

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as the "Agreement") is entered into as of the _____ day of September, 2018, by and between **COLTS NECK TOWNSHIP**, with offices located at 124 Cedar Drive, Colts Neck, New Jersey 07722 (hereinafter "the Township" or "Employer"), and **KEVIN SAUTER**, (hereinafter "Sauter" or "Employee") (the Township and Employee are collectively referred to herein as the Parties, or individually as the Party).

WHEREAS, Sauter is an employee of the Township Police Department, in the position of Chief of Police; and

WHEREAS, on September 26, 2017, Sauter filed a Complaint with the Monmouth County Superior Court alleging that the Township violated various New Jersey laws; and

WHEREAS, the Township has denied all of Sauter's allegations; and

WHEREAS, without admitting any liability to Sauter, and in an effort to resolve the dispute the Township has offered Sauter payment, as described below, in exchange for Sauter's retirement and release of any and all claims against the Township; and

WHEREAS, Colts Neck Township and Kevin Sauter desire to resolve and reach a full and final resolution of all matters related to the employment relationship between them.

NOW THEREFORE, in consideration of the mutual promises of the Parties to this Agreement, the receipt and sufficiency is hereby acknowledged, the Parties agree as follows:

1. Sauter agrees to retire effective December 31, 2018 and release any and all claims, including those contained in the Complaint filed in the Monmouth County Superior Court under Docket No. MON-L-3122-16, against the Township resulting from his employment, as set forth in Paragraph 13 ("Release").
2. Effective December 31, 2018, Sauter shall retire from employment in good standing from Colts Neck Township Police Department. Sauter shall submit his application for retirement with an effective date of December 31, 2018. Said application for retirement shall be considered irrevocable regardless of the outcome of the decision by New Jersey Division of Pensions and Benefits.
3. Upon signing this Settlement Agreement, Sauter shall provide simultaneously an irrevocable letter of retirement effective December 31, 2018, which is attached hereto as **Exhibit A**, which is to be held in escrow by the Township's attorney until Sauter's attorney confirms receipt and disbursement of payment as set forth in paragraph 9. Regardless of the outcome of the decision by New Jersey Division of Pensions and Benefits for Sauter's retirement, the letter of retirement is irrevocable.
4. Upon retirement, Sauter shall not be afforded any other payments, benefits and/or compensation except as what is set forth in this Settlement Agreement.

5. The Township agrees to accept Sauter's retirement in good standing concomitant with the execution of this Agreement. Sauter agrees to complete all necessary paperwork with regard to this retirement.
6. Sauter will have over twenty-five (25) years of service as a law enforcement officer on December 31, 2018. Due to his length of service and his retirement in good standing, Sauter expects to receive a pension through the State of New Jersey. The Township shall fully cooperate with Sauter regarding his retirement application to be filed with the State of New Jersey, Division of Pensions, however, the Township makes no guarantees and/or promises regarding Sauter's pension as any such decisions are solely within the purview of the State of New Jersey, Division of Pensions. The Township agrees to timely file all necessary documents with the Pension Board to confirm that Sauter has been a police officer and employee of the Township for more than thirty-four (34) years and indicate that he is retiring in good standing after an honorable career. The documents to be filed include but, are not limited to, a Certificate of Service and Final Salary. The Certificate of Service and Final Salary shall be issue by the Township to Sauter at the time the Parties execute this Agreement. This Agreement is not contingent upon any pension determination.
7. On November 1, 2018 or seventy-two (72) hours after the Township lawfully approves this Agreement, whichever is the later date, Sauter shall return all Township equipment and/or property in the possession including his Township vehicle(s). At the time Sauter is placed on paid leave, the Township shall expunge from Sauter's personnel file the five (5) day discipline/suspension. Sauter will turn in his badge and police identification on December 31, 2018.
8. On November 1, 2018 or seventy-two (72) hours after the Township lawfully approves this Agreement, whichever is the later date, Sauter will be placed on paid leave until the December 31, 2018; the effective date of his retirement. While on paid leave, Sauter shall not perform any duties on behalf of the Township. At the time Sauter is placed on paid leave, the Township shall expunge from Sauter's personnel file the five (5) day discipline/suspension.
9. In consideration for Sauter's retirement and release of any and all claims against the Township, as set forth in Paragraph 13 ("Release"), the Township offers and Sauter accepts payment in the amount of five hundred thousand dollars (\$500,000.00) ("Payment"). The check will be sent to Sauter's attorneys, Sciarra & Catrambone, L.L.C. and the check will be made payable to Sciarra & Catrambone, L.L.C. Attorney Trust Account. The Township will provide Sauter's attorneys with the check within thirty (30) days of the Township's approval of this Agreement. This Payment shall be made in one lump sum without any withholdings following execution of this Agreement and will be accompanied by an IRS Form 1099 made out to Sciarra & Catrambone, L.L.C. Upon notice to Sauter's attorneys that the Township has formally voted to approve this Agreement, Sauter's attorneys will provide the Township with a W-9. Sauter hereby agrees that no representations have been made by the Township regarding the taxability or non-taxability of this settlement and Sauter hereby waives any and all claims against the Township in the event that any governmental authorities deem the settlement or any portion thereof to be taxable, and/or that said settlement proceeds should have been paid as W-2 income, and upon such

occurrence, Sauter and Sauter alone shall be responsible for payment of any and all taxes, interest, penalties and, and Sauter further agrees to indemnify and hold the Township harmless from any and all claims for the payment of any taxes, interest, penalties and/or other payroll deductions resulting from the manner in which the settlement is paid.

10. Contemporaneous with the execution of this Agreement, Sauter shall provide to the Township an executed Stipulation of Dismissal with Prejudice (attached hereto as **Exhibit B**) to be held in escrow by the Township until Sauter receives payment as put forth in Paragraph 9.
11. Sauter acknowledges and agrees that the Payment constitutes adequate consideration for his retirement and Release. Sauter further acknowledges and agrees that he shall be solely responsible for the payment of any attorney fees and expenses incurred by him and specifically acknowledges that he shall not be considered a prevailing party under any federal or state law or court rule and hereby releases any claims for attorney's fees or expenses.
12. This Agreement is entered into with the understanding that it is without precedent and shall not be referred to in any other case or matter between the Township or any employee of the Township.
13. **COMPLETE RELEASE AND COVENANT NOT TO SUE**

In consideration for the Payment as set forth in this Agreement, the Employee, his heirs, assigns and agents (hereinafter referred to collectively as "Sauter") voluntarily enters into this Agreement, and certifies that he has not been threatened or coerced into signing this Agreement, upon the terms which follow:

a. Sauter hereby releases, waives and discharges the Township, its affiliated departments, and its elected officials both past and present, officers, trustees, agents, employees, successors and assigns (hereinafter collectively referred to as the "Releasees") from each and every claim, demand, cause of action, obligation, damage, complaint, or action or writ of any kind, nature, character or description that Sauter had, now has, or may in the future have against the Releasees on account of or arising out of any matter or thing that has happened, developed or occurred prior to the date of this Agreement including, but not limited to, the employment of Sauter. This Complete Release includes, but is not limited to, any claim, demand, cause of action, obligation, claim for damages of any kind, complaint, expense, compensation, or action or writ of any kind, nature, character or description arising out of or under the Constitutions of the United States and/or the State of New Jersey, any Federal, State or municipal statute or ordinance and any other law (whether such be common law, decisional law or statutory law), rule, regulation, executive order or guideline, and any and all claims for attorney's fees and costs arising from the above acts including, but not limited to:

i. Any claim, cause of action, demand or complaint arising out of or under federal law, such as Title VII of the Civil Rights Act, 42 U.S.C. 2000e et seq. and equivalent State law, such as the New Jersey Law Against Discrimination

(NJLAD), which, among other things, prohibits discrimination in employment on the basis of an individual's race, creed, color, religion, sex, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, handicap, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States.

ii. Any claim, cause of action, demand or complaint arising out of or under the New Jersey Conscientious Employee Protection Act ("CEPA") (N.J.S.A. 34:19-1 et seq.), which, among other things, prohibits retaliation based on an employee engaging in protected conduct.

iii. Any federal claim, cause of action demand or complaint arising out of or under the Federal Title VII of the Civil Rights Act of 1964 (Title VII) or the Civil Rights Act of 1991, as amended, which, among other things, prohibit discrimination in employment on account of a person's race, color, religion, sex or national origin.

iv. Any claim, cause of action, demand or complaint arising out of or under the federal Worker Adjustment and Retraining Notification ("WARN") Act (29 U.S.C. § 2101 et seq.), and/or equivalent State law, such as the New Jersey Millville Dallas Airmotive Plant Job Loss Notification Act (commonly referred to as the NJ WARN) (N.J.S.A. 34:21-2 et seq.), which, among other things, requires employers to provide employees with advance notice of business closing or mass layoff from the employer.

v. Any claim, cause of action, demand or complaint arising out of or under the Federal Age Discrimination in Employment Act of 1967, as amended (ADEA), which among other things, prohibits discrimination in employment on account of a person's age.

vi. Any claim, cause of action, demand or complaint arising out of or under the Federal Americans with Disabilities Act (ADA), which, among other things, prohibits discrimination in employment on account of a person's disability or handicap.

vii. Any claim, cause of action, demand or complaint arising out of or under the Federal Family and Medical Leave Act (FMLA), and equivalent State law, which, among other things, entitles an employee to take reasonable leave for medical reasons for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition.

viii. Any claim, cause of action demand or complaint arising out of or under the Federal Rehabilitation Act of 1973, as amended, which, among other things, prohibits discrimination in employment by Federal contractors against individuals with disabilities.

ix. Any claim, cause of action, demand or complaint arising out of or under the Federal Employee Retirement Income Security Act of 1974, as amended

(ERISA), which among other things, regulates pension and welfare plans and prohibits interference with individual rights protected under that statute.

x. Any claim, cause of action, demand or complaint arising out of or under the Federal Older Workers Benefit Protection Act (OWBPA) which, among other things, amends provisions of ADEA and prohibits discrimination in employment and employment benefits on account of a person's age.

b. Sauter waives the right to any money damages with respect to any claim, charge or complaint of any nature with the New Jersey Division on Civil Rights and the U.S. Equal Employment Opportunity Commission (EEOC). Sauter acknowledges that he has not filed and shall not hereafter file any claim, charge or complaint of any nature with the National Labor Relations Bureau ("NLRB") or with any Federal, State or local court or agency against the Township or the Releasees. Notwithstanding the foregoing, Sauter hereby waives any and all rights to recover monetary damages in any charge, complaint, or lawsuit filed by him or by anyone else on his behalf based on events occurring which arose or existed on or before the date on which this Agreement is fully executed.

c. If either party violates any of the terms of this Settlement Agreement and Release, the violating party agrees that, in addition to any and all remedies available at law or equity, said party shall be responsible to pay all costs and expenses of enforcement, including reasonable attorney's fees.

14. MUTUAL NON-DISPARAGEMENT.

Sauter agrees that, in any communications with the press, other media or any other individual, he shall not criticize, ridicule or make any statement which disparages or is derogatory of the Township or its elected officials both past and present, employees, directors or senior officials. If Sauter is contacted regarding the settlement, Sauter or his attorneys on his behalf will only state: "It has been an extreme pleasure to serve Colts Neck as the Township's Chief of Police and he looks forward to moving onto the next chapter of his life." Likewise, the Township and its senior officials will not criticize, ridicule or make any statement which disparages or is derogatory of Sauter.

15. NON-DISCLOSURE AGREEMENT.

All parties shall not disclose, either directly or indirectly, in any manner whatsoever, any information regarding the existence of the terms or contents of this Settlement Agreement, to any third party, person or organization, including but not limited to, any governmental agency, members of the press and media, present and former officers, employees and agents of the Township and other members of the public. This paragraph shall not preclude the parties from discussing the existence or terms of this Settlement Agreement with governmental authorities who require such information, or pursuant to a subpoena duly issued by a court or agency within competent jurisdiction. Additionally, this paragraph shall not preclude the parties from providing copies of this Agreement pursuant to an order and/or request of the New Jersey Government Records Council (including but not limited to a valid request pursuant to the Open Public Records Act), New Jersey Division of Pensions and Benefits and/or Supreme Court. It shall not be

considered a breach of his obligation of confidentiality for Sauter to make disclosure of the terms of the Agreement to his attorney(s), immediate family members (who shall be expressly advised of, and also be bound by, the same requirement of confidentiality), or accountants in order to obtain private and confidential legal, tax, or financial advice.

16. REMEDIES FOR BREACH.

In the event of a breach or threatened breach by either party of any of the provisions of this Agreement, the parties hereby consent and agree that the non-breaching party shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction within the State of New Jersey, without the necessity of showing any actual damages, and without the necessity of posting any bond or other security. Any equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available. In addition, if there is a judicial determination that Sauter or the Township violated this Agreement in any way, then the violating party agrees to pay all remedies allowed by law.

17. CONSULTATION WITH ATTORNEY.

Sauter has had an opportunity to consult with his attorney with respect to this Agreement and has had an opportunity to review with his Attorney all of the terms and conditions of this Agreement prior to executing this Agreement.

18. COMPLETE AGREEMENT.

This Agreement, with its exhibits, constitutes the entire agreement between Sauter and the Township with respect to the subject matter and supersedes all prior agreements, understandings and/or dealings whether written or otherwise with respect to the same subject matter. There is no agreement on the part of the Township to do anything other than what is expressly stated in this Agreement. It is understood between and among all Parties hereto that the terms of this Agreement shall not have a precedential effect or constitute binding precedent.

19. MODIFICATION.

No modification or amendment of this Agreement will be enforceable unless it is in writing and signed by both the Township and Sauter.

20. SEVERABILITY.

Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term, or provision shall be deemed not part of this Agreement.

21. ATTESTATION.

Sauter represents and warrants that he has carefully read each and every provision of this Agreement and that he fully understands all of the terms and conditions contained in each provision of this Agreement. Sauter represents and warrants that he enters into this Agreement voluntarily, of his own free will, without any pressure or coercion from any person or entity including, but not limited to, the Township.

22. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of New Jersey.

23. VENUE.

Any controversies or disagreements arising out of, or relating to this Agreement or the breach thereof, shall be resolved in the Monmouth County Superior Court of New Jersey or the District Court of New Jersey.

24. REVOCATION.

Sauter may revoke this Agreement within seven calendar (7) days after the date this Agreement is signed by Sauter. This revocation must take the form of written notice by Sauter, which specifically indicates that he intends to revoke this Agreement. This revocation must be provided to the Township, c/o Matthew J. Giacobbe, Esq., Cleary Giacobbe Alfieri Jacobs, LLC, 169 Ramapo Valley Road, Upper Level - Suite 105, Oakland, New Jersey 07436. This seven (7) day revocation period may not be waived. In the event Sauter revokes his acceptance of this Agreement, any and all payments to Sauter from the Township made pursuant to this Agreement must be returned with the written letter of revocation.

25. REASONABLE PERIOD OF TIME.

Sauter agrees that he has been given a reasonable period of time of at least twenty-one (21) days within which to review and consider this Agreement prior to executing this Agreement, but that he may waive this twenty-one (21) day period by signing in the space provided at the end of this Agreement (See **Exhibit C** attached hereto).

26. PRECATORY PHRASES.

The precatory phrases ("whereas clauses") are not mere recitals, but are specifically agreed to by the Parties and are incorporated herein by reference.

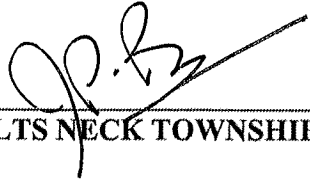
BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT EACH HAS READ THE TERMS OF THIS AGREEMENT, UNDERSTANDS THE TERMS OF THIS AGREEMENT AND INTENDS TO BE LEGALLY BOUND BY THIS AGREEMENT AND ITS PROVISIONS. ADDITIONALLY, THE PARTIES ARE SIGNING BELOW VOLUNTARILY AND WITHOUT THREAT OR COERCION OF ANY KIND.

IN WITNESS WHEREOF, and intending to be legally bound hereby, I, Kevin Sauter, executed the foregoing Agreement this ____ day of October, 2018.



KEVIN SAUTER

10/22/2018
Date



COLTS NECK TOWNSHIP

10/24/18
Date

EXHIBIT A

Dear Mayor Bartolomeo:

Effective December 31, 2018, I am retiring from my employment with Colts Neck Township Police Department as the Chief of Police in good standing. I understand that his retirement is not revocable.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kevin Sauter", is written over a horizontal line.

KEVIN SAUTER

DATED: 10/22/2018

Exhibit B

KEVIN SAUTER,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: MONMOUTH COUNTY
Plaintiff,	:	DOCKET NO. MON-L-3122-16
	:	
v.	:	Civil Action
	:	
TOWNSHIP OF COLTS NECK,	:	
	:	STIPULATION OF DISMISSAL WITH
Defendant.	:	PREJUDICE
	:	
	:	

It is stipulated and agreed by the attorneys for the respective parties that the above action be dismissed with prejudice and without costs to any of the parties.

By: _____

Sciarra & Catrambone, LLC
Attorneys for Plaintiff, Kevin Sauter

Dated: October __, 2018

By: _____

Attorneys for Defendant, Township of Colts Neck

Dated: October __, 2018

EXHIBIT C

WAIVER

By signing below, the undersigned hereby irrevocably elects to waive the 21-day period referred to in Paragraph 24 of this Agreement.

Date: 10/22/2018



KEVIN SAUTER