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Hon. Robert C. Wilson  
Bergen County Courthouse  
10 Main Street, 2nd Floor  
Hackensack, NJ 07601

**REPLY TO PLAINTIFF'S  
OPPOSITION TO MOTION  
TO DISMISS**

January 21, 2020

RE: Thomas Powers v. Township of Mahwah et al.  
Docket No. BER-L-6223-19

Dear Judge Wilson,

Please accept this letter brief in lieu of a formal brief in reply to Thomas Power's ("Plaintiff") Opposition to the Ramapough Mountain Indians, Inc. ("Ramapough") Motion to Dismiss.

**ARGUMENT**

As more fully set out below, Plaintiff's opposition fails to provide the Court any reason to deny either motion to dismiss. Most fundamentally, Plaintiff fails to acknowledge that his underlying legal theory — that the Settlement is impermissible because it allows the Ramapough to pray and gather on their own land<sup>1</sup> — is precisely the theory this Court has already rejected at trial when presented on Plaintiff's behalf by the homeowner's association to which he belongs. Plaintiff cannot overcome the fact that this case is a naked attempt to re-litigate the Polo Club's lost trial.

**I. Plaintiff's Opposition Relies on Unsupported and Inaccurate Allegations**

Plaintiff's opposition is riddled with new, inaccurate allegations, with which he attempts to bolster the array of unsupported allegations contained in his First Amended Complaint ("FAC"). Plaintiff mischaracterizes Ramapough's use of their privately-owned land, the terms of the settlement he is seeking to challenge, the need for a zoning permit, and the existence of "permanent" structures. Such new allegations are not a proper means to oppose a motion to dismiss. *See* Rule 4:6-2(e); *see also Printing Mart–Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 746 (1989) (review of the adequacy of pleading is "limited to examining the legal sufficiency of the facts alleged on the face of the complaint.").

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<sup>1</sup> Plaintiff's opposition obscures this by *now* only referring vaguely to "safety" concerns. *See e.g.*, Plaintiff Opp. at 6-7. However, in the Amended Complaint, Plaintiff's theory of the case is that "religious uses and public activity" are somehow unsafe and somehow violate the law, thus making the Settlement impermissible. AC ¶ 11. *See also id.*, ¶ 8 ("Public Assembly and religious gatherings are not permitted uses.").

**JUSTICE TAKES A FIGHT.**

On numerous occasions Plaintiff makes the unfounded allegation that, with the exception of one occasion in 2012, the Ramapough had not used their property prior to 2016 as a place of assembly or for religious activities. *See* Plaintiff Opp. at 1 and 5. This allegation does not appear in Plaintiff's complaint, it has no support, and it is patently false. The Ramapough have held title to 95 Halifax Road for more than 25 years and their use of the land predates the establishment of the Township of Mahwah<sup>2</sup> and in turn predates Plaintiff's purchase of his property.

Additionally, throughout Plaintiff's Opposition, he claims that the Settlement authorizes "public" gatherings and events on 95 Halifax. *See* Plaintiff Opp. at 2, 3, 5, 6, 7, 8, and 12. Plaintiff provides no authority for this statement and again, he could not, as the Settlement says nothing about "public" gatherings or events. *See* Plaintiff's FAC Ex. B. Rather, the Settlement agreement acknowledges, as this Court has held, that the Ramapough can pray and gather on their land. *Id.* Just as Plaintiff can invite guests to his home for a wedding, holiday gathering, or backyard barbeque, the Ramapough can invite guests to join them on their land.<sup>3</sup>

Next, ignoring this Court's prior ruling and the findings of other courts, Plaintiff repeatedly alleges that the Ramapough have erected "permanent structures" requiring a zoning permit and have conducted activities which require land use approval. *See* Plaintiff's Opp. at 1, 3, 5, 6, 7, 8, and 10. As was fully discussed in the Ramapough's Motion to Dismiss and is clear from this Court's opinion dismissing Ramapo Polo & Hunt Club's ("Polo Club") Complaint, the Ramapough are "permitted to put stones in a circle and place tree stumps upright and to leave a stone pillar where it's been." *Twp. of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Transcript of Decision Dismissing Polo Club Complaint May 3, 2019) at 9:18-20. And no violations of law existed at the time of the trial, which predated the signing of the Settlement agreement. *Id.* at 9:13-14.

Finally, Plaintiff's reliance on Judge McGeady's municipal court decision borders on willfully misleading this court. *See* Plaintiff's Opp. at 5. Plaintiff repeatedly cites this opinion as evidence of Defendants' wrongdoing, yet fails to notify the court that the municipal court decision was appealed, and on appeal the court found only one violation of Mahwah zoning code—based on the existence of a tent in 2017, that is not allowed by the Settlement Agreement. *See* State v. RMI, Inc. A-002403-18/ BMA-001-18-02 (Order Dated January 10, 2018); see also Plaintiff's exhibit C.

It is unclear what Plaintiff hopes to gain from these new unfounded allegations—as shown below, they are also irrelevant— but they are inappropriate and further evidence Plaintiff's animus toward the Ramapough. Plaintiff's attempt to persuade the Court with these mischaracterizations is improper.

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<sup>2</sup> 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). *Schweizer v. MacPhee*, 130 N.J. Super. 123, 125, 325 A.2d 828, 829 (App. Div. 1974) ("In any event, we may take judicial notice of . . . pleadings").

<sup>3</sup> As this Court noted: "[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. *Township of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Transcript of Decision Dismissing Polo Club Complaint May 3, 2019) at 9:14-16.

## II. Plaintiff's Exhibits are Irrelevant

In support of his opposition, Plaintiff relies on various exhibits that are irrelevant, predate the Settlement Agreement entirely, and in multiple instances contradict Plaintiff's claims. Nearly all of the exhibits predate the signing of the Settlement Agreement. Specifically, Plaintiff's opposition exhibits B, C, D, E, G, H, and J all predate the signing of the Settlement Agreement and further fail to support Plaintiff's position—that the Settlement signed on June 28, 2019 was a violation of existing Mahwah municipal codes.

Plaintiff's exhibits B, D, G, and H are documents authored by various Township representatives, which detail nothing more than how the Township previously interpreted their zoning code. See Plaintiff's Exhibit B, D, G, and H. Judge McGeady's municipal court decision (Plaintiff's Exhibit C) was, as referenced above, successfully appealed. See Plaintiff's Exhibit C. Plaintiff's Exhibit J is a notice of tort claim dating back to 2018, sent to the Township of Mahwah on behalf of the Polo Club which appears to complain about Mahwah's provision of a zoning permit authorizing the Ramapough to conduct gatherings on their land.<sup>4</sup> This exhibit is not *evidence* of anything, as it is a litigation document created by the Polo Club, in which Plaintiff is an active member, and it has no bearing on whether the Township had authority to enter into the Settlement Agreement. See FAC at 1. The fact that a party has previously made the same, unfounded assertion is not evidence of the truth of that assertion.

Moreover, Plaintiff's exhibits draw into question many of his own allegations. Plaintiff alleges that zoning approval is necessary for the Settlement agreement, and while this is incorrect, the documents suggest that even proper zoning approval would fail to appease Plaintiff. See Plaintiff's Exhibit J. Further, Plaintiff's exhibit F is a notice of tort claim against the Township for the Settlement Agreement at issue here. See Plaintiff's Exhibit F. The Notice was filed *after* Plaintiff initiated this lawsuit, and includes Plaintiff's concession that his claim accrued on June 28, 2019, in direct contradiction to his argument to this Court that his claim did not accrue until July 2nd, 2019. See *id.*; see also Plaintiff's Opp. at 3-4.

## III. Plaintiff Fails to Address Defendants' Arguments in the Motion to Dismiss

Plaintiff's opposition fails to adequately address the arguments raised by the Ramapough in their Motion to Dismiss.

Plaintiff's FAC seeks to invalidate the Settlement Agreement because it allegedly violates Mahwah zoning ordinances. See FAC. However, as the Ramapough pointed out, Plaintiff fails to identify any structure allowed by the Settlement Agreement that he believes to be in violation of Mahwah zoning ordinances. See Plaintiff Opp.; see also Ramapough Memorandum of Law ISO Motion to Dismiss (hereafter "MTD") at 9. Similarly, Plaintiff fails to address the main argument raised by the Ramapough—municipalities have broad authority to interpret their zoning code and the Settlement Agreement is simply an acknowledgement of Mahwah's interpretation — an interpretation consistent with the result this Court reached when

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<sup>4</sup> See Amended Complaint, Ramapough Mt. Indians, INC., et al. v. Township of Mahwah, et al. *supra* at 17-19 (detailing how the zoning permit was unilaterally rescinded by the Township of Mahwah after complaints were filed by members of the Polo Club.)

the same theory was pressed by the Polo Club in the previous trial. *See DEG, LLC v. Township of Fairfield*, 198 N.J. 242, 273 (2009); *see also* MTD at 9-12.

Plaintiff also disregards Defendant's arguments that an action in lieu of prerogative writ is not an avenue by which Plaintiff can obtain his desired remedy. *See* Plaintiff's Opp.; MTD at 14-15. Instead, Plaintiff focuses for the first time on an alleged "taking" by the Township, but Plaintiff's own argument and exhibits demonstrate that he has been complaining about this alleged taking since long before the Settlement Agreement, and regardless, the only remedy for a taking is just compensation, not the annulment of a Settlement Agreement that post-dates the action in question. *See* Plaintiff's Opp.; *see also* Plaintiff's Exhibit K (Takings Demand Letter); FAC Exhibit B.

Plaintiff ignores Defendant's argument that an action in lieu of prerogative writ does not authorize the Court to move a driveway nor does it authorize the Court to make determinations as to the safety of activities conducted within a municipality. Instead, Plaintiff alters his focus from the driveway contemplated by the Settlement (which requires review by the proper authorities and must be properly offset from Mr. Powers' driveway); seeking instead to challenge the existence of a driveway that is currently on the Ramapough property, which is not discussed in the FAC. *See* Plaintiff's Opp. at 9. Plaintiff's exhibits demonstrate that he has complained about this old driveway since at least 2018. *See* Plaintiff's Ex. H. It has nothing to do with the Settlement or the allegations contained within his FAC. *See id.*; *see also* FAC.

Finally, Plaintiff completely ignores this Court's trial decision, which specifically held that the Ramapough were not in violation of Mahwah zoning ordinances and that the Ramapough can have guests and pray on their land, similar to every other property owner. *Township of Mahwah v. Ramapough Mountain Indians, Inc.*, Docket No. BER-L-003189-17 (Transcript of Decision Dismissing Polo Club Complaint May 3, 2019); *see also* Plaintiff's Opp. In lieu of addressing this Court's decision, Plaintiff relies on a Municipal court decision which was appealed and decided on other grounds. *See State v. RMI, Inc.* A-002403-18/ BMA-001-18-02 (Order Dated January 10, 2018).

Plaintiff's FAC fails to allege facts sufficient to support any claim for relief. Plaintiff's Opposition, in turn, does not address Defendant's legal arguments, but instead raises yet another set of legally irrelevant, internally inconsistent and unsupported facts that cannot form the basis of an action in lieu of prerogative writ.

### CONCLUSION

For these reasons, in addition to the grounds identified in the initial Motion to Dismiss, we respectfully request that this Court dismiss Plaintiff's First Amended Complaint in its entirety.

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