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Thomas Schierer

THOMAS SCHIERER,

Plaintiff,

v.

BOROUGH OF LAVALLETTE,
MAYOR WALTER G. LACICERO,
COUNCILPERSON ANITA F. ZALOM,
COUNCILPERSON JAMES G. BOROWSKI,
COUNCILPERSON JOANNE FILIPPONE,
COUNCILPERSON DAVID FINTER,
COUNCILPERSON ROBERT LAMB, and
COUNCILPERSON MICHAEL STOGDILL,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – OCEAN COUNTY

Docket No.:

Civil Action

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRIT, PURSUANT TO
R. 4:69-1, ET. SEQ.**

Plaintiff Thomas Schierer (hereinafter, the “Plaintiff” or “Schieer”), by and through his undersigned counsel, by way of Verified Complaint in Lieu of Prerogative Writ in support of Order to Show Cause as against the Defendants Borough of Lavallette (hereinafter, the “Borough” or “Lavallette”), Mayor Walter G. LaCicero, Councilperson Anita F. Zalom, Councilperson James G. Borowski, Councilperson JoAnne Filippone, Councilperson David Finter, Councilperson Robert Lamb, and Councilperson Michael Stogdill (all Defendant Councilpersons collectively referred to as the “Borough Councilmembers”) (all collectively, the “Defendants”), hereby states and alleges as follows:

PARTIES

1. Plaintiff Thomas Schierer is a former employee of Defendant Lavallette, last serving in its municipal police department as a Sergeant.

2. Defendant Borough of Lavallette is a municipality located in the State of New Jersey with its principal offices at 1306 Grand Central Avenue, Lavallette, New Jersey 08735, and runs/operates the Lavallette Police Department day-to-day by way of funding, hiring, monitoring, training, terminating, disciplining and ensuring that all officers within its police department follow all rules, regulations and statutes on a daily basis.

3. Defendant Mayor Walter G. LaCicero, at all relevant times herein, was and is the Mayor of Defendant Lavallette, serving in this position since 2007.

4. Defendant Councilperson Anita F. Zalom, at all relevant times herein, was and is a Councilmember for Defendant Lavallette, serving in this position since 1997.

5. Defendant Councilperson James G. Borowski, at all relevant times herein, was and is a Councilmember for Defendant Lavallette, serving in this position since 2010.

6. Defendant Councilperson JoAnne Filippone, at all relevant times herein, was and is a Councilmember for Defendant Lavallette, serving in this position since 2007.

7. Defendant Councilperson David Finter, at all relevant times herein, was and is a Councilmember for Defendant Lavallette, serving in this position since 2014.

8. Defendant Councilperson Robert Lamb, at all relevant times herein, was and is a Councilmember for Defendant Lavallette, serving in this position since 2005.

9. Defendant Councilperson Michael Stogdill, at all relevant times herein, was and is a Councilmember for Defendant Lavallette, serving in this position since 2005.

FACTUAL BACKGROUND RELEVANT TO ALL CLAIMS

10. The Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs with the same force and effect as if each were fully set forth at length herein.

11. Plaintiff Schierer sustained numerous serious physical injuries during the performance of his duties while employed at the Lavallette Police Department (hereinafter, the “LPD”), and defendant Lavallette has never contested, in any fashion whatsoever, this medical finding.

12. Among other workplace injuries, Schierer sustained serious permanent hearing damage while assisting with the LPD’s presence during July 4, 2016, holiday beach festivities. While Schierer was clearing used fireworks on the beach, nearby “grand finale” fireworks were set off, causing Schierer to sustain extensive hearing loss.

13. Additionally, on March 28, 2017, Schierer sustained a back/spine injury when responding to a home fire. During said incident, Schierer severely injured his back/spine while rescuing children from the area of the fire. Up to the current date, Schierer continues to be treated for this injury, and has never fully recovered from same.

14. In 2019, Schierer entered a rehabilitation facility to treat an addiction to medication he was prescribed to treat his on-the-job back/spine injury. Schierer successfully completed his treatment and exited the rehabilitation facility after three (3) months.

15. Soon thereafter, Schierer satisfactorily completed for a Fitness for Duty Examination (hereinafter, an “FFD”) and was deemed fit to return to his normal workplace duties.

16. Notwithstanding the above, and almost immediately after being cleared to return to work, Defendant Lavallette curiously and without valid cause commenced termination proceedings as against Schierer. Moreover, the Ocean County Prosecutor’s Office (hereinafter, the

“OCPO”), upon more than valid information and belief, threatened criminal action toward Schierer. This was precipitated by false allegations stemming from the scorned mother of Schierer’s child, all allegations of which were absurd, bizarre, and completely fallacious.

17. At or about that point in time, Schierer was faced with the proverbial “Hobson’s Choice”, as described further hereinbelow. Schierer was placed under extreme duress when confronted with this situation, duress so severe that no reasonable person would or should be able to endure.

18. With the assistance of previous legal counsel, Schierer and Defendant Lavallette entered into settlement negotiations, whereby Schierer would retire from his employment at the Borough in good standing and apply for accidental disability benefits with the New Jersey Police and Fireman’s Retirement System (hereinafter, the “PFRS”). The stipulation in the Agreement allowing Schierer to apply for accidental retirement disability was critical, crucial, formed the fulcrum for, and was the overriding reason for Schierer executing said Agreement in the first instance.

19. On June 22, 2021, Schierer executed a Settlement Agreement and General Release with Defendant Lavallette (hereinafter, the “Agreement” or “Settlement Agreement”). A true and accurate copy of the Settlement Agreement is attached hereto as **Exhibit A**.

20. The Settlement Agreement noted that “following review by the [OCPO], the Borough would be entitled to bring disciplinary charges [. . .] against Officer Schierer seeking the termination of his employment[.]”

21. The Settlement Agreement further noted that “Schierer could be charged with” numerous statutory and regulatory violations related to alleged off-duty and workplace misconduct.

22. Additionally, the Agreement states that “Schierer intends to make an application to the [PFRS] for a disability retirement, in which case the Borough would take all action necessary to effect or support such application[.]” This clause/statement was also key, crucial and critical to Schierer. Again, without legally being able to apply for his rightfully earned accidental disability retirement, Schierer would have never executed the Agreement in the first instance. This too is uncontroverted.

23. Furthermore, under the terms of the Agreement, thought to be legally enforceable by Defendant Lavallette also at the time, the Borough expressed its belief that “Schierer may be considered as totally and/or permanently disabled from performing his job responsibilities as a Police Officer[.]” and that “Schierer agrees to take all action reasonably necessary to effectuate a disability retirement with the [PFRS] effective on or before September 1, 2021 or as otherwise set forth herein[.]”

24. Moreover, under the terms of the Settlement Agreement, Schierer was required to “deliver [. . .] an Irrevocable Letter of Resignation from the [LPD], without an effective date.” Said resignation was to be “held in abeyance pending Officer Schierer’s disability retirement application with the PFRS.” However, the Agreement also provided that Schierer’s resignation would be effective as of the date Schierer executed the Agreement “regardless of whether, or when, the PFRS acts upon his disability retirement application.” As such, the express terms of the Settlement Agreement required that Schierer resign from his Borough employment regardless of the parties’ mutual intention for Schierer to be eligible for disability retirement benefits – a term which inadvertently and unintentionally made Schierer ineligible for same.

25. The Settlement Agreement further stated that “[i]n the event the PFRS denies Officer Schierer’s application, the Irrevocable Letter of Resignation from the [LPD] shall become

effective upon notice by the PFRS to Officer Schierer and the Borough without further action by either party, and Officer Schierer shall be deemed to have separated from his employment at the end of business on the date of such notice[.]” Indeed, it remained obvious that the Agreement contradicted itself in myriad ways and in numerous respects.

26. The Agreement also states that it “is subject to formal approval and ratification by the Borough’s governing body and by the Borough’s attorney.”

27. Indeed, as evidenced by the clear and unambiguous terms of the Agreement, both Schierer and the Defendant Borough intended, from the outset, for Schierer to be eligible for, and ultimately be approved for and collect, accidental disability retirement benefits for the workplace injuries he sustained while on duty as an LPD officer.

28. Moreover, upon information and belief, although Schierer executed the Settlement Agreement on June 22, 2021, no representative of the Borough ever returned a fully executed copy thereof to Schierer, nor was the Agreement ever formally approved and/or ratified by the Defendant Borough Councilmembers, essentially making same useless, moot, legally unenforceable, and of no moment.

29. Schierer complied with the Settlement Agreement and submitted his retirement application for disability benefits with the PFRS on August 31, 2021. The Agreement itself mandated Schierer to submit same on or before September 1, 2021. A true and accurate copy of Schierer’s Summary of Retirement Application is attached hereto as **Exhibit B**.

30. On October 22, 2021, Schierer received a letter from the PFRS advising that the PFRS determined that Schierer was not eligible for disability benefits because, according to the terms of the Settlement Agreement, he submitted an irrevocable resignation from the LPD on June

22, 2021. A true and accurate copy of the PFRS's October 22, 2021, letter to Schierer is attached hereto as **Exhibit C**.

31. As of the current date, Schierer is neither receiving disability benefits nor is an employee of the Defendant Borough.

32. Although both parties to the Agreement intended and wished for Schierer to be eligible for said benefits, the language/terms of the Agreement inadvertently, unintentionally, and mistakenly prevented the PFRS (through its own review and analysis of the Agreement) from considering Schierer as an eligible applicant. Again, the language/terms of the Settlement Agreement, as well as the intention, purpose and aim of the Agreement, clearly express both parties' intention that Schierer be an eligible candidate for disability retirement benefits. It is apparent that the express language of the Agreement in and of itself thwarted the PFRS's consideration and processing of the disability retirement application. This mutual mistake of law and/or fact remains obvious and palpable.

33. As such, Schierer received no benefit from executing the Agreement, since his sole intended benefit was that he would be eligible for, and ultimately be approved for and receive, disability retirement benefits from the PFRS. Indeed, Schierer has received no benefit and has suffered irreparable injury, all as a result thereof.

34. On February 24, 2023, Schierer, through his undersigned counsel, advised PFRS that he is appealing PFRS's denial of his disability retirement application.

35. As it cannot be any clearer that both the Plaintiff and Defendant Lavallette never had an actual or true meeting of the minds when executing the subject Agreement, and that serious and critical mutual mistakes of fact and law were made therein by both parties thereto, said agreement must forthwith be rescinded, canceled, and/or annulled by this court.

AS AND FOR A FIRST CAUSE OF ACTION
(Temporary/Preliminary Restraints)

36. The Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs with the same force and effect as if each were fully set forth at length herein.

37. The Settlement Agreement must be deemed as null and void, since same was not fully executed, was not formally approved and/or ratified by the Defendant Councilmembers, was signed under duress, contained mutual factual and legal mistakes and failed to include consideration to the benefit of the Plaintiff or the detriment of the Defendants

38. Therefore, it is patently evident that the Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order:

- (a) Temporarily, preliminarily, and permanently restraining and enjoining the Defendants from executing and/or formally approving and/or ratifying the Settlement Agreement;
- (b) Immediately reinstating the Plaintiff to his position as a Sergeant in the Defendant Borough's municipal police department; and
- (c) Granting such other and further relief as the Court deems just and equitable.

AS AND FOR A SECOND CAUSE OF ACTION
(Permanent Injunctive Relief)
(Invalidate the Settlement Agreement – Duress)

39. The Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs with the same force and effect as if each were fully set forth at length herein.

40. Schierer has been the victim of a wrongful or illegal act or threat that deprived him of his unfettered will.

41. Specifically, Schierer was forced to sign the Settlement Agreement under duress, as the Defendant Borough threatened to terminate Schierer's employment and have the OCPO bring criminal charges against Schierer in the event he did not sign said Settlement Agreement.

42. Schierer was forced to sign the Settlement Agreement against his will because the Defendants threatened to, among other things, bring criminal action against him, terminate his employment, and prevent him from applying for/collecting disability pension.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order:

- (a) Temporarily, preliminarily, and permanently restraining and enjoining the Defendants from executing and/or formally approving and/or ratifying the Settlement Agreement;
- (b) Immediately reinstating the Plaintiff to his position as a Sergeant in the Defendant Borough's municipal police department; and
- (c) Granting such other and further relief as the Court deems just and equitable.

AS AND FOR A THIRD CAUSE OF ACTION

(Permanent Injunctive Relief)

(Invalidate the Settlement Agreement – Mutual Mistake)

43. The Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs with the same force and effect as if each were fully set forth at length herein.

44. The Plaintiff and the Defendant Borough entered into the Settlement Agreement which contained a mistake that was mutual in that both parties were laboring under the same misapprehension as to a particular, essential fact.

45. Specifically, the Settlement Agreement required that the Schierer resign from the LPD effective immediately upon the contract's execution without considering the potential effect same would have on his disability application.

46. Under the terms of the Settlement Agreement, the Borough was to assist however necessary for the Schierer's disability application to the PFRS, and the Borough acknowledged that it believed Schierer was entitled to disability benefits.

47. For Schierer to be eligible for disability benefits, he must have been an employee of the Defendant Borough at the time he applied for said benefits.

48. Due to the mutual mistake requiring Schierer to immediately resign from the LPD, Schierer was unable to be eligible for disability benefits.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order:

- (a) Temporarily, preliminarily, and permanently restraining and enjoining the Defendants from executing and/or formally approving and/or ratifying the Settlement Agreement;
- (b) Immediately reinstating the Plaintiff to his position as a Sergeant in the Defendant Borough's municipal police department; and
- (c) Granting such other and further relief as the Court deems just and equitable.

AS AND FOR A FOURTH CAUSE OF ACTION

(Permanent Injunctive Relief)

(Invalidate the Settlement Agreement – Failure of Consideration)

49. The Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs with the same force and effect as if each were fully set forth at length herein.

50. The Settlement Agreement as drafted fails to contain adequate consideration on behalf of the Plaintiff.

51. The terms of the Settlement Agreement prevented Schierer (unknowingly to Schierer) from receiving any benefit whatsoever.

52. The Defendant Borough did not incur any detriment under the terms of the Settlement Agreement.

53. Specifically, Schierer did not receive any benefit under the Settlement Agreement since he was not eligible for disability benefits due to the terms of said Agreement.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order:

- (a) Temporarily, preliminarily, and permanently restraining and enjoining the Defendants from executing and/or formally approving and/or ratifying the Settlement Agreement;
- (b) Immediately reinstating the Plaintiff to his position as a Sergeant in the Defendant Borough's municipal police department; and
- (c) Granting such other and further relief as the Court deems just and equitable.

DEMAND FOR TRIAL BY JURY

Pursuant to R. 4:35-1, the Plaintiff, Thomas Schierer, herein demands a trial by jury.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4 and R. 4:5-1(c), Patrick P. Toscano, Jr. is hereby designated as trial counsel for the Plaintiff, Thomas Schierer.

DEMAND FOR DISCOVERY OF INSURANCE INFORMATION

Pursuant to R. 4:10-2(b), please comply with the Plaintiff's request for all insurance information.

CERTIFICATION

I hereby certify, upon information and belief, that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding.

I also certify, upon information and belief, that at the present time no other action or arbitration with respect to the matter in controversy is contemplated.

On the basis of the present knowledge, I am aware of no other party or parties who should be joined in this action.

Dated: March 24, 2023

By: *s/ Patrick P. Toscano, Jr.*
Patrick P. Toscano, Jr.

s/ Matthew J. Toscano
Matthew J. Toscano

VERIFICATION

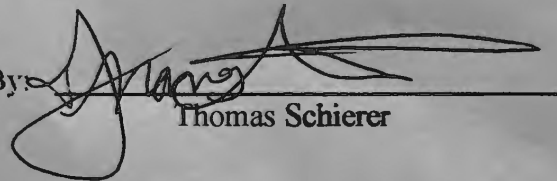
THOMAS SCHIERER, being of full age, hereby certifies as follows:

1. I am ~~the~~ Plaintiff in the above-captioned matter and therefore am authorized to make and ~~execute~~ this verification on my own behalf.
2. I have read the allegations contained in the Verified Complaint and same are true to the best of my knowledge, except where noted as on information and belief. as to which I believe them to be true.
3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____

3/23/23

By: _____



Thomas Schierer

Exhibit A

**SETTLEMENT AGREEMENT AND GENERAL RELEASE
BETWEEN POLICE OFFICER SGT. THOMAS SCHIERER
AND THE BOROUGH OF LAVALLETTE,
COUNTY OF SOMERSET, STATE OF NEW JERSEY**

This is a Settlement Agreement and General Release (the "Agreement") between the Borough of Lavallette, (the "Borough"), a municipal corporation of the State of New Jersey, with its principal offices located at 1306 Grand Central Avenue, Lavallette, New Jersey 07835 and Thomas Schierer ("Officer Schierer"), a member of the Lavallette Police Department, whose principal address is 65 Grand Central Ave, Lavallette, NJ 08735.

WHEREAS, Officer Schierer is employed as a Police Officer by the Borough and currently holds the rank of Sergeant; and,

WHEREAS, following review by the Ocean County Prosecutor's Office, the Borough would be entitled to bring disciplinary charges (the "Disciplinary Charges") against Officer Schierer seeking the termination of his employment in a Preliminary Notice of Disciplinary Action ("PNDA"); and,

WHEREAS, Officer Schierer could be charged with Statutory Misconduct (*N.J.S.A.* 40A:14-147), Job Abandonment, various Civil Service rules and regulations violations, including but not limited to Incompetency, Inefficiency and Failure to Perform Duties, Inability to Perform Duties, Chronic or Excessive Absenteeism, Conduct Unbecoming a Public Employee and Other Sufficient Cause as to alleged violations of the Lavallette Police Department Rules and Regulations (the "Disciplinary Charges") that are related to his fitness for duty as a Police Officer and his inability to perform his duties; and,

WHEREAS, Officer Schierer also sustained an injury in 2018, which resulted in significant injuries and consequences which have significantly impaired his ability to perform his duties as a Lavallette Police Officer; and,

WHEREAS, Officer Schierer underwent a fitness for duty evaluation with the Institute for Forensic Psychology ("IFP") regarding his fitness for duty as a Police Officer; and,

WHEREAS, said dispute is not yet resolved in favor of any party and the Borough believes, in good faith, that Officer Schierer could not then, and cannot now, perform his duties ~~and Officer Schierer agrees with the Borough's position;~~ and,

WHEREAS, Officer Schierer intends to make an application to the Police and Fire Retirement System (PFRS) for a disability retirement, in which case the Borough would take all action necessary to effect or support such application; and,

WHEREAS, the Borough and Officer Schierer desire to settle fully and finally any and all disputes between Officer Schierer and the Borough ; and,

WHEREAS, the Borough and Officer Schierer desire to set forth all of the terms and conditions of their agreement in this Agreement and General Release; and,

THEREFORE, in consideration of the promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties acknowledge, the Borough and Officer Schierer agree as follows:

1. Based on the pending internal investigation and the conduct underlying the internal investigation, the Borough believes that Officer Schierer may be considered as totally and/or permanently disabled from performing his job responsibilities as a Police Officer. As a result, Officer Schierer agrees to take all action reasonably necessary to effectuate a disability retirement with the Board of Trustees, Police and Firemen's Retirement System, State of New Jersey, Department of Treasury, Division of Pensions, (the "PFRS") effective on or before September 1, 2021 **or as otherwise set forth herein**, hereinafter referred to as the "Retirement Date".

2. The parties recognize that only the PFRS has the authority to approve Officer Schierer's retirement as a disability retirement and to establish the effective date of that retirement if granted (the "Retirement Date").

3. Officer Schierer shall deliver to the Lavallette Borough Administrator and Lavallette Chief of Police a signed copy of this Agreement within seven (7) days of being provided a copy hereof and an Irrevocable Letter of Resignation from the Lavallette Police Department, **without an effective date** ~~effective September 1, 2021~~. The Irrevocable Letter of Resignation will be held in abeyance pending Officer Schierer's disability retirement application with PFRS. However, said letter shall become effective **as provided below** ~~on September 1, 2021~~ as to his status as a Lavallette Police Officer, regardless of whether, or when, PFRS acts upon his disability retirement application.

4. Officer Schierer shall file and perfect a disability retirement application with PFRS within thirty (30) calendar days of the date of his signing of this Agreement, which disability retirement application shall specify an effective Retirement Date of no later than September 1, 2021.

5. The Borough will take no action against Officer Schierer while his disability retirement application is pending with PFRS, up to and including September 1, 2021. This will include placing any action to **prosecute** ~~initiate~~ a Preliminary Notice of Disciplinary Action (PNDA) or other disciplinary proceedings against Officer Schierer in abeyance and continuing him on an employment status of "administrative leave of absence with pay" pending the outcome of his disability application up to, but not including, September 1, 2021. **However, the Borough will order Officer Schierer to attend a fitness for duty examination.**

6. ~~Irrespective of the date that the PFRS approves Officer Schierer's application for a disability retirement effective on the Retirement Date, or retroactively approves Officer Schierer's disability retirement on an earlier or different date, Officer Schierer will separate from his employment at the end of business on August 31, 2021 and shall be deemed to have resigned in~~

good standing. If he has any rights and entitlements authorized by law and pursuant to the contract between the Borough and the PBA Local 372 upon retirement, that will not come into effect until and if Officer Schierer is actually granted a retirement by PFRS.

6. In the event that the PFRS has not acted upon Officer Schierer's disability retirement application as of September 1, 2021, then on September 1, 2021 Officer Schierer's status with the Borough will change to administrative leave without pay; provided, however, that the Borough will continue to pay Officer Schierer's enrollment in the Borough's medical benefits program and Officer Schierer shall only pay that percentage of such medical benefits program as was paid by him while on the Borough's regular payroll.

7. In the event the PFRS denies Officer Schierer's disability retirement, the Irrevocable Letter of Resignation from the Lavallette Police Department ~~effective September 1, 2021,~~ shall become effective upon notice by the PFRS to Officer Schierer and the Borough without further action by either party, and Officer Schierer shall be deemed to have separated from his employment at the end of business on the date of such notice ~~August 31, 2021~~ and shall be deemed to have resigned in good standing with any rights and entitlements authorized by law and pursuant to the contract between the Borough and the PBA Local 372, which shall not come into effect until Officer Schierer is actually granted a retirement by PFRS.

8. In the event that the PFRS has neither approved nor denied any retirement application by the Borough for Officer Schierer prior to ~~September 1, 2021,~~ **January 1, 2022**, i.e., has taken no action or issued no decision, the Irrevocable Letter of Resignation from the Lavallette Police Department in good standing shall become effective without further action by either party at the end of business on August ~~December~~ 31, 2021 and Officer Schierer shall be deemed to have resigned in good standing. If he is ultimately granted retirement, he will be entitled to any rights and entitlements authorized by law and pursuant to the contract between the Borough and the PBA Local 372 for such employees who have resigned in good standing.

9. ~~In the event that the PFRS does not approve any retirement application by the Borough for Officer Schierer prior to September 1, 2021 and Officer Schierer attempts to challenge, contest, repudiate, appeal and/or otherwise disregard the Irrevocable Letter of Resignation from the Lavallette Police Department in any tribunal or court of any kind or jurisdiction, a PNDA shall be served upon Officer Schierer and his status will change from administrative leave without pay to suspended without pay and a Loudermill hearing regarding such status will be conducted while such disciplinary action is pending.~~

10. ~~Officer Schierer will remain in the status of administrative leave with pay pending the outcome of his disability retirement application or through the end of the business day of Tuesday, August 31, 2021, whichever comes first.~~

9. Officer Schierer agrees that he waives all timeliness defenses with respect to any disciplinary proceedings, disciplinary charges and/or any disciplinary hearing concerning such disciplinary charges. Officer Schierer acknowledges that the Borough is not otherwise obligated

to withdraw any disciplinary action pending against him or to take any and/or all action reasonably necessary to effectuate a disability retirement.

10. Officer Schierer agrees that the undertakings set forth above on behalf of or by the Borough provide a significant and substantial part of the consideration for entering into this Agreement.

11. The Borough and Officer Schierer understand and agree that the administrative leave of absence with pay **and the administrative leave without pay** referenced above is a ~~paid~~ leave of absence during which time Officer Schierer will not accrue any further holiday pay, vacation pay, sick pay and/or other paid benefit pursuant to the applicable collective bargaining agreement during this period, but will receive or be entitled to health, medical, life and/or other insurance benefits pursuant to the applicable collective bargaining agreement. Officer Schierer agrees that the benefits on behalf of or by the Borough provide a significant and substantial part of the consideration for entering into this Agreement.

12. The Borough agrees to pay Officer Schierer any monies owed to him for unpaid sick leave (other than donated sick leave), and/or that he has accrued prior to the effective date of this Agreement in the event that Officer Schierer is awarded an disability retirement as of the Retirement Date pursuant to the collective bargaining agreement between the Borough and PBA Local 372. Otherwise, Officer Schierer is not eligible for such payment. Officer Schierer acknowledges and agrees that, except as provided in this Section, Officer Schierer is not entitled to anything further from the Borough in terms of compensation per the aforementioned contract by way of cash payout.

13. The Borough shall not be liable for costs or the payment of any of Officer Schierer's attorney's fees. Officer Schierer agrees that, except as provided in this Agreement, neither he nor his legal counsel are entitled to, nor shall either or both seek, any further compensation from ~~any of the Releasees~~ **the Borough, its officials, whether elected or appointed, or its agents or employees** (as defined in Paragraph 7) for any other amounts, damages, costs, disbursements or attorneys' fees in connection with any of the matters encompassed in this Agreement, or for any aspect of Officer Schierer's employment with the Borough, including, but not limited to, the retirement from that employment. The covenants in this Section apply to all claims accrued up to the date Officer Schierer executes this Agreement and do not apply to claims arising out of any breach of this Agreement.

14. Officer Schierer acknowledges that, in his execution of this Agreement, he is effecting a knowing and voluntary waiver of any claims, liabilities and/or causes of action against the Borough of Lavallette and the Lavallette Police Department, their officials (elected and/or appointed), officers, employees, representatives, assigns, successors and designees, (hereinafter collectively referred to as the "Releasees") which Officer Schierer now has or hereafter can, shall or may have, including but not limited to claims under the New Jersey Law Against Discrimination ("NJ LAD"), the American's with Disabilities Act ("ADA"), 42 U.S.C. § 1983, *et seq.*, the New Jersey Civil Rights Act, *N.J.S.A. 10:6-2, et seq.*, and/or any other statute, rule, regulation or common law cause of action including, but not limited to any prerogative writ action. The

covenants in this Section apply to all claims accrued up to the date Officer Schierer executes this Agreement and do not apply to claims arising solely out of a breach of this Agreement.

15. Officer Schierer agrees that no disparaging, negative or derogatory remarks, written, oral or otherwise, regarding the Borough or any other Releasers, or any part or phase of the employment relationship, shall be disclosed to any party, except as may be required by law or court order. Officer Schierer shall refer all prospective employment inquiries to the attention of the Chief of Police or his designee. In response to any prospective employment inquiries, the Borough agrees to solely provide Officer Schierer's dates of employment, salary and position/title history during the employment. The Borough will not release any other information to a non-law enforcement potential employer. The Borough will only release information to other law enforcement agencies in accordance with the then existing Attorney General Guidelines. All reference to this disciplinary matter will be expunged from Officer Schierer's personnel file, but shall remain in any Internal Affairs file under the then existing Attorney General Guidelines.

16. Officer Schierer and the Borough agree to enter into this Agreement with the intent and understanding that it shall serve as a mutual release of all claims between Officer Schierer and the Borough.

17. Officer Schierer understands that he is executing the Agreement freely and voluntarily. The Borough and Officer Schierer agree, and Officer Schierer understands, that he does not waive any rights or claims that may arise after the date he executes this Agreement. Officer Schierer and the Borough agree that any modifications to this Agreement, whether material or immaterial, must be made within seven (7) calendar days of signing the Agreement in writing to the Borough's Attorney at his law office.

18. Should any provision of this Agreement be declared or determined by a court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected and the illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The remainder of the Agreement shall remain in full force and effect. If, however, the Release contained in this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, Officer Schierer agrees, promptly upon the request of the Borough, to execute a new release that is valid and enforceable. In the absence of a valid, enforceable release, this Agreement shall be null and void.

19. This Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement. It is intended that this Agreement shall be comprehensive in nature and shall be construed liberally to affect its purposes.

20. This Agreement shall not in any way be construed as an admission on the part of the Borough and/or the Releasees that the Borough and/or the Releasees wrongfully or in any manner or fashion whatsoever violated any law and/or obligation to Officer Schierer.

21. Officer Schierer releases, acquits, gives up and forever discharges any and all claims and rights which he may have against the Borough of Lavallette and the Lavallette Police

Department and any and all of their officials (elected and/or appointed), officers, employees, representatives, assigns, successors and designees, up to the time of complete execution of this Agreement by all parties. This releases any and all claims, including those of which Officer Schierer, his family, designees, representatives and assigns are not aware and those not mentioned in this Agreement. This Agreement applies to claims resulting from anything which has happened from Officer Schierer's first (1st) date of application for employment with the Borough of Lavallette and the Lavallette Police Department through the date of complete execution of this Agreement by both parties. Officer Schierer specifically releases the following claims:

ANY AND ALL CLAIMS FOR DAMAGES, WHETHER KNOWN OR UNKNOWN AT THIS DATE, ARISING FROM OR RELATING TO ANY AND/OR ALL PORTIONS OF HIS APPLICATION FOR EMPLOYMENT, AND/OR HIS EMPLOYMENT WITH THE BOROUGH OF LAVALLETTE AND LAVALLETTE POLICE DEPARTMENT, AND/OR ANY DISCIPLINARY CHARGES FROM OFFICER SCHIERER'S FIRST (1st) DATE OF APPLICATION WITH THE BOROUGH OF LAVALLETTE AND THE LAVALLETTE POLICE DEPARTMENT DOWN TO THE PRESENT TIME AND THE DATE OF ANY REINSTATEMENT TO HIS POSITION AND/OR TERMINATION FROM HIS POSITION.

22. Officer Schierer hereby releases, acquits and forever discharges the Borough of Lavallette and the Lavallette Police Department from any and all actions or causes of action, suits, debts, claims, complaints, contracts, controversies, agreements, promises, damages, cross-claims, claims for contribution and/or indemnity, claims for costs and/or attorney's fees, judgments and demands whatsoever, in law or equity, which Officer Schierer ever had, now has, or may have, as of the date of this Agreement, including, but not limited to, any claim, demand or action under the Age Discrimination in Employment Act, (ADEA), the Civil Rights Act of 1964, as amended and supplemented, as well as the Civil Rights Act of 1871 (42 U.S.C. 1981 *et. seq.*), as amended and supplemented, the Civil Rights Act of 1991, as amended and supplemented, the Equal Pay Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), the New Jersey Law Against Discrimination (NJLAD), the New Jersey Conscientious Employee Protection Act (CEPA), any and all State and/ or Federal workers compensation laws, any and all State and Federal wage and hour laws and State and Federal family leave laws and any and all other applicable laws, Federal and/or State, as well as any Borough of Lavallette and/or Lavallette Police Department laws, rules, regulations, orders and/ or policies. Furthermore, Officer Schierer waives any and all relief/ claims not explicitly provided for herein.

23. Officer Schierer further releases the Borough of Lavallette and the Lavallette Police Department from any and all damages, whether known or unknown at this date, arising from or in any way relating to his application for employment and/or employment with the Borough of Lavallette and the Lavallette Police Department and the procedures followed by the Borough of Lavallette and the Lavallette Police Department in processing Officer Schierer's application for employment and/or any other employment matters (judicial/quasi-judicial/administrative/contractual) or any existing, pending and/or planned actions against the Borough of Lavallette and the Lavallette Police Department arising from Officer Schierer's application for employment and/or employment with the Borough of Lavallette and the Lavallette Police Department from the

date of his initial application for employment, up to and including the date of the fully execution date of this Agreement, including, but not limited to, attorney's fees, pursuant to 42 U.S.C. §1983 and/or 42 U.S.C. §1988 and/or *N.J.S.A. 10:5-1 et seq.* and/or any other applicable Federal or State laws, statutory or common law.

24. Officer Schierer agrees not only to release, acquit and forever discharge the Borough of Lavallette and the Lavallette Police Department from any and all claims which arose from Officer Schierer's application for employment and/or employment with the Borough of Lavallette and the Lavallette Police Department that he could make on his own behalf, but also those which have been or may be made against the Borough of Lavallette and the Lavallette Police Department by any other person, entity, group or organization on his behalf which are known or should have been known. Officer Schierer specifically waives any right to become, and promises not to become, a member of any class in any case in which any claim is asserted against the Borough of Lavallette and the Lavallette Police Department, involving any event that has occurred on or before the date of this Agreement.

25. The Borough of Lavallette and the Lavallette Police Department affirm that, as of the date of execution of this Agreement by all parties, they have no knowledge of any pending class action against it to which Officer Schierer could be a potential class member as a result of his application for employment and/or employment with the Borough of Lavallette and the Lavallette Police Department.

26. This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrator, successors and assigns.

27. This Agreement shall be deemed to have been made in New Jersey and shall be interpreted, construed, and enforced pursuant to the laws of the State of New Jersey.

28. This Agreement sets forth the entire agreement between the Borough and Officer Schierer, fully supersedes any and all prior agreements or understandings between the parties and may not be modified orally and only modified in writing as noted by executor of the Borough and Officer Schierer.

29. The Borough and Officer Schierer may execute this Agreement in counterparts. Each counterpart, when executed will be deemed to be an original, all of which together will constitute one Agreement. The parties agree that faxed or PDF scanned counterpart signatures render this Agreement binding.

30. This Agreement is subject to formal approval and ratification by the Borough's governing body and by the Borough's attorney.

31. Officer Schierer acknowledges that he discussed the terms of the resolution of these disciplinary charges with his attorney and that his attorney has answered any questions he had regarding this matter to his full satisfaction. Officer Schierer also agrees and acknowledges that he has been fully, fairly and adequately represented by his attorney in this matter and that he is satisfied with his representation.

32. OFFICER SCHIERER EXPRESSLY ACKNOWLEDGES, REPRESENTS, AND WARRANTS THAT HE HAS CAREFULLY READ THIS AGREEMENT; AND, THAT HE FULLY UNDERSTANDS THE TERMS, CONDITIONS, AND SIGNIFICANCE OF THIS AGREEMENT; AND, THAT HE HAS HAD AMPLE TIME TO CONSIDER AND NEGOTIATE THIS AGREEMENT; AND, THAT HE HAS HAD A FULL OPPORTUNITY TO REVIEW THIS AGREEMENT; AND, THAT HE IS ABLE TO MAKE AN INFORMED DECISION AND IS NOT PSYCHICALLY OR MEDICALLY OR MENTALLY INCAPACITATED SO THAT HE IS ABLE TO RENDER AN INFORMED DECISION; AND, THAT HE HAS EXECUTED THIS AGREEMENT VOLUNTARILY AND KNOWINGLY, WITH THE ADVICE OF COUNSEL.

THOMAS SCHIERER


THOMAS SCHIERER

4/22/21
DATE

WITNESS

DATE

BOROUGH OF LAVALLETTE

By: _____

DATE

WITNESS

DATE

Exhibit B

Retirement Application

Summary of Retirement Application Information

Your retirement application, change or cancellation was successfully submitted on 08/31/2021 10:22:09 AM.

MEMBER INFORMATION

Name: THOMAS SCHIERER

Member Number: 03-0097101

Date of Birth: 05/09/1982

Address: 65 GRAND CENTRAL AVENUE

City: LAVALLETTE State: NJ ZIP: 08735 Country: UNITED STATES OF AMERICA

Home/Cell Phone: (732)966-2837

Work Phone Number: Ext.:

E-mail: lpd363@yahoo.com

Employer Name: LAVALLETTE BOROUGH

RETIREMENT INFORMATION

Retirement Date: 09/01/2021

Retirement Type: ACCIDENTAL DISABILITY

Disability Explanation:

RIDER WITH EXPLANATION OF INCIDENTS AND INJURIES TO FOLLOW UNDER SEPARATE COVER.

Accident Date 1: 03/28/2017

Accident Date 2: 07/03/2016

Service credit purchase application WAS NOT submitted within the past 6 months.

Fraud Warning:

Any person, who knowingly submits incomplete, false, fraudulent, deceptive or misleading facts or information when filing an application for disability retirement benefits or a statement of claim for payment of a benefit, commits a fraudulent act and is guilty of a crime and may be subject to punishment. I hereby certify that I have read, understand and agree with the fraud warning statement.

SURVIVOR INFORMATION

None was selected for the Marital Status option.

DEPENDENT INFORMATION

First Dependent's Name: ISABELLA SCHIERER

Date of Birth: 08/21/2013

Address: 65 GRAND CENTRAL AVENUE

City: LAVALLETTE

State: NJ

ZIP Code: 08735

Country: UNITED STATES OF AMERICA

LIFE INSURANCE BENEFICIARY INFORMATION

Name: ISABELLA SCHIERER

Date of Birth: 08/21/2013

Relationship: OTHER

Selection Type: PRIMARY

Address: 65 GRAND CENTRAL AVENUE

City: LAVALLETTE

State: NJ

ZIP Code: 08735

Country: UNITED STATES OF AMERICA

Print

Close

Exhibit C



State of New Jersey

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

October 22, 2021

THOMAS R SCHIERER *
65 GRAND CENTRAL AVE
LAVALLETTE, NJ 08735

RE: 3-97101
Administrative Denial

Dear Mr. Schierer:

This letter is in reference to your Application for Accidental Disability Retirement. A review of your membership file indicates that you are not eligible to file for disability benefits.

N.J.A.C. 17:1-6.4(b): requires that disability applicants must prove that the retirement is due to a total and permanent disability and that the disability is the reason the member left employment.

Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;
4. Voluntary separation from service for reasons other than a disability; and
5. Job abolishment or reduction in force.

✓ Your irrevocable resignation from employment signed by you on June 22, 2021, clearly shows that there would be no position for you should your alleged disability diminish at some time in the future to the point that you could return to employment and thereby comply with the provisions of N.J.S.A. 43:16A-8(2).

If you disagree with this determination, you do have the right to file a formal appeal with the Board of Trustees. However, you should be aware that the board review must also be consistent with the specific legal standards of the statutes and regulations of the retirement system. Should you wish to file an appeal, please send a written statement outlining, in detail, the reasons for your disagreement with my determination and submit any and all supporting documentation for the appeal to: Lisa Pointer, Board Secretary of the PFRSNJ, PO Box 297, Trenton, NJ 08625-0297 within 30 days of the date of this letter.

If you have any questions regarding this matter, please contact the Office of Client Services at (609) 292-7524.

Sincerely,

Dawn Lewis

Dawn Lewis
Supervisor-Disability
Bureau of Retirements

CC: FRANK CRIVELLI, ATTORNEY

Patrick P. Toscano, Jr. (Attorney ID: 014461986)
Matthew J. Toscano (Attorney ID: 305642019)
THE TOSCANO LAW FIRM, LLC
80 Bloomfield Avenue
Suite 101
Caldwell, NJ 07006
Phone: (973) 226-1691
Facsimile: (973) 226-1693
Attorneys for Plaintiff,
Thomas Schierer

THOMAS SCHIERER,

Plaintiff,

v.

BOROUGH OF LAVALLETTE,
MAYOR WALTER G. LICICERO,
COUNCILPERSON ANITA F. ZALOM,
COUNCILPERSON JAMES G. BOROWSKI,
COUNCILPERSON JOANNE FILIPPONE,
COUNCILPERSON DAVID FINTER,
COUNCILPERSON ROBERT LAMB, and
COUNCILPERSON MICHAEL STOGDILL,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – OCEAN COUNTY

Docket No.:

Civil Action

**ORDER TO SHOW CAUSE WITH
TEMPORARY RESTRAINTS**

THIS MATTER having been opened to the Court upon the application of The Toscano Law Firm, LLC, attorneys for Plaintiff Thomas Schierer (hereinafter, the “Plaintiff” or “Schieer”); seeking relief by way of temporary restraints pursuant to R. 4:69-3 and in accordance with R. 4:52, based upon the facts set forth in the Verified Complaint in Lieu of Prerogative Writs (hereinafter, the “Verified Complaint”), and Memorandum of Law in Support of Order to Show Cause Seeking Temporary Restraints and Injunctive Relief (hereinafter, the “Memorandum of Law”); and it appearing that notice has been provided to the Defendants Borough of Lavallette (hereinafter, the

“Borough” or “Lavallette”), Mayor Walter G. LiCicero, Councilperson Anita F. Zalom, Councilperson James G. Borowski, Councilperson JoAnne Filippone, Councilperson David Finter, Councilperson Robert Lamb, and Councilperson Michael Stogdill (collectively, the “Defendants”); and for good cause shown;

IT IS on this _____ day of _____, 2023;

ORDERED that Defendants shall appear and show cause before the Superior Court at the Ocean County Courthouse in Toms River, New Jersey, via video conference or as otherwise instructed by the Court at _____ a.m./p.m. or as soon thereafter as counsel can be heard, on the _____ day of _____, 2023, why an Order should not be entered preliminarily or permanently;

IT IS further **ORDERED** that pending the return date herein:

1. That the performance of the Settlement Agreement and General Release purportedly made by and between Plaintiff Thomas Schierer and Defendant Borough of Lavallette, dated June 22, 2021 (hereinafter, the “Settlement Agreement”) be, and hereby is, enjoined;
2. That the Defendants be, and hereby are, enjoined from taking any action in approval or pursuit of the Settlement Agreement purportedly made, including but not limited to formally approving and/or ratifying same;
3. That the Plaintiff’s employment be, and hereby is, temporarily reinstated compelling the Borough to reinstate the Plaintiff as a Sergeant in its municipal police department;
4. That the Plaintiff and the Defendants, be, and hereby are, restored to their respective status prior to purportedly having made the settlement agreement;

5. That the measures reasonably necessary to facilitate submission and processing of the Plaintiff's application for New Jersey Police and Fire Retirement System pension benefits shall be promptly taken and timely pursued by the Defendants;

6. The status quo shall be maintained; and

7. Granting such other and further relief as the Court deems just and equitable.

IT IS further **ORDERED** that:

1. Defendants may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to Plaintiff's counsel.

2. A true and accurate copy of this Order to Show Cause, the Verified Complaint, and the Memorandum of Law submitted in support of this application be served upon the Defendants via email within two (2) days of the date herein.

3. 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 response to this order to show cause and the request for entry of injunctive relief and proof of service by the _____ day of _____, 2023. The original documents must be electronically filed with the Clerk of the Superior Court in the County listed above. A directory of these offices is available in the Civil Division Management Office in the County listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf. You must send a copy of your opposition papers directly to Honorable _____, J.S.C., whose address is _____; Toms River, New Jersey. You must also send a copy of your opposition papers to the Plaintiff's attorney whose name and address appears above. A telephone call with 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 Defendants' Order to Show Cause Opposition by the _____ day of _____, 2023. 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 Honorable _____, J.S.C.

6. If the Defendants do 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 (3) days prior to the return date.

7. If the Plaintiffs have 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. Defendants shall 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 to the complaint 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 directory of these offices is available in the Civil Division Management Office in the County listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf. Include a \$_____ filing fee payable to the "Treasurer, State of New Jersey." You must also send a copy of your answer and any other responsive papers to Plaintiff's attorney whose name and address appear 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. Please note: Opposition to the Order to Show Cause is not an Answer and you must file both. Please note further: if you do not file an Answer within 35 days of this Order, the Court may enter a default against you for the relief Plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services Office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). 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 directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

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.

Dated: _____

By: _____
Hon. J.S.C.

