

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

City Clerk File No. Res. 15.141

Agenda No. 10.Z.4

Approved: FEB 25 2015

TITLE:



## RESOLUTION AUTHORIZING THE SETTLEMENT OF THE SUIT OF ANTHONY MUSANTE AND MICHELLE MUSANTE V. CITY OF JERSEY CITY, ET AL.

WHEREAS, Anthony Musante ("Musante") and his wife, Michelle Musante (collectively, "the Musantes") asserted a claim against the City of Jersey City for purported injury damages or loss on March 3, 2014; and

WHEREAS the claim alleges that Defendants discriminated and retaliated against Musante; and

WHEREAS, because of the litigation risk involved, the Corporation Counsel has recommended a settlement of \$50,000.00; and

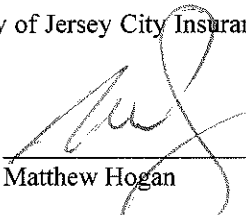
WHEREAS, Plaintiffs have agreed to this settlement and will sign all required releases; and

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 is authorized to settle this lawsuit for \$50,000 inclusive of all attorneys' fees and costs.
2. The Jersey City Insurance Fund Commission is authorized to pay to or on behalf of Musante the sum of fifty thousand dollars and zero cents (\$50,000) (the "Settlement Payment"), inclusive of any and all costs and attorneys' fees incurred. The first check will be made payable to "Anthony Musante" in the amount of Three-thousand dollars and zero cents (\$3,000), less applicable tax deductions or withholdings. The second check will be made payable to "Gina Mendola Longarzo, Esq. in Trust for Anthony Musante" in the amount of Twenty-two thousand dollars and zero cents (\$22,000) (no tax deductions or withholdings). The third check will be made payable to "Gina Mendola Longarzo, Esq." in the amount of Twenty-five thousand dollars and zero cents (\$25,000) (no tax deductions or withholdings) in full and complete satisfaction of the Musantes' claim for attorneys' fees, costs, and other legal expenses.

I hereby certify that funds for this expenditure are available in the City of Jersey City Insurance Fund Commission Accounts.

  
Matthew Hogan

VS/dc  
2/18/15

APPROVED: 

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

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Corporation Counsel

Certification Required ☐

Not Required ☐


APPROVED 9-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 2.25.15											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
RAMCHAL	✓			OSBORNE	✓			WATTERMAN	✓		
BOGGIANO	✓			COLEMAN	✓			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

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**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 Anthony Musante and Michelle Musante v. City of Jersey City, et al.

**Initiator**

Department/Division	Law	
Name/Title	Jeremy Farrell	
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 employment, labor and related issues. Based upon initial settlement demands, risk of legal, monetary exposure, and costs associated with litigating this matter through trial, the amount of \$50,000 is fair and reasonable.

I certify that all the facts presented herein are accurate.

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

\_\_\_\_\_  
Date

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This is a Settlement Agreement and General Release ("Agreement") by and between: (1) Anthony Musante ("Musante") and his wife, Michelle Musante (collectively, "the Musantes"); and (2) the City of Jersey City ("Jersey City"). Jersey City includes its current and past subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees (including, but not limited to, Mayor Steven M. Fulop and Chief Robert Cowan), insurers, benefit plan fiduciaries, agents, or successors. Jersey City and the Musantes will sometimes collectively be referred to herein as "the Parties."

WHEREAS, The Musantes asserted a claim against the City of Jersey City for purported injury damage or loss on March 3, 2014 (See Exhibit A attached hereto);

WHEREAS, Jersey City denies the allegations in the Musantes claim, and denies that it, or any of its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees, insurers, benefit plan fiduciaries, agents, or successors are liable for any claims raised by the Musantes;

WHEREAS, the Parties mutually desire to resolve all of their disputes.

NOW THEREFORE, in consideration of the foregoing, and of the promises and mutual covenants herein contained, the parties agree as follows:

1. SETTLEMENT PAYMENT - In consideration for the Musantes' agreement to all of the terms, conditions and promises in this Agreement, Jersey City and the Musantes agree that: (1) Anthony Musante shall be placed in the Background Unit of the Police Chief effective February 1, 2015; and (2) Jersey City will pay to or on behalf of Musante the sum of fifty thousand dollars and zero cents (\$50,000) (the "Settlement Payment"), inclusive of any and all costs and attorneys' fees incurred. The first check will be made payable to "Anthony Musante" in the amount of Three-thousand dollars and zero cents (\$3,000), less applicable tax deductions or withholdings, and will be reported as wage income on IRS Form W-2. The second check will be made payable to "Gina Mendola Longarzo, Esq. in Trust for Anthony Musante" in the amount of Twenty-two thousand dollars and zero cents (\$22,000) (no tax deductions or withholdings) and will be reported as income on IRS Form 1099. The third check will be made payable to "Gina Mendola Longarzo, Esq." in the amount of Twenty-five thousand dollars and zero cents (\$25,000) (no tax deductions or withholdings) in full and complete satisfaction of the Musantes' claim for attorneys' fees, costs, and other legal expenses, and shall be reported as income on IRS Form 1099. Jersey City agrees to deliver the aforementioned checks to the Musantes' attorney within ninety (90) days following the delivery to Jersey City's counsel of (a) this Agreement, executed with the Musantes' original signature and the date of execution, provided, however, that no payment shall be due until after the Effective Date of this Agreement, i.e., after the expiration of the seven-day revocation period described in below. The parties agree that no part of any payments by Jersey City pursuant to this Agreement constitutes (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.

2. **TAX LIABILITY** – Musante represents and warrants that neither Jersey City or any of its employees or agents nor counsel to the Parties provided any advice regarding the taxability of the settlement amount to be paid pursuant to Paragraph 1. Musante agrees that he shall be liable for the payment of all federal, state and local taxes which may be due as the result of the consideration received in the Settlement Payment described above, and that such Settlement Payment is made for the settlement of disputed claims as set forth herein. Musante represents that he shall pay such taxes at the time and in the amount required by law. In addition, Musante agrees fully to defend, indemnify and hold Jersey City, and each of its divisions, affiliates, parents, subsidiaries and operating companies, and the respective officers, directors, employees, agents and affiliates of each of them, harmless from any liability for payment of taxes, penalties, withholding obligations and interest that are required of him by any government agency at any time as the result of the payment of the consideration set forth herein. Musante further acknowledges and agrees to hold harmless the counsel to the Parties in the event that any federal, state or local taxing authority asserts any claim for unpaid taxes, failure to withhold taxes, or interest based upon Jersey City's payment of these sums to him.

3. **SUFFICIENCY OF CONSIDERATION** – The Musantes recognize that Jersey City disputes their claims and has asserted defenses to their claims, and that the consideration provided in this Agreement accordingly confers upon them a benefit to which they are otherwise not entitled. Therefore, the Musantes acknowledge and agree that the consideration provided by Jersey City to them pursuant to this Agreement (including but not limited to Paragraph 1) constitutes good and valuable consideration for the general release and the other promises and terms in this Agreement. The Musantes understand and agree that they are not eligible for or entitled to any other benefit or consideration from Jersey City except as provided in this Agreement or except as provided pursuant to any collective bargaining agreement or applicable employment manual or policy of Jersey City.

4. **GENERAL RELEASE** – In exchange for the Settlement Payment set forth above in Paragraph 1, the Musantes agree, intending to be legally bound, to the maximum extent permitted by law, to release and forever discharge Jersey City and its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees (including but not limited to Mayor Steven M. Fulop and Chief Robert Cowan), insurers, benefit plan fiduciaries, agents, or successors (collectively, the "Released Parties") individually and collectively, from any and all claims, causes of action, complaints, lawsuits or liabilities of any kind (collectively "Claims"), which the Musantes, their heirs, agents, administrators or executors may have against Jersey City or any of the other Released Parties that exist as of the date this Agreement is signed.

A. **RELEASED CLAIMS** - By agreeing to this General Release, the Musantes are waiving, to the maximum extent permitted by law, any and all Claims (the "Released Claims") which they have or may have against Jersey City or any of the other Released Parties arising out of or relating to any conduct, matter, event or omission existing or occurring prior to their signing of this Agreement, including but not limited to the following:

any Claims relating to or arising out of Musante's employment with Jersey City and/or any of its departments, agencies and/or affiliated entities;

any Claims for unpaid or withheld wages, severance, benefits, bonuses, commissions and/or other compensation of any kind;

any Claims for reimbursement of expenses of any kind;

any Claims arising under the Employee Retirement Income Security Act;

any Claims for attorneys' fees, costs or expenses;

any Claims of discrimination and/or harassment based on age, sex, race, religion, color, creed, disability, handicap, citizenship, national origin, ancestry, sexual orientation, political affiliation, political association 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. (ADEA), Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Equal Pay Act, the New Jersey Law Against Discrimination, the New Jersey Civil Rights Act, 42 U.S. Code § 1983, and any Claims for retaliation under any of the foregoing laws;

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)];

any Claims under the National Labor Relations Act;

any Claims under the Sarbanes-Oxley Act;

any Claims for violation of public policy;

any Claims for retaliation and/or any whistleblower Claims [including any Claims under the Conscientious Employee Protection Act];

any Claims of political retaliation;

any complaint filed by Musante with the City of Jersey City Police Department filed prior to the execution of this Settlement Agreement;

any Claims for emotional distress or pain and suffering; and/or

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.

- B. **NON-RELEASED CLAIMS** - It is important that the Musantes understand that this General Release includes all Claims known or unknown to them, including those that they may have asserted or raised previously as well as

those that they have not raised or asserted previously. The General Release in Paragraph 4A above does not apply to:

Any Claims for vested benefits under any City retirement and/or 401(k) plan;

Any Claims to require Jersey City to honor its commitments set forth in this Agreement;

Any Claims to interpret or to determine the scope, meaning or effect of this Agreement;

Any Claims relating to any conduct, matter, event or omission occurring after they signed this Agreement;

Any past, pending or future claims for Worker's Compensation benefits and awards.

Any claim which cannot be waived as a matter of law.

5. **COVENANT NOT TO SUE** – The Musantes agree not to file or initiate a lawsuit in any court, initiate an arbitration proceeding, or opt into any collective action or class action, asserting any of the Released Claims against any of the Released Parties. The Musantes further agree that they will not permit themselves to be a member of any class in any court or in any arbitration proceeding seeking relief against the Released Parties based on claims released by this Agreement, and that even if a court, arbitrator, or government agency rules that they may not waive a claim released by this Agreement, they will not accept or be entitled to any money damages or other relief in connection with any other action or proceeding asserting any of the Released Claims against any of the Released Parties. The Musantes agree to reimburse the Released Parties for any legal fees that they incur as a result of any breach of this paragraph by the Musantes.

6. **NO FAIR LABOR STANDARDS ACT CLAIM/UNPAID WAGES CLAIM**  
The Musantes represent that they are not aware of any facts that would support a claim against any of the Released Parties for unpaid overtime or any other alleged violation of the Fair Labor Standards Act or comparable state or city law. Musante represents and agrees that he has been paid all of his normal and customary wages for services rendered during his employment with Jersey City, and is not due and owing any additional monies/holidays or vacation days for services rendered.

7. **CONFIDENTIALITY**– To the extent permitted by law, the Musantes agree to keep all of the terms and conditions of this Agreement (including but not limited to the amount of the Settlement Payments) strictly confidential, subject to all applicable laws. The Musantes represent that they have not disclosed and agree that they will not disclose the existence of this Agreement or any of the terms or conditions of this Agreement to anyone other than a current spouse, attorney, tax or financial advisor, medical provider, any taxing authority, any court of competent jurisdiction in order to enforce the terms of this Agreement, or as may be required pursuant to law or legal process. The Musantes further agree to take reasonable steps to ensure

that any information concerning this Agreement which is disclosed to a spouse, attorney or tax or financial advisor will not be disclosed to any other third party, including but not limited to informing such persons that the terms and conditions of this Agreement are strictly confidential and that they may not be disclosed or discussed with anyone else. If the Musantes are asked about the status of this case by anyone else, they shall respond that "The case was resolved confidentially" and will not say anything further. The Musantes acknowledge that this Confidentiality provision constitutes a material inducement to Jersey City agreeing to settle this matter, and that Jersey City would not have settled this matter *but for* the Musantes agreeing to the terms and conditions of this paragraph 7.

8. **PROHIBITION ON NEGATIVE COMMENTS** – Jersey City, its agents and employees and the Musantes agree that, to the extent permitted or prohibited by law, they will not make any negative comments or disparaging remarks, in writing, orally or electronically, about each other or any Released Party. However, nothing in this Agreement shall be interpreted to restrict Jersey City, its agents' and employees' or the Musantes' right and obligation: (i) to testify truthfully in any forum; (ii) to cooperate fully and provide information as requested in any investigation by a governmental agency or commission or as required by law; or (iii) to exercise their First Amendment rights to participate in public discourse about public issues.

9. **INJUNCTIVE RELIEF** – Without limiting the remedies available to the Released Parties, the Musantes acknowledge that a proven breach of any of the covenants contained in any of the sections above labeled Confidentiality and Prohibition on Negative Comments may result in irreparable injury to the Released Parties for which there is no adequate remedy at law, and that, in the event of such a breach or threat thereof, the affected Released Party shall be entitled to seek, in addition to any other relief that may be available, a temporary restraining order and/or a preliminary or permanent injunction, restraining the Musantes from engaging in activities prohibited by any of the covenants contained herein, as well as such other relief as may be required specifically to enforce any of the covenants contained herein, without the payment of any bond.

10. **NON-ADMISSION OF WRONGDOING** – The Parties agree that this Agreement does not constitute an admission by Jersey City or any of the Released Parties of any of the matters alleged in the Lawsuit or of any violation by them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Jersey City or any of its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees, insurers, benefit plan fiduciaries, agents, or successors. This Agreement may be introduced, however, in any proceeding to enforce this Agreement. Such introduction shall be pursuant to an order protecting its confidentiality, which order Jersey City shall apply for and the Musantes will not oppose.

11. **WAIVER OF DAMAGES** - Nothing herein is intended to or shall interfere with the Musantes' right and/or obligations to participate in a proceeding with any appropriate federal, state or local government agency enforcing federal or state discrimination laws and/or cooperating with said agency in its investigation. The Musantes, however, shall not be entitled to receive any relief, recovery or monies in connection with any complaint or charge brought against any of the

Released Parties, without regard as to who brought any such complaint or charge for any claim released herein.

12. **GOVERNING LAW** - This Agreement shall be governed by and conformed in accordance with the laws of the State of New Jersey without regard to its conflict of laws provisions.

13. **COUNTERPARTS** - This Agreement may be executed in counterparts and each counterpart will be deemed an original.

14. **REPRESENTATION BY COUNSEL; UNDERSTANDING OF AGREEMENT** - The Musantes agree and represents that:

- A. They have read carefully the terms of this Agreement, including the General Release;
- B. They have had an opportunity to and have been encouraged to review this Agreement, including the General Release, with an attorney;
- C. They understand the meaning and effect of the terms of this Agreement, including the General Release;
- D. Their decision to sign this Agreement, including the General Release, is of their own free and voluntary act without compulsion of any kind;
- E. No promise or inducement not expressed herein has been made to them; and They have adequate information to make a knowing and voluntary waiver.

15. **EMPLOYEE RIGHTS UNDER THE OLDER WORKERS BENEFIT PROTECTION ACT** - Musante acknowledges that he has been afforded 21 days to consider this Agreement. If Musante signs this Agreement before the expiration of such 21 days, Musante is representing that he has elected to waive his 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 Musante chooses to execute this Agreement, he has the right to revoke his 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, Megan Morey, Esq. (mmorey@jcnj.org) and state, "I hereby revoke my acceptance of our Settlement Agreement and General Release." If Musante 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"). Jersey City advises Musante to consult with his attorney prior to executing this Agreement.

16. **SECTION HEADINGS** - Section headings contained in this Agreement are for convenience of reference only and shall not affect the meaning of any provision herein.

17. **SEVERABILITY** - Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by any court of competent jurisdiction and if such provision cannot be modified to be enforceable, such provision shall immediately become null and void,



leaving the remainder of this Agreement in full force and effect. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

18. **ENTIRE AGREEMENT** - This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the parties concerning the subject matter of this Agreement. The Musantes acknowledge that they have not relied on any representations, promises or agreements of any kind made to them in connection with their decision to accept the terms of this Agreement, except for the representations, promises and agreements herein. Any modification to this Agreement must be in writing and signed by Musante and Jersey City's Corporation Counsel.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and General Release as of the date set forth below.

**PLAINTIFFS**

**WITNESS**

BY: Anthony Musante  
Anthony Musante

BY: Karlaukurie

DATE: 1/29/15

DATE: 1/29/15

BY: Michelle Musante  
Michelle Musante

BY: Karlaukurie

DATE: 1/29/15

DATE: 1/29/15

**CITY OF JERSEY CITY**

BY: Megan L. Morey

Megan L. Morey, Esq.  
ASSISTANT CORPORATION COUNSEL  
Jeremy Farrell  
CORPORATION COUNSEL

DATE: 3/2/2014

V4

Chief Philip Jank  
3/3/14