

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made by and among Plaintiff Kristen Durham ("Durham") and Defendants Township of Franklin and the Franklin Township Police Department (collectively, "Defendants"). Plaintiff and Defendants are collectively referred to herein as the "Parties."

BACKGROUND

WHEREAS, Durham is employed as a police officer at the Franklin Township Police Department with the rank of lieutenant; and

WHEREAS, on or about May 8, 2018, Durham filed a lawsuit against Defendants entitled Durham v. Township of Franklin, et als., in the Superior Court of New Jersey, Somerset County, Law Division (Docket No. SOM-L-00603-18) in which she claimed, *inter alia*, violations of the New Jersey Law Against Discrimination and the New Jersey Civil Rights Act (the "Litigation"); and

WHEREAS, Durham sought damages for lost wages and personal injuries; and

WHEREAS, Defendants have denied all allegations made by Durham; and

WHEREAS, Defendants underwent a cost-benefit analysis and determined that it was appropriate to resolve this matter at this stage of the Litigation based upon purely financial considerations; and

WHEREAS, the Parties have consulted with their respective attorneys prior to executing this Agreement and have had an adequate opportunity to consider the Agreement; and

WHEREAS, the Parties desire to settle with prejudice all claims, disputes or causes of action which may exist between them, including those which were or could have been asserted in the Litigation and represent there are no other actions pending;

NOW, THEREFORE, in mutual consideration of the termination of the Litigation and the further promises and covenants that hereafter follow, the Parties hereby agree to end, on the terms and conditions set forth below, all existing or potential disputes between them, whether currently known or unknown, which arose on or before the Effective Date of this Agreement:

TERMS

1. **Dismissal of Claims.** A Stipulation of Dismissal with Prejudice, in the form of Exhibit A attached hereto, will be submitted for entry by the Court with respect to the Litigation within 10 days after the receipt of the consideration payable to Durham by Defendants. The Parties agree to take all steps necessary to ensure entry of the Order and further agree that the Stipulation, coupled with this Agreement, will terminate the Litigation and all claims between the Parties with prejudice and without an award of costs or attorneys' fees to either.

2. **Mutual Release and Waiver.** In consideration for the payment and promises described in paragraphs 3 and 5, and elsewhere in this Agreement, the Parties to this Agreement fully release and forever discharge each other of and from any and all claims, actions, causes of action, back pay, front pay, contracts, agreements, compensation, pay, promises, charges, judgments, grievances, obligations, rights, demands, debts, sums of money, salaries, wages, benefits, physical injury, pain, suffering, emotional distress, compensatory damages, punitive damages, attorneys' fees, expenses, costs, losses liabilities, damages, or accountings of whatever nature, whether known or unknown, disclosed or undisclosed, asserted or unasserted, in law or equity, contract or tort or otherwise (collectively, "Claim" or "Claims"), through the Effective Date of this Agreement, including, but not limited to, any and all Claims of gender or sex discrimination, harassment, retaliation, and any and all tort Claims or contract Claims or Claims for general damages, and any and all Claims arising under, made, regarding, or involving: any

federal, state or local laws or under the common law; violations of any federal, state or local fair employment practices or civil rights laws or ordinances; Claims for personal injury, defamation, wrongful conduct, or wrongful discharge; the Civil Rights Acts of 1866 and 1871, as amended, 42 U.S.C. §1981; the Civil Rights Act of 1964, as amended, including Title VII; the Americans with Disabilities Act; the Age Discrimination in Employment Act, as amended; the Older Workers Benefit Protection Act; the Employee Retirement Income Security Act; the Fair Labor Standards Act; the Rehabilitation Act of 1973; Executive Order 11246; the federal Family and Medical Leave Act; state Family and Medical Leave Acts; Claims alleging retaliation under the Worker's Compensation Act; the Unemployment Compensation Law; the National Labor Relations Act, as amended; any and all state wage payment and collection laws; Pickering's policies, practices, collective bargaining agreements, contracts, benefits or understandings; any Claims arising out of any relationship, including employment relationship, between or among Durham and Defendants predating the Effective Date of this Agreement; any and all grievances, or demands for mediation or arbitration, or Claims or demands under Defendants' policies and procedures; and any and all Claims asserted, or which could have been asserted, in the Litigation referenced above, including any Claims against any current or former agents, officials or employees of the Township of Franklin.

The Parties to this Agreement hereby specifically waive, release and give up all Claims and rights, as described in the preceding paragraph, whether now known or unknown, which they have or may have, against the other, occurring before the Effective Date of this Agreement. The Parties understand that they are waiving, releasing and giving up all Claims and rights that they know about and all Claims and rights that they may not know about. This release does not apply

to Claims based on facts occurring after the Effective Date of this Agreement or claims against the Township of Franklin for failure to perform any of their obligations under this Agreement

3. **Settlement Payments.** In exchange for and in consideration of Durham's promises as set forth above and below, and in full and complete settlement, release and discharge of all of the actual and/or potential claims described above, including those asserted in the Litigation, Defendants agree to tender the sum of Three Hundred Thousand Dollars (\$300,000.00) to Durham. This amount will be paid by a check made payable to the Law Offices of Gina Mendola Longarzo, LLC in Trust for Kristen Durham in full and final satisfaction of alleged tort damages attributable to purported physical illness. The amount set forth on the check described above will not be subject to any withholdings and will be on a 1099 form issued to the Law Offices of Gina Mendola Longarzo, LLC. The payment shall be made within forty-five (45) days of the date upon which this Agreement is ratified by the Township of Franklin.

4. **Continued Employment.** The parties agree that Durham will remain on a paid personal administrative leave until June 1, 2021 or the month following the date on which she achieves 25 years of service credit in the New Jersey Division of Pensions, Police and Firemen's Retirement System, whichever occurs later, at which time she agrees to retire in accordance with paragraph 8, below; however, should Durham not have 25 years of service credit as of June 1, 2021, then Durham shall be required to use her accumulated personal, sick and vacation time to obtain her 25 years of service credit for a period not to exceed 30 days. During this period, Durham shall be entitled to all contractual benefits except that she shall not be entitled to accrue any vacation or personal days. As an active employee, Durham will be entitled to health benefits, subject to the appropriate contribution. On retirement and because Durham has achieved 15 years of PFRS credit as of June 28, 2011, she will not be required to contribute any

amount to the cost of health care benefits upon retirement as set forth in the Collective Negotiations Agreement between the Town and the Superior Officers Association.

During this period, Durham shall be subject to recall at all times to handle assignments directed at the sole discretion of the Township and completed in a manner directed by the Township. Durham may attend law enforcement training at her cost and shall notify the Department of all such completed training. Durham agrees that she will not contact, request, apply for or solicit work assignments from any Town or Police Department officials or employees at any time. Durham further agrees that she will not apply for any promotion in the event one should occur during this period. Durham understands that if she acts contrary to these provisions the Township will have the right to immediately terminate her employment.

5. Taxability of Settlement Payments. Durham represents and warrants that neither Defendants nor counsel to the Parties in the Litigation provided any advice regarding the taxability of the settlement amount paid pursuant to Paragraph 3. Durham acknowledges and agrees that she is solely responsible for payment of any and all federal, state and local taxes which may be due from the settlement sum in the event that it is determined that any taxes are owed based on the taxation laws in effect on the date of execution of this Agreement or become due at any time in the future because of a change to the laws governing the taxation of such settlement proceeds. Durham further acknowledges and agrees to hold harmless Defendants and counsel to the Parties in the Litigation in the event that any federal, state or local taxing authority asserts any claim for unpaid taxes, failure to withhold taxes, or interest based upon the Township of Franklin's payment of these sums to Durham.

6. **Reimbursement of Time.** Defendants shall restore to Durham 128 hours of sick time and 384 hours of vacation time to Durham's accumulated time bank within forty-five (45) days of the date upon which this Agreement is ratified by the Township of Franklin.

7. **Approval by Township of Franklin.** Durham understands that this Agreement is subject to final approval by the Township of Franklin and is without prejudice to any Party if the Agreement is not ratified. Durham is not bound by the Agreement until it has been ratified by the Township of Franklin. The Township of Franklin shall vote on approval of the Agreement at its next regularly scheduled meeting on July 9, 2019, and payment shall be made within forty-five (45) days of the approval by the Township of Franklin. Upon ratification, the Township of Franklin shall cause a copy of the relevant resolution to be forwarded to Durham.

8. **Retirement.** Durham covenants and agrees that, as has always been her intent, she shall retire no later than June 1, 2021 or the month following the date on which she achieves 25 years of service credit in the New Jersey Division of Pensions, Police and Firemen's Retirement System, whichever occurs later. Durham shall submit all documents necessary to make her retirement effective on that date. Durham shall be entitled to all contractual benefits upon her retirement in good standing. The Township of Franklin shall submit the Certification of Service and Final Salary on a timely basis and shall affirm that Durham is an employee in active service and that there are no pending, active or contemplated disciplinary actions against Durham by the Township. The Township, however, makes no representation whatsoever regarding the amount of pension Durham will be entitled to in retirement. Upon retirement, the Township of Franklin will provide Durham with a retirement badge and identification card and will support any application by Durham to carry a firearm in retirement.

9. **No Other Claims.** Durham represents there are no pending lawsuits, charges or other claims of any nature whatsoever by her against Defendants in any state or federal court, agency or other administrative body, other than this Litigation. Defendants likewise represent there are no pending lawsuits, charges or other claims of any nature whatsoever by them against Durham in any state or federal court, agency or other administrative body, including any disciplinary actions and/or Internal Affairs complaints or investigations.

10. **Mutual Non-Disparagement.** The Parties shall not take any actions or make or solicit any statements (written or oral), or cause others to make or solicit any statements (written or oral) which in any way disparage, criticize or otherwise reflect negatively or adversely upon any Party (unless such statements are made under oath at a deposition or at trial) or which would otherwise encourage any adverse action against the Parties. **Although the Parties may have agreed to keep the settlement and underlying facts confidential, such a provision is unenforceable against the Township of Franklin if Durham publicly reveals sufficient details of the claim so that the Township of Franklin is reasonably identifiable.**

11. **Neutral Job Reference.** In the event Defendants are contacted by any person or entity seeking a professional, personal, or character reference related to Durham, all parties agree that Defendants shall advise such person or entity that it is the policy of the Township of Franklin to solely provide information verifying employment, dates, and title and will advise such person or entity that Durham is employed/retired in good standing. Defendants shall not retaliate against or adversely affect Durham's prospective employment, or take any action that may adversely affect Durham's efforts to obtain employment. Defendants shall not refer in any way to the Litigation when communicating with prospective reference-seekers seeking a reference for Durham.

10. **No Admission of Liability.** This Agreement is not, and shall not in any way be considered or construed as an admission of liability by Defendants. Additionally, this Agreement is not, and shall not in any way be considered or construed as an admission of liability or wrongdoing by Durham.

11. **Child Support Search.** Durham represents that, prior to the execution of this Agreement she will have, through counsel, provided Defendants, through their counsel, with a certification and child support judgment search compliant with N.J.S.A. 2A:17-56.23b and agrees that the settlement proceeds described in this Agreement shall be paid in accordance with N.J.S.A. 2A:17-56.23b and/or other applicable law.

12. **Breach of Agreement/Attorneys' Fees.** In the event that either Party brings an action to enforce the terms of this Agreement or as a result of a breach of the Agreement by the opposite party, in addition to any remedies available at law or in equity, the non-breaching Party shall be entitled to an award of reasonable attorneys' fees and costs incurred in connection with that enforcement or breach action should such a breach be proven.

13. **Enforceability and Severability.** Should any provisions of this Agreement be held to be illegal, void or unenforceable, such provision shall be of no force or effect. However, the illegality or unenforceability of any such provision shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement.

14. **Drafting and Negotiation by Counsel.** The Parties represent that they were represented by counsel throughout the negotiation and settlement of the Litigation, and that counsel participated in and negotiated the language contained in this Agreement. The Parties further agree that the terms of this Agreement, having been negotiated at arms' length by all

Parties, shall not be construed against the drafter in any respect. In the event an ambiguity exists in any provision of this Agreement, such ambiguity shall not be construed against the drafter.

15. **No Modification.** No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and signed by all Parties. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same, similar or different nature.

16. **Entire Agreement.** This Agreement contains the entire agreement between the Parties concerning the matters set forth in this document save for the terms of a letter from the Department indicating that any pending or potential Internal Affairs cases against Lt. Durham are hereby administratively closed, not sustained and dismissed with prejudice and that there are no pending or contemplated Internal Affairs investigations and charges at this time.

17. **Counterparts.** This Agreement may be executed and delivered in two or more counterparts, each of which when so executed and delivered shall be an original.

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

19. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the last Party has executed this Agreement.

20. **OWBPA Rights.** Durham understands that, pursuant to the Older Workers Benefit Protection Act of 1990, she is entitled to consult with an attorney and to have twenty-one (21) days within which to fully consider this Agreement. Durham shall have seven (7) days following her signing of this Agreement to revoke this Agreement, which shall be done in writing. Durham may not waive this seven (7) day revocation period, but she may waive the twenty-one (21) day period in which to consider the Agreement. Any revocation within the

seven (7) day period must be submitted, in writing, and state: "I hereby revoke my acceptance of our Agreement and General Release." The revocation must be personally delivered or mailed to Kathryn V. Hatfield, Esq., Weiner Law Group, LLC, 629 Parsippany Road, P.O. Box 0438, Parsippany, New Jersey 07054 and be postmarked within seven (7) calendar days of execution of this Agreement.

21. Plaintiff's Acknowledgments as to Review of Agreement. Durham acknowledges that she has been advised to seek the guidance and advice of legal counsel in considering the terms and effect of this Agreement, and that she has had a full and fair opportunity to consult with her attorney of record prior to executing this Agreement. Durham further acknowledges that she is not suffering from any physical or mental impairment, and is not taking any medication, that would affect in any way her ability to understand fully this Agreement and her ability to knowingly and voluntarily enter into this Agreement. Durham further acknowledges that she has carefully read it, that she understands completely its contents, and that she has executed the same knowingly and voluntarily and of her own free will, act and deed.

22. Binding on Successors. This Agreement is binding on and will inure to the benefit of Durham and Defendants, and their respective successors, assigns, heirs, executors and representatives. Without limiting the foregoing, in the event of Durham's death, the payments referred to in Paragraph 3 and 5 of this Agreement shall be made to her estate.

23. Authorization. Each Party hereby represents and warrants that the individual signing this Agreement is duly authorized to enter into and execute this Agreement and to legally bind such Party to it.

IN WITNESS WHEREOF, with the intent to be legally bound, the Parties have set their hands and seal on the day and date first written above.

Witness: Kaffakurrie

KRISTEN DURHAM

Kristen Durham

Dated: 1/22/2020

TOWNSHIP OF FRANKLIN

Witness: Ann Marie McCarty

Raven E. Williams

By: Raven E. Williams

Dated: 08.01.2020

EXHIBIT A

SHIP OF FRANKLIN, FRANKLIN SHIP POLICE DEPARTMENT, AND AND JANE DOES 1-10, Defendants.	Civil Action STIPULATION OF DISMISSAL
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partly

LAW OFFICES OF GINA MENDOLA
LONGARZO, LLC
Attorneys for Plaintiff Kristen Durham

WEINER LAW GROUP, LLC
Attorneys for Defendants Township of
Franklin, Franklin Township Police
Department

KARA A. MACKENZIE, ESQ.

DATED:

KATHRYN V. HATFIELD, ESQ.

DATED: