

**TOWN OF WEST NEW YORK
COUNTY OF HUDSON, STATE OF NEW JERSEY**

**RESOLUTION #R20-116
RE: AUTHORIZING SETTLEMENT OF PENDING LITIGATION**

WHEREAS, the Town of West New York (the "Town") is a party to a pending Civil Action docketed and captioned Marcos Garciga v. Town of West New York, et als. HUD-L-2311-16 (the "Litigation"); and,

WHEREAS, after participating in significant pre-trial discovery, dispositive motion practice, and appellate review, the Parties' in good faith endeavored to amicably resolve all disputes, claims, issues, controversies and liabilities between and among them that were or could have been asserted in the Litigation; and,

WHEREAS, the Town is desirous of resolving the Litigation by mitigating any potential liability and settling the subject Litigation in exchange for a complete release for the sum total of ONE HUNDRED AND THIRTY THOUSAND DOLLARS (\$130,000.00) (USD), without incurring the additional costs, hardships, and burdens associated with protracted litigation, and ending any perception of an alleged culture of political retaliation and harassment that may or may not have historically clouded the Town by executing a dutifully reviewed and negotiated settlement agreement; and,

NOW THEREFORE BE IT RESOLVED, that the Mayor and Board of Commissioners of the Town of West New York do hereby accept that the aforesaid recitals are incorporated herein as if set forth at length.

BE IT FURTHER RESOLVED, that the Mayor and Board of Commissioners of the Town of West New York do hereby authorize the settlement of the Litigation pursuant to the terms negotiated by Special Litigation Counsel.

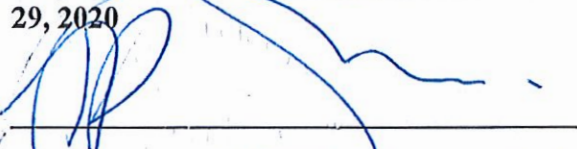
BE IT FURTHER RESOLVED, that the Mayor and Board of Commissioners of the Town of West New York hereby authorize the Mayor, Municipal Administrator, and/or Municipal Clerk or Deputy Municipal Clerk to execute a Settlement Agreement and Release resolving the Litigation, with such changes as Corporation Counsel and Labor Counsel determine to be necessary to effectuate the purposes of this Resolution.

BE IT FURTHER RESOLVED, that the Mayor and Board of Commissioners of the Town of West New York do hereby authorize that the Mayor, Municipal Administrator, Deputy Municipal Administrator, Municipal Clerk, and/or Deputy Municipal Clerk and any other necessary official, officer or employee of the Town be and they are hereby permitted to execute any and all documents and to take any and all actions necessary to complete and realize the intent and purpose of this Resolution, including but not limited to, the execution of a Settlement Agreement and General release.

BE IT FURTHER RESOLVED, that the Mayor and Board of Commissioners of the Town of West New York do hereby direct that a copy of a fully executed Settlement Agreement and General Release shall be kept on file by the Municipal Clerk.

Adopted: April 29, 2020

I, Adelinny Plaza, Deputy Town Clerk, of the Town of West New York, County of Hudson, do hereby certify the foregoing to be a true and correct copy of the above resolution adopted by the Mayor and Board of Commissioners of the Town of West New York at a meeting held on April 29, 2020



Adelinny Plaza, RMC, Deputy Town Clerk

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE is entered into this 5th day of May, 2020 (the "Agreement") by and between plaintiff MARCOS GARCIGA ("PLAINTIFF") and defendants TOWN OF WEST NEW YORK, FELIX ROQUE and CARIDAD RODRIGUEZ (hereinafter, "WEST NEW YORK DEFENDANTS"; collectively, the "PARTIES").

WITNESSETH

WHEREAS, Marcos Garciga is an individual residing in Bergen County, New Jersey, and is a police officer with the rank of Lieutenant currently employed by the West New York Police Department; and

WHEREAS, the Town of West New York is a municipality of the State of New Jersey in the County of Hudson, established in accordance with N.J.S.A. 40:72-2 et seq.; and

WHEREAS, Felix Roque is an individual residing in the State of New Jersey, who formerly served as the Mayor of the Town of West New York; and

WHEREAS, Caridad Rodriguez is an individual residing in the State of New Jersey, who formerly served as the Town of West New York's Commissioner of Public Safety pursuant to N.J.S.A. 40:72-4; and

WHEREAS, on June 2, 2016, PLAINTIFF filed a Complaint in the Superior Court of New Jersey, Law Division, Hudson County against the WEST NEW YORK DEFENDANTS, alleging violations of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 et seq. ("NJRCA") and the New Jersey Racketeer Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-2(c) et seq. ("NJRICO"), as set forth in the Complaint in the matter of Marcos Garciga v. Town of West New York, et al. (Docket No. HUD-L-2311-16) (the "Litigation"); and

WHEREAS, the parties wish to amicably resolve all disputes, claims, issues, controversies and liabilities between and among them that were or could have been asserted in the Litigation.

NOW, THEREFORE, in consideration of the mutual promises, releases and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **No Adjudication of Claims; No Admission of Liability.** This Agreement shall not constitute an adjudication or finding on the merits of any claim asserted in the present litigation and shall not be construed as an admission or acknowledgment of any wrongdoing or liability on the part of any party.

2. **Who Is Bound.** The PARTIES are bound by this Agreement and each of its provisions, including anyone who succeeds to their rights and responsibilities. This Agreement is made for the benefit of all parties hereto and all who succeed to their rights and responsibilities, and expressly includes their officials, employees, agents, attorneys, successors and assigns.

3. **Compensation.** Subject to the provisions of Paragraph 4 of this Agreement, within ninety (90) days from the date of execution, the WEST NEW YORK DEFENDANTS shall collectively pay to PLAINTIFF the total sum of One Hundred Thirty Thousand (\$130,000.00) (the "Settlement Proceeds"), in a check or wire transfer to the attention of Marcos Garciga, c/o Caruso, Smith, Picini, P.C. Attorney Trust Account, 60 Route 46 E., Fairfield, New Jersey, 07004.

Counsel for PLAINTIFF shall assume sole responsibility for distributing the Settlement Proceeds to PLAINTIFF and any and all individuals or entities having a claim, lien or entitlement to such Settlement Proceeds. PLAINTIFF shall indemnify and save harmless the WEST NEW YORK DEFENDANTS against any claim, lien, or action brought by any third-party with respect to the Settlement Proceeds. PLAINTIFF and his attorney agree to this arrangement for payment and acknowledge that transmittal of a check in the above-specified amounts to counsel shall constitute full performance of WEST NEW YORK DEFENDANTS' settlement obligations under this Agreement. PLAINTIFF agrees not to seek any other award, attorneys' fees, relief or payment of any kind other than that which is expressly set forth in this Agreement. WEST NEW YORK DEFENDANTS shall be solely and individually responsible for payment of the Settlement Proceeds. In the event of a default by any other defendants to the Litigation, there shall not be joint and several liability attributable to any other party.

4. Additional Approvals and Conditions.

a. This Agreement, and the performance of the WEST NEW YORK DEFENDANTS' obligations hereunder, is expressly subject to approval by majority vote of the Board of Commissioners of the Town of West New York, in a duly-adopted resolution, and at a duly-noticed public meeting.

b. This Agreement, and the performance of the WEST NEW YORK DEFENDANTS' obligations hereunder, shall be further conditioned upon PLAINTIFF releasing any and all claims against the WEST NEW YORK DEFENDANTS in connection with the underlying allegations as set forth in the Complaint and Litigation.

If the aforementioned provisions of Paragraph 4 are not satisfied, this Agreement shall be rendered null and void.

5. **Dismissal of All Claims.** Promptly after the execution of this Agreement by the parties, counsel for each party shall execute and cause to be filed in the Superior Court of New Jersey, Law Division, Hudson County, a Stipulation of Dismissal With Prejudice in the form annexed hereto as **Exhibit A**. Each party agrees to dismiss with prejudice all claims that they have asserted or could have asserted against the other in the Litigation. The filing of the Stipulation of Dismissal With Prejudice shall be a condition precedent for the effectuation of all other terms of this Agreement.

6. **General Release.** PLAINTIFF acknowledges that he is currently employed as a Lieutenant with the West New York Police Department, and that no representations, express or implied, are made by the West New York Defendants with respect to Plaintiffs' future eligibility for, or receipt of any further promotion. Plaintiff releases any claim with respect to the validity of, and the promotional decisions arising out of the current, but soon to expire certified promotional list. Plaintiff acknowledges that any future promotions will require the administration of a promotional examination, sufficient placement on and eligibility for, and certification of a new promotional list. Nothing herein shall preclude Plaintiff from being eligible for or receiving such promotion provided that the appropriate civil service and administrative requirements are met under applicable law, but neither shall the West New York Defendants be obligated to conduct any such promotional process, certify a promotional list at any particular time, or grant any such promotion except insofar as may be warranted in their sole and absolute discretion.

In settlement of this matter and in consideration of the Settlement Proceeds set forth in Paragraph 3 above, PLAINTIFF hereby releases and forever discharges all named defendants, TOWN OF WEST NEW YORK, FELIX ROQUE and CARIDAD RODRIGUEZ, along with

their past, present / future officers, officials, commissioners, administrators, directors, attorneys, employees, insurers, agents, and their respective successors and assigns, jointly and severally, from any and all actions, claims, complaints, causes of action, lawsuits or claims of any kind, known or unknown, asserted or unasserted, which PLAINTIFF, his wife, heirs, agents, executors, successors or assigns ever had, now have or hereafter may have against them arising out of the present Litigation, and any matter, occurrence, omission, or event existing or occurring prior to PLAINTIFF'S execution of this Agreement, including, without limitation, claims:

- a. relating to or arising out of PLAINTIFF'S employment with the West New York Police Department, his promotional status and his ranking on the current certified promotional list for the rank of Captain;
- b. which were asserted, actually asserted or which could have been asserted in the present litigation;
- c. relating to or arising out of free speech retaliation, discrimination, harassment, or retaliation based on political affiliation, age, sex, gender, race, religion, color, creed, disability, handicap, citizenship, national origin, ancestry, sexual orientation, pregnancy, veteran's status, marital status, familial status, domestic partnership status, civil union status, or any other factor protected by federal, state or local law (such as Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, 42 U.S.C. § 1981a, the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq., and/or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.);
- d. relating to or arising out of the New Jersey Racketeer Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-2(c) et seq. ("NJRICO");
- e. relating to or arising out of the Civil Service Act, N.J.S.A. 11A:1-1 et seq.;
- f. relating to or arising out of the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., or any implementing rules and regulations;
- g. relating to or arising out of the New Jersey Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.; or any implementing rules and regulations;
- h. relating to or arising out of the Fair Credit Reporting Act, 15 U.S.C. § 1581 et seq.;
- i. relating to or arising out of 42 U.S.C. § 1981, 1983 or 1985;

- j. relating to or arising out of the Health Insurance Portability and Accountability Act, P.L. 104-191;
- k. relating to or arising out of the New Jersey Worker Freedom From Employer Intimidation Act, N.J.S.A. 34:19-9;
- l. based upon any contract or implied contract;
- m. relating to or arising out of any provision of any other law, constitution, regulation, ordinance, decision, common or statutory, of the United States, New Jersey or any other state, city, county, or municipality;
- n. for attorneys' fees, costs or expenses, including any such attorneys' fees, costs or expenses incurred by PLAINTIFF in any criminal, administrative, quasi-criminal or other proceeding arising out of the course of, or involving any act or omission relating to PLAINTIFF'S employment with the West New York Police Department; and/or
- o. based upon any other statutory or common law, now existing or hereinafter recognized, including, but not limited to violations of public policy, tort, privacy, defamation, intentional infliction of emotional distress, negligence, contract, whistleblower laws, promissory estoppel or equitable estoppel.

7. **Voluntary Agreement.** PLAINTIFF hereby acknowledges that he is signing this Agreement voluntarily of his own free will and not under duress or coercion of any kind. PLAINTIFF understands and agrees that he knowingly and voluntarily has decided to enter into this Agreement, and release any and all potential claims against the WEST NEW YORK DEFENDANTS after thoroughly reviewing this Agreement with his attorney.

8. **Confidentiality.** The terms of this Agreement including, but not limited to, any facts surrounding PLAINTIFF'S employment with the West New York Police Department and the present Litigation, are confidential and shall not be disclosed by either party to any persons or entities except as provided below. The parties mutually agree that the parties and their attorneys or representatives shall not affirmatively disclose, publish, publicize or disseminate, or cause to be disclosed, published or disseminated, in any manner, information relating to the

contents of this Agreement or the discussions or events surrounding it, to any third party, including, but not limited to, the news and communications media or any agents thereof (and the parties represent that they have not made any such disclosure to the news and communications media prior to the execution of the Agreement), excepting such disclosure that PLAINTIFF may make to his spouse, or which the parties may have made to their attorneys, auditors or tax planners, representatives of the New Jersey Tax Court, or any disclosure made in compliance with a court order or any state or federal law, provided that if either party is served with or otherwise receives notice of any such court order, or if either party believes such disclosure is required by state or federal law, the receiving party shall promptly notify the other's counsel in writing so that an opportunity may be afforded to oppose same prior to disclosure. Notwithstanding the foregoing sentence, for purposes of seeking future employment, nothing in this Agreement shall preclude PLAINTIFF from discussing, publishing or otherwise disclosing specific information about the work that he performed for any of the WEST NEW YORK DEFENDANTS, except that PLAINTIFF agrees that he shall not disclose the existence of and the factual circumstances leading to the present litigation.

Following the dismissal of the present litigation, the WEST NEW YORK DEFENDANTS may disclose the terms of this Agreement to the extent required by the laws of the State of New Jersey, including, but not limited to, the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

9. **Non-Disparagement.** The parties mutually agree not to make any disparaging statements concerning each other, or to defame each other in any manner to any person or entity. The parties agree not to authorize any person or entity to make any disparaging statements about each other or to any person or entity. Neither PLAINTIFF nor the WEST NEW YORK

DEFENDANTS shall refer to themselves or to the other party as the winning or losing party regarding the Litigation. Nothing herein shall be interpreted to restrict or inhibit the parties' right and obligation: (i) to testify truthfully in any forum; and (ii) to cooperate fully in any investigation by a governmental agency.

10. **No Claims Permitted/Covenant Not to Sue.** To the fullest extent permitted by law, PLAINTIFF covenants and agrees that he will not commence, encourage, facilitate or participate as a party to any action or proceeding for damages, reinstatement, injunctive or any other type of relief against releasees, in any state, federal or local court or before any administrative agency relating to his employment, based upon any act, event or omission occurring before the effective date of this Agreement.

PLAINTIFF confirms that no EEOC charge, complaint and/or action personal to him exists in any forum or form relating to this Litigation or his employment with the West New York Police Department.

PLAINTIFF also covenants not to file any charge, complaint or action in any forum or form against releasees 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 PLAINTIFF, it shall be dismissed with prejudice upon presentation of this Agreement, and PLAINTIFF shall reimburse the WEST NEW YORK DEFENDANTS for the costs, including attorneys' fees, of defending any such action.

11. **No Cooperation/Participation.** PLAINTIFF covenants and agrees that he will not voluntarily assist, or provide information, or provide advice or counsel to, or otherwise cooperate with, or assist in any manner, any entity or person, including, but not limited to, any employee or former employee of releasees, asserting or seeking to assert any cause of action,

charge or any claim whatsoever against the WEST NEW YORK DEFENDANTS, regarding the subject matter of any such cause of action, charge or claim, unless compelled to do so by force of law or subpoena or unless such assistance is in connection with an investigation, proceeding or inquiry received from an agency of the State of New Jersey or United States government, provided that the WEST NEW YORK DEFENDANTS are provided with notice, and an opportunity to respond, as set forth below, but only to the extent consistent with applicable law. Nothing herein shall be construed as requiring PLAINTIFF to provide notice to the WEST NEW YORK DEFENDANTS of any investigation, proceeding or inquiry initiated by an agency of the State of New Jersey or the United States Government, unless such disclosure is expressly authorized by such agency or governmental entity.

PLAINTIFF further agrees that in connection with any action at law, proceeding in equity, or in any administrative proceeding commenced by any such person or entity against releasees, he will not participate as a witness or attempt to offer any evidence against releasees, concerning any act or omission by releasees, unless compelled to do so by force of law or subpoena, provided that if PLAINTIFF is served with or receives notice of any such subpoena or if he believes such participation or offer of evidence is required by any state or federal law, he shall immediately provide written notice in accordance with Paragraph 24 of this Agreement, so that the WEST NEW YORK DEFENDANTS may be afforded the opportunity to oppose same, prior to any such participation and/or offer of evidence.

12. No Other Proceedings. PLAINTIFF represents that there are no pending or contemplated lawsuits, charges, administrative proceedings, criminal complaints or other claims of any nature whatsoever against any of the WEST NEW YORK DEFENDANTS in any state or federal court or before any agency or other administrative body.

13. **No Claims Permitted/Covenant Not to Sue.** To the fullest extent permitted by law, PLAINTIFF covenants and agrees that he will not commence, encourage, facilitate or participate in any action or proceeding for damages, reinstatement, injunctive or any other type of relief against the WEST NEW YORK DEFENDANTS, in any state, federal or local court or before any administrative agency relating to his employment, based upon any act, event or omission occurring before the effective date of this Agreement. Except as prohibited by law, in the event that any charge, complaint or action is filed by PLAINTIFF, it shall be dismissed with prejudice upon presentation of this Agreement, and PLAINTIFF shall reimburse releasees for the costs, including attorneys' fees, of defending any such action.

14. **No Cooperation/Participation.** PLAINTIFF covenants and agrees that he will not voluntarily assist, or provide information, or provide advice or counsel to, or otherwise cooperate with, or assist in any manner, any entity or person, including, but not limited to, any employee or former employee of the WEST NEW YORK DEFENDANTS, asserting or seeking to assert any cause of action, charge or any claim whatsoever against the WEST NEW YORK DEFENDANTS, unless compelled to do so by force of law or subpoena or unless such assistance is in connection with an investigation or proceeding conducted by an agency of the State of New Jersey or United States government, provided that the WEST NEW YORK DEFENDANTS are provided with notice, as set forth in Paragraph 24.

15. **Prospective Employers/Personnel File.** If any prospective employer of PLAINTIFF makes a request to the WEST NEW YORK DEFENDANTS for a reference concerning PLAINTIFF, WEST NEW YORK DEFENDANTS will respond to the request by providing only the dates of PLAINTIFF'S affiliation with the West New York Police Department and position(s) held.

16. **Entire Agreement.** This Agreement contains the entire agreement between the parties on this subject matter, and all prior promises, inducements, agreements, statements, representations and negotiations are superseded by this Agreement. No amendments or additions to this Agreement shall be binding unless in writing and signed by all parties.

17. **Authority to Bind.** Each party represents that it has the requisite power, authority and authorization to execute and deliver this Agreement and to perform and carry out all covenants and obligations arising hereunder.

18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties who are signatory hereto and their respective successors and assigns.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all such counterparts shall together constitute but one and the same instrument. An electronic facsimile or photocopy of this Agreement or any signature hereon shall be deemed an original.

20. **Severability.** In the event that any one or more provisions of this Agreement shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect any of the remaining legal and enforceable provisions hereof, which shall be construed as if such illegal or unenforceable provisions had not been included.

21. **Governing Law.** The terms of this Agreement, including the rights, obligations and liabilities arising hereunder, shall be governed by, construed, interpreted and enforced in accordance with, the laws of the State of New Jersey without regard to choice of law principles. The Superior Court of New Jersey, Law Division, Hudson County shall have exclusive jurisdiction in the event of any dispute under this Agreement.

22. **Construction.** Each party agrees that it has reviewed this Agreement with legal counsel of its choice and, accordingly, the normal rules of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. The parties also agree that the terms of this Agreement have been read and explained to them by their attorneys, and that they are fully understood and voluntarily accepted.

23. **Recitals.** The parties agree that the recitals set forth in this Agreement do not constitute part of the Agreement and are not admissions of the parties hereto.

24. **Notices.** All notices required or made under this Agreement shall be validly made, given or rendered if sent by hand delivery, or by certified or registered mail, or if sent by facsimile or email with a confirmation copy sent by regular first-class mail, addressed to all of the WEST NEW YORK DEFENDANTS' attorneys, as set forth below:

Peter C. LaGreca, Esq.
Caruso, Smith, Picini, P.C.
60 Route 46 E.
Fairfield, NJ 07004

Attorneys for plaintiff Marcos Garciga

Thomas A. Abbate, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
61 S. Paramus Road, Suite 250
Paramus, NJ 07652

*Attorneys for defendants Town of West New York,
Felix Roque and Caridad Rodriguez*

25. **Further Assurances.** The parties agree to execute and deliver all documents and instruments and to perform such additional acts as the other parties may reasonably request, or as may be necessary or appropriate to effectuate, consummate, or perform any of the terms, provisions or conditions of this Agreement, provided, however, that such actions do not materially alter, and/or

are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to effectuate the intent hereof.

26. **Attorneys' Fees.** Except as indicated in Paragraph 3 above with regard to the recovery of attorneys' fees in the event of non-payment, the parties agree that they will bear their own costs and attorneys' fees which may be incurred in connection with this Agreement. No amounts other than the consideration stated in Paragraph 3 of this Agreement shall be sought by or owed to PLAINTIFF in connection with this matter.

IN WITNESS WHEREOF, the parties, through their duly authorized officers or representatives hereby agree to all of the foregoing terms and conditions and have executed this Agreement so that it is effective on the date first written above.

ATTEST:

MARCOS GARCIGA

By: _____

Marcos Garciga, Plaintiff

ATTEST:

Adelanny Plaza, Deputy Municipal Clerk

TOWN OF WEST NEW YORK, FELIX
ROQUE and CARIDAD RODRIGUEZ

By: _____

Jonathan Castaneda, Municipal Administrator

EXHIBIT A

[Stipulation of Dismissal with Prejudice]