SETTLEMENT AGREEMENT AND RELEASE

Walz v. City of Plainfield, et al.

This Settlement Agreement and Release is made and entered into by and between Frederick W. Walz (hereinafter "Plaintiff"), and City of Plainfield and Plainfield Police Division (hereinafter referred to as "the Defendants");

WHEREAS on or about November 30, 2011, Plaintiff filed a Complaint in the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1569-11 (the "Lawsuit"), alleging certain claims against Defendants arising out of Plaintiff's employment with Defendant; and

WHEREAS the Defendants filed an Answer to the Complaint denying any and all liability in connection therewith; and

WHEREAS Defendants and the Plaintiff have agreed to finally and fully settle all claims which were or could have been asserted by Plaintiff against Defendants and any agent or employee of Defendants and to finally and fully settle all possible claims for attorneys' fees and costs in connection therewith, and any and all medical, or Medicare claims or liens upon the terms and conditions set forth in this Settlement Agreement and Release;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

(1) This Settlement Agreement and Release shall not constitute an adjudication or finding on the merits of the Plaintiff's claims and shall not be construed as an admission or acknowledgment of any wrongdoing or liability by Defendants, the same being expressly denied.

(2) Plaintiff hereby agrees to release Defendants, and their present and former employees, agents, directors, affiliated entities of any kind, shareholders and/or subsidiaries from all claims, debts, demands, obligations, contracts, agreements, damages, controversies, suits, liabilities or causes of action they may have or claim to have against the Defendants including any and all claims arising out of or relating in any way to Plaintiff's employment with Defendants, personal injuries or any other claims he may have regarding any matters that have occurred up until this date. The claims released include, but are not limited to:

(a) all statutory claims including but not limited to discrimination based on discrimination of any kind, including but not limited to the Conscientious Employee Protection Act, N.J.S.A. 34-19-1 et seq. (or any other federal, state or local law); the New Jersey Law Against Discrimination; 42 U.S.C. § 1983, et seq.; Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., as amended by the Older Workers' Benefits Protection Act of 1990; the Americans with Disabilities Act; the Family and Medical Leave Act; the New Jersey Family Leave Act; the Rehabilitation Act; and any other statutes applicable to the allegations as set forth in the underlying Lawsuit.

It is further understood that as a condition of this settlement, all claims and/or liens, past, current and/or future arising out of this settlement or asserted against the proceeds of this settlement are to be satisfied by Plaintiff, including but not limited to any Medicare or Medicaid claims and/or liens, Worker's Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer claims and/or liens, physician or attorney claims and/or liens, or any of the statutory, equitable, common law or judgment claims and/or liens, including but not limited to claim based on subrogation or any other legal or equitable theory. Plaintiff therefore agrees, upon prompt presentation of any such claims and/or liens, to defend the Defendants against any such claims and/or liens, and to indemnify and hold Defendants harmless against any judgment entered against Defendants based on such claims and/or liens, including the payment of any fines, charges and attorneys fees incurred as a result of any such lien. Failure to satisfy any such

lien shall be considered a breach of this Agreement and Plaintiffs agree to pay all costs, interest and attorneys fees relative to any such lien.

(b) all claims arising under the United States or New Jersey Constitutions;

(c) all claims arising under any Executive Order or derived from or based upon any federal or state regulations;

(d) all common-law claims including but not limited to claims for wrongful discharge, public policy claims, retaliation claims, promissory estoppel, detrimental reliance, fraud, misrepresentation, negligent infliction of emotional distress and vicarious liability, claims for breach of an express or implied contract, claims for breach of an implied covenant of good faith and fair dealing, intentional infliction of emotional distress, harassment, assault, battery, defamation, conspiracy, loss of consortium, tortious interference with contract or prospective economic advantage and negligence;

(e) all claims for any compensation, potential punitive and non-punitive damages, compensatory or consequential damages including back wages, front pay, bonuses, incentive awards, merit awards, performance awards, fringe benefits, stock options, vacation days, excused workdays, personal or sick days, reimbursement for or payment of medical expenses, reinstatement, retroactive seniority, pension benefits, retirement-related benefits, severance benefits or any other form of economic loss;

(f) all claims for personal injury, including physical injury, mental anguish, emotional distress, pain and suffering, embarrassment, humiliation, damage to name or reputation, liquidated damages and punitive damages; and

(g) all claims for costs and attorneys' fees on behalf of Plaintiff or any attorneys who may have represented him.

Nothing contained in this paragraph 3 is intended, nor shall be construed, to waive or release any future claim arising after the date this Settlement Agreement and Release is signed by Plaintiff.

(4) (a) Plaintiff represents that he has no charge, claim or complaint of any kind pending against the Defendants and/or their present and former employees, agents, directors, affiliated companies, subsidiaries, and/or shareholders, other than the lawsuit which is being dismissed pursuant to paragraph 2 above and he covenants that none will be filed by him seeking any personal recovery or personal injunctive relief arising out of or relating in any way to Plaintiff's employment with the Defendants.

(b) Nothing contained in this paragraph 4 shall prohibit Plaintiff from bringing any action to enforce the terms of this Settlement Agreement and Release.

(5) Plaintiff warrants and represents that he has not disclosed any confidential or proprietary information relating to Defendants or to any third party and affirms his obligation not to do so in the future.

The total settlement shall be allocated as follows:

A. Plaintiff, Frederick W. Walz, will be promoted by the City of Plainfield to the position of Lieutenant, which promotion will be made retroactive for a period of one (1) year and which will occur on January 1, 2016 following the adoption of an appropriate Resolution by Plainfield City Council approving this settlement;

B. Wages equaling one (1) year's differential salary between plaintiff's current position of Sergeant and that of Lieutenant, in addition to one (1) year of pension payments related to plaintiff's retroactive promotion;

C. $80,000.00 to be made payable to David H. Kaplan, Esq., as attorney to plaintiff, and representing both compensatory damages and attorney's fees and costs;

D. The payment set forth in the preceding paragraph shall be made within thirty (30) days of the entry of a Resolution approving this agreement by the City Council;

E. Defendants shall withdraw pending disciplinary charges, remove same from Plaintiff's personnel files, and restore to Plaintiff the 10 days served as a penalty for said charges.

(6) In light of the nature of the payments described in the subparagraphs above, Defendants will not deduct or withhold any amounts from the settlement payments made to the law firm of David H. Kaplan, Esq. Plaintiff further acknowledges that he is not being provided specific tax advice by the Defendant, Defendants' counsel or by Plaintiff's attorney and will seek independent tax advice, and further that it is his sole and exclusive responsibility to make the necessary tax payments, if any may be required, and he agrees to indemnify and hold Defendants, and Defendants' counsel, harmless with respect to any amounts, claims, liabilities, penalties and interest which may be found to be owed by Plaintiff as a result of this Agreement by any Federal, State or local taxing authority.

(7) **Entire Agreement and Severability**. The parties hereto agree that this Agreement may not be modified, altered or changed except by a written agreement signed by the parties hereto. The parties acknowledge that this constitutes the entire agreement between them superseding all prior written and oral agreements. If any provision of this Settlement Agreement and General Release is held to be invalid, the remaining provisions shall remain in full force and effect.

(8) **Construction.** This Agreement shall be construed under the laws of the State of New Jersey and shall not be interpreted strictly for or against the parties.

(9) Plaintiff acknowledges that the only consideration he has received for executing this Settlement Agreement and Release is that set forth herein. No other promise, inducement, threat, agreement or understanding of any kind or description has been made with them or to them to cause them to enter into this Settlement Agreement and Release.

(10) Plaintiff represents that he has carefully read and fully understands all of the provisions of this Settlement Agreement and Release. Plaintiff represents that he has reviewed and discussed the Settlement Agreement and Release with his attorney and fully understands the contents of this Settlement Agreement and Release and has voluntarily and knowingly executed the Settlement Agreement and Release.

DAVID H. KAPLAN, ESQ.
Attorney for Plaintiff
Frederick W. Walz

JOHN F. GILLICK, ESQ.
Attorney for Defendants City of Plainfield
and Plainfield Police Division

FREDERICK W. WALZ

DAVID MINCHELLO, ESQ.
Corporation Counsel, City of Plainfield

Signed and subscribed to before me
this 30 day of November 2015

A Notary Public of New Jersey
My Commission Expires

David H. Kaplan, ESQ.
Attorney at Law - NJ

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
ALAN G. LESNEWICH
JUDGE

COURTHOUSE
ELIZABETH, NEW JERSEY
07207

LETTER OPINION
NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

February 20, 2015

David H. Kaplan, Esq.
20 Continental Drive
Building One
Stanhope, NJ 07874

John F. Gillick, Esq.
Martin Kane Kuper
180 Tices Lane
Building B, Suite 200
East Brunswick, NJ 08816

Eric L. Harrison, Esq.
Methfessel & Werbel
2025 Lincoln Highway, Suite 200
P.O. Box 3012
Edison, NJ 08818

Re: *Walz v. City of Plainfield, et als*
Docket No. L-1569-11

Dear Counsel:

This case has its genesis in an employment relationship between a law-enforcement officer, the director of law enforcement, and the city in which they serve. It involves allegations of whistle blowing, discrimination, and breach of contract. Plaintiff seeks a full panoply of damages. The matter is before the court by way of a motion for summary judgment, which was filed by the employer and joined in by the supervisor of the plaintiff law-enforcement officer. As is typically

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the case in employment cases in which a motion for summary judgment is filed, many, but not all, of the salient facts are not controverted. Other "facts" are controverted, but not necessarily as required by the Rules of Court. The legal issues have been well briefed and professionally argued by competent counsel.

STATEMENT OF MATERIAL FACTS[1]

Plaintiff, Frederick Walz ("Plaintiff" or "Walz"), is a Sergeant in the Police Department of the City of Plainfield. Defendant, City of Plainfield ("Plainfield" and/or "City"), is a municipal corporation formed under the laws and statues of the State of New Jersey. Defendant, Plainfield Police Department ("PPD"), is an arm of the municipal government. Defendant, Martin R. Hellwig ("Director" or "Hellwig"), is the Director of Public Affairs and Safety and the Police Director for the City of Plainfield. Throughout the time relevant to his case, Plaintiff has been employed as a Sergeant working in the IT Bureau of the Plainfield Police Department. His job responsibilities include maintaining the computer systems for the Police Department.

On Wednesday, July 22, 2009, Walz and his supervisor, Captain Soltys ("Soltys"), were using a Plainfield-owned vehicle assigned to Captain Santiago ("Santiago"), an officer in the Narcotics Bureau, to deliver computer equipment. During their drive, Walz and Soltys discovered a three (3)-page printed e-mail exchange dated June 19, 2009, between "mrhellwig@hotmail.com" and "massageking1@hotmail.com." The document was found in a cup holder in the center console of the vehicle. The e-mail exchange contained arrangements for a massage. Based upon his review of the document, Walz concluded that Director Hellwig was soliciting prostitution through e-mail from his computer during work hours: "It seems obvious that the Director was soliciting some type

[1] The Statement of Material Facts has been gleaned by the court from the parties' Rule 4:46 statements by culling out those "facts" that were not supported by the record, contained argument or were properly controverted by other record facts. The facts are stated in the light most favorable to the non-moving party.

of prostitution services ...via Craigslist.com...and an appointment was arranged for 18 June 2009 at 1400 hrs for an $80.00 'donation' plus tip."

Walz and Soltys discussed the e-mail and decided that because it involved what could be a potential criminal violation, it should be investigated by the Union County Prosecutor's Office. Walz testified during his deposition that he reported the potential "crime" because "[i]t was a required thing to do." Walz then decided to do a "background investigation" to determine if the e-mails were legitimate prior to reporting them.

On Monday, July 27, 2009, Plaintiff authored a form "PD-10" entitled "Information concerning Police/Public Safety Director" about his investigation. Walz went to see Lieutenant Turner ("Turner"), Commander of the Plainfield Internal Affairs Department, to give him the report, but Turner was on vacation. Rather than leaving the e-mail and his report with another officer in Internal Affairs, Walz gave the e-mail and report to Captain Edward G. Santiago ("Santiago"), the senior Captain on duty that day.

On July 28, 2009 Santiago authored a letter to Lieutenant Colonel Christopher Andreychak and the New Jersey State Police ("State Police") describing his receipt of Walz's report and the e-mail. In that letter, Santiago stated that "it would appear that Director Hellwig was using a city issued computer in his office when the emails were written." He also commented that due to the "sensitive nature of the emails and the apparent crime of prostitution that Director Hellwig was engaged in", the matter was considered to be confidential."

Prior to calling the State Police, Santiago showed Turner the e-mail and Walz's report. Santiago's memorandum/letter noted that Turner "was obligated to stamp out an IA time and number, which only he knows about. The two other members assigned to Internal Affairs did not know of this matter and Turner knows that it is to be kept strictly confidential, with the NJSP

Political Corruption Unit to handle the investigation." Santiago reported that the only personnel with knowledge of the e-mail was himself, Walz, and his supervisor, Soltys, and Turner of Internal Affairs. Walz testified that he asked Santiago for updates on the investigation by the State Police because Walz believes that he performed the "initial investigation" and he "wanted to know what was going on...."

On September 2, 2009, the State Police transferred the investigation to the Union County Prosecutor's Office which "declined prosecution" against Hellwig because it concluded "[a]fter a comprehensive review" that there was "insufficient evidence warranting criminal charges." Walz questioned Turner about the status of the investigation. Because Turner provided no information concerning the investigation, Walz assumed that the investigation "died."

On November 10, 2009, following a forensic evaluation of Hellwig's computer and in view of a finding of insufficient evidence to warrant criminal charges against Hellwig, the Union County Prosecutor's office referred the matter back to the City of Plainfield by way of a letter of that date delivered by hand to Plainfield's Mayor, Sharon Robinson-Briggs. At the end of 2009, Turner administratively closed the Internal Affairs file containing Walz's report and the attached e-mail. In January 2010, Walz gave the report and the e-mails to Captain Gilliam ("Gilliam").

Walz gave the report and e-mails to Gilliam because, according to Walz, none of the agencies that investigated the incident interviewed him, and Walz concluded that there was a "cover up." Walz believed that Gilliam could determine the status of the investigation through Hellwig's immediate supervisor, Bibi Taylor ("Taylor"), Plainfield's City Administrator. The next day, Gilliam advised Walz that he had spoken with Taylor and she would "deal with it."

After Taylor received the documents from Gilliam she consulted with the City's Corporation Counsel. As a result, Taylor decided that the documents should be provided to Turner in Internal Affairs for further investigation.

Following its own investigation, the City suspended Hellwig for three days for "misuse of equipment and internet policy" based on the applicable Plainfield Municipal Ordinance

Approximately one week after Walz gave Gilliam the investigative documents, a story about Hellwig's suspension and a copy of the e-mail was posted on "NJToday.net," an on-line newspaper, and linked to a story in the "Plainfield Today" blog.

In February 2010, Taylor contacted Turner in Internal Affairs to investigate the public release of the documents. Taylor suggested that the matter be investigated. Plainfield Internal Affairs investigated Gilliam and Walz for disclosing confidential documents to the City Administrator.

When Turner became involved in the investigation, Taylor was informed that the documents she received from Gilliam were part of an Internal Affairs file and it was a violation of Attorney General's Guidelines for them to be released. She was not aware at the time that the documents given to her by Gilliam were already part of an Internal Affairs file. She would normally not be privy to such documents.

On March 9, 2010 Waltz provided a voluntary sworn statement in connection with the Internal Affairs investigation of the release of the confidential information. Walz acknowledged that he was aware that all reports in Internal Affairs investigations are confidential, and explained during the interview that he gave Gilliam a copy of his Official Report because of what he explained as "[f]rustration mostly." Walz did not tell Soltys that he had provided Gilliam with a copy of the confidential documents. Walz discussed with Gilliam bringing the Official Report to

the City Administrator. Walz also explained during the interview that it was his intention when writing the Official Report to forward the information to Internal Affairs, but that Turner and Soltys were both on vacation. Walz believed that the information was so critical that he provided the Report to Santiago before either Turner or Soltys returned. Turner eventually agreed with Santiago that the matter should not be investigated by the Plainfield Police Department. Walz admitted that he was aware the report was forwarded to Internal Affairs, but he did not know it was an "active investigation" at the time he gave the report to Gilliam.

Again, Walz was aware that all Internal Affairs investigations are confidential. Despite knowing that information was confidential, he provided a copy of the report to Gilliam.

On April 1, 2010, Hellwig announced at a weekly Captain's meeting that he was changing Walz's assignment from working in the IT Bureau to manning the Command Center from 4:00 p.m. to midnight, Monday through Friday. Walz was on vacation from April 2 through April 11, 2010. He returned to work on April 12.

On April 9, 2010, Hellwig issued Personnel Order: 2010-24, which ordered that Walz be transferred from the IT Bureau to the Uniform Bureau under the command of Gilliam effective April 19, 2010. Walz was told by Hellwig on April 13, 2010 – four days after the Transfer Order - that the Order was rescinded and that he would remain in the IT Bureau. The Transfer Order was "officially" rescinded on April 16, 2010 by way of "Personnel Order: 2010-24a." Walz was never transferred and currently remains in the IT Bureau where he has worked since 2003.

On May 3, 2010, Walz wrote to Karen O. Dabney ("Dabney"), the Personnel Director of Plainfield, complaining that the rescinded Transfer Order was an attempt by Hellwig to retaliate against him for authoring the Official Report which led to Hellwig's three-day suspension. In that letter Walz stated that he "appreciated the fact that [his] transfer was rescinded, however, [he]

wanted this matter on record so that [he would not be] subjected to further retaliatory actions" by Hellwig. On May 14, 2010, Walz met with the City Administrator Taylor, regarding his Complaint and was advised by a memorandum of that same date that an independent investigator would be assigned to investigate, and Walz would ultimately report to Police Captain Ruth Selzam instead of Hellwig.[2]

On May 19, 2010, Walz was informed that the Internal Affairs Bureau had concluded its investigation regarding the release of confidential information related to his report and "sustained" the charges against him.[3] A "Preliminary Notice of Disciplinary Action (31-A)" was issued which proposed a ninety-day suspension (August 2-December 3, 2010) and a demotion (effective August 2, 2010) "to the position of Police Officer." The proposal was based on the recommendation of the New Jersey State Association of Chiefs of Police. The document notified Walz that he was entitled to and could request a "departmental hearing." Taylor signed the document.[4]

Walz was served with the Preliminary Notice on June 11, 2010. By memorandum dated June 14, 2010, Walz requested a disciplinary hearing on the charges lodged against him.

On August 9, 2011, approximately fourteen (14) months after Walz requested a hearing, two sergeants were promoted to lieutenant. Walz was passed over from promotion in favor of a

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[2] According to the record, following that memo in 2010, Walz did not interact with Hellwig and the order that he report to Captain Selzam still stands. Hellwig retired in December 2013.

[3] As City Administrator and in accordance with administrative code, Administrator Taylor was the "appointing authority" and the person responsible for authorizing disciplinary action against City employees including police officers. Typically, Taylor would authorize disciplinary action after consultation with the Department Director and Personnel Director regarding the nature of the charges, previous handling of similar charges and recommendations concerning the disposition of the charges. In this instance, however, because the investigation involved Hellwig, then Internal Affairs Lieutenant Turner and City Counsel, Dan Williamson, ran the investigation and made the recommendation for disciplinary action to Taylor.

[4] Taylor never discussed anything relating to the discipline, the disciplinary action or the determination of the discipline concerning Walz with Hellwig.

lower-ranked candidate on the Civil Service Eligibility List. As such, he sent a letter dated August 12, 2011, to Personnel Director Dabney requesting a copy of the Statement of Reasons for the decision as provided by N.J.A.C. 4A:4-4.8(b)(4).

In accordance with New Jersey Civil Service rules, by memorandum dated September 8, 2011, Dabney provided the following justification: "...Sgt. Walz is currently facing major disciplinary action. The charges in question have not yet been adjudicated."

Walz retained counsel who, by letter dated August 17, 2011, filed a Notice of Appeal with the Civil Service Commission concerning failure to promote him in August 2011. Plaintiff's appeal asserted he was improperly bypassed for promotion because of pending discipline where the City purposefully caused the delay in his disciplinary hearing in retaliation for his "whistle-blowing."

By opinion/order dated April 2013, Robert M. Czech, Chairperson of the Civil Service Commission, rendered a decision on Walz's appeal of his bypass for promotion. The Commission found no evidence that the delay of the resolution of Walz's discipline was for the purpose of bypassing him or any unlawful motive. The Commission opined that it was permissible for the appointing authority to consider Walz's pending discipline as a basis for bypassing him:

> A review of the record in the instant matter indicates that the appellant has failed to meet his burden of proof. The appellant has not shown by a preponderance of the evidence that the bypass of his name was improper. Although he maintains that the appointing authority retaliated against him by bypassing him and delaying the departmental hearing, apart from the appellant's allegations, there is nothing in the record to indicate that the delay of the resolution of the appellant's discipline was for the purposes of bypassing him or for any other unlawful motive. Rather, the appellant had pending disciplinary charges against him at the time the appointments were made. In this regard, it is permissible for the appointing authority to consider the appellant's pending discipline as a basis for bypassing him on the certification.

Walz was afforded a Disciplinary Hearing on the disciplinary charges against him and was represented by counsel. Walz did not testify at the hearing or present any witness to testify as to the factual basis for his behavior. Following hearings that were held on February 17 and 21, 2012, as well as "the written submissions," by opinion dated December 18, 2012, the Hearing Officer found that Walz violated the New Jersey Administrative Code 4A:2-2.3(6), Conduct Unbecoming of a Public Employee, as well as Division Rule and Regulations 4:3.2. The Hearing Officer concluded, in pertinent part, as follows:

> I find Sergeant Walz in violation of New Jersey Administrative Code 4A:2-2.3(6) Conduct Unbecoming a Public Employee and in violation of Division Rules and Regulations 4:3-2, division records in divulging and exhibiting confidential official reports to unauthorized personnel within the police department.
>
> In regard to my recommendation for penalties for the Sergeant I have taken into account his past record of having no disciplinary actions against him. I may do this in determining the appropriate penalty for a current offense. *See, In Re Moorestown,* 216 N.J. Super. 143 (App. Div. 1987). It appears that the Sergeant has served the Plainfield Police Department and the citizenry of Plainfield as a good officer in the past. Because of this and the fact that the report was given to a Captain within the police department and not taken outside the police department by the Sergeant I find that demotion would be inappropriate for these charges. I do find though, that given the Sergeant's knowledge and experience in Internal Affairs, given the fact that a criminal investigation was going on that the Sergeant was or should have been fully aware that the PD10 report which he composed was a confidential document whether it was in an Internal Affairs file or not and should not have been released to Captain Gilliam. The Sergeant had avenues of inquiry which he could make if he was frustrated by not hearing from anyone about the results of the criminal investigation. Also, one would assume that in the City of Plainfield having not heard any repercussions to the director one could assume that the investigation was either on-going or had been completed with no criminal culpability attributed to the director. This being the case I believe a major discipline should be imposed on Sergeant Walz and would recommend that he receive a 10 day suspension.

The Hearing Officer recommended a ten day suspension which was memorialized in a "Final Notice of Disciplinary Action (31-B)" signed by Captain Santiago on January 3, 2013.

According to the record, Walz eventually served a ten-day suspension in 2013 stemming from those disciplinary charges. Walz lost no pay during the suspension because he "served" the suspension by charging his vacation days account.

The validity of the suspension has apparently not yet been addressed, but is awaiting a hearing and decision by an Administrative Law Judge related to a timely appeal filed by Walz. The reason for the delay is not part of the record.

ALLEGATIONS

Plaintiff has alleged the following claims in his Complaint:

- COUNT ONE: Plaintiff alleges a violation of the Conscientious Employee Protection Act N.J.S.A. 34:19-1 et seq. ("CEPA") based on the prohibition of retaliation against an employee for reporting, objecting to, refusing to participate and/or providing information and/or testimony of a violation of law or fraudulent or criminal activity, policy or practice.
- COUNT TWO: Plaintiff alleges a violation of the Law Against Discrimination N.J.S.A. 10:5-1 et seq. ("NJLAD") based on the prohibition of discrimination, retaliation and harassment of an employee and from aiding and abetting, coercing or compelling discriminatory or retaliatory acts against an employee.
- COUNT THREE – FICTITIOUS PARTY ALLEGATIONS – Plaintiff alleges that unnamed fictitious managers, supervisors or individuals treated the Plaintiff either negligently or discriminatory or aided or abetted discrimination against the Plaintiff.
- COUNT FOUR – COMMON LAW RETALIATION – Plaintiff alleges that defendants' actions constitute common law retaliation.
- COUNT FIVE – BREACH OF CONTRACT – Plaintiff alleges that he is a member of the Police Benevolent Association, which has a contract with the City of Plainfield, and the contract prohibits retaliation and discrimination against its members. Hellwig is not identified as a defendant as to that claim.
- COUNT SIX – PUNITIVE DAMAGES - Plaintiff alleges that the actions of the Defendants were outrageous and constitute willful and wanton behavior entitling him to punitive damages.

The parties participated in oral argument following the initial briefing of all issues. The parties then submitted supplemental briefs to address issues raised by the court during oral argument. The respective positions of the parties are discussed below.

Hellwig's Contentions

Count One:

Defendant Hellwig begins by arguing that Plaintiff has no basis to assert a CEPA claim against him because he cannot maintain a claim against the City and without employer liability there is no individual liability for Hellwig. The following five factors are used to assess whether

a supervisor provides "substantial assistance" to the employer: "(1) the nature of the act encouraged, (2) the amount of assistance given by the supervisor, (3) whether the supervisor was present at the time of the asserted harassment, (4) the supervisor's relating to others, and (5) the state of mind of the supervisor." *Tarr v. Ciasulli,* 181 N.J. 70, 84, (2004). Intentional wrongful conduct must be shown to prove liability; negligent supervision is insufficient. *Id.* at 85.

Because individual liability stems from aiding and abetting another's discriminatory conduct, an employee cannot be held individually liable for his own actions. *Newsome v. Administrative Office of Courts of State of New Jersey,* 103 F. Supp. 2d 807, 823 (D.N.J. 2000). Accordingly, if the employer is not liable for a CEPA violation, then the individual cannot be held liable. *See Failla v. City of Passaic,* 146 F.3d 149, 159 (3d Cir. 1998) (requiring employer's liability before considering individual's liability). Hellwig contends that there is no evidence that he provided "substantial assistance" to Plainfield. In addition, this Defendant contends that the Plaintiff did not engage in the type of whistleblowing activity required to satisfy CEPA, as Plaintiff has conveyed that he was "merely doing his job." Next, Hellwig asserts that Plaintiff cannot prove that Hellwig took a legally cognizable adverse employment action against him because the effectuated transfer and the internal affairs investigation were not tantamount to an adverse employment action. In addition, Hellwig argues that Plainfield has presented legitimate, non-pretextual reasons for the actions taken against Walz such that his CEPA claim must, therefore, fail.

Counts Two, Three, Four, and Five:

Hellwig asserts that Plaintiff's claims under CEPA bar/waive his claims under the LAD and other state law causes of action because N.J.S.A. 34:19-8 holds that "institution of an action in accordance with this act [CEPA] shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, State law, rule, or regulation or under

the common law." As such, Hellwig asserts that Counts Two, Three, Four, and Five should be dismissed as a matter of law.

Count Two:

In addition to CEPA barring Count Two, Hellwig asserts that plaintiff cannot sustain a claim against him under the LAD because Hellwig cannot "aid and abet" his own conduct.

Count Three:

In addition to CEPA barring this Count, Hellwig asserts that it should be dismissed because plaintiff has not amended his Complaint to identify these fictitious entities.

Count Five:

In addition to CEPA's bar on this Count, Hellwig argues that the breach of contract claim in this matter should be dismissed as to him because he is not a party to any contract with the plaintiff. It is undisputed that Hellwig was not a party to the contract between the PBA and the City, under which Plaintiff performed.

Count Six:

Finally, Hellwig contends that the Plaintiff's claim for punitive damages fails as a matter of law because they will only be awarded for wantonly reckless or malicious conduct and discovery here has not revealed any fact that could "remotely establish that Hellwig acted in a wantonly reckless or malicious manner…".

The City Defendants' Contentions

Count One:

The City of Plainfield and Plainfield Police Department (the "City Defendants") have filed their own Summary Judgment Motion, arguing that summary judgment is appropriate because Plaintiff did not complain of any illegal conduct by the employer. The City Defendants allege that Walz's claim under CEPA fails because Hellwig was not acting within the scope of his

employment when he allegedly solicited a prostitute. They argue that that behavior, which goes to the heart of this matter, did not pertain to Hellwig's role with the City and as such, any ramifications therefrom are outside the scope of the protection afforded by CEPA.

Counts Two, Three, Four, and Five:

The City Defendants concur with Hellwig insofar as Counts Two, Three, Four, and Five of the Plaintiff's complaint are concerned. All defendants agree that these counts are waived and barred because the Plaintiff did not name any fictitious parties.

Count Six:

The City Defendants also argue the punitive damages claim must be dismissed by relying upon the provisions of N.J.S.A. 59:9-2(c) which holds "no punitive or exemplary damages shall be awarded against a public entity."

Walz's Contentions

Plaintiff has interposed several arguments in opposition to these motions. First, he contends generically that the Defendants have failed to sustain their burden of showing that they are entitled to summary judgment as a matter of law and that there is no genuine issue of material fact.

Second, he contends that the Defendants have failed to sustain their summary judgment burden of showing that the Plaintiff has no legal basis to assert a CEPA claim.

Third, Plaintiff argues that he is not barred from bringing a claim under CEPA by virtue of his job responsibilities.

Fourth, Walz argues that his NJLAD claims should not be dismissed. He contends that a plaintiff is entitled to elect his remedy and cites *Ballinger v. Del. River Port Auth.*, 172 N.J. 586, 602 (2002) among other cases to support this proposition. He also argues that his NJLAD retaliation claim is distinct from his CEPA claim and thus is not barred, citing to *Young v. Schering*

Corp., 141 N.J. 16, 32 (1995), for the proposition that "the waiver exception foes not apply to those causes of action that are substantially independent of the CEPA claim."

LEGAL ANALYSIS

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Rule 4:46-2(c). The Supreme Court of New Jersey, in *Brill v. Guardian Life Ins. Co. of America,* 142 N.J. 520, 540 (1995), articulated the analysis as follows:

> A determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

The Court in *Brill* also held that a non-moving party cannot defeat a Motion for Summary Judgment merely by pointing to any fact in dispute, but rather must point to competent evidence that leads to substantial issue of material fact. *Id.* at 529. In sum, "where the party opposing summary judgment points only to disputed issues of fact that are of an insubstantial nature, the proper disposition is summary judgment." *Id.* The Court explained as follows:

> It is critical that a trial court ruling on a summary judgment motion not "shut a deserving litigant from his [or her] trial." *Judson, v. Peoples Bank & Trust of Westfield*, 17 N.J., 67 77, 1954 (citation omitted). At the same time, we stress that it is just as important that the court not "allow harassment of an equally deserving suitor for immediate relief and worthless trail." Ibid. (citation omitted).
>
> If these general rules are applied by the courts with discernment and care, the summary judgment procedure, without unjustly depriving a party of a trial, can effectively eliminate from crowded court calendars cases in which a trial would serve no useful purpose and cases in which the threat of trial is used to coerce a settlement. [Ibid. (quoting Asbill and Snell, Summary Judgment under the Federal Rules, 51 Mich.L.Rev. 1143, 1172 (1953))
>
> To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed "worthless" and will "serve no useful purpose." *Brill*, 142 N.J. at 540-41. Trial courts must keep in mind that the summary judgment rule should be applied so as to serve two

competing jurisprudential philosophies. *Robbins v. Jersey City*, 23 N.J. 229, 240 (1957). As the Court observed over a quarter of a century ago:

> On the one hand is the desire to afford every litigant who has a bona fide cause of action or defense the opportunity to full expose his case... On the other hand protection is to be afforded against groundless claims and frivolous defenses, not only to save antagonists the expense of protracted litigation but also to reserve judicial manpower and facilities to cases which meritoriously command attention. [*Id.* at 240-41, 128 A.2d 673 (citations omitted.)] [*Brill*, 142 N.J. at 541-42.]

In light of this framework, and for the reasons set forth below, the Court will grant the Motion the City Defendants, in part, and deny it, in part. The Court will grant Defendant Hellwig's Motion in its entirety.

I. The NJLAD Claims Must Be Dismissed.

Count Two of the Complaint alleges a violation of the Law Against Discrimination, N.J.S.A. 10:5-12 et seq. ("NJLAD"), against both the City of Plainfield and Plainfield Police Department directly, and Hellwig, individually, under the NJLAD's "aiding and abetting" provision. The NJLAD specifically prohibits "any person, whether or not an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so." N.J.S.A. 10:5-12(e). The purpose of the LAD is to ban discrimination against persons falling within the ambit of certain identified protected categories which include, among other things, "race, creed, color, national origin, ancestry, age, sex, marital status or because of ... liability for service in the Armed Forces of the United States." N.J.S.A. 10:5-3. *Fuchilla v. Layman*, 109 N.J. 319, 332 (1988). It is well settled that "[t]he clear public policy of this State," reflected in the LAD, "is to abolish discrimination in the work place." *Id.* at 334. See *Castellano v. Linden Bd. of Educ.*, 79 N.J. 407 (1979).

Relying on the pronouncements of the United States Supreme Court in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973), concerning the establishment of a *prima facie* case of discrimination under federal law, the Supreme Court of New Jersey has adopted a four-part

analysis to be applied in NJLAD actions, beginning with its decisions *in Peper v. Princeton University Board of Trustees*, 77 N.J. 55, 82-83 (1978), and followed thereafter in cases such as *Goodman v. London Metals Exchange Inc.*, 86 N.J. 19, 31 (1981); *Andersen v. Exxon Co.*, 89 N.J. 483, 492 (1982); *Clowes v. Terminix International, Inc.*, 109 N.J. 575, 595 (1988) and *Maher v. New Jersey Transit Rail Operations, Inc.*, 125 N.J. 455, 480-81 (1999).

In *Andersen*, the Court first explained that in New Jersey, a *prima facie* case of unlawful discrimination is established when "[t]he plaintiff [] demonstrate[s] by a preponderance of the evidence that he or she (1) **belongs to a protected class**, (2) applied and was qualified for a position for which the employer was seeking applicants, (3) was rejected despite adequate qualifications, and (4) after rejection the position remained open and the employer continued to seek applications for persons of plaintiff's qualifications. 89 N.J. at 492 (citing *McDonnell Douglas, supra*, 411 U.S. at 802) (emphasis added).

During oral argument, Plaintiff's counsel conceded that there is no record evidence to satisfy the first prong of this required element:

> Court: What's the protected category?
> Counsel: I don't have anything to add to the brief relative to that.
>
> Court: Well I didn't see anything in the brief, that's why I'm asking you while you're on your feet....He's not claiming that any of [the alleged adverse action] because of any type of actual or perceived protected class. He's just a police officer, correct?
> Counsel: Yes.
>
> Court: So the LAD claim is gone.
> Counsel: I can't enumerate any protected class.
>
> Court: Is there something else...that I'm missing on that claim?
> Counsel: No.

The court concludes that this failure to identify a protected category is fatal to Plaintiff's NJLAD claim against all Defendants.

In addition, with regard to that claim against Hellwig, a supervisor's misconduct, which forms the basis of a discrimination claim against the employer, although imputable to the employer, cannot alone support a claim of individual liability against the supervisor. *Cicchetti v. Morris County Sheriff's Office, et al.*, 194 N.J. 563, 594-96 (2008) (employees granted summary judgment dismissing the claims against them, holding they were not liable as aiders and abettors for their own acts of harassment).

In light of Plaintiff's admission that he does not fall into a protected category, as a matter of logic, the court need not address this additional argument as to the claim against Hellwig. Summary judgment is granted as to Count Two of the Complaint and the NJLAD claims are dismissed against all Defendants with prejudice.

II. The Breach of Contract Claim Must Be Dismissed.[5]

With respect to the contract claim as against the City Defendants, the court has concluded that summary judgment must be granted. Plaintiff's contract claim is apparently grounded in "no

[5] Although Hellwig is not identified as a defendant as to this claim, for purposes of clarity, in light of the nature of the pleading, the court finds that Count Five of the Complaint as to Hellwig must be dismissed with prejudice. Nothing in the Complaint alleges that Hellwig was the signatory to a contract with Walz. That pleading failure alone should be dispositive. However, even if it was alleged in the Complaint that Walz and Hellwig were parties to a contract that Hellwig breached, that claim could not survive a summary judgment motion in light of the uncontroverted record to the contrary. It is well-settled hornbook law that "[A] person not a party to a contract, nor in privity thereto, cannot sue [or be sued] in respect to a breach of a duty arising out of the contract." *Bacak v. Hogya*, 4 N.J. 417, 422 (1950). Count Five of Plaintiff's Complaint alleges a breach of contract claim, as Plaintiff was a member of the Plainfield Police Benevolent Association Local 19 ("PBA"), which has a contract with the City of Plainfield. There is nothing in the voluminous written record even suggesting that Hellwig and Plaintiff entered into a contractual relationship. As such, it is undisputed that Hellwig was not a party to the contract between the PBA and the City of Plainfield. Plaintiff's counsel conceded that absence of fact during oral argument: Plaintiff's counsel conceded that absence of fact during oral argument: "Court: How about the breach of contract claim against Director Hellwig? He's not a signatory to the C[ollective] B[argaining] A[greement]. Counsel: I agree with that."

In view of the absence of any contractual relationship between Walz and Hellwig, this Count is dismissed with prejudice as to Hellwig.

discrimination" clause of Article XIV of the CBA, which essentially reiterates the mandates of state and federal law. Article III of the CBA provides a very detailed five-step "Grievance Procedure." The parties to the CBA have agreed that the procedure provided is the only way to resolve grievances that arise and that are raised by City employees covered by the CBA:

> The following constituted the sole and exclusive method for resolving grievances between the parties covered by this Agreement, with the exception of disciplinary action and other matters which are cognizable under the Civil Service law of New Jersey and the rules and regulations promulgated by the New Jersey Department of Personnel, in which case such matters shall proceed for resolution, if any in accordance with the aforesaid rules and regulations of the Department of Personnel.

Plaintiff has stipulated that he never filed a grievance pursuant to the Grievance Procedure set forth in the CBA. As such, the court finds that he has waived the right to pursue a contract claim in this litigation. To conclude otherwise would require the court to ignore the unambiguous language of the negotiated contract that was executed by the parties. Count Five of the Complaint as to the City Defendants must be dismissed with prejudice.

III. Count Three Must Be Dismissed.

Discovery has ended and Plaintiff has not amended his Complaint to include any fictitious parties as set forth in Count Three of his Complaint. At oral argument, Plaintiff's counsel advised the court that no new parties would be identified/added. Accordingly, Count Three of the Complaint must be dismissed with prejudice as to all Defendants.

IV. The CEPA Claim Must Be Dismissed.

The Conscientious Employee Protection Act ("CEPA"), codified at N.J.S.A. 34:19-3, provides, in pertinent part, that:

> An employer shall not take any retaliatory action against an employee because the employee does any of the following:
>
> a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer ... that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, ...

****

> c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:
>
> (1) is in violation of a law, or a rule or regulation promulgated pursuant to law;
>
> (2) is fraudulent or criminal; or
>
> (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

Walz has brought suit against his employers, the City Defendants, as well as Hellwig, claiming retaliation under CEPA.

The New Jersey Supreme Court in *Dzwonar v. McDevitt*, 177 N.J 451, 462-64 (2003), held that a plaintiff must introduce evidence sufficient to prove that:

> (1) he or she reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy; (2) he or she performed a 'whistle-blowing' activity described in N.J.S.A. 34:19-3c; (3) an adverse employment action was taken against him or her; and (4) a causal connection exists between the whistle-blowing activity and the adverse employment action.

Significantly, this analysis requires that all four of the *Dzwonar* elements be satisfied. As such, if Plaintiff cannot establish each of the four required elements, Plaintiff's CEPA violation claim must fail. The court will address each prong in light of the record and will consider the record in the light most favorable to Walz.

A. Plaintiff Reasonably Believed That Hellwig's Behavior Was Violating A Law or Clear Mandate of Public Policy.

For the purposes of addressing this particular aspect of the pending motion, the court will assume that the record supports Walz's argument that he reasonably believed that Hellwig engaged in criminal behavior by "soliciting prostitution" and that by "retaliated" against him for Walz's part in "reporting [Hellwig's] attempts to have [Walz] removed from [his assignment in the IT

Bureau] ...for reporting [Hellwig's] unlawful conduct that eventually resulted in [Helwig's]...three day suspension."[6]

B. Did Plaintiff Engage in Whistle-blowing Activity, or Was He Merely Performing His Job Responsibilities?

As stated above, to satisfy the second element of the *prima facie* CEPA claim, Plaintiff must prove that he performed a whistle-blowing activity. *Dzwonar, supra.,* 177 N.J. at 462. Relying upon *Massarano v. New Jersey Transit*, 400 N.J. Super. 474, 491 (App. Div. 2008), Defendants contend that CEPA does not protect disclosures that are part of the employee's job responsibility unless the employee believed that the employer condones the illegal activity. In that case, the plaintiff was a security manager who reported defendant's allegedly careless disposal of blueprints relating to transit structures as CEPA. The Appellate Division held that plaintiff was merely performing her responsibilities and, therefore, was not a whistleblower protected by CEPA.

Here, Defendants, relying upon *Massarano*, argue that Plaintiff is a police officer who simply reported what he suspected was criminal activity. Walz testified that he investigated the emails he discovered in the Police Department vehicle because he believed Hellwig had committed a crime and reported it on a PD-10 which is an official report of the Police Department. As such, Defendants contend that Plaintiff cannot, as a matter of law, satisfy the second prong of a CEPA claim because he was simply performing his job when he reported Hellwig for engaging in what Walz thought was criminal activity.

The court is mindful that just last year the Appellate Division, in *Lippman v. Ethicon*, 432 N.J. Super. 378 (2013), reversed and remanded trial court's summary dismissal of a CEPA claim by a "watchdog employee" whose job was to monitor and ensure compliance with public safety

[6] This information is set forth in Walz's letter dated May 3, 2010, to Karen O. Dabney, Personnel Director for the City of Plainfield, which is referenced by the Court in the Statement of Facts.

standards. The Supreme Court of New Jersey granted certification in the *Lippman* case and recently heard oral argument. Defendants argue that *Lippman* is distinguishable from this case and, therefore, *Massarano* should apply. This court disagrees and, after reviewing the authoritative case law, has concluded that even if *Lippman* were controlling--an argument not made by Plaintiff--based upon the uncontroverted record as to his issue, Walz cannot satisfy the elements established by the Appellate Division for a "watchdog employee" in a CEPA case to avoid summary judgment.

In *Lippman,* the plaintiff communicated his concerns about the safety of medical devices. *Id.* The Appellate Division explained that "watchdog" employees are the most vulnerable to retaliation because they are "uniquely positioned to know where the problem areas are and to speak out when corporate profits are put ahead of consumer safety." *Id.* at 406-407. The Appellate Division clarified the elements of a CEPA claim for employees who perform "watchdog activities" were as follows:

> In the interest of assisting both the trial courts and the attorneys who practice in this field, we will distill our holding in this case to the following *Dzwonar*-guided paradigm. To establish a prima facie cause of action under CEPA, employees who perform "watchdog" activities as their employment function must demonstrate the following. First, the employee must establish that he or she reasonably believed that the employer's conduct was violating either a law, government regulation, or a clear mandate of public policy. Second, the employee must establish that he or she refused to participate or objected to this unlawful conduct, and advocated compliance with the relevant legal standards to the employer or to those designated by the employer with the authority and responsibility to comply. To be clear, this second element requires a plaintiff to show he or she either (a) pursued and exhausted all internal means of securing compliance; or (b) refused to participate in the objectionable conduct. Third, the employee must establish that he or she suffered an adverse employment action. And fourth, the employee must establish a causal connection between these activities and the adverse employment action. We are satisfied that this paradigm tracks and adheres to the four elements established by the Court in *Dzwonar, supra,* 177 *N.J.* at 462.

In this case, Walz has not satisfied his burden of proving the second prong of the newly enunciated *Lippmann* test. There is nothing in the record even suggesting that he sought any compliance by Hellwig for any behavior, especially in light of the fact that the behavior about

which Walz complained was in the past and was addressed by the City Defendants. Nor is there logically any suggestion that Walz refused to engage in any type of behavior.

As such, the court finds that under the analysis set forth under either *Massarano* or *Lippman*, Walz did not engage in any whistle blowing activity with respect to the behavior of Helwig about which Walz complained in terms of the belief that Hellwig was engaging in criminal conduct by "soliciting prostitution." Therefore, Walz cannot prove a CEPA claim for that complained of behavior by Hellwig.

However, in terms of Walz's argument that he was retaliated against by Hellwig or another agent, employee or representative of the City Defendants because his investigation resulted in Walz being suspended for ten days, the court will assume for argument sake only that Walz engaged in "whistle-blowing" activity as contemplated by CEPA when he sent the May 30, 2010 letter to City Administrator Taylor.[7]

C. Adverse Employment Action.

As already discussed above, in order to establish a *prima facie* case of retaliation under CEPA, Plaintiff must show "1) that [he] engaged in protected activity, 2) that [his] employer . . . took adverse action against [him], and 3) that a causal link exists between the protected activity and the employer's action." *See Young v. Schering Corp.*, 275 N.J. Super. 221, 233 (App. Div. 1994) aff'd 141 N.J. 16 (1995). N.J.S.A. 34:19-2e specifically defines "retaliatory action" as "the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in terms and conditions of employment." "The definition of retaliatory action speaks in terms of completed action," and, therefore, notice of termination, without more (i.e. actual termination), is neither completed nor retaliatory. *Daniels v. Mutual Life Ins. Co.*, 340 N.J.

[7] The Court is skeptical that a claimed violation of CEPA could, in fact, be the basis for a CEPA claim, but that is an issue that need not be addressed at this time in light of the court's ultimate decision in this case.

Super. 11, 16 (App. Div. 2001); *Borawski v. Henderson*, 265 F. Supp. 2d 475, 486 (D.N.J. 2003) ("Retaliatory actions under CEPA are confined to completed personnel actions that have an effect on either compensation or rank.") (App.Div.1996) The term "adverse employment actions" also includes "serious intrusions into the employment relationships..." *Id.* Such adverse actions have been held to include the length of the workday, increase or decrease in hours, decrease in salary or fringe benefits and physical arrangements and facilities. *Beasley v. Passaic County*, 377 N.J. Super. 585, 685-686 (App. Div. 2005).

The Defendants argue that the alleged actions taken against Walz did not qualify as retaliation under CEPA, which defines "retaliatory action" as the "discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment." *N.J.S.A.* 34:19-2(e). Filing a CEPA or other complaint against an employer also "does not insulate [a] complaining employee from discharge or other disciplinary action for reasons unrelated to the complaint." *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 424 (1999). Therefore, an investigation of an employee alone is not normally considered retaliation. *See Jones v. Fitzgerald,* 285 F.3d 705, 715 (8th Cir. 2002). An investigation, if conducted properly, should reveal "whether the basis for the complaint is reasonable." *Higgins, supra,* 158 N.J. at 424.

The court is aware that retaliation under CEPA can consist of a single discrete action resulting in an employee's discharge, suspension or demotion. *Green v. Jersey City Bd. of Educ.*, 177 N.J. 434 (2003). According to the Court, an "adverse employment action taken against an employee in the 'terms and conditions of employment,' *N.J.S.A.* 34:19-2e, can include . . . many separate but relatively minor instances of behavior directed against an employee that may not be actionable individually but that combine to make up a pattern of retaliatory conduct." However,

if there has been no discharge, suspension or demotion, *Beasley* requires that a plaintiff demonstrate a "pattern of conduct that adversely affects the terms and conditions of employment." 377 N.J. Super. 610.

Walz argues that he suffered the following adverse employment actions:

1. On April 9, 2010 Walz was ordered to be transferred from the IT Bureau to the Uniform Bureau effective April 19, 2010.

2. Walz was bypassed twice during promotional cycles.

3. Plaintiff was served with a Preliminary Notice of Disciplinary Action based on his disclosure of confidential Internal Affairs documents. He was afforded a hearing and represented by attorney. The hearing officer determined that Walz violated the New Jersey Administrative Code 4A:2-2.3(6), Conduct Unbecoming a Public Employee and a violation of Division Rule and Regulations 4:3.2. The hearing officer recommended a ten (10) day suspension, which was memorialized in a final notice of disciplinary action signed by Captain Santiago. Walz served the ten-day suspension by way of taking vacation time.

This court concludes that even when viewed in the light most favorable to Plaintiff, the "rescinded demotion" claim fails to establish an "adverse employment action" against Plaintiff brought about by either Hellwig of the City Defendants. First, the record is clear that Hellwig did not bring any charges against Walz. The deposition testimony of City Administrator Taylor and Internal Affairs Commander Turner confirms that the Internal Affairs investigation for the release of confidential information was prompted by Taylor, upon the advice of City Counsel, when she received Walz's Report and the attached e-mail from Gilliam. Here, Turner conducted the investigation while City Counsel provided oversight and ultimately recommended that Ms. Taylor, in her role as the statutory appointing authority, sign the charges. The proposed discipline was based upon the recommendation of the New Jersey State Association of Chiefs of Police. There is no evidence that Director Hellwig had any input or provided any assistance to the City in its Internal Affairs investigation or in charging Plaintiff. As such, that aspect of the claim as to Hellwig cannot stand as a matter of law.

Second, and as to all Defendants, the "transfer was rescinded before it was to occur, which rendered Plaintiff whole and, therefore, cannot logically of as a matter of law constitute an adverse employment action." *Beasley, supra,* 377 N.J. Super. at 607-08 (N.J. Super. Ct. App. Div. 2005. *See Kadetsky v. Egg Harbor Tp. Bd. of Educ.*, 82 F.Supp.2d 327, 340 (D.N.J. 2000) (plaintiff was subsequently granted tenure and incriminating materials were removed from his personnel file and therefore, there was no adverse employment action). In other words, employer actions that are rescinded makes a plaintiff completely whole and remedies a prior decision cannot constitute an adverse employment action. *See e.g., Pennington v. City of Huntsville,* 261 F.3d 1262, 1267 (11th Cir.2001); *Benningfield v. City of Houston,* 157 F.3d 369, 378 (5th Cir.1998), *cert. denied,* 526 U.S. 1065 (1999); *Lee v. N.M. State Univ. Bd. of Regents,* 102 F.Supp.2d 1265, 1275 (D.N.M.2000); *Almonte v. Coca-Cola Bottling Co. of N.Y., Inc.,* 959 F.Supp. 569, 572-73 (D.Conn.1997). *See also Horvath v. Rimtec Corp.*, 102 F.Supp.2d 219, 235 (D.N.J. 2000) (plaintiff ultimately received the raise at issue, and, therefore, the court found that plaintiff did not suffer any retaliation by way of an adverse employment action under the federal Age Discrimination in Employment Act).

Here, the salient record facts are not controverted. Specifically, on April 13, 2010, prior to effectuating the transfer, Hellwig informed Plaintiff that he was not going to be transferred. At oral argument, Plaintiff's counsel conceded that Waltz was never transferred and remains assigned to the IT Bureau. Moreover, according to Walz's testimony, after that conversation with Hellwig in 2010, he did not have any interaction with Hellwig. Hellwig retired in December 2013. As such, the proposed/rescinded transfer cannot form the basis of an adverse action against Hellwig or the City Defendants.[8]

[8] Walz also asserts that he was "upset" by the "possibility of a transfer". Plaintiff's subjective reaction to a potential transfer does not constitute an adverse employment action. While Plaintiff may not have been

Defendants also argue that Plaintiff has not amended his Complaint to include the "promotional bypass" and failure to include his name on the Civil Service Eligibility list as an adverse employment action. Thus, Defendants contend that Walz has effectively waived the right to assert a cause of action based on his non-promotion under the entire controversy doctrine.

As a preliminary matter, in light of the uncontroverted record, the court has concluded that even if Plaintiff had been permitted to amend his Complaint to include his non-promotion as an alleged adverse employment action, no liability can attach to Hellwig regarding that claim. The Civil Service Commission and the associated statutory regulations control promotions within the City of Plainfield. *See* N.J.S.A Title 11A et seq. Once the promotion list is certified by the Civil Service Commission, the City's Mayor swears-in and promotes the police officers. Accordingly, the bypass of Plaintiff's name due to pending disciplinary charges cannot be an adverse employment action attributable to Hellwig.

When a plaintiff is afforded a hearing and represented by counsel, such as is the case here, a plaintiff "cannot claim that . . . substantiated disciplinary charges and resulting brief suspensions from work [are] retaliatory." *Hancock v. Borough of Oaklyn,* 347 N.J. Super. 350, 361 (App. Div. 2002), *appeal dismissed as improvidently granted,* 177 N.J. 217 (2003). It would require a strong showing to "transmute [a] defense to the disciplinary charges into an affirmative CEPA claim." *McLelland v. Moore,* 343 N.J. Super. 589, 608 (App. Div.2001), *certif. denied,* 171 N.J. 43(2002).

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happy about the prospect of a transfer, it goes without saying that not everything that makes an employee unhappy rises to the level of an actionable adverse employment action. *Smart v. Ball State Univ.,* 89 F.3d 437, 441 (7th Cir.1996). Adverse employment actions do not qualify as retaliation under CEPA "merely because they result in a bruised ego or injured pride on the part of the employee." *Klein v. Univ of Med. & Dentistry,* 377 N.J. Super. 28, 46 (App.Div.2005). CEPA's purpose is to prevent retaliatory action against whistle-blowers, it is not to "assuage egos or settle internal disputes at the workplace." *Id.* at 45.

Plaintiff timely appealed his promotional-bypass claim to the Civil Service Commission. In that appeal, Plaintiff argued that he was "improperly" bypassed for promotion when the City "purposefully" delayed his disciplinary hearing. According to Plaintiff, the delay by the City operated to maintain the disciplinary charges as "pending" and foreclosed any possibility of promotion. Plaintiff claimed that the City and Hellwig caused the delay in retaliation for his "whistle-blowing." Ultimately, the Chairperson of the Civil Service Commission found that Walz's assertions were without merit:

> [A]part from the appellant's allegations, there is nothing in the record to indicate that the delay of the resolution of the appellant's discipline was for the purpose of bypassing him or for any other unlawful motive. Rather, the appellant had pending disciplinary charges against him at the time the appointments were made. In this regard, it is permissible for the appointing authority to consider the appellant's pending discipline as a basis for bypassing him on the certification.[9]

As stated above, when a plaintiff is afforded a hearing and represented by counsel, such as is the case here, a plaintiff "cannot claim that . . . substantiated disciplinary charges and resulting brief suspensions from work [are] retaliatory." As such, the court finds that the" failure-to-promote" aspect of Plaintiff's claimed adverse employment action is without merit.

However, in considering the record in light of the non-moving party, as the court is required to do when addressing a motion for summary judgment, the court comes to a different conclusion with regard to that aspect of Plaintiff's claim that he served a ten-day suspension as a result of his claimed whistle-blowing activity. The court finds that in light of the current procedural status of

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[9] As a result of his appeal to the Civil Service Commission and the final decision by the Commission concerning the bypass, Plaintiff is collaterally estopped from asserting a claim of retaliation based on non-promotion in this action. *Winters v. North Hudson Regional Fire and Rescue*, 212 N.J. 67 (2012) (Prior decision of Civil Service Commission, determining that termination of firefighter was warranted due to firefighter's abuse of sick leave, precluded, under doctrine of collateral estoppel, firefighter's subsequent action against regional fire department alleging claim of retaliatory termination under CEPA.)

the litigation, until the Administrative Law Judge hears Plaintiff's appeal on the suspension and renders a decision, it would be premature for this court to grant summary judgment against the City Defendants as to that alleged aspect of Plaintiff's CEPA claim. At this point, the court is confronted with multiple issues of material fact as to the cause and result of that particular action. As such, the court is compelled to deny that aspect of the City Defendant's Motion for Summary Judgment.

D. Legitimate Non-Discriminatory Reasons and Discriminatory Motive.

CEPA claims are to be evaluated at the summary judgment stage through an application of the *McDonnell-Douglas* burden-shifting approach. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Mogull v. CB Commercial Real Estate Group, Inc.*, 162 N.J. 449, 462 (2000); *El-Sioufi v. St. Peter's University Hosp.*, 382 N.J. Super. 145, 166 (App. Div. 2005); *Grigoletti v. Ortho Pharm. Corp.*, 118 N.J. 89, 97-98 (1990); *Myers v. AT&T,* 380 N.J. Super. 443, 452 (App. Div. 2005). The prongs of that analytical framework are: (1) proof by Plaintiff of the *prima facie* elements of discrimination; (2) production by the employer of a legitimate, non-discriminatory reason for the adverse employment action; and (3) demonstration by Plaintiff that the reason so articulated is not the true reason for the adverse employment action, but a pretext for discrimination. *See Mogull, supra*, 162 N.J. at 462; *Erickson v. Marsh & McLennan*, 117 N.J. 539, 549-51, (1990).

Under this analytical framework, the court first determines whether the plaintiff has produced sufficient evidence to demonstrate the elements of a *prima facie* case. Assuming that requirement is satisfied, the burden shifts to the employer to produce evidence of legitimate, non-discriminatory reasons that support its employment actions. The employer's burden has been described as "so light as to be 'little more than a mechanical formality; a defendant, unless silent,

will almost always prevail.'" Mogull, 162 N.J. at 469. Once the employer has produced evidence of legitimate, non-discriminatory reasons, the burden shifts back to plaintiff to prove that the stated reasons were a pretext for discrimination. *El-Sioufi v. St.Peters Univ.* 382 N.J. Super. 145, 166 (App. Div. 2005). If the employer proffers a legitimate, non-discriminatory reason, then a jury trial is not required unless a plaintiff "[c]an point to some evidence, direct or circumstantial, from which a fact finder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." *Id. at 169.* See also *Svarnas v. AT&T Communications*, 326 N.J. Super. 59, 82 (App. Div. 1999) ("All that is needed is [to defeat a summary judgment motion is] some evidence from which a factfinder could infer that the employer's proffered reason was either a post hoc fabrication or otherwise did not actually motivate the decision.")

In this case, the court need not address the pretext prong of the analysis as to the claims against Hellwig because Walz has failed to make a *prima facie* case against him. Accordingly, for the reasons set forth above, Count One of Complaint as to Hellwig must be dismissed with prejudice a matter of law.

As already discussed above, until the "ten-day suspension" issue is resolved by the Administrative Law Judge, the court finds that when viewed in the light most favorable to him, there remains a fact dispute as to whether Walz has demonstrated that there was discriminatory intent in any of the actions taken by the City Defendants. Although it is arguable a very close call, Plaintiff has identified certain record evidence that a reasonable trier of fact could find either casts sufficient doubt upon the City Defendants' proffered legitimate reason so that a fact finder could reasonably conclude it was fabricated or that allows the fact finder to infer that discrimination was

more likely that not the motivating or determinative cause of the "ten-day suspension". Accordingly, with regard to that component of his CEPA only, the court finds that summary judgment cannot be granted as to the City Defendants.

E. Individual liability under CEPA.

CEPA's definition of "employer," N.J.S.A. 34:19-2(a), is somewhat expansive and makes "both the employer and the employee subject to CEPA's prohibitions." *Maw v. Advanced Clinical Commc'ns*, 359 N.J. Super. 420, 439-40, (App.Div.2003), rev'd on other grounds, 179 N.J. 439 (2004). See *Espinosa v. Cont'l Airlines*, 80 F.Supp.2d 297, 305-06 (D.N.J.2000). While the Court is mindful that under certain circumstances personal liability may attach in a CEPA claim, the holding in *Maw* requires that the employee act "on behalf of or in the interest of an employer with the employer's consent." *Id.* (quoting N.J.S.A. 34:19-2a). After thoroughly reviewing the record, the court agrees with Hellwig that the facts alleged by the Walz as to Hellwig in this case, even if accepted as true, fail to satisfy this threshold requirement as to individual liability.

According to the New Jersey Supreme Court in *Tarr v. Ciasulli*, 181 N.J. 70, 84, (2004), the following five factors are relevant to assess whether a supervisor provides "substantial assistance" to the employer. Those factors are as follows" "(1) the nature of the act encouraged, (2) the amount of assistance given by the supervisor, (3) whether the supervisor was present at the time of the asserted harassment, (4) the supervisor's relating to others, and (5) the state of mind of the supervisor. Intentional wrongful conduct must be established to prove liability on behalf of a supervisor. Negligent supervision alone is not a sufficient basis to impose individual liability. *Id.* at 85.

Because individual liability under CEPA is contingent upon aiding and abetting another's discriminatory conduct, it is axiomatic that an employee cannot be held individually liable for his own actions. *Newsome v. Administrative Office of Courts of State of New Jersey*, 103 F. Supp. 2d

807, 823 (D.N.J. 2000). Accordingly, if the employer is not liable for a CEPA violation, then the individual cannot be held liable. *See Failla v. City of Passaic*, 146 F.3d 149, 159 (3d Cir. 1998) (requiring employer's liability before considering individual's liability).

Hellwig contends that Walz cannot sustain a CEPA claim against him for two reasons: (1) Walz cannot maintain a claim against the City Defendants and without employer liability, there can be no individual liability; and (2) There is no evidence that Hellwig provided "substantial assistance" to the City Defendants in any discriminatory conduct or adverse employment action. For the reasons set forth above, after reviewing the record, the court concludes that Hellwig is wrong in his first argument, but correct in his second. As such, for this additional reason, the CEPA claim (Count One) cannot stand against Hellwig and must be dismissed with prejudice.

V. Plaintiff's CEPA Claims Constitute A Waiver Of All Other Claims Based On State Law.

N.J.S.A. 34:19-8 articulates the waiver provision of CEPA as follows:

> Nothing in this act shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or State law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this act shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, State law, rule or regulation or under the common law.

"Once a CEPA claim is 'instituted,' any rights or claims for retaliatory discharge on a contract of employment; collective bargaining agreement; state law, whether its origin is in the legislature, the courts, the common law or rules of the court; or regulations or decisions based on statutory authority, all are waived." *Baldassare v. State of New Jersey*, 250 F.3d 188, 202 (3rd Cir. 2001), citing Young v. Schering, 141 N.J. 16 (1995). The CEPA waiver provision is fact-specific and not absolute. A claim based on facts independent of the accompanying CEPA claim will avoid preclusion. *Falco v. Community Medical Center*, 296 N.J. Super. 298, 318 (App. Div. 1997) certif. den. 153 N.J. 405 (1998). CEPA's exclusivity provision bars Plaintiff's state constitutional claim

and common-law claims relying on the same facts. *Falco v. Cmty. Med. Ctr.*, 296 N.J. Super. 298, 318, (App. Div. 1997), *abrogated on other grounds*, Dzwonar v. McDevitt, 177 N.J. 451 (2003) (dismissing a constitutional tort); *See also Beasley v. Passaic County*, 377 N.J. Super. 585, 610 (App.Div.2005) (dismissing a claim for intentional infliction of emotional distress, *Littman v. Morgan Stanley Dean Witter*, 337 N.J. Super. 134, 144 (App. Div. 2001) (dismissing common law claims).

The court agrees with Defendants' argument that while pleading in the alternative is a well-accepted practice in many legal settings, it is expressly prohibited in a CEPA action in which the plaintiff articulates no facts upon which he or she relies exclusively to advance a different cause of action. Specific to this case, most of the exclusivity arguments presented by the parties have essentially been mooted by the court's decision to grant summary judgment and dismiss the Complaint in its entirety as to Hellwig and Counts Two, Three, Four, Five and Six as to the City Defendants. The only cause of action that has survived summary judgment is that aspect of Count One which relies upon Plaintiff's claimed adverse action which is grounded in the ten-day suspension imposed by the Hearing Officer following the hearing on that appeal.

However, for the reasons set forth above, to the extent that claim is still not ripe and will not be until the Administrative Judge rules on the legally of that suspension under the applicable Civil Service standards, at this point the court agrees with Plaintiff's argument that he does not yet have to elect his claim of action. *See Ballinger v. Del. River Port Auth.*, 172 N.J. 586, 602 (2002). However, as discussed above, should Plaintiff's ten-day suspension be declared to have been "illegal", then for the reasons set forth above, the court finds that that aspect, and that aspect only, of Plaintiff's claim could potentially proceed to trial. If, on the other hand, the Administrative Law Judge determines that the ten-day suspension was "legal" then Plaintiff should be collaterally

estopped from asserting a claim of retaliation based on non-promotion in this action. *See Winters v. North Hudson Regional Fire and Rescue*, 212 N.J. 67 (2012) (prior decision of Civil Service Commission, determining that termination of firefighter was warranted due to firefighter's abuse of sick leave, precluded, under doctrine of collateral estoppel, firefighter's subsequent action against regional fire department alleging claim of retaliatory termination under CEPA).

VI. Plaintiff's Common-Law Retaliation Claims Fail For The Same Reasons That His CEPA Claims Fail.

If under the election of remedies, Walz decides to forego his remaining CEPA claim and instead proceed with the common-law claim alleging unlawful retaliation, under the existing case law, in the court's opinion, Plaintiff still could not sustain a valid claim as a matter of law as to Hellwig and any claim against the City Defendants would be circumscribed in scope by the alleged "ten-day suspension" adverse employment action already addressed by the court. The legislative intent behind CEPA was the adoption of a statute that would formalize the common law. Accordingly, in order to establish a *prima facie* case of common-law retaliation, a plaintiff must satisfy the same elements as set forth in a CEPA claim by demonstrating that: (1) he engaged in a protected employee activity; (2) he suffered an adverse employment action; and (3) there was a causal connection between his participation in the protected activity and the adverse employment action. *See, e.g., Fasold v. Justice*, 409 F.3d 178, 188 (3d Cir.2005).

For the reasons set forth above, the court concludes that Plaintiff cannot establish a common-law retaliation claim as a matter of law against Hellwig and could only possibly proceed with his "ten-day suspension" claim against the City Defendants. Although Walz argues that his NJLAD/common-law retaliation claim is distinct from his CEPA claim and thus is not barred, citing to *Young v. Schering Corp.*, 141 N.J. 16, 32 (1995) for the proposition that "the waiver exception foes not apply to those causes of action that are substantially independent of the CEPA

claim," the court finds that Plaintiff is relying upon an unarticulated distinction. That, however, is an issue which is not yet ripe for consideration and will not be unless and until this litigation reaches the stage that Plaintiff is required to make an election of remedies.

VII. Plaintiff's Claim For Punitive Damages Fails As A Matter Of Law.

In Count Six of the Complaint, Plaintiff asserts a claim for punitive damages. Not every violation of the NJLAD warrants an award of punitive damages. Under New Jersey law, to warrant an award of punitive damages, a defendant's conduct must have been wantonly reckless or malicious, meaning, in this case, that someone employed by the City of Plainfield or Hellwig must be guilty of intentional wrongdoing in the sense of an evil-minded act or an act accompanied by a wanton and willful disregard of the rights of Plaintiff. *Maudsley v. State*, 357 N.J. Super. 560, 591 (App. Div. 2003) (quoting *Nappe v. Anschelewitz, Barr, Ansell & Bonello*, 97 N.J. 37, 49 (1984)).

N.J.S.A. 2A:15-5.12(a) of the New Jersey Punitive Damages Act (the "PDA"), provides as follows:

> Punitive damages may be awarded to the plaintiff only if the plaintiff proves, by clear and convincing evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions. This burden of proof may not be satisfied by proof of any degree of negligence including gross negligence. *Id.*

The PDA defines "clear and convincing evidence" as the quantum of evidence leaving "no serious or substantial doubt" about the correctness of the conclusions drawn from that evidence. N.J.S.A. 2A:15-5.10. "Actual malice" is defined as "intentional wrongdoing in the sense of an evil-minded act." *Id.* Lastly, "wanton and willful disregard" is defined as a "deliberate act or omission with knowledge of a high degree of probability of harm to another and reckless indifference to the consequences of such act or omission." *Id.*

The statute does not substantially alter the common law regarding punitive damages. Therefore, punitive damages are only to be awarded in exceptional cases even where the NJLAD

has been violated. *Catalane v. Gillian Instrument Corp.*, 271 N.J. Super. 476, 500 (App. Div. 1994) *Weiss, supra*, 747 F. Supp. at 1135. In *Weiss*, then-Chief Judge Gerry stated:

> Like any other case where punitive damages are available, punitive damages should only be awarded under the NJLAD in exceptional cases.... In order for punitive damages to be awarded, the defendant's conduct must have been wantonly reckless or malicious. Under New Jersey law, the exceptional nature of a given case and the wanton or malicious nature of the defendant's conduct are questions for the finder of fact. [Ibid. (citations omitted) (emphasis added).]

The Court has completed an exhaustive review and concludes that is nothing in the record to even remotely suggest any fact that could remotely establish by clear and convincing evidence that Hellwig acted in a wantonly reckless or malicious manner toward Walz. Accordingly, Plaintiff's demand for punitive damages against Hellwig (Count Six of the Complaint) must be dismissed as a matter of law.

Lastly, as to Walz's claim for punitive damages as to the City Defendants, it is well settled that such claims are not available under the Tort Claims Act. N.J.S.A. 59:9-2(c). That statutory provision states unequivocally that "[n]o punitive or exemplary damages shall be awarded against a public entity." For this reason alone, Plaintiff's claims as to the City Defendants for punitive damages should be dismissed.

Moreover, even absent this clear statutory provision, punitive damages may not be recovered against an employer for the wrongful acts of its employees unless the act in question was specifically authorized or ratified by the master. *See Winkler v. Hartford Accident and Indemnity Co.*, 66 N.J. Super, 22, 29 (App. Div.), *certif. denied*, 34 N.J. 581 (1961). Here, Walz has not identified any such evidence in the record. As discussed above, the only alleged acts of retaliation are a transfer which was rescinded, disciplinary charges which, to date, were upheld following a hearing at which Plaintiff was represented, and a bypass for promotion which was upheld by the Civil Service Commission. Therefore, the court finds that Plaintiff has not pointed

to a single record fact from which a reasonable jury could infer that the City Defendants, or any employee, agent or representative of the City Defendants, "specifically authorized or ratified" knowingly retaliatory conduct. The demand for punitive damages must be dismissed.

CONCLUSION

For the reasons set forth above, the court is granting the following relief:

1. Summary judgment is granted and Count One of the Complaint is dismissed with prejudice as to Martin R. Hellwig. Summary judgment as to Defendants, City of Plainfield and Plainfield Police Department, is denied without prejudice.

2. Summary judgment is granted and Count Two of the Complaint is dismissed with prejudice as to all Defendants.

3. Summary judgment is granted and Count Three of the Complaint is dismissed with prejudice as to all Defendants.

4. Summary judgment is granted and Count Four of the Complaint is dismissed with prejudice as to all Defendants.

5. Summary judgment is granted and Count Five of the Complaint is dismissed with prejudice as to all Defendants.

6. Summary judgment is granted and Count Six of the Complaint is dismissed with prejudice as to all Defendants.

The Court has enclosed copies of the Orders.

In light of the court's decision, counsel are to schedule a telephone conference with the court to discuss the scheduling of the hearing before the Administrative Law Judge and related procedural issues.

Very truly yours,

ALAN G. LESNEWICH, J.S.C.

Eric L. Harrison – 033381993
METHFESSEL & WERBEL, ESQS.
2025 Lincoln Highway, Suite 200
PO Box 3012
Edison, New Jersey 08818
(732) 248-4200
harrison@methwerb.com
Attorneys for Martin R. Hellwig
Our File No. 75148 ELH

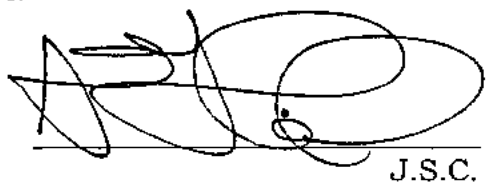
FREDERICK W. WALZ Plaintiff, V. CITY OF PLAINFIELD, PLAINFIELD POLICE DEPARTMENT; MARTIN R. HELLWIG, JOHN DOES 1-20 (SAID NAMES BEING FICTITIOUS) AND ABC CORPORATIONS 1-10 (SAID CORPORATIONS BEING FICTITIOUS) Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION:UNION COUNTY DOCKET NO.: UNN-L-1569-11 Civil Action **ORDER OF SUMMARY JUDGMENT**

THIS MATTER having been brought before the Court on the Motion of Methfessel & Werbel attorneys for defendants, Martin R. Hellwig for an Order for Summary Judgment dismissing the Plaintiff's Complaint, and the Court having considered the matter and for good cause shown;

IT IS on this 20th day of February 2015;

ORDERED that Summary Judgment dismissing the Plaintiff's Complaint in its entirety with prejudice is hereby granted in favor of the defendant, Martin R. Hellwig; and it is further

ORDERED that a copy of this Order be served on all counsel within 7 days of the date hereof.



J.S.C.

ALAN G. LESNEWICH

(✓) Opposed
( ) Unopposed

John F. Gillick, Esq. ID#017302001
MARTIN KANE & KUPER
ATTORNEYS AT LAW
180 Tices Lane - Building B, Suite 200
East Brunswick, New Jersey 08816
732-214-1800
732-214-0307 (fax)
Attorneys for defendants City of Plainfield and Plainfield Police Department

FREDERICK W. WALZ,

Plaintiff,

vs.

CITY OF PLAINFIELD, PLAINFIELD POLICE DEPARTMENT, MARTIN R. HELLWIG, et als.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - UNION COUNTY
Docket No. UNN-L-001569-11

Civil Action

ORDER

THIS MATTER being opened to the Court on Friday, December 6, 2013, by John F. Gillick, Esq., of Martin Kane & Kuper, attorneys for defendants City of Plainfield and Plainfield Police Department on a Motion for Summary Judgment, and it appearing to the Court that due notice of this Motion has been given to all counsel, and the Court having considered the matter and for good cause shown,

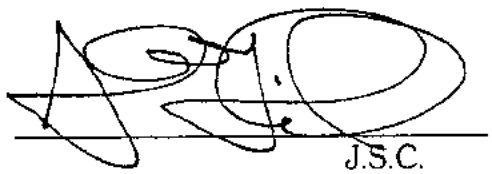
IT IS on this 20TH day of FEBRUARY, 2015

ORDERED that the Motion for Summary Judgment be and hereby is granted in favor of defendants City of Plainfield and Plainfield Police Department thereby dismissing, with prejudice, any and all claims and cross-claims against said defendants; and it is further

COUNTS TWO, THREE, FOUR, FIVE AND SIX OF THE COMPLAINT

SUMMARY JUDGMENT AS TO COUNT ONE IS GRANTED IN PART AND DENIED IN PART AS PER THE COURT'S ORDER DATED FEBRUARY 20, 2015.

ORDERED that a true and correct copy of this Order be served upon all counsel within seven (7) days of the date hereof.



J.S.C.

ALAN G. LESNEWICH

Opposed (✓) Unopposed ( )