

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. TA 19-1125-40

Date of Adoption NOVEMBER 25, 2019

APPROVED AS TO FORM AND LEGALITY ON THE BASIS OF FACTS SET FORTH BY

[Signature]
Legislative Research Officer

PRESENTED BY COUNCIL MEMBER COX

SECONDED BY BEASLEY

**APPROVING THE FINAL DISPOSITION OF
ESPINOZA V. TOWNSHIP OF IRVINGTON, ET AL.**

WHEREAS, the matter of Salvador Espinoza v. Township of Irvington, et al, was filed in the Superior Court of New Jersey, Law Division, Docket No. ESX-L-7249-17; and

WHEREAS, the Township of Irvington Administration and the Municipal Council deem it in the best interest to bring this matter to a resolution, thus saving the Township further expense in the defense thereof and curtailing any excessive liability that could result from this litigation; and

WHEREAS, the Office of the Township Attorney has reviewed, monitored and consulted with counsel and all relevant municipal officials and pursuant thereto recommend that this matter be concluded:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it hereby agrees to a settlement of the above matter in the amount not to exceed Ninety Five Thousand (\$95,000.00) Dollars to be paid to the firm of Richard Greifinger, Attorney Trust Account, subject to the execution of a Release and Settlement agreement and executed Stipulation of Dismissal with Prejudice; and

BE IT FURTHER RESOLVED that this matter is hereby concluded with absolutely no admission of liability on behalf of the Township of Irvington, its Police Department or any agents, officers or personnel; and

BE IT FURTHER RESOLVED that the settlement funds will be processed through D&H Alternative Risk Solutions, the Township's third party liability administrator.

RECORD OF COUNCIL VOTE

X = Indicates Vote N.V. = No Vote A.B. = Absent

COUNCIL MEMBER	YES	NO	N.V.	A.B.	COUNCIL MEMBER	YES	NO	N.V.	A.B.
BEASLEY	X				INMAN		X		
COX	X				VICK	X			
FREDERIC, 2ND VICE PRESIDENT	X				BURGESS, PRESIDENT	X			
HUDLEY, 1ST VICE PRESIDENT	X								

PRESIDENT OF COUNCIL *[Signature]* MUNICIPAL CLERK *[Signature]* DATE November 25, 2019

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK *[Signature]* DATE NOV 25 2019



ADMINISTRATOR ASSESSOR BLDG CFO COLLECTOR COURT EDGO ENGINEER FIRE CF HEALTH HOUSING INIC
 JUDGE LEGAL LIBR LICEN MAYOR NPP OCDP PARKS PAYROLL PUBLIC SAFETY DIR PUBLIC WORKS PURCHASING
 SEC PB/ZBA TRAFFIC ZONING OFF DLGS GNCD OTHER(S): _____

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE [hereinafter, the "Agreement"] is made as of this 9th day August, 2019, by and between Plaintiff SALVADOR ESPINOZA, individually and as Administrator ad Prosequendum and Administrator of the Estate of Angel Favian Chalco Espinoza, deceased [hereafter collectively Plaintiffs], and the TOWNSHIP OF IRVINGTON, SIMON JOHNSON, and JOHN DOES 1-20, [hereafter collectively the "Defendants"]. Plaintiff and Defendants are collectively referred to herein as the "Parties."

WHEREAS, Plaintiff instituted an action by the filing of a Complaint against Defendants in the Superior Court of New Jersey, Law Division, Essex County, entitled SALVADOR ESPINOZA, individually and as Administrator ad Prosequendum and Administrator of the Estate of Angel Favian Chalco Espinoza, deceased [hereafter Plaintiff], and the TOWNSHIP OF IRVINGTON, SIMON JOHNSON, and JOHN DOES 1-20,, Docket No. ESX-L-7249-17 [hereinafter, the "Action"];

WHEREAS, the Action contains two causes of action alleging negligence by the defendants, and seeks damages and seeks damages to compensate the decedent's heirs for the wrongful death of the decedent;

WHEREAS, Defendants denied all such allegations;

WHEREAS, the Parties have consulted with their respective attorneys prior to executing this Agreement and have had an adequate opportunity to consider the Agreement; and

WHEREAS, the Parties are desirous of settling any disputes among them, including those which were or could have been asserted by Plaintiff in the Action or otherwise, based on the terms and conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree and covenant as follows:

1) Effective Date. This Agreement is effective and binding upon the Parties as of the date set forth above.

2) Dismissal of the Action. Simultaneous with the execution of this Agreement, the Parties, by their respective counsel, shall execute a Stipulation of Dismissal for filing with the Law Division, in the form attached hereto as Exhibit A, dismissing the Action with prejudice against Defendants and without attorneys' fees and costs to any party. This Stipulation of Dismissal shall be filed with the Court within ten (10) business days after the receipt of this Agreement signed by all parties.

3) Settlement Conditions: In consideration of the release executed by Plaintiff herein, Defendant Township of Irvington shall pay Plaintiff the sum of ninety-five thousand (\$95,000) dollars by checks made payable to "Richard Greifinger, Attorney Trust Account, on behalf of SALVADOR ESPINOZA, individually and as Administrator ad Prosequendum and Administrator of the Estate of Angel Favian Chalco Espinoza."

4) The parties agree that they have been advised by their respective counsel that they should seek the advice of an accountant or financial advisor as to the taxability of this Agreement. Plaintiffs agree that they are solely responsible for the payment and reporting of federal, state and/or local taxes with respect to the Settlement Amount, and Plaintiffs agree to waive any such claims against Defendants or counsel for any liability for the reporting or payment of applicable taxes, and agree to indemnify and hold harmless Defendants for any such liability, including counsel fees and costs.

5) Release of Claims by the Parties. Plaintiff and all of his present, former or future agents, personal representatives, heirs, beneficiaries, executors, administrators, assigns and insurance carriers [hereinafter, the "Releasers"] hereby irrevocably and unconditionally forever release, acquit and discharge Defendants from and against any and all claims, debts, sums of money, medical expense liens, Workers Compensation liens or other statutorily mandated liens such as any Child Support Lien imposed by law (see N.J.S.A. 2A:17-56.23b), obligations, losses, costs, attorney's fees, controversies, suits, actions, causes of action, liabilities, judgments, damages, expenses, claims, or demands, in law or in equity, asserted or unasserted, express or implied, foreseen or unforeseen, real or imaginary, suspected or unsuspected, known or unknown, liquidated or non-liquidated, of any kind or nature or description whatsoever, which the Releasers ever had or now have, which were, could have been or should have been asserted against each other as of the date of the Agreement. Without limiting the generality of the foregoing subparagraph (a), this Agreement is intended to and shall release the Releasees from any and all claims arising out of the automobile accident involving the decedent, and the vehicle owned and operated by Defendant Township of Irvington, on or about February 21, 2016, including but not necessarily limited to any and all claims for breach of any duty owed to the Plaintiff and/or deceased, tort, negligence, infliction of emotional distress, violation of public policy, as well as any claim for attorneys' fees, costs, disbursements and/or the like, or for reimbursement or payment of medical bills or balances. It is further understood that this Release applies to claims which could be brought in the future arising out of the accident that occurred on February 21, 2016, as provided by Mauro vs. Raymark Industries, 116 N.J. 126 (1989) and Alfone vs. Sarno, 87 N.J. 99 (1981).

6) **Medicare/Medicaid Liens.**

A. Releasor for the consideration set forth in this Release Agreement, further agrees to satisfy any and all liens or claims against the proceeds of this Agreement, specifically including, but not limited to, any lien, claim or conditional payment reimbursement demand asserted by or on behalf of Medicare, Medicaid or any entity claiming any right of reimbursement under the Medicare Secondary Payer Act or any other Act. Releasor further agree to hold harmless, indemnify and defend Releasee and Releasee's counsel of record from any claims arising from the failure of Releasor and/or Releasor's counsel of record to satisfy any such liens, claims, and/or Medicare/Medicaid conditional payment reimbursement demands. These obligations include Releasor's payment and/or reimbursement of any and all reasonable attorney's fees and expenses incurred by Releasee and/or Releasee's counsel of record in connection with the failure of Releasor and/or Releasor's counsel of record to satisfy any such liens, claims, and/or Medicare/Medicaid conditional payment reimbursement demands.

B. Releasor also agree to hold harmless, indemnify, and defend Releasee and Releasee's counsel of record with respect to any and all other claims that may be presented by Releasor, Medicare, Medicaid, and/or any other party acting on Releasor's or Medicare's or Medicaid's behalf, including, but not limited to, administrative or civil fines, penalties, and interest, as well as any damages that arise out of, result from, and/or occur as a consequence of any adverse administrative or legal actions, up to and including the loss of Releasor's future Medicare or Medicaid benefits and/or Medicare or Medicaid eligibility. These obligations include Releasor's payment and/or reimbursement of any and all reasonable attorney's fees and expenses incurred by Releasee and/or Releasee's counsel of record in connection with the failure of Releasor and/or Releasor's counsel of record to perform these obligations.

C. The parties to this Release Agreement acknowledge that Releasor may choose to obtain a Medicare Set Aside Arrangement (“MSA”) when Releasor’s liability claims have been resolved. The parties further acknowledge that Releasee and/or Releasee’s counsel of record has/have not provided any advice, legal or otherwise, as to whether such MSA is required, needed or warranted, or how it should be structured or funded. Releasor undertakes and acknowledges complete responsibility for the implementation of any such MSA. Releasor further agree to hold harmless, indemnify, and defend Releasee and/or Releasee’s counsel of record from any claims or liabilities arising out of or in any way connected with any such MSA, including any and all reasonable attorney’s fees and expenses incurred by Releasee and/or Releasee’s counsel of record in connection therewith.

D. The funding of this settlement agreement by the Releasee is made in reliance on Releasor’s agreement to fulfill the obligations set forth in paragraph A, B, and C above. The provisions of paragraph A, B, and C, above, shall survive the execution of this Release Agreement and shall be enforceable at any time in the future, .

7) Mutual Non-Disparagement. Neither Plaintiff nor the defendants nor any past, present or future member of the Township of Irvington Council shall take any actions or make or solicit any statements, written or oral, which in any way disparage, criticize or otherwise reflect adversely upon either Party or which otherwise encourage any adverse action against the Parties.

8) Breach of Agreement/Attorneys’ Fees. In the event that either Party brings an action to enforce the terms of this Agreement or as a result of a breach of the Agreement by the opposite Party, in addition to any remedies available at law or in equity, the non-breaching Party shall be entitled to an award of reasonable attorneys’ fees and costs incurred in connection with

13) Tax Implication. Defendants, their agents, servants, volunteers and representatives, and Plaintiff's legal counsel make no representations as to the tax consequences or liability arising from any payment made under this Agreement. Moreover, Plaintiffs understand that any tax consequence and/or liability arising from payment to Plaintiffs in accordance with this Agreement shall be Plaintiffs' sole responsibility and neither the Defendants nor their agents, servants, volunteers or representatives (past or present) shall be held liable for any payment of any taxes on Plaintiff's behalf. Plaintiff agrees that she will pay any and all income tax that may be determined to be due in connection with the payment described above. Because Plaintiff agrees that she is solely responsible for the payment of taxes on any settlement money received under this Agreement, should the Internal Revenue Service, any State or any other taxing agency or tribunal require Defendants to pay any taxes, fines, penalties, interest or any other cost related to taxes on behalf of Plaintiff with regard to the payment received under this Agreement, Plaintiff agrees to indemnify or reimburse the Defendants, their agents, servants, volunteers or representatives for any taxes she is required to pay.

14) Entire Agreement. This Agreement constitutes the sole and complete agreement among the Parties with respect to the settlement of the Action. None of the Parties is relying upon any representation, understanding, undertaking or agreement, whether oral or in writing, not set forth in this Agreement. This Agreement may not be amended, changed, altered, modified or terminated except in a writing signed by all the Parties hereto.

15) Drafting and Negotiation by Counsel. The drafting and negotiation of this Agreement have been participated in by each of the Parties and their respective counsel and, for all purposes; this Agreement shall be deemed to have been drafted jointly by each of the Parties. No ambiguity shall be resolved against any Party based upon authorship. The Parties hereby

that enforcement or breach action in the event that any such breach is found by a court of competent jurisdiction.

9) Entities and Persons Bound by Agreement. The terms of the Agreement shall be binding upon the Parties and their successors and assigns.

10) Compromise/No Admission of Liability. The Parties understand, represent, and warrant that this Agreement is a full and final compromise of disputed claims and not an admission of wrongdoing or liability (civil, criminal or pursuant to any internal rule or regulation) by or on the part of any Party.

11) Enforceability and Severability. The Parties agree and acknowledge that each of the provisions of this Agreement is reasonable and should be fully enforceable, and the Parties waive any right to argue, assert or allege any claim to the contrary. However, if any provision of this Agreement is determined by a Court of competent jurisdiction to be unenforceable because it is overbroad or unreasonable, the Parties agree that such provision(s) may be modified and enforced to the maximum extent permissible. If any provision of this Agreement is held to be invalid and cannot be modified so as to make it enforceable, then such provision shall be deemed to be severed from the Agreement and the remaining provisions shall remain in full force and effect.

12) Waiver of Breach. A waiver by any Party of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement or of any subsequent breach of the same or any other provisions of this Agreement. The understandings and representations of the Parties set forth in this Agreement shall survive any breach of this Agreement and be enforceable by any non-breaching Party.

acknowledge that they have been represented by counsel throughout the settlement of the above-referenced matter, throughout the negotiation of this Agreement, and at the execution of this Agreement, and have read and consulted with counsel regarding this Agreement.

16) Headings. The headings contained in this Agreement are for convenience and reference purposes only and shall not be deemed to be a part of the Agreement or to offer the meaning or interpretation of this Agreement.

17) Counterparts. This Agreement may be executed in counterparts, including by fax, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

18) Authority. The signatories hereto warrant and represent that they are legally authorized and empowered to enter into this Agreement on behalf of the Parties.

19) Governing Law; Jurisdiction. This Agreement shall be construed under, subject to, and governed by the laws of the State of New Jersey, without regard to conflict of law principles.

20) No Modification. This Agreement shall not be modified except in accordance with a written agreement signed by all parties hereto.

21) Further Assurances. The Parties hereto agree to perform such other and further acts or things and to execute and deliver such other and further documents necessary and appropriate to effectuate the terms and objectives hereof.

22) Notices. All Notices and exchanges of information required under this Agreement must be delivered to the Notice Agents for the Parties hereto by Overnight Delivery or Certified Mail Return Receipt Requested. Notice shall be deemed to have been given or delivered upon the date it is received by the Notice Agent.

Notice to Plaintiff:

Notice to Defendants Township of Irvington:

Township of Irvington Legal Department
Civic Square
Irvington, New Jersey

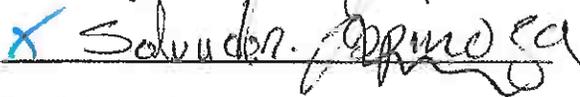
23) Signatures. The Parties hereby signify their agreement to the above terms by their signatures below. All signatories to this Agreement represent that they have carefully read the Agreement, have had sufficient time to review this Agreement before signing it, are represented by counsel in connection with this settlement, and have had an opportunity to consult with and have consulted with an attorney prior to signing this Agreement.

IN WITNESS WHEREOF, the Parties, by the undersigned, have executed this Agreement as of the date first above written.

THE UNDERSIGNED HAS READ THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE, FULLY UNDERSTAND IT AND AGREES TO ABIDE BY ITS TERMS.

IN WITNESS WHEREOF, the Parties, by the undersigned, have executed this Agreement as of the date first above written.

SALVADOR ESPINOZA, individually and as Administrator ad Prosequendum and Administrator of the Estate of Angel Favian Chalco Espinoza TOWNSHIP OF IRVINGTON

X 

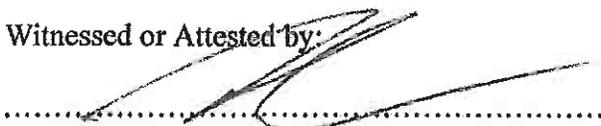
By: Salvador Espinoza

By:

Dated:

Dated:

Witnessed or Attested by:



STATE OF NEW JERSEY, COUNTY OF Essex SS.:

RICHARD A. GREIFINGER
An Attorney At Law
State of New Jersey

I CERTIFY that on August 9, 2019, Salvador Espinoza personally came before me and acknowledged under oath, to my satisfaction, that he:

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his voluntary acts and deeds.

(Print name and title below signature) -----

RICHARD A. GREIFINGER
An Attorney At Law
State of New Jersey

EXHIBIT A

<p>SALVADOR ESPINOZA, individually and as Administrator ad Prosequendum and Administrator of the Estate of Angel Favian Chalco Espinoza, deceased,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>TOWNSHIP OF IRVINGTON, SIMON JOHNSON, and JOHN DOES 1-20,</p> <p style="text-align: center;">Defendants.</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-7249-17</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;">STIPULATION OF DISMISSAL WITH PREJUDICE</p>
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Plaintiff dismissed by way of this stipulation of dismissal any and all claims raised against Defendants Township of Irvington, Simon Johnson, said claims being dismissed with prejudice and without costs or attorney's fees against any party.

**LAW OFFICE OF RICHARD
GREIFINGER, ESQ.**



RICHARD GREIFINGER, ESQ.
Attorney for Plaintiffs

Dated: 8/9/19

**LAW OFFICE OF MICHAEL A.
D'AQUANNI, LLC**

MICHAEL D'AQUANNI, ESQ.
Attorneys for Defendants
TOWNSHIP OF IRVINGTON & SIMON
JOHNSON

Dated: