

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E.D.N.Y.

★ JUL 22 2014 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT NEW YORK

-----X
PHILIP DATZ,

Plaintiff,

- against -

MICHAEL MILTON, in his individual and
Official capacities, and the COUNTY OF
SUFFOLK,

Defendants.
-----X

12 Civ. 1770 (LDW)(WDW)

LONG ISLAND OFFICE

**STIPULATION AND
ORDER OF SETTLEMENT**

WHEREAS, Plaintiff is a professional photojournalist: and

WHEREAS, Plaintiff was arrested by defendant Michael Milton, a Sergeant with the Fifth Precinct of the Suffolk County Police Department ("SCPD") on July 29, 2011 while videotaping a scene involving police activity in a public place; had his video camera and videotape seized by Defendant Milton; and was charged by Defendant Milton with Obstructing Governmental Administration in the Second Degree, which charge was subsequently dismissed by the Suffolk County District Attorney's Office; and

WHEREAS, Plaintiff commenced this federal civil rights action on April 11, 2012, by filing a Complaint (the "Complaint") against defendants Milton and County of Suffolk ("Suffolk County") (collectively, "Defendants") in the United States District Court for the Eastern District of New York (the "Court"); and

WHEREAS, the Plaintiff alleges in his Complaint (annexed hereto as Exhibit "A"), *inter alia*, that his arrest was without probable cause and in violation of his First and Fourth Amendment rights under the U.S. Constitution, and seeks damages and equitable relief in the form of training practices relating to the constitutional rights of the public and press to observe, photograph and record police activity from locations open to the public; and

WHEREAS, Defendants have denied any and all liability arising out of Plaintiff's allegations and claims; and

WHEREAS, the SCPD has issued (a) Department General Order Number 11-42 (attached hereto as Exhibit B), effective September 7, 2011, relating to interacting with and releasing information to the media; (b) Department General Order Number 11-43 (attached hereto as Exhibit C), effective September 8, 2011, relating to bystanders at police incidents; (c) Department General Order Number 11-44 (attached hereto as Exhibit D), effective September 8, 2011, relating to recorded media in the possession of bystanders and media personnel; and

WHEREAS, the Plaintiff and Defendants (collectively, the "Parties") now desire to resolve the issues raised in this litigation, without further proceedings and without admitting fault or liability;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. Consideration. In consideration for plaintiff's Release of Claims against all Defendants and other provisions set forth herein, the Parties agree as follows:

(a) The undersigned Counsel for the Parties have executed this Stipulation of Settlement and Order on May 6, 2014. Defendant Suffolk County shall pay Plaintiff the sum of \$200,000 (the "Settlement Payment"), inclusive of attorney's fees and costs, subject to approval of the terms of the within Settlement (i) by the Ways and Means Committee of the Suffolk County Legislature, and approval of any necessary bonding for the settlement payment by the full Suffolk County Legislature (collectively, the "Legislative Approval Process"), and thereafter (ii) by the Court pursuant to General Municipal Law 6-n(9)(b).

- i. Upon execution of this Stipulation and Order of Settlement by the Parties, the Suffolk County Attorney's Office shall promptly present the terms of the Settlement to the Ways and Means Committee of the Suffolk County Legislature for its approval. Following approval of the settlement by the Ways and Means Committee, the Suffolk County Attorney's Office shall then promptly seek approval of any necessary bonding of the Settlement Payment by the full Suffolk County Legislature.
- ii. Within five (5) business days after completion of the Legislative Approval Process, Suffolk County shall submit this Stipulation to the Court for approval and "so ordering" pursuant to General Municipal Law 6-n(9)(b). The date on which the Court "so orders" this Stipulation shall hereinafter be referred to the "Effective Date."
- iii. Within five (5) business days of the Effective Date, Plaintiff shall execute and deliver to Defendants a General Release and Stipulation of Dismissal with Prejudice, which are to be held in escrow by the County and not filed with the Court. Within twenty-one (21) days of receipt of the General Release, the County shall deliver to Plaintiff's counsel the Settlement Payment by check made payable to "Philip Datz";
- iv. In the event that the Stipulation and Order of Settlement and/or Settlement Payment are not approved in the Legislative Approval Process or by the Court, then this Stipulation and Order of Settlement shall become null and void and the Parties shall at that point resume litigation of this federal civil rights action.

2. Rules and Procedures. In addition to the Department General Orders recited in the WHEREAS clauses, the SCPD has issued General Order Number 13-17a (attached hereto as Exhibit E) effective November 4, 2013, relating to, among other things, dispute resolution between SCPD and members of the media arising out of or in connection with news media coverage at scenes of police activity.

3. Training. The SCPD has instituted a video training module (a Decentralized Individualized In-Service Training or “DIIT” film, hereinafter “DIIT video training”) (attached hereto as Exhibit F) addressing the Rules and Procedures of the SCPD and the constitutional right of the public and press to observe, photograph and record police activity in locations open to the public. The DIIT video training is viewed annually by all sworn members of the SCPD (except those members on leave or extended absences due to injury or illness), and the SCPD tests all officers who view the DIIT video training to verify comprehension of the Rules and Procedures of the SCPD and the constitutional right of the public and press to observe, photograph and record police activity in locations open to the public. The DIIT video training provides, among other things, that (a) members of the press and public have the right to observe, photograph and record all police activity from locations open to the public; (b) police personnel may not expand a crime scene perimeter for the sole purpose of interfering with the right of the media and the public to observe and record police activity from locations open to the public; (c) members of the media are not required to possess a press pass when in areas open to the public; and (d) all members of the SCPD must be familiar with the Rules and Procedures regarding bystanders and media at police incidents.

4. Police-Media Relations Committee. Defendant, Suffolk County, acting through the SCPD, will be forming a Police-Media Relations Committee (hereinafter the “Committee”) to enhance communications between the SCPD and the media.

(a) The Committee herein above described may consist of:

- i. a Commanding Officer of the SCPD Public Information Bureau who shall serve as chair (hereinafter “Chair”);
 - ii. the Executive Officer of the SCPD Public Information Bureau;
 - iii. a civilian employee of the SCPD Public Information Bureau who, as part of his or her regular job duties, handles calls and complaints from members of the media;
 - iv. a representative of local print media (for purposes of this stipulation local print media means a representative from a local Long Island newspaper) who shall serve as vice chair (hereinafter “Vice-chair”);
 - v. a representative of local television/broadcast media (for purposes of this stipulation local television/broadcast media means a representative from a local broadcast station); and
 - vi. a professional freelance videographer or photographer who works in local media markets.
- (b) Meetings of the Committee shall be at SCPD headquarters at such time and place and on such notice as the Chair and Vice-Chair shall agree. Written notice of each meeting of the members shall be given by the Chair to the members, and shall state the place, date and hour of the meeting and, if applicable, shall also indicate that it is being issued by or at the request direction of a person calling the meeting.
- (c) The mission of the Committee is to frankly discuss specific instances and recurring issues relating to recording, photographing and reporting of police activity, access to police scenes and police-media relations and to propose solutions for specific instances and recurring issues relating to recording, photographing and

reporting of police activity, access to police scenes and police-media relations. To the extent the PIB (Public Information Bureau) has received complaints from members of the media involving incidents with SCPD officers ("Media Incidents") that arose since the last Committee meeting, the Committee will discuss those specific Media Incidents.

(d) The Committee shall otherwise have the power to formulate its own operating procedures.

5. Dismissal. Within five (5) business days after receipt by Plaintiff's counsel of the Settlement Payment, Defendant's attorney shall cause the Stipulation of Dismissal to be filed with the Court. The settlement check will be held in escrow until such time as the Stipulation of Dismissal with Prejudice is filed with the Court.

6. No Admission of Liability. This Stipulation and Order of Settlement and the performance of the obligations referred to herein shall effect the settlement of all claims in the Action, all of which claims are denied and contested, and nothing contained herein nor the payment of any consideration provided for herein shall be construed as an admission of any fact, wrongdoing or liability of any kind by Defendants. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

7. Entire Agreement. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to bind the parties hereto, or to vary the terms and conditions contained herein.

7a. Headings. The headings contained in this Stipulation and Order are for convenience or reference only and shall not affect the interpretation or meaning of this Stipulation and Order.

8. Counterparts. This Stipulation and Order may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned. This Stipulation and Order may be executed on varying dates, and a pdf of the executed Stipulation and Order shall have the same force and effect as a hard copy of the original.

9. Execution of Other Necessary Documents. The parties agree to execute any further documentation that may be required in order to effect the provisions of this Stipulation and Order, including all documentation necessary to dismiss the pending lawsuit.

IN WITNESS WHEREOF, counsel for the Parties have executed this Stipulation and Order of Settlement on May 7, 2014.

DAVIS WRIGHT TREMAINE LLP

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SO ORDERED: [Signature]

[Signature]
HON. LEONARD D. WEXLER, USDJ

William D. Wall USMJ