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FILED
JUL 18 2014
CIVIL DIVISION
SUPERIOR COURT-CAPE MAY COUNTY

Robert Hartman
Plaintiff,

v.

Township of Lower
Defendant.

SUPERIOR COURT OF NEW JERSEY
CAPE MAY COUNTY
LAW DIVISION

Docket No. *CPM-2-326-14*

COMPLAINT AND JURY DEMAND

Robert Hartman, residing in the Township of North Cape May, County of Cape May, New Jersey, by way of Complaint, says:

COUNT ONE

1. At all times relevant hereto, Plaintiff Robert Hartman (hereinafter "Plaintiff") is employed by the Township of Lower as a Police Officer with the Lower Township Police Department.

2. At all times relevant hereto, the Township of Lower (hereinafter "Township") was and is an incorporated Township of the County of Cape May, with its offices located at 2600 Bayshore Road, Villas, New Jersey.

3. On or about 2006, the Township individually and by and through its Police Department, enacted a policy providing for a designation of an employee for "light duty" assignments in the case of illness or injury.

4. On or about March 16, 2013, Plaintiff requested, applied for, and was approved for a light duty assignment.

5. On April 16, 2013, the Lower Township, through its Chief of Police, Brian Marker, unilaterally determined that effective April 22, 2013, that employees of the Police Department would no longer be permitted to be designated for "light duty" assignments.

6. The elimination of light duty assignments by the Defendant Township was targeted at the Plaintiff herein specifically to require the Plaintiff to utilize accumulated leave time which had been duly accrued by Plaintiff in accordance with the Collective Bargaining Agreement then in effect between PBA Local 59 and the Township.

7. Furthermore, Plaintiff had received full medical clearance from his own physician to return to full duty on April 12, 2013.

8. Although Plaintiff was fully able to perform all job duties and functions of his office, and although he had been fully approved for a light duty assignment, the Defendant Township wrongfully withheld Plaintiff's accumulated leave from the date of April 17, 2013 through June 17, 2013.

9. Without authorization or legal justification, the Defendant Township wrongfully utilized Plaintiff's accumulated leave time until the Defendant Township determined that he could return to full duty.

10. On June 19, 2013, the Defendant Township determined that Plaintiff was permitted to return to full active duty.

11. Following Plaintiff's return to full active duty with the Lower Township Police Department, the Police Department reinstated its previous policy with regard to the availability of light duty to its employees.

12. As a direct and proximate result of the wrongful and illegal acts of the Defendant Township, the Defendant Township has been unjustly enriched by wrongfully removing a legally accrued benefit from the Plaintiff by specifically targeting Plaintiff for the removal of the availability of light duty, and thereafter reinstating that availability following Plaintiff's reinstatement to full duty.

13. As a direct and proximate result of the actions of the Defendant Township, which unjustly enriched the Township, the Plaintiff has been caused to suffer damages in the form of lost accrued leave time, the monetary value of the lost accrued leave time, damages, punitive damages, interest, attorney's fees and costs of suit.

WHEREFORE, the Plaintiff, Robert Hartman, demands judgment against Defendant, Township of Lower, for the lost accrued leave time, the monetary value of the lost accrued leave time, damages, punitive damages, interest, attorney's fees and costs of suit.

COUNT TWO

1. Plaintiff repeats the allegations set forth in each paragraph of Count One as if fully set forth herein at length.

2. On April 17, 2013, Plaintiff received notification from Chief of Police, Brian Marker. Said communication set forth threats and intimidation to coerce Plaintiff and to otherwise exact a monetary penalty from him without legal basis.

3. The actions of the Defendant Township were contrary to N.J.S.A. 40A:14-128 and contrary to N.J.S.A. 40A:14-147 individually and when read *in para materia*.

4. Said actions taken by Defendant and its agents, against Plaintiff, were negligent, careless, reckless, willful, wanted, and otherwise in reckless disregard of the rights of the Plaintiff.

5. As a direct and proximate result of the actions of the wrongful and illegal acts of Defendant Township, the Plaintiff has been caused to suffer damages in the form of lost accrued leave time, the monetary value of the lost accrued leave time, damages, punitive damages, interest, attorney's fees and costs of suit.

WHEREFORE, the Plaintiff, Robert Hartman, demands judgment against Defendant, Township of Lower, for the lost accrued leave time, the monetary value of the lost accrued leave time, damages, punitive damages, interest, attorney's fees and costs of suit.

COUNT THREE

1. Plaintiff repeats the allegations set forth in each paragraph of Counts One and Two as if fully set forth herein at length.

2. The actions of Defendant Township, acting through its agents, servants and/or employees, of taking Plaintiff's accrued leave time and converting the same to the benefit of the Defendant Township constitutes the tort of conversion.

3. The elimination of "light duty," which targeted Plaintiff for the period of time wherein he was fully approved for light duty by the Lower Township Police Department, and thereafter restoring the availability of light duty to members of the Lower Township Police Department following Plaintiff's return to full active duty, constituted a sham and fraud.

4. Furthermore, the actions of Defendant Township by and through its agents, servants and/or employees, to cause threats and intimidation to be leveled at Plaintiff with regard

to his light duty and leave status, further caused the wrongful loss of Plaintiff's accrued leave time.

5. The actions of Defendant by and through its agents, servants and/or employees, was negligent, careless, reckless, willful, wanted, and otherwise in reckless disregard of the rights of the Plaintiff.

6. All actions as set forth herein by Defendant were engaged in under the color of State law and in violation of the law and Constitution of the State of New Jersey.

7. As a direct and proximate result of the actions of Defendant Township, the Plaintiff has been caused to suffer damages in the form of lost accrued leave time, the monetary value of the lost accrued leave time, damages, punitive damages, interest, attorney's fees and costs of suit.

WHEREFORE, the Plaintiff, Robert Hartman, demands judgment against Defendant, Township of Lower, for the lost accrued leave time, the monetary value of the lost accrued leave time, damages, punitive damages, interest, attorney's fees and costs of suit.

WEIR & PARTNERS LLP
A Pennsylvania Limited Liability Partnership



JOHN C. EASTLACK, JR., ESQUIRE

Dated: July 16, 2014

CERTIFICATION PURSUANT TO RULE 4:5-1

I, John C. Eastlack, Jr., Esq. attorney for Plaintiff in the within action, hereby certify that to the best of my knowledge, the matter in controversy is not the subject of another pending or contemplated court action or arbitration, nor should any other persons be joined in this litigation.

JURY TRIAL DEMAND

PLEASE TAKE NOTICE that plaintiff hereby demands a trial by jury.

CERTIFICATION PURSUANT TO R. 1:38-7

I hereby certify that confidential personal identifiers have been redacted from all documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

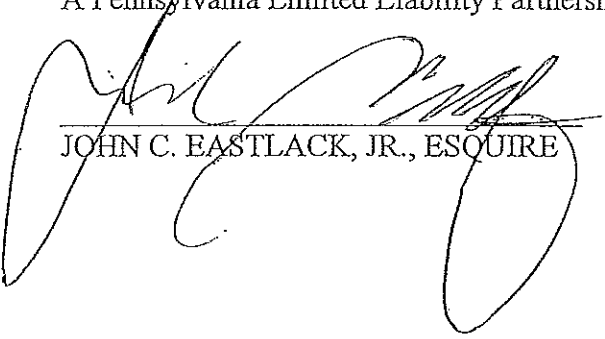
NOTICE PURSUANT TO THE RULES

TAKE NOTICE that the undersigned attorney, counsel for the Plaintiff, hereby demands, pursuant to the Rules 1:5-2(a) and 4:17-4(c) that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answers to interrogatories received from any party upon the undersigned attorney and TAKE NOTICE that this is a continuing demand.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:5-1(c), John C. Eastlack, Jr., is hereby designated trial counsel for Plaintiff.

WEIR & PARTNERS LLP
A Pennsylvania Limited Liability Partnership



JOHN C. EASTLACK, JR., ESQUIRE

Dated: July 16, 2014

SETTLEMENT AGREEMENT

AND

GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter "this Agreement") dated February 17, 2016, is entered into by and between the Plaintiff, **ROBERT HARTMAN**, (hereinafter "Plaintiff") and the Defendants, **TOWNSHIP OF LOWER, SUMMIT RISK SERVICES AND XL INSURANCE COMPANY**, (hereinafter "Defendants"); and

WHEREAS, Plaintiff filed a Complaint against Defendants in the Superior Court of New Jersey, Law Division, Cape May County, entitled Robert Hartman, Plaintiff, v. Township of Lower, Defendant, bearing Docket No. CPM-L-326-14, (hereinafter the "Action"); and

WHEREAS, the parties settled all controversies between them, including Plaintiff' claims in the Action, including any and all related claims which could have been asserted in the Action as of the effective date of the settlement herein, whether such claims are presently known or unknown; and

WHEREAS, all parties acknowledge that the merits of the controversy are in dispute and have not been finally adjudicated, and that no party admits any liability to any other, but all have reasons to desire amicable resolution of the matter, including to avoid the costs of litigation; and

NOW, for and in consideration of the agreements, covenants and conditions herein contained, the adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, the parties agree as follows:

1. TERMS OF SETTLEMENT:
 - (a) The Defendant, Township of Lower, agrees to restore any and all vacation/leave time utilized by the Plaintiff as a result of being placed on administrative leave, which forms the basis of this action. The restoration of time is in the amount of 340 hours;
 - (b) The Defendant, Township of Lower, agrees to remove the report of Dr. Matthew Guller from the plaintiff's personnel/disciplinary file in connection with this matter; and
 - (c) The payment to the Firm of Weir & Partners, LLP in the amount of \$15,000.00 representing litigation expenses and attorney's fees.

- (d) Plaintiff agrees that, but for this Settlement Agreement and General Release, he would not be entitled to the aforesaid payment and other terms of settlement described herein.

2. Dismissal of Action: Plaintiff understands and agrees that counsel for the Defendant will file with the Superior Court of New Jersey the executed original Stipulation of Dismissal with Prejudice with regard to the Action. The Parties understand and agree that the terms of the aforesaid dismissal is expressly incorporated by reference within this Settlement Agreement and General Release as if fully set forth herein.

3. Release in consideration for the payment and other consideration provided for in this Agreement: In consideration of the payment and other consideration provided for in this Agreement, Plaintiff personally 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, Township of Lower, Summit Risk Services and XL Insurance Company, its agents, representatives and employees (present and former), and their respective successors and assigns, heirs, executors and personal or legal 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, Robert Hartman's employment and/or association with the Defendant, Township of Lower. Plaintiff specifically waives, releases and gives up any and all claims arising from or relating to the incident with the Defendants based upon any act, event or omission occurring before the date of execution of this settlement 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. Plaintiff specifically waives, releases and gives up any and all claims arising from or relating to his employment and/or relationship and/or association with defendants, based upon any act, event or omission occurring before the effective date of settlement including but not limited to any claim that was asserted or could have been asserted under any Federal and/or State status regulations and/or common law, expressly including, but not limited to, any potential claim relating to the following (along with amendments therefore):

- 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 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. **No Admission of Liability:** By entering into this settlement agreement, defendants do not acknowledge any wrongdoing or liability for the allegations set forth in plaintiff's Complaint. To the contrary, defendants believe that they acted in accordance with state and federal law and that all their actions were in accordance with accepted business practices.

5. **Entire Agreement.** This Agreement contains the sole and entire Agreement between the Parties hereto and fully supersedes any and all prior agreements and understanding pertaining to the subject matter hereof, and is intended to memorialize the settlement of plaintiff's claims. Plaintiff represents and acknowledges that, prior to executing this Agreement, he consulted with their attorney and that he had ample time to do so, and that he obtained the advice of their counsel prior to making the decision to execute this Agreement, and that he have not 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.

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

7. **Applicable Law:** This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey. The parties agree that any action to enforce or interpret this Agreement shall only be brought in a court of competent jurisdiction in the State of New Jersey, which the parties hereby acknowledge and agree to be the Superior Court of New Jersey, Law Division, Cape May County.

8. **Effective Date:** This Agreement will become effective on the date on which all parties to this Agreement have executed this Settlement Agreement and General Release.

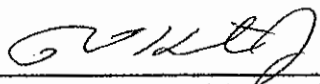
9. This Settlement and General Release is not intended to be used and shall not be used as evidence or for any other purpose in any other action or proceeding, other than evidence of the parties' compromise as set forth herein or to enforce the terms of this Settlement Agreement and General Release.

10. BY SIGNING THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE, PLAINTIFF ACKNOWLEDGES:

- a. He has read it;
- b. He understands it and knows he is giving up important rights;
- c. He agrees with everything in it;
- d. His attorney negotiated this Settlement Agreement and General Release with his knowledge and consent;
- e. He has been advised to consult with his attorney prior to executing this Settlement Agreement and General Release, and have in fact done so; and
- f. He has signed this Settlement Agreement and General Release knowingly and voluntarily.

IN WITNESS WHEREOF, the Plaintiff have hereunto set their hands.

DATED: 02/25/11

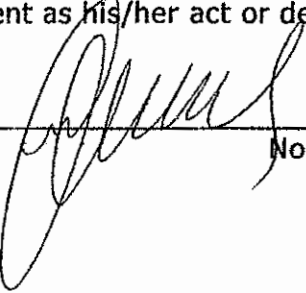


ROBERT HARTMAN, PLAINTIFF

STATE OF NEW JERSEY :

COUNTY OF Cape May **: SS:**

I certify that on Feb. 23rd, 2016, **Robert Hartman**, personally came before me and acknowledged under oath, to my satisfaction, that this person is named in and personally signed this document and signed, sealed and delivered this document as his/her act or deed.



Notary Public

<p>PETYA PLAMENOVA STOEVA Notary Public State of New Jersey My Commission Expires Aug. 11, 2019</p>
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