

RIVIERE CRESCI & SINGER, LLC
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Freehold, NJ 07728
(732) 664-5529
Attorneys for Plaintiff

ARTHUR SABATINO,

Plaintiff,

Vs.

UNION TOWNSHIP, UNION
TOWNSHIP POLICE DEPARTMENT,
UNION COUNTY, UNION COUNTY
PROSECTOR'S OFFICE, UNION
COUNTY SHERRIFF'S DEPARTMENT,
OFFICER ERNEST
SCHMIDT, SHERIFF'S OFFICE CHIEF
DONALD DOMANSKI, DIRECTOR
DAN ZEISER & OFFICERS DOES NO'S
1-10,

Defendants.

UNITED STATES DISTRICT COURT OF
NEW JERSEY

DOCKET NO: 2:11-CV-01656

CIVIL ACTION

COMPLAINT
(Jury Demand Endorsed Hereon)

Plaintiff ARTHUR SABATINO, residing at 819 Greenwich Avenue in the Township of Union and in the County of Union by way of complaint, brings this action pursuant to 42 U.S.C. § 1983 and 1985 to redress violations of his right to be free of unreasonable seizures and conspiracy of the same guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiff brings this action Pursuant to the New Jersey Constitution and/or the New Jersey Civil Rights Act, N.J.S.A. Section 10:6-1 et seq. Plaintiff also sues for damages for discrimination based on his disability, under the Americans With Disabilities Act, 42 U.S.C. § 12131-165 (ADA), and Section 504 of the Rehabilitation Act of 1973 (§ 504). This court has jurisdiction of plaintiff's federal claims pursuant to 28 U.S.C. §§1331 and 1343(3). This court

has supplemental jurisdiction of plaintiff's state law claims pursuant to 28 U.S.C. §1367. Venue is proper as the claims arose in Union County, New Jersey.

The plaintiff hereby avers:

I. PARTIES

1. On April 26, 2009, Plaintiff Arthur Sabatino, was and is still an adult individual who was seized from his bed and taken to Trinitas Hospital for psychological evaluation by the Union Township Police Department (sometimes hereinafter referred to as "UTPD") in concert with the Union County Sherriff's Department (sometimes hereinafter referred to as "UCERT" or "Union County Emergency Response Team"), allegedly for his own safety and the public welfare.
2. Defendant Union Township is organized under the Laws of The State of New Jersey, with offices at 1976 Morris Ave., Union Township, New Jersey 07083. By duly adopted Statues, the Township has determined to provide police services through the UTPD.
3. Defendant UTPD is a government agency or body with offices at 1981 Caldwell Ave. in Union Township, New Jersey. The UTPD is part of the municipal government of the Township of Union.
4. Defendant Ernest Schmidt (sometimes hereinafter referred to as "Officer Schmidt") is an adult individual who is employed by the Union County Sherriff's Department. He is sued individually and in his official capacity.
5. Defendant, Director of Police, Dan Zeiser (sometimes hereinafter referred to as "Director") is an adult individual who is employed by the UTPD. He is sued individually and in his official capacity.

6. Defendant, Chief Donald Domanoski (sometimes hereinafter referred to as "Chief" is an adult individual who is employed by the Union County Sherriff's Department. He is sued individually and in his official capacity.

7. Officers Doe Nos. 1-10 are to date unidentified members of UTPD and/or Union County Sherriff's Department whose intentional acts or omissions, or negligent acts or omissions caused Plaintiff discrimination and/or harm. They are being sued in their individual and official capacities. UTPD's Director is the highest ranking members of the UTPD and as such is responsible for the hiring, training, protocol, firing, discipline and control of the Department's officers. Union County Sherriff's Department's Chief is highest ranking member of the Union County Sherriff's Department and as such is responsible for the hiring, training, protocol, firing, discipline and controls the Department's officers.

II. SUBSTANTIVE ALLEGATIONS

8. On or about April 26, 2009, plaintiff's daughter, Jennifer Sabatino, called 911 and talked to dispatch in regards to her 65 year old father Arthur Sabatino, alleging that he was "mentally and physically ill." She also said, "He's also dangerous." On hearing this, the 911 operator asked if Mr. Sabatino had a weapon and his daughter acknowledged that the plaintiff probably did indeed have a gun that was loaded. The dispatcher then announced loudly into the radio that "We have a loaded weapon... a man with a loaded weapon at 819 Greenwich Avenue." Apparently trying to steer the operator back to the more relevant issue of the plaintiff's physical illness, the daughter informed the 911 dispatcher that Mr. Sabatino could not get up and said that he was "lying in his own shit and piss," and that he had not been well for a while. The 911 operator then

again asked if Mr. Sabatino has a gun, but the daughter only replied that she was not worried about him hurting her. When the 911 operator asked if it was possible that he had shot himself, the daughter replied “No, no, no! He did not do anything to himself. He is just very, very, very sick.” She indicated he had been throwing up, had a high fever, a high white blood cell count, as well as other medical problems. The daughter indicated that the plaintiff was “in and out” of consciousness. The daughter asked for an “ambulance and a cop.” The 911 operator asked if the father was unconscious on the floor and the caller reiterated that he was in bed. The 911 operator asked about a gun—“where is the gun?” The daughter replied, “I know there is one in the room, but...” but was cut off by the operator.

9. On the 911 tape, the daughter never alleged that the plaintiff had barricaded himself (or even locked himself) inside of his room. In fact, the room that he was in could not be locked. The daughter never alleged that the plaintiff had threatened her. She denied actually seeing a gun. She denied he had a gun on his person (she merely knew that he possessed one in his bedroom). The guns were stowed underneath his bed and in the closet out of his immediate control. From the 911 tape, it is clear that the daughter was concerned about the plaintiff’s health and wanted an ambulance. From her comment that he had told her to “get out”, it seems that she had trouble getting him to a hospital. The only actual reference to any “barricade” was from an officer who was speculating over the radio that “She’s saying he may possibly barricade himself in,” which, in fact, the daughter never suggested.

10. On or about April 26, 2009, the UTPD responded, at the above described location, where they were able to speak to multiple neighbors, family members, and friends that told them that

the plaintiff was a peaceable person and that he needed medical help. The UTPD, in concert with the Union County Sherriff's Department, called to the plaintiff over the PA system to come out but the plaintiff was too physically ill to hear or respond their commands. He was in and out of consciousness. He had a window unit air conditioner running, as it was unseasonably hot, in the lower 90's on April 26, 2009., which further impeded his ability to hear. He was suffering from a 101.2 degree fever (as later measured at the hospital) and had vomited blood the night before, leaving him in a weakened and unresponsive state. Without hearing any threats or observing anything that would indicate dangerous intent, Ernest Schmidt and Officers Doe Nos. 1-10 moved into the plaintiff's residence to seize him and his weapons. The seizure was effectuated in an unreasonable manner. The officers inexplicably threw a series "flash-bang" grenades, first into the living room and then directly into the plaintiff's room (this second grenade led to the death of the plaintiff's longtime friend and family pet, his beloved dog). The officers then rushed in, ripped the plaintiff out of his sick bed, forcibly kicked him and then weighted him down with their body weight. The officers failed to take into consideration the plaintiff's disability, as he is severely disabled in his shoulders. The plaintiff then told the defendant Officers multiple times that he had a shoulder disability and was unable to move his hands behind his back; the officers cuffed him in blatant disregard of such disability or his overall physical state.

11. On or about April 26, 2009, at the above described location, the Defendant Officers became verbally abusive towards the Plaintiff as he lay on his bed, whilst effectuating arrest.

12. At the above time, date and location, the Officer Does No. 1-10, including Officer Schmidt, negligently and with excessive force, effectuated arrest on the Plaintiff causing him to suffer harm in the form of physical injuries, emotional distress and discrimination.

13. After Mr. Sabatino was extracted from his home, the Defendant Officer's moved the plaintiff in brute fashion down stairs, without sufficient clothing, causing his pants to fall off, to a location where he stood barefooted and in critical physical condition. He was then taken to be evaluated by UCERT and then turned over to Union EMS and UTPD. In fact, the plaintiff was suffering from a dangerous "fever, sepsis, cough" which was later treated with antibiotics. The hospital that the plaintiff was brought also discovered kidney and gallstones.

14. The plaintiff was then taken to Trintas Regional Medical Center, where he was compelled to undergo medical aid and treatment, against his direct appeal to be brought to Overlook Hospital, and handcuffed to a bed by the arresting authorities, continuing a pattern of excessive force and false imprisonment of the plaintiff, who, to this day, has never been charged with a crime in connection with his arrest.

15. Officers Doe Nos. 1-10 are fictitious names for UTPD and Union County Sheriff's Officers or civilian personnel whose acts or omissions harmed and/or discriminated against the Plaintiff. The true identities of these individuals are not yet known.

16. The Plaintiff timely served Notices of Claims for damages in the form prescribed by New Jersey Statutes Title 59, by hand delivery

17. More than six months have elapsed since the service of the Plaintiff's Notices of Claims and the claims remained unresolved. This action is commenced with two years from the date of the occurrence. The Defendants had made no attempts to settle this matter, nor have they or anyone of them made any attempt to settle or discuss settlement. Plaintiff has suffered such serious and permanent personal injuries such as to meet the threshold requirements of Title 59 and has a right to institute suit.

18. During all times relevant the Defendants acted jointly and in concert with each other in committing the acts *supra*, they acted intentionally and otherwise were negligent, careless, or improper, violating state and federal laws or common law in their arrest of the Plaintiff, Arthur Sabatino, resulting in serious discrimination of the disabled arrestee, a failure to grant the Plaintiff his due process rights, a failure to provide the Plaintiff with his equal rights, as well as harm thereto.

COUNT ONE
(State Constitutional Violations)

19. Plaintiff incorporates each and every allegation above as if set forth fully herein.

20. Each and every of the Defendants' actions as set forth above deprived Mr. Sabatino of his rights and privileges afforded to him under Article I, paragraphs 1,7, 12, of the New Jersey Constitution.

21. Defendants' actions as set forth above deprived the plaintiff of his rights to procedural and substantive due process under Article I, paragraph 1 of the New Jersey Constitution. This

includes, but is not limited to his right to be free, independent, and his right to safety and happiness.

22. At all times relevant the Defendants were acting in his/her/their official capacity under color of law.

23. By and through the above actions, said Defendants acting under color of law, caused the Plaintiff to be subjected to the deprivation of his due process, equal protection rights and privileges and immunities secured by the Constitution or laws of the United States and of State of New Jersey, thereby, defendants violated the New Jersey Constitution and/or the New Jersey Civil Rights Act, N.J.S.A. Section 10:6-1 et seq.

24. As a further proximate result of defendants' unconstitutional conduct, the Plaintiff sustained harm to include physical injuries, emotional anguish and distress, discrimination and destruction of his property.

WHEREFORE, plaintiff demands judgment in his favor against Defendants, Union Township, Union Township Police Department, Union County, Union County Prosecutor's Office, Union County Sherriff's Department, Officer Schmidt, Union County Sherriff's Department Chief Donald Domanoski, Union Township Police Director Dan Zeiser and/or Officers Doe Nos. 1-10:

A. For Compensatory damages.

B. For punitive damages.

C. For attorneys' fees;

D. For costs, fees and all other appropriate relief including a Civil Penalty under the New Jersey Civil Rights Act Section 10:6-2.

COUNT TWO
(United States Constitutional Violations)

25. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

26. Defendants' actions as set forth above violated the Plaintiff's rights to substantive due process under the Fourteenth Amendment to the United States Constitution by subjecting him to arbitrary, capricious and unjustified governmental actions, by false arrest, by depriving him a properly effectuated arrest and reasonable accommodations in connection with the same.

27. As a proximate result of Defendants' actions, the Plaintiff was denied his due process rights afforded to him under the Fifth Amendment of the Constitution, and suffered damage in the form of constitutional deprivation, emotional anguish and distress.

28. Defendants inflicted cruel and unusual punishment on Plaintiff, by, amongst other things, not providing him with an appropriate means and manner of effectuating arrest, failing to provide immediate medical care and otherwise violating the Sixth and Eighth Amendment to the Constitution which is actionable under 42 U.S.C. 1983 and affords Plaintiff remedies.

29. Defendants actions undertaken to deprive the Plaintiff of substantive due process guaranteed to him under the Fifth and Fourteenth Amendments are actionable under 42 U.S.C. Section 1983, and afford Plaintiff remedies.

30. Defendants actions undertaken to deprive the Plaintiff of equal protection of his rights guaranteed to him under the Fifth and Fourteenth Amendments are actionable under 42 U.S.C. Section 1983, and afford Plaintiff remedies.

31. Defendants are liable for punitive damages under 42 U.S.C. Section 1983 because they were motivated by evil motive or intent and/or they showed a deliberate indifference, recklessness or callous indifference to the federally protected rights of Plaintiff, thereby violating the United States Constitution.

32. Said actions of the Defendants wantonly inflicted pain upon the Plaintiff.

WHEREFORE, Plaintiff demands judgment in his favor against, Union Township, Union Township Police Department, Union County, Union County Prosecutor's Office, Union County Sherriff's Department, Officer Schmidt, Union County Sherriff's Department Chief Donald Domanoski, Union Township Police Director Dan Zeiser and/or Officers Doe Nos. 1-10, as follows:

- A. For Compensatory damages.
- B. For punitive damages.
- C. For attorneys' fees;
- D. For costs, fees and all other appropriate relief.

**COUNT THREE
(Negligence)**

33. Plaintiff repeats each and every allegation set forth above as if fully set forth herein.

34. On April 26, 2009, Defendants negligently effectuated arrest on the Plaintiff by inexplicably throwing a series "flash-bang" grenades, causing massive blasts, first into the living room and then directly into the plaintiff's room. They then rushed in, ripped him out of his sick bed, forcibly kicked him and then weighted him down onto the floor with their body weight; they

failed to take into consideration the plaintiff's disability; he is severely disabled in his shoulders. Disregarding his disability, they ruthlessly hand cuffed him rotating his severely disabled shoulders behind his back. They then dragged him out of his house barely clothed and shoeless and further complicated his ominous state by delaying the medical attention that he needed.

35. On April 26, 2009, and prior to that time, Defendants Union Township, UTPD Agents and/or employees, Union County Sherriff's Department, Union County Sherriff's Department Chief Donald Domanoski, Union Township Police Director Dan Zeiser negligently hired, trained, supervised, Defendant Officers Schmidt, and/or Officers Doe Nos. 1-10. Said negligence included, but is not limited to, failing to have proper policies and procedures in place for effecting arrest, the use of unjustified and excessive force, failing to interyene and/or prevent to subject occurrence, failing to provide proper medical treatment, failing to discipline or terminate the defendant's employees, agents or servants for acts of violence or violent tendencies, or negligence or other carelessness and failing to properly instruct them in how to properly effectuate arrest on disabled arrestees.

36. Further, said Defendants negligently trained, supervised, hired and retained Defendant Officer Schmidt and/or Officers Doe Nos. 1-10, by failing to implement proper procedures or plans, execute or train for effectuating arrest on a disabled arrestee or otherwise impeded their ability or knowledge to assess the needs of the Plaintiff to receive reasonable accommodations.

37. The negligence of said Defendants was a proximate cause of the injuries of the Plaintiff and damage to his property.

WHEREFORE, Plaintiff demands judgment in his favor against, Union Township, Union Township Police Department, Union County, Union County Prosecutor's Office, Union County Sherriff's Department, Officer Schmidt, Union County Sherriff's Department Chief Donald Domanoski, Union Township Police Director Dan Zeiser and/or Officers Doe Nos. 1-10, as follows:

- A. For Compensatory damages against all defendants;
- B. For punitive damages;
- C. For attorneys' fees;
- D. For costs, fees and all other appropriate relief.

COUNT FOUR
(Law Against Discrimination)

38. Plaintiff repeats each and every allegation set forth above as if fully set forth herein.

39. Given the Plaintiff's medical condition before and during the time of his arrest, Plaintiff was disabled, as defined under N.J.S.A. 10:5-5(q).

40. The Plaintiff's disabilities required the Defendants to provide plaintiff with reasonable accommodations.

41. The Defendants were required under New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, to provide the Plaintiff with an appropriate manner and means of arrest and subsequent transportation to ensure that he did not suffer aggravation of his disabilities during such arrest and/or transport.

42. The Defendants knew or should have known that the Plaintiff had significant and disabling health conditions with regard to his shoulders and/or mental health.

43. The Defendants should have had policies and/ or procedures in place to accommodate persons with disabilities such as the Plaintiff's.

WHEREFORE, Plaintiff demands judgment in his favor against, Union Township, Union Township Police Department, Union County, Union County Prosecutor's Office, Union County Sherriff's Department, Officer Schmidt, Union County Sherriff's Department Chief Donald Domanoski, Union Township Police Director Dan Zeiser and/or Officers Doe Nos. 1-10, as follows:

- A. For Compensatory damages against all defendants;
- B. For punitive damages;
- C. Statutory damages;
- D. Attorneys' fees and costs;

COUNT SIX
(Violations of the Americans with Disabilities Act)

44. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

45. The Plaintiff meets the criteria of being disabled under the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, including, but not limited to, 42 U.S.C. § 12132.

46. The Defendants fall under the auspices of the ADA.

47. The ADA defines "public entity" to include "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1)(B).

48. This legislation, under one or more sections, including, but not limited to, 42 U.S.C. § 12131(2), required the Defendants to provide the Plaintiff with safe and appropriate arrest, if an arrest is called for to ensure that the Plaintiff would not be harmed or have his disability further exacerbated during said arrest.

49. The Defendants were required to provide a safe means of handling and subsequent transport of the Plaintiff, during and subsequent to any arrest. Such means include, but are not limited to, having adequately trained staff, adequately supervised staff, adequate equipment and the ability to use such equipment in order to provide a safe manner of arrest and transport given the Decedent's physical and/or mental disabilities.

WHEREFORE, Plaintiff demands judgment in his favor against, Union Township, Union Township Police Department, Union County, Union County Prosecutor's Office, Union County Sherriff's Department, Officer Schmidt, Union County Sherriff's Department Chief Donald Domanoski, Union Township Police Director Dan Zeiser and/or Officers Doe Nos. 1-10, as follows:

- A. For Compensatory damages against all defendants;
- B. For punitive damages;
- C. Statutory damages;
- D. Attorneys' fees and costs;

COUNT SIX
(Violations of the Rehabilitation Act)

50. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

51. The Plaintiff meets the criteria of being a qualified individual with a disability under the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

52. The Defendants fall under the auspices of the Rehabilitation Act, which prohibits against disability-based discrimination in programs and activities (including state and local programs and activities) receiving federal financial assistance and include, amongst other things, all operations of state and local governments.

53. Section 504 applies to arrests made upon the Plaintiff and actions related thereto as they constitute "operations of" the police department.

54. This legislation, under section 504, required the Defendants to provide the Plaintiff with a safe and appropriate handling during arrest to ensure that he would have his disabilities exacerbated during said arrest and, consequently, suffer harm.

55. The Defendants were required to provide a safe means of handling and subsequent transport of the Plaintiff, during and subsequent to any arrest. Such means include, but are not limited to, having adequately trained staff, adequately supervised staff, adequate equipment and the ability to use such equipment in order to provide a safe manner of arrest and transport given the Plaintiff's physical disabilities.

WHEREFORE, Plaintiff demands judgment in his favor against, Union Township, Union Township Police Department, Union County, Union County Prosecutor's Office, Union County

Sherriff's Department, Officer Schmidt, Union County Sherriff's Department Chief Donald Domanoski, Union Township Police Director Dan Zeiser and/or Officers Doe Nos. 1-10, as follows:

- A. For Compensatory damages against all defendants;
- B. For punitive damages;
- C. Statutory damages;
- D. Attorneys' fees and costs;

COUNT SEVEN
(False Imprisonment)

55. Plaintiff repeats each and every allegation set forth above as if fully set forth herein.

56. The acts of the defendants constituted false imprisonment by way of unlawful detention of the plaintiff. The Plaintiff was deprived of his personal liberty or freedom of movement without legal authority or justification.

57. As proximate result of the unlawful detention the plaintiff was harmed.

WHEREFORE, Plaintiff demands judgment in his favor against, Union Township, Union Township Police Department, Union County, Union County Prosecutor's Office, Union County Sherriff's Department, Officer Schmidt, Union County Sherriff's Department Chief Donald Domanoski, Union Township Police Director Dan Zeiser and/or Officers Doe Nos. 1-10, as follows:

- E. For Compensatory damages against all defendants;
- F. For punitive damages;

G. Statutory damages;

H. Attorneys' fees and costs;

COUNT EIGHT
(Conspiracy to Interfere with Civil Rights)

57. Plaintiff repeats each and every allegation set forth above as if fully set forth herein.

58. The actions of the Defendants individually and severably as described herein constitute a conspiracy to commit the acts *supra* in violation of 42 U.S.C. § 1985.

59. Defendants without cause or justification and without the consent of the Plaintiff did wantonly, recklessly and maliciously assault and batter and engage in unlawful contact with the Plaintiff and did use excessive force on the Plaintiff under state law.

60. As a further proximate result of defendants' unconstitutional conduct, the Plaintiff sustained harm to include physical injuries, emotional anguish and distress, discrimination and destruction of his property.

Respectfully submitted,
RIVIERE CRESCI & SINGER, LLC.
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JURY DEMAND

Plaintiff demands a trial by a jury as to all issues presented herein.

/s/ Paul J. Riviere

RIVIERE CRESCI & SINGER, LLC
222 Schanck Street, Suite 201
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Attorneys for Plaintiff

ARTHUR SABATINO,

Plaintiff,

Vs.

UNION COUNTY EMERGENCY
RESPONSE TEAM, CAPAIN MARTIN
MOGENSEN, CHIEF DONALD F.
DOMANOSKI, UCERT TEAM
MEMBER OFFICER ERNEST
SCHMIDT, UCERT TEAM MEMBER
CHARLES SCHMITT, UCERT TEAM
MEMBER OFFICER ERIC FINNE.
UCERT TEAM MEMBER OFFICER
GEORGE MAMAROU & OFFICERS
DOES NO'S 6-10,

Defendants.

UNITED STATES DISTRICT COURT OF
NEW JERSEY
(Newark Vicinage)

DOCKET NO: Civil Action No. 11-1656
(JLL)

CIVIL ACTION

FIRST AMENDED COMPLAINT
(Jury Demand Endorsed Hereon)

Plaintiff ARTHUR SABATINO, residing at 819 Greenwich Avenue in the Township of Union and in the County of Union by way of complaint, brings this action pursuant to 42 U.S.C. § 1983 and 1985 to redress violations of his right to be free of unreasonable seizures and conspiracy of the same guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiff brings this action Pursuant to the New Jersey Constitution and/or the New Jersey Civil Rights Act, N.J.S.A. Section 10:6-1 et seq. Plaintiff also sues for damages for discrimination based on his disability, under the Americans With Disabilities Act, 42 U.S.C.

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(908) 527-4250
Attorney for Defendants,
County of Union, Union County
Prosecutor's Office, Union County Sheriff's
Department and Chief Donald Domanoski

ARTHUR SABATINO,

Plaintiff,

vs.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY
CIVIL ACTION NO.: 2:11-CV-01656

UNION TOWNSHIP, UNION TOWNSHIP
POLICE DEPARTMENT, UNION COUNTY,
UNION COUNTY PROSECUTOR'S
OFFICE, UNION COUNTY SHERIFF'S
DEPARTMENT, OFFICER ERNEST
SCHMIDT, SHERIFF'S OFFICE CHIEF
DONALD DOMANSKI, DIRECTOR DAN
ZEISER & OFFICERS DOES NO.'S 1-10

Defendants

CIVIL ACTION

ANSWER, AFFIRMATIVE DEFENSES,
CROSSCLAIMS, FRIVOLOUS ACTION
NOTICE, DEMAND FOR PRODUCTION
OF DOCUMENTS, DEMAND FOR
STATEMENT OF DAMAGES, DEMAND
FOR ANSWERS TO INTERROGATORIES
JURY DEMAND, DESIGNATION OF TRIAL
COUNSEL

Defendant, Union County, Union County Prosecutor's Office, Union County Sheriff's Department, Chief Donald Domanoski (improperly plead is Sheriff's Office Chief Donald Domanski) having an address for the purpose of this proceeding of c/o Office of the County Counsel, Union County Administration Building, Elizabethtown Plaza, Elizabeth, NJ 07207 by way of Answer to the Complaint of Plaintiff by denying all substantive allegations to the extent that some are construed to imply that said Defendants acted negligently, carelessly, recklessly or improperly in any aspect, otherwise, at the point in time, said Defendants have no knowledge or information sufficient to form a belief regarding the truth of said substantive allegations says as

follows:

FIRST COUNT

1. Defendants deny the allegations of the Complaint to that extent that some are construed to express and /or imply that said Defendants acted negligently, carelessly, recklessly or improperly in any respect, and otherwise, at the point in time, have no knowledge or information to form a belief regarding the truth of Plaintiff's substantive allegations.
2. Defendants deny the allegations of Paragraph 20 of the First Count of the Complaint.
3. Defendants deny the allegations of Paragraph 21 of the First Count of the Complaint.
4. Defendants deny the allegations of Paragraph 22 of the First Count of the Complaint.
5. Defendants deny the allegations of Paragraph 23 of the First Count of the Complaint.
6. Defendants deny the allegations of Paragraph 24 of the First Count of the Complaint.

Wherefore, Defendants, County of Union, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski demand dismissal of the First Count of the Complaint with prejudice.

SECOND COUNT

1. Defendants repeat and reallege their answers to each and every allegation of the First Count of the Complaint as set fourth at length herein.
2. Defendants deny the allegations of Paragraph 26 of the Second Count of the Complaint.
3. Defendants deny the allegations of Paragraph 27 of the Second Count of the Complaint.

4. Defendants deny the allegations of Paragraph 28 of the Second Count of the Complaint.
5. Defendants deny the allegations of Paragraph 29 of the Second Count of the Complaint.
6. Defendants deny the allegations of Paragraph 30 of the Second Count of the Complaint.
7. Defendants deny the allegations of Paragraph 31 of the Second Count of the Complaint.
8. Defendants deny the allegations of Paragraph 32 of the Second Count of the Complaint.

Wherefore, Defendants, County of Union, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski demand dismissal of the Second Count of the Complaint with prejudice.

THIRD COUNT

1. Defendants repeat and reallege their answers to each and every allegation of the First and Second Counts of the Complaint as set fourth at length herein.
2. Defendants deny the allegations of Paragraph 34 of the Third Count of the Complaint.
3. Defendants deny the allegations of Paragraph 35 of the Third Count of the Complaint.
4. Defendants deny the allegations of Paragraph 36 of the Third Count of the Complaint.

5. Defendants deny the allegations of Paragraph 37 of the Third Count of the Complaint.

Wherefore, Defendants, County of Union, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski demand dismissal of the Third Count of the Complaint with prejudice.

FOURTH COUNT

1. Defendants repeat and reallege their answers to each and every allegation of the First, Second and Third Count of the Complaint as set forth at length herein.
2. Defendants deny the allegations of Paragraph 39 of the Fourth Count of the Complaint.
3. Defendants deny the allegations of Paragraph 40 of the Fourth Count of the Complaint.
4. Defendants deny the allegations of Paragraph 41 of the Fourth Count of the Complaint.
5. Defendants deny the allegations of Paragraph 42 of the Fourth Count of the Complaint.
6. Defendants deny the allegations of Paragraph 43 of the Fourth Count of the Complaint.

Wherefore, Defendants, County of Union, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski demand dismissal of the Fourth Count of the Complaint with prejudice.

FIFTH COUNT

1. Defendants repeat and reallege their answers to each and every allegation of the First, Second, Third and Fourth Count of the Complaint as set fourth at length herein.
2. Defendants deny the allegations of Paragraph 45 of the Fifth Count of the Complaint.
3. Defendants deny the allegations of Paragraph 46 of the Fifth Count of the Complaint.
4. Defendants deny the allegations of Paragraph 47 of the Fifth Count of the Complaint.
5. Defendants deny the allegations of Paragraph 48 of the Fifth Count of the Complaint.
6. Defendants deny the allegations of Paragraph 49 of the Fifth Count of the Complaint.

Wherefore, Defendants, County of Union, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski demand dismissal of the Fifth Count of the Complaint with prejudice.

SIXTH COUNT

1. Defendants repeat and reallege their answers to each and every allegation of the First, Second, Third, Fourth and Fifth Count of the Complaint as set fourth at length herein.
2. Defendants deny the allegations of Paragraph 51 of the Sixth Count of the

Complaint.

3. Defendants deny the allegations of Paragraph 52 of the Sixth Count of the Complaint.
4. Defendants deny the allegations of Paragraph 53 of the Sixth Count of the Complaint.
5. Defendants deny the allegations of Paragraph 54 of the Sixth Count of the Complaint.
6. Defendants deny the allegations of Paragraph 55 of the Sixth Count of the Complaint.

Wherefore, Defendants, County of Union, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski demand dismissal of the Sixth Count of the Complaint with prejudice.

SEVENTH COUNT

1. Defendants repeat and reallege their answers to each and every allegation of the First, Second, Third, Fourth, Fifth and Sixth Count of the Complaint as set forth at length herein.
2. Defendants deny the allegations of Paragraph 56 of the Sixth Count of the Complaint.
3. Defendants deny the allegations of Paragraph 57 of the Sixth Count of the Complaint.

Wherefore, Defendants, County of Union, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski demand dismissal of the Seventh

Count of the Complaint with prejudice.

EIGHTH COUNT

1. Defendants repeat and reallege their answers to each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth and Seventh Count of the Complaint as set fourth at length herein.
2. Defendants deny the allegations of Paragraph 58 of the Sixth Count of the Complaint.
3. Defendants deny the allegations of Paragraph 59 of the Sixth Count of the Complaint.
4. Defendants deny the allegations of Paragraph 60 of the Sixth Count of the Complaint.

Wherefore, Defendants, County of Union, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski demand dismissal of the Eighth Count of the Complaint with prejudice.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Plaintiff has failed to give timely Notice of Claim or present a claim in accordance with N.J.S.A. 59:8-1, et seq.

THIRD SEPARATE DEFENSE

Defendants herein are not guilty of negligence and violated no duty owed to the Plaintiff.

FOURTH SEPARATE DEFENSE

To the extent that Plaintiff suffered any damages, which Defendants expressly deny, Plaintiff's own negligence or other culpable conduct was the proximate cause thereof.

FIFTH SEPARATE DEFENSE

The accident complained of was caused by the actions of persons or entities over whom Defendants had no control.

SIXTH SEPARATE DEFENSE

Any liability might otherwise be imposed upon Defendants is subject to reduction by the application of comparative negligence as set forth in N.J.S.A. 59:9-4.

SEVENTH SEPARATE DEFENSE

Recovery herein is barred by the provisions of New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

EIGHTH SEPARATE DEFENSE

Defendants will rely upon any and all defenses, immunities and protections of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. and hereby places Plaintiff on notice that each and every such statutory provision is hereby raised as a separate and affirmative defense throughout every stage of this matter. All parties are further placed on notice that the failure to specifically plead those defenses does not constitute a waiver.

NINETH SEPARATE DEFENSE

Any recovery to which Plaintiff may be entitled as against Defendants are subject to the limitations and reductions as set forth in N.J.S.A. 59:9-2.

TENTH SEPARATE DEFENSE

The negligence, if any, on the part of Defendants was not the proximate cause of the injuries which may have been sustained by the Plaintiff.

ELEVENTH SEPARATE DEFENSE

Plaintiff's claims, in whole or in part, are barred by the doctrine of res judicata.

TWELFTH SEPARATE DEFENSE

Plaintiff's claims, in whole or in part, are barred by the entire controversy doctrine.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's lawsuit, in its entirety, must be dismissed by the doctrine of res judicata.

FOURTEENTH SEPARATE DEFENSE

Plaintiff's lawsuit, in its entirety, must be dismissed by the entire controversy doctrine.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by the Statute of Limitations.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's claims, in whole or in part, are barred by the doctrine of estoppel.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff's claims, in whole or in part, are barred by Plaintiff's own contributory negligence and any damages claimed by Plaintiff were caused by his sole negligence.

EIGHTEENTH SEPARATE DEFENSE

The Defendants' conduct was not the proximate cause of Plaintiff's alleged damages.

NINETEENTH SEPARATE DEFENSE

The Defendants have no policy, scheme, practice nor custom to violate the constitutional rights of the Plaintiff.

TWENTIETH SEPARATE DEFENSE

The Defendants deny the allegations of improper conduct as set forth in Plaintiff's Complaint and the alleged misconduct does not rise to the level of a Constitutional violation.

TWENTY-FIRST SEPARATE DEFENSE

The Defendants, in carrying out their duties, acted in good faith and without malicious intent to deprive Plaintiff of his Constitutional rights.

TWENTY-SECOND SEPARATE DEFENSE

No malicious intent of causing a deprivation of Plaintiff's Constitutional rights has been factually set out against the Defendants.

TWENTY-THIRD SEPARATE DEFENSE

Without admitting Plaintiff's civil rights were violated, the Defendants state that in any event the Defendants are shielded from liability for civil damages because the alleged conduct did not violate clearly established statutory and/or constitutional rights of which a reasonable person would have known.

TWENTY-FOURTH SEPARATE DEFENSE

At all times relevant hereto, the Defendants were protected by a qualified privilege and as such Plaintiff is barred from any recovery herein.

TWENTY-FIFTH SEPARATE DEFENSE

At no time relevant to this litigation did Plaintiff sustain any violation of his civil rights pursuant to a governmental policy or custom thereby precluding Plaintiff from maintaining any causes of action for violation of civil rights.

TWENTY-SIXTH SEPARATE DEFENSE

At all relevant to this litigation, the Defendants acted in good faith and with probable

cause and entertained an honest, reasonable belief that his/their actions were reasonable and necessary thereby precluding Plaintiff from maintaining any causes of action for violation of civil rights.

TWENTY-SEVENTH SEPARATE DEFENSE

Plaintiff's conduct was not constitutionally protected.

TWENTY-EIGHTH SEPARATE DEFENSE

Plaintiff fails to establish a prima facie case of a violation of 42 U.S.C. § 1983.

TWENTY-NINTH SEPARATE DEFENSE

The Defendants, if involved at all, acted within the scope of their authority and in good faith in the performance of their duties.

THIRTIETH SEPARATE DEFENSE

The Defendants had no direct and personal participation in the alleged occurrence.

THIRTY-FIRST SEPARATE DEFENSE

All of the actions of these Defendants were performed in good faith and in the performance of their duties, and they are, therefore, entitled to qualified immunity.

THIRTY-SECOND SEPARATE DEFENSE

These Defendants incorporate by reference herein all Separate Defenses asserted in the responsive pleadings filed on behalf of all other co-Defendants.

THIRTY-THIRD SEPARATE DEFENSE

The Complaint fails to set forth a cause of action against the Defendants under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

THIRTY-FOURTH SEPARATE DEFENSE

The Complaint fails to set forth a cause of action against the Defendants under the

Americans with Disabilities Act, 42 U.S.C. Sections 12131-12165.

THIRTY-FIFTH SEPARATE DEFENSE

The Complaint fails to set forth a cause of action against the Defendants under the Rehabilitation Act of 1983, Section 504, 29 U.S.C 794.

RESERVATION OF RIGHTS TO ADD AFFIRMATIVE DEFENSES

Defendants reserve their right to amend their Answer to the Plaintiff's Complaint to assert such additional affirmative defenses as may become apparent during the continuing course of discovery in this matter.

CROSSCLAIM FOR CONTRIBUTION AND INDEMNIFICATION

Defendants, Union County, Union County Prosecutor's Office, Union County Sheriff's Department and Chief Donald Domanoski, by way of Crossclaim against the co-Defendants, Union Township, Union Township Police Department, Director Dan Zeiser.

FIRST COUNT

While denying any liability to the Plaintiff for the accident, injuries and damages alleged, if adjudged liable, Defendants assert that such liability is not morally culpable, but merely secondary, technical, vicarious and imputed, and that the sole or primary liability is that of co-Defendants, entitling these Defendants to indemnification both common law and/or contractual form Defendant for any and all sums recovered against it by Plaintiffs.

WHEREFORE, Defendant demand damages from co-Defendants for any sum recovered against it by Plaintiff together with attorney's fees and costs of suit.

SECOND COUNT

While denying any liability to Plaintiffs if Defendants are adjudged liable to Plaintiff, they then assert that the co-Defendants, are joint tortfeasors with it and therefore demands

contribution from said co-Defendants pursuant to the terms and provisions of the Joint Tortfeasor's Contribution Action, N.J.S.A. 2A:53A-1, et se., and the Comparative Negligence Act, N.J.S.A. 2A:15-5.1, et seq.

FRIVOLOUS ACTION NOTICE

The Defendants expressly reserve their rights to pursue an action against Plaintiff at the conclusion of the case pursuant to the provisions of N.J.S.A.2A:15-59.1, et seq.

WHEREFORE, Defendants demand judgment dismissing the Complaint.

JURY DEMAND

Defendants demand a trial by jury on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Defendants hereby designate Christopher M. Howard, Esq., as trial counsel in this matter.

CERTIFICATION

I certify that the within pleading was served within the time period allowed under the Federal Rules of Civil Procedure and/or Consent Order entered herein and that there is no other action pending in this or any other Court or in arbitration between the parties.

ROBERT E. BARRY, ESQ.
UNION COUNTY COUNSEL

DATED: 8/10/11

/s/ Christopher M. Howard
CHRISTOPHER M. HOWARD
Assistant County Counsel