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	:
	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION: BERGEN COUNTY
JOSEPH RIZZA,	:
	: CIVIL ACTION
Plaintiff,	:
	: DOCKET NO.: BER-L-8825-13
vs.	:
	:
BOROUGH OF DUMONT, BOROUGH OF	:
DUMONT POLICE DEPARTMENT,	:
& THE COUNCIL FOR THE	:
BOROUGH OF DUMONT AND,	:
ITS MEMBERS, <i>in their</i>	:
<i>official capacity only, &amp;</i>	:
THE MAYOR OF DUMONT, <i>in his</i>	:
<i>Official capacity only,</i>	: <b>SECOND AMENDED COMPLAINT</b>
JOSEPH L. FAULBORN, <i>in his</i>	:
<i>individual capacity and his</i>	:
<i>official capacity as Chief of</i>	:
<i>Police,</i>	:
	:
Defendants.	:
	:

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Plaintiff JOSEPH RIZZA ("Plaintiff"), by and through his attorneys, the Law Offices of Sciarra & Catrambone, L.L.C., as and for a Complaint for claims under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq. upon information and belief, alleges as follows:

6. Chief Faulborn is named herein in his individual capacity and in his official capacity as Chief of Police for the Borough of Dumont.
7. The Borough Council is comprised of six (6) duly elected Council Members and the duly-elected Mayor.
8. Chief Faulborn is the Chief of Police in Dumont and was involved in the promotional process.
9. The Borough of Dumont is formed under the "Borough" form of municipal government pursuant to N.J.S.A. 40A:60-1, et seq.

#### JURISDICTION

10. Jurisdiction is properly laid in this Court in that Defendants are subject to personal jurisdiction in the State of New Jersey, the events giving rise to the Complaint occurred within the County of Bergen, and Defendants are public bodies and employers located in the County of Bergen.

#### STATEMENT OF FACTS

11. Plaintiff has been employed as a Police Officer with the Department for 27 years.
12. During his tenure with the Department, he has performed his duties in a competent and efficient manner.
13. Plaintiff has been a Police Sergeant for approximately 10 years.
14. Plaintiff is a resident of the Borough of Dumont.

22. Additionally, the Borough Council voted to promote Centrello to the rank of Lieutenant effective October 3, 2013.
23. On October 3, 2013, the Police Chief informed Plaintiff he would not be promoted. There was no substantive discussion in the letter regarding Defendants' decision to promote Patrolman Centrello over Sgt. Rizza.
24. On or about October 9, 2013, Plaintiff met with Chief Faulborn and in order to inquire into the promotional process and the manner in which the Council chose to promote Centrello. Faulborn indicated that the candidates on the promotional list were presented to Mayor and Council based upon "rank order" from the interview. Faulborn recommended Centrello for promotion, and the Council voted to promote Centrello based upon that recommendation.
25. Plaintiff is the grievance officer for the Policeman's Benevolent Association, and was tasked with bringing grievances against management for violations of the collective bargaining agreement.
26. Plaintiff has been an active participant in the Policeman's Benevolent Association Local 377.
27. Plaintiff has been involved with the Police Promotional Committee, Contract Committee, Twelve (12) hour shift

36. After being denied promotion in 2013, Plaintiff spoke to the Defendants about why he was denied promotion.
37. The Chief told Plaintiff he was not promoted because he was "antagonistic" over the past ten years. The Chief was referring to the Plaintiff's work as a Union official.
38. Plaintiff also applied for a promotion to the rank of Captain. He was told that he ranked fourth (4<sup>th</sup>) out of four (4) applicants.
39. The promotional process executed by Defendants is arbitrary, unreasonable and/or capricious, in that it takes into account improper criteria, penalized Plaintiff for legitimate union activity, and fails to consider relevant criteria.
40. Specifically, consideration of the education level obtained by the candidates is inherently biased towards older, more senior officers who at the time of their hire, were not required by Defendants to obtain a 4-year college degree.
41. Additionally, Defendants' promotional process is inherently flawed as it has resulted in a Patrolman with no supervisory experience leapfrogging a Sergeant with over 10 years of supervisory experience.
42. Additionally, Plaintiff possesses police and law enforcement-related training and certifications superior to that of other promotional candidates for the rank of

(Violation of the NJCRA,  
N.J.S.A. 10:6-1 et seq.)

47. Plaintiff reassert and reallege each and every previous paragraph as if fully set forth and reiterated herein.
48. Defendants' actions are in violation of the New Jersey Civil Rights Act ("NJCRA") under N.J.S.A. 10:6-1 et seq.
49. Defendants' collective actions as enumerated above violate Plaintiff's rights to freedom of speech, freedom of association, freedom of assembly, procedural due process and/or substantive due process. Defendants are thus in violation of the New Jersey State Constitution of 1947, including Article I, (1), (5), (6), (18), and (19).
50. Defendants have deprived Plaintiff of rights, privileges and/or immunities secured by the New Jersey State Constitution. Through Defendants' illegal acts, Plaintiff's exercise and/or enjoyment of these rights, privileges or immunities have been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law.
51. The foregoing actions were taken pursuant to an official and extant policy and practice of Defendants, and were taken by individuals with final policymaking authority over such actions.

a. Awarding Plaintiff a promotion and/or instatement to the rank of Lieutenant, with all requisite salary, seniority, pension and other benefits with regard thereto back to the date of the promotions;

b. Awarding Plaintiff attorneys' fees and costs;

c. Pursuant to the applicable provisions New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq., awarding Plaintiff damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, as well as all commensurate pension benefits, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, any statutory fines, together with both pre-judgment and post judgment interest, compensation for the adverse tax consequences of a lump sum award, and attorneys' fees and costs of court;

d. For an Order of the Court retaining jurisdiction over this action until Defendants have fully complied with the Orders of this Court, and that the Court require Defendants to file such reports as may be necessary to supervise such compliance; and

e. For such other, further, additional and different relief as this Court deems just and proper.

## REPAYMENT AGREEMENT

THIS AGREEMENT dated May 17, 2016 by and between:

### **MUNICIPAL EXCESS LIABILITY FUND**

with offices located at:  
PERMA Risk Management Services  
9 Campus Drive, Suite 216  
Parsippany, NJ 07054

(Hereinafter "MEL")

and

### **BOROUGH OF DUMONT, a Municipal Corporation**

with offices located at:  
Municipal Building  
80 West Madison Avenue  
Dumont, NJ 07628

(Hereinafter "Municipality")

**WHEREAS**, the Municipal Excess Liability Fund ("MEL") has agreed under a Reservations of Rights to provide a defense to the Municipality in the matter entitled, Joseph Rizza v. Borough of Dumont, et al, Superior Court of New Jersey, Bergen County, Law Division bearing Docket No. BER-L-8825-13; and

**WHEREAS**, the MEL and the Municipality unequivocally agree to settle the aforementioned litigation in accordance with the terms of a Release and Waiver dated March 8, 2016 which includes certain rights and obligations of the Municipality; and

**WHEREAS**, as part of this settlement, the Municipality is responsible to pay \$65,580.57 towards its co-pay and deductible in accordance with the terms of its policy with the MEL; and

**WHEREAS**, due to the financial constraints on the Municipality, the parties hereby agree as follows:

1. The MEL has made payment in the amount of \$275,000 to the plaintiff as settlement of the matter.
2. The Borough has agreed to reimburse the MEL the sum of \$65,580.57, representing the Borough's co-pay and deductible towards the settlement, in three (3) installments of \$21,860.19 plus interest, with the first payment being made to the MEL on or before January 1, 2017 and subsequent payments to be made annually on January 1<sup>st</sup> until the full amount has been repaid to the MEL, together with interest equal to the rate of interest the MEL is currently receiving on its investments, which fluctuates, but which, at the moment is .87%.
3. In the event the Municipality fails to make timely repayment, the MEL reserves the right to call for payment in full for the balance of the

remaining payments as well as charge interest pursuant to the New Jersey Rules of Court and offset or withhold any dividends paid to the Municipality by way of the MEL and/or its related entities that which the Municipality is an insured.

4. In the event that payment is not made by the Municipality, the MEL reserves the right to pursue payment and all costs and attorneys fees associated with any action or effort made to secure repayment of such funds.
5. In accordance with this Repayment Agreement, the parties hereby stipulate, understand and have been advised by their respective legal counsel that there is no dispute whatsoever of the fact that the parties have agreed to settle the aforementioned litigation for the amount of \$275,000 of which the Municipality will owe the MEL \$65,580.57 for co-pays and deductibles, to be reimbursed to the MEL as outlined in paragraph 1 above.
6. The Release and Waiver between the plaintiffs and the Municipality in the matter of Joseph Rizza v. Borough of Dumont, Superior Court of New Jersey, Bergen County, Law Division bearing Docket No. BER-L-8825-13 is incorporated herein as a document evidencing settlement and the payment obligation of the parties herein.
7. If the Municipality's membership terminates with the Bergen County Joint Insurance Fund, then any outstanding balance accelerates and payment is due to the MEL immediately.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their duly authorized proper officers and their proper seals affixed hereto the day and year first written.

ATTEST:

MUNICIPAL EXCESS  
LIABILITY FUND

Jane Pesto

By:

D. N. Gill

BOROUGH OF DUMONT

Juan Connelly

By:

Jan J. Kelly

