

WILLIAM A. FELDMAN, LLC  
One Passaic Avenue  
Fairfield, New Jersey 07004  
Tel. No. (973)244-7944  
Attorney for Plaintiff  
File No. 40071

SUPERIOR COURT BERGEN COUNTY  
FILED

APR 24 2012



DEPUTY CLERK

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY  
DOCKET NO. BER-L-2753-12

ROBERT CARNEY,

*Plaintiff,*

vs.

BERGEN COUNTY POLICE DEPARTMENT;  
COUNTY OF BERGEN; UWE MALAKAS;  
and BRIAN HIGGINS,

*Defendants.*

Civil Action

FIRST AMENDED COMPLAINT,  
JURY DEMAND, DESIGNATION  
OF TRIAL COUNSEL,  
RESERVATION OF RIGHT TO  
AMEND AND CERTIFICATION  
PURSUANT TO R. 4:5-1

Plaintiff, Robert Carney ("Carney" or "Plaintiff"), residing at 8 Raymond Avenue, Rutherford, New Jersey 07070, by way of first amendment adding subparagraph 10(i), complaining of Defendants, states as follows:

**PARTIES**

1. Carney is a career police officer in the employ of the Bergen County Police Department ("BCPD") and is presently holder of the rank of Sergeant. His employment rights and tenure are protected by Civil Service law and regulations.

2. The BCPD is a governmental entity and arm of the County of Bergen ("County"), a political subdivision of the State of New Jersey.

3. Uwe Malakas ("Malakas"), currently a Captain in the BCPD, held the title of Chief for a period of years prior to the tenure of the current Chief, Brian Higgins ("Higgins").

4. Higgins is currently the Chief of BCPD.

**FIRST COUNT**

**(New Jersey Conscientious Employee Protection Act,**

**N.J.S.A. 34:19-1, et seq. ("CEPA")**

5. Plaintiff is and has for approximately 10 years been a respected, repeatedly commended, and promoted member of the BCPD, presently holding the rank of Sergeant, having been promoted to that rank in July 2006. He has been an employee of the BCPD since May 17, 2002.

6. During or about October 2009, Plaintiff took and scored well on the promotional examination to compete for a deserved promotion to the rank of Police Lieutenant. Plaintiff passed said examination with a high score and with demonstrated qualification for promotion to the rank of Police Lieutenant.

7. Since 2006, Plaintiff was assigned to the position of Investigator in the Office of Internal Affairs ("I.A.") of the BCPD. During his time in that position, between 2006 and 2011, Plaintiff usually fulfilled the responsibilities of a Police Lieutenant out of necessity, since either the assigned Lieutenant was incapable or unwilling to fulfill those functions or no lieutenant or other superior officer was assigned to I.A. leaving Plaintiff

alone in charge. Plaintiff made such facts known to the then Chief of the BCPD, Malakas. During that time, Plaintiff fulfilled responsibilities above and beyond those of his rank in order to make up for the lack of any assigned superior or due to the deficiencies of a higher ranking but non-performing superior officer, when one was so assigned. Such circumstances went unremedied despite Chief Malakas' knowledge and capability to cause Plaintiff's promotion to the appropriate rank of Lieutenant, given Plaintiff's assignment and responsibilities, or to otherwise remedy the situation. Plaintiff was often assigned to multiple tasks beyond his primary designated assignment.

8. During the time Plaintiff was assigned to Internal Affairs investigations, between 2006 and December 2011, and continuing thereafter, Plaintiff reported many incidents of wrongful, abusive, and illegal behavior on the part of BCPD officers of various ranks, including those at the highest levels of command. Such acts of wrongdoing were and are reasonably believed to constitute violations of law and governing police regulations such as, but without limitation, N.J.S.A. 2C:27-3 [Threats and Other Improper Influence in Official and Political Matters]; N.J.S.A. 2C:27-5 [Retaliation for Past Action]; N.J.S.A. 2C:27-11 [Offer of Unlawful Benefit to Public Servant for Official Behavior]; N.J.S.A. 2C:28-5 [Witness Tampering]; N.J.S.A. 2C:28-6 [Tampering with or Fabricating Evidence]; N.J.S.A. 2C:28-7 [Tampering with Public Records]; N.J.S.A. 2C:29-1 [Obstructing Administration of Law]; N.J.S.A. 2C:30-2 [Official Misconduct]; N.J.S.A. 2C:30-7 [Pattern of Official Misconduct]; N.J.A.C. 4A:3-3.4 [Title Appropriate to Duties

Performed]; and the New Jersey Attorney General's I.A. Guidelines. Such disclosures were made to supervisory personnel within the BCPD, including Chiefs Malakas and Higgins, and eventually to the Director of Personnel of Bergen County, R. W. Kornfeld, by letter dated March 3, 2011 and subsequently. Moreover, Plaintiff repeatedly refused to participate in illegal or otherwise prohibited acts, or to withhold action required by law and I.A. practice where such actions or inactions related to matters of public safety and welfare. Such acts included the unreported and potentially unlawful discharge of firearms by on-duty police officers and the tampering with or concealment of evidence of such criminal or otherwise illegal activity, and attempted witness tampering in connection therewith. The knowing and willful failure to respond effectively, conscientiously, and as required by law and applicable standards of practice were and are indicative of official misconduct at the highest levels of the BCPD, in violation of N.J.S.A. 2C:3-2.

9. By way of illustration and not limitation, Plaintiff duly but unsuccessfully reported, objected to, and sought to initiate and perform investigations within the BCPD and/or the Office of the Bergen County Prosecutor, as individual cases made appropriate, regarding the following:

- Recognized unfitness to perform by high-ranking command level personnel (ignored due to cronyism in violation of N.J.S.A. 2C:30-2);
- Admitted break-in and probable theft by two high-ranking command level officers of confidential documents stored in a locked I.A.

evidence cabinet in violation of N.J.S.A. 2C:28-6 and -7;

- The filing of a knowingly false motor vehicle accident report by a BCPD officer involving another officer's off-duty accident with a civilian motorist and the giving of knowingly false information by said officer at a related BCPD interview in violation of N.J.S.A. 2C:28-3(b);
- Use of police (CJIS") computer system resources for performance of unauthorized and therefore illegal background checks on non-police job applicants in violation of N.J.S.A. 2C:30-2;
- Inappropriate and/or illegal discharge of firearms by BCPD officers under circumstance involving risk of serious injury to or death of civilians, and concealment or failure to preserve available evidence and to investigate and prosecute such actions in violation of N.J.S.A. 2C:28-6; N.J.S.A. 2C:29-1; and N.J.S.A. 2C:30-2;
- Unexplained and uninvestigated loss of approximately 130 items of evidence from the BCPD evidence locker and subsequent failure to report such losses to the Office of the Bergen County Prosecutor as required by governing regulations and Attorney General guidelines in violation of N.J.S.A. 2C:28-6 and -7; N.J.S.A. 2C:29-1; and N.J.S.A. 2C:30-2;

- Pervasive abuse of sick leave by BCPD officers and command level personnel in violation of N.J.S.A. 2C:30-2;
- Attempts at the highest level of BCPD to coerce and/or induce by the offer and/or threat to withhold merited promotions the suppression and/or falsification of an official police applicant check for purposes of seeking political favors with such applicant's political sponsor, despite knowledge of such applicant's disqualifying history, making him unsuitable for law enforcement responsibilities, in violation of N.J.S.A. 2C:27-3 and -5 and N.J.S.A. 2C: 27-11(a);
- A pervasive pattern of cronyism, favoritism, failure to enforce discipline and maintain integrity within the BCPD at its highest command levels in knowing and intentional disregard of law, good practice, and New Jersey Attorney General Guidelines and regulations applicable to the conduct, management, training, and oversight of the BCPD and its I.A. functions, and interference with and punishment of Plaintiff's efforts to comply with and maintain such standards of professionalism and integrity over a period of approximately five years or more; such acts amounted to a pattern of willful mismanagement, corruption, misconduct, and malfeasance in office at the highest levels of BCPD command in violation of N.J.S.A. 2C:30-7; and

- Plaintiff was himself personally and directly threatened with potentially lethal violence by the anonymous taping of two live rounds of ammunition to his locker on the premises of the BCPD, in an area restricted to high-ranking police personnel, in an apparent effort to intimidate and retaliate against Plaintiff for pursuing or seeking investigation of, or testifying in the course of, an investigation of missing evidence consisting of shell casings arising out of the previously referenced illegal discharge of firearms by BCPD officers who have apparently concealed, hidden, or misplaced such evidence with intent to cover up illegal and improper police actions of potentially life-threatening firearms misuse against civilians during police action. Such known and reported acts and omissions to properly respond, report, investigate, and prosecute same were in violation of N.J.S.A. 2C:27-5; N.J.S.A. 2C:28-5; N.J.S.A. 2C:29-1; and N.J.S.A. 2C:30-2.

10. As a direct and proximate result of Plaintiff's reports, disclosures, objections, and refusals to participate in or otherwise condone or facilitate violations of law and regulations referenced above, including, but not limited to, Plaintiff's March 3, 2011 written report and complaint directed to R. W. Kornfeld, Bergen County Director of Personnel, Defendants, and each of them, have wrongfully and illegally retaliated against Plaintiff by causing, condoning, and participating in adverse employment actions detrimental

to Plaintiff, his job, the conditions and terms of his employment, and to his health, safety, and welfare, as follows, such listing being illustrative and not by way of limitation. Such acts are part of a pattern and policy that is ongoing and continuing to the date of this filing:

- (a) Plaintiff has, since March 3, 2011, been repeatedly publicly and privately insulted by command level officers within the BCPD who have addressed him in vile and obscene terms, including in work-related, private and social contexts and in the presence of fellow officers, calling him “jerk-off,” “motherfucker,” “crazy,” and who have otherwise defamed and libeled him by spreading false rumors within the BCPD that Plaintiff is lacking in integrity, “wired”, that is, carries concealed sound recording equipment in order to entrap fellow officers, that he is viewed by his superiors as “crazy” and emotionally unfit for service and therefore untrustworthy, and that he is responsible for causing an outside investigation of sick time abuse within BCPD that is seen as detrimental and threatening to the rank and file of the BCPD; such defamations include the spreading of false rumors within the BCPD that Plaintiff is a “rogue officer” and was “booted from the Detective Bureau,” purportedly for unspecified and fictitious misconduct;
- (b) On or about September 30, 2011, Plaintiff discovered that his vitally

important BCPD personnel file had been improperly tampered with and degraded in violation of N.J.S.A. 2C:28-7 by the elimination of letters of commendation, training records, and other documents of value to Plaintiff's future as a career police officer and without which he has and will continue to suffer serious detriment. Such actions strongly imply the approval, authorization, or acquiescence of the highest levels of command within the BCPD who alone control access to such restricted and confidential records;

- (c) On or about December 9, 2011, Plaintiff was the target of an implied threat of lethal violence by the anonymous taping of live rounds of ammunition on Plaintiff's BCPD locker; Plaintiff's prompt complaints and subsequent reminders to the highest levels of BCPD command regarding such incident have gone without meaningful internal investigation or redress of any kind within the BCPD, necessitating Plaintiff's report of such events to governmental officials outside BCPD;
- (d) On or about December 9, 2011, Plaintiff was unfairly and without Due Process demoted from his long-term assignments to I.A. and Criminal Investigations to a less prestigious, less advantageous, less remunerative, and more onerous assignment as a patrol officer, and was

replaced in his I.A. duties by a less experienced and less qualified person;

- (e) Shortly after Plaintiff's abovementioned December 9, 2011 retaliatory demotion to patrol status, his "tour assignment" was abruptly and maliciously changed without cause, explanation, or due notice under circumstances detrimental to Plaintiff's ability to plan appropriately for use of his available time off for family vacations and other personal uses.
- (f) On or about January 11, 2012, Plaintiff was ordered to give up continued use of his assigned police motor vehicle without just cause or hearing, depriving him of a valuable benefit he had enjoyed for approximately six years incidental to his prior assignments and positions in the Criminal Investigations Division and I.A.; such deprivation was retaliatory and without stated charges or Due Process;
- (g) On February 10, 2012, Plaintiff was unjustly singled out and discriminatorily denied time off for normal and appropriate training classes at his own expense which were and are necessary to his future advancement as a police officer;
- (h) Plaintiff has for two years or more been denied promotion to the rank of Police Lieutenant for unjust, insufficient, inconsistent, changing, and

pretextual reasons, including being told by Chief Brian Higgins that his promotion, and that of a fellow employee known to be a friend of Plaintiff's, would be withheld unless and until Plaintiff agreed to suppress or falsify the unsatisfactory I.A. background check report of a politically favored job applicant; Plaintiff's promotion denials were repeatedly linked by both Malakas and Higgins to their stated and implied displeasure with Plaintiff's truthful complaints and written documentation of senior staff officers' misconduct, including their own pattern of misconduct and mismanagement of BCPD; and

- (i) On April 13, 2012, following the filing of the Complaint in this matter and publication of information regarding such filing, Plaintiff was further retaliated against in response thereto by being unjustifiably and wrongfully demoted from his position as the Sergeant Second-in-Command on the BCPD SWAT team for the false and pretextual reason that the filing of a lawsuit seeking enforcement of Plaintiff's rights under CEPA created a so-called "distraction." On information and belief, such action was directly or indirectly caused or induced by Defendant-Higgins and was pursuant to the BCPD policy and pattern of harassment and retaliation against Plaintiff as referenced hereinabove.

11. As a direct and proximate consequence of the above, Plaintiff has suffered and continues to suffer serious damage to his career, good name, personal and professional well-being, and has suffered both economic and non-economic loss and damage. Such non-economic damage includes the serious and ongoing emotional distress incidental to abusive treatment, hostile work environment, unjust retaliation, denial of opportunities for advancement, and the anxiety associated with being the unprotected and vulnerable target of hatred and vindictiveness by command level co-employees within the BCPD and the target of a clear anonymous threat to his life and safety by persons having the capacity to carry out such threats of violence, either directly or through willful failure to provide necessary support in the context of foreseeable dangerous police activities in the field.

12. Plaintiff's aforementioned acts of disclosure, complaint, and refusal to support or participate in the wrongful acts referenced hereinabove, and other acts by him of a similar or related nature, are all "whistle blowing" actions within the scope and ambit of the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, *et seq.* ("CEPA"), and the above adverse employment actions are knowing, willful, malicious, and egregious acts of retaliation therefor, and are all proximately and causally related to such protected "whistle blowing" acts by Plaintiff.

WHEREFORE, Plaintiff demands judgment as follows:

- (a) for compensatory damages;
- (b) for consequential damages;

- (c) for punitive damages;
- (d) for an award of reasonable attorney's fees and litigation costs;
- (e) for injunctive relief compelling Defendants to take all such actions reasonable and necessary to effectuate Plaintiff's promotion to the rank of Police Lieutenant with such back pay as may be appropriate in the premises for the delay and wrongful withholding of such promotion, and compelling Defendants to implement appropriate safeguards and protections for Plaintiff's benefit as to immediately stop and prohibit further harassment and adverse employment actions against him in the work place;
- (f) awarding pre-judgment interest and costs of suit;
- (g) compelling Defendants to reinstate Plaintiff's position within the Criminal Investigations Division and I.A. Division of BCPD and cancelling his demotion to patrol assignments; and
- (h) for such other and further relief as the Court may deem just in the premises.

**SECOND COUNT**

**(New Jersey Civil Rights Act Violations,  
N.J.S.A. 10:6-2(c))**

13. Plaintiff repeats each and every allegation contained in Paragraphs 1 through 12 and incorporates same herein by reference as if recited verbatim and at length.

14. Plaintiff's objections and reports referenced above were and are constitutionally protected speech and communication, and constitute protected petitioning of government within the scope of the First and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the New Jersey State Constitution. Plaintiff's said liberties and job-related property rights and expectations have been impaired, threatened, and damaged by Defendants under color of law and without Due Process of law and therefore Defendants are all in violation of Plaintiff's rights under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).

15. Plaintiff has been and continues to be damaged in consequence thereof.

WHEREFORE, Plaintiff demands judgment as follows:

- (a) for compensatory damages;
- (b) for consequential damages;
- (c) for punitive damages;
- (d) for an award of reasonable attorney's fees;
- (e) for injunctive relief compelling Defendants to take all such actions reasonable and necessary to effectuate Plaintiff's promotion to the rank of Police Lieutenant with such back pay as may be appropriate in the premises for the delay and wrongful withholding of such promotion, and compelling Defendants to implement appropriate safeguards and protections for Plaintiff's benefit as to immediately stop and prohibit

further harassment and adverse employment actions against him in the work place;

- (f) awarding pre-judgment interest and costs of suit;
- (g) compelling Defendants to reinstate Plaintiff's position within the Criminal Investigations Division and I.A. Division of BCPD and cancelling his demotion to patrol assignments; and
- (h) for such other and further relief as the Court may deem just in the premises.

WILLIAM A. FELDMAN, LLC  
Attorney for Plaintiff

BY: \_\_\_\_\_

WILLIAM A. FELDMAN

DATED: April 23, 2012

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues so triable.

WILLIAM A. FELDMAN, LLC  
Attorney for Plaintiff

BY: \_\_\_\_\_

WILLIAM A. FELDMAN

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, William A. Feldman is designated as trial counsel on behalf of Plaintiff in the within matter.

**RESERVATION OF RIGHT TO AMEND**

Plaintiff reserves the right to amend the Complaint herein upon expiration of the time prescribed following service of the New Jersey Tort Claims Act ("Act") notice to state claims, if any, within the scope and coverage of said Act in accordance with N.J.S.A. 59:8-8.

WILLIAM A. FELDMAN, LLC  
Attorney for Plaintiff

BY: \_\_\_\_\_

WILLIAM A. FELDMAN

DATED: April 23, 2012

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

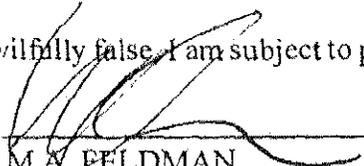
1. I am an attorney at law of the State of New Jersey and the attorney for Plaintiff herein. I am familiar with and responsible for the within action.

2. 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 a pending arbitration proceeding, nor is any such proceeding contemplated at this time.

3. To the best of my knowledge, information and belief, and based upon my investigation of this matter, there are no other parties who must be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that

if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
\_\_\_\_\_  
WILLIAM A. FELDMAN

DATED: April 23, 2012

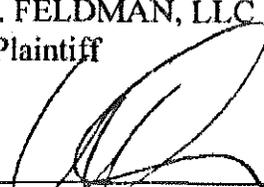
**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, William A. Feldman is designated as trial counsel on behalf of Plaintiff in the within matter.

**RESERVATION OF RIGHT TO AMEND**

Plaintiff reserves the right to amend the Complaint herein upon expiration of the time prescribed following service of the New Jersey Tort Claims Act ("Act") notice to state claims, if any, within the scope and coverage of said Act in accordance with N.J.S.A. 59:8-8.

WILLIAM A. FELDMAN, LLC  
Attorney for Plaintiff

BY:   
WILLIAM A. FELDMAN

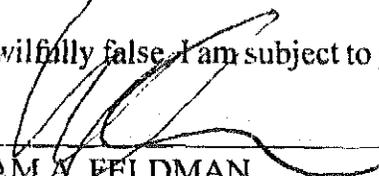
DATED: April 23, 2012

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

1. I am an attorney at law of the State of New Jersey and the attorney for Plaintiff herein. I am familiar with and responsible for the within action.
2. 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 a pending arbitration proceeding, nor is any such proceeding contemplated at this time.
3. To the best of my knowledge, information and belief, and based upon my investigation of this matter, there are no other parties who must be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that

if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
\_\_\_\_\_  
WILLIAM A. FELDMAN

DATED: April 23, 2012

## RELEASE

This RELEASE, dated April 22, 2015, is hereby given:

BY the Releasor ROBERT CARNEY, referred to herein as "PLAINTIFF,"

TO: THE COUNTY OF BERGEN, including all of its agents, elected or appointed officials, officers, and employees; THE BERGEN COUNTY POLICE DEPARTMENT, including all of its agents, elected or appointed officials, officers, and employees; and UWE MALAKAS AND BRIAN HIGGINS, in their professional and individual capacities; herein referred to collectively as "YOU" or "YOUR" or as "DEFENDANTS."

1. **Release and Waiver of Claims.** PLAINTIFF hereby releases and hereby surrenders and gives up any and all claims and rights which PLAINTIFF may have against DEFENDANTS, their heirs, their administrators, their spouses, their officers, their directors, their elected and appointed officials, their employees, their successors (including the Bergen County Sheriff's Office as successor to the Bergen County Police Department) and their attorneys. This RELEASE applies to any and all claims, rights, demands, causes of action, obligations, damages, expenses or alleged compensation, including those of which PLAINTIFF is not presently aware, and those which are not specifically mentioned in the Complaint or in the Amended Complaint filed on PLAINTIFF'S behalf or in this RELEASE. This RELEASE applies to all claims resulting from any conduct which has occurred to date. PLAINTIFF also specifically releases the following claims:

A.

It claims as set forth in the action entitled *Robert Carney v. Bergen County Police Department, County of Bergen, Uwe Malakas, and Brian Higgins*, Superior Court of New Jersey, Docket No. BER-L-2753-12, including but not limited to any claims not pleaded therein or any claims cognizable or allowable pursuant to amendment against DEFENDANTS, including but not limited to claims pursuant to N.J.S.A. 34:19-1 et seq. ("the New Jersey Conscientious Protection Act"), N.J.S.A. 10:6-2 (c) ("the New Jersey Civil Rights Act"), and any other state or federal civil rights or anti-discrimination law or any statutory or any common law claims, or any claims otherwise arising from PLAINTIFF'S employment with the County of Bergen and the Bergen County Police Department.

A

B.

It claims between the parties for personal injury and emotional distress, litigation costs, attorney's fees, damages and costs including but not limited to any claims for reimbursement for attorney's fees and for the costs of litigation, medical expenses, sick days, vacation days, salary, bonuses, compensatory time, overtime pay, pension differential, and medical or health or pension benefits that PLAINTIFF would have been entitled to recover pursuant to state or federal law, or pursuant to any state or federal statute, or pursuant to any anti-discrimination laws or any other employment-related tort law, or pursuant to any federal or state

A

common law, or pursuant to any prior agreement of the parties, or pursuant to any contract or employment agreement, or pursuant to any County resolution, or pursuant to the New Jersey Court Rules, or pursuant to any other claim arising from PLAINTIFF'S employment with the County of Bergen and the Bergen County Police Department until and through the effective date of this RELEASE.

2. **Settlement Amount.** Plaintiff will be paid a total of \$350,000.00 in full and final payment for making this RELEASE, of which \$140,000 will be to compensate PLAINTIFF for his personal physical injury and sickness, and of which \$210,000.00 will be to compensate Plaintiff for attorneys fees, costs, and disbursements.

3. **Understanding of the Parties.** This lawsuit is being settled, and in exchange for this RELEASE and the dismissal of said lawsuit in its entirety and with prejudice against these DEFENDANTS, PLAINTIFF is receiving compensation for PLAINTIFF'S personal physical injury and pain and suffering, and to reimburse PLAINTIFF's attorney as to PLAINTIFF'S own attorney's fees, costs and disbursements. PLAINTIFF hereby agrees that he will not seek anything further, including any other payment, from these DEFENDANTS.

U

Furthermore, PLAINTIFF hereby agrees that PLAINTIFF is solely responsible for the payment of all attorneys fees and costs and expenses payable to his attorney William A. Feldman, Esq., and PLAINTIFF hereby agrees that none of the parties to this RELEASE including PLAINTIFF is considered to be a "prevailing party" under state law, such that PLAINTIFF hereby waives and releases his claim against these DEFENDANTS for an award of attorneys fees and costs pursuant to any state or federal law, pursuant to any prior agreement between any of the parties, pursuant to any statute or collective bargaining agreement, or pursuant to the New Jersey Court Rules.

4. **No Admission of Liability.** PLAINTIFF hereby agrees that DEFENDANTS have not admitted to any liability, nor have DEFENDANTS admitted to any violation of the New Jersey Conscientious Employee Protection Act, the New Jersey Civil Rights Act, or any other federal or state statute or County resolution or policy or rule or regulation, or any Bergen County Police Department Rules or Regulations or Policies and Procedures, and it is the intention of the Parties to enter into this settlement solely for the purpose of amicably resolving any and all matters in controversy or dispute, and to avoid the further expenditure of attorneys fees and other costs that would result from continued and protracted litigation.
5. **Confidentiality.** PLAINTIFF agrees that the terms of this RELEASE, including but not limited to the amount and manner of payment of the Settlement Amount, are confidential and to the extent allowable by law shall not be disclosed to or discussed with any person or entity other than the Parties hereto, their attorneys, their accountants, and for the sole purpose of enforcing the provisions of this RELEASE with the Bergen County Superior Court, if necessary.

In the event that PLAINTIFF or any Party is contacted by the press or by the news media, PLAINTIFF hereby agrees that PLAINTIFF or any Party may reply to the effect that "the case has been resolved," that the Parties have not admitted to any liability or to any wrongdoing or to any violations of law or statute or rule or regulation, and that the basis for the settlement is to avoid protracted Trial and appeals and additional attorneys fees, and that any statement made to this effect will not be considered to be a violation of this Confidentiality provision. In addition thereto, PLAINTIFF hereby acknowledges that the resolution of this lawsuit and the monetary payments made herein and the fully-executed **RELEASE** herein are a matter of public record pursuant to Asbury Park Press v. County of Monmouth, 406 N.J. Super. 1 (App. Div. 2009), and are not protected by OPRA, in the event of a timely and proper OPRA request by a third party.

PLAINTIFF additionally agrees to the return or to the destruction of any and all confidential discovery as provided by DEFENDANTS pursuant to the terms of the Consent Protective Order and Confidentiality Agreement entered on December 21, 2012, and within the time limitations as set forth therein to commence immediately upon receipt of the settlement draft, and PLAINTIFF hereby agrees that PLAINTIFF will not maintain any copies or any electronically-stored information regarding same, and PLAINTIFF further agrees not to use or to disseminate or to allow any third parties to review or to secure copies of any confidential information belonging to DEFENDANTS for any subsequent litigation against the County of Bergen, the Bergen County Police Department, Uwe Malakas, or Brian Higgins, or for any other purpose. PLAINTIFF agrees to return the above-referenced materials to DEFENDANTS subject to DEFENDANTS' representation that their counsel will maintain copies of such materials in accordance with the Court Rules and Ethics Rules governing the maintenance of such file materials.

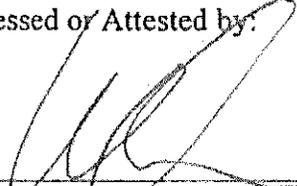
This provision and the obligations of this Confidentiality provision shall be continuing, and shall remain in effect in perpetuity.

6. **Non-Disparagement.** PLAINTIFF continues to be an employee of the County of Bergen and the Bergen County Sheriff's Office, Bureau of Police Services, and PLAINTIFF agrees that PLAINTIFF will not make any disparaging, negative or derogatory remarks concerning the events which had formed the basis for this lawsuit or concerning the resolution of this lawsuit to any third party, including to friends, family members, co-workers and employees, the press and any other media, nor will PLAINTIFF take any action that is intended, or which may be reasonably be expected (directly or indirectly) to impair the reputation or good name of these DEFENDANTS.
7. **Taxability.** PLAINTIFF hereby agrees that no representations have been made by DEFENDANTS as to either the taxability or non-taxability of any portion of this settlement, and PLAINTIFF hereby waives any and all such claims against DEFENDANTS, and hereby agrees to indemnify these DEFENDANTS in the event that the federal or state authorities deem this settlement or any portion thereof to be taxable to PLAINTIFF, and should this occur PLAINTIFF, and PLAINTIFF alone, is responsible for the payment of any such taxes.

8. **Medicare/Medicaid Reporting Requirements.** Pursuant to Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, the Center for Medicare and Medicaid Services must be provided PLAINTIFF'S full address, Social Security Number, date of birth, gender, and, if available, his Medicare Health Insurance Claim Number (HICN) on the form attached to this RELEASE. Provision of this information is a condition of this settlement. PLAINTIFF understands that this information will be reported by the insurance provider for DEFENDANTS pursuant to federal law.
9. **Voluntary Agreement.** PLAINTIFF acknowledges and agrees that he fully understands the terms of this RELEASE, and that PLAINTIFF has entered into this settlement and has signed this RELEASE voluntarily without any coercion or duress on the part of any person or entity.
10. **Advice of Counsel.** PLAINTIFF represents and agrees that PLAINTIFF was given adequate time to consider all aspects of this RELEASE prior to signing it, and to freely and fully consult with and seek the advice of whomever PLAINTIFF deemed appropriate including, but not limited to, PLAINTIFF'S attorney.
11. **Legal Authority.** PLAINTIFF represents that he has the full legal authority to enter into this settlement and to sign this RELEASE.
12. **Entire Agreement.** This RELEASE constitutes the entire agreement and understanding between the Parties relating to the subject matter contained herein.
13. **Severability.** PLAINTIFF agrees that in the event that any portion of this RELEASE shall be found to be illegal or in violation of public policy, or for any reason unenforceable at law, such finding shall not invalidate any other part of this RELEASE.
14. **Governing Law.** PLAINTIFF agrees that the procedural and substantive rights, liabilities and remedies of the Parties to this RELEASE shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to New Jersey's choice of law rules.
15. **Jurisdiction.** PLAINTIFF agrees to convey personal and subject matter jurisdiction upon the Superior Court of New Jersey, Law Division, Bergen County exclusively with respect to the enforcement and/or resolution of any dispute concerning, or arising from, this RELEASE.
16. **Who is Bound.** PLAINTIFF is bound by this RELEASE. Anyone who succeeds to PLAINTIFF'S rights and to PLAINTIFF'S responsibilities, such as PLAINTIFF'S heirs or the executor of PLAINTIFF'S Estate, is also bound. To the extent that PLAINTIFF possesses a statutory or common law claim for reimbursement of attorneys fees, costs or disbursements associated with the prosecution of this action pursuant to the decisional or common law of this state or pursuant to any state statute, it is also PLAINTIFF'S

intention that PLAINTIFF'S attorney also be bound by this **RELEASE** as to PLAINTIFF'S claim for reimbursement of attorneys fees, costs or disbursements. PLAINTIFF further agrees that this **RELEASE** is made for DEFENDANTS' benefit and for the benefit of all who succeed to DEFENDANTS' rights and to DEFENDANTS' responsibilities, such as DEFENDANTS' heirs, assigns, estates, successors, employees or agents. Though representatives of DEFENDANTS will not be signing this **RELEASE**, DEFENDANTS' employees and agents are parties to the settlement of this lawsuit and to the various agreements contained herein, and upon payment to PLAINTIFF of the settlement proceeds, DEFENDANTS and their employees or agents are also specifically bound to all included provisions. PLAINTIFF understands that if DEFENDANTS' employees and agents breach any portion of this **RELEASE**, PLAINTIFF is free to use this **RELEASE** as evidence in a court of law to enforce the terms and conditions of the settlement contained in this **RELEASE**, and to seek any injunctive or equitable relief as may be appropriate to remedy such breach.

Witnessed or Attested by:

  
\_\_\_\_\_  
**WILLIAM A. FELDMAN, ESQ.**  
(or a licensed Notary Public)

Dated:

4/27/15

  
\_\_\_\_\_  
**ROBERT E. CARNEY**

Dated:

4-27-15

ROBERT E. CARNEY

It is understood and agreed that the information provided below will be provided to the Centers for Medicare and Medicaid Services pursuant to the Medicare, Medicaid and SCHIP Extension Act of 2007.

Full Name as it appears on Plaintiff's  
Social Security Card

ROBERT E. CARNEY III

Social Security Number

[REDACTED]

Current Address

[REDACTED]

Date of Birth

[REDACTED]

Medicare Health Insurance Claim  
Number (HICN)

N/A

Gender

Male

[Signature]  
Signature/Date

4-27-15