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ATLANTIC COUNTY
LAW DIVISION

ANDRIA TOOLEY, ROGER LESTER and ADRIAN TOOLEY	:	SUPERIOR COURT OF NEW JERSEY
	:	ATLANTIC COUNTY – LAW DIVISION
	:	
Plaintiffs,	:	Civil Action
	:	
vs.	:	DOCKET NO. L 1114-14
	:	
CITY OF ATLANTIC CITY; ATLANTIC CITY POLICE DEPARTMENT; POLICE OFFICER ERMINDO MARSINI; POLICE OFFICER MARINELA PALI and JOHN DOBS 1-5 AND 6-10,	:	COMPLAINT AND JURY DEMAND
	:	
Defendants.	:	

Plaintiffs, Andria Tooley, Roger Lester, and Adrian Tooley, by way of Complaint against the defendants, say:

Preliminary Statement

Plaintiffs Tooley, Lester and Tooley bring claim under the New Jersey Law Against Discrimination (“LAD”) claiming that they were discriminated against during an incident on

December 23, 2013 during which they were referred to as "niggers" by representatives of the Atlantic City Police Department.

Identification of Parties

1. Plaintiffs Andria Tooley, Roger Lester and Adrian Tooley were present at the events set forth herein and are residents of the State of New Jersey.
2. All three plaintiffs are African-American.
3. Defendants City of Atlantic City and Atlantic City Police Department are responsible for the incidents set forth herein on a *respondeat superior* basis under the LAD, and are also independently liable because of their failure to train, supervise and/or by virtue of actual and constructive notice of similar incidents a failure to prevent the incidents set forth herein.
4. Individual Police Officers and defendants Ermino Marsini and Marinela Pali are, upon information and belief, the Officers who undertook the commentary set forth herein and/or participated in the conduct set forth herein and are individually liable as a result of their direct participation and also render the entities liable as a result of *respondeat superior* and otherwise as set forth above.
5. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals and/or entities who, on the basis of their direct acts or on the basis of *respondeat superior*, are liable to plaintiffs under one or both of the theories set forth in this action.

Factual Allegations

6. The incidents set forth hereafter occurred on the Atlantic City Boardwalk in close proximity to the Taj Mahal on or about December 23, 2013 at 4:20 a.m.
7. As the plaintiffs exited the Taj Mahal, they observed police officers speaking with two light-skinned African-American males.

8. As the plaintiffs attempted to leave the boardwalk and depart via taxi cab, they were stopped by defendants Marsini and Pali.

9. Defendants Marsini and Pali stated that they had stopped plaintiff Roger Lester because he matched the description of three black males who were suspected of having committed a robbery at Resorts Casino Hotel.

10. Plaintiff Roger Lester objected and indicated that he did not fit the description as the defendants were looking for three black males and he was with two females, plaintiffs Andria Tooley and Adrian Tooley.

11. Defendant Marsini responded by telling plaintiff Roger Lester to "Shut the fuck up," and "That's what all you niggers say."

12. When plaintiff Roger Lester continued to object that he did not meet the physical description and should not have been detained, defendant Pali responded, "All you niggers look alike."

13. Plaintiffs Andria Tooley and Adrian Tooley objected to the detention of plaintiff Roger Lester and advised the police officers that all three of the plaintiffs were public servants and were in Atlantic City vacationing.

14. Defendant Marsini then responded, "You're just a couple of niggers gambling. What about the other niggers robbing and shooting?"

15. Defendant Pali then stated, "OK teacher lady! What about those niggers?"

16. The above comments were made to plaintiffs because of their race.

Legal Allegations

17. The Police Departments of New Jersey and all individual members of the same are deemed by interpretation of the LAD to be, wherever they go and with whomever they interact in a professional capacity, "Places of public accommodation."

18. Regardless of where police officers may interact with the public, they are always considered "places" of public accommodation and such is the allegation here.

19. The LAD prohibits discrimination on the basis of race in the course of interaction with or utilization of a "place" of public accommodation.

20. Even individuals who are subject to the executive authority of the police are, therefore, considered to be circumstantially, "adverse" to the police, are legally identical in their LAD rights to individuals who are interacting with the police on a non-adversarial basis.

21. There is, therefore, no distinction to be drawn from the fact that the individuals putatively subject to executive authority as expressed by the police on the date in question.

22. Further, unlike traditional jurisprudence associated with the New Jersey and Federal Civil Rights Acts, where *respondeat superior* liability is not assumed for civil rights violations, such is not the case for the LAD.

23. Under LAD jurisprudence and based upon the manner in which the LAD is to be broadly and liberally interpreted and construed, there is automatic liability on the part of an entity for the acts of servants, agents and employees of the entity which violate the LAD.

24. To allow the City of Atlantic City and/or Atlantic City Police Department to escape liability for LAD violations undertaken by the officers in question would be to subvert, evade and undermine the purposes of the LAD.

COUNT I

LAD Liability – Defendants Marsini and Pali

25. Plaintiffs hereby repeat and reallege paragraphs 1 through 24, as though fully set forth herein.

26. The individuals herein conspired, coerced and compelled and incited one another in their actions to the extent those actions violate the LAD for the reasons set forth above, rendering them individually liable for the same.

27. In addition because they are dually authorized servants, agents and employees of the entities, and are, therefore, “places” of public accommodation on behalf of the entities whereby the entities extend their presence to the public, the individuals are deemed to being the entities for all intents and legal purposes.

WHEREFORE, plaintiffs demand judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys’ fees, enhanced attorneys’ fees, and any other relief the Court deems equitable and just.

COUNT II

LAD Liability – City of Atlantic City and Atlantic City Police Department

28. Plaintiffs hereby repeat and reallege paragraphs 1 through 27, as though fully set forth herein.

29. The entities in this matter are liable under the LAD independently of the jurisprudence attending interpretation of the Civil Rights Act, regarding entity liability for the reasons set forth above.

30. It has been the public policy of the LAD in the trend of judicial interpretation to hold entities responsible for the actions of individuals as long as the individuals there are sufficient agency relationship to those entities such that it is reasonable to do so.

31. Further, it is otherwise impossible for the entities to extend their presence to the public without deeming the arm of their presence to be the individual police officers in question.

32. For all these reasons, therefore, and also because the entities independently failed to train against and/or deter this conduct, and also because the entities may have been on notice of the individual proclivities of the officers in question as to this conduct, the entities should be deemed liable under the LAD for the actions of the officers, both as to compensatory and punitive damages.

WHEREFORE, plaintiffs demand judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, and any other relief the Court deems equitable and just.

COUNT III

Prayer for Equitable Relief

33. Plaintiffs hereby repeat and reallege paragraphs 1 through 32 as though fully set forth herein.

34. In addition to all the legal claims for damages set forth heretofore, plaintiffs also request the following equitable orders from this Court.

- a) The form of discipline to both officers up to and including suspension and/or termination;
- b) An Order for this Court to the prosecutor for Atlantic County suggesting criminal prosecution of the officers in question, a violation of New Jersey hate crime and other criminal law;

c) An Order from the Court to the Atlantic City Police Department requiring that they immediately undertake a substantive and in depth sensitivity and race discrimination training program to be repeated at regular semi-annual intervals, both specifically for the Officers in question and for all other Officers of the Department.

WHEREFORE, plaintiffs demand judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, and any other relief the Court deems equitable and just.

COSTELLO & MAINS, P.C.

By:



Kevin M. Costello

Dated: 3/20/14

DEMAND TO PRESERVE EVIDENCE

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

COSTELLO & MAINS, P.C.

By: _____
Kevin M. Costello

JURY DEMAND

Plaintiff hereby demands a trial by jury.

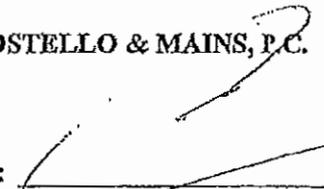
COSTELLO & MAINS, P.C.

By: _____
Kevin M. Costello

RULE 4:5-1 CERTIFICATION

1. I am licensed to practice law in New Jersey and am responsible for the captioned matter.
2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

COSTELLO & MAINS, P.C.

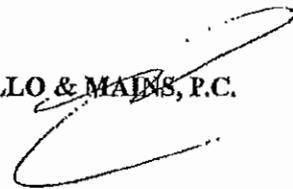
By: 

Kevin M. Costello

DESIGNATION OF TRIAL COUNSEL

Kevin M. Costello, Esquire, of the law firm of Costello & Mains, P.C., is hereby-designated trial counsel.

COSTELLO & MAINS, P.C.

By: 

Kevin M. Costello

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Our File Number: 51076-63
Attorney for Defendants

ANDRIA TOOLEY, ROGER LESTER
and ADRIAN TOOLEY,
Plaintiffs,

v.

CITY OF ATLANTIC CITY; ATLANTIC
CITY POLICE DEPARTMENT; POLICE
OFFICER ERMINDO MARSINI;
POLICE OFFICER MARINELA PALI
and JOHN DOES 1-5 AND 6-10,
Defendants

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY - LAW DIVISION
DOCKET NUMBER:
ATL-L-1114-14

Civil Action

**SETTLEMENT AGREEMENT and
GENERAL RELEASE**

1. The parties to this Negotiated Settlement Agreement and General Release (the "Agreement") are Andria Tooley, Roger Lester, and Adrian Tooley, their agents, servants, employees, representatives, attorneys, heirs, assigns (hereinafter "Plaintiffs"), and the City of Atlantic City, Atlantic City Police Department; Police Officer Ermindo Marsini;

and Police Officer Marinela Pali, and their agents, servants, employees, representative, attorneys and insurance carriers on the risk for any matter complained of by Plaintiffs (hereinafter "Defendants").

2. Plaintiffs and Defendants have chosen to enter into the Agreement in order to avoid further proceedings with respect to certain claims that Plaintiffs have made or could have made against Defendant, directly or indirectly, related to any and all causes of action, claims and/or demands of every type, whether known or unknown, sustained or allegedly sustained, presented or which may have been presented, by Plaintiffs, arising from or in any way connected with any of the matters alleged or which may have been alleged in the civil action filed in the New Jersey Superior Court, Atlantic County, Law Division, Docket Number ATL-L-1114-14 (the "Litigation").

3. Plaintiffs and Defendants have chosen to enter into this Settlement Agreement and General Release in order to avoid further litigation expenses and distraction with respect to any and all claims between one another including but not limited to those filed or which may have been filed in the matter of *Andria Tooley, Roger Lester and Adrian Tooley v. City of Atlantic City; Atlantic City Police Department;*

Police Officer Ermino Marsini; Police Officer Marinela Pali and John Does 1-5 and 6-10; Docket Number ATL-L-1114-14.

4. Plaintiffs understand and agree that Defendants deny each and every allegation of wrongdoing made by Plaintiff in the above-captioned matter currently pending in the New Jersey Superior Court, Atlantic County, Law Division, Docket Number ATL-L-1114-14.

5. Plaintiffs and Defendants understand and agree that the making of this Agreement shall not, in any way, be construed or considered to be an admission by Defendants of guilt or non-compliance with any federal, state or local law, or of any other wrongdoing whatsoever. Plaintiffs and Defendants agree that the making of this Settlement Agreement and General Release shall not, in any way, be construed as an admission against interest by Plaintiffs or Defendants nor shall this Settlement Agreement and General Release be admissible into evidence in any subsequent proceeding, except for the enforcement of this Settlement Agreement and General Release. This Settlement Agreement and General Release is entered into solely to avoid the continuing expense and distraction of litigation.

6. In exchange for the promises made by Defendants herein, Plaintiffs:

A. agree to the dismissal, with prejudice, of the Complaint filed in the Litigation; and,

B. unconditionally and irrevocably discharge and release Defendants, from any and all claims for fees and costs, and from any and all other claims, known or unknown, that Plaintiffs, have or may have had against Defendants as of the date of the full, complete and proper execution of this Agreement, including, but not limited to those claims set forth in the Litigation.

7. In exchange for the promises made by Plaintiffs and their execution of this Agreement, Defendants agree to pay the following:

- A check made payable to the law offices of Costello & Mains, P.C., as attorneys for Andria Tooley in the amount of Twelve-Thousand, Five Hundred Dollars (\$12,500.00);
- A check made payable to the law offices of Costello & Mains, P.C., as attorneys for Roger Lester in the amount of Twelve-Thousand, Five Hundred Dollars (\$12,500.00); and,
- A check made payable to the law offices of Costello & Mains, P.C., as attorneys for Adrian Tooley in the amount of Twelve-Thousand, Five Hundred Dollars (\$12,500.00).

These payments are in full satisfaction and for the general release of all claims for personal injury, compensatory damages, attorneys' fees

and disbursements, known or unknown, asserted or unasserted including, but not limited to, claims for emotional distress, pain and suffering, legal or equitable relief, for all statutory claims, all common law claims, tort claims, contract claims (express, written or implied), and all costs of this action.

8. The sums referred to in paragraph 7 shall be paid as follows:

Within forty-five (45) days of the date counsel for Defendants receives the fully, completely and properly executed settlement documents, including but not limited to this Agreement, Defendants will pay to Plaintiffs and their counsel the amount noted in Paragraph 7 above by three separate check made payable as noted in Paragraph 7 above, transmitted to The Law Offices of Costello & Mains, P.C.

9. Plaintiffs agree that they are responsible for all applicable taxes, if any, as a result of the payments set forth in paragraph 7. Plaintiffs agree to indemnify Defendants and hold Defendants harmless for all taxes, penalties and interest, withholding or otherwise, for which Defendants may be found liable as a consequence of having paid monies pursuant to paragraph 7 of this Agreement. Defendants shall notify Plaintiffs within thirty (30) days, in writing and via certified mail, return receipt requested, of any IRS notification, assessments or concerns. It is

expressly agreed that if Defendants are required to provide payments for taxes or interest or penalties to any taxing authority, Plaintiffs shall reimburse Defendants for such payments to such taxing authority within ten (10) days after Defendants notify Plaintiffs, in writing, via certified mail, return receipt requested, that they have incurred such liability.

10. Plaintiffs agree to be responsible for any liens including but not limited to any liens for any medical provider or attorney and Plaintiffs do agree that in the event any state agency or other authority or person deems any amount to be due from Defendants with respect to any lien, Plaintiffs will indemnify Defendants for any sums Defendants may be required to pay to satisfy any such lien or any part thereof; and, Plaintiffs further agrees to pay any reasonable and necessary attorney's fees incurred by Defendants in defense of any action brought against Defendants as a result of any such lien provided that Plaintiffs will have no such obligation to pay any such reasonable and necessary attorney's fees incurred by Defendants in defense of any such lien related to claims unless Plaintiffs are first provided by Defendants with notice of any such lien related claims and Plaintiffs are provided 30 days of opportunity to pay or otherwise fully resolve any such lien related claim against Defendants.

11. Non-disclosure Agreement. Plaintiffs agree not to disclose this Agreement, or the amounts involved in this Agreement, and shall keep such information confidential, and shall not disclose it to anyone except as may be required to consult with legal counsel, or for tax or accounting consultation, or advice, or spouse, or as otherwise directed by court order.

12. This Agreement fully supersedes any prior agreements or understandings between the parties. Plaintiffs also acknowledge that they has not relied on any representation, promises, or agreements of any kind made in connection with the decision to sign this Agreement, except for those set forth in this Agreement; and, Plaintiffs acknowledge they have been satisfied by the representation and services of their attorney.

13. This Agreement may not be modified except upon express written consent of Plaintiffs and Defendants wherein specific reference is made to this Agreement.

14. Plaintiffs acknowledge and agree that they have been given a reasonable period of time to consider the terms of this Agreement. Plaintiffs further acknowledge that they have reviewed with legal counsel of their choosing, the terms of this Agreement and the consequences of

their signing this Agreement. Plaintiffs understand and agree that this Agreement settles, bars, and waives any and all claims that they have or could possibly have against Defendants for anything that has happened up until the execution of this Agreement.

15. This Agreement shall be governed by and conformed in accord with the laws of the State of New Jersey without regard to its conflict of laws provision.

16. Plaintiffs agree to fully execute any and all supplemental documents and take any additional action(s) that may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement and General Release.

17. In the event that any provision contained in this Agreement is declared invalid, illegal or unenforceable by any court of competent jurisdiction, and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Moreover, if any such provision determined to be invalid, illegal or unenforceable can be made valid, legal or enforceable by modification thereof, then the party for whose benefit the provision exists, may make such modification as necessary to make the provision valid, legal and

