

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JULIO MAGANA ESTRADA, ET AL.,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

CITY OF LAKEWOOD, ET AL.,
Defendant

CASE NUMBER: 3:10-CV-05789-GEB -LHG

TO: *(Name and address of Defendant):*

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:

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

BETH JONIAK

(By) DEPUTY CLERK



ISSUED ON 2010-11-08 15:15:21.0, Clerk
USDC NJD

RETURN OF SERVICE		
Service of the Summons and complaint was made by me (1)	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
☐ 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 _____ Date _____ <u>Signature of Server</u> _____ <u>Address of Server</u>		

J. David Alcantara, Esq.
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

**JULIO MAGANA ESTRADA,
JOSE FRANCISCO MAGANA,**

Plaintiff(s),

vs.

**City of Lakewood, Lakewood Police Dept. :
Brick Township, Brick Township Police :
Dept., City of Brick Twp., Seaside Heights:
Police Dept., City of Seaside Heights, :
Ocean County Special Operations Group, :
Ocean County, Det. Steve Wexler, Det. :
Joseph Vitiello, Det. Cristino Rentas, :
Det. Lawrence Petrola, Det. D. Fox, :
Det. D. Roske, Det. John Steinhauer, :
Det. Kenneth Hess, Det. N. Sandage, Sgt. :
Todd Friedman, Mr. Larry Negron, Det. :
Anthony Sgro, Ocean County Sheriff's :
Department, Det. Carlos Trujillo Tovar, :
John Does 1-10, Jane Doe 1-4, Doe 1-4, :
Ocean County Prosecutor's Office, :
Joseph Mackolin, Ocean County, :
Jointly, severally and in the alternative, :**

Defendant(s),

: CASE NO.

: CIVIL ACTION

: TRENTON DIVISION

: COMPLAINT and Jury Request

Plaintiff(s), Julio Magana Estrada and Jose Francisco Magana, by way of complaint against the various defendants, hereby aver as follows:

I. PARTIES:

1. Plaintiff Julio Magana Estrada is a 20 year old individual whose present residence is in the City of Lakewood, Ocean County, New Jersey, requesting his address be kept confidential.

2. Plaintiff Jose Francisco Magana is a 47 year old individual who also presently resides in the City of Lakewood, Ocean County, State of New Jersey and requests his Lakewood address be kept confidential.

3. The various defendant entities, detectives, police officers and County employees, and individuals are employed or employ various police or law enforcement departments within Ocean County New Jersey or otherwise reside in Ocean County or have sufficient contacts with Ocean County, New Jersey.

4. At all times relevant, the various defendants were employed for or by the various above named Police departments, investigating entities, counties or otherwise associated with the same on the date of November 18, 2008 and continuing to the present date.

5. Defendant cities of Seaside Heights, Lakewood and Brick Township, Ocean County, Ocean County Prosecutor's Office, Ocean County Sheriff's Department, are all governmental Corporations with offices located at their respective municipal buildings delineated hereunder.

6. At all times relevant, each and every individual, officer, entity named herein was an employee, Servant, agent or representative of each and every entity or person named in the face of the complaint herein and is responsible under respondeat superior and principles of agency.

7. John Does 1-10 and Jane Doe 1-4 and Doe 1-4 are fictitious individuals, corporations,

Joint ventures, or governmental entities, identities not yet fully known despite the due diligence on the part of the plaintiff to more clearly identify those persons, who caused injuries to the plaintiff(s), as well as losses.

8. Each of the said defendant(s) and entities participated, assisted, aided, abetted, condoned, permitted and/or conspired to violate the civil rights, constitutional rights and legal rights of the plaintiffs herein.

II. JURISDICTION:

9. This is a multi pronged claim for federal rights violations, Federal Constitutional rights violations, together with pendant State law and State constitutional rights violations and claims.

10. Jurisdiction in this court is properly placed as to the plaintiffs' federal claims under a number of statutes including 28 U.S.C. Sec. 1981, 28 U.S.C. Set. 1331, 28 U.S.C. Sect. 1343(s)(3) as also an action to redress the deprivation, under color of state law, of rights secured Constitution of the United States of America.

11. Jurisdiction over plaintiff's pendent state law claims is proper under 28 U.S.C. §1367.

12. Venue is properly laid in this district under 28 U.S.C. §1391(b) in the District of New Jersey, because all parties reside in this district and the events giving rise to plaintiff's claims occurred in this district.

13. In addition, plaintiff seeks attorney's fees and costs pursuant to 42 U.S.C. §1988 for his federal claims and 42 U.S.C. Section 1983, and also as per the State law claims.

III. SUBSTANTIVE FACT ALLEGATIONS COMMON TO ALL COUNTS

1. On or about November 18, 2008 Julio Magana was a passenger in a vehicle driven by one Maximino Madrigal.

2. Maximino Madrigal drove the vehicle to a location known as the 2d Stage Garage, at 40 Chestnut Drive, in the City of Lakewood, Ocean County, New Jersey sometime during the morning.

3. Said Garage was owned, maintained, operated or managed by and through an individual known as Larry Negron.

4. Said Larry Negron was arrested the day priorly, Nov. 17, 2008, for possession of CDS (controlled dangerous substance) but shortly released after permitting him to become a police informant and entrap any one defendant, for a lenient sentence.

5. As placed on this complaint, for brevity, any referral to a " defendant " shall be inclusive of all the defendants herein, jointly, severally or in the alternative.

6. When plaintiff Julio Magana herein, also hereinafter referred to as the plaintiff, arrived at 40 Chestnut Drive, Lakewood, New Jersey, he and the driver were both arrested. Plaintiff Julio Magana remained in jail until 10-19-2010 when all charges were dismissed.

7. All the criminal charges and indictment were dismissed on October 19, 2010 by the Honorable Judge James Den Uyl, JSC, of the Superior Court of Ocean County, New Jersey, in the presence of Defense Counsel J. David Alcantara and Assistant Prosecutor Joseph Mackolin.

8. Priorly, on or about February of 2010, for the first time in the discovery, the State presented a surprise alleged " confession " recording , approximately 13 months post date of arrest, and that had not been shown to any of Julio Magana's three prior attorneys in the prior criminal matter.

9. Det. Wexler of the Lakewood Police Department testified in court that he deleted the computer original of the alleged video, under the questionable excuse that he was directed by his superiors due in the Lakewood Police Department, due to the computer hard drive periodically needing emptying.

10. Det. Wexler purged evidence, spoliated evidence, the Magana case, which was still active, as well as any other case that had been pending or needed evidence preserved, also in violation of the Attorney General Guidelines of the State of New Jersey.

11. Detective Cristino , of the Seaside Heights Police Department, testified he lost the Miranda warnings signature statement of the defendant, thereby losing evidence, which was not disclosed to defense counsel until he testified in year 2010 under oath.

12. Det. Cristino Rentas also lost, misplaced or intentionally caused to be lost other evidence, the photo of a Roberto, who was a target in part of a larger investigation of which the instant matter was part of that investigation, arising out of a property of an address at 125 Mountainview Drive, Lakewood, New Jersey.

13. Det. Rentas testified that he gets his car repaired at informant Larry Negron's garage and is "proud" of said garage.

14. The defendants declared they lost the mobile phones used to make telephone calls to the defendants in the underlying criminal case, which consisted of Larry Negron's cell phone, Maximino Madrigal's cell phone and the cell phone or calling device of Julio Magana.

15. These lost cell phones would have easily clarified the actual voice of the real targeted Individuals in the underlying investigation, and which voice would NOT have been that of Julio Magana, nay also that of Maximino Madrigal.

16. In losing this alleged evidence, the police and defendants herein absconded, hid, intentionally misplaced, conveniently lost crucial evidence which would have early and quickly exculpated the plaintiff in this instant civil complaint.

17. The prosecutor in this matter objected to the introduction of audio forensics from Mexico, stating that he objected to a "Spanish" forensic preliminary report and "in an English speaking country", and that besides objecting there was no resume attached to back up the credentials of the proffered expert, who stated the voices on the alleged video confession were

NOT those of Julio Magana Estrada.

18. The defendant(s) and Prosecutor never engaged a forensic expert of any type to investigate the Authenticity of either the audio, video of the alleged confession.

19. Said confession dvd was false, modified, blurry, inadequate, questionable and otherwise of a nature in violation of the attorney general guidelines requiring recording in conformance with the system from Cardinal Case Cracker system.

20. The defendants did not take ANY photos of the alleged arrest, extraction of the alleged drugs or of the entire arrest as it was occurring, in order to hide, obfuscate, modify times and dates, at a later time.

21. The defendants never offered additional explanations in discovery, prior to motions and as required by law, that there were TWO " el loco " targets of the alleged investigation, as testified to finally by Det. Joseph Vitiello at the suppression hearing.

22. The Court refused to hear any more motions, and NEVER did hear the entrapment motion, leaving the same by the wayside, unattended and undecided.

23. The defendant(s) did not disclose timely and appropriately that there was evidence missing from the very beginning when plaintiff was represented by either the Office of the Public Defender of Ocean County (c/o Ms. Melissa Barbier), or while represented by attorney Paul Begrin (now in jail for a separate matter of killing State's witness), or David Glassman (who never filed any motions in this matter).

24. It appears that co-defendant counsel, Terrance Turnbach, Esquire, not once filed ANY motion in this matter on behalf of his client in the criminal matter, Maximino Madrigal.

25. There were never any fingerprints done on the alleged cocaine seized in the investigation.

26. Defendant Larry Negron was somehow permitted to be the interpreter for the plaintiff, who did not know who this person was, at his preliminary and first entry medical review and exam at the Ocean County jail, this interpreter not being certified and being the very

informant for the police who had been arrested the day before.

27. The defendant(s) police used the informants own computer while inside the garage and used the same to draft the alleged search warrant, as testified by Inv. Petrola herein.

28. The seizure of the alleged illegal substance was conducted without the timely and proper approval of a Judge, resulting in a suppression of the evidence.

29. The defendant amended the indictment, only to submit the same exact indictment, only for the purpose of throwing off extensive motion to suppress, and other omnibus motions, filed by Julio Magana and counsel at that time, hoping the motion to suppress would not be resubmitted by accident, and thereby waiving the entire matter . This resulted in the strange colloquy of the prior defense counsel being inquired by the court as to whether he had filed a suppression motion (new one) and being told there was no proof, whereupon counsel for defendant presented the certified mail and proofs of new suppression motion being served upon all the parties, as well as the Presiding Judge.

30. The defense counsel in the criminal matter repeatedly stated he felt intimidated throughout the proceedings.

31. The Prosecution , in the criminal matter below, repeatedly and through several months asked for a list of the proffered list of witnesses of Mr. Magana in the criminal matter, whereupon his counsel had to repeatedly state (and prove) that it was submitted to all involved, causing delays and false accusations or implications.

32. In one instance, plaintiff's copy of the court hearing transcripts became askew and otherwise (only a few words) non logical due to the use of a program called Abby Fine Printer, whereupon the prosecutor below considered filing ethics charges for allegedly filing false transcript, but the same was corrected when page 23-25 of the Abby manual shows that this can sometimes occur, all in the attempt to try to intimidate the attorney for Mr. Magana in this matter.

33. Defendant Wexler was presented, and permitted by the court, without any advance

notice or warning as a witness in the hearing on the motions, without any explanation as to the non appearance of Officer Hill, or Officer Valmon, who had a more direct role to play in the making or presenting of the alleged video confession.

34. Officer Wexler, in open court, could NOT and DID not identify the defendant in pre trial hearing, although defendant was present. The state did not dismiss the charges.

35. The Prosecutor did the unusual motion to reopen Mr. Magana's motion to suppress, thereby inviting the "new " testimony of Lt. Joseph Vitiello that it may be that the officers under him obtained the alleged CDS prior to a proper warrant, thereby Lt. Vitiello becoming the fall guy for an otherwise more than shoddy but intentionally unwarranted and false investigation.

36. The State knew or should have known of all these errors pronouncedly, prior to continuing this matter and had a continuing ethical and legal duty to fully disclose all its faults, defects and missing or intentionally lost evidence prior to continuing this matter.

37. The signature of the Judge on the search warrant is questionable as his signature, if not being a false signature of a Judge (Hodgson) or as to the hour being altered from 10 a.m. to 12 midnight.

38. The height of Julio Magana varies greatly in the police reports from 5' 05" to 5' 9" at least 5 times or more, again showing reckless investigations and reports.

39. No external hard drive, second camera or Carbonite system was used by the Lakewood police to preserve the evidence in this matter, which was a process of deleting the hard drive in place for several years, thereby erasing original evidence of 100's if not 1000's of case, putting the entire criminal system in Ocean County of an extremely serious risk and danger of being revamped, at least as to any recorded testimonies presented by the Prosecutor's office and Special Operations Group.

40. No report (s) were ever submitted by the State in the underlying matter when Magana repeatedly, and to this day not received, all the requested the criminal records of Larry Negron, of all other concurrent arrest out of the same matter (Miguel Asencio and others), and the

remaining pages of the arrest warrant and the DR2 forms.

41. The same defendant(s) police reports clearly show that from the time the alleged evidence drug package of allegedly one kilo was seized, several report vary in the amount, so that to this date there is approximately 200 grams missing of cocaine. The Investigator Petrola report of 11-18-08 reports 1200 grams, the 12-3-08 report of Petrola and Fox report 1200 grams of cocaine. The Petrola to Lab report states 1000 grams and the 12-24-08 lab report only state 994.4 grams therefore there are approximately 205.6 grams of missing cocaine, all while in the chain of custody of law enforcement authorities in this matter.

42. The defendant(s) never submitted the said cocaine to the State Lab in Sea Girt, New Jersey, which is only about 25 minutes away from Toms River, and instead used Forensic expert Maffei of the Ocean County Sheriff's Department, who did not list on her report the entry amount of the cocaine, the certifications as to her lab equipment and submitted a conclusive report, devoid of details as to the spectography actually employed, the type of gas used to measure the quantity and the spectral lines readout, a report that was otherwise a sham.

43. The defendant(s) continue to explain and write in their reports that the vehicle driven by co defendant was an S-10 Toyota, a vehicle described as such although no such make or type of vehicle exists, as testified by Inv. Petrola and Inv. Vitiello at the first indictment transcripts.

44. The co-defendant in the underlying criminal matter submitted a statement under oath implicating defendant Magana but as soon as the suppression motion was granted, the co-defendant was permitted to withdraw his plea of guilty, and the charges as to him were also dismissed, although he had already pled guilty.

45. The plaintiff herein was immediately reported in the reports as being illegal, despite his evident proof that he was legally in the United States as a tourist, thereby having INS allegedly issue an INS detainer. However, the State never presented proof of the detainer or its number.

46. The Mexican Consulate, Dr. Armando Bustos, for the first time in Ocean County

history, to investigate the inappropriate treatment of the 101 Mexican nationals in the Ocean County jail, the failure to notify under international treaties and was not given proper treatment whereupon the foreign country of Mexico in contemplating filing an international objection against Ocean County for its dismal failures in regards the proper treatment of Mexicans in the Ocean County jail and by the defendants herein.

47. Despite being given 9 secret recordings of the defendant police officers and Larry Negron Providing certain exculpatory evidence as to Julio Magana, the State did not investigate these recordings not take any action to ascertain the truth, not following the " purpose of a prosecutor is to search for the truth " maxim by the late Hon. Judge Martin Haines.

48. In one of those recordings, one officer describes Mexicans as " fucking Mexicans "

49. The defendant(s) compelled the plaintiff's expert, Robert Sanderson, to have to come to the Lakewood Police Department on more than one occasion because the alleged password access to the recording computer (for the video) was not accessible, thereby causing plaintiff to lose extra moneys in expert, when they knew or should already have known that the original was manually deleted by Det. Wexler, all the time making plaintiff herein lose time, lose time in jail, incur attorney's fees of over \$50,000 dollars, lose expert's fees of over \$8500 dollars, travel time, tolls, and commissary and computer expenses.

50. Plaintiff(s) have lost businesses, vehicles, funds, money and have needed health attention as to physicians and medical attention due to extreme stress, fatigue, anxiety, some depression and financial ruin.

51. Plaintiff Julio Magana had just about finished high school, excellent grades, and has no Prior criminal record of any type.

52. Plaintiff Jose Francisco Magana has no prior criminal record and has always loved America In that he has visited America numerous times to visit family legally, to do rock lamp business and to buy souvenirs. They have been recognized by the Mexican authorities and church as upstanding citizens and have received letters from the President of Mexico.

53. The plaintiffs contacted , and was interviewed, by the Internal Affairs office of the Ocean County Prosecutor's office who has apparently decided to not file any charges!

54. Officer Wexler testified he did the recording of the alleged confession, whereas the dvd shows the interview as officer Oscar Valmon, thereby implying that officer Valmon's password was used illegally. No statement was ever obtained by the Prosecutor's office Investigating the officers nor anyone on this matter.

55. Officer Roske reports falsely the date of the arrest as being 11-18-09.

56. The reports falsely state the meeting between Mr. Madrigal with Larry Negron took place on 11-17-08 at 6-7 pm at a restaurant as per page 12 of his taped statement, with Mr. Larry Negron, the police informant, whereas Officer Petrola states on 7-14-10 during his under oath statement at the suppression hearing he stated that Larry Negron was never released (from his arrest) which then amounts to Officer Petrola lying under oath. This makes sense why Madrigal was quickly exited out of the county jail, all his charges dismissed and conveniently taken to INS for a quick deportation, to avoid him testifying again.

57. Officer Petrola testified under oath in the indictment transcript of 1- 13- 2010 that he pushed the suspect's vehicle inside the garage, while contradicting him is officer Fox who testifies/writes in his report of 2-23-10, page two, that he DRIVE the vehicle into Negron's garage, thereby each officer contradicting the other, and otherwise lying on the record.

58. The defendant(s) gave at least three different versions of what or how they entered or searched the suspect's vehicle: Off. Petrola wrote that the K9 officer, on page 2 of his 11-18-08 report, only searched the exterior (whereas officer Vitiello testified they entered); Officer Fox reports that he drove the vehicle into the garage and the K9 officer only conducted an exterior search of the vehicle; whereas Officer Vitiello testifies that in his 11-18-08 and 2-25-10 report that Petrola took the decision to look inside the vehicle due to alleged , but false, exigent circumstances.

59. Francisco Magana was detained, arrested or otherwise frisked and followed by

police agents on more than one occasion, and Larry Negron, thereby being intimidated and scared but no charges were ever filed against him, although held for 4 hours.

60. Mr. Francisco Magana had to go to the hospital on more than one occasion as a result of fear, stress, intimidation and other emotional upset by this entire process, including going to the hospital immediately after giving testimony before the internal affairs department of the Ocean County Prosecutor's office who showed him photos that did not exist, where inaccurate and clear lies and evidence, of the case.

61. The defendants have yet to release to plaintiff the moneys taken from his from the Writ of Replevin.

62. At the time and moment of the arrest, defendant(s) grabbed Julio Magana, who did not resist and had no weapon, picked him up in the air and threw him down on the pavement, thereby causing him to bleed on his knees and almost pass out from pain.

63. Plaintiff Julio Magana was kept in the Negron garage for half an hour until transported to the County jail.

64. Plaintiff Julio Magana entered the jail in excellent health, but developed hepatitis and other illnesses during his jail stay, which were not promptly and properly addressed.

65. Plaintiff Julio Magana is now, out of jail, under medical and psychological treatments.

66. At all times relevant herein, Larry Negron knew or should have known that his lies, fraud and deceit were going to cost the plaintiff time in jail, false charges, intimidation, false arrests and other actions against the plaintiff(s).

CAUSES OF ACTION

COUNT I

ACTION UNDER 42 U.S.C. § 1983 and 1988 FOR VIOLATIONS OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS

AS TO ALL DEFENDANTS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. Plaintiff(s) have rights under the Fourth Amendment to the United States Constitution to be free from the use of excessive force by agents of the state, and in particular by the police.

3. The actions or omissions to act, of the individual defendants, as described above, violated those rights.

4. The defendant(s) violated the laws by unlawfully or illegally incarcerating, arresting, charging, imprisoning, withholding crucial evidence, failure to disclose, failure to timely disclose, intimidation, reckless investigation and negligent investigation and procedures.

5. As a proximate result of that violation, Plaintiff(s) was/were was injured as set forth above.

WHEREFORE, plaintiffs repeat all the same demand for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages; \$10 million dollars;
- c. Consequential damages,
- d. business losses,
- e. costs incurred, airplane trips back and forth to Mexico, rental expenses, attorney's fees of over \$50,000 dollars paid or owed, transcripts costs, gas expenses and tolls, purchasing of video and computer equipment, business loses being away from the business, expert's costs of over \$8500.00 dollars, immigration expenses, work lost at employment, loss of moneys taken during Replevin seizure, commissary expenses, dvd costs, and Attorney s fees and costs pursuant to 42 U.S.C. § 1988 & N.J.S.A. 10:6-2 {f};
- f. For costs, fees, and all other appropriate relief.

g. medical losses for psychologist treatment as well as curing infection in body detected immediately after release and examined

COUNT II

ACTION UNDER 42 U.S.C. § 1983 -LIABILITY IN CONNECTION WITH THE ACTIONS OF ANOTHER -FAILURE TO INTERVENE

AS TO INDIVIDUAL OFFICERS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. Defendant(s) violated plaintiff(s) rights under the Fourth Amendment to the United States constitution to be free from the use of excessive force by agents of the state, and in Particular by the police.

3. All other defendants have a duty to intervene to prevent the use of excessive force by a fellow police officer.

4. Defendant(s) had a reasonable opportunity to intervene during plaintiff's interactions with the other officers as well as with clearing up any false investigations, misleading reports or false arrests.

5. Defendant(s) chose not to intervene during plaintiff's arrests, investigations, false reports, and clarifying errors or intentional wrongdoings.

6. Defendant(s) chose to zealously protect their co-defendant police officers of personnel, protecting the wrongful acts of other officers and persons in this investigation, instead of owing loyalty to a higher cause, the law.

7. During his time in the court room, and prior to being named a witness for the defense, Det. Steinhauer tried to intimidate officer Vitiello by constantly making grimaces, using hand signals, using nods and other clearly visible signals, in court, in the presence of the prosecutor, using also his cell phone during the other's testimony to steer Officer Vitiello's testimony.

8. Officer Friedman supervised Det. Petrola's final report and did not make any

corrections to the alleged weight of Julio Magana, who did not weigh 150 lbs, but as per Nurse Alicea, only 135 lbs. and the date of birth was not 4-29-90 as falsely put thereon and approved by Sgt. Friedman.

9. Defendant(s) and Officer Sandage was present during the application, making, producing of the search warrant.

WHEREFORE, plaintiff demands judgment in his favor of the plaintiffs and against the defendant(s) herein, jointly, severally and in the alternative repeat all the same demands for Judgment of all counts of this complaint requesting the same relief as if set forth at length herein and also for:

- a. Compensatory damages;
- b. Punitive damages; \$10 million dollars;
- c. Consequential damages,
- d. business losses,
- e. costs incurred, airplane trips back and forth to Mexico, rental expenses, attorney's fees of over \$50,000 dollars paid or owed, transcripts costs, gas expenses and tolls, purchasing of video and computer equipment, business losses being away from the business, expert's costs of over \$8500.00 dollars, immigration expenses, work lost at employment, loss of moneys taken during Replevin seizure, commissary expenses, dvd costs, and Attorney's fees and costs pursuant to 42 U.S.C. § 1988 & N.J.S.A. 10:6-2 {f};
- f. For costs, fees, and all other appropriate relief.
- g. medical losses for psychologist treatment as well as curing infection in body detected immediately after release and examined

COUNT III

**ACTION UNDER 42 U.S.C. § 1983, N.J.S.A. 10:6-2,
AND STATE COMMON LAW FOR CONSPIRACY**

AS TO ALL DEFENDANTS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. The defendants agreed in some manner to perform acts that would deprive the plaintiffs of his Federal & State constitutional rights.

3. The members of this conspiracy came to a mutual agreement, either express or implied, to perform acts which violated plaintiffs' constitutional rights.

4. The members of this conspiracy took step(s) in furtherance of this agreement.

5. The conspiracy was developed to deprive Plaintiffs of their Federal & State Constitutional Rights.

6. The sequence of events on November 18th 2008 and thereafter, makes it more likely than not that various defendants agreed to perform acts that would deprive Plaintiffs of their Constitutional Rights.

7. The actions of the individual defendants, as described above, violated Plaintiffs rights.

8. As a proximate result of that violation, the plaintiffs were injured as set forth above.

WHEREFORE plaintiffs repeat all the same demand for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

a. Compensatory damages;

b. Punitive damages; \$10 million dollars;

c. Consequential damages,

d. business losses,

e. costs incurred, airplane trips back and forth to Mexico, rental expenses, attorney's fees of over \$50,000 dollars paid or owed, transcripts costs, gas expenses and tolls, purchasing of video and computer equipment, business losses being away from the business, expert's costs of over \$8500.00 dollars, immigration expenses, work lost at employment, loss of moneys taken during Replevin seizure, commissary expenses, dvd costs, and Attorney s fees and costs pursuant to 42 U.S.C. § 1988 & N.J.S.A. 10:6-2 {f};

f. For costs, fees, and all other appropriate relief.

g. medical losses for psychologist treatment as well as curing infection in body detected immediately after release and examined

COUNT IV

**ACTION UNDER N.J.S.A. 10:6-2 FOR VIOLATIONS OF ARTICLE I,
PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION**

AS TO ALL DEFENDANTS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.
2. The Plaintiffs' have a right under the Article It Paragraph 7 of the New Jersey Constitution to be free from the use of excessive force by agents of the state and in particular by the police.

3. The actions of the defendants as described above violated those rights.

WHEREFORE, plaintiff repeat all the same demand for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages; \$10 million dollars;
- c. Consequential damages,
- d. business losses,
- e. costs incurred, airplane trips back and forth to Mexico, rental expenses, attorney's fees of over \$50,000 dollars paid or owed, transcripts costs, gas expenses and tolls, purchasing of video and computer equipment, business loses being away from the business, expert's costs of over \$8500.00 dollars, immigration expenses, work lost at employment, loss of moneys taken during Replevin seizure, commissary expenses, dvd costs, and Attorney s fees and costs pursuant to 42 U.S.C. § 1988 & N.J.S.A. 10:6-2 {f};
- f. For costs, fees, and all other appropriate relief.
- g. medical losses for psychologist treatment as well as curing infection in body detected immediately after release and examined

COUNT V

**ACTION UNDER N.J.S.A. 10:6-2 FOR VIOLATIONS OF ARTICLE I,
PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION**

AS TO EACH OFFICER AND INDIVIDUAL

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. Defendants, and Defendant Cities of Seaside Heights, Brick Township, City of Lakewood training program was/were inadequate to train its employees in the methods of lawfully, properly, and safely executing arrests.

3. Said defendant Cities, and their respective police departments, as well as the Special Operations Group of the Ocean County Prosecutor's Office, failed to adequately supervise the defendants herein, to ensure that they were effecting proper and lawful arrests and searches and investigations.

4. The defendant's failures to adequately train and adequately supervise defendants amounted to deliberate indifference to the fact that inaction would obviously result in the violation of plaintiff's rights.

5. Defendant Cities and Police Department and law enforcement agencies failure to adequately train and supervise defendants proximately caused the violation of plaintiffs' rights.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages;
- c. For attorney's fees and costs pursuant to N.J.S.A. 10:6-2 (f) .
- d. For costs, fees, and all other appropriate relief.

COUNT VI

**NEGLIGENT HIRING, RETENTION, TRAINING, AND
SUPERVISION UNDER STATE LAW**

AS TO EACH CITY, PUBLIC ENTITY

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages;
- c. For costs, fees, and all other appropriate relief.

COUNT VII

MUNICIPAL LIABILITY UNDER 42 U.S.C. section 1983

AS TO EACH CITY, PUBLIC ENTITY

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. Defendants, and Defendant Cities of Seaside Heights, Brick Township, City of Lakewood, Ocean County, training program was/were inadequate to train its employees in the methods of lawfully, properly, and safely executing arrests.

3. Said defendant Cities, and their respective police departments, as well as the Special Operations Group of the Ocean County Prosecutor's Office, failed to adequately supervise the defendants herein, to ensure that they were effecting proper and lawful arrests and searches and investigations.

4. The defendants failures to adequately train and adequately supervise defendants amounted to deliberate inference to the fact that inaction would obviously result in the violation of plaintiffs rights.

5. Defendant Cities and Police Department and law enforcement agencies failure to adequately train and supervise defendants proximately caused the violation of plaintiff's rights.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Attorney's fees and costs pursuant to 42 U.S.C. § 1988;
- c. All other appropriate relief.

COUNT VIII

VICARIOUS LIABILITY -STATE LAW CLAIMS

AS TO EACH CITY AND PUBLIC ENTITY

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. The Cities and County is/are vicariously liable for the actions and/or lack of action of the individual defendants.

WHEREFORE, plaintiffs repeat all the same demands for Judgment of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages;
- c. For costs, fees and all other appropriate relief.

COUNT IX

**42 U.S.C. § 1983 CIVIL ACTION FOR DEPRIVATION OF
RIGHTS, FALSE ARRESTS, UNLAWFUL IMPRISONMENT
VIOLATIONS OF THE FOURTH, FIFTH AND FOURTEENTH
AMENDMENTS OF THE UNITED STATES CONSTITUTION
AS WELL AS COMMON LAW.**

AS TO EACH CITY, PUBLIC ENTITY AND DEFENDANT

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.
2. The Cities and County is/are vicariously liable for the actions and/or lack of action of the individual defendants.
3. At no point whatsoever did any defendant reach out and contact the New Jersey State Police, as required by law, nor submit any notice to the Attorney General, as required by law, and in view of the Detectives alleged evidence that the alleged drugs were crossing state lines.
4. There were never any exigent circumstances, as Judge Den Uyl decided, to warrant the warrantless search into the vehicle, in violation of the law.
5. In the criminal investigations conducted by the Special Operations Group and the defendants, there was a lack of affirmative acts and a series of omissions amounting to an objectively unreasonable investigation such that qualified immunity does not apply to the failure to perform the necessary actions in the investigation.
6. There was no probable cause in the underlying criminal matter as to plaintiff Julio Magana.
7. Defendant Petrola's curriculum vitae has false statement regarding the credentials of his prior teachers in certain courses.
8. The vehicle searched was not the vehicle described by the informant, nor does an S 10

Toyota exists.

9. Defendant Negron stated Julio Magana was not El Loco, but the Prosecutor did not Or refused to investigate this matter, although given the recordings.

10. Defendant Vitiello stated on the record, under oath, there were more than two El Loco, thereby showing that prima facie Julio Magana may not be the proper individual or suspect.

11. The description offered by the informant was a totally different height from Julio Magana.

12. Upon discovering their mistakes, the defendants destroyed or made sure the evidence was lost and continued to mislead the court below.

13. The continued investigation of the defendant was attempted at being bolstered by the State offering additional reports in February of 2010 by several of the officers, over one year and three months post arrests, all vague, without any time references and all conflicting with each other and thereby misleading the court and the legal system's integrity.

14. The error of the defendants in continuing to investigate this matter was not reasonable in that the defendants knew, or should have known, that Julio Magana did not fit the profile of the person sought and described.

15. Larry Negron set up and tricked the police by either collaborating with Maximino Madrigal or by entrapping Madrigal so that Larry Negron would get the benefit of an arrest and presumed cooperation with the police while Madrigal brought an innocent bystander into the picture, Julio Magana, who was going to see Nascar type cars at Larry Negron's garage.

16. No reasonable police officer would have relied on the information given to them by Larry Negron under these circumstances.

17. Larry Negron was known as a police informant who became much too cozy with the police.

18. Larry Negron's employee, Rigoberto Beltran a/k/a "El Chino", is and was the brother in law of one of the investigating officers in this matter, Carlos Trujillo Tovar, who was the officer who took accusatory statement from co-defendant Madrigal against Julio Magana.

19. The nephew of Larry Negron, Paris Aguirre, who was also arrested with Larry Negron the prior day (to the arrest of Julio Magana), is the son of a police officer in Manchester Township, Ocean County, New Jersey.

20. Almost practically, many aspects of this investigation involved officers who have family with the informant and his employees.

21. When issue was brought up in court of the concurrent arrest of November 18, 2008 happening simultaneously on 125 Mountainview Drive, Lakewood, New Jersey (approximately two blocks away from Larry Negron's garage), that defense counsel wanted said information, The court and prosecutor stated that this information was irrelevant.

22. Said 125 Mountainview Drive information was in fact relevant because a) it was part of the same investigation, b) Miguel Enrique Asencio a/k/a "El Chepe " or "Roberto " was the same individual that Officer Rentas was asking information during the dvd confession of the alleged Julio Magana, c) which photo was also and has been lost, conveniently.

23. This is a cover up, to protect Larry Negron and his ties to police friends and associates.

24. The \$74,000.00 reportedly found by the police during the concurrent arrest of Miguel Asencio has never been disclosed as to its whereabouts, as well as the \$34,000 seized from Larry Negron along with the heroin seized from him.

25. The information in the above paragraph, and documents, was NEVER provided to defense counsel in the prior criminal matter.

WHEREFORE, Plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein including also:

- a. Compensatory damages;
- b. Punitive damages;
- c. For costs, fees and all other appropriate relief.

COUNT X

ASSAULT and Battery

As to the Individual Defendants Police Officers

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. As described above, the individual defendants used improper, excessive, and illegal force against Mr. Julio Magana was used.

3. The individual defendants' conduct as described above constitutes a civil assault.

4. The individual defendants acted willfully, wantonly and deliberately in assaulting the plaintiff.

5. The individual defendants' conduct as described above constitutes intentionally tortious conduct in the form of a willful, wanton, and deliberate battery upon Mr. Rivera

6. As a proximate result of that conduct, Mr. Julio Magana was injured as set forth above.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein.

XI

NEGLIGENCE

AGAINST ALL DEFENDANTS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.
2. The Cities and County is/are vicariously liable for the actions and/or lack of action of the individual defendants.
3. By their acts and omissions to act, by failing to respect the law and their own duties, by failing to follow the attorney general guidelines and their own internal practices, by failing to use reasonable care in the investigation(s) defendants violated the duty of care they owed the plaintiffs.
4. Defendants acted with gross negligence and/or recklessness, in that their actions or omissions to act did not involve the mere exercise of professional judgment or discretion.
5. By their acts or omissions, each defendant proximately caused the damages, injuries, failure to properly investigate, continued incarceration, psychological trauma, diseases, emotional scars, sadness and fears that the plaintiff(s) suffered.
6. Defendants acts and omissions were a significant and material element in, or a substantial factor, in bringing harm to the plaintiff.
7. The defendants owed a duty to the People to be good cops, to properly investigate, to correct any improper report, to follow the law properly, to not cooperate in any shoddy or questionable facts of investigations, to be loyal to the law, not to the prosecutor or any errant

police officer, to abide by the laws and not be loyal to a group that is presumed to follow the law more so, and to respect the law.

8. The defendant officers were to have questioned the intent, decision and orders from their superiors, from the Prosecutor's office to make sure that these directives, orders and commands are within the parameters of the law, not outside the proper rules, regulations and orders of good police work and conduct.

9. The defendants were acting in such a manner as to amount to police corruption, fraud in charges, fraudulent investigation, false documents, false exhibits, fake reports, and lies.

10. The defendants did not show any remorse, pity or mercy for the truth.

11. The harms sustained by the plaintiff(s) were a direct and foreseeable result of the actions or omissions of the defendants.

12. The actions , or omissions, of the defendant(s) were reckless, grossly negligent and/or intentional or with deliberate indifference and callous disregard of the plaintiffs rights and body, thereby depriving the plaintiff of the equal protection of the equal protection of the laws and impeded the course of justice in violation of the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States, the Laws of the State of New Jersey and 42 U.S.C. 1983 and the Civil Rights Act.

13. The actions or omissions of the defendants have expressly or implicitly caused them to lose any qualified immunity.

14. The informant in this matter was admittedly Larry Negron.
was not reliable.

15. Larry Negron was not reliable as an informant.

16. Larry Negron knew, or should have known, that Julio Magana was not the "El Loco" who was to have brought the drugs to the garage for the arrest, providing the police with an alleged worthwhile arrest and thereby diminishing his criminal charges.

17. Larry Negron continues free and out of jail since the day he cooperated with the police in this matter, and was otherwise already walking free on Nov. 18, 2008 and talking freely to the police in the hallway of the police station as Julio Magana was brought in.

18. Informant Larry Negron, in the police department, intimidated Julio Magana in the police holding cell that if he cooperated with the police, he would have his police friends go easy on him, give him a lenient sentence.

19. Defendant police permitted and gave great latitude to Larry Negron to intimidate, harass and talk to the plaintiffs, beyond the scope of an everyday informant, but more like a close knit collaborator.

20. Larry Negron threatened Mr. Francisco Magana with dangers if he continued on his course of meddling with police activities, of recording police conversations and of asking too many questions.

21. As a proximate causation, the defendants caused plaintiffs injuries, continued incarceration, harassment, psychological and emotional harm, deprivation of liberty, deprivation of college and high school education, income making at the family business and other employment, access to the love and care of their family and children, lost of over \$100,000 in income and business, loss of reputation and physical deprivations.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein.

XII

SPOLIATION

AS TO ALL DEFENDANTS AND THE Ocean County Prosecutor's Office

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.
2. The Cities and County is/are vicariously liable for the actions and/or lack of action of the individual defendants.
3. By their acts and omissions to act, by failing to respect the law and their own duties, by failing to follow the attorney general guidelines and their own internal practices, by failing to use reasonable care in the investigation(s) defendants violated the duty of care they owed the plaintiffs.
4. The defendant(s) admitted having in their possession, on the record, cell phones, Mobil phones, special phones, making telephone calls to and from the alleged informant to and From the alleged defendant(s) in the criminal case below, to having had a photo of a Roberto, to having had the signature of the alleged confessor below in a Miranda warnings document, to deleting manually the original alleged video confession of a defendant below, to not having any photos of the cocaine as it was extracted, to not having any videos of the arrest in process, to "losing" or not explaining the whereabouts or difference of 200 grams of cocaine and other inexplicable losses.
5. The defendant(s) never identified the exact whereabouts or reasons for losing, whether Intentionally or negligently, any of these relevant which were relevant to the process and exculpation of the plaintiff herein in the prior criminal matter.
6. The defendant(s) knew or should have known that such evidence was material,

relevant and needed to be preserved.

7. The defendant(s) knew the evidence before it was missing, destroyed or lost.

8. An ordinary, or even professional, person under the same circumstances would not have lost, destroyed or caused to be missing such evidence.

9. The losing of such evidence was in violation of the Rules of the Court, of good faith, of the Attorney General Guidelines of the State of New Jersey and integrity of keeping to good ethics and preservation of evidence.

10. Such actions or omissions resulted in prejudice to the plaintiff herein in the underlying criminal action(s).

11. Any reconstruction of such evidence is impossible to start.

12. There is a need for deterrence to halt state entities and officer from losing such evidence, under such suspicious circumstances.

13. Had the evidence been made available, the transcripts and voices of the alleged incoming suspect would have been compared to the voice of the plaintiff or his co-defendant so as to exculpate and clarify the suspects.

14. There was a cover up.

15. Defendant(s) engaged in fraudulent concealment or bad faith.

16. Officer Vitiello testified two times on the motion to suppress, once in the summer of 2010 and the second on October of 2010, three months later, on the State's own motion to reopen the defendant's motion to suppress based on the officer's "new" testimony, resulting in plaintiff's additional needless incarceration.

WHEREFORE, Plaintiff(s) repeat all the same demand for Judgment of all counts of this complaint requesting the same relief as if set forth at length herein.

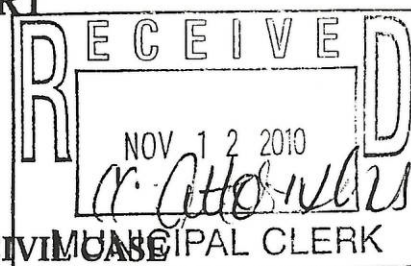
CERTIFICATION

To the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

J. David Alcantara

JURY DEMAND

Plaintiff hereby demands trial by jury as to each and every issue raised by this complaint.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**JULIO MAGANA ESTRADA, ET AL.,**
Plaintiff

V.

SUMMONS IN A CIVIL CASE**CITY OF LAKEWOOD, ET AL.,**
*Defendant*CASE NUMBER: **3:10-CV-05789-GEB -LHG**TO: *(Name and address of Defendant):* Virginia A. Lampman, City Clerk

Brick Township

401 Chambersbridge Rd.

Brick Twp., NJ 08723

RECEIVED

NOV 10 2010

SAFETY & INSURANCE

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:

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

BETH JONIAK

(By) DEPUTY CLERK

ISSUED ON 2010-11-08 15:15:21.0, Clerk
USDC NJD

RETURN OF SERVICE

Service of the Summons and complaint was made by me (1)	DATE 11-11-10
NAME OF SERVER (PRINT) Teresia Quirk	TITLE Student in college

Check one box below to indicate appropriate method of service

- ☒ Served personally upon the defendant. Place where served: Virginia A. Capman City Clerk
Brick Township 401 Cromwell Bridge Rd. Brick, NJ 08723
- ☐ 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
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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

11-11-10
DateTeresa Quirk
Signature of Server109 Woodlake Manor Dr.
Address of Server
Lakewood, NJ 08701

RECEIVED

NOV - 8 2010

AT 8:30 M
WILLIAM T. WALSH
CLERK

J. David Alcantara, Esq.
4021 Ventnor Ave.
Atlantic City, NJ 08401
Tel. (609)-348-2300
Fax: (609)-348-0229
E-mail: alcantara@lawyer.com

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JULIO MAGANA ESTRADA,
JOSE FRANCISCO MAGANA,

Plaintiff(s),

: CASE NO.
:
: CIVIL ACTION
: TRENTON DIVISION

vs.

City of Lakewood, Lakewood Police Dept.:
Brick Township, Brick Township Police :
Dept., City of Brick Twp., Seaside Heights:
Police Dept., City of Seaside Heights, :
Ocean County Special Operations Group, :
Ocean County, Det. Steve Wexler, Det. :
Joseph Vitiello, Det. Cristino Rentas, :
Det. Lawrence Petrola, Det. D. Fox, :
Det. D. Roske, Det. John Steinhauer, :
Det. Kenneth Hess, Det. N. Sandage, Sgt. :
Todd Friedman, Mr. Larry Negron, Det. :
Anthony Sgro, Ocean County Sheriff's :
Department, Det. Carlos Trujillo Tovar, :
John Does 1-10, Jane Doe 1-4, Doe 1-4, :
Ocean County Prosecutor's Office, :
Joseph Mackolin, Ocean County, : COMPLAINT and Jury Request
Jointly, severally and in the alternative, :

Defendant(s),

Plaintiff(s), Julio Magana Estrada and Jose Francisco Magana, by way of complaint against the various defendants, hereby aver as follows:

I. PARTIES:

1. Plaintiff Julio Magana Estrada is a 20 year old individual whose present residence is in the City of Lakewood, Ocean County, New Jersey, requesting his address be kept confidential.

2. Plaintiff Jose Francisco Magana is a 47 year old individual who also presently resides in the City of Lakewood, Ocean County, State of New Jersey and requests his Lakewood address be kept confidential.

3. The various defendant entities, detectives, police officers and County employees, and individuals are employed or employ various police or law enforcement departments within Ocean County New Jersey or otherwise reside in Ocean County or have sufficient contacts with Ocean County, New Jersey.

4. At all times relevant, the various defendants were employed for or by the various above named Police departments, investigating entities, counties or otherwise associated with the same on the date of November 18, 2008 and continuing to the present date.

5. Defendant cities of Seaside Heights, Lakewood and Brick Township, Ocean County, Ocean County Prosecutor's Office, Ocean County Sheriff's Department, are all governmental Corporations with offices located at their respective municipal buildings delineated hereunder.

6. At all times relevant, each and every individual, officer, entity named herein was an employee, Servant, agent or representative of each and every entity or person named in the face of the complaint herein and is responsible under respondeat superior and principles of agency.

7. John Does 1-10 and Jane Doe 1-4 and Doe 1-4 are fictitious individuals, corporations,

Joint ventures, or governmental entities, identities not yet fully known despite the due diligence on the part of the plaintiff to more clearly identify those persons, who caused injuries to the plaintiff(s), as well as losses.

8. Each of the said defendant(s) and entities participated, assisted, aided, abetted, condoned, permitted and/or conspired to violate the civil rights, constitutional rights and legal rights of the plaintiffs herein.

II. JURISDICTION:

9. This is a multi pronged claim for federal rights violations, Federal Constitutional rights violations, together with pendant State law and State constitutional rights violations and claims.

10. Jurisdiction in this court is properly placed as to the plaintiffs' federal claims under a number of statutes including 28 U.S.C. Sec. 1981, 28 U.S.C. Sec. 1331, 28 U.S.C. Sect. 1343(s)(3) as also an action to redress the deprivation, under color of state law, of rights secured Constitution of the United States of America.

11. Jurisdiction over plaintiff's pendent state law claims is proper under 28 U.S.C. §1367.

12. Venue is properly laid in this district under 28 U.S.C. §1391(b) in the District of New Jersey, because all parties reside in this district and the events giving rise to plaintiff's claims occurred in this district.

13. In addition, plaintiff seeks attorney's fees and costs pursuant to 42 U.S.C. §1988 for his federal claims and 42 U.S.C. Section 1983, and also as per the State law claims.

III. SUBSTANTIVE FACT ALLEGATIONS COMMON TO ALL COUNTS

1. On or about November 18, 2008 Julio Magana was a passenger in a vehicle driven by one Maximino Madrigal.

2. Maximino Madrigal drove the vehicle to a location known as the 2d Stage Garage, at 40 Chestnut Drive, in the City of Lakewood, Ocean County, New Jersey sometime during the morning.

3. Said Garage was owned, maintained, operated or managed by and through an individual known as Larry Negron.

4. Said Larry Negron was arrested the day priorly, Nov. 17, 2008, for possession of CDS (controlled dangerous substance) but shortly released after permitting him to become a police informant and entrap any one defendant, for a lenient sentence.

5. As placed on this complaint, for brevity, any referral to a " defendant " shall be inclusive of all the defendants herein, jointly, severally or in the alternative.

6. When plaintiff Julio Magana herein, also hereinafter referred to as the plaintiff, arrived at 40 Chestnut Drive, Lakewood, New Jersey, he and the driver were both arrested. Plaintiff Julio Magana remained in jail until 10-19-2010 when all charges were dismissed.

7. All the criminal charges and indictment were dismissed on October 19, 2010 by the Honorable Judge James Den Uyl, JSC, of the Superior Court of Ocean County, New Jersey, in the presence of Defense Counsel J. David Alcantara and Assistant Prosecutor Joseph Mackolin.

8. Priorly, on or about February of 2010, for the first time in the discovery, the State presented a surprise alleged " confession " recording , approximately 13 months post date of arrest, and that had not been shown to any of Julio Magana's three prior attorneys in the prior criminal matter.

9. Det. Wexler of the Lakewood Police Department testified in court that he deleted the computer original of the alleged video, under the questionable excuse that he was directed by his superiors due in the Lakewood Police Department, due to the computer hard drive periodically needing emptying.

10. Det. Wexler purged evidence, spoliated evidence, the Magana case, which was still active, as well as any other case that had been pending or needed evidence preserved, also in violation of the Attorney General Guidelines of the State of New Jersey.

11. Detective Cristino , of the Seaside Heights Police Department, testified he lost the Miranda warnings signature statement of the defendant, thereby losing evidence, which was not disclosed to defense counsel until he testified in year 2010 under oath.

12. Det. Cristino Rentas also lost, misplaced or intentionally caused to be lost other evidence, the photo of a Roberto, who was a target in part of a larger investigation of which the instant matter was part of that investigation, arising out of a property of an address at 125 Mountainview Drive, Lakewood, New Jersey.

13. Det. Rentas testified that he gets his car repaired at informant Larry Negron's garage and is " proud " of said garage.

14. The defendants declared they lost the mobile phones used to make telephone calls to the defendants in the underlying criminal case, which consisted of Larry Negron's cell phone, Maximino Madrigal's cell phone and the cell phone or calling device of Julio Magana.

15. These lost cell phones would have easily clarified the actual voice of the real targeted Individuals in the underlying investigation, and which voice would NOT have been that of Julio Magana, nay also that of Maximino Madrigal.

16. In losing this alleged evidence, the police and defendants herein absconded, hid, intentionally misplaced, conveniently lost crucial evidence which would have early and quickly exculpated the plaintiff in this instant civil complaint.

17. The prosecutor in this matter objected to the introduction of audio forensics from Mexico, stating that he objected to a " Spanish" forensic preliminary report and " in an English speaking country " , and that besides objecting there was no resume attached to back up the credentials of the proffered expert, who stated the voices on the alleged video confession were

NOT those of Julio Magana Estrada.

18. The defendant(s) and Prosecutor never engaged a forensic expert of any type to investigate the Authenticity of either the audio, video of the alleged confession.

19. Said confession dvd was false, modified, blurry, inadequate, questionable and otherwise of a nature in violation of the attorney general guidelines requiring recording in conformance with the system from Cardinal Case Cracker system.

20. The defendants did not take ANY photos of the alleged arrest, extraction of the alleged drugs or of the entire arrest as it was occurring, in order to hide, obfuscate, modify times and dates, at a later time.

21. The defendants never offered additional explanations in discovery, prior to motions and as required by law, that there were TWO " el loco " targets of the alleged investigation, as testified to finally by Det. Joseph Vitiello at the suppression hearing.

22. The Court refused to hear any more motions, and NEVER did hear the entrapment motion, leaving the same by the wayside, unattended and undecided.

23. The defendant(s) did not disclose timely and appropriately that there was evidence missing from the very beginning when plaintiff was represented by either the Office of the Public Defender of Ocean County (c/o Ms. Melissa Barbier), or while represented by attorney Paul Begrin (now in jail for a separate matter of killing State's witness), or David Glassman (who never filed any motions in this matter).

24. It appears that co-defendant counsel, Terrance Turnbach, Esquire, not once filed ANY motion in this matter on behalf of his client in the criminal matter, Maximino Madrigal.

25. There were never any fingerprints done on the alleged cocaine seized in the investigation.

26. Defendant Larry Negron was somehow permitted to be the interpreter for the plaintiff, who did not know who this person was, at his preliminary and first entry medical review and exam at the Ocean County jail, this interpreter not being certified and being the very

informant for the police who had been arrested the day before.

27. The defendant(s) police used the informants own computer while inside the garage and used the same to draft the alleged search warrant, as testified by Inv. Petrola herein.

28. The seizure of the alleged illegal substance was conducted without the timely and proper approval of a Judge, resulting in a suppression of the evidence.

29. The defendant amended the indictment, only to submit the same exact indictment, only for the purpose of throwing off extensive motion to suppress, and other omnibus motions, filed by Julio Magana and counsel at that time, hoping the motion to suppress would not be resubmitted by accident, and thereby waiving the entire matter. This resulted in the strange colloquy of the prior defense counsel being inquired by the court as to whether he had filed a suppression motion (new one) and being told there was no proof, whereupon counsel for defendant presented the certified mail and proofs of new suppression motion being served upon all the parties, as well as the Presiding Judge.

30. The defense counsel in the criminal matter repeatedly stated he felt intimidated throughout the proceedings.

31. The Prosecution, in the criminal matter below, repeatedly and through several months asked for a list of the proffered list of witnesses of Mr. Magana in the criminal matter, whereupon his counsel had to repeatedly state (and prove) that it was submitted to all involved, causing delays and false accusations or implications.

32. In one instance, plaintiff's copy of the court hearing transcripts became askew and otherwise (only a few words) non logical due to the use of a program called Abby Fine Printer, whereupon the prosecutor below considered filing ethics charges for allegedly filing false transcript, but the same was corrected when page 23-25 of the Abby manual shows that this can sometimes occur, all in the attempt to try to intimidate the attorney for Mr. Magana in this matter.

33. Defendant Wexler was presented, and permitted by the court, without any advance

notice or warning as a witness in the hearing on the motions, without any explanation as to the non appearance of Officer Hill, or Officer Valmon, who had a more direct role to play in the making or presenting of the alleged video confession.

34. Officer Wexler, in open court, could NOT and DID not identify the defendant in pre trial hearing, although defendant was present. The state did not dismiss the charges.

35. The Prosecutor did the unusual motion to reopen Mr. Magana's motion to suppress, thereby inviting the "new " testimony of Lt. Joseph Vitiello that it may be that the officers under him obtained the alleged CDS prior to a proper warrant, thereby Lt. Vitiello becoming the fall guy for an otherwise more than shoddy but intentionally unwarranted and false investigation.

36. The State knew or should have known of all these errors pronouncedly, prior to continuing this matter and had a continuing ethical and legal duty to fully disclose all its faults, defects and missing or intentionally lost evidence prior to continuing this matter.

37. The signature of the Judge on the search warrant is questionable as his signature, if not being a false signature of a Judge (Hodgson) or as to the hour being altered from 10 a.m. to 12 midnight.

38. The height of Julio Magana varies greatly in the police reports from 5' 05" to 5' 9" at least 5 times or more, again showing reckless investigations and reports.

39. No external hard drive, second camera or Carbonite system was used by the Lakewood police to preserve the evidence in this matter, which was a process of deleting the hard drive in place for several years, thereby erasing original evidence of 100's if not 1000's of case, putting the entire criminal system in Ocean County of an extremely serious risk and danger of being revamped, at least as to any recorded testimonies presented by the Prosecutor's office and Special Operations Group.

40. No report (s) were ever submitted by the State in the underlying matter when Magana repeatedly, and to this day not received, all the requested the criminal records of Larry Negron, of all other concurrent arrest out of the same matter (Miguel Asencio and others), and the

remaining pages of the arrest warrant and the DR2 forms.

41. The same defendant(s) police reports clearly show that from the time the alleged evidence drug package of allegedly one kilo was seized, several report vary in the amount, so that to this date there is approximately 200 grams missing of cocaine. The Investigator Petrola report of 11-18-08 reports 1200 grams, the 12-3-08 report of Petrola and Fox report 1200 grams of cocaine. The Petrola to Lab report states 1000 grams and the 12-24-08 lab report only state 994.4 grams therefore there are approximately 205.6 grams of missing cocaine, all while in the chain of custody of law enforcement authorities in this matter.

42. The defendant(s) never submitted the said cocaine to the State Lab in Sea Girt, New Jersey, which is only about 25 minutes away from Toms River, and instead used Forensic expert Maffei of the Ocean County Sheriff's Department, who did not list on her report the entry amount of the cocaine, the certifications as to her lab equipment and submitted a conclusive report, devoid of details as to the spectrography actually employed, the type of gas used to measure the quantity and the spectral lines readout, a report that was otherwise a sham.

43. The defendant(s) continue to explain and write in their reports that the vehicle driven by co defendant was an S-10 Toyota, a vehicle described as such although no such make or type of vehicle exists, as testified by Inv. Petrola and Inv. Vitiello at the first indictment transcripts.

44. The co-defendant in the underlying criminal matter submitted a statement under oath implicating defendant Magana but as soon as the suppression motion was granted, the co-defendant was permitted to withdraw his plea of guilty, and the charges as to him were also dismissed, although he had already pled guilty.

45. The plaintiff herein was immediately reported in the reports as being illegal, despite his evident proof that he was legally in the United States as a tourist, thereby having INS allegedly issue an INS detainer. However, the State never presented proof of the detainer or its number.

46. The Mexican Consulate, Dr. Armando Bustos, for the first time in Ocean County

history, to investigate the inappropriate treatment of the 101 Mexican nationals in the Ocean County jail, the failure to notify under international treaties and was not given proper treatment whereupon the foreign country of Mexico in contemplating filing an international objection against Ocean County for its dismal failures in regards the proper treatment of Mexicans in the Ocean County jail and by the defendants herein.

47. Despite being given 9 secret recordings of the defendant police officers and Larry Negron Providing certain exculpatory evidence as to Julio Magana, the State did not investigate these recordings not take any action to ascertain the truth, not following the " purpose of a prosecutor is to search for the truth " maxim by the late Hon. Judge Martin Haines.

48. In one of those recordings, one officer describes Mexicans as " fucking Mexicans "

49. The defendant(s) compelled the plaintiff's expert, Robert Sanderson, to have to come to the Lakewood Police Department on more than one occasion because the alleged password access to the recording computer (for the video) was not accessible, thereby causing plaintiff to lose extra moneys in expert, when they knew or should already have known that the original was manually deleted by Det. Wexler, all the time making plaintiff herein lose time, lose time in jail, incur attorney's fees of over \$50,000 dollars, lose expert's fees of over \$8500 dollars, travel time, tolls, and commissary and computer expenses.

50. Plaintiff(s) have lost businesses, vehicles, funds, money and have needed health attention as to physicians and medical attention due to extreme stress, fatigue, anxiety, some depression and financial ruin.

51. Plaintiff Julio Magana had just about finished high school, excellent grades, and has no Prior criminal record of any type.

52. Plaintiff Jose Francisco Magana has no prior criminal record and has always loved America In that he has visited America numerous times to visit family legally, to do rock lamp business and to buy souvenirs. They have been recognized by the Mexican authorities and church as upstanding citizens and have received letters from the President of Mexico.

53. The plaintiffs contacted , and was interviewed, by the Internal Affairs office of the Ocean County Prosecutor's office who has apparently decided to not file any charges!

54. Officer Wexler testified he did the recording of the alleged confession, whereas the dvd shows the interview as officer Oscar Valmon, thereby implying that officer Valmon's password was used illegally. No statement was ever obtained by the Prosecutor's office Investigating the officers nor anyone on this matter.

55. Officer Roske reports falsely the date of the arrest as being 11-18-09.

56. The reports falsely state the meeting between Mr. Madrigal with Larry Negron took place on 11-17-08 at 6-7 pm at a restaurant as per page 12 of his taped statement, with Mr. Larry Negron, the police informant, whereas Officer Petrola states on 7-14-10 during his under oath statement at the suppression hearing he stated that Larry Negron was never released (from his arrest) which then amounts to Officer Petrola lying under oath. This makes sense why Madrigal was quickly exited out of the county jail, all his charges dismissed and conveniently taken to INS for a quick deportation, to avoid him testifying again.

57. Officer Petrola testified under oath in the indictment transcript of 1- 13- 2010 that he pushed the suspect's vehicle inside the garage, while contradicting him is officer Fox who testifies/writes in his report of 2-23-10, page two, that he DRIVE the vehicle into Negron's garage, thereby each officer contradicting the other, and otherwise lying on the record.

58. The defendant(s) gave at least three different versions of what or how they entered or searched the suspect's vehicle: Off. Petrola wrote that the K9 officer, on page 2 of his 11-18-08 report, only searched the exterior (whereas officer Vitiello testified they entered); Officer Fox reports that he drove the vehicle into the garage and the K9 officer only conducted an exterior search of the vehicle; whereas Officer Vitiello testifies that in his 11-18-08 and 2-25-10 report that Petrola took the decision to look inside the vehicle due to alleged , but false, exigent circumstances.

59. Francisco Magana was detained, arrested or otherwise frisked and followed by

police agents on more than one occasion, and Larry Negron, thereby being intimidated and scared but no charges were ever filed against him, although held for 4 hours.

60. Mr. Francisco Magana had to go to the hospital on more than one occasion as a result of fear, stress, intimidation and other emotional upset by this entire process, including going to the hospital immediately after giving testimony before the internal affairs department of the Ocean County Prosecutor's office who showed him photos that did not exist, where inaccurate and clear lies and evidence, of the case.

61. The defendants have yet to release to plaintiff the moneys taken from his from the Writ of Replevin.

62. At the time and moment of the arrest, defendant(s) grabbed Julio Magana, who did not resist and had no weapon, picked him up in the air and threw him down on the pavement, thereby causing him to bleed on his knees and almost pass out from pain.

63. Plaintiff Julio Magana was kept in the Negron garage for half an hour until transported to the County jail.

64. Plaintiff Julio Magana entered the jail in excellent health, but developed hepatitis and other illnesses during his jail stay, which were not promptly and properly addressed.

65. Plaintiff Julio Magana is now, out of jail, under medical and psychological treatments.

66. At all times relevant herein, Larry Negron knew or should have known that his lies, fraud and deceit were going to cost the plaintiff time in jail, false charges, intimidation, false arrests and other actions against the plaintiff(s).

CAUSES OF ACTION

COUNT I

ACTION UNDER 42 U.S.C. § 1983 and 1988 FOR VIOLATIONS OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS

AS TO ALL DEFENDANTS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. Plaintiff(s) have rights under the Fourth Amendment to the United States Constitution to be free from the use of excessive force by agents of the state, and in particular by the police.

3. The actions or omissions to act, of the individual defendants, as described above, violated those rights.

4. The defendant(s) violated the laws by unlawfully or illegally incarcerating, arresting, charging, imprisoning, withholding crucial evidence, failure to disclose, failure to timely disclose, intimidation, reckless investigation and negligent investigation and procedures.

5. As a proximate result of that violation, Plaintiff(s) was/were was injured as set forth above.

WHEREFORE, plaintiffs repeat all the same demand for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

a. Compensatory damages;

b. Punitive damages; \$10 million dollars;

c. Consequential damages,

d. business losses,

e. costs incurred, airplane trips back and forth to Mexico, rental expenses, attorney's fees of over \$50,000 dollars paid or owed, transcripts costs, gas expenses and tolls, purchasing of video and computer equipment, business loses being away from the business, expert's costs of over \$8500.00 dollars, immigration expenses, work lost at employment, loss of moneys taken during Replevin seizure, commissary expenses, dvd costs, and Attorney s fees and costs pursuant to 42 U.S.C. § 1988 & N.J.S.A. 10:6-2(f);

f. For costs, fees, and all other appropriate relief.

g. medical losses for psychologist treatment as well as curing infection in body detected immediately after release and examined

COUNT II

ACTION UNDER 42 U.S.C. § 1983 -LIABILITY IN CONNECTION WITH THE ACTIONS OF ANOTHER -FAILURE TO INTERVENE

AS TO INDIVIDUAL OFFICERS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. Defendant(s) violated plaintiff(s) rights under the Fourth Amendment to the United States constitution to be free from the use of excessive force by agents of the state, and in Particular by the police.

3. All other defendants have a duty to intervene to prevent the use of excessive force by a fellow police officer.

4. Defendant(s) had a reasonable opportunity to intervene during plaintiff's interactions with the other officers as well as with clearing up any false investigations, misleading reports or false arrests.

5. Defendant(s) chose not to intervene during plaintiff's arrests, investigations, false reports, and clarifying errors or intentional wrongdoings.

6. Defendant(s) chose to zealously protect their co-defendant police officers of personnel, protecting the wrongful acts of other officers and persons in this investigation, instead of owing loyalty to a higher cause, the law.

7. During his time in the court room, and prior to being named a witness for the defense, Det. Steinhauer tried to intimidate officer Vitiello by constantly making grimaces, using hand signals, using nods and other clearly visible signals, in court, in the presence of the prosecutor, using also his cell phone during the other's testimony to steer Officer Vitiello's testimony.

8. Officer Friedman supervised Det. Petrola's final report and did not make any

corrections to the alleged weight of Julio Magana, who did not weigh 150 lbs, but as per Nurse Alicea, only 135 lbs. and the date of birth was not 4-29-90 as falsely put thereon and approved by Sgt. Friedman.

9. Defendant(s) and Officer Sandage was present during the application, making, producing of the search warrant.

WHEREFORE, plaintiff demands judgment in his favor of the plaintiffs and against the defendant(s) herein, jointly, severally and in the alternative repeat all the same demands for Judgment of all counts of this complaint requesting the same relief as if set forth at length herein and also for:

- a. Compensatory damages;
- b. Punitive damages; \$10 million dollars;
- c. Consequential damages,
- d. business losses,
- e. costs incurred, airplane trips back and forth to Mexico, rental expenses, attorney's fees of over \$50,000 dollars paid or owed, transcripts costs, gas expenses and tolls, purchasing of video and computer equipment, business loses being away from the business, expert's costs of over \$8500.00 dollars, immigration expenses, work lost at employment, loss of moneys taken during Replevin seizure, commissary expenses, dvd costs, and Attorney s fees and costs pursuant to 42 U.S.C. § 1988 & N.J.S.A. 10:6-2(f);
- f. For costs, fees, and all other appropriate relief.
- g. medical losses for psychologist treatment as well as curing infection in body detected immediately after release and examined

COUNT III

**ACTION UNDER 42 U.S.C. § 1983, N.J.S.A. 10:6-2,
AND STATE COMMON LAW FOR CONSPIRACY**

AS TO ALL DEFENDANTS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. The defendants agreed in some manner to perform acts that would deprive the plaintiffs of his Federal & State constitutional rights.

3. The members of this conspiracy came to a mutual agreement, either express or implied, to perform acts which violated plaintiffs' constitutional rights.

4. The members of this conspiracy took step(s) in furtherance of this agreement.

5. The conspiracy was developed to deprive Plaintiffs of their Federal & State Constitutional Rights.

6. The sequence of events on November 18th 2008 and thereafter, makes it more likely than not that various defendants agreed to perform acts that would deprive Plaintiffs of their Constitutional Rights.

7. The actions of the individual defendants, as described above, violated Plaintiffs rights.

8. As a proximate result of that violation, the plaintiffs were injured as set forth above.

WHEREFORE plaintiffs repeat all the same demand for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

a. Compensatory damages;

b. Punitive damages; \$10 million dollars;

c. Consequential damages,

d. business losses,

e. costs incurred, airplane trips back and forth to Mexico, rental expenses, attorney's fees of over \$50,000 dollars paid or owed, transcripts costs, gas expenses and tolls, purchasing of video and computer equipment, business loses being away from the business, expert's costs of over \$8500.00 dollars, immigration expenses, work lost at employment, loss of moneys taken during Replevin seizure, commissary expenses, dvd costs, and Attorney s fees and costs pursuant to 42 U.S.C. § 1988 & N.J.S.A. 10:6-2(f);

f. For costs, fees, and all other appropriate relief.

g. medical losses for psychologist treatment as well as curing infection in body detected immediately after release and examined

COUNT IV

**ACTION UNDER N.J.S.A. 10:6-2 FOR VIOLATIONS OF ARTICLE I,
PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION**

AS TO ALL DEFENDANTS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.
2. The Plaintiffs' have a right under the Article I Paragraph 7 of the New Jersey Constitution to be free from the use of excessive force by agents of the state and in particular by the police.
3. The actions of the defendants as described above violated those rights.

WHEREFORE, plaintiff repeat all the same demand for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages; \$10 million dollars;
- c. Consequential damages,
- d. business losses,
- e. costs incurred, airplane trips back and forth to Mexico, rental expenses, attorney's fees of over \$50,000 dollars paid or owed, transcripts costs, gas expenses and tolls, purchasing of video and computer equipment, business loses being away from the business, expert's costs of over \$8500.00 dollars, immigration expenses, work lost at employment, loss of moneys taken during Replevin seizure, commissary expenses, dvd costs, and Attorney s fees and costs pursuant to 42 U.S.C. § 1988 & N.J.S.A. 10:6-2(f);
- f. For costs, fees, and all other appropriate relief.
- g. medical losses for psychologist treatment as well as curing infection in body detected immediately after release and examined

COUNT V

**ACTION UNDER N.J.S.A. 10:6-2 FOR VIOLATIONS OF ARTICLE I,
PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION**

AS TO EACH OFFICER AND INDIVIDUAL

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. Defendants, and Defendant Cities of Seaside Heights, Brick Township, City of Lakewood training program was/were inadequate to train its employees in the methods of lawfully, properly, and safely executing arrests.

3. Said defendant Cities, and their respective police departments, as well as the Special Operations Group of the Ocean County Prosecutor's Office, failed to adequately supervise the defendants herein, to ensure that they were effecting proper and lawful arrests and searches and investigations.

4. The defendant's failures to adequately train and adequately supervise defendants amounted to deliberate indifference to the fact that inaction would obviously result in the violation of plaintiff's rights.

5. Defendant Cities and Police Department and law enforcement agencies failure to adequately train and supervise defendants proximately caused the violation of plaintiffs' rights.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages;
- c. For attorney's fees and costs pursuant to N.J.S.A. 10:6-2 (f) .
- d. For costs, fees, and all other appropriate relief.

COUNT VI

**NEGLIGENT HIRING, RETENTION, TRAINING, AND
SUPERVISION UNDER STATE LAW**

AS TO EACH CITY, PUBLIC ENTITY

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages;
- c. For costs, fees, and all other appropriate relief.

COUNT VII

MUNICIPAL LIABILITY UNDER 42 U.S.C. section 1983

AS TO EACH CITY, PUBLIC ENTITY

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. Defendants, and Defendant Cities of Seaside Heights, Brick Township, City of Lakewood, Ocean County, training program was/were inadequate to train its employees in the methods of lawfully, properly, and safely executing arrests.

3. Said defendant Cities, and their respective police departments, as well as the Special Operations Group of the Ocean County Prosecutor's Office, failed to adequately supervise the defendants herein, to ensure that they were effecting proper and lawful arrests and searches and investigations.

4. The defendants failures to adequately train and adequately supervise defendants amounted to deliberate inference to the fact that inaction would obviously result in the violation of plaintiffs rights.

5. Defendant Cities and Police Department and law enforcement agencies failure to adequately train and supervise defendants proximately caused the violation of plaintiff's rights.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Attorney's fees and costs pursuant to 42 U.S.C. § 1988;
- c. All other appropriate relief.

COUNT VIII

VICARIOUS LIABILITY -STATE LAW CLAIMS

AS TO EACH CITY AND PUBLIC ENTITY

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. The Cities and County is/are vicariously liable for the actions and/or lack of action of the individual defendants.

WHEREFORE, plaintiffs repeat all the same demands for Judgment of all counts of this complaint requesting the same relief as if set forth at length herein and also:

- a. Compensatory damages;
- b. Punitive damages;
- c. For costs, fees and all other appropriate relief.

COUNT IX

**42 U.S.C. § 1983 CIVIL ACTION FOR DEPRIVATION OF
RIGHTS, FALSE ARRESTS, UNLAWFUL IMPRISONMENT
VIOLATIONS OF THE FOURTH, FIFTH AND FOURTEENTH
AMENDMENTS OF THE UNITED STATES CONSTITUTION
AS WELL AS COMMON LAW.**

AS TO EACH CITY, PUBLIC ENTITY AND DEFENDANT

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. The Cities and County is/are vicariously liable for the actions and/or lack of action of the individual defendants.

3. At no point whatsoever did any defendant reach out and contact the New Jersey State Police, as required by law, nor submit any notice to the Attorney General, as required by law, and in view of the Detectives alleged evidence that the alleged drugs were crossing state lines.

4. There were never any exigent circumstances, as Judge Den Uyl decided, to warrant the warrantless search into the vehicle, in violation of the law.

5. In the criminal investigations conducted by the Special Operations Group and the defendants, there was a lack of affirmative acts and a series of omissions amounting to an objectively unreasonable investigation such that qualified immunity does not apply to the failure to perform the necessary actions in the investigation.

6. There was no probable cause in the underlying criminal matter as to plaintiff Julio Magana.

7. Defendant Petrola's curriculum vitae has false statement regarding the credentials of his prior teachers in certain courses.

8. The vehicle searched was not the vehicle described by the informant, nor does an S 10

Toyota exists.

9. Defendant Negron stated Julio Magana was not El Loco, but the Prosecutor did not Or refused to investigate this matter, although given the recordings.

10. Defendant Vitiello stated on the record, under oath, there were more than two El Loco, thereby showing that prima facie Julio Magana may not be the proper individual or suspect.

11. The description offered by the informant was a totally different height from Julio Magana.

12. Upon discovering their mistakes, the defendants destroyed or made sure the evidence was lost and continued to mislead the court below.

13. The continued investigation of the defendant was attempted at being bolstered by the State offering additional reports in February of 2010 by several of the officers, over one year and three months post arrests, all vague, without any time references and all conflicting with each other and thereby misleading the court and the legal system's integrity.

14. The error of the defendants in continuing to investigate this matter was not reasonable in that the defendants knew, or should have known, that Julio Magana did not fit the profile of the person sought and described.

15. Larry Negron set up and tricked the police by either collaborating with Maximino Madrigal or by entrapping Madrigal so that Larry Negron would get the benefit of an arrest and presumed cooperation with the police while Madrigal brought an innocent bystander into the picture, Julio Magana, who was going to see Nascar type cars at Larry Negron's garage.

16. No reasonable police officer would have relied on the information given to them by Larry Negron under these circumstances.

17. Larry Negron was known as a police informant who became much too cozy with the police.

18. Larry Negron's employee, Rigoberto Beltran a/k/a "El Chino", is and was the brother in law of one of the investigating officers in this matter, Carlos Trujillo Tovar, who was the officer who took accusatory statement from co-defendant Madrigal against Julio Magana.

19. The nephew of Larry Negron, Paris Aguirre, who was also arrested with Larry Negron the prior day (to the arrest of Julio Magana), is the son of a police officer in Manchester Township, Ocean County, New Jersey.

20. Almost practically, many aspects of this investigation involved officers who have family with the informant and his employees.

21. When issue was brought up in court of the concurrent arrest of November 18, 2008 happening simultaneously on 125 Mountainview Drive, Lakewood, New Jersey (approximately two blocks away from Larry Negron's garage), that defense counsel wanted said information, The court and prosecutor stated that this information was irrelevant.

22. Said 125 Mountainview Drive information was in fact relevant because a) it was part of the same investigation, b) Miguel Enrique Asencio a/k/a "El Chepe" or "Roberto" was the same individual that Officer Rentas was asking information during the dvd confession of the alleged Julio Magana, c) which photo was also and has been lost, conveniently.

23. This is a cover up, to protect Larry Negron and his ties to police friends and associates.

24. The \$74,000.00 reportedly found by the police during the concurrent arrest of Miguel Asencio has never been disclosed as to its whereabouts, as well as the \$34,000 seized from Larry Negron along with the heroin seized from him.

25. The information in the above paragraph, and documents, was NEVER provided to defense counsel in the prior criminal matter.

WHEREFORE, Plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein including also:

- a. Compensatory damages;
- b. Punitive damages;
- c. For costs, fees and all other appropriate relief.

COUNT X

ASSAULT and Battery

As to the Individual Defendants Police Officers

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.
2. As described above, the individual defendants used improper, excessive, and illegal force against Mr. Julio Magana was used.
3. The individual defendants' conduct as described above constitutes a civil assault.
4. The individual defendants acted willfully, wantonly and deliberately in assaulting the plaintiff.
5. The individual defendants' conduct as described above constitutes intentionally tortious conduct in the form of a willful, wanton, and deliberate battery upon Mr. Rivera
6. As a proximate result of that conduct, Mr. Julio Magana was injured as set forth above.

~~WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of~~
this complaint requesting the same relief as if set forth at length herein.

XI

NEGLIGENCE

AGAINST ALL DEFENDANTS

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.
2. The Cities and County is/are vicariously liable for the actions and/or lack of action of the individual defendants.
3. By their acts and omissions to act, by failing to respect the law and their own duties, by failing to follow the attorney general guidelines and their own internal practices, by failing to use reasonable care in the investigation(s) defendants violated the duty of care they owed the plaintiffs.
4. Defendants acted with gross negligence and/or recklessness, in that their actions or omissions to act did not involve the mere exercise of professional judgment or discretion.
5. By their acts or omissions, each defendant proximately caused the damages, injuries, failure to properly investigate, continued incarceration, psychological trauma, diseases, emotional scars, sadness and fears that the plaintiff(s) suffered.
6. Defendants acts and omissions were a significant and material element in, or a substantial factor, in bringing harm to the plaintiff.
7. The defendants owed a duty to the People to be good cops, to properly investigate, to correct any improper report, to follow the law properly, to not cooperate in any shoddy or questionable facts of investigations, to be loyal to the law, not to the prosecutor or any errant

police officer, to abide by the laws and not be loyal to a group that is presumed to follow the law more so, and to respect the law.

8. The defendant officers were to have questioned the intent, decision and orders from their superiors, from the Prosecutor's office to make sure that these directives, orders and commands are within the parameters of the law, not outside the proper rules, regulations and orders of good police work and conduct.

9. The defendants were acting in such a manner as to amount to police corruption, fraud in charges, fraudulent investigation, false documents, false exhibits, fake reports, and lies.

10. The defendants did not show any remorse, pity or mercy for the truth.

11. The harms sustained by the plaintiff(s) were a direct and foreseeable result of the actions or omissions of the defendants.

12. The actions, or omissions, of the defendant(s) were reckless, grossly negligent and/or intentional or with deliberate indifference and callous disregard of the plaintiffs rights and body, thereby depriving the plaintiff of the equal protection of the equal protection of the laws and impeded the course of justice in violation of the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States, the Laws of the State of New Jersey and 42 U.S.C. 1983 and the Civil Rights Act.

13. The actions or omissions of the defendants have expressly or implicitly caused them to lose any qualified immunity.

14. The informant in this matter was admittedly Larry Negron.
was not reliable.

15. Larry Negron was not reliable as an informant.

16. Larry Negron knew, or should have known, that Julio Magana was not the "El Loco" who was to have brought the drugs to the garage for the arrest, providing the police with an alleged worthwhile arrest and thereby diminishing his criminal charges.

17. Larry Negron continues free and out of jail since the day he cooperated with the police in this matter, and was otherwise already walking free on Nov. 18, 2008 and talking freely to the police in the hallway of the police station as Julio Magana was brought in.

18. Informant Larry Negron, in the police department, intimidated Julio Magana in the police holding cell that if he cooperated with the police, he would have his police friends go easy on him, give him a lenient sentence.

19. Defendant police permitted and gave great latitude to Larry Negron to intimidate, harass and talk to the plaintiffs, beyond the scope of an everyday informant, but more like a close knit collaborator.

20. Larry Negron threatened Mr. Francisco Magana with dangers if he continued on his course of meddling with police activities, of recording police conversations and of asking too many questions.

21. As a proximate causation, the defendants caused plaintiffs injuries, continued incarceration, harassment, psychological and emotional harm, deprivation of liberty, deprivation of college and high school education, income making at the family business and other employment, access to the love and care of their family and children, lost of over \$100,000 in income and business, loss of reputation and physical deprivations.

WHEREFORE, plaintiffs repeat all the same demands for Judgment paragraphs of all counts of this complaint requesting the same relief as if set forth at length herein.

XII

SPOILIATION

AS TO ALL DEFENDANTS AND THE Ocean County Prosecutor's Office

1. Each of the paragraphs of all counts and parts herein are incorporated as if fully set forth herein.

2. The Cities and County is/are vicariously liable for the actions and/or lack of action of the individual defendants.

3. By their acts and omissions to act, by failing to respect the law and their own duties, by failing to follow the attorney general guidelines and their own internal practices, by failing to use reasonable care in the investigation(s) defendants violated the duty of care they owed the plaintiffs.

4. The defendant(s) admitted having in their possession, on the record, cell phones, Mobil phones, special phones, making telephone calls to and from the alleged informant to and From the alleged defendant(s) in the criminal case below, to having had a photo of a Roberto, to having had the signature of the alleged confessor below in a Miranda warnings document, to deleting manually the original alleged video confession of a defendant below, to not having any photos of the cocaine as it was extracted, to not having any videos of the arrest in process, to "losing" or not explaining the whereabouts or difference of 200 grams of cocaine and other inexplicable losses.

5. The defendant(s) never identified the exact whereabouts or reasons for losing, whether Intentionally or negligently, any of these relevant which were relevant to the process and exculpation of the plaintiff herein in the prior criminal matter.

6. The defendant(s) knew or should have known that such evidence was material,

relevant and needed to be preserved.

7. The defendant(s) knew the evidence before it was missing, destroyed or lost.

8. An ordinary, or even professional, person under the same circumstances would not have lost, destroyed or caused to be missing such evidence.

9. The losing of such evidence was in violation of the Rules of the Court, of good faith, of the Attorney General Guidelines of the State of New Jersey and integrity of keeping to good ethics and preservation of evidence.

10. Such actions or omissions resulted in prejudice to the plaintiff herein in the underlying criminal action(s).

11. Any reconstruction of such evidence is impossible to start.

12. There is a need for deterrence to halt state entities and officer from losing such evidence, under such suspicious circumstances.

13. Had the evidence been made available, the transcripts and voices of the alleged incoming suspect would have been compared to the voice of the plaintiff or his co-defendant so as to exculpate and clarify the suspects.

14. There was a cover up.

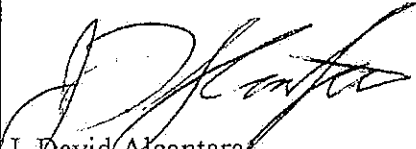
15. Defendant(s) engaged in fraudulent concealment or bad faith.

16. Officer Vitiello testified two times on the motion to suppress, once in the summer of 2010 and the second on October of 2010, three months later, on the State's own motion to reopen the defendant's motion to suppress based on the officer's "new" testimony, resulting in plaintiff's additional needless incarceration.

WHEREFORE, Plaintiff(s) repeat all the same demand for Judgment of all counts of this complaint requesting the same relief as if set forth at length herein.

CERTIFICATION

To the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.



J. David Alcantara
11-5-10

JURY DEMAND

Plaintiff hereby demands trial by jury as to each and every issue raised by this complaint.