

Law Offices of Walter M. Luers, LLC
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 Attorneys for Plaintiffs

<p>JANET PISZAR and MARILYNN ENGLISH,</p> <p>Plaintiffs,</p> <p>v.</p> <p>TOWNSHIP OF CEDAR GROVE and PAUL LEE in his official capacity of Mayor of Cedar Grove and personally,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY: LAW DIVISION: SPECIAL CIVIL PART</p> <p>ESSEX COUNTY DC-034868-09</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>COMPLAINT</p> <p>JURY TRIAL REQUESTED</p>
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ESSEX COUNTY CLERK
 OCT 20 2009
 FINANCE DIVISION RECEIVED FILED

Plaintiffs Janet Pizar and Marilyn English, through the undersigned counsel Law Offices of Walter M. Luers LLC, complaining of the Defendants, allege as follows:

1. This is an action against Defendants **TOWNSHIP OF CEDAR GROVE** and **PAUL LEE** in his official capacity as Mayor of the Township of Cedar Grove and personally under 42 U.S.C. § 1983, *et seq.*; the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.*, the United States Constitution and the New Jersey State Constitution.

THE PARTIES

2. Plaintiff Janet Pizar is a real person who resides at 186 Main Street, Millburn, New Jersey.

3. Plaintiff Marilyn English is a real person who resides at 97 Pease Avenue, Verona, New Jersey.

4. Defendant Township of Cedar Groves ("Cedar Grove") is a municipal corporation located within Essex County, New Jersey. Cedar Grove maintains its municipal offices at 525 Pompton Avenue, Cedar Grove.

5. Defendant Paul Lee is the former Mayor of Cedar Grove and at the times relevant to the allegations of this Complaint, he was the Mayor of Cedar Grove. Defendant Lee resides at 44 Harper Terrace, Cedar Grove.

JURISDICTION AND VENUE

6. The Court has jurisdiction of this action because the claims arise under the Federal and State Constitutions and under Federal State statutory law, and venue is appropriate because the Plaintiffs reside in Essex County, the municipal defendant resides in Essex County, the individual defendant resides in Essex County, and the events that form the basis for this complaint occurred in Essex County.

FACTS

7. Across New Jersey, public agencies frequently consider and utilize methods to reduce this State's population of deer. Some of the methods that have been considered and used result in the death of the deer. Plaintiffs abhor methods of deer management that are lethal to the deer. Plaintiffs believe that the means used to kill deer in New Jersey in residential areas are inhumane and are not effective in reducing the deer population.

8. Plaintiffs frequently meet and speak with such public agencies, to persuade them to use means of reducing the deer population that do not kill the deer. Prior to April 2009, Plaintiffs became aware that the governing body of Defendant Cedar Grove had

authorized, considered or would be considering methods to reduce its deer population by conducting a deer kill.

9. On April 6, 2009, Plaintiffs attended a public meeting of the governing body of Cedar Grove. Plaintiffs sought to present arguments and evidence regarding the efficacy of deer kills and to encourage the Township to employ alternative methods of controlling its deer population. Plaintiff Pizar also wanted to submit information to the Borough.

10. While both Plaintiffs spoke at the April 6, 2009 meeting, when Plaintiffs attempted to address the issue of whether Defendants were going to authorize or had authorized a deer kill and attempted to offer their opinions and findings regarding the efficacy and, in their opinion, cruelty of such methods.

11. Through Defendant Lee, the Borough prohibited Plaintiffs from discussing the deer kill issue. The Mayor and other members of the Borough Council repeatedly interrupted Plaintiffs, refused to permit Plaintiffs to finish their comments, and refused to allow Ms. Pizar to make her presentation regarding deer kills. Meanwhile, the Mayor and Borough Council repeatedly took the floor from Plaintiffs and discussed their views on how the deer population should be managed, while refusing to let Plaintiffs finish their comments. Ms. Pizar had brought several charts and illustrations and the Mayor prohibited her from using any of them. The Mayor repeatedly stated that he did not want Plaintiffs to make their presentation; that Plaintiffs could come back in the future to make their presentation; that he did not want Plaintiffs to make their presentation and comments twice; that he would "not discuss this issue any further," and that the Council meeting was "not the forum to discuss this."

12. On May 18, 2009, the Borough Council met in a public meeting. Ms. Pizar attempted to make public comments at this meeting. The Mayor prohibited her from

making public comments regarding the Borough's authorization, consideration or approval of a deer kill. Putting it bluntly, the Mayor said "I am not listening to your comments," he accused Ms. Pizar of denigrating the Borough, and he told her to leave the podium, implying that if she made further public comment she would be arrested. When Ms. Pizar said "You're denying me my right to speak out. Let's be clear," the Mayor responded: "Yes."

13. At all times relevant to this Complaint, Defendants were acting under color of law. At all times relevant to this Complaint, all Defendants were "persons" within the meaning of 42 U.S.C. § 1983 and were governing agencies or agents within the meaning of the New Jersey Civil Rights Act.

COUNT I - § 1983

14. Plaintiffs repeats and incorporates by reference each and every allegation contained in paragraphs 1-13 of Plaintiff's Complaint as though fully set forth at length herein.

15. Plaintiffs have the right to make public comments at public meetings of governing agencies, pursuant to the First Amendment of the United States Constitution and the New Jersey Constitution. The First Amendment is applicable to New Jersey as a substantive due process right guaranteed and made applicable to the States through the Fourteenth Amendment to the United States Constitution.

16. Defendants prohibited Plaintiffs from making comments regarding deer management and deer kill issues. Defendants' actions were based on the subject matter that Plaintiffs wished to discuss.

17. Defendants' actions were willful, malicious or in reckless disregard of Plaintiffs' rights.

18. As a direct and proximate result of Defendants' conduct, Plaintiffs were deprived of their free speech rights.

19. Wherefore, Plaintiffs demand judgment for compensatory damages and punitive damages in an amount not to exceed \$15,000, reasonable attorneys fees, interest, costs of suit and such other relief as the Court may deem appropriate.

COUNT II - NEW JERSEY CIVIL RIGHTS ACT

20. Plaintiffs repeat and incorporate by reference each and every allegation contained in paragraphs 1-19 of Plaintiff's Complaint as though fully set forth at length herein.

21. Plaintiffs have the right to make public comments at public meetings of governing agencies, pursuant to the New Jersey Constitution and the Open Public Meetings Act, N.J.S.A. 10:4-12(a).

22. Defendants prohibited Plaintiffs from making comments regarding deer management and deer kill issues. Defendants' actions were based on the subject matter that Plaintiffs wished to discuss.

23. Defendants' actions were willful, malicious or in reckless disregard of Plaintiffs' rights.

24. As a direct and proximate result of Defendants' conduct, Plaintiffs were deprived of their free speech rights under the New Jersey State Constitution and New Jersey law.

25. Wherefore, Plaintiffs demand judgment for compensatory damages and punitive damages in an amount not to exceed \$15,000, reasonable attorneys fees, interest, costs of suit and such other relief as the Court may deem appropriate.

WHEREFORE, Plaintiffs respectfully request that this Court enter Judgment against the Defendants:

- A. Awarding compensatory damages;
- B. Awarding punitive damages;
- C. Awarding Plaintiffs reasonable attorneys fees and costs of suit; and
- D. For such other or further relief as this Court deems just and equitable.

CERTIFICATION

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

I further certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable by a jury.

Plaintiffs do not need an interpreter and do not need any accommodation for special needs or disabilities.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (“Agreement”) is made by and between Plaintiff, Janet Pizar (‘‘Plaintiff’’) on the one hand, and the New Jersey Intergovernmental Insurance Fund (hereinafter, referred to as the ‘‘NJIF’’) on behalf of Township of Cedar Grove, its agents, servants, employees, elected officials, volunteers, and their respective heirs, successors and assigns (hereinafter, referred to as the ‘‘Township’’) and Paul Lee in his official capacity as the former mayor of the Township and personally (hereinafter referred to as ‘‘Lee’’), (the Township and Lee being individually and jointly referred to as ‘‘Defendants’’), on the other hand, (the Plaintiff and NJIF being hereinafter referred to individually as a ‘‘Party’’ and jointly as the ‘‘Parties’’). The Agreement shall be deemed entered into as of the date of signature of the last party or party representative to sign this Agreement.

WITNESSETH

WHEREAS, Plaintiff and former plaintiff Marilyn English filed suit against the Defendants on or about October 20, 2009 in a matter listed In Essex County New Jersey under Docket Number DC-034868-09 and titled ‘‘Janet Pizar and Marilynn English v. Township of Cedar Grove and Paul Lee in his official capacity of Mayor of Cedar Grove and personally’’, which set forth factual and legal allegations against Defendants (the ‘‘Action’’); and

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

WHEREAS, Defendants are provided with insurance as a result of the membership of the Township in the NJIF; and

WHEREAS, the Parties have mutually agreed to resolve the claims that form the basis for the Action and wish to memorialize their settlement herein;

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

1. Within thirty (30) days following its receipt of fully executed copies of this Agreement and the Stipulation of Dismissal with Prejudice attached hereto as Exhibit A, the NJIIF shall provide Plaintiffs with payment of Eight Thousand \$8,000.00, (referred to herein as the "Settlement Sum"). The Settlement Sum shall be made payable to "Janet Pizar and the Law Offices of Walter M. Luers" and shall be delivered to:

Walter M. Luers, Esq.
Law Office of Walter M. Luers, LLC
105 Belvidere Ave.
PO Box 527
Oxford, New Jersey 07863-0527

2. Plaintiff acknowledges and agrees that all federal and state income taxes and/or penalties relating to the payments set forth in this Agreement are her sole responsibility. Plaintiff further covenants and agrees that she will indemnify Defendants and the NJIIF for any taxes and/or penalties sought from or assessed to Defendants and/or the NJIIF by any state or federal governmental agency, including but not limited to Social Security payroll taxes ("FICA"), state and/or federal disability payments, unemployment taxes, and/or state and/or federal income taxes.

3. As additional partial consideration for payment of the Settlement Sum, Plaintiff, for herself and on behalf of her successors, heirs, beneficiaries, estates and assigns (referred to herein as "Releasor") does hereby fully and forever release, remit, acquit, remise, hold harmless and discharge, (the "Release"), Defendants and the NJIIF,

as well as the Defendants' and the NJIIF's past and present officials, agents, attorneys, departments, officers and employees, (for individuals, said Release runs to them in their official and personal capacities), and all of their respective heirs, successors and assigns, (hereinafter, individually and collectively referred to as "Releasees"), jointly and individually, from any and all liabilities, claims, causes of action, charges, appeals, complaints, obligations, costs, losses, damages, injuries, attorneys' fees, and other legal responsibilities, (collectively, referred to as "claims"), of any form or kind whatsoever, whether vested or contingent, which Releasor has or may have against Releasees from the beginning of time through the date of this Agreement, including but not limited to any claims in law, equity, contract, tort, public policy, any claims or causes of action for breach of contract, negligence, retaliation, harassment and/or discrimination based upon, among other things, disability, handicap, sex, age or race, intentional infliction of emotional distress, defamation, any claims which were raised or could have been raised prior to the date of this Agreement, or any claims under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, as amended, the Reconstruction Era Civil Rights Act, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, as amended, the New Jersey Law Against Discrimination, the New Jersey Constitution, or any other federal, state or local statute, ordinance or law whether known or unknown, unforeseen, unanticipated, unsuspected or latent, and any claims which were raised or could have been raised prior to the date of this Agreement, whether known or unknown, unforeseen, unanticipated, unsuspected or latent. Notwithstanding anything set forth herein to the contrary, the Releasees do not waive any defenses or affirmative defenses in any pending or future litigation or claim,

including but not limited to the entire controversy doctrine, estoppel, joinder, etc., whether with regard to the Claim or otherwise.

4. Plaintiff promises and agrees that she will not file, re-file, appeal, initiate, or cause to be filed, refilled or initiated any claim, suit, claim or other proceeding based upon, arising out of, or related to any claims and causes of action released herein; nor shall she solicit, encourage, participate, assist or cooperate in any claim against any of the Releasees, whether before a court or administrative agency, unless required to do so by law. If a court order or lawful subpoena is served on Plaintiff requiring that she testify in any matter in which Releasees have an interest, she agrees to immediately notify and provide a copy of the court order or subpoena to (1) the NJIIF's General Counsel c/o Eric J. Nemeth, P.C. 55 Madison Avenue, Suite 400, Morristown New Jersey, 07960, phone (973-539-2122), fax (973-539-4677). Plaintiff shall provide the NJIIF's General Counsel and the Township with a copy of the court order or subpoena as soon as possible and reasonably in advance of his/her appearance and/or compliance with the court order or subpoena. Plaintiff agrees to cooperate with and assist the Township and NJIIF in connection with any lawful efforts to quash or limit the scope of the subpoena or court order.

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

6. Plaintiff agrees that she shall engage in no act relating to the issues raised by Plaintiff in this Action which is intended, or reasonably may be expected to harm the reputation, business, prospects, or operations of Releasees.

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

8. While the Parties acknowledge and agree that as a governmental entity, the Township may be obligated to disclose a copy of this Agreement to persons under the Open Public Records Act. Notwithstanding the foregoing, Plaintiff and her Attorney agree that they shall not disclose, or cause to be disclosed, the terms of this Agreement, or the fact that this Agreement exists, except to their accountants and/or tax advisors, or

to the extent otherwise required by law. Each such person who is provided information regarding the terms of this Agreement by Plaintiff shall first be required to review this Agreement and agree to abide by the limitations on disclosure. Plaintiff and her Attorney acknowledge and agree that this confidentiality provision is an express and absolute condition of this Agreement, is bargained for consideration for this Agreement and that any violation of the terms and conditions of this confidentiality provision shall constitute a material breach of this Agreement. In the event that this Agreement is required to be disclosed pursuant to applicable law, Plaintiff and her Attorney agree that their communication with any person or the media regarding the Litigation shall be limited to the statement that the "claim was resolved to their satisfaction."

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

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

11. This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, successors, and assignees of each of the parties to it. Each of the Releasees who are not signatories to this Agreement is intended to be third-party beneficiaries of this Agreement. Each such Releasee shall be entitled to enforce this Agreement and each of its terms. In the event of any breach of this Agreement, an aggrieved Releasee may move to enforce the terms hereof and shall be awarded legal fees if it is the prevailing party in such action.

12. Plaintiff hereby agrees to jointly and severally indemnify, defend and hold harmless Releasees jointly and individually, from any and all liabilities, claims, causes of action, charges, appeals, complaints, obligations, costs, losses, damages, injuries, attorneys' fees, and other legal responsibilities of any form or kind whatsoever, whether vested or contingent, which any party to the Action or any other person or their successors or assigns has or may have against the Releasees arising from the subject matter of the Action, including but not limited to any claims in law, equity, contract, tort, public policy, any claims or causes of action for breach of contract, negligence, retaliation, harassment and/or discrimination based upon, among other things, disability, handicap, sex, age or race, intentional infliction of emotional distress, defamation, and any claims which were raised or could have been raised in the Action, whether known or unknown, unforeseen, unanticipated, unsuspected or latent.

13 This Agreement, with the Stipulation of Settlement signed and filed on May 24, 2010, which is incorporated into this document by reference, represent the entire agreement and understanding between the Parties, constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof, and supersedes and replaces any and all prior agreements and understandings, both written and oral, concerning the subject matter hereof. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be changed or modified, except by a writing signed by the Parties hereto.

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

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

16. Plaintiff hereby certifies that if any liens exist against the Settlement Sum, they will be paid in full, compromised or satisfied and released by her. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien, Plaintiff agrees that she will pay that lien in full. This representation is intended to include all liens, including, but not limited to, attorneys' liens, medical provider liens, Medicare and Medicaid liens, workers' compensation liens, all statutory or common law liens, and judgment liens. Plaintiff agrees to indemnify and hold the Releasees harmless in connection with any claim made by reason of liens against or tax obligations associated with payment of the Settlement Sum. If a claim is hereafter made against the Releasees by anyone seeking payment of the liens, Plaintiff will indemnify and hold the Releasees harmless for any such liens and/or defending against such a claim, including, but not limited to, attorneys' fees, costs of suit, and interest.

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

18. This Settlement Agreement is executed voluntarily and without any duress coercion or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims asserted in the Claim. The Parties acknowledge that:

(a) They have read this Agreement;

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

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

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

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




Witness

Janet Piszar

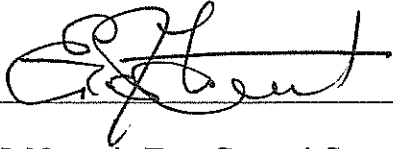
By:

Date:


7 Jan. 2011

The New Jersey Intergovernmental Insurance
Fund on Behalf of the Township of Cedar
Grove and Paul Lee.

Judith A. Ganso
Witness

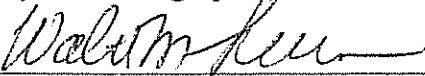
By: 

Eric J. Nemeth, Esq. General Counsel
New Jersey Intergovernmental Insurance
Fund
55 Madison Avenue
Suite 400
Morristown, New Jersey 07960

Date: 2/28/11

Attorney for Plaintiffs

(Solely as to Paragraph 8)

By: 

Date: 1/7/11