
Brenda Kormandy and Garis Kormandy, Janice Hosbach, David P. Morrisette and Sandra S. Morrisette,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - WARREN COUNTY
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	
Town of Phillipsburg Town Council,	:	DOCKET NO. WRN-L-248-21
Defendant.	:	

REPLY BRIEF OF PLAINTIFFS

Submitted by:

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and Sandra S. Morrisette. and Janice Hosbach

Dated: May 26, 2022.

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Preliminary Statement

Plaintiffs David Morrisette and Sandra Morrisette and Janice Hosbach file their reply trial brief in this action in lieu of prerogative writs, responding to the Town Council's opposing trial brief (Town Brief). The Town Brief is thin gruel indeed.

In the interests of judicial economy, we will try to avoid any extensive paraphrasing of our brief and exhibits and assume the court is familiar with them.

The Town does not oppose our request to remove Brenda and Garis Kormandy as plaintiffs, and the court should grant that request as unopposed.

Statement Of Relevant Facts: The Town Has No Credibility On The Facts

We ask that the court be mindful throughout that the Town willfully stonewalled our discovery requests and provided only a few misleading pieces of information and almost no requested documents. Plaintiffs were thus compelled through a combination of court record searches and requests under the Open Public Records Act (OPRA) to assemble the necessary documents. The Town complains that this amounted to "hundreds of pages of court filings," Town Brief at 6, but never addresses the contents of these filings, because they are so damning to the Town's arguments. The Town's inexcusable stonewalling renders the Town's arguments not credible.

Since filing our initial brief, the Town has responded to our OPRA requests

for the settlement agreements for the Post-Sheedy and Cappello cases. They are included here as Plaintiffs' Exhibits 5G and 6G. An interlocutory order entered in Post-Sheedy is included as Plaintiffs' Exhibit 5H.

ARGUMENT

The Town's only arguments are (1), that the owner of the beneficiary of the challenged ordinance, Peron Construction, Michael Perrucci, Esq., of the firm of Florio, Perrucci, Steinhardt Cappelli Tipton & Taylor LLC (misspelled in the Town Brief), did not personally represent the Council members, as opposed to other lawyers in that firm, and (2), the representations were not "meaningful" within the ambit of Piscitelli v. Garfield Bd. of Zoning Adjustment, 237 N.J. 333 (2019)(also misspelled in the Town Brief). These arguments are utterly without merit.

We first dispose of the Town's foolish claim in its brief and its sorry response to our discovery that we haven't presented any proof that Mr. Perrucci is, in fact, the owner of Peron. He still identifies himself as the "owner of Peron Construction, Inc., a real estate development company" on his law firm website biography.

<https://www.floriolaw.com/attorney/michael-j-perrucci/>

(The Town Brief relies on that same website for several of its own factual claims.)

He signed the Land Use Board site plan application as "Owner" of Peron and the Phillipsburg LUB resolution of approval noted his ownership. Plaintiffs' Exhibit 2,

pages 4 and 6. The Town does not assert or submit any sworn proof – say, a certification from Mr. Perrucci – that Mr. Peron doesn't own Peron. He does. The court should disregard the Town's foolishness.

1. The Conflicts Are Disqualifying Regardless Of Mr. Perrucci's Role In The Representations

The Town's first argument seems to be that there can be no disqualifying conflict because Mr. Perrucci was supposedly not personally involved in any of the representations. But the Town does not assert or submit any sworn proof – say, a certification from Mr. Perrucci – that Mr. Perrucci wasn't personally involved in the representations. He didn't sign any pleadings or enter an appearance, but that's certainly not the end of the inquiry. It defies the most elementary common sense to assert that Mr. Perrucci would ignore several substantive and complex representations by lawyers in his firm involving the members of a Council who held considerable power over his 35+ acre riverfront property and its development. Many of the Florio Perrucci lawyers have had extensive political involvements, and the "About" page brags about the firm's "government affairs capabilities" and "[o]ur impressive list of attorneys is comprised of diverse men and women who have achieved academic excellence, contribute to their communities, and are able to respond effectively and with consistency in a wide range of areas. Many of the attorneys at Florio Perrucci Steinhardt Cappelli

Tipton & Taylor serve at the Local, County and State level and therefore have a unique understanding of government which is an added value to the legal expertise they provide our clients." <https://www.floriolaw.com/about/>

In other words, this is a law firm that brags about its involvement in politics. We don't say this as a criticism, but to note that it is entirely irrational to assume that Mr. Perrucci showed no interest in the legal fortunes of the Council members who would vote on his very ambitious, very inappropriate massive truck distribution warehouse, and who were being defended by his firm against substantial personal risk in several lawsuits.

It is equally irrational to argue that the defendant Council members were willfully blind to the identity of the owner of the project, who by no coincidence at all was also the founding partner of the law firm that had bailed them out of lawsuits and one criminal proceeding that presented them each with serious personal jeopardy. It doesn't matter that the Council did not vote on the insurer's alleged selection of the law firm, but only that the Florio Perrucci firm did in fact render them very valuable representation.

2. The Representations Were Meaningful In Any Sense Of The Word, And The Town Is Estopped From Arguing Otherwise

We ask the court to examine the Town's sorry responses to our discovery, which from the beginning has been directed at information that might disclose

conflicts of interest, including pertinently, the extent of any representation by the Florio Perrucci firm. Plaintiffs' Exhibit 3A. questions 1a-j, 4, 5, and 6 are all not answered or evasively answered. Not a single document relevant to the lawsuits was provided; see questions 1j and 5. Although question 1 is clearly addressed to the individual Council members, the answers are sworn to by one Robert Bengivenga, Jr., who is apparently the Business Administrator of the Town and plainly lacks personal knowledge of the answers. We discuss below how several of these answers are inaccurate, perhaps willfully so given the five months the Town had to prepare them.

The Town's misconduct on discovery is especially egregious because it has tried this tactic before. Plaintiffs' Exhibit 5H is an order entered in the Post-Sheedy case by then Presiding Judge Thomas C. Miller mandating that the affected Town Council defendants individually answer and swear to discovery questions.

As we explained in our initial brief filed on April 13, at page 2, we received these answers on March 16, less than a month before our initial brief was due. If we were to engage in motions practice, it would have delayed briefing on the merits, and Peron had sought and obtained variance and site plan approval for the warehouse. Time was of the essence if this court were to timely rule on the conflicts, so plaintiffs had no choice but to forego formal motions, even though, as

the Post-Sheedy order demonstrates, we would have prevailed. Plaintiffs were compelled to resort to OPRA requests and court record searches to compile our exhibits.

Because it refused to answer our discovery, which included questions seeking the extent and nature of the legal representations, the Town should be estopped from arguing that the representations were not, in fact, meaningful. See, e.g., Knorr v. Smeal, 178 N.J. 169 (N.J. 2003), in which the court denied a defendant the opportunity to pursue a motion to dismiss because of its dilatory behavior in not filing the affidavit of merit motion on a timely basis. The Court said "[i]n short, to establish equitable estoppel, plaintiffs must show that defendant engaged in conduct, either intentionally or under circumstances that induced reliance, and that plaintiffs acted or changed their position to their detriment." Id. at 178.

In any event, the Town's argument is devoid of merit. The Town appears not to have read our briefs and those "hundreds of pages of court filings" it complains about, because they show that the representations of the Council members were certainly "meaningful."

With regard to the four lawsuits based on allegations of mistreatment of Town employees, the Town incorrectly asserts that the Council members were sued in their official capacities. That is not what the actual complaints show. Each Council member was sued in his or her individual capacity and each complaint

seeks monetary damages against those Council members. As we noted in our initial brief, if any member had been found to have engaged in deliberate wrongdoing, and that certainly describes the retaliatory actions the members took against the plaintiffs, they faced not only the possibility that there could be no insurance benefits but also the very real possibility that the Town would deny them indemnification. The possible denial of indemnification was not based on "punitive damage" claims, as the Town Brief asserts at 7, but based on the Town's code provision denying indemnification for "willful misconduct." The settlements, which totaled \$485,500, removed this personal jeopardy. We were not told how much these representations cost, which also would have been relevant to the test of "meaningful."

The Town does not deny that the law requires that a conflict of any one Council member must void the Council action. Then-Council President McVey, in addition to the four lawsuits involving mistreatment of Town employees, was also arrested for driving under the influence and leaving the scene of an accident, among other charges. He faced loss of his license and a term of incarceration. His Florio Perrucci lawyer was able to negotiate a plea deal of a three-month license suspension, \$1,039 in fines and no jail. This was no "limited private representation[]," as the Town Brief claims at 7. Mr. McVey also received the benefit of Florio Perrucci efforts in another lawsuit in which Mayor Ellis sought

indemnification for his legal fees. Thus, as we pointed out, Mr. McVey had every reason to be very grateful for his substantial Florio, Perrucci assistance.

In attempting to distinguish the case of Piscitelli v. Garfield Zoning Board, 237 N.J. 333 (2019), the Town tries to argue, without any proof, that a physician-patient relationship is meaningful while a lawyer-client relationship is not. That argument is defeated by the very excerpt they quote at page 8. In discussing what it meant by a "meaningful" relationship, the Court said, "[a] primary-care physician who examines a patient annually and tends to the patient's health-care issues as they arise or the surgeon who performs a life-altering or -enhancing procedure will fall within the sphere of a meaningful relationship that should prompt disqualification." Id. at 359-360. By the very same logic, a law firm that performs the "life-altering or -enhancing procedure" of saving a Council member from hundreds of thousands of dollars of damages, or a term of jail time, is performing meaningful services.

The Town tries to distinguish the other cases cited by the plaintiffs by noting minor factual differences instead of addressing the strong legal standards enunciated in the cases. Since the Town never addresses the facts of the conflicting lawsuits here, these efforts are unavailing. Somewhat mysteriously, the Town cites to Petrick v. Planning Board of Jersey City, 287 N.J. Super. 325 (App. Div. 1996), but it doesn't support the Town. The Town correctly notes that the

court found the alleged conflict too remote: one Board member's wife worked only occasionally at the applicant hospital, and there was no suggestion that she would benefit in any way from the proposed parking garage. The Town doesn't mention, however, that the affected Board member vigorously opposed the application and voted against it. Id. at 332.

A cursory examination of the case jackets and pleadings we filed as exhibits will prove that these representations were prolonged and involved numerous conferences and motions before settlement. The communications between the Council members and their Florio Perrucci lawyers would have included extensive disclosures of the facts relating to the mistreatment of Town employees and other incriminating and embarrassing information.

Post-Sheedy was filed on February 28, 2018, and did not settle until March 3, 2020. Plaintiffs' Exhibit 5A. Mr. McVey was arrested for driving under the influence and leaving the scene of an accident on June 28, 2018, and his guilty pleas were entered on February 26, 2019. Plaintiffs' Exhibit 4. Cappello was filed on November 11, 2018, and also settled on March 3, 2020. Plaintiffs' Exhibit 6A. Corcoran was filed on January 16, 2020, and settled on July 21, 2021. Plaintiffs' Exhibit 7A. Thompson was filed on May 20, 2020, and settled on April 14, 2021. Plaintiffs' Exhibit 8A.

Thus, as to Mr. McVey alone, he was being represented in four civil lawsuits

seeking hundreds of thousands of dollars against him personally, for which he might not be insured or indemnified, and defending a drunk driving arrest with the possibility of jail, from February 28, 2018, to July 21, 2021, a period of three-and-a-half years.

Council members DeGerolamo and Fulper were also represented in the four civil lawsuits. Ellis, the suit in which the former mayor was seeking reimbursement of legal fees, was filed on February 26, 2018, and final judgment was entered on September 4, 2019. Mr. Fulper also received the benefit of Florio Perrucci efforts in Ellis in that same time period.

Finally, in what is surely chutzpah, the Town that refused to accurately answer discovery aimed at these issues, and refused to provide any responsive documents at all, suggests that this court should remand for fact-finding. Town Brief at 9. Significantly, the Town does not specify what any additional fact-finding would seek or accomplish. There is more than enough record evidence for this court to rule that the conflicts are disqualifying, but in any event, the Town's discovery misconduct mandates that no remand is justified.

CONCLUSION

An impartial observer might consider that such an extraordinarily inappropriate project for Phillipsburg's last undeveloped riverfront property has no logical explanation other than the pressure of the conflicts. While the wisdom of

the proposal is not before the court, the rife and material conflicts of the Council that approved it are, and they require that the ordinance of approval be declared void ab initio.

Plaintiffs also request that the court remove Brenda and Garis Kormandy as plaintiffs.

Respectfully submitted,

POTTER AND DICKSON

 /s/ Peter Dickson

Peter Dickson

Attorney for Plaintiffs

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and Sandra S. Morrisette
and Janice Hosbach

Brenda Kormandy and Garis Kormandy, : SUPERIOR COURT OF NEW JERSEY
Janice Hosbach, David P. Morrisette and : LAW DIVISION - WARREN COUNTY
Sandra S. Morrisette, :
Plaintiffs, : Civil Action
v. :
Town of Phillipsburg Town Council, : DOCKET NO. WRN-L-248-21
Defendant. :

CERTIFICATION OF DAVID P. MORRISETTE

1. I am David P. Morrisette, an adult resident of New Jersey and one of the plaintiffs in this action. I have personal knowledge of these facts.

2. I certify that Plaintiffs' Exhibits 5G and 6G are true and correct copies of settlement agreements which I obtained on May 12, 2022, from the Town of Phillipsburg in response to earlier OPRA requests.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.


David P. Morrisette

Dated: May 26, 2022.

1-6 pgs.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

WHEREAS, Kelly Post-Sheedy (hereinafter referred to as "Post-Sheedy" or "Plaintiff"), having filed a complaint against her former employer, Town of Phillipsburg, and Council Members Robert Fulper, Danielle DeGerolamo, and Frank McVey (collectively "Defendants"), in the Superior Court of New Jersey, Law Division, Warren County bearing Docket No. WRN-L-59-18, asserting claims arising out of and relating to Plaintiff's employment with the Town (hereinafter the "litigation"); and

WHEREAS, Post-Sheedy and the Defendants (hereinafter jointly referred to as the "parties") seek to amicably resolve any and all matters in controversy, disputes, causes of action, grievances, claims, contentions and differences between them; and

WHEREAS, the Defendants, including their successors, assigns, and representatives, and all of their present and former elected officials, officers, agents, directors, supervisors, attorneys, insurers, reinsurers, employees, and each and every one of them and their heirs, executors, administrators, successors, and assigns, and all persons acting by, through, under or in concert with any of them (hereinafter "Releasees"), believe they acted lawfully and properly at all times and in all respects and specifically deny any and all liability for the claims asserted by Post-Sheedy, comply in good faith to its insurance carrier's desire to avoid the legal fees and expenses that necessarily will result from further litigation; and

WHEREAS, the parties, who have received independent legal advice in this matter, wish to settle the litigation in a manner that will obviate the need for further litigation of the above-mentioned action and will preclude the bringing of any other claim, cause, proceeding or action



against Releasees by providing Post-Sheedy with an amount of money that will recompense her for any and all of her respective claims, including her respective costs and attorneys' fees;

NOW, THEREFORE, in consideration of the total gross sum of ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$170,000.00) as damages for Post-Sheedy's claims and her attorneys' fees, the parties have reached a full and final compromise and settlement of any and all matters in controversy, and Plaintiff hereby agrees as follows:

1. **RELEASE FROM POST-SHEEDY:** Plaintiff irrevocably and unconditionally releases and forever discharges, for herself, her heirs, beneficiaries, executors, administrators, representatives, successors and assigns, Releasees from any and all manner of action and actions, cause and causes of action, suits, claims, grievances, debts, sums of money, accounts, reckonings, bonds, bills, claims for attorneys' fees, interest, expenses and costs, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands of any nature whatsoever known or unknown, suspected or unsuspected, in law or in equity, civil or criminal, vested or contingent, which Post-Sheedy ever had, now has or asserts against Releasees, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date hereof, including, though not by way of limitation, all matters which were asserted or could have been asserted in all actions or claims identified above or any matter arising out of Post-Sheedy's employment with the Town of Phillipsburg, and any other state or federal statutory, constitutional, contract or common law claims.

2. **DISMISSAL OF ACTION:** Post-Sheedy understands and agrees that this Agreement terminates the above-referenced litigation with prejudice and any and all claims related to the facts giving rise to the litigation.

3. **FEES AND COSTS:** Post-Sheedy further understands and agrees that

the parties are to bear their own fees and costs and that neither is a prevailing party under any applicable law, statute or regulation.

4. **PAYMENT:** Post-Sheedy understands that, in consideration for the promises and agreements set forth herein, the Releasees agree to pay to Post-Sheedy the gross amount of ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$170,000.00) payable as one check in the amount of \$170,000.00 payable to McDonnell Artigliere Trust Account, subject to a Form 1099. Post-Sheedy further understands and agrees that the payment of the monies herein set forth does not constitute an admission of liability or violation of any applicable law, contract provisions, benefit plan, rule nor regulation, as to which Releasees expressly deny any such liability or violation and that the Defendants have only agreed to resolve the litigation in good faith at the recommendation and decision of its insurance carrier. Payment of the money set forth herein will not be due and owing until thirty (30) days after (a) the executed Settlement Agreement and Release is received by Pádraig P. Flanagan, Esq., from Post-Sheedy and (b) the completed and executed W-9 form is received by Pádraig P. Flanagan, Esq.

5. **INCOME TAXATION:** Post-Sheedy understands and agrees that payment of monies herein set forth is in the nature of compensation for any and all claims including, but not limited to, alleged wages, personal injuries (pain and suffering), emotional distress injuries, and attorneys' fees and costs claimed by her. Post-Sheedy has full and complete responsibility for any taxes, penalties or assessments of any kind, which may become due in connection with payments made under this Agreement for which Defendants did not withhold taxes. Post-Sheedy understands that certain taxing authorities may, subsequent to this Agreement, characterize payments made under this Agreement in a manner different from that which is intended by the parties and reflected in this Agreement. Post-Sheedy agrees to accept

full, complete, sole and entire responsibility for any tax liability, interest or penalty that may be assessed against or incurred by the Releasees as a result of not withholding taxes on any monies paid pursuant to this Agreement, and Post-Sheedy agrees to indemnify and hold harmless and pay to the Releasees an amount equal to such tax liability, interest or penalty, including Releasees' share of FICA should it be assessed against the Releasees for payments which Defendants' insurance carrier issued a Form 1099.

6. **MEDICARE REPRESENTATION:** Post-Sheedy represents that she is not Medicare eligible, or if she is Medicare eligible, that she is not enrolled and that Medicare has not (pursuant to 42 U.S.C. § 1395y(b) and the corresponding regulations) made any conditional payments for medical services or items provided to her and arising from or relating to any claim, accident, occurrence, act, error, omission, bodily injury, disease, loss, or damages that are subject to the settlement and release herein. Post-Sheedy agrees to defend, indemnify, and hold harmless Releasees from any and all claims arising from or relating to Medicare claims.

7. **CONSIDERATION:** Post-Sheedy acknowledges that the only consideration for signing this Agreement is as set forth in this Agreement, that the consideration received for executing this Agreement is greater than that ordinarily provided by Releasees under any contract, severance plan, policy or practice; that no other promises of any kind have been made to her by any person or entity whatsoever to cause her to sign this Agreement; that she is competent to execute this Agreement; and she has been advised and given the opportunity to consult advisors, legal and otherwise, of her own choosing; and that she fully understands the meaning and intent of this Agreement. Post-Sheedy specifically represents that she has been represented in this matter by the Law Offices of McDonnell Artigliere, and this Agreement has been explained to her by her counsel.

8. **CHOICE OF LAW AND FORUM:** The Agreement shall in all respects be interpreted, enforced, governed under the substantive and procedural laws of the State of New Jersey, without regard to principles of conflicts of law. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the parties. The parties consent and stipulate to the personal jurisdiction of the State of New Jersey in any subsequent proceeding to enforce this Agreement.

9. **INVALIDITY:** Should any provisions of this Agreement be declared to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this Agreement.

10. **ENTIRE AGREEMENT:** This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements or understandings, written or oral, between the parties hereto pertaining to the subject matter hereto. Post-Sheedy represents and acknowledges that in executing this Agreement she does not rely and has not relied upon any representation or statement made by any of the Releasees or by any of the Releasees' agents, representatives or attorneys, with regard to the subject matter or effect of this Agreement or otherwise, other than as specifically stated in this written Agreement. Post-Sheedy further declares that in making this Settlement Agreement and General Release she relies entirely upon her own judgment, belief and interests and the advice of her counsel.

11. **NO COERCION:** Post-Sheedy acknowledges that she has executed this Agreement after consulting with her attorneys and considering the terms of the Agreement. Post-Sheedy further acknowledges that she has read this Agreement in its entirety, understands

all of the terms and freely, voluntarily and knowingly, without duress or coercion, assents to all the terms and conditions contained herein.

By signing below, Post-Sheedy indicates that she has carefully read and understands the terms of this Agreement, that she enters into this Agreement knowingly, voluntarily and of her own free will, and that she understands its terms and significance and intends to abide by its provisions without exception.

Dated: 3/10/2020

Kelly Post-Sheedy

KELLY POST-SHEEDY

Dated: 3/12/2020 BY:

Todd M. Tersigni

TODD M. TERSIGNI, Mayor
Town of Phillipsburg.

1-8 pgs.

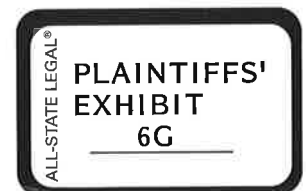
SETTLEMENT AGREEMENT AND GENERAL RELEASE

WHEREAS, Samuel R. Cappello (hereinafter referred to as "Cappello" or "Plaintiff"), having filed a complaint against his employer, Town of Phillipsburg, and Council Members Robert Fulper, Danielle DeGerolamo, and Frank McVey (collectively "Defendants"), in the Superior Court of New Jersey, Law Division, Warren County bearing Docket No. WRN-L-127-18, asserting claims arising out of and relating to Plaintiff's employment with the Town (hereinafter the "litigation"); and

WHEREAS, Cappello and the Defendants (hereinafter jointly referred to as the "parties") seek to amicably resolve any and all matters in controversy, disputes, causes of action, grievances, claims, contentions and differences between them; and

WHEREAS, the Defendants, including their successors, assigns, and representatives, and all of their present and former elected officials, officers, agents, directors, supervisors, attorneys, insurers, reinsurers, employees, and each and every one of them and their heirs, executors, administrators, successors, and assigns, and all persons acting by, through, under or in concert with any of them (hereinafter "Releasees"), believe they acted lawfully and properly at all times and in all respects and specifically deny any and all liability for the claims asserted by Cappello, comply in good faith to its insurance carrier's desire to avoid the legal fees and expenses that necessarily will result from further litigation; and

WHEREAS, the parties, who have received independent legal advice in this matter, wish to settle the litigation in a manner that will obviate the need for further litigation of the above-



mentioned action and will preclude the bringing of any other claim, cause, proceeding or action against Releasees by providing Cappello with an amount of money that will recompense him for any and all of his respective claims, including his respective costs and attorneys' fees;

NOW, THEREFORE, in consideration of the total gross sum of ONE HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$122,500.00) as damages for Cappello's claims and his attorneys' fees, the parties have reached a full and final compromise and settlement of any and all matters in controversy, and Plaintiff hereby agrees as follows:

1. ***RELEASE FROM CAPPELLO:*** Plaintiff irrevocably and unconditionally releases and forever discharges, for himself, his heirs, beneficiaries, executors, administrators, representatives, successors and assigns, Releasees from any and all manner of action and actions, cause and causes of action, suits, claims, grievances, debts, sums of money, accounts, reckonings, bonds, bills, claims for attorneys' fees, interest, expenses and costs, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands of any nature whatsoever known or unknown, suspected or unsuspected, in law or in equity, civil or criminal, vested or contingent, which Cappello ever had, now has or asserts against Releasees, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date hereof, including, though not by way of limitation, all matters which were asserted or could have been asserted in all actions or claims identified above or any matter arising out of Cappello's employment with the Town of Phillipsburg, and any other state or federal statutory, constitutional, contract or common law claims ("Released Matters").

2. ***DISMISSAL OF ACTION:*** Cappello understands and agrees that this Agreement terminates the above-referenced litigation with prejudice and any and all claims related to the facts giving rise to the litigation.

3. **FEES AND COSTS:** Cappello further understands and agrees that the parties are to bear their own fees and costs and that neither is a prevailing party under any applicable law, statute or regulation.

4. **PAYMENT:** Cappello understands that, in consideration for the promises and agreements set forth herein, the Releasees agree to pay to Cappello the gross amount of ONE HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$122,500.00) payable as one check in the amount of \$122,500.00 payable to McDonnell Artigliere Trust Account, subject to a Form 1099. Cappello further understands and agrees that the payment of the monies herein set forth does not constitute an admission of liability or violation of any applicable law, contract provisions, benefit plan, rule nor regulation, as to which Releasees expressly deny any such liability or violation and that the Defendants have only agreed to resolve the litigation in good faith at the recommendation and decision of its insurance carrier. Payment of the money set forth herein will not be due and owing until thirty (30) days after (a) the executed Settlement Agreement and Release is received by Pádraig P. Flanagan, Esq., from Cappello and (b) the completed and executed W-9 form is received by Pádraig P. Flanagan, Esq.

5. **INCOME TAXATION:** Cappello understands and agrees that payment of monies herein set forth is in the nature of compensation for any and all claims including, but not limited to, alleged wages, personal injuries (pain and suffering), emotional distress injuries, and attorneys' fees and costs claimed by him. Cappello has full and complete responsibility for any taxes, penalties or assessments of any kind, which may become due in connection with payments made under this Agreement for which Defendants did not withhold taxes. Cappello understands that certain taxing authorities may, subsequent to this Agreement, characterize payments made under this Agreement in a manner different from that which is intended by the

parties and reflected in this Agreement. Cappello agrees to accept full, complete, sole and entire responsibility for any tax liability, interest or penalty that may be assessed against or incurred by the Releasees as a result of not withholding taxes on any monies paid pursuant to this Agreement, and Cappello agrees to indemnify and hold harmless and pay to the Releasees an amount equal to such tax liability, interest or penalty, including Releasees' share of FICA should it be assessed against the Releasees for payments which Defendants' insurance carrier issued a Form 1099.

6. MEDICARE REPRESENTATION: Cappello represents that he is enrolled in Medicare.

a. The following definitions apply to Section 6 of the Agreement:

1. "CMS" means the Centers for Medicare & Medicaid Services within the U.S. Department of Health and Human Services, including any agents, representatives, or contractors of CMS, such as the Coordination of Benefits Contractor ("COBC") or Medicare Secondary Payer Recovery Contractor ("MSPRC").

2. "Conditional Payments" shall have the meaning ascribed to it under the MSP Statute and implementing regulations.

3. "Medicare Beneficiary" or "Medicare Plaintiff" means any Plaintiff for whom Medicare has made Conditional Payments for the treatment of injuries arising out of or related to the Released Matters.

4. "MMSEA" means the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), which, in part, amended the Medicare Secondary Payer statute at 42 U.S.C. § 1395y(b)(7) and (8). This portion of MMSEA is referred to herein as "Section 111 of MMSEA."

5. "MSP Statute" means the Medicare Secondary Payer ("MSP") Statute, 42 U.S.C. § 1395y(b).

b. Plaintiff represents and warrants that he has received no Medicare benefits for medical services or items related to, arising from, or in connection with the Released Matters.

c. Plaintiff acknowledges and agrees that it is Plaintiff's responsibility pursuant to this Agreement, and not the responsibility of Releasees, to reimburse Medicare for any Conditional Payments made by Medicare on behalf of Plaintiff that have been or may be identified by CMS.

d. Plaintiff represents and warrants that no Medicaid payments have been made to or on behalf of Plaintiff and that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to any Released Matters. Plaintiff further agrees that Plaintiff, and not Releasees, shall be responsible for satisfying all such liens, claims, demands, subrogated interest, or causes of action that may exist or have been asserted or that may in the future exist or be asserted.

e. To the extent that Plaintiff's representations and warranties related to Plaintiff's Medicare status and receipt of medical services and items related to the Released Matters are inaccurate, not current, or misleading, Plaintiff agrees to indemnify and hold harmless Releasees from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare, arising from or related to this Release, the payment of the settlement amount, any Conditional Payments made by Medicare, or any medical expenses or payments arising from or related to any Released Matters, including but not limited to: (i) all claims and demands for reimbursement of Conditional Payments or for

damages or double damages based upon any failure to reimburse Medicare for Conditional Payments; (ii) all claims and demands for penalties based upon any failure to report, late reporting, or other inaccurate, or inadequate information provided to Releasees by Plaintiff or Plaintiff's Counsel or upon any failure of Plaintiff or Plaintiff's Counsel to provide information; and (iii) all Medicaid liens. This indemnification obligation includes all damages, double damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of Releasees in connection with such claims, demands subrogated interests, or causes of action.

f. It is understood and agreed that: Releasees have relied expressly upon the promises, representations, and warranties made by Plaintiff and Plaintiff's Counsel in this Agreement; that any breach of such promises, representations, and warranties would constitute a material breach of this Agreement; and that in the event of any such breach, Releasees shall be entitled to any and all of the following relief: (i) the immediate repayment to Releasees of the full settlement amount; (ii) the indemnification and hold harmless protection set forth in Section 6 of the Agreement; (iii) specific enforcement of all promises and undertakings made by Plaintiff and Plaintiff's Counsel hereunder; and (iv) all other relief and damages available at law or in equity.

g. Included in the Released Matters is Plaintiff's release of any claim or cause of action that Plaintiff may have against Releasees under the MSP Statute, including any private cause of action under 42 U.S.C. § 1395y(b)(3)(A).

7. **CONSIDERATION:** Cappello acknowledges that the only consideration for signing this Agreement is as set forth in this Agreement, that the consideration received for executing this Agreement is greater than that ordinarily provided by Releasees under any contract, severance plan, policy or practice; that no other promises of any kind have been made

to him by any person or entity whatsoever to cause him to sign this Agreement; that he is competent to execute this Agreement; and he has been advised and given the opportunity to consult advisors, legal and otherwise, of his own choosing; and that he fully understands the meaning and intent of this Agreement. Cappello specifically represents that he has been represented in this matter by the Law Offices of McDonnell Artigliere, and this Agreement has been explained to him by his counsel.

8. **CHOICE OF LAW AND FORUM:** The Agreement shall in all respects be interpreted, enforced, governed under the substantive and procedural laws of the State of New Jersey, without regard to principles of conflicts of law. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the parties. The parties consent and stipulate to the personal jurisdiction of the State of New Jersey in any subsequent proceeding to enforce this Agreement.

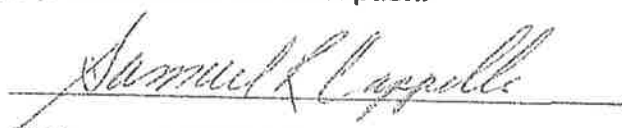
9. **INVALIDITY:** Should any provisions of this Agreement be declared to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this Agreement.

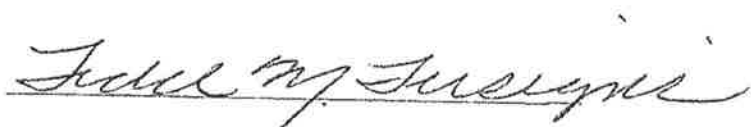
10. **ENTIRE AGREEMENT:** This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements or understandings, written or oral, between the parties hereto pertaining to the subject matter hereto. Cappello represents and acknowledges that in executing this Agreement he does not rely and has not relied upon any representation or statement made by any of the Releasees or by any of the Releasees' agents, representatives or attorneys, with regard to the subject matter or effect of this Agreement or otherwise, other than as specifically stated in this written Agreement. Cappello

further declares that in making this Settlement Agreement and General Release he relies entirely upon his own judgment, belief and interests and the advice of his counsel.

11. **NO COERCION:** Cappello acknowledges that he has executed this Agreement after consulting with his attorneys and considering the terms of the Agreement. Cappello further acknowledges that he has read this Agreement in its entirety, understands all of the terms and freely, voluntarily and knowingly, without duress or coercion, assents to all the terms and conditions contained herein.

By signing below, Cappello indicates that he has carefully read and understands the terms of this Agreement, that he enters into this Agreement knowingly, voluntarily and of his own free will, and that he understands its terms and significance and intends to abide by its provisions without exception.

Dated: 3/11/20 
SAMUEL R. CAPPELLO

Dated: 3/12/2020 BY: 
TODD M. TERSIGNI, Mayor
Town of Phillipsburg.

McDONNELL ARTIGLIERE
John F. McDonnell, Esq.
NJ Attorney ID No.: 000871984
60 Youmans Avenue
Washington, NJ 07882
(908) 689-5885
Attorneys for Plaintiff

KELLY POST-SHEEDY,
Plaintiff,

v.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,
Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY
DOCKET NO.: WRN-L-000059-18

Civil Action

ORDER COMPELLING DISCOVERY

THIS MATTER having been presented to the Court on application of McDonnell Artigliere, attorneys for plaintiff, for an Order directing each defendant to provide separate sets of Answers to Interrogatories, directing each defendant to provide Certifications with their Interrogatory Answers and directing each defendant to provide responsive Answers to Interrogatory numbers 28, 36 and 37; and the Court having considered the arguments and submissions of counsel; and for good cause shown:

IT IS on this 26th day of April, 2019 ORDERED as follows:

1. Defendants Town of Phillipsburg, Robert Fulper, Danielle DeGerolamo and Frank McVey shall provide separate sets of Answers to the Interrogatories served on them by plaintiff within twenty days of the date of this Order;

2. Each of the four defendants shall provide Certifications in the form required by Rule 1:4-4 with their Answers to Interrogatories within twenty days hereof;



3. Each defendant shall provide a responsive Answer to Interrogatory numbers 28, 36 and 37 within twenty days hereof;

4. A copy of this Order shall be served upon all counsel of record within five (5) days hereof.

/s/ THOMAS C. MILLER, P.J.Cv.

Thomas C. Miller, P.J.Cv.

XXX. Opposed

The Court's Findings of Facts and Conclusions of Law were placed on the record in open Court on April 25, 2019