

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter "Agreement") is entered into by and between the Borough of Hightstown (hereinafter "Borough") and Frank Marchione (hereinafter "Marchione"). The Borough and Marchione are hereinafter collectively referred to as "the Parties" or individually as "a Party."

WHEREAS Marchione was previously employed as a Police Officer for the Borough until his employment was terminated effective September 22, 2015, following the issuance of disciplinary charges and an administrative hearing on those charges, and which was preceded by a suspension without pay beginning September 4, 2015; and

WHEREAS on October 27, 2015, Marchione appealed his termination by filing a Complaint with the Superior Court of New Jersey, Mercer County, Law Division, docket number MER-L-002253-15; and

WHEREAS on May 9, 2017, the Court entered a final order with respect to Marchione's appeal, which was then appealed by the Borough to the Appellate Division and is currently pending at Appellate Division docket number A-3946-16T1; and

WHEREAS on June 1, 2017, Marchione filed a complaint, under docket number MER-L-1160-17, against the Mercer County Prosecutor's Office and received a final order July 26, 2017, removing any impediments to reinstatement.

WHEREAS on August 10, 2017, during the pendency of the appeal, Marchione filed another Complaint in the Superior Court of New Jersey, Mercer County, Law Division, at docket number MER-L-001748017, making certain allegations against the Borough; and

WHEREAS the Parties now wish to compromise and settle all claims and disputes between them including but not limited to the claims articulated in the aforementioned Complaints; and

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Borough and Marchione agree that this matter shall be settled and compromised pursuant to the following terms and conditions:

1. Marchione's Employment and Retirement.

a. Marchione shall be reinstated to his prior position as a Police Officer for the Borough of Hightstown effective on August 18, 2017. As of the date of his reinstatement:

i. Marchione will have a total of 216 vacation hours, representing his total vacation allotment for 2017. Marchione agrees that he is not entitled to

any other vacation. Use of vacation time is subject to the applicable collective negotiations agreement.

ii. Marchione will have a total of 510 sick hours, representing his total sick time allotment for 2015, 2016 and 2017. Marchione agrees that he is not entitled to any other sick time. Use of sick time is subject to the applicable collective negotiations agreement.

b. Further, Marchione shall only work the minimum amount of time required to have a twenty (20) year service retirement approved by the Police and Fire Retirement System. Marchione shall immediately retire effective upon achieving the minimum amount of time required to have a twenty (20) year service retirement approved by the Police and Fire Retirement System. All Parties agree to cooperate in order to effectuate the approval of the service retirement and the granting of pension credits for the back pay described herein. The Parties believe that the retirement date should be August 1, 2018. Nothing in this agreement shall prevent Marchione from leaving by his own accord prior to August 1, 2018.

c. If Marchione fails and/or refuses to retire after achieving the minimum amount of time required to have a twenty (20) year service retirement approved by the Police and Fire Retirement System, Marchione expressly agrees that the Borough may terminate his employment. Marchione expressly waives any and all due process rights he may have in the event that his employment is terminated pursuant to this Paragraph. This includes but is not limited to waiving any and all rights to any administrative hearing and/or judicial review, and any and all rights he may have pursuant to any collective bargaining agreement.

2. **Back Pay.** The Borough shall pay Marchione back pay in the amount of \$223,176.10 within forty-five (45) days of the effective date of this Agreement. The Parties agree that this amount represents full back pay for the period of time from September 4, 2015 to August 17, 2017, and includes payment for all vacation time in 2015 and 2016. This amount shall be reported on an IRS form W-2. The Borough shall deduct all the usual withholdings from this amount (i.e., all employment taxes, pension contributions, etc.).

3. **Police Academy.** Marchione shall be required to attend a police academy identified by the Borough's Chief of Police. Marchione shall be required to pass all police academy courses except that the Borough agrees to waive any physical requirement.

4. **Dismissal of Actions.**

a. Regarding the matter currently pending at docket number MER-L-001748-17, Marchione understands and expressly agrees that in conjunction with this settlement and the payment of the amounts referenced herein, in the manner described herein, the Complaint filed with the Superior Court of New Jersey, Law Division, Mercer County, currently pending at docket number MER-L-001748-

17, shall be dismissed with prejudice. A stipulation of dismissal with prejudice as to all Defendants shall be prepared by Marchione and shall be executed and provided to Amy R. Guerin, Esquire, at Parker McCay, P.A. to be held in escrow until the effective date of this Agreement. **The stipulation of dismissal shall be provided with the signing of this Agreement.**

- b. Regarding the matter currently pending at Appellate Division Docket No. A-3946-16T1, immediately following the effective date of this Agreement the Borough shall withdraw its appeal and advise the Appellate Division that the matter was settled pursuant to the terms of this Agreement. Marchione understands and expressly agrees that in conjunction with this settlement and the payment of the amounts referenced herein, he will be foregoing any additional remedies from the Superior Court of New Jersey, Law Division, Mercer County, in docket number MER-L-002253-15. A stipulation of dismissal with prejudice as to all Defendants shall be prepared by Marchione and shall be executed and provided to Amy R. Guerin, Esquire, at Parker McCay, P.A., to be held in escrow until the effective date of this Agreement. **The stipulation of dismissal shall be provided with the signing of this Agreement.**

- 5. **Settlement Payment.** In connection with the dismissal with prejudice of the Complaint filed with the Superior Court of New Jersey, Law Division, Mercer County, docket number MER-L-001748-17, the Borough shall pay Marchione the sum of one hundred fifty thousand dollars and no cents (\$150,000.00) within one hundred eighty (180) days of the effective date of this Agreement. With respect to the settlement payment:

- a. The Parties agree that payment shall be rendered in a single check made payable to Frank Marchione.
- b. Marchione shall supply the Borough with a typed IRS form W-9 at the time that he provides the signed settlement agreement in order to receive payment. Marchione shall be issued an IRS form 1099 in connection with the payment.
- c. Marchione shall be solely liable for the payment of all applicable state, federal and local taxes, if any, with respect to the settlement payment described in this Paragraph 5. Marchione shall also be solely liable for the payment of any liens required by law that he may have against him. Marchione agrees to indemnify and hold harmless the Borough from any and all penalties and/or fees and/or interest relating to and/or arising from any state, federal or local taxes and/or any liens that may be required by law to be paid by Marchione with respect to the settlement payment described in this Paragraph 5.

- 6. **Unconditional Release.** In exchange for the payments and other covenants contained in this Agreement, Marchione does for himself and for his dependents, heirs, executives, administrators, predecessors, successors and assignees, agree to hereby irrevocably and unconditionally release and forever discharge the "Released Parties" (as defined *infra*)

from any and all "Released Claims" (as defined *infra*) from the beginning of time up to and including the effective date of this Agreement.

- a. "Released Parties" as used in this Agreement shall mean (1) the Borough of Hightstown, (2) (3) the Borough's past, current and future employees; (4) the Borough's Council members, officers, directors, agents, attorneys, consultants, affiliates, and other representatives; (5) the Borough's insurers; (6) Borough vendors and entities under contract with the Borough; (7) the Borough's heirs, successors and assignees; (8) all of the aforementioned individuals in both their official and individual capacities; and (9) any other person or entity whom/which might be claimed to be jointly and/or severally liability with any of the aforementioned entities and/or individuals.
- b. "Released Claims" as used in this Agreement shall mean any and all liabilities, claims, demands, causes of action, suits at law or in equity, covenants, charges, debts, dues, costs, any sums of money, attorneys' fees, accounts, bills, reckonings, extents, judgments, and rights, whether known or unknown, whether accrued or unaccrued, whether contingent or non-contingent, whether or not capable of proof, regardless of the theory of recovery, and whether common law or statutory in nature that occurred at any time in the past up to and including the effective date of this Agreement. Expressly excluded from this release are claims for the breach of this Agreement including, but not limited to, the failure to pay any of the compensation set forth herein, "Released Claims" shall also include the following:
 - i. All claims relating to and/or arising from Marchione's employment with the Borough;
 - ii. All claims of discrimination and/or harassment based on any one or combination of the following: sex, race, religion, color, creed, ancestry, national origin, disability, citizenship, age, marital status, military status, gender, sexual or affectional orientation, pregnancy, and any other protected class recognized by local, state and/or federal law;
 - iii. All claims pursuant to Title VII of the Civil Rights Act of 1964, the New Jersey Law Against Discrimination, the New Jersey Civil Rights Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the National Labor Relations Act, the New Jersey Employer-Employee Relations Act, the Equal Pay Act, the Equal Pay Act of New Jersey, the Americans With Disabilities Act, the Occupational Safety and Health Act, the New Jersey Worker Health & Safety Law, the Fair Labor Standards Act, the Immigration Reform Control Act, the Family Medical Leave Act, the New Jersey Family Leave Act, the New Jersey Wage and Hour Law, the New Jersey Conscientious Employee Protection Act, the New Jersey Workers' Compensation Law, ERISA, HIPAA, Title IX of the Education Amendments 1972, the Rehabilitation

Act of 1973, Sections 1981 through 1988 of the Title 42 of the United States Code, any anti-retaliation provision of any of the foregoing laws, and all other similar local, state and federal laws;

- iv. All claims for any alleged unpaid and/or withheld wages, severance, bonuses and/or other compensation or any kind;
 - v. All claims for alleged wrongful discharge and/or breach of any alleged employment contract, whether express or implied;
 - vi. All claims for alleged breach of any contract whatsoever, whether express or implied;
 - vii. All claims based on any alleged wrongful act, including but not limited to invasion of privacy, defamation, fraud, and infliction of emotional distress that occurred at any time in the past up to and including the effective date of this Agreement;
 - viii. All claims for any compensatory and/or punitive damages for any incident, act or omission that occurred at any time in the past up to and including the effective date of this Agreement; and
 - ix. All claims for any attorneys' fees, costs, disbursements and the like for any incident, act or omission that occurred in the past up to the date of execution of this Agreement.
- c. Marchione agrees that neither he nor any person or entity acting on his behalf will file any type of complaint, charge, claim and/or cause of action, or cause or permit any complaint, charge, claim and/or cause of action to be filed, against any Released Party involving any matter whatsoever which occurred at any time from the beginning of time up to and including the effective date of this Agreement, or involving any continuing effects or any acts or practices which may have arisen or occurred prior to the effective date of this Agreement. It is understood that if a class action is filed, that the mere filing of said class action does not place Marchione in breach of this Agreement provided that Marchione immediately takes reasonable steps with all due speed to remove himself from the class.
- d. Marchione agrees that if he brings any type of complaint, charge, claim and/or cause of action in any administrative and/or judicial forum against any Released Party for any Released Claim, he will be in breach of this Agreement. In such event, Marchione will be liable for (1) paying all of the Released Party's attorneys' fees and costs associated with the defense of any such complaint, charge, claim and/or cause of action, and (2) paying all of the Released Party's attorneys' fees and costs associated with the enforcement of this Agreement.

7. **Attorney's Fees.** The Borough agrees to pay Marchione's attorneys' fees in an amount not to exceed one hundred fifty thousand dollars and no cents (\$150,000.00) within forty-five (45) days of the receipt and approval by the Borough of detailed invoices from Marchione's attorney. The rate for the attorneys' fees shall not exceed three hundred dollars and no cents (\$300.00) per hour. Payment of attorneys' fees shall be made in a single check made payable to Sciarra & Catrambone, LLC, with offices at 100 Horizon Center Blvd, Hamilton, New Jersey, 08691. Sciarra & Catrambone shall provide the Borough with a typed IRS form W-9 in order to receive payment. The Borough shall provide Sciarra & Catrambone with an IRS form 1099 in connection with the payment. It is expressly agreed by the Parties that the Borough shall not be responsible for the payment of any attorneys' fees in connection with the Verified Complaint and Order to Show Cause filed in Superior Court of New Jersey, Mercer County, Law Division, docket number MER-L-1160-17 (i.e., Frank Marchione v. Mercer County Prosecutor's Office).
8. **Satisfaction of Claims and/or Liens.** It is further understood that as a condition of this settlement, all claims and/or liens, past, current and/or future arising out of this settlement or asserted against the proceeds of this settlement are to be satisfied by Marchione, including but not limited to any Medicare or Medicaid claims and/or liens, Worker's Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer claims and/or liens, physician or attorney claims and/or liens, or any of the statutory, equitable, common law or judgment claims and/or liens, including but not limited to claims based on subrogation or any other legal or equitable theory. Marchione therefore agrees, upon prompt presentation of any such claims and/or liens, to indemnify and hold the Borough harmless against any judgment entered against the Borough based on such claims and/or liens, including the payment of any fines or charges incurred as a result of any such lien. Failure to satisfy any such lien shall be considered a breach of this Agreement and Marchione agrees to pay all costs and interest relative to any such lien.
9. **No Admission of Liability.** Marchione and the Borough agree that this Agreement represents a compromise to resolve a dispute. None of the terms of this Agreement shall be construed to be an admission of wrongdoing by either Party. It is expressly understood that neither the execution of this Agreement, nor any other action taken by the Borough in conjunction with Marchione's alleged claims, nor the settlement payment defined herein constitutes an admission by the Borough of any violation of any law, duty or obligation. Marchione and the Borough both agree that they have entered into this Agreement for reasons other than the merits of the case, including but not limited to the cost and uncertainty of litigation. It is also expressly understood that acceptance of this Agreement does not constitute any representation by or to Marchione as to the merits of the underlying claims or lack thereof.
10. **Confidentiality.** Marchione agrees that he will not publish, publicize or disseminate, or cause to be published, publicized or disseminated, to the news, social media, communications media or any agent thereof, or to any online/internet based forum, or to any employees, friends or any other third party, any of the following: the amount of the settlement payment described herein, any offers or counteroffers leading to the settlement

payment, and/or any of the terms or conditions of this Agreement. The only exception to this Paragraph is that Marchione may share the amount of the settlement payment with his spouse, attorney and/or tax preparer for tax purposes.

11. **Open Records.** Marchione acknowledges that this Agreement may be subject to disclosure pursuant to New Jersey's Open Public Records Act and that the Borough has no legal authority to negotiate or bargain away any of the statutory requirements of the Open Public Records Act. Marchione acknowledges and agrees that whether or not the Borough is required to disclose this Agreement pursuant to the Open Records Act in no way diminishes Marchione's obligations pursuant to the preceding Paragraph regarding Confidentiality.
12. **Mutual Non-Disparagement.** Marchione shall not disparage and/or defame the Borough or any of its officers, directors, employees, officials, attorneys and/or other representatives regarding the matters subject to this Agreement. Further, Marchione shall not make any comments regarding the Borough, or any of its directors, employees, attorneys or agents that may be construed as critical and/or derogatory regarding the matters subject to this Agreement. Further, Marchione agrees not to authorize any other person or entity to make any disparaging and/or defamatory statements about the Borough or any of its officers, directors, employees, officials, attorneys and/or other representatives.

Current Borough Council Members, the Borough Administrator, the Borough's Chief Financial Officer and the Borough's Chief of Police (collective "Borough Representatives") shall not disparage and/or defame Marchione regarding the matters subject to this Agreement. Further, the Borough Representatives shall not make any comments regarding Marchione that may be construed as critical and/or derogatory regarding the matters subject to this Agreement. Further, the Borough Representatives agree not to authorize any other person or entity to make any disparaging and/or defamatory statements about Marchione.

13. **No Reemployment/Future Employment.** Marchione agrees that he shall not apply or be eligible for employment with the Borough in any capacity after he retires or resigns pursuant to this Agreement. In the event that Marchione should apply for employment with the Borough, the Borough shall disregard said application. It is expressly agreed by the Parties that the Borough's disregard of any such employment application shall be pursuant to this Agreement and shall not be the result of any unlawful conduct by the Borough.
14. **No Reemployment Via Vendors.** Marchione shall not perform any services for the Borough, directly or indirectly, in any capacity. Marchione agrees that, should he be employed by any third party from which the Borough procures products or services, he shall not accept any work assignment related to and/or on behalf of the Borough.

15. **No Entry of Borough Property.** Marchione agrees that, after he retires or resigns pursuant to this Agreement, he shall not enter Borough property for any reason, except to the same extent that any member of the public is permitted to enter Borough property.
16. **Neutral Reference.** The Borough agrees that, if contacted by any third party for a reference, the Borough shall only provide Marchione's dates of employment, positions held and salary information. Marchione shall refer all third parties seeking reference checks to the Borough's department of human resources.
17. **Consultation with Legal Counsel.** Both Parties acknowledge and agree that they had ample time and opportunity to review this Agreement with legal counsel of their own choosing and that each Party is satisfied with the advice received.
18. **Breach.** If either Party fails and/or refuses to comply with any obligation he/it has pursuant to this Agreement, regardless of the reason for said failure and/or refusal to comply, that party shall be in breach of this Agreement. In such event, the breaching party will be liable for paying all of the attorneys' fees and costs associated with the enforcement of this Agreement.
19. **Knowing and Voluntary Execution of Agreement.** Marchione acknowledges and agrees that he freely and voluntarily agreed to all of the terms and conditions contained in this Agreement after consulting with legal counsel of his choosing and after considering all of his options. Marchione further acknowledges and agrees that he had ample time to read and understand this Agreement. Marchione's agreement is not the result of any fraud, coercion or duress. Further, Marchione warrants and represents that he is under no disability or impairment that would prevent him from understanding this Agreement or from knowingly and voluntarily entering into this Agreement.
20. **Effective Date.** This Agreement shall become effective on the date that the Agreement is both signed by Marchione and approved by the Borough. Marchione acknowledges and agrees that this Agreement is subject to a vote of approval by the Borough's governing body and it shall not take effect unless it is approved by the Borough's governing body. It is expressly understood by Marchione that the Borough shall not approve this Agreement if he fails and/or refuses to provide a typed W-9 and/or a signed stipulation of dismissal.
21. **Entire Agreement.** This Agreement represents the sole and entire agreement between the Parties. This Agreement supersedes all prior agreements, representations or understandings, oral or written, express or implied, with respect to the subject matter hereof.
22. **Modification and Waiver.** No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement.

23. **Rules of Construction.** This Agreement shall be interpreted in accordance with the laws of the State of New Jersey and, to the extent applicable, the United States government. Marchione acknowledges and agrees that in consideration of the fact that he has carefully read, reviewed and considered the terms of this Agreement and that he has had full opportunity to obtain legal advice from counsel of his choice in connection with this Agreement, the normal principle of contract construction whereby all ambiguities are to be construed against the drafter shall not be employed in the interpretation and construction of this Agreement.

24. **Choice of Venue.** The Parties agree that any action to enforce or interpret this Agreement shall only be brought in a court of competent jurisdiction in the State of New Jersey, which parties hereby acknowledge and agree to be the Superior Court of New Jersey in Mercer County.

25. **Counterparts.** In the event that two or more counterparts of this Agreement are executed all such counterparts shall collectively constitute the same instrument.

26. **Severability.** All agreements and covenants contained herein are severable. In the event that any provision of this Agreement should be held to be unenforceable, the validity and enforceability of the remaining provisions hereof shall not be affected thereby. Any court (or arbitrator) construing this Agreement is expressly granted the authority to revise any invalid or unenforceable provision hereof in order to render same enforceable.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have set their hands and seals on the dates indicated:

BOROUGH OF HIGHTSTOWN

By: 

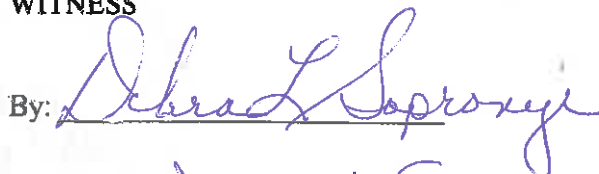
Print Name: LAWRENCE D. QUATTRONE

FRANK MARCHIONE

By: 

Print Name: Frank Marchione
8/21/17

WITNESS

By: 

Print Name: DEBRA L. SOPRONYI

Date: 8/22/17

WITNESS

By: 

Print Name: Christopher A. Gray

Date: 8/21/2017
Attorney at Law Notary by Statute