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April 6, 2016

CONFIDENTIAL SETTLEMENT COMMUNICATION N.J.R.E. 408 COMMUNICATION

Via E-mail & First Class Mail

Louis N. Rainone, Esq.
DeCotiis, Fitzpatrick & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd., Suite 31
Teaneck, New Jersey 07666

Re: Wayne Azzarello/Township of Brick

Dear Mr. Rainone:

We are returning enclosed herewith four (4) originals of the Settlement Agreement and General Release signed by Mr. Azzarello. Kindly arrange for execution by the proper Township official and return to us two (2) originals. We are also enclosing a copy of Exhibit A detailing the personal items Mr. Azzarello still had at the work place, as well as, per the Agreement, a copy of the child support judgment search result.

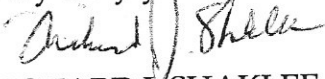
As to the expected claim for unemployment benefits that Mr. Azzarello will file, please be advised, and please advise the Township, that the applicable "base year" for provision to the Unemployment Division is found at N.J.S.A. 43:21-19(c)(3), which provides that the base year, in the circumstances under which Mr. Azzarello is applying, means: "The first four of the last five completed calendar quarters immediately proceeding the individual's period of disability...." Accordingly, it is not the standard base year normally used, but rather, it is judged from the time of Mr. Azzarello's disability which occurred on or around September 14, 2014, his last day of work.

Kindly arrange for execution and return the applicable documents to me. It is our understanding that the settlement payment will be made through the worker's compensation process.

We will circulate to Mr. Racz a Stipulation of Dismissal of all claims in the Superior Court matter upon return of the signed Agreement. I am copying Mr. Azzarello's workers' compensation attorney so that any further actions that might be necessary as to the workers' compensation matter may be addressed.

Thank you for your attention to this matter.

Very truly yours,



RICHARD J. SHAKLEE

RJS/geb

Enc.

cc: Eugene Racz, Esq. (*via email & First Class mail*)
Samantha Keown, Esq. (*Via e-mail & First Class mail*)

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This **Settlement Agreement and General Release** (the "Agreement"), is entered into this _____ day of _____, 2016, by and between the **Township of Brick** a Municipal Corporation of the State of New Jersey with offices at 401 Chambersbridge Road, Brick, N.J. 08723 (hereinafter the "Township") and **WAYNE AZZARELLO** and of 1247 Sally Ike road, Brick, New Jersey (herein "Azzarello"). For purposes of this Agreement, the term "Township" shall mean and include Brick Township and its past, present and future elected officials, officers, directors, agents, administrators, managers, employees, insurers, independent contractors and benefit plans, and all of their predecessors and successors, and any and all of their respective executors, administrators, successors, assigns, agents and representatives. The term "Azzarello" shall mean and include Wayne Azzarello and any and all of their executors, administrators, successors, assigns, agents and representatives. Wayne Azzarello and the Township are hereinafter jointly referred to as the "Parties." This Agreement constitutes the complete and final settlement of any and all disputes arising from or relating to Wayne Azzarello's employment with the Township and any claims or actions Wayne Azzarello has brought or could have brought against the Township.

WHEREAS, On June 24, 2015 the Azzarello filed a complaint in the Superior Court of New Jersey, Law Divisions, Ocean County, Docket Number OCN-L-1766-15 against upon the Township

WHEREAS, the Township denies all allegations of wrongful conduct in the Complaint; and

WHEREAS, Azzarello and the Township wish to enter into a full and final compromise and settlement of the claims, including any and all claims Azzarello could have raised against the Township, and any and all of its affiliated entities, employees, agents or representatives, without the necessity of further proceedings.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound, it is AGREED as follows:

1. **Consideration.** The Township of Brick agrees to pay, and Azzarello agrees to accept, the sum of \$55,000.00, inclusive of counsel fees, in full and final settlement of all Azzarello's claims, and any and all disputes arising from or relating to Wayne Azzarello's employment with the Township and any claims or actions Wayne Azzarello has brought or could have brought against the Township.

2. **Taxability.** Azzarello agrees that neither the Township nor the Townships' counsel nor their legal counsel have made representations to Azzarello concerning the taxability of the amounts to be paid herewith. It is further understood that in the event a taxing entity ultimately determines that any or all of the foregoing amounts constitute income for which any taxes remain due and owing, Azzarello shall be responsible for the payment of all such taxes and Azzarello will defend, indemnify

and hold harmless the Township and its counsel for any sums the Township or its counsel may be required to pay with respect to the Agreement.

3. Compromise of Dispute Claims. The Parties understand and agree that this is a compromise of disputed claims and that the consideration transferred herein is to compromise any and all disputed claims, and to avoid further litigation. Nothing contained herein shall be construed as an admission of liability by or on behalf of any of the Parties to this Agreement, and any and all such liability being expressly denied.

4. Waiver and Release of Claims. As used in this Agreement, the term "Township" means the Township of Brick, any subsidiaries, affiliates, divisions, predecessors, successors and/or assigns of the Township and in their capacities as such, any past, present, and future officers, agents, representatives, attorneys, employees, officers and elected officials of the Township.

a. Azzarello releases and give up any and all claims, demands, damages, causes of action, or suits which have been or could have been brought against the Township, including those of which Azzarello is not aware and those not mentioned in this Agreement, except for his right to the payments and benefits provided for in this Agreement. This Agreement applies to claims resulting from anything which has happened up to now. Azzarello releases and gives up any and all claims and rights against the Township of any nature arising under any federal, state, local or foreign law, including, but not limited to, those not mentioned in this Agreement, those of which Azzarello is not aware, and any claims for or rights to attorneys' fees.

b. Azzarello specifically releases any and all claims of retaliation, unlawful discrimination or harassment, including, but not limited to, those based on Azzarello's age, sex, race, color, religion, national origin, citizenship, veteran status, sexual orientation, gender orientation, disability, or any other status protected by applicable law. These include, but are not limited to, any and all claims Azzarello may have under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. ("CEPA"); the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. ("Title VII"); the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 et seq. ("ADEA"); the Americans with Disabilities Act, 42 U.S.C. §12101, et seq. ("ADA"); Section 1981 of the Civil Rights Act of 1866; the Sarbanes-Oxley Act of 2002; the federal Family and Medical Leave Act, 29 U.S.C. §2611 et seq. ("FMLA"); the New Jersey Family Leave Act, N.J.S.A. 34:1113-1 et seq. ("NJFLA"); the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq. ("ERISA"); the Worker Adjustment and Retraining Notification Act ("WARN"), 29 U.S.C. §2101, et seq.; federal and state wage and hour laws; Executive Order .11246; and any other applicable federal, state, foreign or local statute, regulation or ordinance prohibiting discrimination, harassment or retaliation. Azzarello is also releasing any and all other claims and rights they may have against the Township, including, but not limited to, claims for whistle-blowing, wrongful discharge, breach of contract (express or implied), breach of promise, unjust dismissal, unfair competition, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing,

invasion of privacy, defamation, wrongful denial of benefits, intentional and negligent infliction of emotional distress, intentional and negligent misrepresentation, fraud, negligence, any intentional torts, and/or any claims for wages, benefits, compensation, costs, fees, or other expenses, including attorneys' fees and including his workers compensation claim.

c. Azzarello is releasing all claims described above arising through the date he signs this Agreement, including those for any injuries or damages suffered at any time after the date he signs this Agreement by reason of the continued effects of alleged retaliatory or defamatory acts or other conduct that occurred prior to the date they sign this Agreement. However, Azzarello is not waiving any claims for any new unlawful acts that may be committed by any Township employee after the date he signs this agreement and including his workers' compensation claim

d. This Release is intended by the Parties to be construed to release any and all claims and rights arising on or before the date of the execution of this Agreement to the fullest extent permitted by law.

5. Child Support Certification. Azzarello hereby acknowledges and understands his obligation to comply with the legal requirements of N.J.S.A. 2A:17-56.23b, including, but not limited to, the requirement to perform a certified child support judgment lien search and to provide the Township with said documentation prior to the Township's disbursement of the settlement funds due Azzarello under this Agreement. Azzarello agrees that he shall direct his attorney to perform the judgment search required by N.J.S.A. 2A:17-56.23b, and deliver a copy of the certification to the Township's counsel. Azzarello further understands and acknowledges that no settlement funds due Azzarello under this Agreement shall be released prior to the receipt of the judgment search certification.

6. Non-Admission of Liability. This Agreement shall not be construed as an admission by any of the Township Releasees of any of the acts or omissions alleged by Azzarello in the Tort Claim Notice, or of any acts or omissions which could have been alleged in those proceedings. The Township specifically denies any liability whatsoever for any damages, injuries or other claims by Azzarello, or which could be claimed by Azzarello. Conversely, Azzarello, by accepting these benefits, does not admit that his claims were without merit. Azzarello expressly waives any right he may have to recover attorneys' fees or costs from the Township.

7. No Actions or Proceedings. Other than the Complaint and the Workers Compensation action, Azzarello represents that he has no pending lawsuits, charges, administrative proceedings, or other claims of any nature whatsoever against the Township or any other Releasee in any state or federal court, or before any agency or other administrative body.

8. No Claims Permitted/Covenant Not to Sue. Azzarello waives his rights to file any charge or complaint on Azzarello's own behalf and/or participate as a complainant, as a Plaintiff or charging party in any charge or complaint which may be made by any other person or organization on Azzarello's behalf, with respect to any thing which has happened up to the execution of this Agreement before any federal, state or local court administrative agency, including the EEOC and the DCR, against the Township, except if such waiver is prohibited by law. Should any charge or complaint be filed, Azzarello agrees that Azzarello will not accept any relief or financial recovery therefrom. Azzarello confirms that no such charge, complaint or action currently exists in any forum or form other than the Complaint and Workers Compensation actions. Azzarello hereby covenants not to file any charge, complaint or action in any forum or form against the Township based upon anything which is encompassed by the terms of this Agreement. Except as prohibited by law, in the event that any such charge, complaint or action is filed by Azzarello or any charge, complaint or action which has been previously filed by Azzarello and was represented to have been withdrawn, same shall be dismissed with prejudice upon presentation of this Agreement.

9. Liens. a. This settlement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Section 1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. Azzarello and Azzarello's counsel warrant that Azzarello is not a Medicare beneficiary as of the date of this Agreement. Because Azzarello is not a Medicare recipient as of the date of this Agreement, no conditional payments have been made by Medicare. Azzarello agrees that if any claims, suits or liens are asserted against him in connection with injuries or other losses, either under workers' compensation laws, by any provider of medical, dental or hospital services, or by the State of New Jersey, or any governmental body, including welfare boards, Azzarello will indemnify and hold the Township or its agents and its counsel harmless against such claims, suits or liens. Azzarello agrees to satisfy any liens against the proceeds of the settlement including, but not limited to outstanding medical bills, workers' compensation liens, child support liens, Medicare/Medicaid liens, etc., and agree to indemnify and otherwise hold harmless the Township from claims arising out of or in connection with said liens.

b. Azzarello agrees and represents that he will be responsible for the complete payment and discharge of any and all liens, subrogation claims and statutory rights of reimbursement, of any kind or type whatsoever, arising out of or in connection with any and all injuries and damages sustained by him or alleged to be sustained by him in the matter being released by this Agreement, including, but not limited to those physicians, hospitals and any and all other medical/health care providers, workers' compensation insurance, no fault insurers, health benefit insurers, federal, military hospital and veteran's benefits providers, Medicare, Medicaid and ERISA plan providers.

10. Attorney's Fees and Costs. Azzarello agrees that he will bear his own costs, expenses and attorney's fees which have been incurred in connection with the within matter and in connection with the negotiation and preparation of this Agreement and that no amounts other than the payment to be made pursuant to Paragraph 1 of this Agreement shall be sought by or owed to Azzarello or his attorneys by the Township in connection with this matter.

11. Actions Arising During Azzarello's Employment. The Township will defend, hold harmless and indemnify Azzarello in all actions which arose out of his employment with the Township with the exception of intentional wrongful acts which are as a matter of law outside the scope of his employment" This provision will include, but not be limited to, the action titled *Haney v. Township of Brick, et. al.*, docketed as OCN-L-1107-15.

12. Separation. As of the effective date of this Agreement, Azzarello will be separated from employment for unavailability of a position. The Township will not contest any application for unemployment benefits by Azzarello and will not appeal any determination in Azzarello's favor regarding same. If contacted by the Unemployment Division, the Township will give as a reason for termination lack of work, and will answer inquiries regarding same from the Unemployment Division that work was no longer available to Azzarello after his disability which was compensable under the provisions of the Workers' Compensation law.

13. Personal Belongings. Azzarello will be permitted to retrieve his personal belongings from the work site. A schedule of known personal belongings is attached as Exhibit A.

14. References. The Township will respond to all inquiries from potential employers with dates of service and positions held only.

15. Who is Bound. Azzarello and the Township are bound by this Agreement. Those who succeed to their rights and responsibilities, such as any successors, heirs, executors of Azzarello's estate, or Azzarello's personal representatives are also bound. This Agreement is made for the benefit of Azzarello and the Township, and all who succeed to their rights and responsibilities, such as any successors and/or assigns.

16. Severability. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid or unenforceable, the remaining provisions, or the application of such provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected. However, if the Release by Azzarello contained in this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, Azzarello agrees, promptly upon the request of the Township, to negotiate a new release that is valid and enforceable. In the absence of a valid, enforceable release by Azzarello, this Agreement shall be null and void and all payments made by the Township to the Azzarello under this Agreement

shall be promptly returned to the Township by Azzarello.

17. Entire Agreement. This Agreement, contains the sole and the entire agreement between Azzarello and the Township, and fully supersedes any and all prior agreements and understandings between Azzarello and the Township pertaining to the subject matter of the Agreement. Azzarello represents and acknowledges that he has not relied upon any representation or statement by the Township, or its counsel or representatives, with regard to the subject matter of this Agreement, which is not set forth in this Agreement. No other promises or agreements shall be binding unless in writing, signed by a representative of the Township and Azzarello, and expressly stated to be a modification of this Agreement.

18. BY SIGNING THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE, AZZARELLO STATES THAT:

- A. HE HAS READ THE SETTLEMENT AGREEMENT AND GENERAL RELEASE;
- B. HE HAS BEEN GIVEN AT LEAST 21 DAYS TO CONSIDER THE TERMS OF THIS RELEASE;
- C. HE UNDERSTANDS AND AGREES THAT THIS SETTLEMENT AGREEMENT SETTLES, BARS AND WAIVES ANY AND ALL CLAIMS THAT THEY, THEIR HEIRS, EXECUTORS, ADMINISTRATORS, FIDUCIARIES, SUCCESSORS AND ASSIGNS HAVE OR COULD POSSIBLY HAVE AGAINST THE TOWNSHIP AS OF THE DATE OF THE EXECUTION OF THIS AGREEMENT;
- D. AZZARELLO AGREES WITH EVERYTHING IN THE SETTLEMENT AGREEMENT AND GENERAL RELEASE;
- E. HIS ATTORNEY, RICHARD SHAKLEE, ESQ., NEGOTIATED THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE WITH HIS KNOWLEDGE AND CONSENT;
- F. HE CONSULTED WITH HIS ATTORNEY PRIOR TO EXECUTING THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE; AND
- G. HE HAS SIGNED THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE KNOWINGLY AND VOLUNTARILY.

Township of Brick

By: _____

Dated _____, 2016


WAYNE AZZARELLO

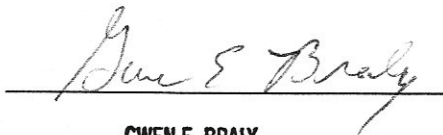
Dated: _____, 2016

4/4/16

STATE OF NEW JERSEY:

COUNTY OF *Monmouth*

I hereby state that Wayne Azzarello personally came before me and executed the within Settlement Agreement and General Release in my presence.



GWEN E. BRALY
A Notary Public of New Jersey
My Commission Expires June 19, 2019
Notary Public

Date: *April 4, 2016*

EXHIBIT A

Schedule of Personal Items belonging to Wayne Azzarello

Left in work vehicle:

- 1) Sirius satellite radio receiver docking station
- 2) Iphone car charger

Left at desk:

- 3) Personal pictures
- 4) Personal calendars (1 of Mr. Azzarello's children)
- 5) Personal pens/highlighters/markers
- 6) Sirius satellite radio receiver (Model- Sporster R)
- 7) Drawings from Mr. Azzarello's children