

CUMBERLAND FINANCE
Batch # 977

SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY

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CIVIL CASE
MANAGEMENT OFFICE

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Initials SP

Plaintiff(s) NANCY POLLARD	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	CUMBERLAND COUNTY
vs.	:	
	:	DOCKET NO.: CUM-L- <u>90-15</u>
Defendant(s) CUMBERLAND COUNTY COLLEGE and THE BOARD OF TRUSTEES OF CUMBERLAND COUNTY COLLEGE	:	Civil Action

Plaintiff, Nancy Pollard, residing in the City of Vineland, County of Cumberland and State of New Jersey by way of Complaint against the defendant says:

FIRST COUNT

1. At all times hereinafter mentioned, the plaintiff, Nancy Pollard, was an employee of the defendant, Cumberland County College, (referred to as "CCC") and a member of a protective class/category of individuals defined by the New Jersey Conscientious Employee Protection Act (CEPA-Whistleblower) and N.J.S.A. 34:19-2(b) and the New Jersey Law against Discrimination ("NJLAD") N.J.S.A. 10:5-1, et. seq.

2. At all times hereinafter mentioned, the defendant, Cumberland County College and the Board of Trustees, is an employer as defined/described by the New Jersey Conscientious Employee Protection Act N.J.S.A. 34:19-2(a) ("CEPA") and the NJLAD and the employer of the plaintiff, Nancy Pollard.

3. Throughout the course of plaintiff's employment with the defendant the plaintiff

performed her job duties as the Director of Continuing Education in an exemplary fashion and received multiple accolades from the student body of the defendant, CCC.

4. While the plaintiff was employed at the defendant, CCC, the plaintiff became aware of a variety of acts/omissions which she reasonably believed/perceived were in violation of a law, rule or regulation and/or a clear mandate of public policy and/or participated in an investigatory process regarding various claims regarding activity protected by CEPA and reported and/or complained regarding the matters to members of upper management and supervisory personnel.

5. The plaintiff's complaints included complaints regarding the acts/omissions of her supervisor, from whom the plaintiff received direction and instructions as to her work activities and a supervisor as defined/described by the New Jersey Law against Discrimination and/or the New Jersey Conscientious Employee Act.

6. The plaintiff's complaints/objections regarding the unlawful conduct of her supervisor and/or the authorized representatives of the defendant and/or its members of upper management included, but were not limited to:

a. That her supervisor changed the rubric and/or requirements that were utilized by the Certified Medical Assistant (CMA) program so that all the students were to pass the class notwithstanding that they did not achieve objective goals to do so; and

b. The failure of the CMA program supervisor to extend externships or national exams to all students as represented, required and appropriate; and

c. Derogatory references regarding a student's spouse including comments such as "that man must be on drugs, he is desperate. He keeps calling everyday for their refund."; and

d. Preparation by the plaintiff's supervisor of a graduation ceremony program for students which placed the student's names in order of their GPA ranking and announcement of

the criteria several times at the graduation causing embarrassment and turmoil against clear mandates of public policy; and

e. Plaintiff's supervisor's deviation from the program and previous representations made to and relied upon by students regarding a health program which included removing the "Gold Standard" or otherwise offering students a different exam rather than the required national exam which would allow students to work in a hospital setting without first obtaining at least one year of experience; and

f. Supervisory personnel communicating with the plaintiff by email and requesting work while the plaintiff was absent on an approved medical leave; and

g. Refusal of the plaintiff's supervisor to sign and approve time sheets for hours taught by the plaintiff depriving her of compensation in addition to a salary received by virtue of the plaintiff's director position; and

h. The indiscriminate and disparate awarding by plaintiff's supervisor of "comp time" to certain employees but not to others; and

i. The inappropriate discussion of the plaintiff's health and physical condition/disability or perception thereof at staff meetings breaching the plaintiff's confidentiality; and

j. Inappropriately disciplining the plaintiff for failing to supply information to area schools regarding summer camp while the plaintiff was out on an approved medical leave; and

k. Encouraging a former student-worker in the Workforce Community Education Department who interviewed with an outside company to perpetuate a lie and falsehood regarding the status of her drivers' license and doing so during a staff meeting for subordinates to hear.

7. The plaintiff's complaints/objections regarding the unlawful acts of her supervisor were made both orally and in writing to members of upper management and those in a position to remediate and/or to those in a position who knew or reasonably should have known of the conduct of the plaintiff's supervisor.

8. Notwithstanding plaintiff's multiple oral complaints and follow-up written complaints made in December, 2013 and in January, 2014, no investigation was conducted and no remedial efforts were put in place to correct the conduct of the plaintiff's supervisor and abate the hostile work environment caused by such conduct.

9. The defendant, CCC's, Department of Human Resources acknowledged receipt of the plaintiff's written complaints regarding the conduct of the plaintiff's supervisor as well as its "delay" in responding thereto. No investigation took place despite representation from the Human Resource Department that it would contact the plaintiff if there were questions or if it "required" additional information.

10. The plaintiff complained and objected concerning the defendant's Human Resource Department and its' personnel concerning its' failure to conduct an adequate investigation and to handle what the plaintiff believed was a violation of the law, defendant's policy, procedures or clear mandates of public policy. Following plaintiff's complaints she was told, specifically, "there was no audience for the situation" and that the "executive leadership did not want to hear about the problems". Plaintiff was purposely dissuaded, contrary to the law, of pursuing her complaints and specifically complained that said conduct constituted a violation of the law and contrary to her obligation as a director employed by the defendant, CCC. In fact, the plaintiff was intimidated and specifically warned by the Human Resource Department that she should not make complaints and was told to remember what had happened to other employees who made

complaints which employees were discharged.

11. On or about February 14, 2014, following the plaintiff's most recent oral and written complaints to members of upper management regarding the aforesaid unlawful activities, she was terminated in violation of the New Jersey Conscientious Employee Protection Act.

12. As a direct and proximate result of the conduct of the defendant, CCC, by and through its' authorized representatives and supervisory personnel and in violation of N.J.S.A. 39:19-1, et. seq., the plaintiff sustained emotional distress, economic loss and other damages.

WHEREFORE, plaintiff, Nancy Pollard demands judgment against the defendant, CCC, sufficient to compensate her for her losses, together with punitive damages, costs of suit, attorneys' fees, and such other relief that is equitable, just, and available/awardable under the New Jersey Conscientious Employee Protection Act including but limited to reinstatement.

SECOND COUNT

1. Plaintiff repeats each and every allegation contained in the First Count and incorporates herein by reference thereto.

2. During the course of plaintiff's employment with the defendant, CCC, the plaintiff was wrongfully accused and inappropriately "investigated" regarding a note(s) allegedly received by her supervisor which writings supposedly cast plaintiff's supervisor in an unfavorable light.

3. The plaintiff's supervisor in retaliation for plaintiff's complaints/objections, more particularly described in the First Count, accused the plaintiff of writing the alleged unfavorable note and thereafter embarked on a course of action to discipline the plaintiff by interfering in the investigation and participating in the discipline process including plaintiff's termination in violation of CEPA.

4. The plaintiff denied and continues to deny engaging in any conduct whatsoever related to

the alleged note(s) and maintained, at all times, the allegations against her were without merit and motivated by the retaliatory conduct of her supervisor.

5. The plaintiff's termination from her position as Director of Continuing Education was not only without merit, but also disparate treatment markedly different than discipline for conduct of other persons employed by the defendant, CCC, who engaged in conduct far more severe/worse than the non-meritorious and disputed conduct allegedly engaged in by the plaintiff. The accusations were pre-text for plaintiff's termination.

6. Management's disparate treatment of the plaintiff and her termination was consistent with the threats of intimidation previously made by management and Human Resources and the representations that there was "no audience" for her previous complaints and the "executive leadership" did not want to hear complaints such as those made by the plaintiff.

7. The conduct of the defendant, CCC, in firing the plaintiff and their pre-textual reason for the termination was retaliatory in nature for plaintiff's complaints and in violation of plaintiff's rights under CEPA.

WHEREFORE, plaintiff, Nancy Pollard demands judgment against the defendant, CCC, sufficient to compensate her for her losses, together with punitive damages, costs of suit, attorneys' fees, and such other relief that is equitable, just, and available/awardable under the New Jersey Conscientious Employee Protection Act including but limited to reinstatement.

RICHARD M. PESCATORE, P.C.

By: _____

RICHARD M. PESCATORE

Attorney for Plaintiff

Dated: February 12, 2015

CERTIFICATION PURSUANT TO RULE 4:5-1

I, RICHARD M. PESCATORE, ESQUIRE, hereby certify:

The matter in controversy is not the subject of any other action pending in any other Court or arbitration proceeding and no such action or proceeding is contemplated.

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 willfully false, I am subject to punishment.

DEMAND FOR JURY TRIAL

The plaintiff demands a Trial by jury on all issues in accord with the Rules of this Court.

THIS WILL SERVE AS A DEMAND FOR IMMEDIATE DISCLOSURE OF ALL MEMBERS OF DEFENDANT'S LITIGATION CONTROL GROUP

NOTICE PURSUANT TO RULE 4:25-1(4)
AND RULE 4:25-4

TAKE NOTICE that Richard M. Pescatore, Esquire, attorney for the plaintiff, is hereby designated trial counsel pursuant to the provisions of the above-stated Rules.

Date: February 12, 2015

RICHARD M. PESCATORE, P.C

By: 
RICHARD M. PESCATORE
Attorney for Plaintiff

CERTIFICATION OF COUNSEL PURSUANT TO RULE 1:38-7(b)

I certify that 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 Rule 1:38-7(b).

RICHARD M. PESCATORE, PC

Date: February 12, 2015

By: 

RICHARD M. PESCATORE

Attorney for Plaintiffs

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP

BY: Wendy D. Testa, Esquire
Karen M. Gottlieb, Esquire
The Curtis Center, Suite 1130 East
Independence Square West
Philadelphia, PA 19106
(215) 627-6900

Attorney for Defendants
Cumberland County College and
The Board of Trustees of Cumberland
County College

NANCY POLLARD,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff	:	CUMBERLAND COUNTY
	:	
v.	:	DOCKET NO. CUM-L-90-15
	:	
CUMBERLAND COUNTY COLLEGE and:	:	CIVIL ACTION
THE BOARD OF TRUSTEES OF	:	
CUMBERLAND COUNTY COLLEGE,	:	
	:	ANSWER WITH SEPARATE
Defendants	:	DEFENSES TO PLAINTIFF, NANCY
	:	POLLARD’S, COMPLAINT

Defendants, Cumberland County College and the Board of Trustees of Cumberland County College, by and through its attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, in Answer to the Complaint, responds as follows:

FIRST COUNT

1. Denied. The allegations of this paragraph contain conclusions of law to which no response is required.

2. Denied. The allegations of this paragraph contain conclusions of law to which no response is required.

3. Denied as stated. It is admitted only that Plaintiff was employed with the Defendants as Director of Continuing Education.

4. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

5. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

6. Denied. The allegations of this paragraph and its subparts contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and its subparts and, therefore, denies same and demands strict proof thereof at trial.

7. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

8. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation,

Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

9. Denied. Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

10. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

11. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

12. Denied. The averments contained in this paragraph state conclusions of law to which no response is required. If a response is deemed to be required, as to plaintiffs damages, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial. By way of further answer, Answering Defendants deny any violation of any act or

statute and, as to Plaintiff's damages, it is specifically denied that any such damages were caused by the alleged violations of Answering Defendants.

WHEREFORE, Defendants, Cumberland County College and the Board of Trustees of Cumberland County College, demand judgment in their favor and against all other parties along with attorneys' fees, costs and any such other relief this honorable Court deems appropriate.

SECOND COUNT

1. Answering Defendants repeat and incorporate their responses to the First Count as if the same were set forth at length herein.

2. Denied. Answering Defendant denies the allegations set forth in this paragraph and the Plaintiff is left to her proofs.

3. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

4. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

5. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth

of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

6. Denied. The allegations of this paragraph contain conclusions of law to which no response is required. If a response is deemed to be required, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

7. Denied. The averments contained in this paragraph state conclusions of law to which no response is required. If a response is deemed to be required, as to plaintiffs damages, after reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial. By way of further answer, Answering Defendants deny any violation of any act or statute and, as to Plaintiff's damages, it is specifically denied that any such damages were caused by the alleged violations of Answering Defendants.

WHEREFORE, Defendants, Cumberland County College and the Board of Trustees of Cumberland County College, demand judgment in their favor and against all other parties along with attorneys' fees, costs and any such other relief this honorable Court deems appropriate.

FIRST SEPARATE DEFENSE

The Complaint fails to state a claim upon which relief can be granted against Answering Defendants.

SECOND SEPARATE DEFENSE

The causes of action set forth in the Complaint are barred, in whole or in part, by the applicable statute of limitations.

THIRD SEPARATE DEFENSE

Any and all actions taken by Answering Defendants with respect to Plaintiff were based upon legitimate business factors.

FOURTH SEPARATE DEFENSE

Plaintiff's claims are barred by the Doctrine of Estoppel and Waiver.

FIFTH SEPARATE DEFENSE

Plaintiff's claims are barred by the Doctrine of Laches.

SIXTH SEPARATE DEFENSE

Plaintiff's claim for punitive damages is barred by the due process clause of the Fourteenth Amendment to the United States Constitution.

SEVENTH SEPARATE DEFENSE

Plaintiff failed to mitigate her alleged damages.

EIGHTH SEPARATE DEFENSE

Any damages suffered by Plaintiff resulted from the action or inaction of Plaintiff herself or third parties not a party to this action.

NINTH SEPARATE DEFENSE

Plaintiff's claims are barred by her failure to promptly advise and inform Answering Defendants of the alleged wrongful conduct.

TENTH SEPARATE DEFENSE

To the extent plaintiff claims damages based upon emotional, mental and physical injuries, such claims are barred by the exclusivity provisions of the applicable Workers' Compensation Act.

ELEVENTH SEPARATE DEFENSE

Plaintiff failed to engage in any protected activity.

TWELFTH SEPARATE DEFENSE

Plaintiff did not suffer any loss or damage by reason of any alleged acts of Defendant.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's claims, in whole or in part, are pre-empted/superseded as a matter of law.

FOURTEENTH SEPARATE DEFENSE

By her own acts and conduct, Plaintiff is barred from bringing this action.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's claims, in whole or part, are barred by a failure of consideration.

SIXTEENTH SEPARATE DEFENSE

Answering Defendants have not violated any state or federal law.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff has failed to identify any law or public policy alleged to have been violated by the Answering Defendants.

EIGHTEENTH SEPARATE DEFENSE

Answering Defendants hereby reserve the right to assert such other defenses as discovery and investigation may disclose.

WHEREFORE, Defendants, Cumberland County College and the Board of Trustees of Cumberland County, pray that the Court enter judgment dismissing with prejudice Plaintiff's Complaint against them in its entirety, and awarding them attorneys' fees, costs of suit, interest, and such other and further relief as the Court deems just and proper.

REQUEST FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that pursuant to Rule 4:5-2, the party filing this Answer requires that you, within five (5) days, serve a statement of damages claimed.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provision of Rule 4:25-4, Wendy D. Testa, Esquire is hereby designated as trial counsel in the within matter.

CERTIFICATION PURSUANT TO RULE 4:5-1

It is hereby certified as follows:

1. I certify that this pleading was served within the time period allowed under the Rules of Court and any extension granted by the court within which to do so.
2. This case, to my knowledge is not the subject of any other action pending in a Court or Arbitration proceeding and none other is contemplated.
3. At this time, there are no other known parties that should be joined in this lawsuit.

CERTIFICATION PURSUANT TO RULE 4:6-1

I certify that a copy of the within pleading was served upon opposing counsel within the time prescribed by Rule 4:6-1.

NOTICE

Please take notice that the undersigned attorney does hereby demand, pursuant to Rule 1:5-1(a) and Rule 4:17-4(c), that each party herein serving pleadings and interrogatories and receiving answers thereto serve copies of such pleadings and answers to interrogatories received from any party upon the undersigned attorney. This demand is deemed to be continuing.

WILSON, ELSER, MOSKOWITZ,

EDELMAN & DICKER LLP

By: _____
Wendy D. Testa, Esquire
Karen M. Gottlieb, Esquire
Attorney for Defendants,
Cumberland County College and the Board
of Trustees of Cumberland County College

Dated: March 20, 2015