

CITY OF VINELAND

RESOLUTION NO. 2017-336

RESOLUTION AUTHORIZING THE EXECUTION OF A
RELEASE AND SETTLEMENT AGREEMENT IN THE
MATTER OF WILLIAM LUTZ V. CITY OF VINELAND

WHEREAS, a law suit was filed in the matter of William Lutz v. The City of Vineland, et al filed in the Superior Court of New Jersey, bearing Docket Number CUM-L-224-14 (Complaint); and

WHEREAS, the parties wish to settle all controversies among them including those claims asserted in the Complaint; and

WHEREAS, all claims alleged against Anthony Fanucci have heretofore been dismissed with prejudice leaving claims asserted against the City of Vineland, among others; and

WHEREAS, the City of Vineland denies each and every allegation made against it in the Complaint and any settlement entered into is based upon reasons other than the merits of the claims against the City of Vineland; and

WHEREAS, the proposed settlement is in the amount of \$350,000.00 of which the City of Vineland would be responsible for the payment of \$120,000 representing its deductible and other uninsured claims.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are authorized to execute a Settlement Agreement and General Release in the form and substance attached hereto and made a part hereof.

Adopted:

President of Council

ATTEST:

City Clerk

SETTLEMENT AGREEMENT AND GENERAL RELEASE

In the matter of WILLIAM LUTZ v. CITY OF VINELAND, ANTHONY FANUCCI AND ROBERT PINIZZOTTO, Docket No. CUM-L-224-14

This Settlement Agreement and General Release (hereinafter "this Agreement") entered into and by and among WILLIAM E. LUTZ ("Lutz" or "Plaintiff"), Releasor, and the CITY of VINELAND AND ROBERT PINIZZOTTO, (the "Defendants") Releasees, collectively known as "the Parties."

Whereas, Releasor, as Plaintiff, filed a Complaint against Defendants in the New Jersey State Superior Court, Cumberland County, entitled WILLIAM LUTZ v. CITY OF VINELAND, ANTHONY FANUCCI AND ROBERT PINIZZOTTO, with the Docket No. CUM-L-224-14 and has asserted claims against Defendants; and,

Whereas, the Parties wish to settle all controversies among them involving Plaintiff, including Plaintiff's claims bearing William Lutz v. City of Vineland, Anthony Fanucci and Robert Pinizzotto, Docket No. CUM-L-224-14, and any and all related claims which could have been asserted, whether they are presently known or unknown,

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

Whereas, Plaintiff stands by the merits of his claims against Releasees and agrees that the merits of his claims against Releasees are disputed and have not been adjudicated by any Court; and

Whereas, Defendant Anthony Fanucci has been dismissed with prejudice.

Whereas, Defendants City of Vineland and Robert Pinizzotto are going to be dismissed with prejudice;

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

1. SETTLEMENT PAYMENTS.

a. After Releasor's execution and presentation of the attached Release and Stipulation of Dismissal with Prejudice, PLAINTIFF shall be paid the total amount of Three Hundred Fifty Thousand dollars (\$350,000.00) for emotional distress, pain and suffering and attorney's fees and costs of suit, which payment shall constitute consideration for the execution of this agreement and any other documents necessary to resolve and compromise this matter, with finality and with prejudice.

b. Releasees takes no position on the allocation of the settlement amount, which represents a global settlement of all claims presented and which could have been presented. All prayers for relief are dismissed with prejudice in consideration for the sum tendered.

c. PLAINTIFF agrees that, but for this Settlement Agreement and General Release, he would not be entitled to the aforesaid payment.

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d. The settlement amount shall be paid by Releasees in the form of two checks in the amounts of Two Hundred Ninety Thousand (\$290,000.00) to be paid on behalf of DEFENDANTS, the City of Vineland and Sixty (\$60,000.00) to be paid on behalf of Robert Pinizzotto and both checks will be made payable to "My Rights Lawyers, LLC and William Lutz." The Releasees shall issue to My Rights Lawyers, LLC, 1099 Misc. forms in 2018.

e. No payment shall be released without an executed Release and Settlement Agreement and signed Stipulation of Dismissal with Prejudice for the matter bearing William Lutz v. City of Vineland, Anthony Fanucci and Robert Pinizzotto, Docket No. CUM-L-224-14. Other than the further representations and agreements set forth within this Agreement, Releasor shall seek nothing further from Releasees and shall not see any further payment. Nor shall Releasor, or his attorneys, apply to any court for payment of counsel fees, other than those set forth within this Agreement.

2. **COVENANT TO NOT SEEK FURTHER EMPLOYMENT.**

PLAINTIFF covenants and agrees that his relationship with the CITY OF VINELAND has been permanently and irrevocably severed, and that he will not seek employment or reinstatement with, apply for future employment or otherwise obtain employment, apply for any position or seek appointment to any position, with the CITY OF VINELAND, or any board or authority of the CITY OF VINELAND at any time in the future. Releasor expressly acknowledges and agrees that the CITY OF VINELAND will never be obligated to reinstate or employ him, consider him for employment, appoint him or consider him for appointment, and should PLAINTIFF seek reinstatement, obtain employment or apply for future employment, obtain an appointment or seek an appointment, in violation of the terms of this section, the CITY OF VINELAND shall incur no liability by virtue of a refusal to appoint, refusal to hire or consider him for employment or by terminating his employment should he become employed.

3. **COVENANT TO NOT PURSUE FURTHER LEGAL ACTION.**

PLAINTIFF hereby covenants and agrees that the Civil Action shall be dismissed with prejudice and without costs as to the DEFENDANTS. PLAINTIFF shall take no further action against the DEFENDANTS based upon the matters set forth within PLAINTIFF'S pleadings and/or based upon any other cause of action that PLAINTIFF may have stemming or originating from PLAINTIFF'S employment with the CITY OF VINELAND.

As part of good and valuable consideration provided in connection with this agreement, PLAINTIFF further covenants, warrants, agrees and represents that he is unaware of any job related injuries or illnesses associated with his employment with the City of Vineland, except as to those injuries or illnesses enumerated in this Agreement.

As part of the good and valuable consideration provided in connection with this agreement, PLAINTIFF further represents and warrants that he has not initiated any other claim or complaint with any other court, tribunal, law enforcement agency or government agency respecting her employment with the CITY OF VINELAND.

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4. DISMISSAL OF ACTION.

PLAINTIFF understands and agrees that counsel for Releasees will file with the State of New Jersey, Cumberland County an executed Stipulation of Dismissal with Prejudice. The Parties understand and agree that the terms of the aforesaid Dismissal are expressly incorporated by reference within the Settlement Agreement and General Release as if fully set forth herein. The DEFENDANTS will also dismiss all cross-claims with prejudice.

5. RELEASE.

In consideration for the payment and other consideration provided for in this agreement, PLAINTIFF, personally and for his estate and/or his heirs, waives, releases, and gives up any and all claims, demands, obligations, damages, liabilities, causes of action and rights, in law or in equity, known and unknown, that he may have against Releasees and any and all of its officers, officials, employees (present and former), their respective successors and assigns, heirs, executors, legal or personal representatives, and their insurers (including the insurers' current and former agents) based upon any act, event, or omission of any kind occurring before the execution of this Agreement, including, but not limited to, any claim that was asserted or could have been asserted under any federal and/or state statutes, regulations and/or common law, expressly including but not limited to any potential claim relating to the following (including any amendments thereto):

- a. The National Labor Relations Act;
- b. Title VII of the Civil Rights Act of 1964;
- c. Sections 1981 through 1988 of Title 42 of United States Code;
- d. The Employment Retirement Income Security Act of 1974;
- e. The Immigration Reform Control Act;
- f. The Americans with Disabilities Act;
- g. The Age Discrimination in Employment Act of 1967;
- h. The Fair Labor Standards Act;
- i. The Occupational Safety and Health Act;
- j. The Family and Medical Leave Act of 1993;
- k. The Equal Pay Act;

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- l. The New Jersey Law Against Discrimination;
- m. The New Jersey Minimum Wage Law;
- n. The Equal Pay Law for New Jersey;
- o. The New Jersey Worker Health and Safety Act;
- p. The New Jersey Family Leave Act;
- q. The New Jersey Conscientious Employee Protection Act;
- r. The Uniformed Services Employment and Reemployment Act;
- s. Any anti-retaliation provision of any statute or law;
- t. Any other federal, state or local, civil or human rights law or any other local, state or federal law, regulation or ordinance, any provision of any federal or state constitution, any public policy, contract, tort or common law, or any losses, injuries or damages (including back pay, front pay, liquidated, compensatory or punitive damages, attorney's fees and litigation costs).

PLAINTIFF acknowledges that he has twenty-one (21) days to review and consider this Release, which waives PLAINTIFF'S rights and claims under the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) and that his execution of this Release prior to the expiration of that time period constitutes an express waiver to the consideration period.

6. NO CLAIMS PERMITTED/COVENANT NOT TO SUE.

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

7. RELEASE INCLUDES UNKNOWN CLAIMS.

A. PLAINTIFF and the DEFENDANTS understand and agree that the Released Claims are intended to and do include any and all claims of every nature and kind whatsoever (whether known, unknown, suspected, or unsuspected and whether pursuant to any law or cause of action presently in effect or which may be enacted or created in the future) which any one of them has or may have against each other, individually or collectively. This Release is intended to release known and/or unknown Claims directly or indirectly related to the allegations contained in Plaintiff's Complaints, but not intended to waive the rights of either Party for claims against the other for acts or omissions occurring subsequent to the execution of this Agreement.

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B. PLAINTIFF and the DEFENDANTS further acknowledges that they may hereafter discover facts different from or in addition to those which they now know or believe to be true with respect to the Released Claims and agree that, in such event, this Agreement shall nevertheless be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

C. PLAINTIFF and the DEFENDANTS represents and acknowledges (i) that they and their attorneys have conducted whatever investigation was deemed necessary by them and their attorneys to ascertain all facts and matters related to this Agreement; (ii) that each has consulted with and received advice from legal counsel concerning this Agreement; and (iii) that each is not relying in any way on any statement or representation by the other party or their attorneys, except as expressly stated herein, in reaching their decision to enter into this Agreement.

8. **NO ASSIGNMENT OR TRANSFER OF RELEASED CLAIMS.**

PLAINTIFF represents and warrants that as of the date of execution of this Agreement, PLAINTIFF has not assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate, to any person, firm, corporation, association, or entity whatsoever any of the Released Claims. PLAINTIFF hereby agrees to indemnify and hold harmless Releasees against, without limitation, any and all rights, claims warranties, demands, debts, obligations, liabilities, costs, expenses (including attorneys' fees), causes of action, and judgments based on, arising out of, or connected with any such transfer, assignment, or hypothecation, or purported transfer, assignment, or hypothecation.

9. **CONFIDENTIALITY.**

The Parties agree that as an honorable undertaking among themselves not to discuss or divulge the terms of the settlement, except as required by any state or federal law, including OPRA requests for documents related to the settlement. The parties further agree that the amount of Robert Pinizzotto's contribution to the settlement shall remain confidential.

10. **DEFENSE/INDEMNIFICATION.**

Releasor agrees to defend Releasees in any action brought by any source as a result of Releasor's allocation of the settlement amount and to indemnify and hold Releasees harmless from any judgment, penalty, fine or other financial assessment against Releasees stemming from such action.

Releasor's counsel agrees to be solely responsible for any and all judgement searches required by law, including, but not limited to child-support Orders, and to defend and indemnify Releasees in any action of any description resulting from a judgment against PLAINTIFF entered prior to the date of this Release.

16 7/8

11. NO ADMISSION OF LIABILITY.

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

12. ALLOCATION.

The parties acknowledge that this settlement is not conditioned or contingent upon the tax consequences, or lack thereof, associated with PLAINTIFF's receipt of the settlement proceeds discussed above. Further, PLAINTIFF understands and agrees that the DEFENDANTS have not withheld any amount from the agreed upon payment made for federal, state, or local taxes or other withholdings. PLAINTIFF covenants and agrees that he is solely responsible for paying any taxes that may be owed by him on the amounts that he received under paragraph 1.A of this Agreement. To the extent there is a demand for federal, state and city withholding taxes, penalties, interest and assessments by reason of any determination by any taxing or governmental agency that income taxes, employment taxes, and/or social security taxes should have been withheld from payment made to PLAINTIFF each party shall be liable for its own taxes, penalties, interest and assessments.

13. MODIFICATION.

No provision of this Agreement may be changed, altered, modified or waived except in writing signed by PLAINTIFF and duly authorized representatives of DEFENDANTS, which writing shall specifically reference this Agreement and the provision which the parties intend to waive or modify.

14. ATTORNEYS' FEES, COSTS, AND EXPENSES.

PLAINTIFF understands and agrees that the aforesaid payments to him include and encompass therein any and all claims with respect to attorneys' fees, costs, and expenses for or by any and all attorneys who have represented him or with whom he has consulted or who have done anything in connection with William Lutz v. City of Vineland, Anthony Fanucci and Robert Pinizzotto, Docket No. CUM-L-224-14 and/or the Released Claims enumerated in this Agreement.

15. APPLICABLE LAW AND MUTUAL SUBMISSION TO JURISDICTION.

This Agreement shall be construed and enforced according to the laws of the State of New Jersey. PLAINTIFF agrees to submit any and all disputes arising out of or based on this Agreement to the jurisdiction of the courts of the State of New Jersey.

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16. ENTIRE AGREEMENT.

This Agreement contains the sole and entire Agreement between the Parties. PLAINTIFF represents and acknowledges that, prior to executing this Agreement, he consulted with his attorney and that he has had ample time to do so, and that he obtained the advice of his counsel prior to making the decision to execute this Agreement, and that he has not relied upon any representation or statement not set forth in this Agreement made by any other party hereto, or their counsel or representatives, with regard to the subject matter of this Agreement. No other promises or agreements shall be binding unless in writing, signed by the Parties hereto, and expressly stated to represent an amendment to this Agreement.

17. SEVERABILITY.

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

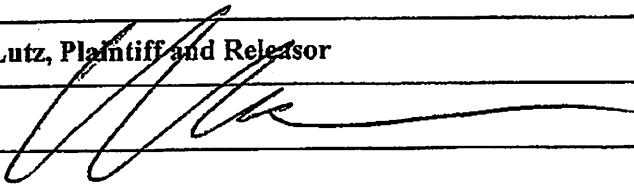
18. COUNTERPARTS ACCEPTABLE.

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

PLAINTIFF HEREBY UNDERSTANDS AND AGREES THAT HE HAS SOUGHT AND RECEIVED THE ADVICE OF HIS ATTORNEY PRIOR TO EXECUTING THIS AGREEMENT, AND THAT HE HAS HAD AMPLE TIME TO DO SO AND THAT HE KNOWINGLY AND VOLUNTARILY HAS DECIDED TO SETTLE HIS CLAIMS AGAINST RELEASEES AFTER THOROUGHLY REVIEWING THIS AGREEMENT WITH HIS ATTORNEY.

SIGNATURES FOLLOW

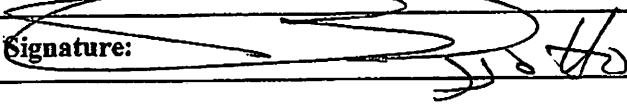
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William E. Lutz, Plaintiff and Releasor
Signature: 

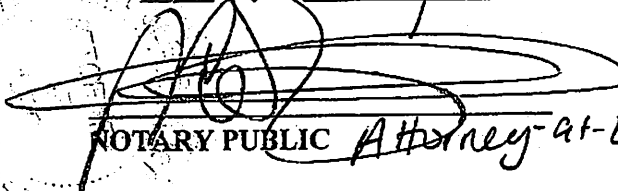
Sworn to and subscribed to before me on
this 6 day of July, 2017.

CAROL B EHRET
ID # 2303071
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires July 18, 2018


NOTARY PUBLIC

~~Robert Pinizzotto, Defendant and Releasee~~
Signature: 

Sworn to and subscribed to before me on
this 20th day of July, 2017.


NOTARY PUBLIC *NICOLE E. WISE*
Attorney-at-Law, State of New Jersey

Anthony Fanucci, on behalf of the City of Vineland, Defendant and Releasee
Signature:

Sworn to and subscribed to before me on
this ___ day of _____, 2017.

NOTARY PUBLIC

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