

**RESOLUTION
BOROUGH OF MOUNTAINSIDE**

Council Meeting Date: September 15, 2020

Title: Authorize Stinner Settlement Agreement

Introduced by: Councilman Turner

Seconded by: Councilman Messler

Roll Call Vote: Ayes: 5 Nays: 1 Abstain:

Absent:

RESOLUTION 116-2020

**RESOLUTION APPROVING STINNER V. MOUNTAINSIDE SETTLEMENT AGREEMENT AND
AUTHORIZING BOROUGH OFFICIALS TO SIGN SUCH AGREEMENT**

WHEREAS, the Borough of Mountainside is a Defendant in a lawsuit pending in the Superior Court of New Jersey captioned Jeffrey Stinner, Christopher Feighner, Amy Colineri, Richard Latargia, Thomas Norton, James Urban v. The Borough of Mountainside, John & Jane Does(s) 1-10, XYZ Corp(s) 1-10, Law Division: Union County Docket No.: UNN-L-001695-18; and

WHEREAS, the parties to the lawsuit have engaged in mediation in an effort to determine whether the issues addressed in the lawsuit can be amicably resolved; and

WHEREAS, the result of such mediation is that an agreement was reached that was recommended by the Mediator, the Attorneys employed by the Borough to defend the lawsuit, and the Borough's insurance companies as being in the best interests of the Borough of Mountainside; and


WHEREAS, the proposed settlement amount is \$2,450,000 to be shared among the six plaintiffs and their attorney; and

WHEREAS, the Governing Body is very much aware that in litigation there is never a guarantee of the outcome regardless of how confident we might be that the Borough would ultimately prevail in the lawsuit; and

WHEREAS, if the Borough approves such settlement the Borough's insurance companies will pay the entire settlement amount, no taxpayer funds will be needed, any risk of a jury verdict that would not be covered by insurance is eliminated, and the Borough will avoid substantial future legal costs; and

WHEREAS, by reason of these facts, among others, the Governing Body is satisfied that it is in the best interests of the Borough of Mountainside for the Borough to settle the litigation on the terms recommended as a result of the mediation.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mountainside that it does hereby approve the settlement of the aforesaid lawsuit on the terms resulting from the aforesaid mediation and that the appropriate Borough Officials be and they hereby are authorized to sign the Settlement Agreement.



Martha Lopez, Borough Clerk



Paul N. Mirabelli, Mayor

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into, as of the date signed, by and between the Borough of Mountainside ("Borough") and Plaintiffs Jeffrey Stinner ("Stinner"), Christopher Feighner "Feighner"), Amy Colineri ("Colineri"), Richard Latargia ("Latargia"), Thomas Norton ("Norton"), and James Urban ("Urban") The Plaintiffs are collectively referred to herein as "Plaintiffs," and all parties are collectively referred to herein as the "Parties."

WHEREAS, Plaintiffs are current employees of the Borough;

WHEREAS, on May 11, 2018, through their counsel, Sciarra & Catrambone LLC, Plaintiffs filed a Complaint in the New Jersey Superior Court, Union Vicinage, bearing Docket Number: UNN-L-001695-18 (hereinafter the "Action");

WHEREAS, the Borough denies all of the allegations asserted by Plaintiffs via the Action, and denies that it violated any law, rule, or regulation or committed any wrongdoing whatsoever against Plaintiffs;

WHEREAS, the Parties enter into this Agreement for the purpose of avoiding the burdens and expenses of litigation;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for good consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement Payment.** In consideration for signing, not revoking and complying with the terms of this Agreement, the Borough's insurers agree to pay Plaintiffs the total gross amount of Two Million Four Hundred Fifty Thousand Dollars, (\$2,450,000.00) (the "Settlement Payment"), representing full settlement of all damages alleged in connection with the Action, including but not limited to compensatory damages, emotional distress, attorney's fees and costs. The Settlement Payment shall be rendered via check made payable to the trust account of Sciarra & Catrambone, LLC. The Borough shall issue an IRS Form 1099 to Sciarra & Catrambone, LLC in connection with the Settlement Payment.

2. The Borough's insurers will make all reasonable efforts to pay the Settlement Payment within forty-five (45) days of the Effective Date of this agreement, provided that the Agreement is fully effective and has not been revoked.

3. Plaintiffs understand and agree that no representations or advice has been made concerning the taxability of the Settlement Payment. In the event the Internal Revenue Service, or any other state or local taxing entity, or any court or other tribunal of competent jurisdiction determines that all or part of the payments referenced in the subparagraphs above are remuneration for which any taxes are due and owing by any Plaintiff, that Plaintiffs shall be solely responsible for the payment of such taxes. Plaintiffs agrees not to make a claim against the Borough for the payment of any such taxes, or for any related interest or penalties. Plaintiffs also agree to indemnify the Borough for any amounts which the Borough may be required to pay with respect to taxes on this payment to the Plaintiffs, including, but not limited to, interest and penalties, in connection with any taxes that Plaintiffs may owe based on this payment.

4. The Borough's insurers agree to pay the entirety of the fee charged by the Hon. Peter E. Doyne, A.J.S.C. (ret.), in connection with his mediation of the Action on July 13, 2020 (the "Mediation Fee").

5. Settlement of Disciplinary Charges Against Plaintiffs Sinner and Latargia.

The parties agree that any administrative disciplinary charges pending against Plaintiff Stinner and Latargia as of the Effective Date of this Agreement shall be deemed resolved and the disciplinary sanction resulting from such charges and imposed on each Stinner and Latargia shall be deemed to be within the scope of the General Release set forth in Paragraph 6 below. The settlement of these disciplinary charges shall be memorialized in separate agreements (the "Disciplinary Settlement Agreements"), and Plaintiffs Latargia and Stinner agree to accept the disciplinary sanctions set forth in the Disciplinary Settlement Agreements and to make no claims against the Borough relating to any discipline imposed

6. General Release.

(a) Plaintiffs knowingly and voluntarily release and forever discharge the Borough, its insurers, successors and assigns, and their current and former employees, elected officials, members of Borough volunteer organizations, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries (collectively referred to throughout the remainder of this Agreement as "Releasees"), of and from any and all claims, known and unknown, asserted and unasserted, which they have or may have against Releasees as of the date of execution of this Agreement, including, but not limited to, any alleged violation of: the National Labor Relations Act; Title VII of the Civil Rights Act; Sections 1981 through 1988 of Title 42 of the United States Code; the Employee Retirement Income Reform and Control Act; the American with Disabilities Act; the Workers Adjustment and Retraining Notification Act; the Fair Credit Reporting Act; the Family and Medical Leave Act; the Equal Pay Act; the Uniformed Services Employment and Reemployment Rights Act; Employee Polygraph Protection Act; the employee (whistleblower) civil protection provisions of the Corporate and Criminal Fraud Accountability Act (Sarbanes-Oxley Act); the New Jersey Law Against Discrimination, the Conscientious Employee Protection Act, the New Jersey Equal Pay Act, the New Jersey Wage and Hour Law, the New Jersey Wage Payment Law, the New Jersey Family Leave Act, the New Jersey Civil Rights Act, the New Jersey Employer-Employee Relations Act, the New Jersey Workers Compensation Act, the Millville Dallas Airmotive Plant Loss Job Notification Act ("NJ WARN"), the Collective Bargaining Agreement Between the Borough of Mountainside and the Mountainside P.B.A. Local 126 (the "CBA"); any other federal, state, or local law, rule, regulation, or ordinance; any public policy, contract, tort, or common law; the New Jersey State Constitution, the United States Constitution; or any claims for vacation, sick or personal leave pay, short or long term disability benefits, or payment pursuant to any practice, policy, handbook or manual; or any basis for recovering costs, fees, or other expenses including attorneys' fees incurred in these matters.

(b) Plaintiffs understand that this Release includes all claims related in any manner to their employment or the cessation of that employment. Plaintiffs further acknowledge that they are hereby releasing any known or unknown claim for alleged right of discovery of information or documents of Releasees.

(c) If any claim is not subject to release, to the extent permitted by the law, Plaintiffs waives any right or ability to recover any compensation on that claim and further waives any right or ability to be a class or collective action representative, or to otherwise participate in any putative or certified class, collective or multi-party action, CBA grievance, or any other proceeding based on such claim in which Plaintiffs or any other Releasee identified in this Agreement is a party.

(d) Plaintiffs specifically release their right to recover any monetary compensation from the pending CBA grievance arbitration filed by the Mountainside Policemen's Benevolent Association, Local 126 (the "PBA") with the New Jersey Public Employee Relations Commission on November 4, 2019, bearing Docket No.: AR-2020-202 (hereinafter the "Grievance"), seeking compensation for alleged "out of title" work by PBA members. In the event that the PBA is successful in prosecuting this Grievance, or that the resolution of this Grievance otherwise results in payment of any sum by the Borough to the PBA or its members, the Plaintiffs understand and agree that they shall not receive any portion of the sum paid by the Borough and further acknowledge that they waive any rights they would otherwise have to recover any portion of this sum.

(e) In consideration for the payment made pursuant to this Agreement, Plaintiff's Stinner and Latargia specifically release any right they possess—contractual or otherwise—to receive monetary compensation for unused vacation, sick, or personal leave accrued as of the Effective Date of this Agreement. All vacation, sick, and personal leave accrued by Plaintiffs Stinner and Latargia prior to the Effective Date of this Agreement shall be available for use by Plaintiffs Stinner and Latargia for a period of three (3) years following the Effective Date of this Agreement. If Plaintiffs Stinner and Latargia have not used all vacation, sick and personal leave accrued as of the Effective Date of this Agreement within three (3) years, such unused leave shall be forfeited. If Plaintiffs Stinner and/or Latargia choose to retire within three (3) years of the Effective Date of this Agreement, they agree that they shall not receive any monetary payment at that time for any unused vacation, sick or personal leave that they had accrued prior to the Effective Date of this Agreement. This provision shall have no effect as to vacation, sick, and personal leave accrued by Plaintiffs Stinner and Latargia subsequent to the Effective Date of this Agreement.

7. Acknowledgements and Affirmations.

(a) Plaintiffs affirm that they have not filed, caused to be filed, nor are presently a party to any claim or action against the Borough or any of the other Releasees, other than the Action, and that were any such action or proceeding commenced, it would be released and dismissed pursuant to this Agreement.

(b) Plaintiffs affirm that they have been paid and/or received all compensation, wages, commission, bonuses, benefits, expense reimbursements, and/or other monies owed to them by the Borough as of the Effective Date of this Agreement. Plaintiffs further affirm that they are not entitled to any further compensation, wages, bonuses, benefits and/or other monies in connection with their employment with the Borough up through the Effective Date of this Agreement, other than the Settlement Payment as set forth in Paragraph 1 above. Plaintiffs acknowledge they would not be entitled to receive the Settlement Payment absent their execution

of this Agreement and the fulfilment of the promises, acknowledgements, and affirmations made herein.

(c) Plaintiffs affirm that they have not been denied any leave to which they claim to have been entitled under the federal Family and Medical Leave Act or any similar leave laws, and that they have no known workplace injuries or occupational diseases.

(d) The Parties acknowledge that this Agreement does not limit either party's right, where applicable, to file or participate in an investigative proceeding of any federal, state or local government agency. To the extent permitted by law, Plaintiffs agree that if such administrative claim is made, they shall not be entitled to the recovery of individual monetary relief or other administrative remedies.

8. **Consideration and Revocation Period for Release of Claims Under the ADEA.**

The release of claims under the Age Discrimination in Employment Act ("ADEA") is subject to special waiver protection. Plaintiffs specifically agree that they knowingly and voluntarily release and waive any rights or claims of discrimination under the ADEA. In particular, Plaintiffs represent and acknowledge the following: (i) Plaintiffs waiving rights or claims for age discrimination under the ADEA in exchange for the Settlement Payment described herein, which is in addition to anything of value to which they are otherwise entitled; (ii) Plaintiffs have been given an opportunity to consider fully the terms of this Agreement for twenty-one (21) days; (iii) Plaintiffs have consulted their attorneys, Sciarra & Catrambone LLC, before signing this Agreement and have read and fully understand its terms; (iv) Plaintiffs understand that they have seven (7) days from the date that they sign this Agreement in which to revoke it (the "Revocation Period") and that they may do so by providing written notice to Christine A. Amalfe, Esq., of Gibbons, P.C., via electronic and certified mail of their intent to revoke before the end of the seven-day period. Plaintiffs understand and agree that this Agreement shall not become effective or enforceable until the date when the Revocation Period has expired (the "Effective Date").

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9. **Non-Disparagement.** In response to any inquiry from any source as to status of the Action, the Plaintiffs agree that their response shall be limited to stating that the Action has been "amicably resolved," or words to this effect.

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10. **No Future Promotions for Plaintiffs Stinner and Latargia.**

Plaintiffs Stinner and Latargia agree to never apply for any promotional opportunity available within the Borough's Police Department for the remainder of their tenure as Borough employees, and to never apply for any other employment position within the Borough. The Parties agree that the Borough does not have any obligation to promote, hire, or otherwise employ Plaintiffs Stinner and Latargia, except in the positions and ranks they currently hold as of the Effective Date of this Agreement, and may refuse to do so without any recourse.

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11. **No Admission of Wrongdoing.**

The Parties agree that neither this Agreement nor the furnishing of consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by the Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

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12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey, without regard to the conflicts of laws provisions of New Jersey law.

13. Consent to Jurisdiction and Forum Selection. Any action or proceeding arising in connection with this Agreement shall be tried and litigated exclusively in a federal or State court located in Union County, New Jersey, and the parties consent to personal jurisdiction in said jurisdictions. The choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this Paragraph.

14. Medicare/Medicaid Affirmations. Plaintiffs acknowledge and affirms that:

(a) They are not presently eligible to collect, nor are they presently collecting, Medicare or Social Security Disability Insurance.

(b) Plaintiffs have not submitted a request to Medicare seeking benefits for any damages, conditions, or injuries related in any manner to the claims made and settled in the subject action.

(c) Plaintiffs do not have a reasonable expectation of enrollment in Medicare within the next 30 months.

(d) Plaintiffs have not applied for Social Security Disability Insurance, and have no plans to apply for Social Security Disability Insurance, in connection with any damages, conditions or injuries related in any manner to the claims made and settled in the subject action.

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(e) No portion of any expenses incurred to date in connection with the claims made and settled in the subject action have been paid, or are reasonably expected to be paid, pursuant to any health insurance program provided, or funded in whole or in part, by Medicare or Medicaid

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15. Cooperation.

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(a) Plaintiffs agree to cooperate with reasonable requests by the Borough and/or its counsel in connection with any investigation, administrative or regulatory proceeding or litigation relating to any matter in which the Plaintiffs were involved or of which Plaintiffs have knowledge as a result of their employment with the Borough and/or any other Releasees.

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(b) Plaintiffs also agree that, except as otherwise required by law, they will not voluntarily cooperate with an adverse party in any investigation, administrative or regulatory proceeding or litigation in which the Borough and/or any other Releasee is involved to the extent that such cooperation relates to Plaintiffs' employment with the Borough. Plaintiffs affirm that if they are served a subpoena for testimony in any such matter, they will promptly notify the Borough, and/or its Releasees, so that the Borough may file a motion to quash the subpoena. Such notification must be made by certified mail and electronic mail to John Post, Esq., Borough Attorney.

JM

16. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions, whether oral or in writing, express or implied, between or among the Parties. The Parties acknowledge that no representations, inducements, promises, agreements or warranties have been made to them or by them, or anyone acting on their behalf, that are not embodied in this Agreement, that they have not executed this Agreement in reliance upon any such representation, inducement, promise, agreement, or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including but not limited to any purported supplements, modifications, waivers, or termination of this Agreement, shall be valid or binding unless executed in writing by each of the Parties of this Agreement.

17. **Agreement to Be Construed Fairly.** This Agreement is to be construed fairly as if the Agreement was drafted by all Parties. Any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement

18. **Successors and Assigns.** The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their agents, employees, subsidiaries, successors, assigns, and insurers.

19. **Consultation with Attorneys.** Plaintiff's acknowledge that this Agreement has been voluntarily and knowingly executed by them after having had the opportunity to consult with legal counsel. Plaintiff's acknowledge that they know and understand the contents of this Agreement and that have executed it voluntarily.

20. **Headings.** The various headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the Agreement or any provision of it.

21. **Amendments to Agreement Must Be in Writing.** This Agreement may not be altered or amended except by a subsequent agreement in writing that is personally signed by all Parties or by counsel acting on their behalf.

22. **Severability.** If any word, clause, phrase, sentence, or paragraph of this Agreement is declared void or unenforceable, such portion shall be considered independent of, and severable from, the remainder, the validity of which shall remain unaffected.

23. **Reasonable Time and Consideration.** Plaintiff's acknowledge that they: (i) have carefully read this Agreement in its entirety; (ii) have had an opportunity, including a reasonable period of time, to consider fully the terms of this Agreement; (iii) have consulted with their attorneys, Sciarra & Catrambone LLC, in connection with this Agreement; (iv) fully understand the significance of all of the terms and conditions of this Agreement; (v) have discussed it with their counsel, Sciarra & Catrambone LLC; (vi) have received answers to their satisfaction to any questions asked with regard to the meaning and significance of any of the provisions in this Agreement; and (vii) are signing this Agreement voluntarily and of their own will, with the benefit of advice from their counsel, and with the intention of releasing all claims recited herein in exchange for the consideration described herein, which they acknowledges to be adequate and satisfactory to them.

Handwritten initials and marks on the left margin, including "CSF", "AK", "JC", and "AC".

Handwritten initials "JM" on the right margin.

their counsel, Sciarrà & Catrambone LLC, (vii) have received the questions asked with regard to the meaning and significance of any of the provisions in this Agreement, and (viii) are signing this Agreement voluntarily and of their own will, with the benefit of advice from their counsel, and with the intention of releasing all claims recited herein in exchange for the consideration described herein, which they acknowledge to be adequate and satisfactory to them


24 Counterparts This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute together one in the same instrument, and will be effective upon execution by all Parties. Facsimile copies or electronic versions of the signed Agreement shall be deemed originals for all purposes

I UNDERSTAND THAT BY SIGNING THIS AGREEMENT, TO THE FULLEST EXTENT DESCRIBED ABOVE AND PERMITTED BY LAW, I WILL BE WAIVING MY RIGHTS UNDER FEDERAL, STATE AND LOCAL LAW, INCLUDING, BUT NOT LIMITED TO, THE AGE DISCRIMINATION IN EMPLOYMENT ACT, AS AMENDED BY THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990, TO BRING ANY CLAIMS THAT I HAVE OR MIGHT HAVE AGAINST THE BOROUGH OF MOUNTAINSIDE. I ACKNOWLEDGE THAT THE BOROUGH OF MOUNTAINSIDE HAS ADVISED ME TO CONSULT WITH COUNSEL BEFORE SIGNING AND I HAVE CONSULTED WITH THE LAW FIRM OF SCIARRA & CATRAMBONE, LLC REGARDING THIS AGREEMENT. I ENTER INTO THIS AGREEMENT FREELY AND KNOWINGLY, AFTER CAREFUL CONSIDERATION OF ITS TERMS, AND WITH THE INTENT TO WAIVE, SETTLE AND RELEASE ALL CLAIMS

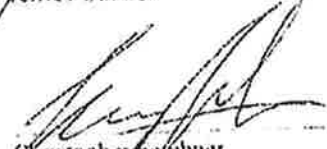
Handwritten initials: PA, CST, and several other illegible marks.

Handwritten initials: JM

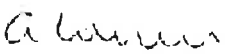
Agreed and Accepted


Jeffrey Sumner

Dated August 13th, 2020


Christopher Feighner

Dated August 13th, 2020



Amy Colneri

Dated August 13, 2020



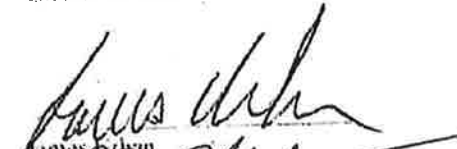
Richard Latarga

Dated Aug 13, 2020



Thomas Norton

Dated 8/13/2020, 2020


James Wilson

Dated Aug 13, 2020


Thomas Atkins

Dated SEP 18, 2020

Glenn Mortimer



Glenn Mortimer

Dated: SEP 18, 2020

Title: Borough Administrator
Borough of Mountainside