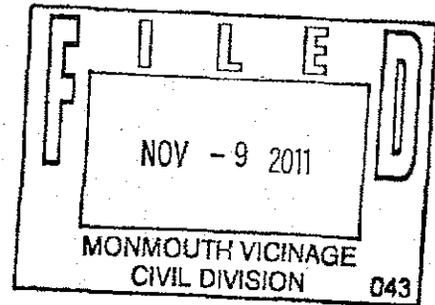


LAW OFFICE OF STEPHAN T. MASHEL  
500 Campus Drive, Suite 302  
Morganville, New Jersey 07751  
(732) 536-6161  
Attorneys for Plaintiff



RONALD ANDERSON

Plaintiff,

v.

TOWNSHIP OF MILLSTONE; NANCY A. GRBEJLA, individually, and in her official capacity as Mayor of Millstone Township; JOHN DOE 1-10; XYZ CORPORATION (1-10)

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO:

L. 5222-11

Civil Action

COMPLAINT AND JURY DEMAND  
NOTICE PROHIBITING SPOILIATION  
OF EVIDENCE; AND DEMAND FOR  
PRODUCTION OF DOCUMENTS

RECEIVED  
SUPERIOR COURT OF  
MONMOUTH COUNTY  
NOV 10 2011  
11:24 AM  
LAW DIVISION  
R.W.

Plaintiff, Ronald Anderson, residing in the County of Ocean, State of New Jersey, by way of Complaint against the Defendants Township of Millstone, Nancy A. Grbejla, John Doe 1-10, and XYZ Corporations (1-10), hereby says:

NATURE OF THE ACTION

1. Plaintiff Ronald Anderson contends in this lawsuit that his discharge from his position of employment with the Millstone Township Public Works Department violates, among others, New Jersey's Conscientious Employee Protection Act, N.J.S.A. 34:19-1 (CEPA) and New Jersey's Law Against Discrimination, N.J.S.A., 10:5-1, et. seq. (LAD).

## IDENTIFICATION OF THE PARTIES

2. Plaintiff Ronald Anderson ("Anderson") is, at all relevant times, a resident of the State of New Jersey and was an employee of the Township of Millstone serving in the capacity of an equipment operator with the Millstone Township Public Works Department (DPW).
3. Defendant Township of Millstone ("Millstone") is, at all times relevant hereto, a public entity located in Monmouth County, New Jersey. The Millstone Township Committee ("the Committee") is Millstone's legislative body and is comprised of five (5) elected officials. The Committee may investigate the conduct of any department, officer or agency of the municipal government.
4. Defendant Nancy A. Grbejla ("Grbejla") is sued in her individual capacity and in her official as Mayor of Millstone at all times relevant hereto.
5. Defendants John and Jane Does (1-10) and XYZ Corporations (1-10) are fictitious names for any presently unknown person(s), corporation(s), partnership(s), business and/or entity who, at times relevant hereto, aided and abetted defendant Millstone in effecting the retaliatory wrongful discharge of plaintiff Anderson from his former position of employment with Millstone.

## GENERAL ALLEGATIONS

6. In or about 1996, Anderson became employed with the Millstone Department of Public Works ("DPW").
7. In or about January 2008, DPW employee Mark Philpot ("Philpot") was promoted to a DPW Crew Chief position.
8. In or about August 2009, Jeffrey Hawk ("Hawk") was hired by Millstone to work in its DPW.

9. In or about August 2009, Jack Guyette ("Guyette") was hired by Millstone to work in its DPW.
10. In or about January 2010, Hawk was made a full-time employee of the DPW in the position of Equipment Operator I.
11. Immediately upon joining the Millstone Township DPW, Mr. Hawk began telling his DPW coworkers that he was Grbejla's "boy."
12. An example of Hawk's close personal relationship with Grbejla is that he regularly drove Grbejla's motor vehicle to work.
13. Guyette and Hawk were assigned tasks previously reserved for more experienced employees despite their probationary status, and performed the tasks assigned to them poorly and without apparent concern that they may be disciplined or terminated for their poor performance. At or about this same time, DPW equipment soon began disappearing, damaged to equipment was not reported, and vehicles were not refueled.
14. Following their hire, favoritism was shown to Guyette, Hawk and another new employee Ryan Elsbree ("Elsbree").
15. At times, Hawk would take a DPW truck without consideration of the need for the truck to complete assignments, causing other DPW employees to be without the equipment they needed to complete their daily tasks.
16. Hawk would fail to appear at assignments without notifying anyone at the DPW or obtaining permission from a superior, and without being subject to discipline.
17. Hawk's behavior drastically impacted the efficiency and productivity of the Millstone Township DPW.

18. Ever since Hawk's hiring, the functioning of the DPW has been disrupted by his unprofessional and unlawful behavior.

**A. As to Mark Philpot's Hostile Work Environment and Retaliatory Discharge**

19. Philpot brought the unlawful conduct of Hawk and other DPW employees to the attention of his superiors such as Grbejla, and former Millstone Administrator James Pickering.
20. On or about February 8, 2010, and upon information and belief, Philpot informed Pickering and Grbejla of his suspicion that certain DPW employees, including Hawk, were smoking marijuana while on the job.
21. Another example of unlawful conduct reported to Millstone by Philpot is found in Hawk's misuse and misappropriation of Millstone vehicles in order to perform personal jobs and errands for and on behalf of Grbejla such as picking up horse feed or bedding, and cleaning litter boxes during the work day.
22. In violation of Millstone policy, and state law prohibiting the misappropriation and misuse of public property and employees for private benefit, Grbejla has requested Hawk and other DPW employees to run similar errands for her in Millstone vehicles during their work day.
23. Philpot complained to Pickering and Grbejla about the improper use of Millstone resources and employees, but no action was taken to address or resolve the situation.
24. On or about March 16, 2010, Hawk similarly misappropriated Millstone property by replacing a tire on Grbejla's personal truck with a tire that was removed from a Township truck.
25. Philpot complained to Grbejla about Hawk's misconduct. Again, no corrective action was taken.

26. The next day, March 16, 2010, Hawk attempted to engage Philpot in a physical altercation, but Philpot was able to diffuse the situation. Thereafter, and upon information and belief, Hawk informed Philpot that Grbejla had informed him of Philpot's complaints.
27. In response to his complaints to Grbejla and Pickering, Philpot was subject to retaliatory and hostile treatment by Grbejla and Pickering in the form of being constantly belittled, badgered and harassed over assignments that could not be accomplished in the unreasonable time parameters set by them. Eventually, Philpot was wrongfully discharged in retaliation for his aforementioned whistleblowing activities.
28. Philpot has a pending lawsuit against Millstone Township filed in the Monmouth County Superior Court entitled *Philpot v. Millstone Township*, Docket No. MON- L-5950-10 in which he asserts, *inter. alia.*, that he was discharged in retaliation for his whistleblowing activities in violation of CEPA.

**B. As to George Schwarz's Hostile Work Environment and Retaliatory Discharge**

29. On or about May 5, 2010, DPW worker George Schwarz ("Schwarz") was working with Hawk and Guyette at a job site gathering brush on the roadside and running it through a wood chipper rented by the Township.
30. Despite having just finished their lunch break, Hawk and Guyette informed Schwarz that they both needed to go to the recreation center to go to the restroom. They then took the DPW truck, along with the wood chipper, thereby shutting down all work at the site.
31. Shortly after Hawk and Guyette returned with the DPW truck and equipment, a basketball was put in the wood chipper by one of them, jamming the rented wood chipper and ending the day's work.

32. Upon information and belief, Hawk and Guyette obtained a basketball from the recreation center, as the basketball clearly stated that it was the property of Millstone Township, and then put the basketball in the wood chipper with the intent of stopping the day's work.
33. Schwarz had no role in this childish prank and immediately informed DPW Crew Chief Scott Beachy ("Beachy") and Administrator Pickering of his co-workers' destructive and unlawful behavior both verbally and in writing.
34. Pickering had a meeting with Schwarz, Beachy, Hawk and Guyette to discuss the basketball incident. Upon information and belief, Pickering inferred to Schwarz that in the future he should mind his own business and that no disciplinary action was going to be taken against Hawk and Guyette.
35. On June 3, 2010, without any notice and no history of any problems, Schwarz was advised by the Township that he was not to operate any Township vehicles until he underwent an eye examination.
36. Such an examination was completely unnecessary as the Township was already in possession of Schwarz's current health, including eye, reports which were completed on March 10, 2009 and effective until March 10, 2011 which stated that Schwarz was qualified to hold his CDL license. Further, on March 16, 2010 Schwarz was seen by his own eye doctor, Dr. David Grossman, an ophthalmologist, and his vision was cleared for his CDL license.
37. On June 8, 2010, Schwarz was escorted by DPW Crew Chief Scott Beachy to the office of Kinnari K. Patel, a local optometrist. For 2-3 hours, Dr. Patel and her receptionist conducted the eye exam. When Schwarz returned to the Millstone Township DPW building he was immediately summoned to Mr. Pickering's office and was informed that his position of employment with Millstone was terminated.

38. The letter of termination provided to Schwarz alleged that he had almost caused several motor vehicle accidents while operating a Township vehicle.
39. Schwarz denies that he almost caused several motor vehicle accidents while operating a Township vehicle.
40. Upon information and belief, any alleged complaints about Schwarz's driving originated from Hawk, Guyette and/or Elsbree in retaliation against Schwarz for his previous complaints about their performance and improper behavior.
41. Upon information and belief, Schwarz's driving record is absolutely clear of any driving infractions.
42. Schwarz claims that Dr. Patel's report indicating that he "did not meet visual requirement with or without correction" and was therefore unqualified to maintain his CDL license is absolutely without merit. Subsequent to Dr. Patel's sham eye exam, Schwarz was examined again by his own doctor, Dr. Grossman, and again cleared for his CDL license.
43. Schwarz has a pending lawsuit against Millstone Township filed in the Monmouth County Superior Court entitled *Schwarz v. Millstone Township*, Docket No. MON-L-1387-11 in which he asserts, *inter. alia.*, that he was discharged in retaliation for his whistleblowing in violation of CEPA for having reported the unlawful conduct of Hawk and Guyette in causing damage to DPW equipment. Schwarz also alleges in his lawsuit that his termination also stems from disability or perceived disability discrimination.

**C. As to Ronald Anderson's Hostile Work Environment and Retaliatory Discharge**

44. In or about March 2010, while on assignment with co-worker Schwarz checking road signs in Zone 1, Anderson witnessed Hawk coming down Windsor-Perrineville Road in Windsor Twp. operating an unmarked DPW truck (no. 901) containing in its cargo bed bags of horse bedding.

45. The Township does not own any horses, nor does the Township officially provide any private services for horse owners.
46. Upon information and belief, and at all times relevant to the events set forth in paragraph 44 above, Hawk was performing unauthorized work unrelated to his job at the DPW while on Township time.
47. The following day, Anderson informed Philpot that he and Schwarz had seen Hawk Operating a DPW truck on Windsor-Perrineville Rd with horse bedding in the cargo area of the truck. Thereafter, Hawk began a campaign of harassment against Anderson.
48. Later that same day, Hawk approached Anderson and said to him, "what's wrong with going and helping the Mayor out? She's hurt. She doesn't have any family. Going to Rick's Saddle Shop in Upper Freehold is like you going to the diner in Upper Freehold at lunch time."
49. On April 5, 2010, Anderson complained to his union shop steward Shawn Ludwig that he was tired of picking up the slack for Hawk, who would often leave during work hours to run personal errands for Mayor Grbejla while on Township time.
50. Hawk was afforded preferential treatment by Township Administration due to his personal relationship with Mayor Grbejla.
51. For instance, if Hawk was not happy with his work detail, which was written up and handed out every morning by Crew Chiefs Mark Philpot and Scott Beechy, he would complain to Administrator Pickering and Mayor Grbejla, and Pickering would change the work detail to accommodate Hawk.
52. On April 22, 2010, Anderson witnessed Hawk say he would not do his work assignment. Hawk was not disciplined for his act of insubordination. Similar conduct by another employee would have been considered insubordination and cause for discipline.

53. In or around April 2010, Anderson complained to Administrator Pickering about Mayor Grbejla using Township staff to run personal errands for her and added that it was unfair to the rest of the DPW staff because they have to cover for their absences. In response, Pickering told Anderson that he should be happy that he had a job because a lot of people don't have jobs and "not to worry about what don't concern you."
54. On May 19, 2010, Anderson wrote a letter and submitted it to the Township complaining about the way Pickering was interfering in the way the DPW was managed.
55. On or about June 23, 2010, Anderson was brought into Pickering's office to meet with two investigators the Township had hired. Anderson asked for union representation and was told that "wasn't going to happen."
56. On or about the second week in July 2010, Anderson was confronted by Pickering and asked why he had allegedly said that Hawk should be fired for running errands for Mayor Nancy Greblja before Philpot was fired for taking a set of deer antlers.
57. In retaliation for complaints of about Hawk running personal errands for Mayor Grbelja on Township time, Anderson was falsely accused of spinning the tires on a Township trailer and driving it recklessly.
58. The truth is that the brakes on the trailer were known to lock up which can cause the wheels to skid.
59. With knowledge of the falsity of the spinning tires claim made against Anderson, Pickering nevertheless issued a disciplinary write-up to Anderson over this baseless charge.
60. On or about July 21, 2010, the same day Pickering was terminated, someone placed a Penthouse magazine on the table in the DPW break room near where Anderson typically sat. Thereafter, Anderson was questioned by crew chief Beachy as whether he knew

anything about the magazine. Anderson told Beachy that it wasn't his magazine and he knew nothing about it.

61. Anderson took a picture of the Penthouse magazine sitting on my table and handed it to Beachy with the request that he take it to Pickering and let him know that this was the type of harassment he had been complaining about. Anderson told Beachy that someone had purposely placed the magazine where he typically sat in order to set him up for disciplinary action which would cost him his job.
62. Later the afternoon of the same day, discussed in paragraphs 60 and 61 above, Anderson asked Beachy what had been done about the magazine and Beachy responded by saying that he gave it to Maria, the Township Clerk, who called Mayor Grbejla and was told by the Mayor to place the magazine in a plastic bag in a safe to be dealt with later.
63. When Anderson inquired of Maria some two weeks later about the status of his complaint regarding the Penthouse magazine, she replied that the Mayor told her to throw the magazine away because the Mayor did not care what the guys at the DPW read on their own time.
64. Thereafter, Anderson spoke with Tom Shannon, the Temporary Business Administrator, and complained to him about nothing being done to investigate who had placed the magazine on the table. To Anderson's knowledge, no investigation was ever conducted.
65. Also during the summer of 2010, Anderson was in the DPW break room and Hawk harassed him by leaving the door open to the rest room while he was urinating. Anderson asked him to close the door. Hawk asked "why does it bother you?"
66. The following day Ryan Elsbree likewise harassed Anderson who was again in the DPW break room by leaving the door open to the rest room while he was urinating. Elsbree's behavior in mimicking Hawk's lewd conduct caused Anderson much distress.

67. Another example of Hawk's harassment of Anderson took place when Hawk used his cell phone to send Anderson lewd pictures of a girl lifting her top exposing her breasts and a picture of a hand displaying the middle finger.
68. On September 1, 2010, Anderson sent a letter addressed to Administrator Shannon and the Township Committee complaining of the retaliatory harassment and hostile work environment he was enduring at work. The letter began as follows:

Dear Mr. Tom Shannon and Township Committee,

I am officially filing a complaint to you and the township committee for various types of harassment done to me by Jeff Hawk as well as a hostile work environment. As you are well aware I have previously communicated to you as well as other township officials including but not limited to the township clerk and mayor directly or through a supervisor. Since my complaints things have only gotten worse for me.

I have been written up twice for things that other had done on a daily basis and have not been punished or spoke too and I have been written up for things that I couldn't possibly have any control over. I can only feel that these actions are to put together as progressive action to fire me sense (sic) after 15 years on the job to the best of my knowledge there is nothing in my file until the past couple of months.

\*\*\*

Because of the current conditions I am on more medication and seeing a Counselor twice a month. I would like to be able to come to work and not watch over my shoulder. I served this town for many years. I hope I can once again feel safe and comfortable with my job. I hope this will be addressed properly and in a timely manner.

Truly yours,

Ron Anderson

69. No corrective action was taken in response to Anderson's letter and he continued to be subject to harassment and a hostile work environment.

70. On or about February 15, 2011, Anderson suffered an injury to his back while in the course of his employment with Millstone.
71. Anderson's back injury caused him to be unable to report to work and he was placed on workers compensation temporary disability.
72. As a result of his back injury, Millstone authorized Anderson to receive medical treatment from Hoan T. Nguyen, M.D. of Seaview Orthopaedic & Medical Associates. Consequently, Anderson received medical treatment from Dr. Nguyen.
73. Dr. Nguyen, at times relevant hereto, provided Millstone with updates as to Anderson's medical condition either directly or indirectly through QualCare, its authorized workers compensation insurer or agent.
74. On September 6, 2011, Dr. Nguyen re-evaluated Anderson's medical condition and stated on a doctor's note he prepared and provided that same date to Millstone either directly or indirectly through QualCare, that Anderson was physically able to return to work without limitation starting on Monday, September 19, 2011.
75. On September 6, 2011, and notwithstanding Dr. Nguyen's doctor note of the same date authorizing Anderson's return to work without limitation 13 days later, Phil Del Turco, the new Township Administrator, wrote to Anderson informing that Millstone was terminating his employment effective Friday, September 16, 2011.
76. In patent disregard of Dr. Nguyen's doctor's note of the same date, Mr. Del Turco's letter of September 6, 2011 falsely claims that Anderson "was unable to perform the physical activities which are essential meet the job requirements of an equipment operator with the Millstone Public Works Department."
77. Millstone terminated Anderson without first discussing with him the possibility of his returning to work.

78. Millstone terminated Anderson without first discussing with him or his treating physician Dr. Nyguen the possibility of Anderson returning to work prior to his effective date of termination on Friday, September 16, 2011.
79. Millstone terminated Anderson with knowledge, actual or constructive, of the fact that Dr. Nyguen had authorized Anderson's return to work without limitation starting on Monday, September 19, 2011.
80. Millstone proceeded with the termination of Anderson with full knowledge that his treating physician had authorized his return to work the very next work day following his effective date of termination.
81. Millstone terminated Anderson without first discussing with him or Dr. Nyguen the possibility of Anderson returning to work prior to September 16, 2011 with a reasonable accommodation for any limitations caused by his back injury.
82. Based on its treatment of Anderson as hereinabove described, Millstone and Grbejla violated New Jersey's Conscientious Employee Protection Act, *N.J.S.A. 34:19-1*(CEPA).
83. Based on its treatment of Anderson as hereinabove described, Millstone and Grbejla violated New Jersey's Law Against Discrimination, *N.J.S.A., 10:5-1, et. seq.* (LAD).
84. Grbejla aided and abetted Millstone in its decision to subject Anderson to a hostile work environment and to unlawfully terminate him in violation of CEPA and LAD.
85. Fictitious defendants John and Jane Does (1-10) and XYZ Corporations (1-10) aided and abetted defendants Millstone and Grbejla in their decision to subject Anderson to a hostile work environment and to wrongfully discharge him.
86. As a result of the hostile and retaliatory actions undertaken by Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), jointly and severally, Plaintiff

Anderson has been and continues to suffer economic losses and pecuniary damage in the form of lost income and monetary benefits past, present and future.

87. As a result of the hostile and retaliatory actions undertaken by Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), jointly and severally, Plaintiff Anderson has been and continues to suffer non-economic damages in the form of humiliation, stress, anxiety causing his mental and emotional anguish and dysfunction, and physical manifestations of same including, but not limited to, nervousness, anxiousness, sleeplessness, loss of appetite, anxiety attacks, upset stomach and stomach pains all or some of which may be permanent.

### COUNT I

#### **VIOLATION OF THE NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA), N.J.S.A. 34:19-1**

1. Plaintiff repeats each and every allegation set forth in paragraphs 1-87 above as if set forth at length herein.
2. Anderson communicated complaints to Millstone concerning his reasonable belief that members of the Township DPW were engaging in violations of law and public policy including, but not limited to, destruction of Township property and misappropriation of municipal property and employees.
3. CEPA allows an employee an action for retaliation when the employee discloses, threatens to disclose, objects to, or refuses to participate in certain actions that the employees reasonably believe are either illegal or a violation of public policy and is then subject to a course of retaliator conduct by the employer. Anderson is clearly a person protected under CEPA as the acts that he complained of are violations of the law and Township policies.

4. Defendants Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), acted jointly and/or severally, to subject Plaintiff Anderson to a hostile work environment and to affect his wrongful discharge in retaliation for his making those complaints.
5. Defendants Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), acted, jointly and/or severally, to unlawfully harass and then terminate Plaintiff Anderson's employment with Millstone was unlawful, and served to violate CEPA.
6. Defendant Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), by their collective and/or individual acts and omissions, subjected Plaintiff Anderson to unlawful retaliatory conduct. As such, said defendants are liable to Plaintiff Anderson for any and all damages, economic and non-economic, which he has and continues to be caused to sustain.
7. Defendants Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), by their respective officials, administrators, managers, supervisors and/or employees, unlawfully conspired with each other in order to subject Plaintiff Anderson to unlawful retaliatory conduct in violation of CEPA.
8. A person subject to unlawful retaliation is afforded the remedy of *punitive damages*. See *N.J.S.A., 34:19-1 et seq.* As such, Plaintiff Anderson is entitled to an award of punitive damages against defendants, jointly or severally.
9. Plaintiff Anderson has been compelled to retain counsel in order to file this lawsuit and seek an adjudicated remedy to the damages he has suffered as a result of defendants' unlawful conduct. The legislature has determined that a prevailing party may be awarded reasonable counsel fees. *N.J.S.A., 34:19-1 et seq.* As such, Plaintiff Anderson is entitled to an award of reasonable attorney fees against all named defendants.
10. As a result of the retaliatory and discriminatory actions undertaken by Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), Plaintiff Anderson has been

and continues to suffer economic losses and pecuniary damage in the form of lost income and benefits past, present and future.

11. As a result of the retaliatory and discriminatory actions undertaken by Defendants Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), Plaintiff Anderson has been and continues to suffer non-economic damages in the form of humiliation, stress, anxiety causing his mental and emotional anguish and dysfunction, and physical manifestations of same including, but not limited to, nervousness, anxiousness, sleeplessness, loss of appetite, anxiety attacks, upset stomach and stomach pains all or some of which may be permanent.

**WHEREFORE**, Plaintiff, Ronald Anderson, demands judgment against the Defendant Township of Millstone, Nancy A. Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), jointly or severally, as follows:

- a. Directing the Defendants to make Plaintiff Ronald Anderson whole for any and all losses he has suffered in the past, present and in the future in terms of lost wages, benefits, insurance and pension coverage, and any other fringe benefits of his employment;
- b. Directing the Defendants, in lieu of reinstating Plaintiff Ronald Anderson to his former position with Millstone Township to fully compensate him with front pay and benefits for the aforementioned retaliatory acts;
- c. Directing Defendants to pay Plaintiff Ronald Anderson compensatory and consequential damages for any and all non-economic damages including, but not limited to, mental and emotional distress damages, suffered as a result of Defendants' retaliatory acts in violation of New Jersey Conscientious Employee Protection Act;

- d. Directing the Defendants to pay Plaintiff Ronald Anderson punitive damages on the grounds that the acts of Defendants and its agents, servants and employees were especially egregious, evil minded and/or were committed with a wanton and willful disregard for the rights of Plaintiff;
- e. Directing Defendants to pay Plaintiff Ronald Anderson for all of his attorneys' fees and costs incurred to the full extent permitted under *N.J.S.A. 34:19-1 et seq.* and *Rendine v. Pantzer*, 141 N.J. 292 (1995).
- f. Awarding interest and costs of suit; and
- g. Granting Plaintiff such relief as the Court deems just and proper.

## COUNT II

### **VIOLATION OF NEW JERSEY LAW AGAINST DISCRIMINATION (DISABILITY DISCRIMINATION)**

1. Plaintiff repeats each and every allegation set forth in Counts One of the ~~Complaint~~ and in paragraphs 1-87 above as if set forth at length herein.
2. Millstone and Grbejla's treatment of Anderson violates the New Jersey's Law Against Discrimination (LAD), N.J.S.A., 10:5-1 *et seq.*, which prohibits unlawful employment discrimination against any person by reason of race, religion, age, gender, **handicap**, marital status, national origin, sexual orientation, etc.
3. Hostile work environment involves harassing conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
4. An employer is strictly liable for damages caused by discrimination committed by supervisors, by non-supervisory employees and in some instances by third parties if

the employer knew or should have known about the conduct, had control over the conduct and failed to take prompt appropriate corrective action.

5. Millstone and Grbejla discriminated against Anderson by wrongfully discharging him due to his handicap, back injury, in violation of LAD.
6. New Jersey Division of Civil Rights regulations require employers to provide reasonable accommodations for the handicapped. *N.J.A.C. 13:13-2.5*. DCR states that this requirement of reasonable accommodation is implicit in the LAD provision that an individual may not be denied employment opportunities because of a handicap unless the nature and extent of the handicap reasonably precludes job performance.
7. Millstone discriminated against Anderson by failing to provide him with a reasonable accommodation due to his handicap, back injury, in violation of LAD.
8. It is the duty of an employer to engage a qualified employee in an inter-active process to determine if a reasonable accommodation can be accorded a disabled employee without resulting in undue prejudice to the employer.
9. Millstone discriminated against Anderson by failing to engage him in an inter-active process to determine if a reasonable accommodation can be accorded his handicap, impaired eyesight, in violation of LAD.
10. The legislature has determined that persons subjected to unlawful discrimination may suffer diverse and substantial hardships which give rise to remedies under LAD, including compensatory damages: economic loss; physical and emotional distress; search and relocation difficulties; anxiety caused by a lack of information, uncertainty and resultant planning difficulty; career, education, family and social disruption; adjustment problems; and severe emotional trauma, illness, homelessness, or other irreparable harm resulting from the strain of employment

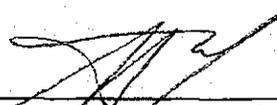
controversies. A person subject to unlawful discrimination is also afforded the remedy of punitive damages. See *N.J.S.A.*, 10:5-3. The legislature has also determined that the prevailing party may be awarded reasonable counsel fees. *N.J.S.A.*, 10:5-27.1.

11. Anderson was subject to a hostile work environment, retaliation and wrongful discharge while working for Millstone because of his back injury.
12. Defendants Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), by their respective officials, administrators, managers, supervisors and/or employees, unlawfully conspired with each other in order to subject Plaintiff Anderson to unlawful discriminatory conduct in violation of LAD.
13. As a direct and proximate cause of the Defendants' acts and omissions as aforesaid, Plaintiff Anderson has been discharged from his position of employment with Millstone.
14. As a result of the retaliatory and discriminatory actions undertaken by Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), Plaintiff Anderson has been and continues to suffer economic losses and pecuniary damage in the form of lost income and benefits past, present and future.
15. As a result of the retaliatory and discriminatory actions undertaken by Defendants Millstone, Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), Plaintiff Anderson has been and continues to suffer non-economic damages in the form of humiliation, stress, anxiety causing his mental and emotional anguish and dysfunction, and physical manifestations of same including, but not limited to, nervousness, anxiousness, sleeplessness, loss of appetite, anxiety attacks, upset stomach and stomach pains all or some of which may be permanent.

**WHEREFORE**, Plaintiff, Ronald Anderson, demands judgment against the Defendant Township of Millstone, Nancy A. Grbejla, John and Jane Does (1-10) and XYZ Corporations (1-10), jointly or severally, as follows:

- a. Directing the Defendants to make Plaintiff Ronald Anderson whole for any and all losses he has suffered in the past, present and in the future in terms of lost wages, benefits, insurance and pension coverage, and any other fringe benefits of his employment;
- b. Directing the Defendants, in lieu of reinstating Plaintiff Ronald Anderson to his former position with Millstone Township, to fully compensate him with front pay and benefits for the aforementioned retaliatory acts;
- c. Directing Defendants to pay Plaintiff Ronald Anderson compensatory and consequential damages for any and all non-economic damages including, but not limited to, mental and emotional distress damages, suffered as a result of Defendants' retaliatory and/or discriminatory acts in violation of New Jersey Law Against Discrimination;
- d. Directing the Defendants to pay Plaintiff Ronald Anderson punitive damages on the grounds that the acts of Defendants and its agents, servants and employees were especially egregious, evil minded and/or were committed with a wanton and willful disregard for the rights of Plaintiff;
- e. Directing Defendants to pay Plaintiff Ronald Anderson for all of his attorneys' fees and costs incurred to the full extent permitted under *N.J.S.A. 34:19-1 et seq.* and *Rendine v. Pantzer*, 141 N.J. 292 (1995).
- f. Awarding interest and costs of suit; and

- g. Granting Plaintiff such relief as the Court deems just and proper.

  
\_\_\_\_\_  
Stephan T. Mashel, Esquire  
Attorney for Plaintiff Ronald Anderson

Dated: November 7, 2011

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues triable in this action.

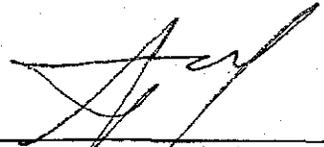
**DESIGNATED TRIAL ATTORNEY**

Stephan T. Mashel, Esquire is hereby designated as plaintiff's trial attorney.

**CERTIFICATION**

I hereby certify to the best of my personal knowledge that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any other action or arbitration contemplated, nor any other parties to be joined EXCEPT for the joinder of the true persons in interest whose names are identified herein as defendants John and Jane Does 1-10 and XYZ Corporations 1-10.

Dated: November 7, 2011

  
\_\_\_\_\_  
Stephan T. Mashel, Esquire

**SETTLEMENT AGREEMENT AND RELEASE**

**THIS SETTLEMENT AGREEMENT AND RELEASE**, (hereinafter referred to as "Agreement"), is made between **RONALD ANDERSON**, individually, his representatives, heirs and assigns, (hereinafter referred to as "Plaintiff"); the **TOWNSHIP OF MILLSTONE**, their Elected/Appointed Officials, Directors, Operators, Representatives, Agents, and Employees, and **NANCY A. GRBEJLA**, individually, and in her official capacity, (hereinafter referred to as "Defendants").

**WHEREAS**, Plaintiff filed a civil action against Defendants, through an employment lawsuit entitled, *Ronald Anderson v. Township of Millstone, Nancy A. Grbejla*, pursuant to Docket No., MON-L-5222-11, (hereinafter referred to as the "Lawsuit"); and

**WHEREAS**, the parties to this Lawsuit having reached a negotiated agreement to fully, and finally, settle all claims among them, including those asserted in the Lawsuit; and

**WHEREAS**, the Defendants have agreed to pay full mediation costs as associated with the negotiations which led the parties to fully, and finally, settle all claims asserted in the Lawsuit; and among them; and

**WHEREAS**, the Lawsuit sought redress from the Defendants, and Plaintiff having advised of his intention to voluntarily dismiss all claims, with prejudice;

**NOW, IN CONSIDERATION** of the payment to Plaintiff as provided for by this Agreement, and for other good and valuable consideration, and the promises and covenants contained herein, the receipt and sufficiency of which the respective parties acknowledge, the parties do hereby agree as follows:

1. Defendants shall pay to Plaintiff, within thirty (30) days following the date of the February 2015 meeting of the Middlesex County Joint Insurance Fund and upon receipt by its attorneys the law firm of Hoagland, Longo, Moran Dunst & Doukas, LLP, Attention: Craig L. Corson, Esquire, of an executed original of the within Agreement and search reports required herein, by delivering a check to Plaintiff's attorneys Mashel Law, LLC located at 500 Campus Drive, Suite 303, Morganville, New Jersey 07751 made payable to the "Attorney Trust Account of Mashel Law, LLC" in the sum of \$187,500.00 with said check referencing that payment is made on behalf of Plaintiff. Following receipt of the above settlement amount, a Stipulation of Dismissal with prejudice shall be executed, and returned to Defendants for filing. (annexed hereto as **Exhibit A**)

2. Defendants, in accordance with the payments noted within paragraph one of this Settlement Agreement and Release, shall issue to Mashel Law, LLC an applicable Federal Tax Form 1099 in accordance with the above payments. Defendants make no representations regarding the federal, or state, tax consequences of the payments referred to in paragraph one, and shall not be responsible for any tax liability, interest, or penalty incurred by Plaintiff which in any way arises out of, or is related to, said payment. Plaintiff agrees to pay any amount that may be determined to be due and owing as taxes, interest, and penalties arising out of the payment referred to in paragraph one should it be determined that all, or part, of such payments constitute gross income to Plaintiff within the meaning of the Internal Revenue Code of 1986, as amended, or under any other federal, state or local statute, or ordinance. Plaintiff further agrees to (i) hold harmless, and to indemnify, the Defendants for any and all losses and/or damages arising from claims made by the Internal Revenue Service ("IRS"), or any other taxing authority, or other

governmental agency, (whether federal, state, or local), which may be made against the Defendants arising out of, or relating to, the Defendants' failure to withhold any portion of the payment to Plaintiff for income, or social security tax purposes, or for any other purpose, and (ii) to reimburse Defendants for any resulting payments, including without limitation, all penalties, and interest, payable to the Internal Revenue Service, or any other taxing authority, or governmental agency. The parties further agree that Defendants will give to Plaintiff notice of any such claim, and Plaintiff will cooperate with Defendants in the defense of any such claim. .

3. In conjunction with the terms of payment as set forth within paragraph one, and by executing this Agreement, Plaintiff certifies that he has complied with the requirements of N.J.S.A. 2A:17-56.23b. Plaintiff understands, and agrees, that payment as referenced in paragraph one will not be released until such time as his Counsel provides Defendants' Counsel with a certified copy of a child support judgment search, performed by a private judgment search company, reflecting that Plaintiff is not a child support judgment debtor. A copy of the Charles Jones Report will be annexed hereto as **(Exhibit B)**, once provided on behalf of Plaintiff.

4. Pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub.L. No. 107-56, § 411(a)(1)(F), 115 Stat. 272 (2001) (the "Patriot Act"), Executive Order 13224, and the enforcement regulations set forth by United States Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), Plaintiff understands, and agrees, that the payment referenced in paragraph one will not be released until such time as his Counsel provides Defendant's Counsel with a certified copy of a search, performed by a private search company, reflecting that Plaintiff is not identified on the list of Specially Designated Nationals and Blocked Persons, generated by the Office of Foreign

Assets Control ("OFAC"). Plaintiff further understands, and agrees, that in the event it is revealed that he is identified on the list of Specially Designated Nationals and Blocked Persons, generated by OFAC, that Plaintiff will not receive any of the proceeds set forth within paragraph one without Court Order. A copy of the Charles Jones Report will be annexed hereto as (Exhibit C), once provided on behalf of Plaintiff.

5. Many Medicare beneficiaries have their medical expenses paid in whole, or in part, by liability insurance, (including self-insured), no-fault insurance, and workers' compensation. Federal law precludes Medicare from making payments for items, or services, for any injury or condition for which a person is entitled to recover under a workers' compensation plan, automobile, or liability insurance policy ("primary payer"), except that such payments may be made by Medicare as conditional payments subject to the right of repayment.

The Centers for Medicare, and Medicaid, Services ("CMS") has a direct priority right of recovery of such conditional payments. As a matter of federal law, this direct priority right of recovery may be enforced against the workers' compensation, automobile, or liability insurer and/or against any entity, (including a beneficiary, provider, supplier, physician, attorney, or state agency), that has received any portion of the primary payer's payment directly, or indirectly. CMS also has a subrogation right with respect to such primary payer's payment. Thus, to the extent Medicare has made, or will make, prior to settlement, any payment for any item or service related to any injury or condition for which Plaintiff is, or may be, receiving as compensation, Medicare is entitled to receive repayment of such conditional payments.

Federal regulations further provide that liability for work-related injuries resulting in future medical expenses after settlement may not be shifted to Medicare by the responsible

parties. Applicable regulations require that appropriate steps be taken to allocate a portion of the Medicare beneficiary's workers' compensation settlement in certain cases to pay for the beneficiary's future work-related injury or illness. Although there are no comparable regulations for third party liability claims at the present time, if a third party liability settlement is intended to release future medical expenses for which Medicare may be asked to pay, a portion of the liability settlement should be allocated to pay for the beneficiary's future medical expenses in appropriate cases.

In addition, Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA"), requires liability insurers, (including self-insureds), no-fault insurers, workers' compensation insurers, and certain claims processing third party administrators, to report specific information about Medicare beneficiaries who may be covered under other insurance. This reporting is to assist CMS and the insurers to properly coordinate the payment of benefits among various plans.

Through this Agreement, Plaintiff is advised that Defendants, to the extent applicable, intend to fully comply with federal law, including the requirements of the MMSEA. Accordingly, if applicable, Defendants will report to Medicare all information concerning the settlement in the subject action, including the full settlement amount, which Defendants deem reasonably necessary for Medicare to make a determination regarding the appropriate coordination of benefits. In part, the reporting requirements are to ensure that Medicare is not asked to pay, and/or does not pay, for any medical expenses associated with, or arising out of, the conditions and/or injuries for which Plaintiff receives settlement proceeds under the terms of the within Agreement.

However, and based on information supplied to Defendants on Plaintiff's behalf, it is asserted that Medicare does not have an interest in the settlement reached in this Lawsuit. Therefore, Plaintiff hereby affirms that: (i) Plaintiff is not presently Medicare eligible, (ii) Plaintiff has not submitted a request to Medicare seeking benefits for any alleged damages, conditions, or injuries related in any manner to the claim settled in this Lawsuit, (iii) that Plaintiff has not applied for Social Security Disability Insurance, and has no plans to apply for Social Security Disability Insurance, in connection with the claims settled in the subject Lawsuit, and (iv) that no portion of any expenses incurred to date in connection with the claims settled in the subject Lawsuit have been paid, or are reasonably expected to be paid, pursuant to any health insurance program provided, or funded in whole or in part, by Medicare or Medicaid

If it is subsequently determined that Medicare does, in fact, have an interest in the settlement of the claims brought in this Lawsuit, and if Plaintiff fails to follow the requirements, if any, for determining what portion of the settlement proceeds paid in connection with the Lawsuit must be allocated to future medical expenses, ("Allocation"), and/or if Plaintiff further fails to establish, fund, and administer any required Medicare Set-Aside Account ("MSA") for such Allocation, Plaintiff's rights to future Medicare coverage and/or benefits could be adversely impacted. In particular, Medicare could determine that the entire amount of the settlement proceeds paid in connection with the Lawsuit should be allocated towards future medical expenses and, thereafter, deny Medicare coverage and/or benefits to Plaintiff until the full extent of the settlement proceeds paid in connection with the Lawsuit have been paid towards such future medical expenses.

Through execution of the within Agreement, Plaintiff hereby acknowledges the disclosures set forth herein. As such, and if it is determined that Medicare has an interest in the settlement of the subject action, Plaintiff agrees: (i) that Plaintiff shall bear sole, and continuing, responsibility to determine whether an Allocation and/or MSA is required with respect to the settlement proceeds paid in connection with the Lawsuit; (ii) that if it is determined that an Allocation and/or MSA is required, it shall be Plaintiff's sole, and continuing, responsibility to contact CMS to work out an appropriate Allocation, and any required MSA with respect to the settlement proceeds paid in connection with the Lawsuit; (iii) that it shall be Plaintiff's sole, and continuing, responsibility to secure, and to follow, all CMS requirements for the establishment, funding, and administration of any required MSA; and (iv) that Plaintiff's failure to discharge any of the foregoing responsibilities could jeopardize Plaintiff's ability to obtain and/or maintain Social Security and/or Medicare coverage and/or benefits to the full extent of any settlement proceeds paid in connection with the Lawsuit.

Plaintiff further acknowledges that all claims for wages, and medical expenses paid or unpaid, and/or liens asserted for wages and medical expenses, paid or unpaid, will be satisfied from the settlement proceeds paid in connection with this Lawsuit. By executing this Agreement, Plaintiff certifies that he has complied with the requirements of 42 U.S.C. 1395y, *et seq.*, and 42 C.F.R. 411.24, *et seq.* Should any subsequent claims be made under these subsections, Plaintiff further agrees to: (i) hold harmless, and to indemnify, Defendants for any, and all, losses and/or damages arising from claims relating to Medicare/Medicaid brought by any governmental agency, (whether federal, state or local), which may be made against Defendants arising out of, or relating to, Defendants' failure to withhold any portion of the payment to Plaintiff for medical

lien purposes, or for any other purpose, and (ii) reimburse Defendants for any resulting payments, including without limitation, all penalties and interest payable to any governmental agency.

6. Through this Agreement, Plaintiff hereby releases ,and forever discharges Defendants, their present and former elected officials, appointed officials, affiliates, subsidiaries, parents, owners, partners, officers, directors, agents, attorneys, employees, former employees, representatives, insurers and reinsurers, and all of their successors and assigns, from any and all actions, causes of action, suits, claims, charges or complaints, known or unknown, which Plaintiff has, may have, or may claim to have against any of them for everything that has occurred up to the entry date of this Agreement. Plaintiff further acknowledges that this is a General Release and includes, but is not limited to, claims set forth in the Lawsuit, claims arising under federal, state, and local laws included, but not limited to, claims for violations of the New Jersey Constitution, harassment, failure to act, failure to train, defamation, slander, libel, discrimination, negligence, intentional acts, property damage claims, claims for economic damages, claims for attorney's fees, expenses, and costs, claims for physical, mental, emotional and psychological injuries and for punitive damages. Plaintiff expressly waives all claims allowed under Title VII of the Civil Rights Act, the Civil Rights Acts of 1871 as amended, 42 U.S.C. 1983, and 1991, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* ("LAD"); the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.* ("NJCRA"); and any other law or statute, federal or state or local law or ordinance. This General Release includes all claims, known or unknown, for anything that has occurred up to, and including, the entry date of this Agreement. Notwithstanding the foregoing language, it is agreed that Plaintiff is not releasing

any right to continue, bring, or pursue a claim for workers compensation benefits relating to and/or arising out of injuries he sustained during the course of employment with the Defendants.

7. It is specifically understood, and agreed, that the amount paid under this Agreement includes all attorneys' fees and costs to which Plaintiff and/or his Counsel may be entitled. Plaintiff understands that by executing this Agreement that he hereby releases and waives any claim and/or right to attorneys' fees and expenses in connection with the Lawsuit. Neither Plaintiff, his Counsel, or any other Law Firm, nor anyone acting on their behalf, shall make an application for monies in addition to the amount set forth within paragraph one of this Agreement as those amounts are included in the total payment being made herein.

8. Plaintiff further covenants that he will not hereafter file, or cause to be filed on his behalf, any charge, complaint, legal, or administrative action of any nature before any court, or administrative agency to assert any claim against Defendants for anything that has occurred up to and including the entry date of this Agreement.

9. Plaintiff represents that he has not assigned to any third party any claim that she has, may have, or believes she has, or may have, against the Defendants.

10. This Agreement does not constitute, and shall in no manner be construed as, an admission of any wrongdoing, or liability, on the part of Defendants, or as an admission by Defendants as to the validity of any of the Plaintiff's claims as contained in the Lawsuit, and as may have been supplemented during the course of discovery. The Defendants continue to maintain the applicability, and validity of their denials and affirmative defenses as set forth in their Answer to the Plaintiff's Complaint.

11. By executing this Agreement, Plaintiff represents, and acknowledges, that he does not rely, and has not relied, upon any representation, or statement, not set forth in this Agreement made by Defendants, or their Counsel, with regard to the subject matter, basis, or effect of this Agreement, or otherwise. This Agreement sets forth the entire agreement between the parties, and supersedes any, and all, prior agreements, or understandings between the parties.

12. This Agreement shall be binding, and inure to the benefit of the Plaintiff, and his successors, assigns, heirs, executors, personal, and legal representatives.

13. This Agreement shall be construed in accordance with the laws of the State of New Jersey.

14. The parties agree that the language of this Agreement has been negotiated, is a product of the draftsmanship of all of the parties, and that the usual rule that the provisions of a document are to be construed against the drafter shall not apply to the interpretation of any provisions hereof.

15. The signatures of the parties below indicate they have had an opportunity to review this Agreement with their respective Counsel, that they have read and understood the provisions, and that they have executed it voluntarily with full knowledge of the significance of all provisions.

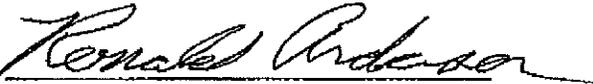
16. In the event any party to this Agreement brings any motion application, court action, lawsuit or other form of proceeding to enforce any provision or provisions of this Agreement, and/or to collect on the monies due and payable under this Agreement, the prevailing party will be indemnified for all reasonable attorney's fees and costs incurred in the preparation, filing, prosecution and argument of such an application, motion, suit, action, proceeding, or claim.

17. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed to be an original.

18. The Plaintiff and Defendants have had opportunity to review this Agreement with their respective attorneys before signing. By affixing their signatures below, they acknowledge that they have carefully read, and fully understand, the provisions of the Agreement and have had sufficient time, and opportunity, to consult with their attorney of choice prior to executing this document, and intend to be legally bound by its terms.

Plaintiff further attests that he has executed this Agreement in a knowing, and voluntary, manner with the full knowledge that he is waiving any and all rights, or claims, he may have to later challenge the sufficiency, scope, or terms of the Agreement and have, again, done so after consultation with his Counsel. Plaintiff further understands that he may revoke his signature within seven (7) days following my signing, understands that his rights under this Agreement are contingent on his signing this Agreement, and not revoking his signature on said document.

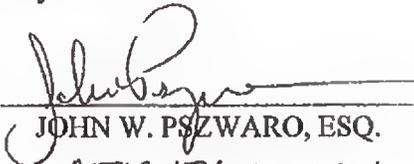
IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement.

BY:   
RONALD ANDERSON

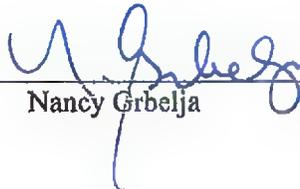
STATE OF NEW JERSEY :  
: SS.  
COUNTY OF MONMOUTH :

I CERTIFY that on February 2, 2015, RONALD ANDERSON, personally came before me and acknowledged under oath, to my satisfaction, that he is the person named in this Agreement, and that he personally signed this document, and signed, sealed, and delivered this document as his act and deed.

Mashel Law, LLP  
Attorneys for Plaintiff

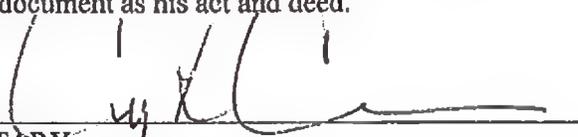
By:   
\_\_\_\_\_  
JOHN W. PSZWARO, ESQ. Atty ID # 02051-2012  
ATTORNEY AT LAW OF NJ

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement.

BY:   
\_\_\_\_\_  
Nancy Grbelja

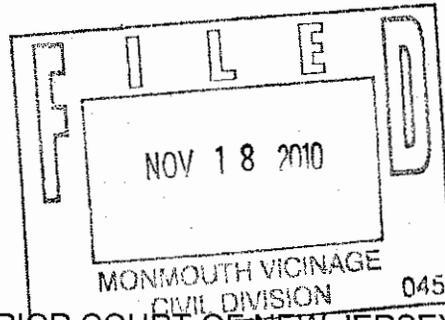
STATE OF NEW JERSEY :  
: SS.  
COUNTY OF MONMOUTH :

I CERTIFY that on March 4, 2015, NANCY GRBELJA, personally came before me and acknowledged under oath, to my satisfaction, that he is the person named in this Agreement, and that he personally signed this document, and signed, sealed, and delivered this document as his act and deed.

  
\_\_\_\_\_  
NOTARY  
CRAIG L. CORSON  
AN ATTORNEY AT LAW OF THE STATE OF NJ

**LAW OFFICE OF STEPHAN T. MASHEL**  
500 Campus Drive, Suite 302  
Morganville, New Jersey 07751  
(732) 536-6161  
Attorneys for Plaintiff

---



MARK PHILPOT,

Plaintiff,

v.

TOWNSHIP OF MILLSTONE;  
JOHN DOE 1-10; XYZ CORPORATION  
(1-10)

Defendants.

---

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO: *L-005950-10*

Civil Action

**COMPLAINT AND JURY DEMAND  
NOTICE PROHIBITING SPOILIATION  
OF EVIDENCE; AND DEMAND FOR  
PRODUCTION OF DOCUMENTS.**

Plaintiff, Mark Philpot, residing in the County of Ocean, State of New Jersey, by way of Complaint against the Defendant Township of Millstone, John Doe 1-10, and XYZ Corporations (1-10), hereby says:

**NATURE OF THE ACTION**

1. Plaintiff Mark Philpot, former Crew Chief of the Millstone Township Public Works Department, contends in this lawsuit that his discharge from employment with the said public entity violates New Jersey's Conscientious Employee Protection Act, N.J.S.A. 34:19-1 (CEPA).

## **IDENTIFICATION OF THE PARTIES**

2. Plaintiff Mark Philpot ("Philpot") is, at all relevant times, a resident of the State of New Jersey and was an employee of the defendant Township of Millstone serving in the capacity of Crew Chief of the Millstone Township Public Works Department (DPW).
3. Defendant Township of Millstone ("Millstone") is, at all times relevant hereto, a public entity located in Monmouth County, New Jersey. The Millstone Township Committee (the Committee) is Millstone's legislative body and is comprised of 5 elected officials. The Committee may investigate the conduct of any department, officer or agency of the municipal government.
4. Defendants John and Jane Does (1-10) and XYZ Corporations (1-10) are fictitious names for any presently unknown person(s), corporation(s), partnership(s), business and/or entity who, at times relevant hereto, aided and abetted defendant Millstone in effecting the retaliatory wrongful discharge of plaintiff Philpot from his former position of employment with Millstone.

## **GENERAL ALLEGATIONS**

5. On or about December 18, 2003, Philpot became employed with the Millstone Department of Public Works (DPW) in the position of Operator I.
6. In or about January 2008, Philpot was promoted to a DPW Crew Chief position.
7. In or about August 2009, Jeffrey Hawk ("Hawk") was hired by Millstone to work in its DPW.
8. In or about January 2010, Hawk was made a full-time employee of the DPW in the position of Equipment Operator I.

9. Hawk has been and continues to be a probationary employee as of the date of this Complaint.
10. Ever since Hawk's hiring, the functioning of the DPW has been disrupted by his unprofessional and unlawful behavior.
11. Philpot has brought the unlawful conduct of Hawk and other DPW employees to the attention of his superiors such as Millstone Mayor Nancy A. Grbeja ("Grbeja"), and former Millstone Administrator James Pickering ("Pickering"). All references herein to Grbeja and Pickering are in their official capacities as officials and administrators of Millstone.
12. For example, on or about February 8, 2010, Philpot informed Pickering and Grbeja of his suspicion that certain DPW employees, including Hawk, were smoking marijuana while on the job.
13. The DPW employees suspected of on the job drug use were informed by Pickering and/or Grbeja of Philpot's suspicions of them and of an impending drug test.
14. Defendants Millstone, Pickering and Grbeja failed to keep confidential Philpot's concerns about certain DPW employees using drugs on the job.
15. The DPW employees identified by Philpot were not drug tested until some six weeks after Philpot's complaints.
16. Thereafter, the DPW employees identified by Philpot became angry and hostile towards him.
17. Another example of unlawful conduct reported to Millstone by Philpot is found in Hawk's misuse and misappropriation of Millstone vehicles in order to perform personal jobs for

and errands for and on behalf of Grbejla such as picking up horse feed or bedding, and cleaning litter boxes during the work day.

18. In violation of Millstone policy, and state law prohibiting the misappropriation and misuse of public property and employees for private benefit, Grbejla has requested Hawk and other DPW employees to run similar errands for her in Millstone vehicles during their work day.
19. Philpot complained to Pickering and Grbejla about the improper use of Millstone resources and employees, but no action was taken to address or resolve the situation.
20. On or about March 16, 2010, Hawk similarly misappropriated Millstone property by replacing a tire on Grbejla's personal truck with a tire that was removed from a Township truck.
21. Philpot complained to Grbejla about Hawk's misconduct. Again, no corrective action was taken.
22. The next day, March 16, 2010, Hawk attempted to engage Philpot in a physical altercation, but Philpot was able to diffuse the situation. Thereafter, Hawk informed Philpot that Grbejla had told him about Philpot's complaints.
23. In response to his complaints to Grbejla and Pickering, Philpot was subject to retaliatory and hostile treatment by Grbejla and Pickering in the form of being constantly belittled, badgered and harassed over assignments that could not be accomplished in the unreasonable time parameters set by them.
24. On or about April 10, 2010, Philpot's doctor put him out of work due to stress caused by the hostile environment he was experiencing while working at the Millstone DPW.

25. In response to Philpot's doctor placing him out of work on temporary disability, and as an example of his overbearing conduct toward Philpot, defendant Pickering called Philpot's treating doctor in an attempt to obtain information about Philpot's medical condition. Philpot's doctor properly refused Pickering's unlawful attempt to obtain Philpot's confidential medical information.
26. On May 12, 2010, Philpot sent an e-mail to Pickering, a copy of which is attached, complaining about retaliation and asking to be reassigned as an Equipment Operator in order to quell the harassment to which he was being subject. Philpot received no response to his request.
27. On May 17, 2010, Millstone received a letter from Philpot's attorney Stephan T. Mashel, Esquire, office demanding the Township to immediately cease and desist all hostile and retaliatory actions against Philpot.
28. In blatant disregard of the warning and in reckless disregard and violation of the laws of the State of New Jersey, Millstone dramatically escalated its retaliatory conduct towards Philpot.
29. On or about May 24, 2010, Millstone hired two investigators, Tom Beatty and Richard Daitman, to allegedly "investigate matters pertaining to the Department of Public Works." Upon information and belief, these investigators were hired shortly after Millstone's receipt of Mr. Mashel's May 17, 2010 letter requesting that the Township to cease and desist all retaliatory action against Philpot.
30. It is alleged Millstone hired the investigators in furtherance of its continued retaliatory harassment of Philpot. Indeed, the investigation was incomplete and faulty, as plaintiff believes no written report was prepared and the persons to whom the investigators spoke never identified.

31. Philpot was not interviewed by Millstone's retained investigators.
32. On May 25, 2010, Philpot was informed by Millstone's Township Clerk and its Deputy Mayor, in the presence of two New Jersey State Troopers who they saw fit to have present, that he was being suspended without pay effective immediately.
33. On or about May 25, 2010, Millstone suspended Philpot without pay, in direct violation of his *Loudermill* rights and the Conscientious Employee Protection Act ("CEPA"). Further, the Township failed at the time to identify why Philpot had been suspended.
34. On June 8, 2010, Millstone significantly escalated its retaliation against Philpot by directing its Conservation Officer to appear at Philpot's home in order to retrieve a set of deer antlers and issue to Philpot a summons for having possession of the deer antlers without a tag.
35. Philpot obtained the deer antlers in August of 2009 when Ken Gann ("Gann"), the then Director of the Millstone DPW, directed Philpot to remove a deer carcass from a resident's front lawn and gave him permission to remove the deer antlers.
36. In August of 2009 Philpot did not think his actions were unlawful as he was acting with the permission of Mr. Gann and had removed deer antlers for the benefit of Pickering a year earlier in a similar situation.
37. The Conservation Officer who issued the summons to Mr. Philpot was apologetic that he had been sent to collect the antlers and issue a summons. He stated that he thought the situation was petty, but that it was political and that Millstone's Township Committee was forcing the issuance of a summons.

38. Upon information and belief, no summonses were issued against Administrator Pickering for being in possession of deer antlers without a tag, or Elsbree, a DPW employee who is/was in possession of at least three deer antlers without tags.
39. On June 15, 2010, Mr. Mashel faxed a letter to Millstone Township Attorney Loren Rosenberg Lightman on behalf of Philpot, which in part, provided the following notice:

"PLEASE TAKE NOTICE, that Mr. Philpot demands that his employment status be discussed in public session, and that he be given the opportunity to address the Township Committee regarding the problems existing at the DPW, the wrongful acts and omissions of Township officials, and his endangered employment status. (emphasis included in original)

\*\*\*

As stated previously, Mr. Philpot has been notified that the Township Committee will discuss the status of Mr. Philpot's employment with the Township tomorrow, June 16, 2010. In anticipation of the Township taking further disciplinary action against my client, the Township is once again implored to cease and desist all hostile and retaliatory conduct towards Mr. Philpot immediately, and to forthwith return him back to work together with payment of all lost back pay. Further, the Township is asked to address and respond to Mr. Philpot's request to be reassigned to the position of Equipment Operator."

40. On or about June 16, 2010, a sham disciplinary hearing was conducted by Millstone which lacked any notion of fundamental due process.
41. Philpot's was not granted his request for the hearing to be conducted in public session.
42. Millstone's public session meetings usually begin at 7:30 p.m. and are videotaped.
43. Millstone's denial of Philpot's request to have his hearing conducted in public session is evidenced by the fact that the change in the time of the regularly scheduled Millstone meeting is not reflected on its website.

44. It was only on the day of the disciplinary hearing that Philpot learned that the disciplinary charges seeking his removal from employment stemmed from his handling of a deer carcass while on the job some 10 months prior on September 9, 2009.
45. Philpot had no reasonable opportunity to prepare or present a defense against those charges, including the basic right to call witnesses.
46. The witnesses who testified at the hearing at the behest of Millstone were not placed under oath.
47. Philpot's union representative was expelled from the disciplinary hearing at the direction of Millstone's Township Attorney.
48. Millstone's denial of Philpot's request to have his hearing conducted in public session is further evidenced by the fact that hearing was not videotaped, as taping only began at that evening at 7:30 p.m., the time of the regularly scheduled meeting.
49. The videotape of the public session conducted by the Millstone Twp. committee was mischievously cut off immediately preceding Philpot addressing the committee about his termination at the end of the public session meeting.
50. At the end of its meeting on June 16, 2010, Millstone terminated Philpot's employment.
51. Based on its treatment of Philpot, Millstone violated New Jersey's Conscientious Employee Protection Act, *N.J.S.A. 34:19-1(CEPA)*.
52. Fictitious defendants John and Jane Does (1-10) and XYZ Corporations (1-10) aided and abetted defendant Millstone in its decision to subject Philpot to a hostile work environment and to wrongfully discharge him.

53. As a result of the hostile and retaliatory actions undertaken by Millstone, John and Jane Does (1-10) and XYZ Corporations (1-10), Philpot has been and continues to suffer economic losses and pecuniary damage in the form of lost income and monetary benefits past, present and future.
54. As a result of the retaliatory and discriminatory actions undertaken by Defendant Millstone, John and Jane Does (1-10) and XYZ Corporations (1-10), Plaintiff Philpot has been and continues to suffer non-economic damages in the form of humiliation, stress, anxiety causing his mental and emotional anguish and dysfunction, and physical manifestations of same including, but not limited to, nervousness, anxiousness, sleeplessness, loss of appetite, anxiety attacks, upset stomach and stomach pains all or some of which may be permanent.

**COUNT TWO**

**VIOLATION OF THE NEW JERSEY CONSCIENTIOUS  
EMPLOYEE PROTECTION ACT (CEPA), N.J.S.A. 34:19-1  
(HOSTILE WORK ENVIRONMENT)**

1. Plaintiff repeats each and ever allegation set forth in paragraphs 1-54 above as if set forth at length herein.
2. Philpot communicated complaints to Millstone and its Mayor and Administrator concerning his reasonable belief that members of the Township DPW were engaging in violations of law and public policy including, but not limited to, illegal drug use and unlawful use and misappropriation of municipal property and employees. Philpot further communicated complaints to Millstone and its Mayor and Administrator about Mayor Grbejla's unlawful use of municipal property and employees and improper personal benefit therefrom.

3. CEPA allows an employee an action for retaliation when the employee discloses, threatens to disclose, objects to, or refuses to participate in certain actions that the employees reasonably believe are either illegal or a violation of public policy and is then subject to a course of retaliator conduct by the employer. Philpot is clearly a person protected under CEPA as the acts that he complained of are violations of the law and Township policies.
4. Defendant Millstone, John and Jane Does (1-10) and XYZ Corporations (1-10), acted jointly or severally, to subject Plaintiff Philpot to a hostile work environment in retaliation for his making those complaints.
5. The decision made by Defendant Millstone, John and Jane Does (1-10) and XYZ Corporations (1-10), acted jointly or severally, to unlawfully harass and then terminate Plaintiff Philpot's employment with Millstone was unlawful, and served to violate CEPA.
6. Defendant Millstone, John and Jane Does (1-10) and XYZ Corporations (1-10), by their collective and/or individual acts and omissions, subjected Plaintiff Philpot to unlawful retaliatory conduct. As such, the said defendants are liable to Plaintiff Philpot for any and all damages, economic and non-economic, which he has and continues to be caused to sustain.
7. Defendants Millstone, John and Jane Does (1-10) and XYZ Corporations (1-10), by their respective officials, administrators, managers, supervisors and/or employees, unlawfully conspired with each other in order to subject Plaintiff Philpot to unlawful retaliatory conduct in violation of CEPA.
8. A person subject to unlawful retaliation is afforded the remedy of *punitive damages*. See N.J.S.A. 34:19-1 et seq. As such, Plaintiff Philpot is entitled to an award of punitive damages against defendants, jointly or severally.

9. Plaintiff Philpot has been compelled to retain counsel in order to file this lawsuit and seek an adjudicated remedy to the damages he has suffered as a result of defendants unlawful conduct. The legislature has determined that a prevailing party may be awarded reasonable counsel fees. N.J.S.A., 34:19-1 et seq. As such, Plaintiff Philpot is entitled to an award of reasonable attorney fees against all named defendants.
10. As a result of the retaliatory and discriminatory actions undertaken by Millstone, John and Jane Does (1-10) and XYZ Corporations (1-10), Plaintiff Philpot has been and continues to suffer economic losses and pecuniary damage in the form of lost income and benefits past, present and future.
11. As a result of the retaliatory and discriminatory actions undertaken by Defendant Millstone, John and Jane Does (1-10) and XYZ Corporations (1-10), Plaintiff Philpot has been and continues to suffer non-economic damages in the form of humiliation, stress, anxiety causing his mental and emotional anguish and dysfunction, and physical manifestations of same including, but not limited to, nervousness, anxiousness, sleeplessness, loss of appetite, anxiety attacks, upset stomach and stomach pains all or some of which may be permanent.

**WHEREFORE**, Plaintiff, Mark Philpot, demands judgment against the Defendant Township of Millstone and John and Jane Does (1-10) and XYZ Corporations (1-10), jointly or severally, as follows:

- a. Directing the Defendants to make Plaintiff Philpot whole for any and all losses he has suffered in the past, present and in the future in terms of lost wages, benefits, insurance and pension coverage, and any other fringe benefits of his employment;
- b. Directing the Defendants, in lieu of reinstating Plaintiff Philpot to his former position with Millstone Township to fully compensate him with front pay and benefits for the aforementioned retaliatory acts;

- c. Directing Defendants to pay Plaintiff Philpot compensatory and consequential damages for any and all non-economic damages including, but not limited to, mental and emotional distress damages, suffered as a result of Defendants' retaliatory acts in violation of New Jersey Conscientious Employee Protection Act;
- d. Directing the Defendants to pay Plaintiff Philpot punitive damages on the grounds that the acts of Defendants and its agents, servants and employees were especially egregious, evil minded and/or were committed with a wanton and willful disregard for the rights of Plaintiff;
- e. Directing Defendants to pay Plaintiff Philpot for all of his attorneys' fees and costs incurred to the full extent permitted under *N.J.S.A. 34:19-1 et seq.* and *Rendine v. Pantzer*, 141 N.J. 292 (1995).
- f. Awarding interest and costs of suit; and
- g. Granting Plaintiff such relief as the Court deems just and proper.

  
\_\_\_\_\_  
Stephan T. Mashel, Esquire  
Attorney for Plaintiff Mark Philpot

Dated: November 15, 2010

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues triable in this action.

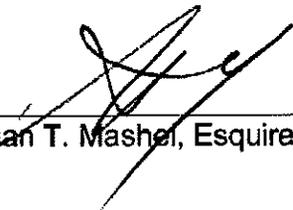
**DESIGNATED TRIAL ATTORNEY**

Stephan T. Mashel, Esquire is hereby designated as plaintiff's trial attorney.

**CERTIFICATION**

I hereby certify to the best of my personal knowledge that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any other action or arbitration contemplated, nor any other parties to be joined EXCEPT for the joinder of the true persons in interest whose names are identified herein as defendants John and Jane Does 1-10 and XYZ Corporations 1-10.

Dated: November 15, 2010

  
\_\_\_\_\_  
Stephan T. Mashel, Esquire

**NOTICE PROHIBITING SPOILIATION OF EVIDENCE**

PLEASE TAKE NOTICE, defendant's failure to prevent spoliation of evidence can result in severe sanctions being imposed by the Court. Furthermore, defendant's obligations to preserve documents and things for discovery in this case arise in law and equity independent of any Order of court or notice from our office. Defendant is hereby placed on notice not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on computers and storage media (e.g., hard drives, hard disks, floppy disks, backup tapes, email accounts), or any other electronic data maintained by the named defendants, such as surveillance or voice mail, that may be construed in any manner as potentially discoverable information in this litigation.

**SETTLEMENT AGREEMENT AND RELEASE**

**THIS SETTLEMENT AGREEMENT AND RELEASE**, (hereinafter referred to as "Agreement"), is made between **MARK PHILPOT**, individually, his representatives, heirs and assigns, (hereinafter referred to as "Plaintiff"); the **TOWNSHIP OF MILLSTONE**, their Elected/Appointed Officials, Directors, Operators, Representatives, Agents, and Employees, (hereinafter referred to as "Defendants").

**WHEREAS**, Plaintiff filed a civil action against Defendants, through an employment lawsuit entitled, *Mark Philpot v. Township of Millstone*, pursuant to Docket No., MON-L-5950-10, (hereinafter referred to as the "Lawsuit"); and

**WHEREAS**, the parties to this Lawsuit having reached a negotiated agreement to fully, and finally, settle all claims among them, including those asserted in the Lawsuit; and

**WHEREAS**, the Defendants have agreed to pay full mediation costs as associated with the negotiations which led the parties to fully, and finally, settle all claims asserted in the Lawsuit, and among them; and

**WHEREAS**, the Lawsuit sought redress from the Defendants, and Plaintiff having advised of his intention to voluntarily dismiss all claims, with prejudice;

**NOW, IN CONSIDERATION** of the payment to Plaintiff as provided for by this Agreement, and for other good and valuable consideration, and the promises and covenants contained herein, the receipt and sufficiency of which the respective parties acknowledge, the parties do hereby agree as follows:

1. Defendants shall pay to Plaintiff, within thirty (30) days following the date of the February 2015 meeting of the Middlesex County Joint Insurance Fund and upon receipt by its

attorneys the law firm of Hoagland, Longo, Moran Dunst & Doukas, LLP, Attention: Craig L. Corson, Esquire, of an executed original of the within Agreement and search reports required herein, by delivering a check to Plaintiff's attorneys Mashel Law, LLC located at 500 Campus Drive, Suite 303, Morganville, New Jersey 07751 made payable to the "Attorney Trust Account of Mashel Law, LLC" in the sum of \$187,500.00 with said check referencing that payment is made on behalf of Plaintiff. Following receipt of the above settlement amount, a Stipulation of Dismissal with prejudice shall be executed, and returned to Defendants for filing. (annexed hereto as **Exhibit A**).

2. Defendants, in accordance with the payments noted within paragraph one of this Settlement Agreement and Release, shall issue to Mashel Law, LLC an applicable Federal Tax Form 1099 in accordance with the above payments. Defendants make no representations regarding the federal, or state, tax consequences of the payments referred to in paragraph one, and shall not be responsible for any tax liability, interest, or penalty incurred by Plaintiff which in any way arises out of, or is related to, said payment. Plaintiff agrees to pay any amount that may be determined to be due and owing as taxes, interest, and penalties arising out of the payment referred to in paragraph one should it be determined that all, or part, of such payments constitute gross income to Plaintiff within the meaning of the Internal Revenue Code of 1986, as amended, or under any other federal, state or local statute, or ordinance. Plaintiff further agrees to (i) hold harmless, and to indemnify, the Defendants for any and all losses and/or damages arising from claims made by the Internal Revenue Service ("IRS"), or any other taxing authority, or other governmental agency, (whether federal, state, or local), which may be made against the Defendants arising out of, or relating to, the Defendants' failure to withhold any portion of the

payment to Plaintiff for income, or social security tax purposes, or for any other purpose, and (ii) to reimburse Defendants for any resulting payments, including without limitation, all penalties, and interest, payable to the Internal Revenue Service, or any other taxing authority, or governmental agency. The parties further agree that Defendants will give to Plaintiff notice of any such claim, and Plaintiff will cooperate with Defendants in the defense of any such claim.

3. In conjunction with the terms of payment as set forth within paragraph one, and by executing this Agreement, Plaintiff certifies that he has complied with the requirements of N.J.S.A. 2A:17-56.23b. Plaintiff understands, and agrees, that payment as referenced in paragraph one will not be released until such time as his Counsel provides Defendants' Counsel with a certified copy of a child support judgment search, performed by a private judgment search company, reflecting that Plaintiff is not a child support judgment debtor. A copy of the Charles Jones Report will be annexed hereto as **(Exhibit B)**, once provided on behalf of Plaintiff.

4. Pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub.L. No. 107-56, § 411(a)(1)(F), 115 Stat. 272 (2001) (the "Patriot Act"), Executive Order 13224, and the enforcement regulations set forth by United States Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), Plaintiff understands, and agrees, that the payment referenced in paragraph one will not be released until such time as his Counsel provides Defendant's Counsel with a certified copy of a search, performed by a private search company, reflecting that Plaintiff is not identified on the list of Specially Designated Nationals and Blocked Persons, generated by the Office of Foreign Assets Control ("OFAC"). Plaintiff further understands, and agrees, that in the event it is revealed that he is identified on the list of Specially Designated Nationals and Blocked Persons,

generated by OFAC, that Plaintiff will not receive any of the proceeds set forth within paragraph one without Court Order. A copy of the Charles Jones Report will be annexed hereto as (Exhibit C), once provided on behalf of Plaintiff.

5. Many Medicare beneficiaries have their medical expenses paid in whole, or in part, by liability insurance, (including self-insured), no-fault insurance, and workers' compensation. Federal law precludes Medicare from making payments for items, or services, for any injury or condition for which a person is entitled to recover under a workers' compensation plan, automobile, or liability insurance policy ("primary payer"), except that such payments may be made by Medicare as conditional payments subject to the right of repayment.

The Centers for Medicare, and Medicaid, Services ("CMS") has a direct priority right of recovery of such conditional payments. As a matter of federal law, this direct priority right of recovery may be enforced against the workers' compensation, automobile, or liability insurer and/or against any entity, (including a beneficiary, provider, supplier, physician, attorney, or state agency), that has received any portion of the primary payer's payment directly, or indirectly. CMS also has a subrogation right with respect to such primary payer's payment. Thus, to the extent Medicare has made, or will make, prior to settlement, any payment for any item or service related to any injury or condition for which Plaintiff is, or may be, receiving as compensation, Medicare is entitled to receive repayment of such conditional payments.

Federal regulations further provide that liability for work-related injuries resulting in future medical expenses after settlement may not be shifted to Medicare by the responsible parties. Applicable regulations require that appropriate steps be taken to allocate a portion of the Medicare beneficiary's workers' compensation settlement in certain cases to pay for the

beneficiary's future work-related injury or illness. Although there are no comparable regulations for third party liability claims at the present time, if a third party liability settlement is intended to release future medical expenses for which Medicare may be asked to pay, a portion of the liability settlement should be allocated to pay for the beneficiary's future medical expenses in appropriate cases.

In addition, Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA"), requires liability insurers, (including self-insureds), no-fault insurers, workers' compensation insurers, and certain claims processing third party administrators, to report specific information about Medicare beneficiaries who may be covered under other insurance. This reporting is to assist CMS and the insurers to properly coordinate the payment of benefits among various plans.

Through this Agreement, Plaintiff is advised that Defendants, to the extent applicable, intend to fully comply with federal law, including the requirements of the MMSEA. Accordingly, if applicable, Defendants will report to Medicare all information concerning the settlement in the subject action, including the full settlement amount, which Defendants deem reasonably necessary for Medicare to make a determination regarding the appropriate coordination of benefits. In part, the reporting requirements are to ensure that Medicare is not asked to pay, and/or does not pay, for any medical expenses associated with, or arising out of, the conditions and/or injuries for which Plaintiff receives settlement proceeds under the terms of the within Agreement.

However, and based on information supplied to Defendants on Plaintiff's behalf, it is asserted that Medicare does not have an interest in the settlement reached in this action.

Therefore, Plaintiff hereby affirms that: (i) Plaintiff is not presently Medicare eligible (ii) Plaintiff has not submitted a request to Medicare seeking benefits for any alleged damages, conditions, or injuries related in any manner to the claim settled in this Lawsuit, (iii) that Plaintiff has not applied for Social Security Disability Insurance, and has no plans to apply for Social Security Disability Insurance, in connection with the claims settled in the subject Lawsuit, and (iv) that no portion of any expenses incurred to date in connection with the claims settled in the subject Lawsuit have been paid, or are reasonably expected to be paid, pursuant to any health insurance program provided, or funded in whole or in part, by Medicare or Medicaid.

If it is subsequently determined that Medicare does, in fact, have an interest in this settlement of the claims brought in this Lawsuit, and if Plaintiff fails to follow the requirements, if any, for determining what portion of the settlement proceeds paid in connection with the Lawsuit must be allocated to future medical expenses, ("Allocation"), and/or if Plaintiff further fails to establish, fund, and administer any required Medicare Set-Aside Account ("MSA") for such Allocation, Plaintiff's rights to future Medicare coverage and/or benefits could be adversely impacted. In particular, Medicare could determine that the entire amount of the settlement proceeds paid in connection with the Lawsuit should be allocated towards future medical expenses and, thereafter, deny Medicare coverage and/or benefits to Plaintiff until the full extent of the settlement proceeds paid in connection with the Lawsuit have been paid towards such future medical expenses.

Through execution of the within Agreement, Plaintiff hereby acknowledges the disclosures set forth herein. As such, and if it is determined that Medicare has an interest in the settlement of the subject action, Plaintiff agrees: (i) that Plaintiff shall bear sole, and continuing,

responsibility to determine whether an Allocation and/or MSA is required with respect to the settlement proceeds paid in connection with the Lawsuit; (ii) that if it is determined that an Allocation and/or MSA is required, it shall be Plaintiff's sole, and continuing, responsibility to contact CMS to work out an appropriate Allocation, and any required MSA with respect to the settlement proceeds paid in connection with the Lawsuit; (iii) that it shall be Plaintiff's sole, and continuing, responsibility to secure, and to follow, all CMS requirements for the establishment, funding, and administration of any required MSA; and (iv) that Plaintiff's failure to discharge any of the foregoing responsibilities could jeopardize Plaintiff's ability to obtain and/or maintain Social Security and/or Medicare coverage and/or benefits to the full extent of any settlement proceeds paid in connection with the Lawsuit.

Plaintiff further acknowledges that all claims for wages, and medical expenses paid or unpaid, and/or liens asserted for wages and medical expenses, paid or unpaid, will be satisfied from the settlement proceeds paid in connection with the Lawsuit. By executing this Agreement, Plaintiff certifies that he has complied with the requirements of 42 U.S.C. 1395y, *et seq.*, and 42 C.F.R. 411.24, *et seq.* Should any subsequent claims be made under these subsections, Plaintiff further agrees to: (i) hold harmless, and to indemnify, Defendants for any, and all, losses and/or damages arising from claims relating to Medicare/Medicaid brought by any governmental agency, (whether federal, state or local), which may be made against Defendants arising out of, or relating to, Defendants' failure to withhold any portion of the payment to Plaintiff for medical lien purposes, or for any other purpose, and (ii) reimburse Defendants for any resulting payments, including without limitation, all penalties and interest payable to any governmental agency.

6. Through this Agreement, Plaintiff hereby releases ,and forever discharges Defendants, their present and former elected officials, appointed officials, affiliates, subsidiaries, parents, owners, partners, officers, directors, agents, attorneys, employees, former employees, representatives, insurers and reinsurers, and all of their successors and assigns, from any and all actions, causes of action, suits, claims, charges or complaints, known or unknown, which Plaintiff has, may have, or may claim to have against any of them for everything that has occurred up to the entry date of this Agreement. Plaintiff further acknowledges that this is a General Release and includes, but is not limited to, claims set forth in the Lawsuit, claims arising under federal, state, and local laws included, but not limited to, claims for violations of the New Jersey Constitution, harassment, failure to act, failure to train, defamation, slander, libel, discrimination, negligence, intentional acts, property damage claims, claims for economic damages, claims for attorney's fees, expenses, and costs, claims for physical, mental, emotional and psychological injuries and for punitive damages. Plaintiff expressly waives all claims allowed under Title VII of the Civil Rights Act, the Civil Rights Acts of 1871 as amended, 42 U.S.C. 1983, and 1991, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* ("LAD"); the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.* ("NJCRA"); and any other law or statute, federal or state or local law or ordinance. This General Release includes all claims, known or unknown, for anything that has occurred up to, and including, the entry date of this Agreement. Notwithstanding the foregoing language, it is agreed that Plaintiff is not releasing any right to continue, bring, or pursue a claim for workers compensation benefits relating to and/or arising out of injuries he sustained during the course of employment with the Defendants.

7. It is specifically understood, and agreed, that the amount paid under this Agreement includes all attorneys' fees and costs to which Plaintiff and/or his Counsel may be entitled. Plaintiff understands that by executing this Agreement that he hereby releases and waives any claim and/or right to attorneys' fees and expenses in connection with the Lawsuit. Neither Plaintiff, his Counsel, or any other Law Firm, nor anyone acting on their behalf, shall make an application for monies in addition to the amount set forth within paragraph one of this Agreement as those amounts are included in the total payment being made herein.

8. Plaintiff further covenants that he will not hereafter file, or cause to be filed on her behalf, any charge, complaint, legal, or administrative action of any nature before any court, or administrative agency to assert any claim against Defendants for anything that has occurred up to and including the entry date of this Agreement.

9. Plaintiff represents that he has not assigned to any third party any claim that she has, may have, or believes she has, or may have, against the Defendants.

10. This Agreement does not constitute, and shall in no manner be construed as, an admission of any wrongdoing, or liability, on the part of Defendants, or as an admission by Defendants as to the validity of any of the Plaintiff's claims as contained in the Lawsuit, and as may have been supplemented during the course of discovery. The Defendants continue to maintain the applicability, and validity of their denials and affirmative defenses as set forth in their Answer to the Plaintiff's Complaint.

11. By executing this Agreement, Plaintiff represents, and acknowledges, that he does not rely, and has not relied, upon any representation, or statement, not set forth in this Agreement made by Defendants, or their Counsel, with regard to the subject matter, basis, or effect of this

Agreement, or otherwise. This Agreement sets forth the entire agreement between the parties, and supersedes any, and all, prior agreements, or understandings between the parties.

12. This Agreement shall be binding, and inure to the benefit of the Plaintiff, and his successors, assigns, heirs, executors, personal, and legal representatives.

13. This Agreement shall be construed in accordance with the laws of the State of New Jersey.

14. The parties agree that the language of this Agreement has been negotiated, is a product of the draftsmanship of all of the parties, and that the usual rule that the provisions of a document are to be construed against the drafter shall not apply to the interpretation of any provisions hereof.

15. The signatures of the parties below indicate they have had an opportunity to review this Agreement with their respective Counsel, that they have read and understood the provisions, and that they have executed it voluntarily with full knowledge of the significance of all provisions.

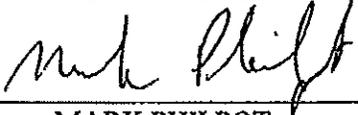
16. In the event any party to this Agreement brings any motion application, court action, lawsuit or other form of proceeding to enforce any provision or provisions of this Agreement, and/or to collect on the monies due and payable under this Agreement, the prevailing party will be indemnified for all reasonable attorney's fees and costs incurred in the preparation, filing, prosecution and argument of such an application, motion, suit, action, proceeding, or claim.

17. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed to be an original.

18. The Plaintiff and Defendants have had opportunity to review this Agreement with their respective attorneys before signing. By affixing their signatures below, they acknowledge that they have carefully read, and fully understand, the provisions of the Agreement and have had sufficient time, and opportunity, to consult with their attorney of choice prior to executing this document, and intend to be legally bound by its terms.

Plaintiff further attests that he has executed this Agreement in a knowing, and voluntary, manner with the full knowledge that he is waiving any and all rights, or claims, he may have to later challenge the sufficiency, scope, or terms of the Agreement and have, again, done so after consultation with his Counsel. Plaintiff further understands that he may revoke his signature within seven (7) days following my signing, understands that his rights under this Agreement are contingent on his signing this Agreement, and not revoking his signature on said document.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement.

BY:   
MARK PHILPOT

STATE OF NEW JERSEY :  
: SS.  
COUNTY OF MONMOUTH :

I CERTIFY that on February 4, 2015, MARK PHILPOT, personally came before me and acknowledged under oath, to my satisfaction, that he is the person named in this Agreement, and that he personally signed this document, and signed, sealed, and delivered this document as his act and deed.

Mashel Law, LLC  
Attorneys for Plaintiff

By:   
STEPHAN T. MASHEL, ESQ.  
Attorney at Law of New Jersey

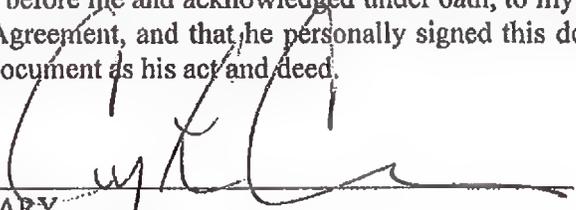
IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement.

TOWNSHIP OF MILLSTONE

BY: 

STATE OF NEW JERSEY :  
: SS.  
COUNTY OF MONMOUTH :

I CERTIFY that on March 4, 2015, MARIA DELLASALA, personally came before me and acknowledged under oath, to my satisfaction, that he is the person named in this Agreement, and that he personally signed this document, and signed, sealed, and delivered this document as his act and deed.

  
NOTARY  
CRAIG L. CORSON  
AN ATTORNEY AT LAW OF THE STATE OF NJ