

WALTER M. LUERS, ESQ. - 034041999  
LAW OFFICES OF WALTER M. LUERS, LLC  
Suite 2  
122 West Main Street  
Clinton, New Jersey 08809  
Telephone: 908.894.5656  
Attorneys for Plaintiff

**FILED**  
AUG 01 2016  
DANIEL D'ALESSANDRO, J.S.C.

<p>LIBERTARIANS FOR TRANSPARENT GOVERNMENT, a New Jersey Non-Profit Corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>CITY OF JERSEY CITY and ROBERT BYRNE in his official capacity as Municipal Clerk and Records Custodian of the City of Jersey City,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY</p> <p>DOCKET NO. <u>L - 2952-16</u></p> <p>CIVIL ACTION</p> <p>ORDER TO SHOW CAUSE (OPRA SUMMARY PROCEEDING)</p>
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THIS MATTER being brought before the Court by Law Offices of Walter M. Luers, LLC, attorney for Plaintiff Libertarians for Transparent Government, seeking relief by way of summary action pursuant to R. 4:67-1 and 2(a), based upon the facts set forth in the verified complaint and supporting papers filed herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for good cause shown,

IT IS on this 01 day of AUGUST, 2016 ORDERED that the Defendants City of Jersey City and Robert Byrne in his official capacity as municipal clerk and records custodian, appear and show cause on the 30 day of SEPTEMBER, 2016 before the Honorable

Daniel D'Alessandro, Superior Court of New Jersey, County of Hudson, William J. Brennan Courthouse, 583 Newark Avenue, Jersey City, New Jersey,

at <sup>1:30</sup> ~~1:30~~ o'clock in the \_\_\_\_\_ noon or as soon thereafter as counsel can be heard, why judgment should not be entered:

A. Ordering Defendants to provide copies of the documents requested by Plaintiff in its July 3, 2016 OPRA request, which were all informal agreements, draft agreements, correspondence, and emails that show the terms of the settlement in *Henry v. Jersey City Police Department, et al.*, Case No. 2:14-cv-005480 (SDW) (LDW);

B. An award of costs of this action and reasonable attorneys' fees;

C. Such other, further and different relief as the Court may deem equitable and just.

And it is further *ORDERED* that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the Defendants personally or by certified mail, return receipt requested, within 7 days of the date hereof, in accordance with *R. 4:4-3* and *R. 4:4-4*, this being original process.

2. The Plaintiff must file with the Court their proof of service of the pleadings on the Defendants no later than three (3) days before the return date.

3. Defendants shall file and serve a written answer, a *Vaughn* Index that lists all of the responsive documents and contains information consistent with *Paff v. New Jersey Dep't of Labor*, 392 N.J. Super. 334, 341 (App. Div. 2007) and opposition papers to this order to show cause and the relief requested in the verified complaint and proof of service of the same by SEPT 12, 2016. The answer and opposition papers must be filed with the Clerk of the Superior Court in the county listed above and a

copy of the papers must be sent directly to the chambers of the Honorable

DANIEL D'ALESSANDRO

4. The Plaintiff must file and serve any written reply to the Defendants' order to show cause opposition by SEPT 22, 2016. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of the Honorable

DANIEL D'ALESSANDRO

5. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

7. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of the order to show cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at:

[http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf). Unless exempt from paying the filing fee, include a \$175 filing fee payable to the "Treasurer, State of New Jersey." You must also send a copy of your answer and opposition papers to the Plaintiff's attorney whose name and address appear above, or to the Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at:

[http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the Court and parties are advised to the contrary no later than 2 days before the return date.

HON.

  
DANIEL D'ALESSANDRO, J.S.C.

WALTER M. LUERS, ESQ. - 034041999  
LAW OFFICES OF WALTER M. LUERS, LLC  
Suite 2  
122 West Main Street  
Clinton, New Jersey 08809  
Telephone: 908.894.5656  
Attorneys for Plaintiff

<p>LIBERTARIANS FOR TRANSPARENT GOVERNMENT, a New Jersey Non-Profit Corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>CITY OF JERSEY CITY and ROBERT BYRNE in his official capacity as Municipal Clerk and Records Custodian of the City of Jersey City,</p> <p>Defendants.</p>	<p><b>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY</b></p> <p><b>DOCKET NO.</b> _____</p> <p><b>CIVIL ACTION</b></p> <p><b>VERIFIED COMPLAINT</b></p>
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Plaintiff Libertarians for Transparent Government (“LFTG”), through its undersigned counsel Law Offices of Walter M. Luers, LLC, by way of verified complaint against the Defendants City of Jersey City and Robert Byrne in his official capacity as Municipal Clerk and Records Custodian (“Defendants”), alleges as follows:

**PRELIMINARY STATEMENT**

1. This is an action alleging violations of the Open Public Records Act, *N.J.S.A. 47:1A-1, et seq.* (“OPRA”) and the common law right of access seeking copies of emails and communications by and among attorneys for Jersey City and plaintiff’s attorneys regarding a settlement that they had reached but that has not yet been formally memorialized.

**THE PARTIES**

2. Plaintiff Libertarians for Transparent Government is a New Jersey non-profit corporation whose principal place of business is 73 Servis Road, Skillman, New Jersey.

3. Defendant City of Jersey City is a public municipal body corporate and politic, and is a political subdivision of the State. Jersey City is a “public agency” within the meaning of *N.J.S.A. 47:1A-1.1*. Jersey City’s principal place of business is 280 Grove Street, Jersey City, New Jersey.

4. Defendant Robert Byrne is Jersey City’s Municipal Clerk and Records Custodian. By operation of law, he is Jersey City’s “custodian of a government record” as that term is defined by OPRA, *N.J.S.A. 47:1A-1.1*. Defendant Byrne’s principal place of business is 280 Grove Street, Jersey City, New Jersey.

#### **JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction of this action pursuant to *N.J.S.A. 47:1A-6* and the common law.

6. Venue is proper in this Court pursuant to *R. 4:3-2(a)(2)* because all of the relevant events occurred in Hudson County and the Defendants are located within this County.

#### **FACTUAL ALLEGATIONS**

7. LFTG is a New Jersey non-profit organization that is dedicated to promoting transparency in New Jersey. John Paff is the Executive Director of LFTG.

8. LFTG communicates with a blog located at <http://njcivilsettlements.blogspot.com/> that reports on settlements of lawsuits against local government officials and employees and also directs journalists to those settlements. Sometimes, newspapers report on the settlements.

9. Plaintiff places a high value on providing to the public access to information regarding municipal settlements. Time is of the essence, because the newsworthiness of the settlements decreases over time. One of the goals of the Plaintiff is to

provide information to the public about settlements at the time an agreement has been reached, not when that agreement has been memorialized in a writing, which can take many months. See Plaintiff's OPRA request for a fuller explanation of this phenomena and Plaintiff's interest in the settlements.

10. In this case, Plaintiff became aware of a settlement in the Federal case of *Tevin Henry v. Jersey City Police Department, et al.*, Case No. 2:14-cv-005480-LDW-SCM, which according to PACER was settled on June 29, 2016.

11. On July 3, 2016, Plaintiff transmitted a written OPRA request to Defendants in which the Plaintiff requested copies of three sets of documents: (1) the most recent amended civil complaint filed by the plaintiff or, if there has been no amendment, the original complaint filed by the plaintiff; (2) the agreement that sets forth the terms of the settlement (i.e., the "settlement agreement"); or (3) if no settlement agreement exists or is provided, then copies of all informal agreements, draft agreements, correspondence and emails related to the *Henry* case that disclose the settlement amount and any other term. The purpose of Item 3 is to capture the terms of a settlement as expressed between counsel for the parties prior to the memorialization and execution of a final agreement.

12. On July 13, 2016, the Defendants responded by providing Item 1, stating that no responsive documents existed in response to Item 2, and saying that the documents responsive to Item 3 were not public records pursuant to *New Jersey Rule of Evidence 408* and *N.J.S.A. 47:1A-9*.

13. Defendants did not provide any additional information regarding the documents they were withholding.

14. The documents being withheld are public records because they reflect the *Henry* settlement. As such, these communications were made outside of the scope of any applicable privilege or OPRA exception.

15. The records requested by Plaintiff are public records that are not subject to any exemption or exception. Plaintiff's OPRA request was a valid OPRA request.

16. Plaintiff has a strong public interest and legitimate private interest in obtaining the requested documents.

17. Defendant's interest in non-disclosure does not outweigh Plaintiff's interest in disclosure.

**COUNT I: OPEN PUBLIC RECORDS ACT, N.J.S.A. 47:1A-1, ET SEQ.**

18. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-18 of the Plaintiff's complaint as though fully set forth at length herein.

19. Defendant has violated OPRA by not providing to Plaintiff copies of all communications regarding the settlement in the *Henry* case that show the settlement's terms.

**COUNT II: COMMON LAW RIGHT OF ACCESS**

20. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-20 of the Plaintiff's complaint as though fully set forth at length herein.

21. Plaintiff has a common law right of access to copies of the documents requested by him.

22. Plaintiff has a legitimate private interest and wholesome public interest in the requested records.



23. Defendant has no legitimate interest in maintaining the secrecy of the requested records. Therefore, the Defendant has violated Plaintiff's common law right of access.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment against the Defendant:

A. Ordering Defendant to disclose to Plaintiff all informal agreements, draft agreements, correspondence, and emails that show the terms of the settlement in *Henry v. Jersey City Police Department, et al.*, Case No. 2:14-cv-005480 (SDW) (LDW);

B. Awarding Plaintiff costs and reasonable attorneys' fees; and

C. For such other or further relief as this Court deems just and equitable.

**CERTIFICATION PURSUANT TO R. 4:5-1**

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

**CERTIFICATION PURSUANT TO R. 1:38-7(B)**

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Walter M. Luers, Esq. is designated as trial counsel on behalf of Plaintiff.

Respectfully Submitted,

LAW OFFICES OF WALTER M. LUERS, LLC

By: 

DATED: July 20, 2016

Walter M. Luers, Member  
Suite 2  
122 West Main Street  
Clinton, New Jersey 08809  
Telephone: 908.894.5656

## VERIFICATION

John Paff, of full age, certifies as follows:

1. I am the Executive Director of the Plaintiff in the action captioned “*Libertarians for Transparent Government v. City of Jersey City, et al.*” All of the facts stated in the verified complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe those facts to be true. In addition, I have been duly authorized by the Plaintiff to execute this Verification on behalf of the Plaintiff.

2. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 20, 2016



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JOHN PAFF

Law Offices of  
Walter M. Luers, LLC

Suite 2  
122 West Main Street  
Clinton, New Jersey 08809  
Telephone: 908.894.5656  
Facsimile: 908.894.5729  
www.luerslaw.com

July 20, 2016

Walter M. Luers, Esq.\*

\*Also admitted in New York

Writer's Direct Email: wluers@luerslaw.com

Honorable Judge of the Superior Court  
Superior Court of New Jersey – Law Division  
William J. Brennan Courthouse  
583 Newark Avenue  
Jersey City, New Jersey 07302

**Re: *Libertarians for Transparent Government v. City of Jersey City, et al.***  
**Docket No. HUD-L-**

Dear Honorable Judge:

We are submitting this Letter Brief in lieu of a more formal brief in support of this action under the Open Public Records Act (“OPRA”), *N.J.S.A. 47:1A-1, et seq.*, and the common law right of access, which has been opened to the Court via Order to Show Cause. This action was filed because Defendants have denied Plaintiff access to records that reflect a settlement agreement between Jersey City and a third party.

Since 2009, settlement agreements in this State have been public records, even if they contained confidentiality clauses or settled claims of a personal nature. *Asbury Park Press v. Monmouth County*, 406 N.J. Super. 1 (App. Div. 2009). Settlement agreements are contracts, and are thus explicitly subject to public disclosure, even if they settle claims that have not been asserted through a formal court filing.

It stands to reason that documents that reflect an agreement, even if they are not formal documents, are subject to OPRA, even if they are not formal signed and sealed

documents. In this case, there must be some evidence of an agreement, because the underlying matter has been dismissed. (Certification of Walter M. Luers, Exh. D (dismissing the Henry matter) (“Luers Cert.”)). Because those records relate to public business and are not subject to any exception, they must be produced.

First, we discuss the facts of this case. Second, we discuss why this action should proceed in a summary manner. Third, we discuss legal arguments that support disclosure.

### **STATEMENT OF FACTS**

For the facts, the Court is respectfully referred to Plaintiff’s Verified Complaint. Plaintiff’s OPRA request and Defendants’ OPRA response, are attached to the Certification of Walter M. Luers.

### **LEGAL ARGUMENT**

#### **POINT I**

#### **PLAINTIFF’S ACTION SHOULD PROCEED IN A SUMMARY MANNER**

The practice in this State is for OPRA actions to proceed in a summary manner, and for them to be opened to the Court via Verified Complaint and Order to Show Cause. The purpose of this practice is so that OPRA actions, which usually do not require discovery or motion practice, may proceed in a “summary or expedited” manner, as required by the Legislature.

“A person who is denied access to a government record by the custodian of the record, . . . may institute a proceeding to challenge the custodian’s decision by filing an action in Superior Court.” *N.J.S.A. 47:1A-6*. Once instituted, “[a]ny such proceeding shall proceed in a summary or expedited manner.” *Id.* “This statutory language requires a trial court to proceed under the procedures prescribed in Rule 4:67.” *Courier News v. Hunterdon County Prosecutor’s*

*Office*, 358 N.J. Super. 373, 378 (App. Div. 2003). Any such action must be initiated by Order to Show Cause, supported by a verified Complaint. *Id.* (citing *R. 4:67-2(a)*). Here, because OPRA authorizes actions under it to proceed in a summary manner, and Plaintiff's request for an order to show cause is supported by a verified complaint, the relevant documents have been provided via that complaint, and the relevant facts should not reasonably be disputed, the order to show cause should be granted so this matter may proceed in a summary manner. *R. 4:67-2(a)*.

In addition, in our proposed Order to Show Cause, we have inserted a paragraph that required Defendants to serve and file a Vaughn Index that lists all of the documents that are responsive to Plaintiff's OPRA request and the reasons why they are being withheld, as well as other information required by *Paff v. New Jersey Dep't of Labor*, 392 N.J. Super. 334, 341 (App. Div. 2007).

## POINT II

### THE RECORDS SOUGHT BY PLAINTIFF SHOULD BE DISCLOSED

Plaintiff seeks copies of all records that reflect the agreement between the parties in *Tevin Henry v. Jersey City Police Department, et al.*, Case No. 2:14-cv-005480-LDW-SCM. We know the case was settled because the June 29, 2016 Order of the Court so reflects. (Luers Cert. Exh. D).

Plaintiff seeks records pursuant to OPRA and the common law right of access. As the Court knows, the Open Public Records Act ("OPRA") mandates that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public's right of access." *Libertarian Party of Cent. New Jersey v. Murphy*, 384 N.J.

Super. 136, 139 (App. Div. 2006) (citing *N.J.S.A. 47:1A-1*). “The purpose of OPRA ‘is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.’” *Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp.*, 183 N.J. 519, 535 (2005) (quoting *Asbury Park Press v. Ocean County Prosecutor’s Office*, 374 N.J. Super. 312, 329 (Law Div. 2004)).

These lofty descriptions of the purposes of OPRA are not mere bromides or empty statements of legislative intent. Our Supreme Court has stated that “Those who enacted OPRA understood that knowledge is power in a democracy, and that without access to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions.” *Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities*, 207 N.J. 489, 502 (2011).

The burden of proof in showing that a denial of access was justified rests solely with the Records Custodian. *N.J.S.A. 47:1A-6; Asbury Park Press v. Monmouth County*, 406 N.J. Super. 1, 7 (App. Div. 2009). Here, the documents sought by Plaintiff are “government records” within the meaning of OPRA. Under OPRA, a “government record”:

means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. *N.J.S.A. 47:1A-1.1*.

Here, the documents requested by Plaintiff are public records.

Settlement agreements are public records. *Asbury Park Press v. County of Monmouth*, 406 N.J. Super. 1, 4 (App. Div. 2009), *aff'd*, 201 N.J. 5 (2010). And, OPRA requests for settlement agreements that do not specify specific lawsuits are valid OPRA requests, even if the settlement agreements are not within the physical possession of the Records Custodian. *Burnett v. County of Gloucester*, 415 N.J. Super. 506, 513-15 (App. Div. 2010).

The sole reason given by the Records Custodian for denying our request was Rule of Evidence 408. That rule states that settlement offers and negotiations are not admissible as evidence at trial.

However, in general, the fact that a matter is being litigated cannot form the basis for an OPRA exemption. In *MAG Entertainment v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 543-44 (App. Div. 2005) (citing *Mid-Atlantic Recycling Technologies, Inc. v. City of Vineland*, 222 F.R.D. 81, 85 (D.N.J. 2004), the Appellate Division observed that Court rules do not prohibit parties from seeking records through OPRA.

In addition, although a court rule might form the basis to exempt a document from OPRA, Rule 408 does not address disclosure of records. Rule 408 is a rule of evidence regarding whether documents may be used at trial. Clearly, the Rules of Evidence cannot constitute a basis for not disclosing records. While settlement documents between the parties may not be admissible at trial, that is not the test here. Here, if the documents were public records, they must be disclosed, regardless of whether they would be “admissible.”

Neither can responsive records be privileged.

These two records are obviously not privileged. “Specifically, the attorney-client privilege generally applies to communications (1) which legal advice is sought, (2) from an attorney acting in his capacity as a legal advisor, (3) and the communication is made in



confidence, (4) by the client.” *Hedden v. Kean University*, 434 N.J. Super. 1, 10 (App. Div. 2013) (citing *Metalsalts Corp. v. Weiss*, 76 N.J. Super. 291 (Ch. Div. 1962)). Any emails or letters confirming a settlement or its terms between plaintiff’s counsel and defense counsel in the *Henry* matter can never be privileged because the parties are adversaries.

The public interest in producing these records is strong. Courts have noted a strong public interest in the production of settlement agreements. In addition to the highest Court of this State, several out-of-state courts have held that settlement agreements are public records. *Tribune-Review Publishing Co. v. Westmoreland County Housing Authority*, 833 A.2d 112, 121 (Pa. 2003); *State ex rel. Findlay Publ’g Co. v. Hancock Co. Bd. of Comm’rs*, 684 N.E.2d 1222, 1225 (Ohio 1997); *Des Moines Indep. Cmty. Sch. Dist. Pub. Records v. Des Moines Register & Tribune Co.*, 487 N.W.2d 666, 669 (Iowa 1992); *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191, 1193 (Alaska 1989).

The public policy importance in producing documents that reflect a “settlement” (in contrast to a settlement agreement) is the same. Cases are settled frequently on the basis of exchanges of emails. Court documents may not reflect the terms of any settlement, including cash payments or other terms. The public may have to wait months for such settlements to be memorialized in writing, even if the terms of a settlement are clear and reflected in writings, such as emails.

Indeed, in the *Henry* case, the record reflects that the case was settled on June 29, 2016. (Luers Cert. Exh. D). But the fundamental terms of the agreement are not reflected there.

Ultimately, records that reflect a settlement must be produced under OPRA, so that the public may know the terms of the settlement without having to wait for the parties to

formalize that agreement in writing. To do otherwise would undermine the public interest and public trust by delaying the disclosure of such information to the public.

### **Common Law Right of Access**

If this Court should deny access to the records requested under OPRA, the Court should grant access under the common law right of access. The public's right of access to records is broader under the common law right of access than under OPRA. "Nothing contained in [OPRA] shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency." *N.J.S.A.* 47:1A-8; *see also North Jersey Media Group Inc. v. State, Dep't of Personnel*, 389 N.J. Super. 527, 536 (Law. Div. 2006); *Bergen County Improvement Auth. v. N. Jersey Media Group, Inc.*, 370 N.J. Super. 504, 516 (App. Div. 2004). Thus, the right of access to records under the common law is broader than under OPRA. *North Jersey Media Group*, 389 N.J. Super. at 537.

The common law right of access has three elements: (1) the records must be common law public documents; (2) the person who seeks access must "establish an interest in the subject matter of the material," *South Jersey Publishing Co. v. New Jersey Expressway Auth.*, 124 N.J. 478, 487 (1991), and (3) the citizen's right to access "must be balanced against the State's interest in preventing disclosure." *Higg-A-Rella, Inc.*, 141 N.J. at 46; *see also Keddie v. Rutgers, The State University*, 148 N.J. 36, 50 (1997) (discussing these three elements).

Common law public records "include almost every document recorded, generated, or produced by public officials whether or not 'required by law to be made, maintained or kept on file.'" *Shuttleworth v. City of Camden*, 258 N.J. Super. 573, 582 (App. Div. 1992). Here, the records sought here are public records because they are kept by the public agency. *Higg-A-*

*Rella, Inc.*, 141 N.J. at 46 (defining a common-law record as one that is made by a public official in the exercise of their public function, either because the record was required or directed by law to be made or kept, or because it was filed in a public office). Plaintiff has standing to request these documents under the common law, a requirement that is easily met. “A citizen, and the press on its behalf, does not have to prove any personal interest in order to satisfy the common law standing requirement.” *Daily Journal v. Police Dep’t of City of Vineland*, 351 N.J. Super. 110, 122 (App. Div. 2002).

To determine whether the records should be disclosed to Plaintiff, this Court must balance Plaintiff’s interest in disclosure against Defendant’s interest in confidentiality. In weighing whether disclosure outweighs confidentiality, New Jersey courts have weighed several factors, including

(1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policy-makers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual’s asserted need for the materials. *Loigman v. Kimmelman*, 102 N.J. 98, 113 (1986).

Here, we rely on the reasons set forth in Plaintiff’s OPRA request and our discussion above regarding the importance of disclosure of settlements. Those interests are strong, and there is no countervailing interest in non-disclosure.

**POINT III**

**AWARD OF REASONABLE ATTORNEYS' FEES**

If the Court orders Defendant to produce the documents at issue, the Court should find that Plaintiff is the prevailing party and, under OPRA's fee-shifting provision and the common-law right of access, award Plaintiff a reasonable attorneys' fee and costs. *N.J.S.A. 47:1A-6; Mason v. Hoboken*, 196 N.J. 51, 79 (2008) (concluding that catalyst theory applies to fee awards under both OPRA and the common law right of access).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter M. Luers". The signature is written in a cursive style with a large, looping initial "W".

Walter M. Luers

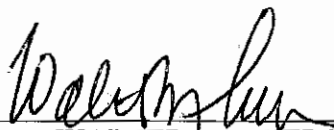
WALTER M. LUERS, ESQ. - 034041999  
LAW OFFICES OF WALTER M. LUERS, LLC  
Suite 2  
122 West Main Street  
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Telephone: 908.894.5656  
Attorneys for Plaintiff

<p>LIBERTARIANS FOR TRANSPARENT GOVERNMENT, a New Jersey Non-Profit Corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>CITY OF JERSEY CITY, <i>et al.</i>,</p> <p>Defendants.</p>	<p><b>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY</b></p> <p><b>DOCKET NO.</b> _____</p> <p><b>CIVIL ACTION</b></p> <p><b>CERTIFICATION OF WALTER M. LUERS</b></p>
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I, WALTER M. LUERS, of full age, hereby certify:

1. I am an attorney of the State of New Jersey and a member of the law firm of Law Offices of Walter M. Luers, LLC, and counsel for Plaintiff.
2. I am attaching hereto true and correct copies of the following documents: **Exhibit A:** Plaintiff's July 3, 2016 OPRA request; **Exhibit B:** Defendants' July 13, 2016 denial of access; **Exhibit C:** a copy of the First Amended Complaint in *Henry v. Jersey City Police Department, et al.*, Civil Action No. 2:14-cv-005480-LDW-SCM; **Exhibit D:** June 29, 2016 Order dismissing the Henry case without prejudice.
3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 20, 2016

  
WALTER M. LUERS

# **Exhibit A**

# OPRA Request

to City of Jersey City

Submitted via E-mail to rbyrne@jcnj.org on Sunday, July 3, 2016 at 1:41 PM

Requestor: **Libertarians for Transparent Government, a NJ Nonprofit Corporation.**

This is our request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records via e-mail to NJTransparency@yahoo.com. If you have any questions please call 732-873-1251.

## **Records Requested:**

For the case of Tevin Henry v. Jersey City Police, Federal Case 2:14-cv-05480, which the court's computer system shows as having settled on June 29, 2016, we would like the following records:

1. The most recently amended civil complaint filed by the Plaintiff or, if there are no amendments, please send the original civil complaint. Please do not send us summonses, case information statements, etc.
2. The agreement(s) that sets forth the terms and amount of settlement, i.e. the "settlement agreement(s)" related to this case.
3. If the City of Jersey City provides us with all of the unredacted settlement agreement(s), as requested in #2 above, by no later than seven business days after receiving this request, then you may ignore this paragraph of this request. Otherwise, after reading the "Statement" below, please send us all informal agreements, draft agreements, correspondence, e-mails etc. related to this case that disclose the settlement amount and/or any other settlement terms. We do not want internal communications between the City of Jersey City and/or its insurer and/or its attorneys. Rather, we want the informal agreements, draft agreements, correspondence, e-mails etc. exchanged between a) the City of Jersey City and/or its agents/attorneys/insurers and b) the Plaintiff and/or his or her agents/attorneys/insurers.

## **Statement Regarding #3 of the above request.**

We often encounter situations where, in response to a records request for an agreement memorializing a recent settlement of a lawsuit against a government agency, we are told that the settlement agreement is "not yet available" even though a meeting of the minds has been reached among the parties and the matter has been marked "settled" in the court's records. The typical justification for the denial is that the settlement agreement has not yet been formalized or that it has not received the signatures of all parties.

The practice of a blog that we communicate with (<http://njcivilsettlements.blogspot.com/>) is to report on settlements of lawsuits against local government officials and employees and then direct newspaper journalists to those reports. In some case, the newspapers, having been alerted to a settlement by way of the blog, will publish their own articles on the



settlements. We desire this because the newspapers are able to reach wider audiences than the blog. The problem is that the news value of settlements, and thus the blog's chance of having articles about a given settlement published in the regular news media, decreases as time elapses.

We don't think that our (and the public's) right to know the amount and terms of lawsuit settlement should depend on how high of a priority the lawsuit parties' attorneys and insurers place on getting the settlement agreement reduced to writing and signed by all parties. Accordingly, we are making this request to gain disclosure of any other documents, such as letters and e-mails between the parties and/or their lawyers or insurers, that disclose the agreed upon settlement terms. It seems to us that after a meeting of minds between the lawsuit parties has been reached, there ought to be some sort of documentation, even if it is only an e-mail from your agency's lawyer to plaintiff's lawyer saying "OK, this is to confirm our discussion last Friday where we agreed that our government agency will pay your client \$175,000 in return for a full release with a standard confidentiality agreement." It is this sort of correspondence that we seek.

### **Important notes regarding your response to # 3 of this request.**

Several records custodians, in responding to #3, have failed or refused to identify which settlement documents are responsive to our request and often fail to even confirm or deny that such responsive records exist. For example, they may respond "Draft settlement agreements or settlement communications are exempt from disclosure because they are attorney-client privileged." But, such a response does not let us know whether any responsive records exist. So, when responding to #3 of our request, recognize that you are required by OPRA to:

**First**, find out from the City of Jersey City's agents, attorneys and insurers whether any responsive records exist. It is, of course, very likely that responsive records would not be located at your agency's headquarters but held by the attorney(s) who defended the civil suit and/or agency's insurer(s)<sup>1</sup>. Then, in your response to #3 of our request, set forth in detail your efforts to gain the cooperation with your agency's attorneys, insurers and agents and inform us of the extent of their cooperation. Without being informed whether these attorneys and insurers searched their records, we are unable to conclude that the City of Jersey City's search was adequate.

**Second**, you are required by OPRA to identify the records within the scope of #3 above even if you claim that they are exempt from disclosure. If no records are within the scope of #3, you are required to plainly state in your response that no such records exist.

**Third**, for each record that is suppressed in its entirety or partially (i.e. redacted), you are required by OPRA to explain your justification for the suppression or redaction with enough detail and precision to allow us to judge for ourselves whether your decision to suppress or redact was correct.

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<sup>1</sup> The City of Jersey City is under a duty to seek out and retrieve responsive records from its attorneys, insurers or other agents when responding to an OPRA request. Burnett v. Gloucester, 415. N.J. Super. 506, 517 (App. Div. 2010).



# **Exhibit B**

----- Forwarded message -----

From: **Irene McNulty** <[McNultyI@jcnj.org](mailto:McNultyI@jcnj.org)>

Date: Wed, Jul 13, 2016 at 2:19 PM

Subject: FW: OP2016-1263 - Tevin Henry vs. JC Police - Settlement Documents, etc.

To: "[njtransparency@yahoo.com](mailto:njtransparency@yahoo.com)" <[njtransparency@yahoo.com](mailto:njtransparency@yahoo.com)>

Cc: Sean Gallagher <[SeanG@jcnj.org](mailto:SeanG@jcnj.org)>, Amanda Bransky <[ABransky@jcnj.org](mailto:ABransky@jcnj.org)>, Genevieve Esteban <[GEsteban@jcnj.org](mailto:GEsteban@jcnj.org)>

Oops...here is the document that was inadvertently not attached to below e-mail. My apologies for the error.

**Irene McNulty, R.M.C.**

**Deputy City Clerk**

Office of the City Clerk

280 Grove Street

Jersey City, NJ 07302

Telephone #[201-547-4847](tel:201-547-4847)

FAX #[201-547-5461](tel:201-547-5461)

**From:** Irene McNulty  
**Sent:** Wednesday, July 13, 2016 2:16 PM  
**To:** '[njtransparency@yahoo.com](mailto:njtransparency@yahoo.com)'  
**Cc:** Sean Gallagher; Amanda Bransky; Genevieve Esteban  
**Subject:** OP2016-1263 - Tevin Henry vs. JC Police - Settlement Documents, etc.

Reference is made to your OPRA request captioned above.

Attached please find a copy of the complaint that is responsive to part 1 of the request.

In regards to part 2 of the request, no responsive records were located.

In regards to part 3 of the request, it is denied pursuant to N.J.R.E. 408 and N.J.S.A. 47:1A-9 which specifically states that OPRA "shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.); any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order."

This request is now deemed closed. Thank you.

**Irene McNulty, R.M.C.**

**Deputy City Clerk**

Office of the City Clerk

280 Grove Street

Jersey City, NJ 07302

Telephone #[201-547-4847](tel:201-547-4847)

FAX #[201-547-5461](tel:201-547-5461)

— Attachments: —

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OP2016-1263 - Henry - Complaint.pdf	668 KB
JerseyCityOPRA.pdf	128 KB
JCSettleOrder.pdf	44.3 KB

# **Exhibit C**

LAW OFFICES OF ROBERT A. JONES  
Filing Attorney: Jessica L. Di Bianca, Esq.  
Attorney ID# 012012006  
354 Eisenhower Parkway  
Livingston, NJ 07039  
973-994-3030  
Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK VICINAGE

TEVIN HENRY,

Plaintiff

v.

JERSEY CITY POLICE DEPARTMENT, CITY OF JERSEY CITY, POLICE CHIEF THOMAS J. COMEY, SERGEANT STEPHEN TROWBRIDGE, CAPTAIN JOHN SABO, SERGEANT ANTHONY TEDESCO, SERGEANT TIMOTHY O'BRIEN, POLICE OFFICER WILLIAM COSTIGAN, POLICE OFFICER CHRISTOPHER DALIANI, POLICE OFFICER MICHAEL J. RIVERA, POLICE OFFICER KEITH O'BRIEN, POLICE OFFICER J. LARKINS, POLICE OFFICER ANTHONY CANCEL, POLICE OFFICER VINCENT ALBERTO, POLICE OFFICER KEVIN LOWRY, POLICE OFFICER BRIAN CULLINANE, COUNTY OF HUDSON, HUDSON COUNTY PROSECUTOR'S OFFICE, HUDSON COUNTY SHERIFF'S OFFICE, NEW JERSEY TRANSIT POLICE, STATE OF NEW JERSEY, JOHN DOES 1-20 (being fictitious persons whose identities are currently unknown) and ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown),

Defendants

Civil Action No. 2:14-cv-05480-LDW-SCM

FIRST AMENDED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. SECTIONS 1982, 1983, 1985, 1988, THE UNITED STATES CONSTITUTION, AND THE NEW JERSEY STATE CONSTITUTION

Plaintiff, Tevin Henry, residing at 32 Ruby Brown Terrace, Jersey City, New Jersey,  
by way of Complaint against the Defendants, hereby says:

PARTIES

1. Plaintiff, Tevin Henry is an adult residing at the above address.
2. Defendants, Police Chief Thomas J. Comey ("Comey"), Sergeant Stephen Trowbridge ("Trowbridge"), Captain John Sabo ("Sabo"), Sergeant Anthony Tedesco ("Tedesco"), Sergeant Timothy O'Brien ("Sergeant O'Brien"), Police Officer William Costigan ("Costigan"), Police Officer Christopher Daliani ("Daliani"), Police Officer Michael J. Rivera ("Rivera"), Police Officer Keith O'Brien ("O'Brien"), Police Officer J. Larkins ("Larkins"), Police Officer Anthony Cancel ("Cancel"), Police Officer Vincent Alberto ("Alberto"), Police Officer Brian Cullinane ("Cullinane") and John/Jane Does 1-20 were at all times relevant herein duly appointed superior officers, police officers, detectives, supervisors or agents, servants or employees of Defendants, City of Jersey City and Jersey City Police Department and were acting as agents, servants and/or employees of the aforesaid Defendants. They are sued individually and in their official capacity.
3. At all times mentioned herein, Defendants John Does 1-20 were duly appointed superior officers, supervisors, detectives, officers, or other persons within the Hudson County Prosecutor's office and were acting as agents, servants and employees of the Hudson County Prosecutor's office and Hudson County. They are sued individually and in their official capacity.
4. At all times mentioned herein, Defendants John Does 1-20 were duly appointed superior officers, supervisors, officers, detectives or other agents, servants and employees of Hudson County and the Hudson County Sheriff's Office and were

acting as agents, servants and employees of the aforesaid Defendants. They are sued individually and in their official capacity.

5. At all times mentioned herein, Defendants, John Does 1-20 were duly appointed superior officers, supervisors, police officers, detectives or other agents, servants or employees of the New Jersey Transit Police Department and the State of New Jersey and were acting as agents, servants and employees of the aforesaid Defendants. They are sued individually and in their official capacity.

6. At all times mentioned herein, Defendants John Does 1-20 were duly appointed superior officers, supervisors, officers, detectives or other agents, servants and employees of ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown) and were acting as agents, servants and employees of the aforesaid Defendants. They are sued individually and in their official capacity.

7. Defendants, City of Jersey City, Jersey City Police Department, County of Hudson, Hudson County Prosecutor's Office, Hudson County Sheriff's Office, New Jersey Transit Police, State of New Jersey and ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown) employed the individual Defendants mentioned above as superior officers, supervisors, detectives, officers, and agents, servants or employees of the aforesaid Defendants and are responsible for and vicariously liable for the actions committed herein by the individual Defendants.

8. The aforesaid Defendants are responsible for assuring that the individual officers obey the regulations of the Jersey City Police Department, Hudson County Prosecutor's Office, Hudson County Sheriff's Office, New Jersey Transit Police, ABC



COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown) and the laws of the United States and the State of New Jersey.

9. Defendants, Comey, Sabo, Trowbridge, Tedesco, Sergeant O' Brien and John Does 1-20 are superior officers, supervisors, officers, detectives, agents, servants or employees of the Jersey City Police Department and the City of Jersey City, who were responsible for hiring, training, supervising, controlling and disciplining all of the individual Defendants involved in the subject incident with Plaintiff on November 1, 2012.

10. Defendants John Does 1-20 are superior officers, supervisors, officers, detectives, agents, servants or employees of the County of Hudson, Hudson County Prosecutor's Office, Hudson County Sheriff's Office, State of New Jersey, New Jersey Transit Police and/or ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown) who were responsible for hiring training, supervising, controlling and disciplining all of the individual defendants involved in the subject incident with Plaintiff on November 1, 2012.

#### FIRST COUNT

1. Plaintiff hereby repeats and incorporates herein each and every allegation set forth in the previous paragraphs as if set forth fully herein.

2. On or about November 1, 2012, Plaintiff was the victim of wrongful and illegal conduct by the Defendants.

3. On the aforesaid date, at approximately 9:30 p.m., Plaintiff was riding on his bicycle on Winfield Avenue in the City of Jersey City, New Jersey.

4. Suddenly and without warning, one of the Defendants flashed headlights at the Plaintiff.

5. Plaintiff then heard someone yell freeze.

6. Plaintiff then saw ten (10) to twelve (12) people run towards him.

7. Plaintiff stopped his bicycle, dropped it on the ground and put his hands up.

8. Plaintiff was immediately assaulted by the Defendants.

9. The Defendants pushed his face into the ground and began hitting him with flashlights and night sticks in the face.

10. Defendants twisted his ankles and kicked and stepped on his chest. Defendants placed him in handcuffs but then did not arrest him.

11. While in custody, Defendants searched Plaintiff. After accusing him of possessing a gun, they realized that it was a flashlight. Defendants broke the flashlight.

12. Plaintiff was released a short time later.

13. Plaintiff was subjected to excessive force, brutality and assault and battery by the individual Defendants.

14. As a result of the use of excessive force, brutality and assault and battery, Plaintiff was caused to sustain severe and grievous permanent injuries resulting in damages for which he makes this claim.

15. As a result of the conduct of Defendants, the Plaintiff was deprived of his rights, privileges and immunities secured by the Constitution and Laws of the United States in violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution and 42 U.S.C. §1982, 1983, 1985 and 1988 and in violation of the New Jersey State Constitution and all applicable New Jersey State Laws.

16. The actions of all Defendants as described in this Complaint were performed under color of State Law.

17. The injuries suffered by Plaintiff were caused by Defendants' deliberate indifference to the protection of the rights, privileges and immunities guaranteed by the Constitution of the United States, the Constitution of New Jersey and the laws of the United States and the State of New Jersey.

18. Such indifference consists of the following:

- a. Failure to exercise due care under the circumstances;
- b. Permitting officers such as the aforesaid individuals to use excessive force under the circumstances;
- c. Failure to properly discipline and control officers known to be dangerous and causing harm to citizens of the community;
- d. Failure to properly hire, retain, supervise, restrain and train the officers who severely injured Plaintiff.

19. The governmental entities named as Defendants, City of Jersey City, Jersey City Police Department, County of Hudson, Hudson County Prosecutor's office, Hudson County Sheriff's Office, State of New Jersey, New Jersey Transit Police and ABC COS. 1-20 (being fictitious government and/or business entities whose identities are currently unknown are directly liable and responsible for the acts of the individual Defendants because they failed to adequately hire, retain, train, supervise, discipline or in any way control the individual Defendants who assaulted Plaintiff, thereby demonstrating a policy of condoning this conduct by police officers and by obligating a policy of using force against people outside their home on the night of November 1, 2012.

WHEREFORE, Plaintiff hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

SECOND COUNT

1. Plaintiff repeats and incorporates each and every allegation set forth in the First Count as if set forth fully herein.

2. The aforesaid acts and failures to act by the Defendants were careless, reckless and negligent.

3. As a result thereof, Plaintiff sustained severe and grievous personal injuries resulting in damages for which he makes this claim.

WHEREFORE, Plaintiff hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

THIRD COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in in the First and Second Counts as if fully set forth at length herein.

2. The physical attack of Plaintiff constitutes assault and battery by the Defendants.

3. As a result of the assault and battery, Plaintiff sustained severe and grievous personal injuries resulting in damages for which he makes this claim.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

FOURTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in First, Second and Third Counts as if fully set forth at length herein.

2. Each and every of the Defendants' acts and failures to act as set forth above deprived Plaintiff of his rights and privileges afforded to him under Article I of the New Jersey Constitution.

3. Defendants acts and failures to act as set forth above deprived Plaintiff of his rights to procedural due process under Article I, paragraph 1 of the New Jersey State Constitution. This includes, but is not limited to his right to be free, independent and his right to safety and happiness.

4. The Defendants denied Plaintiff of his civil rights afforded under Article I, paragraph 12 of the New Jersey State Constitution.

5. The Defendants denied Plaintiff of his rights as a victim of a crime as afforded him under Article I, paragraph 22 of the New Jersey State Constitution, which resulted in a violation by Defendants of the New Jersey Constitution and/or the New Jersey Civil Rights Act.

6. As a result of Defendants unconstitutional conduct, Plaintiff sustained severe and grievous personal injuries and emotional anguish and distress resulting in damages for which he makes this claim.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

#### FIFTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in the First through Fourth Counts as if fully set forth at length herein.

2. Defendants conspired against Plaintiff to deprive him of equal protection laws as guaranteed by the State and Federal Constitution by unlawfully detaining him, beating him, arresting him, and then releasing him.

3. In furtherance of that conspiracy, none of the Defendant governmental entities, with the exception of Defendants, City of Jersey City, Jersey City Police Department, Hudson County and the Hudson County Sheriff's Office, have provided

the results of their investigation, including, without limitation, their internal affairs investigation, to Plaintiff or his attorney, and have not provided the identities of the individual officers involved to the Plaintiff or his attorney.

4. These acts and failures to act were performed under the color of State Law and embodied a policy, practice custom or procedure of the defendant public entities.

5. The acts and failures to act by the Defendants constitute a violation of Plaintiff's constitutional rights pursuant to 42 U.S.C. §1983 et seq.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

#### SIXTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in the First through Fifth Counts of the Complaint as if fully set forth at length herein.

2. Defendants' acts and failures to act caused Plaintiff to be subject to a state created danger in violation of his substantive due process rights under the United States Constitution and in violation of 42 U.S.C. §1983.

3. Defendants' acts and failures to act were with deliberate indifference to the protection of the rights of Plaintiff.

4. As a result of the Defendants constitutional violations, Plaintiff was caused to sustain severe and grievous personal injuries, deprivation of his constitutional rights and has sustained damages as a result thereof.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

#### SEVENTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in the First through Sixth Counts of the Complaint as if fully set forth at length herein.

2. Defendants' acts and failures to act caused Plaintiff to be subject to a state created danger in violation of his substantive due process rights under the New Jersey Constitution and in violation of 42 U.S.C. §1983 and all applicable state laws.

3. Defendants' acts and failures to act were with deliberate indifference to the protection of the rights of Plaintiff.

4. As a result of the Defendants constitutional violations, Plaintiff was caused to sustain severe and grievous personal injuries, deprivation of his constitutional rights and has sustained damages as a result thereof.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, interest, attorney's fees and costs of suit.

#### EIGHTH COUNT

1. Plaintiff repeats and incorporates all of the allegations set forth in the First through Seventh Counts as if fully set forth at length herein.

2. The acts and failures to act by the Defendants as alleged in the preceding paragraphs constitute intentional misconduct and/or gross negligence which directly caused the harm suffered by Plaintiff.

3. The harm suffered by Plaintiff was a foreseeable consequence of the intentional misconduct and/or gross negligence of the Defendants.

4. The Defendants were grossly negligent, and acted intentionally, willfully, wantonly, maliciously, recklessly and outrageously in their disregard for the rights and safety of the Plaintiff.

5. As a direct result, Plaintiff sustained injuries and damages, including punitive damages, for which he makes this claim.

WHEREFORE, Plaintiff, Tevin Henry, hereby demands judgment against the Defendants, jointly and severally, for damages, punitive damages, attorney's fees, interest and costs of suit.

LAW OFFICES OF ROBERT A. JONES  
Attorney for Plaintiff

Dated: 10/15/15

By: /s/Jessica L. Di Bianca  
Jessica L. Di Bianca



CERTIFICATION

I hereby certify that to the best of my knowledge, information and belief, the within matter is not the subject of any other pending action in any court or the subject of a pending arbitration proceeding, and no other parties known to the plaintiffs at this time should be joined.

LAW OFFICES OF ROBERT A. JONES  
Attorney for Plaintiff

Dated: 10/15/15

By: /s/Jessica L. Di Bianca  
Jessica L. Di Bianca

LAW OFFICES OF ROBERT A. JONES  
Filing Attorney: Jessica L. Di Bianca, Esq.  
Attorney ID: 012012006  
354 Eisenhower Parkway, Suite 1800  
Livingston, NJ 07039  
Phone No.: (973) 994-3030  
Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK VICINAGE

TEVIN HENRY

Plaintiff,

v.

JERSEY CITY POLICE DEPARTMENT, et al.,

Defendants.

HON. SUSAN D. WIGENTON  
CIVIL ACTION NO.  
2:14-cv-05480-LDW-SCM

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the within First Amended Complaint with the Clerk of the United States District Court and that a copy of these documents will be sent *via* CM/ECF to:

Stephen R. Tucker, Esq., Deputy Attorney General  
State of New Jersey, Office of Attorney General  
Department of Law and Public Safety  
Division of Law  
25 Market Street  
Trenton, New Jersey 08625

Michael Dougherty, Esq.  
City of Jersey City  
Dept. of Law/City Hall  
280 Grove Street  
Jersey City, New Jersey 07302

Michael L. Dermody, Esq.  
County Of Hudson, NJ  
567 Pavonia Ave  
Jersey City, New Jersey 07306

Randall B. Weaver, Esq.  
Office of the NJ Attorney General  
Division of Law, Tort Litigation Section  
R.J. Hughes Justice Complex  
25 Market Street  
Trenton, New Jersey 08625

I declare under penalty of perjury that the foregoing is true and correct.

LAW OFFICES OF ROBERT A. JONES  
ATTORNEY FOR PLAINTIFF

By: s/ JESSICA L. DI BIANCA  
JESSICA L. DI BIANCA, ESQ. (ID: 012012006)

Dated: October 15, 2015

# **Exhibit D**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

TEVIN HENRY	:	
	:	Civil Action No. 14-5480 (SDW)
Plaintiff (s)	:	
	:	
v.	:	
	:	ORDER OF DISMISSAL
JERSEY CITY POLICE DEPT., ET AL.	:	
	:	
Defendant(s)	:	
_____	:	

It has been reported to the Court that the above-captioned matter has been settled,

**It is on this 29<sup>TH</sup> day of June, 2016**

**ORDERED** that this action is hereby dismissed without prejudice and without costs, subject to the right of the parties upon good cause shown within **60 days**, to reopen the action if the settlement is not consummated. The terms of the settlement agreement are incorporated herein by reference and the Court shall retain jurisdiction over the settlement agreement to enforce its terms.

*s/ Susan D. Wigenton*  
U.S.D.J.