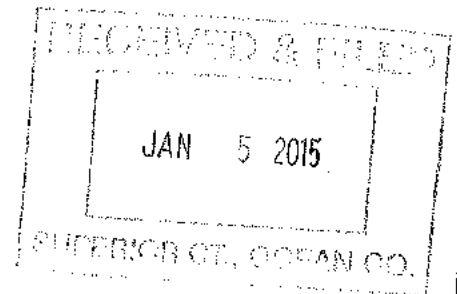


**Law Offices of Leo B. Dubler, III, LLC**

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Attorney I.D. #: 030071993

ATTORNEY FOR PLAINTIFF NICOLE KELLEY



NICOLE KELLEY,

Plaintiff,

v.

LITTLE EGG HARBOR MUNICIPAL  
UTILITIES AUTHORITY, DAVID  
JOHNSON, JOHN DOES 1-10, JANE  
DOES 1-10, and ABC COMPANIES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
OCEAN COUNTY

**Docket No.: OCN-L- 3787-14**

**AMENDED COMPLAINT**

The Plaintiff, Nicole Kelley, residing in the City of Little Egg Harbor, County of Ocean, State of New Jersey, complaining against the Defendants, Little Egg Harbor Municipal Utilities Authority, David Johnson, John Does 1-10, Jane Does 1-10, and ABC Companies 1-10, jointly, severally and in the alternative, says:

**COUNT ONE**

1. Plaintiff Nicole Kelley ("Nicole") resides in the City of Little Egg Harbor, County of Ocean, and State of New Jersey.
2. Nicole began working for the Little Egg Harbor Municipal Utilities Authority ("MUA") on February 22, 2000.
3. Nicole worked as a Senior Clerk at the MUA.

4. At all relevant times herein, Defendant David Johnson (“Johnson”) was the Executive Director of the MUA.

5. As Executive Director, Defendant Johnson was Nicole’s supervisor.

6. While employed by the MUA, Nicole suffered from severe and pervasive sexual harassment at the hands of Defendant Johnson.

7. Defendant Johnson would use his power and authority as Executive Director and Nicole’s supervisor in order to facilitate his sexual harassment.

8. For example, Johnson would regularly call Nicole into his office, shut the door, and ask her about her personal life. At the end of these conversations, Defendant Johnson would always end by hugging Nicole and kissing her on the lips.

9. Defendant Johnson would also regularly make inappropriate comments to Nicole.

10. For example, one afternoon, Nicole wore a white dress to work. Defendant Johnson, upon seeing Nicole, asked her to turn around. When Nicole turned around, Defendant Johnson said, “Oooh” in a provocative fashion.

11. This sort of harassment occurred regularly throughout Nicole’s employment with the MUA.

12. Throughout the harassment, Nicole still performed her job to the best of her ability.

13. In 2010, the State of New Jersey advised all municipalities and townships to research hiring or creating a position to be a Qualified Purchasing Agent.

14. Nicole was appointed to this position, and attended classes at Rutgers University in Camden, NJ to achieve her certification.
15. Not only did Nicole take these classes, but she was continuously learning new laws and policies to act as a Qualified Purchasing Agent.
16. Despite the extensive work put into becoming a Qualified Purchasing Agent, Nicole only received a \$2.00 per hour raise. Her work was mostly to benefit the MUA.
17. By 2012, after all of Nicole's hard work to become a Qualified Purchasing Agent, the harassment worsened.
18. While out on medical leave, Defendant Johnson sent flowers to Nicole's apartment.
19. In September 2012, Nicole purchased a new town house.
20. Defendant Johnson called Nicole on a Wednesday night, and asked if he could stop by her house.
21. Defendant Johnson came alone to Nicole's house, gave her a housewarming card, and proceeded to hug Nicole and kiss her on the lips.
22. Nicole, alarmed and uncomfortable, told Defendant Johnson that her boyfriend was on his way to her home.
23. Defendant Johnson promptly left once Nicole mentioned her boyfriend.
24. The harassment and inappropriate behavior by Defendant Johnson continued in and out of the work place.
25. In December of 2012, before Christmas, Nicole was out with her girlfriends at Sea Oaks Country Club.

26. Nicole went out with her friends for a drink because she had recently broken up with her boyfriend.
27. By an unfortunate coincidence, Defendant Johnson was at the same bar.
28. Defendant Johnson was visibly intoxicated, and repeatedly tried to put his hands on Nicole.
29. Nicole continuously resisted and rejected Defendant Johnson's advances.
30. At one point, Defendant Johnson came and sat next to Nicole.
31. Then, Defendant Johnson asked Nicole if she was dating anyone.
32. Nicole told Defendant Johnson that her boyfriend had just broken up with her and that she was heartbroken.
33. Defendant Johnson proceeded to tell Nicole how he was unhappy with his marriage, and while he never wanted to leave his wife, he wanted to "have some fun."
34. Defendant Johnson asked Nicole if he could be her "sugar daddy" and asked what she would want to make that happen.
35. Nicole told Defendant Johnson that she was not interested in a romantic relationship with him.
36. Defendant Johnson kept pressing Nicole on why she wasn't interested in a relationship with him, and why she loved her former boyfriend.
37. Nicole became extremely uncomfortable with the conversation, and got up and told her girlfriends that she wanted to leave.
38. Nicole told her girlfriend, Angela Mezzina Depalma, what Defendant Johnson had said.

39. As Nicole left, Defendant Johnson insisted on walking her to her car.
40. Before Nicole got into her car, Defendant Johnson grabbed her and forcibly kissed her, sticking his tongue in her mouth.
41. Nicole pushed Defendant Johnson away, got in her car, and left.
42. The Next work day, Defendant Johnson called Nicole into his office and said he hoped what happened at Sea Oaks would not affect their work relationship.
43. Nicole hoped that meant Defendant Johnson's sexual harassment of her would stop – but it did not.
44. Defendant Johnson's harassment of Nicole continued well into the next year.
45. Defendant Johnson continued to use his authority as Executive Director and Nicole's supervisor to harass Nicole.
46. For example, multiple times a week, Defendant Johnson would hug Nicole and kiss her on the lips while at work.
47. Defendant Johnson would invade Nicole's personal space and whisper into Nicole's ear things such as "you smell good."
48. Defendant Johnson would call Nicole into his office, supposedly to discuss work, but the real reason was to harass her.
49. Defendant Johnson's harassment of Nicole was so severe and pervasive that it altered the terms and conditions of Nicole's employment with MUA.
50. All of the aforementioned harassment was upsetting to Nicole and unwanted.

51. All of the aforementioned harassment was directed at Nicole because of her gender.
52. Defendant Johnson sexually harassed Nicole in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* ("LAD").
53. Defendant Johnson aided and abetted the Defendant Municipal Utilities Authority in discriminating against Nicole in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.*
54. Defendant Johnson's harassment of Nicole violated N.J.S.A. 10:5-12.
55. Defendant Johnson's harassment of Nicole caused her harm.
56. Nicole was upset, embarrassed, and humiliated by Defendant Johnson's sexual harassment of her.
57. The intentional and malicious nature of Defendant Johnson's harassment of Nicole justifies the imposition of punitive damages.

WHEREFORE, Plaintiff Nicole Kelley demands judgment against Defendants Little Egg Harbor Municipal Utilities Authority, David Johnson, John Does 1-10, Jane Does 1-10, and ABC Companies 1-10, jointly, severally, and in the alternative, for damages; interest; emotional upset; psychological harm, injuries and suffering; damages for humiliation and embarrassment; attorney's fees; costs of suit; costs of experts; punitive damages; anxiety; equitable relief; injunctive relief; any and all relief provided for by New Jersey's Law Against Discrimination, and any and all relief that the Court deems just and proper.

## COUNT TWO

58. Nicole repeats and incorporates all of the facts and all of the paragraphs of Count One of the Complaint as if set forth at length herein.

59. Nicole refused to accept or go along with Defendant Johnson's unwanted advances.

60. Nicole made it clear she was uncomfortable with Defendant Johnson's sexual harassment of her.

61. Nicole told Defendant Johnson that she was not interested in him and that his advances were not welcome.

62. Because of her refusal of his advances at Sea Oaks Country Club, and her continued objection to his actions and harassment, Defendant Johnson began to be retaliate against Nicole at work.

63. In the fall of 2013, in the aftermath of Hurricane Sandy, the MUA became extremely busy.

64. Nicole was forced to return to clerical work in order to keep up the pace, taking away from her job as a Qualified Purchasing Agent.

65. Nicole was routinely disciplined for no reason by Defendant Johnson, despite her attempts to balance her own responsibilities as well as additional clerical responsibilities.

66. Nicole would routinely request additional space in order to fulfill her duties as a Qualified Purchasing Agent. She was constantly rebuffed by Defendant Johnson.

67. However, Defendant Johnson's son, Vincent Johnson, who worked for the MUA, got his own office.

68. On January 7, 2014, Nicole was put on medical leave by her doctor due to stress.

69. On March 10, 2014, Defendant Johnson instructed Nicole to go to the conference room to talk to an attorney who represents the MUA.

70. The attorney was conducting an internal investigation into why Nicole was forced to go out on leave due to stress, and whether or not it was due to problems in the workplace.

71. The attorney asked Nicole what had forced her to go out on leave due to stress, and she told him about the sexual harassment and retaliation occurring in the workplace at Defendant MUA.

72. On April 14, 2014, Nicole's doctor again informed the MUA that she would have to take stress leave until June 16, 2014.

73. The MUA rejected this request, and told Nicole that she had to report to work in April of 2014.

74. Despite being told by a doctor not to work, Nicole returned to work in April of 2014.

75. The MUA continued to deny Nicole's request for medical leave, despite the support from her doctor.

76. The continuing stress, along with the MUA denying her medical leave, forced Nicole to take sick days in April of 2014.



77. On May 1, 2014, the MUA wrote to Nicole, telling her that she had exhausted her sick time for the year and, as such, needs to report to work immediately.

78. On May 7, 2014, Nicole wrote to the MUA to explain why her doctor had placed her on medical leave. In this letter, Nicole specifically wrote that the stress was a result of "all that has occurred with the sexual harassment/harassment and now retaliation."

79. Nicole was forced to return to work despite not being medically cleared, because the Defendants insisted she return or lose her job.

80. Shortly after her return, on May 12, 2014, Nicole was disciplined for allegedly making unauthorized copies of an OPRA request.

81. After the incident, Nicole asked other employees if they ever had to get authorization to make copies. The employees told her no.

82. On May 13, 2014, Nicole was terminated from the MUA due to her allegedly making unauthorized copies.

83. The retaliation did not stop after Nicole was fired from the MUA.

84. Nicole complained about Defendant Johnson's sexual harassment and, because of her complaints, she was subject to multiple acts of retaliation.

85. Nicole was continuously harassed, unnecessarily disciplined, and eventually terminated, in retaliation for her refusal to accept Defendant Johnson's sexual advances, and for complaining about the sexual harassment.

86. Defendant Johnson and the MUA conspired to retaliate against Plaintiff Nicole Kelley.

87. Defendant aided and abetted the MUA in retaliating against Plaintiff Nicole Kelley.
88. The harassment and retaliation against Nicole violated New Jersey's Law Against Discrimination, N.J.S.A. 10-5-1, *et seq.* ("LAD").
89. The retaliation against Nicole violated N.J.S.A. 10:5-12 (d), the anti-retaliation provision of LAD.
90. The retaliation against Nicole caused her harm.
91. Nicole was upset, embarrassed, and humiliated by the continued retaliation against her.
92. The intentional and malicious nature of Johnson's harassment of Nicole justifies the imposition of punitive damages.

WHEREFORE, Plaintiff Nicole Kelley demands judgment against Defendant Little Egg Harbor Municipal Utilities Authority, David Johnson, John Does 1-10, Jane Does 1-10, and ABC Companies 1-10, jointly, severally, and in the alternative, for damages; interest; emotional upset; psychological harm, injuries and suffering; damages for humiliation and embarrassment; attorney's fees; costs of suit; costs of experts; punitive damages; anxiety; equitable relief; injunctive relief; any and all relief provided for by New Jersey's Law Against Discrimination; and any and all relief that the Court deems just and proper.

### **COUNT THREE**

93. Nicole repeats and incorporates all of the facts and all of the paragraphs of Counts One and Count Two of the Complaint as if set forth at length herein.

94. Nicole was continuously harassed by Defendant Johnson.
95. The harassment was severe and pervasive.
96. In December of 2012, Defendant Johnson made unwelcome physical advances on Nicole at Sea Oaks Country Club.
97. Nicole made it clear those advances were not welcome, and continued to object to Defendant Johnson's harassment well into 2013.
98. Nicole was retaliated against in the work place, due to her refusal to accept Defendant Johnson's advances and to due to her continued objections to his harassment.
99. This harassment culminated with Nicole's termination from the MUA.
100. The termination was not the MUA's only form of retaliation.
101. Before being terminated, Nicole filed for Temporary Disability.
102. The MUA contested her application for Temporary Disability, despite the fact she had repeatedly seen a doctor for her anxiety and provided the MUA with a doctor's note.
103. Additionally, Nicole filed for unemployment after being terminated.
104. The MUA contested Nicole's unemployment claim, claiming she was fired for cause.
105. Because the MUA retaliated by contesting her unemployment, Nicole lost 8 weeks of unemployment benefits.
106. Nicole complained about Defendant Johnson's sexual harassment and, because of her complaints, she was subject to multiple acts of retaliation.

107. Nicole was continuously harassed, unnecessarily disciplined, and eventually terminated, in retaliation for her refusal to accept Defendant Johnson's sexual advances, and for complaining about the sexual harassment.

108. Defendant Johnson and the MUA conspired to retaliate against Nicole.

109. Defendant Johnson aided and abetted the MUA in retaliating against Nicole.

110. The harassment and retaliation against Nicole violated New Jersey's Law Against Discrimination, N.J.S.A. 10-5-1, *et seq.* ("LAD").

111. The retaliation against Nicole violated N.J.S.A. 10:5-12 (d), the anti-retaliation provision of LAD.

112. The retaliation against Nicole caused her harm.

113. Nicole was upset, embarrassed, and humiliated by the continued retaliation against her.

114. The intentional and malicious nature of Johnson's harassment of Nicole justifies the imposition of punitive damages.

WHEREFORE, Plaintiff Nicole Kelley demands judgment against Defendant Little Egg Harbor Municipal Utilities Authority, David Johnson, John Does 1-10, Jane Does 1-10, and ABC Companies 1-10, jointly, severally, and in the alternative, for damages; interest; emotional upset; psychological harm, injuries and suffering; damages for humiliation and embarrassment; attorney's fees; costs of suit; costs of experts; punitive damages; anxiety; equitable relief; injunctive relief; any and all relief provided for by New

Jersey's Law Against Discrimination; and any and all relief that the Court deems just and proper.

#### COUNT FOUR

115. Nicole repeats and incorporates all of the facts and all of the paragraphs of Count One, Count Two, and Count Three of the Complaint as if set forth at length herein.

116. Defendants John Does 1-10 and Jane Does 1-10 are the fictitious names of real individuals whose names are not currently known.

117. Defendants ABC Companies 1-10 are the fictitious names of real business entities (companies, corporations, partnerships, professional associations, professional corporations, and other business organizations) whose identities are not currently known.

118. It is believed that John Does 1-10 and Jane Does 1-10 represent the names of individuals, including professionals, who conspired with Defendants MUA and Johnson to harass and retaliate against Nicole.

119. It is believed that John Does 1-10 and Jane Does 1-10 represent the names of individuals, including professionals, who conspired with Defendants MUA and Johnson to harass and retaliate against Nicole.

120. John Does 1-10 and Jane Does 1-10 are individuals (including professionals) who took active steps to aid and abet Defendants MUA and Johnson in their harassment of and retaliation against Nicole.

121. ABC Companies 1-10, John Does 1-10, and Jane Does 1-10 conspired with Defendants MUA and Johnson to violate LAD.

122. John Does 1-10 and Jane Does 1-10 (including but not limited to professionals) are individuals who aided, assisted, and abetted Defendants MUA and Johnson to harass and retaliate against Nicole, in violation of LAD.

123. John Does 1-10 and Jane Does 1-10 (including but not limited to professionals) are individuals who assisted and provided advice and encouragement to Defendants MUA and Johnson to harass and retaliate against Nicole.

124. John Does 1-10 and Jane Does 1-10 (including but not limited to professionals) are individuals who assisted and provided advice and encouragement to Defendants MUA and Johnson to harass and retaliate against Nicole.

125. The actions of Defendants MUA, Johnson, John Does 1-10, Jane Does 1-10, and ABC Companies 1-10 were intentional, malicious, and designed to cause harm, which they in fact did.

126. The actions of Defendants MUA, Johnson, John Does 1-10, Jane Does 1-10, and ABC Companies 1-10 caused Nicole harm.

127. The intentional and malicious nature of the actions of Defendants MUA, Johnson, John Does 1-10, Jane Does 1-10, and ABC Companies 1-10 justifies the imposition of punitive damages.

WHEREFORE, Plaintiff Nicole Kelley demands judgment against Defendant Little Egg Harbor Municipal Utilities Authority, David Johnson, John Does 1-10, Jane Does 1-10, and ABC Companies 1-10, jointly, severally, and in the alternative, for damages; interest; emotional upset; psychological

harm, injuries and suffering; damages for humiliation and embarrassment; attorney's fees; costs of suit; costs of experts; punitive damages; anxiety; equitable relief; injunctive relief; any and all relief provided for by New Jersey's Law Against Discrimination; and any and all relief that the Court deems just and proper.

**JURY DEMAND**

The Plaintiff hereby requests a trial by jury as to all issues referred to in the Complaint.

**CERTIFICATION**

I certify that this matter is not the subject of any pending law suit or arbitration. I further certify that no other parties should be joined in this matter.

**Law Offices of Leo B. Dubler, III, LLC**  
Attorney for Plaintiff Nicole Kelley

By:   
Leo B. Dubler, III

Dated: January 2, 2015

## SETTLEMENT AGREEMENT AND RELEASE

This Agreement is being entered into on October \_\_\_\_, 2015 between **THE LITTLE EGG HARBOR MUNICIPAL UTILITIES AUTHORITY**, for the benefit of itself, all related governmental agencies, departments and/or entities, its and their present and former officers, directors, employees, agents, officials, representatives, insurers, successors and assigns, both in their official and individual capacities, including but not limited to **DAVID JOHNSON**, for the benefit of himself, his heirs and/or anyone entitled to assume his rights hereunder (hereinafter collectively referred to as "**JOHNSON**"), (hereinafter all such parties are collectively referred to as "**THE MUA**") and **NICOLE KELLEY**, for the benefit of herself, her heirs and/or any one entitled to assume her rights hereunder, (hereinafter collectively referred to as "**MS. KELLEY**" OR "**YOU**" OR "**YOUR**"), collectively referred to as "the Parties."

**WHEREAS**, a lawsuit containing claims filed by Ms. Kelley against the MUA and Johnson is pending in the Superior Court of New Jersey, Law Division, Civil Part, Camden County, under the caption of Nicole Kelley v. David Johnson, et al., Civil Action No. OCE-L-3787-14 (referred to as "the litigation");

**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) The MUA and/or its insurer shall pay Ms. Kelley the total sum of **\$140,000.00**. The MUA will pay **\$15,000.00** of the **\$140,000.00** and the insurer shall pay **\$125,000.00**. Such payment shall be made by (1) one check made from the MUA in the amount of **\$15,000.00** payable as follows: "Nicole Kelley and Leo B. Dubler, III, Esquire, her attorney" and (2) one check made from the insurer in the amount of **\$125,000.00** payable as follows: "Nicole Kelley and Leo B. Dubler, III, Esquire, her attorney." There shall be no withholdings from such payments and a 1099 shall be issued by the insurer and/or the MUA to Ms. Kelley and/or her attorney. The Parties will use their best efforts to provide such payment by 12/14/15.
  - (b) All payments are contingent upon Ms. Kelley's execution of this Agreement as well as a Stipulation of Dismissal with prejudice to be filed with the Court. Specifically, first a Partial Stipulation of Dismissal with Prejudice as to all sexual harassment claims against Mr. David Johnson as alleged in Count One of the Complaint, both in his official and individual capacities, shall be executed and filed with the Court. Thereafter, a Stipulation of Dismissal with prejudice as to all remaining Defendants and claims will be executed upon the signing of this Agreement and Release. All payments are also subject to the execution of three (3) W9s from both Ms. Kelley and Mr. Dubler and/or his law firm



(two from Ms. Kelley -- one for the insurer and one for the MUA). Ms. Kelley must also provide a clear child support judgment certification.

- (c) Ms. Kelley and her attorney agree that they are solely responsible for any state and/or federal tax obligations related to any payments made hereunder and that the MUA and/or its insurer has no obligation in that regard and have made no representations to Ms. Kelley or her counsel as to what, if any, state and/or federal tax obligations may arise from payment of these monies to Ms. Kelley and her attorney. If any action or proceeding shall be instituted against the MUA and/or its insurer related to any alleged failure to make withholdings on such monies or Ms. Kelley's failure to pay taxes on such monies, Ms. Kelley hereby agrees to indemnify and hold harmless the MUA and/or its insurer in any such action and for any judgment which may be entered against it as well as reimburse the MUA and/or its insurer for all reasonable attorneys' fees incurred.
- (d) The MUA agrees to waive its \$1,507.82 claim against plaintiff for her use of leave time which she had not yet accrued during her employment.
- (e) The MUA agrees to pay the full cost of the mediation which occurred on October 20, 2015 before the Honorable Francis J. Orlando, J.S.C. (Ret.).

## 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. The Board of the MUA must approve this Settlement Agreement and Release. All reasonable efforts will be made to timely obtain such approval at the Board's November 10, 2015 meeting. This Agreement and Release shall be null and void without the approval of the Board of Trustees.

## 3. GENERAL RELEASE.

In exchange for the valuable consideration provided in this Agreement, Ms. Kelley hereby waives, relinquishes and forever releases the MUA (as defined above), and/or its insurer, and Johnson 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 Litigation as defined above, including but not limited to any claims for harassment, discrimination, and/or wrongful termination with regards to any alleged protected activity, 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, malicious prosecution, false arrest, false imprisonment, lost wages and/or benefits, and any other economic and/or non-economic damages whatsoever. Ms. Kelley specifically waives any rights that she may have under the Age

Discrimination in Employment Act, New Jersey Law Against Discrimination, Conscientious Employee Protection Act, Title VII of the Civil Rights Act of 1964, Section 1981 and 1983, the Americans With Disabilities Act, the Family and Medical Leave Act, the Equal Pay Act, the Fair Labor Standards 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 MUA policy, procedure or plan. This releases all claims, including those of which Ms. Kelley is 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 all other matters, and each party shall bear their own attorneys' fees and costs. This Release applies to claims resulting from anything which has happened up to now. Ms. Kelley 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 and of which she has not already notified the MUA and/or their insurer.

4. **COVENANT NOT TO SUE.** Ms. Kelley hereby warrants she has not filed any other litigation against the MUA, and/or its insurer, or Johnson except for the Litigation referenced above. Further, Ms. Kelley agrees that she will not file, charge, claim, sue or cause or permit to be filed any civil action, 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. Ms. Kelley 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, 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. Kelley agrees that the MUA, and/or its insurer, and/or Johnson shall be entitled to immediate dismissal of such civil action, suit or legal proceeding and that she shall be responsible for the payment of the reasonable attorneys' fees and expenses incurred by the MUA's defense and/or Johnson's defense. Ms. Kelley 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 Litigation.
5. **NO ADMISSION OF LIABILITY.** The Parties understand that by entering into the Agreement, the MUA and Johnson do not admit any liability and expressly deny that they have committed any wrongdoing whatsoever.
6. **CONFIDENTIALITY.** Ms. Kelley agrees that the terms, amount and fact of this Agreement, and the nature of all claims that were or could have been raised, as well as any information disclosed by the Parties in the negotiations of this matter are confidential. This paragraph shall not prevent Ms. Kelley from disclosing the fact or amount of the settlement to her attorney, accountant or members of her immediate family, each of whom shall first be advised of the confidentiality provision of this Agreement. In the event that she or they are asked about this litigation, she hereby agrees, and they agree, to state only that "the matter has been settled". Ms. Kelley recognizes and agrees that the representations, promises and covenants set forth in this paragraph

constitute a material and significant part of this Agreement and that the MUA and Johnson would not have entered into this Agreement absent such agreement and, therefore, any violation of this paragraph by Ms. Kelley will constitute a material violation and breach of this Agreement.

Should Ms. Kelley be requested to provide a copy of this Agreement to any person or entity by subpoena or court order, she shall notify the Executive Director and the Board for the MUA and Johnson in writing at least fourteen (14) days prior to any return date of any subpoena or upon receipt of any court order. If served with any notice or court order within the fourteen (14) day period prior to the return date, she shall immediately make such notification as soon as reasonably practicable.

It is expressly recognized and agreed, however, that this provision may be limited by and is subject to the MUA's obligation to comply with various state and federal statutes regarding the disclosure of records and information including but not limited to the Open Public Records Act. In addition, this provision shall not be interpreted to prohibit the MUA responding to any requests for information and/or documents by any State and/or Federal agency and/or otherwise responding to a duly issued subpoena duces tecum and/or testificadum.

7. AGREEMENT NOT TO DISPARAGE. In further consideration for the above, Kelley agrees to refrain from making any disparaging remarks or comments whatsoever about the MUA and/or any of its current or former employees, officers, and/or directors including David Johnson and/or their work, facilities, products, programs, or services. This Agreement includes, but is not limited to, any statements or postings made online or on the internet including, but not limited to, Twitter, MySpace, Facebook, any website, etc. To the extent such postings exist as of the date of this Agreement, Kelley hereby agrees to delete or remove such postings at the time of his execution of this Agreement.

Kelley recognizes and agrees that the representations, promises, and covenants set forth in this paragraph constitute a material and significant part of this Agreement and that the Library would not have entered into this Agreement absent the non-disparagement provisions of this paragraph, and that any violation of this paragraph will constitute a material violation and breach of the Agreement.

The Board Members of the MUA and David Johnson agree to refrain from making any disparaging remarks or comments regarding the Plaintiff.

8. NEUTRAL REFERENCE. The MUA agrees that in the event of an inquiry by a third-party related to Kelley, that it shall only state the relevant dates of employment and job title along with Kelley's salary information. This provision shall not be construed so as to prohibit the MUA from truthfully responding to a subpoena duces tecum or for deposition seeking information related to Kelley's employment and/or production of documents upon a duly made legal request to do so and/or with Kelley's written authorization. This provision shall not be construed so as to prohibit the Library from

truthfully responding to any inquiry by any third-party to whom it has a legal obligation and/or duty to provide a complete and truthful response.

In addition to the neutral reference, the MUA will provide Ms. Kelley with a letter of recommendation to be mutually agreed upon by the MUA and Ms. Kelley.

9. **NO-REHIRE.** Kelley hereby acknowledges and agrees that her employment with the MUA has been irrevocably severed and that she shall not be eligible for re-hire with the MUA or any agency or entity affiliated with or related to the MUA. In the event that she applies for employment and/or accepts employment in violation of this paragraph, the employer shall have the right to reject such application and/or revoke any offer of employment if made without knowledge of this provision.
10. **ACKNOWLEDGEMENT.** MS. KELLEY 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 MUA AND/OR JOHNSON. SHE HAS BEEN ADVISED BY THE MUA TO CONSULT WITH AN ATTORNEY OF HER OWN CHOOSING AND THAT SHE IS IN FACT REPRESENTED BY THE LAW OFFICES OF LEO B. DUBLER, III, I.L.C AT THE TIME OF EXECUTION OF THIS AGREEMENT. MS. KELLEY 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. KELLEY 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.
11. **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 Ocean County, New Jersey. The Parties consent to personal jurisdiction in such courts for any such actions.
12. **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.
13. **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.

14. **MODIFICATIONS AND AMENDMENTS.** This Agreement shall not be Modified or amended except by writing duly executed and signed by the Parties to this Agreement.
15. **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.

**PLAINTIFF,  
NICOLE KELLEY**

By: Nicole Kelley Date: 12/23/15  
NICOLE KELLEY

**DEFENDANT,  
LITTLE EGG HARBOR MUNICIPAL UTILITIES AUTHORITY**

By: [Signature] Date: 12-14-15  
Exec. - Municipal

**DEFENDANT,  
DAVID JOHNSON**

By: [Signature] Date: 1/7/16  
DAVID JOHNSON

**MEMO**

**FROM: Earl F. Sutton, Jr. Executive Director**

**RE: Settlement Agreement Nicole Kelley**

**DATE: December 16, 2015**



Please include the following MEMO as an attachment to the settlement agreement and place in the Confidential file of the Authority. The following additional items were discussed with the Authority Attorney Mr. Christian Schlegel of the firm Citta, Holzapfel and Zabarsky and the clarifications were made as follows:

- 1) A check in the amount of \$15,000 is to be made payable to Leo B. Dubler, III, Esquire Trust Account. The name Nicole Kelley is not to appear on the check. A PO was provided to Mr. Dubler who has yet to sign and return the PO. There was some confusion as Mr. Schlegel initially signed and returned the PO. I advised him that all documentation was sent to his office and that this should be forwarded to Mr. Dubler for signature. Mr. Schlegel has been asked to reply to Mr. Dubler that payment cannot be made to him unless a W-9 has been completed, the PO has been signed and returned by Mr. Dubler, and a 1099 will be issued.
- 2) Paragraph 1 (e) states that the cost of mediation is to be paid by the MUA. This is not correct. The fees for mediation are to be paid for by the insurance carrier. They agreed to pay them at the time of the settlement hearing. Mr. Schlegel advised me that the Authority is not responsible to pay the mediation fees.

All other provisions of the agreement have been reviewed and are acceptable. The agreement has been signed by me on December 14, 2015 and this agreement is to be forwarded to Mr. Schlegel's office where we will await the other signatures and required documentation before issuing the check.