



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Sean Gaven, *et al.*,
City of Newark

CSC Docket Nos. 2017-2400, *et al.*

Administrative Appeals

ISSUED: **MAY 19 2017** (RE)

Sean Gaven, Rory Murphy, Cesar Soares, Christopher Brown, Celso Velez, Matthew Ruane, Lee Douglas III, and Marlin Easter, represented by Patrick Toscano, Jr., Esq., petition the Civil Service Commission (Commission) for retroactive regular appointments effective December 26, 2011 to the title of Police Lieutenant, and for admittance to the promotional examination for Police Captain (PM1345U), Newark.

By way of background, the petitioners ranked 4, 3, 2, 9, 8, 10, 13 and 14 respectively on the eligible list for Police Lieutenant (PM2539K), Newark, which promulgated on March 19, 2009 and expired on February 6, 2013. One certification was made from this eligible list, resulting in one appointment. Subsequently, a second eligible list (PM5035P) was promulgated on February 7, 2013 and expired February 6, 2016. Mr. Soares was appointed from this list with a July 15, 2014 appointment date, and the remaining petitioners are Police Sergeants. Subsequently, the petitioners filed actions in the Superior Court of New Jersey, Law Division, against the City of Newark, and the petitioners and the appointing authority entered into a settlement. This settlement provides for the petitioners' appointments as Police Lieutenant retroactive to December 26, 2011, for seniority and examination purposes within 30 days. Further, the settlement indicates that their working test periods would be considered "waived" and they would be eligible to take a Police Captain examination.

Messrs. Ruane, Douglas, Easter, and Brown applied for the examination for Police Captain (PM1345U), Newark, which had a closing date of September 30,

2016, and were denied eligibility on the basis that they lacked the required amount of permanent status in the title to which the examination was open, in this case, Police Lieutenant. This examination was open to employees in the competitive division currently serving and having an aggregate of one year of continuous permanent service as of the closing date as a Police Lieutenant. Permanent service is gained from a regular appointment and the completion of a working test period. In this case, seven of the petitioners were Police Sergeants as of the closing date. They request admittance to the examination based on the settlement. For this exam, 21 candidates were admitted and took the two-part examination in October 2016 and January 2017. The results are not yet available.

Lastly, this settlement agreement was executed prior to authorization by the Department of Community Affairs (DCA). As a result, the waiver for the approval of the promotions will not be signed. However, these promotions will not be barred unless there is a negative impact on the City's financial budget. Going forward, Newark is notified that it must present settlement agreements to DCA representatives before execution and submission to the Commission.

N.J.A.C. 4A:4-2.6(a) (Eligibility for promotional examination) states in pertinent part that applicants for promotional examinations shall, by the closing date, meet the criteria of having one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open.

N.J.A.C. 4A:4-1.10(c) provides that when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties.

N.J.A.C. 4A:4-3.4(a) provides that the [Civil Service Commission] may revive an expired eligible list under the following circumstances:

1. to implement a court order, in a suit filed prior to the expiration of the list;
2. to implement an order of the [Civil Service Commission] in an appeal or proceeding instituted during the life of the list;
3. to correct an administrative error;
4. to effect the appointment of an eligible whose working test period was terminated by a layoff; or
5. for other good cause.

CONCLUSION

A review of the settlement indicates that it substantially complies with Civil Service law and rules. The policy of the judicial system strongly favors settlement. See *Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130

(App. Div. 1974); *Jannarone v. W. T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. In this matter, no such compelling circumstances exist. Therefore, the Commission orders that the eligible list for Police Lieutenant (PM2539K), Newark eligible list be revived in order to effectuate the appointments of the petitioners to that title on December 26, 2011 for seniority purposes only. Although Mr. Soares was appointed from a subsequent eligible list (PM5035P) on July 15, 2014, he should be recorded as having been appointed on December 26, 2011 from the eligible list for Police Lieutenant (PM2539K).

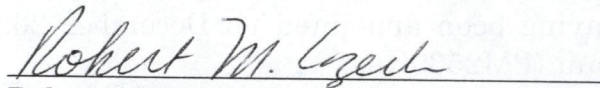
As to the petitioners' eligibility for the examination for Police Captain (PM1345U), the petitioners must have actually served in and performed the duties of the title of Police Lieutenant during the requisite time-in-grade in order to be eligible. The power to award, based on administrative error, delay, or other good cause, retroactive seniority to individuals who have in some way been harmed with the concomitant right to sit for promotional examinations, implicitly recognizes the principle of merit and fitness for promotion. In this regard, the settlement submits that the subject individuals have each been working as Police Lieutenants for a significant period of time. As such, aside from Mr. Soares, who has already completed a working test period, they should be deemed to have served their three-month working test periods as Police Lieutenant. Further, Messrs. Ruane, Douglas, Easter, and Brown should be admitted to the examination for Police Captain (PM1345U), Newark and be given make-up examinations. Additionally, Messrs. Gaven, Murphy, and Velez should be admitted to the examination upon receipt of their appropriately completed promotional applications and fees. A copy of the promotional application is attached for their use and should be submitted, along with a \$75.00 application fee **and a copy of this decision**, within 20 days of receipt of this decision to the address listed on the top left of the first page of the application. It is noted that Mr. Soares has been admitted to the examination for (PM1345U).

ORDER

Therefore, it is ordered that these requests be granted, and the Police Lieutenant (PM2539K), Newark eligible list be revived in order for Messrs. Gaven, Murphy, Brown, Soares, Velez, Ruane, Douglas, and Easter to be appointed retroactive to December 26, 2011 as Police Lieutenants, for seniority purposes only, and the personnel records of these employees be amended in accordance with this decision. It is further ordered that the petitioners' requests for admittance to the Police Captain (PM1345U), Newark promotional examination, except for Mr. Soares, be granted upon receipt of their properly completed promotional applications, and they be considered for prospective appointment only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17th DAY OF MAY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachments

- c: Sean Gaven CSC Docket No. (2017-2400)
- Rory Murphy CSC Docket No. (2017-2401)
- Cesar Soares CSC Docket No. (2017-2402)
- Christopher Brown CSC Docket No. (2017-2403)
- Celso Velez CSC Docket No. (2017-2404)
- Matthew Ruane CSC Docket No. (2017-2405)
- Lee Douglas III CSC Docket No. (2017-2406)
- Marlin Easter CSC Docket No. (2017-2407)
- Patrick Toscano, Jr., Esq.
- Jack Kelly
- Kecia Daniels
- Michael Johnson
- Kelly Glenn
- Records Center

Staple Payment Here

APPLICATION FOR PROMOTIONAL EXAMINATION

NEW JERSEY CIVIL SERVICE COMMISSION —County and Municipal Government

\$ 75.00

\$25.00 FEE REQUIRED
Make Check/Money Order Payable to NJCSC
FOR COMMISSION USE ONLY

INSTRUCTIONS: Please print or type. Answer all pertinent questions and ensure that all information is accurate and complete. Sign your name in Block 11. **NOTE:** No additional information may be accepted after the last date for filing applications has passed. **If you change your address, you must notify the Civil Service Commission immediately in writing.** Return your completed application no later than the last date for filing listed on the announcement to: NJ CSC, 44 S. Clinton Ave. PO Box 322, Trenton, N.J. 08625-0322

FOR COMMISSION USE ONLY		
STATUS: [][]		
SEN: [][][][]	UE: [][][][]	REV NO REV

2. Social Security Number: * (see block 10 for additional information)	3. Symbol:
4. Name & Address:	
Last: _____ First: _____ M.I. _____	
Street: _____	
City: _____ State: _____ Zip Code: _____	
E-mail address: _____	
County: _____ Daytime Telephone: _____ <small>(Area Code) - Number</small>	

1. Title of Promotion:

Note: Applications must be postmarked by

5. BACKGROUND DATA

5a. Education (Indicate the highest level Diploma or Degree you have earned):

<input type="checkbox"/> High School Diploma or GED	<input type="checkbox"/> (A) Associate's Degree	<input type="checkbox"/> (M) Master's Degree
<input type="checkbox"/> (S) Some College but No Degree	<input type="checkbox"/> (B) Bachelor's Degree	<input type="checkbox"/> (D) Doctorate

5b. Completion of this part is *VOLUNTARY* and is to be used only for complying with EEOC Guidelines and the New Jersey State Affirmative Action Program.

Gender: <input type="checkbox"/> (1) Male <input type="checkbox"/> (2) Female	Check the group you are a member of:
	<input type="checkbox"/> (1) Black <input type="checkbox"/> (2) White <input type="checkbox"/> (3) Hispanic <input type="checkbox"/> (4) Asian <input type="checkbox"/> (5) American Indian or Alaskan Native

6. Check the county in which you prefer to take the examination. (Check one box only)

<input type="checkbox"/> (1) Camden	<input type="checkbox"/> (2) Mercer	<input type="checkbox"/> (3) Essex
<input type="checkbox"/> (4) Monmouth	<input type="checkbox"/> (6) Atlantic	<input type="checkbox"/> (7) Bergen

8. ADA Assistance: Check the box if you would like to be contacted regarding auxiliary aid or reasonable accommodation in taking this examination in accordance with the Americans with Disabilities Act.

7. Are you claiming veterans preference? YES NO

Check YES if you are claiming veterans preference for this examination. If you have established veterans preference since April 1, 1980, no further action is needed. Otherwise, complete a veterans preference claim form and include the required documents. Claim forms are available on our web site at www.state.nj.us/csc and at our office at 44 S. Clinton Avenue, Trenton, NJ. Completed forms should be mailed to the Department of Military and Veterans' Affairs (DMAVA). For more information, visit their web site at www.state.nj.us/military or contact them at 1-888-865-8387. Note: In accordance with Public Law 2010 c.26, Veterans pay a reduced application fee of \$15.00 if they have previously established Veterans Preference with the DMAVA (as defined by N.J.S.A. 11A:5-1 et seq.), or your claim is approved by DMAVA at least 8 days prior to the issuance of this eligibility list.

9. Present Permanent Title & Appointment Date:

Name & Title of Immediate Supervisor:

Telephone Number & Email Address of Immediate Supervisor:

* 10. Your Social Security number will be kept confidential and used as your applicant I.D. number to identify and track all of your records and transactions associated with the application and testing process. Collecting this data is permissible under NJSA 11A:4-1, but its submission is voluntary. If you do not provide the number, a unique number will be assigned to you. However, once assigned, you will be responsible for remembering it for any inquiries you may have concerning your application or testing process.

11. Signature: I CERTIFY that the statements made by me in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I understand that if my application is incomplete, it may be rejected. (WARNING: The Civil Service Commission may refuse to examine, or certify after examination, any applicant who makes a false statement of any material fact per NJAC 4A:4-6.2)

FORCSC ONLY

NOTE: Your application may be released to the Appointing Authority for the purpose of verifying information with regard to your qualifications.

Signature..... Date.....

Title of Promotion: _____ **Symbol:** _____ **SS#:** _____

12. Educational Section - College And Graduate School - List any colleges, universities, and graduate schools you have attended. If it is required in the job announcement, be sure to attach a copy of your transcript or a list of courses, course descriptions, and credits completed. Foreign degrees/transcripts must be evaluated by a recognized evaluation service.

What is the name and location of the college(s) you attended?	What yrs. did you attend?	What was your major course of study?	What type of degree did you earn?	Did you graduate?	If NO, when will you graduate?	Number of credits earned
	From: _____ To: _____			<input type="checkbox"/> Y <input type="checkbox"/> N	_____/_____ Month / Year	
	From: _____ To: _____			<input type="checkbox"/> Y <input type="checkbox"/> N	_____/_____ Month / Year	

13. Other Schools or Training Courses - Include business, vocational, technical, or military schools you have attended, as well as any training courses that are related to the title for which you are applying. If it is not a full-time curriculum, be specific as to the number of hours attended.

What is the name & location of school/facility where course(s)/training was held?	What classes did you take?	What were the dates you attended?	How many hours per week did you attend?	Did you complete the program?
		_____/_____/_____ Month/Yr. TO Month/Yr.		<input type="checkbox"/> Y <input type="checkbox"/> N
		_____/_____/_____ Month/Yr. TO Month/Yr.		<input type="checkbox"/> Y <input type="checkbox"/> N

14. Use this space to describe any internships, licenses, certifications or registrations that you possess which are related to the position for which you are applying.

<p>A. What type of license(s), certification(s), and/or registration(s) do you hold?</p> <p>In which state(s) do you hold the license(s), certification(s), and/or registration(s)? _____</p> <p>B. What was the original issue date of the license(s), certification(s), and/or registration(s)?</p> <p>What is the date of your current license(s), certification(s), and/or registration(s)? _____</p>	<p>C. What type of internship(s) have you completed?</p> <p>Where was the internship(s) completed? _____</p> <p>What were the dates of the internship(s)? _____</p> <p>How many hours per week did you take part in the internship? _____</p> <p>Was it part of a college curriculum? <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>D. Certified Public Manager's Program</p> <p>Level 1 - 3 Completed ▶ _____ Month/Year</p> <p>Level 4 - 6 Completed ▶ _____ Month/Year</p>
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15. Employment Record - If you do not properly complete your application you may be declared ineligible or you may not receive proper credit for scoring purposes. If you held different positions with the same employer, list each position separately. Make sure you give full dates of employment (month/year), indicate whether the job was full or part time, and the number of hours worked per week. Since your application may be your only "test paper," be sure it is complete and accurate. Failure to complete your application properly may cause you to be declared ineligible, lower your score, or possibly cause you to fail. If more space is needed, attach separate sheets.

<p>A What is the name and address of your current employer?</p> <p>What dates have you been employed in this position? From _____ To _____ Month/Year Month/Year</p>	<p>What is your title in this position?</p> <p>Is this position: <input type="checkbox"/> FULL TIME? <input type="checkbox"/> PART TIME? (Average No. hrs. per wk.) _____</p> <p>How many staff members do you supervise? Professional Staff _____ Support Staff _____</p>	<p>List the major duties you perform in this position in order of importance.</p>
<p>B What was the name and address of your previous employer?</p> <p>What dates were you employed in this position? From _____ To _____ Month/Year Month/Year</p>	<p>What was your title in this position?</p> <p>Was this position: <input type="checkbox"/> FULL TIME? <input type="checkbox"/> PART TIME? (Average No. hrs. per wk.) _____</p> <p>How many staff members did you supervise? Professional Staff _____ Support Staff _____</p>	<p>List the major duties you perform in this position in order of importance.</p>
<p>C What was the name and address of your previous employer?</p> <p>What dates were you employed in this position? From _____ To _____ Month/Year Month/Year</p>	<p>What was your title in this position?</p> <p>Was this position: <input type="checkbox"/> FULL TIME? <input type="checkbox"/> PART TIME? (Average No. hrs. per wk.) _____</p> <p>How many staff members did you supervise? Professional Staff _____ Support Staff _____</p>	<p>List the major duties you perform in this position in order of importance.</p>

CHASAN LEYNER & LAMPARELLO, PC
300 Lighting Way
Secaucus, New Jersey 07094-3621
201-348-6000
Attorneys for Defendant

<p>SEAN GAVEN, RORY MURPHY, CESAR SOARES, CHRISTOPHER BROWN, and CELSO VELEZ,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>CITY OF NEWARK,</p> <p style="text-align: center;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-958-13</p> <p style="text-align: center;">SETTLEMENT AGREEMENT AND RELEASE</p>
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This Settlement Agreement and Release (hereinafter "Agreement"), dated _____, is between Plaintiffs, Sean Gaven, Rory Murphy, Cesar Soares, Christopher Brown, and Celso Velez, and Defendant City of Newark. Plaintiffs and Defendant are referred to collectively as the "Parties."

1. **Background and Purposes of Agreement**

1.1 Plaintiffs and Defendant are parties to the above captioned action (the "Action").

1.2 The Parties have determined that it is in their best interest to enter into this Agreement and thereby (a) amicably resolve all issues in dispute asserted in the Action, or

which could have been asserted in the Action, without any admission of liability or wrongdoing, and (b) dismiss the Action with prejudice and without costs.

2. **Effective Date**

2.1 This Agreement shall not be binding upon the Parties until the Effective Date, which shall be the date when the last of the following has occurred:

2.1.1 The Agreement is approved by the City of Newark's Mayor and Council;

2.1.2 The Agreement has been executed by all of the Parties;

2.1.2 The New Jersey Civil Service Commission approves the Agreement;

2.1.3 If necessary, the New Jersey Department of Community Affairs ("DCA"), and any other necessary agency, approves the Agreement and permits the promotions discussed below; and

2.1.4 The Commission revives promotional list PM 2539K and allows the City to promote from the list, in rank order, through at least Sergeant Marlin Easter.

2.2 The Parties will cooperate and use their good faith efforts in securing all necessary approvals.

3. **Settlement**

The Action is settled in its entirety, subject to the following terms:

3.1 The City shall issue and Plaintiffs shall accept a check made payable to "The Toscano Law Firm, as attorneys for Plaintiffs" in the amount of twenty-seven thousand (\$27,000.00) dollars. This payment, however it shall be allocated

amongst each of the Plaintiffs, will be reported on an IRS Form 1099, and any other appropriate federal, state, or local tax reporting forms, issued to Plaintiffs.

3.2 Payment shall be made within 30 days of the Effective Date of this Agreement.

3.3 Plaintiffs Gaven, Murphy, Brown and Velez shall be promoted to the rank of Police Lieutenant within 30 days of the Effective Date of this Agreement. Said promotions shall be deemed effective as of December 26, 2011. However, Plaintiffs waive their rights to any back-pay (including but not limited to related overtime, vacation time, compensatory time and deferred time) associated with these retroactive promotions and back benefits of any nature whatsoever, except as set forth in sections 3.4 through 3.8.

3.4 Plaintiff Soares, who has already been promoted to the rank of Lieutenant from a subsequent promotional list, shall be given a promotional date of December 26, 2011.

3.5 All Plaintiffs will be entitled to vacation selection seniority computed from a promotional date of December 26, 2011.

3.6 For the purposes of taking future promotional examinations, Plaintiffs appointment date shall be December 26, 2011, and the working test period shall be waived so that Plaintiffs are eligible to take the Captain's promotional examination in October of 2016.

3.7 Upon the effective date of this Agreement, Plaintiffs Gaven, Murphy, Brown and Velez will be entitled to a total of twenty-seven (27) vacation days per year, as provided for in the Collective Bargaining Agreement between the City and Police Superior

Officer's Association of Newark, NJ. Plaintiffs are not entitled to any retroactive vacation days, except that Plaintiffs Gaven, Murphy, Brown and Velez shall be retroactively credited with one (1) vacation day per year for the time period: December 26, 2011 until the execution of this agreement. Moreover, to the extent that Plaintiffs receive their annual allotment of vacation days provided to Police Sergeants for 2016 prior to the Effective Date of this Agreement, then, upon the Effective Date of the Agreement, Plaintiffs shall receive the difference between the twenty-seven (27) days and the number of days they were provided as Sergeants. Plaintiffs are not entitled to 27 vacation days in addition to what they have already received.

3.8 The City shall be responsible for paying the pension credit difference (between the salaries of Sergeant and Lieutenant) from December 26, 2011 to the date this Agreement is executed.

3.9 Plaintiff Soares shall not receive any additional vacation days pursuant to this settlement, except that Soares shall be retroactively credited with one (1) vacation day per year for the time period: December 26, 2011 until March 27, 2015.

3.10 At the time of Plaintiffs' promotions, their pay scale for Police Lieutenant in the Newark Police Department will be based on a promotion date of December 26, 2011.

4. **No Representations as to Tax Consequences; Tax Identification**

4.1 The amount to be paid under this Agreement will be reflected on IRS Form 1099 Misc. to be issued to the Toscano Law Firm and such form shall be filed with the IRS, indicating that the sum indicated above has been paid under this Agreement as other

income. Defendant does not make any representation as to the tax consequences of the payment hereunder.

4.2 Plaintiffs agree that they will be responsible for the payment of all applicable state, federal and local taxes with respect to the payment described in **Section 3** and will assume full liability with respect to same. Plaintiffs further agree that in the event the IRS or any other taxing authority deems any withholding tax, interest, penalties, or other amounts to be due from Defendant with respect to this settlement payment, Plaintiffs will fully indemnify Defendant and hold it harmless for any sums that they may be required to pay.

5. **Release**

5.1 Plaintiffs fully, unconditionally and without limitation waive, release and give up any and all known and unknown claims, rights and causes of action of every kind, whether in law or in equity, against Defendant, its officers, officials, agents, employees, representatives, successors, assigns, and anyone who succeeds to their rights, including, but not limited to, its heirs, or executors of its estate, which now exists or may hereafter arise in connection with the Action. This releases all claims and rights up to the date of this agreement, including those of which Plaintiffs may not be aware and those not mentioned in this Agreement. This Agreement applies to claims resulting from anything which has happened up to the date of the execution of this Agreement.

5.2 In addition to releasing any and all claims and rights pursuant to **Section 5.1** above, Plaintiffs also specifically release any and all claims which were brought or could have been brought including, but not limited to, the following:

- 5.2.1 Claims against Defendant for misfeasance, malfeasance, nonfeasance or failure to take required official action;
- 5.2.2 Claims alleging a violation of statutory and constitutional promotional rights;
- 5.2.3 Claims alleging violations of Article I, paragraphs 6 (freedom of speech) and 18 of the New Jersey Constitution (freedom of assembly);
- 5.2.4 Claims alleging violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("LAD"), which, among other things, prohibits discrimination in employment on the basis of an individual's race, creed, color, religion, sex, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, handicap, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States;
- 5.2.5 Claims alleging aiding and abetting of discriminatory employment practice(s) in violation of the LAD;
- 5.2.6 Claims alleging violations of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq., which, among other things, prohibits retaliatory action against an employee under certain specified conditions;
- 5.2.7 Claims arising under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.;

- 5.2.8 Claims arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., or the Civil Rights Act of 1991, as amended, which, among other things, prohibits discrimination in employment on account of a person's race, color, religion, sex or national origin;
- 5.2.9 Claims arising under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621, et seq., ("ADEA"), which, among other things, prohibits discrimination in employment on account of a person's age;
- 5.2.10 Claims arising under the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq., ("ADA"), which, among other things, prohibits discrimination in employment on account of a person's disability or handicap;
- 5.2.11 Claims arising under the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601, et seq., ("FMLA"), which among other things, entitles certain employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition;
- 5.2.12 Claims arising under the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq., which among other things, prohibits discrimination in employment by federal contractors against individuals with disabilities;

5.2.13 Claims arising under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et seq., ("ERISA"), which, among other things, regulates pension and welfare plans and prohibits interference with individual rights protected under that statute;

5.2.14 Claims arising under the Older Workers Benefit Protection Act, 29 U.S.C. § 621, et seq., ("OWBPA"), which, among other things, amends provisions of ADEA and prohibits discrimination in employment and employment benefits on account of a person's age;

5.2.15 Claims alleging violations of N.J.S.A. 11A:2-24 or N.J.A.C. 4A:2-5.1, which prohibit appointing authorities from taking action, or threatening to take action, against an employee in retaliation for an employee's disclosure of information on the violation of any rule, law or abuse of authority;

5.2.16 Sections 5.2.6 and 5.2.15 shall specifically prohibit any claims – including those that could be pursued in the Courts, in an administrative appeal or through the grievance process – that any Plaintiff's transfer constituted harassment, retaliation or any other unlawful conduct.

5.2.17 Claims arising under any federal or state statute, rule or regulation, or common law.

5.3 Plaintiffs acknowledge the following:

- 5.3.1 They consulted with an attorney of their choosing concerning the legal significance of this Agreement;
- 5.3.2 This Agreement is written in a manner that Plaintiffs understand;
- 5.3.3 The consideration set forth above in **Section 3** of this Agreement is adequate and sufficient for Plaintiffs entering into this Agreement and consists of benefits to which Plaintiffs are not otherwise entitled;
- 5.3.4 Plaintiffs have been offered 21 days to consider this Agreement before executing same and that any changes to this Agreement subsequently agreed upon by the Parties, whether material or immaterial, do not restart this period for consideration; and
- 5.3.5 Plaintiffs have been advised that during the seven-day period following their execution of this Agreement, any one of them may revoke their acceptance of this Agreement by delivering written notice to Chasan Leyner & Lamparello, PC, attention Joseph A. Garcia, Counsel for the City of Newark, and that this Agreement shall not become effective or enforceable until after the revocation period has expired for each and every Plaintiff without any one of them revoking their acceptance.

6. **Attorney's Fees and Expenses**

It is specifically understood and agreed that the amount paid under this Agreement includes all attorney's fees and costs to which Plaintiffs and/or their attorneys may be

entitled and the settlement sum is specifically intended to be inclusive of all attorneys' fees and costs. Plaintiffs understand that by executing this Agreement, they release and waive any claim or right for attorneys' fees and expenses in connection with the within suit. Neither Plaintiffs nor the Toscano Law Firm, Counsel for Plaintiffs, nor anyone acting on their behalf, shall make application for any additional monies in addition to the amounts set forth in this Agreement nor shall any of them make any application for attorneys' fees or costs as those amounts are included in the total payment being made herein.

7. **No Admission of Liability**

This Agreement is executed and all consideration is given in final settlement of disputed claims, and shall not be construed as an admission of any allegation of liability or wrongdoing by any of the Parties.

8. **Confidentiality and Non-Disclosure**

8.1 Unless consent is granted, neither the Parties nor their respective attorneys, agents or representatives shall disclose this Agreement or discuss the terms hereof with any third party. However, the information in this Agreement may be communicated to the Parties' spouses, attorneys, tax advisors, and financial advisers. If a Party or their attorney receives an inquiry from any third party about this Agreement, the Party shall respond by saying only that "the matter has been settled." The Parties agree and understand the confidentiality requirements of this Section are a material inducement to their consent to this Agreement, and that a violation of these confidentiality requirements will be deemed a material breach of this Agreement. In the event a Party or their attorney is required by

Court Order to disclose the terms and provisions of this Agreement, the Party shall give all other Parties written notification prior to disclosure.

8.2 The provisions of **Section 8.1** shall apply to all Parties, however, the Parties acknowledge and recognize that the City of Newark is a public entity, and as such, disclosure of this Agreement by the City may be compelled under the Open Public Records Act, N.J.S.A. 47:1A-1, et seq. ("OPRA"), other statute or common law. The City may also be required to disclose the Agreement in relation to its approval or in relation to its compliance with the terms of the Agreement. Notwithstanding any other term in this Agreement, the Parties agree that the City shall be required to use good faith efforts to prevent disclosure of the terms of this Agreement, but the City, as a public entity and employer of numerous people, cannot guarantee non-disclosure.

8.3 The Parties acknowledge that this Agreement will be filed with the Commission and any other necessary State agencies.

9. **No Disparaging Statements.**

Plaintiffs agree that they will not make any statement(s) that has, have, or can be expected to have the effect of disparaging the Defendant and/or their employees or agents. Defendant City of Newark, as an entity, will not make or adopt any statement(s) that has, have, or can be expected to have the effect of disparaging Plaintiffs, nor will it authorize any of its employees or agents to do so.

Nothing in this Agreement, however, shall bar the City of Newark, its representatives or agents, from justifying the City's rationale for entering this Agreement.

10. **Fair Representation**

The Parties represent and warrant that their respective attorneys have represented them fully, fairly, and without bias or conflict in connection with the Action.

11. **New Jersey Child Support Judgment Search and Potential Liens**

11.1 Pursuant to N.J.S.A. 2A:17-56.23(b), Plaintiffs understand and agree that the settlement sum will not be released until such time as they or their attorneys provide Counsel for Newark with a certified copy of a child support judgment search, performed by a private judgment search company, reflecting that each of the Plaintiffs is not a child support judgment debtor. Plaintiffs further understand and agree that in the event it is revealed that any of them is a child support judgment debtor, Plaintiffs will not receive any of the proceeds of the settlement until all outstanding New Jersey child support judgments are satisfied. Plaintiffs also understand and agree that if any child support judgment exceeds the net proceeds of the settlement sum, the entire settlement proceeds will be utilized to satisfy any outstanding child support judgment.

12. **Consultation With an Attorney**

The Parties have consulted with their attorneys with respect to this Agreement, and reviewed with their attorneys all the terms and conditions of this Agreement before signing this Agreement.

13. **Knowing and Voluntary Agreement**

The Parties represent and acknowledge that they have had a reasonable amount of time to consider this Agreement, and that in executing this Agreement rely entirely upon their own judgment, beliefs and interests and the advice of their counsel, and they do not

rely and have not relied upon any representation or statement made by the other party, or by any agents, representatives or attorneys of the other party, with regard to the subject matter, basis or effect of this Agreement or otherwise, other than as specifically stated in this Agreement. The Parties specifically acknowledge that all releases contained herein are knowing and voluntary.

14. **Who is Bound**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective officers, officials, legal representatives, agents, successors, assigns, heirs and executors.

15. **Complete Agreement**

This Agreement contains the entire agreement between the Parties with respect to the subject matter, and supersedes all prior agreements or understandings dealing with the same subject matter. No Party has agreed to do anything other than as is expressly stated in this Agreement.

16. **Choice of Law**

This Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of New Jersey, without regard to its conflict of laws provisions.

17. **Modification**

No modification or amendment of this Agreement will be enforceable unless it is in writing and signed by the Party to be charged.

18. **Severability**

Except as set forth below, should any provision of this Agreement be declared or determined by any court of competent jurisdiction 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 a part of this Agreement. The releases set forth in **Section 5** are deemed to be material terms of the Agreement. The elimination of the releases set forth in **Section 5** are deemed to be material terms of the Agreement. If any part of the releases are deemed to be unenforceable, or if there is any claim Plaintiffs assert against Defendant that is deemed not to be released under **Section 5**, then the Defendant may seek to revoke the promotions referenced in **Section 3** and seek reimbursement of all payments made to Plaintiffs under this Agreement.

19. **Negotiated Agreement; No Construction Against Any Party**

This Agreement was not drafted by any of the Parties, but rather is the result of negotiations among the Parties with the benefit of their attorneys. Each Party to this Agreement read this Agreement and has freely and voluntarily executed it. No ambiguity that may arise in this agreement shall be resolved by construing the Agreement against any of the Parties as drafter of same.

20. **Attestation of Parties**

Each of the Parties represent and warrant that they have carefully read each and every provision of this Agreement, and that they fully understand all of the terms and conditions contained in each provision of this Agreement. Each of the Parties represents

and warrants that they enter into this Agreement voluntarily, of their own free will, without any pressure or coercion from any person or entity whatsoever.

PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS, INCLUDING LAWS PROHIBITING DISCRIMINATION IN EMPLOYMENT.

PLAINTIFFS ACKNOWLEDGE THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT, FULLY UNDERSTAND IT AND ARE VOLUNTARILY ENTERING INTO IT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

WITNESS:

SEAN GAVEN

Dated: _____

WITNESS:

RORY MURPHY

Dated: _____

WITNESS:

CESAR SOARES

Dated: _____

WITNESS:

CHRISTOPHER BROWN

Dated: _____

PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS, INCLUDING LAWS PROHIBITING DISCRIMINATION IN EMPLOYMENT.

PLAINTIFFS ACKNOWLEDGE THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT, FULLY UNDERSTAND IT AND ARE VOLUNTARILY ENTERING INTO IT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

WITNESS:
h. Toscano

Dated: 4/28/16

[Signature]
SEAN GAVEN

WITNESS:
h. Toscano

Dated: 4/28/16

[Signature]
RORY MURPHY

WITNESS:
Olga forte

Dated: 4/28/16

[Signature]
CESAR SOARES

WITNESS:
Olga forte

Dated: 4/28/16

[Signature]
CHRISTOPHER BROWN

WITNESS:
Olga forte

Dated: 4/28/16

[Signature]
CELSO VELEZ

CHASAN LEYNER & LAMPARELLO, PC
300 Harmon Meadow Boulevard
Secaucus, New Jersey 07094-3621
201-348-6000
Attorneys for Defendant

**MATTHEW RUANE, LEE DOUGLAS III,
and MARLIN EASTER**

Plaintiffs,

vs.

CITY OF NEWARK,

Defendant.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.**

**SETTLEMENT AGREEMENT AND
RELEASE**

This Settlement Agreement and Release (hereinafter "Agreement"), dated _____, is between Plaintiffs, Matthew Ruane, Lee Douglas III, and Marlin Easter, and Defendant City of Newark. Plaintiffs and Defendant are referred to collectively as the "Parties."

1. **Background and Purposes of Agreement**

1.1 Plaintiffs and Defendant are parties to the above captioned action (the "Action").

1.2 The Parties have determined that it is in their best interest to enter into this Agreement and thereby (a) amicably resolve all issues in dispute asserted in the Action, or which could have been asserted in the Action, without any admission of liability or wrongdoing, and (b) dismiss the Action with prejudice and without costs.

2. **Effective Date**

2.1 This Agreement shall not be binding upon the Parties until the Effective Date, which shall be the date when the last of the following has occurred:

2.1.1 The Agreement is approved by the City of Newark's Mayor and Council;

2.1.2 The Agreement has been executed by all of the Parties;

2.1.2 The New Jersey Civil Service Commission approves the Agreement;

2.1.3 If necessary, the New Jersey Department of Community Affairs ("DCA"), and any other necessary agency, approves the Agreement and permits the promotions discussed below; and

2.1.4 The Commission revives promotional list PM 2539K and allows the City to promote from the list, in rank order, through at least Sergeant Marlin Easter.

2.2 The Parties will cooperate and use their good faith efforts in securing all necessary approvals.

3. **Settlement**

The Action is settled in its entirety, subject to the following terms:

3.1 The City shall issue and Plaintiffs shall accept a check made payable to "The Law Offices of John McGovern, as attorneys for Plaintiffs" in the amount of seventeen (\$15,000.00) dollars. This payment, however it shall be allocated amongst each of the Plaintiffs, will be reported on an IRS Form 1099, and any other appropriate federal, state, or local tax reporting forms, issued to Plaintiffs.

3.2 Payment shall be made within 30 days of the Effective Date of this Agreement.

3.3 Plaintiffs shall be promoted to the rank of Police Lieutenant within 30 days of the Effective Date of this Agreement. Said promotions shall be deemed effective as of December 26, 2011. However, Plaintiffs waive their rights to any back-pay (including but not limited to related overtime, vacation time, compensatory time and deferred time) associated with these retroactive promotions and back benefits of any nature whatsoever, except as set forth in sections 3.4 through 3.7.

3.4 Plaintiffs will be entitled to vacation selection seniority computed from a promotional date of December 26, 2011.

3.6 For the purposes of taking future promotional examinations, Plaintiffs appointment date shall be December 26, 2011, and the working test period shall be waived so that Plaintiffs are eligible to take the Captain's promotional examination in October of 2016.

3.7 Upon the effective date of this Agreement, Plaintiffs will be entitled to a total of twenty-seven (27) vacation days per year, as provided for in the Collective Bargaining Agreement between the City and Police Superior Officer's Association of Newark, NJ. Plaintiffs are not entitled to any retroactive vacation days. Moreover, to the extent that Plaintiffs receive their annual allotment of vacation days provided to Police Sergeants for 2016 prior to the Effective Date of this Agreement, then, upon the Effective Date of the Agreement, Plaintiffs shall receive the difference between the twenty-seven (27) days and

the number of days they were provided as Sergeants. Plaintiffs are not entitled to 27 vacation days in addition to what they have already received.

3.8 The City shall be responsible for paying the pension credit difference (between the salaries of Sergeant and Lieutenant) from December 26, 2011 to the date this Agreement is executed.

3.9 At the time of Plaintiffs' promotions, their pay scale for Police Lieutenant in the Newark Police Department will be based on a promotion date of December 26, 2011.

4. **No Representations as to Tax Consequences; Tax Identification**

4.1 The amount to be paid under this Agreement will be reflected on IRS Form 1099 Misc. to be issued to the Law Offices of John McGovern and such form shall be filed with the IRS, indicating that the sum indicated above has been paid under this Agreement as other income. Defendant does not make any representation as to the tax consequences of the payment hereunder.

4.2 Plaintiffs agree that they will be responsible for the payment of all applicable state, federal and local taxes with respect to the payment described in **Section 3** and will assume full liability with respect to same. Plaintiffs further agree that in the event the IRS or any other taxing authority deems any withholding tax, interest, penalties, or other amounts to be due from Defendant with respect to this settlement payment, Plaintiffs will fully indemnify Defendant and hold it harmless for any sums that they may be required to pay.

5. **Release**

5.1 Plaintiffs fully, unconditionally and without limitation waive, release and give up any and all known and unknown claims, rights and causes of action of every kind, whether in law or in equity, against Defendant, its officers, officials, agents, employees, representatives, successors, assigns, and anyone who succeeds to their rights, including, but not limited to, its heirs, or executors of its estate, which now exists or may hereafter arise in connection with the Action. This releases all claims and rights up to the date of this agreement, including those of which Plaintiffs may not be aware and those not mentioned in this Agreement. This Agreement applies to claims resulting from anything which has happened up to the date of the execution of this Agreement.

5.2 In addition to releasing any and all claims and rights pursuant to **Section 5.1** above, Plaintiffs also specifically release any and all claims which were brought or could have been brought including, but not limited to, the following:

- 5.2.1 Claims against Defendant for misfeasance, malfeasance, nonfeasance or failure to take required official action;
- 5.2.2 Claims alleging a violation of statutory and constitutional promotional rights;
- 5.2.3 Claims alleging violations of Article I, paragraphs 6 (freedom of speech) and 18 of the New Jersey Constitution (freedom of assembly);
- 5.2.4 Claims alleging violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("LAD"), which, among other things, prohibits discrimination in employment on the basis of an

individual's race, creed, color, religion, sex, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, handicap, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States;

- 5.2.5 Claims alleging aiding and abetting of discriminatory employment practice(s) in violation of the LAD;
- 5.2.6 Claims alleging violations of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq., which, among other things, prohibits retaliatory action against an employee under certain specified conditions;
- 5.2.7 Claims arising under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.;
- 5.2.8 Claims arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., or the Civil Rights Act of 1991, as amended, which, among other things, prohibits discrimination in employment on account of a person's race, color, religion, sex or national origin;
- 5.2.9 Claims arising under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621, et seq., ("ADEA"), which, among other things, prohibits discrimination in employment on account of a person's age;

- 5.2.10 Claims arising under the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq., ("ADA"), which, among other things, prohibits discrimination in employment on account of a person's disability or handicap;
- 5.2.11 Claims arising under the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601, et seq., ("FMLA"), which among other things, entitles certain employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition;
- 5.2.12 Claims arising under the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq., which among other things, prohibits discrimination in employment by federal contractors against individuals with disabilities;
- 5.2.13 Claims arising under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et seq., ("ERISA"), which, among other things, regulates pension and welfare plans and prohibits interference with individual rights protected under that statute;
- 5.2.14 Claims arising under the Older Workers Benefit Protection Act, 29 U.S.C. § 621, et seq., ("OWBPA"), which, among other things, amends provisions of ADEA and prohibits discrimination in employment and employment benefits on account of a person's age;

5.2.15 Claims alleging violations of N.J.S.A. 11A:2-24 or N.J.A.C. 4A:2-5.1, which prohibit appointing authorities from taking action, or threatening to take action, against an employee in retaliation for an employee's disclosure of information on the violation of any rule, law or abuse of authority;

5.2.16 **Sections 5.2.6** and **5.2.15** shall specifically prohibit any claims – including those that could be pursued in the Courts, in an administrative appeal or through the grievance process -- that any Plaintiff's transfer constituted harassment, retaliation or any other unlawful conduct.

5.2.17 Claims arising under any federal or state statute, rule or regulation, or common law.

5.3 Plaintiffs acknowledge the following:

5.3.1 They consulted with an attorney of their choosing concerning the legal significance of this Agreement;

5.3.2 This Agreement is written in a manner that Plaintiffs understand;

5.3.3 The consideration set forth above in **Section 3** of this Agreement is adequate and sufficient for Plaintiffs entering into this Agreement and consists of benefits to which Plaintiffs are not otherwise entitled;

5.3.4 Plaintiffs have been offered 21 days to consider this Agreement before executing same and that any changes to this Agreement

subsequently agreed upon by the Parties, whether material or immaterial, do not restart this period for consideration; and

5.3.5 Plaintiffs have been advised that during the seven-day period following their execution of this Agreement, any one of them may revoke their acceptance of this Agreement by delivering written notice to Chasan Leyner & Lamparello, PC, attention Joseph A. Garcia, Counsel for the City of Newark, and that this Agreement shall not become effective or enforceable until after the revocation period has expired for each and every Plaintiff without any one of them revoking their acceptance.

6. **Attorney's Fees and Expenses**

It is specifically understood and agreed that the amount paid under this Agreement includes all attorney's fees and costs to which Plaintiffs and/or their attorneys may be entitled and the settlement sum is specifically intended to be inclusive of all attorneys' fees and costs. Plaintiffs understand that by executing this Agreement, they release and waive any claim or right for attorneys' fees and expenses in connection with the within suit. Neither Plaintiffs nor the Law Offices of John McGovern, Counsel for Plaintiffs, nor anyone acting on their behalf, shall make application for any additional monies in addition to the amounts set forth in this Agreement nor shall any of them make any application for attorneys' fees or costs as those amounts are included in the total payment being made herein.

7. **No Admission of Liability**

This Agreement is executed and all consideration is given in final settlement of disputed claims, and shall not be construed as an admission of any allegation of liability or wrongdoing by any of the Parties.

8. **Confidentiality and Non-Disclosure**

8.1 Unless consent is granted, neither the Parties nor their respective attorneys, agents or representatives shall disclose this Agreement or discuss the terms hereof with any third party. However, the information in this Agreement may be communicated to the Parties' spouses, attorneys, tax advisors, and financial advisers. If a Party or their attorney receives an inquiry from any third party about this Agreement, the Party shall respond by saying only that "the matter has been settled." The Parties agree and understand the confidentiality requirements of this Section are a material inducement to their consent to this Agreement, and that a violation of these confidentiality requirements will be deemed a material breach of this Agreement. In the event a Party or their attorney is required by Court Order to disclose the terms and provisions of this Agreement, the Party shall give all other Parties written notification prior to disclosure.

8.2 The provisions of **Section 8.1** shall apply to all Parties, however, the Parties acknowledge and recognize that the City of Newark is a public entity, and as such, disclosure of this Agreement by the City may be compelled under the Open Public Records Act, N.J.S.A. 47:1A-1, et seq. ("OPRA"), other statute or common law. The City may also be required to disclose the Agreement in relation to its approval or in relation to its compliance with the terms of the Agreement. Notwithstanding any other term in this Agreement, the Parties agree that the City shall be required to use good faith efforts to

prevent disclosure of the terms of this Agreement, but the City, as a public entity and employer of numerous people, cannot guarantee non-disclosure.

8.3 The Parties acknowledge that this Agreement will be filed with the Commission and any other necessary State agencies.

9. **No Disparaging Statements.**

Plaintiffs agree that they will not make any statement(s) that has, have, or can be expected to have the effect of disparaging the Defendant and/or their employees or agents. Defendant City of Newark, as an entity, will not make or adopt any statement(s) that has, have, or can be expected to have the effect of disparaging Plaintiffs, nor will it authorize any of its employees or agents to do so.

Nothing in this Agreement, however, shall bar the City of Newark, its representatives or agents, from justifying the City's rationale for entering this Agreement.

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The Parties represent and warrant that their respective attorneys have represented them fully, fairly, and without bias or conflict in connection with the Action.

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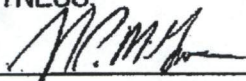
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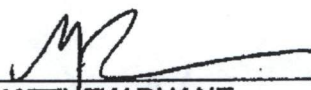
PLAINTIFFS ACKNOWLEDGE THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT, FULLY UNDERSTAND IT AND ARE VOLUNTARILY ENTERING INTO IT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

WITNESS:



Dated: 4/29/16



MATTHEW RUANE

WITNESS:

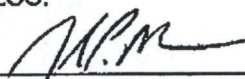


Dated: 4/29/16



LEE DOUGLAS III

WITNESS:



Dated: 4/29/16



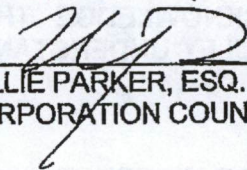
MARLIN EASTER

WITNESS:

Dated: _____

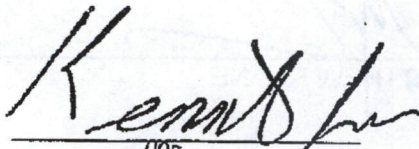
CITY OF NEWARK,

BY:



WILLIE PARKER, ESQ.
CORPORATION COUNSEL

ATTEST:



KENNETH LOUIS
CITY CLERK

DATE: 11/29/16