

II

PARTIES

1. Plaintiff John Buccieri, Jr. resides at 161 Main Street, Apt. B, City of South Grafton, State of Massachusetts. He is profoundly deaf and communicates primarily through American Sign Language.

2. All defendants acted under the color of State law during all relevant times.

Nature of Case

On July 26, 1990, Congress enacted the Americans with Disabilities Act, 42 U.S.C. Section 12131 et seq., establishing the most important civil rights for persons with disabilities in our country's history. This action is brought by plaintiff against the defendants for the failure to provide reasonable accommodations for plaintiff's disability and for discrimination based on disability. The plaintiff experienced humiliation and discrimination in violation of his civil rights through Defendants' policies and practices of discrimination on the basis of disability.

This action claims that defendants violated the New Jersey Law Against Discrimination, N.J.S.A. 34:1-69.10, et. seq., hereafter NJLAD, the ADA, Section 1983, and Section 504 of the Rehabilitation Act, as well as other state and common law causes of action. In this action, plaintiff seeks money damages, declaratory relief, attorney's fees and costs and punitive damages.

IV.

FACTUAL ALLEGATIONS

1. The Americans with Disabilities Act provides that State, County and Local Governments cannot exclude individuals with disabilities from participation in or denying them the benefits of services, programs or activities.

2. The New Jersey Law Against Discrimination specifically prohibits discrimination based

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upon disability under 10:5-4.1. Further N.J.S.A. 34:1-69.10 requires all that all hearing impaired individuals must be provided with a qualified interpreter for all civil and criminal proceedings. In addition the appointing authority must appoint such individual. Specifically the hearing impaired person, if incarcerated must not be held pending the arrival of an interpreter.

3. Section 504 of the Rehabilitation Act of 1973, provides that "No otherwise qualified individual with a disability" shall be "excluded, denied or discriminated against" by any facility receiving "federal financial assistance".

4. Defendants are state and local entities who must provide public accommodations within the meaning provided in each of the above laws.

5. As relevant to the present action, discrimination includes a failure to provide appropriate and reasonable auxiliary aids to plaintiff who has a hearing loss to ensure effective communication. 28 C.F.R. Section 36.303(c).

6. On or about December 12, 2012 plaintiff, John Buccieri, Jr. was pulled over by defendant police officer, Stephen Austin. Plaintiff tried to explain him that he was deaf and needed a sign language interpreter to communicate. Mr. Buccieri tried to communicate in writing because he could not understand why he was stopped. Plaintiff also tried to exit the vehicle so he could understand more of what was going on, but was told by the police officer to remain in the car which he did. The police officer then handed him a ticket, and when plaintiff tried to exit the vehicle so he could understand why he was given a ticket, the police officer became irate and confronted plaintiff in an aggressive manner. Plaintiff continued to try to communicate with the police officer and was then placed under arrest. Plaintiff was charged with resisting arrest and assaulting a police officer as a result of miscommunication. All requests for a sign language interpreter were ignored by defendants. Plaintiff was not even given his Miranda rights when he was arrested and questioned without a qualified interpreter. Plaintiff was handcuffed and brought down to the Toms River Township police station and placed in a cell without the ability to effectively communicate as the Police station did

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not provide an interpreter.

7. Plaintiff was told to take off his shoes and belt at the police station and placed in a cell. He again requested a sign language interpreter however there was none provided. Plaintiff was upset as he did not understand why he was there nor what was going to happen as there was no effective communication. Plaintiff could not communicate and the police department failed to provide a sign language interpreter to ensure that plaintiff could understand what was occurring.

8. Plaintiff was thereafter transferred to Ocean County Department of Corrections where he was classified and incarcerated also without a qualified sign language interpreter present. In addition Plaintiff was given a medical exam and an injection without explanation of the reasons for same and without his informed consent. Plaintiff remained extremely upset as he struggled to understand what was happening. In addition there were no video phones that plaintiff could use to contact his family or his attorney as all other non-disabled inmates could.

9. Defendants failed to provide any reasonable accommodation for plaintiff at any time during the arrest and incarceration of plaintiff in the Ocean County Jail on December 12, 2012. This failure included the lack of any interpreters or attempts on the part of Ocean County Department of Corrections and the Toms River Police department to obtain any qualified interpreters to communicate with plaintiff. Further a failure to provide a videophone or any way for plaintiff to communicate with the outside world. These accommodations were requested by plaintiff and denied by the defendants during his arrest and incarceration.

10. Plaintiff was ignored, humiliated and treated like a non-person by defendants. Defendants' actions resulted in plaintiff being incarcerated for a longer period of time without proper accommodation for his disability.

11. Defendants' willful, knowing and intentional discrimination against plaintiff was in violation of federal and state laws and caused plaintiff to suffer and continue to suffer mental and physical pain and anguish.

VIOLATION OF STATE and FEDERAL STATUTES

1. Plaintiff repeats and realleges all of the allegations set forth in the section entitled "Factual Allegations" as if set forth at length herein.

2. Defendants' conduct is in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10: 5-1, et. seq, N.J. S.A. 34:1- 69.10 et seq, the Americans with Disabilities Act, 42 U.S.C. Section 12131 et seq., 42 U.S.C. Section 1983 and the Rehabilitation Act of 1973, 29 U.S.C. Section 794, et seq.

3. Plaintiff, John Buccieri, Jr.'s hearing loss substantially limits his major life activities, including his ability to effectively communicate. Therefore, Plaintiff is an individual with a disability under Title II of the ADA. Plaintiff meets the essential eligibility requirements for Defendants' programs, services, and activities at all times material hereto. Thus, Plaintiff is a qualified individual with a disability and is entitled to the protections of the ADA under 29 USCS Section 794, et seq.

4. Defendants violated Title II of the ADA, the NJLAD and the Rehabilitation Act in numerous ways, including discriminatory actions which occurred when they:

(a) Failed to maintain policies and procedures to ensure compliance with Title II of the ADA, specifically policies that provide equal access and effective communication to individuals with disabilities;

(b) Failed to ensure that communications with Plaintiff, John Buccieri, Jr. were as effective as communications with non-disabled individuals;

(c) Failed to provide auxiliary aids and services, including qualified interpreters, and to modify policies and procedures to prevent discrimination against Plaintiff, John Buccieri, Jr.;

(e) Excluded Plaintiff from services of the public entity and denied Plaintiff the benefit of these services due to his disability.

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5. Plaintiff suffered severe emotional distress and damages in the past, and continue to suffer emotional distress and damages due to Defendants' intentional violations of Title II of the ADA, the Rehabilitation Act and the NJLAD.

WHEREFORE, Plaintiff prays that the court grant judgment against the defendants, jointly and severally for the following:

[A] Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, stating that Defendants' practices, policies and procedures have subjected Plaintiff, John Buccieri, Jr. to discrimination in violation of Title II of the Americans with Disabilities Act, the Rehabilitation Act and the New Jersey Law Against Discrimination.

[B] Permanently enjoin Defendants from any practice, policy and/or procedure which will deny Plaintiff John Buccieri, Jr equal access to, and benefit from Defendants' services or which deny Plaintiff, John Buccieri, Jr effective communication with Defendants. Enter a permanent injunction ordering Defendants:

1. To cease discrimination against Plaintiff and other deaf or hard of hearing inmates;
2. To promulgate and comply with policies and procedures to ensure that Defendants and their staff do not discriminate against inmates who are deaf and hard of hearing;
3. To promulgate and comply with procedures to ensure that Defendants will provide and pay for interpreter services when needed by inmates who are deaf or hard of hearing in all services offered by Defendants;
4. To promulgate and comply with procedures to ensure that Defendants will notify inmates who are deaf or hard of hearing of their right to effective communication. This notification will include posting explicit and clearly worded notices that Defendants will provide sign language interpreters, TTY's and other communication services to ensure effective communication with deaf or hard of hearing inmates.

[C] Award compensatory and punitive damages;

[D] Cost of suit to include disbursements and attorneys' fees;

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[E] Such other and further relief as the court deems fair and equitable.

NOTICE OF DESIGNATION OF TRIAL COUNSEL

Clara R. Smit, Esq., is hereby designated as trial counsel in this matter.

JURY DEMAND

Plaintiff demands trial by jury of 6 persons.

CLARA R. SMIT, ESQ.
Attorney for Plaintiff

/s/ Clara R. Smit
CLARA R. SMIT, ESQ.

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CERTIFICATION

This is to certify that, to my knowledge, the matter in controversy is not the subject of any other action pending in any other Court, or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated at this point.

Pursuant to Rule 4:5-1, I, Clara R. Smit, certify that I am a member of the firm of Clara R. Smit, attorney for the Plaintiff stated herein. To my information and belief, the matter in controversy is not the subject of any other action pending in any other Court, or of a pending arbitration proceeding and no other action or arbitration proceeding is being contemplated. At this time, the Plaintiff knows of no other party who should be joined in this action.

/s/ Clara R. Smit
Clara R. Smit, Esq.
Attorney for Plaintiff

Dated: July 15, 2014

RELEASE

THIS RELEASE, dated 5-14-16 is given by **DELOVI CANALES**, referred to as "I", to **TOWNSHIP OF TOMS RIVER, TOWNSHIP OF TOMS RIVER POLICE DEPARTMENT, SCOTT KENNY, PAT JACQUES, ED MOONEY, JIM CAREY, CHRIS MCDOWELL, P.J. GAMBARDELLA AND KEVIN SCULLY** and their agents and employees, 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 any and all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now, and to future claims as described below. I specifically release all claims from personal injuries, both physical and emotional, and all other losses and damages, including punitive damages, allegedly arising from acts or omissions by the **TOWNSHIP OF TOMS RIVER, TOWNSHIP OF TOMS RIVER POLICE DEPARTMENT, SCOTT KENNY, PAT JACQUES, ED MOONEY, JIM CAREY, CHRIS MCDOWELL, P.J. GAMBARDELLA AND KEVIN SCULLY**, and their agents and employees, for the events occurring on and about January 15, 2011 which is the subject of lawsuit in CANALES v. TOWNSHIP OF TOMS RIVER, ET AL., Civil Action No.11-3159 (MLC-LHG), and any and all claims for personal injuries and all other damages and losses, including punitive damages, alleged in the future as a result of the acts or omissions of the **TOWNSHIP OF TOMS RIVER, TOWNSHIP OF TOMS RIVER POLICE DEPARTMENT, SCOTT KENNY, PAT JACQUES, ED MOONEY, JIM CAREY, CHRIS MCDOWELL, P.J. GAMBARDELLA AND KEVIN SCULLY** alleged in CANALES v. TOWNSHIP OF TOMS RIVER, ET AL., Civil Action No.11-3159 (MLC-LHG).

I further understand and agree that by executing this Release and

accepting the money paid by you, 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 **TOWNSHIP OF TOMS RIVER, TOWNSHIP OF TOMS RIVER POLICE DEPARTMENT, SCOTT KENNY, PAT JACQUES, ED MOONEY, JIM CAREY, CHRIS MCDOWELL, P.J. GAMBARDELLA AND KEVIN SCULLY**, and their agents and employees as described above. I further understand and agree that if any claims are made at any time in the future by me, directly or indirectly, or by or on behalf of **DELOVI CANALES's** heirs 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 **DELOVI CANALES'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 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 a 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.

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 to 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 my behalf related to this incident; 2) I am not, nor have I ever been a Medicare beneficiary; 3) I am not currently receiving Social Security Disability Benefits; 4) I have not applied for Social Security

Disability Benefits; 5) I have not been denied, nor have I appealed from a denial of Social Security Disability Benefits; 6) I do not expect to be eligible for Medicare benefits within the next 30 months; 7) I am not in End Stage Renal failure; and 8) 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 his or her own attorney's fees and costs arising from this action and in connection with the Complaint, the Release, and the matters and documents referred to herein, the filing of a Dismissal of the Complaint, and all related matters. 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 \$25,000 in full payment for making this Release, with said payment represented as follows: \$25,000 from the **TOWNSHIP OF TOMS RIVER**. I agree that I will not seek anything further, including any other payment, from you.

6. **WHO IS BOUND.** I am 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, and anyone else who succeeds to our 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 heirs and your estate.

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 no 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

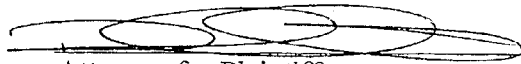
attorney, who is the attorney of my choice, and that I have read this Release in its entirety or had it read to me, and that the terms of this Release have been explained to me by my attorney, and that these terms are fully understood and voluntarily accepted by me.

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.

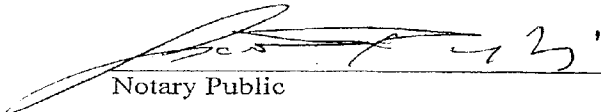
11. **NON-DISCLOSURE.** I, including my respective counsel, stipulate that the settlement of this action and this Release are **confidential**. I shall not disclose the amount of the settlement or the terms hereof to any person nor discuss or confirm the same with any person, except my counsel, spouse and/or tax professional. I agree that I am responsible for insuring that my spouse and tax professional understand and comply with this confidentiality provision. I and my counsel agree not to contact the media or make any press release regarding the resolution of this matter. In the event I am contacted by any person regarding the within litigation or this settlement, I shall state that "the matter has been resolved" and that I have "no further comment." In the event I receive a subpoena or court order regarding the terms of this settlement, I shall provide You with at least 10 days notice before complying with said subpoena or court order. I acknowledge that you, may be required to disclose the amount of this settlement, under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1, et seq., or other law or court order. Any such disclosure by you pursuant to OPRA, or other law or court order, shall not operate as a waiver of the confidentiality of this settlement nor shall it relieve me of my obligation to comply with the terms of this paragraph.

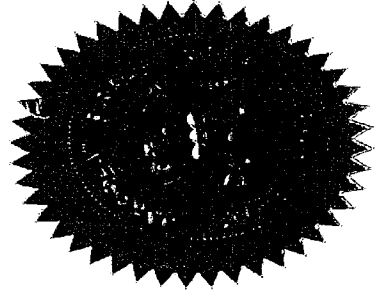
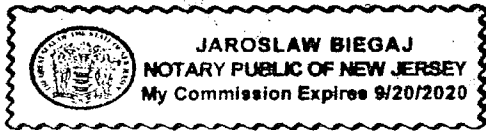

DELOVI CANALES


Attorney for Plaintiff
DONALD STANZONE

STATE OF NEW JERSEY
COUNTY OF

I certify that on 05-14, 2016,
came before me and acknowledge under oath, to my satisfaction, that he/she has the
power and authority to execute this release and to bind _____ and that
he/she personally signed this document, and that he/she voluntarily signed, sealed, and
delivered this document as his/her act or deed, without coercion or undue influence by
any other person(s).


Notary Public



Sworn to and subscribed before me
this 14 day of May 2016