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Freehold, NJ 07728
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RENE A. BERDUGO,

UNITED STATES DISTRICT COURT
DISTRICT COURT OF NEW JERSEY

NEWARK

Plaintiff

vs.

Civil Action No.: - (-)

WEST NEW YORK; MARCO A. BARRERA, HECTOR A. RODRIGUEZ, JOHN DOES 1-5, (fictitious individuals) West New York Police Officers; **MICHAEL E. INDRI,** West New York Police Director; and **JOHN DOES 6-10,** (fictitious individuals) members of the West New York Police Department in supervisory capacities;

COMPLAINT

Defendants.

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. Section 1983 and in accordance with the First, 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).

PARTIES

2. Plaintiff Rene A. Berdugo, residing at 7 Porter Street, Hackensack, New Jersey, 07601, is and was, at all times herein relevant, a citizen of the United States and a resident of the State of New Jersey.

3. Defendants Marco A. Barrera, Hector A. Rodriguez and John Does 1-5 were at all times mentioned herein duly appointed and acting police officers of the West New York Police

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Department and at all times herein were acting in such capacities as the agents, servants and/or employees of West New York and were acting under the color of law.

4. Defendants Michael E. Indri and John Does 6-10 were at all times mentioned herein duly appointed and acting members of the West New York Police Department and at all times ~~herein were acting in such capacities as the agents, servants and/or employees of West New~~ York and were acting under the color of law.

5. Defendants Michael E. Indri, John Doe 2 and/or John Does 6-10 were acting in supervisory capacities over Defendants Barrera, Rodriguez and John Does 1-10 and responsible by law for the training, supervision and conduct of Defendants Barrera, Rodriguez and John Does 1-10.

6. Defendant West New York 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 West New York employed the aforementioned Defendants. As such, it was responsible for the training, supervision and conduct of Defendants Barrera; Rodriguez; Indri, and John Does 1-10.

8. All Defendants are named in their individual and official capacities.

FACTUAL ALLEGATIONS

1. On April 27, 2013, Plaintiff Rene A. Berdugo was a photography student at the School of Visual Arts.

2. On that date Plaintiff was taking photographs of a bodega on 62nd and Monroe Streets in West New York.

3. Plaintiff was approached by Defendants Barrera, Rodriguez and/or John Does 1-5, who asked Plaintiff for identification.

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4. Plaintiff asked why he had to show them identification.
5. Defendants told Plaintiff that they would arrest him if he did not show his identification.
6. Plaintiff took out his phone to record and document the encounter with Defendants.
7. Defendants tried to grab Plaintiff's phone and Plaintiff walked backwards into the bodega
~~continuing to record the encounter.~~
8. Defendants Barrera, Rodriguez and/or John Does 1-5 then assaulted Plaintiff with unreasonable and excessive physical force, specifically by punching and kicking him.
9. Plaintiff was taken to police headquarters in West New York, processed and released.
10. Following his release, Plaintiff discovered that the recording of his encounter with Defendants had been erased from his phone. Plaintiff also discovered that a necklace and approximately forty dollars which had been on his person prior to his arrest were never returned to him.
11. Plaintiff's encounter with Defendants was recorded on the bodega video surveillance camera system.
12. Plaintiff sustained bodily injuries as a result of Defendant's unjustified assault and their use of excessive and unreasonable physical force on his person.

SECTION 1983 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 unlawful and malicious physical abuse of Plaintiff by Defendants Barrera, Rodriguez and/or John Does 1-5 committed under color of state law, Plaintiff sustained bodily harm and was deprived of his rights 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.

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3. As a direct and proximate cause of the malicious and outrageous conduct of Defendants as set forth above, Plaintiff suffered bodily injuries, medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Rene A. Berdugo demands judgment against Defendants Barrera, Rodriguez 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 Barrera, Rodriguez and/or John Does 1-5 were West New York Police Officers and at all times mentioned herein were acting under color of state law.
3. Defendants Barrera, Rodriguez and/or John Does 1-5 had a duty to intervene in the unjustified assault and arrest of Plaintiff by Defendants Barrera, Rodriguez and/or John Does 1-5.
4. The unjustified assault and arrest of Plaintiff by Defendants Barrera, Rodriguez 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 Barrera, Rodriguez and/or John Does 1-5 had a reasonable opportunity to intervene in the unjustified arrest and assault of Plaintiff by Defendants Barrera, Rodriguez 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 along with damages in the form of medical expenses and will suffer additional special damages in the future in an amount which cannot yet be determined.

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WHEREFORE, Rene A. Berdugo demands judgment against Defendants Barrera, Rodriguez 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 FIRST AMENDMENT RETALIATION
COUNT THREE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The aforementioned acts of Defendants West New York; Barrera; Rodriguez; Indri, and/or John Does 1-10 committed under color of state law and/or in their individual capacities constituted a retaliation in violation of the First Amendment of the United States Constitution.
3. Specifically, Plaintiff's right to take photographs in public was constitutionally protected conduct under the First Amendment.
4. Defendants interfered with Plaintiff's constitutionally protected conduct by assaulting him, using excessive and unreasonable physical force on his person and arresting him.
5. By reason of the above, Plaintiff suffered damages preventing him from attending to his business, was deprived of his constitutional rights as described above and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Rene A. Berdugo demands judgment against Defendants West New York; Barrera; Rodriguez; Indri, and John Does 1-10 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 SUPERVISORY LIABILITY
COUNT FOUR

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Police Director Michael E. Indri and/or John Does 6-10 were supervisory officials and/or officers in charge at the time Plaintiff was arrested and assaulted.

3. Defendants Indri and/or John Does 6-10 had a duty to prevent subordinate officers Defendants Barrera, Rodriguez and/or John Does 1-5 from violating the constitutional rights of citizens and/or detainees.
4. Defendants Indri and/or John Does 6-10 either directed Defendants Barrera, Rodriguez and/or John Does 1-5 to violate Plaintiff's constitutional rights or had knowledge of and acquiesced in his/their subordinate's violations.
5. Specifically, Defendants Indri, 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 West New York 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.
6. As a direct and proximate result of the acts of Defendants Indri and/or John Does 6-10 set forth herein, Plaintiff suffered physical injury and medical expenses 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.
7. As a direct and proximate cause of the conduct of Defendants as set forth above, Plaintiff suffered bodily injuries along with damages in the form of medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

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WHEREFORE, Rene A. Berdugo demands judgment against Defendants Indri 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 CUSTOM, PRACTICE,
POLICY/ INADEQUATE TRAINING
COUNT FIVE**

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants West New York, West New York Police Director Michael E. Indri 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 the West New York 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 Indri and/or John Does 6- 10 are responsible for training Police Officers in the use of force and/or were officers in charge when Plaintiff Rene A. Berdugo was assaulted.
3. At all times mentioned herein, Defendants Barrera, Rodriguez and/or John Does 1- 5, as police officers, agents, servants and/or employees of Defendant West New York, were acting under the direction and control of Defendants West New York's Police Department, Indri and/or John Does 6-10, and were acting pursuant to the official policy, practice or custom of the West New York Police Department.
4. Acting under color of law pursuant to official policy, practice, or custom, Defendants West New York, Indri 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

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basis, Defendants Barrera, Rodriguez and/or John Does 1-5 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.

5. Acting under color of law pursuant to official policy, practice, or custom, Defendants West New York, Indri and/or John Does 6-10 intentionally, knowingly, recklessly and/or 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 West New York, Indri 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.

6. Defendants West New York, Indri 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 West New York 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.

7. Defendants West New York, Indri and/or John Does 6-10 were aware of numerous similar police citizen encounters involving, and/or Internal Affairs complaints and/or civil lawsuits filed against, Defendants Barrera, Rodriguez, John Does 1-10, and/or other West New York 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,

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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, mishandled and/or withheld evidence and/or used unreasonable and excessive force on citizens/arrestees.

8. Despite their awareness, Defendants West New York, Indri and/or John Does 6-10 failed to employ any type of corrective or disciplinary measures against Defendants Barrera, Rodriguez, John Does 1-10 and/or other West New York Police Officers.

9. Defendants West New York, Indri and/or John Does 6-10 had knowledge of, or, had they diligently exercised their duties to instruct, train, supervise, control, and discipline Defendants Barrera, Rodriguez 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.

10. Defendants West New York, Indri 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.

11. Defendants West New York, Indri and/or John Does 6-10, directly or indirectly, under color of state law, approved and/or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Defendants Barrera, Rodriguez and/or John Does 1-10 heretofore described.

12. As a direct and proximate result of the acts of Defendants West New York, Indri and/or John Does 6-10 as set forth herein, Plaintiff suffered physical injury, 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 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.

WHEREFORE, Plaintiff Rene A. Berdugo, demands judgment against Defendants West New York, Michael E. Indri and/or John Does 6-10, on this Count together with compensatory and

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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 SIX

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

2. 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.

3. The relief sought by Plaintiff includes, but is not limited to, the following:

a. An order permanently restraining and enjoining Defendants West New York; Barrera; Rodriguez; Indri, and John Does 1-10 from engaging in, encouraging, teaching, promoting or training West New York Police Officers in falsely arresting, maliciously prosecuting, maliciously abusing process, and/or using excessive force against citizens and/or arrestees.

b. An order compelling Defendant West New York 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, maliciously abusing process and/or using excessive force against citizens and/or arrestees.

c. An order compelling Defendant West New York to provide regular and consistent training sessions to West New York Police Officers.

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

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

f. An order permanently restraining and enjoining Defendant West New York from employing Defendants Barrera, Rodriguez and/or John Does 1-5 as police officers or law enforcement personnel in any capacity except for clerical duty, solely and entirely confining them to Police headquarters and limiting them entirely to desk duty; enjoining Defendants Barrera, Rodriguez and/or John Does 1-5 from any patrol duty, and enjoining Defendants Barrera, Rodriguez and/or 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.

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WHEREFORE, Plaintiff Rene A. Berdugo, demands judgment against Defendants West New York; Marco A. Barrera; Hector A. Rodriguez; Michael E. Indri, and John Does 1-10 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 CLAIMS
VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT (NJ CRA)
COUNT SEVEN

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. The excessive force, failure to intervene and First Amendment retaliation committed by Defendants Barrera, Rodriguez 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")
3. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.
4. As a direct and proximate result of the aforesaid acts of Defendants Barrera, Rodriguez and/or John Does 1-5, Plaintiff suffered physical injury, medical expenses, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Rene A. Berdugo demands judgment against Defendants Barrera, Rodriguez 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.

ASSAULT AND BATTERY
COUNT EIGHT

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Barrera, Rodriguez and/or John Does 1-5 committed an assault and battery on Plaintiff by physically injuring him without justification and/or by putting him in reasonable apprehension of serious and imminent bodily harm.

3. The assault and battery committed by Defendants was contrary to the laws of the State of New Jersey, and Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.

4. As a result of the intentional, reckless, negligent and/or objectively unreasonable assault and battery committed in the course of their official duties as police officers and/or agents, servants and/or employees of West New York, and/or in their personal capacities, as specifically alleged above, Plaintiff sustained diverse substantial and permanent physical injuries; medical expenses; pain and suffering, and will suffer additional special damages in the future in an amount which cannot yet be determined.

WHEREFORE, Plaintiff Rene A. Berdugo demands judgment against Defendants Barrera; Rodriguez; West New York, 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.

NEGLIGENCE
COUNT NINE

1. The previous paragraphs are incorporated herein inclusively as if fully set forth.
2. Defendants Barrera, Rodriguez and/or John Does 1-5 had a duty to the Plaintiff to not expose him to an unreasonable risk of injury.

3. Through the acts and omissions set forth at length above, Defendants Barrera, Rodriguez and/or John Does 1-5 breached that duty.

4. The acts of the Defendants were in violation of the common law of the State of New Jersey.

~~5. Plaintiff invokes the supplemental jurisdiction of this court to hear and determine this claim.~~

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

WHEREFORE, Plaintiff Rene A. Berdugo demands judgment against Defendants Barrera, Rodriguez 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: January 7, 2015

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

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release ("Agreement") is made by and between Plaintiff, Rene Berdugo, "Plaintiff" or "Releasor" with an address of 7 Porter St. ACKENACK NJ 07601 Michael

Indri, police officers Hector Rodriguez and Marco Barrera, and the Town of West New York, including West New York's current and former agents, current and former attorneys, current and former servants, current and former employees, current and former elected officials, current and former volunteers, and its respective heirs, successors and assigns, "Defendants or Releasee."

The Agreement shall be deemed entered into as of the date of signature of the last Party or Party representative to sign this Agreement.

WITNESSETH

WHEREAS, Plaintiff Rene Berdugo ("Plaintiff" or "Releasor") filed suit against Defendants Town of West New York, Officers Rodriguez and Barrera, and former Director Indri (collectively, the "Defendants" or "Releasees") in a matter listed in the United States District Court for the District of New Jersey under Civil Action No. 15-112, which set forth factual and legal allegations against the Defendants (the "Lawsuit"); and

WHEREAS, the Defendants have denied all allegations asserted against them in the Lawsuit; and

WHEREAS, on May 20, 2016, the parties filed a stipulation of dismissal with prejudice as to West New York and Director Indri;

WHEREAS, the Parties have mutually agreed to resolve the Lawsuit and wish to memorialize their settlement herein; and

NOW THEREFORE, in consideration of the mutual promises and covenants made herein, the Parties agree as follows:

1. The Town of West New York shall provide Plaintiff's attorney with payment in the total amount of fifty thousand dollars (\$50,000), inclusive of all costs, attorney fees, or any other cost or expense related to the Lawsuit. This payment shall be referred to as the "Settlement Sum." Payment shall be made in the ordinary course.

No other payments shall be due to Plaintiff by the Defendants and/or their current and former agents, current and former attorneys, insurance carriers, current and former servants, current and former employees, current and former elected officials, current and former volunteers, and their respective heirs, successors and assigns.

2. The Settlement Sum shall be made via check payable to the plaintiff and Thomas Mallon, Esq., and delivered to the following address:

Thomas Mallon, Esq.
The Law Office of Mallon & Tranger
86 Court Street,
Freehold NJ 07728

3. In addition to this Confidential Settlement Agreement and Release, Plaintiff shall execute and return to the Town of West New York c/o Roshan D. Shah, Esq., Scarinci & Hollenbeck, LLC, 1100 Valley Brook Avenue, P.O. Box 790, Lyndhurst, NJ 07071, a copy of the following: a) copy of a clear Charles Jones search; b) executed W-9 form from plaintiff's attorney; and c) stipulation of dismissal with prejudice.

4. Plaintiff acknowledges and agrees that all federal and state income taxes and/or penalties relating to the payments set forth in this Agreement are his sole responsibility. Plaintiff further covenants and agrees that he will indemnify the Defendants for any taxes and/or penalties sought from or assessed against Defendants by any state or federal governmental agency,

including without limitation Social Security payroll taxes ("FICA"), state and/or federal disability payments, unemployment taxes, and/or state and/or federal income taxes.

5. As additional, partial consideration for payment of the Settlement Sum, Plaintiff, for himself and on behalf of his successors, agents, spouse, heirs, beneficiaries, estates and assigns (individually and collectively referred to herein as "Releasors") does hereby fully and forever release, remit, acquit, remise, hold harmless and discharge the Defendants and their past and present officials, agents, commissioners, attorneys, volunteers, officers, insurers and employees (for individuals, this release runs to them in their official and personal capacities), and all of their respective heirs, estates, employees, agents, successors and assigns, jointly and individually, from any and all liabilities, claims, causes of action, charges, appeals, complaints, obligations, costs, losses, damages, injuries, attorneys' fees, and other legal responsibilities of any form or kind whatsoever which Releasors have or may have against the Defendants, including without limitation any claims in law, equity, contract, tort, public policy, any claims or causes of action for breach of contract, negligence, retaliation, harassment and/or discrimination based upon, among other things, disability, sexual orientation, handicap, sex, age or race, negligent or intentional infliction of emotional distress, defamation, any claims arising under The Civil Rights Act of 1871 as amended by 42 U.S.C. §1983, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the Reconstruction Era Civil Rights Act, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, as amended, the New Jersey Law Against Discrimination, the United States Constitution, the New Jersey Constitution, or any other federal, state or local law. Plaintiff hereby releases these claims and causes of action irrespective of whether such claims and causes of action are known or unknown, unforeseen, unaccrued, unanticipated, unsuspected or latent.

6. Plaintiff promises and agrees that he will not file, re-file, appeal, initiate, or cause to be filed, re-filed or initiated any claim, suit, or other proceeding based upon, arising out of, or related to any claims and causes of action subsumed within the Release; nor shall he solicit, encourage, participate, assist or cooperate in any claim against any of the Releasees, whether before a court or administrative agency, unless required to do so by law. The Releasees have entered into this agreement with the understanding that said agreement will not be admissible in any other litigation where the Releasees are named as defendants. If a court order or lawful subpoena is served on Plaintiff requiring that he testify in any matter regarding any claim subject to the Release, he agrees to immediately notify and provide a copy of the court order or subpoena to the Town of West New York c/o Roshan D. Shah, Esq., Scarinci & Hollenbeck, LLC, 1100 Valley Brook Avenue, P.O. Box 790, Lyndhurst, NJ 07071. Plaintiff shall provide the Town of West New York with a copy of the court order or subpoena as soon as possible and reasonably in advance of his appearance and/or compliance with the court order or subpoena. Plaintiff agrees to cooperate with and assist the Town of West New York in connection with any lawful efforts to quash or limit the scope of the subpoena or court order.

7. This Agreement is not an admission by the Defendants and/or any of their present or former agents, employees or representatives of any wrongdoing or liability, and is being entered into solely for the purpose of economic expediency.

8. Plaintiff agrees that he shall engage in no act which is intended, or reasonably may be expected, to harm the reputation, functioning, prospects, or operations of Releasees. Releasor further agrees and covenants that he shall not make any disparaging statements, oral or written, whether direct or implied, about Releasees.

9. Plaintiff represents and warrants that no other person or entity has any interest in the claims that comprise or could have been raised in the Lawsuit, or in any other demands, obligations, or causes of action referred to in this Agreement, and that he has the sole right and exclusive authority to execute this Agreement and receive the benefits specified. Plaintiff further represents that he has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims which comprise the Lawsuit, or any other demands, obligations, or causes of action referred to in this Agreement. Plaintiff further acknowledges that the only consideration for signing this Agreement are the terms stated in this Agreement, and that no other promise or agreement of any kind has been made to him by any person or entity whatsoever to cause him to sign this Agreement; that he is competent to execute this Agreement; that he has been advised in writing and given the opportunity to consult advisors, legal or otherwise, of their own choosing; and that he fully understands the meaning and intent of this Agreement. No change to or modification of this Agreement shall be valid or binding unless it is in writing and signed by Plaintiff and the Town of West New York.

10. The Parties acknowledge and agree that as a governmental entity, the Town of West New York may be obligated to disclose a copy of this Agreement to persons under the New Jersey Open Public Records Act or common law. Notwithstanding the foregoing, Plaintiff and his Attorney agree that he shall not disclose, or cause to be disclosed, the terms of this Agreement, or the fact that this Agreement exists, except to their accountants and/or tax advisors, or to the extent otherwise required by law. Each such person who is provided information regarding the terms of this Agreement by Plaintiff shall first be required to review this Agreement and agree to abide by the limitations on disclosure. The Plaintiff and his Attorney acknowledge and agree that this confidentiality provision is an express and absolute condition of

this Agreement, is bargained for consideration for this Agreement and that any violation of the terms and conditions of this confidentiality provision shall constitute a material breach of this Agreement. In the event that this Agreement is required to be disclosed pursuant to applicable law, the Plaintiff and his Attorney agree that their communication with any person or the media regarding the Action shall be limited to the statement that the "claim was resolved to my satisfaction." In the event Plaintiff or his Attorney violates this non-disclosure provision, the Town of West New York may move in a summary action to enforce same and shall be entitled to 50% of the Settlement Sum as liquidated damages from the breaching person, along with costs and reasonable attorney fees.

11. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications and to this end the provisions of this Agreement are declared to be severable.

12. Other than the summary action specified in paragraph 10, any dispute regarding the enforceability of this Agreement, including actions where this Agreement is an asserted defense to a claim or cause of action, shall be resolved through binding arbitration. You are waiving your right to assert your rights in court and before a jury. The arbitration panel shall consist of three certified arbitrators, one appointed by the plaintiff, one appointed by the defendant, and the third appointed by agreement of the two already-appointed arbitrators. Arbitration awards may be enforced in any court of competent jurisdiction. The provisions of this paragraph shall be governed by the provisions of the Federal Arbitration Act, 9 U.S.C. §1, et seq., and shall survive settlement. The rules governing arbitration are different than those in court. Arbitration does not involve a judge or jury and review is limited, but an arbitrator can

award the same damages as a court. The prevailing party in such action shall be awarded reasonable attorney fees and costs.

13. No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall it be, a waiver of any other term of this Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the breach.

14. This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, successors, and assignees of each of the Parties to it.

15. This Agreement represents the entire agreement and understanding between the Parties, constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous agreements and understandings, both written and oral, concerning the subject matter hereof. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be changed or modified, except by a writing signed by the Parties hereto.

16. This Settlement Agreement shall be governed by and construed under the laws of the State of New Jersey and shall not be construed for or against any Party based on attribution of drafting to any Party.

17. This Settlement Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

18. Plaintiff hereby covenants that if any liens exist against the Settlement Sum, he will be obligated to and shall ensure that they are paid in full, compromised or satisfied and released by him. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien against the Releasees and/or Defendants, Plaintiff agrees

that he will defend and indemnify the Releasees and/or Defendants from and against all such claims. This representation is intended to include all liens, past, present and future, including, but not limited to, governmental liens, Social Security liens, child support or custody liens, attorneys' liens, medical provider liens, Medicare and Medicaid liens, ERISA liens, workers' compensation liens, all statutory or common law liens, and judgment liens. Plaintiff agrees to indemnify and hold the Releasees and/or Defendants and all of their insurance carriers harmless in connection with any claim made by reason of liens against or tax obligations associated with payment of the Settlement Sum. If a claim is hereafter made against the Releasees and/or Defendants or their insurance carriers by anyone seeking payment of the liens, Releasor will indemnify and hold the Releasees and/or Defendants harmless for any such liens and/or defending against such a claim, including, but not limited to, attorneys' fees, costs of suit, and interest.

In furtherance of the foregoing, Plaintiff states as follows:

"I agree to satisfy and personally guarantee payment for any and all liens, including but not limited to liens asserted by any workers' compensation insurance carrier or governmental entity, including but not limited to Medicare and/or Medicaid, that has paid, or will pay, any benefits to me, or on my behalf, out of the monies you are paying pursuant to this Agreement. I further agree to satisfy any and all child support judgment liens and unpaid medical bills of any medical provider or facility out of the proceeds of this settlement.

In recognition of my obligations to satisfy all such liens out of the monies being paid pursuant to this Agreement, I further agree to indemnify and defend you, your attorney's and your liability insurance carriers from and against any and all claims made or actions filed against you, your attorneys, or your liability insurance carriers for payment of any such liens upon prompt presentation and tender of such claims."

19. Plaintiff represents and warrants that he is not Medicare eligible and/or enrolled and that Medicare has not (pursuant to 42 U.S.C. §1395y(b) and the corresponding regulations) made any conditional payments for medical services or items provided to Plaintiff and arising

from or relating to any claim, accident, occurrence, act, error, omission, bodily injury, disease, loss, or damages that are subject to the release herein. The Parties agree that all representations and warranties made herein shall survive settlement. In consideration of the promises made by the Releasees in this Agreement, including but not limited to the Settlement Sum to be paid, Plaintiff agrees that he shall be responsible for satisfying any future claims for reimbursement of conditional payments that may be asserted by Medicare, and that no Releasee and/or Defendant shall have any obligation to satisfy any such claims for reimbursement.

20. Plaintiff agrees to indemnify, defend and hold harmless Releasees and/or Defendants from any action, cause of action, claim, penalty, statutory fine, and attorneys fee, including, but not limited to, an action to recover or recoup Medicare benefits paid or a loss of Medicare benefits or for any recovery sought by Medicare, including past, present and future payments, benefits and/or liens, and including any such claims, actions, causes of action, enforcement proceedings, penalties, liabilities and similar sanctions under the Medicare Secondary Payer Act. Plaintiff further agrees to and hereby waives any and all potential future claims against Releasees and/or Defendants under the Medicare Secondary Payer ("MSP") Act, 42 U.S.C. §1385y (including any and all amendments thereto) and its accompanying federal regulations at CFR §411.1 et. seq., including 42 CFR §411.46 and 42 CFR §411.47. It is the Parties' intention and purpose under this paragraph to provide for the full protection and indemnification of Releasees from and against any claims, actions, enforcement proceedings, penalties, fines, liabilities and other sanctions under the requirements, regulations and provisions of the MSP Act and its accompanying regulations.

The Plaintiff agrees that if he is required to set aside or repay any portion or all of this settlement to reasonably consider Medicare's interest under Federal Law, he shall be solely responsible for setting aside or repaying such monies from his own funds.

Plaintiff and/or his estate agree to investigate and assume any responsibility and/or liability to pay any current Medicare liens that may be related to the injury in question. Further, plaintiff and/or his estate agree to pay any future Medicare liens that may arise that are determined to be related to the injury that is the subject of the Lawsuit.

21. Each Party represents that it has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement, and signs this Agreement of its own free will. No Party to the Agreement has relied upon any representations or statements made by any other Party hereto which are not specifically set forth in this Agreement. The Parties each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

22. Plaintiff agrees that each defendant to this Lawsuit is a Releasee and entitled to all the benefits and protections of this Agreement, irrespective of whether the defendant is a signatory to this Agreement.

23. This Agreement is executed voluntarily and without any duress, coercion or undue influence on the part or behalf of the Parties hereto. The Parties acknowledge that:

- (a) They have read this Agreement;
- (b) They have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

(c) They understand the terms and consequences of this Agreement and of the releases it contains;

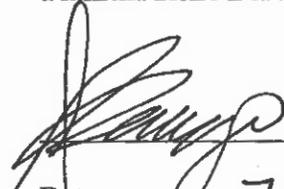
(d) They are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Plaintiff Rene Berdugo



Witness
RANDONI TRANKER

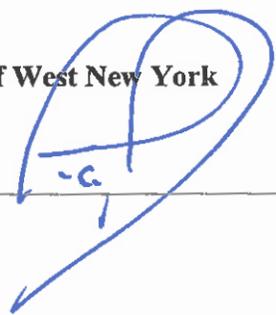


Date: 7/27/16



Witness

Town of West New York



By: