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Attorney for Plaintiff
Police Chief Kevin Sauter

KEVIN SAUTER,

Plaintiff,

v.

TOWNSHIP OF COLTS NECK,

Defendant.

:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MONMOUTH COUNTY
:
: CIVIL ACTION
:
: DOCKET NO. MON-L-3122-16
:
: FIRST AMENDED COMPLAINT
:
:

Plaintiff Kevin Sauter ("Plaintiff"), by and through his attorneys, Sciarra & Catrambone, LLC, by way of the within First Amended Complaint ("Complaint"), alleges and says as follows:

PRELIMINARY STATEMENT

1. This is an action brought by Plaintiff Kevin Sauter against his employer the Township of Colts Neck, as well as principle decision makers, who govern, operate, and are agents and officers for the above referenced entity collectively referenced as Defendants.
2. Plaintiff, a tenured township police officer, and thus protected from suspension from office, seeks judgment of

this Court against Defendants for relief permitted under N.J.S.A. 40A:14-150, *et seq.* Additionally, Plaintiff seeks relief as a whistle-blower pursuant to the New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1, *et seq.*

3. Plaintiff is the Chief of Police of Colts Neck Police Department.

4. Defendants encompass the Township of Colts Neck, its police department, and the governing body doing business at 124 Cedar Drive, Colts Neck, New Jersey 07722.

5. Plaintiff seeks immediate dismissal of the charges filed against him and reversal of his five (5) day suspension and reinstatement of back-pay and benefits.

STATEMENT OF FACTS

6. Plaintiff has been employed by the Township of Colts Neck Police Department for thirty-two (32) years.

7. After nine (9) years of service working for the Township of Colts Neck Police Department, initially as a patrolman and then sergeant, Plaintiff was named Chief of Police. As of today's date Plaintiff has been Chief of Police for twenty-three (23) years.

8. As Chief of Police, Plaintiff was a member of various trade organizations that included the Monmouth County

Police Chiefs Association, New Jersey State Police Chiefs Association, and International Association of Police Chiefs of Police. ("IACP").

9. Plaintiff was president of the Monmouth County Police Chiefs Association in 2002 and in 2014/2015 he was president of the New Jersey State Chief's Association.

10. The Township of Colts Neck provides tax-deferred income benefits to active volunteer members of the Colts Neck Volunteer Fire Department.

11. Plaintiff's brother, Jeff Sauter, requested that Plaintiff certify to information Plaintiff was aware of related to the Colts Neck Volunteer Fire Department.

12. On or about January 13, 2014, Plaintiff signed a certification in his capacity as a member of the Colts Neck Fire Co. No. 2. Plaintiff certified that in his more than 30 years as a member he served in many officer and administrative positions including as President of Colts Neck Fire Co. No. 2.

13. Plaintiff certified that as President he started a practice on or about August 16, 2006 of having all members sign-in as the "official" record of attendance at monthly business meetings. He certified that this was standard practice from August 2006 to on or about September 18, 2013.

14. Plaintiff certified that on or about September 18, 2013 no sign in sheet was passed around at the regular business meeting. Instead, at this meeting a call sheet was passed for members to just check there name as attending. Plaintiff recalled Fire Fighter Riden just checking off multiple names as she looked around the room.

15. Finally, Plaintiff certified that at the December 18, 2013 regular company business meeting there was a discussion on sign-in sheets and it was approved to restart/continue the practice of signing in.

16. Upon information and belief, Plaintiff's certification was submitted in support of his brother's LOSAP appeal.

17. Plaintiff's certification was also submitted to the Government Records Council by his brother or his brother's legal counsel with respect to Colts Neck's assertion that certain government records concerning the Volunteer Fire Department did not exist when in fact they did exist.

18. Plaintiff's certification is a protected whistleblower activity pursuant to N.J.S.A. 34:19-3 as he provided information to a public body conducting an investigation, hearing or inquiry into a violation of law or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship.

19. On or about March 5, 2014, Plaintiff had lunch with Mayor Russell Macnow to discuss his mayor year and budget. During this lunch meeting, Mayor Macnow discussed term limits and how he agreed with them. Mayor Macnow also stated that Police Officers and Chiefs of Police should have term limits. At that point, Mayor Macnow asked Plaintiff whether he had any plans of retiring. In response, Plaintiff stated, "we do have term limits in law enforcement, it's called age 65", or words to that effect.

20. On or about April 9, 2014, the Township Committee had its first reading of the ordinance changing the Town's Appropriate Authority from the Township Administrator to the Township Committee. When Plaintiff asked the Township Administrator for the reason for this change, none was given.

21. In or about this time period, Plaintiff's brother made a complaint to the Alcoholic Beverage Control ("ABC") that both Town fire companies maintained alcohol on site without a club license and the alcoholic beverages were accessible to minors.

22. Plaintiff was advised by the ABC investigator that they were not conducting an investigation of the complaint because they considered it a local issue.

23. Plaintiff did not assign the matter to the Monmouth County Prosecutor's Office ("MCPO") because that office does not conduct fact-finding interviews.

24. On or about April 28, 2014, Plaintiff forwarded an email to Township Administrator Robert Bowden. Therein, Plaintiff advised Township Administrator Bowden his conversation with the ABC investigator and the reason why the matter was not sent to the MCPO. Further, Plaintiff advised the Township Administrator that he assigned the matter to the Detective Sergeant who spoke with the ABC and a Deputy Attorney General from the State.

25. Additionally, in this email, Plaintiff advised Township Administrator Bowden that the Detective Sergeant completed his interviews with members of the Fire Department, his report was forthcoming "but it looked like only housekeeping issues", or words to that effect.

26. Plaintiff received a *Rice* notice regarding the above. This *Rice* notice provided Plaintiff with notice that Township Committee would be having discussions about him that may adversely impact his employment.

27. On or about May 14, 2014, the Township Committee went into Executive Session to discuss Plaintiff's *Rice* notice.

28. During this same meeting, the Township Committee had a second reading of the ordinance changing the Appropriate

Authority from the Township Administrator to the Township Committee. The Township Committee passed this ordinance at this time.

29. On or about May 19, 2014, Plaintiff received a *Rice* notice that Plaintiff's employment would be discussed by the Township Committee on May 28, 2014.

30. On or about May 29, 2014, Plaintiff sent a memorandum to Township Administrator Robert Bowden. Therein, Plaintiff attached the report of Sgt. Santucci. Plaintiff relayed the Sergeant's determination that the ABC complaint was unfounded.

31. On or about June 2, 2014, with retaliatory intent, the Township Council issued Plaintiff a written reprimand. In this written reprimand, Mayor Russell Macnow claimed, "your actions at least created the appearance that you allowed the Colts Neck Police Department to be used as a weapon by your brother in furtherance of his efforts to retaliate against the Fire Department", or words to that effect.

32. On or about July 24, 2014, the Township Committee rescheduled the *Rice* notice for Plaintiff related to his certification referenced above from August 14, 2014 to August 27, 2014.

33. On or about August 19, 2014, Mayor Macnow drafted a letter to Plaintiff. Therein, the Mayor ordered Plaintiff

to advise the Mayor or Police Liaison of any first or second degree crimes, the use of deadly force by a Colts Neck Police Officer or any other sworn law enforcement officer while in the Town, vehicle pursuits within the Town, lost or missing persons, and on-going searches for any at-large criminal suspect in the Town.

34. Also on or about August 19, 2014, Mayor Macnow drafted another letter to Plaintiff. Therein, he directed that the two highest ranking members of the Police Department shall not be out of State or otherwise unavailable to supervise the Police Department at the same time.

35. On or about August 19, 2014, Mayor Macnow drafted another letter to Plaintiff. In this letter, the Mayor ordered that Police Department vehicles shall be placed in service for their designated purpose within 30 days of their delivery.

36. On or about August 19, 2014, Mayor Macnow drafted a letter ordering Plaintiff to provide the Governing Body with a time sheet at the end of the Friday of each work week setting forth the date, description of task performed and the time spent on each task.

37. On or about August 23, 2014, Plaintiff reviewed the contents of an envelope that contained the four directives to the Chief of Police from the Mayor on behalf of the

Appropriate Authority set forth above. These directives were retaliatory and interfered with Plaintiff's statutory authority to oversee the day-to-day operations of the Police Department.

38. On or about August 25, 2014, Plaintiff spoke with Michael Fitzgerald and requested a meeting to clarify the four directives.

39. On or about August 27, 2014, in response to his *Rice* notice, Plaintiff attended executive session of the Township Committee regarding Plaintiff's January 13, 2014 certification.

40. Mayor Macnow summarized this executive session meeting by way of a letter dated on or about September 10, 2014 stating in part as follows: "[v]arious Township Committee members, as well as the Township's Labor Counsel, pointed out to you that they were significantly concerned that a sitting Chief of Police in a New Jersey municipality would be a signatory of that Certification submitted by a party adverse to the Township in a litigation case", or words to that effect.

41. While waiting for a response to his August 25, 2014 request for a meeting, Plaintiff received a September 3, 2014 letter from Mayor Macnow asserting that Plaintiff was delinquent in complying with his obligations to submit time

sheets. Upon receipt of this correspondence, Plaintiff handed in his time sheet which he had previously prepared.

42. On or about September 4, 2014, Plaintiff had a meeting with Macnow and Fitzgerald regarding the four directives that Plaintiff reviewed on or about August 23, 2014.

43. During this meeting, Plaintiff addressed the directive that he submit weekly time sheets. Plaintiff noted that he is the only department head in the Town that the Township Committee has ordered to submit time sheets. Plaintiff also explained that he has been working over 40 hours per week and he is on call 24 hours a day, 7 days a week.

44. The directive that Plaintiff cannot drive newly purchased police vehicles was also discussed during this meeting. Plaintiff advised Macnow and Fitzgerald that there was a new vehicle break-in period where the Police Department would wait for equipment to be installed. During this period of time, Plaintiff would drive the vehicle. Plaintiff explained that this had been his practice for the last 21 years.

45. Macnow was on his cellphone for most of this meeting.

46. During the meeting, Plaintiff asked Macnow and Fitzgerald about the September 3, 2014 letter he received. According to Macnow, this letter as not a reprimand but rather just a reminder.

47. On January 14, 2016, Plaintiff was served with charges and suspended for five (5) days by the Defendants for allegedly failing to comply with a November 14, 2014 Police Chief's Directive No.: 2014-6 (the "November 2014 Directive") ("Suspension notice").

48. Defendants alleged in the Suspension Notice that Plaintiff failed to comply with the November 14, 2014 Directive for attending the IACP Chiefs Training Conference and Expo from October 23-28, 2015 without the Township Committee's written consent, violation the directive, and violating the Use of Vehicles Policy by having an officer pick Plaintiff up at the airport with another fellow chief and his wife.

49. The Suspension Notice stated that the November 2014 Directive mandated that Plaintiff "not attend any conferences or training events which require the expenditure of public funds without the written consent of the Township Committee."

50. Specifically, the Suspension Notice stated the following:

On May 28, 2015, you sent a memorandum to Interim Township Thomas Antus advising him of your intent to attend the IACP conference in Chicago from October 23-28, 2015. You submitted an invoice for attendance at the conference thereby requiring the expenditure of public funds. Your time sheet for that week reflects that you did not take vacation time for your

expenditure of additional public funds. Further, it was subsequently discovered that you ordered an on-duty Colts Neck Township police officer to pick you up at the Newark Airport in a Colts Neck Township police car on your return from the conference thereby requiring the expenditure of yet additional public funds. Because public funds were expended, you were required to obtain the "express written consent of the Township Committee." Your failure to do so constitutes a willful refusal to comply with a directive by the "appropriate authority." . . .

You violated the "Use of Vehicles Policy" because you were not "on official business" when you ordered a Colts Neck Township police car to pick you up at Newark Airport after returning from conference especially under these circumstances in which you did not receive "express written consent of the Township Committee" to attend the event in the first place. We also understand that your wife accompanied you on the trip and was driven back from the airport in a Colts Neck Police car. She was clearly not on "Township business" thereby constituting an additional violation of this policy. Your use of a Colts Neck police car essentially as a taxi to chauffeur you and your wife back from Newark Airport also constituted a misuse of public property in violation of the Handbook.

We also find that it was unbecoming of Colts Neck's police chief to order the on-duty police shift supervisor out of Colts Neck to Newark to provide you, your wife and another police chief with what was in effect, a taxi ride. . . .

51. The training for chiefs and other high level law enforcement executives further police functions, not only within a department, but promotes better service to the community.

52. Training included, but was not limited to, contemporary policing issues, community policy, active

shooter training, and training regarding handling terrorism issues.

53. It is Plaintiff's, as chief law enforcement officer in the Township of Colts Neck, responsibility to run the day-to-day operations of the department which includes training.

54. It is Plaintiff's responsibility as chief of police to assign training assignments to officers in his command and himself.

55. Plaintiff had taken sixteen (16) out of state training classes over his twenty-three (23) years as Chief. The out of state training classes were IACP Conferences.

56. Around 2009/2010 Defendants had come out with a verbal policy that it would not pay for hotel or airfare with regard to out of state conferences.

57. Plaintiff used forfeiture funds to offset the cost of training conferences.

58. On or about September 8, 2014, Township Administrator Robert Bowden, as per then Mayor Macnow ("Macnow"), requested Plaintiff provide a list of meetings he may attend outside of Colts Neck that Plaintiff believed would satisfy the 40 core hours of his Police Department work. This list was to be sent to Macnow and copied to the Township Administrator.

59. On or about September 10, 2014, Plaintiff provided a list of events he would or may attend to Macnow on copy to the Township Administrator.

60. On or about October 5, 2014, during the evening, Plaintiff received a phone call from James Schatzle berating Plaintiff for not appearing for the Colts Neck PBA 5k run/walk.

61. Plaintiff was working a road job during this event.

62. Upon information and belief, only the Mayor appeared at this event on behalf of the Town.

63. On or about November 14, 2014, Macnow issued the November 2014 Directive instructing Plaintiff may not attend any conferences or training without "written express consent of the Township Committee". Pursuant to the November 2014 Directive, Plaintiff was required to seek approval of conference attendance thirty (30) days prior to any requested conference and was required to report on eight detailed items pursuant to the request ("training advisement"). Thereafter within five (5) days after attendance at any approved conference Plaintiff was required to provide a detailed report satisfying eight (8) requirements ("return advisement").

64. The Defendants were infringing on the authorities of Plaintiff as Chief of Police regarding training as detailed

in Defendants September 2014 correspondences and the November 2014 Directive.

65. On November 21, 2014, Plaintiff sent a request to Fitzgerald for a meeting with the Township Committee. Plaintiff did not receive a response.

66. On or about January 15, 2015, after periodic phone conversations with the Township Administrator but with no response from the Township Committee Plaintiff sent a written memorandum to the Administrator.

67. On or about January 16, 2015, Plaintiff received an email from Schatzle requesting that the Chief meet with the Mayor to discuss Schatzle's personal business including "some possibilities with the Chiefs Association and meetings", or words to that effect. Plaintiff has received other emails from Schatzle regarding his personal business.

68. On or about February 5, 2015, at Schatzle's request, Plaintiff met with Schatzle and two representatives from Cardiac Science at Schatzle's office.

69. During the meeting they discussed Cardiac Science becoming involved with the State Chief's Association through meetings, sponsorships and donations. Schatzle stated that Bradley Beach Borough is one of six Monmouth County Police Departments that does not use his company.

70. Further, Schatzle stated that Avon-by-the-Sea is another municipality that does not use his company. Schatzle requested that Plaintiff call the Chief of this Borough so that Schatzle could have an introduction.

71. After the two Cardiac Science representatives left the meeting, Plaintiff had a one-on-one meeting with Schatzle. During this meeting, Schatzle stated he has had nine years of frustration dealing with department heads and emergency services. Schatzle stated he was "pissed off" when a cop comes into his office and says he cannot talk with Schatzle.

72. During this one-on-one meeting, Schatzle stated he was upset that he thinks the Town has frustrated Police Officers. Schatzle said he was upset that Plaintiff speaks with other Chiefs of Police and he stated that he does not speak with other Mayors.

73. Schatzle also stated that he was frustrated that he had asked a Sergeant to call in Officers on overtime for a power outage and the Sergeant would not do so without approval of the Chief. He also stated he was upset that Plaintiff had dismissed him from an Office of Emergency Management meeting years ago.

74. Plaintiff refused to participate in furthering Schatzle's personal business interests. In fact, some

Monmouth County Police Departments stopped using Schatzle's company. During one conversation with Schatzle, he accused Plaintiff of taking food money away from his kids because Chiefs told him why they stopped using Schatzle.

75. On or about February 12, 2015, Plaintiff sent a memorandum to Township Administrator Bowden regarding Police Department training. Plaintiff advised that he planned on attending the GORE law enforcement seminar in Elkton, Maryland from February 17th to February 19th.

76. With respect to traveling to the conference, Plaintiff wrote, "[r]ide share with Brick Twp. Chief", or words to that effect.

77. There was zero cost to the Town for this training.

78. On or about February 13, 2015, Plaintiff submitted a memorandum to Township Administrator Bowden regarding Police Department training. Therein, Plaintiff advised that he was attending the IACP State Association of Chiefs of Police mid-year conference in San Antonio, Texas.

79. There was zero cost to the Town for this conference.

80. On or about February 16, 2015, Plaintiff sent a letter to Mayor Schatzle confirming a conversation he had with the Mayor regarding the training seminar in Maryland on February 13, 2015.

81. During that conversation, Schatzle recommended that if Plaintiff goes to the seminar Plaintiff should take two vacation days because he did not give the Township Committee 30-days' notice. Further, Schatzle stated in effect that he would convince the other members of the Township Committee to allow Plaintiff to attend the conference in Texas if Plaintiff agrees to use vacation days for the Maryland seminar.

82. In his February 16th letter, Plaintiff reminded Schatzle of Plaintiff's statutorily vested authority over the day-to-day operations of the Police Department. Plaintiff quoted the text of N.J.S.A. 40A:14-118 regarding the statutory powers of the Chief of Police.

83. Plaintiff stated in his correspondence that training is an assignment and he has sole discretion to assign personnel including Plaintiff for training.

84. In this letter, Plaintiff documented his prior requests on November 21, 2014 and January 15, 2015 to clarify the Township Committee's directives.

85. Plaintiff also advised Schatzle by way of his letter that the Maryland seminar was rescheduled and Plaintiff only obtained confirmation that he could attend the seminar on February 11, 2015.

86. In order to avoid discipline by way of the docking of two vacation days, Plaintiff advised Schatzle that he would be utilizing personal time/time utilizing the excess hours that he has been documenting for the Maryland seminar.

87. Plaintiff concluded his letter to Schatzle by stating, "[i]f the day-to-day operation continues [he] will be forced to contact the Monmouth County Prosecutor's Office for intervention", or words to that effect.

88. On or about March 11, 2015, 23 days after Plaintiff's correspondence, Schatzle sent a letter stating in part, "[t]he Township committee expects its Police Chief to abide by the issued directives. Failure to abide by those directives will result in disciplinary action", or words to that effect.

89. On May 28, 2015, Plaintiff submitted a memorandum to Interim Township Administrator Tom Antus regarding the IACP Conference to be held from October 23rd to October 28th 2015 ("October Conference"). This memorandum was in compliance with the November 2014 Directive. ("training advisement").

90. The October Conference is the subject of the alleged violation referenced in the Suspension Notice.

91. Plaintiff had advised in the May 28, 2015 training advisement that the cost to the Township of the October Conference was a \$350.00 dollar registration fee.

92. On or about June 4, 2015, Plaintiff submitted a purchase order for the October Conference.

93. In September 2015, Plaintiff inquired as to the status of registration for the October Conference as the registration cost was going to increase. On or about September 9, 2015, the Township Committeemen approved the October Conference.

94. On September 10, 2015 the Business Administrator forwarded Plaintiff an e-mail verifying October Conference had been approved.

95. On or about October 7, 2015, Plaintiff informed the newly hired Township Administrator, Kathleen Capristo "Capristo", that he was attending the October Conference.

96. On or about December 11, 2015, Plaintiff received a Rice notice to attend the December 12, 2015 executive session. The Town Clerk advised Plaintiff that the meeting was in reference to the IACP airport trip to Chicago and a letter the Town received from the MCPD.

97. Plaintiff learned that the Mayor and Council made a complaint to the MCPD alleging that Plaintiff engaged in the felony of official misconduct related to the training in Chicago and the trip to the airport. The MCPD found that the matter was not criminal and referred it back to the Town.

98. On or about December 21, 2015, Plaintiff received a Christmas card from Schatzle/Team Life which was addressed to

"Captain" Kevin Sauter. As of this date, Plaintiff had been Chief of Police for 23 years.

99. On or about December 30, 2015, Plaintiff received notice from the Borough Administrator that Schatzle had requested that Plaintiff remove the "+/-" from his time sheets which documented the amount of hours he worked in addition to his 40 hour work week.

100. On or about December 30, 2015, Plaintiff sent an email to Schatzle, Capristo, Macnow, Thomas Orgo, Fitzgerald and Jarrett Engel regarding the above issue. Therein, Plaintiff stated he is still being subjected to retaliatory and discriminatory acts and he demanded that this hostile work environment cease.

101. Capristo was the only witness called by the Defendants to sustain their charges.

102. Capristo testified that she was not privy to the investigation, had no firsthand knowledge regarding the documents in question as she was not hired at the time of their creation, and had no knowledge of the November 2014 Directive other than what was presented to her.

103. Capristo testified at the disciplinary hearing that Plaintiff's May 28, 2015 training advisement responded to all the eight detailed items in the November 2014 Directive.

104. Capristo testified that she was never shown the purchase order submitted by Plaintiff on June 4, 2015 and certified by the Township Clerk, after its approval, on September 9, 2015 until the day before Plaintiff's disciplinary hearing.

105. Capristo testified that the October Conference had been approved on September 9, 2015 by the Township Committee.

106. Capristo testified that she had seen Macnow's Certification that was submitted to the Court wherein he certified that "None of the five Township Committee members had any prior knowledge of the Chief's attendance at this conference."

107. The November 2014 Directive does not state as to whom training advisements should be filed with.

108. At the disciplinary hearing the Defendants stipulated that the November 2014 Directive does not state that training advisements must be sent directly to individual Township Committee members.

109. Since November 2014, Plaintiff's training advisements were routinely initially filed with the Township Administrator.

110. Plaintiff was never told not to submit/file his initial training advisements to the Township Administrator.

111. Since the November 2014 Directive, Plaintiff submitted all his return advisements to the Township Administrator including the return advisement related to the October Conference.

112. Plaintiff has never been instructed that this was improper.

113. The November 2014 Directive makes no reference as to whether or not the Police Chief was required to utilize vacation time for approved training.

114. Capristo testified that the November 2014 Directive issued to Plaintiff made no reference as to whether or not Plaintiff was required to use vacation time for approved training.

115. Capristo confirmed at the hearing that there was no policy, rule, regulation, or writing that required Plaintiff, as Chief of Police, to take vacation time for approved training.

116. Plaintiff has never been required to use approved vacation time to attend approved conferences.

117. Plaintiff had never been notified to use vacation time for the October Conference.

118. Capristo testified that when Plaintiff submitted his time sheets for the period in October 2015 of the training no one said anything about him needing to use vacation time.

119. The November 2014 Directive does not identify prohibited uses of forfeiture funds as related to training conferences.

120. When traveling out of state for conferences it was common practice for Plaintiff to car pool with other chiefs of police to save the various municipalities money, thus having an "inter-local agreement".

121. The means of carpooling would have been for a police car to transport the police chiefs from the various municipalities/townships.

122. This had been Plaintiff's common practice for over the last sixteen (16) times he had traveled out of state for conferences.

123. Plaintiff never hid this common practice.

124. Upon Plaintiff's return from the October Conference he had a patrol car pick up himself, a fellow police chief, and Plaintiff's wife from the airport.

125. There was full police coverage in Colts Neck on the day that Plaintiff was picked up at the airport.

126. As the October Conference had been approved Plaintiff was returning on official business.

127. On July 10, 2013, during the public comment segment of the Township Committee Meeting, Plaintiff's brother commented on his observation of the use of a Fire Department vehicle in

New York. He requested that the Township Committee view this matter.

128. Fitzgerald, Macnow, Schatzle, Jarrett Engel, Bowden and Town Attorney John O. Bennett, III, Esq. were present at this meeting.

129. The Town did not take any action with respect to the use of a Town Fire Department vehicle in New York.

130. On April 28, 2016, a disciplinary hearing was held before a hearing officer unilaterally chosen and paid for by the Township.

131. On August 24, 2016, the Colts Neck Township Committee affirmed its five (5) day suspension of Plaintiff.

132. On or about January 6, 2016, Plaintiff forwarded an email to Fitzgerald and Capristo. Therein, Plaintiff requested to have the directive that he submit detailed weekly time logs rescinded.

133. Further, in this email, Plaintiff noted that he had worked 128.25 documented hours above his normal 40-hour work week. This figure did not include undocumented time wherein he took calls or otherwise addressed police-related issues.

134. Plaintiff advised that he was the lowest paid Chief in Monmouth County. Plaintiff requested a meeting to discuss being compensated in the area of what the average Chief in Monmouth County makes in salary.

135. Plaintiff makes only \$30.00 per year more than the Police Department's Lieutenant.

136. Plaintiff noted that the Town has had the lowest crime rate in the County and minimal litigation during his tenure as Chief.

137. On or about July 3, 2016, Plaintiff was at the Town's July 4th fireworks display when he saw Schatzle speaking to his brother-in-law and a few other individuals. Plaintiff walked up to say hello and extended his hand to shake Schatzle's hand. In response, Schatzle began to berate Plaintiff. Schatzle stated, "really Kevin, you want to say hell and shake my hand after what you said about my dead wife, right here in front of all of these people", or words to that effect. Schatzle then spoke some more about Plaintiff's testimony at the April 28, 2016 disciplinary hearing wherein Plaintiff mentioned Schatzle's wife.

138. Schatzle was referring to testimony Plaintiff gave on cross-examination by the Town's attorney who asked about Police Officers transporting citizens in police vehicles. In response to the line of questioning, Plaintiff provided examples of when Officers have picked up residents on a parade route and dropped them off at their vehicles.

139. Also in response to the Town attorney's question, Plaintiff testified that there were several occasions when the

then Mayor's wife was picked up and transported in vehicles while she was drunk back to her residence as a favor for the then Mayor.

140. In or about October 2016, Plaintiff was advised that the Township was taking 52 hours (6.5 days) of his earned and accrued vacation time retroactively back to December 31, 2015.

141. The Town had a long standing past practice going back to in or about 1993 wherein it approved of Plaintiff carrying all of his earned and accrued vacation time for each year.

142. This past practice continued even after the Township approved its Employee Handbook. For instance, in 2015, Plaintiff carried approximately 132 hours (16.5 days) into the following year without issue.

143. During 2015, the Town failed to advise Plaintiff that he would not be permitted to carry over more than 10 days of vacation time into the calendar year 2016.

144. On or about October 26, 2016, Plaintiff had a meeting with Fitzgerald and Town Administrator Capristo wherein Plaintiff stated that this was more retaliation against him.

145. On or about November 9, 2016, Plaintiff received a letter from Mayor Thomas Orgo. Therein, Orgo ordered, "[e]ffective immediately, any day during the week (Monday - Friday) in which you work less than eight (8) hours will be considered a vacation day unless you receive expressed written

permission from the 'appointing authority' to work a less amount", or words to that effect.

146. However, prior to this directive, on or about September 19, 2014, Plaintiff had a conversation with Fitzgerald wherein Fitzgerald stated that it was a "soft 40-hours per week", or words to that effect. From August 23, 2014 to November 18, 2016, Plaintiff documented in his time sheets 95 weeks in which he worked over 40 hours in a week.

147. To date, the Township has taken no action with respect to Plaintiff's complaints of discrimination, retaliation and that he is the subject of a hostile work environment.

148. On or about November 30, 2016, Plaintiff attended a Committee meeting to watch the Committee's discussion regarding Plaintiff's *Rice* notice. At that meeting, the Township decided not to take Plaintiff's vacation days retroactively but they decided to enforce the policy moving forward. The Committee also discussed Plaintiff's work hours and handed Plaintiff the Township's written response at the meeting.

149. On or about December 1, 2016, Plaintiff had a conversation with Administrator Capristo who advised him that the Township adopted a new employee manual the night before.

150. On or about December 15, 2016, Plaintiff learned that the Township was conducting an illegal investigation of the Police Department related to an EZPass violation.

151. As of the filing of the within First Amended Complaint, Plaintiff continues to work a schedule of 8:30am to 4:30pm as ordered by the Council.

152. Plaintiff has endured adverse employment actions and a pattern of harassment from Defendant due to his having engaged in protected whistle-blowing activities.

COUNT I

(VIOLATION OF N.J.S.A. 40A:14-150)

DISMISSED WITH PREJUDICE AS PER SEPTEMBER 19, 2017 ORDER

153. Plaintiff repeats and re-alleges each and every allegation contained in each previous paragraph as if set forth at length herein.

154. The Township of Colts Neck is non-civil service jurisdiction.

155. Pursuant to N.J.S.A. 40A:14-150 as Plaintiff is an officer in a non-civil service jurisdiction he is entitled to review of sustained disciplinary charges by the Superior Court of New Jersey.

156. The Superior Court of New Jersey "shall hear the cause *de novo* on the record below and may either affirm, reverse or modify such conviction." N.J.S.A. 40A:14-150.

157. "Either party may supplement the record with additional testimony subject to the rules of evidence." N.J.S.A. 40A:14-150.

158. Defendants are bound by N.J.S.A. 40A:14-150.

159. Defendants did not have just cause to charge Plaintiff and thereafter suspend him for five (5) days.

160. The local disciplinary hearing was inherently biased against the Plaintiff.

161. Plaintiff seeks a *de novo* review of the charges and five (5) day suspension.

162. Plaintiff seeks to supplement the record.

COUNT II

(VIOLATION OF CHIEF'S BILL OF RIGHTS - N.J.S.A. 40A:14-118)

DISMISSED WITH PREJUDICE AS PER SEPTEMBER 19, 2017 ORDER

163. Plaintiff repeats and re-alleges each and every allegation contained in each previous paragraph as if set forth at length herein.

164. N.J.S.A. 40A:14-118 provides in pertinent part:

The governing body of any municipality, by ordinance, may create and establish, as an executive and enforcement function of municipal government, a police

force Any such ordinance, or rules and regulations, shall provide that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof, and that he shall, pursuant to policies established by the appropriate authority:

a. Administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel;

b. Have, exercise, and discharge the functions, powers and duties of the force;

c. Prescribe the duties and assignments of all subordinates and other personnel

165. Plaintiff, by statute, is given the duty to assign all training to the police force, including himself, as a means of exercising and discharging the functions, powers, and duties of the force.

166. It is Plaintiff's duty and responsibility as head of the police force to ensure the efficient and routine day-to-day operation of the police department which would include up to date training on critical issues of contemporary policy, community policy, issues surrounding mass shootings, terrorism.

167. Defendants' implementation of the November 2014 Directive violated N.J.S.A. 40A:14-118 by restricting Plaintiff's discretion and access to police training which interfered with Plaintiff's duties and responsibilities as

head of the police force for the efficient and routine day-to-day operation of the police department.

COUNT III

(VIOLATION OF N.J.S.A. 40A:14-147)

DISMISSED WITH PREJUDICE AS PER SEPTEMBER 19, 2017 ORDER

168. Plaintiff repeats and re-alleges each and every allegation contained in each previous paragraph as if set forth at length herein.

169. N.J.S.A. 40A:14-147 states the following:

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the day on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. . . .

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint. N.J.S.A. 40A:14-147.

170. Defendant unduly and prejudicially delayed the imposition of disciplinary charges against Plaintiff.

171. Defendant had sufficient information to determine if charges should be filed against Plaintiff from May 28, 2014 through September 9, 2014 and failed to do so.

172. Defendant had sufficient information to determine if charges should be filed against Plaintiff immediately after

the October Conference and once his time sheets had been filed and failed to do so.

173. Defendants failed to file any charges against Plaintiff until January 14, 2016 violating N.J.S.A.40A:14-147, thus the charges should be dismissed against Plaintiff.

COUNT IV

(VIOLATION OF CEPA
N.J.S.A. 34:19-1, et seq.)

174. Plaintiff repeats and re-alleges each and every allegation contained in each previous paragraph as if set forth at length herein.

175. Defendant's actions against Plaintiff, as detailed above, are in retaliation for Plaintiff's whistle-blowing activities described herein, in violation of the New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1, et seq.

176. Plaintiff engaged in "whistle-blowing" activities in that he disclosed and objected to, and/or refused to participate in, Defendant's 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, was fraudulent, and/or negatively impacted the health, safety and welfare of the public. Plaintiff provided

information to a public body conducting an investigation, hearing or inquiry into a violation of law or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship. In retaliation for his whistle-blowing activities, Plaintiff suffered adverse employment action(s) and other retaliatory and harassing acts at the hands of Defendant, as outlined above.

177. Defendant created a continuous pattern of tortious conduct against Plaintiff in retaliation for his whistle-blowing activities.

178. Defendant's adverse employment actions against Plaintiff include, but are not limited to, suspending Plaintiff for five days, docking Plaintiff 52 hours (6.5 days) of earned and accrued vacation time, not increasing his compensation as Chief of Police, and subjecting him to a series of instances of behavior directed against him that may not be actionable individually but that combine to make up a pattern of retaliatory conduct.

179. Defendant's adverse employment actions against Plaintiff are without any legitimate and/or lawful purpose. The purported rationale for Defendant's adverse employment actions are pre-textual and are advanced in order to mask Defendant's retaliatory intent.

180. Defendant's harassing and retaliatory actions against Plaintiff constitute violations of CEPA.

181. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated.

182. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, physical injury, mental injury, the loss of opportunities for prospective employment, the loss of fringe benefits, and is incurring legal expenses and other expenses as a result of Defendant's actions.

183. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, physical injury, mental injury, the loss of opportunities for prospective employment, the loss of fringe benefits, and is incurring legal expenses and other expenses as a result of Defendant's actions.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. For an Order dismissing the administrative charges for failure to prove the charges by a preponderance of the evidence;
- b. For an Order dismissing the administrative charges for violating N.J.S.A. 40A:14-147;
- c. For an Order dismissing the administrative charges for

violating N.J.S.A. 40A:14-118;

d. For an Order dismissing the administrative charges for violating Plaintiff's Due Process Rights;

e. 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 front and back pay, as well as all commensurate pension benefits, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, any statutory fines, compensation for adverse tax consequences for a lump sum award, together with both pre-judgment and post-judgment interest and attorneys' fees and costs, including but not limited to fees associated with N.J.S.A. 40A:14-155 and N.J.S.A. 34:19-1, et seq., as well as any enhancements pursuant to the case law, and costs of court;

f. For any additional equitable relief and fines permitted by N.J.S.A. 34:19-1, et seq. including but not limited to removing any retaliatory disciplinary actions from his personnel and Internal Affairs file.

g. 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; and

e. For such other, further, additional and different relief as this Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Charles J. Sciarra, Esq. is hereby designated as trial counsel.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues involved herein.

Respectfully submitted,
SCIARRA & CATRAMBONE, L.L.C.
Attorneys for Plaintiff

By: Charles J. Sciarra *By: [Signature]*
Charles J. Sciarra, Esq.

Dated: September 26, 2017