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THOMAS J. MALLON, ESQ.
Attorney-at-Law
86 Court Street
Freehold, NJ 07728
(732) 780-0230
Attorney for Plaintiff Francisco J. Villaneuva

FRANCISCO J. VILLANEUVA,

Plaintiff

vs.

BOROUGH OF SOUTH BOUND BROOK;
WILLIAM KING, Chief of Police;
EDWARD McGOVERN;
DOUGLAS LaGRUA;
JOHN DOES 1-5 (fictitious individuals),
members of the South Bound Brook Police Department;
JOHN DOES 6-10 (fictitious individuals),
Personnel of the South Bound Brook Police Department
in supervisory capacities;

Defendants.

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY
TRENTON

Civil Action No.: - (-)

COMPLAINT

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. Section 1983 and in accordance with the Fourth and Fourteenth Amendments of the Constitution of the United States of America. Jurisdiction is conferred under 28 U.S.C. Section 1331 and Section 1343(3). This Court has supplemental jurisdiction over Plaintiff's pendent state law claims pursuant to 28 U.S.C. Section 1367.

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PARTIES

2. Plaintiff Francisco J. Villaneuva, residing at 118 Clinton Street, South Bound Brook, New Jersey, 08880, is and was, at all times herein relevant, a resident of the State of New Jersey.

3. Defendants Edward McGovern, Douglas LaGrua and/or John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the South Bound Brook Police Department and at all times herein were acting in such a capacity as the agents, servants and/or employees of South Bound Brook and were acting under the color of law.

4. Defendants Chief of Police William King and/or John Does 6-10 were at all times mentioned herein duly appointed and acting members of the South Bound Brook Police Department and at all times herein were acting in such capacities as the agents, servants and/or employees of South Bound Brook and were acting under the color of law.

5. Defendants Chief of Police King, McGovern and/or John Does 6-10 were acting in supervisory capacities over Defendants King; McGovern; LaGrua and/or John Does 1-5 and responsible by law for the training, supervision and conduct of Defendants King; McGovern; LaGrua, and/or John Does 1-5.

6. Defendant South Bound Brook is a duly designated municipality of the state of New Jersey, under the laws of the state of New Jersey.

7. At all times relevant hereto, Defendant South Bound Brook employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants McGovern, LaGrua and/or John Does 1-10.

8. Suit is brought against all individually named Defendants in their personal and official capacities.

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FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

1. On July 8, 2011, Defendant McGovern initiated a motor vehicle stop of Plaintiff's son.
2. Defendant McGovern initiated the stop outside of Plaintiff's home and began a course of verbal abuse toward Plaintiff's son.
3. Defendant LaGrua arrived at the scene to assist Defendant McGovern.
4. Plaintiff left his residence and went over to his son's vehicle.
5. Defendant McGovern ordered Plaintiff back toward his residence, and Plaintiff complied.
6. Defendant McGovern approached Plaintiff and engaged in a course of verbal abuse toward him.
7. Defendants McGovern, LaGrua and/or John Does 1-5 then assaulted and arrested Plaintiff without justification and with excessive force.
8. Plaintiff advised Defendants that he had recently undergone shoulder surgery during the encounter.
9. Plaintiff sustained various injuries related to this incident all caused by Defendants McGovern, LaGrua and/or John Does 1-5.
10. Plaintiff was brought to police headquarters, where he was charged with Obstructing Justice (2C:29-1a); Disorderly Conduct (2C:33-2a); Resisting Arrest (2C:29-2a), and Aggravated Assault (2C:12-1b).
11. The charges brought against Plaintiff are pending.

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SECTION 1983 USE OF EXCESSIVE FORCE
COUNT ONE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. As a direct and proximate result of the above-referenced unreasonable and excessive force used on Plaintiff by Defendants McGovern, LaGrua and/or John Does 1-5 committed under color of state law, Plaintiff sustained bodily harm and was deprived of his right to be secure in his person against unreasonable seizure of his person, in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and U.S.C. Section 1983.
3. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses and lost wages, and will suffer additional special damages in the future in an amount which cannot yet be determined.

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

SECTION 1983 FAILURE TO INTERVENE
COUNT TWO

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants McGovern, LaGrua and/or John Does 1-5 were South Bound Brook Police Officers and at all times mentioned herein were acting under color of state law.
3. Defendants McGovern, LaGrua and/or John Does 1-5 had a duty to intervene in

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the unjustified assault and arrest of Plaintiff by Defendants McGovern, LaGrua and/or John Does 1-5.

4. The unjustified assault and arrest of Plaintiff by Defendants McGovern, LaGrua and/or John Does 1-5 deprived Plaintiff of his right to be secure in his person against unreasonable seizure in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and made actionable through 42 U.S.C. Section 1983.

5. Defendants McGovern, LaGrua and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified arrest and assault of Plaintiff by Defendants McGovern, LaGrua and/or John Does 1-5 and failed to intervene.

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

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

SECTION 1983 FALSE ARREST / IMPRISONMENT
COUNT THREE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The aforementioned acts of Defendants McGovern, LaGrua and/or John Does 1-5 in arresting Plaintiff was undertaken without legal or factual justification and without probable

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cause,

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

4. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses and lost wages; incurred legal expenses associated with defending the false and malicious charges brought against him, and will suffer additional special damages in the future in an amount which cannot yet be determined.

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

SECTION 1983 MALICIOUS PROSECUTION
COUNT FOUR

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

2. Defendants McGovern, LaGrua and/or John Does 1-5 maliciously and unlawfully initiated a criminal process against Plaintiff as a pretext to protecting themselves from criminal and civil liability, and/or justifying the injuries they caused Plaintiff to suffer.

3. The criminal proceedings initiated by Defendants are pending.

4. As a direct and proximate cause of the actions initiated by Defendants McGovern, LaGrua and/or John Does 1-5, Plaintiff suffered a deprivation of constitutional rights

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guaranteed to him by the Fourth and Fourteenth Amendments to the Constitution of the United States, and made actionable through 42 U.S.C. Section 1983.

5. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses and lost wages; incurred legal expenses associated with defending the false and malicious charges brought against him, and will suffer additional special damages in the future in an amount which cannot yet be determined.

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

SECTION 1983 SUPERVISORY LIABILITY
COUNT FIVE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Chief of Police William King, McGovern and/or John Does 6-10 were supervisory officials and/or officers in charge at the time Plaintiff was arrested and assaulted.
3. Defendants King, McGovern and/or John Does 6-10 had a duty to prevent subordinate officers Defendants McGovern, LaGrua and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.
4. Defendants King, McGovern and/or John Does 6-10 either directed Defendants McGovern, LaGrua and/or John Does 1-5 to violate Plaintiff's constitutional rights or had knowledge of and acquiesced in his/their subordinate's violations.

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5. As a direct and proximate result of the acts of Defendants King, McGovern and/or John Does 6-10 set forth herein, Plaintiff suffered physical injury, medical expenses and mental anguish in connection with the deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.

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

WHEREFORE, Plaintiff Francisco J. Villaneuva demands judgment against Defendants King, McGovern and/or John Does 6-10 on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SECTION 1983 UNLAWFUL POLICY, CUSTOM, PRACTICE
INADEQUATE TRAINING
COUNT SIX

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants South Bound Brook's Police Department, King and/or John Does 6-10, are vested by state law with the authority to make policy on : (1) the use of force; internal affairs investigations and/or administrative reviews pursuant to South Bound Brook Police Department policies, practices and/or customs and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines; (2) effectuating arrests; (3) police citizen encounters, and/or (4) disciplining officers. Defendants King and/or John Does 6- 10 are responsible for training Police

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Officers in the use of force, the laws of search and seizure and/or were officers in charge when Plaintiff Francisco J. Villancuva was assaulted.

3. Specifically, Defendant William King is the Chief of Police. Defendants John Does 2 and/or John Does 6-10 are South Bound Brook police department Use of Force instructors, Internal Affairs officers; officers in supervisory capacities, and/or were the officers in charge at the time of Plaintiff's arrest.

4. At all times mentioned herein, Defendants King; McGovern; LaGrua, and/or John Does 1- 10, as police officers, agents, servants and/or employees of Defendant South Bound Brook, were acting under the direction and control of Defendants South Bound Brook's Police Department, King and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the South Bound Brook Police Department.

5. Acting under color of law pursuant to official policy, practice, or custom, Defendants South Bound Brook, King and/or John Does 6-10 intentionally, knowingly, recklessly and/or with deliberate indifference failed to train, instruct, supervise, control, and discipline on a continuing basis, Defendants McGovern, LaGrua, and/or John Does 1-10 in their duties to refrain from: (1) unlawfully and maliciously assaulting, arresting and harassing citizens; (2) intentionally, recklessly and/or negligently misrepresenting the facts of arrests and/or other police-citizen encounters; (3) falsifying police and/or other official records; (4) withholding and/or mishandling evidence; (5) making false arrests, and/or (6) using unreasonable and excessive force.

6. Acting under color of law pursuant to official policy, practice, or custom, Defendants South Bound Brook, King and/or John Does 6-10 intentionally, knowingly, recklessly and/or

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with deliberate indifference implemented and/or conducted superficial and shallow Internal Affairs processes which ignored evidence and patterns of police misconduct on individual and departmental levels. Defendants South Bound Brook, King and/or John Does 6-10 failed to professionally, objectively and/or expeditiously investigate instances and patterns of police misconduct in violation of the spirit and substance of the New Jersey Attorney General's Guidelines for Internal Affairs Policy and Procedures.

7. Defendants King, John Doe 2 and/or John Does 6-10 failed to adequately track departmental excessive force complaints, administrative complaints and/or use of force incidents in violation of South Bound Brook Police Department policies, practices, customs and/or guidelines and/or the New Jersey Attorney General's Use of Force and/or Internal Affairs Guidelines, and/or failed to discipline officers for such violations.

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

9. Despite their awareness, Defendants South Bound Brook, King and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants King;

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McGovern; LaGrua; John Does 1-10, and/or other South Bound Brook Police Officers.

10. Defendants South Bound Brook, King and/or John Does 6-10 had knowledge of, or had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants King; McGovern; LaGrua, and/or John Does 1-10 on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.

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

12. Defendants South Bound Brook, King and/or John Does 6-10, directly or indirectly, under color of state law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Defendants King; McGovern, LaGrua, and/or John Does 1-10 heretofore described.

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

14. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical

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expenses and lost wages, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Francisco J. Villaneuva demands judgment against Defendants South Bound Brook, William King and/or John Does 6-10, on this Count together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SECTION 1983 DEMAND FOR PROSPECTIVE INJUNCTIVE RELIEF
COUNT SEVEN

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

Pursuant to 42 USC Section 1983, given that there exists no adequate remedy at law, Plaintiff is entitled to prospective injunctive relief against the Defendants.

2. The relief sought by Plaintiff include, but is not limited to, the following:

a. An order permanently restraining and enjoining Defendants South Bound Brook; King; McGovern; LaGrua, and John Does 1-10 from engaging in, encouraging, teaching, promoting or training South Bound Brook Police Officers in falsely arresting, maliciously prosecuting, and/or using excessive force against citizens and/or arrestees.

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

c. An order compelling Defendant South Bound Brook to provide regular and consistent training sessions to South Bound Brook Police Officers.

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

e. An order permanently restraining and enjoining Defendants McGovern, LaGrua and/or John Does 1-5 from arresting citizens without adequate probable cause, physically abusing and using excessive force against citizens and/or arrestees.

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f. An order permanently restraining and enjoining Defendant South Bound Brook from employing Defendants McGovern, LaGrua and John Does 1-5 as police officers or law enforcement personnel in any capacity except for clerical duty, solely and entirely confining them to South Bound Brook Police headquarters and limiting them entirely to desk duty; enjoining Defendants McGovern, LaGrua and John Does 1-5 from any patrol duty, and enjoining Defendants McGovern, LaGrua; and John Does 1-5 from making arrests, assisting in making arrests and using any force in making arrests and/or assisting in making arrests.

g. Any other relief as the Court deems proper and just.

WHEREFORE, Plaintiff Francisco J. Villanueva demands judgment against Defendants South Bound Brook; King; McGovern; LaGrua and John Does 6-10 on this Count, together with compensatory and punitive damages, attorney's fees, interest and costs of suit incurred, and for any such further relief as the court deems proper and just.

SUPPLEMENTAL STATE LAW CLAIMS

VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT (NJCR)
COUNT EIGHT

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The false arrest; false imprisonment; excessive force, and failure to intervene by Defendants McGovern, LaGrua and/or John Does 1-5 set forth at length above, deprived Plaintiff of his substantive due process right to be free from unlawful seizure of his person and his fundamental right to liberty secured by the Constitution of the United States and the Constitution of the State of New Jersey, in violation of N.J.S.A. 10:6-1, et seq. ("The New Jersey Civil Rights Act"), and will suffer additional special damages in the future in an amount which cannot yet be determined.
3. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries and mental anguish along with damages in the form of medical expenses and lost wages; incurred legal expenses associated with defending the false and malicious

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charges brought against him, and will suffer additional special damages in the future in an amount which cannot yet be determined.

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

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Please be advised that Thomas J. Mallon, Esquire is hereby designated trial counsel in the above captioned matter.

Dated: July 2, 2013

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

MICHAEL JOHN STONE, ESQ.

CERTIFIED BY THE SUPREME COURT OF NEW JERSEY
AS A CIVIL TRIAL ATTORNEY

THE STONE LAW GROUP
20 GLENVIEW DRIVE
WARREN, NEW JERSEY 07059
E-MAIL: mjs@stonelawgroup.com

TEL: 908-791-1110
CELL: 908-229-2002
FAX: 908-561-6561

March 15, 2016

E-mail only

Christina Fischer
Borough of South Bound Brook
12 Main Street
South Bound Brook, New Jersey 08880

RE: Villaneuva v. Borough of South Bound Brook, et al
Civil Action No.:3:13-cv-04089 (MLC-LHG)
File No.:9617 mjs

Dear Ms. Fischer:

This is to advise that this matter was settled in the amount of \$100,000 on behalf of the Borough of South Bound Brook pursuant to authority from the Middlesex County Municipal Joint Insurance Fund. All individually named defendants were voluntarily dismissed with prejudice.

The closing papers are being finalized at this time. I will provide a copy after they are finalized and all related closing documents are executed and received.

If you require any additional information, contact me at your convenience.

Very truly yours,

Michael John Stone

MICHAEL JOHN STONE
MJS: hs

Cc: Theresa Delaney