

THOMAS POWERS

Plaintiff,

-against-

THE TOWNSHIP OF MAHWAH, MAYOR JOHN
ROTH, TOWNSHIP COUNCIL MEMEBRS,
Defendants,

THE RAMAPOUGH MOUNTAIN INDIANS, INC.
Nominal Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Civil Action L-6223-19

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
DISMISSAL OF FIRST
AMENDED COMPLAINT**

Brittany M. Thomas [NJ ID: 312762019]
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Attorney for Nominal Defendant Ramapough Mountain
Indians, Inc.

Defendant Ramapough Mountain Indians Inc. (the “Ramapough”) submit this Memorandum of Law in support of its Motion to Dismiss the First Amended Complaint filed by Thomas Powers (“Plaintiff”). Pursuant to Rule 4:6-2(e), the Ramapough respectfully request that this Court dismiss the Complaint in its entirety on the basis that the Complaint is precluded, and fails to plead the necessary elements for any of the claims outline in the Complaint.

Introduction

Plaintiff’s First Amended Complaint (“FAC”) seeks to annul a comprehensive and just settlement reached by the Ramapough and the Township of Mahwah, that has been accepted by the Superior Court of New Jersey and recognized by the United States District Court for the District of New Jersey. The Complaint presents an array of legally irrelevant and conclusory allegations designed to chill constitutionally protected activity by the Ramapough. Plaintiff’s suit is the latest in a long line of attacks brought by the Ramapo Hunt and Polo Club Homeowners Association and its members seeking to prevent the Ramapough from praying and gathering on their land in peace. Plaintiff’s blatant attempts to misuse this court’s resources in order to chill constitutionally protected activity should not be tolerated. Plaintiff utterly fails to allege facts sufficient to support any claim for relief and his First Amended Complaint must be dismissed.

Facts

The Ramapough Mountain Indians, Inc. is a 501(c)(3) nonprofit organization owned, operated, and managed on behalf of the Ramapough Lenape Nation, a state-recognized sovereign entity whose members are descendants of the original Munsee people of Lenapehoking a

territory that includes parts of present-day New York and New Jersey.¹ The Ramapough are indigenous people who have lived and practiced religion on their ancestral land since the pre-contact period and now principally reside in the Ramapo Mountains.² A central tenet of the Ramapough faith is the sacred connection between human beings and nature.³ One of the Ramapough's most sacred lands is in an area currently located at 95 Halifax Road in Mahwah, New Jersey. The Ramapough hold title to the property ("95 Halifax") and conduct religious ceremonies and gatherings there.⁴

Notwithstanding the Ramapough's private ownership of 95 Halifax, since at least November 2016, the Ramapough have been repeatedly harassed by the Ramapo Polo & Hunt Club ("Polo Club") and the Township of Mahwah ("Township" or "Mahwah") in an attempt to force the Ramapough to cease assembling and practicing their religion on their land.⁵ After November 2016, the Township, with pressure from the Polo Club, began levying summons against the Ramapough for the presence of two religious' artifacts (stone altar and prayer circle) on their land and for holding religious ceremonies.⁶ The Township and the Polo Club also initiated an array of lawsuits against the Ramapough. The Township brought an enforcement action (*State v. RMI, Inc.* BMA-001-18-02, Bergen Cnty. Sup. Ct. Jan. 10, 2018) seeking adjudication on a portion of the summonses against the Ramapough. Both the Township and the Polo Club initiated actions for injunctive relief seeking to prevent the Ramapough from praying and gathering on the land. *See Township of Mahwah v. Ramapough Mountain Indians, Inc.*,

¹ Amended Complaint, Ramapough Mt. Indians, INC., et al. v. Township of Mahwah, et al. No. 2:18-cv-09228 (Dist. Ct. N.J.) (Dk. No. 107) (A complete summary of relevant facts are available in the Amended Complaint. A copy can be provided if the court desires).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Docket No. BER-L-003189-17 (Bergen Cnty. Sup. Ct. May 9, 2017); *Ramapo Hunt & Polo Club Assoc., Inc., v. Ramapough Mountain Indians, Inc. et al.*, Docket No. BER-L-006409-17 (Bergen Cnty. Sup. Ct. September 22, 2017). In addition, the Polo Club initiated a suit seeking to strip 95 Halifax of its tax exemption status. *See* 2019 Real Property Tax Complaint, *Ramapough Hunt & Polo Club Ass'n, Inc. v. Twp. Of Mahwah & Ramapough Mountain Indians, Inc.*, Case No. 008145-2019 (N.J. Tax Ct. April 1, 2019). Following the years of harassment, the Ramapough initiated a lawsuit in the District of New Jersey against the Township and the Polo Club for, *inter alia*, a conspiracy to violate civil rights. *See Ramapough Mountain Indians, Inc. v. Township of Mahwah, et.al*, Case No. 2:18-cv-09228 (D.N.J. May 14, 2018).

The injunction actions by the Township and Polo Club were consolidated and set for trial in April 2019. *See Township of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Bergen Cnty. Sup. Ct. May 9, 2017). In lieu of proceeding to trial the Township and the Ramapough reached a settlement, dismissing all pending litigation. (Plaintiff's Ex. B). That settlement is under attack in this present suit. *See* FAC. A settlement was not reached between the Polo Club and the Ramapough. *Township of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Transcript of Decision Dismissing Polo Club Complaint May 3, 2019) (Attached as Defendant's Exhibit A). Instead, the Polo Club went to trial. *Id.* at 4:14. At trial, the Polo Club attempted to persuade the Court that the religious activities conducted by the Ramapough on 95 Halifax were a violation of Township zoning code. *Id.* at 7:23-8:2. The court, in dismissing the Polo Clubs complaint, held "[a]ssemblage on property that [the Ramapough] own and praying is no more [a violation] of the law than," having a party in your home. *Id.* at 9:14-16. The court found that the Ramapough were "permitted to put stones in a circle and place tree stumps upright and to leave a stone pillar where it's been." *Id.* at

9:18-20. And “[t]he Court... [did] not see any violations of law currently occurring,” on Ramapough land. *Id.* at 9:13-14. The Polo Club did not appeal this decision and the deadline to appeal it has lapsed. *See* N.J. Ct. R. R. 2:4-1(a).

Mahwah held a public meeting to finalize the settlement agreement reached between the Township and the Ramapough. (Plaintiff’s Ex. A). At this meeting, Mahwah residents were given the opportunity to comment and provide their opinion of the settlement. Many Polo Club members spoke, including Plaintiff, Tom Powers. Mr. Powers utilized his time to raise many of the issues contained in his First Amended Complaint.⁷ After the opportunity to consider the comments expressed at the public meeting, the Township approved the settlement subject to one minor change.⁸ This action followed. *See* FAC at 1.

Argument

Plaintiff’s ability to prove the Amended Complaint’s allegations is not at issue in a motion to dismiss; rather, “the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim.” *Decker v. Bally’s Grand Hotel Casino*, 280 N.J. Super. 217, 221 (App. Div. 1994) (quoting *P. & J. Auto Body v Miller*, 72 NJ Super 207, 211, 178 A2d 237, 239 (NJ Super Ct App Div. 1962)). Although allegations in a complaint are to be considered in a light most favorable to plaintiffs, “dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted.” *Rieder v. Dep’t of Transp.*, 221 N.J. Super. 547, 552 (App. Div. 1987). Under these

⁷ Township of Mahwah, Township Council meeting (May 9,2019) video available at <http://mahwahnj.swagit.com/play/05092019-1083>. (Mr. Powers speaks in first general public comment section at min 23:30.)

⁸ *Id.*

well-established standards, Plaintiff's claims against the Township of Mahwah and the Ramapough must be dismissed.

I. Plaintiff is Estopped from Raising Previously-Adjudicated Claims

Plaintiff's claims appear to rest on alleged violations of Mahwah municipal ordinances and alleged illegal activity occurring on 95 Halifax. *See* FAC. Plaintiff is collaterally estopped from raising claims based upon alleged violations of the C-200 zoning code or alleged illegal activity as they have already been adjudicated by a New Jersey Court. *See Township of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Transcript of Decision Dismissing Polo Club Complaint May 3, 2019).

The collateral estoppel doctrine will act as a bar when (1) the issue to be precluded is identical to the issue decided in the first proceeding; (2) the issue was actually litigated in the prior action, that is, there was a full and fair opportunity to litigate the issue in the prior proceeding; (3) a final judgment on the merits was issued in the prior proceeding; (4) determination of the issue was essential to the prior judgment; and (5) the party against whom issue preclusion is asserted was a party to or in privity with a party to the prior proceeding.

Pace v. Kuchinsky, 347 N.J. Super. 202, 215–16 (App. Div. 2002) (citing *In re Estate of Dawson*, 136 N.J. 1, 20–21 (1994)). “The concept of privity, as well as its parameters, are necessarily imprecise: ‘[p]rivity states no reason for including or excluding one from the estoppel of a judgment. It is merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include the other within the res judicata.’” *State v. Brown*, 394 N.J. Super. 492, 503, (App. Div. 2007) (quoting *Zirger v. Gen. Accident Ins. Co.*, 144 N.J. 327, 338, (1996) (quoting *Bruszewski v. United States*, 181 F.2d 419, 423 (3d Cir. 1950) (Goodrich, J., concurring))). A relationship is usually considered to be in privity “when the

party is a virtual representative of the non-party....” *State v. Brown*, 394 N.J. Super. at 503 (quoting *Collins v. E.I. DuPont de Nemours & Co.*, 34 F.3d 172, 176 (3d Cir.1994)).

Each element of collateral estoppel is met here. First, the Polo Club brought an affirmative suit alleging identical claims to those raised in Plaintiff’s FAC, specifically seeking a finding that the Ramapough were in violation of Mahwah Municipal ordinance C-200 for gathering and praying on their privately- owned land and for the existence of their sacred stone altar and prayer circle. *See* Complaint, ¶ 113-128, *Ramapo Hunt & Polo Club Assoc., Inc., v. Ramapough Mountain Indians, Inc. et al.*, Docket No. BER-L-006409-17. In addition, the Polo Club sought injunctive relief based upon alleged safety violations and flood plain hazards. *See id.* at ¶ 155-162. Further, the case resulted in a full and fair proceeding as it went to trial in May of 2019. *See Township of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Transcript of Decision Dismissing Polo Club Complaint May 3, 2019). The Polo Club was able to be heard fully and they presented multiple witnesses and exhibits. *See generally id.* As described above, following the trial on the merits, Judge Wilson held that “[a]ssemblage on property that [the Ramapough] own and praying is no more [a violation] of the law than,” having a party in your home. *Id.* at 9:14-16. The court found that the Ramapough were “permitted to put stones in a circle and place tree stumps upright and to leave a stone pillar where it’s been.” *Id.* at 9:18-20. And “[t]he Court... [did] not see any violations of law currently occurring,” on Ramapough land. *Id.* at 9:13-14. Finally, the Polo Club Homeowners Association was acting as the representative of the homeowners, “seeking to enforce the Ordinances,” of Mahwah. *See* Complaint at ¶ 6, *Ramapo Hunt & Polo Club Assoc., Inc.*, Docket No. BER-L-006409-17. The Polo Club is an association made up of 29 residential lots. *Id.* at ¶ 1. Plaintiff is a homeowner within the Polo Club. (FAC ¶ 5). The Polo Club was a representative for Plaintiff as

the complaint was brought because the homeowners believed that “[t]he health, safety and welfare of the members of the Association [were] affected each and every day,” by the Ramapough praying and gathering on their land. *See* Complaint at ¶ 106, *Ramapo Hunt & Polo Club Assoc., Inc.* Docket No. BER-L-006409-17.

The principles underpinning the need for the estoppel doctrine are all present here: “conservation of judicial resources; avoidance of repetitious litigation; and prevention of waste, harassment, uncertainty and inconsistency.” *Selective Ins. Co. v. McAllister*, 327 N.J. Super. 168, 174, (App. Div. 2000) (citation omitted). Plaintiff is attempting to circumvent a valid and final order made by a New Jersey Court. Thus, Plaintiff’s claims are precluded by the collateral estoppel doctrine and should be dismissed with prejudice.

II. Plaintiff’s Factual Allegations are Palpably Insufficient to Support a Claim Upon Which Relief can be Granted

Alternatively, Plaintiff’s entire complaint must be dismissed for failure to state a claim. The Ramapough address each count, in turn, below.

A. Count One Must be Dismissed for Failure to State a Claim

In Count One, Plaintiff alleges that the Settlement violates his rights to equal protection and due process, is a violation of municipal ordinances, and amounts to impermissible spot zoning. (FAC at ¶15). As an initial matter, Plaintiff fails to allege any classifications or deferential treatment that could give rise to an equal protection claim. Similarly, Plaintiff fails to identify any deprivation of liberty or property giving rise to a due process claim. Thus, Plaintiff’s claims based on denial of equal protection or due process must be dismissed. *See Rivkin v. Dover Tp. Rent Leveling Bd.* 143 N.J. 352, 381 (1996) (finding that an equal protection plaintiff must be

singled out because of membership in a class). As explained below, Plaintiff also fails to plead allegations sufficient to support a claim based upon municipal ordinance violations or “spot zoning.”

i. Plaintiff Fails to Allege that the Settlement Violates any Municipal Ordinance

Count One is based on Plaintiff’s bare and conclusory statement that the Settlement violates “municipal ordinances” and “avoids land use and site place approval process.” (FAC at ¶6). The claim is hard to parse, as Plaintiff fails to identify which sections of the Settlement are at issue, and which ordinances the settlement is supposed to violate. As far as the Ramapough can discern, Plaintiff’s primary claim is that the Settlement amounts to “spot zoning” because it allows the Ramapough to pray and gather on their land, a use Plaintiff asserts is inconsistent with C-200 zoning. (FAC at ¶ 7-17). But this is not impermissible spot zoning; the Township has not changed the zoning applicable to the Ramapough or provided any sort of permit or variance. Rather, the Township has settled a legal challenge by acknowledging that C-200 does not (and cannot) restrict individuals from gathering and praying on their own land in the open air.

Municipalities have the broad authority to interpret their zoning ordinances as they see appropriate. *See DEG, LLC v. Township of Fairfield*, 198 N.J. 242, 273 (2009). Additionally, government entities within New Jersey are empowered to settle legal disputes, especially those which involve constitutional claims or could, if not settled, result in constitutional challenges. *Id.* at 259. New Jersey courts “have long encouraged the settlement of litigation... because it permits litigants to resolve disputes on mutually acceptable terms in place of risking exposure to an adverse judgement.” *Id.* quoting (*Puder v. Buechel*, 183 N.J. 428, 437-38, 874 A. 2d 534 (2005)). Those benefits are available to public entities, not just private parties. *Id.*

Contrary to Plaintiff's contentions, the Settlement is not a violation of municipal ordinances. The Settlement ended several legal disputes between the Township and the Ramapough, including a federal suit brought by the Ramapough claiming that the Township's interpretation of C-200 zoning to disallow open-air worship violates the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. (Plaintiff's Ex B at 1). The Settlement also resolved enforcement actions by the Township, in which the Ramapough brought defenses based upon their First Amendment right to pray on their land. *Id.*

The relevant portions of the Settlement Agreement provide the following:

- The Ramapough's religious items, a prayer circle and a stone altar, will remain on the Ramapough's property.
- The Ramapough will continue, as they have for years, to utilize their property as a place of assembly.
- Large gatherings will be limited.
- Upon receiving proper authority, the Ramapough may construct a parking lot.

(Plaintiff's Ex B at 2-3)

As *DEG, LLC v. Township of Fairfield* establishes, the Township has broad authority to settle the various legal disputes involving the Ramapough in this way. *DEG* involved the operation of a sexually oriented business within the Township of Fairfield. *Id.* at 250. Fairfield's zoning ordinance banned all such uses, and the State's Municipal Land Use Law (MLUL) prohibited such uses within a 1,000-foot buffer zone, *unless "expressly permitted by municipal ordinance."* *Id.* (emphasis added). After the court struck down Fairfield's zoning ordinance as unconstitutional and found it reasonably likely that the MLUL was unconstitutional as applied to *DEG*, the parties settled, allowing *DEG* to operate its business, and agreeing that *DEG* would receive a permit for nonconforming use in the event that the Township passed a new zoning ordinance allowing sexually oriented businesses within a different zoning district in Fairfield. *Id.*

at 253. Following the agreement, Fairfield amended their ordinance to allow sexually oriented businesses in certain zoning districts that did not include DEG's location, and refused to issue DEG their certificate of nonconforming use based on the zoning change. *Id.* DEG brought suit to enforce the settlement and the Town cross-moved seeking relief from the consent judgment. *Id.* at 254. The Supreme Court of New Jersey ruled for DEG, affirming the validity of the settlement despite the Town's argument that the settlement violated MLUL, and illegally allowed DEG to operation its sexually oriented business within a zone where such use is barred. *Id.* at 270. As the Court explained, "when a municipality invokes [the relevant MLUL provision] it does not permit the 'illegal' location of a sexually oriented business, but instead renders that location a legal one. As such, the consent judgment is in full conformity with the legislative scheme." *Id.* It did not matter that Fairfield failed to enact an ordinance as contemplated by the MLUL, because the settlement "was not intended to rezone the area in which DEG was located but only to settle DEG's statutory claim" in light of a substantial constitutional challenge. *Id.* at 273.

Just as Fairfield had authority to settle with DEG, it is well within the Township's broad authority to settle the disputes with the Ramapough, and to the extent Plaintiff contends zoning approval was needed for the settlement, the Court need not look any further than the Settlement itself to discern the inaccuracy of this allegation. (Plaintiff's Ex. B.) The Settlement does not grant the Ramapough a zoning permit, zoning variance, or construction permit. *Id.* Rather, the Settlement is simply a reflection of the Township's broad authority to interpret its zoning ordinances as it sees fit, and consistent with Constitutional demands. The Township has determined that its zoning ordinances allow the Ramapough to pray and gather on their land in the open air. *Id.* This interpretation is not only reasonable, but is likely necessary, as an alternate interpretation would open the Township to considerable liability. One New Jersey Court has

already determined that Plaintiff's restrictive view of C-200 zoning would offend First Amendment Principles. *See Township of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Transcript of Decision Dismissing Polo Club Complaint May 3, 2019). And the United States Department of Justice filed a notice of interest in the federal case, supporting the Ramapough's claims that interpreting the zoning law in this manner would open the Township up to a RLUIPA claim. Statement of Interest of the United States of America, *Ramapough Mt. Indians, INC., et al. v. Township of Mahwah, et al.* No. 2:18-cv-09228 (Dist. Ct. N.J.) (Dk. No. 82). Indeed, to the extent that the Mahwah zoning code *could* be interpreted otherwise, to prohibit open-air prayer in conservation zoned land, the code itself would likely violate the Constitution. *See State v. Cameron*, 100 N.J. 586, 595 (1985) (finding a zoning ordinance, which was interpreted to prevent a minister from holding weekly prayer in his own home, as applied to the minister, to be unconstitutionally vague.)

Decisions regarding zoning interpretation are squarely within the authority of the Township. Plaintiff may be disappointed with the Township's decision to resume interpreting its laws in accordance with statutory and constitutional law, but that frustration does not give rise to an actionable claim.

ii. The Settlement Does Not Constitute "Spot Zoning"

Plaintiff also claims the Settlement constitutes impermissible "spot zoning." (FAC at ¶ 7). "'Spot zoning' is the use of the zoning power to benefit particular private interests rather than the collective interests of the community." *Taxpayers Ass'n of Weymouth Tp., Inc. v. Weymouth Tp.*, 80 N.J. 6, 18, (1976), *cert. denied sub nom.*, 430 U.S. 977 (1977). "It is zoning which disregards" New Jersey law requiring a "regulation be accomplished in accordance with a

comprehensive plan to promote the general welfare.” *Id.* [T]he test is whether the particular [action] is made with the purpose or effect of furthering a comprehensive scheme or whether it is designed merely to relieve a lot or lots from the burden of a general regulation. *Palisades Props., Inc. v. Brunetti*, 44 N.J. 117, 134 (1965). To establish impermissible “spot zoning,” a Plaintiff must allege that the effect of the challenged action is inconsistent or incompatible with the Township’s comprehensive zoning plan. *Smith v. S. Brunswick Twp.*, A-1218-15T2, 2017 WL 2180669 (N.J. Super. Ct. App. Div. May 18, 2017).

As described above, the Settlement did not rezone or alter, in any way, the existing zoning ordinances in the Township. The Settlement is simply a reasonable interpretation of the Township’s zoning code. (Plaintiff’s Ex. B.) Plaintiff attempts to rely upon Township letters, claiming that activities conducted by the Ramapough were in violation of Mahwah zoning code and a paragraph within the settlement agreement, in order to establish that allowing Ramapough to pray and gather on their land constitutes “spot zoning.” (FAC ¶ 10-11). These allegations do not support a claim for spot zoning.

First, while it is true that the Township initially took the position that some of the Ramapough’s activities violated the zoning law, this position was the subject of litigation, which ultimately found the Ramapough to have violated Township zoning code *only* for a tent they had on the property, and not for the activities outlined in the letter. *State v. RMI, Inc.* A-002403-18/BMA-001-18-02 (Order Dated January 10, 2018); *see also Township of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Transcript of Decision Dismissing Polo Club Complaint May 3, 2019) (finding that religious activities conducted by the Ramapough were not violations of Mahwah zoning ordinance). That the Township has abandoned its early,

erroneous position in light of these decisions and the Ramapough's weighty constitutional arguments presents no hurdle to settlement.

Similarly, Plaintiff finds no support in section 2(f) of the settlement, which merely indicates that "[t]he use of the Property shall be personal to the RMI, and any conveyance of the Property shall terminate the use herein *to the extent inconsistent with the C-200 zone.*" (Plaintiff's Ex. B)(emphasis added). This provision does not indicate that any Ramapough uses of the property violate C200 zoning, but merely provides a failsafe should such a determination be made in the future. (FAC ¶ 10).

Finally, Plaintiff fails to allege any facts supporting the conclusory assertion that the Settlement is not in line with the Township's comprehensive plan; thus, Plaintiff's "spot zoning" claim should be dismissed with prejudice. *Smith*, A-1218-15T2, 2017 WL 2180669 (N.J. Super. Ct. App. Div. May 18, 2017).

B. Count Two and Three Fail to Allege a Cognizable Claim

The final two counts of Plaintiff's complaint are even more difficult to parse. Count Two of Plaintiff's First Amended Complaint appears to allege that the activities allowed under the Settlement constitute a safety hazard. (FAC at ¶19-33). Plaintiff alleges that the Ramapough must seek zoning approval for a driveway, and complain that an event which occurred 7 years ago resulted in a bridge being blocked. *Id.*

Plaintiff does not cite any statute or cause of action which would authorize this Court to make determinations as to the safety of a driveway, and undersigned counsel are aware of none. Plaintiff brings these claims as an Action in Lieu of Prerogative Writ, but such a cause of action

does not authorize the Court to make determinations as to the safety of decisions made by Townships within New Jersey.⁹

Interestingly, in Count Three of Plaintiff's First Amended Complaint, Plaintiff asks this Court to ignore the safety concerns he believes to be at issue in Count Two and demands the driveway to be moved from Bridle Path Lane to Halifax Road. (FAC at ¶ 39). Again, Plaintiff does not provide a theory or cause of action that would allow the Court to make such a determination and the Ramapough are not aware of one. In reality, Plaintiff is asking this Court to move the alleged "unsafe" driveway so that it will not be on the same road in which Plaintiff resides. (FAC at 1). It is an inappropriate use of this Court's time to make demands that are not based upon law but instead are to appease Plaintiff's own personal desires.

As Plaintiff cites no cause of action for "safety" or a cause of action that would allow a Court to order a driveway moved, Counts Two and Three must be dismissed with prejudice.

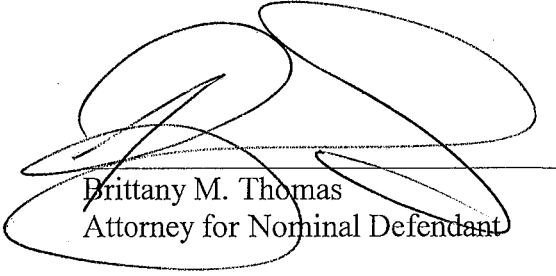
Conclusion

For the reasons set forth above, the Ramapough respectfully requests that this Court dismiss Plaintiff's First Amended Complaint in its entirety.

Designation of Trial Counsel

Pursuant to R. 4:25-4, Defendant, Ramapough Mountain Indians, INC. designates
Brittany M. Thomas, Esq. as trial counsel.

12/13/19



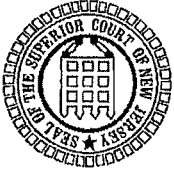


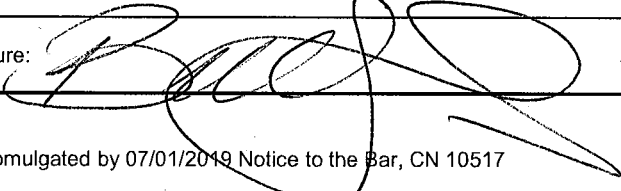
Brittany M. Thomas
Attorney for Nominal Defendant

⁹ As outlined in the Settlement, Plaintiff's safety concerns are adequately addressed as the driveway needs to be approved both by the Township Engineer and the New Jersey Department of Environmental Safety. (Plaintiff's Ex. B at 3-4).

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Appendix XII-B1

	<h2 style="margin:0;">Civil Case Information Statement</h2> <h3 style="margin:0;">(CIS)</h3> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p>		<p style="font-size:small; margin:0;">For Use by Clerk's Office Only</p> <p style="margin:0;">Payment type: <input type="checkbox"/> ck <input type="checkbox"/> cg <input type="checkbox"/> ca</p> <p style="margin:0;">Chg/Ck Number:</p> <p style="margin:0;">Amount:</p> <p style="margin:0;">Overpayment:</p> <p style="margin:0;">Batch Number:</p>
	Attorney/Pro Se Name Brittany M. Thomas	Telephone Number (212) 614-6483	County of Venue Bergen 
	Firm Name (if applicable) Center for Constitutional Rights		Docket Number (when available) L-6223-19
	Office Address 666 Broadway, FL 7 New York, NY 10012		Document Type Motion to Dismiss
Name of Party (e.g., John Doe, Plaintiff) Ramapough Mt. Indians, Inc.		Caption Thomas Powers v. Township of Mahwah et. al.	
Case Type Number (See reverse side for listing) 701 701	Is this a professional malpractice case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you have checked "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.		
Related Cases Pending? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If "Yes," list docket numbers		
Do you anticipate adding any parties (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Name of defendant's primary insurance company (if known) <input type="checkbox"/> None <input checked="" type="checkbox"/> Unknown		
The Information Provided on This Form Cannot be Introduced into Evidence.			
Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation			
Do parties have a current, past or recurrent relationship? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If "Yes," is that relationship: <input type="checkbox"/> Employer/Employee <input checked="" type="checkbox"/> Friend/Neighbor <input type="checkbox"/> Other (explain) <input type="checkbox"/> Familial <input type="checkbox"/> Business		
Does the statute governing this case provide for payment of fees by the losing party? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition			
 Do you or your client need any disability accommodations? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, please identify the requested accommodation:		
Will an interpreter be needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, for what language?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .			
Attorney Signature: 			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|-----------------------------------------------------------|----------------------------------------------|
| 271 ACCUTANE/ISOTRETINION | 297 MIRENA CONTRACEPTIVE DEVICE |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 300 TALC-BASED BODY POWDERS |
| 282 FOSAMAX | 601 ASBESTOS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 623 PROPECIA |
| 286 LEVAQUIN | 624 STRYKER LFIT CoCr V40 FEMORAL HEADS |
| 289 REGLAN | 625 FIREFIGHTER HEARING LOSS LITIGATION |
| 291 PELVIC MESH/GYNECARE | 626 ABILIFY |
| 292 PELVIC MESH/BARD | 627 PHYSIOMESH FLEXIBLE COMPOSITE MESH |
| 293 DEPUY ASR HIP IMPLANT LITIGATION | 628 TAXOTERE/DOCETAXEL |
| 295 ALLODERM REGENERATIVE TISSUE MATRIX | 629 ZOSTAVAX |
| 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS | 630 PROCEED MESH/PATCH |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59