

**R E L E A S E**

THIS RELEASE, dated 12/10 2008 is given

BY the Releasor(s) referred to as "I",

**JAMES GAVIN**

TO

**Borough of Lake Como and Lake Como Police Department**

referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. **Release.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

Any and all claims for personal injuries arising out of an assault that occurred on or about May 28, 2005 at or about 703-5 16<sup>th</sup> Avenue, in the Borough of Lake Como, County of Monmouth, New Jersey New Jersey which claims are more particularly described as the subject of a lawsuit filed in the Superior Court of New Jersey, Law Division, Morris County, captioned James Gavin v. Borough of Lake como, Lake Como Police Department, John Doe 1 Chief of Police in individual and official capacity, John Does 2-6 Supervising Officers, in individual and official capacities, Special Officer Ben Estrada-Rivera, in individual and official capacity, Officer William Fancher, in individual and official capacity Officer "John" Allen, in individual and official capacity, Sergeant Nicholas Schas, in individual and official capacity, "John Does 7-10", in individual and official capacities, and "ABC Corps. 1-10", Civil Action No. 07-cv-2479.

The terms of this Release and settlement shall be kept confidential by all parties hereto including plaintiffs' family members and all other parties to which this Release applies. In the event of any inquiry by the media or members of the media to any party to this agreement, the parties agree to provide only the following statement: "No comment". In the event this Release or the terms of this settlement are in any way disseminated to any individual or entity (with the exception of the parties to this litigation or their counsel), the party disseminating this agreement shall be liable to the other party for any and all damages suffered as a result of same.

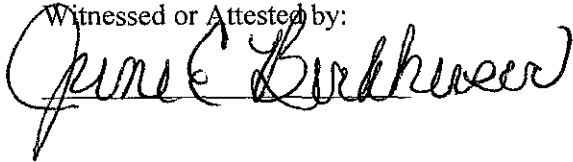
This shall further hold harmless the Defendant from payment of any and all liens incurred as a result of the within matter.

2. **Payment.** I have been paid a total of **\$52,500.00 dollars**, in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

3. **Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. **Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

  
James Gavin

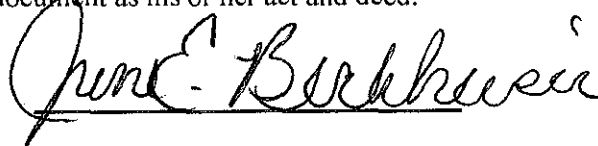
STATE OF NEW JERSEY

: SS.

COUNTY OF MORRIS

I CERTIFY that on 12/10, 2008 James Gavin personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.



JUNE E. BERKHEISER  
A NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES 07/02/2010

**RELEASE**

Dated:

TO

RECORD AND RETURN TO:

Nusbaum, Stein, Goldstein, Bronstein &  
Kron  
20 Commerce Boulevard  
Succasunna, New Jersey 07876

## RELEASE

THIS RELEASE, dated 12/10 2008 is given

BY the Releasor(s) referred to as "I",

**BRIAN GAVIN**

TO

**Borough of Lake Como and Lake Como Police Department**

referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. **Release.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

Any and all claims for personal injuries arising out of an assault that occurred on or about May 28, 2005 at or about 703-5 16<sup>th</sup> Avenue, in the Borough of Lake Como, County of Monmouth, New Jersey New Jersey which claims are more particularly described as the subject of a lawsuit filed in the Superior Court of New Jersey, Law Division, Morris County, captioned Brian Gavin v. Borough of Lake como, Lake Como Police Department, John Doe 1 Chief of Police in individual and official capacity, John Does 2-6 Supervising Officers, in individual and official capacities, Special Officer Ben Estrada-Rivera, in individual and official capacity, Officer William Fancher, in individual and official capacity Officer "John" Allen, in individual and official capacity, Sergeant Nicholas Schas, in individual and official capacity, "John Does 7-10", in individual and official capacities, and "ABC Corps. 1-10", Civil Action No. 07-cv-2478.

The terms of this Release and settlement shall be kept confidential by all parties hereto including plaintiffs' family members and all other parties to which this Release applies. In the event of any inquiry by the media or members of the media to any party to this agreement, the parties agree to provide only the following statement: "No comment". In the event this Release or the terms of this settlement are in any way disseminated to any individual or entity (with the exception of the parties to this litigation or their counsel), the party disseminating this agreement shall be liable to the other party for any and all damages suffered as a result of same.

This shall further hold harmless the Defendant from payment of any and all liens incurred as a result of the within matter.

2. **Payment.** I have been paid a total of **\$7,500.00 dollars**, in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

3. **Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. **Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

June E. Bebbesen

Brian Gavin

Brian Gavin

STATE OF NEW JERSEY

: SS.

COUNTY OF MORRIS

I CERTIFY that on 12/10, 2008 Brian Gavin personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

June E. Bebbesen

**RELEASE**

Dated:

TO

RECORD AND RETURN TO:

Nusbaum, Stein, Goldstein, Bronstein &  
Kron

20 Commerce Boulevard  
Succasunna, New Jersey 07876

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

NUSBAUM, STEIN, GOLDSTEIN,  
BRONSTEIN & KRON, P.A.  
20 Commerce Boulevard  
Succasunna, New Jersey 07876  
(973) 584-1400  
Attorneys for Plaintiffs

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JAMES T. GAVIN, )  
 )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 )  
 BOROUGH OF LAKE COMO, )  
 )  
 LAKE COMO POLICE DEPARTMENT, )  
 )  
 JOHN DOE 1 CHIEF OF POLICE , in )  
 )  
 individual and official capacity, JOHN DOES 2-6 )  
 )  
 SUPERVISING OFFICERS, in individual and )  
 )  
 official capacities, )  
 )  
 SPECIAL OFFICER BEN ESTRADA-RIVERA, )  
 )  
 in individual and official capacity, )  
 )  
 OFFICER WILLIAM FANCHER, )  
 )  
 in individual and official capacity )  
 )  
 OFFICER "JOHN" ALLEN, )  
 )  
 in individual and official capacity, )  
 )  
 SERGEANT NICHOLAS SCHAS, )  
 )  
 in individual and official capacity, )  
 )  
 "JOHN DOES 7-10," )  
 )  
 in individual and official capacities, and )  
 )  
 "ABC CORPS. 1-10," )  
 )  
 )  
 Defendants. )  
 )

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DOCKET NO.  
CIVIL ACTION

**COMPLAINT**  
**AND JURY DEMAND**

Plaintiff JAMES T. GAVIN, residing at 1429 State Route 57, Port Murray, NJ 07865  
(hereinafter "Plaintiff"), by way of Complaint against the Defendants says:

## **JURISDICTION**

1. This action is brought pursuant to 42 U.S.C. § 1983 and jurisdiction in this Court is therefore founded upon 28 U.S.C. § 1331. Plaintiffs further invoke the pendent jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide any and all claims arising under state law.

2. Prior hereto, Plaintiffs filed a Notice of Claim against each municipal defendant to pursuant to N.J.S.A. 59:1, et. seq.

## **THE PARTIES**

1. Defendant BOROUGH OF LAKE COMO (hereinafter “Lake Como”) is a municipal entity incorporated pursuant to the Municipal Laws of the State of New Jersey, whose principal place of business is located at 1740 Main Street, P.O. Box 569, Lake Como, NJ 07719, and at all times relevant hereto maintained a police department and had the duty to exercise its powers and authority over that police department pursuant to N.J.S.A. § 40A:14-118, et seq., and to provide training and supervision of the law enforcement officers employed by that police department, and promulgated official policies, customs, and practices concerning the activities, hiring, training, and supervising of law enforcement officers in that police department.

2. Defendant LAKE COMO POLICE DEPARTMENT (hereinafter “Police Department”) is a law enforcement agency whose principal place of business is located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719, and at all times relevant hereto had the duty to provide training and supervision of the law enforcement officers employed by it, and promulgated official policies, customs, and practices concerning the activities, hiring, training, and supervising of those law enforcement officers.

3. Defendant SPECIAL OFFICER BEN ESTRADA-RIVERA, (hereinafter “Rivera”) was at all times relevant hereto acting under color of law and employed as a law enforcement officer in the Police Department located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719 and was responsible for upholding and enforcing the law and maintaining the peace in Lake Como. Defendant Rivera was identified as the Complainant listed on the New Jersey State Summonses Numbered, S-2005-000189-1347, S-2005-000193-1347, and S-2005-000194-137 issued on May 28, 2005, against James Gavin, and appears on some of those Summonses to be associated with a badge identification number of 221.

4. Defendant OFFICER WILLIAM FANCHER (hereinafter “Fancher”) was at all times relevant hereto acting under color of law and employed as a law enforcement officer in the Police Department located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719 and was responsible for upholding and enforcing the law and maintaining the peace in Lake Como. Defendant Fancher was identified as the Complainant listed on the New Jersey State Summonses Numbered S-2005-000186-1347, S-2005-000187-1347 (Officer Ben Estrada-Rivera), S-2005-000188-1347, and S-2005-000191-1347 issued on May 28, 2005, against Brian A. Gavin, and appears on those Summonses to be associated with a badge identification number of 228.

5. Defendant OFFICER “JOHN” ALLEN (hereinafter “Allen”) was at all times relevant hereto acting under color of law and employed as a law enforcement officer in the Police Department located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719 and was responsible for upholding and enforcing the law and maintaining the peace in Lake Como. Defendant Allen was identified in the Report Narrative of the Police Department’s Investigation Report dated May 28, 2005, for Case No.: 200501680 and appears in that Report to be associated with a badge identification number of 227. Defendant Allen’s first name is unknown at this time

and therefore he has been assigned the fictitious name “John”; at such time as Allen’s first name becomes known, this complaint will be amended to reflect same.

6. Defendant POLICE OFFICER SERGEANT NICHOLAS SCHAS (hereinafter “Sergeant Schas”) was at all times relevant hereto acting under color of law and employed as a law enforcement officer and/or supervisor in the Police Department located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719 and was responsible for upholding and enforcing the law and maintaining the peace in Lake Como, and/or for the training and supervision of the law enforcement officers employed by the Police Department. Defendant Schas was identified as the Officer in Charge of Station in the New Jersey State Summonses Numbered S-2005-000186-1347, S-2005-000187-137, S-2005-000188-1347, S-2005-000189-1347, S-2005-000191-1347, S-2005-000193-1347, and S-2005-000194-1347 issued on May 28, 2005, against Plaintiff James Gavin and Brian Gavin.

7. Defendant John Does 7-10 are fictitious persons and/or law enforcement officers whose identities are unknown at this time, and who at all times relevant hereto were acting under color of law as law enforcement officers and/or supervisors responsible for upholding and enforcing the law and maintaining the peace in Lake Como, and/or for the training and supervision of the law enforcement officers employed by the Police Department, and/or for the promulgation of official policies, customs, and practices concerning the activities, hiring, training, and supervising of law enforcement officers employed by the Police Department. At such time as their identities become known, this complaint will be amended to name the known persons.

8. Defendants ABC Corps. 1-10 (hereinafter “ABC Corps”) are fictitious names for entities, corporations, and/or agents which were responsible for the training and supervision of



the law enforcement officers employed by the Police Department and for the promulgation of official policies, customs, and practices concerning the activities, hiring, training, and supervising of law enforcement officers in the Police Department. At such time as their identities become known, this complaint will be amended to reflect same.

9. Defendants Rivera, Fancher, Allen, Sergeant Schas, and John Does 7-10 will sometimes hereinafter be collectively referred to as “Defendant Police Officers.”

10. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Rivera, Fancher, Allen, Sergeant Schas, and ABC Corps will sometimes hereinafter be collectively referred to as “Defendants.”

**COUNT ONE**  
**Assault/Battery**

1. Plaintiff James Gavin hereby repeats and realleges any and all of the allegations of the Parties as though set forth verbatim herein.

2. On or about May 28, 2005, at approximately 10:23 p.m., the Plaintiff was at or about 703-5 16<sup>th</sup> Avenue, in the Borough of Lake Como, State of New Jersey, when Defendant Police Officers suddenly and without warning or justification committed a wrongful assault and battery on Plaintiff.

3. Defendant Police Officers’ assault and battery on Plaintiff directly and proximately caused severe and permanent physical and emotional injuries to Plaintiff.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendant Police Officers for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT TWO**  
**Negligent Training and Supervision**

1. Plaintiff James Gavin hereby repeats and realleges any and all of the allegations of the Parties, and Count One as though set forth verbatim herein.

2. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Sergeant Schas, and ABC Corps owed a duty to Plaintiff and the general public to exercise reasonable care and skill in training and supervising law enforcement officers.

3. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Sergeant Schas, and ABC Corps breached that duty by training and supervising Defendant Police Officers negligently and carelessly.

4. Such negligent training and supervision of Defendant Police Officers by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Sergeant Schas, John Does, and ABC Corps proximately caused severe and permanent physical and emotional injuries to the Plaintiff.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas, and ABC Corps jointly and severally for compensatory damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT THREE**  
**Excessive Use of Force in Violation of N.J.S.A. § 10:6-2**

Plaintiff James Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, and Count Two as though set forth verbatim herein.

1. At the aforementioned date and approximate time, Defendant Police Officers violated N.J.S.A. § 10:6-2 by acting under color of law and using unreasonably excessive force against the Plaintiff in excess of the force permitted pursuant to N.J.S.A. § 2C:3-7 and the Constitution and Laws of the United States and State of New Jersey, including, but not limited to: Article 1 ¶¶ 1, 5, and 7 of the New Jersey Constitution and the Fourth and Fourteenth Amendments of the United States Constitution.

3. At all times relevant herein, Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps violated N.J.S.A. § 10:6-2 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, and/or with deliberate indifference or actual knowledge that such policies, customs, and practices would lead to the Defendant Police Officers' use of excessive force in violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States and State of New Jersey, including, but not limited to: N.J.S.A. § 2C:3-7; Article 1 ¶¶ 1, 5, and 7 of the New Jersey Constitution; and the Fourth and Fourteenth Amendments of the United States Constitution.

4. Defendant Police Officers' use of unreasonably excessive force and the promulgation by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps of official policies, customs, and practices leading to that use of excessive force directly and proximately caused severe and permanent physical and emotional injuries to the Plaintiff.

WHEREFORE, Plaintiff James Gavin demand judgment against Defendants jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT FOUR**  
**Excessive Use of Force in Violation of 42 U.S.C. § 1983**

1. Plaintiff James Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, and Count Three as though set forth verbatim herein.

2. At the aforementioned date and approximate time, Defendant Police Officers violated 42 U.S.C. § 1983 by acting under color of law and using unreasonably excessive force against the Plaintiff in excess of the force permitted pursuant to the Constitution and Laws of the United States including, but not limited to the Fourth and Fourteenth Amendments of the United States Constitution.

3. At all times relevant herein, Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps violated 42 U.S.C. § 1983 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, and/or with deliberate indifference or actual knowledge that such policies, customs, and practices would lead to the Defendant Police Officers' use of excessive force in violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States, including, but not limited to the Fourth and Fourteenth Amendments of the United States Constitution.

4. Defendant Police Officers' use of unreasonably excessive force and the promulgation by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps of official policies, customs, and practices leading to that use of excessive force directly and proximately caused severe and permanent physical and emotional injuries to Plaintiff.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT FIVE**  
**Refusal of Medical Treatment in Violation of N.J.S.A. § 10:6-2**

1. Plaintiff James Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, and Count Four as though set forth verbatim herein.

2. On or about May 28, 2005, Defendant Police Officers violated N.J.S.A. § 10:6-2 by refusing to allow Plaintiff James Gavin to receive appropriate medical care for the injuries they inflicted on him. Such refusal to allow medical treatment by Defendant Police Officers was negligent, reckless, deliberately indifferent, and/or with actual knowledge that it was wrongful and in violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States and State of New Jersey, including, but not limited to: Article 1 ¶ 12 of the New Jersey Constitution; and the Eighth and Fourteenth Amendments of the United States Constitution.

3. At all times relevant herein, Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps violated N.J.S.A. § 10:6-2 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, and/or with deliberate indifference or actual knowledge that such policies, customs, and practices would lead to the Defendant Police Officers' refusal to allow medical treatment in violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States and State of New Jersey, including, but not

limited to: Article 1 ¶ 12 of the New Jersey Constitution; and the Eighth and Fourteenth Amendments of the United States Constitution.

4. Defendant Police Officers' refusal to allow medical treatment and the promulgation by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers Lake Como Police Department, and ABC Corps of official policies, customs, and practices leading to that refusal to allow medical treatment directly and proximately caused severe and permanent physical and emotional injuries to Plaintiff James Gavin.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT SIX**  
**Refusal of Medical Treatment in Violation of 42 U.S.C. § 1983**

1. Plaintiff James Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, and Count Five as though set forth verbatim herein.

2. On or about May 28, 2005, Defendant Police Officers violated 42 U.S.C. § 1983 by refusing to allow Plaintiff James Gavin to receive appropriate medical care for the injuries they inflicted on him. Such refusal to allow medical treatment by Defendant Police Officers was negligent, reckless, deliberately indifferent, and/or with actual knowledge that it was wrongful and in violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States, including, but not limited to: the Eighth and Fourteenth Amendments of the United States Constitution.

3. At all times relevant herein, Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, John Does, and ABC Corps violated 42

U.S.C. § 1983 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, deliberately indifferent, and/or with actual knowledge that such policies, customs, and practices would lead to the Defendant Police Officers' refusal to allow medical treatment in violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States and State of New Jersey, including, but not limited to: the Eighth and Fourteenth Amendments of the United States Constitution.

4. Defendant Police Officers' refusal to allow medical treatment and the promulgation by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, John Does, and ABC Corps of official policies, customs, and practices leading to that refusal to allow medical treatment directly and proximately caused severe and permanent physical and emotional injuries to Plaintiff James Gavin.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT SEVEN**  
**Inadequate Training and Supervision in Violation of N.J.S.A. § 10:6-2**

1. Plaintiff James Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, and Count Six as though set forth verbatim herein.

2. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas and ABC Corps violated N.J.S.A. § 10:6-2 by training and supervising Defendant Police Officers negligently, recklessly, and with deliberate indifference, and/or with actual knowledge that such training and supervision would lead to the

violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States and State of New Jersey, including, but not limited to: N.J.S.A. § 2C:3-7; Article 1 ¶¶ 1, 5, 7, and 12 of the New Jersey Constitution; and the Fourth, Eighth, and Fourteenth Amendments of the United States Constitution.

4. Such negligent, reckless, deliberately indifferent, and/or intentionally wrongful training and supervision of Defendant Police Officers by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas, and ABC Corps proximately caused severe and permanent physical and emotional injuries to the Plaintiff.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas, and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT EIGHT**  
**Inadequate Training and Supervision in Violation of 42 U.S.C. § 1983**

1. Plaintiff hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, Count Six, and Count Seven as though set forth verbatim herein.

2. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Sergeant Schas, and ABC Corps violated 42 U.S.C. § 1983 by training and supervising Defendant Police Officers negligently, recklessly, with deliberate indifference, and/or with actual knowledge that such training and supervision would lead to the violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of



the United States, including, but not limited to: the Fourth, Eighth, and Fourteenth Amendments of the United States Constitution.

4. Such negligent, reckless, deliberately indifferent, and/or intentionally wrongful training and supervision of Defendant Police Officers by Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, and ABC Corps proximately caused severe and permanent physical and emotional injuries to the Plaintiff James Gavin.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT NINE**  
**Negligent Infliction of Bodily Injury**

1. Plaintiff hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, Count Six, Count Seven and Count Eight as though set forth verbatim herein.

2. During the course of the arrest of the Plaintiff the Defendant Police Officers acted in a careless and negligent manner thereby causing severe and permanent physical and emotional injuries to the Plaintiff James Gavin.

3. At all times relevant hereto, Defendant Police Officers were in the course of their employment and the actions of the Defendant Police Officers would be deemed the actions of Defendant Lake Como or Lake Como Police Department.

4. As a direct and proximate result of the careless and negligent conduct of the Defendant Police Officers in executing the arrest of the Plaintiff, the Plaintiff was injured.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT TEN**  
**FALSE ARREST/FALSE IMPRISONMENT**

1. Plaintiff hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, Count Six, Count Seven, Count Eight and Count Nine as though set forth verbatim herein.

2. On or about May 28, 2005, the Plaintiff was illegally arrested by Defendant Police Officers without justification, said arrest being without probable cause.

3. The illegal arrest of the Plaintiff by Defendant Police Officers was in bad faith, with actual malice, and/or with a wanton and willful disregard of the Plaintiff's Constitutional rights.

4. As a result of the false arrest/false imprisonment of the Plaintiff, the Plaintiff was wrongfully detained and/or deprived of his freedom and liberty.

5. As a direct and proximate result of the false arrest/false imprisonment of the Plaintiff, the Plaintiff suffered damages to his person, damage to his reputation, as well as incurring unnecessary legal fees in the defense of the criminal charges.

6. Pursuant to N.J.S.A. 2A.15-5.10 Plaintiff prays for punitive damages.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps jointly and severally for compensatory

damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT ELEVEN**  
**ARREST AND SEIZURE WITHOUT PROBABLE CAUSE**  
**IN VIOLATION OF 42 U.S.C. § 1983**

1. Plaintiff hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, Count Six, Count Seven, Count Eight, Count Nine, and Count Ten as though set forth verbatim herein.

2. The arrest and seizure of the Plaintiff on May 28, 2005 was illegal in that it was without justification and/or probable cause, and therefore in contravention of the Fourth and Fourteenth Amendments of United States Constitution and the laws and Constitution of the State of New Jersey.

3. As a direct result of the wrongful arrest of the Plaintiff by Defendant Police Officers, the Plaintiff was caused to suffer personal injury as well as damage to his reputation and was further caused the expenditure of unnecessary legal fees.

4. At all times relevant herein, Defendant John Doe 1 Chief of Police, John Does 2-6 Supervising Officer, Lake Como Police Department, John Does, and ABC Corps. Violated 42 U.S.C. § 1983 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, deliberately indifferent and/or with actual knowledge that such policies, customs, and practices would lead to the Defendant Police Officers' to arrest and incarcerate Plaintiff without probable cause or justification in violation of Plaintiff's rights, privileges and immunities secured by the Constitution and Law of the United States and State of New Jersey including but not limited to the Fourth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT TWELVE**  
**MALICIOUS PROSECUTION**

1. Plaintiff hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, Count Six, Count Seven, Count Eight, Count Nine, Count Ten, and Count Eleven as though set forth verbatim herein.

2. On or about May 28, 2005 the Plaintiff was arrested and charged pursuant to the summonses set forth previously.

3. The charges were brought against the Plaintiff with actual malice, in bad faith and with the intention to cause harm to the Plaintiff.

4. As a direct and proximate result of the malicious prosecution by the Defendant John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps., Plaintiff has suffered damages to his person, his reputation and was caused to incur unnecessary legal expenses in the defense of the criminal matter.

5. Said malicious prosecution was committed by the Defendants with actual malice, bad faith and/or with a wanton and willful disregard to the harm that it would cause the Plaintiff.

6. At all times relevant herein, Defendant John Doe 1 Chief of Police, John Does 2-6 Supervising Officer, Lake Como Police Department, John Does, and ABC Corps. violated 42 U.S.C. § 1983 by acting under color of law and promulgating official policies, customs, and

practices negligently, carelessly, recklessly, deliberately indifferent and/or with actual knowledge that such policies, customs, and practices would lead to the malicious and bad faith prosecution of the Plaintiff without probable cause or justification in violation of Plaintiff's rights, privileges and immunities secured by the Constitution and Law of the United States and State of New Jersey including but not limited to the Fourth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**JURY DEMAND**

Plaintiff hereby requests a trial by jury.

**CERTIFICATION**

1. The within matter in controversy is not the subject of any other action pending in any other court or any pending arbitration proceeding.
2. No other action or arbitration proceeding is contemplated by Plaintiff.
3. No other party should presently be joined in this action.

NUSBAUM, STEIN, GOLDSTEIN  
BRONSTEIN & KRON, P.A.

By: /s/ Robert D. Kobin  
Robert D. Kobin

Date: May 25, 2007

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

NUSBAUM, STEIN, GOLDSTEIN,  
BRONSTEIN & KRON, P.A.  
20 Commerce Boulevard  
Succasunna, New Jersey 07876  
(973) 584-1400  
Attorneys for Plaintiffs

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BRIAN GAVIN, )  
)  
)  
Plaintiffs, )  
)  
v. )  
)  
BOROUGH OF LAKE COMO, )  
)  
LAKE COMO POLICE DEPARTMENT, )  
JOHN DOE 1 CHIEF OF POLICE , in )  
individual and official capacity, JOHN DOES 2-6 )  
SUPERVISING OFFICERS, in individual and )  
official capacities, )  
SPECIAL OFFICER BEN ESTRADA-RIVERA, )  
in individual and official capacity, )  
OFFICER WILLIAM FANCHER, )  
in individual and official capacity )  
OFFICER "JOHN" ALLEN, )  
in individual and official capacity, )  
SERGEANT NICHOLAS SCHAS, )  
in individual and official capacity, )  
"JOHN DOES 7-10," )  
in individual and official capacities, and )  
"ABC CORPS. 1-10," )  
)  
Defendants. )  

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DOCKET NO.  
CIVIL ACTION

**COMPLAINT**  
**AND JURY DEMAND**

Plaintiff BRIAN GAVIN, residing at 1429 State Route 57, Port Murray, NJ 07865  
(hereinafter "Plaintiffs"), by way of Complaint against the Defendant says:

### **JURISDICTION**

1. This action is brought pursuant to 42 U.S.C. § 1983 and jurisdiction in this Court is therefore founded upon 28 U.S.C. § 1331. Plaintiff further invokes the pendent jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide any and all claims arising under state law.

2. Prior hereto, Plaintiff filed a Notice of Claim against each municipal defendant to pursuant to N.J.S.A. 59:1, et. seq.

### **THE PARTIES**

1. Defendant BOROUGH OF LAKE COMO (hereinafter “Lake Como”) is a municipal entity incorporated pursuant to the Municipal Laws of the State of New Jersey, whose principal place of business is located at 1740 Main Street, P.O. Box 569, Lake Como, NJ 07719, and at all times relevant hereto maintained a police department and had the duty to exercise its powers and authority over that police department pursuant to N.J.S.A. § 40A:14-118, et seq., and to provide training and supervision of the law enforcement officers employed by that police department, and promulgated official policies, customs, and practices concerning the activities, hiring, training, and supervising of law enforcement officers in that police department.

2. Defendant LAKE COMO POLICE DEPARTMENT (hereinafter “Police Department”) is a law enforcement agency whose principal place of business is located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719, and at all times relevant hereto had the duty to provide training and supervision of the law enforcement officers employed by it, and promulgated official policies, customs, and practices concerning the activities, hiring, training, and supervising of those law enforcement officers.

3. Defendant SPECIAL OFFICER BEN ESTRADA-RIVERA, (hereinafter “Rivera”) was at all times relevant hereto acting under color of law and employed as a law enforcement officer in the Police Department located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719 and was responsible for upholding and enforcing the law and maintaining the peace in Lake Como. Defendant Rivera was identified as the Complainant listed on the New Jersey State Summonses Numbered, S-2005-000189-1347, S-2005-000193-1347, and S-2005-000194-137 issued on May 28, 2005, against James Gavin, and appears on some of those Summonses to be associated with a badge identification number of 221.

4. Defendant OFFICER WILLIAM FANCHER (hereinafter “Fancher”) was at all times relevant hereto acting under color of law and employed as a law enforcement officer in the Police Department located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719 and was responsible for upholding and enforcing the law and maintaining the peace in Lake Como. Defendant Fancher was identified as the Complainant listed on the New Jersey State Summonses Numbered S-2005-000186-1347, S-2005-000187-1347 (Officer Ben Estrada-Rivera), S-2005-000188-1347, and S-2005-000191-1347 issued on May 28, 2005, against Brian A. Gavin, and appears on those Summonses to be associated with a badge identification number of 228.

5. Defendant OFFICER “JOHN” ALLEN (hereinafter “Allen”) was at all times relevant hereto acting under color of law and employed as a law enforcement officer in the Police Department located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719 and was responsible for upholding and enforcing the law and maintaining the peace in Lake Como. Defendant Allen was identified in the Report Narrative of the Police Department’s Investigation Report dated May 28, 2005, for Case No.: 200501680 and appears in that Report to be associated with a badge identification number of 227. Defendant Allen’s first name is unknown at this time



and therefore he has been assigned the fictitious name “John”; at such time as Allen’s first name becomes known, this complaint will be amended to reflect same.

6. Defendant POLICE OFFICER SERGEANT NICHOLAS SCHAS (hereinafter “Sergeant Schas”) was at all times relevant hereto acting under color of law and employed as a law enforcement officer and/or supervisor in the Police Department located at 1730 Main Street, P.O. Box 597, Lake Como, NJ 07719 and was responsible for upholding and enforcing the law and maintaining the peace in Lake Como, and/or for the training and supervision of the law enforcement officers employed by the Police Department. Defendant Schas was identified as the Officer in Charge of Station in the New Jersey State Summonses Numbered S-2005-000186-1347, S-2005-000187-137, S-2005-000188-1347, S-2005-000189-1347, S-2005-000191-1347, S-2005-000193-1347, and S-2005-000194-1347 issued on May 28, 2005, against Plaintiff Brian Gavin and James Gavin.

7. Defendant John Does 7-10 are fictitious persons and/or law enforcement officers whose identities are unknown at this time, and who at all times relevant hereto were acting under color of law as law enforcement officers and/or supervisors responsible for upholding and enforcing the law and maintaining the peace in Lake Como, and/or for the training and supervision of the law enforcement officers employed by the Police Department, and/or for the promulgation of official policies, customs, and practices concerning the activities, hiring, training, and supervising of law enforcement officers employed by the Police Department. At such time as their identities become known, this complaint will be amended to name the known persons.

8. Defendants ABC Corps. 1-10 (hereinafter “ABC Corps”) are fictitious names for entities, corporations, and/or agents which were responsible for the training and supervision of

the law enforcement officers employed by the Police Department and for the promulgation of official policies, customs, and practices concerning the activities, hiring, training, and supervising of law enforcement officers in the Police Department. At such time as their identities become known, this complaint will be amended to reflect same.

9. Defendants Rivera, Fancher, Allen, Sergeant Schas, and John Does 7-10 will sometimes hereinafter be collectively referred to as "Defendant Police Officers."

10. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Rivera, Fancher, Allen, Sergeant Schas, and ABC Corps will sometimes hereinafter be collectively referred to as "Defendants."

**COUNT ONE**  
**Assault/Battery**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties as though set forth verbatim herein.

2. On or about May 28, 2005, at approximately 10:23 p.m., the Plaintiff was at or about 703-5 16<sup>th</sup> Avenue, in the Borough of Lake Como, State of New Jersey, when Defendant Police Officers suddenly and without warning or justification committed a wrongful assault and battery on Plaintiff.

3. Defendant Police Officers' assault and battery on Plaintiff directly and proximately caused severe and permanent physical and emotional injuries to Plaintiff.

WHEREFORE, Plaintiff Brian Gavin demands judgment against Defendant Police Officers for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT TWO**  
**Negligent Training and Supervision**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, and Count One as though set forth verbatim herein.

2. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Sergeant Schas, and ABC Corps owed a duty to Plaintiff and the general public to exercise reasonable care and skill in training and supervising law enforcement officers.

3. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Sergeant Schas, and ABC Corps breached that duty by training and supervising Defendant Police Officers negligently and carelessly.

4. Such negligent training and supervision of Defendant Police Officers by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como, Police Department, Sergeant Schas, John Does, and ABC Corps proximately caused severe and permanent physical and emotional injuries to the Plaintiff.

WHEREFORE, Plaintiff Brian Gavin demands judgment against Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas, and ABC Corps jointly and severally for compensatory damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT THREE**  
**Excessive Use of Force in Violation of N.J.S.A. § 10:6-2**

Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, and Count Two as though set forth verbatim herein.

1. At the aforementioned date and approximate time, Defendant Police Officers

violated N.J.S.A. § 10:6-2 by acting under color of law and using unreasonably excessive force against the Plaintiff in excess of the force permitted pursuant to N.J.S.A. § 2C:3-7 and the Constitution and Laws of the United States and State of New Jersey, including, but not limited to: Article 1 ¶¶ 1, 5, and 7 of the New Jersey Constitution and the Fourth and Fourteenth Amendments of the United States Constitution.

3. At all times relevant herein, Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps violated N.J.S.A. § 10:6-2 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, and/or with deliberate indifference or actual knowledge that such policies, customs, and practices would lead to the Defendant Police Officers' use of excessive force in violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States and State of New Jersey, including, but not limited to: N.J.S.A. § 2C:3-7; Article 1 ¶¶ 1, 5, and 7 of the New Jersey Constitution; and the Fourth and Fourteenth Amendments of the United States Constitution.

4. Defendant Police Officers' use of unreasonably excessive force and the promulgation by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps of official policies, customs, and practices leading to that use of excessive force directly and proximately caused severe and permanent physical and emotional injuries to the Plaintiff.

WHEREFORE, Plaintiff Brian Gavin demand judgment against Defendants jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT FOUR**  
**Excessive Use of Force in Violation of 42 U.S.C. § 1983**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, and Count Three as though set forth verbatim herein.

2. At the aforementioned date and approximate time, Defendant Police Officers violated 42 U.S.C. § 1983 by acting under color of law and using unreasonably excessive force against the Plaintiff in excess of the force permitted pursuant to the Constitution and Laws of the United States including, but not limited to the Fourth and Fourteenth Amendments of the United States Constitution.

3. At all times relevant herein, Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps violated 42 U.S.C. § 1983 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, and/or with deliberate indifference or actual knowledge that such policies, customs, and practices would lead to the Defendant Police Officers' use of excessive force in violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States, including, but not limited to the Fourth and Fourteenth Amendments of the United States Constitution.

4. Defendant Police Officers' use of unreasonably excessive force and the promulgation by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, and ABC Corps of official policies, customs, and practices leading to that use of excessive force directly and proximately caused severe and permanent physical and emotional injuries to Plaintiff.

WHEREFORE, Plaintiff Brian Gavin demands judgment against Defendants jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT FIVE**  
**Inadequate Training and Supervision in Violation of N.J.S.A. § 10:6-2**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, and Count Four, as though set forth verbatim herein.

2. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas and ABC Corps violated N.J.S.A. § 10:6-2 by training and supervising Defendant Police Officers negligently, recklessly, and with deliberate indifference, and/or with actual knowledge that such training and supervision would lead to the violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States and State of New Jersey, including, but not limited to: N.J.S.A. § 2C:3-7; Article 1 ¶¶ 1, 5, 7, and 12 of the New Jersey Constitution; and the Fourth, Eighth, and Fourteenth Amendments of the United States Constitution.

4. Such negligent, reckless, deliberately indifferent, and/or intentionally wrongful training and supervision of Defendant Police Officers by Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas, and ABC Corps proximately caused severe and permanent physical and emotional injuries to the Plaintiff.

WHEREFORE, Plaintiff Brian Gavin demands judgment against Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas, and ABC Corps. jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT SIX**  
**Inadequate Training and Supervision in Violation of 42 U.S.C. § 1983**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, and Count Five as though set forth verbatim herein.

2. Defendants John Doe 1 Chief of Police, John Does 2-6 Supervising Officers, Lake Como Police Department, Sergeant Schas, and ABC Corps violated 42 U.S.C. § 1983 by training and supervising Defendant Police Officers negligently, recklessly, with deliberate indifference, and/or with actual knowledge that such training and supervision would lead to the violation of Plaintiff's rights, privileges, and immunities secured by the Constitution and Laws of the United States, including, but not limited to: the Fourth, Eighth, and Fourteenth Amendments of the United States Constitution.

4. Such negligent, reckless, deliberately indifferent, and/or intentionally wrongful training and supervision of Defendant Police Officers by Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, and ABC Corps proximately caused severe and permanent physical and emotional injuries to the Plaintiff Brian Gavin.

WHEREFORE, Plaintiff James Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como, Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT SEVEN**  
**Negligent Infliction of Bodily Injury**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, and Count Six, as though set forth verbatim herein.

2. During the course of the arrest of the Plaintiff the Defendant Police Officers acted in a careless and negligent manner thereby causing severe and permanent physical and emotional injuries to the Plaintiff Brian Gavin.

3. At all times relevant hereto, Defendant Police Officers were in the course of their employment and the actions of the Defendant Police Officers would be deemed the actions of Defendant Lake Como or Lake Como Police Department.

4. As a direct and proximate result of the careless and negligent conduct of the Defendant Police Officers in executing the arrest of the Plaintiff Brian Gavin, the Plaintiff was injured.

WHEREFORE, Plaintiff Brian Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT EIGHT**  
**FALSE ARREST/FALSE IMPRISONMENT**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, Count Six, and Count Seven, as though set forth verbatim herein.



2. On or about May 28, 2005, the Plaintiff was illegally arrested by Defendant Police Officers without justification, said arrest being without probable cause.

3. The illegal arrest of the Plaintiff by Defendant Police Officers was in bad faith, with actual malice, and/or with a wanton and willful disregard of the Plaintiff's Constitutional rights.

4. As a result of the false arrest/false imprisonment of the Plaintiff Brian Gavin, the Plaintiff was wrongfully detained and/or deprived of his freedom and liberty.

5. As a direct and proximate result of the false arrest/false imprisonment of the Plaintiff, the Plaintiff suffered damages to his person, damage to his reputation, as well as incurring unnecessary legal fees in the defense of the criminal charges.

6. Pursuant to N.J.S.A. 2A.15-5.10 Plaintiff prays for punitive damages.

WHEREFORE, Plaintiff Brian Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT NINE**  
**ARREST AND SEIZURE WITHOUT PROBABLE CAUSE**  
**IN VIOLATION OF 42 U.S.C. § 1983**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, Count Six, Count Seven, and Count Eight as though set forth verbatim herein.

2. The arrest and seizure of the Plaintiff on May 28, 2005 was illegal in that it was without justification and/or probable cause, and therefore in contravention of the Fourth and

Fourteenth Amendments of United States Constitution and the laws and Constitution of the State of New Jersey.

3. As a direct result of the wrongful arrest of the Plaintiff Brian Gavin, the Plaintiff was caused to suffer personal injury as well as damage to his reputation and was further caused the expenditure of unnecessary legal fees.

4. At all times relevant herein, Defendant John Doe 1 Chief of Police, John Does 2-6 Supervising Officer, Lake Como Police Department, John Does, and ABC Corps. Violated 42 U.S.C. § 1983 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, deliberately indifferent and/or with actual knowledge that such policies, customs, and practices would lead to the Defendant Police Officers' to arrest and incarcerate Plaintiff without probable cause or justification in violation of Plaintiff's rights, privileges and immunities secured by the Constitution and Law of the United States and State of New Jersey including but not limited to the Fourth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, Plaintiff Brian Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como, Police Department, Sergeant Schas, and ABC Corps jointly and severally for compensatory damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**COUNT TEN**  
**MALICIOUS PROSECUTION**

1. Plaintiff Brian Gavin hereby repeats and realleges any and all of the allegations of the Parties, Count One, Count Two, Count Three, Count Four, Count Five, Count Six, Count Seven, Count Eight, and Count Nine as though set forth verbatim herein.

2. On or about May 28, 2005 the Plaintiff was arrested and charged pursuant to the summonses set forth previously.

3. The charges were brought against the Plaintiff with actual malice, bad faith and with the intention to cause harm to the Plaintiff.

4. As a direct and proximate result of the malicious prosecution by the Defendant John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como, Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps., Plaintiff has suffered damages to his person, his reputation and was caused to incur unnecessary legal expenses in the defense of the criminal matter.

5. Said malicious prosecution was committed by the Defendants with actual malice, bad faith and/or with a wanton and willful disregard to the harm that it would cause the Plaintiff.

6. At all times relevant herein, Defendant John Doe 1 Chief of Police, John Does 2-6 Supervising Officer, Lake Como Police Department, John Does, and ABC Corps. violated 42 U.S.C. § 1983 by acting under color of law and promulgating official policies, customs, and practices negligently, carelessly, recklessly, deliberately indifferent and/or with actual knowledge that such policies, customs, and practices would lead to the malicious and bad faith prosecution of the Plaintiff without probable cause or justification in violation of Plaintiff's rights, privileges and immunities secured by the Constitution and Law of the United States and State of New Jersey including but not limited to the Fourth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, Plaintiff Brian Gavin demands judgment against Defendants John Doe 1 Police Chief, Supervising Officers John Does 2-6, Lake Como, Police Department, Sergeant Schas, Defendant Police Officers and ABC Corps jointly and severally for compensatory

damages, punitive damages, interest, counsel fees, costs of suit, and any other relief the Court deems appropriate.

**JURY DEMAND**

Plaintiff hereby requests a trial by jury.

**CERTIFICATION**

1. The within matter in controversy is not the subject of any other action pending in any other court or any pending arbitration proceeding.
2. No other action or arbitration proceeding is contemplated by Plaintiff.
3. No other party should presently be joined in this action.

NUSBAUM, STEIN, GOLDSTEIN  
BRONSTEIN & KRON, P.A.

By: /s/ Robert D. Kobin  
Robert D. Kobin

Date: May 25, 2007

