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Superior Court of New Jersey

MAY 26 2011

CIVIL CASE MANAGEMENT
UNION COUNTY

MICHAEL GILLIAM, : SUPERIOR COURT OF NEW JERSEY
Plaintiff, : LAW DIVISION
vs. : UNION COUNTY
DOCKET NO. 011004-11
: CIVIL ACTION
CITY OF PLAINFIELD,
PLAINFIELD POLICE DEPART-
MENT; MARTIN R. HELLWIG, :
JOHN DOES 1 – 20 (said names
being fictitious) and ABC :
CORPORATIONS 1-10 :
(said corporations being fictitious) :
Defendants. : COMPLAINT, JURY DEMAND,
DESIGNATION OF TRIAL COUNSEL

Plaintiff, Michael Gilliam, residing at 311 Randolph Road, City of Plainfield, County of Union and State of New Jersey, by way of Complaint against the defendants, says:

FIRST COUNT

1. Plaintiff, Michael Gilliam, was and still remains employed as a police officer by the defendants, City of Plainfield and Plainfield Police Department whose main office is located in Plainfield, New Jersey, since

2. The plaintiff was a Captain with the Plainfield Police Department; however, he was demoted to the rank of Lieutenant on or about May 26, 2010.

3. The defendant, Martin R. Helwig, was at all times relevant hereto the Director of Police for Plainfield Police Department and the City of Plainfield Police

Department and was employed by the City of Plainfield as a direct manager and/or supervisor of the plaintiff.

4. Approximately February of 2010, in the course of his employment with the defendants, Plainfield Police Department, the plaintiff became aware of, and came into possession of information indicating that the defendant, Police Director Martin R. Helwig, was soliciting prostitution services via the Internet while in the course of his employment with the defendants, Plainfield Police Department and the City of Plainfield.

5. The plaintiff, a Captain with the Plainfield Police Department, further investigated this matter and having a good faith belief that the Director of the Plainfield Police Department was engaged in unlawful activity and/or official misconduct during the course of his employment brought this information to the City of Plainfield, and in particular, the business administrator for the City of Plainfield.

6. Plaintiff's actions in advising the City of Plainfield of the unlawful conduct on the part of the defendant, Martin R. Helwig, was a lawfully protected whistle blowing action protected by the New Jersey Conscientious Employee Protection Act (CEPA) N.J.S.A. 34-19-1 et seq.

7. As a direct and proximate result of the plaintiff providing and/or disclosing this information to the City of Plainfield, the defendants, Plainfield Police Department, City of Plainfield and Martin R. Helwig, did retaliate against the plaintiff by demoting him to the rank of Lieutenant, initiating a formal investigation of the plaintiff, filing administrative charges against the plaintiff, seeking further demotion of the plaintiff, and suspension of the plaintiff from his duties as a Plainfield Police Officer.

8. The Conscientious Employee Protection Act prohibits an employer from retaliating against an employee who reports, objects to, refuses to participate in and/or

provides information or testimony of a violation of law or fraudulent or criminal activity, policy or practice on the part of their employer.

9. The actions and practices on the part of the defendants were in direct violation of the New Jersey Conscientious Employee Protection Act N.J.S.A. 34:19-1 et seq. in that they retaliated against the plaintiff for complaints made concerning the unlawful activity on the part of the defendant, Police Director Martin R. Helwig.

10. As a direct and proximate result of the actions on the part of the defendants, the plaintiff has suffered damage including emotional distress and humiliation, economic damages including lost wages, benefits, and severe emotional distress with physical manifestations other, economic damages, attorney's fees and costs.

WHEREFORE, the plaintiff demands judgment as follows: (a) ordering defendants to reinstate the plaintiff with full back pay and benefits; (b) compensatory damages; (c) punitive damages; (d) damages including personal hardship, economic loss, physical and emotional stress, severe emotional trauma and anxiety caused by the uncertainty of this employment controversy, family and social disruption and other personal injuries; (e) costs and attorneys fees; (f) an order declaring the defendants have violated the New Jersey Law Conscientious Employee Protection Act and requiring them to take appropriate corrective action to end discrimination in the work place; and (g) for any other relief as the Court may deem equitable and just.

SECOND COUNT

1. Plaintiff repeats and reiterates each and every allegation of the First Count as if fully set forth herein at length.

2. The conduct and practices on the part of the defendants in failing to properly investigate the complaints raised by the plaintiff, and in retaliating against plaintiff for providing information concerning the unlawful activities on the part of the defendant, Police Director Martin R. Helwig, was unlawful.

3. As a direct and proximate result of the unlawful activities on the part of the defendants, the plaintiff suffered injuries including emotional distress and humiliation, economic damages including lost wages, benefits, and severe emotional physical manifestations of emotional distress, economic damages.

WHEREFORE, the plaintiff demands judgment as follows: (a) ordering defendants to reinstate the plaintiff with full back pay and benefits; (b) compensatory damages; (c) punitive damages; (d) damages including personal hardship, economic loss, physical and emotional stress, severe emotional trauma and anxiety caused by the uncertainty of this employment controversy, family and social disruption and other personal injuries; (e) costs and attorneys fees; (f) an order declaring the defendants have violated the New Jersey Conscientious Employee Protection Act and requiring them to take appropriate corrective action to end discrimination in the work place; and (g) for any other relief as the Court may deem equitable and just.

THIRD COUNT

1. Plaintiff repeats and reiterates each and every allegation of the First and Second Counts as if fully set forth herein at length.

2. At all times relevant hereto the defendant, Martin R. Helwig, was the Director of Police for the Plainfield Police Department and the City of Plainfield and manager and/or direct supervisor of the plaintiff.

3. The defendant, Police Director Martin R. Helwig, did act in concert with, aid, abet and incite and otherwise participate in the unlawful activity, including but not limited to the demotion of the plaintiff an other retaliation.

4. As a direct and proximate result of the aforesaid conduct on the part of the defendant, Police Director Martin R. Helwig, the plaintiff, Michael Gilliam, suffered damages including but not limited to economic damages, attorney's fees and costs of suit.

5. The actions and practices on the part of the defendants were in direct violation of the New Jersey Conscientious Employee Protection Act N.J.S.A. 34:19-1 et seq. in that they retaliated against the plaintiff for complaints made concerning the unlawful activity on the part of the defendant, Martin R. Helwig.

WHEREFORE, the plaintiff demands judgment as follows: (a) ordering defendants to reinstate the plaintiff with full back pay and benefits; (b) compensatory damages; (c) punitive damages; (d) damages including personal hardship, economic loss, physical and emotional stress, severe emotional trauma and anxiety caused by the uncertainty of this employment controversy, family and social disruption and other personal injuries; (e) costs and attorneys fees; (f) an order declaring the defendants have violated the New Jersey Conscientious Employee Protection Act and requiring them to take appropriate corrective action to end discrimination in the work place; and (g) for any other relief as the Court may deem equitable and just.

FOURTH COUNT

1. Plaintiff repeats and reiterates each and every allegation of the First, Second, and Third Counts as if fully set forth herein at length.

2. Defendants ABC Corporations 1-10 are to date unknown and/or undiscovered entities including both private organizations as well as any public and quasi-public bodies and/or organizations yet to be discerned who were employers of the plaintiff.

3. Defendants John Does 1-20 are to date unknown and/or undiscovered individuals including both private organizations as well any public or quasi-public bodies and/or organizations yet to be discerned who were employees of the defendant.

4. ABC Corporations 1-10 and John Does 1-20, through their agents, servants and/or employees did act to intentionally harm the plaintiff, Michael Gilliam, by wrongfully demoting the plaintiff in violation of the New Jersey Conscientious Employee Protection Act.

WHEREFORE, the plaintiff demands judgment as follows: (a) ordering defendants to reinstate the plaintiff with full back pay and benefits; (b) compensatory damages; (c) punitive damages; (d) damages including personal hardship, economic loss, physical and emotional stress, severe emotional trauma and anxiety caused by the uncertainty of this employment controversy, family and social disruption and other personal injuries; (e) costs and attorneys fees; (f) an order declaring the defendants have violated the New Jersey Conscientious Employee Protection Act and requiring them to take appropriate corrective action to end discrimination in the work place; and (g) for any other relief as the Court may deem equitable and just.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into by and between Michael Gilliam (hereinafter "Plaintiff"), and City of Plainfield and Plainfield Police Division (hereinafter referred to as "the Defendants");

WHEREAS on or about May 26, 2011, Plaintiff filed a Complaint in the Superior Court of New Jersey, Law Division, Union County, Docket No. L-2104-11 (the "Lawsuit"), alleging certain claims against Defendants arising out of Michael Gilliam's employment with Defendants; and

WHEREAS the Defendants filed an Answer to the Complaint denying any and all liability in connection therewith; and

WHEREAS Defendants and the Plaintiff have agreed to finally and fully settle all claims which were or could have been asserted by Plaintiff against Defendants and any agent or employee of Defendants (including the individual defendant, Martin Hellwig) and to finally and fully settle all possible claims for attorneys' fees and costs in connection therewith, and any and all medical, or Medicare claims or liens upon the terms and conditions set forth in this Settlement Agreement and Release;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

(1) This Settlement Agreement and Release shall not constitute an adjudication or finding on the merits of the Plaintiff's claims and shall not be construed as an admission or acknowledgment of any wrongdoing or liability by Defendants, the same being expressly denied.

(2) Plaintiff agrees that the Lawsuit shall be dismissed, with prejudice and without costs or attorneys' fees, as to the individual defendant, Martin Hellwig, by filing the appropriate Voluntary Stipulation of Dismissal with prejudice. The provision of an executed Voluntary Stipulation of Dismissal shall be presented to counsel for defendant Hellwig as a precondition to the consummation of this settlement.

(3) Plaintiff hereby agrees to release City of Plainfield and Plainfield Police Division, and their present and former employees, agents, directors, affiliated entities of any kind, shareholders and or subsidiaries, including but not limited to Martin Hellwig, from all claims, debts, demands, obligations, contracts, agreements, damages, controversies, suits, liabilities or causes of action they may have or claim to have against the Defendants including any and all claims arising out of or relating in any way to Michael Gilliam's employment with Defendants, personal injuries or any other claims he may have regarding any matters that have occurred up until this date. The claims released include, but are not limited to:

(a) all statutory claims including but not limited to discrimination based on discrimination of any kind, including but not limited to the Conscientious Employee Protection Act, N.J.S.A. 34-19-1 et seq. (or any other federal, state or local law); the New Jersey Law Against Discrimination; 42 U.S.C. § 1983, et seq.; Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., as amended by the Older Workers' Benefits Protection Act of 1990; the Americans with Disabilities Act; the Family and Medical Leave Act; the New Jersey Family Leave Act; the Rehabilitation Act; and any other statutes applicable to the allegations as set forth in the underlying Lawsuit.

It is further understood that as a condition of this settlement, all claims and/or liens, past, current and/or future arising out of this settlement or asserted against the proceeds of this

settlement are to be satisfied by Plaintiff, including but not limited to any Medicare or Medicaid claims and/or liens, Worker's Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer claims and/or liens, physician or attorney claims and/or liens, or any of the statutory, equitable, common law or judgment claims and/or liens, including but not limited to claim based on subrogation or any other legal or equitable theory. Plaintiff therefore agrees, upon prompt presentation of any such claims and/or liens, to defend the Defendants against any such claims and/or liens, and to indemnify and hold Defendants harmless against any judgment entered against Defendants based on such claims and/or liens, including the payment of any fines, charges and attorneys fees incurred as a result of any such lien. Failure to satisfy any such lien shall be considered a breach of this Agreement and Plaintiffs agree to pay all costs, interest and attorneys fees relative to any such lien.

(b) all claims arising under the United States or New Jersey Constitutions;

(c) all claims arising under any Executive Order or derived from or based upon any federal or state regulations;

(d) all common law claims including but not limited to claims for wrongful discharge, public policy claims, retaliation claims, promissory estoppel, detrimental reliance, fraud, misrepresentation, negligent infliction of emotional distress and vicarious liability, claims for breach of an express or implied contract, claims for breach of an implied covenant of good faith and fair dealing, intentional infliction of emotional distress, harassment, assault, battery, defamation, conspiracy, loss of consortium, tortious interference with contract or prospective economic advantage and negligence;

(e) all claims for any compensation, potential punitive and non-punitive damages, compensatory or consequential damages including back wages, front pay, bonuses, incentive awards, merit awards, performance awards, fringe benefits, stock options,

vacation days, excused workdays, personal or sick days, reimbursement for or payment of medical expenses, reinstatement, retroactive seniority, pension benefits, retirement-related benefits, severance benefits or any other form of economic loss;

(f) all claims for personal injury, including physical injury, mental anguish, emotional distress, pain and suffering, embarrassment, humiliation, damage to name or reputation, liquidated damages and punitive damages; and

(g) all claims for costs and attorneys' fees on behalf of Plaintiff or any attorneys who may have represented him.

Nothing contained in this paragraph 3 is intended, nor shall be construed, to waive or release any future claim arising after the date this Settlement Agreement and Release is signed by Plaintiff.

(4) (a) Plaintiff represents that he has no charge, claim or complaint of any kind pending against the Defendants and/or their present and former employees, agents, directors, affiliated companies, subsidiaries, and/or shareholders, including but not limited to Martin Hellwig, other than the lawsuit which is being dismissed pursuant to paragraph 2 above and he covenants that none will be filed by him seeking any personal recovery or personal injunctive relief arising out of or relating in any way to Plaintiff's employment with the Defendants.

(b) Nothing contained in this paragraph 4 shall prohibit Plaintiff from bringing any action to enforce the terms of this Settlement Agreement and Release.

(5) Plaintiff warrants and represents that he has not disclosed any confidential or proprietary information relating to Defendants or to any third party and affirms his obligation not to do so in the future.

The total settlement shall be allocated as follows:

- A. Plaintiff, Michael Gilliam, will be compensated by the City of Plainfield for monies owed in back wages, said monies being the difference in pay between the grade of Police Lieutenant and Police Captain for the period between the date of his demotion from Captain to Lieutenant and the date of his reinstatement to the position of Captain as required under this Agreement, with said monies to include all proper deductions and pension contributions;
- B. \$25,000.00 to the law firm of Cahn & Parra, LLC representing attorney's fees and costs;
- C. \$2,500.00 to Stephen E. Klausner, Esq. representing attorney's fees and costs;
- D. The Defendants, City of Plainfield and Plainfield Police Division, will dismiss with prejudice any and all administrative charges currently pending against the plaintiff, Michael Gilliam, and said charges shall be noted in his personnel jacket to have been dismissed with prejudice;
- E. The plaintiff, Michael Gilliam, shall be promoted from Lieutenant to Captain, which promotion shall take place within a reasonable time following the execution of the appropriate Resolution by the Plainfield City Council approving this agreement;
- E. This payment shall be made within thirty (30) days of the entry of a Resolution approving this agreement by the City Council;

(6) In light of the nature of the payments described in the subparagraphs above, Defendants will not deduct or withhold any amounts from those settlement payments made to to the law firm of Cahn & Parra, LLC. Plaintiff further acknowledges that he is

not being provided specific tax advice by the Defendants, Defendants' counsel or by Plaintiff's attorney and will seek independent tax advice, and further that it is his sole and exclusive responsibility to make the necessary tax payments, if any may be required, and he agrees to indemnify and hold Defendants, and Defendants' counsel harmless with respect to any amounts, claims, liabilities, penalties and interest which may be found to be owed by Plaintiff as a result of this Agreement by any Federal, State or local taxing authority. Defendants shall issue IRS forms W-2 to Michael Gilliam for back wages, and a 1099 shall be issued to Cahn & Parra in the amount of \$25,000.00 representing attorney's fees and costs.

(7) (a) The parties, the Plaintiff and the Defendants, as well as their respective counsel, agree to maintain in confidence and not to disclose the terms of this Settlement Agreement and Release and not to make any public statements regarding the underlying events which were the subject matter of this claim to the extent allowed by law. In addition, the parties, the Plaintiff and the Defendants, further agree not to make any disparaging comments about the other party, this settlement or to disclose any facts, documents or the like related to any of the underlying events which are the subject of this litigation. It shall not be considered a breach of this obligation of confidentiality for any party to make disclosure of the settlement terms in order to obtain private and confidential professional legal, tax or financial advice or in connection with any legal proceeding in which Plaintiff's testimony or disclosure of documents by them may be compelled by subpoena or court order or to respond to any inquiry from any governmental entity or agency regarding a tax filing. In the event that any legal, governmental, regulatory or self-regulatory authority, subpoena or other legal process

calls upon plaintiff to disclose the terms or provisions of this Agreement, as a witness or otherwise, plaintiff shall immediately (within 24 hours, if possible) contact Steven D. Cahn, Esq., Cahn & Parra, LLC, 1015 New Durham Road, Edison, New Jersey, 08817 by forwarding to him a copy of the subpoena or process, who in turn shall contact counsel for Defendants.

(7) (b.) Plaintiff's attorneys firm is Cahn & Parra, 1015 New Durham Road, Edison, New Jersey, 08817. The tax identification number is [REDACTED]. This information is for the issuance of the appropriate 1099 forms as expeditiously as possible.

(8) **Entire Agreement and Severability.** The parties hereto agree that this Agreement may not be modified, altered or changed except by a written agreement signed by the parties hereto. The parties acknowledge that this constitutes the entire agreement between them superseding all prior written and oral agreements. If any provision of this Settlement Agreement and General Release is held to be invalid, the remaining provisions shall remain in full force and effect.

(9) **Construction.** This Agreement shall be construed under the laws of the State of New Jersey and shall not be interpreted strictly for or against the parties.


(10) Plaintiff acknowledges that the only consideration he has received for executing this Settlement Agreement and Release is that set forth herein. No other promise, inducement, threat, agreement or understanding of any kind or description has been made with them or to them to cause them to enter into this Settlement Agreement and Release.

(11) Plaintiff represents that he has carefully read and fully understands all of the provisions of this Settlement Agreement and Release. Plaintiff represents that he has

SIGNATURE PAGE


MICHAEL GILLIAM

Signed and subscribed to before me
this 2nd day of April, 2013


A Notary Public of New Jersey
My Commission Expires _____

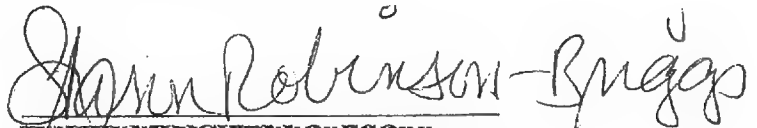
CHERYL L. MOSCATELLO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 3/26/2017


JOHN F. GILICK, ESQ.

Attorney for City of Plainfield and
Plainfield Police Division

Dated:

CITY OF PLAINFIELD



~~DAVID M. MINCHIELLO, ESQ.~~
~~CITY ATTORNEY, City of Plainfield~~
SHARON ROBINSON-BRIGGS, MAYOR

Dated:

Gilliam v. City of Plainfield

ADDENDUM
SIGNATURE PAGE



STEPHEN E. KLAUSNER

Attorney for Plaintiff on
Disciplinary Charges

Dated: 4/12/13