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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ZACHARY A. ROHAN
126 Bengal Boulevard
Barnegat, NJ 08005

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:
: CIVIL ACTION
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: Docket No.
:
:

Plaintiffs,

v.

HARVEY CEDAR BOROUGH
76TH & Long Beach Boulevard
Harvey Cedar, New Jersey 08008

and

POLICE OFFICER BRIAN SMITH
76TH & Long Beach Boulevard
Harvey Cedar, New Jersey 08008

:
:
: JURY TRIAL DEMANDED
:
:

and

POLICE OFFICERS JOHN DOE(S)

Defendants.

CIVIL ACTION COMPLAINT

Plaintiff, Zachary A. Rohan by and through his attorneys, the Zeff Law Firm, LLC does hereby file this complaint and aver as follows:

INTRODUCTION

1. This action for declaratory, injunctive, monetary and other appropriate relief is brought by Plaintiff to redress the intentional violations by Defendants of the rights secured by him by the laws of the United States of America and State of New Jersey.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343(3) and the aforementioned statutory and constitution provision.

3. Jurisdiction lies over state and law claims based on the principals of supplemental jurisdiction, as codified at 28 U.S.C. § 1367.

4. The amount of controversy exclusive of interest and costs exceeds the sum of One Hundred Thousand Dollars (\$100,000.00).

VENUE

5. All the claims herein arose within the jurisdiction of the United States District Court of New Jersey and involve Defendants who reside within the jurisdictional limits. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. § 1391(b) and (c).

PARTIES

6. Plaintiff, Zachary A. Rohan, is an adult individual citizen of the State of New Jersey and resides at the above address. (Hereinafter referred to as "Plaintiff").

7. Defendant Borough of Harvey Cedar is a municipality, organized by and through the State of New Jersey. ("Borough").

8. Defendant Police Officer Brian Smith ("Defendant Smith") is a Borough police officer employed by and the agent of the Borough. Defendant Smith is sued in his individual and official capacities.

9. Defendant John Doe(s) are municipal and individual Defendants unidentified at this time. Specifically, Officer Smith and/or one John Doe, or the named Defendants, jointly or separately, are responsible for the injuries to Plaintiff. (Defendants Smith and John Doe(s) may collectively be referred to as (the "individual Defendants").

FACTS

10. On or about July 20, 2011, Plaintiff was lawfully at a concert in Defendant Borough.

11. While at the concert, Plaintiff was picked up and tossed about by a number of concert goers.

12. The carrying of Plaintiff resulted in disorientation.

13. As a result of his disorientation, Plaintiff came under the custody and control of the Defendant Borough police department and the individual Defendants.

14. As Borough police, including Defendants Smith and Officers John Does(s) attempted to handcuff Plaintiff, one or more of the individual Defendants, struck Plaintiff across the left arm with either an object or a body part with such force as to fracture and/or shatter his arm.

15. The actions of the individual Defendants and Defendant Borough's police officers were unlawful, in violation of the United States Constitution, the New Jersey Constitution and State law.

16. The actions of Defendant officers were excessive use of force under the circumstances.

17. As a result of the wrongful excessive force of Defendants, Plaintiff has suffered a fractured arm and other injuries.

COUNT I

42 U.S.C. § 1983 – EXCESSIVE FORCE

(Plaintiff v. Defendant Police Officer Smith and Officers John Doe(s))

18. Plaintiff adopts and incorporates Paragraphs 1 through 8 herein as if set forth at length.

19. Defendant Police Officer Smith and John Doe used excessive force thereby violating Plaintiff's rights under the laws of the Constitution of the United States, in particular the 4th and 14th Amendments and his rights under the Constitution laws of New Jersey.

20. Without any justification or provocation, Defendant Smith and John Doe(s) willfully and maliciously caused Plaintiff to suffer injuries which resulted in a fractured arm and other injuries.

21. The actions committed by Defendant officers constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiff which caused previously described injuries, in violation of his constitutional rights as previously set forth in the above paragraphs.

WHEREFORE, Plaintiff demands judgment against Defendant Police Officer Smith and Officers John Doe in an amount in excess of \$100,000.00, plus interest, costs, attorney's fees and punitive damages.

COUNT II
BATTERY

(Plaintiff v. Defendant Police Officer Smith and Officers John Doe(s))

22. Plaintiff adopts and incorporates Paragraphs 1 through 12 herein as if set forth at length.

23. Defendant Officers, without provocation, justification, permission or cause, did commit battery upon the person of Plaintiff.

24. As a direct result of Defendants' battery, Plaintiff suffered the injuries aforesaid.

WHEREFORE, Plaintiff demands judgment against Defendant Police Officer Smith and Officers John Doe in an amount in excess of \$100,000.00 plus interest, costs, attorney's fees and punitive damages.

COUNT III
ASSAULT

(Plaintiff v. Defendant Police Officer Smith and Officers John Doe(s))

25. Plaintiff adopts and incorporates Paragraphs 1 through 16 herein as if set forth at length.

26. Defendant, without provocation, justification, permission or cause, did commit assault upon the person of Plaintiff as aforesaid.

27. As a direct result of Defendants' assault, Plaintiff suffered the injuries aforesaid.

WHEREFORE, Plaintiff demands judgment against Defendant Police Officer Smith and Officers John Doe in an amount in excess of \$100,000.00 plus interest, costs, attorney's fees and punitive damages.

COUNT IV
VIOLATIONS OF 42 U.S.C. § 1983 FAILURE TO TRAIN
(Plaintiff v. Defendant Borough)

28. Plaintiff adopts and incorporates Paragraphs 1 through 19 as set forth herein at length.

29. Defendant Borough failed to properly train and supervise Defendant Officer Smith and Officers John Doe.

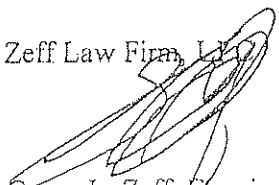
30. As such Defendants were grossly negligent, deliberately indifferent and reckless with respect to the potential violations of constitutional rights.

31. Defendant Borough and Defendant's police chief were the moving force behind the actions of Defendant Police Officer Smith and John Doe(s) resulting in the injuries to Plaintiff.

32. Defendants' policies, practices and/or customs, caused Defendants Police Officer Smith and Officers John Doe to believe that they could violate the constitutional rights of Plaintiff with impunity and with tacit approval of Defendant borough. Defendant borough's policies, customs and/or practices were a direct proximate cause of the injuries suffered by Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant Police Officer Smith and Officers John Doe in an amount in excess of \$100,000.00 plus interest, costs, attorney's fees and punitive damages.

Zeff Law Firm, LLC



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Suite 305
Mount Laurel, New Jersey 08054
gzeff@glzefflaw.com

Dated: July 18, 2013

RELEASE AND SETTLEMENT AGREEMENT

This Release, dated _____, 2015, is given

BY the Releasor(s) **ZACHARY A. ROHAN**

referred to as "I",

TO: **BRIAN SMITH, BOROUGH OF HARVEY CEDARS, POLICE OFFICERS
JOHN DOE(S),**

referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. Release. I release and give up any and all claims and rights which I may have against you. This releases all claims arising out of Federal or State law, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything and everything which has happened up to now, and to future claims as described below. I specifically release all claims for personal injuries, both physical and emotional, and any and all other losses and/or damages, including punitive damages, and any and all claims that could be asserted in the future, allegedly arising from acts or omissions by the **BOROUGH OF HARVEY CEDARS, and BRIAN SMITH**, and/or their agents and/or employees, for the event occurring on July 20, 2011, which is the subject of a lawsuit entitled **ZACHARY A. ROHAN v. BRIAN SMITH, BOROUGH OF HARVEY CEDARS, et al., United States District Court of New Jersey, Civil Action No. 3:13-cv-04553 (AET-TJB).**

I further understand and agree that by executing this Release and accepting the money paid by you, or on your behalf, I acknowledge that I have received fair, just, and adequate consideration for any and all claims, and I further understand and agree that by executing this Release and accepting the money paid by you, I have forever remised, released, discharged, and given up any and all claims that I or others might have against you arising from or alleged to arise from any acts or omissions by the **BOROUGH OF HARVEY CEDARS, and BRIAN SMITH**, and/or survivors, or by some person in a representative capacity, for pecuniary losses, injuries or damages arising from the current action against you, that you shall be entitled to be indemnified by **ZACHARY A. ROHAN**, the deceased's heirs, executors, administrators, or personal representatives, for any sums expended in defending against said claims including, but not limited to, attorneys' fees and all costs of suit together with any sum paid by way of judgment, settlement, or otherwise on account of those claims.

It is further understood and agreed that the payment of the money being paid pursuant to this Release is in full accord and satisfaction, and in compromise of, any and all disputed claims, and that the payment of the money is not an

admission of liability on the part of any of the named defendants but is made for the sole purpose of terminating the litigation between the parties.

In the event I have received or shall receive any monies from any person who hereafter seeks to recover the monies from you by way of claim or action of any type, including but not limited to subrogation actions and claims and actions or claims for contribution and/or indemnification, I shall indemnify and hold you harmless from and against any judgment entered against you or any payment made by you in connection therewith, and also for any money spent in defending against such claims including, but not limited to, attorney's fees, costs of suit, judgment, or settlement by you.

The undersigned hereby acknowledges that a material aspect of this settlement is an agreement by the parties to keep confidential the facts, terms, and conditions of this Release and settlement, including all terms and provisions thereof. The undersigned further agrees and acknowledges that this settlement is a confidential matter and that he/she will not disclose the same, except to a spouse, attorney, tax advisor, or pursuant to a court order. The undersigned acknowledges that the defendants, if requested, pursuant to the Open Public Records Act or pursuant to the common law of the State of New Jersey, will be obligated to release certain information concerning this settlement. Any such release by the defendants shall not constitute a waiver of my obligation to keep this settlement confidential.

2. Liens. I hereby certify that if there are any liens against the proceeds of this settlement, they will be paid in full or compromised and released by me out of and from the amount stated in paragraph 4, below. If any liens exist which are not satisfied as required by this Agreement and a claim is made or an action filed against you by anyone or enforce such liens, I agree that I will immediately pay such liens in full. This is intended to include all liens, including but not limited to attorney's liens, liens in favor of hospitals and other medical providers, liens in favor of health and other insurers, Medicare and Medicaid liens, worker's compensation liens, all statutory or common law liens, and judgment liens. My attorney has investigated the existence of such liens, and I am making this statement based upon information known to me and/or supplied to me by my attorney. Therefore, I agree to indemnify and hold you harmless from and against any and all claims made against you by reason of any liens against the proceeds of this settlement. In addition, in the event a claim is hereafter made or an action is hereafter filed against you by anyone seeking payment of liens, I will indemnify and hold you harmless from and against any money spent in defending against such a claim, including but not limited to, attorney's fees, costs of suit, judgment, or settlement by you.

3. Warranty as to Medicare Involvement. I understand and acknowledge that the Medicare, Medicaid and SCHIP Extension Act of 2007 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 agreement agreed to herein, I warrant and

represent to You the following: 1) Medicare has made no conditional payments for any medical expense or prescription expense on behalf of **ZACHARY A. ROHAN** related to this incident; were ever receiving Medicare beneficiaries; were/are not receiving Social Security Disability Benefits; had not appealed any denial of Social Security Disability Benefits which is still currently pending; and, 5) no liens, including but not limited to liens for medical treatments by hospitals, physicians, or medical providers of any kind have been filed for the treatment of injuries sustained in this incident.

4. **Attorney's Fees.** Each party shall bear responsibility for his or her own attorney's fees and costs arising from this action and in connection with the Complaint and the subsequent litigation and appeal. I shall be totally responsible for any attorney's liens arising out of representation of me by any attorney which may have been or will be asserted in connection with this claim or related matters.

5. **Payment.** I have been paid a total of \$22,000.00 in full payment for making this Release, with said payment represented as follows: \$22,000.00 on behalf of the defendants, **BOROUGH OF HARVEY CEDARS** and **BRIAN SMITH**. I agree that I will not seek anything further, including any other payment, from you and your agents and employees.

6. **Who is Bound.** I am bound by this Release individual, heirs and assigns, are also bound by this Release. I specifically understand and agree that all of the terms and conditions of the Release are for the benefit of and are binding upon me, individually, and/or anyone else who succeeds either to my rights and responsibilities or to the estate's rights and responsibilities. This Release is made for your benefit and for the benefit of all who succeed to your rights and responsibilities, such as your agents and employees.

7. **Warranty of Capacity to Execute Agreement.** The person signing this Release represents and warrants that they have the sole right and exclusive authority to execute this Settlement Agreement and receive the sum specified in it, and that he or she had not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release.

8. **Representation of Comprehension of Document.** In entering into this Release, I represent that I have relied upon the legal advice of my attorney, who is the attorney of my choice, and that I have read this Release in its entirety or had it read to me, and that the terms of this Release have been explained to me by my attorney, and that these terms are fully understood and voluntarily accepted by me.

9. **Governing Law.** This Release shall be construed and interpreted in accordance with the laws of the State of New Jersey.

10. **Additional documents.** All parties agree to cooperate fully and to execute any and all supplementary documents and to take all action which may be

necessary or appropriate to give full force and effect to the terms and intent of this Release.

11. **Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

ZACHARY A. ROHAN

Date

STATE OF NEW JERSEY, COUNTY OF

SS:

I CERTIFY that on _____, 2015, ZACHARY A. ROHAN, personally came before me and acknowledged under oath, to my satisfaction, that this person:

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his act and deed.

Prepared by:

MICHAEL J. McKENNA, ESQ.