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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSE L. RIVERA,

Plaintiff,

v.

CITY OF CAMDEN BOARD OF
EDUCATION; AND JOHN DOES 1-10:
FICTITIOUS PERSONS OR
ENTITIES; JOINTLY, SEVERALLY
AND ALTERNATIVELY,

Defendants.

DOCKET NO.:

COMPLAINT AND JURY DEMAND

The Plaintiff, JOSE L. RIVERA, residing in Cumberland, New Jersey, by way of Complaint against the Defendants, states as follows:

THE PARTIES

1. Plaintiff Jose Rivera resides at 423 S. 8th Street, Vineland, New Jersey. He was employed by the Defendants for approximately four years until his unlawful termination in or about March 2008. The Plaintiff is of Puerto Rican Hispanic national origin.
2. Defendant City of Camden Board of Education administers and operates the Camden City Public Schools. Its administrative offices are located at 201 Front Street, Camden, New Jersey.

The City of Camden Board of Education was the employer of the Plaintiff at all times relevant to this action.

JURISDICTION

3. Jurisdiction is conferred on this Court by virtue of Federal question jurisdiction pursuant to 28 U.S.C. §1331; and supplemental jurisdiction pursuant to 28 U.S.C. §1367.

FACTS COMMON TO ALL CAUSES OF ACTION

4. The Plaintiff was employed by the Defendant for four school years, from the 2004-2005 school year through the 2007-2008 school year.
5. During the 2007-2008 school year the Plaintiff was employed as a bi-lingual teacher and was responsible for teaching a fifth grade class of exclusively Hispanic bi-lingual students at the Defendant's Sumner Elementary School.
6. The Acting Principal of the school, Alex DeFlavis (DeFlavis"), was Caucasian-American, and the Vice Principal of the school, Theresa Brown ("Brown"), was African-American. DeFlavis and Brown were both direct supervisors of the Plaintiff. Neither administrator was of Hispanic national origin.
7. Throughout his employment with the Defendant the Plaintiff's performance was satisfactory and the Plaintiff was rehired each year.
8. One day in February 2008, while the Plaintiff was out absent

from school and Plaintiff's class was under the direction of a substitute teacher, one of the students in the Plaintiff's class unsuccessfully tried to change a jug of water in the water cooler and accidentally spilled some water.

9. Unbeknownst to the Plaintiff, Vice Principal Brown decided to punish the entire class for the one student's accident. Without advising the Plaintiff, Brown decided that the Hispanic children would have to eat lunch on the floor of the cafeteria without trays, while the African-American and mixed classes sat at lunch tables with trays. This went on for more than a week before the Plaintiff learned of the punishment.
10. The Plaintiff was unaware of the punishment because the Plaintiff did not eat with the children. It was the practice at the Sumner School that the teachers would drop the children off at the cafeteria for lunch so that the teachers could have a lunch break. Therefore, the Plaintiff did not see the children during their lunch time.
11. Also unbeknownst to the Plaintiff, Brown had threatened the children with further punishment if the children told anyone about her outrageously demeaning and discriminatory punishment.
12. In or about the end of February 2008, one of the students' parents came to the Sumner School to complain to the

Principal about the Vice-Principal's actions. The Principal would not speak to the parent, but after the parent had explained the situation to the Principal's secretary, she advised the Plaintiff of the situation.

13. The Plaintiff was shocked by the allegations, and further shocked that the Vice-Principal herself would have taken such action and that the Principal would not have acted to stop such an outrageous punishment.
14. The Plaintiff spoke with the children about the punishment. The children told him about the punishment and that the Vice-Principal had threatened to punish them if they told him about it.
15. Knowing that the Vice-Principal was responsible for this outrageous behavior and reasonably believing that the Principal was either indifferent to or in support of the Vice-Principal's actions, and fearing retaliation if he went over the head of the Principal, the Plaintiff advised the students to tell their parents what was happening and to have the parents immediately call the Defendant Board of Education.
16. After receiving the parents' complaints, the Board of Education immediately retaliated against the Plaintiff, reprimanding and suspending the Plaintiff for failing to notify the Principal, even though the Principal already knew

and had taken no action.

17. The Plaintiff never worked another day for the Defendants. On March 18, 2008, the Plaintiff was terminated due to "conduct unbecoming of a board employee". The Vice-Principal, who had perpetrated the outrageous and discriminatory punishment, and who had threatened further punishment if the children reported it, was not terminated. She was merely transferred to another school in the District.
18. After a public uproar, nationwide press coverage, newspaper editorials, and parent demonstrations related to the Plaintiff's termination, the Defendants changed the reason for terminating the Plaintiff to "insufficient certification". This was a transparent pretext, since numerous bi-lingual teachers were given a class by the Board in May 2008 to complete their certification, and if the Plaintiff had not have been terminated, he would have taken the class in May with the other teachers and completed his Certification.

COUNT ONE - VIOLATION OF THE CONSCIENTIOUS EMPLOYEE PROTECTION ACT, N.J.S.A. 34:19-1 et seq.

19. The Plaintiff repeats and reiterates all of the prior paragraphs and allegations as if fully stated herein.
20. By advising the students to notify their parents to immediately report the unlawful and demeaning actions to the

School Board, the Plaintiff actively, albeit indirectly, disclosed the unlawful actions to the Board of Education.

21. The Plaintiff reasonably believed that the outrageous actions of the Vice-Principal in forcing the students to eat on the floor without trays, and then extorting children with further punishment if they reported her actions, was unlawful, in violation of New Jersey School laws and regulations, in violation of the childrens' Constitutional rights, and in violation of public policy.
22. The Plaintiff opposed such behavior and refused to participate in the behavior, choosing instead to advise the children to immediately have their parents report the behavior to the Defendant School Board.
23. As a direct and proximate result of the Plaintiff's complaints and objections of conduct on the part of the Defendant's administrators, which he reasonably believed to be unlawful and in violation of public policy, the Plaintiff was retaliated against by the Defendant, in that he was immediately suspended and then terminated from his employment.
24. The alleged actions were outrageous and beyond all bounds of human decency, justifying the imposition of punitive damages against the Defendant.
25. The Defendant's retaliatory actions were performed with

malice and reckless indifference to the Plaintiff's protected rights.

26. The willful indifference and actual participation of upper management of the Board of Education creates liability against the Defendant.
27. As a result of Defendant's intentional outrageous actions toward the Plaintiff, as detailed in the previous paragraphs of this Complaint, the Plaintiff has suffered, and continues to suffer, extreme emotional distress, anxiety, embarrassment, humiliation, monetary, emotional, reputational, and other personal injuries.
28. The Camden Board of Education, by its foregoing described actions, retaliated against the Plaintiff in violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq.

WHEREFORE, the Plaintiff demands judgment against the Defendant for compensatory damages, including damages for emotional distress, physical injury, loss of reputation and other personal injury, consequential damages, punitive damages, statutory damages, enhancement for tax liability, pre-and post-judgment interest, reasonable attorneys' fees enhanced under the New Jersey's fee shifting policies, cost of suit and any other relief that Court deems just.

COUNT TWO - VIOLATIONS OF THE NEW JERSEY LAW AGAINST
DISCRIMINATION, n.j. s.a. 10:5-12(D) - RETALIATION

29. The Plaintiff repeats and reiterated all of the prior paragraphs and allegations as if fully stated herein.
30. The actions of the Vice-Principal in forcing the Hispanic, bi-lingual students to eat on the floor without trays while the American and English speaking students ate at tables on lunch trays were egregiously discriminatory and in violation of the New Jersey Law Against Discrimination.
31. The Plaintiff and others had previously made complaints about the blatantly discriminatory behavior of Vice-Principal Brown. For example, Plaintiff and others had complained when Brown previously arranged for all of the students to go on a field trip to the City Library, except for the bi-lingual students. On that occasion Brown untruthfully stated that there just was not enough room for the bi-lingual students. When confronted about making the bi-lingual students eat on the floor, Brown untruthfully stated that there just were not enough trays for the bi-lingual students.
32. The Defendant took adverse action against the Plaintiff, including suspension and termination of his employment, because the Plaintiff opposed the discriminatory actions of the Defendant's administrators.
33. As a direct and proximate result of the Plaintiff's

opposition to the conduct on the part of the Defendant's administrators, which he reasonably believed to be in violation of the New Jersey Law Against Discrimination, the Plaintiff was retaliated against by the Defendant, in that he was immediately suspended and then terminated from his employment.

34. The alleged actions were outrageous and beyond all bounds of human decency, justifying the imposition of punitive damages against the Defendant.
35. The Defendant's retaliatory actions were performed with malice and reckless indifference to the Plaintiff's protected rights.
36. The willful indifference and actual participation of upper management of the Board of Education created liability against the Defendant.
37. As a result of Defendant's intentional outrageous actions toward the Plaintiff, as detailed in the previous paragraphs of this Complaint, the Plaintiff has suffered, and continues to suffer, extreme emotional distress, anxiety, embarrassment, humiliation, monetary, emotional, reputational, and other person injuries.
38. The Camden Board of Education, by its foregoing described actions, retaliated against the Plaintiff in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-

12 (d).

WHEREFORE, the Plaintiff demands judgment against the Defendant for compensatory damages, including damages for emotional distress, physical injury, loss of reputation and other person injury, consequential damages, punitive damages, statutory damages, enhancement for tax liability, pre-and post-judgment interest, reasonable attorneys' fees enhanced under the New Jersey's fee shifting policies, cost of suit and any other relief that Court deems just.

COUNT THREE - VIOLATION OF 42 U.S.C. §1983 AND N.J.S.A. 10:6-2-
CIVIL RIGHTS VIOLATIONS

39. The Plaintiff repeats and reiterates all of the prior paragraphs and allegations as if fully stated herein.
40. The Defendants deprived the Plaintiff of his rights under the First, Fifth and Fourteenth Amendments to the United States Constitution, and Article I of the New Jersey State Constitution.
41. The retaliatory and unlawful actions against the Plaintiff constitutes a taking and a monetary loss to the Plaintiff, in that he has incurred the loss of his governmental job and has incurred tremendous hardship as a result of the unwarranted charges brought against him, without due process of law.
42. The retaliatory and unlawful actions by the Defendants constitutes a taking and monetary loss to the Plaintiff.

43. Defendants, acting under color of law, have subjected and causes to be subjected to the deprivation of Plaintiff's substantive due process rights, privileges or immunities secured by the Constitution or laws of the United States and law of this State.
44. Plaintiff has been deprived of his substantive due process rights, privilege or immunities secured by the Constitution or laws of the United States and Constitution or laws of the State.
45. Plaintiff has been deprived of his right to exercise his rights, privileges or immunities, and has been deprived of the enjoyment of those substantive rights, privileges or immunities.
46. The Defendant had in effect policies and practices that were intended to and did encourage, endorse and permit their agents and employees to violate the constitutional rights of the Plaintiff and other similarly situated persons. At a minimum, the Defendant was recklessly indifferent to such constitutional violations.
47. As a result of the foregoing the Plaintiff has suffered monetary loss, loss of income, and defamation of character, all without proper due process of law, thus violating Federal and New Jersey's Civil Rights Act.
48. In addition, the actions taken against the Plaintiff, as

described above, were in retaliation for the Plaintiff's exercise of his Constitutional right of free speech, in that he filed a lawsuit alleging illegal retaliation and wrongful termination by the Defendants.

49. The outrageous conduct of the upper management of the defendants in the scope of their employment has been so extreme as to go beyond all possible bounds of decency, thus warranting the imposition of punitive damages.
50. The actual participation and willful indifference of the upper management, of the Defendant creates liability against the Defendants for punitive damages.

WHEREFORE, the Plaintiff demands judgment against the Defendant for Compensatory damages, including damages for pain and suffering, humiliation and emotional distress, consequential damages, statutory damages, punitive damages, pre- and post-judgment interest, enhancement for tax consequences, reasonable attorney fees multiplies under New Jersey's fee-shifting laws, costs of suit and for such other relief as the court may deem reasonable and just.

COURT FOUR - JOHN DOES

51. The Plaintiff repeats, realleges, and incorporates by reference each and every allegation contained in the previous paragraphs and Counts, as if fully set forth herein.

52. Although the Plaintiff believes that the acts complained of were performed or caused by the named Defendant, the Plaintiff cannot be certain that the named Defendants are the only person(s) or entity(ies) liable for the acts complained of as set forth herein. Therefore, the Plaintiff has named John Does 1-10, fictitious persons or legal entities as Defendant(s) to this action.
53. As such, the terms "Defendant" as used in all of the above Counts and paragraphs should therefore be defined and read as "Defendant(s) and/or John Doe(s)".

WHEREFORE, the Plaintiff demands Judgment against the Defendant and any subsequently named John Does 1-10, jointly, severally, and alternatively, for such sums as would reasonably and properly compensate the Plaintiff in accordance with the laws of the State of New Jersey, together with interest and costs of suit.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury as to all of the Triable issues of this complaint, pursuant to Fed. R. Civ. P. 38(b) (1) & L. Civ. R. 38.1.

DESIGNATION OF TRIAL COUNSEL

The Court is advised that Alan H. Schorr, Esquire, is hereby designated as trial counsel.

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to L. Civ. R. 11.2 it is stated that the matter in controversy is not subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also, to the best of our belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

NOTICE REGARDING NON-DESTRUCTION OF EVIDENCE

Please be advised and noticed that the Defendant(s) should refrain from destroying, disposing or altering any potential evidence in its possession which would related in any way to this matter.

Please also be advised and noticed that this includes any and all electronic records, including but not limited to the hard drives on any and all computers and/or servers. To that end:

- A. The Defendant(s) should not initiate any procedures which would alter any active, deleted, or fragmented files. Such procedures may include, but are not limited to: storing (saving) newly created files to existing drives and

diskettes; loading new software, such as application programs; running data compression and disk defragmentation (optimization) routines; or the use of utility programs to permanently wipe files, disks or drives.

- B. The Defendant(s) should stop any rotation, alteration, and/or destruction of electronic media that may result in the alteration or loss of any electronic data. Backup tapes and disks should be pulled from their rotation queues and be replaced with new tapes.
- C. The Defendant(s) should not alter and/or erase active files, deleted files, or file fragments, on any electronic media storage devices replaced due to failure, upgrade, and/or lease expiration that may contain electronic data having any relation to this matter.

Alan H. Schorr & Associates, P.C.
Attorney for the Plaintiff

By 

Alan H. Schorr, Esquire

DATED: August 26, 2008

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter "Agreement") is entered into by and between the City of Camden Board of Education (hereinafter "Camden"), and Jose Rivera (hereinafter "Plaintiff"). Camden and Plaintiff collectively are referred to as "the Parties".

WHEREAS Plaintiff filed a Complaint with the United States District Court for the District of New Jersey, Camden Vicinage, bearing Civil Action No. 08-cv-4306-JEL, asserting claims against the City of Camden Board of Education, and John Does 1-10, jointly severally and alternatively (hereinafter "Defendants") in connection with Plaintiff's employment with Camden, and;

WHEREAS the Parties wish to settle all controversies among them involving Plaintiff, including Plaintiff's claims brought in the United States District Court for the District of New Jersey, Civil Action No. 08-cv-4306-JEL, and any and all related claims which could have been asserted, filed or brought by Plaintiff against Defendants, whether they are known or unknown; and,

WHEREAS all Parties acknowledge that the merits of the controversy are in dispute, and no party admits any liability to any other, but all have reason to desire amicable resolution of the matter, including to avoid the cost of further litigation; and

Now, and for the consideration of the agreements, covenants and conditions herein contained, the adequacy and sufficiency of which is expressly acknowledged by the Parties hereto, the Parties agree as follows:

1. **SETTLEMENT TERMS.**

- a. In full and final settlement of the claims of Plaintiff against Defendants, Camden shall pay the amount of Seventy Five Thousand Dollars and No Cents (\$75,000.00). The settlement amount will be paid in the form of two (2) checks. The check in the amount of \$50,000.00 will be made payable to Alan Schorr & Associates, P.C. The check in the amount of \$25,000.00 will be made payable to Jose Rivera. The settlement amount will be paid in full within thirty-five (35) days of the receipt by Gloria B Cherry, Esq., Braff, Harris & Sukoneck, counsel for Camden, as to the Complaint, of the executed Settlement Agreement and Release and a Stipulation of Dismissal with Prejudice that has been executed by Plaintiff's counsel with regard to claims brought under United States District Court for the District of New Jersey Civil Action No. 08-cv-4306-JEI. Camden will issue a form 1099 for the payments, which Box 3 (miscellaneous income) will be checked.
- b. Plaintiff agrees to assume full responsibility for all applicable State, Federal and local taxes that may be required by law to be paid by Plaintiff with respect to any settlement payments described herein, if any. Further, Plaintiff agrees to indemnify and hold harmless Camden for any claim, demand, assessment or penalty relating to any State, Federal or local taxes that may be required by law to be paid by Plaintiff with respect to the settlement amount.

2. **DISMISSAL OF ACTION.**

Plaintiff understands and agrees that in conjunction with this settlement, the Complaint filed with the United States District Court for the District of New Jersey, bearing Civil Action No. 08-cv-2267-RMB, will be dismissed with prejudice. Plaintiff agrees not to bring any litigation relative to the issues contained in these claims and relating to his employment with

Camden based upon acts, events, or omissions, whether known or unknown, as of the date of his execution of this Agreement.

3. RELEASE.

In consideration for the monetary payment and other consideration provided for in this Agreement, Plaintiff personally and for his estates and/or heirs, waives, releases and gives up any and all claims, demands, obligations, damages, liabilities, causes of action and rights, in law or in equity, known and unknown, that he may have against the Defendants and their governing body, elected officials, city council members, mayor and/or any and all of their agents, insurers, attorneys, representatives, and employees (present and former), and their respective successors and assigns, heirs, executors and legal or personal representatives, based upon any act, event, or omission occurring before the execution of this Agreement, including, but not limited to, any events related to, arising from, or in connection with Plaintiff's employment with Camden. Plaintiff specifically waives, releases and gives up any and all claims arising from or relating to his relationship and/or association with Camden based upon any act, event, or omission occurring before the effective date of this Agreement, including but not limited to, any claim that was asserted or could have been asserted under any Federal and/or State statutes, regulations, and/or common law, including but not limited to any potential claim relating to the following (including amendments thereto):

- a. The National Labor Relations Act;
- b. Title VII of the Civil Rights Act of 1964;
- c. Sections 1981 through 1988 of Title 42 of United States Code;
- d. The Employment Retirement Income Security Act of 1974;
- e. The Immigration Reform Control Act;

- f. The Americans with Disabilities Act;
- g. The Age Discrimination in Employment Act of 1967;
- h. The Fair Labor Standards Act;
- i. The Occupational Safety and Health Act;
- j. The Family and Medical Leave Act of 1993;
- k. The Equal Pay Act;
- l. The New Jersey Law Against Discrimination;
- m. The New Jersey Minimum Wage Law;
- n. The Equal Pay Law for New Jersey;
- o. The New Jersey Worker Health and Safety Act;
- p. The New Jersey Family Leave Act;
- q. The New Jersey Conscientious Employee Protection Act;
- r. Any anti-retaliation provision of any statute or law;
- s. Any other federal, state or local, civil or human rights law or any other local, state or federal law, regulation, code, statute or ordinance, any provision of any federal or state constitution, any public policy, contract, tort or common law, or any losses, injuries or damages (including back pay, front pay, liquidated, compensatory or punitive damages, attorney's fees and litigation costs).

4. **NON-DISPARAGEMENT.**

In the event that Camden is contacted for a reference as to Plaintiff by any person or entity, Camden will disclose only the following: Plaintiff's dates of employment with Camden and Plaintiff's job title at the time of the cessation of his employment with Camden.

5. **NO EMPLOYMENT RIGHTS WITH CAMDEN.**

Plaintiff agrees that he has no right to employment with Camden at any time after the effective date of this Agreement and he will not apply to Camden for employment or re-employment.

6. **ATTORNEY'S FEES.**

Each party agrees that each party will bear his or its own costs and attorney's fees, if any, which have been incurred in connection with the within matter and in conjunction with the negotiation and preparation of this Agreement and that no amounts other than the payments to be made pursuant to Paragraph 1 of this Agreement shall be sought by or owed to Plaintiff or to any attorney in connection with this matter, and that no monies shall be sought by Camden and no party will be considered a prevailing party.

7. **NO ADMISSION OF LIABILITY.**

It is expressly understood that neither the execution of this Agreement, nor any other action taken by Camden in conjunction with Plaintiff's alleged claims or this settlement, constitutes admission by Camden of any violation of any law, duty or obligation. The Parties agree that they have entered into this Agreement for reasons including reasons other than the merits of the case, including to avoid the cost of litigation, and that no party admits any liability to any other. It is also expressly understood that acceptance of this settlement does not constitute any representation by Plaintiff as to the merits of his claims or lack thereof, and that Plaintiff also wishes to avoid the costs of litigation.

8. **ENTIRE AGREEMENT.**

This Agreement contains the sole and entire Agreement between the Parties hereto. Each Party represents and acknowledges that, prior to executing this Agreement, they have had ample time to consult with legal counsel prior to making the decision to execute this Agreement, and that no Party has relied upon any representation or statement not set forth in this Agreement made by any other Party hereto, or their counsel or representatives, with regard to the subject matter of this Agreement. No other promises or agreements shall be binding unless in writing, signed by the Parties hereto, and expressly stated to represent an amendment to this Agreement.

9. **SEVERABILITY.**

The Parties agree that if any Court declares any portion of this Agreement unenforceable, the remaining portions shall be fully enforceable.

10. **CONSTRUCTION.**

The Parties understand and agree that this Agreement shall be construed pursuant to the laws of the State of New Jersey. This Agreement is contingent upon the approval of the Camden Board of Education.


Each Party hereby understands and agrees that he and it have had ample time to seek the advice of counsel prior to executing this Agreement, and that each Party knowingly and voluntarily has decided to settle all claims against any other Party except as otherwise set forth herein after thoroughly reviewing this Agreement with counsel.

FOR THE CITY OF CAMDEN

By: _____
City fo Camden Council President

(date of signing)

AGREED:


JOSE RIVERA, and his Heirs,
Personal Representatives and Assigns

10/27/09
(date of signing)