

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release ("Agreement") is made by and between Plaintiff, Yosbel Mompellier, "Plaintiff" or "Releasor" with an address of 420-63rd St. Wny, NY 07093, and Mayor Felix Roque, Michael Indri, Michael Zitt, Patrick Culhane, Fior D'Aliza Frias, Johann Messina, Shine Alicea, Joseph Demarco, Ruben Vargas, Caridad Rodriguez, and the Town of West New York, including West New York's current and former agents, current and former attorneys, current and former servants, current and former employees, current and former elected officials, current and former volunteers, and its respective heirs, successors and assigns, "Defendants or Releasee." The Agreement shall be deemed entered into as of the date of signature of the last Party or Party representative to sign this Agreement.

WITNESSETH

WHEREAS, Plaintiff Yosbel Mompellier ("Plaintiff" or "Releasor") filed suit against Defendants Town of West New York, Mayor Felix Roque, Michael Indri, Michael Zitt, Patrick Culhane, Fior D'Aliza Frias, Johann Messina, Shine Alicea, Joseph Demarco, Clara Herrera, Ruben Vargas, Caridad Rodriguez, West New York Housing Authority, West New York Board of Education, Robert DiVincent, Rick Solaris (collectively, the "Defendants" or "Releasees") in a matter listed in the New Jersey Superior Court, Hudson County under Docket No. L-1673-13, which set forth factual and legal allegations against the Defendants (the "Lawsuit"); and

WHEREAS, the Defendants have denied all allegations asserted against them in the Lawsuit; and

WHEREAS, the Parties have mutually agreed to resolve the Lawsuit and wish to memorialize their settlement herein; and

NEW JERSEY
SUPERIOR COURT
CLERK OF COURT
JUL 19 2013

NOW THEREFORE, in consideration of the mutual promises and covenants made herein, the Parties agree as follows:

1. The Town of West New York, through its insurance carrier, shall provide Plaintiff's attorney with payment in the total amount of fifty-seven thousand, five hundred dollars (\$57,500), inclusive of all costs, attorney fees, or any other cost or expense related to the Lawsuit. This payment shall be referred to as the "Settlement Sum." Payment shall be made in accordance with the Municipal Excess Liability Joint Insurance Fund procedures and policies and shall be made within 30 days of plaintiff returning an executed copy of this settlement agreement and release to the Town of West New York, c/o Roshan D. Shah, Esq. The settlement sum paid is to compensate Plaintiff for her emotional distress damages under the New Jersey Civil Rights Act.

No other payments shall be due to Plaintiff by the Defendants and/or their current and former agents, current and former attorneys, insurance carriers, current and former servants, current and former employees, current and former elected officials, current and former volunteers, and their respective heirs, successors and assigns.

2. The Settlement Sum shall be made via check payable to the plaintiff and Louis A. Zayas, Esq., and delivered to the following address:

Louis A. Zayas, Esq.
8901 Kennedy Boulevard
5th Floor
North Bergen, NJ 07047-3483

3. In addition to this Confidential Settlement Agreement and Release, Plaintiff shall execute and return to the Town of West New York c/o Roshan D. Shah, Esq., Scarinci & Hollenbeck, LLC, 1100 Valley Brook Avenue, P.O. Box 790, Lyndhurst, NJ 07071, a copy of

the following: a) copy of a clear Charles Jones search; b) executed W-9 form from plaintiff's attorney; and c) stipulation of dismissal with prejudice.

4. This is a settlement for emotional distress for alleged civil rights violations under the New Jersey Civil Rights Act. While the parties characterize the claim as a personal injury/emotional distress, in the event that any portion is deemed to be taxable, the plaintiffs understand and agree that they are solely responsible for paying any taxes and/or penalties. Plaintiff further covenants and agrees that she will indemnify the Defendants for any taxes and/or penalties sought from or assessed against Defendants by any state or federal governmental agency, including without limitation Social Security payroll taxes ("FICA"), state and/or federal disability payments, unemployment taxes, and/or state and/or federal income taxes. Defendants do not make any representations as to the tax consequences, if any, regarding the settlement amount received by the Plaintiff. Nothing in this paragraph shall be construed to limit the scope of plaintiff's release set forth in paragraph 5.

5. As additional, partial consideration for payment of the Settlement Sum, Plaintiff, for himself and on behalf of his successors, agents, spouse, heirs, beneficiaries, estates and assigns (individually and collectively referred to herein as "Releasors") does hereby fully and forever release, remit, acquit, remise, hold harmless and discharge the Defendants and their past and present officials, agents, commissioners, attorneys, volunteers, officers, insurers and employees (for individuals, this release runs to them in their official and personal capacities), and all of their respective heirs, estates, employees, agents, successors and assigns, jointly and individually, from any and all liabilities, claims, causes of action, charges, appeals, complaints, obligations, costs, losses, damages, injuries, attorneys' fees, and other legal responsibilities of any form or kind whatsoever which Releasors have or may have against the Defendants,

including without limitation any claims in law, equity, contract, tort, public policy, any claims or causes of action for breach of contract, negligence, retaliation, harassment and/or discrimination based upon, among other things, disability, sexual orientation, handicap, sex, age or race, negligent or intentional infliction of emotional distress, defamation, any claims arising under The Civil Rights Act of 1871 as amended by 42 U.S.C. §1983, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the Reconstruction Era Civil Rights Act, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, as amended, the New Jersey Law Against Discrimination, the United States Constitution, the New Jersey Constitution, or any other federal, state or local law. Plaintiff hereby releases these claims and causes of action irrespective of whether such claims and causes of action are known or unknown, unforeseen, unaccrued, unanticipated, unsuspected or latent.

6. Plaintiff promises and agrees that she will not file, re-file, appeal, initiate, or cause to be filed, re-filed or initiated any claim, suit, or other proceeding based upon, arising out of, or related to any claims and causes of action subsumed within the Release; nor shall she solicit or encourage any claim against any of the Releasees, whether before a court or administrative agency, unless required to do so by law. The Releasees have entered into this agreement with the understanding that said agreement will not be admissible in any other litigation where the Releasees are named as defendants. If a court order or lawful subpoena is served on Plaintiff requiring that he testify in any matter regarding any claim subject to the Release, he agrees to immediately notify and provide a copy of the court order or subpoena to the Town of West New York c/o Roshan D. Shah, Esq., Scarinci & Hollenbeck, LLC, 1100 Valley Brook Avenue, P.O. Box 790, Lyndhurst, NJ 07071. Plaintiff shall provide the Town of West New York with a copy of the court order or subpoena as soon as possible and reasonably in

advance of his appearance and/or compliance with the court order or subpoena. Plaintiff agrees to cooperate with the Town of West New York in connection with any lawful efforts to quash or limit the scope of the subpoena or court order.

7. This Agreement is not an admission by the Defendants and/or any of their present or former agents, employees or representatives of any wrongdoing or liability, and is being entered into solely for the purpose of economic expediency.

8. Plaintiff agrees that he shall engage in no act which is intended, or reasonably may be expected, to harm the reputation, functioning, prospects, or operations of Releasees. Releasor further agrees and covenants that he shall not make any disparaging statements, oral or written, whether direct or implied, about Releasees.

9. Plaintiff represents and warrants that no other person or entity has any interest in the claims that comprise or could have been raised in the Lawsuit, or in any other demands, obligations, or causes of action referred to in this Agreement, and that he has the sole right and exclusive authority to execute this Agreement and receive the benefits specified. Plaintiff further represents that he has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims which comprise the Lawsuit, or any other demands, obligations, or causes of action referred to in this Agreement. Plaintiff further acknowledges that the only consideration for signing this Agreement are the terms stated in this Agreement, and that no other promise or agreement of any kind has been made to him by any person or entity whatsoever to cause him to sign this Agreement; that he is competent to execute this Agreement; that he has been advised in writing and given the opportunity to consult advisors, legal or otherwise, of their own choosing; and that he fully understands the meaning and intent of this Agreement. No change to or

modification of this Agreement shall be valid or binding unless it is in writing and signed by Plaintiff and the Town of West New York.

10. The Parties acknowledge and agree that as a governmental entity, the Town of West New York may be obligated to disclose a copy of this Agreement to persons under the New Jersey Open Public Records Act or common law. Notwithstanding the foregoing, Plaintiff and his Attorney agree that he shall not disclose, or cause to be disclosed, the terms of this Agreement, or the fact that this Agreement exists, except to their accountants and/or tax advisors, or to the extent otherwise required by law. Each such person who is provided information regarding the terms of this Agreement by Plaintiff shall first be required to review this Agreement and agree to abide by the limitations on disclosure. The Plaintiff and his Attorney acknowledge and agree that this confidentiality provision is an express and absolute condition of this Agreement, is bargained for consideration for this Agreement and that any violation of the terms and conditions of this confidentiality provision shall constitute a material breach of this Agreement. In the event that this Agreement is required to be disclosed pursuant to applicable law, the Plaintiff and his Attorney agree that their communication with any person or the media regarding the Action shall be limited to the statement that the "claim was resolved to my satisfaction."

11. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications and to this end the provisions of this Agreement are declared to be severable.

12. No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall it be, a waiver of any other term of this Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the breach.

13. This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, successors, and assignees of each of the Parties to it.

14. This Agreement represents the entire agreement and understanding between the Parties, constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous agreements and understandings, both written and oral, concerning the subject matter hereof. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be changed or modified, except by a writing signed by the Parties hereto.

15. This Settlement Agreement shall be governed by and construed under the laws of the State of New Jersey and shall not be construed for or against any Party based on attribution of drafting to any Party.

16. This Settlement Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

17. Plaintiff hereby covenants that if any liens exist against the Settlement Sum, he will be obligated to and shall ensure that they are paid in full, compromised or satisfied and released by him. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien against the Releasees and/or Defendants, Plaintiff agrees that he will defend and indemnify the Releasees and/or Defendants from and against all such claims. This representation is intended to include all liens, past, present and future, including, but not limited to, governmental liens, Social Security liens, child support or custody liens, attorneys' liens, medical provider liens, Medicare and Medicaid liens, ERISA liens, workers' compensation liens, all statutory or common law liens, and judgment liens. Plaintiff agrees to

indemnify and hold the Releasees and/or Defendants and all of their insurance carriers harmless in connection with any claim made by reason of liens against or tax obligations associated with payment of the Settlement Sum. If a claim is hereafter made against the Releasees and/or Defendants or their insurance carriers by anyone seeking payment of the liens, Releasor will indemnify and hold the Releasees and/or Defendants harmless for any such liens and/or defending against such a claim, including, but not limited to, attorneys' fees, costs of suit, and interest.

In furtherance of the foregoing, Plaintiff states as follows:

"I agree to satisfy and personally guarantee payment for any and all liens, including but not limited to liens asserted by any workers' compensation insurance carrier or governmental entity, including but not limited to Medicare and/or Medicaid, that has paid, or will pay, any benefits to me, or on my behalf, out of the monies you are paying pursuant to this Agreement. I further agree to satisfy any and all child support judgment liens and unpaid medical bills of any medical provider or facility out of the proceeds of this settlement.

In recognition of my obligations to satisfy all such liens out of the monies being paid pursuant to this Agreement, I further agree to indemnify and defend you, your attorney's and your liability insurance carriers from and against any and all claims made or actions filed against you, your attorneys, or your liability insurance carriers for payment of any such liens upon prompt presentation and tender of such claims."

18. Plaintiff represents and warrants that he is not Medicare eligible and/or enrolled and that Medicare has not (pursuant to 42 U.S.C. §1395y(b) and the corresponding regulations) made any conditional payments for medical services or items provided to Plaintiff and arising from or relating to any claim, accident, occurrence, act, error, omission, bodily injury, disease, loss, or damages that are subject to the release herein. The Parties agree that all representations and warranties made herein shall survive settlement. In consideration of the promises made by the Releasees in this Agreement, including but not limited to the Settlement Sum to be paid, Plaintiff agrees that he shall be responsible for satisfying any future claims for reimbursement of

conditional payments that may be asserted by Medicare, and that no Releasee and/or Defendant shall have any obligation to satisfy any such claims for reimbursement.

19. Plaintiff agrees to indemnify, defend and hold harmless Releasees and/or Defendants from any action, cause of action, claim, penalty, statutory fine, and attorneys fee, including, but not limited to, an action to recover or recoup Medicare benefits paid or a loss of Medicare benefits or for any recovery sought by Medicare, including past, present and future payments, benefits and/or liens, and including any such claims, actions, causes of action, enforcement proceedings, penalties, liabilities and similar sanctions under the Medicare Secondary Payer Act. Plaintiff further agrees to and hereby waives any and all potential future claims against Releasees and/or Defendants under the Medicare Secondary Payer ("MSP") Act, 42 U.S.C. §1385y (including any and all amendments thereto) and its accompanying federal regulations at CFR §411.1 et. seq., including 42 CFR §411.46 and 42 CFR §411.47. It is the Parties' intention and purpose under this paragraph to provide for the full protection and indemnification of Releasees from and against any claims, actions, enforcement proceedings, penalties, fines, liabilities and other sanctions under the requirements, regulations and provisions of the MSP Act and its accompanying regulations.

The Plaintiff agrees that if he is required to set aside or repay any portion or all of this settlement to reasonably consider Medicare's interest under Federal Law, he shall be solely responsible for setting aside or repaying such monies from his own funds.

Plaintiff and/or his estate agree to investigate and assume any responsibility and/or liability to pay any current Medicare liens that may be related to the injury in question. Further, plaintiff and/or his estate agree to pay any future Medicare liens that may arise that are determined to be related to the injury that is the subject of the Lawsuit.

20. Each Party represents that it has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement, and signs this Agreement of its own free will. No Party to the Agreement has relied upon any representations or statements made by any other Party hereto which are not specifically set forth in this Agreement. The Parties each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

21. This Agreement is contingent upon all other plaintiffs—Carlos Irimia, Sergio Sanchez, Thomas Mannion, Donna Davis, Silverio Rodriguez, Marie Bombino, David Rivera, Michelle Lopez, Janet Passante, Walter Lopez, William Parkinson, Scott Cannao, Maria Varela, and Gloria Varela—to this Lawsuit executing settlement agreements in favor of the Releasees and/or Defendants. To the extent any plaintiff refuses to sign a settlement agreement and prosecutes the Lawsuit against any defendant, this Agreement shall be null and void and Releasees shall be entitled to the return of all monies paid, plus attorney fees and costs related to the negotiation, preparation, approval and execution of this Agreement.

22. Plaintiff agrees that each defendant to this Lawsuit is a Releasee and entitled to all the benefits and protections of this Agreement, irrespective of whether the defendant is a signatory to this Agreement.

23. This Agreement is executed voluntarily and without any duress, coercion or undue influence on the part or behalf of the Parties hereto. The Parties acknowledge that:

- (a) They have read this Agreement;
- (b) They have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

(c) They understand the terms and consequences of this Agreement and of the releases it contains;

(d) They are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective
dates set forth below.

Plaintiff Yosbel Mompellier



Witness



Date: 8/24/10

Town of West New York

Witness

By: