

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Release") is made this 21st day of October, 2020, by and between the plaintiff, Douglas McEntegart ("McEntegart") and the defendants, Borough of Tinton Falls and Tinton Falls Police Department (the "Borough").

WHEREAS, McEntegart is an employee of the Borough and

WHEREAS, McEntegart has asserted claims against the Borough arising out of his employment in a lawsuit filed with the Superior Court of New Jersey, Law Division, Monmouth County, bearing Docket No. MONSJL-643-18 (hereinafter referred to as the "Lawsuit"); and

WHEREAS, the Borough denies engaging in any wrongdoing or any unlawful conduct and denies all liability on the claims asserted by McEntegart, including those asserted in the Lawsuit, and makes no admissions regarding the same; and

WHEREAS, McEntegart and the Borough desire to settle all claims through the date of this Release, including but not limited to those claims asserted in the aforementioned Lawsuit.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is hereby agreed as follows:

1. McEntegart, individually, and on behalf of his heirs, executors, administrators, successors, assigns and anyone claiming under them, hereby releases, discharges and acquits the Borough and its representatives, including, without limitation, its past, present and future agents, employees, consultants, attorneys, successors and assigns (hereinafter referred to collectively as "Releasees") of any and all claims including, without limitation, McEntegart's claims that state laws were violated as well as all other claims, demands, sums of money, actions, rights, causes of actions, obligations and liabilities of any kind whatsoever which McEntegart has, may have had or claimed to have had which arose out of or were directly or indirectly related to his employment with the Borough, or the subject matter of the Lawsuit, or any claims or causes of action that could have been asserted by McEntegart, and/or any act or omission of any kind whatsoever by any of the Releasees or by anyone acting or purporting to act on behalf of the Releasees.

2. In consideration of the foregoing Release the Borough agrees to the following:

2.1 McEntegart shall be promoted to the rank of Lieutenant effective January 21, 2021. No later than February 1, 2022, McEntegart will retire, in good standing, from the Tinton Falls Police Department and shall submit an irrevocable retirement letter to the Police Chief or his designee upon his execution of this Agreement which shall be annexed to this Agreement as Exhibit A. No later than February 1, 2021, McEntegart shall file papers with the State of New Jersey, Department of the Treasury, Division of Pensions and Benefits, for his retirement effective February 1, 2022. McEntegart understands and agrees that his retirement pursuant to Section 2.1

and Exhibit A is irrevocable. McEntegart agrees, warrants, and represents that he will not revoke, rescind or in any way withdraw his retirement for any reason. McEntegart further warrants and represents that he met/spoke with a representative from the State of New Jersey, Department of the Treasury, Division of Pensions and Benefits prior to executing this Agreement and that the Division of Pensions answered all of his questions to his full satisfaction, including but not limited to, his pension service credit, retirement income and retirement date.

2.2 The Borough shall pay the sum of thirty-five thousand (\$35,000.00) dollars within thirty (30) days of the execution of the release. This payment shall be for attorneys' fees and not as compensation for any of McEntegart's claims for damages. The check shall be made payable to DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Leher and Flaum as attorneys' fees. McEntegart agrees that he will be responsible for the payment of any all applicable state, federal and/or local taxes that may be owed and will assume all liability, if any, for payment thereof. McEntegart further agrees that neither he nor his attorneys will seek any further payment of damages, fees, costs or interest.

3. Waiver and Specific Release of Claims: McEntegart hereby releases and forever discharges the Borough and its past, present and future officers, officials, council members, administrators, directors, attorneys, insurers, reinsurers, agents, and their respective successors and assigns (hereinafter collectively referred to as the "Releasees"), jointly and severally, from any and all actions, complaints, causes of action, lawsuits or claims of any kind (hereinafter collectively referred to as the "Claims"), known or unknown, asserted or unasserted, which McEntegart, his heirs, agents, executors, successors or assigns ever had or now have against Releasees arising out of any matter, occurrence, omission, or event existing or occurring prior to the execution of this Agreement, including, without limitation, claims

- a. relating to or arising out of McEntegart's employment with the Borough, including any and all claims for back pay, front pay, benefits or other financial losses;
- b. relating to or arising out of any pension law or regulation, including, but not limited to the New Jersey Police and Firemen's Retirement Act, N.J.S.A. 43:16-1 et seq. and the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq.;
- c. of discrimination, harassment, and or retaliation based on age, sex, gender, race, religion, color, creed, disability, handicap, citizenship, national origin, ancestry, sexual orientation, pregnancy, veteran's status, marital status, familial status, domestic partnership status, civil union status, or any other factor protected by federal, state or local law (such as Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, 42 U.S.C. § 1981a, the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., the Older Workers Benefit Protection Act, 29 U.S.C. § 621 et seq., and/or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.);

- d. relating to or arising out of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.;
- e. relating to or arising out of COBRA, or any implementing rules and regulations;
- f. relating to or arising out of the New Jersey Employment Relations Act, N.J.S.A. 34:13A-1, et seq.;
- g. relating to or arising out of the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., or any implementing rules and regulations;
- h. relating to or arising out of the New Jersey Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:5A-2 et seq., or any implementing rules and regulations;
- i. relating to or arising out of the Fair Credit Reporting Act, 15 U.S.C. § 1561 et seq.;
- j. relating to or arising out of 42 U.S.C. § 1981, 1983 or 1985;
- k. relating to or arising out of the Health Insurance Portability and Accountability Act, P.L. 104-191;
- l. relating to or arising out of the New Jersey Worker Freedom From Employment Intimidation Act, N.J.S.A. 34:19-9;
- m. relating to or arising out of the Civil Service Act, N.J.S.A. 11A:1-1 et seq.;
- n. based upon any contract or implied contract;
- o. relating to or arising out of any provision of any other law, constitution, regulation, ordinance, decision, common or statutory, of the United States, New Jersey or any other state, city, county or municipality;
- p. for attorneys' fees, costs or expenses; and/or
- q. based upon any other statutory or common law, now existing or hereinafter recognized, including, but not limited to, violations of public policy, tort, privacy, defamation, intentional infliction of emotional distress, negligence, contract, whistleblower laws, promissory estoppel or equitable estoppel.

4. No Other Proceedings. By his signature below, McEntegart represents that there are no pending or contemplated lawsuits, charges, administrative proceedings, or other claims of any nature whatsoever by McEntegart against the Borough or any of the Releaseds in any state or

federal court or before any agency or other administrative body. McEntegart agrees, to the extent permitted by law, not to assert any claims, charges, grievances or other legal or contractual proceedings against the Borough or any of the Releasees in any forum, based upon his employment with the Borough, whether known or unknown. McEntegart further represents and agrees that he has not filed any claims against the Borough or any of the Releasees with any local, state or federal enforcement agency, including, but not limited to, any law enforcement agency, the U.S. Department of Labor, the Equal Employment Opportunity Commission ("EEOC"), the New Jersey Department of Labor & Workforce Development, or the New Jersey Division on Civil Rights.

5. Challenging of Waiver McEntegart understands that nothing in this Release is intended to interfere with or deter his right to challenge the waiver of an ADEA claim or state law age discrimination claim or the filing of an ADEA charge or ADEA complaint or state law age discrimination complaint or charge with the EEOC or any state discrimination agency or commission or to participate in any investigation or proceeding conducted by those agencies. Further, McEntegart understands that nothing in this Release would require him to tender back the money received under this Release if he seeks to challenge the validity of the ADEA or state law age discrimination waiver, nor does McEntegart agree to ratify any ADEA or state law age discrimination waiver that fails to comply with the Older Workers Benefit Protection Act by retaining the money received under the Release. Further, nothing in this Release is intended to require the payment of damages, attorneys' fees or costs to the Borough should McEntegart challenge the waiver of an ADEA or state law age discrimination claim or file an ADEA or state law age discrimination suit except as authorized by federal or state law.

6. Medicare Eligibility McEntegart represents and warrants that he is not Medicare eligible and that Medicare has not made any conditional payments for medical services received by McEntegart. Further, McEntegart represents and warrants that if any conditional payments related to the incident giving rise to this settlement are or have been made by Medicare, then within sixty (60) days of the execution of this Release, McEntegart shall reimburse Medicare for such conditional payments. The Parties agree that all representations and warranties made herein shall survive settlement.

McEntegart and his representatives agree to indemnify, hold harmless, and defend the Borough and its insurers and reinsurers against any loss, cost, expense, or liability imposed upon or incurred by the Borough and/or their insurers and reinsurers arising from, relating to or concerning Medicare conditional payments related to the accident, injury, or illness giving rise to this settlement.

7. Stipulation of Dismissal As a condition precedent to delivery of the Settlement Payment set forth in Paragraph 2 above, McEntegart agrees that his counsel will execute and deliver to the Borough's counsel a Stipulation of Dismissal, with prejudice and without costs, relating to the Lawsuit, which shall be executed by McEntegart's counsel, and hereby consents to the filing of that Stipulation of Dismissal with the court following the payment of the settlement as set forth in paragraph 2 herein.

9. **Non-Disparagement** McEntegart agrees that he will not make any negative comments or disparaging remarks, in writing, orally or electronically, about the Borough or any other Releasee, including their respective officers, directors, and Employees. Nothing in this paragraph or this Agreement shall be interpreted to restrict or inhibit McEntegart's right and obligation (i) to testify truthfully in any forum or (ii) to cooperate fully in any investigation by a governmental agency. Similarly, the Borough agrees that it will not make any negative comments or disparaging remarks, in writing, orally or electronically, about McEntegart. Neither McEntegart nor the Borough shall refer to themselves or to the other party as the winning or losing party regarding the Lawsuit.

10. **Publicity** McEntegart agrees, individually, and on behalf of his attorneys, heirs, executors, administrators, successors and assigns, that he will take no action which is intended or likely to result in publicity for this settlement, the consideration received for same, or any of the details incidental thereto.

11. **Counterparts, Entire Agreement, No Oral Modification** This Agreement may be executed in counterparts, which together shall comprise the entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements, written or oral, expressed or implied. No other promises, agreements or amendments, or any separate agreement relating to the subject matter of this Agreement shall be binding or shall modify this Agreement unless expressed in writing and signed by all parties hereto. Signatures transmitted by facsimile machine or electronically in Portable Document Format (PDF) or similar software shall be treated as originals for purposes of this Agreement.

12. **Governing Law** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

13. **No Admission of Liability** Nothing in this Agreement shall be construed as an admission or concession of liability or wrongdoing by the Borough. Rather, this Agreement is being offered for the sole purpose of settling, cooperatively and amicably, the Lawsuit, as well as any and all possible current disputes between the parties.

14. **Severability** Nothing in this Agreement is intended to violate any law or shall be interpreted to violate any law. If any paragraph or part or subpart of any paragraph in this Agreement or the application thereof is construed to be overbroad and/or unenforceable, then the court making such determination shall have the authority to narrow the paragraph or part or subpart of the paragraph as necessary to make it enforceable and the paragraph or part or subpart of the paragraph shall then be enforceable in its/their narrowed form. Moreover, each paragraph or part or subpart of each paragraph in this Agreement is independent of and severable (separate) from each other. In the event that any paragraph or part or subpart of any paragraph in this Agreement is determined to be legally invalid or unenforceable by a court and is not modified by a court to be enforceable, the affected paragraph or part or subpart of such paragraph shall be stricken from the

Agreement, and the remaining paragraphs or parts or subparts of such paragraphs of this Agreement shall remain in full force and effect.

15. Headings. The headings contained in this Agreement are for convenience of reference only and are not intended, and shall not be construed, to modify, define, limit, or expand the intent of the parties as expressed in this Agreement, and they shall not affect the meaning or interpretation of this Agreement.

16. Plain Meaning. Each party has had the opportunity to revise, comment upon and redraft this Agreement. Accordingly, it is agreed that the terms and conditions of this Agreement shall be construed according to their plain meaning, as if the parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted or construed in favor of or against either McEntegart or the Borough.

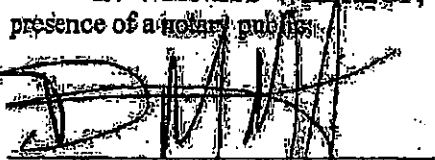
17. Strict Adherence. The failure of either party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement.

18. Who Is Bound. All parties are bound by this Agreement and each of its provisions. Anyone who succeeds to their rights and responsibilities, such as their successors and assigns, as well as McEntegart's heirs and the executor of his estate, also are bound. This Agreement is made for the benefit of all the parties hereto and all who succeed to their rights and responsibilities, and expressly includes their officials, McEntegart's agents, attorneys, successors and assigns.

19. Acknowledgments and Representations of McEntegart. McEntegart agrees and represents that:

- (a) he has read carefully the terms of this Agreement, including the General Release;
- (b) he had an opportunity to and has been encouraged to review this Agreement, including the General Release, with his attorney, Richard P. Flaum, Esq.;
- (c) he understands the meaning and effect of the terms of this Agreement, including the General Release;
- (d) the entry into and execution of this Agreement, including the General Release, is of his own free and voluntary act without compulsion of any kind;
- (e) he has adequate information to make a knowing and voluntary waiver and release of claims.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the presence of a notary public.


DOUGLAS MONTGART

Sworn to before me on this 9th
day of October, 2020



ELISABETH A. SEBORIA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 3/15/2021