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**Attorney for Plaintiff**

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FRANK RUSIGNUOLO,  
Plaintiff,  
v.  
TOWNSHIP OF NUTLEY and  
PAUL CAFONE,  
Defendants.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION - ESSEX COUNTY  
:  
: DOCKET NUMBER: **L-4018-13**  
:  
:  
: Civil Action  
:  
: **COMPLAINT, JURY DEMAND,**  
: **DESIGNATION OF TRIAL COUNSEL,**  
: **DEMAND FOR DISCOVERY OF**  
: **INSURANCE INFORMATION AND**  
: **CERTIFICATION**

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**THE PARTIES**

1. Plaintiff, Frank Rusignuolo, at all relevant times mentioned herein, owned both a home and commercial building in Nutley, Essex County, New Jersey. Further, he served with distinction as a police officer with Defendant Township of Nutley for over two decades eventually retiring from the force in good standing.
2. Defendant, Township of Nutley, is a municipal subdivision organized pursuant to the laws of the State of New Jersey and operates by funding, staffing, supervising and otherwise controlling the operations of the Township and its employees on a day to day basis.
3. Defendant, Paul Cafone, at all relevant times herein, was the deputy fire chief for the Township of Nutley.

### RELEVANT FACTUAL AVERMENTS

3. Plaintiff owns a commercial establishment located at 248 Centre Street in Nutley, which he leases to prospective tenants/commercial businesses.
4. In June 2011, plaintiff legally rented the above premises to Robert and Mariluz Martinez pursuant to a valid, binding and proper lease agreement, to be utilized by the Martinez's unisex hair salon. The Martinezes were moving their business from 92 Centre Street in Nutley to the plaintiff's building. The 92 Centre Street building was/is owned by defendant Cafone.
5. Upon information and belief, Mr. Martinez applied to the defendant's code enforcement department for a permit for certain work he desired to perform before opening his business in the plaintiff's building. At that time, he was specifically and unequivocally told that a permit was unnecessary unless and until he did any electrical or plumbing work.
6. No problems arose for either the Martinezes or the plaintiff until defendant Cafone realized that the Martinezes were vacating his building and moving into the plaintiff's. Upon this realization, simply put, things started to change for the plaintiff, all in an attempt by the defendant and certain of its municipal employees to harass, stop, interfere with, annoy and/or wrongfully stymie the plaintiff from realizing any economic benefit whatsoever from his renting his premises to the Martinezes, as follows:
  - a) Nutley code enforcement officials wrongly and/or without valid reason ordered a floor plan diagram from the Martinezes and a property survey from the plaintiff.
  - b) In/about August 2011, defendant Cafone and another of the defendant's employees entered into the plaintiff's building/Martinez's business and ordered Mr. Martinez and his

contractor to stop certain work they were performing therein. Upon inquiry as to why this order was given, Mr. Martinez was told "a permit is needed".

- c) When the above permit was sought/ requested, same was denied. Martinez and/or plaintiff were told that they would be "called" when the permit was granted. Upon information and belief, defendant Cafone was successful in having the job stalled because this delay would keep the Martinezes from moving out of his building, so he can continue to collect rent from them, while the plaintiff would be prohibited from doing so.
- d) Immediately thereafter, the plaintiff received a violation notice for not removing his old store sign from the front of his store- this, despite the fact that the violation notice was wrongfully and with malice improperly issued and, further, despite the fact that the sign was in fact removed by the plaintiff weeks before.
- e) In September 2011, the plaintiff received a "penalty notice fine" in the outstanding and unconscionable amount of \$2,000 per week issued by the code enforcement official for failure to obtain a construction permit which, of course, was untrue. Further, this fine was issued even though the plaintiff did not do any construction at all on the premises.
- f) Thereafter, upon further information and belief, defendant Cafone continued to direct further unconstitutional harassment toward the plaintiff by ordering inspection after inspection upon the building. This harassment was so pervasive that at times certain of the defendant's employees drove by the subject building three or four times an hour.
- g) In furtherance of these gross due process and equal protection violations, the defendant's tax assessor's office directed the plaintiff to submit a listing of all rents collected for the year ending in December 2010. The harassment could not have been any more blatant.

- h) Later in September 2011, the plaintiff wrote letters to certain of the defendant's employees requesting an investigation of what was happening to him. All of his letters were ignored.
  - i) Just a few weeks subsequent to plaintiff's forwarding the above letters, a law enforcement officer, J.V., paid a visit to the plaintiff and the Martinezes.
7. The Martinezes finally opened their business in the plaintiff's building in November 2011, a half a year later.
8. As of August 2012, a permanent Certificate of Occupancy had still not been issued.

**\*THE ABOVE IS MERELY MEANT TO BE ILLUSTRATIVE, NOT EXHAUSTIVE.**

#### **SPECIFIC CAUSES OF ACTION**

##### **A. (NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-2(C))**

9. The intentional/grossly negligent/palpably unreasonable conduct of defendant violated the rights of plaintiff as guaranteed by Article I, Sections 1, 6 and 18 of the N.J. State Constitution. Further, plaintiff has been clearly treated differently than others within the township, and certain township officials have meted out this disparate treatment, thereby seriously violating plaintiff's equal protection rights, with Nutley's tacit approval.

##### **B. (VIOLATION OF STATE CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION)**

10. It was the policy and/or practice of Nutley to authorize/allow certain employees to cover up the usage of illegal conduct toward the plaintiff during the above time period, specifically in the form of intimidation/coercion. Further, Nutley's conduct was palpably unreasonable in that it did not ensure that its municipal officials were ever properly trained in this regard.

11. This policy and practice of Nutley caused constitutional violations by employees, including the violation of the plaintiff's state constitutional rights by defendant described in the foregoing paragraphs.
12. Defendant Nutley refused to adequately and properly train/ direct/ supervise/ control and others so as to prevent the violation of the plaintiff's constitutional rights.
13. At all times pertinent hereto, employees were acting within the scope of his employment and pursuant to the aforementioned policies and practices of the Township of Nutley. These policies and practices were enforced by the co-defendant and their employee supervisors, and were the moving force/proximate cause/affirmative link behind the conduct causing the plaintiff's injuries. Defendant Nutley is therefore liable for all violations of the plaintiff's state constitutional rights by Cafone.

**C. (CONSPIRACY TO VIOLATE STATE CIVIL RIGHTS)**

14. Defendants conspired to violate plaintiff's state statutory civil rights by acting in concert to attempt to extort him, ignore his requests for a thorough investigation and together creating an environment of intimidation and coercion, including the use of verbal and abuse, as more fully described in the foregoing paragraphs, all in violation of the New Jersey State Constitution.

**D. (PUBLIC ENTITY LIABLE FOR ACT OF PUBLIC EMPLOYEE)**

15. Defendant Nutley, a public entity, is liable in damages for injuries to the plaintiff proximately caused by the acts or omissions of its public employee(s), as described in the foregoing paragraphs, within the scope of their employment, and/or resulting from the employees' incompetence or unfitness.

16. Defendant Nutley knew or had reason to know of these attributes and could reasonably have foreseen that such qualities created a risk of harm to other persons.

**E. (PUBLIC EMPLOYEE WRONGFULLY ENFORCING CLAIM -BOMBACE CAUSE OF ACTION)**

17. Defendants, Nutley, Cafone and their employees' actions and their wrongful execution or enforcement of laws, described in the foregoing paragraphs, proximately caused injuries to plaintiff.

18. Defendants' acts were reckless, without reasonable good faith and were outside the scope of their employment. Defendants are liable in damages and defendants' public entity employer is vicariously liable in damages.

**F. (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

19. Defendant Cafone's intentional abuse of plaintiff's constitutional rights was extreme, outrageous and unjustified and caused plaintiff to suffer physical and emotional distress for which all defendants are individually liable. This is exactly what Cafone intent was from the onset of his purposeful/reckless and/or negligent harassment of the plaintiff.

20. The abuse of plaintiff was unjustified and also done with actual malice and wanton indifference to and deliberate disregard for the rights of plaintiff. Plaintiff is thus entitled to exemplary damages.

**G. (GROSS NEGLIGENCE/PALPABLY UNREASONABLE CONDUCT)**

21. Defendant Cafone, while acting as an agent and employee for the co-defendant, owed a duty to plaintiff to perform his duties without the use of intimidation and the like.

22. As a proximate result of defendants' gross negligence/palpably unreasonable conduct, plaintiff has sustained permanent economic and emotional injuries and he has incurred medical bills and other expenses. These injuries have caused and will continue to cause plaintiff pain and suffering, both mental and physical. Cafone was acting within the scope of employment.

23. Defendants Township of Nutley is liable for compensatory damages under the doctrine of respondeat superior for the gross negligence/palpably unreasonable conduct of Cafone committed within the scope of his employment.

#### **H. (GROSS NEGLIGENCE/ PALPABLY UNREASONABLE CONDUCT)**

24. Defendant Nutley owed a duty to plaintiff to train and supervise and otherwise control Cafone and others in the use of coercion, intimidation, violation of state constitutional guarantees and other matters incidental to the exercise of township functions.

25. Defendants failed to provide adequate training, supervision and control of Cafone, which failure constitutes gross negligence and palpably unreasonable conduct.

26. As a proximate cause of defendant Nutley's gross negligence/palpably unreasonable conduct in failing to provide adequate training, supervision and control of Cafone, plaintiff has sustained permanent injuries and has incurred and will continue to incur medical bills and other expenses. These injuries have caused and will continue to cause plaintiff pain and suffering, both mental and physical. Defendant Nutley's failure to provide adequate training and supervision to Cafone constitutes a willful and wanton indifference and deliberate disregard for the rights of private citizens, including plaintiff. Plaintiff is thus entitled to exemplary damages.

**I. (INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AND/OR CONTRACTUAL RELATIONS)**

27. By virtue of his above intentional and/or reckless actions, defendant Cafone intentionally interfered with the plaintiff's prospective economic advantage and/or his contractual relations the plaintiff rightfully enjoyed with the Martinezes.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff, Frank Rusignuolo, requests that this court enter judgment against all defendants and award the following:

- a. Accept jurisdiction over this matter;
- b. Empanel a jury to hear and decide this matter;
- c. Compensatory damages in favor of plaintiff;
- d. Punitive damages in favor of plaintiff;
- e. Costs of this action, including reasonable attorney fees (fee shifting) to the plaintiff; and
- f. Such other and further relief as the court may deem appropriate, equitable and just.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 4:35-1, the plaintiff, Frank Rusignuolo, herein demands a trial by jury.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4 and Rule 4:5-1(c), Patrick P. Toscano, Jr., is hereby designated trial counsel for the plaintiff, Frank Rusignuolo.

**DEMAND FOR DISCOVERY OF INSURANCE INFORMATION**

Pursuant to Rule 4:10-2(b), please comply with plaintiff's request for all insurance information.

**CERTIFICATION**

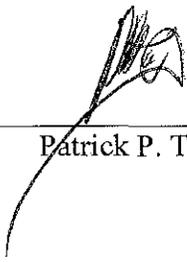
I hereby certify, upon information and belief, that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding.

I also certify, upon information and belief, that at the present time no other action or arbitration with respect to the matter in controversy is contemplated.

On the basis of the present knowledge, I am aware of no other party or parties who should be joined in this action.

Dated: May 22, 2013

By: \_\_\_\_\_

  
Patrick P. Toscano, Jr.