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**FILED**

FEB - 5 2016

CIVIL DIVISION  
SUPERIOR COURT-CAPE MAY COUNTY

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DONALD BRAD WILTSHIRE,

Plaintiff

v.

CHRISTOPHER BREUNIG, AND THE  
CITY OF OCEAN CITY, jointly, severally  
and individually,

Defendants

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION/CIVIL PART  
CAPE MAY COUNTY

DOCKET NO. CPM- L-52-16

Civil Action

VERIFIED COMPLAINT FOR  
DECLARATORY JUDGMENT,  
TEMPORARY AND PERMANENT  
INJUNCTION, AND FOR ALL DAMAGES  
AND RELIEF COMPELLED BY THE NEW  
JERSEY CONSCIENTIOUS EMPLOYEE  
PROTECTION ACT AND THE NEW  
JERSEY LAW AGAINST  
DISCRIMINATION

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Donald Brad Wiltshire, residing at 11 Summer Court, Ocean City, New Jersey, and complaining against the defendants, says:

COUNT ONE

(Declaratory Judgment Pursuant to N.J.S.A. 2A:16-52)

Plaintiff, Donald Brad Wiltshire, was and is at all times relevant hereto a full time municipal firefighter employed by the City of Ocean City and protected in his office pursuant to N.J.S.A. 40A:14-19. Plaintiff Wiltshire was appointed as a municipal firefighter in 1995, and has for the last 20 plus years, industriously served the citizens of Ocean City with loyalty and fidelity to his office. Plaintiff's competency, expertise and leadership qualities have resulted in his serving as an acting captain in the Fire

Department for over seven years. Notwithstanding his decorated service, exemplary performance as a public servant, and strict observance to the rules and regulations of the Department as well as the ethical obligations attendant thereto, plaintiff was suspended from his office by defendant Breunig, first on October 19, 2015 and thereafter without pay on November 12, 2015. (Exhibits A & B).

2. Defendant Christopher Breunig was and is at all times relevant hereto the Chief of the Ocean City Fire Department.

3. Defendant City of Ocean City is the municipal incorporated government operating within the jurisdiction of the City of Ocean city as created and permitted by state law.

4. On October 9, 2015 the plaintiff requested and received a meeting with defendant Breunig for the purpose of disclosing his current medical regimen of ingesting medicinal marijuana. The Department had weeks earlier adopted for the first time a department-wide drug testing policy that was to be implemented soon thereafter. Notwithstanding the fact that plaintiff's existing medical condition had been previously disclosed to command supervisors, and further that plaintiff's history of prescribed controlled substances to treat his condition had likewise been disclosed, plaintiff's intent was to review and confirm his medical regimen with the Chief in light of the new drug testing policy and the potential that plaintiff may be subjected to random drug testing within the Fire Department. Plaintiff has not, over the course of 20 and a half years, ever incurred or sustained any disciplinary infraction or violation, and believed that calling a meeting with the Chief in light of the new drug testing policy was the sensible and responsible course. The drug policy ultimately adopted by the City had initially contained

a particular provision which exempted medical marijuana from the proscribed class of drugs deemed "illegal". Upon final adoption in July of 2015 however, that provision of the new policy had been deleted. (Exhibit C).

5. Plaintiff Wiltshire served the Ocean City Fire Department in the capacity of firefighter for 11 years before he developed a medical condition known as Meige syndrome. The syndrome is a combination of two forms of dystonia, namely a condition which causes involuntary muscle contraction and spasms in the face, jaw and neck. The condition when left untreated, exhausts its victim and causes significant fatigue and general inability to function. When properly treated the disease is virtually undetectable and causes no impairment whatsoever in the plaintiff's ability to fulfill all of the essential job functions of a firefighter. Indeed, plaintiff has been doing just that for the last nine plus years. While there is no known medical cure, various treatment regimens have been attempted by the plaintiff with multiple physicians throughout the years. Plaintiff was initially prescribed the regimen of Botox injection and Tegretal. Later, by medical adjustment due to ineffectiveness, plaintiff was prescribed Botox and Clonopin. Ultimately, through the evolution of his treatment over the course of approximately nine years, plaintiff was prescribed and currently treats the disease with Botox and medical marijuana. (Exhibit D). Plaintiff has found that it is the most comprehensive and effective medical treatment that he has experienced since being diagnosed in 2006. Given plaintiff's assignment of extended shifts on a set number of days each week, with corresponding multiple days off, the treatment regimen with the marijuana prescription is perfectly suited. Plaintiff has the ability to treat comprehensively on his days off, and then perform without hesitation or limitation on his assigned work shifts. Plaintiff never brings

his prescription medication to the workplace, never takes that medication during his assigned work hours, and has never reported for duty while impaired by any medication. Moreover, plaintiff has never been limited in any function, assignment or duty within the Fire Department because of his medical condition, and has never requested any accommodation for his condition, at least up until October 9, 2015.

6. On October 9, 2015 plaintiff met with Chief Breunig, reviewed his long-standing medical condition, and explained his treatment regimen of medical marijuana. In response, plaintiff was immediately removed from active duty and ordered to undergo a barrage of physical and medical testing without any basis for that testing whatsoever. Plaintiff was additionally ordered to undergo a drug screen, notwithstanding the fact that it was plain and clear that that drug screen would reveal the metabolites of medical marijuana. (Exhibit D). Within 30 days of his report, plaintiff was suspended from his duty as a firefighter, without pay on November 12, 2015, and that suspension according to defendant Breunig is with intent that plaintiff's position be terminated. (Exhibit B).

7. On October 27, 2015, the City of Ocean City issued a Preliminary Notice of Disciplinary Action against the plaintiff seeking his suspension for a period of 60 days for the alleged failure to report that plaintiff had taken Clonopin to a commanding officer or to other designated individuals within Ocean City management. Plaintiff was charged with multiple violations of the Administrative Code and specific violations of the Department's Rules and Regulations. Nothing alleged by the City on that date refutes the fact that all of the medications necessitated by plaintiff's medical condition were in fact legally prescribed, that none of the prescribed medications in any way interfered with, impaired or affected plaintiff's ability to perform the function of a firefighter, or to operate

any motor vehicles, or further that at all times relating to his course of treatment, plaintiff was declared by his treating physicians as fully able and capable to perform all of the essential functions of his job without any restrictions whatsoever. The October 19, 2015 charges are without factual and legal basis and will be dismissed at the time of departmental hearing.

8. The City of Ocean City then amended its Preliminary Notice of Disciplinary Action on November 12, 2015, this time alleging that that plaintiff violated various provisions of the Administrative Code as well as specific rules and regulations, specifically plaintiff's use of medicinal marijuana and the allegation that plaintiff failed to disclose same. The charges further allege without any basis in fact whatsoever, that the plaintiff remained on duty while under the influence of "any alcoholic beverage or drug", and "appeared to be unfit for duty because of excessive use of such beverage or drug". This time however, the City's amended notice filed by defendant Breunig was filed with the intent to remove plaintiff from his position as a firefighter because of those and other alleged violations.

9. Finally, the City's amended notice of November 12, 2015 goes beyond those fact dependent charges as summarized above, and alleges directly that the plaintiff had violated a specific rule and regulation, namely 3:1.8 by failing to "observe and obey the letter and spirit of all laws, ordinances, rules and orders of the state, city and the Department of Fire and Rescue Services". Moreover, the city now charges the plaintiff with the patently false legal conclusion that the plaintiff had violated the law because of the purported presence of "carboxy-THC" in his system pursuant to a mandated drug test following plaintiff's disclosure. The essence of the City's conclusory claim therefore is

that the plaintiff is in violation of the law for his ingestion of medical marijuana and is therefore subject to termination from office.

10. On January 18, 2010, the New Jersey Compassionate Use of Medical Marijuana Act was approved and passed by the Legislature. N.J.S.A. 24:61-1, et. seq. While not effective until 2013, the Legislature's findings and declarations make clear that "New Jersey joins this effort for the health and welfare of its citizens;". N.J.S.A. 24:61.2c. Further, the Legislature makes clear that compliance with the law will not result in criminal or "other penalties" and further guarantees those complying with the act that they will not be deprived of rights or privileges in any civil or administrative proceeding, and that they will not be singled out for punishment or legal disadvantage by utilizing necessary medication to treat incurable diseases and afflictions. The Legislature so mandates in the following sections:

Compassion dictates that a distinction be made between medical and non-medical use of marijuana. Hence, the purpose of this act is to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes. . . .  
[N.J.S.A. 24:61-2e]

\* \* \*

b. A qualifying patient . . . or any other person acting in accordance with the provisions of this act shall not be subject to any civil or administrative penalty, or be denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, related to the medical use of marijuana as authorized under this act. . . .  
[N.J.S.A. 24:61.6B]

\* \* \*

16. Nothing in this act shall be construed to require a government medical assistance program or private

health insurer to reimburse a person for costs associated with the medical use of marijuana, or an employer to accommodate the medical use of marijuana in any workplace. . . .

N.J.S.A. 24:61-14(16).

11. Pursuant to N.J.S.A. 2A:16-52, plaintiff therefore seeks a declaration of the legal rights afforded by the New Jersey Compassionate Use of Medical Marijuana Act, specifically that strict compliance with the Act, and subsequent use of medical marijuana to treat his medical conditions, cannot as a matter of law, establish the ingestion or use of medical marijuana as an "illegal substance" for which plaintiff can be subject to punishment by his public employer. Notwithstanding the dictates of the Act, the Department's policy continues to define "controlled substance" as illegal and by its terms, that policy is in direct violation of the Act. The Department's current drug policy provides:

Controlled substances: The terms "drugs" and "controlled substances" shall include all derivatives of the following class of drugs: marijuana metabolites/THC, cocaine metabolites, opiates (heroin, codeine, morphine, etc.), thencyclidine (PCP), and amphetamines. (Exhibit D).

WHEREFORE, plaintiff demands declaratory judgment against defendants Breunig and the City of Ocean City seeking the Court's interpretation and declaration that the medical use of marijuana pursuant to the Compassionate Care Act cannot be deemed an "illegal use" for the purpose of the City's drug policy, for the purpose of discipline, discrimination or termination of a public employee from office, merely because the plaintiff's urinalysis confirms marijuana metabolites in his system. Any such interpretation is in direct violation of the letter, spirit and intent of the New Jersey Compassionate Use of Medical Marijuana Act;

Plaintiff additionally seeks judgment in order to prevent irreparable harm and injury, and to likewise prevent the perversion and violation of state law, immediately enjoining the City of Ocean City from utilizing a drug test result under the circumstances hereinstated, as a basis for suspension, discipline and/or termination.

Finally, plaintiff seeks judgment against the defendant imposing a permanent injunction pursuant to the Court's declaration above, along with an award of attorneys' fees, interest and costs of suit.

**COUNT TWO**  
**(Violation of the New Jersey Conscientious  
Employee Protection Act, N.J.S.A. 34:19-2 et. seq.)**

12. Plaintiff Wiltshire is at all times relevant hereto an employee as defined by the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et. seq.

13. Defendant Chief Christopher Breunig, was at all times relevant hereto a supervisor of the plaintiff and the City of Ocean City was at all times relevant hereto the employer of the plaintiff pursuant to that Act.

14. On October 9, 2015, plaintiff disclosed as aforementioned, and likewise disclosed to defendant Breunig that the policy and practice of the City of Ocean City in declaring his use of medical marijuana illegal, or utilizing his lawful use of medical marijuana as a basis to discipline, suspend or seek termination, was in direct violation of state law, namely the Compassionate Care Act as well as the New Jersey Law against Discrimination. Notwithstanding plaintiff's conscientious disclosure, defendant Breunig and the City of Ocean City undertook retaliatory action against the plaintiff by requiring alleged "fitness for duty" examinations, compelling physical and medical testing without basis in fact or law, and by suspending plaintiff with intent to terminate his public office.

Defendant's conduct is in direct violation of CEPA, and constitutes a blatant violation of the plaintiff's civil rights.

15. Plaintiff's disclosure on October 9, 2015 was additionally an articulation of his objection to the aforementioned policy and practice of the City of Ocean City, and was further an objection to the City's policy which is diametrically opposed to and incompatible with the clear mandate of public policy which concerns the public health, safety and welfare as so declared by the New Jersey Legislature in the New Jersey Compassionate Use of Medical Marijuana Act.

16. Defendant Breunig and the City of Ocean City have undertaken retaliatory action for the plaintiff's conscientious disclosure, report and objections and has caused the plaintiff substantial economic and other damages.

WHEREFORE, plaintiff demands judgment against defendants jointly, severally and individually as follows:

- a. Compensatory damages;
- b. Consequential damages;
- c. Punitive damages;
- d. Interest, attorneys' fees and costs of suit;
- e. Imposition of a civil penalty against the City for violation of the Act;
- f. A permanent injunction against the City of Ocean City from taking any action against the plaintiff for his lawful use of medical marijuana, and further an injunction against the City of Ocean City from violating New Jersey state law, namely N.J.S.A. 24:61-1, et. seq.;
- g. Any other relief that the Court deems equitable and just.

COUNT THREE  
(Violation of the New Jersey Law Against Discrimination,  
N.J.S.A. 10:5-12a, d and e)

17. Plaintiff repeats and incorporates all previous allegations as if fully set forth herein.

18. Plaintiff's onset of Meige syndrome constitutes a "disability" pursuant to the New Jersey Law Against Discrimination. N.J.S.A. 10:5-5q. As articulated in the Act, "disability" means "physical disability, infirmity . . . which is caused by bodily injury, birth defect or illness including, but not be limited to, any degree of paralysis, . . . lack of physical coordination, . . . speech impediment . . . or neurological condition which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic technique".

19. Pursuant to N.J.S.A. 10:5-12, it is an unlawful employment practice and unlawful discrimination for an employer because of disability "to refuse to hire or employ or to bar or to discharge or to require to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions of privileges of employment . . .".

20. Defendant Breunig and the City of Ocean City knew at all times relevant hereto, that the plaintiff's ingestion of medical marijuana was a direct consequence and requirement of his disability, a disability which in no way required any actual accommodation at the workplace, but which instead clearly required that plaintiff have and maintain the legal right to use prescription medications and secure necessary medical care and treatment to treat, contain and otherwise render his disability ineffective

and meaningless in the context of his performing the job of a firefighter during scheduled work hours and shifts.

21. Notwithstanding defendant's knowledge as set forth above, defendants Breunig and the City of Ocean City have by virtue of its aforementioned conduct, utilized the plaintiff's disability to discriminate against the plaintiff and to punish and otherwise harm the plaintiff in the terms conditions and perpetuation of his employment where there is no factual or legal basis for such action.

WHEREFORE, plaintiff seeks judgment against the defendants jointly, severally and individually for violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12a, b and e, as follows:

- a. Compensatory damages;
- b. Consequential damages;
- c. Punitive damages;
- d. An injunction prohibiting defendants' discrimination and permitting the plaintiff to lawfully treat his medical condition off duty and during off hours so that he can fully, competently and effectively perform the job of a firefighter while on duty as he has done throughout the course of the last nine years;
- e. An award of attorneys' fees, interest and costs of suit;
- f. Any other relief the Court deems equitable and just.

#### RULE 4:5-1 CERTIFICATION

Pursuant to R. 4:5-1, I hereby certify that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action pending in any Court or arbitration proceedings, and no other action is contemplated. I know of no other parties that should be joined herein.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)

I certify the Confidential Personal Identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

JURY DEMAND PURSUANT TO R. 1:8-1(b) and R. 4:35-1

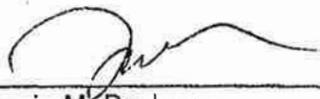
Plaintiff Donald Brad Wiltshire hereby requests trial by jury as to all issues herein.

NOTICE OF DESIGNATION OF TRIAL COUNSEL

Plaintiff Donald Brad Wiltshire hereby designates Louis M. Barbone, Esquire as trial counsel in the within matter.

JACOBS & BARBONE, P.A.

By:

  
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Louis M. Barbone

Dated: 2/4/16