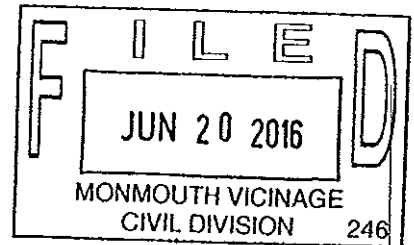


Attorney ID #: 016861986 – Our File No.: C22415

**DIFRANCESCO, BATEMAN, KUNZMAN,
DAVIS, LEHRER & FLAUM, P.C.**

15 Mountain Boulevard
Warren, NJ 07059-5686
(908) 757-7800
Attorneys for Plaintiff



PETER KOENIG,

Plaintiff,

v.

BOROUGH OF RUMSON, RUMSON
POLICE DEPARTMENT, JOHN DOES
1-10, JANE DOES 1-10 and XYZ
CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY
DOCKET NO.:

L 2182-16

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, Peter Koenig, residing at 65 East River Road #2, Rumson NJ 07760, by way of Complaint against defendants, Borough of Rumson, Rumson Police Department, John Does 1-10, Jane Does 1-10 and XYZ Corporations 1-10, says:

STATEMENT OF FACTS

COMMENT TO ALL COUNTS

1. Plaintiff Koenig is a current employee of the Borough of Rumson.
2. Plaintiff Koenig has been employed by the Borough of Rumson through its Police Department for in excess of twenty (20) years.
3. Plaintiff Koenig has held the rank of sergeant for eleven (11) years.

4. In addition to Plaintiff Koenig's sergeant's duties until the summer or February 2016, he had additional administrative duties and responsibilities.

5. On or about May 31, 2015, Plaintiff Koenig observed events at the Rumson Police Department that he reasonably and objectively believed were in violation of law, may have been criminal acts or unethical, were a violation of the public policy of the State of New Jersey, and placed the health and safety of members of the public in danger.

6. As a consequence of those observations, Plaintiff made a report to a governmental agency and exercised his civil rights pursuant to the Conscientious Employee Protection Act ("CEPA"), 34:19-1, et seq., and the New Jersey Law Against Discrimination.

7. Plaintiff's report to a governmental agency was protected activity pursuant to CEPA and the New Jersey Law Against Discrimination.

8. Plaintiff's complaint to a governmental agency included a complaint that a member of the public was subject to discriminatory behavior by members of his employer as a consequence of a disability.

9. Plaintiff Koenig did not make the report to the Chief of Police in accordance with his rights under CEPA and the New Jersey Law Against Discrimination out of fear of retaliation by the Borough of Rumson and the Rumson Police Department.

10. Within several weeks of Koenig's report to the governmental agency, Koenig was subject to and continues to be subject to retaliatory actions by the Borough and the Police Department.

11. These actions including Plaintiff Koenig being subject to an improper Internal Affairs Investigation related to his report to a governmental agency pursuant to the Conscientious Employee Protection Act and the New Jersey Law Against Discrimination.

12. The failure of the Borough of Rumson and the Police Department to properly follow their own internal investigation procedures in connection with the Internal Affairs Investigation also demonstrates the Borough of Rumson's retaliatory motive against Plaintiff Koenig.

13. Plaintiff Koenig was subject to retaliation through discipline as a direct and proximate result of the activities he engaged in pursuant to CEPA and the New Jersey Law Against Discrimination.

14. The retaliation against Plaintiff also included an attempt by the Borough of Rumson and the Police Department to send Plaintiff for a sham fit for duty examination with a psychologist located in Bergen County, rather than the psychologist who performed fit for duty exams for the Rumson Police Department. These efforts were a direct result by the Borough of Rumson and the Police Department to disqualify Plaintiff Koenig from continuing his employment with the Borough of Rumson and the Police Department.

15. Despite scheduling Plaintiff Koenig for a fit for duty examination, which Plaintiff claims was a sham, the Borough of Rumson and the Police Department did not remove Plaintiff Koenig's firearm nor place Plaintiff on any administrative leave demonstrating that the fit for duty examination was a retaliatory act and a sham.

16. Following the disciplinary charges being levied against Plaintiff Koenig and discipline being meted out, Plaintiff was stripped of certain administrative functions. These included tidal flooding officer, performed since 2011; radio equipment officer, performed since 1996; and crossing guard, performed since 2010.

17. Following these events, Plaintiff Koenig has been subject to regular and continuing hostility in the workplace, even associated with a simple discussion relative to Plaintiff volunteering to teach a class on his own time at the MCPA (Monmouth County Police Academy).

18. The actions by the Borough of Rumson and Police Department have created a hostile work environment in which Plaintiff Koenig has a reasonable belief that if he complains about any workplace related issue, he will be retaliated against.

COUNT ONE

Retaliatory Harassment

19. Plaintiff Koenig engaged in protected activity pursuant to the New Jersey Law Against Discrimination by assisting a member of the public who suffered from a disability.

20. The employer engaged in activities in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et. seq.*, including actions that were severe or pervasive enough to make a reasonable person believe that the conditions of employment were altered and the working environment was hostile or abusive.

21. Plaintiff Koenig considered the actions of his employer to be severe or pervasive enough to make a reasonable person think twice before reporting any additional workplace issues based upon his fear of retaliation.

22. As a direct and proximate result of the actions of the employer, Plaintiff Koenig suffered retaliatory harassment in violation of the New Jersey Law Against Discrimination, N.J.S.A 10:5-1, *et seq.*

23. As a direct and proximate result of Defendants' actions, Plaintiff Koenig has suffered emotional distress, humiliation, embarrassment, bodily injury, coupled with physical manifestation of emotional distress, loss of income and benefits, and other severe financial losses.

24. The foregoing actions were knowing, willful and deliberate violations of law and deprivation of Plaintiff Koenig's statutory rights and Plaintiff is entitled to punitive damages under applicable law.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) Awarding plaintiff damages, including but not limited to, equitable, punitive and compensatory damages on all lost benefits, wages and rights including but not limited to back pay, lost earning power, as well as commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to plaintiff's employment, and other economic and non-economic damages for emotional distress together with both pre-judgment and post-judgment interest and attorney's fees and costs for defendants' violations of plaintiff's civil rights;

(b) Awarding plaintiff damages, including but not limited to equitable, punitive and compensatory damages on all lost benefits, wages and rights including but not limited to back pay, lost earning power, as well as commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to plaintiff's employment, other economic and non-economic damages for emotional distress, together with both pre-judgment and post-judgment interest and attorney's fees and costs of court with regard to retaliation engaged in by the defendants against plaintiff all with regard to the adverse employment actions taken against the plaintiff without any basis in law or fact;

(c) For an Order of the court retaining jurisdiction over this action until defendants have fully complied with the orders of this court and that the court require defendants to file such reports as may be necessary to supervise such compliance;

(d) For such other additional relief as the court deems just and proper.

COUNT TWO

Retaliation

25. Plaintiff repeats and incorporates the preceding paragraphs as set forth in their entirety.

26. In response to plaintiff's protected activities Defendants retaliated against Plaintiff.

27. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's statutory and civil rights, and in violation of the New Jersey Law Against Discrimination NJSA 10:5-1 et seq. and Plaintiff is entitled to damages.

28. As a direct and proximate result of Defendants' actions, plaintiff has suffered severe emotional distress, humiliation, embarrassment, bodily injury, coupled with physical manifestation of emotional distress, loss of income and benefits and other severe financial loss.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) Awarding plaintiff damages, including but not limited to, equitable, punitive and compensatory damages on all lost benefits, wages and rights including but not limited to back pay, lost earning power, as well as commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to plaintiff's employment, and other economic and non-economic damages for emotional distress together with both pre-judgment and post-judgment interest and attorney's fees and costs for defendants' violations of plaintiff's civil rights;

(b) Awarding plaintiff damages, including but not limited to equitable, punitive and compensatory damages on all lost benefits, wages and rights including but not limited to back pay, lost earning power, as well as commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to plaintiff's employment, other economic and non-economic damages for emotional distress, together with both pre-judgment and post-judgment interest and attorney's fees and costs of court with regard to retaliation engaged in by the defendants against plaintiff all with regard to the adverse employment actions taken against the plaintiff without any basis in law or fact;

(c) For an Order of the court retaining jurisdiction over this action until defendants have fully complied with the orders of this court and that the court require defendants to file such reports as may be necessary to supervise such compliance;

(d) For such other additional relief as the court deems just and proper.

COUNT THREE

NJCRA

29. Plaintiff repeats and incorporates the preceding paragraphs as set forth in their entirety.

30. Defendant's actions are in violation of the NJCRA under N.J.S.A. 10:6-1 et seq.

31. Defendants' actions as described above violate Plaintiff's rights to freedom of speech, freedom of assembly, freedom of association and the right to organize and submit grievances and proposals through representatives in violation of the New Jersey state constitution.

32. Defendants have deprived Plaintiff of rights, privileges and or immunities secured by the New Jersey state Constitution. Through Defendants' illegal acts, Plaintiff's exercise and enjoyment of these rights privileges or immunities has been interfered with by threats, intimidation or coercion by a person acting under color of law. Defendants have also imposed adverse employment actions against Plaintiff, as outlined above, in retaliation for Plaintiff having engaged in protected activities.

33. The foregoing actions were taken pursuant to an official and extant policy and practice of Defendants, and were taken by individuals with final policy making authority over such actions.

34. These violations of law were overseen by agents, officials, employees and/or other individuals acting on Defendants' behalf who ratified such violations by Defendant's actions, which were retaliatory and violations of law, and being in a position to stop the illegal behavior Defendants failed to take remedial action in willful indifference to the violations of Plaintiff's civil rights.

35. The illegal acts by Defendant against Plaintiff as outlined above were initiated by Defendants for the purpose of retaliating against, harassing and intimidating Plaintiff for his whistleblowing activities.

36. As a direct and proximate result of Defendants' harassing and retaliatory actions, Plaintiff has suffered economic and non-economic damages, including emotional distress.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) Awarding plaintiff damages, including but not limited to, equitable, punitive and compensatory damages on all lost benefits, wages and rights including but not limited to back pay, lost earning power, as well as commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to plaintiff's employment, and other economic and non-economic damages for emotional distress together with both pre-judgment and post-judgment interest and attorney's fees and costs for defendants' violations of plaintiff's civil rights;

(b) Awarding plaintiff damages, including but not limited to equitable, punitive and compensatory damages on all lost benefits, wages and rights including but not limited to back pay, lost earning power, as well as commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to plaintiff's employment, other economic and non-economic damages for emotional distress, together with both pre-judgment and post-judgment interest and attorney's fees and costs of court with regard to retaliation engaged in by the defendants against plaintiff all with regard to the adverse employment actions taken against the plaintiff without any basis in law or fact;

(c) For an Order of the court retaining jurisdiction over this action until defendants have fully complied with the orders of this court and that the court require defendants to file such reports as may be necessary to supervise such compliance;

(d) For such other additional relief as the court deems just and proper.

COUNT FOUR

CEPA

37. Plaintiff repeats and incorporates the preceding paragraphs as set forth in their entirety.

38. Defendant's actions were in violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1, *et seq.*

39. Plaintiff engaged in protected whistleblowing activities in that he disclosed an employee of Defendants' conduct which he reasonably believed was in violation of law and or public policy, and/or rules or regulations promulgated pursuant to law and or public policy to a

governmental agency between 2015 and 2016. Plaintiff provided information which became known to the defendants related to his protected whistleblowing activity between 2015 and 2016.

40. Plaintiff engaged in further whistleblowing activities when he disclosed the Department's retaliatory conduct against him as well as various Department misconduct, cover-ups and fraud which he reasonably believed were in violation of law and or public policy, and or rules or regulations promulgated pursuant to law and or public policy to a governmental agency to which he provided information between 2015 and 2016.

41. In retaliation for Plaintiff's whistleblowing activities, Plaintiff has suffered adverse employment action(s), including but not limited to repeated harassment, placement on administrative leave, denial of promotions, removal of assignments and unwarranted investigations and disciplinary actions.

42. As a direct and proximate result of Defendant's actions, Plaintiff has suffered emotional distress, humiliation, embarrassment, bodily injury, coupled with physical manifestation of emotional distress, loss of income and benefits and other severe financial losses.

43. The foregoing actions were knowing, willful and deliberate violations of law and deprivation of Plaintiff's statutory rights, and Plaintiff is entitled to punitive damages under applicable law.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) Awarding plaintiff damages, including but not limited to, equitable, punitive and compensatory damages on all lost benefits, wages and rights including but not limited to back pay, lost earning power, as well as commensurate pension benefits, the adverse tax consequences

of a lump sum award, and other benefits with respect to plaintiff's employment, and other economic and non-economic damages for emotional distress together with both pre-judgment and post-judgment interest and attorney's fees and costs for defendants' violations of plaintiff's civil rights;

(b) Awarding plaintiff damages, including but not limited to equitable, punitive and compensatory damages on all lost benefits, wages and rights including but not limited to back pay, lost earning power, as well as commensurate pension benefits, the adverse tax consequences of a lump sum award, and other benefits with respect to plaintiff's employment, other economic and non-economic damages for emotional distress, together with both pre-judgment and post-judgment interest and attorney's fees and costs of court with regard to retaliation engaged in by the defendants against plaintiff all with regard to the adverse employment actions taken against the plaintiff without any basis in law or fact;

(c) For an Order of the court retaining jurisdiction over this action until defendants have fully complied with the orders of this court and that the court require defendants to file such reports as may be necessary to supervise such compliance;

(d) For such other additional relief as the court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a Trial by Jury on all issues triable by a jury.

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates RICHARD P. FLAUM as his trial counsel in this matter.

CERTIFICATION

I certify that the original of this pleading has been filed with the Clerk of the Monmouth County Superior Court via first class mail.

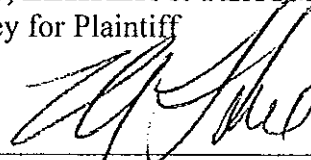
CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, the undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated, and the undersigned is unaware of any other party who is potentially responsible to any party on the basis of the facts set forth herein and who should be joined in this action pursuant to Rules 4:28 and 4:29-1, et seq.

Pursuant to Rule 4:5-1(b)(3), the undersigned hereby certifies 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).

DIFRANCESCO, BATEMAN, KUNZMAN,
DAVIS, LEHRER & FLAUM, P.C.
Attorney for Plaintiff

By: _____



Richard P. Flaum

Dated: June 16, 2016