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Attorney(s) for Plaintiff(s): JOHN F. KIENE

JOHN F. KIENE

Plaintiff(s)

vs.

BOROUGH OF NEW MILFORD, A Corporate Body Politic of
the State of New Jersey; FRANK PAPAPIETRO; and JOHN
DOES NOS. 1-10

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

DOCKET NO. L-4690-12

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. (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 \$135.00 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 toll free hotline at 1-888-LSNJ-LAW (576-5529). 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: June 25, 2012

/s/ Jennifer M. Perez
Jennifer M. Perez

Superior Court Clerk

Name of Defendant To Be Served: Borough of New Milford
c/o Christine Demiriz, Borough Administrator

Address of Defendant To Be Served: Borough of New Milford, Municipal Building
930 River Road, New Milford, NJ 07646

Directory of Superior Court Deputy Clerk Offices

Legal Services of New Jersey statewide toll free hotline 1-888-LSNJ-LAW (576-5529)

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Floor
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main Street
Hackensack, NJ 07601-0769
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 Floor, Court Facility,
49 Rancocas Road
Mount Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(800) 496-4570

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
First Floor, Hall of Records
101 South Fifth Street
Camden, NJ 08103
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 North Main Street
Box DN-209
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
Broad & Fayette Streets, P.O. Box 815
Bridgeport, NJ 08302
LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 461-0003

ESSEX COUNTY:

Deputy Clerk of the Superior Court
50 West Market Street
Room 131
Newark, NJ 07102
LAWYER REFERRAL
(973) 622-6207
LEGAL SERVICES
(973) 624-4600

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Floor, Court House
1 North Broad Street, P.O. Box 750
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-6360

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Courthouse, First Floor
583 Newark Avenue
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) 263-6109
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 South Broad Street, P.O. Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-8200
LEGAL SERVICES
(609) 695-8249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court
Administration Building
Third Floor
1 Kennedy Sq., P.O. Box 2635
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
Court House
71 Monument Park, P.O. Box 1269
Freehold, NJ 07728-1269
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 868-0020

MORRIS COUNTY:

Deputy Clerk of the Superior Court
Civil Division
30 Schuyler Place, P.O. Box 910
Morristown, NJ 07960-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08754
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division Court House
77 Hamilton Street
Paterson, NJ 07605
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY:

Deputy Clerk of the Superior Court
92 Market Street, P.O. Box 18
Salem, NJ 08079
LAWYER REFERRAL
(856) 678-8363
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office, P.O. Box 3000
New Court House, Third Floor
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
First Floor, Court House
2 Broad Street
Elizabeth, NJ 07207-6078
LAWYER REFERRAL
(908) 853-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(908) 387-1835
LEGAL SERVICES
(908) 475-2010

BERGEN COUNTY COURTHOUSE
SUPERIOR COURT LAW DIV
BERGEN COUNTY JUSTICE CTR RM 415
HACKENSACK NJ 07601-7680

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (201) 527-2600
COURT HOURS

DATE: JUNE 20, 2012
RE: KIENE VS NEW MILFORD BOROUGH OF
DOCKET: BER L -004690 12

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 LISA PEREZ-FRISCIA

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003
AT: (201) 527-2600.

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: EDWARD J. NOLAN
NOLAN & BOYAN LLC
LAW OFFICES OF EDWARD J NOLAN
1 UNIVERSITY PLAZA STE 404
HACKENSACK NJ 07601

JUBHUE1

LAW OFFICES OF EDWARD J. NOLAN

One University Plaza, Suite 404

Hackensack, New Jersey 07601

(201) 996-1400

Attorneys for Plaintiff, John F. Kiene

JOHN F. KIENE,

Plaintiff,

v.

BOROUGH OF NEW MILFORD, a corporate
body politic of the State of New Jersey;
FRANK PAPAPIETRO; and JOHN DOE NOS.
1-10,

Defendants.

SUPERIOR COURT BERGEN COUNTY

FILED

JUN 18 2012



**SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION**

DOCKET NO. **L-4690-12**

CIVIL ACTION

**COMPLAINT
AND JURY DEMAND**

Plaintiff, JOHN F. KIENE ("Kiene" or "plaintiff"), residing at 2 Winding Trail,

Township of Mahwah, State of New Jersey NJ 07430, by way of complaint, says:

THE PARTIES

1. Kiene is a 29-year veteran of the Borough of New Milford Police Department ("New Milford PD"). He began his employment as a Patrolman in September 1982, was promoted to the rank of Sergeant in 1994 and promoted to the rank of Lieutenant in June 2002.

2. Defendant Borough of New Milford ("New Milford") is organized, pursuant to law, as the governing body of New Milford with offices for the administration of its governmental functions located at 930 River Road, Borough of New Milford, County of Bergen, and State of New Jersey.

3. At all times relevant to this lawsuit, defendant Frank Papapietro ("Papapietro") was and is Chief of Police of the New Milford PD and a resident of New Milford, New Jersey.

As Chief of Police, Papapietro was and is plaintiff's employer and supervisor within the meaning of the Conscientious Employee Protection Act and, upon information and belief, the source, if not the sole source, of the retaliatory actions described within. Moreover, as Chief of Police, Papapietro aided and abetted the unlawful conduct set forth herein within the meaning of the New Jersey Law Against Discrimination.

4. Defendants John Doe Nos. 1 through 10 are fictitious names of additional individuals who are yet unknown to plaintiff, who participated, directly or indirectly, in the acts, events or conduct set forth herein.

NATURE OF THIS ACTION

5. Kiene brings this action against New Milford and Papapietro pursuant to New Jersey's Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1 et seq., and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., respectively, for adverse employment action taken against him and for discrimination against him on account of age.

JURISDICTION AND VENUE

6. Jurisdiction is properly laid in this Court in that the named defendants are subject to the personal jurisdiction of the Court and the as yet unidentified fictitious defendants, upon information and belief, also are subject to the jurisdiction of this Court. Venue is proper herein because all the events giving rise to the instant claims occurred within the County of Bergen, State of New Jersey.

STATEMENT OF FACTS

7. From 2001 to 2005, the New Milford P.D. had seven administrative officers which included one Captain, one Detective Lieutenant and five Lieutenants. Plaintiff John Kiene was one of the five Lieutenants. In addition, there were six Sergeants during that period of time.

8. However, between 2006 and 2011, the New Milford P.D. had nine retirements, but made no promotions to replace the retirees made up primarily of the ranking officers described above.

9. As a consequence, the New Milford P.D. (which has operated without a Captain since 2006) began operations at the beginning of 2012 with only a handful of ranking officers: Chief of Police (Papapietro), one Lieutenant (Kiene) and six Sergeants.

10. Between 2006 and 2011, there were frequent discussions concerning the lack of rank in the police department between Papapietro and the New Milford P.D. rank and file through the Police P.B.A. as well as discussions between Papapietro and the Governing Body. The P.B.A. pushed for promotions for several years because the effect of the lack of rank was the shrinking group of ranking officers, as well as many patrolmen, were required to work out of title.

11. Kiene has been the *de facto* Captain since 2008, and until very recently, Kiene, as the senior Lieutenant, had been the highest ranking officer of the New Milford P.D. (excepting only Papapietro) since 2008.

12. Moreover, due to the shortage of ranking officers, senior patrolmen were frequently required to command patrol tours which, according to New Milford's Police Policy and Procedures, is the command responsibility of Police Lieutenants.

13. In fact, the absence of ranking officers had reached such a critical stage that Papapietro recently publicly stated the lack of appropriate rank in the New Milford P.D. was exposing the Borough to potential liability.

14. For several years, including as late as year-end 2011, Papapietro proposed promotions of two Captains, five Lieutenants and four Sergeants.

15. During this time, Papapietro had frequently stated orally and in written proposals that he wanted promotions to the rank of Captain as well as to the ranks of Lieutenant and Sergeant. In fact, at a PBA meeting in June 2009, Papapietro publicly stated that he wanted two Captains. Moreover, since at that time there was only two Lieutenants, Kiene and Lt. Raffo, in the police department, he indicated that the promotions would proceed without the need for a test.

16. After Lt. Raffo retired at the end of 2011, Kiene was the only Lieutenant in the New Milford P.D.

17. In January 2012, Papapietro proposed the following promotions which the Governing Body approved and which recently took effect, respectively, in March and April, 2012: five (5) promotions to Lieutenant, and one (1) promotion to the newly created rank of Detective Lieutenant, from the existing pool of six Sergeants, as well as promotions of five (5) patrolmen to the position of Sergeant, and one (1) to the newly created rank of Detective Sergeant.

18. Six Sergeants were automatically promoted. The rationale was six new Lieutenants were required, the six Sergeants proposed for promotion were the only members of the New Milford P.D. who were eligible for promotion to that position and all six sergeants were qualified based on their experience working out of title for several years.

19. The promotion of six patrolmen to, respectively, the ranks of Sergeant and Detective Sergeant, were made following an examination. Six patrolmen, among the eighteen patrolmen who applied, were promoted.

20. Thus, it was understood by Papapietro and the Mayor and Council (as well as the rank and file in the New Milford P.D.) that the men who were promoted had all been working performing out of title work in addition to their titled responsibility and therefore merited their promotions.

21. Kiene was never considered for promotion, let alone recommended for promotion in 2012. When Kiene only learned in or about January 2012 after the matter became public that the proposed 2012 promotions of several junior officers, six Sergeants and six patrolmen , were to be made but that he was not to be promoted to Captain, he protested his omission to Papapietro.

22. Kiene advised Papapietro that he agreed that all of the Sergeants in the New Milford P.D. deserved to be promoted to Lieutenant since they had all been working out of title since the retirements of Lieutenants Boccher, McGrath and Burns.

23. However, Kiene also reminded Papapietro that he had been performing Captain's duties since Captain Gerrity retired in 2006. Furthermore, he had been performing the duties of Captain and was second in command as the ranking Lieutenant of the New Milford P.D. beginning April 1, 2008 when Lieutenant McGrath retired.

24. As the police department's senior officer (other than Papapietro), Kiene is responsible for the patrol division from a command perspective and also serves as the chief administrative officer for the entire police department. As such, he has been working out of title

longer and has performed more out-of-title work than any other current officer in the New Milford P.D.

25. However, even after Kiene objected to his omission from the proposed promotions (which the entire rank and file recognized as a glaring exclusion), Papapietro refused to reconsider and revise his promotion recommendations to the Governing Body.

26. Papapietro claimed that it was not his decision to deny Kiene a promotion. Papapietro claimed that the Mayor and Council were not interested in his promotion at this time.

27. This was not true. Both Papapietro and Kiene knew that Papapietro was simply passing the buck because the Governing Body, which was authorizing twelve promotions after years of no promotions, looked to Papapietro for his recommendation. Moreover, the New Milford borough ordinances and the police department's policies and procedures make it very clear that Papapietro has full and unfettered discretion concerning the promotion to the position of Captain.

28. Kiene's objection to his omission from the promotion list was basic: it was arbitrary, inequitable and discriminatory.

29. Kiene has maintained an exemplary record throughout his years of service to New Milford. He has performed his Lieutenant's work to the best of his ability and performed any additional out-of-title work that was asked of him to the best of his ability as well. Throughout his employment with the New Milford P.D., Kiene without question has performed and continues to perform up to the present all the duties required of him in a diligent, proper and satisfactory manner.

30. Plaintiff had no reason to believe that Papapietro ever held, or could reasonably hold, a different opinion. Therefore, the denial of Kiene's deserved promotion to Captain had nothing to do with merit.

31. In short, Papapietro denied Kiene his merited promotion without any valid reason.

32. Moreover, Kiene has been left to conclude that Papapietro's failure to recommend his immediate promotion to Captain, in conjunction with the other promotions of junior officers, proposed to the Governing Body, and especially his handling of the entire episode, was malicious and intended to needlessly humiliate and embarrass Kiene.

33. Papapietro failed to support Kiene's promotion to Captain as expected when the long overdue promotions were finally addressed in early 2012

34. In addition, despite the fact that Kiene had been second in command for several years, Papapietro also did not even apprise him of proposed 2012 promotions, which excluded Kiene, before he first presented the matter to the Governing Body. As noted above, Kiene, much to his embarrassment, only found out about the promotions when the anticipated promotions became public knowledge.

35. In addition, as a result of New Milford's promotion of one of the Sergeants to the newly created position of Detective Lieutenant in 2012, Kiene has been demoted in rank from second in command to third in command.

36. Finally, Kiene is still expected to continue to serve, and continues to serve, in the Lieutenant rank as *de facto* or acting Captain without compensation.

FIRST COUNT
**(Claim Under New Jersey's Conscientious Employee
Protection Act, N.J.S.A. 34:19-1 to 34:19-8)**

37. Kiene repeats and realleges Paragraphs 1 through 36 of the Complaint as if fully set forth herein.

38. Kiene reasonably believes that his performing Captain's work and duties as a police Lieutenant in the New Milford P.D. is in violation of law, or a rule or regulation promulgated pursuant to law, and is incompatible with the clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

39. Specifically, defendants failure to compensate Kiene for his work as *de facto* or acting Captain since 2008 is in violation of N.J.S.A. 40A:9-6 ("defacto officers and employees; right to compensation"). In addition, defendants' inequitable and discriminatory failure to promote him to Captain is in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5 - 1 et seq.¹

40. Thus, defendants' refusal to promote Kiene and failure to remunerate him for his service as *de facto* Captain violated the law and public policy set forth in Titles 10 and 40A of the New Jersey Statutes.

41. Kiene performed a whistle-blowing activity as described in N.J.S.A. 34:19-3(a) and (c) respectively, when he disclosed to Papapietro that his refusal to support his promotion

¹ In addition, defendants' actions and inactions clearly violated N.J.S.A. 40A:14-147 ("Suspension and removal of members and officers....") and also may have violated N.J.S.A. 40A:14-129 ("Promotion of members and officers....")

N.J.S.A. 40A:14-147, which concerns tenure in office, prohibits, among other things, the demotion or reduction in rank in office of a police officer except for "just cause" initiated by written complaint and established at a hearing. The demotion of Kiene in this case clearly violates the public policy reflected in the statute.

N.J.S.A. 40A:14-129, which concerns promotions, states, in pertinent part, that "preference shall be given according to seniority of service". Upon information and belief, no consideration was given to Kiene's seniority, let alone his merit and fitness for promotion at any time — even after counsel on behalf of Kiene asked the Mayor and Council to reconsider their intended promotions before their proposed effective dates.

was improper, and objected to Papapietro's improper refusal to support his promotion to Captain since he had been working for several years without remuneration as *de facto* Captain for the New Milford P.D.

42. Defendants took adverse employment action against Kiene by deliberately demoting his rank without any justification from number two in the new Milford P.D. to number three by changing the composition of the New Milford P.D. to create two (2) new positions in conjunction with the recent promotions.

43. The Governing Body, on Papapietro's recommendation, amended the Borough Ordinances to create (and to subsequently fill) two (2) new positions on the New Milford P.D.'s Table of Organization, the positions of Detective Lieutenant and Detective Sergeant. The Detective Lieutenant position is senior in rank to Kiene's rank of Lieutenant. Moreover, as a further result, the newly promoted Detective Lieutenant now holds the second ranking position in the New Milford P.D. because there is no incumbent in the Captain rank, which is the higher and last recognized rank between Detective Lieutenant and Papapietro as Chief of Police.

44. Kiene was not only demoted to a lower rank on the Table of Organization but also lost his second ranking position in the Chain of Command. Notwithstanding, Kiene continues to perform without compensation the many services of the still higher rank of Captain as *de facto* Captain.

45. Adverse employment action taken against Kiene by defendants also included several instances of actions directed against plaintiff Kiene that combined, with his demotion, to make a pattern of retaliatory conduct, including the following: (i) defendant New Milford's failure to entertain Kiene's merit and fitness for promotion instead deferring to Papapietro's arbitrary, capricious, unreasonable and discriminatory exercise of discretion; (ii) defendants'

discriminatory refusal to promote Kiene to Captain or compensate him for his out-of-title work, notwithstanding defendants' subsequent promotion of twelve junior police officers, who also were working out of title, to the positions of Lieutenant and Sergeant; and (iii) defendants continued expectation that Kiene would continue to serve as *de facto* Captain within the police department while continuing to fail to compensate him for performing the duties of *de facto* Captain.

46. The causal connection between plaintiff's whistleblowing activity and the adverse employment action is therefore plain.

47. The aforesaid conduct of defendants was done maliciously and/or with wanton and willful disregard of plaintiff's rights pursuant to New Jersey's Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to 34:19-8.

48. Defendants' conduct involved the participation of Upper Management thereby warranting an award of punitive damages.

49. As a result of defendants' actions and inactions, plaintiff has suffered and will continue to suffer damages.

WHEREFORE, plaintiff demands judgment against defendants the Borough of New Milford and Frank Papapietro jointly, severally and in the alternative, for compensatory damages and punitive damages, interest, attorneys' fees, costs of suit and civil fines and for such further relief as the Court deems just, proper and equitable.

SECOND COUNT

**(Age Discrimination Claim Under New Jersey's
Law Against Discrimination, N.J.S.A. 10:5-1 et seq.)**

50. Kiene repeats and realleges Paragraphs 1 through 49 of the Complaint as if fully set forth herein.

51. Kiene is 50 years old and has been employed by the New Milford P.D. for over 29 years.

52. Kiene belongs to a protected class. He also performed his job at a level that met his employer's legitimate expectations, but was denied his promotion to Captain and demoted under circumstances that would give rise to an inference of discrimination.

53. Defendants offered no reasonable or credible explanation for their actions, including the exclusion and demotion of Kiene in connection with the recent promotions of several junior officers in the New Milford P.D.

54. Papapietro's reason given to Kiene for why he was excluded from the recent promotions and demoted by the process was false. In fact, Kiene was denied his merited promotion and demoted in connection with the promotions of junior officers by defendants because of his age. Papapietro's statements to Kiene were merely a pretext to camouflage defendants' discriminatory and other improper and illegal treatment of plaintiff.

55. Kiene's age, therefore, was a determinative factor in defendants' decision to exclude and demote him in connection with the recent promotions of 12 junior officers.

56. As such, the foregoing constitutes age discrimination in violation against New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1 et seq. (the "NJLAD").

57. The aforesaid conduct of defendants was done maliciously and/or with wanton and willful disregard of plaintiff's rights pursuant to the NJLAD.

58. Papapietro knowingly and substantially assisted New Milford's unlawful conduct and, as such, is individually liable as an aider and abettor under the LAD.

59. Defendants' conduct involved the participation of Upper Management thereby warranting an award of punitive damages.

60. As a result of defendants' actions and inactions, plaintiff has suffered and will continue to suffer damages.

WHEREFORE, plaintiff demands judgment against defendants the Borough of New Milford and Frank Papapietro jointly, severally and in the alternative, for compensatory damages and punitive damages, interest, attorneys' fees, costs of suit and civil fines and for such further relief as the Court deems just, proper and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

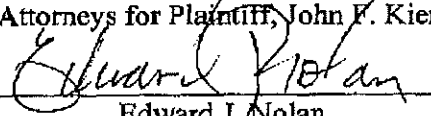
DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Edward J. Nolan, Esq. as trial counsel.

LAW OFFICES OF EDWARD J. NOLAN
Attorneys for Plaintiff, John F. Kiene

Dated: June 14, 2012

By:

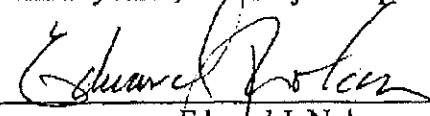

Edward J. Nolan

CERTIFICATION PURSUANT TO R. 4:5-1

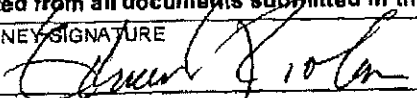
I certify that the matter in controversy is not the subject of any other action pending in any court or of pending arbitration proceeding and that no such action or arbitration proceeding is contemplated by the undersigned. Furthermore, all parties who should be joined in the action have been joined.

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 willfully false, I am subject to punishment.

Dated: June 14, 2012


Edward J. Nolan

Appendix XII-B1

CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
 Use for Initial Law Division Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1. Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.		PAYMENT TYPE: ☐ CK ☐ CG ☐ CA	
		CHG/CK NO.:	
		AMOUNT:	
		OVERPAYMENT:	
		BATCH NUMBER:	
ATTORNEY/PRO SE NAME Edward J. Nolan	TELEPHONE NUMBER (201) 996-1400	COUNTY OF VENUE Bergen County	
FIRM NAME (if applicable) Law Offices of Edward J. Nolan		DOCKET NUMBER (when available) L-4690-12	
OFFICE ADDRESS One University Plaza; Suite 404 Hackensack, NJ 07601		DOCUMENT TYPE Complaint	
		JURY DEMAND ☒ YES ☐ NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) JOHN F. KIENE	CAPTION JOHN F. KIENE v. BOROUGH OF NEW MILFORD, a corporate body politic of the State of New Jersey; FRANK PAPAPIETRO; and JOHN DOE NOS. 1-10		
CASE TYPE NUMBER (See reverse side for listing) 616	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? ☐ YES ☒ NO	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☒ NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN ☐ NONE ☒ UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? ☒ YES ☐ NO	IF YES, IS THAT RELATIONSHIP ☒ EMPLOYER-EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) _____ ☐ FAMILIAL ☐ BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☒ YES ☐ NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS ☐ YES ☒ NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:		
WILL AN INTERPRETER BE NEEDED? ☐ YES ☒ NO	IF YES, FOR WHAT LANGUAGE:		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule</i> 1:38-7(b).			
ATTORNEY SIGNATURE 			

SIDE 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (briefly describe nature of action) _____

Track II — 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 589 CONTRACT/COMMERCIAL TRANSACTION
- 803N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 803Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM Claim (includes bodily injury)
- 699 TORT - OTHER

Track III — 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV — Active Case Management by Individual Judge/450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

- | | |
|----------------------------------|--|
| 280 ZELNORM | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 285 STRYKER TRIDENT HIP IMPLANTS | 291 PELVIC MESH/GYNECARE |
| 288 PRUDENTIAL TORT LITIGATION | 292 PELVIC MESH/BARD |
| 289 REGLAN | 293 DEPUY ASR HIP IMPLANT LITIGATION |

Mass Tort (Track IV)

- | | |
|---------------------------------------|--|
| 248 CIBA GEIGY | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX |
| 271 ACCUTANE/ISOTRETINOIN | 284 NUVARING |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 286 LEVAQUIN |
| 278 ZOMETA/ARELIA | 287 YAZ/YASMIN/OCELLA |
| 278 GADOLINIUM | 601 ASBESTOS |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐ Verbal Threshold☐ Putative Class Action☐ Title 59