



2. Defendant Mullica Township is a municipality in the State of New Jersey in Atlantic County located at 4528 White Horse Pike, Elwood, New Jersey 08217.

3. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals and/or entities who, on the basis of their direct acts or on the basis of *respondeat superior*, are answerable to the plaintiff for the acts set forth herein.

### **General Allegations**

4. Plaintiff began working for Mullica Township in the Mullica Township Public Works Department in or around December 13, 2011 as a laborer.

5. Plaintiff has four co-workers in the Public Works Department who are all machine operators and are all white.

6. Plaintiff's supervisor, Steven Sperlak is also a white male.

7. Upon information and belief, the machine operators perform the same duties as the plaintiff as a laborer; however, they are paid more than him.

8. Three of the four machine operators are also full-time employees while the plaintiff is a part-time employee.

9. Plaintiff is of mixed race, both African-American and Puerto Rican.

10. From the beginning of the plaintiff's employment until approximately September 2012, Sperlak would refer to the plaintiff two or three times a day as Hector, Carlos, Jesus and other traditionally Hispanic names instead of the plaintiff's actual name.

11. In September 2012, the plaintiff stated to Sperlak that he did not appreciate being called other names and that his name was "not that hard to remember."

12. In or around the end of October, 2012, while at work, the plaintiff was riding in a Township truck with two white co-workers Ronald Kahn and Carl, who no longer works at the Township.

13. The three individuals took a 15 minute break at a deer hunting club in the Township when the men saw deer hanging implements that were stationed outside of the hunting club.

14. The plaintiff asked Carl what the deer hanging implements were for and Carl responded that they were to “hang you with.”

15. The plaintiff then looked at Carl and Carl continued that the deer hanging implements were “to hang niggers.”

16. Later that same day, the plaintiff went to Sperlak and complained about the comments that Carl made and told Sperlak that he wanted Carl’s comments to stop.

17. In or around early November, 2012, a meeting was held with the plaintiff along with the Public Works supervisor at the time, Matthew Ayers, and the Township clerk, Kim Johnson, regarding the discriminatory comments.

18. During this meeting, the plaintiff told both Johnson and Ayers about the hanging comment and the nigger comment.

19. Johnson responded that the plaintiff should see the way the females act in the office and then asked the plaintiff “What do you want me to do?”

20. The plaintiff stated that he wanted for the racist comments to stop and wanted the individuals who worked for the Public Works Department to stop using that type of language.

21. To the plaintiff’s knowledge, nothing was ever done about his report of this conduct, and no investigation was ever conducted.

22. The day after the plaintiff had this meeting with Ayers and Johnson, Sperlak told the plaintiff that he was upset because he was not invited to the meeting.

23. Later on that day, Sperlak began to make jokes about hangings.

24. Sperlak continued to make these jokes about hangings for three days until the plaintiff asked him to stop making hanging jokes because they offended him.

25. In the end of November, 2013, the plaintiff was working with Kahn and the two of them were putting gas into the trucks for the job.

26. In order for employees to put gas into the trucks, the employees needed a code.

27. To the plaintiff's knowledge, all of the other employees had a code to use the gas pumps except him.

28. The plaintiff asked Kahn why it was that the other employees had a code but he did not and Kahn responded "It is because you're Puerto Rican and you might steal gas."

29. During the entire time that the plaintiff worked for the Municipality, Kahn would make derogatory comments on a daily basis about African-Americans and Mexicans.

30. In the summer of 2013, the plaintiff applied for an open full-time machine operator position.

31. Instead of hiring the plaintiff, the defendant hired a white male who had previously quit a position with the Township.

32. Shortly after the plaintiff learned that he was not going to receive the full-time machine operator position, he was supervising individuals along with Kahn who were performing community service to satisfy court obligations.

33. During this supervising activity, Kahn said to the plaintiff that the plaintiff would take the "black guys" with him and that Kahn would take the "white guys."

34. One of the day workers that was in the plaintiff's group told the plaintiff that he heard Kahn stating "I heard that that spic didn't get the promotion."

35. When the plaintiff confronted Kahn with this comment, Kahn stated "Those crack heads don't know what they're talking about, they're lying."

36. On or around August 26, 2013, the plaintiff sent a letter to his union rep Randy complaining about the continued discrimination that he was being subjected to by Kahn and Sperlak among others.

37. To the plaintiff's knowledge nothing has ever been done about his complaints of discrimination, and no investigations have been conducted.

38. All harassment claimed herein is either severe and/or pervasive.

39. All harassment towards plaintiff herein is claimed to be because of race.

40. To the extent that all acts of harassment toward plaintiff are motivated by different protected categories, all harassment is, as a paradigm, actionable.

41. All harassment subjected to by plaintiff is such that a reasonable African-American and/or Hispanic male in the same or similar circumstances as the plaintiff would have considered the workplace to have been altered to have been hostile and/or intimidating and/or abusive.

42. All harassment, having been conducted by members of upper management, to wit, is such that the Municipality was aware of its and/or own conduct and failed to stop same.

43. In addition, in the alternative, defendant was negligent in failing to promulgate policies deterring and/or to actually deter such conduct.

44. In addition, because members of upper management engaged in the conduct, and because any and all of the conduct was especially egregious, punitive damages are appropriate as to all counts.

45. In addition, after being made aware of the discrimination and harassment, defendants failed to take proper remedial measures to stop the discrimination and harassment.

46. The discrimination and harassment directed at the plaintiff was undertaken on a regular and continuing basis from as early as 2011 and continues today.

47. The conduct was so regular and reoccurring, that the equitable doctrine of continuing violations allow the plaintiff to capture within the body of this litigation all incidents of harassment, even those that predate the two year filing period prior to the filing date of this Complaint.

48. The discrimination and harassment was also hostile, intimidating and abusive inasmuch as it was discriminatory on its face.

49. Plaintiff claims additional protected status as an individual who advanced his LAD rights and/or who made complaints about the racial discrimination and harassment that he was being subjected to.

50. Plaintiff was subjected to adverse employment actions and harassment as a result of making these complaints and engaging in protected activity.

51. The adverse employment actions include, but are not limited to, the failure to hire and/or promote the plaintiff.

52. The plaintiff's engagement in protected activity was a motivating factor in the adverse employment actions that happened subsequent to the plaintiff engaging in protected activity.

53. Plaintiff's membership in one or more of the protected categories set forth above was a determinative and/or motivating factor in the discrimination and/or harassment and/or retaliation that he was subjected to and the adverse employment actions that he was subjected to.

54. Because the discrimination, harassment and retaliation were knowing, intentional and purposeful, punitive damages are warranted, because the conduct was undertaken by members of upper management.

55. To the extent there is any "mixed-motive," plaintiff need only show that a determinative and/or motivating factor in the conduct directed towards him was because of his membership in one or more of the protected categories set forth above.

56. Plaintiff has been caused to suffer both economic and non-economic losses as a result of the discrimination, harassment and retaliation that he was subjected to.

## COUNT I

### **Discrimination Based on Race Under the LAD**

57. Plaintiff hereby repeats and realleges paragraphs 1 through 56, as though fully set forth herein.

58. Plaintiff was subjected to discrimination because of his race that had an adverse affect on plaintiff's employment including, but not limited to, plaintiff being denied a promotion and/or position.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

## COUNT II

### Workplace Harassment Under the LAD Based on Race

59. Plaintiff hereby repeats and realleges paragraphs 1 through 58, as though fully set forth herein.

60. The conduct set forth above constitutes harassment based on race and is the responsibility of the defendant, both in compensatory and punitive damages, for the reasons set forth above.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

## COUNT III

### Retaliation Under the LAD

61. Plaintiff hereby repeats and realleges paragraphs 1 through 60, as though fully set forth herein.

62. Plaintiff engaged in protected activity and was subjected to adverse employment actions for engaging in such in violation of the LAD.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

## COUNT IV

### **Retaliatory Harassment Under the LAD**

63. Plaintiff hereby repeats and realleges paragraphs 1 through 62, as though fully set forth herein.

64. The conduct set forth above constitutes harassment based and retaliation for engaging in protected activity and is the responsibility of the defendant, both in compensatory and punitive damages, for the reasons set forth above.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

## COUNT V

### **Request for Equitable Relief**

65. Plaintiff hereby repeats and realleges paragraphs 1 through 64 as though fully set forth herein.

66. Plaintiff requests the following equitable remedies and relief in this matter.

67. Plaintiff requests a declaration by this Court that the practices contested herein violate New Jersey law as set forth herein.

68. Plaintiff requests that this Court order the defendants to cease and desist all conduct inconsistent with the claims made herein going forward, both as to the specific plaintiff and as to all other individuals similarly situated.

69. To the extent that plaintiff was separated from employment and to the extent that the separation is contested herein, plaintiff requests equitable reinstatement, with equitable back pay and front pay.

70. Plaintiff requests, that in the event that equitable reinstatement and/or equitable back pay and equitable front pay is ordered to the plaintiff, that all lost wages, benefits, fringe benefits and other remuneration is also equitably restored to the plaintiff.

71. Plaintiff requests that the Court equitably order the defendants to pay costs and attorneys' fees along with statutory and required enhancements to said attorneys' fees.

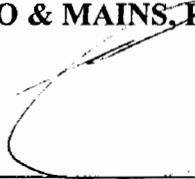
72. Plaintiff requests that the Court order the defendants to alter their files so as to expunge any reference to which the Court finds violates the statutes implicated herein.

73. Plaintiff requests that the Court do such other equity as is reasonable, appropriate and just.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

**COSTELLO & MAINS, P.C.**

Dated: 3/6/14

By:   
Kevin M. Costello

**DEMAND TO PRESERVE EVIDENCE**

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

**COSTELLO & MAINS, P.C.**

By: \_\_\_\_\_

Kevin M. Costello

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

**COSTELLO & MAINS, P.C.**

By: \_\_\_\_\_

Kevin M. Costello

**RULE 4:5-1 CERTIFICATION**

1. I am licensed to practice law in New Jersey and am responsible for the captioned matter.
2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

**COSTELLO & MAINS, P.C.**

By: \_\_\_\_\_  
**Kevin M. Costello**

**DESIGNATION OF TRIAL COUNSEL**

Kevin M. Costello, Esquire, of the law firm of Costello & Mains, P.C., is hereby-designated trial counsel.

**COSTELLO & MAINS, P.C.**

By: \_\_\_\_\_  
**Kevin M. Costello**