

# Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 18-220

Agenda No. 10.Z.38

Approved: FEB 28 2018

TITLE:



## A RESOLUTION AUTHORIZING THE SETTLEMENT OF DANIEL WRIEDEN v. CITY OF JERSEY CITY, DOCKET NO. HUD-L-4610-15

**COUNCIL** offered and moved adoption of the following Resolution:

**WHEREAS**, Daniel Wrieden ("Wrieden") asserted a claim against the City of Jersey City (the "City") for discrimination and retaliation; and

**WHEREAS**, the claim alleges that the City purportedly discriminated against Wrieden and retaliated against him; and

**WHEREAS**, the City denies the allegations in Wrieden's claims, and deny that it is liable for any claims raised by Wrieden; and

**WHEREAS**, because of the litigation risk involved, the Corporation Counsel has recommended a settlement of \$300,000; and

**WHEREAS**, Wrieden has agreed to this settlement and has signed all required documents and releases; and

**WHEREAS**, the necessary funds for this settlement are available in the City of Jersey City Insurance Fund Commission Accounts.

**NOW, THEREFORE BE IT RESOLVED**, by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel be authorized to settle this lawsuit for \$300,000.00 inclusive of all attorneys' fees and costs.
2. The Jersey City Insurance Fund Commission be authorized to issue a check in the amount of \$300,000.00 payable to O'Connor, Parsons, Lane and Noble, LLC in trust for Daniel Wrieden.

SWC/dc  
2/26/18

APPROVED: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
Business Administrator

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
1st Ass. Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED 8-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 2-28-18											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
RIDLEY	✓			YUN	✓			RIVERA	✓		
PRINZ-AREY	✓			SOLOMON	✓			WATTERMANN	ABSENT		
BOGGIANO	✓			ROBINSON	✓			LAVARRO, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.

\_\_\_\_\_  
Rolando R. Lavarro, Jr., President of Council

\_\_\_\_\_  
Robert Byrne, City Clerk

## **RESOLUTION FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

### **Full Title of Ordinance/Resolution**

Resolution authorizing the settlement of the suit of Daniel Wrieden v. City of Jersey City, Dkt. No. HUD-L-4610-15

### **Initiator**

Department/Division	Law	
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	6545	

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

### **Resolution Purpose**

This settlement resolves an employment discrimination and retaliation case filed in State Court by Jersey City Supervising Historic Preservation Specialist Daniel Wrieden. Based upon settlement demands, the facts presented, the risk of legal and monetary exposure, as well as the costs associated with litigating this matter through trial, this settlement is fair and reasonable.

I certify that all the facts presented herein are accurate.

\_\_\_\_\_  
Signature of Department Director

\_\_\_\_\_  
Date

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as the "Agreement") is entered into by and between Daniel M. Wrieden ("Wrieden" or "Plaintiff") and the City of Jersey City (the "City" or "Defendant") (Wrieden and the City, collectively, hereinafter referred to as the "Parties").

### RECITALS

WHEREAS, the Plaintiff filed a civil action entitled *Wrieden v. City of Jersey City, et al.*, Superior Court of New Jersey, Law Division, Hudson County, Docket No. HUD-L-4610-15 (the "Action"); and

WHEREAS, the City denies the allegations containing in the Action, and denies that the City, or any of the City's departments, divisions, agencies, servants, officers, directors, employees, agents, insurers, benefit plan fiduciaries or successors are liable for any claims raised by Wrieden; and

WHEREAS, the Parties have agreed that it is in their mutual best interests to discontinue the Action and have agreed to terms to fully and finally settle and resolve the Action; and

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree as follows:

1. Agreements by the City and Wrieden

A. In full and final settlement of the Action, and within 60 days of approval of this Agreement by the City Council, the City shall pay Wrieden the sum of \$300,000 in a single check made payable to "O'Connor, Parsons, Lane & Noble in Trust for Daniel M. Wrieden" and delivered to his attorney, Gregory B. Noble, Esq., O'Connor, Parsons, Lane & Noble, 435 East



Broad Street, Westfield, NJ 07090. The Parties agree that this amount constitutes payment for emotional distress with physical manifestations related to Plaintiff's Pierce tort claim as asserted in the Action. The Parties agree that no part of any payments by the City pursuant to this Agreement constitute: (i) a fine or penalty under any law; or (ii) a payment to settle any actual or potential liability for a fine or penalty under any law.

B. The Parties acknowledge and agree that the City completed a Status Form to place Plaintiff in the title of Supervising Historic Perseveration Specialist effective as of February 1, 2018 and that Plaintiff currently occupies that title.

C. Within 3 business days of approval of this Agreement by the Jersey City Council, Defendant will make formal application to the Civil Service Commission requesting Plaintiff's retroactive permanent appointment in the title of Supervising Historic Perseveration Specialist pursuant to Certification No. PL131015 and the reopening of the Civil Service Commission promotional list that expired on August 14, 2016. In conjunction with this application, Defendant agrees to formally request of the Civil Service Commission, in writing, a retroactive appointment with a date of November 18, 2013 pursuant to N.J.A.C. 4A:4-1.10 and/or N.J.A.C. 4A:4-3.4 or any other applicable regulations or laws. Defendant will also furnish the full settlement agreement to the Civil Service Commission in support of this request. In the event that Civil Service Commission denies this request, Defendant agrees to cooperate in and support any appeal by Plaintiff. The Parties agree that the making of said formal application to Civil Service Commission by the Defendant is a material term of this Settlement Agreement.

D. The Parties agree that on or before August 1, 2018, Plaintiff shall receive a performance evaluation conducted by the Director of Planning. If the evaluation is positive, Plaintiff shall receive a raise.

E. Within 5 business days of approval of this Agreement by the Jersey City Council, Defendant will credit Plaintiff's accrued time bank as follows: (a) 15 sick days; (b) 15 vacation days; and (c) 19 personal days.

F. Within 5 business days of approval of this Agreement by the Jersey City Council, Jersey City will issue the statement attached hereto as Exhibit A.

G. The Parties understand and agree that this Agreement is and shall be subject to approval by the Jersey City Council. The City shall use its best efforts to present this fully executed Agreement to the Jersey City Council at the February 26, 2018 caucus meeting for approval at the February 28, 2018 Council meeting.

H. The City acknowledges that Anthony Cruz is no longer employed by the City.

2. Non-Disparagement

The Parties agree that they will not make any negative comments or disparaging remarks, in writing, orally or electronically, about each other, including any of the City's departments, divisions, agencies, servants, officers, directors, employees, attorneys or agents.

3. Tax Liability

Plaintiff agrees to assume all responsibility and liability for payment of any federal, state, or local taxes due regarding the settlement payment specified in Paragraph 1 of the Agreement (the "Settlement Payment"). The City shall not be liable for the payment of any federal, state and local taxes which may be due as a result of payment of the Settlement Payment. Neither the City nor any of its employees or agents, nor counsel to the City, has provided any advice regarding the taxability of the Settlement Payment. Wrieden agrees to fully defend, indemnify and hold harmless the City, and each of its departments, divisions, agencies, and the servants, officers, directors, employees and agents of each of them, harmless from any liability for payment of



taxes, penalties, withholdings obligations and interest that may be required by any government agency at any time as a result of the Settlement Payment.

4. Consideration

The Parties agree that sufficient consideration has passed between them by virtue of this Agreement, including the releases, covenants, equitable relief, payments and other provisions herein, all of which the Parties deem valid and enforceable. Wrieden understands and agrees that he is not eligible for or entitled to any other benefit or consideration from the City except as provided in this Agreement.

5. General Release

A. In exchange for the consideration set forth herein, Wrieden agrees, intending to be legally bound, to the maximum extent permitted by law, to release and forever discharge the City, including its current and past departments, divisions, agencies, servants, officers directors, employees, agents, insurers, benefit plan fiduciaries and successors (collectively, the "Releasees"), individually and collectively, from any and all claims, causes of action, complaints, lawsuits or liabilities of any kind (collectively, "Claims"), which he, his heirs, agents, administrators or executors may have against the City or the other Releasees (except for those Claims set forth in Paragraph 5.D below).

B. By agreeing to this release, Wrieden is waiving, to the maximum extent permitted by law, any and all Claims which he may have against the City or the other Releasees arising out of or relating to any conduct, matter, event or omission existing or occurring prior to her signing of this Agreement, including, but not limited to, the following:

- (i) any Claims which Wrieden asserted or could have asserted connection with his employment with the City;



- (ii) any Claims relating to or arising out of Wrieden's employment with the City and/or any of its parents, subsidiaries, departments, divisions, agencies or affiliates;
- (iii) any Claims which Wrieden asserted or could have asserted in the Action;
- (iv) any Claims for unpaid or withheld wages, severance, disability pay, distributions, profits, benefits, bonuses, commissions and/or other compensation of any kind;
- (v) any Claims for reimbursement of expenses of any kind;
- (vi) any Claims for attorneys' fees, costs or expenses;
- (vii) any Claims of discrimination and/or harassment and/or retaliation based on age, sex, pregnancy, race, religion, color, creed, disability, handicap, citizenship, national origin, ancestry, sexual orientation, or any other factor protected by Federal, State or Local law (such as the Age Discrimination in Employment Act, 29 U.S.C. §621 et. seq., Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Equal Pay Act and the New Jersey Law Against Discrimination), and any Claims for retaliation under any of the foregoing laws;
- (viii) any Claims regarding leaves of absence under Federal, State or Local law [including any Claims under the Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA)];



- (ix) any Claims under the National Labor Relations Act;
- (x) any Claims under the Sarbanes-Oxley Act;
- (xi) any Claims for violation of public policy, including any Pierce claims;
- (xii) any other Claims for retaliation and/or any whistleblower Claims (including any Claims under the Conscientious Employee Protection Act);
- (xiii) any Claims for emotional distress or pain and suffering; and/or
- (xiv) any other statutory or common law Claims, now existing or hereinafter recognized, known or unknown, asserted or unasserted, including, but not limited to, breach of contract, libel, slander, fraud, wrongful discharge, promissory estoppel, equitable estoppel and misrepresentation.

C. Wrieden understands that this General Release includes all Claims known or unknown by him, including those that he may have asserted or raised previously as well as those that he has not raised or asserted previously.

D. The Release set forth in this paragraph does not apply to: (a) any claims for vested benefits under any City retirement, 401(k) or other deferred compensation plan; (b) any Claims to require the City to honor its commitments set forth in this Agreement; (c) any Claims to interpret or determine the scope, meaning or effect of the Agreement; (d) any Claims relating to any conduct, matter, event or omission occurring after the Parties' execution of this Agreement and the City Council's approval of this Agreement; (e) any past, pending or future claims for Worker's Compensation benefits and awards; or (f) any Claim that cannot be waived as a matter of law.



6. Agreement to Dismiss Action With Prejudice and Refrain from Filing Claims

In consideration for the benefits set forth in this Agreement and prior to being eligible to receive the Settlement Payment, Wrieden's attorney shall execute a "Stipulation of Dismissal with Prejudice" (the "Stipulation") and return it to the City's attorney along with Wrieden's delivery of an executed original of this Agreement. The Stipulation will not be filed until after the Settlement Payment has been received by counsel for Wrieden. Wrieden agrees to take any other necessary actions to dismiss the Action, with prejudice and without any costs awarded to or against any of the Parties. Wrieden also agrees, to the maximum extent possible under applicable law, that: (a) he will not file or initiate a lawsuit in any court, initiate an arbitration proceeding, or opt into any collective or class action, against any of the Releasees for any Claims released by the Agreement (the "Released Claims"); (b) he will not permit himself to be a member of any class in any court or in any arbitration proceeding seeking relief against any of the Releasees based on any of the Released Claims; and (c) if a court, arbitrator, or government agency rules that he may not waive a Released Claim, he will not accept or be entitled to any money damages or other relief in connection with any other action or proceeding asserting any Claims against any of the Releasees that are released by this Agreement. Wrieden further understands and agrees that the Settlement Payment and other benefits provided under this Agreement shall be the sole relief provided to him for the Released Claims and that, in connection with the filing of any such charge and/or his participation in any such investigation, hearing or proceeding, he will not be entitled to recover, and agrees to waive, any monetary benefits or recovery for any Claims she has released in this Agreement.

7. No Admission of Wrongdoing

This Agreement is entered into as a compromise and for the purpose of avoiding the costs and uncertainties of litigation, and does not constitute an admission by any Party of

liability for any matter including, but not limited to the claims and defenses in the Action. Nothing in this Agreement nor any act or omission relating hereto is or shall be considered an admission, concession, acknowledgment or determination of any alleged liability. Rather, this Agreement has been entered into without any admission, concession, acknowledgement or determination of any liability or non-liability whatsoever, and has no precedential or evidentiary value whatsoever. The Parties intend that this Agreement and its terms be subject to the full protection provided by Rule 408 of either the Federal Rules of Evidence or the New Jersey Rules of Evidence and all similar provisions of law (whether by statute, rule or common law) that protect settlements or settlement communications.

8. Employee Rights Under the Older Workers Benefit Protection Act

Plaintiff acknowledges that he has been afforded 21 days to consider this Agreement. If Plaintiff signs this Agreement before the expiration of such 21 days, Plaintiff is representing that he has elected to waive any rights with respect to the entire 21 days to consider this Agreement; he acknowledges that he has done so voluntarily and with the full understanding that he is waiving his statutory right to do so. If Plaintiff chooses to execute this Agreement, he has the right to revoke acceptance at any time within seven (7) days of the date on which he signed the Agreement. Any revocation within the applicable seven (7) day period must be signed and submitted in writing (which shall include transmission by e-mail) to Jersey City's Assistant Corporation Counsel, Scott W. Carbone, Esq. ([scarbone@jcnj.org](mailto:scarbone@jcnj.org)) and state, "I hereby revoke my acceptance of our Settlement Agreement and General Release." If Plaintiff decides to revoke the Agreement, the revocation shall make this Agreement and its terms and conditions null and void. This Agreement shall not become effective and enforceable until the seven day revocation period has expired ("Effective Date").

9. Each of the Parties agree to pay 50% of the Mediator's fees.

10. Representations by Wrieden

Wrieden represents and warrants as follows: (a) No promise or inducement not expressed herein has been made to him; (b) that, other than the Action, he has not filed any complaints or charges against the City, or any of its any of the City's departments, divisions, agencies, servants, officers, directors, employees or agents, with any local, state or federal agency, tribunal or court, or with any arbitration association; (c) he has not taken any action to pursue his claims, other than as part of the claims asserted in the Action; (d) he has not heretofore assigned or transferred or purported to assign or transfer to any person any Released Claim and will not do so; and (e) that during the course of the Action (whether in the Complaint, interrogatory answers or during his deposition), Wrieden has identified to the best of his recollection all incidents of which he is aware that potentially could be deemed violations of the City's anti-discrimination, anti-harassment or anti-retaliation policies and/or violations of applicable local, state or federal law.

11. No Prevailing Party Designation

The Parties agree that this Agreement shall not be construed to render Wrieden a "prevailing party" within the meaning of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Fair Labor Standards Act, as amended, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act, the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or under any law, statute or ordinance allowing attorney's fees and/or costs to a party who "prevails" in any manner or sense, nor shall this Agreement be deemed to constitute a factor supporting an award of attorney's fees and/or costs under any law, statute or ordinance.

A handwritten signature, likely of Wrieden, enclosed in a circular stamp or seal.

12. Jurisdiction to Enforce Settlement Agreement/Choice of Forum

Except as specifically limited by Paragraph 5.D above, the Superior Court of New Jersey, Law Division, Hudson County shall retain jurisdiction to enforce this Agreement and any proceeding relating to this Agreement, including a default by any of the Parties as to any of terms of this Agreement shall be brought in the Superior Court of New Jersey, Law Division, Hudson County.

13. No Third Party Beneficiaries

The provisions of this Agreement are intended solely to resolve disputed claims between the Parties and the Releasees. This Agreement does not and is not intended to create any rights or benefits for any person other than the Parties and the Releasees. No other person shall have any legally enforceable rights or benefits under this Agreement.

14. Integrated Agreement

The Parties agree that this Agreement represents the sole and exclusive agreement between the Parties with respect to the settlement of the Action and all other matters set forth herein and that all prior communications, representations, undertakings and understandings with respect thereto are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be effective only if in writing and executed by each Party hereto.

15. Amendments

This Agreement may not be changed, modified or altered except in writing signed by the Party against whom the amendment is sought to be enforced.

A handwritten signature, possibly reading "Alia", is enclosed within a hand-drawn circle in the bottom right corner of the page.

16. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of each Party. No assignment or delegation of the obligations hereunder shall be made by any Party without the prior written consent of the other Party.

17. Agreement as Defense

This Agreement may be pleaded as a full and complete defense to any claim that may be instituted, prosecuted or attempted in breach of this Agreement.

18. Voluntary Execution

This Agreement is executed voluntarily by each of the Parties. At the time of the execution of this Agreement, each of the Parties acknowledge that they were not under duress or undue influence and that they each relied upon the advice of competent legal counsel of their own choosing.

19. Joint Drafting

Each of the Parties participated in drafting this Agreement, and each has read, fully reviewed and understands each of the provisions of this Agreement. Each Party has relied on the advice and representation of competent legal counsel of their own choosing in connection with the drafting of this Agreement. Therefore, the language of this Agreement shall not be presumptively construed in favor of or against either Party.

20. Partial Invalidity

If any provision of this Agreement or any portion of this Agreement is declared null and void or unenforceable by any court having jurisdiction, such provision or such portion of a provision shall be considered separate and apart from the remainder of the Agreement, which shall remain in full force and effect.

A handwritten signature, possibly "Glu", is enclosed within a hand-drawn circle in the bottom right corner of the page.

21. Waiver of Breach

The waiver by either Party of a breach by the other Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Any waiver by a Party of a breach shall be effective only if made in writing and duly executed by the Party alleged to have waived the breach.

22. Sense and Circumstance

All references made and all pronouns used herein shall be construed in the singular or plural and in such gender as the sense or circumstances require.

23. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to its conflict of laws provisions.

24. Paragraph Headings

The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

25. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed to be an original and all of which, when taken together, shall constitute the same instrument notwithstanding that the Parties may not have signed the same counterpart.

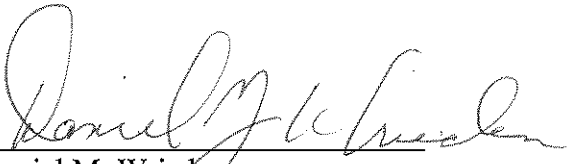
26. Authority of Signatories

The individuals signing this Agreement and the representatives of the Parties on whose behalf such individuals are signing, hereby represent and warrant that they are empowered and authorized to sign on behalf of and bind the Parties for whom they have signed.


*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

A handwritten signature, possibly "G. J. W.", is enclosed within a hand-drawn circle in the bottom right corner of the page.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily have caused this Agreement to be executed on the date(s) indicated below their respective signatures.

  
Daniel M. Wrieden

Date: 2/26/18

WITNESS: 

Date: 2.26.18

**CITY OF JERSEY CITY**

By: 

Business Administrator

Date: 3/2/18

## **EXHIBIT A**

Jersey City and Daniel Wrieden have reached a settlement regarding Mr. Wrieden's lawsuit. As part of the settlement, Mr. Wrieden has dismissed his lawsuit with prejudice and Jersey City, upon approval from the Civil Service Commission, is appointing him to the position of Supervising Historic Preservation Specialist, retroactively and permanently, as of November 18, 2013 as a result of his passing his promotional exam. Jersey City is committed to a professional and respectful work environment and regrets any incidents that occurred contrary to the interests of Mr. Wrieden. Jersey City values Mr. Wrieden as an employee as well as his almost 16 years of dedicated service.

A handwritten signature, possibly "G. Wrieden", is enclosed within a hand-drawn oval in the bottom right corner of the page.