

CITY OF ELIZABETH

CITY CLERK'S OFFICE

50 WINFIELD SCOTT PLAZA

ELIZABETH, N.J. 07201

May 5, 2023

Email: opra+request-42044-dc46a29c@requests.opramachine.com

Mr. John Paff

**RE: CARLOS GONZALEZ v. POLICE DEPARTMENT
OPRA # 598**

Dear Mr. Paff:

On April 28, 2023, this office received an e-mail from you requesting certain records pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1, et seq., ("OPRA") and the common law right of access. Specifically, you requested the following records:

1. Civil lawsuit filed in Carlos Gonzalez v. Elizabeth Police Department (Federal Case No. 2:18-cv-0376)
2. Settlement Agreement or Release that resolved Carlos Gonzalez v. Elizabeth Police Department (2:18-cv-03765)

With respect to No. 1, attached please find a copy of the civil lawsuit filed by Mr. Carlos Gonzalez.

With respect to No. 2, attached please find a resolution for the settlement of Carlos Gonzalez v. City which was passed on April 11, 2023.

If you have any further questions please feel free to contact me at 908-820-4130

Very truly yours,

Grace Sequeira

Grace Sequeira
City Clerk's Office

598
(6)**OPRA request - Civil lawsuit and settlement (20230427-3.txt)**

John Paff <opra+request-42044-dc46a29c@requests.opramachine.com>

Thu 4/27/2023 10:21 AM

To: Yolanda M. Roberts <yroberts@elizabethnj.org>

*** CAUTION ***

This message came from an EXTERNAL address. DO NOT click on links or attachments unless you know the sender and the content is safe. Suspicious? Forward the message to spamreport@elizabethnj.org <<mailto:spamreport@elizabethnj.org>>

Please accept this as my request for government records under both OPRA and the common law right of access. Thank you very much for your commitment to transparent government.

RECORDS REQUESTED:

1. Civil lawsuit filed in Carlos Gonzalez v. Elizabeth Police Department (Federal Case No. 2:18-cv-0376)
2. Settlement Agreement or Release that resolved Carlos Gonzalez v. Elizabeth Police Department (Federal Case No. 2:18-cv-03765)

RECEIVED

APR 28 2023

CITY CLERK'S OFFICE

Please deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-42044-dc46a29c@requests.opramachine.com

Is yroberts@elizabethnj.org the wrong address for OPRA requests to Elizabeth City? If so, please contact us using this form:

https://opramachine.com/change_request/new?body=elizabeth_city

Disclaimer: This message and any reply that you make will be published on the internet. Our privacy and copyright policies:

<https://opramachine.com/help/officers>

View this OPRA request & responses online:

https://opramachine.com/request/civil_lawsuit_and_settlement_202

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an OPRA custodian, please ask your web manager to link to us from your organisation's website.



CITY OF ELIZABETH, NEW JERSEY
DEPARTMENT OF LAW

City Hall
50 Winfield Scott Plaza
Elizabeth, New Jersey 07201-2462
Phone: (908) 820-4009 Fax (908) 352-8658

J. CHRISTIAN BOLLWAGE
Mayor

WILLIAM R. HOLZAPFEL
City Attorney

RAYMOND T. BOLANOWSKI
First Assistant City Attorney

ROCCO DI PAOLA
Second Assistant City Attorney

ROBERT J. LENAHAN, JR.
Special Counsel

JORGE A. ESTRADA
Special Counsel

March 28, 2018

Karen Berenato
Qual-Lynx
100 Decadon Drive
Egg Harbor Township, NJ 08234-3821

**RE: Carlos Gonzalez
v. City of Elizabeth, et al.
Civil Action Summons
Case No.: 2:18-CV-03765-JMV-MF
Our File No.: CA-7-2018
(TC-97-2016)**

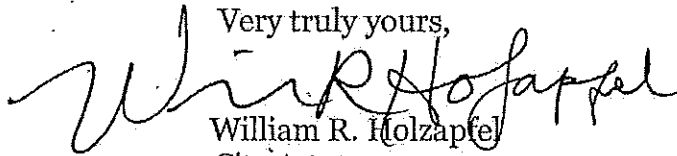
Dear Karen:

Regarding the above captioned matter, attached for your records please find a copy of a Summons which was filed with the United State District Court of New Jersey, Case No.: 2:18-CV-03765-JMV-MF and received in the Law Department on March 28, 2018.

Our defense attorney, on behalf of the City of Elizabeth, Robert F. Varady, will receive same. Please note there was a Notice of Claim filed.

Please handle accordingly. If you have any further questions, please do not hesitate to contact me.

Very truly yours,



William R. Holzappel
City Attorney

Encl.

WRH/mf

cc: James Cosgrove, Police Director
Robert F. Varady, Esq.

Send to Qual-Lyax
cc: Police Director
Bob Varady

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Law Dept
JR

TC-97-2016

CARLOS GONZALEZ,
Plaintiff

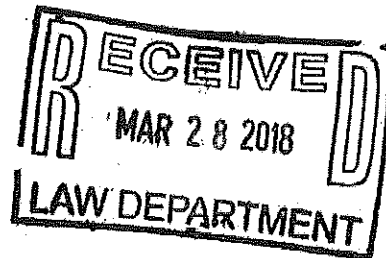
V.

SUMMONS IN A CIVIL CASE

ELIZABETH POLICE DEPARTMENT, ET
AL.,
Defendant

CASE NUMBER: 2:18-CV-03765-JMV-MF

TO: Elizabeth Police Department
One Police Plaza
Elizabeth, New Jersey 07201



A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Schiller McMahon
123 South Avenue East
Westfield, New Jersey 07090

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

WILLIAM T. WALSH
CLERK

John Reilly
(By) DEPUTY CLERK



ISSUED ON 2018-03-21 11:07:08, Clerk
USDC NJD

RETURN OF SERVICEService of the summons and complaint was made by letterNAME OF SERVER DAVID

TITLE _____

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.☐ Name of person with whom the summons and complaint were left: _____☐ Returned unexecuted: _____☐ Other (specify) : _____**STATEMENT OF SERVICE FEES**

TRAVEL _____

SERVICES _____

TOTAL _____

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

3/27/18

Date

Signature of Server

Address of Server _____

Joshua F. McMahon, Esq. – NJAID 043282005
Schiller McMahon LLC
123 South Avenue East
Westfield, New Jersey 07090
P: (908) 233-4840
F: (908) 935-0822
Attorneys for Plaintiff, Carlos Gonzalez

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

CARLOS GONZALEZ,

Plaintiff,

v.

ELIZABETH POLICE DEPARTMENT;
JORGE HIDALGO; EPD BADGE #H371;
JOHN DOES 1 – 5; JANE DOES 1 – 5,

Defendants.

CIVIL ACTION NO.

COMPLAINT

Plaintiff, CARLOS GONZALEZ (hereafter “Plaintiff”), with a residence address of 922 McCandless Place, Linden, New Jersey 07036, by and through undersigned counsel, complain of the defendants and say that:

JURISDICTION STATEMENT AND PARTIES

1. This is an action for damages arising out of one or more violations of federal and state law, and is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendment to the United States Constitution; and, the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.*, and Article I of the New Jersey State Constitution.

2. This Court has jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1331 and § 1343 in that this is an action to redress, among other things, violations of Plaintiff's federally protected Constitutional rights. Jurisdiction over the state law claims is founded upon the supplemental jurisdiction of this Court, 28 U.S.C. § 1367.

3. At all times relevant herein, Plaintiff, Carlos Gonzalez, is and was a legal resident in the United States, and a resident of Union County, New Jersey, and is otherwise *sui juris*.

4. At all times relevant herein, Defendant, Elizabeth Police Department ("EPD"), was a municipal subdivision and arm of the City of Elizabeth, with its principal offices located at 1 Police Plaza, Elizabeth, New Jersey 07201.

5. Jorge Hidalgo ("Hidalgo"), EPD Badge Number H371, was at all times relevant herein employed by Defendant EPD. He is sued in both his individual and official capacity.

6. John Does 1 through 5 and Jane Does 1 through 5 were at all times relevant herein employed by Defendant EPD, and participated in the stop, arrest, detention, search and prosecution of Plaintiff on or about October 16, 2016.

7. Defendants Hidalgo, John Does 1-5, and Jane Does 1-5 are hereafter referred to collectively as the "PO Defendants."

8. PO Defendants were at all times relevant acting under color of state law as active and duly appointed EPD police officers, and in such capacity, as the agent, servant, and employee of Defendant EPD.

9. The acts and practices constituting the violations alleged below have all occurred within the State of New Jersey, which is properly within the jurisdiction of the United States District Court in and for the District of New Jersey. Venue in the District of New Jersey, Newark Division, is proper because the incident which is the subject of this lawsuit occurred in the State

of New Jersey and Defendants are located in this venue. *See* 28 U.S.C. § 1391(b)(1) and § 1391(b)(2).

10. Plaintiff has complied with all conditions precedent to the filing of this lawsuit pursuant to Title 59, New Jersey Statutes; all applicable notices have been provided to Defendants.

11. Plaintiff has retained Schiller McMahon LLC to represent his interests in prosecuting this action, and said law firm is entitled to their reasonable attorneys' fees and costs incurred in connection therewith.

STATEMENT OF FACTS

12. At all times material hereto, the subject incident arises out of the unlawful arrest, detention and prosecution of Plaintiff resulting in serious personal injuries to said Plaintiff which occurred in Elizabeth, New Jersey.

13. Specifically, on or about October 16, 2016, Plaintiff was lawfully operating his blue 1988 Toyota pickup (hereafter the "Toyota") in the area of Chilton Street at the intersection of Rahway Avenue in the City of Elizabeth.

14. At some point during his journey, Plaintiff began to suffer a medical emergency due to complications related to his diagnosis as an insulin-dependent diabetic.

15. In fact, Plaintiff was suffering from severe hypoglycemia, also known as diabetic shock, causing him to lose consciousness.

16. At said time and place, Defendant Hidalgo, while on-duty and undertaking and discharging his assigned duties as an EPD officer that day, approached Plaintiff's Toyota and observed Plaintiff slumped over in the driver's seat.

17. Defendant Hidalgo asked Plaintiff if he was okay and if he had been drinking, but Plaintiff was only able to muster a mumbled response due to his medical condition. Defendant Hidalgo then requested the assistance of another unit.

18. In response to Defendant Hidalgo's request for back-up, EPD police officer Vincent Flatley ("PO Flatley") arrived on scene to assist Defendant Hidalgo.

19. Instead of immediately contacting emergency medical services, Defendant Hidalgo falsely and maliciously claimed that he was able to smell a strong odor of alcohol coming from Plaintiff's mouth and observed Plaintiff with bloodshot eyes.

20. Upon information and belief, the allegation related to the odor of alcohol was a purely pretextual basis for taking Plaintiff into custody on the basis of his race, ethnicity, national origin, or other unlawful reason.

21. There was no reasonable basis, let alone probable cause, for Defendant Hidalgo to arrest Plaintiff for suspicion of being under the influence of alcohol; yet, Plaintiff was nonetheless arrested for same, in violation of state and federal law.

22. Upon information and belief, Defendant Hidalgo ripped Plaintiff out of the Toyota and restrained Plaintiff in handcuffs.

23. After the Plaintiff was in handcuffs, Defendant Hidalgo forcefully held Plaintiff against the Toyota and unlawfully searched Plaintiff's person without a warrant or exception to the warrant requirement.

24. Thereafter, another unknown officer dressed in plain clothes assisted PO Defendant Hidalgo by violently shoving Plaintiff into the back of a police cruiser.

25. Incredibly, and despite Plaintiff clearly being in serious medical distress, at no time during this encounter with police was Plaintiff asked if he needed medical assistance.

26. After Plaintiff was in handcuffs, PO Defendant Hidalgo transported Plaintiff to EPD headquarters for processing and to submit to an Alcotest.

27. While at headquarters, Plaintiff was allegedly monitored by Defendant Hidalgo for twenty minutes for the purpose of conducting an Alcotest. During that observation period, Plaintiff was clearly and definitively in need of medical assistance, but the PO Defendant failed to render any such assistance.

28. Despite Plaintiff's blatant and obvious distress, and with explicit knowledge of Plaintiff's status as an insulin-dependent diabetic, the PO Defendants continued to treat Plaintiff as a common criminal without any probable cause basis for doing so, and failed to render medical assistance.

29. Throughout the entire time Plaintiff interacted with the PO Defendants, including prior to any arrest, Plaintiff advised the PO Defendants that he did not drink and was not drunk.

30. After approximately twenty minutes passed, EPD police officer Grisel Arias ("PO Arias") forced Plaintiff to submit to a breath test four times within a five-minute span. It should be noted that during two of Plaintiff's attempts to provide a breath sample for the Alcotest, the machine registered the error message "MIN. VOL. NOT ACHIEVED". Upon information and belief, the error message received by PO Arias indicated that Plaintiff was unable to provide enough of a breath sample for the machine to register a reading; thereby causing Plaintiff to have to repeatedly blow into the machine and exacerbating his already rapidly deteriorating medical condition.

31. Plaintiff's registered results showed a blood alcohol concentration ("BAC") of 0.00%. Nevertheless, the PO Defendants charged Plaintiff with driving under the influence, despite

zero evidence, and thus no legal justification, to do so. In fact, Defendant EPD intentionally filed a false police report in an effort to conceal the illegality of their unjustified arrest.

32. Sometime thereafter, paramedics were finally called and it was discovered that Plaintiff's sugar level was dangerously low and he was transported to Trinitas Hospital for treatment.

33. Plaintiff was unlawfully arrested without probable cause and mistreated as described above due to his race, ethnicity, national origin, or other unlawful basis, and the illegal practice of profiling engaged in by members of EPD.

34. As a result of the subject incident, the Plaintiff experienced severe pain and suffering due to his physical injuries, including mental anguish, mental and emotional suffering, embarrassment, shame, and humiliation, as well as damages to his constitutional rights due to the unreasonable seizure of his person.

ADDITIONAL FACTS SURROUNDING LIABILITY

35. Defendant EPD is the ultimate policymaking authority for all officially-adopted policies and procedures implemented by employees of Defendant EPD, including all PO Defendants. Further, it is the entity legally responsible for the hiring, retention, supervision, and training of employees of the EPD, as well as administering any discipline to said employees.

36. The EPD has a long-standing de-facto policy of unlawful profiling as has been acknowledged by New Jersey governors, attorneys general and the New Jersey Senate Judiciary Committee, including a Consent Decree wherein the EPD promoted multiple Hispanic and African-American police officers.

37. Defendant EPD has been placed on notice that there is a pervasive and systematic pattern, custom and practice within the EPD to unlawfully stop, search, arrest, and use excessive

force by rendering vicious beatings to members of the general public – even those who do not resist arrest, including innocent bystanders and those accused of minor criminal infractions – and to make great efforts to use excessive force outside the view of third-party witnesses, and frequently while the person detained is subdued, restrained, or otherwise still in handcuffs.

38. False reports are rendered, and prosecutions are officially pursued against the victims of these unlawful stops, searches, arrests, and unconstitutional beatings and excessively forceful arrests.

39. The investigations into such allegations of unlawful stops, searches, arrests, and use of excessive force are almost always a virtual whitewash, as EPD officers are rarely, if ever, punished for such conduct even when investigations reveal conduct that requires action to be undertaken against the officers(s) involved to prevent such civil rights and constitutional violations in the future.

40. Specifically, the notice to the EPD of the unconstitutional conduct of its officers and employees has occurred through notices of intent to sue, lawsuits, internal affairs investigations, and media reports, yet Defendant EPD fails to take any remedial action.

41. Thus, Defendant EPD is also on notice of the fact that a systemic and pervasive pattern and practice of unlawful stops, searches, arrests, and use of excessive force and wrongful and unreasonably forceful arrests exist within the EPD and that members of the citizenry are the victims of these acts committed by EPD officers in violation of the Fourth, Fifth, Eight and Fourteenth Amendments. Defendant EPD officers are allowed and indeed encouraged to commit these wrongful and unconstitutional acts with impunity knowing that no discipline, much less meaningful discipline, will follow for unlawful stops, searches, arrests, and acts of excessive force,

false arrest and malicious prosecution. Such illegal conduct is ratified and condoned by Defendant EPD.

42. PO Defendants Hidalgo, John Does 1 through 5, and Jane Does 1 through 5, are comfortable in the knowledge that any unlawful stop, search, arrest, and act of excessive force, unlawful arrest, and malicious prosecution that they commit will not result in discipline by Defendant EPD even when the unlawful stop, search, arrest, and act of excessive force and/or unlawful arrest occurs. Thus, the lack of discipline for unlawful stops, searches, arrests, and acts of excessive force, unlawful arrests and malicious prosecution allowed PO Defendants to wrongfully stop, arrest and commit excessive and unreasonable force against the Plaintiff because PO Defendants knew that there would be no official reprisals for their actions against Plaintiff.

43. Upon information and belief, the discovery phase of this litigation will further reveal many other instances where Defendant EPD, by and through its officers and employees, has allowed, condoned, and encouraged a systemic, ratified, and sanctioned policy of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests and racial profiling only to fail to discipline personnel for such actions, much less properly supervise and train to prevent further abuses.

CAUSES OF ACTION

COUNT ONE

VIOLATION OF 42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)

44. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 43 as if set forth fully herein, and further states as follows:

45. At all times material, Plaintiff had the constitutional right to be free from the use of excessive and unreasonable force against his person and to be free from unlawful searches and seizures.

46. The PO Defendants individually and as a group participated and conspired with one another, under color of state law, to deprive Plaintiff of his constitutional rights by, among other things:

- a. stopping and detaining Plaintiff without reasonable and articulable suspicion;
- b. falsely arresting Plaintiff without probable cause;
- c. illegally searching Plaintiff's person without probable cause;
- d. using excessive and unreasonable force when arresting Plaintiff;
- e. falsely imprisoning and/or detaining Plaintiff;
- f. improperly denying Plaintiff's right to privacy;
- g. denying Plaintiff his right to freedom of travel;
- h. depriving Plaintiff of his right to due process;
- i. depriving Plaintiff of his right to equal protection of the laws;
- j. subjecting Plaintiff to involuntary servitude;
- k. subjecting Plaintiff to cruel and unusual punishment.

47. PO Defendants violated 42 U.S.C. § 1983 by inflicting serious personal injury upon Plaintiff that was grossly disproportionate to the force necessary to arrest Plaintiff in violation of his rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

48. PO Defendants, including but not limited to Defendant Hidalgo, while acting in their capacity as police officers for Defendant EPD and under color of law, did intentionally and unlawfully stop, search, arrest, and use excessive and unreasonable force by forcefully removing Plaintiff from his vehicle and restraining him, without the requisite legal justification.

49. PO Defendants subjected Plaintiff to further indignities by filing a false report and causing Plaintiff to be wrongfully detained and prosecuted; specifically, by knowingly, intentionally, and falsely claiming an odor of alcohol could be detected.

50. The above acts constitute a violation of the Civil Rights Act, 42 U.S.C. § 1983 for violation of one's civil and constitutional rights under color of state law.

51. As a proximate result of the aforesaid acts by Defendants, Plaintiff has been damaged and has suffered severe emotional injuries including mental distress and anguish.

COUNT TWO
VIOLATION OF 42 U.S.C. § 1981
(Violation of Equal Rights Under the Law)

52. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 51 as if set forth fully herein, and further states as follows:

53. The acts of the PO Defendants as well as the EPD constitute a violation of the Civil Rights Act, 42 U.S.C. § 1981.

54. The acts of the Defendants were motivated by racial, ethnic, national origin, and/or other unlawful animosity and/or by desire to injure, oppress and intimidate the Plaintiff because of his race, ethnicity, national origin, or other protected attribute.

55. As a proximate result of the above-mentioned acts, Plaintiff has suffered damages including severe emotional distress and mental anguish as well as a deprivation of his rights under § 1981, as well as the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

COUNT THREE
VIOLATION OF 42 U.S.C. § 1985
(Conspiracy to Violate Civil Rights)

56. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 55 as if set forth fully herein, and further states as follows:

57. The acts of PO Defendants as well as Defendants EPD constitute a violation of the Civil Rights Act, 42 U.S.C. § 1985, namely a conspiracy to violate the civil rights of Plaintiff based on his race, ethnicity, national origin, or other unlawful basis.

58. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional distress and mental anguish as well as deprivation of rights under the Civil Rights laws.

COUNT FOUR
VIOLATION OF 42 U.S.C. § 1986
(Failure to Prevent Violations of Civil Rights)

59. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 58 as if set forth fully herein, and further states as follows:

60. The PO Defendants had knowledge of the discrimination/violation of constitutional rights perpetrated on Plaintiff and/or other minorities, including Plaintiff, but neglected and failed to prevent said wrongful and illegal acts when they had power to do so.

61. This neglect, aid and refusal to prevent or rectify is a violation of the Civil Rights Act, 42 U.S.C. § 1986.

62. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress and a deprivation of rights under the Civil Rights laws.

COUNT FIVE
VIOLATION OF 42 U.S.C. § 1983
(Negligent Screening, Hiring, Training, Supervising and
Retention Of Dangerous Discriminatory Police Officers)

63. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 62 as if set forth fully herein, and further states as follows:

64. Defendant EPD was negligent in screening, hiring, training, supervising, disciplining and/or retaining the PO Defendants in this matter, who they knew or should have known were dangerous and/or acted in a racially discriminatory manner.

65. Defendant EPD is liable for the aforesaid acts both under the doctrine of *respondeat superior* and because it permitted conditions to exist which facilitated and/or permitted such conduct to occur.

COUNT SIX
NEW JERSEY STATE CIVIL RIGHTS ACTION/STATE CONSTITUTIONAL CLAIM
(N.J.S.A. 10:6-1, *et seq.*)

66. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 65 as if set forth fully herein, and further states as follows:

67. The illegal, unconstitutional and discriminatory acts of the Defendants constituted acts of a *de facto* policy to discriminate, use unlawful force, falsely stop, arrest and detain, and illegally search and assault Plaintiff. The actions of the Defendants aforesaid also represent a *de facto* policy to deny Plaintiff his right to travel, equal protection and privacy. All of these violations contravene Plaintiff's constitutional rights under the New Jersey State Constitution including, but not limited to, Article I, Section 1; Article I, Section 5; and Article I, Section 7 and the New Jersey Civil Rights Act (N.J.S.A. 10:6-2).

68. Each individual Defendant was acting at all times in furtherance of his employer.

69. As a proximate result of the aforesaid conduct, Plaintiff has been damaged, including violation of his civil rights and has suffered severe physical and emotional pain and suffering.

COUNT SEVEN
WILLFUL DISREGARD

70. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 69 as if set forth fully herein, and further states as follows:

71. The conduct of Defendants was outrageous, wanton and willful, in reckless indifference to the rights, safety, and interests of Plaintiffs, and taken with conscious disregard of their duties and obligations.

72. Defendants acted with deliberate indifference to the rights of persons in their domain, including Plaintiff, violating Plaintiff's right to freedom from deprivation of liberty without due process of law in violation of the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act, 42 U.S.C. § 1986.

73. As a proximate result of the above-mentioned acts, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress and a deprivation of rights under the Civil Rights laws.

COUNT EIGHT
ASSAULT AND BATTERY

74. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 73 as if set forth fully herein, and further states as follows:

75. Defendants intended to cause a harmful or offensive contact with Plaintiff, and/or an imminent apprehension of such a contact.

76. Plaintiff was thereby put in such imminent apprehension.

77. PO Defendants, individually and/or acting in concert, contacted Plaintiff in a harmful and offensive manner without cause and/or legal justification.

78. As a proximate result of the aforesaid conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT NINE
ABUSE OF PROCESS

79. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 78 as if set forth fully herein, and further states as follows:

80. The PO Defendants, and perhaps others, made improper, illegal and perverted use of the legal process and their resort to the legal process was neither warranted nor authorized by law.

81. The PO Defendants, and perhaps others, had ulterior motives in initiating the legal process against Plaintiff by filing a criminal complaint against him.

82. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT TEN
FALSE ARREST

83. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 82 as if set forth fully herein, and further states as follows:

84. The PO Defendants named herein, and perhaps others, wrongfully, unlawfully, maliciously, and without any warrant or pretense of legal process, detained and confined Plaintiff.

85. Plaintiff's confinement was without legal authority or legal justification.

86. The actions of the PO Defendants, and perhaps others, of subjecting Plaintiff to detention were deliberate, willful, malicious, wanton and unlawful.

87. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT ELEVEN
FALSE IMPRISONMENT

88. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 87 as if set forth fully herein, and further states as follows:

89. The PO Defendants named herein, and perhaps others, wrongfully, unlawfully, maliciously, and without any warrant or pretense of legal process, detained and confined Plaintiff.

90. Plaintiff's confinement was without legal authority or legal justification.

91. The actions of the PO Defendants, and perhaps others, of subjecting Plaintiff to detention were deliberate, willful, malicious, wanton and unlawful.

92. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT TWELVE
MALICIOUS PROSECUTION

93. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 92 as if set forth fully herein, and further states as follows:

94. The PO Defendants named herein, and perhaps others, conspired to file a criminal complaint against Plaintiff alleging a violation of N.J.S.A. 39:4-50.

95. The aforesated criminal offense was thereafter dismissed by a neutral and detached magistrate.

96. No reasonable or probable cause existed for the PO Defendants to charge Plaintiff with said offense.

97. The PO Defendants named herein, and perhaps others, were activated by malicious motives in prosecuting the charges lodged against Plaintiff.

98. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

COUNT THIRTEEN
NEGLIGENCE

99. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 98 as if set forth fully herein, and further states as follows:

100. At all times relevant hereto, defendants owed a duty to Plaintiff to provide the standard of care that an ordinary prudent person would provide in similar circumstances.

101. Defendants breached their duties of care.

102. As the direct and proximate cause of the defendants' negligence as stated above, Plaintiff has suffered severe injuries.

103. The injuries Plaintiff has sustained are permanent in nature.

104. Plaintiff continues to suffer pain and disability due to the negligent acts of the defendants.

COUNT FOURTEEN
VICARIOUS LIABILITY

105. Plaintiff, Carlos Gonzalez, re-alleges and re-avers each and every allegation set forth in Paragraphs 1 through 104 as if set forth fully herein, and further states as follows:

106. A public employee is liable in damages to anyone suffering injury proximately caused by the execution or enforcement of any law and such acts are without reasonable good faith.

107. Defendant EPD is liable to Plaintiff by virtue of vicarious liability and/or *respondeat superior* for the wrongful acts of the PO Defendants.

108. At all times relevant hereto, PO Defendant Hidalgo, and perhaps others, acted within the scope of their employment with Defendants EPD.

109. Even if the wrongful acts of the PO Defendants were committed while acting outside the scope of their employment, Defendant EPD is liable, as EPD intended the consequences, was negligent or reckless, the conduct violated a non-delegable duty of EPD, or the PO Defendants purported to act or to speak on behalf of EPD and there was a reliance upon apparent authority, or the PO Defendants were aided in accomplishing the torts by the existence of the agency relation.

110. As a proximate result of the PO Defendants' conduct, Plaintiff has been damaged and has suffered severe emotional pain, suffering, anguish and distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against the Defendants, including but not limited to:

111. An award of compensatory damages and punitive damages against Defendants, together with interest, costs of suit and attorneys' fees; for his personal injuries; pain and suffering; past, present and future medical expenses; attorneys' fees; mental anguish; loss of earning capacity; and loss of capacity to enjoy life; as well as his costs, and all other relief the Court deems just and proper.

112. A judgment declaring that the EPD's policy, practice and/or custom of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests and racial profiling challenged herein are unconstitutional in that they violate the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act, 42 U.S.C. § 1986, and the Constitution and laws of the State of New Jersey, and that its implementation,

enforcement and sanctioning by EPD officers is a direct and proximate result of the following policies, practices and/or customs of the EPD:

- a. Failing to adequately screen, train and supervise officers;
- b. Failing to adequately monitor the EPD officers and discipline those EPD officers who violate the constitutional rights of residents of the communities they patrol; and
- c. Encouraging, sanctioning and failing to rectify the EPD's unconstitutional policies.

113. Issue an order for the following injunctive relief:

- a. Enjoining the EPD from continuing its policy, practice and/or custom of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests and racial profiling;
- b. Requiring the EPD to institute and implement improved policies and programs with respect to training, discipline, and promotion designed to eliminate the EPD's policy, practice and/or custom of unlawful stops, searches, arrests, and acts of excessive and unreasonable force, wrongful arrests and racial profiling;
- c. Requiring the EPD to deploy EPD officers with appropriate and adequate supervision; and
- d. Requiring an independent overseer to monitor stops, searches, arrests, and acts of force to determine whether reported stops, searches, arrests, and acts of force have comported with constitutional requirements.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable under the law.

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates the undersigned as trial counsel.

/s/ Joshua F. McMahon, Esq.
Joshua F. McMahon, Esq.
Attorney for Plaintiff Carlos Gonzalez

Dated: 3/19/2018

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on March 19, 2018, we electronically filed the foregoing with the Clerk of the Court using CM/ECF. We also certify that the foregoing document will be served on all parties either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted

By: /s/ Joshua F. McMahon, Esq.

111
BY CITY COUNCIL AS A WHOLE:

WHEREAS, a civil action is currently pending in the matter of Carlos Gonzalez v. City of Elizabeth, et al. (Civil Action No.: 2:18-cv-3765-JMV-ESK); and

WHEREAS, Mr. González agreed to accept Ninety-nine Thousand, Five Hundred Dollars xx/100 (\$99,500.00) in full and final settlement; and

WHEREAS, Robert F. Varady, Esq., and Christina M. DiPalo, Esq., of LaCorte, Bundy, Varady and Kinsella, finds this amount acceptable and recommends final settlement of this matter; and

WHEREAS, the Law Department concurs with the above recommendation and hereby request that the City Council of the City of Elizabeth adopt a resolution authorizing the proper City Officials to execute the appropriate documents to settle this matter in the amount of Ninety-nine Thousand, Five Hundred Dollars xx/100 (\$99,500.00); and

WHEREAS, the Chief Financial Officer has certified that sufficient funds are available and appropriated for this purpose and Certification No. 23-07710, charging the amount of \$99,500.00 to Account No. 23-01-23-215-INR of the Municipal Budget is on file in the Office of the City Clerk; now, therefore, be it

RESOLVED, that the City Council of the City of Elizabeth hereby approves and authorizes the proper City Officials to execute the appropriate documents for the full and final settlement of this matter in an amount of Ninety-nine Thousand, Five Hundred Dollars xx/100 (\$99,500.00) payable to Carlos Gonzalez, 922 McCandless Place, Linden, NJ; Attorney for the Plaintiff: Thomas S. Mirigliano, Esq., 40 Wall Street, 28th Floor, New York, NY 10005.

ADOPTED BY CITY COUNCIL OF
ELIZABETH, NJ AT MEETING

APR 11 2023

YOLANDA M. ROBERTS
MUNICIPAL CLERK

Mayor ✓	Police Dir. ✓	Personnel	Bd Adjus
Bus. Admin. ✓	Pub Works	Judge	Plan Bd.
City Atty ✓	Recreation Dir.	Assessor	Chief Fin. Off ✓
Finance Dir. ✓	Treasurer ✓	Engineer	Plann & Conim
Fire Dir. ✓	Auditor ✓	Bd. Educ.	Traffic
H & HS	Purchasing	EHIP	Central Lic.
Others	<i>J. Pastrelos</i>		

City

4/11/23