

declaratory, injunctive and compensatory damages demanded by the Plaintiff.

4. Defendant Mayor Richard Turner is the duly elected Mayor of Weehawken. Mayor Turner is sued in his official and individual capacity for purposes of effecting the full declaratory, injunctive, compensatory, and punitive damages demanded by the Plaintiff.

5. Defendant James Marchetti is the Town Manager of Weehawken. Marchetti is sued in his official and individual capacity for purposes of effecting the full declaratory, injunctive, compensatory, and punitive damages demanded by the Plaintiff.

FACTS

6. The Township of Weehawken is organized as a Faulker form of government where the Mayor serves primarily in a ceremonial capacity. Under the Town Charter, the Town Manager (in this case, Marchetti) is designated as the person responsible for day-to-day operations in Weehawken. In essence, Weehawken governs through resolutions passed by the Town Council. The purpose of this form of government is to remove political influence from interfering with day-to-day business and purpose of government.

7. Under the Town's Charter, Mayor Turner is not empowered or authorized to influence the decision of any town official or department head, including those assigned to the police department, tax department, tax assessor department, and recycling department.

8. Plaintiff Fredericks is the Tax Collector of Weehawken, a position he has held since 1994. He is licensed by the State of New Jersey and governed by New Jersey Division of Local Government and New Jersey Statutes. Throughout his employment with Weehawken, Fredericks routinely complained to the Defendants regarding improper, if not unlawful, activities.

9. From at least 2007 to the present, Plaintiff complained about Mayor Turner's interference with Weehawken's assessment of the semi-annual property taxes bills.

Fredericks complained to both Marchetti and Barsa every time the tax bills were prepared. (Statutorily, the bills were to be sent on June 14 and Dec 14, however due to Turner's interference, Weehawken was always several months late in sending its bills.) Fredericks would go to Marchetti's office to complain to him that Turner's actions were not legal, to which Marchetti would shrug and say "it's not up to me," or "what do you want me to do?" Plaintiff would complain to Barsa when he ran into him, and Barsa would commiserate, but take no action.

10. Plaintiff complained to Marchetti and Barsa about Mayor Turner's interference with personnel decision affecting Frederick's department. For example, Nora Duffy, a clerk in Frederick's department, asked for a day off. As she was an hourly employee, she did not need to submit a vacation request form. When Turner discovered that she was off, he told Fredericks "I did not approve it," to which Fredericks responded that Turner was not allowed to give orders to employees, either directly or indirectly. In retaliation, Turner moved Duffy from Plaintiff's office to Marchetti's office, and threatened to terminate the employment of Rosy, another one of the employees in Frederick's department. Fredericks went to Marchetti's office and told Marchetti: "that's not right. Turner can't interference in my office," to which Marchetti again shrugged and said "what do you want me to do?"

11. Mayor Turner would direct Weehawken's Tax Assessor what to assess, in violation of his duties to follow the state's formula. For example, Mayor Turner called Plaintiff Fredericks to instruct him as to what amount of taxes to assess for political reasons. On one occasion, Mayor Turner told Fredericks: "What if we reduce the garbage collection tax by \$200,000, how would that affect the assessed tax levy?"

12. On or about September 20, 2010, Fredericks furnished a sworn certification describing the above wronging by Mayor Turner to Weehawken Police Lieutenant Richard

DeCosmis, a Plaintiff who filed a federal lawsuit based on similar constitutional violations by Mayor Turner.

13. Upon learning of Fredericks' submission of the above certification in the DeCosmis Litigation, Mayor Turner escalated the retaliation against Fredericks and began to subject Fredericks to a pattern of retaliatory treatment in the terms and condition of his employment.

14. Fredericks was scheduled to attend the yearly Saul A. Wittes Foundation Educational Seminar on October 7, 2010. Although the seminar was approved by Marchetti, the Defendants withdrew their financial support the day before the seminar and informed that he could no longer attend despite the fact that Weehawken had paid for this seminar for the last sixteen years.

15. Fredericks was also scheduled to attend the 44th Annual Tax Collector's and Treasurers' Spring Conference for which he had attended as Weehawken's Tax Collector for seventeen years. Although the Town Manager and Finance Committee had approved a voucher for Fredericks for the past 17 years, and had already signed a voucher for 2010, the Defendants' cancelled the voucher immediately prior to the conference.

16. While Fredericks had always been permitted to attend the Tax Collectors and Tax Association of New Jersey Executive Board Meetings on township time, the Defendants required that Frederick use his vacation time after he submitted his certification alleging wrongdoing by the Defendants.

17. In furtherance of Defendants' retaliatory scheme, Frederick was also denied compensation for work performed in Weehawken. In March of 2009, Township Manager Marchetti approached Fredericks with the prospect of adding an additional job: that of administering the newly implemented tax abatement program in Weehawken. The

Defendants agreed that Fredericks would receive \$10,400 for his work between May 1, 2009 and June 30, 2010. When Weehawken was unable to pay right away, Fredericks agreed to defer the agreed upon compensation until June 30, 2010. After July 1, 2010, the salary for these additional responsibilities would be \$7,800 annually. Fredericks has not received any of the payment he is due for his work in the tax abatement program. Not only was Fredericks required to spend many extra hours learning about tax abatements, but he was also required to travel to other municipalities and meet with their tax abatement officials. He worked with all of the people who have purchased tax-abated properties, doing more work than was required of him.

18. On August 2, 2010, and again on September 17, 2010, Fredericks wrote to Marchetti requesting payment for his work in the Weehawken Township Tax Abatement Program. Marchetti did not respond until after Fredericks had signed certification in the DeCosmis federal case, and denied Fredericks payment.

19. Effective June 30, 2010, Weehawken employees received a four percent raise in their salaries. On or about June 7th, 2010 Plaintiff suffered a TIA (transient ischemic attack) while at work. As a result of his medical condition, Plaintiff returned to work in September 2010.

20. In early to mid October 2010, Plaintiff discovered that a raise had been given to Weehawken employees in June. Plaintiff speaks to Richard Barsa, the Weehawken Finance Director, to inquire about raise. In that conversation, Barsa informs Plaintiff that he was not entitled to a raise.

21. In response, Fredericks consults with Keith Bonchi Esq the attorney for the Tax Collectors and Treasurers Association, in regard to the denial of the raise. On October 18th Bonchi sends Marchetti' a letter citing NJSA 40A:9-165 that requires a municipality to

provide the Tax Collector with the same raise as all other employees.

22. A couple of weeks after Bonchi sends the letter, Corrigan responded stating that Fredericks is overpaid and doesn't address issue of raise. In a subsequent conversation, Plaintiff was advised by Weehawken that he would not be receiving the raise.

23. In July 1, 2012, Weehawken employees received a 2% raises but Plaintiff was not included.

24. The Defendants denied Fredericks two raises in retaliation for having engaged in the above-captioned protected activities. The Tax Collector is one of four statutory officers that are covered by N.J.S.A. 40A:9-165, which states: "No ordinance shall reduce the salary of, or deny without good cause an increase in salary given to all other municipal officers and employees to, any tax assessor, chief financial officer, tax collector or municipal clerk during the term for which he shall have been appointed."

25. Marchetti told Fredericks that he would not receive a raise because "he was already overpaid," which was a pretext to punish him for engaging in whistle-blowing and First Amendment protected activities.

26. By denying Fredericks payment for his work in the Tax Abatement Program and denying him two raises, the Defendants reduced not only his salary but the pension benefits Fredericks would otherwise have been entitled to.

27. In addition, Defendants stripped Plaintiff of many of his job duties in retaliation for his whistleblowing. For example, on September 23, 2010 Fredericks received a letter from Richard Barsa, Weehawken's Finance Director, stating that "effective immediately" Fredericks would have to report to him or CFO Lisa Toscano, and that all future correspondence and communications would have to be approved by the Finance Director or CFO prior to distribution.

28. On October 25, 2010, Fredericks received a letter from Marchetti requesting a meeting to discuss his existing salary. This investigation into Plaintiff's salary was done in retaliation for Plaintiff's whistleblowing. Marchetti claims that Fredericks was receiving payment for recreation supervisory duties that he had not performed, and wanted to reduce Frederick's salary and recoup the excess.

29. On November 11, 2010, Fredericks received a letter from Marchetti stating that he took unapproved vacation time. Fredericks' vacation time had in fact been approved. Fredericks met with Marchetti on November 23, 2010.

30. In retaliation for Plaintiff's protected activities, Defendants retaliated against Plaintiff, isolating him and creating a hostile work environment.

I.
COUNT ONE
CEPA, N.J.S.A. 34:19-1 et seq.
ALL DEFENDANTS

31. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

32. Plaintiff complained to Defendants of unlawful criminal and otherwise improper activities in Weehawken. Such complaints constitute protected activities under CEPA.

33. As a result of his complaints of unlawful activities in Weehawken, including the filing of the instant federal lawsuit, Weehawken, Mayor Turner, and Marchetti, engaged in a continuing pattern of retaliatory actions from at least July 2007 to the July 2011, against Plaintiff as alleged herein.

34. As a result Defendants' retaliation, Plaintiff has suffered and continues to suffer economic and emotional distress in an amount to be determined by a jury. Because Defendants' conduct was willful and malicious, Plaintiff seeks punitive damages in an amount to be determined by a jury.

II.
COUNT TWO
42 U.S.C. §1983
TOWNSHIP OF WEEHAWKEN

35. Defendant Township of Weehawken, being a "person" within the meaning and intentment of 42 U.S.C. § 1983, acting under the color of the statutes, ordinances, regulations, customs, and/or usages of the State of New Jersey and Township of Weehawken, has infringed upon Plaintiff's constitutional rights under the First Amendment to the United States Constitutions as follows:

- (a) freedom of speech,
- (b) freedom of association
- (c) freedom to petition the government for relief under the Constitution.

36. Defendant intentionally, knowingly, or with deliberate indifference to the rights of Plaintiff failed to train, instruct, supervise, control and/or discipline defendants in the performance of their duties as public officials.

37. As a direct and proximate cause of the aforementioned, Plaintiff was deprived of his Constitutional right secured by the First Amendment to the United States Constitution. As a result of the foregoing, Plaintiff has suffered and will continue to suffer economic, emotional and psychological damages in an amount to be determined by a jury.

III.
COUNT THREE
42 U.S.C. §1983
MAYOR TURNER & MARCHETTI

38. All of the allegations in each of the foregoing paragraphs are incorporated by reference as if fully set forth herein.

39. Defendant Mayor Turner and Marchetti are public officials. Acting under the color of law, Mayor Turner and Marchetti deliberately and willfully infringed upon Plaintiff's constitutional rights

to free speech, freedom of association, and right to petition the government for relief afforded him under the First Amendment to the United States Constitution as alleged herein.

40. As a direct and proximate cause of the aforementioned, Plaintiff was deprived of his constitutional right secured by the First Amendment to the United States Constitution. As a result of the foregoing, Plaintiff has suffered and will continue to suffer economic, emotional and psychological damages in an amount to be determined by a jury. Because of Mayor Turner's willful and malicious conduct, Plaintiff seeks punitive damages in his individual capacity to be determined by a jury.

IV.
COUNT FOUR
CIVIL RIGHTS ACT, N.J.S.A. 10:6-1, *et seq.*
FREE SPEECH
ALL DEFENDANTS

41. Plaintiff repeats each and every allegation as though the same were recited herein at length.

42. Defendant Weehawken, by and through its officials Mayor Turner and Marchetti, has infringed and violated Plaintiff's constitutional right to engage in free speech afforded under the Constitution of the State of New Jersey.

43. As a direct and proximate result of Defendants' actions, Plaintiff suffered economic and emotional damages in an amount to be determined by a jury.

V.
COUNT FIVE
CIVIL RIGHTS ACT, N.J.S.A. 10:6-1, *et seq.*
RIGHT TO PETITION FOR REDRESS OF GRIEVANCES
ALL DEFENDANTS

44. Plaintiff repeats each and every allegation as though the same were recited herein at length.

45. As a result of Plaintiff's protected activities, Defendant Weehawken, by and

through its officials Mayor Turner and Marchetti, has infringed, violated and interfered with Plaintiff's constitutional right to petition for redress of grievances secured under the Constitution of the State of New Jersey.

46. As a direct and proximate result of Defendant's actions, Plaintiff has suffered economic and emotional damages in an amount to be determined by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter an order finding as follows:

- a. That a declaratory judgment be issued that the Plaintiff's rights have been violated as alleged above;
- b. That Plaintiff recover from the Defendants, jointly and severally, compensatory damages, exemplary and punitive damages, treble damages, attorney's fees, post judgment interest, and such other monetary relief as may be deemed appropriate in amounts to be determined at trial;
- c. That the Plaintiff recover from the Defendants, jointly and severally, prejudgment interest to the maximum extent permitted by law; and
- d. That the Court grant such other and further relief as it deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs request a trial by jury on all issues so triable.

Dated: December 14, 2012

By: /S/LOUIS A. ZAYAS, ESQ.
LOUIS A. ZAYAS, Esq. (LZ-1881)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into by and between Joseph Fredericks, Releasor, ("Fredericks") and The Township of Weehawken, Mayor Richard Turner, and James Marchetti and any and all successors and assigns thereof, and all employees and officials of the Township of Weehawken, including all persons, firms, and corporations, who might be liable of and from any and all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses and compensation, on account of, or in any way growing out of the subject matter of this Agreement, or the litigation described in paragraph 1, below, or the employer-employee relationship between Fredericks and the Township of Weehawken (the "Township"), collectively referred to as the "Parties".

The Parties agree as follows:

1. Release.

Fredericks releases and gives up any and all claims and rights which he may have against the Township. This Releases all claims, including those of which Fredericks is not aware and those not mentioned in this Agreement. This Release applies to claims resulting from anything which has happened up to now, including but not limited to the following claims:

As to the matter of **Joseph Fredericks v. Township of Weehawken, Mayor Richard Turner, and Town Manager, James Marchetti**, filed in the United States District Court for The District of New Jersey, being Case No. 2:11-cv-05363 (WJM-MF);

Any claim Fredericks may have in regard to any pending disciplinary proceeding, and anything that has occurred between the parties up until the date this Agreement is executed.

2. Terms of Agreement.

In consideration of making this Agreement, the parties have agreed to the following:

- A. Effective May 14, 2011, Fredericks shall receive a salary increase of FIFTEEN THOUSAND (\$15,000.00) DOLLARS; total payment of FORTY-FIVE THOUSAND (\$45,000.00) DOLLARS subject to normal payroll deductions;
- B. Fredericks shall receive Terminal leave of 153-1/2 days at current rate of pay as per Township of Weehawken current practice and Ordinance; staggered over five (5) years as per policy;
- C. The Township of Weehawken makes no representation of pension determination of creditable salary – This Settlement agreement survives any Pension Board decision on creditable salary;
- D. Joseph Fredericks shall be on paid administrative leave from April 16, 2014 through May 14, 2014. He shall not report to work, except for one hour to clean his desk with two (2) days advanced notice to be provided;
- E. Scottsdale Insurance Company shall pay FORTY-FIVE THOUSAND (\$45,000.00) DOLLARS in attorney's fees, payable to Louis Zayas, Esq. _____;
- F. Scottsdale Insurance Company shall pay an additional THIRTY THOUSAND (\$30,000.00) DOLLARS, payable to Josphe Fredericks _____;
- G. The Township shall drop all present disciplinary charges without any penalty;
- H. Fredericks shall leave the Township's employment irrevocably on May 14, 2014 subject only to the Township ratifying this Agreement;
- I. There is no admission of liability by the Township and/or any individual Defendant;
- J. Payment as set forth above shall be made by July 1, 2014, or sixty (60) days from execution of all settlement documents, whichever is later;

K. This Agreement is subject to the ratification by Township Council; to be decided on May 14, 2014;

The above payments are inclusive of all attorneys' fees and costs, and in full settlement of all claims which Fredericks asserted, or could have asserted against the Township of Weehawken, its employees and officials.

3. Taxability.

Fredericks further agrees that neither the Township nor its counsel have made representations to him concerning the taxability of the amounts to be paid herewith. It is further understood that in the event a taxing entity ultimately determines that any or all of the foregoing amounts constitute income for which any taxes remain due and owing, Fredericks shall be responsible for the payment of all such taxes and shall hold the Township and its counsel harmless.

4. Fredericks agrees that if any claims, suits or liens are asserted against me in connection with injuries or other losses, either under Workers Compensation laws, by any provider of medical, dental or hospital services, or by the State of New Jersey, or any governmental body, including welfare boards, Fredericks will indemnify and hold the Township or its agents and its counsel, Gebhardt & Kiefer, P.C., and the Corrigan Law Firm, harmless against such claims, suits or liens. Fredericks represents that he has not received any conditional payment from Medicare or Medicaid and is not currently entitled to receive any Medicare or Medicaid benefits, and that no injuries have occurred that are related to his claims against the Township which would lead to any future claims for Medicare or Medicaid benefit.

5. Fredericks agrees to satisfy any liens against the proceeds of the settlement including, but not limited to outstanding medical bills, workers' compensation liens, Medicare/Medicaid liens, etc., and agree to indemnify and otherwise hold harmless the Township from claims arising out of or in connection with said liens.

6. Fredericks agrees and represent that he will be responsible for the complete payment and discharge of any and all liens, subrogation claims and statutory rights of reimbursement, of any kind or type whatsoever arising out of or in connection with any and all injuries and damages sustained by him or alleged to be sustained by him in the suit being released by this document, including, but not limited to those physicians, hospitals and any and all other medical/health care providers, workers' compensation insurance, no fault insurers, health benefit insurers, federal, military hospital and veteran's benefits providers, Medicare, Medicaid and ERISA plan providers.

7. It is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of the Township of Weehawken, Richard Turner or James Marchetti. This agreement is being entered into for business reasons and for the purpose of amicably resolving the differences between the parties.

8. Who is Bound.

All parties are bound by this Agreement. Anyone who succeeds to the parties' rights or responsibilities, such as the parties' heirs or the executors of my estate are also bound.

Fredericks has agreed to the terms of this Agreement and is giving this Release for the Township's benefit and all who succeed to the Township's, Turner's or Marchetti's rights and responsibilities, such as their heirs or the executors of their estates.

9. Agreement as a Final and Binding Disposition.

Fredericks agrees that this Agreement shall operate as a final and binding disposition of all disputes as to the legal liability for and as to nature and extent of any damages, claimed by Fredericks against the Township, to Fredericks. Further, the payment of the sums recited in Paragraph (2) above, represents a full accord and satisfaction of the disputed claim.

STATE OF NEW JERSEY)

: SS.

COUNTY OF _____)

I certify that on April____, 2014, the above named individuals, personally came before me and acknowledged under oath, to my satisfaction, that she:

- (a) is named in and did personally sign this document: and
- (b) signed, sealed and delivered this document as his or her act and deed.

s:\Weehawken ads Fredericks\SETL\Draft Release140416.docx