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Denbeaux & Denbeaux  
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Westwood, New Jersey 07675  
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*Attorneys for Plaintiff,*  
*Marcelle Higgs*

MARCELLE HIGGS,

PLAINTIFF,

VS.

UNIVERSITY OF MEDICINE AND  
DENTISTRY OF NEW JERSEY AND  
THE CITY OF NEWARK Essex County,  
Police OFFICERS F. FERRAINO, #85,  
J: Bell, #309, S RODRIGUEZ #39,  
CAICEDO AND REYES AND JOHN  
DOES 1-8,  
AND JOHN DOES 1-8,

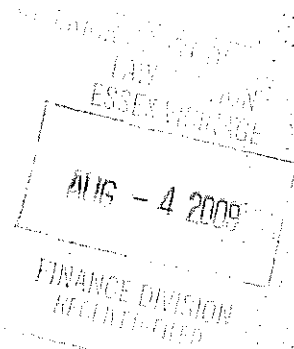
DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY:  
LAW DIVISION: ESSEX COUNTY

DOCKET NO.: L-6346-09

A Civil Action

COMPLAINT



Plaintiff, Marcelle Higgs, of full age, hereby complains of defendants as follows:

**JURISDICTION AND VENUE**

1. This Superior Court of New Jersey may properly exercise jurisdiction over this dispute and these parties as all parties reside within the State of New Jersey and all causes of action referenced herein arose entirely within the State of New Jersey. R. 4:4-4
2. Venue is properly laid within the County of Essex as the defendants do business and all causes of action arose within the County of Essex. R. 4:3-2(a)(2)

**PROCEDURAL PREREQUISITES TO FILING HAVE NOT BEEN MET**

3. Due to his injuries, hospitalization and incarceration, Plaintiff did not file the Tort Claims Act Notices within 90 days. However, plaintiff has filed such a notice as of July

31, 2009 and has filed a motion to allow him to serve the Tort Claims Act Notices and that motion is pending.

### **THE PARTIES**

4. Plaintiff Marcelle Higgs resides at 28 Magnolia Street, Hillsdale, New Jersey 07642.

5. Defendant University of Medicine and Dentistry of New Jersey (hereinafter "UMDNJ") is a State Agency with a place of business at 65 Bergen Street, Newark, New Jersey 07107.

6. Defendant, City of Newark has a place of business at 920 Broad Street, Newark, New Jersey 07102

7. Individual Defendant F. Ferraino #85,

8. Individual Defendant J.Bell, #309,

9. Individual Defendant S. Rodriguez #39

10. Individual Defendant Caicedo Unit 795F

11. Individual Defendant Reyes Unit 795F

12. John Does 1-8

13. Individual defendants are police officers (Hereafter Police Officers) and are sued individually and as agents and employees of Defendant City of Newark, UMDNJ and Essex County

### **ALLEGATIONS COMMON TO ALL COUNTS**

7. Plaintiff, Marcelle T. Higgs, a 30-year-old black man, resides at 28 Magnolia Street, Hillsdale New Jersey 07642

8. On August 12, 2008, Plaintiff was driving alone in his car near the intersection of Bergen St. and South Orange Ave. in City of Newark, New Jersey.

9. Plaintiff was driving safely, and he was in full compliance with all vehicle and traffic laws of the State of New Jersey.

10. Multiple UMDNJ police officers, after having the opportunity to observe that plaintiff was a black man, initiated a vehicle stop. There were several UMDNJ police officers in several cars participating in the stop. The other UMDNJ police officers remained in their cars or stood near plaintiff in his car.

11. One of the UMDNJ police officers approached plaintiff's car from the passenger side and asked plaintiff for his license, insurance card and registration. Plaintiff produced them. All documents were in order.

12. The police officers, after plaintiff produced all of the proper paperwork, refused to allow plaintiff to continue on his way. Instead, unknown to the Plaintiff, the UMDNJ officers call called for UMDNJ and Newark Police back up.

Plaintiff advised the police officer that his papers were in order and that he wanted to leave.

13. Thereupon, the police officer ordered Plaintiff to illuminate his vehicle. Plaintiff objected that there was no basis for doing so but he complied.

14. While seated in the illuminated vehicle plaintiff asked the officer repeatedly what the reason was for the stop. The police officer refused to give an answer.

15. While seated in the illuminated vehicle, plaintiff asked repeatedly why he was not being allowed to leave. No reason was given. No police officer ever alleged there was

contraband in the car; no police officer ever alleged there were weapons in the car, and no officer ever alleged plaintiff driving under the influence of any substance

16. Finally, at no time did any of the police officers ever allege that Plaintiff was stopped because of a motor vehicle violation

17. At this time, the Newark and UMDNJ police back up arrived.

18. Without stating any reason and over plaintiff's objection, the police officers order plaintiff to exit the vehicle. Plaintiff was never told that he had broken any law, committed any crime or was under arrest.

19. There was no probable cause to stop plaintiff, there was no probable cause to detain him in his car nor to order him to step out of his vehicle.

20. When ordered over objection to step out of the car; he complied.

19. When confronted by a large number of Newark and UMDNJ police officer, and without knowing any reason for his stop by the police, plaintiff was afraid..

20. An unknown number of police officers attacked plaintiff, threatened him, assaulted him, and injured him. In the assault by police officers, the defendants broke plaintiff's femur, the largest bone in the human body.

21. There after the police officers discovered a gun almost a block away.

21. There upon the defendant police officers fabricated the allegation of a motor vehicle violation to justify the stop and fabricated the claim of attempted escape and resisting arrest to cover-up the illegal stop, interference with his constitutional rights and assault and battery.

21. Plaintiff had to undergo emergency major knee surgery and a metal rod was inserted into his femur. The rod will remain in his leg for the rest of his life.

22. The act of breaking his leg, the time awaiting surgery, the surgery and the subsequent rehabilitation was excruciatingly painful.

23. Plaintiff continues to walk with a limp, and his leg causes him pain and limits his movement now and will limit his activity for the rest of his life.

## **CAUSES OF ACTION**

### **I.**

#### **Assault and Battery**

24. Plaintiff repeats and realleges all prior allegations of this Complaint by reference as if set forth at length herein.

25. The defendants' conduct as described in this pleading constituted an unlawful assault and battery upon the person of plaintiff.

26. As a result of defendants' torts, plaintiff has suffered injury.

### **II**

#### **False Arrest**

27. Plaintiff repeats and realleges all prior allegations of this Complaint by reference as if set forth at length herein.

28. The defendants' conduct as described in this pleading constituted a false arrest.

29. As a result of defendants' torts, plaintiff has suffered injury.

### **III**

#### **Racial Discrimination: Racial Profiling**

30. Plaintiff repeats and realleges all prior allegations of this Complaint by reference as if set forth at length herein.

31. Plaintiff was accosted by the police only because he was African American.

32. As a result of defendants' torts, plaintiff has suffered injury.

#### IV

##### **Deprivation of Civil Rights under USCA 1983 and New Jersey Constitution**

33. Plaintiff repeats and realleges all prior allegations of this Complaint by reference as if set forth at length herein.

34. The defendants' conduct as described in this pleading constituted a violation of plaintiff's civil rights.

35. As a result of defendants' torts, plaintiff has suffered injury.

#### V

##### **Conspiracy to cover up the false arrest, assault and battery, racial profiling, deprivation of civil rights**

36. Plaintiff repeats and realleges all prior allegations of this Complaint by reference as if set forth at length herein.

37. The defendants' conduct as described in this pleading constituted a tortuous scheme to cover up the defendants' misconduct.

38. As a result of defendants' torts, plaintiff has suffered injury.

#### VI

##### **Intentional infliction of emotional distress**

39. Plaintiff repeats and realleges all prior allegations of this Complaint by reference as if set forth at length herein.

40. The defendants' conduct as described in this pleading constituted an intentional infliction of emotional distress.

41. As a result of defendants' torts, plaintiff has suffered injury.

VII

**Negligent training and supervision of the defendant officers by UMDNJ and the  
City of Newark**

42. Plaintiff repeats and realleges all prior allegations of this Complaint by reference as if set forth at length herein.
43. The torts described and plead in this pleading arose as a result of the conduct of the poorly undertrained officers of the UMDNJ and the City of Newark.
44. As a result of such undertraining and lack of supervision, plaintiff was physically and emotionally harmed.

**WHEREFORE**, plaintiff demands:

- a. Compensatory damages,
- b. Punitive damages,
- c. Attorneys' fees,
- d. Costs of suit, and
- e. All other forms of relief which this Court or jury deem just and proper.

REC'D  
MIG - 4 2009  
FINANCE DIVISION  
RECEIVED FILED

**CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

This matter is not related to any other court or arbitration.

**DESIGNATION OF TRIAL COUNSEL**

Mark P. Denbeaux is hereby designated trial counsel for the within matter.

Dated: July 31, 2009

  
MARK P. DENBEAUX

RECEIVED  
LAW DEPARTMENT  
CITY OF NEWARK, N.J.

2015 FEB 20 A 12:01

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), dated this 20<sup>th</sup> day of January, 2014, is made by the "Parties," consisting of Marcelle Higgs ("Plaintiff"), and the City of Newark, Rafael Reyes and Fabian Caicedo, ("Defendants"), to settle any claims which Plaintiff may have against the Defendants, its departments, divisions, agents or representatives arising out of the matter entitled Marcelle Higgs v. UMDNJ, et als., Docket Number: ESX-L-6346-09 filed in the Superior Court of New Jersey, Essex County, Law Division. The Parties agree that:

1. Definitions:

For the purpose of the Agreement, the following defined terms shall have the following meanings:

"Action" means the matter entitled Marcelle Higgs v. UMDNJ, et als. Docket Number: ESX-L-6349-09.

"Claims" shall mean all claims, cross-claims, counterclaims, third-party claims, fourth-party claims, demands, suits, actions, disputes, judicial, administrative or other proceedings, or cause of action of any type (whether known or unknown, whether asserted or unasserted, whether liquidated or unliquidated, whether actual or alleged, whether past, present or future, whether suspected or unsuspected, whether arising in common law or by statute, whether at law or equity, whether based on contract, professional malpractice, wrongful termination, strict liability, trespass, nuisance, or otherwise, or whether involving property damage, loss of property, diminution in the value of property or other financial or economic harm, or any other form of injury) seeking declaratory relief, compensatory damages, punitive damages, statutory damages, injunctive relief, indemnity, contribution, subrogation, offset, attorney's fees, expert or consultant costs, litigation costs, lien, losses, or any other form of damages, costs, expenses, or relief whatsoever, arising out of the Action, including, but not specifically limited to, the claims that the Defendants were negligent, careless or reckless.

"Parties" shall mean all parties to this Agreement, and all their predecessors, successors, assigns, affiliates, subsidiaries, parents, members, operating managers, employees, agents, attorneys, representatives, officers and/or companies or corporations owned, controlled or under their common ownership.



2. Incorporation of Definitions and Recitals.

The above definitions and recitals are incorporated herein by reference and are made part hereof as if fully set forth at length herein.

3. Compromise of Disputed Claims.

This Agreement is entered into solely to avoid the cost, expense, delay and uncertainty of litigation and is not to be construed as an admission of liability, error, omission, wrongdoing, misconduct or breach of any contractual, common law or statutory duty on the part of any party hereto. The parties to the Agreement intend that the Agreement and its terms be subject to the full protection provided by all provisions of law (whether statute, rule or common law) that protect settlements and/or settlement communication from admission or disclosure into evidence at trial.

4. Settlement of Disputed Claims

Upon the satisfaction of the following conditions:

- a. execution of this Agreement by the Plaintiff; and
- b. approval of the Corporation Counsel of this settlement;

the City of Newark shall, in full settlement of the Plaintiff's claims asserted against the Defendants in the Action, pay to Plaintiff the total sum of \$21,000.00 (Twenty-One Thousand Dollars), which payment will be made payable to "Marcelle Higgs and Denbeaux & Denbeaux" and which payment will be mailed to 366 Kinderkamack Road, Westwood, New Jersey, 07675.

5. Consideration.

For and in consideration of the agreed upon sums set forth in Paragraph 4 above, to be paid by the City of Newark, the Parties hereby forever irrevocably release and discharge each other from any and all Claims which were asserted or could have been asserted in the Action.

6. Additional claims.

In further consideration of the agreed upon sums set forth in Paragraph 4 above, the Parties further agree that they will not pursue any additional Claims which they may have based on any event arising out of the Action.

7. Full and final settlement.

This Agreement constitutes full and final settlement of any and all claims the Parties have based on any event arising out of the Action.

8. Dismissal of the Action.

Plaintiffs agree to dismiss the Action by filing a Stipulation of Settlement.

9. Subsequent Discovery of Different Facts.

The Parties acknowledge that they may discover facts different from, or in addition to, those which they now believe to be true in respect to the Claims released by the terms of this Agreement. Nevertheless, the Parties hereto, and each of them, hereby agree that the release contained in this Agreement shall be and remain effective pursuant to its terms, in all respects, notwithstanding the discovery of such different or additional facts. This section does not apply to any intentional misrepresentation of fact.

10. Joint Agreement.

This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf of, any of them. Each of the Parties has read and fully reviewed each of the provisions of this Agreement. Therefore, the language of this Agreement shall not be presumptively construed in favor of or against any party.

11. Reliance upon counsel.

The Parties have relied upon the advice and representation of their counsel respecting the legal liability of the parties hereby released and the language of this Agreement.

12. Partial invalidation.

If any provision of this Agreement or any portion of this Agreement is declared null or void or unenforceable by any court having jurisdiction, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect.

13. Waiver of Breach.

The waiver by any of the Parties of a breach by any other of the Parties to any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

14. Sense and Circumstance.

All references made and all pronouns used herein shall be construed in the singular or plural and in such gender as the sense or circumstances require.

15. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

16. No modification.

This Agreement constitutes the full agreement of the Parties and may not be modified, altered, or changed except upon their express prior written consent.

17. Authority of Signatures.

The individuals signing this Agreement and the party on whose behalf such individuals are signing hereby represent and warrant that they are empowered and authorized to sign on behalf and bind the party for whom they have signed.

18. Signatures:

I understand and agree to the terms of this Agreement.

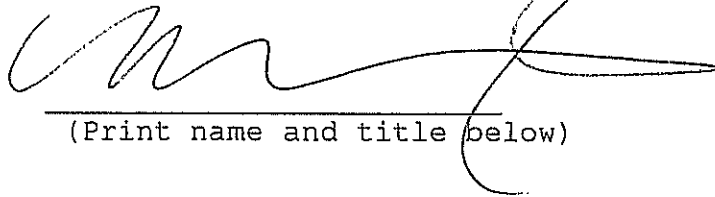
MARCELLE HIGGS  
MARCELLE HIGGS

Witnessed or Attested by:

Juan Correa

State of New Jersey, County of Bergen, SS:

I certify that on January 20, 2014, the above person or persons personally came before me and stated under oath, to my satisfaction, that this person or persons (a) was the maker of this Agreement; and (b) signed this Agreement as his or own act.

  
(Print name and title below)

MARCIA W. DENSEAUX  
ATTORNEY-AT-LAW  
STATE OF NEW JERSEY

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") is made and entered into as of this 20th day of January 2014, by and between MARCELLE HIGGS ("PLAINTIFF" OR "HIGGS"); and RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY ("Rutgers") AS SUCCESSOR IN INTEREST TO UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY AND THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY ("UMDNJ") (collectively referred to as "Parties").

### RECITALS

WHEREAS, Plaintiff commenced a legal action entitled Marcelle Higgs v. University of Medicine and Dentistry of New Jersey, and The City of Newark Essex County, Police Officers F. Ferraino, #85, J Bell, #309, S. Rodriguez, #39, Caicedo And Reyes And John Does 1-8, And John Does 1-8, in the Superior Court of New Jersey, Law Division, Essex County, bearing Docket No. L- 6346-09 (the "Legal Action") in which Plaintiff asserted claims relating to damages allegedly incurred as the result of certain alleged actions and/or omissions by those named in the Legal Action; and

WHEREAS, Defendants filed Answers and Defenses denying the allegations contained in Plaintiff's Complaint; and

WHEREAS, the Parties, recognizing the time, expense and uncertainty of civil litigation, and being represented by independent legal counsel of their own choosing, have agreed to a full and final settlement of all Claims that were or could have been asserted in the Legal Action, under the terms and conditions set forth below; and

WHEREAS, Rutgers, UMDNJ, and Officers F. Ferraino, J. Bell and S. Rodriguez are hereby defined as the "Rutgers Defendants" or "Releasees"; and

WHEREAS, Defendants City of Newark Essex County and Officers Caicedo and Reyes have separately settled with Plaintiff, which settlement is contained in a separate agreement.

NOW, THEREFORE, the Parties, for good and valuable consideration, as set forth below, the receipt and sufficiency of which hereby is acknowledged, agree to the following terms and conditions of settlement:

**1. TERMS OF SETTLEMENT.** In full and final settlement of the claims asserted by Plaintiff in the legal action, and in consideration of the terms and conditions of this Agreement, including the General Release set forth below, the Parties hereto agree to the following terms and conditions of Settlement:

- A. Rutgers agrees to pay to Plaintiff the total sum of \$91,500, inclusive of any and all claims as set forth below in paragraph 2, in full and final settlement of all claims asserted, including, but not limited to, counsel fees, by or on behalf of

Plaintiff in the Legal Action, or any claims which could have been asserted by Plaintiff in the Legal Action; and

- B. Plaintiff's legal counsel shall file with the court a Stipulation of Dismissal with Prejudice and Without Costs upon counsel's receipt of the payment set forth in paragraph A above.

2. **GENERAL RELEASE.** In consideration of the terms of this Agreement, and other such good and valuable consideration as set forth herein, Plaintiff irrevocably and forever and fully releases the Rutgers Defendants and their respective trustees, governors, directors, officers, employees, attorneys, servants, agents, and predecessors and successors in interest (collectively, the "Releasees"), from any and all claims, rights, debts, liabilities, suits, controversies, covenants, causes of action, collections, liens, damages (compensatory, consequential and punitive), monies, obligations, penalties, contracts, attorneys' fees and costs, and all other relief of any kind, based on any and all claims under the state and/or federal constitutions, including but not limited to claims under U.S.C.A. §1983, §1985 or §1988, together with any and all claims for malicious prosecution and/or false arrest and all claims sounding in tort or in contract, law or equity, vested or contingent, whether asserted or not asserted, arising from any and all actions or omissions occurring at any time prior to the date of execution of this Agreement, related to or otherwise in connection with the Legal Action and including any and all claims that were or could have been asserted in the Legal Action and specifically including any and all claims arising out of the incident involving plaintiff and The Rutgers Defendants which occurred on August 12, 2008 in the City of Newark and including the issuance of the motor vehicle summons issued to Plaintiff by the UMDNJ police department. As of the time of this settlement, the summons for violation of N.J.S.A. 39:4-85 (dated August 12, 2008) has not been adjudicated and the parties understand that the adjudication of aforesaid summons is beyond the control of the Rutgers Defendants and that whether aforesaid summons is dismissed or the subject of a plea or trial, plaintiff's release to these defendants extends to any future litigation or dismissal of the aforesaid summons.

3. **WARRANTY AS TO MEDICARE INVOLVEMENT.** Plaintiff 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, Plaintiff warrants and represents to the Rutgers Defendants and their attorneys, that 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 by Plaintiff as a result of claims asserted in the Legal Action.

Plaintiff hereby acknowledges and agrees that he will satisfy from these proceeds any lien associated with the claims asserted in the Legal Action and that he is solely responsible and liable for satisfaction of all liens and/or subrogation claims arising out of the Legal Action, including, but not limited to any Medicare or Medicaid claims and/or liens, Workers' Compensation claims and/or liens, Social Security claims and/or liens; healthcare, physician or

hospital claims and/or liens and any other statutory, equitable, common law or judgment claims and/or liens. Plaintiff agrees that he will defend, indemnify and hold harmless the Rutgers Defendants should any claim be asserted against them or their attorney(s) who are relying upon Plaintiff's representations. In the event any such claim is filed against the Rutgers Defendants, Plaintiff agrees to pay any fines, charges, penalties and/or attorney fees incurred as a result of such lien or claim.

**4. CONFIDENTIALITY.** a. Plaintiff and his counsel agree that they shall not disclose any information relating to the terms and conditions of this Agreement (the "Confidential Information") to any person or entity, except as set forth below:

Plaintiff and his counsel are permitted to disclose the terms and conditions of this Settlement Agreement to plaintiff's accountants, attorneys, income tax preparers, and similar professionals (collectively "Outside Professionals"), the Internal Revenue Service or, when otherwise directed to do so, by Court Order, Subpoena, or directive of an administrative agency of competent jurisdiction. In the case of Outside Professionals, if Plaintiff or his counsel discloses the terms and conditions of this Settlement Agreement, he shall instruct the Outside Professionals that the terms and conditions hereof are confidential and that such Outside Professionals, and their employees, servants, and agents, are obligated to likewise maintain such confidentiality.

b. Plaintiff specifically recognizes and agrees that the obligations of the Releasees as defined under the terms of this Agreement are specifically contingent upon plaintiff's compliance with the confidentiality provisions of this Agreement and agrees not to disclose the terms of this Agreement on the settlement terms with anyone other than those individuals identified in Section 4(a), above.

c. Plaintiff may disclose the terms and conditions of this Agreement in a legal action or proceeding filed to enforce the terms of this Agreement, as set forth below.

In any proceeding to enforce the terms of this Agreement, the Agreement may be introduced under seal in order to maintain its confidentiality. If Rutgers is successful, Plaintiff shall be required to indemnify Rutgers for any and all reasonable costs and attorney fees incurred in connection with any such proceeding. Notwithstanding any such relief, all of the other terms of this Settlement Agreement and General Release including, without limitations, Plaintiff's release of all claims against the Releasees, shall remain in full force and effect. The remedies provided for in this provision shall not be construed to be exclusive and do not bar any other claims for relief, either at law or equity.

d. In the event disclosure of this Agreement or the terms herein is sought by legal demand, Plaintiff or his counsel shall provide to Rutgers prompt written notice thereof, including a true and complete copy of the demand and all exhibits or attachments thereto so that Rutgers may at its own cost and expense seek to obtain an appropriate remedy in equity or law. In the event Rutgers seeks such relief, it shall promptly notify Plaintiff's counsel. Unless otherwise required by operation of law, Plaintiff shall maintain the confidentiality of this Agreement until such request for relief is resolved by the Court.



e. Plaintiff and his counsel agree that, if questioned by others, they will state that the matters in dispute were resolved by mutual agreement and the Parties have agreed to keep confidential the terms thereof.

5. **BREACH.** In the event that Rutgers become aware of circumstances which lead to the conclusion that a breach of the confidentiality provision of this Agreement has occurred, Rutgers shall have the express right to immediately proceed to any court of competent jurisdiction to seek all appropriate relief including, but not limited to, injunctive (both temporary and permanent) against Plaintiff (to be determined based on the facts presented to Rutgers at the time of the breach) and/or recovery of damages.

6. **DENIAL OF LIABILITY AND DAMAGES.** This Agreement shall not in any way be construed as an admission of liability or wrongdoing nor shall it be deemed an admission or declaration against interest of any of the Parties, and at all times this Agreement shall be deemed a final settlement to resolve the disputed and uncertain Claims asserted in the Legal Action.

7. **JURISDICTION.** The Parties hereby consent to the exclusive jurisdiction of the Superior Court of New Jersey, Essex County, Law Division, to resolve any disputes that may arise concerning this Agreement or to enforce any of the terms hereof.

8. **MISCELLANEOUS.**

- a. **Binding Effect.** All signatures to the Agreement are hereby bound by its terms. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective executors, administrators, successors in interest, and/or assigns.
- b. **No Coercion:** The parties acknowledge that they have executed this Agreement after consulting with their attorneys, and considering the terms of the Agreement. The parties further acknowledge that they have read this Agreement in its entirety, understand all of the terms and freely, voluntarily and knowingly, without duress or coercion, assent to all the terms and conditions contained herein.
- c. **Further Acts.** Each of the Parties shall do such further acts and things and execute and deliver such agreements, instruments and documents as may reasonably be requested by the other Parties for the purpose of completing the transactions contemplated in this Agreement.
- d. **Voluntary Act.** The Parties each agree to all terms and conditions of this Agreement. They acknowledge that they are entering into this Agreement voluntarily; and are waiving important legal rights, including the right to a trial by jury.
- e. **Taxation and Indemnification.** The Rutgers Defendants make no representation(s) regarding the tax implication(s) to Plaintiff of the settlement amount. Plaintiff

acknowledges and agrees that Releasees made no representations regarding the tax consequences of any amounts received by him or his counsel pursuant to this Agreement. Plaintiff agrees to pay any federal, state or local taxes, if any, which are required by law to be paid with respect to any funds he or his attorney receives pursuant to this Agreement. Plaintiff agrees to indemnify and hold Releasees harmless from any claims, demands, penalties, interest, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against Releasees for any amounts claimed due on account of this Agreement, or pursuant to any claims made as a result of monies paid under this Agreement under any federal, state or local tax laws, and any costs, expenses or damages sustained by Releasees by reason of any such claims, deficiencies, levies, assessments, penalties, interest, or otherwise. Releasees will notify Plaintiff of any notices received from any federal, state or local tax authority giving Plaintiff the opportunity to resolve any tax issue on behalf of Plaintiff and Releasees.

- f. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties in respect of the subject matters contained herein, and supersedes any and all prior written or oral agreements, understandings or arrangements. The Parties represent and acknowledge that, in executing this Agreement, neither has relied upon any representation, statement, agreement, promise or assurance made by another party, other than as specifically stated in writing in this Agreement; there are no oral understandings contrary to the written terms and conditions set forth in this Agreement; and each party has relied upon its own judgment, belief and interests and the advice of their respective legal counsel. This Agreement may not be modified or amended except by an instrument signed by the party or parties against whom enforcement is sought.
- g. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either of the parties.
- h. Governing Law. This Agreement shall be exclusively governed by, and interpreted in accordance with, the laws of New Jersey without regard to its conflicts of laws rules and provisions.
- i. Paragraph Headings. The paragraph headings in this agreement are for convenience only, are not considered part of the agreement, and shall not be used for the construction or interpretation of the agreement.
- j. Fees and Costs: Plaintiff understands and agrees that the Parties are to bear their own attorneys' fees and costs and that neither Plaintiff nor the Rutgers Defendants are deemed to be a prevailing party in the Legal Action under any applicable law, statute, rule, or regulation.

IN WITNESS WHEREOF, the parties have agreed, executed and delivered this Agreement as of the day and year written below.

By: Marcelle Higgs  
MARCELLE HIGGS

STATE OF NEW JERSEY )  
  )  
  ss:  
COUNTY OF Bergen )

On this 30 day of January, 2014, before me, the undersigned, personally appeared Marcelle Higgs, who, I am satisfied, is the person who signed the foregoing instrument, and he did acknowledge under oath that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes expressed in the instrument.

IN WITNESS WHEREOF, I have signed and sealed this acknowledgment the day and year first above written.

Marcia W. Denderax  
NOTARY PUBLIC

MARCIA W. DENDERAX  
ATTORNEY-AT-LAW  
STATE OF NEW JERSEY

(SEAL)

RUTGERS, THE STATE UNIVERSITY OF NEW  
JERSEY, AS SUCCESSOR IN INTEREST TO  
UNIVERSITY OF MEDICINE AND DENTISTRY  
OF NEW JERSEY

BY: Michael Dwyer