

RECEIVED & FILED

MAY 21 2013

Sussex County LAW Division

SCIARRA & CATRAMBONE, L.L.C.  
1130 Clifton Avenue, Suite #3  
Clifton, New Jersey 07013  
(973) 242-2442  
(973) 242-3118 [Facsimile]  
Attorney for Plaintiff  
Mark Nelson

---

MARK NELSON,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: SUSSEX COUNTY
	:	
Plaintiff,	:	CIVIL ACTION <b>SSX-L 266-13</b>
	:	
vs.	:	DOCKET NO.: SSX-L-_____ -13
	:	
TOWNSHIP OF SPARTA,	:	
	:	
	:	<u>COMPLAINT &amp; JURY DEMAND</u>
Defendant.	:	

---

Plaintiff Mark Nelson ("Plaintiff"), by and through his attorneys, Law Offices of Sciarra & Catrambone, LLC, as and for a Complaint, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action brought by Plaintiff against his employers, the Township of Sparta ("Defendant" or "the Township"). Plaintiff seeks judgment of this Court against Defendant for relief permitted under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. ("CEPA").

**PARTIES**

2. Plaintiff is an employee of Defendant within the meaning of CEPA.
3. At all times relevant to this Complaint, Defendant was the employer within the meaning of CEPA.
4. Defendant Township of Sparta is a political sub-division, and a municipal and/or public entity located in the County of Sussex, State of New Jersey.

**JURISDICTION**

5. Jurisdiction is properly laid in this Court in that Defendant is subject to the personal jurisdiction in the State of New Jersey, County of Sussex, and the events giving rise to this Complaint occurred in Sussex County, New Jersey.

**STATEMENT OF FACTS**

6. Defendant currently employs Plaintiff as a Pumping Station Operator in the Township's Municipal Utilities Department ("the Department"). Plaintiff has been employed by Defendant since in or about 1993.
7. Plaintiff holds a Bachelor of Science Degree from the State University of New York, which he obtained in September 1988. He also holds certifications from the New Jersey State Department of Environmental Protection.

8. Plaintiff is a military veteran. He received an honorable discharge from active duty for the United States Navy after serving for approximately six years from in or about September 1982 until in or about September 1988. During his enlistment, he served for approximately four (4) years as a Ship Nuclear Propulsion Plant Operator.
9. Plaintiff, at all times during his employment with Defendant, has performed his duties in a competent, thorough manner. He has no significant disciplinary history and had never been suspended from his duties prior to June 2012.
10. During times relevant to this Complaint, Plaintiff's direct supervisor is/was Michael Sportelli ("Sportelli"), and the Sparta Municipal Utilities Director is/was Phillip Spaldi ("Spaldi"). The Township Manager is/was David Troast ("Troast").
11. The Township's Department of Utilities is responsible for water distribution and treatment for residents of the Township of Sparta. The Department also services citizens of other Townships surrounding Sparta, including but not limited to Hardyston Township and Byram Township.
12. In or about the summer of 2010, Plaintiff complained to his supervisors and expressed concern about the destruction of a facility maintained and/or utilized by Defendant. Plaintiff expressed his concerns in writing and orally to his supervisors, including but not limited to Sportelli and

Spaldi.

13. Specifically, Plaintiff advised his supervisors that the Commons Pump House should be converted to a "booster station" for providing water to the Sussex Mills area of the Township. Plaintiff reasonably believed that the conversion would be cost-efficient, would be an effective utilization of public municipal funds, and would advance public safety and welfare.
14. As of the time period in or around Summer 2010, the water pressure systems for the Intermediate, Windybush, and Alpline areas of the Township could receive water from Germany Flats through their booster pumps. However, the Sussex Mills areas could not.
15. Plaintiff reasonably believed that establishing a booster station for Sussex Mills would have resulted in: [a] the Township's water supply system being more reliable and efficient, by, for example, increasing water supply to allow for better water pressure in Sussex Mills during summer months, thereby reducing the possibility of water shortages to citizens of the Township; [b] increased fire protection for Township residents; [c] a reduction of overall electrical charges for the Township; & [d] a reduction of the water pressure for the Commerce Park area of the Township from 200 to 150 psi when placed on the Lake Mohawk pressure system, as well as a reduced risk of water main failure for the Commerce Park area due to it being hooked up to the Lake Mohawk

pressure system, as opposed to being hooked up to the Sussex Mills pressure system, which would increase the risk of water main failure for the Commerce Park area.

16. Every three (3) years, the Township, by way of the Utilities Department, is required to submit to the State of New Jersey's Department of Environmental Protection ("NJ DEP"), lead and copper testing samples for the Township's water supply. It is Plaintiff's good faith understanding that the presence of copper in drinking water has been attributed to serious diseases in humans, including but not limited to serious stomach and intestinal distress, liver, and/or kidney damage.
17. During the 2010 testing cycle, in or about June of that year, Spaldi directed Plaintiff to increase the lead and copper treatment dosage to be placed in the water just before the samples were taken for testing, in order to get "good", or acceptable, sampling results with regard to lead and copper levels in the water. Plaintiff refused to do so. Further, Plaintiff advised Sportelli that it would be improper to do so. Plaintiff told Sportelli that the water sample sent to the lab to be tested should be consistent with the water being distributed to the public.
18. As a result, Sportelli was, and ever since has been, assigned to collect the water samples to be submitted to the State DEP. Defendants have intentionally sought to exclude Plaintiff from the lead and copper testing procedures due to his refusal to

participate in activities which he reasonably believed were in violation of State statutory and/or regulatory requirements regarding contaminants present in water supplied to the public.

19. Additionally, in or about November 2010, Plaintiff complained about and expressed his concerns to his superiors, including but not limited to Sportelli, regarding the lead and copper treatment mechanisms being turned off at the Township's Newstar and Buttonwood Pump Houses. Plaintiff believed that resulted in an increased likelihood of contaminated water being present in the Township's water supply to its residents.
20. Plaintiff advised Sportelli that the Township could not meet the lead and copper requirements, which are promulgated pursuant to law and/or regulation, without the treatment being conducted at those two pump houses. Sportelli dismissed Plaintiff's concerns and sarcastically responded to Plaintiff that "we don't put the lead and copper in the water," or words to that effect.
21. On or about April 17, 2011, Plaintiff's concerns which he relayed to his supervisors in or about the Summer of 2010 came to fruition. Specifically, the Sussex Mills water tank became empty due to the unavailability of a Commerce Park booster pump. The tank would not have gone empty if the Commons Booster station had still been in place.
22. On August 1, 2011, Sportelli advised Plaintiff that the

Township was forced to spend approximately \$100,000.00 to replace the well pumps at Commerce Park, in order to restore, improve, and increase water supply.

23. On that same date, Plaintiff contacted Spaldi and left a voice-mail to advise that Sportelli had been verbally abusive towards and had screamed at Plaintiff. Spaldi did not contact Plaintiff in response thereto. Instead, Spaldi played Sportelli the voice-mail and told Sportelli to write Plaintiff up any time he perceived an issue with Plaintiff.
24. Sportelli then began to systematically write up Plaintiff for purported job performance deficiencies, by way of six separate memos dated August 1<sup>st</sup>, August 12<sup>th</sup>, August 12<sup>th</sup>, August 15<sup>th</sup>, November 1<sup>st</sup>, and December 8<sup>th</sup> 2011.
25. Instead of being addressed to Plaintiff, the six memos, all entitled "Mark Nelson Performing Job Duties", were all addressed to Spaldi and not contemporaneously presented to Plaintiff. Thus, instead of being good faith attempts to address performance-related issues with an 18-year employee with a overall positive employment record, Sportelli's memos were issued in retaliation for Plaintiff's whistle-blowing activities outlined above.
26. Plaintiff did not receive copies of the above-referenced "write ups" until December 12, 2011, by way of separate memo to Plaintiff from Spaldi. In that memo, Spaldi advised Plaintiff that "your continued job performance will be

monitored closely."

27. On or about September 6, 2011, Sportelli directed Plaintiff to climb the Alpine Water Tank within the Township during a lightning storm to fix a purported communication issue, thereby placing Plaintiff's health and safety at risk. Sportelli also directed Plaintiff to work on the electrical panel at the tank during the storm.
28. Additionally, on September 13, 2011, Sportelli advised Plaintiff that he would have to renew his certifications required to perform his job duties on his own time, even though in the past Plaintiff was permitted to do so during his work hours.
29. Further, on October 5, 2011, Sportelli directed Plaintiff to do an "improper confined space entry" at Tomahawk Lake, contrary to proper procedures and regulations, thereby compromising Plaintiff's safety because the areas were not properly tested and ventilated. Plaintiff's supervisors improperly required Plaintiff to do other confined space entries on other occasions, including but not limited to on or about January 5, 2012 and on or about March 7, 2012.
30. In or about January 2012, Sportelli and Spaldi began photocopying, or directing the copying of, Monthly Safety Inspection Sheets which were required to be prepared by the Utilities Department for the purpose of maintaining its insurance policy. Sportelli and Spaldi submitted those

reports by photocopying the same inspection report and inserting a date, instead of ensuring that they were prepared and submitted contemporaneously by the Department's employees for each respective month.

31. In fact, on one occasion, Sportelli left for Plaintiff, to complete on a Sunday, a stack of sheets entitled "Water and Sewer Department Monthly Safety Checklist", which included categories such as "building, housekeeping, and ventilation", "hazardous material", "pumps and equipment", "protection" and "first aid kits available". A yellow post-it tab was placed on top of the stack which stated in Sportelli's handwriting "Mack, New Insurance sheets to do. Don't Date Them!" Plaintiff advised Sportelli that it would be inappropriate to submit the identical inspection sheets for multiple months and for Sportelli or someone else to merely fill in the dates. Instead, the monthly safety checklists were required to be filled out contemporaneously for each month, not before or after the fact.
32. Also, Plaintiff noted that on February 23<sup>rd</sup> and 24<sup>th</sup> 2012, non-compliant lead and copper samples of the Township's water supply were taken at the Township's Newstar and Buttonwood pressure areas. Specifically, those samples which were collected were not to be used for reporting purposes.
33. On February 29, 2012, Plaintiff sent an email to Township Manager David Troast with the subject "ongoing fraud, waste

and conspiracy at the Sparta Township Water Utility".

Plaintiff's email states as follows:

*I have pictures and documentation of ongoing fraud, waste, and conspiracy at the Sparta Water Utility that I believe you would like to see. I have also been a victim of retaliation. I have tried several times to have a logical conversation with both Mike [Sportelli] and Phil [Spaldi]. I am respectfully requesting a private meeting with you. My cell phone number is [omitted]. Sincerely, Mark Nelson.*

34. Plaintiff advised Sportelli that he had sent the February 29<sup>th</sup> 2012 email to Troast. Additionally, Plaintiff repeatedly requested to Sportelli that Plaintiff be permitted to meet with Township Manager Troast so that he could discuss and provide documentation of his complaint and concerns raised in his February 29<sup>th</sup> 2012 email.
35. Instead, within two months of the email, Sportelli again began writing up Plaintiff for purported work deficiencies, by way of two (2) memos to Spaldi dated April 30<sup>th</sup> and May 3<sup>rd</sup> 2012 for incidents which supposedly occurred on April 29<sup>th</sup> and April 26<sup>th</sup> 2012. Like the prior memos issued between August and December 2011, those memos raised purported issues without legitimate basis and Defendant issued those memos with retaliatory intent against Plaintiff.
36. On May 18, 2012, Spaldi issued a memorandum to Plaintiff erroneously citing his "lack of responsibility" and "poor job performance". Spaldi directed Plaintiff to meet with him at Town Hall on May 22, 2012.

37. Plaintiff ultimately met with Troast in or about May 2012. In that meeting, Troast refused to discuss Plaintiff's concerns regarding fraud and waste with the Department, but instead directed Plaintiff that he would only discuss with him disciplinary action to be implemented by the Township against Plaintiff.
38. Plaintiff had been feeling ill for several weeks in or about April and May 2012. On or about June 1, 2012, Plaintiff was diagnosed with Lyme disease, and received anti-biotic treatment as a result thereof until on or about June 27, 2012. Plaintiff missed time from work as a result of his illness. On June 11, 2012, Plaintiff requested to utilize one of his personal days as a sick day. Defendant denied that request.
39. On June 8, 2012, Defendant, through Township Manager Troast, issued to Plaintiff a "notice of minor disciplinary action" suspending Plaintiff for four (4) days, arising out of incidents which occurred on April 26<sup>th</sup>, April 27<sup>th</sup>, and April 30<sup>th</sup> 2012. During that time frame, Plaintiff was out sick with a serious illness, as outlined below.
40. By way of memo to Troast dated June 25, 2012, Plaintiff submitted in writing his response to the disciplinary charges, explaining that he was not at fault as to the incident which allegedly occurred on April 26, 2012 with regard to a generator battery at Commerce Park.
41. Also, Plaintiff explained that he did not improperly refuse to

take a call for an emergency while he was home sick on April 27, 2012 due to his illness which was eventually diagnosed with Lyme Disease. With regard to that charge, Plaintiff submitted a supplemental memo dated July 2, 2012 to Troast explaining that he was out sick at the time of the call, that there were other water employees on the call list ahead of him, and, nonetheless, that he ultimately took the call from the dispatcher.

42. Further, Plaintiff explained in writing on June 25, 2012 that the charge regarding Plaintiff's submission of maintenance checklists on May 1, 2013 was without basis and he did nothing improper with regard thereto.
43. Additionally, Plaintiff sent to Troast an email dated June 25, 2012 with the subject "\$60,000 Cover up of a \$500,000 Mistake". In that email, Plaintiff makes reference to his complaints and objections to Spaldi and Sportelli, his supervisors, about the shutting down of the Commons Booster Station, which was the only proper water supply for the Sussex Mills Water Tank.
44. Plaintiff asserted to Troast that the Township spent \$60,000.00 to replace two (2) water well pumps at Commerce Park in order to restore water supply to the Sussex Mills Water Tank on days when water demand is high or when there is water system failure, due to the loss of the Commons Booster Station.

45. Further, Plaintiff asserted that the two new pumps were set to pump water to Sussex Mills at 200psi, which is too high, as proper water utility pressure is 35-65 psi. Plaintiff estimated in good faith that as a result of the high psi setting, the Township was incurring electrical charges at the Commerce Park Station which were four times as much as they should be, thereby causing the Municipality to waste public funds.
46. Plaintiff also stated in his June 25, 2012 memo to Troast that the Sussex Mills Pump House is an improper water source for the Sussex Mills Water Tank because it entails a "low elevation" pump house being connected to a "high elevation" water tank. The higher psi setting required results in significantly increased electric bills for the Township, which results in a substantial waste of public funds.
47. Further, in his email, Plaintiff stated that "[a]ll of Sparta's water systems that can be connected, should be connected, so that all water sources can supply water in the event of a fire or other emergency." Thus, Plaintiff raised with Defendant an issue relevant to the health, safety and welfare of members of the public.
48. In response, Defendants, in a cursory and dismissive manner, through Troast, issued a memo to Plaintiff dated August 30, 2012 stating that his complaint was investigated and that it was "determined that the Township's decisions regarding these

two facilities [the Commons Booster Station and the pumps at Commerce Park] was [sic] an appropriate selection of the many possible operational configurations".

49. The Township provided no further explanation to Plaintiff, and stated that "no further action will be taken with regard to your complaint at this time". Further, the Township refused to provide to Plaintiff a copy of the report purportedly prepared by CP Engineering in response to Plaintiff's Complaint.

50. Furthermore, within nine (9) days of Plaintiff's June 25<sup>th</sup> 2012 email to Troast, Spaldi wrote to Troast directly by way of memo dated July 3, 2012. In the memo he illegitimately and erroneously singled out Plaintiff with regard to a "daily alarm procedure" for the Township's water supply facilities.

51. On or about August 15, 2012, Spaldi, without any legitimate rationale, ceased the lead and copper treatment at the Township's Waters Edge Pump House.

52. On August 30, 2012, Plaintiff made a verbal complaint to Troast that his supervisor, Sportelli, threatened Plaintiff at a well house within the Township on July 25, 2012. Troast, by way of memo dated September 5, 2012, six (6) days later, three (3) of which included the Labor Day holiday weekend, concluded, without any further explanation, that "I have conducted an investigation concerning your complaint against

Mr. Sportelli. The results of the investigation do not substantiate the incident." Troast further stated that "no action will be taken with regard to your complaint at this time."

53. Just over one (1) month later, the Township, with retaliatory intent, issued a Preliminary Notice of Disciplinary Action ("PNDA") dated October 10, 2012 against Plaintiff arising out of various alleged incidents on various dates in July, August, and September 2012. The Township sought to suspend Plaintiff for a period of ten (10) days without pay, as a result of unfounded allegations of Plaintiff's alleged performance of his duties, including, *inter alia*, his conducting of inspections and filling out log books. Those allegations and the disciplinary action arising therefrom are without merit. The PNDA was issued as a result of Plaintiff's whistle-blowing activities outlined above.
54. After a departmental "hearing", over which Township Manager Troast presided, the Township ultimately imposed the 10-day unpaid suspension of Plaintiff from his job duties, which was originally sought in the October 10<sup>th</sup> 2012 PNDA, by way of a Final Notice of Disciplinary Action dated January 30, 2013. That suspension was with retaliatory intent and without legitimate basis.
55. Subsequently, by way of email exchange with Sportelli and

Spaldi on December 13<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup>, 2012, Plaintiff expressed his complaints about and objections to the Township's failure to meet NJ DEP's lead and copper requirements, as a result of the lead and copper treatment equipment being turned off at three (3) pump houses.

56. Specifically, in or about late 2012, Plaintiff became aware of a complaint from a water customer of a blue-green stain in a sink, which could indicate the presence of excessive lead and/or copper in drinking water. Plaintiff maintained that a water sample should have been taken from the complaining customer's home, but it was not.
57. In his email to Spaldi on December 16, 2012, Plaintiff expressed concern about the chain of custody being established for the lead and copper samples, and the fact that the samples were not taken directly from customers' homes to the lab for testing.
58. Plaintiff also expressed his concern about sewer plant effluent being diluted with drinking water during testing.
59. Plaintiff also expressed his concern about the pH levels in the water being delivered to customers. "pH" levels determine the acidity or corrosiveness of the water. If the acidity levels in the water are too high, then the water could corrode the pipes and cause lead and/or copper to get into the water being delivered to the public.
60. For example, previously, on or about September 28, 2009,

Defendant, through Spaldi and Sportelli, lowered pH level at the Hidden Glen pump house to 7.4. Further, on April 5, 2011, Defendant lowered the pH level to 7.15 at the Hidden Glen pump house. This reduction of the pH level increased the likelihood of corrosion of the pipes, thereby compromising the quality and safety of the water supplied to the Utilities Department's customers in and around Sparta Township, thereby potentially endangering public health.

61. In response to Plaintiff's good faith concerns, Spaldi responded by way of email dated December 17, 2012 that what the "level the PH [sic] should be before being delivered to customers is my decision, not yours. You are again (like you have in the past) making false assumptions and accusations based on your inaccurate perception of events and your lack of knowledge surrounding said events." Spaldi also stated that "[m]aking unsubstantiated or untrue claims does not qualify you as a 'whistleblower', it only qualifies you as someone who makes slanderous accusations ... I do not intend on further engaging in a back and forth with you regarding my administration of this Utility."
62. As of the filing of this Complaint, Defendant has removed from Plaintiff virtually all of this prior duties regarding water sampling.
63. During the time of his email exchange with Plaintiff regarding

water quality and testing issues, on December 17, 2012, Spaldi issued a memo to Plaintiff disciplining him for operating a vehicle that had been taken out of service. That allegation is without legitimate basis and the memo, which by its wording "has been forwarded to Administration to be filed as part of your permanent record," was issued by Defendant, through Spaldi, with retaliatory intent.

64. Most recently, the Township served Plaintiff with a PNDA on March 27, 2013, seeking an unpaid suspension of Plaintiff for thirty (30) days from his job duties and a \$10,000.00 reduction in salary, based upon alleged incidents which occurred on various dates in October 2012, November 2012, December 2012, January 2013, and March 2013.
65. The Township's most recent disciplinary charges against Plaintiff were issued with retaliatory intent and represent a continuing course of retaliation by Defendant against Plaintiff. The continuing course and increasing severity of the Township's disciplinary action imposed against Plaintiff, and the Township seeking the reduction of Plaintiff's salary, represent the Township's attempt to threaten Plaintiff's employment, in response to Plaintiff's whistle-blowing activities.
66. The significant and substantial adverse employment actions, harassment and other illegal acts by Defendant against Plaintiff as outlined above are/were initiated by Defendant

for the purpose to harass, intimidate, and retaliate against Plaintiff based on Plaintiff's protected activity.

**COUNT ONE**  
**(Violation of CEPA**  
**N.J.S.A. 34:19-1 et seq.)**

67. Plaintiff reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.
68. Defendant's actions against Plaintiff, including but not limited to the disciplinary actions and suspensions, as well as Defendant seeking to significantly reduce Plaintiff's salary and other benefits, as outlined above, are in retaliation for Plaintiff's whistle-blowing activities described herein, in violation of the New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1 et seq.
69. Plaintiff engaged in "whistle-blowing" activities in that he disclosed and objected to, and/or refused to participate in, Defendant's conduct which he reasonably believed was in violation of law and/or public policy, and/or rules or regulations promulgated pursuant to law and/or public policy, was fraudulent, and/or negatively impacted the health, safety and welfare of the public. In retaliation for his whistle-blowing activities, Plaintiff suffered adverse employment action(s) and other retaliatory and harassing acts at the hands of Defendants, as outlined above.

70. Defendant created, and continues to create, a hostile work environment against Plaintiff in retaliation for his whistleblowing activities.
71. Defendant's adverse employment actions and harassment against Plaintiff was without any legitimate and/or lawful purpose. The purported rationale for Defendant's adverse employment actions were pre-textual and were advanced in order to mask Defendant's retaliatory intent.
72. Defendant's harassing and retaliatory actions against Plaintiff constitute violations of CEPA.
73. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated.
74. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, physical injury, mental injury, the loss of opportunities for prospective employment, the loss of fringe benefits, and is incurring legal expenses and other expenses as a result of Defendant's actions.
75. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's statutory and civil rights, and Plaintiff is entitled to punitive damages under applicable law.

**WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

a. 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, lost earning power, as well as all commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, together with both prejudgement and post-judgement interest and attorneys' fees and costs of court for Defendant's violations of Plaintiff's civil rights;

b. 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, lost earning power, as well as all commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, together with both prejudgement and post-judgement interest and attorneys' fees and costs of court with regard to hostile work environment, retaliation, disparate treatment, and with regard to adverse employment action(s) and other retaliation and harassment as a result of Plaintiff's whistle-blowing activities;

c. Awarding Plaintiff damages, including, but not limited to, equitable, punitive, compensatory and liquidated damages provided by statute or common law on all lost benefits, wages and rights, including but not limited to front and back pay, lost earning power, as well as all commensurate pension benefits and fringe benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, together with both prejudgement and post judgement interest and attorneys' fees and costs of court as Defendant has violated Plaintiff's rights to be free from the injuries which he has suffered due to the Defendant's actions;

d. For an Order from the Court dismissing and/or expunging all disciplinary actions and suspensions referenced in this Complaint effectuated by Defendant against Plaintiff, as well as an Order restoring Plaintiff to his full salary which was in place prior to the adverse employment action imposed by Defendant in violation of CEPA, in addition to the award of compensatory and punitive damages, and attorneys' fees and costs, flowing therefrom, as outlined above;

e. 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 Defendant to file such reports as may be necessary to supervise such compliance; and

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

**DESIGNATION OF TRIAL COUNSEL**

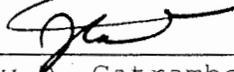
Pursuant to R. 4:25-4, the Court is advised that **Jeffrey D. Catrambone, Esq.**, is hereby designated as trial counsel.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues involved herein pursuant to R. 4:35-1.

Respectfully submitted,  
**SCIARRA & CATRAMBONE, L.L.C.**,  
*Attorneys for Plaintiff*

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

  
Jeffrey D. Catrambone, Esq.

Dated: May 20, 2013

**CERTIFICATION PURSUANT TO R. 4:5-1**

The undersigned, of full age, hereby certifies as follows:

1. The matter in controversy is not the subject of any other pending action before any Court, except for any pending departmental disciplinary action and/or any appeal filed with the Civil Service Commission and pending before the Office of

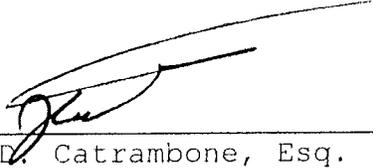
Administrative Law.

2. No other action or arbitration proceeding is contemplated.

3. There are no other parties to be joined in this action at the present time.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the said statements made by me are willfully false, I am subject to punishment.

Dated: May 20, 2013

  
\_\_\_\_\_  
Jeffrey D. Catrambone, Esq.

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE ("AGREEMENT") is being entered into this 13<sup>th</sup> day of April, 2016 between MARK NELSON ("NELSON") and the TOWNSHIP OF SPARTA ("SPARTA"). NELSON and SPARTA will sometimes hereinafter be collectively referred to as "the PARTIES".

**WHEREAS**, NELSON filed a civil action against SPARTA in the Superior Court of New Jersey, Sussex County, Docket No. SSX-L-266-13, alleging, *inter alia*, violations of the New Jersey Conscientious Employee Protection Act ("CEPA") and claims for damages (hereinafter referred to as "the Litigation").

**WHEREAS**, the PARTIES wish to compromise, resolve and settle, finally and forever, any claims and causes of action, including any appeals therefrom, that were or could have been asserted by NELSON against SPARTA, and/or any other person or entity described in the release of this AGREEMENT.

**WHEREAS**, the PARTIES agree and acknowledge that this AGREEMENT is the result of a compromise and shall never be construed as an admission by the PARTIES of any liability, wrongdoing or responsibility on their part or on the part of their predecessors, successors, assigns, agents, representatives, parents, subsidiaries, affiliates, officers, trustees, administrators, insurers, directors or employees. The PARTIES acknowledge that SPARTA has consistently denied and

*mr*

continues to deny any allegations of liability, wrongdoing or responsibility. It is expressly understood and agreed that NELSON shall not be deemed to be a "prevailing party" for the purposes of any fee-shifting statute, rule or agreement.

**WHEREAS**, this AGREEMENT also does not (and shall not be deemed to) constitute an adjudication or finding on the merits of NELSON's claims.

**NOW, THEREFORE**, with the intent to be legally bound, hereby, and in consideration of the mutual promises and covenants contained herein, including, but not limited to, the WHEREAS clauses set forth above, the PARTIES agree as follows:

1. (a) Within thirty (30) days of SPARTA's receipt of this AGREEMENT executed by NELSON and fully completed, a child support search and an executed W-9 by SCIARRA & CATRAMBONE, L.L.C., SPARTA or its designated agent shall provide to NELSON's Counsel, SCIARRA & CATRAMBONE, L.L.C., a check made payable to "SCIARRA & CATRAMBONE, L.L.C., TRUST ACCOUNT" in the amount of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00).

(b) SPARTA agrees to withdraw and dismiss the Departmental disciplinary charges against NELSON, as outlined below in paragraph 1[c]. However, the parties understand that any disciplinary records will be kept and maintained in the normal course by SPARTA and the records will be marked as withdrawn and dismissed.

[c] The Final Notices of Disciplinary Action issued against NELSON by SPARTA on January 30, 2013, September 8, 2014, and September 8, 2014, regarding the ten (10) day suspension, the thirty (30) day suspension with a Ten Thousand Dollar (\$10,000.00) reduction in pay, and Plaintiff's removal, respectively, will be amended and the Final Notices of Disciplinary Action will indicate that the prior Final Notices of Disciplinary Action are withdrawn and dismissed. The amended Final Notices of Disciplinary Action, reflecting that the prior Final Notices of Disciplinary Action are withdrawn and dismissed, shall be filed with the Civil Service Commission and the Office of Administrative Law under the existing docket numbers and/or agency referenced numbers assigned to those matters. The withdrawal of disciplinary charges is not intended to modify the date NELSON'S employment ended with SPARTA.

(d) THE PARTIES make no admission of liability with regard to the above-referenced Departmental disciplinary action. In response to any inquiry regarding the Departmental disciplinary action, THE PARTIES shall respond that "all matters have been amicably resolved." In response to any inquiry regarding NELSON'S employment, SPARTA shall agree to only provide the dates of NELSON'S employment and his positions held.

(e) The benefits and/or conditions described in paragraph 1(a), above, shall be referenced in this AGREEMENT as

"Settlement Benefits". The Settlement Benefits shall be inclusive of any and all attorneys' fees that may be claimed by NELSON or on NELSON's behalf and fee shifting shall not apply.

(f) The receipt of the Settlement Benefits is contingent upon SPARTA's receipt of a W-9 completed and executed by SCIARRA & CATRAMBONE, L.L.C. The PARTIES agree that the Settlement Benefits are intended to be compensation for the release of claims of damages arising out of NELSON's employment by SPARTA, his claims in the Litigation, and/or the alleged facts in support thereof, and any claims he asserted for attorneys' fees and/or seeking punitive damages.

(g) SCIARRA & CATRAMBONE, L.L.C., shall complete and execute W-9 Forms and SPARTA, or its designated agent, shall not withhold any amount from the Settlement Benefits for taxes, but will issue a 1099 Form to SCIARRA & CATRAMBONE, L.L.C. NELSON shall be solely responsible for any taxes assessed against him individually and due all government taxing authorities as a result of the payment of the Settlement Benefits. NELSON further agrees to indemnify SPARTA and hold them harmless from the assessment of any taxes, interest, and/or any penalties assessed by any state or federal government entity, or penalties or other liabilities, including attorneys' fees and costs arising out of or with regards to the AGREEMENT or receipt of Settlement Benefits by NELSON. NELSON agrees and acknowledges

that neither SPARTA, nor any of its employees, agents, or counsel has made any representation to NELSON or his counsel as to the tax consequences of the Settlement Benefits.

(h) NELSON expressly agrees and acknowledges that the payments described above are not payments to which he is otherwise entitled. Except as stated above in Paragraph 1(a) of this AGREEMENT, NELSON shall not be entitled to any additional compensation, remuneration, benefits or other payments from SPARTA and each Party shall be responsible for payment of their own costs and attorneys' fees. Nelson also agrees that he will never seek future employment with SPARTA.

2. (a) This AGREEMENT, in effect, wipes the slate clean as to any and all disputes, controversies, differences of opinion, etc., between NELSON, SPARTA, as well as SPARTA's employees and/or elected officials, arising at any point in time prior to the PARTIES execution of this AGREEMENT. Thus, in consideration of the terms described in paragraph 1 and the entry into this AGREEMENT by SPARTA, NELSON knowingly and voluntarily releases and forever discharges SPARTA, and/or any of SPARTA's current or former employees, affiliates, officers, directors, trustees, board members, administrators, attorneys, insurers, agents, predecessors, successors, assigns, and legal representatives, whether acting as agents for SPARTA or in an individual capacity from any and all actions or causes of

actions, suits, debts, claims, complaints (civil and/or criminal), contracts, controversies, agreements, promises, damages, cross-claims, claims for contribution and/or indemnity, claims for costs and/or attorneys' fees, judgments, and demands whatsoever, in law or equity, which NELSON ever had, now has, or may have as of the date of this AGREEMENT including but not limited to: (1) all wrongful discharge claims (including claims based on breach of contract or implied contract, breach of the covenant of good faith and fair dealing, constructive discharge or violation of public policy); (2) claims under Title VII of the Civil Rights Act of 1964 as amended (which prohibits discrimination on the basis of color, national origin, race, religion, and sex); (3) claims under the Civil Rights Act of 1866; (4) claims under the Americans With Disabilities Act (which prohibits discrimination on the basis of disabilities); (5) claims under the Age Discrimination in Employment Act (which prohibits discrimination against persons 40 years of age or older because of age); (6) claims under the Employee Retirement Income Security Act of 1974; (7) claims under the Older Workers Benefit Protection Act of 1990; (8) claims under the New Jersey Law Against Discrimination; (9) claims under the New Jersey Conscientious Employee Protection Act; (10) claims under the New Jersey Civil Rights Act; (11) claims under the New Jersey State Constitution or the United States Constitution; (12) claims

under the New Jersey Family Leave Act; (13) claims under the Federal Family and Medical Leave Act; (14) claims under the Equal Pay Act; (15) claims under the Fair Labor Standards Act and any State wage and hour laws or regulations; (16) claims under the Occupational Safety and Health Act of 1970; (17) claims under the Sarbanes-Oxley Act of 2002; (18) claims under the Fair Credit Reporting Act; (19) claims under any Executive Order or derived from or based upon any federal, state or local regulations; (20) criminal complaints and/or allegations; and (21) claims under any other federal or state statute, common law, or decisional law, as well as claims for harassment, discrimination, retaliation, negligent and/or intentional infliction of emotional distress, assault, battery, negligence, recklessness, for alleged interference in any contract, economic opportunity or prospective economic advantage, or for alleged violation of any federal, state or local law, regulation, ordinance or common-law duty relating to, arising out of, or having any bearing whatsoever on NELSON's employment by SPARTA.

(b) NELSON acknowledges that by signing this AGREEMENT, he is releasing SPARTA and/or any of SPARTA' current or former employees, affiliates, officers, directors, trustees, board members, administrators, attorneys, insurers, agents, predecessors, successors, assigns, and legal representatives, whether acting as agents for SPARTA or in an individual capacity

from any and all claims, whether known, suspected, or unknown, that NELSON has, may have, or has had as of the date of execution of this AGREEMENT including, but not limited to, claims related in any way to NELSON's employment with SPARTA.

(c) In the event that the law prohibits a waiver of any claim, including those specifically named in this AGREEMENT, NELSON hereby acknowledges that he has no valid claims under those statutes. NELSON also agrees that the Settlement Benefits fully resolve any and all disputes NELSON has as of the execution of the AGREEMENT including any dispute NELSON may have and that he is not entitled to or owed any additional monies. NELSON hereby waives any and all relief not explicitly provided herein. This AGREEMENT 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 AGREEMENT.

(d) The terms outlined in paragraphs 2 [a]-[c] specifically exclude any claims which NELSON may assert against SPARTA for reimbursement for the monetary value of any unused sick, vacation, and/or personal days to which NELSON may be entitled under any applicable Collective Bargaining Agreement, Sparta Township Employee Handbook or Manual, and/or any Sparta Township Rules, Regulations and/or Policies.

*MM*

3. (a) NELSON warrants and represents that, except for the Litigation described above, he has not filed any claims with any court or administrative agency against SPARTA current or former employees, affiliates, officers, directors, trustees, board members, administrators, attorneys, insurers, agents, predecessors, successors, assigns, and legal representatives, whether acting as agents for SPARTA or in an individual capacity. NELSON further agrees not to file or pursue any claims released by this AGREEMENT in the future in any court or other forum against SPARTA' current or former employees, affiliates, officers, directors, trustees, board members, administrators, attorneys, insurers, agents, predecessors, successors, assigns, and legal representatives, whether acting as agents for SPARTA or in an individual capacity. NELSON further agrees to discontinue the Litigation with prejudice and will direct his Counsel to file or he will willingly file on his own, a Stipulation of Dismissal with Prejudice that NELSON'S Counsel, SCIARRA & CATRAMBONE, L.L.C., will execute and file with the Sussex County Superior Court - Law Division within three (3) business days of their receipt of the settlement check referenced in paragraph 1(a) above, thereby forever dismissing the civil action against SPARTA in the Superior Court of New Jersey, Sussex County, Docket No. SSX-L-266-13, with prejudice.

NELSON also promises never to seek or accept any damages, remedies, or other relief for himself personally (any right to which NELSON hereby waives) by prosecuting a charge with any administrative agency, or otherwise, with respect to any claim released or purportedly released by this AGREEMENT. NELSON further agrees to the fullest extent permitted by law that if any agency, court, or board assumes jurisdiction over any charge or complaint on his behalf, with respect to any claim released or purportedly released by this AGREEMENT, against SPARTA, he will not participate in any such proceeding and will request such agency or court to withdraw and/or dismiss the matter with prejudice.

(b) NELSON further acknowledges and agrees that any claims for money, damages or relief of whatever nature, known or unknown, in any way growing out of or connected with NELSON's employment with SPARTA, up to and including the execution of this AGREEMENT, would be barred by the entire controversy doctrine. As such, NELSON agrees that except for the Settlement Benefits and the dismissal and withdrawal of the Departmental disciplinary action as outlined in paragraph 1, above, NELSON will not be entitled to or accept any money, damages and/or relief for claims in any way growing out of or connected with his employment with SPARTA, up to and including the execution of this AGREEMENT.

*ma*

[c] The terms outlined in paragraphs 3 [a]-[b] specifically exclude any claims which NELSON may assert against SPARTA for reimbursement of the monetary value of any unused sick, vacation, and/or personal days to which NELSON may be entitled under any applicable Collective Bargaining Agreement, Sparta Township Employee Handbook or Manual, and/or any Sparta Township Rules, Regulations and/or Policies.

4. Neither this AGREEMENT, nor the payment of the Settlement Benefits, shall be construed as an admission SPARTA of any liability or unlawful conduct whatsoever.

5. (a) By executing this AGREEMENT, the PARTIES represent that they have not, as of the date they execute this AGREEMENT, disclosed to anyone, except their attorneys, insurance carriers, NELSON'S immediate family members, and/or members of SPARTA'S City Counsel, the existence of this AGREEMENT, the amount of the settlement payment and/or the other terms of this AGREEMENT, the circumstances giving rise to the execution of this AGREEMENT, and the negotiations leading to this AGREEMENT. The PARTIES represent that if they engage a tax preparer or accountant, they will inform them of the confidentiality requirements of this AGREEMENT. The PARTIES understand and agree that all discussions, negotiations and correspondence relating to this AGREEMENT and the terms thereof (collectively "Confidential Settlement Information") are

strictly confidential and that this confidentiality provision is a material term of this AGREEMENT. The PARTIES agree not to disclose to anyone (other than their legal counsel, immediate family members and accountants/tax preparers) any Confidential Settlement Information unless such disclosure is (i) lawfully required by any government agency; (ii) otherwise required to be disclosed by law (including legally required financial reporting) and/or by court order; or (iii) necessary in any legal proceeding in order to enforce any provision of this AGREEMENT.

(b) If asked by anyone, other than legal counsel, immediate family members and accountants/tax preparers, regarding the outcome of this Litigation, NELSON agrees to respond only that "the matter has been resolved" without further elaboration or comment.

6. NELSON also agrees that if NELSON is subpoenaed or otherwise compelled to testify in connection with any lawsuit against SPARTA in this litigation, he shall immediately notify SPARTA'S counsel so that SPARTA may move to quash the subpoena and/or take any other action SPARTA deems appropriate. Should NELSON be compelled to testify pursuant to subpoena or other legal process, he shall cooperate with SPARTA and their attorneys to the end that the confidentiality of this AGREEMENT and other confidential information under this AGREEMENT be

preserved; such cooperation to include consultation with SPARTA and their attorneys upon reasonable notice and terms before he is required to provide testimony.

7. BY SIGNING THIS AGREEMENT, NELSON AFFIRMS THAT HE:

- (a) Has read this AGREEMENT carefully;
- (b) Has signed this AGREEMENT voluntarily, without duress or coercion;
- (c) Is capable of fully understanding, and does fully understand and agree to, the terms of this AGREEMENT;
- (d) Has been given the opportunity and has been advised to consult with an attorney before signing this AGREEMENT; and
- (e) Has agreed that in executing this AGREEMENT, he has not relied and does not rely on any representation or statement made by any SPARTA, except as contained herein.

8. This AGREEMENT is made and entered into in the State of New Jersey and shall in all respects be interpreted, enforced and governed under the laws of said state, irrespective of the principles of conflict of law.

9. In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable, illegal, or void, such holding shall not affect any other provision of this AGREEMENT and this AGREEMENT shall then be construed as if such unenforceable provision or provisions had never been contained herein.

10. This AGREEMENT shall be binding upon NELSON, his heirs, administrators, representatives, successors, and assigns, and shall inure to the benefit of SPARTA and its employees, affiliates, officers, directors, trustees, board members, administrators, attorneys, insurers, agents, predecessors, successors, assigns, and legal representatives, whether acting as agents for SPARTA or in an individual capacity.

11. This AGREEMENT contains the full AGREEMENT of the PARTIES and may not be modified, altered, changed or terminated except upon the express prior written consent of the PARTIES, which consent must be signed by the PARTIES or their duly authorized agents.

12. This AGREEMENT may be signed in counterparts, which together shall have the same force and effect as a single original signed by all the PARTIES.

13. This AGREEMENT is deemed to have been jointly prepared by the PARTIES and any uncertainty or ambiguity existing in it shall not be interpreted against any Party as the primary drafter of the AGREEMENT. The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its meaning and not strictly for or against any of the PARTIES.

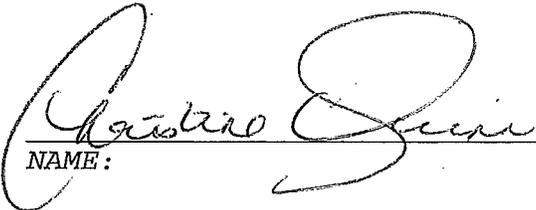
IN WITNESS WHEREOF, the PARTIES knowingly and voluntarily executed and delivered this AGREEMENT as of the date set forth below:

4/13/16  
Date

  
\_\_\_\_\_  
MARK NELSON

TOWNSHIP OF SPARTA

5/12/2016  
Date

  
\_\_\_\_\_  
NAME:

[TITLE]