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SUPERIOR COURT
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MORRIS COUNTY
CIVIL DIVISION

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Attorney for Plaintiff

RIVERDALE POLICE	:	SUPERIOR COURT OF NEW JERSEY
SGT. GREGORY BOGERT,	:	LAW DIVISION -MORRIS COUNTY
	:	
Plaintiff,	:	DOCKET NUMBER: 12639-13
v.	:	
	:	Civil Action
	:	
BOROUGH OF RIVERDALE and	:	COMPLAINT, JURY DEMAND,
MAYOR WILLIAM BUDESHEIM,	:	DESIGNATION OF TRIAL COUNSEL,
	:	DEMAND FOR DISCOVERY OF
Defendants.	:	INSURANCE INFORMATION AND
	:	CERTIFICATION

THE PARTIES

1. Plaintiff, Gregory Bogert, at all relevant times mentioned herein, was a sergeant in the Riverdale Police Department in Riverdale, New Jersey. He was an excellent sergeant in his own right, very well liked among his fellow officers and earned over the years a pristine professional reputation, among and outside his own law enforcement agency.
2. Defendant, Borough of Riverdale, hereinafter referred to as the Borough, is a municipal corporation and runs/operates/oversees/is responsible for, by funding and through other means, the Riverdale Police Department.
3. Defendant, Mayor William Budesheim, at all relevant times mentioned herein, was the mayor of the Borough of Riverdale, and the top ranking municipal official in the Borough of Riverdale.

FACTUAL AVERMENTS/COMMON ALLEGATIONS RELEVANT

TO ALL CLAIMS FOR RELIEF

4. Plaintiff Bogert, for some 15 years, was a valued employee with the Riverdale Police Department. Prior thereto, he served in the U.S Air Force with utter distinction. His work record was impeccable. He was never the subject of any form of discipline. He has received myriad commendations over the years and his professional reputation and demeanor is, simply put, exceptional.
5. Plaintiff has served in numerous areas of the Riverdale Police Department over the years, including Fleet Manager, Traffic Bureau Supervisor and Patrol Supervisor. He also served as PBA president for approximately three (3) years, always placing the best interests of his officers above all else. It was in this role that defendant Budesheim's hatred for and retaliation toward plaintiff had its genesis.
6. For vicious, selfish and/or surreptitious reasons, all defendants began/waged a wholesale campaign against Bogert by discriminating against, abusing, retaliating against and defaming him, which began in/about 2010 and continues to date, which has translated into a three (3) year continuing course of illegal conduct toward plaintiff.
7. The illegal/unjustified/unwarranted/discriminatory/retaliatory course of conduct included, but was not limited to, the following:
 - a. In the calendar year 2010, it was announced by defendant Budesheim that the Riverdale Police Department would be merged with the Butler Police Department resulting in the layoff of three officers. Mayor Budesheim indicated that a merger was inevitable and the state was forcing mergers in many towns, which, of course,

was inaccurate. He proposed a preemptive merger with Butler, where he also served as zoning officer, prior to state involvement. After researching the mergers that the mayor said were happening in the other towns, Sgt. Bogert and PBA President Officer Patrick Harden discovered that the mergers were in point of fact not happening. Accordingly, the PBA and its members opposed defendant Budesheim's proposals during a council meeting. Thereafter, defendant Budesheim harbored asymmetrical and irrational hostility toward the PBA and its members, directly including the plaintiff in his wrath.

- b. In October and November 2010, defendant Budesheim attempted to change the established scheduling of officers and restrict the availability of comp time to officers, in violation of the established Collective Bargaining Agreement (CBA), something he had absolutely no right to do. The PBA vigorously opposed the mayor's actions to try to do away with the 12-hour scheduling and deny the comp time to officers who had been receiving the agreed upon nine hours of comp time per month in accordance with the CBA. The PBA advised the mayor that if he continued to deny officers the comp time, they would file a grievance. Defendant Budesheim, all the time knowing that he was violating the CBA, backed off and relinquished his fight about the comp time. This, defendant Budesheim was enraged over.
- c. Thereafter, defendant Budesheim made inappropriate and entirely unprofessional comments during a meeting between the PBA and the Borough regarding the officers of the department, including admitting that he was "bitter". On another occasion, defendant Budesheim also stated to the PBA President that he would not do anything for the police department because they had "stuck a plunger up

[his] ass". As a result of Budesheim's animosity toward the union and violations of the CBA, the PBA requested that Mayor Budesheim return his silver PBA membership card. Budesheim responded that he would only return the card to the State PBA, but upon information and belief, the card was never returned.

- d. Defendant Budesheim's animosity toward the police department and its officers thereafter became progressively worse. In/about January 2011, defendant Budesheim attempted to downgrade the police department's health plan for its officers. When the PBA and its members objected to the new health plan, as it provided inferior coverage, defendant Budesheim responded by threatening that he would "force" the department to accept the plan. However, because the Borough Council would not support the mayor, the plan was not put through. Shortly thereafter, the PBA and its members, finally fed up with the mayor's constant attacks, requested that a three member police committee of Borough Council members take over all communications with the department. This enraged defendant Budesheim.
- e. In/about February 2011, plaintiff left the Traffic Bureau to return to the Patrol Division, becoming the supervisor of police dispatcher, William Budesheim, the mayor's son. Dispatcher Budesheim had a long and belabored history of tardiness and behavioral problems well before plaintiff became his supervisor, but had received minimal, if any discipline, in this regard. Plaintiff Bogert received continued complaints regarding Dispatcher Budesheim's constant lateness and failure to complete his duties and plaintiff informally counseled him on several occasions, in an effort to help, not negatively affect, his professional advancement.

- f. Shortly thereafter, on February 3, 2011, Plaintiff Bogert was in the booking room across from the dispatch room in headquarters when defendant Budesheim left Chief Soules' office. While walking down the hall, defendant Budesheim saw his son and stated, "Everyone here is a scumbag, watch yourself!". Plaintiff and Detective John Barone overheard the incredible comment, and Officer Harden accompanied plaintiff when he confronted defendant Budesheim about the almost insane and irreverent inappropriate statement and reported his unprofessionalism to the Borough Council. As a result, defendant Budesheim was told to apologize to the officers of the police department for his conduct. Plaintiff, in an effort to keep the peace, agreed to accept a private apology rather than subject the mayor to the embarrassment of a public apology. However, defendant Budesheim's apology was neither sincere nor heartfelt and consisted of the excuse that the comments were directed to his son and should not have been heard by the other officers. Defendant Budesheim's viciousness toward plaintiff thereafter increased, exponentially.
- g. Dispatcher Budesheim continued to have problems with members of his squad and failed to correct his behavior. As a result, on April 10, 2011, plaintiff Bogert recommended the transfer of Dispatcher Budesheim to another squad, a move which defendant Budesheim hated plaintiff for doing, even though it was entirely proper for the plaintiff to do so. Dispatcher Budesheim was not transferred and continued to experience problems with being late, neglecting his duties and exhibiting unprofessionalism toward the members of his squad necessitating discipline.

- h.** Dispatcher Budesheim's misconduct continued at the same time his father (defendant Budesheim) was running for office during October 2011. During this time, plaintiff noticed that the political signs supporting Mayor Budesheim's opponents erected along Newark Pompton Turnpike were regularly damaged, knocked down and removed. Clearly, whoever was responsible for same was violating N.J.S.A. 2C:17-3, a criminal offense. Plaintiff started to notice a pattern where the signs were damaged or missing on the same days and times that Dispatcher Budesheim would walk to and from work down that very street. Plaintiff was informed by Councilman Steven Loesner that he had the same suspicion that dispatcher Budesheim was responsible for the damage and removal of the signs. Accordingly, plaintiff and Loesner conducted surveillance of the signs on Newark Pompton Turnpike. While driving past Dispatcher Budesheim walking on the side of the road, plaintiff noticed that three signs that Dispatcher Budesheim had not yet approached were standing. Plaintiff and Loesner waited for Dispatcher Budesheim to walk past the signs and then drove past the signs in the opposite direction. They observed that the first sign (which was not in view while waiting) was knocked down. Plaintiff filed a report in this regard; however, no disciplinary action or criminal investigation was taken in response.
- i.** After Plaintiff Bogert reported the above incident, Dispatcher Budesheim claimed that plaintiff was "harassing" him. In response, Chief Smith issued a memorandum to Dispatcher Budesheim advising that he took complaints of harassment seriously, telling him to submit a report of the specific incidences of harassment. However, upon information and belief, Dispatcher Budesheim made no further mention of the alleged harassment at that time.

- j. Thereafter, plaintiff started noticing that he was being harassed and watched and being subjected to heightened scrutiny by defendant Budesheim and his son. On November 5, 2011, while letting his parents into his home during his lunch break, plaintiff noticed defendant Budesheim drive by and linger in front of his house, watching him in a menacing fashion. The following day, when plaintiff saw Councilman Paul Carelli on the street, he stopped to notify him of the status as to a power outage. While stopped, he noticed defendant Budesheim's son, Adam Budesheim, taking pictures of his patrol car.
- k. On March 25, 2011, Chief Soules announced that he would be retiring. Chief Soules notified plaintiff and the PBA President that Kevin Smith would be the Acting Chief. This was voted on in June 2011 and Smith became Acting Chief, even though Chief Soules had not yet left and was not scheduled to leave for approximately five more months. Of course, this made no legal or logical sense. There was more than enough time to go through the proper process correctly. Although plaintiff has always held Kevin Smith in high esteem, he did ask Councilman Loesner why interviews were not held for the position of chief, a position to which plaintiff earned and was clearly entitled to, and he responded that the Council had not been given a list of eligible officers. Plaintiff confronted defendant Budesheim on the issue asking why a list of eligibles was not prepared and forwarded. Defendant Budesheim incorrectly responded that Sgt. Smith was the only officer eligible. Only after plaintiff and Sgt. Danzo grieved the issue, which again enraged defendant Budesheim beyond belief, were the interviews held, after Sgt. Smith had been appointed to the position of Acting Chief, and, even then, plaintiff Bogert was never interviewed. This adverse job action by

defendant Budesheim in not properly holding interviews, thereby violating the plaintiff's rights to a retaliation/discrimination free promotional process, was abhorrent and illegal. It should be noted that even Acting Chief Smith asked defendant Mayor Budesheim to correct the promotional ordinance, after learning during a Joint Insurance Fund seminar that the current ordinance was improper because it did not list the number of required officers in each rank.

- l.** Thereafter, defendant Budesheim's animosity toward plaintiff continued in earnest because of the plaintiff's proper actions in bringing misconduct of the defendant and his son to light, in full accordance with the NJCEPA.
- m.** In/around March 2012, it was brought to plaintiff's attention that Hometown News, LLC, the company responsible for distributing Riverdale's newsletter, was owned and operated by three of defendant Mayor Budesheim's relatives. Hometown News was responsible for printing and distributing the newsletter to all residents of Riverdale. When the newsletter was converted from an operation by the Mayor's office to one through an outside vendor, the job was awarded to Hometown News without acquiring outside vendor quotes as required by law, without any Council meetings, and without a vote or resolution, contrary to certain mandatory state laws. The plaintiff was all over this issue, and knew what the law called for. Furthermore, once Hometown News was hired, no contract was signed with regard to the services that would be provided or the fee that would be charged.
- n.** Accordingly, plaintiff Bogert brought the above and his concerns of impropriety and suspected illegal conduct to Chief Smith who ordered that the matter be investigated. Almost immediately after the investigation began, defendant

Budesheim suspected plaintiff's involvement and continued his course of vicious retaliation while attempting to interfere with the investigation. Specifically, after plaintiff started investigating the bulk permit used for the delivery of the newsletter and contacted Postal Inspector Joseph McGinley regarding the number of newsletters actually delivered, defendant Budesheim wrongfully and with malicious intent/purpose contacted P.I. McGinley to improperly ask for information about the investigation.

- o. On April 3, 2012, defendant Budesheim improperly contacted Chief Smith to try to surreptitiously obtain information about the ongoing investigation. Chief Smith responded that he was not entitled to the information as the investigation was active, pursuant to the policy of the Morris County Prosecutor's Office. Defendant Budesheim also sent an OPRA request to Chief Smith on April 4, 2012 regarding the investigation. However, because the investigation was still ongoing, it would have been improper to release the records. After defendant Budesheim failed to obtain the information in this manner, he filed a complaint with the State of New Jersey Government Records Council and even attempted to obtain the information from Chief Smith during an open public council meeting on April 16, 2012. Recognizing that this was an improper forum to be discussing an open ongoing criminal investigation, plaintiff and Chief Smith both informed defendant Budesheim that he should not be talking about the details of such an investigation during an open public meeting. Shockingly, and after the meeting, a close friend and political supporter of defendant Mayor Budesheim confronted plaintiff in the parking lot calling him an "asshole" and antagonizing him. This Budesheim supporter was clearly upset that plaintiff had interjected during the meeting

indicating that defendant Budesheim should not be discussing the investigation during open session.

- p. Defendant Budesheim thereafter continued to be personally involved in the retaliation as against the plaintiff. For instance, on June 25, 2012, while plaintiff was returning to headquarters, defendant Budesheim engaged in a dangerous maneuver to tailgate plaintiff from mere inches away while driving behind plaintiff. Defendant Budesheim committed this criminal act in an attempt to intimidate and harass the plaintiff, without regard to the physical safety of the plaintiff and innocent others on the roadway.
- q. Thereafter, in August 12, 2012, defendant Budesheim suspended the publication of the newsletter. However, in a further effort to retaliate against plaintiff for bringing his misconduct to light, defendant Budesheim falsely blamed plaintiff for the suspension of the newsletter. Shortly thereafter, a certain member of the Borough Planning Board and political supporter of defendant Budesheim submitted untrue and defamatory comments about plaintiff to Suburban Trends newspaper and posted similar comments on Facebook. Upon information and belief, this was done at the direction of defendant Budesheim.
- r. Defendant Budesheim not only enlisted his political supporters to make defamatory statements about plaintiff during meetings, in local newspapers such as the suburban Trends, and on Facebook, but outrageously engaged in such conduct himself. Indeed, during a council meeting on August 20, 2012, defendant Budesheim stated that when he called Chief Smith to inquire as to plaintiff's actions in conducting an investigation into the improprieties with the publication of the newsletter of the newsletter, that the Chief "was unaware that the

investigation was going on". This was an outright fabrication as Chief Smith had in fact informed defendant Budesheim that he could not obtain information about the investigation because it was ongoing.

- s. Defendant Budesheim and his political supporters continued to irreparably and with malicious intention trash plaintiff in the public eye and paint him as a rogue officer trying to make the Mayor look bad by fabricating baseless charges; however, plaintiff was merely engaging in lawful, protected speech activity and carrying out all job functions in a proper manner. Defendant Budesheim's selfish, personal desire to cover up his own misconduct and that of his relatives was the true motivation behind all of the adverse employment actions and indignities he forced plaintiff to endure. Defendant Budesheim was in fact the individual who was engaging in actionable defamation against plaintiff and continually and falsely bad-mouthed him in the eyes of the community. And, even though defendant Borough was aware of all of the above, it never did anything to either curb or cease defendant Budesheim's conduct.
- t. Indeed, defendant Budesheim continued to attack plaintiff and attempt to embarrass him at every conceivable opportunity. On September 17, 2012, defendant Budesheim questioned the Borough Council about an automobile accident which occurred in approximately July 2012. Although defendant Budesheim had received a monthly report in July when the accident had happened, he acted as though he had never been informed of the accident and questioned who had been involved in the accident and the Borough's responsibility to pay for the damage. One of defendant Budesheim's supporters, who lives across the street from plaintiff and was present at the council meeting,

made comments, including siren noises and yelled “crash!” when he saw plaintiff on the street.

- u. Shortly thereafter, on September 24, 2012, plaintiff was inside his home with his family when he noticed a loud noise of someone revving an engine. When plaintiff looked out his front window, he saw a known Budesheim supporter/planning board member sitting in his car in front of plaintiff’s house. Upon seeing plaintiff, the supporter took off speeding down the street. Feeling harassed and threatened by the continued attempts to intimidate, demean and damage his reputation both professionally and within the community, on September 28, 2012, plaintiff filed a formal complaint with the Borough of Riverdale detailing the allegations of harassment by defendant Budesheim and his supporter(s). To date, no corrective action has been taken in response to this complaint, and plaintiff continues to feel the effects of the hostile environment as put in place by defendant Budesheim.
- v. Most recently, and within the last several months, defendant Budesheim further retaliated against plaintiff as a result of his valid complaints of misconduct and harassment. Defendant Budesheim and a planning board member actually attempted to have malicious and bogus criminal charges and fines leveled against plaintiff during a council meeting on November 5, 2012, as a direct result of the complaint he filed against them with the department on September 28, 2012.
- w. The retaliation/discrimination/harassment of the plaintiff has gone so far as to result in plaintiff’s receiving several performance letters for allegedly not issuing enough summonses. Of course, state statute directly prohibits the defendants from mandating same.

8. As a result of the continued harassment and retaliation up to and including the date of the filing of this Complaint, plaintiff has experienced the failure to be promoted, as well as a clean and legal promotional process, as direct retaliation despite Chief Smith's repeated requests that an officer be promoted to the rank of lieutenant and/or captain and despite a real need for this position within the department. Additionally, plaintiff has experienced irreparable damage to his reputation which will continue to affect his employability and future promotions. Plaintiff has also experienced stress and anxiety which have led to difficulty sleeping, medical manifestations, and a disruption of family life.
9. Further, plaintiff is a public employee and suffered retaliation, adverse employment actions and a hostile work environment resulting in the denial of a rightful promotion. The defendant Borough has failed to take any real or proper corrective action, despite being put on notice of the years long and pervasive improper conduct of defendant Budesheim and have instead responded with efforts to harass, retaliate against and punish him for voicing valid concerns and for engaging in protected speech activities.
10. The course of conduct of the defendants and all the individuals named above violated the department's own written policies which contain a non-retaliation provision, and the CBA between the parties, and has caused plaintiff to suffer damages.

THE ABOVE IS MERELY MEANT TO BE ILLUSTRATIVE, NOT EXHAUSTIVE.

SPECIFIC CAUSES OF ACTION

A. (N.J. CONSCIENTIOUS EMPLOYEE PROTECTION ACT)

11. During the relevant time period mentioned herein, all procedural prerequisites of N.J.S.A. 34:19-1 et seq were satisfied.
12. During this same time period, the plaintiff “blew the whistle” relative to certain illegal/unethical, etc. behavior/conditions caused by defendant Budesheim and within the Riverdale Police Department. Plaintiff had a reasonable belief that the foregoing activity was violative of the NJCEPA.
13. Shortly after certain information was given to certain of his superiors, the plaintiff’s work environment became extremely hostile, eventually culminating in his being bypassed for promotions he rightfully earned, among other things.
14. By and through the actions described above, defendants retaliated against plaintiff because plaintiff objected to activity which he reasonably believed was fraudulent and/or illegal and/or unethical and/or in violation of Attorney General Guidelines which govern the offices of the County Prosecutors in the State of New Jersey, and/or in violation of public policy. Such retaliation violates the NJCEPA, N.J.S.A.34:19-1 et seq.

B. (NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-2)

15. By virtue of the above, plaintiff has been deprived of his freedom of speech and substantive due process and equal protection rights, privileges or immunities secured by the New Jersey Constitution, and/or his substantive due process and equal protection rights, privileges or immunities secured by the Constitution or laws of this State of New Jersey, and his exercise or enjoyment of those substantive rights,

privileges or immunities has been interfered with, by threats, intimidation or coercion by the individual defendants herein, who at all times were acting under color of law, all in violation of N.J.S.A.10:6-2.

C. (CIVIL CONSPIRACY)

16. Defendants and others at their direction/under their control conspired to violate plaintiff's statutory and state civil rights by acting in concert to create an environment of intimidation, retaliation and coercion, including the use of verbal abuse, as more fully described in this Complaint.

D. (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

17. The actions of defendant Budesheim herein were extreme and outrageous, and purposely done to inflict severe emotional distress upon the Plaintiff.

E. (INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS)

18. Based on all of the above, defendant Budesheim intentionally and with specific purpose interfered with the contractual relationship between the plaintiff and his employer, the Riverdale Police Department.

19. Accordingly, economic damages flowed as a result thereof and were experienced/ realized by the plaintiff.

F. (INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE)

20. Based on all of the above, all defendants intentionally and with specific purpose interfered with the plaintiff's prospective economic advantage he should have and was rightfully entitled to realize with his employer.

21. Accordingly, economic damages flowed as a result thereof and were experienced/ realized by the plaintiff.

G. (BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING IN ANY EMPLOYMENT CONTRACT)

22. All employment contracts, by their oral or reduced to writing, carry with them the inherent obligation for each party to deal fairly and in good faith with one another.

23. As a result of that alleged above, it is obvious that all defendants breached said duty, with damages flowing accordingly.

H. (NEGLIGENT SUPERVISION)

24. Defendant Borough of Riverdale was for years aware all of the above, as well as defendant Budesheim's illegal, unwarranted and retaliatory conduct toward the plaintiff as relayed hereinabove.

25. Accordingly, defendant Borough is liable in damages proximately caused by its own negligent supervision of defendant Budesheim, for all injuries caused by Budesheim's acts or omissions within the scope of his employment, resulting from Budesheim's incompetence, unfitness, ineptitude and/or ineffectiveness, as defendant Borough knew or clearly had reason to know of these attributes, and could have reasonably and easily foreseen such qualities of Budesheim.

I. (RETALIATION FOR UNION-RELATED ACTIVITIES)

26. Defendant Budesheim's purposeful and malicious interference with the plaintiff's rights pursuant to N.J.S.A. 34:13A-1 and N.J.S.A. 34:13A-5.4, among other relevant NJEERA provisions, resulted in compensatory and economic damages, whereby the defendants are liable to plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this honorable Court:

- (a) accept jurisdiction over this matter;
- (b) empanel a jury to hear and decide this matter;
- (c) award against all defendants compensatory and punitive damages in a manner determined by a jury, as well as his rightfully earned promotion to the next rank;
- (d) enjoin Defendants from engaging in further retaliation, and purge Plaintiffs' files of each and every memorandum which reflects retaliation animus;
- (e) award to plaintiff the reasonable attorneys' fees and costs of this litigation; and;
- (e) for such/any other relief that this Court deems equitable and just.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 4:35-1, the Plaintiff, Gregory Bogert, herein demands a trial by jury.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4 and Rule 4:5-1(c), Patrick P. Toscano, Jr., is hereby designated trial counsel for the Plaintiff, Gregory Bogert.

DEMAND FOR DISCOVERY OF INSURANCE INFORMATION


Pursuant to Rule 4:10-2(b), please comply with Plaintiff's request for all insurance information relative to coverage of all defendants for any verdict that may be entered herein.

CERTIFICATION

I hereby certify, upon information and belief, that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding.

I also certify, upon information and belief that at the present time no other action or arbitration with respect to the matter in controversy is contemplated. On the basis of the present knowledge, I am aware of no other party or parties who should be joined in this action.

Dated: October 2, 2013

By: 

Patrick P. Toscano, Jr.