

SETTLEMENT AGREEMENT AND RELEASE

This Agreement is being entered into on February 19 2013 between THE BOROUGH OF LAWNSIDE, for the benefit of itself, all related corporate and governmental agencies and/or entities, its and their present, future, and former officers, directors, employees, agents, officials, representatives, insurers, successors and assigns, both in their official and individual capacities, including but not limited to JAY TODD, JESSIE HARRIS, and DWIGHT WILSON, (hereinafter collectively referred to as the "Borough") and CARMEN COLON (hereinafter "Ms. Colon," "Employee," or "You" or "Your"), collectively referred to as the "Parties."

WHEREAS, a lawsuit containing claims filed by Ms. Colon against the Borough is pending in the in the United States District Court for the District of New Jersey, under the caption of Carmen Colon v. Borough of Lawnside, et al., Civil Action No. 11-cv-6341-AMD-NLH (the "Litigation"); and

WHEREAS, Ms. Colon has threatened to file a second amended complaint in the Litigation naming additional individual parties and asserting additional causes of action; and

WHEREAS, the Parties now wish to resolve this matter amicably without further litigation;

In exchange for the mutual promises set forth below, and intending to be legally bound the Parties hereby acknowledge and agree to the following terms and conditions:

1. **SETTLEMENT AND CONSIDERATION.** The Parties hereby agree:
 - (a) Ms. Colon shall permanently resign her employment as a member of the Borough's Police Department, effective as of her execution of this Settlement Agreement and Release.
 - (b) Upon the occurrence of Ms. Colon's resignation, the Borough shall: (i) withdraw all pending disciplinary actions against Ms. Colon, and (ii) provide Ms. Colon with a retirement badge and ID.
 - (c) Upon the occurrence of Ms. Colon's resignation, the Borough will execute a settlement agreement to be submitted in the matter of Colon v. Borough of Lawnside, OAL Docket No. CSV 13661-2012S, Agency Docket No. 2013-628, which will advise the Office of Administrative Law that all pending disciplinary charges are dismissed. The Borough shall also issue an amended 31B Civil Service form dismissing all charges.
 - (d) Following Ms. Colon's resignation, the Borough will: (i) respond to any inquiries from Ms. Colon's future prospective employers with a neutral reference, and (ii) take no position with respect to any efforts by Ms. Colon's to obtain unemployment benefits.
 - (e) The Borough will provide Ms. Colon with standard indemnification for actions taken by her within the scope of her employment in accordance with its general policies as provided to all other employees;

- (f) Upon the occurrence of Ms. Colon's resignation, and contingent upon approval of a payment plan by the Camden County Municipal Joint Insurance Fund ("CCMJIF"), the Borough's insurer shall pay Ms. Colon the total sum of \$150,000.00, payable as follows:
- i. The Borough's insurer shall issue a check payable to Ms. Colon for the sum of \$62,500.00. A Form 1099 will be issued for such monies to Ms. Colon. Such payment shall be issued within 30 days of the approval of a payment plan by the CCMJIF.
 - ii. The Borough shall issue a check payable to Ms. Colon for the sum of \$50,000.00. A Form 1099 will be issued for such monies to Ms. Colon. Such payment shall be issued within 45 days of the execution of this Agreement.
 - iii. Of this amount, the parties agree that the sum of \$5,149.92 is allocated to Ms. Colon's claim of back wages due in the pending litigation. The parties agree the balance of the funds payable to Ms. Colon represent payment on her claims of compensatory non-wage damages in the pending Amended Complaint, as well as any anticipated second amended complaint.
 - iv. The Borough's insurer shall issue a check payable to The Vigilante Law Firm, P.C. for the sum of \$37,500.00. A Form 1099 will be issued for such monies to The Vigilante Law Firm, P.C. Such payment shall be issued within 30 days of the approval of a payment plan by the CCMJIF.
 - v. The issuance of any checks or monies as described herein are contingent upon: (i) Ms. Colon's execution of this Agreement; (ii) appropriate notification to the Court advising that this matter has been settled and may be dismissed by the Court with prejudice; (iii) provision of a clear child support judgment search certification; and (iv) return of any outstanding police equipment.
- (g) Upon the occurrence of Ms. Colon's resignation, in addition to the sums set forth in paragraph (f) the Borough shall pay to Ms. Colon the total sum of \$4,683.80, which represents all amounts withheld from her paychecks between November 1, 2010 and her resignation for the Police and Fireman Retirement System and/or Public Employees Retirement System. A Form 1099 will be issued for such monies to Ms. Colon. Such payment shall be issued within 30 days of the approval of a payment plan by the CCMJIF.
- (h) Ms. Colon agrees that she and/or her counsel are solely responsible for any state and/or federal tax obligations that may exist with respect to the sums made payable to The Vigilante Law Firm, P.C. and Ms. Colon, as described above in Sections 1(f)(i) and (ii), and (g) and that the Borough and/or its insurer has no obligation in that regard and has made no representations to Ms. Colon or her counsel as to what, if any, state and/or federal tax obligations may arise from payment of these monies. If any action or proceeding shall be instituted against the Borough related to any alleged failure to make sufficient withholdings on such monies or any failure to pay taxes on such monies, Ms.

Colon hereby agrees to indemnify and hold harmless the Borough and/or its insurer in any such action and for any judgment which may be entered against it as well as reimburse the Borough and/or its insurer for all reasonable attorneys' fees incurred.

- (i) Except as provided in Section 1(f) and (g) above, the parties agree that each party is solely responsible for any state and/or federal tax obligations and that the other party has no obligation in that regard. Each party has consulted and been advised by a tax, legal or other professional of their choice in consenting to this provision and has not relied upon any representations of the other party.
- (j) In the event that the CCMJIF does not agree to a payment plan, this Agreement shall be null and void.

2. **DISMISSAL OF LAWSUIT AND APPROVAL OF SETTLEMENT.** As referenced above, the Parties agree to execute any and all documents which may be requested or required to effect the dismissal of the pending Lawsuit with prejudice immediately upon their execution of this Agreement. Council for the Borough must approve the Agreement and all reasonable efforts will be made to timely obtain such approval.

3. **GENERAL RELEASE.** In exchange for the valuable consideration provided in this Agreement, Ms. Colon hereby waives, relinquishes and forever releases the Borough and/or its insurer from any and all rights or claims, known or unknown, asserted or unasserted, from the beginning of time up to and including the date of full execution of this Agreement, including but not limited to those claims asserted by her in the pending lawsuit, including claims for unpaid wages including any claims of unpaid benefits, overtime payments, pension payments or any other compensation of any kind whatsoever, claims of harassment, retaliation, or wrongful termination with regards to any alleged protected category, status or class, including but not limited to age, sex, religion, race, disability, or national origin, failure to accommodate, breach of contract, hostile work environment, wrongful discharge, retaliation, constructive discharge, as well as claims in tort, including but not limited to claims for misrepresentation, defamation, libel, interference with contract or prospective economic advantage, intentional and/or negligent infliction of emotional distress, personal injury, lost wages and/or benefits, and any other economic and/or non-economic damages whatsoever. Ms. Colon specifically waives any rights that she may have under the Fair Labor Standards Act, the New Jersey Wage and Hour Law, the Age Discrimination in Employment Act, Older Workers Benefit Protection Act, New Jersey Law Against Discrimination, Conscientious Employee Protection Act, Title VII of the Civil Rights Act of 1964, Section 1981, the Americans With Disabilities Act, the Family and Medical Leave Act, the Equal Pay Act, the New Jersey and/or United States Constitutions, or any other federal, state or local law or ordinances and any common law claims under tort, contract or any other theories now or hereafter recognized or any claim related to any Borough policy, procedure or plan. This releases all claims, including those of which the Borough and/or its insurer are not aware and those not mentioned in this Release. This releases all claims, including those for counsel fees and/or costs related to any of the pending litigation and/or other matters, and each party shall bear their own attorneys fees and costs. The parties specifically recognize and acknowledge that the total monies paid to Ms. Colon as described in

Paragraph 1 are intended to include compensation for any and all costs and attorneys fees she and/or her attorney may have incurred. This Release applies to claims resulting from anything which has happened up to now. Ms. Colon hereby acknowledges she has been paid all wages, compensation, and benefits due to her as of this date. She further warrants and represents there is no workers compensation claim or work related injury which she allegedly suffered as of this date and of which she has not already notified Borough and/or their insurer. Ms. Colon also waives any claim to any accrued sick time, vacation time, personal time, comp time, and leave time of any kind. This general release does not apply to any claims that may be brought by Ms. Colon against the Camden County Prosecutor's Office. This general release does not apply to and is not intended to apply to any pending workers' compensation claim.

4. **COVENANT NOT TO SUE.** Ms. Colon hereby warrants she has not filed any other litigation against the Borough and/or its insurer except for the Litigation referenced above. Further, Ms. Colon agrees that she will not file, charge, claim, sue or cause or permit to be filed any civil action, internal complaint, grievance, suit or legal proceeding seeking personal, equitable or monetary relief on her behalf in connection with any and all claims, known or unknown, asserted or unasserted, from the beginning of time up to and including the date of full execution of this Agreement. This prohibition specifically includes and applies to any internal grievances or complaints brought under any collective bargaining agreement by Ms. Colon and/or by any union or labor organization on her behalf. Ms. Colon further agrees that should any person, organization or other entity file, charge, claim, sue or cause or permit to be filed any such civil action, internal complaint, grievance, suit or legal proceeding, she will not seek or accept any personal relief in such civil action, suit or legal proceeding. In the event of a violation of this paragraph, Ms. Colon agrees that the Borough and/or its insurer shall be entitled to immediate dismissal of such civil action, internal complaint, grievance, suit or legal proceeding and that she shall be responsible for the payment of the reasonable attorneys' fees and expenses incurred by the Borough's defense. Ms. Colon further agrees that she will not file nor permit any other party to file charges with any governmental agency relating to any matter alleged in the Amended Complaint filed in this Litigation. This covenant not to sue does not apply to any claims that may be brought by Ms. Colon against the Camden County Prosecutor's Office.
5. **NO ADMISSION OF LIABILITY.** The Parties understand that by entering into the Agreement, the Borough does not admit any liability and expressly denies that it has committed any wrongdoing. The Parties understand that by entering into the Agreement, that Ms. Colon does not admit any liability and expressly denies that she has committed any wrongdoing with respect to any criminal or disciplinary charge or civil action pending against her.
6. **NON DISPARAGEMENT.** Ms. Colon agrees that she shall not criticize, ridicule, or otherwise disparage the Borough to the media or otherwise. The individual Defendants agree that they shall not criticize, ridicule or otherwise disparage Ms. Colon to the media or otherwise.

7. **FUTURE RE-EMPLOYMENT.** Ms. Colon hereby agrees and acknowledges that her current employment with the Borough will be permanently and irrevocably severed on the Termination Date. Ms. Colon shall not be eligible to re-apply and/or seek re-employment with the Borough in the future.
8. **ACKNOWLEDGEMENT, MS. COLON ACKNOWLEDGES THAT SHE HAS READ ALL OF THE TERMS OF THIS AGREEMENT; SHE HAS HAD AN OPPORTUNITY TO DISCUSS IT WITH INDIVIDUALS OF HER OWN CHOICE WHO ARE NOT ASSOCIATED WITH THE BOROUGH. SHE HAS BEEN ADVISED BY THE BOROUGH TO CONSULT WITH AN ATTORNEY OF HER OWN CHOOSING. MS. COLON UNDERSTANDS THAT BY SIGNING THIS AGREEMENT AND ACCEPTING THE TERMS SET FORTH ABOVE, SHE IS RECEIVING BENEFITS TO WHICH SHE WOULD NOT OTHERWISE BE ENTITLED. MS. COLON UNDERSTANDS THAT SHE IS RECEIVING SUCH BENEFITS AS A RESULT OF ENTERING INTO AND COMPLYING WITH THE TERMS AND PROVISIONS OF THIS AGREEMENT. SHE HEREBY ACKNOWLEDGES THAT SHE SIGNS THIS AGREEMENT VOLUNTARILY AND KNOWINGLY IN EXCHANGE FOR THE CONSIDERATION DESCRIBED HEREIN, WHICH SHE ACKNOWLEDGES IS ADEQUATE AND SATISFACTORY; THAT SHE HAS BEEN PROVIDED AN OPPORTUNITY TO REVIEW AND CONSIDER THIS AGREEMENT PRIOR TO SIGNING IT.**
9. **GOVERNING LAW AND CONSTRUCTION.** This Agreement shall be governed by the laws of the State of New Jersey. Any disputes arising out of and/or relating to this Agreement shall be filed only in the state courts in Camden County, New Jersey and/or the federal courts in Camden County, New Jersey and both Parties consent to personal jurisdiction in such courts for any such actions.
10. **TIME FRAME FOR CONSIDERATION.** You acknowledge further that you understand the terms of this Amendment, including the fact that you have terminated your employment relationship with the Borough and that the Agreement and Amendment releases the Borough and/or its insurer forever from any legal action arising from your employment relationship and the termination of your employment relationship by the Borough, including the Age Discrimination and Employment Act and Older Workers Benefit Protection Act. You sign this Agreement of your own free will in exchange for the consideration to be given to you, which you acknowledge is adequate and satisfactory. Neither the Borough and/or its insurer, nor any of their agents, representatives or employees have made any representations to you concerning the terms or effects of this Amendment or Agreement, other than those contained in the Amendment or Agreement. You further acknowledge that:
 - (a) You have been given the opportunity to take a period of at least twenty-one (21) days within which to consider this Amendment. If you choose to sign this Amendment before that date, you acknowledge that you do so knowingly and voluntarily.
 - (b) You further understand that you have the right to change your mind and revoke this Amendment within seven (7) days following the date the Amendment is signed by

providing written notification to the Borough of your intent to do so within that seven (7) day time period. This Amendment will not be effective until the end of the seven (7) day period.

- 11. **ENTIRE AGREEMENT AND HEADINGS.** This Agreement embodies the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings related to the subject matters hereof. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning of this Agreement or its provisions.
- 12. **NOT ADMISSIBLE.** This Settlement Agreement and Release is not intended to be used and shall not be used as evidence or for any other purpose in any other action or proceeding, other than evidence of the Parties' compromise as set forth herein, or to enforce the terms of this Settlement Agreement and Release.
- 13. **MODIFICATIONS AND AMENDMENTS.** This Agreement shall not be modified or amended except by writing duly executed and signed by the Parties to this Agreement.
- 14. **PROVISIONS.** In the event that any such provision of this Agreement is deemed invalid, illegal, void or unenforceable, such provision shall be regarded as stricken from this Agreement and will not affect the validity or enforceability of the remainder of this Agreement.
- 15. **COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall constitute an original document and all of which shall constitute but one and the same instrument.

IN WITNESS THEREOF, the Parties have executed this Agreement.

PLAINTIFF,
CARMEN COLON

DEFENDANT,
THE BOROUGH OF LAWNSIDE

By: 

CARMEN COLON

By: 

THE BOROUGH OF LAWNSIDE

Date: 2/19/13

Date: 2/26/13