel or representatives, with regard to the subject matter of this Agreement. No other promises or agreements shall be binding unless in writing, signed by the parties hereto, and expressly stated to represent an amendment to this Agreement.

8. **Severability:** The Parties agree that if any court declares any portion of this Agreement unenforceable, the remaining portion shall be fully enforceable. In the event that the law prohibits a waiver of any claim, Plaintiff hereby acknowledges that he has no valid claims under those statutes or law. Plaintiff also agrees that this Agreement fully resolve any and all disputes Plaintiff has as of the execution of the Agreement including any unknown dispute Plaintiff may have. Plaintiff acknowledges and agrees that he is not entitled to or owed any additional monies and Plaintiff hereby waives any and all relief not explicitly provided herein.

9. **Applicable Law:** This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey. The Parties agree that any action to enforce or interpret this Agreement shall only be brought in a court of competent jurisdiction in the State of New Jersey, which parties hereby acknowledge and agree to the Superior Court of New Jersey in Atlantic County.

10. **Indemnity:** Tyler Graver agrees to hold the CITY of Atlantic City harmless against, and to indemnify the CITY for, any and all claims by the Internal Revenue Service, or any other taxing authority or other governmental agency, whether federal, state or local, which may be made against the CITY for taxes or other payments owed by Tyler Graver or any penalty assessed against the CITY arising out of or relating to payment of the Settlement Benefits, the failure to withhold any portion of said payments for income or Social Security tax purposes, or for any other purpose; and agrees to reimburse the CITY for any resulting payments to the Internal Revenue Service, or any other taxing authority or other governmental agency that the CITY must make with respect to such claim or Settlement Benefits.
11. **Effective Date:** This Agreement will become effective on the date on which this Agreement is executed.

12. **Use of Agreement:** This Agreement is not intended to be used and shall not be used as evidence or for any other purpose in any other action or proceeding, other than to enforce the terms of this Agreement.
13. **Confidentiality:** To the extent permissible by law, the terms of this Settlement Agreement shall not be publicly disclosed and shall be held confidential by all parties and attorneys involved in this case. It is further understood and agreed as an honorable undertaking that neither Plaintiff nor Defendant nor any agents, servants, attorneys or representatives of Plaintiff or Defendant shall, in any way, at any time disclose for any reason or purpose whatsoever to any other person or entity (other than immediate family, attorneys, accountants, financial advisors, or as otherwise may be required by law) the terms of the consideration, compensation or settlement reached (herein the "Settlement").

Notwithstanding the foregoing, the Parties acknowledge that the Settlement may become part of the public record as a result of Defendant City's status as a public entity. If that occurs, and the Parties are contacted by news media for comment on the Settlement, the parties may respond for the purpose of correcting any inaccuracies in any such news story. The Parties, however, are strictly prohibited from initiating any contact with any news media for any purpose related to the subject of this Agreement.

14. **Plaintiff's Acknowledgments:** BY SIGNING THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE, PLAINTIFF ACKNOWLEDGES:
- A. PLAINTIFF HAS READ IT;
  - B. PLAINTIFF UNDERSTANDS IT AND KNOWS HE IS GIVING UP IMPORTANT RIGHTS;
  - C. PLAINTIFF AGREES WITH EVERYTHING IN IT;
  - D. PLAINTIFF'S ATTORNEY NEGOTIATED THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE WITH PLAINTIFF'S KNOWLEDGE AND CONSENT;
  - E. PLAINTIFF HAS BEEN ADVISED TO CONSULT WITH HIS ATTORNEY PRIOR TO EXECUTING THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE, AND HAS IN FACT DONE SO; AND
  - F. PLAINTIFF HAS SIGNED THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE KNOWINGLY AND VOLUNTARILY.

DATED 1/4/16

[Signature]  
TYLER GRAVER

STATE OF NEW JERSEY )  
COUNTY OF ATLANTIC ) SS:

I, Randall Tranger, a Notary Public, do hereby certify that Tyler Graver, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledge that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes set forth therein.

Given under my hand and official seal this 4<sup>th</sup> day of JANUARY, 2016

[Signature]  
NOTARY PUBLIC

RANDALL TRANGER  
Attorney at Law  
State of NJ