

OPRA #118-20 Privilege Log		
Type/Name of document, date, and page*	If document is denied in its entirety, give a general nature description of the record	List the legal citation(s) and explanation(s) for the denial of access to records in their entirety or with redactions
Initial Notice of Disciplinary Action	Initial Notice of Disciplinary Action, Exhibit 1 to Complaint Barker v. Town of Guttenberg, HUD-L-521-17	NJSA 47:1A-1 - nformation generated by or on behalf of public employers or public employees in connection with any grievance filed against an individual NJSA 47:1A-10 Exempt personnel and pension record not otherwise subject to disclosure as a payroll record.
Decision terminating employment	Decision terminating employment, Exhibit 2 to Complaint Barker v. Town of Guttenberg, HUD-L-521-17	NJSA 47:1A-1 - nformation generated by or on behalf of public employers or public employees in connection with any grievance filed against an individual NJSA 47:1A-10 Exempt personnel and pension record not otherwise subject to disclosure as a payroll record.
Decision terminating employment	Decision terminating employment, Exhibit 2 to Complaint Barker v. Town of Guttenberg, HUD-L-521-17	NJSA 47:1A-1 - nformation generated by or on behalf of public employers or public employees in connection with any grievance filed against an individual NJSA 47:1A-10 Exempt personnel and pension record not otherwise subject to disclosure as a payroll record.
Retirement Notice	Retirement notice appended to complaint in Frischkorn v. Guttenberg, HUD-L-3073-12	NJSA 47:1A-10 Exempt personnel and pension record not otherwise subject to disclosure as a payroll record.
Social Secutiry/TIN	W-9 Forms appended to settlement in Dorador v. Guttenberg, L-3857-13	NJSA 47:1A-1 - Social Security numbers.

Albert Cabrera

118-20

From: Taeho Kim <opra+request-12605-7c52cd09@requests.opramachine.com>
Sent: Wednesday, May 27, 2020 5:01 PM
To: Albert Cabrera
Subject: OPRA request - OPRA: police officer-involved lawsuits 2012-2019

Dear Town of Guttenberg,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested:

1. A list of all lawsuits and cases in which any officer of the police department was involved between 2012 and 2019. For each lawsuit/case, please provide the date (month and year) of the alleged incident at issue, whether the alleged incident was excessive force, settlement amount (if any), and final compensation amount ruled (if any).

2. Please provide copies of the complaint in any lawsuits and cases described above.

Yours faithfully,

UC Research

Please use deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-12605-7c52cd09@requests.opramachine.com

Is townclerk@myguttenberg.com the wrong address for OPRA requests to Town of Guttenberg? If so, please contact us using this form:
https://opramachine.com/change_request/new?body=town_of_guttenberg

Disclaimer: This message and any reply that you make will be published on the internet. Our privacy and copyright policies:
<https://opramachine.com/help/officers>

View this OPRA request & responses online:
https://opramachine.com/request/opra_police_officer_involved_law_207

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an OPRA custodian, please ask your web manager to link to us from your organisation's website.

01/14/2013 04:30

#2598 P.003/022

COPY

CLERK'S OFFICE

Date 1-18-13Attorney(s) LOUISA A. ZAYAS, ESQOffice Address 8801 Kennedy BoulevardSuite 5sTown, State, Zip Code North Bergen, NJ 07047Telephone Number (201) 285-9977

Attorney(s) for Plaintiff _____

Edward Frischkom

Plaintiff(s)

Vs.

Town of Guttenberg and Director Michael Caliguire

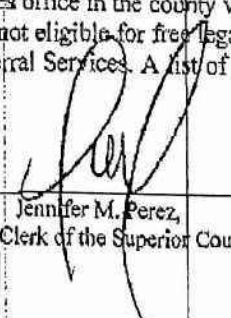
Defendant(s)

From The State of New Jersey To The Defendant(s) Named Above:

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. (The address of each deputy clerk of the Superior Court is provided.) 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 \$135 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. A list of these offices is provided. 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 list of these numbers is also provided.

Dated: 1/14/13

 Jennifer M. Perez,
 Acting Clerk of the Superior Court
Name of Defendant to Be Served: Town of GuttenbergAddress of Defendant to Be Served: Town Hall 6808 Park Avenue Guttenberg, NJ 07093NOTE: The Case Information Statement is available at <http://www.njcourtsonline.com>

Revised 7/1/2008, CN 10792

page 1 of 4

RECEIVED

JAN 18 2013

TOWN CLERK
GUTTENBERG, NJSuperior Court of
New Jersey

9:50 PM

Hudson

COUNTY

Civil Law

DIVISION

Docket No: L-3073-12CIVIL ACTION
SUMMONS

**DIRECTORY OF SUPERIOR COURT DEPUTY CLERK'S OFFICES
COUNTY LAWYER REFERRAL AND LEGAL SERVICES OFFICES****ATLANTIC COUNTY:**

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL

(609) 345-3444

LEGAL SERVICES

(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601

LAWYER REFERRAL

(201) 488-0044

LEGAL SERVICES

(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL

(609) 261-4862

LEGAL SERVICES

(800) 496-4570

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice
1st Fl., Suite 150
101 South 5th Street
Camden, NJ 08103

LAWYER REFERRAL

(856) 964-4520

LEGAL SERVICES

(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Cape May Court House, NJ 08210

LAWYER REFERRAL

(609) 463-0313

LEGAL SERVICES

(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
60 West Broad Street
P.O. Box 10
Bridgeton, NJ 08302

LAWYER REFERRAL

(856) 692-6207

LEGAL SERVICES

(856) 451-0003

ESSEX COUNTY:

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102

LAWYER REFERRAL

(973) 622-6204

LEGAL SERVICES

(973) 624-4500

01/14/2013 04:31

#2598 P.005/022

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street
Woodbury, NJ 08096

LAWYER REFERRAL

(856) 848-4589

LEGAL SERVICES

(856) 848-5360

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House—1st Floor
583 Newark Ave.
Jersey City, NJ 07306

LAWYER REFERRAL

(201) 798-2727

LEGAL SERVICES

(201) 792-6363

HUNTERDON COUNTY:

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822

LAWYER REFERRAL

(908) 735-2611

LEGAL SERVICES

(908) 782-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL

(609) 585-6200

LEGAL SERVICES

(609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court,
Middlesex Vicinage
2nd Floor - Tower
56 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL

(732) 828-0033

LEGAL SERVICES

(732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
Court House
P.O. Box 1269
Freehold, NJ 07728-1269

LAWYER REFERRAL

(732) 431-5544

LEGAL SERVICES

(732) 866-0020

MORRIS COUNTY:

Morris County Courthouse
Civil Division
Washington and Court Streets
P.O. Box 910
Morristown, NJ 07963-0910

LAWYER REFERRAL

(973) 267-5882

LEGAL SERVICES

(973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
118 Washington Street, Room 121
P.O. Box 2191
Toms River, NJ 08754-2191

LAWYER REFERRAL

(732) 240-3666

LEGAL SERVICES

(732) 341-2727

01/14/2013 04:31

#2598 P.006/022

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505

SALEM COUNTY:

Deputy Clerk of the Superior Court
Attn: Civil Case Management Office
92 Market Street
Salem, NJ 08079

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge Street
Somerville, N.J. 08876

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL

(973) 278-9223
LEGAL SERVICES
(973) 523-2900

LAWYER REFERRAL

(856) 678-8363
LEGAL SERVICES
(856) 451-0003

LAWYER REFERRAL

(908) 685-2323
LEGAL SERVICES
(908) 231-0840

LAWYER REFERRAL

(973) 267-5882
LEGAL SERVICES
(973) 383-7400

LAWYER REFERRAL

(908) 353-4715
LEGAL SERVICES
(908) 354-4340

LAWYER REFERRAL

(973) 267-5882
LEGAL SERVICES
(908) 475-2010

01/14/2013 04:32

#2598 P.007/022

LOUIS A. ZAYAS, ESQ.
LAW OFFICES OF LOUIS A. ZAYAS, L.L.C.
8901 Kennedy Boulevard, Suite 5S
North Bergen, NJ 07047
(201) 977-2900

EDWARD FRISCHKORN,

Plaintiff,

vs.

TOWN OF GUTTENBERG,
DIRECTOR MICHAEL
CALIGUIRO,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET No.: L-3073-12

CIVIL ACTION

AMENDED COMPLAINT

The Plaintiff, EDWARD FRISCHKORN, by and through his attorney, LOUIS A. ZAYAS of LAW OFFICES OF LOUIS A. ZAYAS, L.L.C., alleges the following based on information and belief:

FACTS

1. Plaintiff EDWARD FRISCHKORN is a fifty-two year old resident of Bergen County and the State of New Jersey. Before his retirement on October 1, 2010, Plaintiff was a Sergeant in the Town of Guttenberg Police Department.

2. Defendant TOWN OF GUTTENBERG is a municipality organized by virtue of New Jersey law and pursuant to that law, and is to be known and distinguished by the name "GUTTENBERG." Defendant GUTTENBERG is sued to affect the full declaratory, injunctive, and compensatory damages demanded by Plaintiff.

3. Defendant DIRECTOR MICHAEL CALIGUIRO was the Director of Public Safety for the Town of Guttenberg. Director Caliguire is sued to affect the full declaratory, injunctive, and compensatory and punitive damages demanded by the Plaintiff.

4. Plaintiff has been Guttenberg Police Officer since October 7, 1985. He was promoted to Sergeant in 1997.

5. Plaintiff has held many roles in the police department. While a Squad "A" Sergeant, Plaintiff supervised three full time officers and a dispatcher. As Counter Terrorism Coordinator, he worked with the FBI Joint Terrorism Task Force and Hudson County Terrorism Task Force, dealing with all issues related to terrorism. As a Terminal Agency Coordinator, Plaintiff handled the Criminal Justice Information System, a national data bank for wanted or missing persons and possible threats. Plaintiff has also served as a liaison to the Administrative Office of the Courts; a Police Instructor; an Accident Investigator; an Internal Affairs Investigator; an Ethics Instructor; a Missing Persons Investigator; a Juvenile Officer; and an Honor Guard Commander, among many other tasks and positions.

6. Throughout his career, Plaintiff was never once charged with any complaint or offense, or given any reprimand, and has never been the subject of any internal affairs investigation.

7. Plaintiff has at all times performed his job satisfactorily, and has consistently gone above and beyond the call of duty, doing much more than what was required of him.

8. Guttenberg and the individual police officers had executed a Collective Bargaining Agreement ("CBA") that provided police officers with a number of employment benefits and privileges. In part, the CBA provided police patrolmen and supervisors with at least one year of medical and sick leave.

9. The CBA was in effect at all times relevant to the allegations set forth in this case

10. Plaintiff has received many awards and commendations for his extraordinary work, including: an Exceptional Service Award from the Federal Bureau of Investigation; an Exceptional Police Service Award from the New Jersey State Police Benevolent Association (PBA); three Exceptional Police Service awards from P.B.A. Local #88; two Life Saving Awards from the Guttenberg police department; a Meritorious Service Award from P.B.A. Local #88; a Unit Citation Award from the police department; two Commendation Awards from the police department; three Honorable Service Awards from the police department; a letter of commendation from the New Jersey State Police; six letters of commendation from the Guttenberg police department; two letters of recognition from P.B.A. Local #88; twelve letters of recognition from the Guttenberg police department; and eleven letters of appreciation from the HC Prosecutors Office.

11. Plaintiff has completed training from the FBI in: Police Supervision and Management; Counter Terrorism; Criminal Investigation; Crisis Negotiation; and Cyber Crime Investigation. He has completed many other courses such as Criminal Justice Information Systems; Intelligence Systems; Cyber Crime Scenes; First Responder Domestic Preparedness; Suicide Bombers and Prevention; Anti Intelligence Awareness; School Threat Assessment; Forensic Epidemiology; Accident Investigation; Auto Theft; Narcotics Training; White Collar Crime; Identity Theft; Missing Persons; Missing and Abducted Children; Gangs, Guns and Drugs; Arrest, Search and Seizure; Interview and

Interrogation; Search Warrant Preparation; US Customs; Death Scene Investigation; Cellular Phone Fraud; Illegal Chemical Waste; and OC Aerosol Training.

12. Plaintiff was vocal in his objections to certain unjust Police Department Policies (listed below). He was pushed out of the Police Department, in part, in retaliation for whistle-blowing.

13. The Guttenberg Police Department unlawfully discriminates against older police officers in favor of younger ones.

14. Captain Magenheimer, the commanding officer of the Guttenberg Police Department, has created a managerial attitude reflecting a preference for younger police officers. He has often expressed his preference toward younger officers. On multiple occasions, Magenheimer referred to the older, more senior patrol officers as "dinosaurs." In or about February 2009, for example, Magenheimer told Officer D'Amore that certain assignments and promotions should be left "to the younger guys." Magenheimer told Carlos Zaldivar, (referring to older police officers) "you guys are dinosaurs, you don't want to do anything . . . you guys are lazy and don't want to do anything while you are here."

15. The Guttenberg police department does not have any written policies prohibiting discrimination at the workplace other than sexual harassment, and does not provide the department or its officers with any training to understand or comply with state and federal laws prohibiting unlawful discrimination in the workplace.

16. Plaintiff has never stated an intent or desire to retire. In fact, he was vocal about his desire to continue working for the police department until mandatory retirement

at age sixty-five (65). All of Plaintiff's coworkers in the Police Department, as well as the Guttenberg Town Hall employees, were aware of Plaintiff's intentions.

17. Plaintiff underwent back surgery on May 2, 1997. His surgery was successful, and he was able to return to work on September 9, 1997.

18. Plaintiff was able to fully and satisfactorily perform his job duties after his surgery.

19. After returning to work in 1997, Plaintiff did not take a single sick day for 10 years. In 2007, Plaintiff was in a car accident while on his way to work. He injured his back, and required surgery. His surgery was successful, and he returned to work on November 5, 2007.

20. Plaintiff fully and satisfactorily performed his job duties after returning to work.

21. From November 5, 2007 to his car accident in April 2010, Plaintiff did not take any sick leave.

22. On April 21, 2010, Plaintiff was involved in a car accident. Plaintiff injured his back in the accident. In accordance with the CBA, Plaintiff requested medical and/or sick leave to undergo treatment and rehabilitation. Plaintiff had every intention of returning to work upon completion of his medical treatment.

23. There was no reason to believe that Plaintiff would not be able to fully and satisfactorily perform all of his job duties upon return from his treatment, especially since Plaintiff had absolutely no trouble after his 1997 and 2007 surgeries.

01/14/2013 04:33

#2598 P.012/022

24. While on medical leave, Plaintiff complied with the terms and conditions under the CBA. Additionally, Plaintiff followed every detail of the police department's regulations regarding injury leave, as per police department order #05-46, which states:

Whenever an officer is on sick leave or injury leave, he/she shall remain in his/her residence at all times during his/her scheduled tours of duty. If it is necessary for an officer on sick leave or injury leave to leave his/her residence, that officer shall notify the Director. . . Upon returning home, the officer shall notify the Director or desk officer.

25. Plaintiff always notified the department when he left his residence for doctors' appointments and when he returned.

26. While on sick leave, Plaintiff performed whatever work he could from home, including many ABC (Alcoholic Beverage Control) investigations.

27. In May 2007, Plaintiff was told to submit to an examination by Dr. Weiss, at "The Doctor's In." Dr. Weiss is not the official town doctor, however, Plaintiff complied and saw Dr. Weiss.

28. On May 30, 2010, Plaintiff spoke to a coworker who informed him that Sergeant Hughes had stated that Plaintiff would be retiring.

29. Plaintiff received a series of three epidural injections for his back, and was told to attend physical therapy to determine whether surgery was needed.

30. On July 2, 2010, Plaintiff received a letter from Michael Caliguiro, the Public safety Director, stating that he did not appear to meet the requirements of N.J.S.A. 40A: 14-122, which states:

No person shall be appointed as a member of the police department and force, unless he is sound in body and of good health sufficient to satisfy the board of trustees of the police and firemen's retirement system of New Jersey as to his eligibility for membership in the retirement system.

31. The above letter stated that the Town would begin the process of evaluating Plaintiff's fitness to perform the duties of his position, and initiate an involuntary disability retirement for him if it determined that he was unable to perform them.

32. This letter was intended to force Plaintiff out of the police department in violation of the CBA and under the New Jersey Law Against Discrimination on the basis of age and disability.

33. None of Plaintiff's doctors ever suggested the possibility that he might not be able to return to duty as a police officer.

34. Plaintiff's employment contract, Article XI-Sick Leave and Bereavement Leave specifically states: "all employees covered by this agreement shall be granted sick leave on an as needed basis up to a maximum of one (1) year for each occurrence or need." At the time Plaintiff was sent the above letter, he had only missed 40 days of work due to his injury.

35. It is the policy of the police department (pursuant to Order #05-46) to hold a counseling session for any officer whom the department believes to be using an inordinate amount of sick leave. Plaintiff was never counseled regarding his sick leave, but was instead forced out of the police department, simply due to his age.

36. On July 8, 2010, Plaintiff's friend and coworker, Officer Michael D'Amore told him that he had spoken to Magenheimer regarding the letter, and Magenheimer had stated that the letter was meant to make Plaintiff retire, and that they "wanted him out." D'Amore believed the department wanted Plaintiff out in order to

01/14/2013 04:34

#2588 P.014/022

promote Officer Michael Meawad (who is only 27 years old) to Plaintiff's position as Sergeant.

37. Plaintiff never mentioned an intention to retire, either before or after receiving the above letter, yet his duties were already being reassigned, as the department was trying to force him out due to his age.

38. On July 11, 2010, Plaintiff spoke to Lieutenant Conversano, who said that Meawad was already being lined up for Plaintiff's position as Counter Terrorism Coordinator. Plaintiff had been Guttenberg's first and only Counter Terrorism Coordinator for nine years. Plaintiff had attended the FBI Basic and Advanced Counter Terrorism School and the NYPD Counter Terrorism training, and had no desire to retire. Meawad, on the other hand, had no training or knowledge regarding counter terrorism. Conversano also told Plaintiff that Sergeant Jeffrey Lugo was scheduled for TAC training so that he could replace Plaintiff in his role as a TAC officer, which Plaintiff had held for the past ten years, and for which he received a commendation from the NJ State Police for his exceptional performance.

39. In July 2010 Plaintiff spoke to a Pension Consultant of the New Jersey State Police Benevolent Association and a private attorney. Both were of the opinion that Guttenberg was trying to force Plaintiff out of the police force.

40. Attorney Michael Bukosky advised buying four months of pension credit and negotiating a retirement date of October 1, 2010. In light of the Defendants' over threats to his employment, Plaintiff was constructively discharged by compelling his early retirement.

01/14/2013 04:34

#2588 P. 015/022

41. On November 11, 2010, Plaintiff was forced to retire to avoid being terminated by Guttenberg.

42. The last three officers promoted to Sergeant, the position that Plaintiff was forced out of, were James Hosie (age 32), Jeffrey Lago (age 36), and Juan Barrera, (age 37).

COUNT ONE

N.J.S.A.10:5-1, et seq.

DISCRIMINATION BASED ON AGE

43. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

44. Plaintiff's age is given protected status under New Jersey's Law Against Discrimination.

45. There was no reason to believe that Plaintiff was no longer fit to perform his duties as a police officer.

46. Plaintiff never expressed an intent or desire to retire, yet the department was circulating rumors that he intended to retire.

47. Plaintiff was sent a letter by Public Safety Director Michael Caliguero on July 2, 2010, stating that he no longer appeared to meet the requirements of the police department.

48. Plaintiff was pushed out of the police department, in part, because of his age.

49. Throughout his career with the police department, Plaintiff performed his duties satisfactorily. He received many awards and completed training in many areas.

50. Defendant's actions violate the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, as they discriminated against Plaintiff based on age, and have caused Plaintiff to suffer economic, emotional, and psychological damages in an amount to be determined by a jury.

COUNT TWO

N.J.S.A. 10:5-1, *et seq.*

DISCRIMINATION BASED ON DISABILITY

51. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

52. Plaintiff was temporarily disabled due to the car accident he was in on April 21, 2010.

53. There was no reason to believe that Plaintiff would not be able to perform his duties as a police officer once he recovered from the car accident.

54. Plaintiff was sent a letter by Public Safety Director Michael Caliguire on July 2, 2010, stating that he no longer appeared to meet the requirements of the police department.

55. Plaintiff was pushed out of the police department, in part, because of his disability.

56. Defendant's actions violate the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, as they discriminated against Plaintiff based on disability, and have caused Plaintiff to suffer economic, emotional, and psychological damages in an amount to be determined by a jury.

COUNT THREE
N.J. CIVIL RIGHTS ACT
Article 1, Section 6
FREEDOM OF SPEECH

57. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

58. Plaintiff exercised his right to express his speech by objecting to certain unlawful and illegal police department practices. In retaliation for his whistle-blowing activities, Plaintiff was constructively discharged and forced to retire.

59. Plaintiff objected to the following:

- a. In February of 2009, Guttenberg promoted Officer Juan Barrera to Sergeant. Plaintiff believed that Barrera was being promoted based on the department's illegal preference for younger officers, to the detriment of older, more experienced officers who were qualified for the promotion. Magenheimer told several officers that Barrera was being promoted based on a recommendation of Plaintiff, D'Amore and Conversano. Plaintiff told Lieutenant Conversano that this was simply not true – at no time had Plaintiff ever recommended that Barrera be promoted to Sergeant. Sergeant James D'Amore went to Captain Magenheimer and told him that he did not, and would not have, recommended Barrera. Magenheimer said that they were "liars." It was later determined that it was in fact Magenheimer who strongly advised the Mayor of Guttenberg and the Town Council to promote Juan Barrera.
- b. Around 2008, Sergeant Conversano requested that Plaintiff accompany him as a witness while he counseled Officer Michael D'Amore on his use

of sick time. At the end of the counseling session, Plaintiff stated that although he had been on sick leave for approximately eight months in 2007, he was never counseled about it, and officers did not call him or visit his home to ensure that he was there. Plaintiff's frank statement, pointing out the unfairness and inequality in the department's use of counseling embarrassed Conversano, as well as Magenheimer and Caligiuro, who were informed of the conversation.

- c. Around October 2004, while an Officer was out on sick leave from the Guttenberg Police Department, that Officer responded to calls for service while serving as a volunteer firefighter in another jurisdiction, which was not allowed. The Officer was never criminally or administratively charged and was allowed to retire with full pension and benefits. Plaintiff objected to this and told Lieutenant Conversano that if they had sufficient evidence to prove this allegation, formal charges should have been filed. Plaintiff objected to the favoritism that existed in the department.
- d. Around April 2004, an Officer tested positive during a random drug test, yet he was permitted to retire with 20 years of service, and no charges were ever brought against him. Plaintiff objected to this and told Lieutenant Conversano that criminal or administrative charges should have been brought against that officer.
- e. Plaintiff was asked to perform a background check on an applicant for the police department. Plaintiff told Conversano and Magenheimer that the applicant had a prior arrest record. Plaintiff's concerns were ignored, and

Officer was appointed as a police officer. In retaliation, Plaintiff was never requested to perform another police applicant investigation.

- f. Around February 2007, Public Safety Director Caliguiro implemented a new police department flow chart, which placed the Sergeant Conversano over Plaintiff, who was senior to Conversano, and another Sergeant, Arthur Allguier, who was also senior to Conversano. Plaintiff was informed that the order was created specifically to place Conversano over Plaintiff and Allguier. Plaintiff objected to the new organization, as it improperly depicted seniority, and complained to the Police Benevolent Association President Carlos Zaldivar requesting the filing of a grievance.
- g. While Plaintiff was on sick leave, Captain Magenheimer asked Plaintiff to perform several alcoholic beverage control investigations. Plaintiff denied one of the applications, as it was incomplete. Magenheimer told Plaintiff he wanted him to approve the license. When Plaintiff refused, Magenheimer began upset.

60. Defendants actions violate the New Jersey Civil Rights Act, namely Article 1, Section 6, which guarantees all persons the right to engage in free speech and other protected activities in that Guttenberg retaliated against Plaintiff for speaking up about improper and illegal actions in the police department, and have caused Plaintiff to suffer economic, emotional, and psychological damages in an amount to be determined by a jury.

COUNT FOUR**BREACH OF CONTRACT**

61 Plaintiff repeats and realleges the allegations set forth above as if full set forth herein

62 By virtue of the CBA, Plaintiff had a contract with Defendant Guttenberg provide Plaintiff with certain enumerated employment benefits and privileges as a supervisory police officer.

63 Defendants violated Plaintiff contractual rights under the CBA when Defendants unlawful constructively discharged Plaintiff from his employment.

64 Defendants breached that contract under the CBA without justification when they constructively fired Plaintiff.

65 Defendants breached the contract, and have caused Plaintiff to suffer economic, emotional and psychological damages in an amount to be determined by a jury.

COUNT FIVE**BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

66 Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

67 Defendants knew that Plaintiff had a right to medical and sick leave up to a one year without any adverse employment action.

68 Defendants knew that Plaintiff was in compliance with the CBA.

69 Defendants knew that constructively discharging Plaintiff from his employment violated their duty of good faith and fair dealing.

01/14/2013 04:36

#2588 P.021/022

70. As a result of Defendants' conduct, Plaintiff has suffered economic damages, counsel fees, interest and costs.

WHEREFORE, Plaintiff demands judgment against Defendant for the following relief:

- a. Compensatory Damages;
- b. Punitive Damages;
- c. Attorney's fee and costs of suit;
- d. Such other and further relief that the Court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as to all issues so triable.

Dated: January 8, 2013

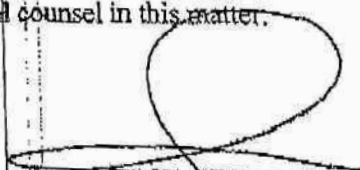


Louis A. Zayas, Esq.

DESIGNATION OF TRIAL COUNSEL

LOUIS A. ZAYAS, ESQ., is designated as trial counsel in this matter.

Dated: January 8, 2013



Louis A. Zayas, Esq.

DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS

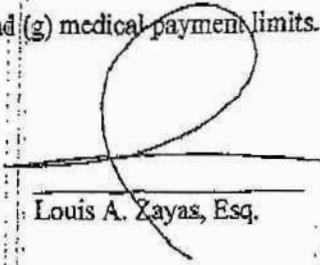
Pursuant to R. 4:10-2(b), demand is hereby made that you disclose to the

01/14/2013 04:38

#2588 P.022/022

undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment. If so, please attach a copy of each, or alternative state, under oath and certification: (a) policy number; (b) name and address of insurer; (c) inception and expiration date; (d) names and addresses of all persons insured thereunder; (e) personal injury limits; (f) property damages limits; and (g) medical payment limits.

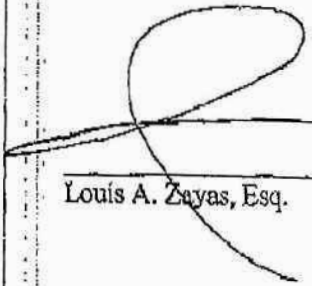
Dated: January 8, 2013


Louis A. Zayas, Esq.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the matters in controversy in this action are not subject of any other action pending in any other court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated.

Dated: January 8, 2013


Louis A. Zayas, Esq.

CAMMARATA, NULTY & GARRIGAN, L.L.C.
Thomas J. Cammarata, Esq. (236421970)
549 Summit Avenue
Jersey City, New Jersey 07306
(201) 656-2222
Attorneys for Plaintiff

FILED
TEAM 1

FEB 02 2017

SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION #10

Plaintiff,	:	
	:	SUPERIOR COURT OF NEW JERSEY
SHAUNDELL BARKER	:	LAW DIVISION: HUDSON COUNTY
	:	Docket No. <i>Hub-L-521-17</i>
vs.	:	
	:	Civil Action
Defendants,	:	
	:	<u>COMPLAINT IN LIEU OF</u>
TOWN OF GUTTENBERG	:	<u>PREROGATIVE WRIT</u>
	:	

The plaintiff, Shaundell Barker ("Barker"), by way of complaint against the defendant, says:

1. The plaintiff was employed as a police officer with the Town of Guttenberg Police Department ("GPD").
2. The Town of Guttenberg ("Town") is located at 6808 Park Avenue, Guttenberg, New Jersey.

JURISDICTION AND VENUE

3. This Court has jurisdiction to review the defendant municipality's decision with respect to the police-related employment matters by virtue of New Jersey Court Rule 4:69-1, N.J.S.A. 40A:14-147, and N.J.S.A. 40A:14-150.

4. The Police Department is located within Hudson County and all relevant acts occurred in Hudson County in violation of New

Jersey statutes, New Jersey common law, and/or the Constitution of the State of New Jersey.

NATURE OF DISPUTE AND CAUSE OF ACTION

5. On April 16, 2016, Plaintiff, a police officer in Guttenberg, Hudson County, New Jersey was involved in an automobile accident while off-duty.

6. As a result of back injuries incurred in the accident, Barker was forced to take time off from her job. She submitted medical reports verifying her injuries and inability to work. During her medical leave Barker traveled to her native country Guyana for a tribute to her deceased father. This leave was pre-approved by the police department prior to her medical leave. She notified the Department of her intention to travel to Guyana while out on leave. When she returned from her trip she was sent for a fitness for duty physical by the Town. Based on the Town doctor's evaluation she was ordered back to work and to report for firearms retraining and qualification. She reported to the range to qualify and during the training she experienced back pain and reported back to Guttenberg's doctors for evaluation. She was then approved for modified duty. She immediately sought medical advice from her own doctors and was advised she was not fit to return to work. She presented these medical records to the Town.

7. The Township filed a Notice of Disciplinary charges on August 30, 2016, charging Plaintiff with violations of the Rules and Regulations of the Guttenberg Police Department as follows.

R. 3:1-7 Neglect of duty

R. 3:1-1.10 Insubordination

R. 4:9.1 Reporting Sick or Injured

R. 4:9.4 Unauthorized absence

The Notice specified what acts constituted the rule violations stating:

Since an off-duty accident in April 2016, P.O. Barker has abused sick leave time; taken vacation while on paid sick leave; refused to submit medical records to verify use of sick leave.

(Exhibit 1)

8. Plaintiff immediately requested a hearing on the charges and a hearing was held on December 12, 2016.

9. On January 27, 2017, Barker was served with a decision signed by the Police Director of Guttenberg stating that the Town Council terminated her employment as a police officer. (Exhibit 2).

10. The decision to terminate was not based on the credible evidence produced at the hearing and failed to dismiss the charges based on a failure of the Police Department to comply with the 45-day rule set forth in N.J.S.A.40A:14-147.

11. Pursuant to N.J.S.A. 40A:14-150, Plaintiff now appeals that decision and the action of the Town of Guttenberg terminating her from her position as police officer.

WHEREFORE, Plaintiff, Shaundell Barker, demands judgment against the Defendants as follows:

- (A) Revocation of the termination.
- (B) Back pay and restoration of all rights, including pension and seniority rights for the period of Plaintiff's suspension;
- (C) Reimbursement for all attorney's fees and costs including costs for health benefits; and
- (B) Such other relief as this Court deems just and equitable.

DATED: February 1, 2017

CAMMARATA, NULTY & GARRIGAN, L.L.C.
Attorneys for Plaintiff

BY: 

THOMAS J. CAMMARATA, ESQ.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Thomas J. Cammarata, Esq., is hereby designed as trial counsel in this matter.

CERTIFICATION PURSUANT TO R.4:5-1

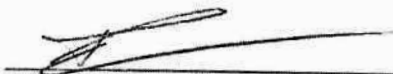
I certify that the matter in controversy in the within action is not the subject of any other action or arbitration proceeding, pending or contemplated, in any court, and that there are no additional parties who should be joined in this action. R. 4:5-1. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

DATED: February 1, 2017

CAMMARATA, NULTY & GARRIGAN, L.L.C.
Attorneys for Plaintiff

BY:



THOMAS J. CAMMARATA, ESQ.

CERTIFICATION PURSUANT TO R.4:69-4

Pursuant to Rule 4:69-4, there was not transcript of the hearing below.

I certify that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements made by me are
wilfully false, I am subject to punishment.

DATED: February 1, 2017

CAMMARATA, NULTY & GARRIGAN, L.L.C.
Attorneys for Plaintiff

BY:



THOMAS J. CAMMARATA, ESQ.

08/22/2013 10:02

#4182 P.015/028

LOUIS A. ZAYAS, ESQ.
 LAW OFFICES OF LOUIS A. ZAYAS, L.L.C.
 8901 Kennedy Boulevard, 5th Floor
 North Bergen, NJ 07047
 Tel: (201) 977-2900
 Counsel for Plaintiff

FILED
 CUSTOMER SERVICE TEAM

AUG 14 2013

SUPERIOR COURT OF NEW JERSEY
 COUNTY OF HUDSON
 CIVIL DIVISION #3

BRIAN DORADOR

Plaintiff,

vs.

TOWNSHIP OF GUTTENBERG, CAPTAIN
 JOEL MAGENHEIMER, OFFICER LAURA
 SORTO, SERGEANT JEFF LUGO,
 OFFICER JOSEPH KESELICA,
 INVESTIGATOR JOSEPH TERELLO,
 SERGEANT JUAN BERRERA

Defendant.

) SUPERIOR COURT OF NEW JERSEY
) LAW DIVISION: HUDSON COUNTY
)

) Docket No.: L-3857-13
)

The Plaintiff BRIAN DORADOR, by and through his attorney, LOUIS A. ZAYAS of LAW OFFICES OF LOUIS A. ZAYAS, L.L.C., alleges the following based on information and belief:

PARTIES

1. Plaintiff Brian Dorador ("Dorador") is a citizen of the State of New Jersey, residing in North Bergen, New Jersey.
2. Defendant Township of Guttenberg is a corporate public entity by virtue of New Jersey law and pursuant to that law. Defendant Township of Guttenberg is sued to affect the full declaratory, injunctive and compensatory damages demanded by the Plaintiff.
3. Defendant Captain Joel Magenheimer ("Captain Magenheimer"), is a captain with the Town of Guttenberg Police Department, and is sued in his individual capacity for purposes of effecting the compensatory and punitive damages demanded by

08/22/2013 10:03

#4182 P.019/028

Plaintiff.

4. Defendant Officer Laura Sorto ("Officer Sorto") is Guttenberg police officer. Officer Sorto is sued in her individual capacity for purposes of effecting the compensatory and punitive damages demanded by the Plaintiff.

5. Defendant Sergeant Jeff Lugo ("Sergeant Lugo") is a sergeant with the Town of Guttenberg Police Department, and is sued in his individual capacity for purposes of effecting the compensatory and punitive damages demanded by the Plaintiff.

6. Defendant Officer Joseph Keselica ("Officer Keselica") is a police officer with the Town of Guttenberg Police Department, and is sued in his individual capacity for purposes of effecting the compensatory and punitive damages demanded by the Plaintiff.

7. Defendant Investigator Joseph Torello ("Investigator Torello") is a police investigator with the Town of Guttenberg Police Department, and is sued in his individual capacity for purposes of effecting the compensatory and punitive damages demanded by Plaintiff.

8. Defendant Sergeant Juan Berrera ("Sergeant Berrera") is a sergeant with the Town of Guttenberg Police Department, and is sued in his individual capacity for purposes of effecting the compensatory and punitive damages demanded by Plaintiff.

FACTS

9. Defendants, individually and acting in concert with each other, engaged in a pattern of retaliatory conduct directed towards Mr. Dorador because of his complaints of unlawful behavior by Officer Keselica, Captain Magenheimer and the other individual defendants conspired to fabricate criminal charges against Mr. Dorador as a means of not

08/22/2013 10:03

#4182 P. 017/028

only retaliating against him for engaging in protected activities, but to discredit him as a civil rights victim.

10. The Guttenberg Police Department is quasi-military organization responsible for enforcing the criminal laws of the State of New Jersey and providing for the public welfare and safety. Guttenberg and its government officials are responsible for complying with state and federal laws.

11. Mr. Dorador is an aspiring police officer, who worked as an auxiliary police officer (a.k.a "peace officer") with the New York Police Department (NYPD).

12. Mr. Dorador had pending employment applications to various police departments to be hired as a police officer, including the Baltimore Police Department where he was in the final stages of the interview process.

13. As a result of his imminent hiring by the Baltimore Police Department, Mr. Dorador was scheduled to move to Baltimore to begin the police academy, and had moved back to his parent's home in North Bergen, New Jersey in the interim.

14. Mr. Dorador's sister had dated Officer Keselica. Mr. Dorador and Officer Keselica were also friends. However, Mr. Dorador's sister broke up with Officer Keselica, Mr. Dorador and Officer Keselica friendship ended.

15. Upon information and belief, Officer Keselica resented Mr. Dorador for the break up with his sister, and held a personal vendetta against him.

16. Plaintiff was also a close acquaintance of Sergeant Lugo, but after the breakup, Mr. Dorador and Sergeant Lugo rarely communicated.

17. Upon information and belief, both Officer Keselica and Sergeant Lugo were aware that Mr. Dorador was a NYPD auxiliary police officer and was preparing to

08/22/2013 10:03

#4182 P.018/028

relocate to Baltimore to begin the police academy.

18. Officer Sorto was a close family friend of Mr. Dorador. In or about the beginning of August 2011, Officer Sorto advised Plaintiff that Officer Kesello was planning a scheme to set up Mr. Dorador and arrest him for impersonating a police officer and carrying a weapon because of his animosity towards Mr. Dorador. Officer Sorto told Dorador that Officer Kesello was aware Mr. Dorador carried PBA cards from the NYPD and planned to use this evidence to arrest Plaintiff.

19. Mr. Dorador never impersonated a police officer or unlawfully carried a weapon, and fear that Officer Kesello would derail his police career with a false arrest.

20. Due to the information provided to him by Officer Sorto, Mr. Dorador reported this information to Captain Magenheimer.

21. In violations of the Attorney General Guidelines on Internal Affairs Procedures, Captain Magenheimer failed to report the criminal allegations to Guttenberg's Internal Affairs Bureau or the Hudson County Prosecutor's Office. Instead of documenting Mr. Dorador's complaint, he simply told Mr. Dorador "don't worry about it."

22. Unsatisfied with Captain Magenheimer's response, Mr. Dorador returned to the Guttenberg Police Department and complained against to Captain Magenheimer. This time, Captain Magenheimer responded: "As long as you haven't impersonated a police officer or unlawfully carry a weapon he would make sure nothing happened." However, Defendant Magenheimer failed to file a formal Internal Affairs report or document the complaint.

23. Fearing that his complaints were not documented or acted upon, on

08/22/2013 10:03

#4192 P. 019/028

August 3, 2011, Mr. Dorador filed an internal affairs complaint regarding the same allegations concerning Officer Keselica with the New York Police Department, namely that Officer Keselica intended to falsely arrest him for impersonating a police officer and carrying a weapon.

24. On August 4, 2011, Plaintiff was notified that someone with NYPD Internal Affairs contacted the Guttenberg Police Department about his complaint.

25. In a deliberate attempt to retaliate against Plaintiff for complaining to both Guttenberg and NYPD, Defendants, individually and acting in concert with each other, conspired to fabricate criminal charges against Mr. Dorador

26. On August 12, 2011, the Guttenberg police officers searched Plaintiff's home in North Bergen, with a warrant signed by Defendant Investigator Torello. The warrant included false information that Defendant Torello knew or should have known to be false. The search of Mr. Dorador's home resulted in no findings of a firearm.

27. On August 15, 2011, Sergeant Lugo texted Mr. Dorador asking him "where he was." When Plaintiff responded that he was in North Bergen, Sergeant Lugo told him to "meet him in a few minutes at a gas station" on the border of Guttenberg and North Bergen because it was "urgent."

28. When Mr. Dorador arrived at the designated gas station, he was approached by Sergeant Lugo, who said: "Something came up, I gotta go," and left. After leaving the gas station, Mr. Dorador was pulled over by two Guttenberg police officers, including Investigator Terello.

29. When Plaintiff asked why he was stopped, Officer Torello responded by stating: "We will explain later." Mr. Dorador's car and person were searched, and

08/22/2013 10:03

#4182 P.020/028

arrested on the street and in the presence of others. After being processed at the Guttenberg Police Department, Mr. Dorador was notified that he was being charged with impersonating a police officer and unlawful possession of a weapon.

30. Mr. Dorador posted bail which set conditions of his freedom and required that he appear in court as commanded.

31. Upon information and belief, the affidavit which caused the arrest of Plaintiff for unlawful possession of a weapon included falsified statements by the Defendants claiming they "had reason to believe that Plaintiff unlawfully possessed a weapon," yet no weapons were found in his parents home, his car, nor his person.

32. When Mr. Dorador contacted Officer Sorto help exonerate him, Officer Sorto recanted ever telling Mr. Dorador any attempts to fabricate criminal charges by Officer Keselica. Officer Sorto's failure to report Officer Keselica's efforts to fabricate criminal charges against an innocent civilian violated her oath as a law enforcement officer.

33. After Mr. Dorador's arrest, Sergeant Berrera signed off on his arrest charges for impersonating a police officer and unlawful possession of a weapon or firearm, and read Mr. Dorador his rights.

34. Upon information and belief, Sergeant Berrera had reason to believe that the Mr. Dorador was arrested for unlawful possession of a weapon based on falsified information.

35. Defendants retaliatory conduct against Plaintiff did not stop with his arrest. Thereafter, Defendants used their status as police officer to deliberately falsify information in an attempt to ensure the unlawful possession of a weapon charges were