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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

<p>MARK BORCHERT,  Plaintiff,  vs.  COUNTY OF HUDSON; HUDSON COUNTY SHERIFF'S OFFICE; SHERIFF FRANK X. SCHILLARI, in his official capacity; FRANK X. SCHILLARI, in his individual capacity; 0506 HEAD DOES 1-5; JOHN DOES 1-5; and HARRY DOES 1-5 (identities unknown)  Defendants.</p>	<p>DOCKET NO.   COMPLAINT AND JURY DEMAND</p>
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**PARTIES**

1. Plaintiff, Mark Borchert is a resident of the State of New Jersey, residing at 100 Columbia Avenue, Jersey City, New Jersey 07307.
2. Defendants, Hudson County and the Hudson County Sheriff's Department are Plaintiff's employer who have the ability to maintain and control Plaintiff's workplace and have maintained and are maintaining an official policy, practice, and/or custom that violates Plaintiff's rights.
3. Defendant, Frank X. Schillari is the Sheriff of Defendants Hudson County and the Hudson County Sheriff's Department. Defendant Schillari has the ability to maintain and control Plaintiff's workplace. He is sued in both his individual and official capacities.

**JURISDICTION AND VENUE**

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 in so far as Plaintiff's Complaint asserts claims under 42 U.S.C. § 1983.

5. Venue is proper in that Defendants are residents of this District and a substantial part of the events giving rise to the claims occurred in this District.

6. Defendants are Hudson County, Hudson County Sheriff's Office, Frank X. Schillari, officially as Sheriff and individually. Defendant Schillari, Head Doe, John Doe, Harry Doe, which "Does" have identities presently unknown, all are joined individually and officially as agents of the County of Hudson and defendant Schillari. Said individual defendants were at all times mentioned herein operating in their employ as agents of the defendant Hudson County. John Doe and Head Doe presently have identities unknown and cooperated, aided and abetted the intentional, wrongful and disparate acts of known defendants herein. Defendants Hudson County and Sheriff Schillari are "employers" as that term is defined by N.J.S.A. 10:1-12 and N.J.S.A. 10:5-1, et seq.

**FACTS COMMON TO ALL COUNTS**

7. Mark Borchert, Plaintiff, has been employed by Hudson County since approximately 1988.

8. Plaintiff began his career working in the Hudson County Probation Department.

9. In or about 1991 Plaintiff began working for the Hudson County Sheriff's Office.

10. During Plaintiff's employment with the Hudson County Sheriff's Office he has been the recipient of many awards including but not limited to: Hudson County Sheriff's Medal of Honor; Hudson County Board of Chosen Freeholder and County Executive award; New Jersey PBA

Valor award; Hudson County 200 Club Valor award; Honor Legions Police of New Jersey award; New York-New Jersey Detective Crime Clinic award; numerous Hudson County Sheriff Service awards; and numerous FBI awards.

11. In or about February 1997 Plaintiff was promoted to the rank of Detective entitling him to overtime and an annual stipend.

12. In or about January 2008 Plaintiff was promoted to the rank of Detective II by former Sheriff Juan M. Perez, entitling him to overtime and an annual stipend.

13. Juan M. Perez served in the elected position of Hudson County Sheriff prior to Defendant-Schillari.

14. Plaintiff supported Perez' candidacy for election to the position of Sheriff in 2008 in an appropriate and lawful manner.

15. Plaintiff's political support of Perez' candidacy was well known in the Department.

16. In the 2010 election Perez ran for re-election and was opposed by defendant, Frank X. Schillari.

17. Plaintiff supported Perez' candidacy in the election against Schillari in a lawful and appropriate manner.

18. Schillari prevailed in the election and on January 1, 2011 became the Sheriff of Hudson County.

19. On or about January 29, 2011 Plaintiff, while off duty, took police action against an individual who failed to stop for a stop sign causing Plaintiff to abruptly stop. Plaintiff identified himself as a Sheriff's Detective and issued the individual a summons for careless driving.

20. On or about February 16, 2011 the aforementioned individual initiated a complaint against Plaintiff for harassment regarding the January 29, 2011 motor vehicle stop.

21. On or about February 16, 2011 Plaintiff injured his back while at work when he was putting a bag into a car. Plaintiff received workers' compensation and was out of work until June 2011.

22. On or about April 13, 2011 an Internal Affairs investigation found the aforementioned individuals complaint to be non-sustainable but did recommend that Plaintiff be administratively charged with violating departmental rules for which he was given a one day suspension.

23. Plaintiff pursuant to his rights filed a grievance and requested an arbitration that to date has not been heard and/or resolved although one previously scheduled date was adjourned by Defendant's the day before the scheduled hearing.

24. On or about June 3, 2011 Plaintiff was informed by Captain William Joy that he was being reassigned from the Detective Bureau to the Court Bureau because of his restriction of no long distance driving and limited to driving of two hours and because there was no "light duty." Plaintiff was to report to Captain Archibald on June 6, 2011.

25. It was the practice of the Hudson County Sheriff's Department that when an individual was placed on "light duty" they were assigned to the Detective Bureau.

26. Plaintiff reported to the Court Bureau and as a result had to wear a heavy gun belt and was placed on the front door security detail causing him to be on his feet for a long period of time causing him pain.

27. On or about June 8, 2011 Dr. Carl P. Giordano, MD prescribed that Plaintiff return to regular duty without restriction.

28. On or about June 14, 2011 Plaintiff requested to return to the Detective Bureau since he was medically cleared without restriction by Dr. Giordano on June 8, 2011.

29. On or about June 15, 2011 Plaintiff again requested to return to the Detective Bureau.

30. On or about June 30, 2011 Plaintiff again requested to return to the Detective Bureau informing that he reported on June 29, 2011 to see a Dr. Lester but was told that he could not be seen because his doctor was changed to Dr. Giordano who had released him to full duty on June 8, 2011.

31. On or about July 5, 2011 Plaintiff was returned to the Detective Bureau and given an assignment wherein he was to accompany a Hudson County Superior Court Judge to the Greystone Psychiatric Hospital twice a week. At the time of this assignment Plaintiff was the second senior person in the Detective Bureau and this assignment was usually given to less senior individuals.

32. On or about February 24, 2012 Plaintiff was asked to attend a meeting with Captain William Joy, Chief Warrant Officer Oliver King and Sergeant John Karras where he was given Personnel Order 05-12 and told he was being transferred to the Court Bureau and demoted to the Rank of Sheriff Officer. Sergeant Karras told Plaintiff that he was one of his workers and wished that others were moved out of the Detective Bureau instead of him. See Personnel Order 05-12 at Exhibit A.

33. On or about February 27, 2012 Plaintiff's detective badge was taken by Captain Cerwinski.

34. On or about February 27, 2012, Jason B. Occhipinti, President of the Policeman's Benevolent Association (PBA-Local 334) sent a letter via hand delivery to Sheriff Schillari regarding Plaintiff's demotion. In the letter, Mr. Occhipinti cited Plaintiff's twenty years of service with the agency, sixteen of which were in the Detective Bureau and that only two or three Detectives assigned to the Bureau had more time than Plaintiff. The letter also cited that the demotion came with a pay decrease and requested written justification for Plaintiff's demotion.

42. Sheriff Frank X. Schillari has replaced plaintiff with individuals who are younger and less experienced than Plaintiff.

43. Sheriff Frank X. Schillari, since taking office has politically retaliated against Plaintiff, while promoting and favoring those, who continue to support and buy fundraising tickets for his campaign.

44. Plaintiff has been denied, refused and frustrated from obtaining the benefit of overtime work and assignments.

45. Plaintiff has been subjected to unfounded and baseless investigation and charges as previously described.

46. Plaintiff's political speech, conduct and/or affiliation and/or Defendants perception thereof were a motivation and/or substantial factor in the adverse employment actions taken by Defendants against Plaintiff.

47. Defendants actions have violated Plaintiff's New Jersey Civil Service Rights, (1) N.J.S.A. 11A:4-16 (transfer, reassignment and title change), specifically by not granting Plaintiff 30 days notice of transfer or reassignment, (2) N.J.S.A. 11A:12-2 (rights of current employees) which states that employees with permanent classified status shall obtain permanent status in career service and (3) N.J.S.A. 11A:2-23 (political activity limited) a person holding a position shall not use his authority to control or affect the political action of another. Defendant Schillari has also violated NJ Civil Service Rights 11A:4-13, 11A:4-14, 11A:4-15 and 11A:10-2 along with violating the Fair Labor Standard Act.

48. Sheriff Frank X. Schillari has also violated New Jersey Constitution, Article 1, Paragraphs 1, 5, 18, 19 and Article VII and N.J.S.A. 40A:14-147 and N.J.S.A. 10:6-2 which

prohibits removal from employment or position for political reasons. It is also illegal to fire or demote government employees for political reasons.

49. Defendants have also violated Plaintiff's employee rights found in the County of Hudson Employee Handbook dated May 1, 2003.

50. Defendants through their aforementioned actions have also violated Plaintiff's federal rights pursuant to 42 U.S.C. § 1983.

51. Sheriff Frank X. Schillari has violated New Jersey's public policy against retaliating against public employees for engaging in protected political activities and associations, and prohibitions against unequal treatment in the workplace.

52. As a direct and proximate result, plaintiff is suffering serious mental and emotional distress, anxiety, ridicule, humiliation, loss of self-esteem, embarrassment, loss of civil and constitutional rights, loss of wages and loss of future overtime income.

53. Defendants Employee Handbook created an implied contract with plaintiff because:

- a. The attempted disclaimer was
  - i. Not in bolder print
- b. All the management and employees are expected to comply with same.
- c. The Handbook was widely distributed to all employees.

54. The following provisions of the County of Hudson Employee Handbook dated May 1, 2003 were violated by defendants:

- a. Page 11 "Equal Employment opportunity prohibits discrimination on national origin, color, race and political affiliation;
- b. Page 12 "New Jersey Department of Personnel" (civil service) which mandates the County's compliance with Civil Service Rules;

- c. Page 14 "Personnel Actions" promotions are to be based on merit (not political patronage). Demotions, should be based upon disciplinary reasons or civil service displacement;
- d. Page 15 "Transfers reassignments" is being utilized improperly by defendants as justification for defendant's demotion of plaintiff from Detective.
- e. Page 61 "harassment" policy was violated by defendants, in that Plaintiff was demoted from the rank of Detective because of his political affiliation.

55. In or about November 2012 in furtherance of the retaliation Plaintiff was subjected, he was denied the ability to use vacation pay for an FMLA day and as a result lost one day of pay.

56. On or about September 15, 2013 Sheriff Schillari further discriminated against Plaintiff by introducing him to an unknown individual as "Detective Borchert" and then while grinning stated "No, I mean Officer Borchert."

57. Defendants acts were committed negligently, recklessly in bad faith, knowingly, intentionally, purposely and maliciously.

**COUNT ONE**

(42 U.S.C. § 1983)

58. Plaintiff repeats and incorporates the preceding paragraphs as if set forth in their entirety.

59. Defendants violated the First and Fourteenth Amendments to the United States Constitution, including but not limited to the right of freedom of speech and association and due process and equal protection of the law, by unlawfully demoting Plaintiff, for reasons based solely on political affiliation, thereby denying Plaintiff the rights and protections conveyed by the Constitution in violation of 42 U.S.C. § 1983.

60. As a direct and proximate result of Defendants' violation of the First and Fourteenth Amendments, Plaintiff has suffered the deprivation of precious Constitutional rights, loss of his detective rank and the attendant wages and benefits, embarrassment, mental anguish, emotional distress, harm to reputation, and other losses.

**WHEREFORE**, plaintiff requests monetary judgment against all defendants individually, jointly and severally for damages both past and future, both compensatory and punitive with costs, interest and attorney's fee.

### COUNT TWO

(Interference with Plaintiff's Beneficial Economic Interest, Breach of Implied Covenant of Good Faith and Fair Dealing and Violations of New Jersey's Constitution)

61. Plaintiff repeats and incorporates the preceding paragraphs as if set forth in their entirety.

62. The Defendant's policies, orders, regulations Handbook along with the New Jersey State Department of Personnel regulations and laws constitute an implied contract, which has been violated in bad faith by defendant as stated herein.

63. Said acts violated provisions of New Jersey Constitution, Article VII, Section 1, Paragraph 2; Article I, Paragraphs 1, 18, 19, which together with N.J.S.A. 10:6-2 allow for this cause of action. Said acts also constituted an invasion of plaintiff's privacy and casting of him in a false light.

**WHEREFORE**, plaintiff requests judgment for monetary damages issued against all defendants individually, jointly and severally for breach of the implied covenant of good faith and fair dealing and against the individually named defendants for malicious interference with a beneficial economic advantage.

**COUNT THREE**

(Official Deprivation of Civil Rights  
2C:30-6, 2C:30-7 and N.J.S.A. 10:6-2)

64. Defendants individually, jointly and severally by their actions aforementioned violated plaintiff's rights under N.J.S.A. 2C:30-6, by denying and impeding plaintiff in his lawful exercise and enjoyment of his right and privilege to not have his civil right violated in his employment in violation of New Jersey's Constitution, Article I, Paragraphs 1, 5, 6 and Article VII and in violations of New Jersey's Civil Service Laws and regulations.

65. Said acts also are in violation of 2C:30-7, in that the aforementioned complaint of conduct amounted to a pattern of official misconduct.

66. As a consequence of the above, plaintiff was harmed and damaged.

67. Defendants engaged in their positions with an invidious political motive and attitude to selectively recommend complaining and grieving personnel not be promoted, or to be demoted and to treat politically disfavored individuals such as plaintiff in a less equal fashion to the non-complaining politically favorable to defendant. This was a custom and policy of the Defendants of the Hudson County Sheriff's Department.

68. As a consequence of defendants' actions, plaintiff has been damaged.

**WHEREFORE**, plaintiff requests monetary judgment against all defendants individually, jointly and severally for damages both past and future, both compensatory and punitive with costs, interest and attorney's fee.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff demands judgment against the Defendants and requests the following relief:

- a. Order that Defendants make Plaintiff whole for all losses he has suffered, still suffers, and will suffer in terms of lost wages, benefits, insurance and pension coverage, and any other fringe benefits of his employment;
- b. Order that Defendants reinstate Plaintiff to the rank of Detective II;
- c. Order that Defendants compensate Plaintiff for the emotional distress, humiliation, and anguish Plaintiff has suffered because of Defendants' wrongful termination of Plaintiff's employment;
- d. Award Plaintiff punitive damages;
- e. Award Plaintiff attorneys' fees and costs incurred by the need to file this action; and
- f. Grant Plaintiff such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues as permitted by law.

Escandon, Fernicola, Anderson &  
Covelli

By: \_\_\_\_\_  
/s/ ROBERT M. ANDERSON

Dated: October 30, 2013

# EXHIBIT A



# PERSONNEL ORDER

05-12

**Subject: Transfers & Reassignments**

Date Issued	Date Effective:	No. Pages
2/23/2012	Listed below	1

1. Effective Monday, February 27th, 2012 Detective Mark Borchert #D-084 will be transferred from the Operations Division, Detective Bureau to the Court Division, Court Bureau 0830-1630 hrs and returned to the Rank of Sheriff Officer Shield # 1058 .
2. Effective Monday, February 27th, 2012 Detective Richard Garcia #D-002 will be transferred from the Operations Division, Detective Bureau to the Court Division, Court Bureau 0830-1630 hrs and returned to the Rank of Sheriff Officer Shield # 1059.
3. Effective Monday, February 27th, 2012 Detective Angel Cruz D# 045 will be transferred from the Operations Division, Detective Bureau to the Court Division, Court Bureau 0830-1630 hrs and returned to the Rank of Sheriff Officer Shield # 1060.
4. Effective Monday, February 27th, 2012 Sheriff Officer Julio Pats-Sotelo will be transferred from the Court Division, Court Bureau to the Operations Division, Patrol Bureau Squad B Day tour 0700-1900 hrs.
5. Effective Monday, February 27th, 2012 Sheriff Officer Bart Lore will be transferred from the Court Division, Court Bureau to the Operations Division, Patrol Bureau Squad B 0700-1900 hrs.
6. Effective Monday, February 27th, 2012 Sheriff Officer Charles Hurley will be transferred from the Court Division, Court Bureau to the Operations Division, Detective Bureau 0700-1500 hrs.
7. Effective Wednesday February 29th, 2012 Sheriff Officer Darwin Ona will be reassigned from the Operations Division, Patrol Bureau Squad B Day Tour to the Operations Division, Detective Bureau 0700-1500 hrs.
8. Effective Wednesday February 29th, 2012 Sheriff Officer Richard Cordevo will be reassigned from the Operations Division, Patrol Bureau Squad B Day Tour to the Operations Division, Detective Bureau 0700-1500 hrs.
9. Effective Monday, February 27th, 2012 Sheriff Officer Carlos Morcira will be transferred from the Court Division, Court Bureau to the Operations Division, Patrol Squad A Day tour 0700-1900 hrs.

All members of the Sheriff Office will take cognizance of the above and all records will be so noted.

BY THE ORDER OF:

*Frank X. Schillari*  
**FRANK X. SCHILLARI**  
 SHERIFF

## CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the "Agreement") is entered into by and between Mark Borchert ("Employee") and the County of Hudson and the County of Hudson Sheriff's Office and Sheriff Frank X. Schillari ("Employer") (Employee and Employer are collectively referred to herein as the "parties") as of the Effective Date stated below.

WHEREAS, Employee is employed by Employer; and

WHEREAS, on or about October 30, 2013, Employee filed a Complaint against Employer in the Federal District Court for the District of New Jersey, titled, Mark Borchert v. County of Hudson, Hudson County Sheriff's Office and Frank X. Schillari, Docket No. 13:6531, related to his employment with Employer, (the "Complaint"); and

WHEREAS, to avoid the possible future costs, burdens, or distractions of litigation, the Employee and Employer now desire and, through the execution of this Agreement, intend to dispose of and resolve fully and completely any and all disputes, causes of action, claims, issues, and/or differences between Employee and Employer, including, but not limited to, those which have arisen, could have arisen out of, and/or are in any way related to the Complaint and/or Employee's employment with Employer, and any and all matters that might arise between Employee and Employer as a result of any act that has heretofore occurred.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties agree as follows:

1. Payment to Employee. In exchange for the promises made by Employee in this Agreement, Employer agrees to make the following payment in the following amount and upon the terms set forth in this Agreement:
  - (a) A check made payable to Escandon, Fernicola, et..al., LLC, as attorneys for Mark Borchert, in the lump-sum amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00), for which Escandon, Fernicola, et. al. LLP, as attorneys for Mark Borchert, will be issued a 1099.
  - (b) Employer will also reassign employee to the title of Detective II, Shield # 84 with a posting within the Court Bureau of the Sheriff's Department within seven (7) days upon complete execution of the settlement agreement and, in accordance with the Collective Bargaining Agreement, Employer will pay Employee the applicable stipend of \$2,000.00 (two thousand dollars) retroactive to January 1, 2016 with appropriate allocation and contributions to the PFRS pension.
  - (c) Neither Employer, Employee, nor their respective counsel make any representation to the other as to the tax consequences of the payment set forth herein and neither Employer nor Employee are relying on any tax

advice or representation from the other. Employee agrees that he will be solely responsible for Employees' payment of all applicable state, federal and local taxes, penalties, interest or other amounts due (if any) with respect to the payment described above and will assume full liability with respect to same. Any Employer tax liability will be borne by the Employer.

- (d) With respect to all monies going to himself and his attorneys, employee further agrees to fully indemnify, defend, and hold harmless Employer and/or its respective successors, assigns, parents, subsidiaries, divisions, affiliates, insurers, officers, directors, trustees, governors, associates, agents described above or that penalties or interest are due on account of any claimed failure to withhold taxes or other monies from said payment.
- (e) Employer shall deliver the aforementioned checks to Employee's counsel in the foregoing amounts in the ordinary course but only after approval of the settlement by the County of Hudson's Insurance Fund Commission at the next available monthly meeting at which the settlement resolution can be presented.

2. No Consideration Absent Execution of this Agreement. Employee understands and agrees that the payment described above in Paragraph 1 would not be provided except for Employee's execution of this Agreement and the fulfillment of the promises contained in this Agreement.

3. Fees and Costs. The parties agree to bear their own fees, costs, and expenses, including attorneys' fees, in connection with the litigation, negotiation, and settlement of the Complaint.

4. Dismissal with Prejudice of the Complaint. Employee agrees to execute a Stipulated Agreement which contains a statement that the Complaint is settled with Prejudice and without an award of attorney's fees or costs to either party, and Employee further agrees he shall deliver to Employer's counsel an executed copy of the Stipulated Agreement and take any and all further action that is necessary or required by the Court to dismiss the Complaint with prejudice and without an award of attorney's fees or costs against all Defendants, including the County of Hudson and Frank X. Schillari. Employee understands that by entering into this Agreement, he is voluntarily agreeing to dismiss his Complaint. This settlement is in full and final satisfaction of any and all Employee's claims, including claims for attorneys' fees and costs, whether made by the Employee or his attorney(s), and the Employee hereby agrees that neither he nor his attorney will make any claim for attorneys' fees or costs under any statute or under any other legal theory in the pending matter or in any another matter. Employee represents that other than the Complaint, no claim, charge, complaint or action exists against the Employer or Releasees (as defined in Paragraph 5 hereof) in any forum.

5. Release by Employee of All Defendants. In exchange for the consideration provided, except as expressly provided below, Employee releases, relinquishes, and gives up (and agrees not to file any suit with respect to) any and all claims, suits, causes of action, known or unknown, (up until the execution of the within release), which Employee may have or hold against the Employer and all of Employer's owners, shareholders, employees, elected representatives (specifically including defendant Frank X. Schillari), former employees, officers, directors, assigns, parent, predecessors and successors, present and former affiliates, subsidiaries, legal representatives and agents (collectively, the "Releasees") of and from all actions, causes of action, suits, debts, dues, sums of money, damages, judgments, executions, claims and demands whatsoever, whether individual or collective, in law or in equity, known or unknown (up until the execution of the within release), foreseen or unforeseen which Employee ever had, now has or which he or his heirs, executors, personal or legal representatives, administrators, successors or assigns hereafter shall, can or may have from the beginning of the world to the Employee's execution of this Agreement. The foregoing release includes, but is not limited to, any and all claims alleged in the Complaint as well as any and all claims in any way arising out of, relating to or resulting from (a) Employee's employment with Employer or his Resignation from employment; (b) any fact, statement, or conduct made on or occurring prior to the Employee's execution of this Agreement; (d) any employment or business custom, practice or policy of Employer, and/or (d) any conduct or decision of Employer which has in any way affected Employee or discussions leading up to and/or culminating in this Agreement.

This release includes, but is not limited to, a release of any and all rights Employee has to sue or bring any type of claim under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.*, ("ADEA") except as provided below, for discrimination and other violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, the Employment Act of 1967, the Civil Rights Act of 1991, the Civil Rights Act of 1866 and 1870, the Civil Rights Act of 1966, as amended, 42 U.S.C. § 1981, as amended, Executive Order 11246, the Americans with Disabilities Act 42 U.S.C. § 12101, *et seq.*, as amended, the Family and Medical Leave Act, as amended, the Equal Pay Act of 1963, as amended, the Immigration and Reform Control Act, as amended, the Fair Labor Standards Act; the Rehabilitation Act of 1973; the Employee Retirement Income Security Act; the Veterans Reemployment Rights Act; the Uniformed Services Employment and Reemployment Rights Act; the Worker Adjustment and Retraining Notification Act; the Consolidated Omnibus Budget Reconciliation Act; the New Jersey Law Against Discrimination; the New Jersey Wage and Hour law; the New Jersey Family Leave Act; New Jersey Conscientious Employee Protection Act; the New Jersey Equal Pay Act; the New Jersey Smokers' Rights Law; the New Jersey Genetic Privacy Act; the common laws of the State of New Jersey; any other applicable federal, state or local wage and hour, anti-discrimination or employment law or regulation, the Occupational Safety and Health Act, as amended, the Sarbanes-Oxley Act of 2002, as amended, the Older Workers Benefit Protection Act of 1990, as amended, for any federal, state or common law claim or cause of action for breach of contract, wrongful discharge, constructive discharge, retaliation, defamation, slander, liable, intentional or negligent infliction of emotional distress, misrepresentation, fraud, promissory estoppel, any other tort or negligence claim, or

obligations arising out of any of Employer's employment policies or practices, employee handbooks and/or any statements by any employee or agent of Employer whether oral or written; and for reinstatement, back pay, bonus, attorneys' fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering, medical expenses, damage to reputation, damage for personal, emotional or economic injury or damage of any kind.

This release does not release any claims the law does not permit Employee to release. Nothing in this Agreement shall be construed to prohibit Employee from enforcing this Agreement or from filing a charge with the Equal Employment Opportunity Commission, New Jersey Division on Civil Rights, local human rights agency or the National Labor Relations Board, or from participating in any investigation or proceeding conducted by these agencies. Notwithstanding the foregoing, Employee agrees to waive his right to recover monetary damages in any charge, complaint, or lawsuit filed by Employee or by anyone else on his behalf. Employee assures Employer that as of the date of execution of this Agreement by Employee, Employee is not aware of any fact or circumstance that Employee believes creates any duty or obligation on the part of Employee to report any matter or concern to any governmental agency.

If the release of any claim described herein is found invalid, Employee acknowledges and agrees that such invalidity has no effect on the validity of any other release of claim and that this Agreement shall remain valid and enforceable so long as the release of claim provisions that are found valid and enforceable are acceptable to Employer.

6. Class or Collective Action Claims. Employee acknowledges and agrees that included among the claims released are any and all claims that have been, or may be, asserted by him or by any other person or entity on his behalf in any class or collective action relating to the Released Parties including but not limited to the County of Hudson. Consistent with the terms of this Agreement:

a. Employee waives any right to become, and promises not to consent to become, a member of any class in a case in which claims are asserted against the Released Parties and that involve events which have occurred as of the date he signs this Agreement; and

b. Employee waives any and all rights he might otherwise have to receive notice of any class or collective action. In the event that ~~Employee~~ Employee is included or identified as a member, or potential member of a class in any proceeding against the Released Parties, he agrees to opt out of the class at the first opportunity afforded to him after learning of his inclusion. In this regard, Employee agrees that he will execute, without objection or delay, an "opt-out" form presented to him in connection with such proceeding.

7. Employee warrants and represents that there are no liens or encumbrances on his claims, including but not limited to Workers' Compensation liens, physicians' liens, and/or attorney liens. Employee expressly acknowledges that, in any case, all obligations to satisfy such liens are the sole responsibility of Employee, and not of the County of Hudson. Employee also agrees that if any liens or encumbrances on his claims should arise between the date he signs the Agreement and the date on which the funds identified in Paragraph 1 of this Agreement are paid and the County of Hudson is required by law to pay such lien or encumbrances, Hudson County's payment of the lien or encumbrance shall act as an offset to Hudson County's obligations to Employee set forth herein.

8. Denial of Liability. It is expressly understood and agreed to by and among the parties hereto that by entering into this Agreement, Employer and Employee do not admit the truth of the allegations made in the Complaint, and this is a compromise of disputed claims which should not be construed as an admission of liability on the part of any party. Employer expressly denies any wrongdoing or liability to the Employee.

9. Review of the Agreement. Employee acknowledges that he has carefully read this Agreement and understands all of its terms, and that he signs it voluntarily with full knowledge of its significance after adequate opportunity for consideration and consultation with an attorney/advisor. Employee represents that no payments or consideration have been promised to him for executing or delivering this Agreement other than those described herein, and that the payment and benefit described herein shall constitute the entire amount of consideration provided to him under the Agreement. Employee acknowledges that this amount constitutes adequate and sufficient consideration for the claims released herein and any other promises made under this Agreement. The recitals stated above are incorporated herein by reference. The parties have each received or had the opportunity to receive independent legal advice from attorney(s) of their choice with respect to the preparation, review and advisability of executing this Agreement. Employee has consulted with counsel of his choice, prior to execution of this Agreement. The parties acknowledge that they have executed this Agreement after independent investigation and without fraud, duress or undue influence.

10 All Compensation Paid. Employee agrees and acknowledges that he has been paid for all hours worked and all services provided as an employee of the Employer, including without limitation, all compensation, bonuses, expenses, and all accrued but unused paid time off benefits, such as vacation.

11. Assigns and Successors-in-Interest. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto.

12. Confidentiality/Non-Disparagement. The Employee agrees to keep the terms and conditions of this Agreement and the payment of the settlement proceeds in accordance with this Agreement confidential and he will not disclose to any other person other than the Employee's spouse, attorney, or tax advisor (collectively, a "Disclosed Party"). Employee shall advise any Disclosed Party that this Agreement is

confidential and the Disclosed Party shall not disclose any information that Employee conveys to the Disclosed Party about the Agreement or the Complaint. If asked about the terms of this Agreement, the Employee and any Disclosed Party shall state that the claim has been resolved to the satisfaction of the parties. The Employee agrees that after the date of this Agreement, he will not disparage or denigrate the County of Hudson or Frank X. Schillari orally or in writing to any third party, any web or Internet site, newspaper, or media source of any type. Additionally, defendants' including but not limited to Frank X. Schillari agree not to disparage or denigrate Employee orally or in writing to any third party, any web or Internet site, newspaper, or media source of any type. This agreement contemplates that Frank X. Schillari and Employee are running for Sheriff of Hudson County in the 2016 election. This agreement shall not preclude either Frank X. Schillari or Employee from articulating their respective political opinions in the election for Sheriff.

13. Applicable Law. The existence, validity, construction, and operation of this Agreement, and all of its covenants, agreements, representations, warranties, terms, and conditions shall be determined in accordance with the laws of the State of New Jersey, without giving effect to the principles of conflicts of law.

14. Entire Agreement. This Agreement sets forth the entire agreement between the parties, and fully supersedes all prior and/or contemporaneous agreements or understandings between the parties which pertain to the subject matter hereof. The terms of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement and no extrinsic evidence whatsoever may be introduced to vary its terms in any judicial proceeding involving this Agreement.

15. Modification. This Agreement may be modified, but only if the modification is in writing and signed by all parties to this Agreement.

16. Severability. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

18. Joint Effort. The parties stipulate that this Agreement was prepared by and is the joint effort of the parties through negotiations. Accordingly, any ambiguity, uncertainty or vagueness in the construction and interpretation of this Agreement shall not be attributed to either Employee or Employer, and the theory of construction that a document should be construed against the party drafting the document is waived and will not be applied in construing this Agreement.

19. Review and Consultation. Employee acknowledges that: (a) this Agreement is written in terms and sets forth conditions in a manner which he



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County of Hudson

Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_