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A Limited Liability Company

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May 16, 2018

Via Lawyers Service

Motions Clerk
Superior Court of Middlesex County
Chancery Division
56 Paterson Street
New Brunswick, New Jersey 08903
Attn: Toni

RE: The Borough of South River v. South River Rescue Squad, Inc., et. al.

Dear Sir/Madam:

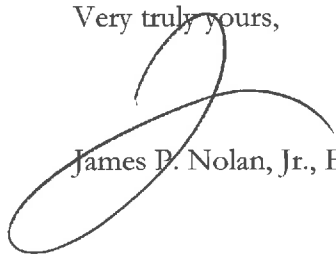
Please be advised that this office represents Plaintiff, the Borough of South River with respect to the above-referenced matter. Enclosed please find an original and two (2) copies of the following with respect to the above referenced matter:

1. Order to Show Cause with Temporary Restraints;
2. Verified Complaint;
3. Letter Brief;
4. Certification of Exhibits;
5. Case Information Statement.

Kindly file same and return one copy marked "filed" in the self-addressed stamped envelope provided for your convenience. Finally, please charge any filing fee to our collateral account under account number 141627.

Thank you for your kind attention to this matter.

Very truly yours,



James P. Nolan, Jr., Esq.

THIS IS A CHANCERY DIVISION CASE AND CANNOT BE ELECTRONICALLY FILED

JPN/bb

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THE BOROUGH OF SOUTH RIVER : SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION-GENERAL EQUITY
Plaintiff, : MIDDLESEX COUNTY

-v- : Docket No.

SOUTH RIVER RESCUE SQUAD, INC., :
SOUTH RIVER EMERGENCY :
MEDICAL SERVICES, INC., ANDREW :
COGSWELL (in his official capacity as :
President of the South River Rescue Squad :
and as Board member of the South River :
EMS Board of Directors), SUSAN :
COGSWELL (in her official capacity as :
Secretary of the South River Rescue Squad), :
MATTHEW PARKS (in his official capacity :
as Assistant Captain and Financial Secretary :
of the South River Rescue Squad :
and as Vice President of the South River :
EMS Board of Directors), MARK :
DELUREY (in his official capacity as :
Treasurer and First Lieutenant of the :
South River Rescue Squad and as President :
of the South River EMS Board of Directors), :
EDINA SZOLLOSI (in her official capacity :
as Second Lieutenant of the South River :
Rescue Squad and as Secretary of the South :
River EMS Board of Directors), PATRICK :
GERALDO (in his official capacity as :
Captain of the South River Rescue Squad :
and as Treasurer of the South River EMS :
Board of Directors), KYLE HERZIG in his :
official capacity as a Board member of the :
South River EMS Board of Directors) :
WILLIAM SYNEK in his official capacity :
as a Board member of the South River EMS :
Board of Directors) AND JOHN DOES/ :
ABC CORPS., 1-5 :

Defendants.

**ORDER TO SHOW CAUSE
WITH TEMPORARY RESTRAINTS**

THIS MATTER being brought before the Court by James P. Nolan and Associates, (James P. Nolan , Esq. appearing), attorneys for Plaintiff, The Borough of South River, (“Plaintiff” or “Borough”) seeking a temporary restraining order pursuant to R. 4:2 restraining Defendants, South River Rescue Squad, Inc., South River Emergency Services, Inc., Andrew Cogswell, Susan Cogswell, Matthew Parks, Mark Delurey, Edina Szollosi, Patrick Geraldo , Kyle Herzig and William Synek (“Defendants” or “South River Rescue Squad”) from dispersing any funds, selling any assets or making any expenditures whatsoever without the approval of a trustee to be appointed by the Court, operating any rescue squad/EMS vehicles, marine crafts or equipment, and to relinquish all control of Emergency Medical Service operations in the Borough of South River, and based upon the facts set forth in the Verified Complaint and Brief filed herewith, and it appearing that Defendant was provided with a copy of this application; and for good cause shown:

It is on this _____ day of May, 2018 **ORDERED** that defendants, The South River Rescue Squad, South River EMS, its officers and/or directors and individual Defendants named herein, appear and show cause on the _____ day of _____, 2018 before the Superior Court at the Middlesex County Courthouse in New Brunswick, New Jersey at ___ o’clock in the _____ noon, or as soon thereafter as counsel can be heard, why an order should not be issued preliminarily enjoining and restraining Defendants, The South River Rescue Squad and the South River EMS, its officers, board members and/or directors thereof from:

- A. Spending any funds without approval from a Court appointed trustee;
- B. Selling any assets without approval from a Court appointed trustee;
- C. Operating or removing any rescue squad/EMS vehicles, marine crafts or equipment;
- D. Making any monetary disbursements without approval from a Court appointed trustee;

And why an order should not be issued:

- E. Creating a Constructive Trust to seize and protect any money and/or assets of the South River Rescue Squad and South River EMS;

F. Appointing South River Business Administrator, Jack Layne as Trustee to oversee and approve all future expenditures and monetary disbursements by the South River Rescue Squad and South River EMS.

G. For a full accounting of all expenditures by the South River Rescue Squad and South River EMS for the past five (5) years.

H. For limiting expenditures to necessities and requirements to keep the South River Rescue Squad and South River EMS operational while this matter is pending.

And it is further **ORDERED** that pending the return date herein, the defendant is enjoined and restrained from:

- A. Making any monetary expenditures other than those necessary to sustain the basic operational requirements of the South River Rescue Squad and South River EMS;
- B. Selling any assets currently in the possession of the South River Rescue Squad and South River EMS;
- C. Removing or operating any rescue squad/EMS vehicles, marine crafts or equipment from the premises located at 6 Thomas Street in South River for any reason unless approved by the Borough Administrator for the provision of emergency medical services to the Borough of South River.

And it is further **ORDERED** that:

1. The Defendant may move to dissolve or modify the temporary restraints herein contained on two (2) days notice to the Plaintiff's attorney.
2. A copy of this order to show cause, verified complaint, and all supporting affidavits or certifications submitted in support of this application be served upon the defendants, The South River Rescue Squad with its main business address located at 6 Thomas Street, South River, New Jersey, 08882, personally or via certified mail return receipt requested within _____ days of the date hereof in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

3. The plaintiff must file with the court its proof of service of the pleadings on the defendants no later than three (3) days before the return date.
4. Defendants shall file and serve a written answer to this order to show cause and the relief requested in the Verified Complaint and proof of service of the same by _____, 2018. The original documents must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge _____, whose address is the Middlesex County Courthouse, 56 Paterson Street, New Brunswick, New Jersey, 08901. You must also send a copy of your opposition papers to the Plaintiff's attorney whose name and address appears above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of \$_____ and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the Plaintiff is seeking.
5. The Plaintiff must file and serve any written reply to the Defendant's order to show cause opposition by _____, 2018. The reply papers must be filed with the Clerk of the Superior Court in the County listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.
6. If the Defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.
7. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

8. Defendant take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and proof of service within 35 days from the date of service of this order to show cause, not counting the day you received it. These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$_____ filing fee payable to the “Treasurer State of New Jersey”. You must also send a copy of your answer to the Plaintiff’s attorney whose name and address appear above, or to the Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer (with the fee) or judgment may be entered against you by default.
9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.
10. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

J.S.C.

Fredrick L. Rubenstein, ID #004651994
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TELEPHONE (732) 636-3344 FAX: (732) 636-1175
Attorneys for Plaintiff, The Borough of South River

THE BOROUGH OF SOUTH RIVER : SUPERIOR COURT OF NEW JERSEY
Plaintiff, : CHANCERY DIVISION-GENERAL EQUITY
: MIDDLESEX COUNTY

-v- : Docket No.

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Rescue Squad and as Secretary of the South :
River EMS Board of Directors), PATRICK :
GERALDO (in his official capacity as :
Captain of the South River Rescue Squad :
and as Treasurer of the South River EMS :
Board of Directors), KYLE HERZIG in his :
official capacity as a Board member of the :
South River EMS Board of Directors) :
WILLIAM SYNEK in his official capacity :
as a Board member of the South River EMS :
Board of Directors) AND JOHN DOES/ :
ABC CORPS., 1-5 :
Defendants. :

Plaintiff, The Borough of South River, by way of Verified Complaint against the above-named Defendants says as follows:

THE PARTIES

1. Plaintiff, the Borough of South River (hereinafter referred to as “South River” and/or “Plaintiff”) is a municipal corporation located in Middlesex County, New Jersey.

2. Defendant, South River Rescue Squad, Inc. (hereinafter referred to as the “Rescue Squad”) is a local corporation which handles emergency medical services in the Borough of South River from the hours of 12:00 a.m. to 6:00 a.m. and consists of volunteer members with its principal place of business located at 6 Thomas Street, South River, New Jersey 08882.

3. Defendant, South River Emergency Services, Inc. (hereinafter referred to as “South River EMS or EMS”) is a local corporation which handles emergency medical services in the Borough of South River from the hours of 6:00 a.m. to 12:00 a.m. and consists of paid members with its principal place of business located at 6 Thomas Street, South River, New Jersey 08882.

4. Defendant, Andrew Cogswell is the current President of the Rescue Squad.

5. Defendant, Susan Cogswell is the current Secretary of the Rescue Squad.

6. Defendant, Matthew Parks is the current Financial Secretary of the Rescue Squad.

7. Defendant, Mark Delurey is the current Treasurer and First Lieutenant of the South Rescue Squad.

8. Defendant, Edina Szollosi is the current Second Lieutenant of the Rescue Squad.

9. Defendant, Patrick Geraldo is a managing member of South River Rescue Squad, Inc.

10. The South River EMS Board of Directors is currently comprised of numerous volunteer rescue squad members that make decisions regarding economic disbursements, employment positions and other facets of the South River Rescue Squad and the South River EMS departments. These Board members include the following named Defendants: Board President, Mark Delurey,

Board Vice President, Matthew Parks, Board Treasurer, Patrick Geraldo, Board Secretary, Edina Szollosi, Board member Kyle Herzig, Board member Andrew Cogswell and Board member William Synek.

11. The Defendants identified above in paragraphs three (3) through eleven (11) will collectively be referred to as “Defendants” and/or “Rescue Squad” hereinafter.

FACTS COMMON TO ALL COUNTS

CREATION OF THE RESCUE SQUAD AND SOUTH RIVER EMS

12. The South River Rescue Squad was established in 1936 and consisted of all volunteer members whom assisted in various emergency medical services throughout the Borough of South River.

13. Some time later, the Borough passed an Ordinance officially establishing the South River Rescue Squad and allowing funding for equipment and the administration of the Rescue Squad in order to ensure efficient provision of emergency medical services to the residents of the Borough. (See Section 72-64 of the South River Borough Code attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “A”**).

14. On/or about September 29, 2009, the Borough entered into a Shared Services Agreement with the Rescue Squad and South River EMS (See September 9, 2009 Shared Services Agreement attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “B”**).

15. As previously stated, the Rescue Squad is comprised of all volunteer members most of whom do not reside in the Borough of South River.

16. South River EMS is comprised of paid per diem employees which are paid an hourly rate.

17. The purpose of the above-referenced Shared Services Agreement was to bring in paid employees (South River EMS) to supplement the volunteers (the Rescue Squad) in order to provide twenty-four hour emergency medical services to the Borough and its residents.

18. The purpose of the shared services agreement is also evidenced on the South River Rescue Squad's website which specifically states that "In 2009 the members of the South River Rescue Squad took action to fix the manpower emergency and formed a new agency... South River EMS. This resulted in a hybrid organization consisting of the volunteer EMTs of the South River Rescue Squad at its core being supplemented by the per-diem EMTs of South River EMS, and allowed for 24 hour emergency medical coverage." (See printed "About Us" page from the South River Rescue Squad website attached Certification of James P. Nolan, Jr., Esq. as **Exhibit "C"**).

19. Paragraph one (1) of the Shared Services Agreement also confirms that it was understood and agreed that "South River Rescue Squad, Inc. shall continue to be the primary provider of emergency medical services to the Borough of South River." (See paragraph 1 of **Exhibit "B"**).

20. On/or about September 29, 2009, the Rescue Squad entered into a lease with the Borough to occupy certain bays and to utilize the building located at 6 Thomas Street as a headquarters for emergency medical services in South River. (See September 29, 2009 Lease Agreement attached Certification of James P. Nolan, Jr., Esq. as **Exhibit "D"**).

21. This Lease once again proclaims that the Rescue Squad "shall continue to be the primary provider of emergency medical services to the Borough of South River." (See paragraph 7 of **Exhibit "D"**).

22. On July 27, 2009, South River EMS entered into a lease with the Borough to occupy Bays 2 and 3 at the building located at 6 Thomas Street, South River, New Jersey 08882 and to supplement the Rescue Squad in providing emergency services to the Borough of South River in accordance with the Shared Services Agreement. (See July 27, 2009 Lease Agreement attached Certification of James P. Nolan, Jr., Esq. as **Exhibit "E"**).

23. This Lease also proclaims that “South River Rescue Squad, Inc. is the primary provider of emergency services to the Borough of South River.” (See paragraph 8 of **Exhibit “E”**).

24. Both of these Lease Agreements between the Borough and the Rescue Squad and the Borough and South River EMS place the responsibility of enforcing these agreements with the Borough Administrator (See paragraph 17 of **Exhibit “D”** and paragraph 17 of **Exhibit “E”**).

SHIFT OF RESPONSIBILITIES AND DERELICTION OF DUTY

25. Since the execution of these agreements, there has been a clear shift in the responsibilities of the Rescue Squad and the South River EMS.

26. The Rescue Squad in no way can be characterized by any means as the primary provider of emergency services in the Borough of South River.

27. Currently, and for some time now, the Rescue Squad only provides emergency medical services for the Borough of South River from 12:00 a.m. until 6:00 a.m.

28. For the remaining eighteen (18) hours of the day, South River EMS provides complete emergency medical services for the Borough of South River.

29. For the six hours for which the Rescue Squad provides coverage, there have been numerous reports of troubling occurrences and clear derelictions of duty by the volunteer members and officers.

30. These incidents were reported through various sources to the Chief of the South River Police Department, Mark Tinitigan. (See Affidavit of Mark Tinitigan attached to the Certification of James. P. Nolan, Jr., Esq. as **Exhibit “F”**).

31. After receiving these reports, Chief Tinitigan conducted an investigation which uncovered serious discrepancies in the provision of emergency medical services by the Rescue Squad.

32. Specifically, it was found that from January 1, 2017 to March 24, 2018, the Rescue Squad responded to only 117 of a total of 303 calls for emergency medical services between the hours of 12:00 a.m. and 6:00 p.m. (See Volunteer Rescue Squad Statistics spreadsheet attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “G”**).

33. The remainder of these calls required either a split crew (paid and volunteer), coverage by the paid crew or a turn over of the call to a neighboring emergency medical service provider. (See **Exhibit “G”**).

34. It was also discovered that several requests for emergency services between the hours of 12:00 a.m. and 6:00 a.m. have been turned away by the Rescue Squad and were relayed to neighboring towns including Sayreville, East Brunswick and Spotswood, New Jersey. (See Turnover Call spreadsheet attached to the Certification of James P. Nolan as **Exhibit “H”**).

35. In addition to the numerous concerns raised by deficient and poor performance and response to calls, several Rescue Squad and EMS members have come forward and provided accounts of misconduct and misappropriation by Rescue Squad Officers and other volunteer members. (See Affidavit of Suzanne Vasquez and Affidavit of Kyle Flemming attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibits “I”** and **“J”** respectively.)

36. There have been reports of Rescue Squad Members using squad vehicles for unauthorized and personal use.

37. Specifically, it has been reported that Patrick Geraldo has used Rescue Squad vehicles for personal use and for transporting other Rescue Squad Members to their other jobs.

38. There have also been reports that the Rescue squad members are consuming alcohol in the basement of the squad house after they get out of their day jobs.

39. These figures and reports clearly demonstrate that the Rescue Squad can no longer be entrusted with the responsibility of providing Emergency Medical Services to the Borough of South River and it's residents.

40. It must also be noted that several members South River EMS were deterred from coming forward to report their numerous concerns due to a fear of termination and retaliation by the Rescue Squad.

POWER STRUGGLE AND ANIMOSITY AGAINST THE SOUTH RIVER EMS

41. The Execution of the Shared Services Agreement (**Exhibit “B”**) and the Lease Agreements between the Rescue Squad and South River EMS (**Exhibits “D” & “E”**) have created a very odd and abusive situation between these two entities.

42. The terms of the Shared Service Agreement, and questionable tactics of the Rescue Squad volunteer members carried over through the years, allowed the Rescue Squad to become a manipulative and abusive force towards the paid EMS members.

43. Specifically, the Rescue Squad has become hostile toward the South River EMS and have placed almost all of the responsibility of providing emergency medical services in South River on the EMS members and have done so with threats of possible termination and complete scheduling control.

44. The current structure of the combined South River Emergency Services Program has allowed all decisions regarding disbursements of funds and employment to be controlled by the Rescue Squad.

45. Based on this one-sided and bias structure, many of the EMS members have been hesitant to report any of the inappropriate actions of the Rescue Squad members out of fear of termination and/or alienation.

46. To date, the Rescue Squad continues to abuse the power created through the Shared-Services Agreement and completely disregards its responsibility to be the primary provider of emergency medical services for the Borough of South River.

THE 2018 RESCUE SQUAD ELECTIONS

47. Immediately following the 2018 Rescue Squad Elections, South River Councilman John Alai was contacted by an individual who identified himself as “John Alan,” who claimed that the elections were done improperly and in violation of the Rescue Squad by-laws.

48. There is no record of a “John Alan” being an active member of the South River Rescue Squad and it appears that this fictitious identity was created solely to report these alleged discrepancies.

49. In response to this anonymous Complaint, a full investigation was performed by Brian A. Bontempo, Esq. from the Borough Attorney’s Office, the Law Office of James P. Nolan and Associates. (See Certification of Brian A. Bontempo, Esq. attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “K”**)

50. In addition to a comprehensive review of the Rescue Squad By-Laws and Rescue Squad meeting minutes, telephonic interviews were conducted with the 2017 Rescue Squad Secretary, William Synek, the 2017 Rescue Squad President, Matthew Parks, Councilman/Public Safety Liaison, John Alia, the 2018 President, Andy Cogswell, and Rescue Squad members Eric Knapp, Patrick Geraldo, Kyle Hersek and Christopher Schienek.

51. Several individuals, including Defendants, Patrick Geraldo and Matthew Parks completely refused to participate in the investigation or even speak to Mr. Bontempo. (See **Exhibit “K”**).

52. By way of context, in order to be eligible to vote in a Rescue Squad election, the member must (1) be an Emergency Medical Technician (EMT), (2) answer a minimum of 15 % of the quarterly calls/ transports, and (3) must serve on a weekly duty crew (Night Shift) as approved by the Captain.

53. The anonymous complainant, “John Alan” alleged that out of all of the Rescue Squad volunteer members, there were only 2-3 members who were actually eligible to vote in the 2018 election. According to Alan, other volunteer Rescue Squad members were not eligible because they did not meet the 15% call volume requirement.

54. After further investigation, it was confirmed that there were only two (2) Rescue Squad Members who were actually eligible to vote in the elections based on the fact that the majority of the Rescue Squad volunteer members did not answer a minimum of 15 % of the quarterly calls/transportations.

55. To circumvent this requirement, and in clear violation of the Rescue Squad By-laws, the members in attendance at the November Squad meeting created a list comprised of members of the rescue squad and determined who would be eligible to vote, waiving the 15% call volume requirement.

56. There was no vote or action to amend the By-Laws to change the voting eligibility requirements. (See November 2, 2017 Rescue Squad Business Meeting minutes attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit "L"** and see Rescue Squad By-Laws attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit "M"**.)

57. In fact, there was not even a quorum at the November Rescue Squad Meeting which would have made the changing of the by-laws, and waiving of voting eligibility requirements possible.

58. Specifically, the Meeting minutes state that "Due to the lack of a quorum, an informal meeting was held to nominate Members for the various elected positions and to establish which members would be allowed to vote in the December officer elections. After nominations were complete, it was discussed that the Squad currently only had two members eligible to vote as defined by the Squad Bylaws (Eric Knapp and William Synek). It was decided that in order to increase the voting membership, ballots would also be supplied to Members who consistently rode their designated Night Crew for the year." (See **Exhibit "L"**)

59. Following this arbitrary decision and action, the election took place at the December Rescue Squad Meeting.

60. After the Squad improperly agreed that there would be eight ballots for the 2018 elections, there were approximately five additional ballots produced by the President, Matthew Parks at the December 7, 2017 meeting.

61. This is also confirmed by the December meeting minutes which state in relevant part that the “Squad meeting was recessed so the ballots could be counted by Councilman Alai with Matthew Parks (President) and William Synek (Secretary) in attendance. When the ballots were opened, it was noted by William Synek that there were supposed to be 8 official ballots, but 13 ballots had been submitted. Matthew Parks stated that he decided after he signed the ballots on 11/6 that he would give out 5 additional ballots to members he felt deserved them. William Synek noted to Councilman Alai that this was highly irregular. In accordance with Squad Bylaws and past practice, after the official ballots were printed, no additional ballots were supposed to be produced. In addition, Matthew Parks made this decision unilaterally without discussion with any voting members and distributed the additional ballots secretly.” (See December 7, 2017 Rescue Squad Business Meeting minutes attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “N”**).

62. The Rescue Squad By-Laws do not allow for the introduction of additional ballots. In addition to this occurrence not being allowed by the By-Laws, the form of the actual ballots was improper. Specifically, the secretary did not print or sign the extra five ballots. (See **Exhibit “M”**).

63. The 2017 Rescue Squad President, Matthew Parks whom was entrusted to carry out the elections in accordance with the By-Laws and who was responsible for the mysterious production of five additional ballots, refused to participate in the investigation.

64. Defendant, Matthew Parks is the current Financial Secretary of the Rescue Squad.

65. Many of the Rescue Squad members whom participated in the investigation opined that this rigged and improper election was orchestrated in order to keep several individuals, including Defendants, Matthew Parks, Andrew Cogswell and Patrick Geraldo in powerful administrative positions.

66. Defendant, Andrew Cogswell is the current President of the Rescue Squad.

67. In addition to not meeting the voting requirements for failing to respond to calls in the Borough, the Rescue Squad has completely ignored its by-laws and has acted in conflict with the well-being of the Borough and for it's own personal power position.

68. The Rescue Squad can no longer be entrusted with ensuring the health and well-being of the Borough of South River and it's residents.

69. These manipulative and reckless members of the Rescue Squad and the South River EMS Board of Directors must be removed in order to place the enormous and serious task of public safety in the proper hands, the Borough of South River and the South River EMS.

70. The South River EMS is fully prepared to take over the Rescue Squad night shift within approximately two (2) weeks of being notified to do so. (**Exhibit "F"**)

71. Recently, the Volunteer members of the Rescue Squad have turned over and/or refused to take any calls during the night-shift.

72. The Borough Administrator, Jack Layne, is fully prepared to act as Trustee if the Court grants Plaintiff's request for a Constructive Trust. Mr. Layne is completely prepared to act in congruence with the South River EMS to ensure the proper provision of emergency medical services to the Borough of South River and its residents. (See Affidavit of Borough Administrator, Jack Layne attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit "O"**).

NEED FOR EMERGENT RELIEF

73. The Rescue Squad can no longer be entrusted with ensuring the health and well-being of the Borough of South River and its residents.

74. These manipulative and reckless members of the Rescue Squad and EMS Board of Directors must be removed in order to place the enormous and serious task of public safety in the proper hands, the Borough of South River and the South River EMS.

75. The South River EMS is fully prepared to take over the Rescue Squad night shift within approximately two (2) weeks of being notified to do so. (See **Exhibit “F”**)

76. The Borough Administrator, Jack Layne, is fully prepared to act as Trustee if the Court grants Plaintiff's request for a Constructive Trust. Mr. Layne is completely prepared to act in congruence with the South River EMS to ensure the proper provision of emergency medical services to the Borough of South River and its residents. (See Affidavit of Borough Administrator, Jack Layne attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “O”**).

77. Recently the Borough Administrator, Jack Layne received a copy of a contract entered into between South River EMS and Princeton Strategic Communications, Inc., a public relations firm. (See May 8, 2018 Contract between Princeton Strategic Communications and South River EMS attached to the Certification of James P. Nolan Jr., Esq. as **Exhibit “P”**).

78. The consideration of said contract is \$15,000.

79. This public relations campaign is a last minute attempt by the Rescue Squad and EMS Board of Directors to sway public opinion and save face after being informed by the Borough of its intentions to seek removal of the EMS Board of Directors and other volunteer members.

80. This is a perfect example of the EMS Board of Directors and Rescue Squad members using EMS funds to bolster and solidify their positions on the Rescue Squad.

81. Another example is the purchase of a brand new Ford Pick-up truck which was paid for with EMS funds and is used by the Rescue Squad members only. Paid EMS members are not allowed to use this vehicle.

82. Finally, There are also continuous reports of use of squad vehicles and intent to use squad marine crafts for personal and unauthorized uses.

83. If Plaintiff's request for emergent injunctive relief is not granted, Defendants will continue to use Rescue Squad and EMS funds for personal gains and purposes unrelated to the provision of emergency medical services.

COUNT ONE

(The contract between the Borough of South River,

South River Rescue Squad and South River EMS Must be Declared Null and Void)

84. In 2009, the Borough of South River entered into a Shared Services Agreement with the South River Rescue Squad and South River EMS for the provision of emergency medical services to the Borough and its residents.

85. New Jersey Law, specifically, N.J.S.A. 40A:11-15(21) provides that no contract for the provision of emergency medical services should exceed five (5) years.

86. As there has been no renewal of the previous contract between the Borough and the Rescue Squad since 2009, the contract between Plaintiff and Defendants should be declared null and void.

WHEREFORE, plaintiff demands that:

1. The agreement between the parties be declared null and void;
2. Defendants be removed from their positions in the South River Rescue Squad and the South River EMS Board of Directors.
3. Defendants cease any involvement in the South River Rescue Squad and South River EMS operations and administration.
4. Defendants provide Jack Layne, the Borough Administrator with any and all information and documents needed to continue Rescue Squad operations.
5. Plaintiff be granted costs of suit; and
6. Plaintiff be granted such other damages and further relief as may be proper.

COUNT TWO

(Breach of Contract and Breach of Lease)

87. In 2009, the Borough of South River entered into a shared service agreement with the South River Rescue Squad and South River EMS for the provision of emergency medical services to the Borough and its residents.

88. On that same date, the Borough and the Rescue Squad entered into a lease allowing the Rescue Squad to occupy the building located at 6 Thomas Street in South River for Rescue Squad operations. This building is owned by the Borough of South River.

89. Both the Shared Service Agreement and the Lease between the parties require that the South River Rescue Squad remain the primary provider of emergency medical services in the Borough.

90. The South River Rescue Squad can in no way be characterized as the primary provider of medical services.

91. The Rescue Squad only provides, on limited occasion, emergency medical services between the hours of 12:00 p.m. and 6:00 a.m.. The majority of the twenty-four hour shift is covered by paid employees of the South River EMS.

92. Even if the Court finds that the contract between the parties is not expired, the South River Rescue Squad has breached its contract with the Borough of South River.

WHEREFORE, plaintiff demands that:

1. The agreement and Lease between the parties be declared null and void;
2. Defendants be removed from their positions in the South River Rescue Squad and the South River EMS Board of Directors.

3. Defendants cease any involvement in Rescue Squad operations and administration.

4. Defendants remove themselves from the premises and relinquish all means of access to the property and equipment therein to the Borough Administrator;

5. Defendants provide Jack Layne, the Borough Administrator with any and all information and documents needed to continue Rescue Squad operations.

6. Plaintiff be granted costs of suit; and

7. Plaintiff be granted such other damages and further relief as may be proper.

COUNT THREE

(Threat to Public Safety and Welfare and Need for Removal)

93. The South River Rescue Squad continues to fail to provide effective and efficient emergency medical services to the Borough of South River.

94. The members of the Rescue Squad, as well as the Rescue Squad/EMS Board of Directors have abused positions of power and have been involved in numerous instances of misconduct.

95. The actions of the Defendants has resulted in a serious threat to public safety and the well-being of South River and its residents.

96. The Defendants participated and created an improper, arbitrary and questionable election which resulted in the placement of certain individuals to positions of power within the Department.

97. This improper election has rendered the South River Rescue Squad non-existent.

98. Based on the actions of the South River Rescue Squad set forth herein, the Defendants, Andrew Cogswell, Susan Cogswell, Matthew Parks, Mark Delurey, Edina Szollosi, Patrick Geraldo, Kyle Herzig and William Synek must be removed from their positions in the South River Rescue Squad and the South River EMS Board of Directors.

WHEREFORE, plaintiff demands that:

1. Defendants be removed from their positions in the South River Rescue Squad and the South River EMS Board of Directors.
2. Defendants cease any involvement in Rescue Squad operations and administration.
3. Defendants provide Jack Layne, the Borough Administrator with any and all information and documents needed to continue Rescue Squad operations.
4. Plaintiff be granted costs of suit; and
5. Plaintiff be granted such other damages and further relief as may be proper.

COUNT THREE

(Demand for Accounting)

99. The Defendants control several accounts for the South River Rescue Squad and South River EMS

100. These accounts contain funds received from the Borough, funds received for services rendered and donations.

101. There have been numerous reports of the misappropriation of these funds and extraneous expenditures on equipment and items which are not necessary for the provision of emergency medical services to the Borough of South River.

WHEREFORE, plaintiff demands that:

1. Defendants provide Jack Layne, the Borough Administrator with a full accounting of all deposits, expenditures and financial activity for the South River Rescue Squad for the past five (5) years.
2. Plaintiff be granted costs of suit; and
3. Plaintiff be granted such other damages and further relief as may be proper.

COUNT FOUR
(Creation of a Constructive Trust)

102. The funds currently controlled by the Rescue Squad and the EMS Board of Directors were received from various sources including the Borough of South River, donations and payments received for services rendered by the paid EMS squad.

103. These funds are for the designated use of operating the Rescue Squad and South River EMS

104. If a Constructive Trust is not created, these funds will continue to be misappropriated, squandered or withdrawn from the Rescue Squad accounts.

105. A Constructive Trust in favor of the Plaintiff should be impressed on all accounts and monies held by the South River Rescue Squad and South River EMS because failure to do so will result in unjust enrichment.

WHEREFORE, plaintiff demands that:

1. A Constructive Trust be created to freeze all funds held by the Rescue Squad and South River EMS.

2. That Jack Layne, the Borough Administrator be appointed as Trustee to oversee and control all funds currently held by the Rescue Squad.
3. Plaintiff be granted costs of suit; and
4. Plaintiff be granted such other damages and further relief as may be proper.

CERTIFICATION

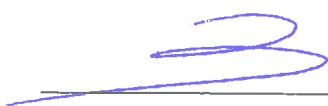
PURSUANT to R. 4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also to the best of our knowledge or belief, no other action or arbitration proceeding is contemplated, Further, other than the parties named herein, we know of no other parties that should be joined in the above action.

I further certify that this complaint contains no personal confidential identifiers and I recognize the responsibility to ensure the same as to all subsequent pleadings.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is hereby advised that Fredrick L. Rubenstein, Esq., is designated as trial counsel for the plaintiff in the above matter.

LAW OFFICE OF JAMES P. NOLAN &
ASSOCIATES, LLC
Attorneys for Plaintiff

BY: 

Fredrick L. Rubenstein, Esq.

Dated: May 17, 2018

James P. Nolan, Jr., Esq. (Attorney ID #004591987)
JAMES P. NOLAN AND ASSOCIATES, L.L.C.
61 GREEN STREET
WOODBIDGE, NEW JERSEY 07095
TELEPHONE (732) 636-3344 FAX: (732) 636-1175
Attorneys for Plaintiff, The Borough of South River

THE BOROUGH OF SOUTH RIVER : SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION-GENERAL EQUITY
Plaintiff, : MIDDLESEX COUNTY

-v- : Docket No.

SOUTH RIVER RESCUE SQUAD, INC., :
SOUTH RIVER EMERGENCY :
MEDICAL SERVICES, INC., ANDREW :
COGSWELL (in his official capacity as :
President of the South River Rescue Squad :
and as Board member of the South River :
EMS Board of Directors), SUSAN :
COGSWELL (in her official capacity as :
Secretary of the South River Rescue Squad), :
MATTHEW PARKS (in his official capacity :
as Assistant Captain and Financial Secretary :
of the South River Rescue Squad :
and as Vice President of the South River :
EMS Board of Directors), MARK :
DELUREY (in his official capacity as :
Treasurer and First Lieutenant of the :
South River Rescue Squad and as President :
of the South River EMS Board of Directors), :
EDINA SZOLLOSI (in her official capacity :
as Second Lieutenant of the South River :
Rescue Squad and as Secretary of the South :
River EMS Board of Directors), PATRICK :
GERALDO (in his official capacity as :
Captain of the South River Rescue Squad :
and as Treasurer of the South River EMS :
Board of Directors), KYLE HERZIG in his :
official capacity as a Board member of the :
South River EMS Board of Directors) :
WILLIAM SYNEK in his official capacity :
as a Board member of the South River EMS :
Board of Directors) AND JOHN DOES/ :
ABC CORPS., 1-5 :
Defendants. :

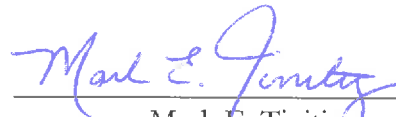
VERIFICATION

I, Mark E. Tinitigan, of full age hereby certifies and says:

1. I am the Chief of the South River Police Department in South River, New Jersey
2. The facts herein are true to the best of my personal knowledge, or based upon the books, records and documents maintained and/or received by the Borough of South River.
3. I have reviewed the Verified Complaint being filed in the above-captioned matter and the facts therein are true.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willingly false, I am subject to punishment.

Dated: May 14, 2018



Mark E. Tinitigan

May 18, 2018

Via Lawyers Service

Motions Clerk
Superior Court of Middlesex County
Chancery Division
56 Paterson Street
New Brunswick, New Jersey 08903
Attn: Toni

RE: The Borough of South River v. South River Rescue Squad, Inc., et. al.

Dear Sir/Madam:

Please be advised that this office represents Plaintiff, Borough of South River, in the above-referenced matter. Please accept this letter brief in lieu of a more formal brief in support of Plaintiff's Order to Show Cause seeking temporary restraints and Verified Complaint filed against Defendants, South River Rescue Squad, Inc., South River Emergency Services, Inc., Andrew Cogswell, Susan Cogswell, Matthew Parks, Mark Delurey, Edina Szollosi, Patrick Geraldo, Kyle Herzig and William Synek ("Defendants" or "South River Rescue Squad" or "Rescue Squad").

STATEMENT OF MATERIAL FACTS

1. The Creation of the South River Rescue Squad and South River EMS:

The South River Rescue Squad (hereinafter referred to "Rescue Squad") was established in 1936 and consisted of all volunteer members whom assisted in various emergency medical services throughout the Borough of South River. Some time later, the Borough passed an Ordinance officially establishing the South River Rescue Squad and allowing funding for equipment and the administration of the Rescue Squad in order to ensure efficient provision of emergency medical services to the residents of the Borough. (See Section 72-64 of the South River Borough Code attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit "A"**).

On/or about September 29, 2009, the Borough of South River entered into a Shared Services Agreement with the South River Rescue Squad and South River EMS for the provision of emergency medical services to the Borough and its residents (See September 9, 2009 Shared Services Agreement attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “B”**). As previously stated, the Rescue Squad is comprised of all volunteer members most of whom do not reside in the Borough of South River. South River EMS is comprised of paid per diem employees which are paid an hourly rate. The EMS Board of Directors is comprised of volunteer Rescue Squad members which make all financial and employment decisions in regards to the South River EMS and its paid members. The purpose of the above-referenced Shared Services Agreement was to bring in paid employees (South River EMS) to supplement the volunteers (the Rescue Squad) in order to provide twenty-four hour emergency medical services to the Borough and its residents. The purpose of the shared services agreement is also evidenced on the South River Rescue Squad’s website which specifically states:

“In 2009 the members of the South River Rescue Squad took action to fix the manpower emergency and formed a new agency... South River EMS. This resulted in a hybrid organization consisting of the volunteer EMTs of the South River Rescue Squad at its core being supplemented by the per-diem EMTs of South River EMS, and allowed for 24 hour emergency medical coverage.” (See printed “About Us” page from the South River Rescue Squad website attached Certification of James P. Nolan, Jr., Esq. as **Exhibit “C”**).

Paragraph one (1) of the 2009 Shared Services Agreement also confirms that it was understood and agreed that “South River Rescue Squad, Inc. shall continue to be the primary provider of emergency medical services to the Borough of South River.” (See paragraph 1 of **Exhibit “B”**). On/or about September 29, 2009, the Rescue Squad entered into a lease with the Borough to occupy certain bays and to utilize the building located at 6 Thomas Street as a headquarters for emergency medical services operations in South River. (See September 29, 2009 Lease Agreement and Resolution attached Certification of James P. Nolan, Jr., Esq. as **Exhibit “D”**). This Lease once again proclaims

that the Rescue Squad “shall continue to be the primary provider of emergency medical services to the Borough of South River.”(See paragraph 7 of **Exhibit “D”**). The South River Rescue Squad and South River EMS have never renewed or modified the agreement with the Borough.

On July 27, 2009, South River EMS entered into a lease with the Borough to occupy Bays 2 and 3 at the building located at 6 Thomas Street, South River, New Jersey 08882 and to supplement the Rescue Squad in providing emergency services to the Borough of South River in accordance with the Shared Services Agreement. (See July 27, 2009 Lease Agreement attached Certification of James P. Nolan, Jr., Esq. as **Exhibit “E”**). This Lease also proclaims that “South River Rescue Squad, Inc. is the primary provider of emergency services to the Borough of South River.” (See paragraph 8 of **Exhibit “E”**). Both of these Lease Agreements between the Borough and the Rescue Squad and the Borough and South River EMS place the responsibility of enforcing these agreements with the Borough Administrator (See paragraph 17 of **Exhibit “D”** and paragraph 17 of **Exhibit “E”**).

2. Shift in Responsibilities and Dereliction of Duty:

Since the execution of these agreements, there has been a clear shift in the responsibilities of the Rescue Squad and the South River EMS. The Rescue Squad in no way can be characterized by any means as the primary provider of emergency services in the Borough of South River. Currently, and for some time now, the Rescue Squad only provides emergency medical services for the Borough of South River from 12:00 a.m. until 6:00 a.m. For the remaining eighteen (18) hours of the day, South River EMS provides complete emergency medical services for the Borough of South River. More recently, the Rescue Squad is not even providing EMS services during the 12:00 a.m. to 6:00 a.m. shift. For the six hours for which the Rescue Squad rarely provides coverage, there have been numerous reports of troubling occurrences and clear derelictions of duty by the volunteer members and the EMS Board of Directors. These incidents were reported through various sources to the Chief of the South River Police Department, Mark Tinitigan. (See Affidavit of Mark Tinitigan attached to the Certification of James. P. Nolan, Jr., Esq. as **Exhibit “F”**).

After receiving these reports, Chief Tinitigan conducted an investigation which uncovered serious deficiencies in the provision of emergency medical services by the Rescue Squad. Specifically, it was found that from January 1, 2017 to March 24, 2018, the Rescue Squad responded to only 117 of a total of 303 calls for emergency medical services between the hours of 12:00 a.m. and 6:00 p.m. (See Volunteer Rescue Squad Statistics spreadsheet attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “G”**). The remainder of these calls required either a split crew (paid and volunteer), the paid crew or a turn over of the call to a neighboring emergency medical service provider. (See **Exhibit “G”**). It was also discovered that several requests for emergency services between the hours of 12:00 a.m. and 6:00 a.m. have been simply ignored and turned away by the Rescue Squad and were relayed to neighboring towns including Sayreville, East Brunswick and Spotswood, New Jersey. (See Turnover Call spreadsheet attached to the Certification of James P. Nolan as **Exhibit “H”**).

There have also been reports of Rescue Squad Members using squad vehicles for unauthorized and personal use. Specifically, it has been reported that Patrick Geraldo has used Rescue Squad vehicles and marine crafts for personal use and for transporting other Rescue Squad Members to their other jobs. There have also been reports that the Rescue squad members are consuming alcohol in the basement of the squad house after they get out of their day jobs. In addition to the numerous concerns raised by the deficient performance and response to calls, several Rescue Squad and EMS members have come forward and provided accounts of misconduct and misappropriation by Rescue Squad Officers and other volunteer members. (See Affidavit of Suzanne Vazquez and Affidavit of Kyle Fleming attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibits “I”** and **“J”** respectively.) These figures and reports clearly demonstrate that the Rescue Squad can no longer be entrusted with the responsibility of providing Emergency Medical Services to the Borough of South River and its residents.

2. Power Struggle and Animosity Towards South River EMS:

The Execution of the Shared Services Agreement (**Exhibit “B”**) and the Lease Agreements with between the Rescue Squad and South River EMS (**Exhibits “D” & “E”**) have created a very odd and abusive situation between these two entities. The terms of the Shared Service Agreement, and questionable tactics of the Rescue Squad volunteer members carried over through the years, allowed the Rescue Squad to become a manipulative and abusive force towards the paid EMS members. Specifically, the Rescue Squad has become hostile toward the South River EMS and have placed almost all of the responsibility of providing emergency medical services in South River on the EMS members and have done so with threats of possible termination and complete scheduling control.

The current structure of the combined South River Emergency Services Program has allowed all decisions regarding disbursements of funds and employment to be controlled by the Rescue Squad and the EMS Board of Directors which is comprised of volunteer Rescue Squad Members. Based on this one-sided and bias structure, many of the EMS members have been hesitant to report any of the inappropriate actions of the Rescue Squad members out of fear of termination and/or alienation. To date, the Rescue Squad continues to abuse the power created through the Shared-Services Agreement and completely disregards its responsibility to be the primary provider of emergency medical services for the Borough of South River.

4. The 2018 Rescue Squad Elections:

Immediately following the December 2018 Rescue Squad Elections, South River Councilman John Alai was contacted by an individual who identified himself as “John Alan,” who claimed that the elections were done improperly and in violation of the Rescue Squad by-laws. There is no record of a “John Alan” being an active member of the South River Rescue Squad and it appears that this

fictitious identity was created solely to report these alleged discrepancies. In response to this anonymous Complaint, a full investigation was performed by Brian A. Bontempo, Esq. from the Borough attorney's office, the Law Office of James P. Nolan and Associates. (See Certification of Brian A. Bontempo, Esq. attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit "K"**)

In addition to a comprehensive review of the Rescue Squad By-Laws and Rescue Squad meeting minutes, telephonic interviews were conducted with the 2017 Rescue Squad Secretary, William Synek, the 2017 Rescue Squad President, Matthew Parks, Councilman/Public Safety Liaison, John Alia, the 2018 President, Andy Cogswell, and Rescue Squad members Eric Knapp, Patrick Geraldo, Kyle Hersek and Christopher Schienek. Several individuals, including Defendants, Patrick Geraldo and Matthew Parks completely refused to participate in the investigation or even speak to Mr. Bontempo. (See **Exhibit "K"**).

By way of context, in order to be eligible to vote in a Rescue Squad election, the member must (1) be an Emergency Medical Technician (EMT), (2) answer a minimum of 15 % of the quarterly calls/transport, and (3) must serve on a weekly duty crew (Night Shift) as approved by the Captain. The anonymous complainant, "John Alan" alleged that out of all of the Rescue Squad volunteer members, there were only 2-3 members who were actually eligible to vote in the 2018 election. According to Alan, all other volunteer members were not eligible because they did not meet the 15% call volume requirement. After further investigation, it was confirmed that there were only two (2) Rescue Squad members who were actually eligible to vote in the elections based on the fact that the majority of the Rescue Squad volunteer members did not answer a minimum of 15 % of the quarterly calls/transport.

To circumvent this voting requirement, and in clear violation of the Rescue Squad By-laws, the members in attendance at the November Squad meeting created a list comprised of members of the rescue squad and determined who would be eligible to vote, waiving the 15% call volume

requirement. There was no vote or action to amend the By-Laws to change the voting eligibility requirements. (See November 2, 2017 Rescue Squad Business Meeting minutes attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “L”** and see Rescue Squad By-Laws attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “M”**). In fact, there was not even a quorum at the November Rescue Squad Meeting which would have made the changing of the by-laws, and waiving of voting eligibility requirements possible. Specifically, the Meeting minutes state that:

“Due to the lack of a quorum, an informal meeting was held to nominate Members for the various elected positions and to establish which members would be allowed to vote in the December officer elections. After nominations were complete, it was discussed that the Squad currently only had two members eligible to vote as defined by the Squad Bylaws (Eric Knapp and William Synek). It was decided that in order to increase the voting membership, ballots would also be supplied to Members who consistently rode their designated Night Crew for the year.” (See **Exhibit “M”**)

Following this arbitrary decision and action, the election took place at the December Rescue Squad Meeting. After the Squad improperly agreed that there would be eight ballots for the 2018 elections, there were approximately five additional ballots produced by the President, Matthew Parks at the December 7, 2017 meeting. This is also confirmed by the December meeting minutes which state in relevant part that:

“Squad meeting was recessed so the ballots could be counted by Councilman Alai with Matthew Parks (President) and William Synek (Secretary) in attendance. When the ballots were opened, it was noted by William Synek that there were supposed to be 8 official ballots, but 13 ballots had been submitted. Matthew Parks stated that he decided after he signed the ballots on 11/6 that he would give out 5 additional ballots to members he felt deserved them. William Synek noted to Councilman Alai that this was highly irregular. In accordance with Squad Bylaws and past practice, after the official ballots were printed, no additional ballots were supposed to be produced. In addition, Matthew Parks made this decision unilaterally without discussion with any voting members and distributed the additional ballots secretly.” (See December 7, 2017 Rescue Squad Business Meeting minutes attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “N”**).

The Rescue Squad By-Laws do not allow for the introduction of additional ballots (See **Exhibit “M”**). In addition to this occurrence not being allowed by the By-Laws, the form of the actual ballots was improper. Specifically, the secretary did not print or sign the extra five ballots. (See

Exhibit “M”). The 2017 Rescue Squad President, Matthew Parks whom was entrusted to carry out the elections in accordance with the By-Laws and who was responsible for the mysterious production of five additional ballots, refused to participate in the investigation. Defendant, Matthew Parks is the current Financial Secretary of the Rescue Squad. Many of the Rescue Squad members whom participated in the investigation opined that this rigged and improper election was orchestrated in order to keep several individuals, including Defendants Matthew Parks, Patrick Geraldo and Andrew Cogswell in powerful administrative positions.

NEED FOR EMERGENT RELIEF

The Rescue Squad can no longer be entrusted with ensuring the health and well-being of the Borough of South River and its residents. These manipulative and reckless members of the Rescue Squad and EMS Board of Directors must be removed in order to place the enormous and serious task of public safety in the proper hands, the Borough of South River and the South River EMS. The South River EMS paid staff is fully prepared to take over the Rescue Squad night shifts immediately and are willing to collaborate with the Borough to provide twenty-four hour coverage. The Borough Administrator, Jack Layne, is fully prepared to act as Trustee if the Court grants Plaintiff's request for a Constructive Trust. Mr. Layne is completely prepared to act in congruence with the South River EMS to ensure the proper provision of emergency medical services to the Borough of South River and its residents. (See Affidavit of Borough Administrator, Jack Layne attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “O”**).

Finally, the Borough Administrator, Jack Layne recently received a copy of a contract entered into between South River EMS and Princeton Strategic Communications, Inc., a public relations firm. (See May 8, 2018 Contract between Princeton Strategic Communications and South River EMS attached to the Certification of James P. Nolan Jr., Esq. as **Exhibit “P”**). The consideration of said

contract is \$15,000. This public relations campaign is a last minute attempt by the Rescue Squad and EMS Board of Directors to sway public opinion and save face after being informed by the Borough of its intentions to seek removal of the EMS Board of Directors and other volunteer members. There are also continuous reports of use of squad vehicles and intent to use squad marine crafts for personal and unauthorized uses. If Plaintiff's request for emergent injunctive relief is not granted, Defendants will continue to use Rescue Squad and EMS funds for personal gains and purposes unrelated to the provision of emergency medical services.

LEGAL ARGUMENT
POINT ONE

**THE PLAINTIFF HAS CLEARLY MET THE STANDARD
ESTABLISHED BY THE NEW JERSEY SUPREME COURT
WARRANTING THE ISSUANCE OF A PRELIMINARY INJUNCTION
AGAINST THE DEFENDANTS**

It is well-settled law that a four-part test is used by the courts of this state in order to determine whether a preliminary injunction should be issued in any particular case. This test has been cited in numerous cases, both state and federal, and was simplified by the court in Community Hosp. Group Inc. v. More, 365 N.J.Super. 84 (2003). The court in Community Hospital Group, Inc., citing the leading case on the issue, sternly stated that:

“A four-prong test for determining whether an applicant is entitled to preliminary injunctive relief was set forth by the Supreme Court in Crowe v. De Gioia, 90 N.J. 126, 447 A.2d 173 (1982). First, an application for preliminary injunctive relief should be granted only “when necessary to prevent irreparable harm.” Id. at 132, 447 A.2d 173. The second prong requires that the legal right underlying the applicant's claim be settled as a matter of law. Id. at 133, 447 A.2d 173. The third prong requires the applicant to “make a preliminary showing of a reasonable probability of ultimate success on the merits.” Ibid. Fourth, the court also must balance the resulting hardship to the parties in granting or denying preliminary injunctive relief. Id. at 134, 447 A.2d 173.” Id. at 95.

Taking each of these factors in turn, it is clear that the Plaintiff is entitled to preliminary injunctive relief.

1. **The Prevention of Irreparable Harm:**

The Courts have enumerated several definitions “irreparable harm” in order to determine whether preliminary injunctive relief is warranted in any specific situation. For Example, the Court in Adams v. Freedom Forge Corp., 204 F.3d 475, 485 (3d Cir. 2000), clearly stated that:

"The irreparable harm requirement is met if a plaintiff demonstrates a significant risk that he or she will experience harm that cannot adequately be compensated after the fact by monetary damages." Adams v. Freedom Forge Corp., 204 F.3d 475, 485 (3d Cir. 2000).

In the case at hand, the Rescue Squad has created a serious threat to the safety and welfare of the Borough of South River and its residents. This threat cannot be fixed by damages or any other form of monetary relief. The Rescue Squad has diverted from its original purpose and has become an enormous liability and dysfunctional organization. As such, injunctive relief is the only means to ensure that the members of the Rescue Squad and the EMS Board of Directors are removed. Also, the imposition of a constructive trust on all accounts held by the Rescue Squad and South River EMS will freeze these accounts and eliminate the possibility of complete depletion by disgruntled Squad members who have complete access.

This danger is immediate and real. The Rescue Squad and the Board of directors have already made several purchases which serve absolutely no purpose to the provision of emergency medical services to the Borough. Additionally, it is only a matter of time until the Rescue Squad Night-Shift ignores a call for emergency medical services resulting in death or serious injury to a resident in need of immediate medical attention. It is hard not to recognize the need for immediate action and the irreparable harm which would undoubtedly occur if the Court denies Plaintiff's request for immediate injunctive relief.

2. **The Legal Right Underlying the Plaintiff's Claim is Settled as a Matter of Law and There Is a Reasonable Probability of Ultimate Success on the Merits:**

A. **Plaintiff's Claim is Settled as a Matter of Law:**

I. **The Contract between the Borough and the Rescue Squad has expired and must be declared null and void:**

On/or about September 29, 2009, the Borough of South River entered into a Shared Services Agreement with the South River Rescue Squad and South River EMS (See September 9, 2009 Shared Services Agreement attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit "B"**). New Jersey Law provides specific durations for contracts entered into with municipalities. Regarding contracts for the provision of emergency medical services, N.J.S.A. 40A:11-15(21) specifically states that no contract for the provision of emergency medical services should exceed five (5) years. As there has been no renewal of the previous contract between the Borough and the Rescue Squad since 2009, the contract between Plaintiff and Defendants should be declared null and void.

II. **Breach of the Shared Service Agreement between the Borough of South River, the Rescue Squad and South River EMS:**

Even if the Court finds that the Shared Service Agreement has not expired, the Defendants have breached the terms of said Agreement by failing to remain the primary provider of emergency medical services and by participating in numerous instances of misconduct and misappropriation. It has been held by the courts, both Federal and State, that a claim for breach of contract is well-settled as a matter of law. In fact, the courts of this state have expressed this very same notion. The Chancery Court in Fluoramics, Inc. v. Trueba, clearly stated:

"The second Crowe element requires that "temporary relief should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, supra, at 133. In this case, plaintiff's verified complaint sets forth claims for breach of contract, breach of a common law duty of loyalty, common law misappropriation/misuse of trade secrets, conversion, unfair competition, unjust enrichment, and fraudulent misrepresentation. These claims are well-settled as a matter of law" Fluoramics, Inc. v. Trueba, (Chancery Div. Unpb. 2005)

On/or about September 29, 2009, the River Rescue Squad entered into a Shared Services Agreement with South River EMS (See September 9, 2009 Shared Services Agreement attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “B”**). The Borough of South River was also a party to this agreement. The purpose of the above-referenced Shared Services Agreement was to bring in paid employees (South River EMS) to supplement the volunteers (the Rescue Squad) in order to provide twenty-four hour emergency medical services to the Borough and its residents. Paragraph one (1) of this agreement also confirms that it was understood and agreed that “South River Rescue Squad, Inc. shall continue to be the primary provider of emergency medical services to the Borough of South River.” (See paragraph 1 of **Exhibit “B”**).

As previously stated and explained in Plaintiff’s Verified Complaint, the Rescue Squad is not the primary provider of Emergency Medical Services in the Borough of South River. Also, there have been no reports or accountings provided to the Borough in accordance with the terms of the agreement. In addition to being in breach of numerous terms and conditions set forth in the Shared Service Agreement and the Lease with the Borough, the Rescue Squad can no longer be entrusted with the great responsibility of providing emergency medical services. Clear breach and the authorities set forth above clearly demonstrate that Plaintiff’s claim for breach of contract is well-settled as a matter of law.

III. Breach of the Lease Between the Borough and the Rescue Squad:

The Lease Agreement between the Borough of South River and South River Rescue Squad, Inc. (The Rescue Squad) authorized the use of the Building at 6 Thomas Street to facilitate the provision of Emergency Medical Services to the Borough and its residents (See July 27, 2009 Lease Agreement attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibit “E”**). Defendants have breached numerous terms of this lease and are thereby, subject to eviction from the premises.

Also, this lease and the terms thereof were also authorized by Resolution 2009-346. (See **Exhibit”E”**). There have been apparent breaches of this lease by the Rescue Squad including its failure to remain the primary provider of emergency medical services to the Borough of South River.

The Borough is well-within its police powers to enforce the terms of the Lease Agreement and to enforce the Resolution passed by the Borough Council. This police Powers is specifically enumerated in N.J.S.A. § 40:48-2 which states in relevant part that:

“Any municipality may make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law.

As the Borough’s provision and supervision of emergency medical services is necessary in order to ensure the “preservation of the public health, safety and welfare of the municipality and its inhabitants,” it is plainly clear that the Borough’s claim for breach of Lease is well-settled as a matter of law.

IV. Imposition of a Constructive Trust on Rescue Squad and South River EMS Accounts Pending the Resolution of This Litigation:

There are specific instances which allow for the equitable remedy of a Constructive Trust. Specifically, in many cases, a Constructive Trust will be impressed against property when failing to do so would be unjust, even if the holder of the property did not acquire the property wrongfully. This concept was clearly stated by the Court in D’lppolito v. Castoro, 51 N.J. 584, 588-89, 242 A.2d 617,619 (1968). The D’lppolito Court emphatically held that:

“Although Gordon v. Griffith, 113 N.J.Eq. 554, 168 A. 57 (Ch. 1933) indicates that fraud is an essential element of a constructive trust, the better view as expressed in our later decisions is that a constructive trust will be impressed in any case where to fail to do so will result in an unjust enrichment. Clark v. Judge, 84 N.J.Super. 35, 61, 200 A.2d 801 (Ch. 1964) *589 affd o.b. 44 N.J. 550, 210 A.2d 415 (1965); 5 Bogert, Law of Trusts s 472, p. 10 (2d ed. 1965); Scott on Trusts s 462.1, p. 3417 (3d ed. 1967). Generally all that is required to impose constructive trust is a finding that there was some wrongful act, usually, though not limited to, fraud, mistake, undue influence, or

breach of a confidential relationship, which has resulted in a transfer of property. Cf. Neiman v. Hurff, 11 N.J. 55, 93 A.2d 345 (1952). Scott on Trusts, supra, s 462.2, p. 3417, goes so far as to suggest that 'A constructive trust may arise, however, even though the acquisition of the property was not wrongful. It arises where the retention of the property would result in the unjust enrichment of the person retaining it'

In the case at hand, there is great inevitability of unjust enrichment if a Constructive Trust is not imposed. The Rescue Squad and EMS receive funding by three (3) means: 1) Donations from the public, 2) Appropriations from the Borough of South River and 3) from compensation for calls responded to by the South River EMS. The Defendants, whom are high-ranking members of the Rescue Squad and make up the South River EMS Board of Directors have complete control over all financial accounts. Also, there have already been reports of financial misappropriations and expenditures on items completely unrelated to the provision of emergency medical services by the volunteer members of the squad. (See Affidavit of Suzanne Vazquez and Affidavit of Kyle Fleming attached to the Certification of James P. Nolan, Jr., Esq. as **Exhibits "I" and "J"** respectively.)

Once this litigation is filed, the Defendants will be free to completely deplete these accounts. These funds are needed to provide emergency medical services and ensure the preservation of public safety and the well-being of South River and its residents. As the imposition of a constructive trust is necessary to prevent unjust enrichment, Plaintiff's claim is well-settled as a matter of law.

B. There Is a Reasonable Probability of Ultimate Success on the Merits

Injunctive relief is appropriate if the Plaintiff can demonstrate a reasonable probability of ultimate success on the merits. See Crowe. As stated by the court, the Plaintiff only needs to "make a showing of reasonable probability, not the certainty, of success on the merits." Atlantic City Coin & Slot Service Co., Inc. v. IGT, 14 F.Supp. 2d 644, 657 (D.N.J. 1998). Although the undeniable and simple facts of this case demonstrate that Plaintiff will succeed on the merits of both its breach of contract and breach of lease claims, Plaintiff is only required to show a reasonable probability of success on the merits. Crowe, 90 N.J. at 132-34. The facts set forth herein demonstrate that the

Rescue Squad has breached the Shared Services Agreement and its Lease with the Borough. Also, because the Defendants have not renewed their contract with the Borough, this agreement must be declared null and void in accordance with N.J.S.A. 40A:11-15(21). As such there is more than a reasonable probability of success on the merits warranting injunctive relief.

3. The Hardship to the Parties in Granting or Denying Preliminary Injunctive Relief:

The final requirement that would justify the issuance of preliminary injunctive relief requires an examination of what, if any, hardship the parties would suffer in granting or denying this equitable remedy. In other words, there must be a showing that the inconvenience or loss to the opposing party would be minimal. This case offers a specific set of circumstances and facts that clearly demonstrate that the hardships faced by the Plaintiff if an injunction is not issued, far outweigh the hardships the Defendant would suffer if the court were to grant this equitable remedy.

The hardships faced by the Plaintiff are clear and absolute. Perhaps more concerning is the hardship to the public and the residents of South River. The provision of emergency medical services is a necessity and not a luxury. The Rescue Squad has continuously deteriorated and cannot be entrusted with the enormous responsibility of serving the public. As such, the hardships in denying injunctive relief will only be felt by the Plaintiff, the Borough of South River and its residents.

The hardships to the Defendants are nonexistent. Most members of the volunteer squad live in other towns and hold separate paying jobs in addition to their volunteer positions in South River. In this case, a preliminary injunction would only require the Defendants to leave volunteer positions, and relinquish control to accounts which hold funds that the Defendants are not entitled to control. Furthermore, not issuing an injunction would result in a windfall for the Defendants and would only condone their behavior, result in retaliation and possible termination of the brave EMS members which came forward, unjust enrichment and other damages.

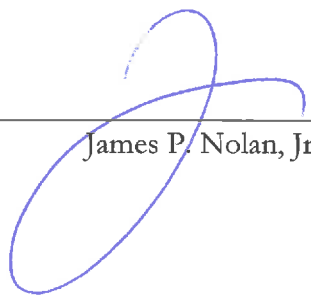
CONCLUSION

For the reasons set forth above, it is respectfully requested that the court issues Plaintiff's proposed Order to Show Cause in order to prevent irreparable damage to the Plaintiff.

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ASSOCIATES, LLC
Attorneys for Plaintiff
The Borough of South River

Dated: May 18, 2018

BY:



James P. Nolan, Jr., Esq.