

SCIARRA & CATRAMBONE, L.L.C.
Christopher A. Gray, Esq.
Attorney ID No. 014682007
100 Horizon Center Blvd
Hamilton, New Jersey 08691
Attorney for Plaintiff Frank Marchione

FRANK MARCHIONE,

Plaintiff,

Vs.

BOROUGH OF HIGHTSTOWN,

Defendants.

:
:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MERCER COUNTY
:
: CIVIL ACTION
:
: DOCKET NO. MER-L-1748-17
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ACKNOWLEDGMENT OF SERVICE

Service of the Summons and Complaint in the above captioned matter by Defendants
Borough of Hightstown are hereby acknowledged this

_____ day of _____ 2017.

Amy Guerin, Esq.
On Behalf of Defendants

SUMMONS

Attorney(s) Christopier A. Gray, Esq.
Office Address Sciarra and Catrambone, LLC
Town, State, Zip Code 100 Horizon Centner Blvd
Hamilton, New Jersey 08691
Telephone Number 856-888-7066
Attorney(s) for Plaintiff Frank Marchione

Superior Court of New Jersey

Mercer ☒ County
Law Division

Docket No: MER-L-001748-17

Plaintiff(s)

vs.

Borough of Hightstown

Defendant(s)

CIVIL ACTION SUMMONS

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. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

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

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

Clerk of the Superior Court

DATED: 08/11/2017

Name of Defendant to Be Served: Borough of Hightstown

Address of Defendant to Be Served: c/o Amy Guerin, Esq. Parker McCay 1009 Lennox Dr. Lawrenceville, NJ 08648

SCIARRA & CATRAMBONE, L.L.C.
Christopher A. Gray, Esq.
Attorney ID No. 014682007
100 Horizon Center Blvd
Hamilton, New Jersey 08691
Attorney for Plaintiff Frank Marchione

FRANK MARCHIONE,
Plaintiff,

Vs.

BOROUGH OF NIGHTSTOWN,

Defendants.

:
:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MERCER COUNTY
:
: CIVIL ACTION
:
:
: DOCKET NO.
:
:
: COMPLAINT
: & JURY DEMAND
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Plaintiff Frank Marchione ("Plaintiff" or "Marchione"), by and through his attorneys, Sciarra & Catrambone, LLC, by way of the within Complaint, alleges and says as follows:

PRELIMINARY STATEMENT

1. This is an action brought by Plaintiff against his employer Borough of Nightstown ("Defendant"). Plaintiff seeks judgment of this Court against Defendants for relief permitted under the New Jersey Law Against Discrimination ("LAD") under N.J.S.A. 10:5-1, et seq.

PARTIES

2. At all times relevant to the within Complaint, Plaintiff is an employee of Defendants within the meaning of the LAD.
3. At all times relevant to this Complaint, Defendants are employers within the meaning of the LAD.
4. Defendant Borough of Hightstown is a political subdivision and a public entity located in the County of Mercer, State of New Jersey.

JURISDICTION

5. Jurisdiction is properly laid in this Court in that Defendants are subject to personal jurisdiction in the State of New Jersey and the events giving rise to the Complaint occurred within the County of Mercer.

STATEMENT OF FACTS

6. Plaintiff was hired by the Hightstown Borough Police Department and started employment on January 1, 2001.
7. Prior to working for the Hightstown Borough Police Department Plaintiff was a police officer for the Middlesex County College from July of 1998 through December of 2000.
8. On June 14, 2013, while working on duty for the Hightstown Police Department, Plaintiff was confronted by Deputy Chief Scott Jenkins of the Hightstown Fire Department at the Police Station.

3. Deputy Chief Jenkins confronted Plaintiff regarding a relationship that Plaintiff had with his ex-girlfriend at the time named Missy some time in 2007.
10. Deputy Chief Jenkins was yelling and screaming at the top of his voice which was witnessed by other officers from the Hightstown Police Department.
11. During the course of the verbal assault Deputy Chief Jenkins threatened Plaintiff, "I am going to fuck you up, you fucked with the wrong person, I am going to ruin your life and get you fired. You know Missy will swear to fucking you on duty and that will get you fired and I am telling Bree you cheated on her. You fucked the wrong guy and you're going to pay. How about I fuck your wife so the rest of your life whenever you fuck her you can picture my dick in her?"
12. During this verbal assault, on the side of the Police Department, Plaintiff kept his hands under his vest and did not respond.
13. After the confrontation at the Police Station ended Plaintiff started to receive text messages from Deputy Chief Jenkins that reiterated the threats to Plaintiff, his family and his career.
14. At about 21:45 hours on June 14, 2013 Deputy Chief Jenkins sent a text message that he had just left Plaintiff's house.

15. Plaintiff immediately became panicked and scared as to what the Deputy Fire Chief was doing at Plaintiff's house after having just threatening to rape Plaintiff's wife.
16. Deputy Chief Jenkins went to the Plaintiff's home. Jenkins was irate and scared the Plaintiff's son.
17. Plaintiff immediately called the Monroe Police Department to have them patrol his neighborhood and to look out for Deputy Chief Jenkins' vehicle.
18. Plaintiff concluded his shift and went home.
19. The Monroe Police Department had escorted his family to a neighbor's house.
20. Plaintiff was relieved when he got home to see that his wife and children were not harmed.
21. Over the next few days Plaintiff remained at home with his wife and children. Plaintiff feared for his family, career, and personal well-being after the threats from Deputy Chief Jenkins.
22. Plaintiff became hyper vigilant and felt he needed to protect his family.
23. Plaintiff did not sleep for approximately four days straight.
24. Plaintiff called out of work for fear of leaving his family and leaving them unprotected.
25. Plaintiff's condition deteriorated due to the lack of sleep and constant concern for the safety of his family.

26. On June 18, 2013, Plaintiff sent a text message to his supervisor and officer in charge of the Hightstown Police Department Lieutenant Gendron stating "I need U".
27. Lieutenant Gendron appeared shortly thereafter at Plaintiff's house and they had a long discussion about Plaintiff's emotional state, Plaintiff told Gendron that Plaintiff needed to go speak with somebody and had asked to be taken over to the Crisis Center.
28. Lieutenant Gendron then escorted Plaintiff to the Crisis Center where Plaintiff spoke to the intake staff.
29. The intake staff discussed what had gone on over the past few days and Plaintiff described to them the emotional roller coaster he had been on and how Plaintiff just wanted to sleep and needed to talk to somebody.
30. Plaintiff was asked if he wanted to harm anybody. Plaintiff responded that he was thinking of self-defense scenarios where he may have to kill Deputy Chief Jenkins if he comes back to his house and follows through on his threat to Plaintiff's family.
31. Plaintiff voluntarily signed up to go into inpatient therapy. He was transferred to Princeton House where Plaintiff received intensive inpatient and outpatient treatment.

32. On June 19, 2013, Deputy Chief Jenkins approached Police Director LeTellier and relayed that he wanted Plaintiff to "map up" and fight him so that he could "kick his ass."
33. On June 24, 2013, Deputy Chief Jenkins told Police Director LeTellier that he wanted to assault Plaintiff again.
34. In a memo dated August 9, 2013, Police Director LeTellier stated, "It is clear that he (Jenkins) will confront Officer Marchione in an attempt to fight him."
35. Defendant failed to take any action to protect Plaintiff from these threats of violence.
36. Defendant took no action to warn Plaintiff of this threat and no action against Deputy Chief Jenkins.
37. On July 18, 2013, at the end of the course of treatment, Plaintiff's treating physician, Dr. Lorna Stanley, cleared him to return to full duty, without restrictions, with the Police Department.
38. Plaintiff was diagnosed with having acute stress disorder by Princeton Behavioral Health.
39. Highstown Borough was immediately made aware the Plaintiff was cleared to return to duty.
40. Plaintiff continued to treat with Dr. Michael Bizzaro for over two years from his discharge from Princeton House.
41. Treatment with Dr. Bizzaro only ceased after Plaintiff was terminated and his health benefits were cancelled.

42. Defendant proceeded to send Plaintiff to a fitness for duty evaluation with the Plainfield Consultation Center.
43. The Plainfield Consultation Center had previously evaluated and cleared Plaintiff for his pre-employment screenings for employment with Middlesex County College Police and the Righstown Police Department.
44. Plaintiff attended the evaluation at the Plainfield Consultation Center on July 11, 2013.
45. Prior to the evaluation with the Plainfield Consultation Center, Lt. Gendron provided information related to the June 14, 2013 incident as well as the June 18, 2013, "I need U" text.
46. Lt. Gendron also provided the Plainfield Consultation Center with a four page report containing information related to the admission of Plaintiff at the crisis center.
47. Plaintiff successfully completed the evaluation and was recommended to be able to return to work and to be retrained on July 15, 2013.
48. Not satisfied with the result, Lt. Gendron contacted the Plainfield Consultation Center and convinced them to withdraw their decision on July 18, 2013.
49. In an e-mail from June 18, 2013, withdrawing the opinion, Dr. Jack Aylward provided specific information to form the basis for the withdrawal of the opinion.

50. After a meeting with the Mercer County Prosecutor's Office, on August 21, 2013, Deputy First Assistant Prosecutor Caluchie authored a letter, without having a completed fitness for duty evaluation, not authorizing Plaintiff to carry a firearm or return to duty.
51. The letter from the Mercer County Prosecutor's Office was not provided to Plaintiff by Defendant.
52. On August 22, 2013 Plaintiff received a notice from James K. Lefebvier, Police Director, suspending him with pay.
53. Lt. Gendron in 2013 told other officers in the police department he will ensure that Officer Marchione never works in the police department again.
54. On October 6, 2013 the Defendants informed Plaintiff he was under investigation for allegedly engaging in sexual activities on duty.
55. On October 11, 2013 Plaintiff, was informed that the Mercer County Prosecutor's Office was requested by the Borough of Hightstown to investigate alleged criminal actions.
56. Plaintiff and Defendant, in conjunction with the Mercer County Prosecutor's Office agreed to send Plaintiff to Dr. Dennis Sandrock to get another fitness for duty report.

57. Dr. Sandrock¹ is a licensed psychologist who works for Middlesex County. Dr. Sandrock performs all fitness for duty evaluations for law enforcement officers in Middlesex County including the Sheriff's Department, Corrections Department, and Juvenile Justice Officers. Dr. Sandrock also performs fitness for duty evaluations for the State of New Jersey Department of Human Services Police Department. Dr. Sandrock is also an expert for the Superior Court in Middlesex County who conducts risk assessments on defendants in the bail process.
58. On December 19, 2013, Plaintiff attended the evaluation with Dr. Sandrock.
59. Dr. Sandrock contacted Dr. Bizzaro, Plaintiff's treating psychologist.
60. Dr. Sandrock rendered a report finding Plaintiff fit for duty, having suffered from an acute stress disorder which was treated and resolved.
61. After the examination, the report was sent by Plaintiff to Deputy First Assistant Prosecutor Galichie on January 13, 2014.
62. Deputy First Assistant Prosecutor Galichie referred the report to Hightstown via e-mail on January 23, 2014.

¹ Dr. Sandrock had never conducted a fitness for duty examination for a private individual before Plaintiff.

63. On January 28, 2014, Deputy First Assistant Prosecutor Galuchie demanded via e-mail that Lt. Gendron from the Hightstown Police Department have direct access to Dr. Sandrock.
64. Galuchie threatened if Plaintiff refused to allow Lt. Gendron to communicate with Dr. Sandrock, Defendant and the Mercer County Prosecutor's Office would disregard Dr. Sandrock's report completely.
65. Faced with no alternative, Plaintiff, despite his concern that Lt. Gendron was going to try to dissuade Dr. Sandrock like they had done to the Plainfield Consultation Center, agreed to allow the direct contact between Lt. Gendron and Dr. Sandrock.
66. Dr. Sandrock completed a meeting with Lt. Gendron on March 3, 2014.
67. On March 10, 2014, Lt. Gendron produced an investigative report relating to the June 14, 2013 incident involving Plaintiff and Hightstown Fire Chief Scott Jenkins. Defendant never indicated that an investigation was completed or a report generated about the June 14, 2013 confrontation and June 18, 2013 crisis of Plaintiff.
68. Plaintiff objected to the report and the contents of same on March 10, 2014 in an e-mail to Deputy First Assistant Prosecutor Galuchie. Plaintiff raised the issue that Lt. Gendron was not impartial and his actions involving Plaintiff were biased.

69. Despite the objections of Plaintiff, the Mercer County Prosecutor's Office demanded Dr. Sandrock review Lt. Gendron's report.
70. Dr. Sandrock reviewed additional materials submitted by Hightstown and re-interviewed Plaintiff on March 26, 2014.
71. Dr. Sandrock also interviewed Bree Marchione, and followed up again with Dr. Bizzaro.
72. On April 7, 2014, Dr. Sandrock issued an addendum opinion finding Officer Marchione fit for duty.
73. The report was immediately sent to Deputy First Assistant Prosecutor Galuchie on April 7, 2014 by e-mail.
74. On April 14, 2014, Deputy First Assistant Prosecutor Galuchie informed Plaintiff's counsel by e-mail that the Mercer County Prosecutor's Office (Hereinafter "MCPO") was waiting for Hightstown to respond to the fitness for duty report before rendering an opinion.
75. On April 30, 2014, the MCPO issued a letter to Plaintiff closing any and all criminal investigations into Plaintiff.
76. The MCPO, on April 30, 2014, also found that Lt. Gendron was conflicted from participating in the investigation into Plaintiff regarding the June 14, 2013 incident.
77. Lt. Gendron's conflict existed when Plaintiff sent him the "I need U" text message. While in conflict Lt. Gendron successfully lobbied the Plainfield Consultation Center to reverse their

fitness determination, and attempted to do the same with Dr. Sandrock.

78. On May 19, 2014, the MCPO, in a letter to Defendant only, decided based on Defendant's insistence, not to accept Dr. Sandrock's report.

79. Despite meeting all of the Defendant's demands during the evaluation process the results were disregarded without explanation.

80. Defendant then demanded another fitness for duty evaluation with Dr. Gary Glass. The evaluation was to take place in May 2014.

81. On May 22, 2014, Plaintiff's counsel received a facsimile from Thomas M. Barron, Esq. who was labor counsel for Hightstown Borough. The cover page of the fax asked that Plaintiff provide Defendant with the data and materials that were provided to Dr. Sandrock. The materials asked for were acquired from Dr. Sandrock and it was all forwarded to Mr. Barron on June 4, 2014.

82. On July 19, 2014, Plaintiff received a letter from Elizabeth Garcia, Esq. substituting as labor counsel for Hightstown requesting the testing answer sheets from Dr. Sandrock. Those materials were produced to Ms. Garcia on the date the letter was received, July 18, 2014.

83. On August 12, 2014, Plaintiff was interviewed for the first time related to the June 14, 2013 incident and subsequent days.

84. By September 10, 2014, Defendant had taken no actions regarding Plaintiff, prompting the filing of Marchione v. Borough of Hightstown, DKT. MER-L-1986-14.

85. The complaint sought immediate reinstatement for violations of N.J.S.A. 40A:14-147.

86. Unaware of the Defendant's rejection of Dr. Samircock's opinion, on July 18, 2014, Plaintiff inquired of the MCEO by e-mail as to the location of his firearms ID card.

87. On July 25, 2014, Plaintiff's counsel sent a letter to the MCEO. The letter stated:

Further my client is interested in getting back his firearms I.D. card. There is a question as to who is in possession of it. The Hightstown Police Department has alluded that the Prosecutor's Office is in possession of it. Can you please verify if you are in possession of it and contact me so we can arrange to have the firearms I.D. card returned to my client.

88. On July 30, 2014, Deputy First Assistant Prosecutor Glauchie responded to the firearm ID inquiry as follows, "Hightstown PD has always been in possession of Marchione's firearms ID card. Please be advised that since the card was issued by Robbinsville and Marchione lives in Monroe, it will not be returned to him."

89. On July 30, 2014, in a follow up e-mail, Deputy First Assistant Prosecutor Glauchie confirmed that Plaintiff would have to seek his firearms ID card from Monroe, where Plaintiff was living.

90. On July 31, 2014, Deputy First Assistant Prosecutor Glauchie further invited Plaintiff to acquire his firearms ID card with the following e-mail message, "Chris, the original was from South Brunswick, not Robbinsville, but he would still need to go to Monroe."
91. On July 31, 2014, Deputy First Assistant Prosecutor Glauchie further clarified by e-mail that the firearms ID would not transfer from Plaintiff's old municipality to his new one and suggested it may be because of municipalities seeking a fee.
92. On August 6, 2014, Deputy First Assistant Prosecutor Glauchie was informed directly by e-mail that Plaintiff had applied for his firearms ID card in Monroe and that Monroe would probably contact Deputy First Assistant Prosecutor Glauchie.
93. On August 12, 2014, Deputy First Assistant Prosecutor Glauchie e-mailed Plaintiff's counsel regarding the Dr. Glass examination.
94. On September 11, 2014, after Monroe Township and the Middlesex County Prosecutor's Office reviewed all of the available materials regarding Plaintiff and issued a firearms ID card, the MCPD was informed by e-mail that the firearms ID card was issued to Plaintiff.
95. Plaintiff was not scheduled to see Dr. Glass until October 2, 2014 and October 3, 2014. Dr. Glass's report was not issued until December 26, 2014.

96. On October 30, 2014 the MCPO sent a letter to Plaintiff advising that the MCPO would not endorse Dr. Sandrock's opinion regarding fitness and Plaintiff should not have his firearms ID card.
97. The October 30, 2014 MCPO letter also alleges Plaintiff provided false information to Dr. Sandrock, without any materials supporting that conclusion.
98. On October 30, 2014, the MCPO was sent a letter from Plaintiff's counsel regarding the firearms ID card. The letter advised the there was no report finding Plaintiff unfit for duty. Further, Plaintiff would be keeping his weapons and ID card unless notified that they were being revoked.
99. The MCPO never took any action to remove Plaintiff's firearms ID card.
100. On November 16, 2014, the MCPO was advised by e-mail that a conference call was scheduled regarding Plaintiff's complaint filed to end his suspension without pay.
101. On December 26, 2014, Dr. Gary Glass rendered an opinion finding Plaintiff unfit for duty.
102. On January 7, 2015 the MCPO adopted Dr. Glass's opinion in a letter. The MCPO did not address Plaintiff's firearms ID card and his possession of weapons that he purchased with that card.

103. Ignoring Dr. Sandrock, Dr. Aylward, Dr. Stanley, and Dr. Buzzaro, Defendant issued disciplinary charges seeking termination of Plaintiff on January 21, 2015.
104. After the issuance of disciplinary charges, the Marchione v. Borough of Hightstown, DKT. MER-L-1986-14 litigation was dismissed without prejudice.
105. On January 30, 2015, Plaintiff's counsel sent the MCPO a letter demanding they consent to intervene in the disciplinary hearing or in the alternative. It stated:

Based upon the determination made by the Prosecutor's Office I am inclined to file a Prerogative Writ action challenging the determination of the Prosecutor finding Officer Marchione unfit. In lieu of having to file such an application I am requesting that the Prosecutor's Office confirm that their position in the Marchione matter is that should Officer Marchione go forward with the disciplinary hearing and prevail and be found to be fit for duty by a Hearing Officer or in the subsequent appeal, that the Prosecutor's Office will abide by any determination made by the hearing process.

If the Prosecutor's Office takes the position that their determination will remain regardless of the outcome of the disciplinary hearing then I will be forced to file the Prerogative Writ to challenge the determination of the Prosecutor's Office at the same time as I am fighting the disciplinary charges filed against my client by Hightstown.

106. On February 2, 2015, the MCPO sent an e-mail that stated:
"I'll send a letter stating that we will abide by the hearing officer's decision."
107. On February 4, 2015, Lt. David McGuinness of the MCPO, the conflict investigator, issued his final report related to the investigations into Plaintiff.
108. The MCPO report found the allegations related to untruthfulness to be not sustained.
109. The MCPO failed to audio record any statements taken from Deputy Chief Scott Jenkins.
110. On February 4, 2015, the MCPO issued a letter, after the report of Dr. Glass, which stated, "Please be advised that this office will abide by the hearing officer's determination regarding Officer Marchione's fitness for duty, as well as any subsequent decision made on appeal."
111. On February 9, 2015, Dr. Collin, a psychiatrist, found Plaintiff fit for duty. This report was submitted to Deputy First Assistant Prosecutor Galuchie and Defendant.
112. A disciplinary hearing was held on the fitness for duty charges before a unilaterally hired and paid for hearing officer. Defendant rejected Plaintiff's demand to mutually select a hearing officer or to have one appointed by LCC with shared costs.

113. The disciplinary hearing for the fitness for duty charges was held on February 11, February 20, April 14, and April 15, 2015.
114. On March 9, 2015, Plaintiff was administratively charged with having sex on duty with Melissa Vryhal.
115. A hearing on the alleged sex on duty occurred on June 18, 2015 and August 27, 2015.
116. The hearing officer dismissed the charges on August 27, 2015.
117. Defendant adopted the dismissal of the sex on duty allegations.
118. Plaintiff filed suit to collect his counsel fees related to the alleged sex on duty. The matter was captioned Marchione v. Borough of Hightstown, MER-L-2765-15.
119. On January 27, 2016 the Hon. Douglas Mudd, J.S.C. awarded counsel fees to Plaintiff.
120. On the fitness for duty charges, based on the limited record presented, and the fact that Plaintiff did not testify, the hearing officer recommended termination of Plaintiff on September 8, 2015.
121. From August 22, 2015 through September 22, 2015 Plaintiff was suspended with pay.
122. Plaintiff was terminated from employment and health benefits September 22, 2015.
123. Plaintiff appealed his termination on October 1, 2015 under N.J.S.A. 40A:14-150 to the Superior Court in Marchione v. Hightstown, MER-L-2253-15.

124. In February 2016, Plaintiff retained Dr. Jennifer Kelly to conduct a fitness for duty evaluation of Plaintiff.
125. In March 2016, Defendant contacted Dr. Jennifer Kelly to conduct a fitness for duty evaluation.
126. On March 25, 2016, Dr. Kelly rendered a report finding Plaintiff fit for duty.
127. On March 31, 2016 Plaintiff attempted to have Defendant stipulate to Dr. Kelly's findings, and acknowledge they tried to retain Dr. Kelly for an evaluation.
128. In May 2016, Defendant attempted to have Plaintiff evaluated by the Institute of Forensic Psychology (Hereinafter "IFP"). Defendant tried to force Plaintiff to attend the evaluation and to waive his right to sue the IFP and record the interview.
129. The IFP has been found to produce inaccurate reports which create a result which the municipality seeks.
130. Through intervention of the Court, Defendant cancelled their plan to send Plaintiff to the IFP.
131. Unable to obtain an evaluator in New Jersey to do their bidding, Defendant contracted with Dr. Barbara Siv to conduct a fitness for duty evaluation.
132. On September 7, 2016, Defendant produced a \$15,000 report from Dr. Siv incredulously declaring Plaintiff a psychopath.
133. A trial de novo was held before the Hon. Mary E. Jacobson, A.J.S.C. on September 27th, 28th and October 4, 2016.

134. On May 5, 2017 the Court reversed the termination of Plaintiff and ordered the immediate reinstatement of Plaintiff. A formal order was issued May 9, 2017.
135. The Court strongly relied on the Dr. Sandrock evaluation to support reinstatement of Plaintiff.
136. After the Court ordered reinstatement, Defendant has refused to reinstate Plaintiff or provide back pay.
137. Plaintiff was awarded \$123,616.16 in counsel fees and costs to defend the fitness for duty matter on May 26, 2017.
138. Plaintiff spent over \$30,617.93 to maintain health benefits for his family and special needs child since he was terminated.
139. Defendant blamed their failure to reinstate Plaintiff on the MCPO's decision not to abide by the Court's May 9, 2017 order granting reinstatement.
140. Plaintiff filed Marchione v. Mercer County Prosecutor's Office, MER-L-1160-17 and received an order removing any objection by the MCPO to Plaintiff's reinstatement.
141. After being forced to produce evidence to support their refusal to reinstate Plaintiff, the MCPO withdrew any allegation of untruthfulness related to the fitness for duty examinations.
142. Despite the MCPO no longer objecting to the reinstatement of Plaintiff, Defendant still refuses to reinstate Plaintiff per the Court's May 9, 2017 order.

COUNT ONE
(LAD - HOSTILE WORK ENVIRONMENT)

143. Plaintiff reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.
144. Defendants' actions are in violation of the New Jersey Law Against Discrimination ("LAD") under N.J.S.A. 10:5-1, et seq.
145. Defendant's actions against Plaintiff created a hostile work environment against Plaintiff because of perceived disability and his resulting membership in a protected class, in violation of the New Jersey Law Against Discrimination under N.J.S.A. 10:5-1, et seq. These actions and activities were unwarranted and uninvited.
146. Defendant's complained of conduct would not have occurred but for Plaintiff's perceived disability. Defendants' conduct was severe and pervasive enough to make a reasonable person believe that the conditions of employment were altered and the working environment was hostile or abusive.
147. Despite repeated requests for these activities to cease, Defendants took no action with regard to ceasing these activities.
148. Defendants' actions and/or inactions constitute a severe or pervasive, and continuing, course of conduct in violation of the LAD.

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

150. Plaintiff has suffered damages resulting in the loss of compensation, loss of earning power, loss of self-esteem, physical injury, mental injury, the loss of opportunities for prospective employment, and is incurring legal expenses and other expenses as a result of Defendants' actions.

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

COUNT TWO
(LAD - DISPARATE TREATMENT / DISCRIMINATION)

152. Plaintiff reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.

153. Defendants' actions against Plaintiff outlined above, including but not limited to termination constitute discrimination and disparate treatment of and against Plaintiff based upon perceived disability in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

154. As outlined above, Defendants, with harassing, retaliatory and discriminatory intent, took adverse employment actions against Plaintiff, while similarly situated employees, who engaged in conduct similar to that which Plaintiff allegedly

engaged in, did not otherwise suffer any adverse employment action.

155. Defendants' actions and/or inactions constitute a severe and/or pervasive, and continuing course of conduct in violation of the LAD.

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

157. Plaintiff has suffered damages resulting in the loss of compensation, loss of earning power, loss of self-esteem, physical injury, mental injury, the loss of opportunities for prospective employment, and is incurring legal expenses and other expenses as a result of Defendants' actions.

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

COUNT THREE
(LAD - FAILURE TO ACCOMMODATE)

159. Plaintiff reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.

160. Defendant's actions against Plaintiff constitute a failure to accommodate Plaintiff because of and based on his disability and/or handicap status in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. Defendants

failed to engage in the interactive process with Plaintiff with respect to his requests to Defendants for a reasonable accommodation for his disability and/or handicap under the LAD.

161. Defendants' actions and/or inactions, which were without any legitimate and/or lawful purpose, were unwarranted and uninvited.

162. Defendants' actions and/or inactions constitute a violation of the LAD.

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

164. Plaintiff has suffered damages resulting in the loss of compensation and benefits, loss of earning power, loss of self-esteem, physical injury, mental injury, the loss of opportunities for prospective employment, and is incurring legal expenses and other expenses as a result of Defendants' actions.

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

COUNT FOUR

(LAD - DISCRIMINATION AGAINST PREVIOUSLY HANDICAPPED PERSON)

166. Plaintiff reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.

167. Defendants' actions are in violation of the New Jersey Law Against Discrimination ("LAD") under N.J.S.A. 10:5-1, et seq.
168. Defendant's actions against Plaintiff created a hostile work environment and Plaintiff suffered adverse employment actions including but not limited to the termination of his employment. Defendant took action against Plaintiff because of his former disability and his resulting membership in a protected class, in violation of the New Jersey Law Against Discrimination under N.J.S.A. 10:5-1, et seq. These actions and activities were unwarranted and uninvited.
169. Defendant's complained of conduct would not have occurred but for Plaintiff's former disability. Defendants' conduct was severe and pervasive enough to make a reasonable person believe that the conditions of employment were altered and the working environment was hostile or abusive.
170. Despite repeated requests for these activities to cease, Defendants took no action with regard to ceasing these activities.
171. Defendants' actions and/or inactions constitute a severe or pervasive, and continuing, course of conduct in violation of the LAD.
172. As a result, Plaintiff's statutory rights have been violated and his protections under the law have been eviscerated.

173. Plaintiff has suffered damages resulting in the loss of compensation, loss of earning power, loss of self-esteem, physical injury, mental injury, the loss of opportunities for prospective employment, and is incurring legal expenses and other expenses as a result of Defendants' actions.

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

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a. Awarding Plaintiff damages, including, but not limited to, equitable, punitive and compensatory damages on all lost benefits, wages and rights, including but not limited to front and back pay, as well as all commensurate pension/retirement benefits, medical benefits, and other benefits with respect to Plaintiff's employment, and non-economic damages for emotional distress, any statutory fines, compensation for the adverse tax consequences of a lump sum award, together with both pre-judgment and post judgment interest and attorneys' fees and costs, as well as any enhancements pursuant to the case law, and costs of court;
- b. Awarding Plaintiff reinstatement to his former position as police officer with Defendants with all requisite salary,

seniority, pension, retirement, and medical benefits and other benefits with regard thereto;

c. For an Order of the Court retaining jurisdiction over this action until Defendants have fully complied with the Orders of this Court, and that the Court require Defendants to file such reports as may be necessary to supervise such compliance; and

d. 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 Christopher A. Gray, Esq. is hereby designated as trial counsel.

JURY DEMAND

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

Respectfully submitted,
SCARPA & CATRAMONE, L.L.C.
Attorney for Plaintiff

By: _____

Christopher A. Gray, Esq.

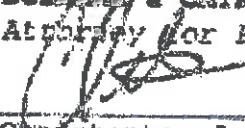
Dated: August 9, 2017

CERTIFICATION PURSUANT TO R. 4:5-1

1. The matter in controversy is the subject of another pending action before in the Appellate Division: Marchione v. Borough of Hightstown, A-3496-16.
2. No other action or arbitration proceeding is contemplated.
3. There are no other parties to be joined in this action at the present time.

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

Respectfully submitted,
SCIARRE & CATRAMONE, L.L.C.
Attorney for Plaintiff

By: 

Christopher A. Gray, Esq.

Dated: August 9, 2017

MERCER COUNTY COURTHOUSE
CIVIL CASE MANAGEMENT OFFICE
175 SOUTH BROAD ST P O BOX 8068
TRENTON NJ 08650-0068

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 571-4490
COURT HOURS 8:30 AM - 4:30 PM

DATE: AUGUST 10, 2017
RE: MARCHIONE FRANK VS BOROUGH OF HIGHTSTOWN N
DOCKET: MER L -001748 17

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 3.

DISCOVERY IS 450 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON JANETTA D. MARRREY

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 008
AT: (609) 571-4456.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: CHRISTOPH A. GRAY
SCIARRA & CATRAMBONE
100 HORIZON CENTER BLVD
HAMILTON NJ 08691

ECOURTS