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Attorneys for Fairfield Township

<p>WAYNE THOMAS BYRD</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>FAIRFIELD TOWNSHIP AND JOHN DOES 1-5 ND 6-10.</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION CUMBERLAND COUNTY DOCKET NO. CUM-L-1027-08</p> <p style="text-align: center;">Civil Action</p> <p>SETTLEMENT AGREEMENT AND GENERAL RELEASE</p>
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This Settlement Agreement and General Release is entered into by and among
Wayne Thomas Byrd and Fairfield Township .

In this document, the following definitions apply:

1. The term “**Releasor**” refers to Wayne Thomas Byrd;
2. The term “**Releasees**” refers to the Fairfield Township and its insurer, the
Municipal Excess Liability Fund.
3. The term “**Agreement**” refers to this Settlement Agreement and General Release.
4. The term “**Parties**” refers to Wayne Thomas Byrd and the Fairfield Township.
5. The term “**Complaint**” refers to a lawsuit filed in Superior Court of New Jersey,
Cumberland County, bearing the caption *Wayne Thomas Byrd v. Fairfield
Township and John Does, 1-5 and 6-10* and bearing Docket No. CUM -L-1027-
08, and to the allegations contained therein.

Whereas, Releasor has asserted claims and allegations against Releasees; and,

Whereas, Releasees deny each and every claim and allegation made by Plaintiff, and enter into this Agreement for reasons other than the merits of Plaintiff's claims; and,

Whereas, the Parties wish to settle all controversies among them, including Releasor's Complaint, and any and all related claims which could have been asserted, whether they are presently known or unknown; and,

Whereas, Releasor agrees that the merits of his Complaint and claims against Releasees are disputed and have not been adjudicated by any Court, tribunal or other forum;

Now, and for the consideration of the agreements, covenants, and conditions herein contained, the adequacy and sufficiency of which is expressly acknowledged by the Parties, the Parties agree as follows:

1. RELEASE

In consideration for the payment and other considerations provided for in this Agreement, Releasor, personally and for his estate and/or his heirs and assigns, waives, releases, and gives up any and all claims, demands, obligations, damages, liabilities, causes of action and rights, in law or in equity, known and unknown, that he may have against Releasees and any and all of their officers, officials, employees (present and former), and their respective successors and assigns, heirs, executors and legal or personal representatives, based upon any act, event, or omission of any kind occurring before the date of the execution of this Agreement, including, but not limited to claims for pain and suffering, emotional distress, lost or damaged reputation, lost wages, lost profits, lost benefits, back pay, future pay, future lost benefits, future lost profits, counsel fees, costs and expenses, and any claim made or which could have been made under the Constitution of the United States, the Constitution of New Jersey, the statutes of

the United States, the statutes of New Jersey, or common law, including, but not limited to.

- a. The National Labor Relations Act;
- b. Title VII of the Civil Rights Act of 1964;
- c. Sections 1981 through 1988 of Title 42 of United States Code;
- d. The Employment Retirement Income Security Act of 1974;
- e. The Immigration Reform Control Act;
- f. The Americans with Disabilities Act;
- g. The Age Discrimination in Employment Act of 1967;
- h. The Fair Labor Standards Act;
- i. The Occupational Safety and Health Act;
- j. The Family and Medical Leave Act of 1993;
- k. The Equal Pay Act;
- l. The New Jersey Law Against Discrimination;
- m. The New Jersey Minimum Wage Law;
- n. The Equal Pay Law for New Jersey;
- o. The New Jersey Worker Health and Safety Act;
- p. The New Jersey Family Leave Act;
- q. The New Jersey Conscientious Employee Protection Act;
- r. Any anti-retaliation provision of any statute or law;
- s. The New Jersey Survival Statute (NJSA 2A:15-3);
- t. The New Jersey Wrongful Death Statute (NJSA 2A:31-1 et seq.);
- u. Any other federal, state or local, civil or human rights law or any other local, state or federal law, regulation or ordinance, any provision of any federal or state constitution, any public policy, contract, tort or common law, or any losses, injuries or damages (including back pay, front pay, liquidated, compensatory or punitive damages, consequential damages, attorney's fees and litigation costs).

2. AGREEMENT NOT TO SEEK FUTURE EMPLOYMENT

Wayne Thomas Byrd hereby expressly agrees that he will never seek or accept any type of employment in any capacity with the Township of Fairfield at all times now and in the future whether by appointment, selection, election or otherwise. Plaintiff will not seek re-employment or return to employment with the Township of Fairfield now or in the future.

3. SETTLEMENT PAYMENTS

Releasor shall be paid the total amount of Seventy Two Thousand, Five Hundred dollars (\$72,500.00), which payment shall constitute consideration for the execution of this Agreement and any other documents necessary to resolve and compromise this matter, with finality and with prejudice.

- a. No payment shall be released until an executed Agreement is in the possession of counsel for Releasees.
- b. No payment shall be released until an executed Stipulation of Dismissal With Prejudice is in the possession of counsel for Releasees.
 - i. The Stipulation of Dismissal shall not be filed until counsel for Releasees has forwarded the settlement check to counsel for Releasor.
- c. No payment shall be released until executed W9s from both Releasor and his counsel are in the possession of counsel for Releasees.
- d. No payment shall be released until a child-support judgment search of Releasor is in the possession of counsel for Releasees.
- e. The settlement amount shall be paid by Releasees in the form of a check made payable to "Wayne Thomas Byrd and Kevin M. Costello, Esq. of Costello & Mains, P.C, his attorney."
- f. Releasor expressly acknowledges that the settlement amount of Seventy Two Thousand, Five Hundred dollars (\$72,500) is intended to satisfy any claim for counsel fees and costs related to this litigation.

4. ALLOCATION, DEFENSE, INDEMNIFICATION

- a. Releasees take no position on how plaintiff and counsel choose to allocate the settlement amount.
- b. The settlement payment of \$72,500.00 is made with the understanding that it is for all damages, including but not limited to pain, suffering, humiliation, embarrassment, loss of enjoyment of life, disability, attorney's fees and costs, said settlement amount being fully and completely inclusive of all claims of any nature, sort, or variety, including claims for attorney's fees and costs incurred by the attorneys for Releasor.
- c. Releasor agrees to assume full liability for any and all applicable state, federal, and local taxes, if any, which may be required by law to be paid with respect to any settlement payment described herein. Releasor further agrees that, in the event that the Internal Revenue Service or any other taxing authority, including but not limited to the State of New Jersey, deems any tax, interest, penalties, or other amounts to be due with respect to the settlement amount paid herein, then Releasor shall indemnify Releasees for any sums the Releasees may be required to pay and to be liable for the cost of defense against such claims.
- d. Releasor agrees to be solely responsible for any and all judgement searches required by law, including, but not limited to child-support Orders, and to defend and indemnify Releasees in any action of any description resulting from a judgment against plaintiff entered prior to the date of this Release.

5. CONFIDENTIALITY

- a. Releasor agrees that neither he nor his immediate family members, attorneys, heirs, successors, or legal or union representatives, will publish, publicize or disseminate, or cause to be published, publicized, or disseminated, in any manner, information relating to the contents of this Agreement, the terms of the settlement agreement, or the discussions or events leading to it, to any third-party, including, but not limited to, the

news and communications media or any agents thereof (and the parties represent that neither they, nor any of their agents, have made any such disclosure to the news and communications media prior to the execution of this Agreement), excepting such disclosure Releasor may make to his attorneys, auditors or tax planners, or any disclosure made in compliance with a Court Order or any state or federal law, provided that if Plaintiff is served with or otherwise receives notice of any such Court Order, or if he believes such disclosure is required by any state or federal law, shall immediately provide written notice to his attorney and that his attorney shall so advise the Defendant's attorney so that Defendant may be afforded the opportunity to oppose same, prior to any such disclosure.

- b. Releasor and his attorney expressly covenant and agree that they will make no disclosure of the contents of this agreement to the press or other media, or to any third party, but will, instead, refer all inquiries to counsel for Releasees.

6. NO CLAIMS PERMITTED/COVENANT NOT TO SUE

Releasor waives his right to file any charge or complaint on his own behalf, to participate as a complainant, a plaintiff or a charging party in any charge or complaint, or to collect damages as a result of any charge or complaint which may be made by any other person or organization on his behalf, with respect to anything which has happened up to the execution of this Agreement, before any federal, state or local court or administrative agency against Releasees.

7. NON-DISPARAGEMENT

- a. The Parties agree not to make any disparaging statements concerning one another, or to defame one another in any manner to any person or entity.
- b. The Parties agree not to authorize any person or entity to make any disparaging statements about one another or to defame one another to any person or entity.

8. NO ADMISSION OF LIABILITY

It is expressly understood that neither the execution of this Agreement nor any other action taken by Releasees in conjunction with Releasor's alleged claims constitute admission by Releasees of any violation of any law, duty or obligation and that Releasees specifically deny any liability to Plaintiff or to any other person.

9. NOTICE TO FUTURE EMPLOYERS

In the event Wayne Thomas Byrd seeks future employment with another employer, Fairfield Township agrees to confirm dates of employment and position held.

10. ENTIRE AGREEMENT

This Agreement contains the sole and entire Agreement between the Parties.

11. AMENDMENTS

No promises or agreements shall be binding on the Parties unless in writing, signed by the Parties hereto, and expressly stated to represent an amendment to this Agreement.

12. HEADINGS

Headings used throughout this Agreement are merely for organizational purposes and shall not be admissible in any dispute among the Parties to determine the meaning of the Agreement or for any other purpose.

13. SEVERABILITY

The Parties agree that if any Court declares any portion of this Agreement unenforceable, the remaining portion or portions shall be fully enforceable.

14. CHOICE OF LAW/VENUE

The laws of the State of New Jersey govern interpretation of this Agreement and the parties agree that any dispute concerning this Agreement shall be brought under seal in Superior Court of New Jersey, Cumberland County.

Plaintiff acknowledges that under certain statutes that may apply to his, he has twenty-one (21) days to review and consider this Release and that his execution

of this release prior to the expiration of that time period constitutes an express waiver to the consideration period. Plaintiff acknowledges that he has seven (7) days from the date of execution of this agreement to rescind this agreement by giving notice to legal counsel for defendants. Plaintiff hereby understands and agrees that he has sought and received the advice of his attorney prior to executing this Agreement, and that he has had ample time to do so and that he knowingly and voluntarily has decided to settle his claims against Releasee after thoroughly reviewing this Agreement with his attorney.

Wayne Thomas Byrd , Releasor

Wayne Thomas Byrd

STATE OF NEW JERSEY :
: ss
COUNTY OF CUMBERLAND :

SONIA B. COSTELLO
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/25/2011

Sworn to and subscribed before me this
29th day of *October* 2010

Sonia B. Costello

Linda A. Galella, Esq., Preparer

Linda A. Galella

SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY
SPECIAL CIVIL PART

OCT 16 2008

RECEIVED
CIVIL CASE
MANAGEMENT OFFICE

LAW OFFICES OF KEVIN M. COSTELLO, P.C.
By: Kevin M. Costello
2090 East Route 70
Cherry Hill, New Jersey 08003
(856) 751-3737

WAYNE THOMAS BYRD	:	SUPERIOR COURT OF NEW JERSEY
	:	CUMBERLAND COUNTY-LAW DIVISION
	:	
Plaintiff,	:	
	:	Civil Action
vs.	:	
	:	DOCKET NO. L 1027-08
	:	
FAIRFIELD TOWNSHIP AND JOHN DOES 1-5 AND 6-10,	:	COMPLAINT AND JURY DEMAND
	:	
Defendants.	:	

Plaintiff, Wayne Thomas Byrd, residing in Bridgeton, New Jersey, by way of Complaint against the defendants, says.

Preliminary Statement

This is a complaint brought under the New Jersey Law Against Discrimination ("LAD") alleging racial/ethnic origin harassment, willful indifference on the part of management, and discriminatory/retaliatory discharge.

Identification of Parties

1. Plaintiff Wayne Thomas Byrd, is at all relevant times herein, a resident of Bridgeton, New Jersey and was employed by the defendants.
2. Defendant Fairfield Township is a New Jersey municipality amenable to jurisdiction under the LAD and in this Court and was plaintiff's employer.
3. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals and entities who on the basis of their *respondeat superior* liability or on the basis of direct acts are liable to the plaintiff.

General Allegations

4. Plaintiff was employed by the defendants since 2004.
5. At all times, his employment was up to the legitimate expectations of his employer.
6. Plaintiff is of African-American race/ethnicity.
7. Hereafter, the terms "race" and "ethnicity" will be subsumed under the use of the word "race" but both are alleged throughout.
8. Plaintiff suffered a heart attack in May 2007 and had been out of work since that time.
9. Plaintiff was due to return to work on or about September 8, 2008 after an extended period of convalescence owing to that heart attack.
10. When plaintiff returned to work, he was on the job for only an hour and a half when he was told that he had to leave the job.
11. Plaintiff was told that he had to leave the job because of a pending meeting concerning an incident in which plaintiff was alleged to have acted improperly with regard to a co-worker, William Ridgeway.
12. Ridgeway, in turn, is an individual who had continuously, egregiously, severely and regularly harassed the plaintiff, details provided below.
13. Plaintiff had been consistently complaining about the harassment by Ridgeway for an extended period of time prior to his convalescence and during his convalescence.
14. Thus, the servants, agents and employees of the defendant who set up the meeting and/or discharged plaintiff were well aware of the fact that plaintiff's discharge was pretextual and that, if anyone should have been discharged, it should have been plaintiff's harasser, Ridgeway.
15. The plaintiff was terminated constructively and/or in reality on or about that date because he was told to leave work without obtaining any work and/or without being paid, thus effectuating a discharge for all practical purposes.
16. In 2006, William Ridgeway, plaintiff's co-worker, began to harass the plaintiff.
17. At all relevant times herein, this harassment is alleged to be severe and/or pervasive.
18. The harassment is alleged to be because of plaintiff's race and/or racist on its face.

19. The harassment is alleged to be especially egregious, malicious, evil-intentioned and purposeful.

20. Upon information and belief, William Ridgeway is very well politically connected and, upon information and belief, is good friends with the business administrator of the township, one Richard DeVillasanta.

21. The harassment included, but was not limited to, making unfounded complaints about the plaintiff, treating the plaintiff in a hostile, intimidating and abusive fashion, belittling the plaintiff, etc.

22. During the initial period of this harassment, none of the harassment was overtly racist on its face, but it was certainly hostile and/or intimidating and/or abusive.

23. In hindsight, in light of later conduct by Ridgeway, all of the earlier hostile, intimidating and abusive conduct now appears to have been motivated by considerations of plaintiff's race.

24. Until about May 2007, plaintiff did not understand Ridgeway's racist motivations.

25. In May, Ridgeway began using the word "nigger" to address plaintiff and/or to refer to the plaintiff, both before and after the plaintiff's heart attack, on multiple occasions.

26. The use of the word "nigger" on even one occasion is a sufficiently severe event to warrant imposition of liability under the LAD for racial harassment.

27. In addition, the use of the word nigger allows reasonable inferences that all of the other hostile, intimidating and abusive conduct was motivated by considerations of race.

28. Both prior to Ridgeway's resort to the word "nigger" and after, plaintiff consistently complained to his supervisor, Nathan Dunn, three of which complaints were in writing and which specifically referenced racism.

29. Plaintiff also complained on at least four to six occasions to the township administrator and on one occasion to Mayor Marion Kennedy, Jr. personally.

30. On each of the occasions referred to above, plaintiff was told that the person to whom he was complaining would "talk to Ridgeway." This appears to have happened on at least some, if not all of

the occasions, because on each occasion, Ridgeway would "soften" his harassment for a period of time, usually just a few weeks, and then resume his former levels of harassment.

31. The sheer number of the times that plaintiff complained, and the obvious ineffectiveness of those complaints should have resulted in Ridgeway's discipline and/or termination long before September 2008.

32. Because of Ridgeway's political connections, however, the trumped up charges against the plaintiff, which were entirely false and knowing pretext, were instead invented to effectuate plaintiff's termination in favor of Ridgeway.

33. This constitutes retaliatory and discriminatory discharge, to the extent that plaintiff's complaints were ignored and/or Ridgeway's connections were favored over the substance of plaintiff's complaints.

34. To the extent that these factors were determinative and/or motivating factors in plaintiff's discharge, plaintiff's discharge is actionable for the reasons set forth above.

35. In addition, the harassment to which plaintiff was subjected also warrants the imposition of punitive damages to the extent that the harassment was especially egregious in whole or in part and to the extent that upper managers willfully and consistently ignored plaintiff's complaints.

36. In addition, and upon further information and belief, there was no reasonably or effectively promulgated policy either advising plaintiff of his rights or deterring and/or prohibiting the conduct to which plaintiff was exposed, nor would such a policy, having not been effectively promulgated, properly instructed the upper managers who willfully ignored plaintiff's complaints on how to react.

37. For all of these reasons both punitive and compensatory damages are the sole responsibility of the employer.

COUNT I

Racial Harassment Under the LAD

38. Plaintiff hereby repeats and realleges paragraphs 1 through 37 as though fully set forth herein.

39. For the reasons set forth above, the harassment to which plaintiff was subjected both before and after Ridgeway's resort to the word "nigger" constitutes racially motivated harassment because of plaintiff's race and which is actionable under the LAD.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, attorneys' fees, enhanced attorneys' fees, interest, costs of suit and any other relief the Court deems equitable and just.

COUNT II

Discriminatory/Retaliatory Discharge

40. Plaintiff hereby repeats and realleges paragraphs 1 through 39 as though fully set forth herein.

41. To the extent that Ridgeway's political connections were placed at a level of importance over plaintiff's own complaints, and to the extent that plaintiff's complaints implicated Ridgeway, and to the extent that the defendants decided not to fire Ridgeway because of plaintiff's complaints, plaintiff was sacrificed in violation of the LAD.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, attorneys' fees, enhanced attorneys' fees, interest, costs of suit and any other relief the Court deems equitable and just.

COUNT III

Punitive Damages

42. Plaintiff hereby repeats and realleges paragraphs 1 through 41 as though fully set forth herein.

43. Plaintiff requests punitive damages on both Counts I and II because the conduct was perpetuated and/or willfully ignored by members of management and because the conduct in whole or in part was egregious, willful, intentional and malicious.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, attorneys' fees, enhanced attorneys' fees, interest, costs of suit and any other relief the Court deems equitable and just.

LAW OFFICES OF KEVIN M. COSTELLO, P.C.

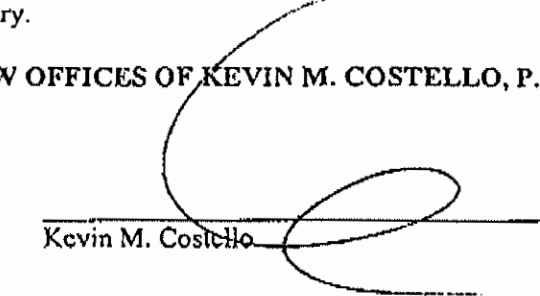
DATED: 10/14/08

By: 
Kevin M. Costello

JURY DEMAND

Plaintiff hereby demands a trial by jury.

LAW OFFICES OF KEVIN M. COSTELLO, P.C.

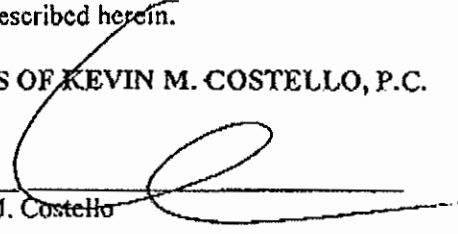
By: 
Kevin M. Costello

RULE 4:5-1 CERTIFICATION

1. I am licensed to practice law in New Jersey and am responsible for the above-mentioned matter.
2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

LAW OFFICES OF KEVIN M. COSTELLO, P.C.

By:

Kevin M. Costello 

DESIGNATION OF TRIAL COUNSEL

Kevin M. Costello, Esquire, of the law firm of Law Offices of Kevin M. Costello, P.C., is hereby-designated trial counsel.

LAW OFFICES OF KEVIN COSTELLO, P.C.

By:

Kevin M. Costello 