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Attorneys for Plaintiff, GinaMarie DiPasquale

Gina Marie DiPasquale, **Plaintiff** **vs.** **State of New Jersey,** **Defendant**	**Superior Court of New Jersey** **Mercer County - Law Division** **Docket Number:** **Civil Action** **Complaint and Jury Demand**

The Plaintiff, Gina Marie DiPasquale, by way of complaint against Defendant, the State of New Jersey, states as follows:

COUNT ONE
(UNLAWFUL HARASSMENT IN VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION)

1. Plaintiff, Gina Marie DiPasquale, resides at 108 Keswick Avenue, Trenton, New Jersey 08638.

2. Plaintiff began employment with the Defendant, State of New Jersey, as a Senior Correctional Officer in August 1996. In May 2001 Plaintiff began working as an Instructor at the Corrections Officer Training Academy, in Sea Girt, New Jersey,

(hereinafter referred to as the "Academy"). In September 2001, Plaintiff became a full time Instructor at the Academy.

3. During her employment at the Academy the Plaintiff was subjected to harassment, retaliation and other discriminatory conduct on account of her sex and was forced to endure a work environment hostile to her and others.

4. In February 2002, Plaintiff complained through her chain of command to the Director of the Academy, about gender-based differential treatment and harassment of female trainees. The harassment included the use of sexually offensive cadences in training, verbal obscenities, inappropriate touching of females and continual demeaning treatment of females for their inability or perceived inability to perform physical exercises as well as male recruits. One of the offensive cadences employed in training included the phrase, "Don't let your ding dong dangle in the dirt."

5. In June 2002, the Plaintiff renewed her complaints to the new Director of the Academy, Craig Conway. The Plaintiff advised Lieutenant Matthew Kyle of her concerns for herself and the trainees. Lieutenant Kyle informed her that she, "had dead issues." In response to that comment, the Plaintiff told Lieutenant Kyle that the issues "were not dead but still on-going." After reviewing Plaintiff's documentation, Lieutenant Kyle advised the Plaintiff that he had brought the issue to the attention of Director Conway. He stated that although she had raised valid concerns, she had to "put these dead issues behind her."

6. As a result of her Complaints, Plaintiff was referred to by management at the Academy as the "Recruit Advocate." As a result of her complaints, Plaintiff was not allowed to instruct classes for which she was qualified.

7. Thereafter, Director Conway, and other management personnel made derogatory comments to supervisors and officers about the Plaintiff. Plaintiff was referred to as "psycho-bitch," "troublemaker," and "snitch," among other derogatory terms. These comments were part of a concerted campaign by Director Conway and Lieutenant Kyle, and upon information and belief, others in supervisory roles, to discredit, defame and demean the Plaintiff's reputation among all employees at the Academy and throughout the Department of Corrections. Despite some public words of compliment to the Plaintiff, this campaign of slander continues behind the back of Plaintiff.

8. In 2002, Director Conway made it known that he wanted the Plaintiff removed from the Academy and took actions to force her out of the Academy. By way of example, Sergeant Wagner informed Plaintiff that he was writing her up for insubordination because Director Conway wanted to "get rid of (her)." The harassment not only included bogus disciplinary charges but also the compelled referral of the Plaintiff to Employee Advisory Services, where the counselor in formed Plaintiff that she did not know who had referred her or the reason for the referral. In response to her complaints, Plaintiff was assigned to Recruitment purportedly for "cross-training." In fact, the assignment was intended to replace plaintiff in her Instructor position with a male. While at cross-training, her Instructor position was filled by a male.

9. During 2002 and thereafter, Plaintiff was harassed by verbal abuse and threatening comments. In 2002, she chose not to aggressively pursue discrimination complaints on account of fear for her employment and further retaliation. Because of the stress and anxiety and depressed mood caused by the continuing discrimination, hostile

work environment, and intimidating acts of management, Plaintiff was forced, on January 30, 2003, to take a temporary disability leave.

10. While she was on leave, she was removed from her position. On July 30, 2003, she received a certified letter advising her that, upon her return from leave, she would be to the New Jersey State Prison in Trenton New Jersey and not the Academy.

11. While on disability leave Plaintiff reviewed her personnel file and discovered that not only were some documents missing but her file included a bogus memorandum describing an attendance counseling session with her that had never taken place.

12. Plaintiff objected to her assignment to the State Prison and upon her return from leave on January 2, 2004 she was assigned to unnecessary "job training" before she could resume the position of Instructor. Plaintiff did not begin instructing again until May 18, 2004.

13. After her return to work in 2004, Plaintiff was further harassed, which harassment included bogus letters of counseling and a disciplinary charge that Plaintiff had violated policy by not timely reporting a possible violation of discrimination and harassment. On appeal of this charge, the Plaintiff was exonerated of the violation by a hearing officer.

14. The retaliatory mindset of Director Conway has been most appropriately evidenced by a statement he made to another Senior Corrections Officer who Director Conway also labeled a "recruit advocate." Director Conway informed this officer that, he "was going to get (the correction officer) and anyone else who stood in his way."

15. The actions against Plaintiff were part of a pattern and practice of discrimination and intimidation against female, minority, and overweight trainees, and

the individuals at the Academy who complained about discriminatory conduct towards the trainees or themselves. This pattern of discrimination continued after EED complaints against Director Conway, and his staff, for their abuse of power, including retaliation against those who protest discriminatory or other inappropriate conduct.

16. This discriminatory conduct and harassment against Plaintiff engaged in and aided and abetted by management of the Department of Corrections of the State of New Jersey. This conduct was severe or pervasive enough to cause a reasonable woman and person to believe that the terms and conditions of her employment had been altered, and her working environment was hostile and abusive.

17. The severe and pervasive misconduct and the pattern and practice of harassment and conduct, of which it was a part, seriously affected the working conditions of the Plaintiff's employment. The actions of the Defendant were designed to force the Plaintiff to request a transfer out of the Academy or to force her to resign.

18. As a result of the acts of the Defendant, the Plaintiff was required to endure a work environment hostile to her, created and condoned by the Defendant.

19. The severe and pervasive misconduct of the Defendant constitutes unlawful harassment on the basis of gender and race in violation of the New Jersey Law Against Discrimination, *N.J.S.A. 10:5-1 et. seq.*

20. The aforesaid wrongful acts of the Defendant constitutes violation of the New Jersey Law Against Discrimination as a direct and proximate result of which the Plaintiff has suffered economic injury, humiliation, anguish, embarrassment, emotional and mental distress and other damages.

21. The wrongful conduct of Defendant warrants an award of punitive damages.

WHEREFORE, Plaintiff, Gina Marie DiPasquale, demands judgment against the Defendant, State of New Jersey, for damages together with costs of suit, attorneys' fees and interest, and other such relief as the Court may deem proper.

COUNT TWO
(WRONGFUL RETALIATION)

22. Plaintiff, Gina Marie DiPasquale, repeats and realleges each and every allegation as set forth in Paragraphs 1 through 21 of Count One of the Complaint, as though fully set forth herein.

23. Plaintiff complained about the discriminatory conduct against her to the EED Office of the Department of Corrections. The response of management to Plaintiff's complaints of discrimination was retaliatory acts. The acts of retaliation included wrongful disciplinary charges and reprimands, assignments to an unsafe workplace, and assignments that were intended to force the Plaintiff to either resign or request a transfer.

24. Specifically, Defendant assigned the Plaintiff to perform work in a dilapidated building. Plaintiff complained about this assignment to the New Jersey Department of Labor, Division of Employee Public Safety and Health, which determined that the building constituted an unsafe work place with serious occupational health and safety violations. As a result of these findings the building to which the Plaintiff had been assigned in retaliation for her complaints has been vacated by the State of New Jersey.

25. The retaliatory conduct towards the Plaintiff by the Defendant constitutes a violation of the New Jersey Law Against Discrimination as a direct and proximate result of which the Plaintiff has suffered economic injury, humiliation, anguish, embarrassment, emotional and mental distress and other damages.

26. The wrongful conduct of Defendant warrants an award of punitive damages.

WHEREFORE, Plaintiff, Gina Marie DiPasquale, demands judgment against the Defendant, State of New Jersey, for damages together with costs of suit, attorneys' fees and interest, and other such relief as the Court may deem proper.

COUNT THREE
(VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION)

27. Plaintiff, Gina Marie DiPasquale, repeats and realleges each and every allegation as set forth in Paragraphs 1 through 26 of Count One of the Complaint, as though fully set forth herein.

28. The complaints of discrimination of the Plaintiff, and others, have been negligently investigated by the State of New Jersey and have resulted in no corrective action. The actions of the State of New Jersey in failing to properly address the discriminatory conduct and hostile work environment at the Academy have fostered an unlawful and intimidating atmosphere for Plaintiff and others.

29. The actions of the Defendant constitute a violation of the New Jersey Law Against Discrimination as a direct and proximate result of which the Plaintiff has suffered economic injury, humiliation, anguish, embarrassment, emotional and mental distress and other damages.

30. The wrongful conduct of Defendant warrants an award of punitive damages

WHEREFORE, Plaintiff, Gina Marie DiPasquale, demands judgment against the Defendant, State of New Jersey, for damages together with costs of suit, attorneys' fees and interest, and other such relief as the Court may deem proper.

JURY DEMAND

Plaintiff, Gina Marie DiPasquale, demands trial by jury as to all issues.

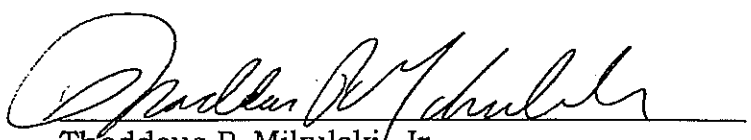
CERTIFICATION PURSUANT TO *RULE 4:5-1(b)2*

I hereby certify that to the best of my information, knowledge and belief that the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration proceeding, that no other action or arbitration proceeding is contemplated, and I am not aware of any other person who should be joined in this matter.

TRIAL COUNSEL DESIGNATION PURSUANT TO *RULE 4:25-4*

Thaddeus P. Mikulski, Jr., Esquire, is hereby designated trial counsel in this matter.

Dated: January 24, 2005



Thaddeus P. Mikulski, Jr.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1336-07T3

GINA M. DIPASQUALE,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY,

Defendant-Respondent.

Argued telephonically October 16, 2008 -- Remanded October 20, 2008.
Resubmitted January 15, 2009 -- Decided June 18, 2009

Before Judges Carchman, Sabatino and Simonelli.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-228-05.

Richard M. Schall argued the cause for appellant (Schall & Barasch, attorneys; Mr. Schall and Patricia A. Barasch, on the brief).

Noreen P. Kemether, Deputy Attorney General, argued the cause for respondent (Anne Milgram, Attorney General, attorney; Lewis A. Scheindlin, Assistant Attorney General, of counsel; Ms. Kemether, on the brief).

PER CURIAM

Plaintiff Gina DiPasquale appeals from the August 3, 2007 order granting summary judgment dismissing her claims of hostile work environment based on gender and retaliation. Plaintiff also appeals from the October 5, 2007 order denying her motion pursuant to Rule 4:49-2 for reconsideration and her motion pursuant to Rule 4:50-1 for relief from a judgment or order. We vacate the entry of summary judgment and remand for trial.

The facts are derived from evidence submitted by the parties in support of, and in opposition to, the summary judgment motion, viewed in a light most favorable to plaintiff. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). In August 1996, plaintiff began her employment as a corrections officer with the Department of Corrections (DOC). In May 2001, she became an adjunct instructor at the Correctional Staff Training Academy (the Academy), a training facility for correction officer recruits. She became a permanent instructor in September 2001.

In January 2002, female recruits complained to plaintiff that male instructors embarrassed, bullied and demeaned them because they could not keep up in physical training sessions. In February 2002, plaintiff reported to Director Buffa that male instructors were pushing female recruits to the point of physical exhaustion and illness. She also complained that male instructors sang sexually offensive cadences during physical

training, used verbal obscenities, inappropriately touched female recruits, and demeaned female recruits because of their inability or perceived inability to perform physical exercises. No corrective action was taken.

After lodging her complaints, other officers began treating plaintiff differently. They would not speak to her and called her a "recruit advocate." Also, a female recruit reported to plaintiff that female recruits had been intimidated and would not write reports about their treatment for fear of retaliation. On February 14, 2002, plaintiff filed a complaint with the Equal Employment Division (EED) of the DOC, alleging on behalf of the female recruits sexual discrimination, harassment and retaliation. The EED closed the matter without an investigation.

In May 2002, Craig Conway, an openly gay man, was appointed Director of the Office of Training, the top-ranked position at the Academy. Conway allegedly created an inner-circle of good-looking, young male officers, including captains, lieutenants and sergeants who supervised plaintiff. He also allegedly gave preferential treatment and more favorable assignments to these men. Senior Corrections Officer Reginald Leven reported to an EED investigator that Conway sided with male instructors regarding their treatment of trainees.

After Conway's arrival at the Academy, conditions allegedly worsened for plaintiff. She contends that Conway ordered her to submit to a fitness for duty evaluation after she complained to him that the issues raised in her EED complaint had not been addressed. Also, according to Ellen Wasner, who worked directly for Conway, plaintiff was an ongoing topic of conversation within Conway's inner-circle wherein he repeatedly referred to her as a "psycho-bitch." Other employees reported this to plaintiff. Plaintiff was also called a "steroid queen," a "troublemaker," a "snitch" and "crazy." Conway also allegedly encouraged the group to exclude plaintiff from the training process. The group allegedly ignored plaintiff and ridiculed her physical training philosophy. Leven reported to an EED investigator that supervisors were encouraged to put pressure on plaintiff, and supervisors ridiculed and ignored her after she filed the EED complaint. Lieutenant Robert Wagner reported to an EED investigator that most of the male staff harassed plaintiff.

In July 2002, Conway directed plaintiff to leave the Academy and go to the Recruitment Office to be cross-trained in recruiting new recruits. Plaintiff claimed that she was the only person "cross-trained," and that she was replaced at the Academy by a male. Several officers reported to an EED investigator that Conway actually transferred plaintiff "to get

rid of [her]" and that he did not want her to return to the Academy.

Plaintiff was transferred back to the Academy in October 2002, after Chief of Staff Charles Ellis, Conway's supervisor, issued a written directive overruling Conway's decision and ordering him to return plaintiff to the Academy. Thereafter, plaintiff claims that male officers ostracized and harassed her and that she was "written up" for minor infractions. She also was summoned daily to meet with Conway. An employee, Anne Damico, reported to an EED investigator that "something was going on and [plaintiff was] the target." Plaintiff also was not permitted to teach and was assigned to do nothing more than observe classes.

Plaintiff became ill and took a temporary disability leave on January 30, 2003. While on leave, she discovered what she characterizes as a "bogus" memorandum in her personnel file, dated February 7, 2003, falsely indicating that she had been counseled about her attendance. She also discovered that various certificates and performance awards were missing from her personnel file.

On August 18, 2003, plaintiff filed with the EED a discrimination and retaliation complaint against Conway. Wasner said that Conway became furious with plaintiff for having done so and that he "tried everything he could to have her not come

back to the Academy." Conway admitted that he told other management personnel that he "didn't want [plaintiff] at the Academy." He also stated that she had filed too many complaints.

Although plaintiff's complaint was neither substantiated nor found to lack merit, the EED found that "a number of witnesses documented negative comments by [] Conway regarding [plaintiff]. Specifically, several staff recalled [] Conway indicate that [plaintiff] was sent to the Recruitment Unit to be cross-trained because he wanted to get rid of her." The EED concluded that it was "improper and divisive [for Conway] to confide in his subordinates his desires to 'get rid of' [plaintiff]." The EED also found that "a number of staff opined that [] Conway demonstrated preferential treatment to male employees[,] resulting in a referral to the Chief of Staff "for further review and administrative action."

Despite Conway's efforts to get rid of plaintiff, she returned to the Academy in January 2004, after her disability leave. She claims that thereafter she was relegated to observing classes and to desk duty with few or no tasks, that she had minimal or no interaction with trainees, and that she was disciplined for using her cell phone, while male officers using their cell phones received no discipline. She also was

assigned to organize files located in a hazardous and unsafe building. No other instructor had received such an assignment

Plaintiff filed another EED complaint on May 12, 2004, alleging that Conway and his subordinates subjected her to retaliation, sex/gender discrimination and sexual harassment. The EED found "a systematic pattern of preferential treatment, selective enforcement of rules and regulations and a blatant disregard for the confidentiality of the EED investigations." The EED concluded that:

> It is clear to the EED that certain employees have been treated less favorably than employees who share cordial relationships with management. However, after an evaluation of demographics of prior complainants and allegations, this office is reluctant to conclude that membership in a protected category is the determinative factor. It appears that those who overtly objected to certain management practices suffered heightened scrutiny. While this may not violate the policy prohibiting discrimination, harassment and hostile environment in the workplace, there are concerns relating to the Conscientious Employee Protection Act (CEPA), which provides protection from retaliation to employees who oppose practices that affect the good of the public. Moreover, many employees recognized a hostile disconnected relationship between supervisors and instructors. There is a clear division of staff--those who align themselves with management and those who do not. If left unaddressed, the insidious negativity that exists at the Academy could have far reaching consequences. Consequently, given the results of a number of investigations and the resistance of CSTA management to

> objectively address prior concerns, this office feels that only substantial changes can began to repair the damage which has been created by the pervasive inconsistent supervision.
>
> [(Emphasis in original).]

Plaintiff resigned on June 10, 2005. Prior thereto, she had filed a complaint in the Superior Court, Law Division, alleging hostile work environment based on gender and retaliation. Defendants filed a summary judgment motion. In opposition, plaintiff's counsel submitted his certification indicating the attachment of copies of Conway's, Wasner's and Leven's deposition transcripts and copies of four EED investigation reports. However, her then-counsel apparently neglected to actually attach the documents. He also did not file a counter-statement of material facts and his oral argument was brief and of little help to plaintiff. Based on counsel's failure to file a counter-statement of material facts, the motion judge accepted as true all of defendant's statement of material facts which had a basis in the record.

The judge granted summary judgment as to plaintiff's hostile work environment claim, concluding that plaintiff failed to satisfy all four prongs of Lehmann v. Toys R' Us, Inc., 132 N.J. 587 (1983). The judge found that the "psycho-bitch" comment was not gender-related and that the comment was not severe or pervasive enough to satisfy the second Lehmann prong.

The judge also found that the comment was a single comment, which would not satisfy our holding in Cutler v. Dorn, 390 N.J. Super. 238 (App. Div. 2007)[1] because it was not made directly to plaintiff. The judge further found that "[p]laintiff has failed to offer any evidence to substantiate [her] belief that others were treating [her] differently after filing the [EED] complaint. Plaintiff has failed to offer any admissible evidence that the statements were ever made and that these statements are simply inadmissible . . . hearsay."

The judge also granted summary judgment as to plaintiff's retaliation claim, concluding that she failed to prove she suffered an adverse employment action. He also concluded that the alleged retaliation was "so remote in time from [her] initial EED complaint in 2002 that as a matter of law, the [c]ourt cannot consider such to be retaliatory under Williams [v. Philadelphia Housing Authority Police Department, 380 F.3d 751 (3d Cir. 2004), cert. denied, 544 U.S. 961, 125 S. Ct. 1725, 161 L. Ed. 2d 602 (2005)]."

Thereafter, plaintiff retained new counsel, who filed a motion for reconsideration or relief from a judgment or order based on the "excusable neglect" of plaintiff's former counsel, whose certification indicated that he suffered from a

[1] As discussed infra, Cutler v. Dorn was subsequently reversed at 196 N.J. 419 (2008).

psychiatric condition, which prevented him from properly opposing the summary judgment motion. Plaintiff also submitted a response to defendant's statement of material facts, a counter-statement of material facts, Wasner's and Levin's deposition transcripts and the EED investigation reports.[2] Without commentary, the judge denied the motions. This appeal followed.

While this appeal was pending, our Supreme Court reversed Cutler. Thus, we temporarily remanded for the motion judge's consideration of that decision. In a written opinion, the judge emphasized that because plaintiff had failed to file a counter-statement of material facts in opposition to defendants' summary judgment motion, he deemed defendants' facts admitted and would not repeat the facts on which he relied in granting summary judgment. He found that plaintiff had no hostile work environment claim based on the "psycho-bitch" comment because it was a single comment not made at or in her presence. He concluded that:

> [T]he factual situation in the instant case stands in marked contrast to that presented to the Supreme Court in Cutler. In Cutler, the plaintiff was subjected to numerous derogatory, insulting statements about

[2] Because plaintiff submitted these documents in support of her motions, we reject defendant's contention that they were not part of the record below and cannot be considered on appeal. R. 2:5-4.

> people of plaintiff's ethnicity and ancestry. Those comments stereotyped people of plaintiff's ancestry. And they were uttered at, or in the presence of the plaintiff.

We use the same standard as the trial court when reviewing a summary judgment motion. Jolley v. Marquess, 393 N.J. Super. 255, 267 (App. Div. 2007); Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment as a matter of law." R. 4:46-2(c); Brill, supra, 142 N.J. at 528-29 (1995). "Genuine" issue of fact means "only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c). If there is no genuine issue of fact, we must then decide whether the lower court's ruling on the law was correct. Prudential, supra, 307 N.J. Super. at 167.

Applying these standards, we conclude that summary judgment was improperly granted as to plaintiff's hostile work environment claim, particularly given the Supreme Court's

clarification of the law in its subsequent opinion in Cutler. First, viewing the evidence in a light most favorable to plaintiff, a reasonable jury could conclude that the word "bitch," in the context Conway used it to refer to plaintiff, is gender-related. Among other definitions, the word "bitch" is defined as "a malicious, spiteful, or domineering woman – sometimes used as a generalized term of abuse." Merriam Webster's Collegiate Dictionary, 117 (10th Ed. 1997). The word "bitch" "clearly and objectively has gender-specific connotations . . . the use of [which] can create a hostile work environment[.]" Bailey v. Henderson, 94 F. Supp. 2d 68, 75 (D.D.C. 2000). See also Huffman v. City of Prairie Village, 980 F. Supp. 1192, 1201 (D. Kan. 1997) ("Sexual epithets that a woman is a . . . 'bitch' [is] capable of making the workplace unbearable for the woman verbally so harassed, and since these are accusations based on the fact that she's a woman, they can constitute a form of sexual harassment.") Further, if there are several reasonable inferences that can be drawn from the facts, and one of them would support the conclusion that the word "bitch" created a hostile work environment, then summary judgment is inappropriate. See Costa v. Desert Palace, Inc., 299 F.3d 838, 861-62 (9th Cir. 2002) (it is for a jury to determine whether the term "bitch" is part of the everyday give-and-take or is a derogatory term indicating sex-based

hostility), aff'd, 539 U.S. 90, 123 S. Ct. 2148, 156 L. Ed. 2d 84 (2003).

Second, "[c]ircumstances can give rise to an actionable hostile work environment claim even where the plaintiff was not the 'target' of the offensive or harassing conduct." Cutler, supra, 196 N.J. at 433 (citing Lehmann, supra, 132 N.J. at 611). See also Jackson v. Quanex Corp., 191 F.3d 647, 660 (6th Cir. 1999) (offensive comments need not be directed at a plaintiff); Schwapp v. Town of Avon, 118 F.3d 106, 111 (2d Cir. 1997) ("[t]he mere fact that [the plaintiff] was not present when a racially derogatory comment was made will not render that comment irrelevant to his hostile work environment claim"); Perry v. Ethan Allen, Inc., 115 F.3d 143, 151 (2d Cir. 1997) (the fact that a plaintiff learns second-hand of sexual harassment by a fellow employee or supervisor also can impact the work environment). Accordingly, it is irrelevant that Conway did not make the "psycho-bitch" comment directly to plaintiff. She has an actionable hostile work environment claim based on the comment if she can prove that it created such an environment that affected her. Viewing the evidence in a light most favorable to plaintiff, a reasonable jury could reach that conclusion.

Lastly, plaintiff does not allege that a single comment created a hostile work environment. She alleges, and her

evidence indicates, that Conway repeatedly called her a "psycho-bitch" in the presence of other employees, including her supervisors, and that these employees harassed, ridiculed and ignored her. A reasonable jury could conclude from this evidence that the "psycho-bitch" comments, along with other evidence of gender-related discriminatory treatment, polluted plaintiff's work environment and made it hostile.

Summary judgment was also improperly granted as to plaintiff's retaliation claim. The anti-retaliation section of the LAD provides that

> [i]t shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:
>
> . . . .
>
> d. For any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this [A]ct or because that person has filed a complaint, testified or assisted in any proceeding under this [A]ct or to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this [A]ct.
>
> [N.J.S.A. 10:5-12d.]

To establish a prima facie claim for retaliation under the LAD, plaintiff must demonstrate that: (1) she engaged in protected activity; (2) the activity was known to the employer;

(3) she suffered an adverse employment decision; and (4) there existed a causal link between the protected activity and the adverse employment action. Young v. Hobart West Group, 385 N.J. Super. 448, 465 (App. Div. 2005) (citing Craig v. Suburban Cablevision, 140 N.J. 623, 629-30 (1995)). Also, "in a case in which a plaintiff alleges retaliation under the LAD, N.J.S.A. 10:5-12d, the plaintiff bears the burden of proving that his or her original complaint--the one that allegedly triggered his or her employer's retaliation--was made reasonably and in good faith." Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 373 (2007).

"Retaliatory action" is defined as "'the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.'" Nardello v. Township plaintiff Voorhees, 377 N.J. Super. 428, 433 (App. Div. 2005) (quoting N.J.S.A. 39:19-2e). "As such, 'employer actions that fall short of [discharge, suspension or demotion], may nonetheless be the equivalent of an adverse action.'" Id. at 433-434 (quoting Cokus v. Bristol Myers Squibb Co., 362 N.J. Super. 366, 378 (Law Div. 2002), aff'd, 362 N.J. Super. 245 (App. Div.), certif. denied, 178 N.J. 32 (2003)). See also Mancini v. Twp. of Teaneck, 349 N.J. Super. 527, 564 (App. Div. 2002) (assignment to different or less desirable tasks may constitute adverse

employment action and establish prima facie case of retaliation), aff'd as modified, 179 N.J. 425 (2004). Further, "many separate but relatively minor instances of behavior directed against an employee that may not be actionable individually but that combine to make up a pattern of retaliatory conduct" may constitute an adverse employment action. Green v. Jersey City Bd. of Educ., 177 N.J. 434, 448 (2003).

Here, the judge did not specifically state that plaintiff failed to act reasonably and in good faith or that she was not engaged in protected activity. Rather, he concluded that she suffered no adverse employment action and that the retaliation was too remote to her initial EED complaint submitted in 2002. However, viewing the evidence in a light most favorable to plaintiff, a reasonable jury could conclude that from 2002 to 2004, she was subjected to numerous acts of retaliation because she had filed EED complaints, and that these acts constitute an adverse employment action.

Further, we reject the judge's reliance on Williams, supra, that the retaliation was too remote. In Romano v. Brown & Williamson Tobacco, 284 N.J. Super. 543, 550 (App. Div. 1995), we concluded that the plaintiff had established a causal connection between the protected activity and the adverse employment action even though ten years had passed. We found

that there exists "no case that stands for the proposition that proximity is the only circumstance that justifies an inference of causal connection." Ibid.

Vacated and remanded for trial.

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Settlement Agreement") is made by and among Gina DiPasquale ("DiPasquale") and the State of New Jersey ("State").

WITNESSETH

WHEREAS, DiPasquale has been an Officer with the Department of Corrections ("DOC") since in or about August 1996 and was assigned to the Corrections Officer Training Academy ("Academy") as an adjunct instructor in May 2001, and thereafter became a permanent instructor at the Academy in September, 2001; and

WHEREAS, beginning in 2002, DiPasquale filed a number of complaints with the Equal Employment Division ("EED") of the DOC alleging discrimination, harassment and retaliation; and

WHEREAS, some of the EED Complaints were referred to the Special Investigations Division ("SID") of the DOC;

WHEREAS, DiPasquale appealed one or one of the EED determinations to the Division of Merit System Practices and Labor Relations ("Merit Board");

WHEREAS, in 2002 DiPasquale filed complaints simultaneously with the United States Equal Employment Opportunity Commission ("EEOC") and the New Jersey Division of Civil Rights ("DCR"); and

WHEREAS, DiPasquale also filed a Disability claim; and

WHEREAS, DiPasquale filed a Workers' Compensation claim which is pending; and

WHEREAS, on or about January 24, 2005, DiPasquale commenced litigation relating to her employment with the DOC in the New Jersey Superior Court entitled *DiPasquale v. State of New Jersey* bearing Docket Number *MER-L-228-05* (the "Litigation"); and

WHEREAS, at a settlement conference held on January 6, 2011 before the Honorable Thomas W. Sumners, Jr., J.S.C., the parties, as hereinafter defined, reached a conceptual agreement to resolve and settle all disputes, proceedings and litigations relating to DiPasquale's employment including, but not limited to, the disputes pending in the Litigation and any matters pending before the EED, SID, Merit Board, EEOC, DCR or any other Federal or State Board, Department, Division, Agency or Authority upon the terms and in the manner provided for in this Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound hereby, the parties do hereby covenant and agree as follows:

I. GENERAL DEFINITIONS

Whenever used in this Settlement Agreement, the following definitions shall apply:

A. "DiPasquale" shall collectively mean Gina DiPasquale, an individual with an address 109 Keswick Avenue, Trenton, New Jersey 08638 and all agents, servants, employees, entities, groups or others who have acted on her behalf, including any Union in which she is a member.

B. "State" shall collectively mean:

1. The State of New Jersey, with an address of Office of the Commissioner, New Jersey Department of Corrections, Whittlesey and Stuyvesant Avenues, P.O. Box 863, Trenton, NJ 08625 (to the attention of Melinda S Haley, Esq., Special Legal Advisor);

2. All Departments, Divisions, Sub-Divisions, Agencies, Commissions or other Authority of, or within, the State of New Jersey, including but not

limited to the DOC;

3. All other current or former members, agents, employees, servants, political appointees and all others who have acted on behalf of the DOC;

4. All current or former members, agents or employees of the Department of Law and Public Safety of the State of New Jersey; and

5. The attorneys, law firm and the staff of the law firm who represented the State in the Litigation.

C. Each of the persons included above within DiPasquale and State is a "Party" and collectively they are the "Parties."

D. "Claims" shall be as broadly defined and construed as the context and intent allows and at a minimum shall include, but not be limited to, any and all liabilities, complaints, damages (including without limitation compensatory, consequential, punitive, treble, special, exemplary, statutory or other), losses, demands, equitable relief, injunctive relief, disputes, disagreements, issues, causes of action, judgments, awards, findings, orders, claims, defects, sanctions, breaches, cross-claims, counterclaims, third party claims, covenants, promises, contracts, agreements, understandings, representations, statements, obligations, responsibilities, compensation, any determinations in law, equity or administrative or arbitration proceedings, and any costs, fees, expenses, disbursements, out of pockets, or expenditures.

II. INCORPORATION OF WHEREAS CLAUSES

DiPasquale and the State hereby ratify and confirm the foregoing Whereas Clauses in their entirety without modification, and incorporate them herein.

III. EFFECTIVE DATE

The Effective Date of this Settlement Agreement shall be the date on which it is fully executed by all Parties.

IV. PAYMENT

As part of the State's consideration for, and as an inducement for DiPasquale to enter into, this Settlement Agreement, the State shall remit to DiPasquale $415,000 in one lump sum within 60 days of the Effective Date of this Settlement Agreement. The check shall be made jointly payable to the Trust Account of Schall & Barasch, L.L.C. and to Gina DiPasquale.

V. DISMISSAL OF LITIGATION

DiPasquale shall dismiss with prejudice the Litigation by filing a Stipulation of Dismissal within five (5) business days of the Effective Date of this Settlement Agreement. DiPasquale, and anyone acting on her behalf, including but not limited to any Union of which she is a member, shall withdraw any and all complaints, petitions, grievances and appeals pending before the EED, SID, Merit Board, EEOC, DCR or any other Department, Division, Sub-Division, Agency, Commission or other Authority of, or within, the Federal government or the State of New Jersey.

VI. RELEASE

As part of DiPasquale's consideration for, and as an inducement for the State to enter into, this Settlement Agreement, DiPasquale hereby releases and gives up any and all Claims, as previously defined, as well as any and all rights which she may have against the State through the Effective Date that arise from or relate to (i) the Litigation; or (ii) any complaint, grievance, petition or appeal filed by DiPasquale directly or indirectly, or by any other person or entity on her behalf, with EED, SID, Merit Board, EEOC, DCR or any other Department, Division, Sub-

Division, Agency, Commission or other Authority of, or within, the Federal government or the State of New Jersey; or (iii) her employment with the DOC. This Release includes all such Claims, including those of which DiPasquale is not aware and those not mentioned in this Settlement Agreement, through the Effective Date. This Release includes, but is not limited to, all claims under: Title VII of the Civil Rights Act, Sections 1981, 1983 and 1985 of the Civil Rights Act, the New Jersey Law Against Discrimination, the New Jersey Civil Rights Act, the Family Medical Leave Act, the Family Leave Act, the Equal Pay Act, the Conscientious Employee Protection Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Service Act, the Handicapped, Blind, or Deaf Persons Civil Rights Law, the Developmentally Disabled Rights Act, the Alcoholism Treatment and Rehabilitation Act, the Education Code, public works statutes, the Public Transportation Act, the Right to Know Law, the Occupational Safety and Health Act, the Worker Health and Safety Act, the Farm Labor Law, the Public School Safety Law, the Minimum Wage Law, the Prevailing Wage Law, the New Jersey Smoking Act, wages and hour laws, unemployment compensation, workers compensation, disability benefits laws, the U.S. Constitution, the New Jersey Constitution, tort law and contract law. Further, this Release explicitly includes any future causes of action related to any denial of any future request by DiPasquale to return to, or obtain an assignment at, the Academy. DiPasquale agrees not to submit any request, formally or informally, verbally or in writing, for her to return to the Academy in order to serve as an adjunct or full-time instructor at the Academy. DiPasquale will however be permitted to go to the Academy as necessary in order to maintain her certifications pursuant to the requirements of the Police Training Commission.

DiPasquale agrees that she will not seek anything further, including any performance or payment of any sort, from the State relating to the allegations contained in the Litigation or in

any complaint, grievance, petition or appeal filed by DiPasquale directly or indirectly, or by any other person or entity on her behalf, with EED, SID, Merit Board, EEOC, DCR or any other Department, Division, Sub-Division, Agency, Commission or other Authority of, or within, the Federal government or the State of New Jersey. Among other things, DiPasquale acknowledges and agrees that she will not seek any other payment for attorneys' fees relating to the Litigation given that the payment set forth in paragraph IV is intended to include any and all such fees.

Notwithstanding the foregoing, nothing in this Section "VI Releases" shall interfere with or waive the rights of any Party to enforce any term in this Settlement Agreement.

VII. REVIEW AND REVOCATION PERIOD

DiPasquale acknowledges that she has twenty-one (21) days from the date of this agreement to consider the terms detailed herein. By signing this Agreement, DiPasquale acknowledges that she has been given this twenty-one (21) day period within which to consider this Agreement. For a period of seven (7) days following the execution of this Agreement, DiPasquale may revoke this Agreement by notifying Russell S. Burnside, Esq., and the terms of this Agreement shall not become enforceable until the seven (7) day revocation period has expired.

VIII. NO ADMISSION

Nothing in this Settlement Agreement, nor in any Party's performance under this Settlement Agreement, shall be construed as an admission or declaration against interest. The execution of this Settlement Agreement does not constitute any admission of liability by any Party as this Settlement Agreement was entered for the sole purpose of avoiding the costs of a trial.

IX. REPRESENTATIONS OF THE PARTIES

The Parties agree that each of the following representations is serving as material inducement to each Party to enter into, and make, this Settlement Agreement:

A. The Parties represent and warrant that each has received good and valuable consideration for the execution of this Settlement Agreement.

B. DiPasquale represents that any claims pending in any forum as of the Effective Date related to her time at the Academy or based on any of the facts or circumstances alleged in this matter, whether by pleading, brief, letter or otherwise, will be dismissed. This is a condition for the remittance of the payment set forth in section IV of this Agreement.

X. CONSTRUCTION

This Settlement Agreement is the result of extensive negotiation and equal bargaining between and among the Parties. Each Party has had sufficient time to review and consider all terms of the Settlement Agreement. It is hereby agreed that this Settlement Agreement shall not be considered the exclusive product of one or another of the Parties and no provision of this Settlement Agreement shall be construed for or against any Party on the basis of the drafting of this instrument.

XI. TAX MATTERS

Nothing in this Settlement Agreement was intended or written to be used, and nothing in this Settlement Agreement may be used, by any Party for the purpose of avoiding penalties, taxes or interest that may be imposed on said Party under United States Federal tax laws.

XII. FAIR AGREEMENT

The Parties acknowledge and affirm that this is a fair agreement and that it is not the result of any fraud, duress, or undue influence exercised by any one Party against another or by any third party against one of the Parties and that each Party is acting voluntarily and of his own free will.

XIII. ENTIRE AGREEMENT

This Settlement Agreement contains the entire understanding and agreement among the Parties regarding the subject matter herein, and there are no other terms, understandings, obligations, covenants, representations, statements, conditions or inducements, oral or otherwise, of any kind whatsoever. No amendment, change, or addition is to be made to this Settlement Agreement unless in a writing executed by all the Parties.

XIV. PRIOR AGREEMENTS

The Parties acknowledge that this Settlement Agreement is intended to replace any and all existing settlement negotiations, understandings, and agreements, whether written or oral, between or among the Parties pertaining to the issues resolved in this Settlement Agreement, and upon execution hereof, all such prior negotiations, understandings, and agreements shall thereafter become merged and extinguished in this Settlement Agreement. In the event of any conflict or inconsistency between this Settlement Agreement and any prior understandings or agreements, this Settlement Agreement shall prevail.

XV. INVALIDITY AND SEVERABILITY

In the event that any provision of this Settlement Agreement shall be adjudicated to be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid and enforceable, or shall be excised from this Settlement Agreement, as if

said provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.

XVI. TITLES AND DEFINITIONS

The titles of the sections of this Settlement Agreement are inserted only as a matter of convenience and for a reference, and in no way define, limit, or describe the scope of this Settlement Agreement or the intent of the provisions herein. All terms contained herein are to be defined as set forth in this Settlement Agreement, and in the event no definition is provided, the customary and generally accepted plain meaning of the term in question shall be accorded it.

XVII. SYNTAX

In this Settlement Agreement, each reference with respect to a Party as "he," "him," or "his" shall also include "she," "her," "hers," "it," and "its" as the context requires. All references in the singular shall include the plural if required by context, and all references in the plural shall include the singular if required by context.

XVIII. NOTICES

All notices, requests, and/or communications from one Party to any other Party with respect to the provisions of this Settlement Agreement shall be in writing and shall be sent pursuant to this Settlement Agreement by United States mail, facsimile, or hand delivery, or overnight delivery service to such Party at the address first set forth above.

XIX. SUCCESSORS AND ASSIGNS

This Settlement Agreement is binding upon, as applicable, each Party's servants, agents, employees, officers, representatives, successors, assigns and all others who actually or purportedly act on behalf of that Party. Whenever a Party to this Settlement Agreement is referred to or cited in this Settlement Agreement, it shall be construed, defined, interpreted and

treated as including that Party's servants, agents, employees, officers, representatives, successors, assigns and all others who actually or purportedly act on behalf of that Party.

XX. FEES AND COSTS

Each Party shall bear her or its own costs and attorneys' fees.

XXI. COUNTERPARTS

This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single agreement. A facsimile signature will be valid as an original signature for all purposes hereunder.

XXII. LAW

The performance, construction and interpretation of this Settlement Agreement shall be governed by the laws of the State of New Jersey without reference to its choice of law provisions.

XXIV. MISTAKE

In entering into and making this Agreement, the Parties hereto assume the risk of any mistake of fact or law. If any Party hereto should later discover that any fact that it relied on in entering this Agreement is not true, or that its understanding of the facts or law was incorrect, that Party shall not be entitled to seek rescission of this Agreement as a result of such discovery. Rather, this Agreement is intended to be final and binding upon the Parties, regardless of any mistake of fact or law.

XXV. ASSIGNMENT

The Parties agree that no party may assign, encumber, pledge, or hypothecate her or its rights or obligations under this Settlement Agreement. DiPasquale represents that she has not

assigned, encumbered, pledged, or hypothecated any Claims being settled herein.

XXVI. RESTRICTION ON DISCLOSURE TO DOC EMPLOYEES

As part of the State's consideration for, and as an inducement for DiPasquale to enter into, this Settlement Agreement, neither DiPasquale nor anyone on her behalf, including Michael Moore, shall publish the negotiation, execution, consummation or contents of this Settlement Agreement in or on any, blog, chat room, internet site, electronic or physical message board, or other similar public forum, pertaining to, discussing, referring to, managed by, critical of, or commenting upon the DOC, the New Jersey State Prison System, law enforcement or the State of New Jersey. DiPasquale understands and acknowledges that this Section is material and has been relied on by the State in their entering into this Settlement Agreement.

XXVII. INDEMNIFICATION

A form 1099 will be issued with respect to the payment to DiPasquale, but no deductions will be made, as this payment constitutes neither income replacement nor compensation for back pay, employee wages or services. DiPasquale will sign an appropriate W-9 form. It is understood and agreed that the State has not made any representations to DiPasquale or her counsel concerning the taxability of the payment set forth in this Settlement Agreement. DiPasquale shall (i) be solely responsible for the payment of appropriate taxes on the settlement amount; (ii) make no claim against the State for payment of any such taxes, or the payment of any applicable interest or penalties; and (iii) shall hold the State harmless and indemnify the State for same.

IN WITNESS WHEREOF, the Parties have hereunto set their seals and signatures on the dates set forth below.

WITNESS

Gina DiPasquale

Date: 3-25-11

STATE OF NEW JERSEY

WITNESS:

Leila Lawrence, Esq.

By:

Date: 4/21/11