

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

EARL L. JANN JR.

Plaintiff,

-against-

**JEROME D. SCHAD, MARK S. CARNEY and
E. THOMAS JONES**, individually and as
constituting the body corporate and politic **ERIE
COUNTY WATER AUTHORITY, TERRENCE
D. McCRACKEN and JEREMY J. ZELLNER**

Index No. 807168/2019

Defendants.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (herein "Agreement") is made effective as of December 12, 2019, by and among EARL L. JANN, JR. (herein "Plaintiff"), by his attorney, Ralph M. Mohr, Esq., JEROME D. SCHAD ("Schad"), MARK S. CARNEY ("Carney"), E. THOMAS JONES ("Jones"), and the ERIE COUNTY WATER AUTHORITY, TERRENCE D. MCCRACKEN ("McCracken"), by their attorney, Margaret A. Murphy, Esq., and JEREMY J. ZELLNER, by his attorney, John M. Dudziak, Esq. ("Zellner") (herein collectively "Defendants"). Plaintiff and Defendants are sometimes referred to herein collectively as the "Parties."

WHEREAS, on June 11, 2019, Plaintiff commenced this action ("Action") against Defendants by filing a Summons with Notice, alleging claims for breach of contract, age discrimination, wrongful interference and violation of free speech and political association in regard to the termination of Plaintiff's employment contract dated January 11, 2018; and

WHEREAS, Defendants deny the allegations in the Action, continue to deny any allegations of wrongdoing, and assert that they are not liable to Plaintiff in any manner; and

WHEREAS, the Plaintiff understands the Defendants deny each and every allegation of wrongdoing; and

WHEREAS, the Plaintiff understands and agrees that neither the making of this Agreement, nor anything contained herein, shall, in any way, be construed or considered to be an admission by the Defendants of guilt or non-compliance with any federal, state or local statute, regulation, public policy, tort law, contract law, common law or any other wrongdoing whatsoever; and

WHEREAS, the Parties wish to settle this matter to avoid the uncertainty, expense and burden of proceeding in the action, and any and all other matters and proceedings which might arise between them as a result of any act which has occurred or occurs before the execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the Parties hereto agree as follows:

1. For purposes of this Agreement, Plaintiff shall be defined to mean Earl L. Jann, Jr., as well as his agents, attorneys, executors, heirs, representatives, successors and assigns. For purposes of this Agreement, Defendants shall be defined to mean Schad, Carney, Jones, McCracken and Zellner, along with each of their agents, attorneys, executors, heirs, representatives, successors and assigns and the Erie County Water Authority as well as its past, present and future elected officials, officers, agents, servants, directors, commissioners, representatives, employees, attorneys, affiliates, predecessors and successors in interest, and assigns, and all other persons, firms or corporations with whom any of the foregoing have been, are now or may hereafter be affiliated, as well as each of their heirs, executors and representatives.

2. The Parties enter into this Agreement solely for the purpose of settling and resolving the Action commenced by Plaintiff against Defendants. By entering into this Agreement, Defendants do not admit to any of the material allegations or claims that Plaintiff asserted in the Action. Further, Defendants Schad, Carney, Jones, McCracken and Zellner do not admit they, as individuals or in their official capacities, ever violated any federal, state, local, or other regulation, rule, ordinance, law, statute or constitution. The Erie County Water Authority, and its past, present and future officers, agents, servants, directors, commissioners, representatives, employees, attorneys, affiliates, predecessors and successors in interest, or assigns, does not admit it ever violated any federal, state, local, or other regulation, rule, ordinance, law, statute or constitution. Rather, Defendants enter into this Agreement solely for the purpose of resolving all matters between Plaintiff and Defendants without further proceedings.

3. In consideration of Plaintiff's execution of this Agreement, inclusive of the General Release set forth in Paragraph 5, and the Stipulation of Discontinuance referenced in Paragraph 4 of this Agreement, Defendants agree to pay to Plaintiff a one-time lump sum payment of NINETY-TWO THOUSAND DOLLARS AND NO CENTS (\$92,000.00) [herein "Settlement Payment"]. The Settlement Payment shall be paid to Plaintiff by check, made payable to "Earl L. Jann, Jr.," and shall be delivered to Plaintiff's counsel, Ralph M. Mohr, Esq., within fifteen (15) business days of the Effective Date of this Agreement. This payment to Plaintiff shall satisfy any claim of damages, including claims for future damages. Defendants will not deduct any taxes or other withholdings from this sum (except for lawful garnishments issued by any authorized governmental entity, if any) and shall issue an IRS Form 1099 to Plaintiff in the normal course. Plaintiff agrees and understands the gross sum of this payment

(\$92,000.00) shall be reported to the IRS on an IRS Form 1099, and that Plaintiff is fully and completely liable for any taxes due with regard to this payment.

a. The Settlement Payment is in satisfaction of any claim or relief Plaintiff sought to recover in the Action or any other matters that could have been commenced by Plaintiff against Defendants, including, but not limited to all claims for past wages, future wages, attorneys' fees and costs, punitive damages, liquidated damages, compensatory damages, mental distress, equitable relief, or any other amounts or damages potentially recoverable.

b. The Parties agree and acknowledge that the Settlement Payment includes amounts to which Plaintiff is not otherwise entitled and that these amounts are in settlement of the allegations made by Plaintiff against Defendants in the Action, inclusive of any and all claims for attorneys' fees and costs.

c. Plaintiff agrees that any local, state or federal income taxes, penalties, fines, assessments or interest incurred as a result of the Settlement Payment, if any, shall be the obligation of Plaintiff. Plaintiff agrees Defendants bear absolutely no responsibility or liability whatsoever with regard to whether or not all or part of the Settlement Payment is determined by the Internal Revenue Service or any other federal, state or local governmental agency to be subject to taxation or withholdings. Plaintiff agrees that he will indemnify, hold harmless and defend Defendants from and against the full amount of any tax liability incurred by Defendants relating to or arising from the Settlement Payment, and that Plaintiff will reimburse Defendants for any taxes, assessments, penalties, fines and payments relating to or arising from the Settlement Payment, and for any costs and attorneys' fees incurred by Defendants in defending against any such liability and by Defendants in enforcing this indemnification provision.

4. The Action shall be discontinued on the merits and with prejudice, and Plaintiff hereby authorizes his counsel to execute the Stipulation of Discontinuance appended hereto as **Attachment A**. Furthermore, Plaintiff authorizes Defendants' counsel to immediately file said Stipulation of Discontinuance upon execution of this Agreement.

5. In exchange for valuable consideration (including the promises made by Defendants in Paragraph 3 of this Agreement), the receipt and adequacy of which is hereby acknowledged, Plaintiff, on behalf of himself and his agents, attorneys, executors, heirs, representatives, successors and assigns (herein, collectively, "Releasors"), fully and completely releases Defendants, as well as each of their agents, attorneys, executors, heirs, representatives, successors and assigns and its past, present and future officers, agents, servants, directors, commissioners, representatives, employees, attorneys, affiliates, predecessors and successors in interest, and assigns, and all other persons, firms or corporations with whom any of the foregoing have been, are now or may hereafter be affiliated, as well as each of their heirs, executors and representatives (herein "Releasees"), from any and all liability, claims (known and unknown, existing and contingent), demands, actions, causes of action, suits, grievances, debts, sums of money, controversies, agreements, promises, damages, costs, expenses, interest, attorneys' fees, and remedies of any type, by reason of any matter, cause, act or omission occurring prior to the execution of this Agreement including, without limiting the generality of the foregoing, those claims as set forth the Action and any other claims, demands or actions arising out of the termination of Plaintiff on June 14, 2018. Plaintiff further covenants not to commence any other legal action of any kind whatsoever that impacts the Releasees, based on any matter, cause, act or omission arising out of or in connection with any matter, cause, act or omission occurring prior to the execution of this Agreement, except to enforce the terms of this Agreement. Plaintiff acknowledges that the consideration set forth in Paragraph 3 of this Agreement is a full and final

settlement of the Action and any statutory or other rights that Plaintiff may have for reimbursement of costs, interest, expenses, expert witness fees, or attorneys' fees and costs in connection with the Action.

6. This Agreement may not be used as evidence or referred to in any way in any judicial or administrative action, any arbitration or any other proceeding, except for a proceeding in which any party hereto alleges a breach of this Agreement, or as may be directed by Court Order.

7. This Agreement shall be binding upon and shall inure to the benefit of Plaintiff, as well as his agents, attorneys, executors, heirs, representatives, successors and assigns, and shall also be binding upon and shall inure to the benefit of Defendants, as well as each of their agents, attorneys, executors, heirs, representatives, successors and assigns and its past, present and future officers, agents, servants, directors, commissioners, representatives, employees, attorneys, affiliates, predecessors and successors in interest, and assigns, and all other persons, firms or corporations with whom any of the foregoing have been, are now or may hereafter be affiliated, as well as each of their heirs, executors and representatives. This Agreement is not intended to create any rights in any person or entity other than the Parties.

8. The Parties agree that nothing contained herein and no actions taken by any party with respect to this Agreement shall be construed as an admission by any party of any liability, wrongdoing or obligation.

9. Except as to Plaintiff's right to enforce this Agreement, Plaintiff covenants, to the maximum extent permitted by law, that he shall not at any time hereafter commence, maintain, prosecute, participate in, or permit to be filed by any other person on Plaintiff's behalf, any action, charge, complaint, suit or proceeding of any kind, based in law or equity, before any

court, administrative body, or other tribunal (whether governmental, self-regulatory or otherwise) against Defendants with respect to any actual or alleged act, omission, transaction, practice, conduct, occurrence or other matter at any time up to and including the date of execution of this Agreement by Plaintiff.

10. Plaintiff further covenants, to the maximum extent permitted by law, that he shall not at any time hereafter provide support or assistance, directly or indirectly, to others in connection with any action, charge, complaint, suit or proceeding of any kind against Defendants with respect to any actual or alleged act, omission, transaction, practice, conduct, occurrence or other matter at any time up to and including the date of execution of this Agreement by Plaintiff, provided, however, that the foregoing covenant shall not preclude Plaintiff from testifying or otherwise giving evidence in a proceeding before a court or agency or other judicial or quasi-judicial forum under compulsion of law.

11. Plaintiff represents and warrants he has filed no complaints or claims against Defendants with any federal or state court or agency based on any actions, omissions, or events occurring prior to the date of Plaintiff's execution of this Agreement, except for the Action. Plaintiff further represents and warrants that Plaintiff has not assigned, sold or otherwise transferred any of the claims released herein.

12. This Agreement is deemed entered into in the State of New York, and shall be construed and interpreted in accordance of the laws of the State of New York, without regard to the principles of conflicts of laws thereof and any action brought to enforce, or otherwise arising out of this Release shall be brought only in either a federal or state court sitting in the State of New York.

13. The Parties understand, agree and acknowledge that none of the Parties shall be deemed to be the drafter hereof for purposes of construction of this Agreement.

14. This Release contains the entire agreement between the Parties hereto related to the subject matter hereof and supersedes all other written or oral exchanges, arrangements or negotiations between them or their representatives. The terms of this Release may not be altered, amended or modified except by written instrument duly signed by each Party. Plaintiff acknowledges that no representative of Defendants has made any representation or promise concerning this settlement other than the terms and conditions contained in this Agreement. The Parties acknowledge that they have not relied upon any promise, representation or warranty, express or implied, not set forth in this Agreement.

15. Plaintiff hereby represents and warrants that he has not authorized, and will not authorize, any claims against Defendants for attorneys' fees, costs, disbursements or the like relating to any representation of Plaintiff in connection with the claims released herein. The Parties agree that they shall each bear their own attorneys' fees and costs with respect to the Action and this Agreement.

16. If any provision of this Agreement is held to be illegal, void or unenforceable, such provision shall be of no force or effect. However, the illegality or unenforceability of such provision shall have no effect upon, and shall not impair the legality or enforceability of, any other provision of this Agreement; provided, however, that a legal and enforceable provision shall be substituted for such illegal and unenforceable provision in order to carry out, to the extent legal and enforceable, the intent and purpose of such illegal and unenforceable provision.

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

18. Each of the Parties represents and warrants that it or they have the full right, power and authority to enter into this Agreement and that the person signing below on its or their behalf is authorized to do so.

19. Plaintiff hereby acknowledges and represents that Defendants have provided him with a copy of this Agreement, and he was advised that a final decision to execute this Agreement and accept the terms of this Agreement would need to be made before December 12, 2019. Plaintiff further acknowledges and represents that:

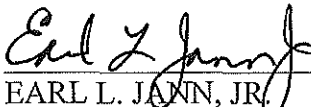
a. he has been afforded a reasonable and sufficient period of time to review the terms and provisions of this Agreement;

b. he has been specifically encouraged by Defendants in this writing to consult with an attorney of his choosing and at his expense prior to executing this Agreement, that Plaintiff has in fact consulted with an attorney of his choosing at his expense, and that Plaintiff has so consulted to his satisfaction;

c. Plaintiff has carefully read this Agreement in its entirety, has had an opportunity to have its provisions explained to him by an attorney of his choosing, and fully understands the significance of all of the terms and provisions of this Agreement; and

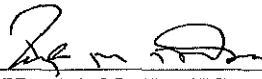
d. Plaintiff is signing this Agreement voluntarily and of his own free will, without duress or coercion, and assents to all terms and conditions contained herein.

Dated: December 4, 2019

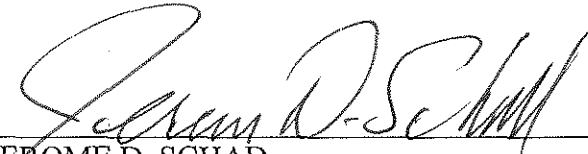


EARL L. JANN, JR.
Plaintiff

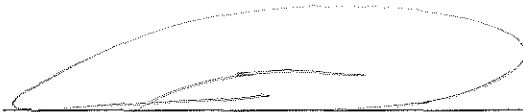
Dated: December 4, 2019


RALPH M. MOHR, ESQ.
Attorney for Plaintiff
5622 Broadway Street
Lancaster, New York 14086
Telephone: (716) 681-3305

Dated: December 2, 2019


JEROME D. SCHAD
Defendant

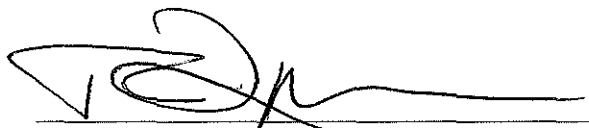
Dated: December 12 2019


MARK S. CARNEY
Defendant

Dated: December 12 2019

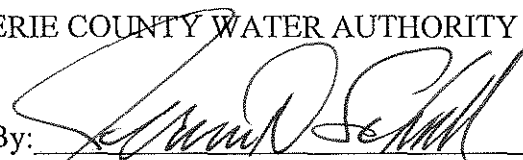

E. THOMAS JONES
Defendant

Dated: December 12 2019



TERRENCE D. McCracken
Defendant

ERIE COUNTY WATER AUTHORITY

Dated: December 2 2019

By: 
JEROME D. SCHAD, Chairman
Erie County Water Authority
Defendant

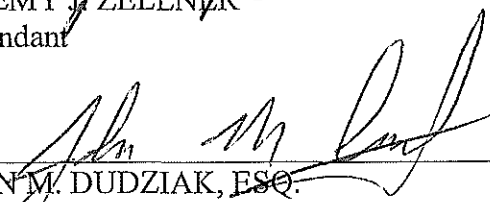
Dated: December 12 2019


MARGARET A. MURPHY, Attorney for the Erie
County Water Authority, Jerome D. Schad, Mark S.
Carney, E. Thomas Jones, Terrence D. McCracken
295 Main Street, Room 350
Buffalo, New York 14203

Dated: December __, 2019


JEREMY J. ZELLNER
Defendant

Dated: December __, 2019


JOHN M. DUDZIAK, ESQ.
Attorney for Defendant Jeremy J. Zellner,
2130 Clinton Street
Buffalo, New York 14206

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

On the 4th day of December, 2019, before me personally appeared **Earl L. Jann, Jr.**, to me known and known to me to be the same person described in and who executed the foregoing Settlement Agreement and General Release, and he duly acknowledged to me that he executed same.



Notary Public

Ralph M. Mohr 01M04623499
Notary Public - State of New York
Originally Qualified in Erie County
My Commission Expires 6/30/2022

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

On the 10th day of December, 2019, before me personally appeared **Jerome D. Schad**, to me known and known to me to be the same person described in and who executed the foregoing Settlement Agreement and General Release, and he duly acknowledged to me that he executed same.



Notary Public

PATRICIA FABOZZI #4957586
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 20 21

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

On the 12th day of December, 2019, before me personally appeared **Jerome D. Schad**, Chairman of the Board of Commissioners of the Erie County Water Authority, to me known, who being by me duly sworn did depose and say that he executed the within instrument, that he was authorized by the Erie County Water Authority to execute said instrument, and that he acknowledged to me that he executed same on behalf of the Erie County Water Authority.

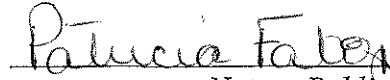


Notary Public

PATRICIA FABOZZI #4957586
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 20 21

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

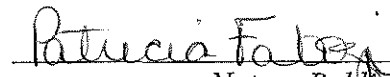
On the 12th day of December, 2019, before me personally appeared **Mark S. Carney**, to me known and known to me to be the same person described in and who executed the foregoing Settlement Agreement and General Release, and he duly acknowledged to me that he executed same.



Notary Public
PATRICIA FABOZZI #4957586
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 2021

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

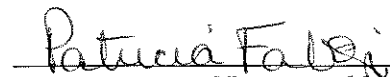
On the 12th day of December, 2019, before me personally appeared **E. Thomas Jones**, to me known and known to me to be the same person described in and who executed the foregoing Settlement Agreement and General Release, and he duly acknowledged to me that he executed same.



Notary Public
PATRICIA FABOZZI #4957586
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 2021

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

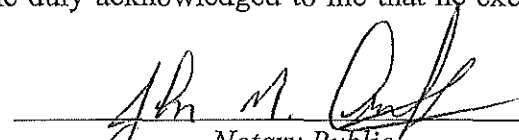
On the 12th day of December, 2019, before me personally appeared **Terrence D. McCracken**, to me known and known to me to be the same person described in and who executed the foregoing Settlement Agreement and General Release, and he duly acknowledged to me that he executed same.



Notary Public
PATRICIA FABOZZI #4957586
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 2021

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

On the ____ day of December, 2019, before me personally appeared **Jeremy J. Zellner**, to me known and known to me to be the same person described in and who executed the foregoing Settlement Agreement and General Release, and he duly acknowledged to me that he executed same.



Notary Public
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
LIC. #02DU6118678
MY COMMISSION EXPIRES 11/15/2021

ATTACHMENT A

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

EARL L. JANN JR.

Plaintiff,

-against-

**JEROME D. SCHAD, MARK S. CARNEY and
E. THOMAS JONES**, individually and as
constituting the body corporate and politic **ERIE
COUNTY WATER AUTHORITY**,
**TERRENCE D. McCRACKEN and JEREMY
J. ZELLNER**

**STIPULATION OF
DISCONTINUANCE**

Index No. 807/168/2019

Defendants.

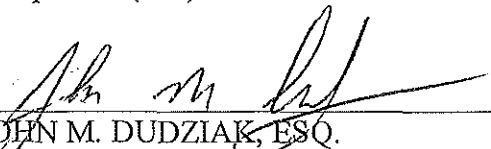
IT IS HEREBY STIPULATED AND AGREED, as follows:

1. The above-named parties are all of the parties who have appeared in this action;
2. None of the parties to this action is an infant or incompetent person for whom a committee has been appointed; and
3. There being no other person or entity who has an interest in the subject matter of this action, the Parties, through the undersigned attorneys of record for Plaintiff and Defendant, stipulate and agree that the above captioned action be, and the same hereby is, discontinued with prejudice and on the merits, with each party to bear their own attorneys' fees and costs incurred prior to the date of this stipulation.

Dated: Buffalo, New York
December 12, 2019



Ralph M. Mohr, Esq.
Attorney for Plaintiff
5622 Broadway Street
Lancaster, New York 14086
Telephone: (716) 681-3305



JOHN M. DUDZIAK, ESQ.
Attorney for Defendant Jeremy J. Zellner,
2130 Clinton Street
Buffalo, New York 14206
Telephone: (716) 683-2700



Margaret A. Murphy, Esq.
*Attorney for the Erie County Water Authority,
Jerome D. Schad, Mark S. Carney, E. Thomas
Jones and Terrence D. McCracken*
295 Main Street, Room 350
Buffalo, New York 14203
Telephone: (716) 849-8433