

From: Anthony Merlino
Sent: Thu, 1 Apr 2021 18:30:43 +0000
To: Laurie Knemoller
Subject: RE: OPRA
Attachments: Scanned from a Xerox Multifunction Printer.pdf

Attached. Sorry for the delay.

ANTHONY MERLINO
Assistant Township Attorney
Township of Toms River
Department of Law
33 Washington Street
Toms River, New Jersey 08753
Phone: (732) 341-1000, Ext. 8213
Fax: (732) 736-6854

From: Laurie Knemoller
Sent: Thursday, April 1, 2021 2:27 PM
To: Anthony Merlino <amerlino@tomsrivertownship.com>
Subject: OPRA

Anthony,
When you get a chance can you please look at request #R010942-032321 This request id due today, It's for a copy of the Don Guardian lawsuit.
Thank you !!
Laurie

Tracy L. Riley, Esquire ID# 006862008
Michael E. Riley, Esquire ID# 007511976
LAW OFFICES OF RILEY & RILEY
2 Eves Drive, Suite 109
Marlton, New Jersey 08053
(609) 914-0300
Attorneys for Plaintiff, Donald Guardian

DONALD GUARDIAN,
Plaintiff,

vs.

TOWNSHIP OF TOMS RIVER; MAYOR
MAURICE HILL, JR.; KEVIN GEOGHEGAN;
LAURIE HURYK; JOSH KOPP; MATTHEW
LOTANO; MARIA MARUCA; TERRENCE
TURNBACH; LOUIS AMORUSO; GREGORY
MCGUCKIN, ESQUIRE, individually, DASTI,
MURPHY, MCGUCKIN, ULAKY,
KOUTSOURIS & CONNORS, A Professional
Corporation; and JOHN AND JANE DOES 1-10;
Defendants.

SUPERIOR COURT OF NEW JERSEY

OCEAN COUNTY
LAW DIVISION

DOCKET NO. OCN-L-000632-21

CIVIL ACTION SUMMONS

From the State of New Jersey to the Defendant(s) Named Above:

**Terrance Turnbach, Councilman
Township of Toms River
33 Washington Street
Toms River, New Jersey 08754**

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion

when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.

/s/Michelle Smith

Michelle Smith, Clerk of the Superior Court

DATED: March 9, 2021

Tracy L. Riley, Esquire ID# 006862008
Michael E. Riley, Esquire ID# 007511976
LAW OFFICES OF RILEY & RILEY
Executive Court
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(609) 914-0300
Attorney for Plaintiff, Donald Guardian

DONALD GUARDIAN,	:	SUPERIOR COURT OF NEW JERSEY
	:	OCEAN COUNTY LAW DIVISION
Plaintiff,	:	
	:	
vs.	:	Docket No.:
	:	
TOWNSHIP OF TOMS RIVER; MAYOR	:	
MAURICE HILL, JR.; KEVIN GEOGHEGAN;	:	
LAURIE HURYK; JOSH KOPP; MATTHEW	:	
LOTANO; MARIA MARUCA;	:	Civil Action
TERRANCE TURNBACH;	:	
LOUIS AMORUSO; GREGORY MCGUCKIN,	:	
ESQUIRE, individually, DASTI, MURPHY,	:	COMPLAINT AND JURY DEMAND
MCGUCKIN, ULAKY, KOUTSOURIS &	:	
CONNORS, A Professional Corporation;	:	
and JOHN AND JANE DOES 1-10;	:	
	:	
Defendants.	:	

Plaintiff, DONALD GUARDIAN, by and through his attorney, Law Offices of Riley & Riley, by way of Complaint against the defendants, both jointly and severally, respectfully states as follows:

PARTIES

1. Plaintiff, Donald Guardian is a resident and the former Mayor of the City of Atlantic City, Atlantic County, New Jersey.

2. Plaintiff, Donald Guardian was at all times relevant hereto, the Business Administrator for the Township of Toms River, Ocean County, New Jersey.
3. Defendant, Township of Toms River, is a municipality chartered by the State of New Jersey and is located at 33 Washington Street, Toms River, New Jersey.
4. Defendant, Maurice Hill is the Mayor of the Township of Toms River, Ocean County, New Jersey. Defendant, Hill is sued individually and in his official capacity.
5. Defendant, Kevin Geoghegan is a Councilman-at-Large for the Township of Toms River, Ocean County, New Jersey. Defendant, Geoghegan is sued individually and in his official capacity.
6. Defendant, Laurie Huryk is a Councilwoman for the Township of Toms River, Ocean County, New Jersey. Defendant, Huryk is sued individually and in her official capacity.
7. Defendant, Josh Kopp is a Councilman-at-Large for the Township of Toms River, Ocean County, New Jersey. Defendant, Kopp is sued individually and in his official capacity.
8. Defendant, Matthew Lotano is a Councilman-at-Large for the Township of Toms River, Ocean County, New Jersey. Defendant, Lotano is sued individually and in his official capacity.
9. Defendant, Maria Maruca is the Council President and Councilwoman of Ward 1 for the Township of Toms River, Ocean County, New Jersey. Defendant, Maruca is sued individually and in her official capacity.
10. Defendant, Terrance Turnbach is a Councilman for the Township of Toms River, Ocean County, New Jersey. Defendant, Turnbach is sued individually and in his official capacity.

11. Defendant, Louis Amoruso is the Business Administrator for the Township of Toms River, Ocean County, New Jersey. Defendant, Amoruso is sued individually and in his official capacity.
12. Defendant, Gregory McGuckin, Esquire is the head of the Department of Law for the Township of Toms River and a partner in the law firm of Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, 620 West Lacey Road, Forked River, New Jersey. Defendant, McGuckin is sued individually and in his official capacity.
13. Defendant, Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors has a contract with the Township of Toms River to provide legal services.
14. John and Jane Does 1 – 10 are fictitious names heretofore-unidentified individuals who were responsible for the damages to the Plaintiff outlined herein.

JURISDICTION AND VENUE

15. The conduct giving rise to the claims described in this Complaint occurred in Ocean County.
16. This Court has subject matter jurisdiction over Plaintiff's claims under N.J. Const., Art. VI, Section 3; N.J.S.A. 10:5-13; and other applicable law.
17. This Court has personal jurisdiction over Defendants pursuant to N.J. Ct. R. 4:4-4 and other applicable law.
18. Venue is appropriate in this Court pursuant to N.J. Ct. R. 4:3-2, and other applicable law.

FACTUAL ALLEGATIONS

19. Plaintiff Donald Guardian has extensive government related experience.

20. Donald Guardian served as the Executive Director for the Atlantic City Special Improvement District.
21. After serving for two decades as the Executive Director, Donald Guardian was elected as the Mayor of Atlantic City from 2014 to 2017.
22. Plaintiff Donald Guardian is an openly gay individual.
23. On December 26, 2017, former Mayor Thomas F. Kelaher nominated Donald A. Guardian to serve as the Township Business Administrator for the Township of Toms River.
24. Former Mayor Thomas F. Kelaher stated Plaintiff, Donald Guardian "is a mature guy with a lot of municipal experience from all different directions. Some of the newer, younger people who applied – with all due respect to them – with the eighth-largest town (by population in New Jersey) like we are, we can't afford to be running an on-the-job training program."
25. The Township Council acknowledged that Plaintiff, Donald Guardian possessed the education and experience to perform the job duties for the position of Township Business Administrator.
26. On December 26, 2017, the Township Council passed a resolution approving Plaintiff, Donald Guardian's appointment to the position of Township Business Administrator effective December 27, 2017 or upon the expiration of any current term of employment or elective office, whichever is later.
27. After the Council vote on December 27, 2017, a letter of employment was directed to Donald Guardian by former Mayor Thomas Kelaher.

28. The parties to the terms of this offer of employment were the Plaintiff, Donald Guardian and Defendant, Township of Toms River.
29. This offer of employment provided various terms of the agreement including but not limited to salary, hours, vacation/sick/personal and compensatory leave time.
30. A provision of the agreement states, "This arrangement may be terminated by either party upon notice in writing".
31. The offer of employment with Defendant, Township of Toms River was signed and accepted by Plaintiff, Donald Guardian on January 8, 2018.
32. As the Business Administrator, Plaintiff, Donald Guardian reported to then Mayor, Thomas F. Kelaher.
33. Plaintiff, Donald Guardian served in the capacity as Township Administrator in an exemplary fashion.
34. At the time that Plaintiff, Donald Guardian began his employment with the Defendant, Township of Toms River, Defendant, Louis Amoruso was the Director of the Department of Public Works.
35. Defendant, Louis Amoruso had previously been demoted by the former Mayor Thomas Kelaher and Township Council from the position of Assistant Business Administrator.
36. Defendant, Louis Amoruso's demotion was a result of allegations of official misconduct including providing information to developers on property that the township was purchasing.
37. The demotion of Defendant, Louis Amoruso was also due to allegations of soliciting political contributions from township vendors for particular candidates.

38. During Plaintiff's time as Business Administrator, the actions of the Defendants were under investigation by the Department of Justice.
39. The investigation by the Department of Justice was centered around the unfair and restrictive zoning ordinances created by the Defendants.
40. The unfair and restrictive zoning ordinances were specifically designed to restrict the exercise of freedom of religion.
41. The actions of the Defendants were prohibiting Shuls within the borders of the Township of Toms River.
42. The taxpayers of the Township of Toms River were faced with the potential of receiving substantial fines due to the violations caused by the Defendant's actions.
43. While serving in this capacity as Business Administrator, the Defendants had until December of 2019 to find a resolution acceptable to the Department of Justice.
44. Plaintiff, Donald Guardian participated in multiple meetings with the Orthodox community and council members to resolve these issues.
45. With the Plaintiff Donald Guardian's input, all of the issues were verbally resolved to both parties satisfaction to put forth a zoning ordinance for council consideration.
46. The ordinance to resolve the concerns by the Orthodox community and the Department of Justice was scheduled to be voted on during a December 2019 council meeting.
47. Since a new mayor and three new council members were going to be sworn in January 2020, the governing body sought an extension from the Department of Justice which was granted.
48. The extension given to the Defendants by the Department of Justice was for one month.

49. Defendant, Mayor Maurice Hill, Jr. was elected to the position of Mayor for the Township of Toms River on November 5, 2019.
50. Defendant, Gregory McGuckin oversaw the transition of Defendant, Mayor Maurice Hill, Jr.
51. Prior to the new governing body being sworn in, Plaintiff Donald Guardian participated in a transitional interview process.
52. Then Mayor-Elect, Defendant, Mayor Maurice Hill, Jr. provided Plaintiff Donald Guardian with a letter advising him that he would "continue as an at-will position of Business Administrator" and would be receiving a 2% salary increase effective January 1, 2020.
53. In January 2020, Defendant, Mayor Maurice Hill, Jr., directed Plaintiff, Donald Guardian to appoint Defendant, Louis Amoruso to the position of Assistant Business Administrator.
54. Plaintiff, Donald Guardian advised the Defendant, Mayor Maurice Hill, Jr. that the appointment of an individual to the position of assistant business administrator was not legal due to the size of the township.
55. Plaintiff, Donald Guardian relied on N.J.S.A. 40:69A-60.3 which states, "The director of the department of administration in any municipality having a population of more than 300,000 which, prior to the effective date of this amendatory and supplementary act, had adopted the form of government designated as "Mayor-Council Plan C" provided for in article 5 of the act of which this is a supplement, may appoint and may remove, with the approval of the mayor, an assistant business administrator of his department who shall

serve in the unclassified service of the civil service of the city and shall receive such salary as shall be fixed by ordinance."

56. Plaintiff, Donald Guardian consulted with Assistant Township Attorney, Anthony Merlino on the issue of assistant business administrator.
57. Assistant Township Attorney, Anthony Merlino provided Plaintiff, Donald Guardian with a memorandum confirmed that it was illegal for the Defendant, Township of Toms River to have an assistant business administrator.
58. Defendant, Mayor Maurice Hill, Jr. demanded that Defendant, Louis Amoroso be appointed to the position since he would not actually be doing the job of an assistant business administrator he would only have the title and the pay only.
59. Defendant, Louis Amoroso insisted on a raise and said raise was approved by the Defendant, Mayor Maurice Hill, Jr. and made retroactive to January 1, 2020.
60. Defendants voted and approved Defendant, Louis Amoroso's appointment as Assistant Business Administrator and a salary increase.
61. Plaintiff, Donald Guardian met weekly with Defendant, Maria Maruca.
62. Defendant Maria Maruca as Council President was responsible for setting the agenda for the council to vote.
63. Plaintiff, Donald Guardian repeatedly indicated to Defendant Maria Maruca that a zoning ordinance must be placed on the agenda for council to vote on to avoid the continued ongoing discrimination raised by the Department of Justice.
64. Defendant, Maria Maruca refused to place the item on the agenda for consideration.

65. In June, the Defendant, Mayor Maurice Hill, Jr. created an organizational chart with which he vests all employees as subordinate to Defendant Louis Amoruso, with the exception of Donald Guardian and legal counsel, Defendant, Gregory McGuckin.
66. Defendant, Gregory McGuckin is a partner in the Defendant law firm of Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors.
67. Defendant, Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors existing 2019 legal contract was extended to December 31, 2020.
68. On May 12, 2020, Defendants passed a resolution on this extension of the contract for general legal and litigation services. This resolution failed to place a cap amount on the contract, thereby creating an open-ended contract.
69. The organizational chart prepared by Defendant, Mayor Maurice Hill, Jr. put the Defendant, Gregory McGuckin of the Defendant law firm, in charge of the Department of Law for the Defendant, Township of Toms River.
70. Plaintiff, Donald Guardian advised the Defendant, Mayor Maurice Hill, Jr. that this was not appropriate because a township employee under the supervisor of Defendant, McGuckin would be responsible for reviewing the Defendant, Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors legal bills.
71. Assistant Township Attorney, Anthony Merlino was in the Department of Law and now was required to report to Defendant, Gregory McGuckin.
72. Assistant Township Attorney, Anthony Merlino was the attorney that provided the legal decision to Plaintiff, Donald Guardian that the position of assistant business administrator is not legal.

73. Plaintiff, Donald Guardian advised the Defendant, Mayor Maurice Hill, Jr. that this could negatively affected the system of checks and balances in the review of Defendants, Gregory McGuckin and Defendant, Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors invoices.
74. Plaintiff, Donald Guardian once again contacts legal counsel to ascertain whether vesting all of the authority to what appears to be an Assistant Business Administrator position is legal.
75. Plaintiff, Donald Guardian is promptly advised by Anthony Merlino, Assistant Township Attorney that the position is not permitted; it is illegal.
76. Plaintiff, Donald Guardian spoke to the named Defendant Council Members about Defendant, Maurice Hill's demands of the creation of the illegal assistant business administrator position.
77. Defendant, Mayor Maurice Hill, Jr. had a meeting with Plaintiff Donald Guardian and Defendant, Louis Amoruso on June 9, 2020.
78. Plaintiff, Donald Guardian advised the Defendants Maurice Hill and Louis Amoruso again that upon information, belief and legal advice the position of a assistant business administrator is not permitted for the size of town as Toms River under the Faulkner Act.
79. During a meeting on June 9, 2020, Plaintiff, Donald Guardian refused to be complicit or approve the reconstruction of the Assistant Business Administrator position that he reasonably believed was illegal.
80. Defendant, Mayor Maurice Hill, Jr. was now taking the Assistant Business Administrator position from name only, paid position to acting in the full capacity of the position.

81. The June 9, 2020 meeting between Plaintiff and Defendants Hill and Amoruso was extremely heated and argumentative.
82. This was not the first time that the Plaintiff Donald Guardian had been subjected to abusive behavior by the Defendants.
83. Specifically, Defendant, Mayor Maurice Hill, Jr. made disparaging homophobic slurs regarding Plaintiff Donald Guardian including referring to Plaintiff as a "pillow biter".
84. Defendant, Louis Amoruso called the Plaintiff, Donald Guardian discriminatory names such as "Fucking pervert" and "Faggot."
85. Defendant, Louis Amoruso did not approve of the Plaintiff's lifestyle as an openly gay man.
86. Defendant, Louis Amoruso stated on multiple occasions that he did not feel "comfortable" around the Plaintiff.
87. Defendant, Louis Amoruso made the statement to multiple individuals including named Defendants that the Plaintiff was a liability and the township needed to get rid of him.
88. On June 9, 2020, the Defendant Township of Toms River had a regular scheduled council meeting.
89. After being exposed to the abusive behavior in the meeting, Plaintiff, Donald Guardian participated in the zoom council meeting in his office at the township administration building.
90. Plaintiff, Donald Guardian's office was physically located in close proximity to the office of the Defendant, Mayor Maurice Hill, Jr.
91. During this council meeting, Plaintiff, Donald Guardian suffered a serious medical incident.

92. The Defendants conducted the entire meeting that Plaintiff, Donald Guardian generally oversees without him present.
93. While the Defendants conducted the meeting knowing the Plaintiff was not present, Plaintiff, Donald Guardian was left lying on the floor of his office in medical distress.
94. Plaintiff, Donald Guardian was required to go out on a medical leave.
95. During Plaintiff, Donald Guardian's medical leave, the Defendant, Louis Amoruso was made the Acting Business Administrator by the Defendants.
96. Plaintiff, Donald Guardian was out on medical leave for approximately three months.
97. During this three-month period, Plaintiff Donald Guardian continued to remain in contact with the Defendants.
98. On August 28, 2020, Plaintiff Donald Guardian advised the Defendants that he was medically cleared to return to work and would be returning on Tuesday, September 8, 2020.
99. Plaintiff Guardian's expectation of returning to his position as the Business Administrator for the Defendant, Township of Toms River was short lived.
100. On or about September 2, 2020, Plaintiff Donald Guardian was notified by Charles Schlager, Esquire of Defendant, Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, "Mayor Hill will not be submitting your nomination for the position of Township Administrator to the Township Council[.]" thereby terminating Plaintiff's employment.
101. On September 2, 2020, Plaintiff was suddenly and without any warning, terminated from his employment with the Defendant, Township of Toms River effective September 8, 2020.

102. The Defendants knew that if Plaintiff, Donald Guardian returned to his position as the Business Administrator, Defendant, Louis Amoruso would not be permitted to remain in his position as Assistant Business Administrator.
103. The Defendants knew that if Plaintiff, Donald Guardian returned to his position as the Business Administrator, he would continue to address the illegal conduct of the Defendants in their failure to enact the zoning ordinance.
104. The Defendant, Township of Toms River owned a property located at 181 Hinds Road.
105. The Defendants retained the services of Max Spann R.E. & Auction Company to auction off the property.
106. Defendant, Matt Lotano has a working relationship with Max Spann R.E. Auction Company.
107. On June 24, 2020, the property of 1810 Hinds Road, Toms River, New Jersey owned by the Defendant, Township of Toms River, was auctioned.
108. Upon information and belief, the initial bid for the 1810 Hinds Road, Toms River, New Jersey property was for \$318,000 by a member of the Lakewood Township Planning Board.
109. After the original successful bidder backed out of the deal, the purchaser of the 1810 Hinds Road property was now 1810 Hinds Road, LLC.
110. Upon information and belief, 1810 Hinds Road, LLC, 2360 Lakewood Road, #3110, Toms River, NJ 08755 was not formed until two days after the sale was made.
111. On August 11, 2020, the Defendants were scheduled to vote on a resolution to accept a \$247,500 bid for the sale of 1870 Hinds Road.

112. Upon information and belief, after the land transaction and the relationships of the parties became known, Defendants did not sell the Hinds Road property.
113. The Defendants knew that if Plaintiff, Donald Guardian returned to his position as the Business Administrator, he would continue to address the illegal conduct of the Defendants including the auction and sale of the Hinds Road property.
114. Upon information and belief, a township employee was permitted to retire last year and receive full health insurance benefits without having met the required years of service to qualify for this benefit.
115. The Defendants knew that if Plaintiff, Donald Guardian returned to his position as the Business Administrator, he would continue to address the illegal conduct of the Defendants in allowing an employee(s) to receive full health benefits upon retirement without meeting the required years of service to qualify.
116. On or about September 8, 2020, Defendant, Maurice Hill nominated and the Defendant, governing body approved, Defendant, Louis Amoruso as Business Administrator for the Township of Toms River.
117. Despite having endured this discrimination and retaliation, Plaintiff, Donald Guardian applied for other employment.
118. On or about January 19, 2021, Plaintiff, Donald Guardian interviewed for the position of Executive Director for the Township of Toms River, Municipal Utilities Authority.
119. Plaintiff, Donald Guardian possessed all of the qualifications for this position.

120. Upon information and belief, Defendant, Lou Amoruso contacted individual(s) at the Toms River Municipal Utilities Authority and instructed them not to hire Plaintiff, Donald Guardian.

121. Defendant, Lou Amoruso directly interfered with Plaintiff, Donald Guardian's ability to be hired for this six figure position resulting in damages.

FIRST COUNT

Violation of New Jersey Conscientious Employee Protection Act

122. Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

123. The termination of Plaintiff Guardian from his position as Business Administrator was directly, solely and causally related to and in retaliation for his protected activity of disclosing the information of the assistant business administrator position as set forth above to Defendant Maurice Hill and named Defendant Council Members.

124. Defendant, Gregory McGuckin knew that Plaintiff, Donald Guardian had sought the legal opinion of Assistant Township Attorney, Anthony Merlino, the individual Defendant supervised.

125. Defendant, Gregory McGuckin knew that Assistant Township Attorney, Anthony Merlino provided a legal opinion to the Plaintiff, Donald Guardian that was inconsistent to what Defendant, Mayor Maurice Hill, Jr. wanted.

126. The retaliatory conduct in question, specifically the unlawful termination of Plaintiff Guardian, was undertaken by the Defendants.

127. The disclosure of all of the above constituted disclosures protected under New Jersey's Conscientious Employee Protection Act, N.J.S.A. 34:19-1 *et. seq.* ("CEPA").

128. CEPA was designed to protect employee "whistleblowers." Pursuant to CEPA, it is unlawful for employers to take adverse employment action against employees who disclose, object to, or refuse to participate in certain actions that the employee reasonably believes are either illegal or in violation of public policy.

129. Plaintiff's termination from his employment as a Business Administrator with Defendant, Township of Toms River was in direct violation of the provisions of CEPA.

130. As a result of the wrongful conduct described above, Plaintiff has suffered and will continue to suffer severe economic and non-economic damages. These damages include, but are not limited to, loss of past and future wages and benefits, diminution of pension benefits, loss of accrues and unpaid sick time and other economic losses. Additionally, Plaintiff has suffered various non-economic losses and damages including, but not limited to, emotional distress as a result of the unlawful retaliatory termination of his employment with Defendant, Township of Toms River.

WHEREFORE, Plaintiff demands judgment against Defendants upon his claim for compensatory damages, punitive damages, costs of suit, and such other relief as may be equitable and just.

SECOND COUNT

Violation of New Jersey Conscientious Employee Protection Act

131. Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs as a part hereof as if fully set forth herein.

132. Plaintiff, Donald Guardian as the Business Administrator repeatedly sought to have a zoning ordinance put before the council for a vote to eliminate the Defendants violation of public policy.
133. Despite Plaintiff, Donald Guardian's numerous requests, the Defendants would not place the ordinance on the agenda.
134. Plaintiff, Donald Guardian was concerned that the inaction by the named Defendants would result in harm to the taxpayers of Toms River.
135. The termination of Plaintiff Guardian from his position as Business Administrator for the Defendant, Township of Toms River was directly, solely and causally related to and in retaliation for his protected activity of attempting to place the zoning ordinance for a vote before the council despite the Mayor's interference with the process.
136. The retaliatory conduct in question, specifically the unlawful termination of Plaintiff Guardian, was undertaken by Defendants.
137. The disclosure of all of the above constituted disclosures protected under New Jersey's Conscientious Employee Protection Act, N.J.S.A. 34:19-1 *et. seq.* ("CEPA").
138. CEPA was designed to protect employee "whistleblowers." Pursuant to CEPA, it is unlawful for employers to take adverse employment action against employees who disclose, object to, or refuse to participate in certain actions that the employee reasonably believes are either illegal or in violation of public policy.
139. Plaintiff's termination from his employment as Business Administrator with the Defendant, Township of Toms River was in direct violation of the provisions of CEPA.
140. As a result of the wrongful conduct described above, Plaintiff has suffered and will continue to suffer severe economic and non-economic damages. These damages

include, but are not limited to, loss of past and future wages and benefits, diminution of pension benefits, loss of accrued and unpaid sick time and other economic losses. Additionally, Plaintiff has suffered various non-economic losses and damages including, but not limited to, emotional distress as a result of the unlawful retaliatory termination of his employment with Ocean County.

WHEREFORE, Plaintiff demands judgment against Defendants upon his claim for compensatory damages, punitive damages, costs of suit, and such other relief as may be equitable and just.

THIRD COUNT

Violation of New Jersey Conscientious Employee Protection Act

141. Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

142. Plaintiff, Donald Guardian as the Business Administrator objected to Defendant, Gregory McGuckin, Esquire overseeing the Department of Law for the Defendant, Township of Toms River.

143. Plaintiff, Donald Guardian believed an outside vendor overseeing a department of Defendant, Township of Toms River without checks and balances in place to monitor invoices submitted by Defendant Gregory McGuckin and Defendant, Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors would be a violation of public policy.

144. Despite Plaintiff, Donald Guardians numerous objections, the Defendants allowed employees to report to the outside vendor, Defendant, Gregory McGuckin, Esquire of the Defendant law firm, Dasti, Murphy, McGuckin, Koutsouris & Connors.

145. The change made by the Defendants was a direct result of the legal opinion sought by the Plaintiff, Donald Guardian and provided by Assistant Township Attorney, Anthony Merlino.

146. The disclosure of all of the above constituted disclosures protected under New Jersey's Conscientious Employee Protection Act, N.J.S.A. 34:19-1 *et. seq.* ("CEPA").

147. CEPA was designed to protect employee "whistleblowers." Pursuant to CEPA, it is unlawful for employers to take adverse employment action against employees who disclose, object to, or refuse to participate in certain actions that the employee reasonably believes are either illegal or in violation of public policy.

148. Plaintiff's termination from his employment as Business Administrator with the Defendant, Township of Toms River was in direct violation of the provisions of CEPA.

149. As a result of the wrongful conduct described above, Plaintiff has suffered and will continue to suffer severe economic and non-economic damages. These damages include, but are not limited to, loss of past and future wages and benefits, diminution of pension benefits, loss of accrued and unpaid sick time and other economic losses. Additionally, Plaintiff has suffered various non-economic losses and damages including, but not limited to, emotional distress as a result of the unlawful retaliatory termination of his employment with Defendant, Township of Toms River.

WHEREFORE, Plaintiff demands judgment against Defendants upon his claim for compensatory damages, punitive damages, costs of suit, and such other relief as may be equitable and just.

FOURTH COUNT
Retaliatory Conduct

150. Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

151. The retaliatory termination of Plaintiff Guardian by Defendants constitutes a violation of numerous clear mandates of public policy and is unlawful pursuant to the New Jersey Supreme Court's decision in *Pierce v. Ortho Pharmaceutical Corp.*, 84 N.J. 58 (1980).

WHEREFORE, Plaintiff demands judgment against Defendants upon his claim for compensatory damages, punitive damages, costs of suit, and such other relief as may be equitable and just.

FIFTH COUNT
Retaliation in Violation of Section 1981

152. Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

153. Plaintiff, Guardian is a homosexual male.

154. Defendants have violated Section 1981 by subjecting Plaintiff to retaliation for his protected complaints and opposition to the Defendants discriminatory comments on the basis of sexual orientation, by making homophobic comments, *inter alia*, such as "Pillow Biter", "Fucking Pervert", "Faggot" and then terminating Plaintiff's employment with the Defendant, Township of Toms River.

155. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of Section 1981, Plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

156. Defendants' unlawful retaliatory conduct constitutes a willful and wanton violation of Section 1981, was outrageous and malicious, was intended to injure Plaintiff, and was done with conscious disregard of Plaintiff's civil rights, entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants upon his claim for compensatory damages, punitive damages, costs of suit, and such other relief as may be equitable and just.

SIXTH COUNT

Violation of the New Jersey Law Against Discrimination

157. Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

158. Defendants have discriminated against Plaintiff in violation of the New Jersey Law Against Discrimination by subjecting him to disparate treatment because of his sexual orientation, by using homophobic slurs, *inter alia*, such as "Pillow Biter", "Fucking Pervert", "Faggot" and terminating Plaintiff's employment with the Defendant, Township of Toms River.

159. As a direct and proximate result of the Defendants' unlawful discriminatory conduct in violation of the New Jersey Law Against Discrimination, Plaintiff has suffered and continues to suffer financial and economic damages as well as severe mental anguish and emotional distress, including but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.

160. Defendants' unlawful discriminatory conduct constitutes a willful and wanton violation of the New Jersey Law Against Discrimination, was outrageous and malicious, was intended to injure Plaintiff, and was done with reckless indifference to Plaintiff's civil rights, entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants upon his claim for compensatory damages, punitive damages, costs of suit, and such other relief as may be equitable and just.

SEVENTH COUNT
Conspiracy

161. Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

162. Defendants Hill, Geoghegan, Huryk, Kopp, Lotano, Maruca, Turnbach Amoruso, and McGuckin reached an agreement amongst themselves to retaliate and discriminate against the Plaintiff, Donald Guardian.

163. All of the individual defendants, along with other co-conspirators, known and not yet known to Plaintiff, reached an agreement amongst themselves to violate Plaintiff, Donald Guardian's rights.

164. In this manner, the individual defendants, acting in concert with other known and unknown co-conspirators, conspired to accomplish this unlawful purpose by an unlawful means.

165. In furtherance of the conspiracy, each of the co-conspirators committed overt acts and was an otherwise willing participant in joint activity.

166. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally and with willful indifference to Plaintiff's constitutional rights.

167. As a direct and proximate result of this illicit agreement referenced above, Plaintiff has suffered and will continue to suffer severe economic and non-economic damages. These damages include, but are not limited to, loss of past and future wages and benefits, diminution of pension benefits, loss of accrued and unpaid sick time and other economic losses. Additionally, Plaintiff has suffered various non-economic losses and damages including, but not limited to, emotional distress as a result of the unlawful retaliatory termination of his employment with Defendant, Township of Toms River.

WHEREFORE, Plaintiff demands judgment against Defendants upon his claim for compensatory damages, punitive damages, costs of suit, and such other relief as may be equitable and just.

EIGHTH COUNT
Interference of Contract - Public Employment

168. Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this complaint and by reference makes said paragraphs a part hereof as if fully set forth herein.

169. Defendant, Louis Amoruso, interfered with Plaintiff, Donald Guardian's ability to obtain a position with the Township of Toms River, Municipal Utilities Authority.

170. As a direct and proximate result of the Defendants conduct, Plaintiff, Donald Guardian suffered damages including but not limited to a salary, health insurance benefits, and pension time credit.

WHEREFORE, Plaintiff demands judgment against Defendants upon his claim for compensatory damages, punitive damages, costs of suit, and such other relief as may be equitable and just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Tracy Riley, Esquire and Michael Riley, Esquire are designated as trial counsel for the within matter.

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned, an attorney at law in the State of New Jersey, hereby certifies that, to the best of my present knowledge, the within matter is not the subject of any other actions or arbitration proceeding, nor are any such other actions or arbitration proceedings presently contemplated in this matter.

NOTICE OF LITIGATION HOLD

The parties are hereby required to preserve all physical and electronic information that may be relevant to the issues to be raised, including but not limited to, Plaintiff's employment, Plaintiff's cause of action, request for relief, to any defenses to same, and pertaining to any party, including but not limited to, electronic data storage, close circuit tv footages, digital images, computer images, cache memory, searchable data, emails, spreadsheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including but not limited to, Facebook, Twitter, LinkedIn, etc.) and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

Failure to do so may result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

The obligation to preserve evidence begins when a party knows or should have known that the evidence is relevant to future or current litigation. You are on notice of litigation and therefore have an obligation to suspend your routine document retention/destruction policy and put in place a "litigation hold" to ensure preservation of relevant documents."

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).

Respectfully submitted,
LAW OFFICES OF RILEY & RILEY

/s/ Tracy L. Riley
Tracy L. Riley, Esquire

/s/ Michael E. Riley
Michael E. Riley, Esquire

Dated: March 8, 2021

Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-000632-21

Case Caption: GUARDIAN DONALD VS TOWNSHIP OF
TOMS RIVER

Case Initiation Date: 03/09/2021

Attorney Name: TRACY L RILEY

Firm Name: RILEY & RILEY

Address: 2 EVES DR STE 109

MARLTON NJ 08053

Phone: 8099140300

Name of Party: PLAINTIFF : Guardian, Donald

Name of Defendant's Primary Insurance Company

(If known): Unknown

Case Type: WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE
PROTECTION ACT (CEPA)

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same
transaction or occurrence)? NO

Are sexual abuse claims alleged by: Donald Guardian? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 69? NO Consumer Fraud? NO

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)

03/09/2021
Dated

/s/ TRACY L RILEY
Signed