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*Attorneys for Declaratory Plaintiff, Borough of Lake Como*

IN THE MATTER OF THE APPLICATION  
OF THE BOROUGH OF LAKE COMO,  
COUNTY OF MONMOUTH, A Municipal  
Corporation of the State of New Jersey

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO.: MON-L-\_\_\_\_\_

**CIVIL ACTION**

**COMPLAINT FOR DECLARATORY  
JUDGMENT PURSUANT TO N.J.S.A.  
52:27D-301, ET SEQ. AND AOC  
DIRECTIVE #14-24**

Declaratory Plaintiff, Borough of Lake Como (the “Borough” or “Lake Como”), a municipal corporation and body politic organized under the laws of the State of New Jersey, with principal offices located at 1740 Main Street, Lake Como, New Jersey 07719, by way of this Declaratory Judgment Action (the “DJ Action”), alleges and says the following:

**BACKGROUND**

1. Declaratory Plaintiff, Borough of Lake Como is a body politic and corporate organized under the laws of the State of New Jersey.
2. On March 20, 2024, Governor Murphy signed into law Bill A4/S50 (P.L. 2024, c.2), which amends the New Jersey Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301, et seq.) (the “Amended FHA”).

3. Pursuant to the Amended FHA, municipalities are required to determine the Present Need obligation and Prospective Need obligation of their fair share of the regional need for affordable housing (“Fair Share Obligation”) during the 10-year period beginning on July 1, 2025 (the “Fourth Round”).

4. Pursuant to the Amended FHA, should a municipality determine its Fair Share Obligation by January 31, 2025, the municipality’s determination shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, unless challenged by an interested party on or before February 28, 2025.

5. Pursuant to the Amended FHA, any challenge to a municipality’s determination must be initiated through the Affordable Housing Alternative Dispute Resolution Program (the “Program”), explain with particularity how the municipality’s calculation fails to comply with N.J.S.A. 52:27D-304.2 and 52:27D-304.3, and include the challenger’s own calculation of the municipality’s Fair Share Obligation in compliance with said sections.

6. On October 18, 2024, the New Jersey Department of Community Affairs (the “DCA”) published a report with an estimate of the fair share affordable housing obligations of all municipalities, which, pursuant to the Amended FHA, shall not be binding on a municipality when calculating a municipality’s respective Fair Share Obligation (the “DCA Report”).

7. On January 21, 2025, the Borough Council of the Borough of Lake Como reviewed the findings of the Borough’s professionals and adopted a duly authorized Resolution adopting the same Fair Share Obligation for the Fourth Round as calculated by the DCA, which consists of a Present Need obligation of 11 units and a Prospective Need obligation of 19 units. A copy of said Resolution, along with the findings of the Borough’s professionals, is attached to this DJ Action as **Exhibit A**.

8. Pursuant to the Amended FHA and Directive No. 14-24 of the Administrative Offices of the Courts, the Borough has filed this DJ Action with the Program to: (a) secure the jurisdiction of the Program and the Court; (b) establish the Borough's presumptively valid calculation of its Present Need and Prospective Need obligations, as set forth in the duly adopted Resolution attached as **Exhibit A**; (c) obtain issuance of a "Compliance Certification" following the Borough's preparation and submission of a Housing Element and Fair Share Plan ("HEFSP"), which shall in part grant immunity to the Borough from all exclusionary zoning litigation, including builder's remedy lawsuits, for the Fourth Round, i.e. through June 30, 2035; (d) to the extent not automatically granted pursuant to the Amended FHA, confirm the Borough's continuing immunity from all exclusionary zoning litigation, including builder's remedy lawsuits, during the pendency of the process established by the Amended FHA for establishing a Fair Share Obligation, preparing a HEFSP, and securing a Compliance Certification; and (e) secure all other relief appropriate to ensure the Borough receives and obtains all protections afforded by the Amended FHA, including but not limited to all immunities and presumptions of validity necessary to satisfy the Borough's affordable housing obligations voluntarily without having to endure the expense and burden of unnecessary third party litigation.

### **COUNT ONE**

#### **DECLARATORY RELIEF ESTABLISHING THE PRESENT AND PROSPECTIVE NEED OF THE BOROUGH OF LAKE COMO PURSUANT TO N.J.S.A. 52:27D-304.1, ET SEQ.**

9. The Borough repeats and incorporates herein each and every allegation contained in the previous paragraphs as if fully set forth at length herein.

10. Pursuant to N.J.S.A. 52:27D-304.1, et seq., the Borough, by way of this DJ Action, seeks the confirmation of the Program and the Court of its Present and Prospective affordable

housing obligations set forth in the binding Resolution attached hereto and made a part hereof as **Exhibit A**.

11. The Borough reserves its right to revise its Fair Share Obligation in the event that a decision of a court of competent jurisdiction, or an action by the New Jersey Legislature, alters the Amended FHA or the meaning of the Amended FHA.

12. The Borough reserves its right to adjust the Fourth Round Obligation calculated by DCA based the following adjustments or others identified during the process of promulgating a Fourth Round Housing Element and Fair Share Plan: 1) a “windshield survey” or similar survey which accounts for a lower estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water or both); 4) an adjustment to the Land Capacity Factor; and/or 5) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan

**WHEREFORE**, the Borough seeks a declaratory judgment for the following relief:

A. Declaring that the Borough is properly within the jurisdiction of Program and the Court for the purpose of establishing its Fair Share Obligation.

B. Declaring, pursuant to N.J.S.A. 52:27D-304.1(f), that the Borough’s affordable housing obligations for the Fourth Round consists of a Present Need obligation of 11 units and a Prospective Need obligation of 19 units.

C. Declaring that the Borough is entitled to immunity from all exclusionary zoning litigation, including builder’s remedy lawsuits, during the pendency of the process established by the Amended FHA for establishing a Fair Share Obligation, preparing a HEFSP, and securing a Compliance Certification.

D. Such other relief that the Program and Court deems just and proper.

**COUNT TWO**

**DECLARATORY RELIEF APPROVING THE BOROUGH'S HOUSING ELEMENT AND FAIR SHARE PLAN PURSUANT TO N.J.S.A. 52:27D-304.1, ET SEQ.**

13. The Borough repeats and incorporates herein each and every allegation contained in the previous paragraphs as if fully set forth at length herein.

14. In compliance with the Amended FHA, the Borough shall prepare a HEFSP demonstrating compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine, which said HEFSP shall apply, as appropriate, any applicable adjustments, including but not limited to a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; an adjustment based upon any ruling in litigation involving affordable housing obligations; and any other applicable adjustments permitted in accordance with the Act and/or applicable regulations.

15. Upon the adoption of the HEFSP by the Borough of Lake Como Planning Board, the Borough shall file it with the Court and submit it to the Program.

16. After such filing, the Borough will seek approval of the HEFSP and issuance of the relief set forth below.

**WHEREFORE**, the Borough seeks a declaratory judgment for the following relief:

- A. Declaring the approval of the Borough's HEFSP.
- B. Declaring that the Borough is constitutionally compliant and issuing a Compliance Certification, with the force and effect of a Judgment of Compliance and Repose, or such other

protections as afforded to the Borough in complying the requirements of the Amended FHA, including but not limited to all immunities and presumption of validity, for the Fourth Round, i.e. the period beginning July 1, 2025 and ending June 30, 2035.

C. Declaring and issuing immunity to the Borough from all exclusionary zoning litigation, including builder's remedy lawsuits, for the Fourth Round, i.e. the period beginning July 1, 2025 and ending June 30, 2035.

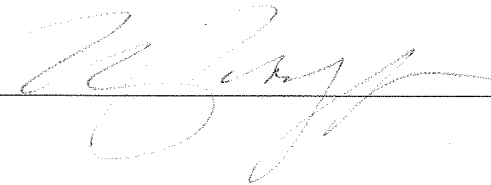
D. For such other relief as the court deems just.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, notice is hereby given that Marguerite M. Schaffer, Esq. is designated as trial counsel in the above captioned matter.

**SHAIN SCHAFFER PC**  
*Attorneys for Declaratory Plaintiff,*  
*Borough of Lake Como*

Dated: 1/24/25

By:  \_\_\_\_\_

**CERTIFICATION PURSUANT TO R. 4:5-1**

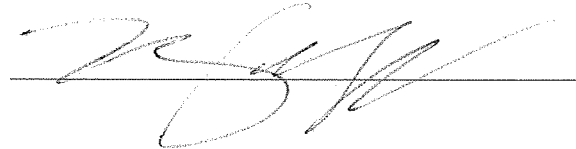
Pursuant to R. 4:5-1, I hereby certify that to the best of my knowledge: (1) the matter in controversy is not the subject of another action pending in this Superior Court; (2) no other action or arbitration proceeding is contemplated; and (3) no other necessary party to be joined in this litigation is presently known to counsel. Further, I hereby 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 R. 1:38-7(b)

**SHAIN SCHAFFER PC**  
*Attorneys for Declaratory Plaintiff,*  
*Borough of Lake Como*

Dated:

1/24/25

By:

A handwritten signature in black ink, appearing to be 'Shain Schaffer', is written over a horizontal line. The signature is stylized and cursive.

# EXHIBIT A



**RESOLUTION 2025-40****RESOLUTION ADOPTING THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS' CALCULATION OF LAKE COMO'S FOURTH ROUND PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS**

**WHEREAS**, the Borough of Lake Como, County of Monmouth (the "**Borough**") is a public body corporate and politic of the State of New Jersey; and

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c. 2 (the "**Act**"), which established a new framework for determining and enforcing municipalities' affordable housing obligations under the New Jersey Supreme Court's *Mount Laurel* doctrine and the State of New Jersey's Fair Housing Act; and

**WHEREAS**, *N.J.S.A. 52:27D-304.1(c)* of the Act provides that prior to the beginning of each new 10-year round of affordable housing obligations beginning with the Fourth Round on July 1, 2025, the State of New Jersey's Department of Community Affairs (the "**DCA**") is tasked with determining municipal present and prospective need in accordance with the formulas established at *N.J.S.A. 52:27D-304.2* and *N.J.S.A. 52:27D-304.3*; and

**WHEREAS**, *N.J.S.A. 52:27D-304.1(d)* further provides that the DCA is required to prepare and submit a report to the Governor and Legislature on the calculations of such municipal obligations by October 20, 2024; and

**WHEREAS**, in accordance with the requirements of the Act, on October 18, 2024, the DCA provided a report setting forth its non-binding calculations of municipalities' present and prospective need for affordable housing for the Fourth Round using the formulas set forth at *N.J.S.A. 52:27D-304.2* and *N.J.S.A. 52:27D-304.3* (the "**Report**"); and

**WHEREAS**, the Report determined the Borough's present need obligation to be 11 units and its prospective need obligation to be 19 units; and

**WHEREAS**, *N.J.S.A. 52:27D-304.1(f)* provides that the Borough is required to determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established at *N.J.S.A. 52:27D-304.2* and *N.J.S.A. 52:27D-304.3* and adopt a housing element and fair share plan based on this determination (as may be adjusted by the Affordable Housing Dispute Resolution Program (the "**Program**") in accordance with the Act); and

**WHEREAS**, for the Fourth Round of affordable housing obligations, this determination of present and prospective fair share obligation is required to be made by binding resolution no later than January 31, 2025; and

**WHEREAS**, the Borough has determined that its present and prospective need obligations of 11 units and 19 units, respectively, as calculated in the Report are accurate and wishes to adopt these calculations as the determination of its Fourth Round affordable housing obligation; and

**WHEREAS**, the Borough specifically reserves the right to adjust the Fourth Round Obligation calculated by DCA based the following adjustments or others identified during the process of promulgating a Fourth Round Housing Element and Fair Share Plan ("**4th Round**

**HEFSP**): 1) a “windshield survey” or similar survey which accounts for a lower estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water or both); 4) an adjustment to the Land Capacity Factor; and/or 5) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan; and

**WHEREAS**, in addition to the foregoing, the Borough specifically reserves all rights and positions, without prejudice, to revoke this resolution and commitment in the event of a successful challenge to the Act in the context of Borough of Montvale, et al. v. State of New Jersey, Docket No. MER-L-1778-24 or any other such action challenging the Act or calculations of Fourth Round Present or Prospective Obligations, or any legislation adopted and signed into law by the Governor of New Jersey altering the deadlines and/or requirements of the Act; and

**WHEREAS**, in addition to the foregoing, nothing in the Act requires or can require an increase in the Borough’s Fourth Round Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of the Act is to establish, for example, unchallenged numbers by default on March 1, 2025; and

**WHEREAS**, pursuant to the Administrative Directive #14-24, dated December 13, 2024 (the “**Directive**”), implementing the Affordable Housing Dispute Resolution Program (the “**Program**”), a municipality seeking certification with the Act, shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located; and

**WHEREAS**, the Borough authorizes the filing of a declaratory judgment action pursuant to the Directive within forty-eight hours after the adoption of this resolution to seek compliance with the Act; and

**WHEREAS**, the Borough further authorizes its professionals to prepare the 4th Round HEFSP and present the same for adoption prior to June 30, 2025; and

**WHEREAS**, in light of the above, the Borough finds it is in the best interest of the Borough to declare its Fourth Round Present and Prospective Need Obligations, authorize the filing of a declaratory judgment action pursuant to the Directive, and direct its professionals to prepare a 4th Round HEFSP, all in accordance with the Act.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and the Council of the Borough of Lake Como, County of Monmouth, State of New Jersey as follows:

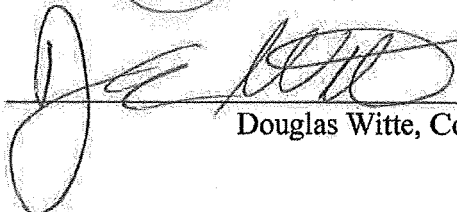
1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The Borough has determined that its present and prospective need obligations of 11 units and 19 units, respectively, as calculated in the Report are accurate and adopts these calculations as the determination of its Fourth Round affordable housing obligation, subject to all reservations of rights, including but not limited to:
  - A. The right to adjust the number based on one or any of the following: a windshield survey, vacant land assessment, durational adjustments, variations in the Land

Capacity Factor, and/or regional planning inputs; and

- B. The right to revoke this resolution in the event of a successful legal challenge to A4 or the Act, any legislative changes to the Act and signed into law by the Governor, or to the calculations of Fourth Round Present or Prospective Obligations.
3. The Borough authorizes its professionals to file a declaratory judgment action with the Program no later than 48 hours following adoption of this Resolution, in accordance with the requirements of the Act. A certified copy of this Resolution shall be included with such filing.
  4. The Borough further authorizes its professionals to prepare the 4th Round HEFSP and present the same for adoption prior to June 30, 2025.
  5. A copy of this Resolution shall be posted on the Borough's website.
  6. This Resolution will take effect immediately.


Dated: January 21, 2025

  
\_\_\_\_\_  
Kevin G. Higgins, Mayor

  
\_\_\_\_\_  
Douglas Witte, Council President

**CERTIFICATION**

I hereby certify the foregoing Resolution to be a true and exact copy of a Resolution adopted by the Borough of Lake Como Council at its meeting held on January 21, 2025.

  
\_\_\_\_\_  
Amy Boney, RMC  
Borough Clerk

# Civil Case Information Statement

## Case Details: MONMOUTH | Civil Part Docket# L-000303-25

**Case Caption:** IN THE MATTER OF LAKE COMO

**Case Initiation Date:** 01/23/2025

**Attorney Name:** MARGUERITE M SCHAFFER

**Firm Name:** SHAIN SCHAFFER PC

**Address:** 150 MORRISTOWN ROAD SUITE 105  
BERNARDSVILLE NJ 07924

**Phone:** 9089539300

**Name of Party:** PLAINTIFF : Borough of Lake Como

**Name of Defendant's Primary Insurance Company**  
(if known): None

**Case Type:** AFFORDABLE HOUSING

**Document Type:** Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Does this case involve claims related to COVID-19?** NO

**Are sexual abuse claims alleged by: Borough of Lake Como?** NO

## 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?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** 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?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** NO **Medical Debt Claim?** NO

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 *Rule* 1:38-7(b)

01/23/2025

Dated

/s/ MARGUERITE M SCHAFFER

Signed