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<p>JOHN JAMES, JR.</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>COUNTY OF CUMBERLAND,</p> <p style="text-align: right;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY, LAW DIVISION</p> <p>COUNTY OF CUMBERLAND <i>Cum L 70-15</i></p> <p>COMPLAINT AND JURY DEMAND</p> <p><i>618 LAD</i></p>
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John James, Jr., residing in Cumberland County, says by way of Complaint:

STATEMENT OF FACTS

Background

1. On or about October 16, 2002, Plaintiff, John James, Jr. (James), was hired by the County of Cumberland (County) assigned to Department of Public Works in the capacity as truck driver/equipment operator.
2. From on or about the date of his hire through to on or about mid-2009, Plaintiff worked without incident and received feedback from supervisor that he performed his duties in a positive manner.
3. In or about October 2009, Donald Olbrich ("Olbrich") was hired by the County as the Supervisor of the Public Works Department. At all times relevant, Olbrich was the supervisor to Plaintiff and he was the head of the Department of Public Works. The County

delegated authority to Olbrich to act on its behalf, including the delegation to Olbrich of the power to hire, promote and fire. At all times relevant, Olbrich was the agent, representative and employee of the County.

4. Thereafter, work life for James changed; not for the better.
5. Upon information and belief, Olbrich is a gay man and /or expresses a homosexual sexual orientation. Plaintiff is a heterosexual male and has not expressed homosexual desire and /or practices in his lifetime.
6. Olbrich began making sexual overtures to Plaintiff shortly after Olbrich was hired but the County.

Harassment Begins

7. In or around December 2010, James and co-workers, Tom Petterson (Petterson) and Brian Kelly (Kelly), were placing sand barrels on a bridge located on West Park Drive in Bridgeton. At the time, James was trying to secure lids on the barrels but was having difficulty doing so. Brian Kelly went back to the yard to get grease to lubricate the lids. Upon Kelly's return to the job site with the grease, Olbrich looked at Kelly and said: "Give me that grease, I want to slap that on J.R's ass". (James is referred to at the workplace as "J.R.") James was mortified. It was common knowledge throughout the Public Works Department that Olbrich was believed to be homosexual and/or expressed homosexual tendencies. James did not welcome the comments and/or did not welcome any sexual advances by Olbrich at any time.
8. In or about February 2011 while waiting in line to load brine, James was standing on the fuel tank of a large dump truck, and as he turned around to step down, he discovered that Olbrich was standing behind him, staring at his buttocks. This startled James to such a

degree that he pointedly asked Olbrich to back him off. James asked Olbrich if he could help him with anything. Olbrich walked away leaving James feeling rattled and dirty.

James Reports Sexual Harassment to Union-First NJLAD Report (discrimination)

9. Shortly thereafter, James reported the above described incidents to the union shop steward, Fran Smith (Smith). Smith advised James simply to document his encounters with Olbrich. Thereafter, James did his best to avoid contact with Olbrich.
10. In or about June 2011, however, James was again sexually harassed by Olbrich. James was in the County Public Works garage holding a hydraulic hose to be repaired. As James waited for the mechanic, Olbrich walked over to James, winked, and put one hand on James' shoulder, and said "mine is bigger than that" obviously referring to the size of the hose and the size of Olbrich' s penis.

James Reports Sexual Harassment to Union-Second NJLAD Report (discrimination)

11. James again reported the harassment to the union representative, Fran Smith. Smith told James that he would bring it to the attention of Olbrich. Smith, however, never followed up with James and never reported to him the outcome of any supposed meeting with Olbrich.

James Takes Approved Medical Leave

➤ Upon Return from Leave, Retaliation Begins

12. In or about July 2011, James took a medical leave of absence from work and returned to work on or about August 15, 2011. Shortly after his return from medical leave, in September 2011, James was notified that he was to be transferred to the Port Norris yard for work, effective October 3, 2011. This transfer would have more than doubled his drive time, not to mention the additional commute costs to and from work. Olbrich claimed the transfer was justified due to James having the least seniority in his "gang." Olbrich's

reasoning was bogus; James knew the transfer was retaliatory. Historically, job transfers and assignments were determined in accordance with seniority of employees of the entire Public Works Department, not as to “gangs” or groups of workers.

James Reports Adverse Job Action to Union-Third NJLAD Report (retaliation)

13. James addressed the proposed transfer with his union. On or about September 28, 2011, the union prepared a letter on behalf of James to Olbrich stating that it sought to resolve the transfer dispute by proposing that a co-worker (Gene Carter) was willing to transfer the Port Norris yard in lieu of James. Indeed, it made sense. Carter lived in the Port Norris area. Olbrich denied, without explanation, the request to transfer Carter instead of James. There was no good faith and/or legitimate business reason for the transfer by Olbrich of James or for the denial to permit Carter to make the transfer in lieu of James.
14. On or about October 3, 2011 James was transferred to the Port Norris yard.
15. On or about October 11, 2011 Don Olbrich finally officially replied to the union's letter. In light of the response, James sought legal representation.

James Seeks Legal Intervention (shoddy NJLAD investigation & retaliation)

16. On or about November 7, 2011, legal counsel for James sent a letter to Samuel Fiocchi, Chairman of Public Works Department. Sometime thereafter, Brian Kelly was interviewed by the County Director of Personnel, Joseph Rossi, ostensibly to satisfy their obligation under the law. Erickson v. Marsh-McLennan Co., 117 N.J. 539 (1990). The investigation, however, was less than thorough as it focused only on one incident, the incident involving the comment about Olbrich wanting to grease James’ ass, and, only one witness was interviewed despite there being more than one witness to the incident.

17. On or about November 23, 2011, Director Rossi forwarded correspondence to counsel for James; and, in January 2012 James was permitted to transfer back to the Bridgeton yard. It should be noted that following the transfer and during the legal negotiations regarding same, James expended a significant amount of accrued time on sick leave, and quite frankly, started looking for another job as it became apparent that Olbrich was motivated by retaliation to take adverse employment actions against him because he had engaged in protected activity under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et. seq.
18. From on or about January 2012 through June 2012, Olbrich laid low and did not continue to harass or retaliate against James. However, on or about June 29-30, 2012 a major storm hit the area. It was during the aftermath of the storm, James was engaged in the cleanup of storm damage when Olbrich notified him to report to the Vineland yard for work. Olbrich offered no explanation for the transfer to the Vineland yard. James was assigned to Bridgeton and this was the area hit hardest by the storm. Indeed, James had been actively engaged in clean up and was needed at the Bridgeton location. Therefore, James once again, was forced to seek assistance from the union because of the adverse transfer.

James Reports Adverse Job Action to Union-Fourth NJLAD Report (retaliation)

➤ James takes Second Medical Leave-To Deal with Stress of Harassment

19. On or about July 9, 2012, because he did not receive an explanation by or on behalf of Olbrich or from the union regarding the unwarranted transfer, James sought medical help for stress and anxiety, sensing the retaliatory conduct was heating up once again.
20. On July 23, 2012, James returned to work, reporting to the Vineland yard.
21. In or about September 2012, again without explanation, James was ordered to return to the Bridgeton yard. Shortly thereafter, the 2013 Job posting was released for two heavy

equipment operators. In effect at the time, was a Civil Service test list that placed James as No. 2 on the list of eligible. Prior to the list having been released, James had applied for and submitted his interest in promotion to the heavy equipment operator positions.

22. There were four workers who applied for the heavy equipment operator positions, including James. These positions were governed by the merit based Civil Service standards as the County is a Civil Service governed employer.
23. All four job candidates were interviewed for the promotional positions.

Refusal to Promote James (NJLAD retaliation)

24. In or about May 2013, the interviewees also were required to take a performance tests. Before the performance test results were officially published and in violation of Civil Service standards, Olbrich announced to the workforce that he had determined that the heavy equipment operator positions would be awarded to Charlie Lupton and Chris Fleetwood, two of the four candidates.
25. The above announcement took place with all four candidates present in Olbrich's office, indeed, after having been summoned by Olbrich to his office. Upon leaving the office, Olbrich made a point of shaking the hands of each of the candidates with the exception of James. As to the other candidate who did not get the promotion, Ronnie Rozzello, Olbrich said to Rozzello, "Don't worry, this does not mean that you're out of it." Again, completely ignoring James.
26. A few weeks later, on September 21, 2013, Olbrich posted notice that co-worker Albert Waller, was to be transferred to the "mosquito" assignment based out of the Bridgeton yard, where James was assigned at the time. Albert Waller was scheduled to retire effective December 2013. Waller held the position of heavy equipment operator before the

promotional process was announced, and his impending retirement resulted in the institution of the Civil Service Promotional process.

Olbrich changes criteria for promotion; FMLA and/or approved sick leave is an illegal criteria (NJLAD and FMLA)

27. Olbrich refused to post the scores for the performance test as required by Civil Service regulations. The union therefore intervened and requested that Olbrich post the scores. It was not until the end of the year in November 2013 that Olbrich posted the scores. At that time James learned that Olbrich unilaterally decided to factor in sick time in addition to performance and verbal examination scores. This additional “factor” evaluating sick time caused the score of James to drop below the two candidates who were promoted from the list. As noted previously, James had been forced to utilize sick time as a result of the harassment and retaliatory actions of Olbrich. The inclusion of the permissible use of sick time is an illegal criterion exercised by Olbrich resulting in an adverse employment action to James.

28. In or about March 2014, Waller retired, therefore making available yet another position for heavy equipment operator within the County. At this time, the Civil Service Eligibility List was still in effect. James and Rozzello were still active on the list with James listed above Rozzello. Civil Service rules require the promotion for this merit based eligibility list.

Olbrich allows Civil Service Eligibility List to Expire to exclude James from promotion to open and available Civil Service Position-(retaliation)

29. On or about **April 20, 2014** the Civil Service Eligibility List for the position of heavy equipment operator expired.

30. In or about May 2014, less than a month after the eligibility list expired, Olbrich re-posted the heavy equipment operator position.

Retaliatory Harassment

31. On or about On June 25, 2014, Olbrich drove to the location on Grove Street located in Bridgeton where James had been working, for the sole purpose of telling James that he was not getting the position of heavy equipment operator. It was apparent to James that Olbrich took pleasure in delivering the news that he was not being promoted. Olbrich advised that he had promoted Brian Kelly to the post instead. Olbrich repeated several times that the reason James was not getting the promotion was because James would not accept more “call out” assignments. (Call out assignments were opportunities for overtime. Call outs occur at any hour that an employee is not scheduled to work. An employee may be called to work to provide extra help when, for example, flooding occurs as a result of a rain storm on a Friday night, on Saturday morning an employee may be called in to help work on cleaning up the flood. James would have welcomed the opportunity to work the additional hours and earn overtime pay. He turned down the “call out” work because accepting them would have meant working more closely with Olbrich.
32. On or about June 25, 2014, Brian Kelly was provisionally promoted to the heavy equipment position and assigned to the mosquito department. Kelly had not even taken the Civil Service test in effect before Olbrich permitted it to expire on or about April 20, 2014.
33. There have been several incidents of harassment since June 2014, including an assignment by Olbrich to James to a tree trimming job requiring the use of an unsafe boom truck (the truck is OSHA approved for limited purposes, none of which, however, involves far reaching tree trimming use for which Olbrich requires James to perform).

34. On or about September 23, 2014, Olbrich refused to accommodate James on his medical accommodation request due to certain limitations James experienced with regard to standing on his feet. Instead of engaging in any interactive process as required under the New Jersey Law Against Discrimination, see, *Victor v. State*, 203 N.J. 383 (2010), Olbrich simply denied the accommodation request, which would have imposed no undue hardship. N.J.A.C. 13:13-2.5(b)(2); <http://www.judiciary.state.nj.us/civil/charges/2.26.pdf>.
35. On or about December 1, 2014, Olbrich resigned and/or was separated from employment with the County of Cumberland.
36. James continues to be employed with the County of Cumberland.

FIRST COUNT
(NJLAD Retaliation)

37. The above paragraphs are repeated at length as if set forth herein.
38. The “broad remedial purposes” of the New Jersey Law Against Discrimination (“LAD”), the New Jersey Supreme Court recently decided that employees may be protected from retaliation.
39. The LAD makes it illegal “[f]or any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this act[.]” N.J.S.A. 10:5–12(d).
40. This claim arises from the retaliation by Olbrich upon James, therefore the elements of the cause of action are that the employee “engaged in a protected activity known to the [employer,]” the employee was “subjected to an adverse employment decision[.]” and there is a causal link between the protected activity and the adverse employment action. Woods–Pirozzi v. Nabisco Foods, 290 N.J.Super. 252, 274 (App.Div.1996). In addition, in order to recover for LAD retaliation, plaintiff must also demonstrate that the original complaint

was both reasonable and made in good faith. *Carmona v. Resorts Int'l Hotel, Inc.*, 189 N.J. 354, 373 (2007). Here, James satisfies all requisite elements for a claim under NJLAD, N.J.S.A. 10:5-12 (d); *Battaglia v. United Parcel Serv., Inc.*, 214 N.J. 518, 547, 70 A.3d 602 (2013).

41. As a direct and causal result of the bad acts by Olbrich, James has suffered in many ways: economically in wages, seniority, pension, sick day losses; and, in health, mental well-being, stress, anxiety and uncertainty.

WHEREFORE, Plaintiff seeks damages to vindicate his rights under the laws and remedy the egregious loss and damages inflicted upon him by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants' illegal acts, liquidated damages and any other damages the Court deems fair and just.

DESIGNATION OF TRIAL COUNSEL

Michelle J. Douglass, Esq., is hereby designated as trial counsel in the above-captioned matter.

CERTIFICATION OF NO OTHER ACTIONS PURSUANT TO RULE 4:5-2

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my

continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

JURY DEMAND

The plaintiff hereby demands a trial by jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

MY RIGHTS LAWYERS

Attorneys for Plaintiff

By _____

MICHELLE J. DOUGLASS, Esq.

January 29, 2015