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January 23, 2018

East Greenwich Town Council
Town Hall
125 Main Street
East Greenwich, RI 02818

Re: Pamela Aveyard

Dear East Greenwich Town Council Members:

I represent Pamela Aveyard. On behalf of Ms. Aveyard, pursuant to R.I. Gen. Laws § 45-15-5, I am putting the East Greenwich Town Council on notice of the claims that Ms. Aveyard is making against the Town of East Greenwich and presenting her demand to it so that the Town has "a reasonable opportunity to settle a claim without putting the municipality to the expense of defending an action at law." " United Lending Corp. v. City of Providence, 827 A.2d 626, 632 (R.I. 2003) (quoting *Bernard v. Alexander*, 605 A.2d 484, 485 (R.I. 1992) (*per curiam*) also referring to *Serpa v. Amaral*, 635 A.2d 1196, 1198 (R.I. 1994) (*per curiam*)).

While I already filed a Complaint on her behalf on December 23, 2017 against *de facto* defendant, Town of East Greenwich, its alleged Town Manager, and the all the individual members of its town council, it has not been served to date. To provide the Town with the equivalent opportunity to "settle [this] claim without putting the municipality to the expense of defending [this] action at law" that it is entitled to receive pursuant to R.I. Gen. Laws § 45-15-5, Ms. Aveyard will wait at least forty days from the date that this claim/demand is received by the Town Council before the Complaint is served on any of the defendants.

Ms. Aveyard's claims are contained in the Complaint, which is attached. In addition, based on the facts contained in this initial Complaint, Ms. Aveyard may amend the Complaint to add an additional cause of action pursuant to the federal Family Medical Leave Act, that will be based on the facts already contained in the initial Complaint.

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To resolve all of the claims that she has against the Town of East Greenwich, Ms. Aveyard would dismiss her Complaint with prejudice and sign a general release on the following conditions: (1) that she receive full back pay and benefits up to the date of the settlement; (2) that as of the day of the settlement, she be reinstated to a position with the Town that is equivalent in terms of pay, benefits, and working conditions, to the position that she held with the Town before it allegedly eliminated that position or, in the alternative, if the Town cannot or will not immediately reinstate her to an equivalent position, that the Town continue to pay her front pay and benefits up to the date that she is eventually reinstated to an equivalent position with the Town; (3) that she receive a lump sum of \$100,000 for the emotional, mental, and social suffering that the Town has caused her by terminating her employment; and (4) that the Town contribute \$35,000 toward her attorney's fees.

Ms. Aveyard did not present notice of her claims against the Town prior to filing her Complaint because she was awaiting action by the Rhode Island Attorney General on the Open Meeting Act claim she filed with it against the Town of East Greenwich. As of December 23, 2018, the Attorney General still had not issued its decision. To ensure that her 180 days statute of limitations relevant to the Open Meeting Act related to the Town Council meeting that took place on June 26, 2017 did not expire, she filed her Complaint on December 23, 2017. Also, in addition to her OMA claim, in compliance with *Plunkett v. State*, 869 A.2d 1185 (R.I. 2015), Ms. Aveyard presented all her claims in one action; however, as mentioned above, still relying on the same facts contained in the Complaint, she may amend the Complaint to include a cause of action under the federal FMLA prior to serving the Complaint on any of the defendants.

As the Town Council likely knows, R.I. Gen. Laws § 45-15-5 cannot be applied so that a failure to provide 40 days' notice to the Town prior to filing a complaint will result in an otherwise timely complaint being considered filed after the expiration of the applicable statute of limitations. At worst it would require that Plaintiff refile the Complaint within a year after it is dismissed without prejudice, as the Rhode Island Supreme Court explained in *United Lending Corp. v. City of Providence*, 827 A.2d 626, 633 (R.I. 2003):

When an action, filed within the statute-of-limitations period, is considered prematurely brought for failure to comply with the presentment provisions of § 45-15-5, summary judgment is inappropriate because it is a final adjudication of the claim. *Serpa*, 635 A.2d at 1199. Under these circumstances, the complaint is subject to abatement or dismissal, not final judgment. Pursuant to G.L. 1956 § 9-1-22, the plaintiff is allowed one year from the date of the termination of the action to comply with § 45-15-5 and file another lawsuit. *Serpa*, 635 A.2d at 1199. (citing *Blessing v. Town of South Kingstown*, 626 A.2d 204 (R.I. 1993)).

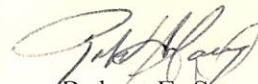
United Lending Corp. v. City of Providence, 827 A.2d 626, 633 (R.I. 2003).

However, by giving the Town 40 days' notice before serving the Complaint, Ms. Aveyard has provided the equivalent of the benefit of the pre-filing notice because it put the Town in the same position of having a "reasonable opportunity to settle a claim without putting the municipality to the expense of defending an action at law" as it would have received with a 40-day pre-filing notice. As the Rhode Island Supreme Court found in *United Lending Corp. v. City of Providence*, 827 A.2d 626, 633 (R.I. 2003) a post-filing notice can provide an acceptable substitute for a pre-filing notice:

under the circumstances in this case, we are satisfied that [Plaintiff's] post-filing notice to the [town] council adequately served the intended purpose of the statute: to afford the municipality an opportunity to settle the claim before litigation commences. We previously have noted that the rationale behind a forty-day notice requirement to the city council is to afford the municipality "a reasonable opportunity to settle a claim without putting the municipality to the expense of defending an action at law." *Bernard*, 605 A.2d at 485.

I hope that the Town Council responds to this notice of claim/demand promptly so that all parties can attempt to avoid expensive and time-consuming litigation to resolve Ms. Aveyard's claims.

Sincerely,



Robert E. Savage

Enclosure: Complaint

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