

Law Office of Robert A. Tandy, LLC

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 Attorney for Plaintiff, Andrew Flax
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ANDREW FLAX Plaintiff, vs. BOROUGH OF FAIR LAWN; BOROUGH OF FAIR LAWN POLICE DEPARTMENT; GLEN CAUWELS, individually and in his official capacity as Chief of Police; XYZ CORP. INC. (1-10); JOHN DOES (1-10) and JANE DOES (1-10) Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L- CIVIL ACTION COMPLAINT & JURY DEMAND
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Plaintiff, Andrew Flax ("Plaintiff"), by his attorneys, the Law Office of Robert A. Tandy, LLC., by way of Complaint against the Defendants, BOROUGH OF FAIR LAWN; BOROUGH OF FAIR LAWN POLICE DEPARTMENT; GLEN CAUWELS, individually and in his official capacity as Chief of Police; XYZ CORP. INC. (1-10); JOHN DOES (1-10) and JANE DOES (1-10), alleges as follows:

NATURE OF ACTION AND VENUE

1. This is an action pursuant to i) the Civil Rights Act, 42 U.S.C. Sections 1981 *et seq.*, 1983 *et seq.*, and 1985 *et seq.*; and ii) the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.*
2. Venue lies in the County of Bergen pursuant to R. 4:3-2 (a).
3. Plaintiff, a Dispatcher, is an employee of Defendants, Borough of Fair Lawn and/or Borough of Fair Lawn Police Department.

4. Defendant, the Borough of Fair Lawn (the “Borough”), is a municipal corporation of the County of Bergen, State of New Jersey, organized under the Borough form of government and is Plaintiff’s “employer.”

5. Defendant, the Borough of Fair Lawn Police Department is Plaintiff’s “employer.”

6. Defendant, Glen Cauwels, at all times relevant herein was/is the Chief of Police of the Borough of Fair Lawn Police Department and was/is acting under color of State law.

7. Defendants XYZ CORP. INC. (1-10); JOHN DOES (1-10) and JANE DOES (1-10) are fictitious parties charged with the responsibility of supervising Plaintiff’s employment with Defendant Borough of Fair Lawn.

STATEMENT OF FACTS

8. In or around June 2004, Plaintiff commenced employment with Defendants Borough of Fair Lawn and/or Borough of Fair Lawn Police Department.

9. On or about December 29, 2008, Plaintiff, also being a Fair Lawn Rescue Squad member, attended a bachelor party in the hall/bar area of the Rescue Squad Building at which female dancers were hired as entertainment.

10. Prior to December 29, 2008, similar parties were held in the Rescue Squad Building; and were, in fact, hosted by then Rescue Squad Chief James Van Kruiningen, the current Borough Manager for Defendant Borough of Fair Lawn.)

11. Between 11:00pm and 12:30am of the night of the party, Plaintiff left the party and went home.

12. The next morning, multiple Rescue Squad Members contacted Plaintiff and advised him that an investigation was in the process of being conducted at the Rescue Squad building relating to an incident that occurred at the party after Plaintiff left.

13. One member advised Plaintiff two individuals decided to "do more" with a dancer at the party, did not pay the dancer, and she alleged she was raped.

14. On or about December 30, 2008, Detective Santiago, from the Bergen County Prosecutors Office, and Detective Censullo, from the Fair Lawn Police Department, arrived at Plaintiff's residence.

15. Plaintiff agreed to voluntarily go to the Bergen County Prosecutor's Office in Paramus to be interviewed relating to the incidents of the prior evening.

16. Plaintiff's voluntary statement was recorded, via audio and video mediums, in which Plaintiff explained he was not present when the two Rescue Squad Members "did more" with the dancer.

17. Detective Santiago thanked Plaintiff for his assistance and said in the future be careful around these types of settings as we know you want to become a Police Officer.

18. Plaintiff was then asked to sign a Receipt that he was taking the Rescue Squads' computer back from the Bergen County Prosecutor's Office possession and Plaintiff returned home.

19. Plaintiff never heard from the Bergen County Prosecutors Office again and never spoke to anyone within the Defendant Borough of Fair Lawn Police Department related to this incident.

20. On or about March 29, 2009, Rescue Squad Chief Eric Van Kruiningen, the brother of former Rescue Chief and current Borough of Fair Lawn Manager James Van

Kruiningen, advised Plaintiff that he had to meet with Plaintiff relating to the incident with the female dancers.

21. When Plaintiff reported for the meeting with a witness/representative from the Rescue Squad, Eric Van Kruiningen yelled at Plaintiff stating to the effect that Plaintiff had no right to have anyone present and directed the witness to leave.

22. Mr. Van Kruiningen then issued Plaintiff a suspension paper for 21 days as a result of Plaintiff, a line officer, was in attendance and should not have allowed the party to go on at the Rescue Squad.

23. Plaintiff advised Mr. Van Kruiningen that similar bachelor-type parties were the common practice at the Rescue Squad Building and were, in fact, hosted by his brother for many years

24. Eric Van Kruiningen advised he was being suspended because the particular party “went bad.” to which I replied that I was not present when anything went bad.

25. Plaintiff again advised he was not in attendance when anything “went bad” and fully cooperated with the Bergen County Prosecutor’s Office’s investigation.

26. Plaintiff also advised he wanted to appeal the suspension with the Fair Lawn Rescue Squad Executive Committee which is made up of line officers and association officers.

27. On or about March 29, 2009, Plaintiff attended an appeal consisting of executive committee members which resulted in a tie as to whether Plaintiff should be suspended.

28. After the initial tie vote, Eric Van Kruiningen unilaterally decided to vacate one line officer’s vote against suspension to break the tie and Plaintiff was suspended.

29. In or around September 2014, Plaintiff was hired by Palisades Interstate Parkway Police Department as a Security Officer/Police Officer.

30. Upon information and belief, prior to his hire by the Palisades Interstate Parkway Police Department, a background check and review of his IA file was conducted and there was no issue with his background or internal affairs file relating to the 2008 incident.

31. In or around May 2016, Plaintiff was hired by the Passaic County Sheriff's Department as a Deputy Sheriff.

32. Upon information and belief, prior to his hire by the Passaic County Sheriff's Department, a background check and review of his IA file was conducted and there was no issue with his background or internal affairs file relating to the 2008 incident.

33. In or around July 2016, Plaintiff was certified #5 on the Borough of Fair Lawn Civil Service List for the position of Police Officer.

34. Plaintiff replied to the certification to Borough Manager James Van Kruiningen and included his resume.

35. Thereafter, Fair Lawn Police Lieutenant Michael Uttel approached Plaintiff and advised "I suggest you submit a new resumé with different references."

36. Plaintiff listed as references Fair Lawn Police Captain Robert Kneer and Fair Lawn Police Lieutenant James Corcoran.

37. Upon information and belief, Defendant Borough of Fair Lawn Police Department hired Thomas Spear as a Police Officer off of the Civil Service list.

38. Officer Spear was also in attendance at the bachelor party that occurred at the Rescue Squad Building in 2008.

39. On or about July 5, 2016, Plaintiff received a call on my cell phone from a female individual stating she was with the Record Newspaper and that she was given his name and number from an anonymous individual about issues with the Fair Lawn Police Department's

hirings.

40. Plaintiff explained he had no knowledge of what she was inquiring about and advised that he was not permitted to speak with media as per his employer the Fair Lawn Police Department and terminated the call.

41. Plaintiff then contacted Defendant Chief Glen Cauwels and advised him of the conversation.

42. On or about July 8, 2016, Defendant Chief Cauwels entered the Fair Lawn Police Communications Center and asked to speak with Plaintiff in the Chief's office.

43. During the one on one meeting, Defendant Cauwels asked Plaintiff "What is going on with this media issue as I received an OPRA request from them too?" Chief Cauwels then stated "I am hearing rumors that someone in the department is coaching you and if you want to tell me what's going on prior to speaking to internal affairs we would figure it out. Someone is attempting to fuck me or you, and if it ends up that you are lying, you will never become a police officer!"

44. Captain Ronald Patterson and Lieutenant Joseph Dawicki conducted an Internal Investigation and it was "Not Sustained" as the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

45. Prior to the investigation, Plaintiff was provided a letter of target and a letter of outcome in compliance with NJ Attorney General Guidelines for Internal Affairs.

46. Plaintiff advised Fair Lawn Police Lieutenants James Corcoran and Derek Bastinck that Chief Cauwels stated that if it ends up that Plaintiff was lying, he would never become a police officer.

47. In or around March 2017, Plaintiff was certified #3 by Borough of Fair Lawn for

Police Officer from the Civil Service List.

48. Upon information and belief, the individual certified #2 on the list did not respond, resulting in Plaintiff being #2 on the list.

49. Defendant Chief Cauwels advised Plaintiff that he spoke to the Fair Lawn Borough Manager about Plaintiff and advised there was no reason not to hire Plaintiff if they got to him on the list.

50. On or about May 19, 2017, the Fair Lawn Police Officer Certification was cancelled by Borough Manager James Van Kruiningen through the Civil Service Commission for reason of "Not filling a vacancy." It should be noted that certifications for police officer are valid for six months, and that this cancellation was four months prior to when it would have expired.

51. On or about July 6, 2017, Lieutenant James Corcoran wrote Plaintiff up for being three minutes late to work.

52. Lieutenant Corcoran advised Plaintiff that he would never have written Plaintiff up but was ordered to write Plaintiff up by Captain Kneer.

53. Captain Kneer advised Plaintiff that he would never have written Plaintiff up but was ordered to write Plaintiff up by Chief Cauwels.

54. On or about September 5, 2017, Fair Lawn Borough Manager James Van Kruiningen requested permission from the Council to hire a police officer for November 01, 2017 as requested by Police Chief Glen Cauwels.

55. At the time of the new hiring, the cancelled certified police officer list from civil service would have been active through September 2017.

56. In or around October 2017, North Haledon Police Department came to the Fair

Lawn Police Department in order to conduct a background investigation on Plaintiff for a part time paid police officer position within North Haledon.

57. During North Haledon's investigation, they met with Captain Ronald Patterson to review Plaintiff's internal affairs and are shown Plaintiff's internal affairs folder and see the entire Rescue Squad Investigation. Plaintiff never heard back from North Haledon.

58. Prior to its review of Plaintiff's Internal Affairs file, North Haldeon Police provided Plaintiff a conditional offer of employment for the vacant position.

59. On or about November 17, 2017, the New Jersey Institute of Technology Police Chief advised Plaintiff he was precluded from their vacant police officer position due to information received in his Internal Affairs file.

60. On or about December 19, 2017, River Edge Police Department came to speak with Plaintiff's Fair Lawn Police Supervisor Lieutenant Brian LaRosa in association with background investigation on Plaintiff for a vacant Police Officer position in River Edge.

61. Fair Lawn Police Captain Ronald Patterson advised Plaintiff following his meeting with the River Edge Officers; "I told them Andrew is an excellent employee who I always rely on and if we got to him on our list he would have been hired in Fair Lawn as a Police Officer. I also advised them that even though you were not involved in the complaint of the Rescue Squad allegation, he was involved in the investigation and that I have never looked through the entire report and do not know much about it."

62. Plaintiff was not selected for the River Edge position.

63. On or about January 23, 2018, Plaintiff and his then attorney, James Patuto, Esq., met with Defendant Chief Glen Cauwels to review Plaintiff's internal affairs folder to ascertain what information in it was problematic.

64. Contained within Plaintiff's Internal Affairs file for the Police Department was the complete Rescue Squad investigation including original documents, statements that specifically state the 2 other individuals who were the subject of the investigation and lists Plaintiff as a witness who was in attendance.

65. Plaintiff was never notified he was the subject of an Internal Affairs investigation, never received a target letter, never advised an investigation was being conducted against him, never advised Plaintiff of charges against him, and never advised of the disposition of any charges against him.

66. On or about February 3, 2018, Plaintiff requested that an Internal Affairs investigation be conducted to determine how the Rescue Squad investigation was placed in Plaintiff's Internal Affairs file, when the file was accessed, by whom was it accessed, and what was removed.

67. Upon information and belief, no such investigation has been conducted.

68. Upon information and belief, no such request for an investigation of the Internal Affairs office was forwarded to the Bergen County Prosecutor's Office.

69. Upon information and belief, Defendant Chief Cauwels, while acting under color of State law, directly or indirectly by conspiring with and directing other officers to, removed the entire Rescue Squad investigation from Plaintiff's Confidential file and placed it in Plaintiff's Internal Affairs file without any notice to Plaintiff.

70. On or about February 13, 2018, Plaintiff contacted retired Captain Serrao, former Internal Affairs Officer within the Defendant Borough of Fair Lawn Police Department, relating to the Rescue Squad investigation.

71. Captain Serrao advised Plaintiff that the investigation was not an internal affairs

investigation, Plaintiff was not the subject of the investigation, it was a confidential investigation, and the investigation was placed within the confidential investigation file cabinet not Plaintiff's Internal Affairs file.

72. Captain Serrao further advised that he, as the Department's Internal Affairs Officer at the time of the investigation in question, never placed it in Plaintiff's Internal Affairs folder because it did not belong in Plaintiff's Internal Affairs folder because Plaintiff was just a witness.

73. Captain Serrao advised that his letter to Fair Lawn Police Chief Rose about a suggested six month suspension and charges for the Rescue Squad was because Chief Rose ordered him to write Plaintiff up.

74. Captain Serrao advised further to the effect if it was an internal affairs investigation Plaintiff would have received a target letter, possible charges letter and a final outcome letter and since Plaintiff was never a target at any time nor was it an internal investigation at any time, Plaintiff was never given those letters.

75. Upon information and belief, the full investigation from the Rescue Squad was removed from the confidential files and placed in Plaintiff's Internal Affairs file.

76. Although the Notice of Suspension is contained within Plaintiff's Rescue Squad File, it was never placed in Plaintiff's Internal Affairs file.

77. However, Attorneys for the Borough of Fair Lawn, presumably acting on behalf of their client Defendant of Fair Lawn threatened Plaintiff that if he continued to pursue this matter, the Notice of Suspension contained within the Rescue Squad folder will be placed in his Police Department Internal Affairs File.

78. As a direct and proximate result of Defendants' conduct, Plaintiff suffered and continues to suffer substantial loss of income and other pecuniary harm; diminishment of career opportunity; loss of self-esteem; disruption of his family life; emotional trauma and distress; physical manifestations of pain and suffering and other irreparable harm.

COUNT ONE

(42 U.S.C. Section 1981 and 1983 *et seq.*)

79. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 78 of the Complaint as if set forth at length herein.

80. The foregoing actions of Defendants, acting under the color of law, subjected Plaintiff to the deprivation of his constitutional rights in violation of 42 U.S.C. Section 1981 and 1983.

81. Defendant, Glen Cauwels is a person who, while acting under color of law, was performing his duties, whether in compliance with federal and/or state laws, or contrary to the same, or within his exercise of professional discretion and has, as a result of his actions, caused detrimental harm to Plaintiff by infringing upon his Fourteenth Amendment rights and privileges.

82. Plaintiff has suffered and continues to suffer irreparable damages by the actions of these Defendants.

83. Plaintiff's constitutionally protected activities, as previously alleged herein, continue to the day of the filing of the Complaint.

84. Through Defendants' repeated illegal acts, Plaintiff's exercise and enjoyment of these rights and privileges have been interfered with or attempted to be interfered with by threats,

intimidation, harassment, or coercion by persons acting under the color of law.

85. Defendants' conduct were taken pursuant to an official and extant policy and practice of Defendants, and were taken by individuals with final policymaking authority over such actions.

86. Defendants' intentional, reckless, willful and unlawful actions have repeatedly and continuously deprived Plaintiff of his rights secured and guaranteed by federal and State law.

87. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's civil rights, and Plaintiff is therefore entitled to punitive damages under applicable law.

88. As a direct and proximate result of Defendants' illegal and wrongful actions, described herein, Plaintiff has suffered and continues to suffer economic, non-economic, and emotional distress damages, physical manifestations of pain and suffering, anxiety, ridicule, embarrassment, public humiliation, loss of compensation, loss of earnings, loss of standing in the community, legal expenses, and other irreparable harm and expenses as a result of defendants' actions.

WHEREFORE, Plaintiff, Andrew Flax, prays for judgment against Defendants, jointly and severally, as follows:

- A. For money damages for all economic losses including, but not limited to, lost, past and future salary and fringe benefits;
- B. For compensatory damages;
- C. For punitive damages;
- D. For emotional distress damages;

- E. For physical manifestations of pain and suffering;
- F. For attorneys' fees and costs of this action;
- G. For interest at the maximum legal rate on all sums awarded;
- H. For Consequential damages; and
- I. For such other and further relief as the Court deems just and proper.

COUNT TWO

(New Jersey Civil Rights Act, *N.J.S.A. 10:6-1 et seq*)

89. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 88 of the Complaint as if set forth at length herein.

90. Defendants' actions are in violation of the New Jersey Civil Rights Act, *N.J.S.A. 10:6-1 et seq.*

91. Defendants' collective conduct as alleged herein violate Plaintiffs' rights secured by the New Jersey State Constitution of 1947.

92. The foregoing actions of Defendants, acting under the color of law, subjected Plaintiff to the deprivation of his constitutional rights in violation of 42 U.S.C. Section 1981 and 1983.

93. Defendant, Glen Cauwels is a person who, while acting under color of law, was performing his duties, whether in compliance with federal and/or state laws, or contrary to the same, or within his exercise of professional discretion and has, as a result of his actions, caused detrimental harm to Plaintiff by infringing upon his Fourteenth Amendment rights and privileges.

94. Plaintiff has suffered and continues to suffer irreparable damages by the actions of these Defendants.

95. Plaintiff's constitutionally protected activities, as previously alleged herein, continue to the day of the filing of the Complaint.

96. Through Defendants' repeated illegal acts, Plaintiff's exercise and enjoyment of these rights and privileges have been interfered with or attempted to be interfered with by threats, intimidation, harassment, or coercion by persons acting under the color of law.

97. Defendants' conduct were taken pursuant to an official and extant policy and practice of Defendants, and were taken by individuals with final policymaking authority over such actions.

98. Defendants' intentional, reckless, willful and unlawful actions have repeatedly and continuously deprived Plaintiff of his rights secured and guaranteed by federal and State law.

99. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's civil rights, and Plaintiff is therefore entitled to punitive damages under applicable law.

100. As a direct and proximate result of Defendants' illegal and wrongful actions, described herein, Plaintiff has suffered and continues to suffer economic, non-economic, and emotional distress damages, physical manifestations of pain and suffering, anxiety, ridicule, embarrassment, public humiliation, loss of compensation, loss of earnings, loss of standing in the community, legal expenses, and other irreparable harm and expenses as a result of defendants' actions.

WHEREFORE, Plaintiff, Andrew Flax, prays for judgment against Defendants, jointly and severally, as follows:

- A. For money damages for all economic losses including, but not limited to, lost, past and future salary and fringe benefits;
- B. For compensatory damages;
- C. For punitive damages;
- D. For emotional distress damages;
- E. For physical manifestations of pain and suffering;
- F. For attorneys' fees and costs of this action;
- G. For interest at the maximum legal rate on all sums awarded;
- H. For Consequential damages; and
- I. For such other and further relief as the Court deems just and proper.

COUNT THREE

(42 U.S.C. Section 1985 *et seq.*)

101. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 100 of the Complaint as if set forth at length herein.

102. Defendants have entered into conspiracies with each other, at one time or another, to deprive Plaintiff, either directly or indirectly, of his privileges and immunities under the law, specifically Plaintiff's civil rights as guaranteed by the Fourteen Amendments of the United States Constitution.

103. 42 USC Section 1985 provides, in pertinent part: "If two or more persons in any state or territory conspire with the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the law, or of equal privileges or immunities under the laws...whereby another is injured . . .or deprived of having and exercising any right or privilege of a citizen of the United States, the party injured or

deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

104. The illegal actions as described hereinabove by Defendants constitute an infringement upon Plaintiff's rights as secured by the Fourteenth Amendment of the United States Constitution and provisions of the New Jersey Constitution, in violation of 42 U.S.C. 1985.

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

106. The foregoing actions were knowing, willful, deliberate and represent a collaborative effort of the Defendants to violate the laws and deprive Plaintiff of his civil rights, and Plaintiff is therefore entitled to punitive damages under applicable law.

107. Defendants have engaged in behavior that violates Plaintiff's constitutional rights and have thereby irreparably injured Plaintiff.

108. The foregoing actions were knowing, willful and deliberate violations of law and deprivations of Plaintiff's civil rights, and Plaintiff is therefore entitled to punitive damages under applicable law.

109. As a direct and proximate result of Defendants' illegal and wrongful actions, described herein, Plaintiff has suffered and continues to suffer economic, non-economic, and emotional distress damages, physical manifestations of pain and suffering, anxiety, ridicule, embarrassment, public humiliation, loss of compensation, loss of earnings, loss of standing in the community, legal expenses, and other irreparable harm and expenses as a result of defendants' actions.

WHEREFORE, Plaintiff, Andrew Flax, prays for judgment against Defendants, jointly and severally, as follows:

- A. For money damages for all economic losses including, but not limited to, lost, past and future salary and fringe benefits;
- B. For compensatory damages;
- C. For punitive damages;
- D. For emotional distress damages;
- E. For physical manifestations of pain and suffering;
- F. For attorneys' fees and costs of this action;
- G. For interest at the maximum legal rate on all sums awarded;
- H. For Consequential damages; and
- I. For such other and further relief as the Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Court Rule, R. 4:25-4, it is hereby asserted that Robert A. Tandy, Esq. is designated trial counsel for the trial of this action.

DEMAND FOR TRIAL BY JURY

Plaintiff, Andrew Flax, herein demands a trial by jury on all issues.

DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS

Pursuant to R. 4:10-2(b), demand is hereby made that you disclose and make a copy to the undersigned of any insurance agreements or policies applicable to this action.

LAW OFFICE OF ROBERT A. TANDY, LLC
Attorney for Plaintiff

ROBERT A. TANDY
ROBERT A. TANDY, ESQ.

Dated: June 12, 2018

CERTIFICATION PURSUANT TO R.4:5-1 & 1:38-7(b)

I certify that the above matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, and I have no knowledge that any other action or arbitration proceeding is contemplated. To the best of my knowledge, no other party should be joined in this action. I further certify that confidential personal identifiers have been redacted in accordance with Rule 1:38-7(b).

LAW OFFICE OF ROBERT A. TANDY, LLC
Attorney for Plaintiff

ROBERT A. TANDY
ROBERT A. TANDY, ESQ.

Dated: June 12, 2018