

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is made between [REDACTED] and his heirs, representatives, successors and assigns (hereinafter referred to as "Plaintiff"), and Middlesex County, its employees, present and former elected and appointed officials, administrators, agents, attorneys, insurers, and representatives (hereinafter referred to as "Defendant").

### RECITALS

**WHEREAS**, Plaintiff asserted certain claims against Defendant arising out of claims resulting from an incident which occurred in the Middlesex County Adult Correctional Facility between October, 2013 and July, 2014 as more fully set forth in a lawsuit entitled *P.D. (a pseudonym) v. Middlesex County*, filed in the New Jersey Superior Court venued in Middlesex County under Docket No: MID-L-3811-14 (hereinafter the "Complaint");

**WHEREAS**, the Plaintiff and the Defendant have reached an agreement to fully and finally settle all remaining claims among them, including those asserted in the Complaint;

**WHEREAS**, the Defendant does not admit liability or any wrongdoing of any kind;

**NOW, IN CONSIDERATION** of the payment to Plaintiff provided for by this Agreement, and other good and valuable consideration and the promises and covenants contained herein, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Defendant, Middlesex County, shall pay to Plaintiff and the American Civil Liberties Union of New Jersey Foundation as counsel for Plaintiff, thirty (30) days after delivery to counsel for Defendant, an original of this executed Agreement, and all required exhibits, duly executed by Plaintiff and his counsel, the total sum of \$100,000. Plaintiff has specified that this sum represents Twenty Five Thousand, Eight Hundred and Seventy Five Dollars (\$25,875.00) in damages, Thirty Seven Thousand Dollars (\$37,000) to

reimburse attorneys for costs associated with the litigation, and Thirty Seven Thousand, One Hundred and Twenty Five Dollars (\$37,125) to cover attorneys' fees for time expended in prosecuting this case. This payment (\$100,000) is in full satisfaction of all claims asserted in the lawsuit and in addition for claims, known and unknown through the date of the execution of the agreement by Plaintiff, as well as for damages of any type whatsoever, as well as for attorney's fees, expenses and costs as set forth in the Complaint. Plaintiff has agreed to the designation of the payees as stated above and has authorized one (1) check to be issued and made payable as indicated and waives any claim for improper payment. Plaintiff has requested that the check be delivered to Alexander Shalom of the ACLU for distribution.

2. Should Plaintiff return to the Middlesex County Adult Corrections Center (MCACC), Defendant will provide Plaintiff's attorney, Alexander Shalom, or in the event that Mr. Shalom is unavailable, Tess Borden with notice of his re-incarceration as soon as practical thereafter, but in no event more than one week after his admission. Should Plaintiff return to the MCACC, Defendant will provide notification to Mr. Shalom or, in the event Mr. Shalom is unavailable, to Ms. Borden, as soon as possible after Plaintiff is placed in Administrative Segregation, Disciplinary Detention, or any other status where he would be entitled to fewer than three (3) hours of daily, in-person contact with other prisoners. Notice under this section shall be given within seventy-two (72) hours after such a housing change. Obligations under this paragraph only shall terminate seven (7) months after the execution of this Settlement Agree and Release.
3. Defendant makes no representations regarding the federal or state tax consequences of the payments referred to above and shall not be responsible for any tax liability, interest or penalty incurred by Plaintiff, or his counsel, which in any way arises out of or is related to said payments. Plaintiff and his counsel agree to pay any amount that may be

determined to be due and owing as taxes, interest and penalties arising out of the payment referred to in Paragraph 1, should it be determined that all or part of such payments constitute gross income within the meaning of the Internal Revenue Code of 1986, as amended, or under any other federal, state or local statute or ordinance. Plaintiff and his counsel further agree to (I) hold harmless the Defendant against, and to indemnify the Defendant for, any and all losses and/or damages arising from claims by the Internal Revenue Service ("IRS"), or any other taxing authority or other governmental agency (whether federal, state or local), which may be made against the Defendant arising out of or relating to Defendant's failure to withhold any portion of the payment to Plaintiff for income or social security tax purposes, or for any other purpose, and (II) reimburse Defendant, for any resulting payments, including without limitation, all penalties and interest payable to the IRS, or any other taxing authority or governmental agency. The parties further agree that Defendant will give Plaintiff or his counsel notice of any such claim, and Plaintiff or his counsel will cooperate with Defendant in the defense of such claim. In any action commenced against Plaintiff or his counsel to enforce the provisions of this paragraph, Defendant shall be entitled to recover its attorneys' fees, costs, disbursements, and the like incurred in prosecuting the action.

4. By executing this Agreement, Plaintiff certifies that he has complied with the requirements of N.J.S.A. 2A:17-56.23b. Plaintiff understands and agrees that the settlement amount referenced in Paragraph 1, will not be released until such time as his attorney provides Defendant's counsel with a certified copy of a child support judgment search, performed by a private judgment search company, reflecting that Plaintiff is not a child support judgment debtor. A copy of the Charles Jones Report shall be attached hereto by Plaintiff's counsel as Exhibit A.
5. Pursuant to the Uniting and Strengthening America by Providing Appropriate Tools

Required to Intercept and Obstruct Terrorism Act, Pub.L. No. 107-56, § 411(a)(1)(F), 115 Stat. 272 (2001) (the "Patriot Act"), Executive Order 13224 and the enforcement regulations set forth by United States Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), Plaintiff understands and agrees that the settlement amount referenced in Paragraph 1, will not be released until such time as his attorneys provide Counsel for Defendant with a certified copy of a search, performed by a private search company, reflecting that Plaintiff is not identified on the list of Specially Designated Nationals and Blocked Persons, generated by the Office of Foreign Assets Control ("OFAC"). Plaintiff further understands and agrees that in the event it is revealed that he is identified on the list of Specially Designated Nationals and Blocked Persons, generated by OFAC, he will not receive any of the proceeds of the settlement without Court Order. A copy of the Charles Jones Report shall be attached hereto by Plaintiff's counsel as Exhibit A.

6. Plaintiff acknowledges that all claims for damages of any type whatsoever will be satisfied from the proceeds of this settlement. By executing this agreement, Plaintiff certifies that he has complied with the requirements of 42 U.S.C. §1395y, et seq. and 42 C.F.R. §411.24, et seq. and has provided documentation from the New Jersey Department of Human Services, which agrees that they do not have a claim to any part of the settlement as a result of payments made through Medicaid. A copy of the documentation is attached hereto by Plaintiff's counsel as Exhibit A. Should any subsequent claims be made under these subsections, Plaintiff further agrees to (I) hold harmless Defendant against, and to indemnify Defendant for, any and all losses and/or damages arising from claims relating to Medicare/Medicaid brought by any governmental agency (whether federal, state or local), which may be made against Defendant arising out of or relating to Defendant's failure to withhold any portion of the payment to Plaintiff for medical lien

purposes, or for any other purpose, and (II) reimburse Defendant for any resulting payments, including without limitation, all penalties and interest payable to any governmental agency.

7. The parties further agree that simultaneously with the execution of this Agreement, Plaintiff's counsel shall supply to counsel for the Defendant a voluntarily signed stipulation of dismissal with prejudice dismissing all claims against Defendant. The parties further agree that counsel for Defendant will hold the executed stipulation of dismissal and, within ten (10) days of the receipt by counsel for Plaintiff of the payment referred to herein, file a Stipulation of Dismissal with Prejudice as to claims against Defendant, with the Clerk of the New Jersey Superior Court, Middlesex County, venued in New Brunswick, New Jersey. Plaintiff and Defendant agree on the form of the Stipulation of Dismissal of the Complaint, with Prejudice, which is attached hereto as Exhibit B.
8. It is specifically understood and agreed that the amount paid under this Release and Agreement includes all attorneys' fees and costs to which Plaintiff and/or his attorney(s) may be entitled to and the settlement sum is specifically intended to be inclusive of all attorneys' fees and costs. Plaintiff understands that by executing this Agreement and Release, he releases and waives any claim and/or right to attorneys' fees and expenses in connection with the Complaint. Neither Plaintiff, the American Civil Liberties Union of New Jersey Foundation, Blank Rome LLP, nor anyone acting on his behalf, shall make an application for additional monies in addition to the amount set forth in Paragraph 1, as those amounts are included in the total payment being made herein.
9. Plaintiff hereby releases and forever discharges Defendant, its present and former affiliates, subsidiaries, parents, owners, partners, officers, directors, former and current elected officials, agents, attorneys, employees, former employees, representatives,

insurers and reinsurers and all of its successors and assigns, from any and all actions, causes of action, suits, claims, charges or complaints, known or unknown, which Plaintiff has, may have, or claim to have against any of them for everything that has occurred up to the date of the signing of this Agreement. Plaintiff acknowledges that this is a General Release and includes, but is not limited to, claims set forth in the Complaint, claims arising under federal, state, and local laws included but not limited to claims for negligent or intentional infliction of emotional distress, assault and battery, violations of the United States Constitution, violations of the New Jersey Constitution, violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq., claims or rights arising under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq., claims arising under any federal or state constitution, statute or law; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; 42 U.S.C. §1983; the Americans With Disabilities Act; the Rehabilitation Act of 1973; all claims arising under any Executive Order and any claims derived from or based upon any federal or state regulation, administrative code, handbook or policy; all common-law claims including, but not limited to, wrongful acts, negligence, public policy violation, whistleblower retaliation, breach of an express or implied contract, breach of an implied covenant of good faith and fair dealing, negligent or intentional misrepresentation, defamation, fraud, misrepresentation, negligent or tortious interference with contract or prospective economic advantage; all claims for any economic loss including but not limited to back wages, front pay, overtime pay, fringe benefits, or any other form of compensation; all claims for personal injury, including but not limited to mental anguish, humiliation, pain and suffering, emotional distress, damage to name or reputation, or any other form of compensatory or punitive damages, and all claims for costs, expenses, and attorney's fees and any and all other claims however denominated, regardless of legal theory. This General Release includes all claims for

damages including requests for injunctive and/or declaratory relief, known or unknown, for anything that has occurred up to and including the date of this Agreement. Plaintiff further releases any and all rights he may have to seek discovery on any claims which have been encompassed by this lawsuit, or which has been a result of the actions of the Defendant, its representatives, agents, attorneys, volunteers, former or current elected officials, or former or current employees. Plaintiff, the County of Middlesex and their respective counsel, shall not bring any action in the United States District Court, the Superior Court of New Jersey, or in any other forum for any attorneys' fees or litigation expenses and costs against each other. This provision fully and finally waives and extinguishes the right of Plaintiff and Plaintiff's counsel to recovery of attorneys' fees or litigation expenses and costs against the Defendant.

10. Plaintiff further covenants and promises that he has not filed and will not hereafter file or cause to be filed on his behalf any charge, complaint or legal or administrative action of any nature before any court or administrative agency to assert any claim against any of the persons or entities released herein, for anything that has occurred up to and including the date that this Agreement was executed.
11. This Agreement does not constitute and shall in no manner be construed as an admission of any wrongdoing or liability on the part of Defendant, or as an admission by the Defendant of the validity of any of the Plaintiff's allegations as contained in his Complaint and/or as supplemented during the course of discovery. Defendant continues to maintain the validity of the denials and affirmative defenses set forth in its respective Answers to the Complaint.
12. Plaintiff represents that he has not assigned to any third party any claim that he has, may have or believes he has or may have against Defendant. Plaintiff represents and warrants that no other person or entity has or has had any interest in the claims, demands,

obligations or causes of action referred to in this Agreement and Release and further that Plaintiff has not sold, assigned, transferred, conveyed and/or otherwise disposed of any of the claims, demands, obligations, or causes of actions referred to in the Agreement to any third party any claim that they have, may have or believe they have or may have against Defendant. Plaintiff further represents that he has no other charge, claim or complaint of any kind pending against the Defendant and he further covenants and represents that he will not file or cause to be filed any charge, claim or complaint of any kind against the Defendant seeking recovery, sanctions, or injunctive relief, with respect to any matter in any way arising out of or relating to Plaintiff's involvement with the Defendant prior to the date that this Release and Settlement Agreement has been executed or any matter or incident relating to the subject matter of the Complaint.

13. The Plaintiff, whose signature appears below, agrees that all settlement negotiations, including any statement made or document prepared by any party or attorney for the negotiations are privileged and shall not be disclosed in any subsequent proceeding or document, or construed for any purpose as an admission against interest. The phrase "Document prepared by any party or attorney for the negotiations" shall not be deemed to apply to any settlement agreement that may result from the negotiations between the parties.
14. Plaintiff agrees that he will not voluntarily assist in any claim or litigation which may be pending or filed in the future against Defendant concerning any incident which has occurred prior to the date of the signing of this Agreement. The parties hereto acknowledge that Plaintiff may be compelled to testify in litigation by court order or process.
15. In the event either party breaches the terms or provisions set forth in the preceding paragraphs, the other party shall be entitled to bring an action for breach of this



Agreement. If either party seeks to rescind this Agreement as a result of a breach, the other will be entitled to be restored to the status quo ante.

16. By executing this Agreement, Plaintiff represents and acknowledges that he does not rely, and has not relied upon, any representation or statement not set forth in this Agreement made by Defendant, or its counsel with regard to the subject matter, basis, or effect of this Agreement or otherwise. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties.
17. This Settlement Agreement and Release shall be binding and inure to the benefit of the Plaintiff and his successors, assigns, heirs, executors and personal and legal representatives, the Defendant, as well as the successors and assigns of the County, its Departments, and its present and former elected and appointed officials, officers, directors, agents, administrators, insurers, attorneys, representatives and employees.
18. This Agreement shall be construed in accordance with the laws of the State of New Jersey.
19. The parties agree that the language of this Agreement has been negotiated, is a product of the draftsmanship of all of the parties and that the usual rule that the provisions of a document are to be construed against the drafter shall not apply to the interpretation of any provisions hereof.
20. The signature of the Plaintiff below indicates they he has had an opportunity to review this Agreement with his attorneys, that he has read and understood the provisions and that he has executed it voluntarily with full knowledge of the significance of all provisions.
21. Counsel of record, all of whose signatures appear below, represent and warrant that they have reviewed this Settlement Agreement and Release with their respective clients. The Plaintiff has been advised by his counsel to execute the Agreement and Release.

22. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed to be an original.

IN WITNESS WHEREOF, and intending to be legally bound, Plaintiff has executed this Agreement.

STATEMENT BY INDIVIDUAL SIGNING BELOW:

The Defendant has advised me in writing to consult with an attorney prior to executing this Agreement and Release. I have carefully read and fully understand the provisions of the Agreement and Release and have had sufficient time and opportunity to consult with my personal advisors prior to executing this document. By signing this document, I certify that I am over the age of 21 and am legally competent. By signing this agreement, I do so in a knowing and voluntary manner with the full knowledge that I am waiving any and all rights or claims I may have to later challenge the sufficiency, scope or terms of the Agreement and have done so after consultation with my attorney. By signing this document, I intend to be legally bound by the terms of this agreement.

BY:



STATE OF NEW JERSEY :  
: SS.  
COUNTY OF :

I CERTIFY that on January 8, 2018,  personally came

before me and acknowledged under oath, to my satisfaction, that he:

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

Attorneys for Plaintiff

By: 

Alexander Shalom  
American Civil Liberties Union of  
New Jersey Foundation

Attorneys for Defendant, County of Middlesex

By: 

Susan K. O'Connor  
Hoagland Longo Moran Dunst &  
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