Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-000555-19

Case Caption: SHERMAN MICHAEL VS HOPEWELL TOWNSHIP PO LICE DEP
Case Initiation Date: 03/19/2019
Attorney Name: CHRISTINA M REGER
Firm Name: BAZELON LESS & FELDMAN, PC
Address: ONE SOUTH BROAD ST STE 1500 PHILADELPHIA PA 19107
Phone:
Name of Party: PLAINTIFF : Sherman, Michael
Name of Defendant's Primary Insurance Company (if known): Unknown

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES
Document Type: Complaint with Jury Demand
Jury Demand: YES - 12 JURORS
Hurricane Sandy related? NO
Is this a professional malpractice case? NO
Related cases pending: NO
If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

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

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

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? NO
If yes, please identify the requested accommodation:

Will an interpreter be needed? 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 *Rule* 1:38-7(b)

03/19/2019
Dated

/s/ CHRISTINA M REGER
Signed

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MICHAEL SHERMAN, 22 Goldspire Lane Burlington, NJ 08016, Plaintiff, v. HOPEWELL TOWNSHIP POLICE DEPARTMENT 201 Washington Crossing Pennington Road Titusville, NJ 08560 and TOWNSHIP OF HOPEWELL 201 Washington Crossing Pennington Road Titusville, NJ 08560 and LIEUTENANT CHRISTOPHER KASCIK, Individually and in his capacity as a police officer with the Township of Hopewell 258 Kingwood Station Barbertown Road Frenchtown, NJ 08825 and CHIEF LANCE D. MALONEY, Individually and in his capacity as Chief of Police of the Township of Hopewell 17 Edith Drive Lawrence, NJ 08648 and LIEUTENANT WILLIAM H. SPRINGER, JR., Individually and in his capacity as a police officer with the Township of Hopewell 11 Eaton Place Hopewell, NJ 08525 Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY DOCKET NO. _____ COMPLAINT AND JURY DEMAND

Plaintiff, Michael Sherman, residing in the Township of Burlington, County of Burlington, State of New Jersey, by way of Complaint against the Defendants says:

1. The Plaintiff, Michael Sherman, alleges that prior to and continuing through the present, the Defendants, Hopewell Township Police Department (hereafter "Department") and the Township of Hopewell (hereafter "Township"), through their agents, servants and employees, including the actions of Lieutenant Christopher Kascik ("Kascik"), Chief Lance Maloney ("Maloney" or "the Chief"), and Lieutenant William Springer ("Springer") (hereinafter collectively referred to as "Defendants"), subjected Plaintiff to unlawful discrimination on the basis of race by creating a hostile work environment through severe, pervasive, and regular instances of racial discrimination and retaliation for reporting and opposing unlawful racial discrimination, sexual harassment, and employee abuse and intimidation in the workplace. In general, the overt acts of discrimination, abuse, and intimidation and other wrongful workplace actions were performed by Kascik. The Township, the Department, Maloney, Springer and others associated with the the Defendants failed to take action required to provide redress and prevent reoccurrence, and have actively contributed to the hostile workplace environment in their treatment of Plaintiff.

PARTIES

2. Plaintiff at all times relevant was a police officer employed by the Township of Hopewell for the past 19 years.

3. Defendant, Township of Hopewell, is a Municipal Corporation organized under the laws of the State of New Jersey located at 201 Washington Crossing Pennington Road, in the unincorporated community of Titusville, Township of Hopewell, County of Mercer, State of New Jersey. The Township has the duty to supervise and control its Police Department, including all

officers employed therein.

4. Defendant, Hopewell Township Police Department is a township police department located at 201 Washington Crossing Pennington Road, in the unincorporated community of Titusville, Township of Hopewell, County of Mercer, State of New Jersey. The Department has the duty to supervise and control its police officers and other employees.

5. Defendant, Lieutenant Christopher Kascik, was a Lieutenant with the Hopewell Township Police Department, who became plaintiff's superior officer during the period at issue. Upon information and belief, Lieutenant Kascik purported to retire on or before February 1, 2019.

6. Defendant, Chief Lance Maloney, is, the Chief of Police for the Hopewell Township Police Department. As the Chief of Police, Maloney had the duty to supervise and control the Department'

7. Defendant, William H. Springer, Jr., is a Lieutenant in the Hopewell Township Police Department, and has held that position since 2006.

JURISDICTION AND VENUE

8. The court has jurisdiction over this matter as The Township of Hopewell and the Hopewell Township Police Department are both located in Mercer County. Defendants Kascik, Maloney and Springer all reside in New Jersey were all employed by the Hopewell Township Police Department at the time the causes of action arose.

9. Venue is properly laid in this county because the Township and the Department are located in the county and the actions that give rise to the causes of action occurred in this county. *See* N.J.R. Civ. P. 4:3-2(a).

FACTS

Plaintiff's Background with the Township and the Department

10. Plaintiff, a 41-year old male, whose race is African American and Caucasian, has been employed by the Department since October 1999 through the present.

11. During his tenure of employment with the Department, Plaintiff has been promoted several times and has most recently held the positions of patrol officer in the Traffic Unit, Detective in the Detective Bureau, and Sergeant in the Patrol Division. He has maintained an excellent job performance rating in said capacities, evidenced by written performance reviews and promotions within the department, as well as numerous commendations for his service, including two officer of the year awards, a volunteer of the year award in 2015, and recognition from many outside agencies for his service.

Plaintiff's Early Exposure To Kascik's Bias and Discriminatory Actions

12. As early as June 2006 or 2007, Plaintiff recalls that Kascik (who was then a patrol officer) made inappropriate comments to Plaintiff, which he believes were directed to him as the only African American male involved in the conversation (and in the Department at the time). On one such occasion, Plaintiff was riding in a car with Kascik and Officer Kevin Zorn during a training session. Kascik made a joke to Plaintiff about having to make child support payments. Kascik said that Father's Day must be confusing at his (Plaintiff's) house because he "must get ten cards with all of the kids [he] has."[1] Plaintiff had one child.

13. At that time, Kascik and Sherman were both patrol officers, and so their interaction was minimal. In 2009, Plaintiff was assigned to the Detective's Bureau, and had virtually no

[1] Notwithstanding Plaintiff's prior complaint to the Township, a March 4, 2019 letter from the Mercer County Prosecutor's Office acknowledged that the Township did not investigate this claim.

interaction with Kascik until 2016,[2] when it appeared that a potential protest might require involvement of some of the members of the Department.

14. Specifically, on or about January 27, 2016, there was a discussion about a potential protest involving the NAACP, the ACLU, and family members of a juvenile who was shot in Trenton. Kascik relayed information regarding this potential protest to members of the Department. Later, while in the lunchroom with Plaintiff, and with (then Detective) Francis Tulko ("Tulko") and Detective Louis Vastola present, Kascik stated to Plaintiff that "when Al Sharpton and all of the other protesters show up, the only thing they need to do is call all the K9s from the other departments because black people don't like dogs and it'll be like the sixties in the parking lot."

15. Plaintiff became concerned by these comments because he was the only African American police officer in the Township and feared for his own well-being, but more importantly, feared for the well-being of any minority who might come in contact with Kascik. Plaintiff was also concerned that any citizens who were reportedly coming to the Township to exercise their First Amendment rights might be exposed to Kascik and his bias against minorities.

16. Later in 2016, Plaintiff suffered a non-work related shoulder injury, which ultimately required surgery. As a result, Plaintiff began spending more time at the station. With increased exposure to Kascik and his erratic and inappropriate comments, in or about 2016, Plaintiff started documenting incidents with Kascik in contemporaneously dated notes. Plaintiff took this step to document the actions of Kascik, noting that Kascik's erratic behavior was becoming more frequent and unpredictable, and because Plaintiff was becoming increasingly concerned for his own well-being, and the well-being of other officers and citizens who might

[2] During that period of time, Plaintiff reported to other officers until 2017, including Chief (then Lieutenant) Maloney, Lieutenant Puskas, and ultimately Springer.

come in contact with Kascik. The transcribed notes formed the basis of his April 2018 complaint to the Township, discussed further below.

Kascik's Discriminatory Comments and Actions Become Pervasive and Regular, Creating a Hostile Work Environment

17. In December 2016 and January 2017, Plaintiff had two surgeries to repair injuries to his shoulder and bicep. He returned to work on light duty in February 2017. During this time while still on light duty, he began eating in the Department lunchroom more frequently, thereby having more exposure to Kascik, who ate in the lunchroom regularly.

18. On or about February 24, 2017, while Plaintiff was in the lunchroom with Kascik and Detective Joseph Maccaquano, Kascik asked Maccaquano how things were at Hopewell Valley Central High School. He was referencing a recent incident in which there was social media outrage over serving chicken as a customary way to honor Black History Month. It should be noted that Hopewell is a predominantly Caucasian community. Kascik commented that "there's nothing wrong with the menu because black people love chicken like Chinese people like rice." Kascik then looked directly at Plaintiff and asked him when he was going over to the high school to get chicken. Kascik then stated that he gave Plaintiff permission to work half days for the rest of the month, presumably because Plaintiff is half black. This remark made Plaintiff feel singled out as the only African American police officer in the Township, and more importantly, embarrassed and humiliated that Kascik made this comment in the presence of a subordinate officer.

19. On or about March 1, 2017, while Plaintiff was in the lunchroom with Kascik and Detective Maccaquano, Kascik was looking at pornographic material on his iPad. He showed Plaintiff an overweight black woman and stated that "I know this is what Sherman likes" and then said, "never mind, he only likes white girls." Plaintiff's wife is Caucasian. Plaintiff believed that

Kascik made this remark in the presence of a subordinate officer (Maccaquano) with the intent to humiliate and embarrass Plaintiff.

20. Racial remarks – such as fried chicken jokes, watermelon jokes, cocoa butter jokes, and racially insensitive remarks – were common practice, and were made in the presence of several of the African American employees of the Department. Although there are policies, rules, and regulations in place which require officers within the Department to report these actions, and although Plaintiff did make such a report to his superior officer Lieutenant Springer (who is also the Internal Affairs officer for the Department), no corrective action was taken.

21. Some of these racial remarks were made in the presence of Springer, yet Springer did not take any action. On other occasions, Springer made the derogatory comment. By way of example, Springer has often referred to African Americans as "brothas," and often talked about how he can shoot a basketball like a "brotha." Springer also told a story about how he and Plaintiff were at a Wendy's restaurant in Philadelphia, and Springer was the only white person in the restaurant, and it "looked like a speckle of salt in a sea of pepper."

22. At various times and by various individuals, Plaintiff has been called "token," Indian, Hindu, and various other names in front of administrative staff, with no resulting investigation or disciplinary action. Such comments from certain individuals like Kascik permeated the Department, but no redress was taken.

23. Plaintiff had also witnessed Kascik's rage, bullying and spiteful nature. It was well-known that Kascik would assign smaller vehicles to bigger officers, and unfavorable posts at community events to officers that angered him. On one occasion, Plaintiff witnessed Kascik instruct Seargant Tulko to go to a patrol officer's home and "rip him the fuck out of his house" and force him to come in and finish a report. When angered, he would regularly refer to his

subordinates as "assholes." Plaintiff was told "that is the way Chris is," "he doesn't mean it," and "he's connected." Such comments caused Plaintiff concern that reporting Kascik would result in retaliation because of the influence Kascik had in the Department.

24. On or about March 2, 2017, Plaintiff was in the Detective Bureau, and Kascik walked in to use the Keurig coffee machine. A female officer, Patrol Officer Alexis Mirra, was present and made a comment to Kascik that his coffee appeared to be hot. Kascik turned around and said "that's what all the girls think about you" to Officer Mirra. Mirra identifies as a lesbian, and she is married to a woman. Officer Mirra looked uncomfortable and walked out of the room.

25. On March 13, 2017, Plaintiff suffered a second shoulder injury, this one work-related, and was scheduled to go out for surgery in the coming months.

26. Before going out on leave for his surgery, on April 3, 2017, Plaintiff was promoted from Detective to Sergeant. As a Sergeant, Plaintiff would ordinarily have begun reporting to Kascik. However, since Plaintiff was scheduled to go out for surgery shortly, he continued to report to Springer. It was intended that upon his return following his surgery, he would report to Kascik once he was cleared for full duty.

27. Two weeks after Plaintiff assumed the role of Sergeant, on or about April 17, 2017, one of Plaintiff's direct reports – Police Officer Voorhees – approached Plaintiff to inform him of an incident involving Kascik. Officer Voorhees reported the incident to Plaintiff as his superior, in accordance with the chain of command policy. Officer Voorhees stated that Kascik "grabbed him by the arms and throwing him against a wall." The incident was captured on one of the Department security cameras, and Plaintiff, pursuant to the chain of command, immediately reported the incident to his supervisor, Springer, as the the Internal Affairs officer for the Department. Plaintiff viewed the videotape with Springer. After viewing the tape, Springer

responded, "you got to be f**king kidding me." Based on the response from Springer, Plaintiff felt that Kascik's actions were in violation of several rules, regulations, and Standard Operating Procedures (S.O.P.'s), and that the incident would be handled appropriately.

28. At Springer's request, Plaintiff drafted a memo regarding the incident on April 20, 2017. Before drafting the memo, Plaintiff asked Springer if he should summarize the events on the video in the memo. Springer responded that he would ask the Chief. Several days later, Springer instructed Plaintiff to prepare a memo summarizing what Officer Voorhees had told him, but to omit any discussion of the video.

29. Plaintiff was not aware of any action that was taken in response to his complaint regarding the mistreatment of Officer Voorhees. Plaintiff was never interviewed in connection with the event. However, Plaintiff later found out that the Department conducted an investigation and that "corrective action was taken." Plaintiff was never advised of the corrective action and was never notified of an outcome, even though the New Jersey Attorney General guidelines for Internal Affairs require that the outcome of any internal affairs investigation be provided to the complainant (in this case Plaintiff was the complainant). Defendants failed to comply with the guidelines, as they never told Plaintiff that an internal affairs investigation was conducted or what the outcome was.

30. On or about April 18, 2017, Plaintiff was in the lunchroom with Detective Maccaquano and Kascik, and a conversation came up about an African American female juvenile victim. Kascik referred to the girl as a "whore" and asked if she was the girl who lived on "Ghetto Street." Plaintiff believed Kascik was referring to Heritage Village, where the female lived and where a portion of the residents are African American and low income. Kascik has referred to Heritage Village and Brandon Farms as "the projects" when talking about assignments in these

neighborhoods.

31. Chief Maloney has also, on occasion, referred to the Brandon Farms development of the Township as "the projects" in a derogatory manner in the presence of Plaintiff and other subordinate officers. This concerned Plaintiff because the residents of that area are low to moderate income and comprise a large percentage of the minorities living within the Township. Plaintiff believes that the use of the term "the projects" by Defendant(s) specifically relates to the minorities living in these areas of the Township.

32. On or about April 26, 2017, while Plaintiff was in the lunchroom with Detective Maccaquano, Police Officer Grey, Patrol Officer Hoffman, and Kascik, Kascik was looking at a magazine that notifies police agencies about extremist groups and "sovereign citizens" within the United States. Kascik commented that, "I was at a meeting with half of these guys last week. I'm a card-carrying member. They gave me a lifetime achievement award for all of the work I do." The remarks instilled fear in Plaintiff, as such extremist groups are often violent. Such comments also further supported Plaintiff's belief that Kascik had a bias against certain groups of people based on their race, ethnicity, and/or gender.

Plaintiff's Reports of a Hostile Work Environment and Violations of Various Laws, Guidelines, Regulations and Policies

33. In or about April or May 2017, Plaintiff complained initially to Springer and ultimately to Maloney about Kascik's ongoing racist comments detailed above, as well as some of Kascik's other erratic and inappropriate behavior, including:

a. Kascik's repeated references to a mentally ill citizen known to the Department. Kascik stated that he wanted to have "a shootout with" this individual and wanted to "slit his throat, gut him like a deer and wear his blood as war paint;"

b. Kascik speaking to other officers about wanting to grow marijuana in his new house, which is located on 10 acres of property with a large pond which Kascik explained could act as a watering source for his crop;

c. Kascik carrying around a baseball bat in the Department and saying he was Crazy Joe from the movie "Lean on Me," which Plaintiff felt was meant to intimidate others in the Department into not challenging Kascik's authority.

34. Although Plaintiff is not aware of what actions Springer took, he was not informed of any actions and did not see any changes to Kascik's behavior. Plaintiff believed that reporting such information to his superior would cause Springer to take action and initiate an internal affairs investigation – particularly since Springer was the Department's Internal Affairs Officer.

35. However, seeing no changes or investigation occurring, Plaintiff again reported the above racist and sexist comments and inappropriate behavior to Maloney during a meeting in the Chief's office. Plaintiff told the Chief he wanted the behavior to stop. Chief Maloney said he would need to seek advice from a third party. The Chief also said he would address all personnel issues in a blanket statement to the whole department. The Chief then provided Plaintiff with two options: 1) the Chief would speak with Kascik alone; or 2) Kascik, Chief Maloney and Plaintiff would speak as a group and the Chief would monitor Kascik's behavior following the group meeting. Plaintiff had been trained that both of these options violated the protocol for addressing such issues.

36. Moreover, Plaintiff did not feel that either of these options would cure the behavior and, given Kascik's erratic behavior and biased opinions, Plaintiff feared retaliation from Kascik, particularly since Kascik would be his supervisor once he returned to full duty (following his surgery). Plaintiff was extremely fearful that he had no one that would listen to his concerns because he had continued to report these acts to his supervisors with the hopes that they would be resolved, but to no avail. Plaintiff felt hopeless and afraid that Kascik would retaliate against him,

knowing that there would be no consequences.

37. During these discussions with Maloney about Kascik, the Chief cautioned Plaintiff to make sure he did everything "by the numbers" and to dot all of his "I's" and cross all of his "T's" so Kascik had nothing to scrutinize once he became aware of Plaintiff's complaints to the Chief.

38. Plaintiff felt this cautioning statement was to intended to warn Plaintiff **not** to complain, and that if he did, he was on notice that Kascik might retaliate against Plaintiff and Plaintiff was (or would be) singled out for scrutiny or unwarranted discipline because he had complained about Kascik. Plaintiff felt that Kascik's actions had gone unchecked and there had been no consequences. Given the prior undisciplined actions, Plaintiff believed that Kascik knew he was essentially above the law and that no one could touch him. Plaintiff believed that Kascik would retaliate and ruin Plaintiff's untarnished reputation. Plaintiff also felt as though the Chief did not know how to stop Kascik's actions, and that the Chief hoped the issues would just go away on their own.

39. On May 16, 2017, at the Department staff meeting, the Chief made the bland announcement that:

> Employees should refrain from using inappropriate language or making inappropriate comments among co-workers, citizens, outside companies/agencies, while at work or representing the police department. Employees should be professional in their conduct and speech.

40. On May 26, 2017, Chief Maloney reiterated (in the guardian tracking software used to document training, discipline, and record keeping by the Department) that inappropriate language should not be used when dealing with co-workers.

41. Plaintiff believes, and therefore avers, that the Chief made Kascik aware of Plaintiff's complaints, thereby triggering the subsequent retaliation and intimidation tactics by Kascik directed toward Plaintiff set forth below.

Kascik's Retaliation and Continued Hostility Toward Plaintiff

42. In or about April/May 2017, after Plaintiff had made the above complaints, Kascik scolded Plaintiff in a staff meeting for sitting at the head of the table, where he (Plaintiff) had sat during the last meeting and where the Sergeant he had replaced had always sat. Plaintiff felt Kascik was publically admonishing him, singling him out, and putting him "in his place" in retaliation for the complaints he had made to the Chief against Kascik.

43. Thereafter, Plaintiff went out on disability leave for his shoulder on June 16, 2017, and had shoulder surgery in September 2017. Plaintiff had no contact with Kascik between June 16, 2017 and February 18, 2018.

44. On November 19, 2017 and December 14, 2017, attorney Ellen Horn of the law firm Ruderman, Horn, Esmerado P.C. conducted two mandatory training sessions that all Township employees were required to attend. The training was titled "Prevention of Harassment, Bullying and Violence and Whistleblower Protection in the Workplace." Attorney Horn presented all attendees with training documents, and gave a PowerPoint presentation.

45. This training was conducted after Plaintiff had several sit-down meetings with Chief Maloney and Lieutenant Springer in private and had begun voicing his concerns about some of Kascik's actions.

46. The training documents specifically addressed the roles of supervisors, stating that Supervisors must not

a. "require the employee to confront the accused" or

b. "require the employees to participate in a sit down."

47. Chief Maloney, Lieutenant Kascik, Lieutenant Springer, and Plaintiff all received the training, and signed written acknowledgments of their receipt of the training.

The Unfounded "Anonymous" Letters from "Concerned Citizens" About Plaintiff

48. In 2016, the Township received an anonymous letter regarding the Plaintiff and (then) Detective Tulko. The Township forwarded the letter to the Mercer County Prosecutors Office. The anonymous letter referred to a 2014 sexual assault case investigated by the Plaintiff and Detective Tulko which had already been dismissed. After the dismissal of the case for a technicality, and around the time of the receipt of the letter by the Township, Kascik consulted with Chief Maloney and expressed his belief that the Plaintiff and Detective Tulko should not be able to testify in future court proceedings. Kascik's actions/interest in this case, and his concern about Plaintiff and Detective Tulko, were suspicious, given the timing of the anonymous letter. This too shows that Kascik had a bias against the Plaintiff. Plaintiff believes and therefore avers that the purpose of Kascik's inquiry as to the Plaintiff being able to testify in future court proceedings was to embarrass and humiliate the Plaintiff.

49. A second "anonymous letter" against Plaintiff arrived in late December 2017 or early January 2018, shortly before Plaintiff was scheduled to return. This second anonymous letter was sent to the Mercer County Prosecutors Office and the New Jersey Division of Criminal Justice insurance fraud division. The letter claimed that Plaintiff may have made a fraudulent insurance claim related to medical procedures and surgery for a work-related injury. The letter further stated

that Chief Maloney knew about and assisted in the fraud.

50. The anonymous letter was obviously written by someone with inner working knowledge about the Department's policies, rules, and regulations, including its light duty policy.

51. The letter clearly stated where and how the injury occurred, and in what capacity Plaintiff had been conducting an investigation during the incident.

52. The letter also gave specific details about the incident which would only be accessible to one or two departments within the Township: the Department and the administrative/town council safety committee. The details in the letter match verbatim the operations report filed by Plaintiff (as required for an injury on duty).

53. The letter was written with full knowledge that the allegation of fraud was not true.

54. The person who wrote the letter did so in violation of HIPPA privacy laws.

55. The letter was written with the intent to defame Plaintiff.

56. The letter was written by someone with a bias against Plaintiff.

57. Plaintiff was never contacted by any investigators regarding the allegations in the anonymous letter.[3]

Plaintiff's Return to Work; Kascik's Retaliatory Actions Toward Plaintiff Escalate

58. Plaintiff returned to work on February 18, 2018.

59. Upon his return, Plaintiff received his annual review, which should have been performed by his new supervisor, Kascik. However, his review was given to him by the Chief – who typically only does reviews of two individuals, Lieutenant Kascik and Lieutenant Springer. In his review, the Chief noted that, "Sgt Sherman is trustworthy and displays conduct that reflects

[3] In October 2018, Plaintiff contacted Detective Brian Cottrell of the Mercer County Prosecutors Office, who confirmed that while a review of the anonymous letter was conducted, no formal investigation took place because the letter was "without merit" and from an anonymous source.

well upon the Hopewell Twp Police Department."

60. Plaintiff believes and therefore avers that his review was completed by the Chief because the Chief had concerns about Kascik's potential bias against Plaintiff for his prior complaints. Notwithstanding the Chief's concerns or suspicion of bias against Plaintiff by Kascik, Plaintiff was slated to report to Kascik only one month later.

61. On March 22, 2018, one of Plaintiff's direct reports – Police Officer Klesney – filed a report about an incident. As his superior, Plaintiff reviewed the report, and noted several errors. Plaintiff spoke to Kascik about the errors, and Kascik stated that Officer Klesney would have to come in and correct the report, even though he was out on sick time. Plaintiff informed Officer Klesney of Kascik's decision. Officer Klesney came in to the Department for 38 minutes to correct the report. Officer Klesney then called Kascik to complain about having to use his sick time to correct the report. When Plaintiff learned that Officer Klesney had called Kascik, he confronted Klesney and reminded him that he must follow the chain of command and report any issues directly to Plaintiff.

62. Plaintiff later found out that Kascik had put in an overtime slip for Officer Klesney for 2 hours (contrary to Kascik's prior instructions to Plaintiff that Officer Klesney would be docked sick time). Plaintiff knew that Kascik put in an hour of extra time for Officer Klesney and reported this, knowing that this could have constituted an act of theft in violation of N.J.S. 2C:20-3, and an act of official misconduct. No action was taken by Springer or Maloney after the Plaintiff reported both of these possible criminal acts. In fact, Kascik almost immediately retaliated against Plaintiff.

63. Later that day, Plaintiff asked Kascik if he could talk to him about an issue regarding reports for Plaintiff's squad. Plaintiff wished to inquire if Kascik could send reports to

Plaintiff for any necessary corrections before submission of the reports to the completed bin. Plaintiff said to Kascik that he "knew he had to tread lightly," and he was referencing the prior complaints he (Plaintiff) had made to the Chief about Kascik, including the report involving Police Officer Klesney. Kascik, looking agitated, asked Plaintiff why he thought he had to tread lightly. Plaintiff responded, "never mind."

64. Kascik's face got red and he stepped toward the squad room door and locked it, locking himself and Plaintiff in the squad room. No other individuals were in the squad room. Kascik had his duty weapon on his side, and blocked Plaintiff's exit. Kascik said, "I have been meaning to talk to you about this," while gritting his teeth. Kascik walked close to Plaintiff, stood over him, with his duty weapon on his side, and yelled "did you fucking tell Klesney he could not come to my office?" At this point, Plaintiff was fearful due to Kascik's history of aggression, so he stood up, thinking he might have to defend himself, and he asked Kascik what he was talking about. Kascik told him to "sit the fuck down" and yelled repeatedly "who the fuck do you think you are?" to Plaintiff while pointing his finger in Plaintiff's face. Kascik told Plaintiff he was being insubordinate for not answering his questions, and he continued to use vulgarities and curse at Plaintiff. He ordered Plaintiff to give him an answer about what Plaintiff told Klesney, and said that he would write Plaintiff up for insubordination if Plaintiff did not give him an answer.

65. At this point, Plaintiff felt this was no longer a personnel matter, and that Kascik was using this opportunity to harass and intimidate him due to his prior complaints against Kascik to both Springer and the Chief. However, he answered Kascik and said he had told Officer Klesney to follow the chain of command and speak to him (Plaintiff) before going to Kascik about any issues. Kascik became more agitated and shouted at Plaintiff, "I'm the fucking boss and I make the fucking decisions on who can come to my office," while also continuing to tell Plaintiff to "sit

the fuck down."

66. Plaintiff then said he wanted to go to the Chief's office to discuss the matter. Kascik responded by saying, "you're going to fucking answer me or be written up for insubordination," all the while blocking Plaintiff's ability to exit the locked squad room. Plaintiff continued to say he wanted to talk to the Chief, and Kascik stood between Plaintiff and the door, imprisoning Plaintiff in the squad room. By this time, the Chief had overheard the yelling and was jiggling the door and knocking loudly on the window pane to get into the squad room. Kascik finally opened the door, and the Chief escorted Kascik out of the squad room.

67. Later that day, the Chief made Plaintiff confront Kascik in a sit-down meeting in the Chief's office, in an attempt to make sure "everyone got along." This was in direct violation of the training provided to all Township employees on November 29, 2017 and December 14, 2017, which stated that supervisors "must not" require an employee who has made a complaint of misconduct against another employee to participate in a "sit down," or to confront the employee that he or she has accused of misconduct.

68. Although Plaintiff requested a witness, the Chief explained that Springer (the only other Lieutenant in the Department) would not be in the office until later in the day. Kascik and Plaintiff both gave their accounts of the incident, during which time Kascik interrupted Plaintiff and said, "I'm the Lieutenant, you're the Sergeant, so let me speak." Kascik then told Plaintiff, "that's your problem, you don't know when to stop talking, and you think you're more than you are."

69. In this meeting with Kascik and the Chief, Kascik said that Plaintiff should be reporting to him and that he was going outside the chain of command by reporting to Springer. Plaintiff believes the decision that Plaintiff continue to report to Springer was based, in part, upon

his prior complaints against Kascik and Kascik's bias against Plaintiff.

70. In the meeting, Kascik ordered Plaintiff to discuss anything that the Plaintiff wanted to address in staff meetings with him first. Even the Chief acknowledged that such action is not protocol, and no other sergeant has ever been told to follow such an order. The Chief took no further action regarding the event or Kascik's ongoing racial slurs directed toward Plaintiff, and instead only commented that everyone needs to get along. Plaintiff was never written up or reprimanded for any interactions with Kascik, and Plaintiff is certain that if there had been any wrongdoing on his part, Kascik would have written him up.

71. Chief Maloney failed to carry out his duties as a supervisor, and instead asked Plaintiff "what course of action" Plaintiff wanted to take.

72. Following the incident, Plaintiff met with the Chief (without Kascik) and told him that he was considering filing a complaint against Kascik with Human Resources and/or the Township Administrator, in accordance with the Department Policies and Procedures regarding Kascik's ongoing harassment, retaliation, and, most recently, false imprisonment of Plaintiff.

73. During the discussion, Plaintiff stated that he believed Kascik's comments, actions, and escalating harassment toward him were in response to Plaintiff's reports of harassment directed at him and other officers in the department and his reporting of the Voorhees event the year prior.

74. The Chief responded that the Voorhees matter had been investigated and, he believed, "appropriately addressed" by Internal Affairs. This was the first time that Plaintiff learned that the Voorhees matter had been investigated – further validating and substantiating his belief that Kascik's actions, harassment, and false imprisonment of Plaintiff were at least in part in retaliation for Plaintiff reporting the Voorhees incident. Upon learning of the investigation,

Plaintiff's requests for information about the outcome of the investigation were denied.

75. Plaintiff believes and therefore avers that Maloney never initiated an Internal Affairs investigation into his complaints of discrimination and hostile work environment, as Maloney was required to do under the New Jersey Attorney General's guidelines for Internal Affairs.

76. Maloney also never reported the incident to Internal Affairs, as he was required to do under the Department's Standard Operating Procedures regarding Internal Affairs.

77. Rather than acknowledging and attempting to resolve the ongoing issues and Plaintiff's expressed concerns that Kascik was retaliating against him, the Chief simply responded that filing a complaint was "within your rights." However, he cautioned Plaintiff that even if he were to address the issues of racial and sexual harassment, he was not to discuss or even reference the Voorhees incident in his complaint, notwithstanding Plaintiff's belief that this event was one of the trigger sources of the retaliation. The Chief did not explain why Plaintiff was not permitted to discuss this event.

78. After the incident, Plaintiff used his own accrued time (from March 30 through April 6, 2018), to avoid contact with Kascik.

79. In March and April 2018, Plaintiff raised concerns with Springer about an officer who tended to make motor vehicle stops of African Americans at a disproportionate rate. The officer stopped motorists late at night, and would position his car perpendicular to the roadway, with the "take down lights" on and shining onto passing cars.

80. Plaintiff consulted with Springer and expressed his opinion that this was not a common practice, and that Plaintiff was concerned that the officer was engaging in racial profiling.

81. Springer told Plaintiff that he would look into this, and get back to Plaintiff. Plaintiff never received a response from Springer, and believes and therefore avers that these actions were never corrected.

As a Result of the Unrelenting Hostile Work Environment and the Escalating Retaliation, Plaintiff filed a Complaint with the Township's Human Resources

82. On April 10, 2018, Plaintiff met with Township Administrator Elaine Borges ("Borges") and Human Resources Representative Sue Newman. They advised him to complete the employee complaint paperwork to proceed. In this meeting, after Plaintiff told them that he had told the Chief about the incidents and that Kascik's behavior did not stop, Borges said, "that's the Chief's flaw, he is too nice and too honest. He needs to know when to put his foot down." She then relayed her own personal story of harassment at a prior employer and stated how she sympathized with Plaintiff and what he was going through.

83. On April 17, 2018, Plaintiff filed a formal complaint with the Township Administrator. Per the Chief's order, Plaintiff omitted any information regarding the Voorhees incident.

84. In the complaint, Plaintiff requested that Kascik be placed on leave during the course of the investigation because of his fear of retaliation against him by Kascik and his belief that Kascik would intimidate the witnesses. Plaintiff was aware that the Department had taken this action in the past when investigating a complaint within the Department. Kascik was never placed on leave.

85. Plaintiff requested that he not be placed under the supervision of Kascik due to Kascik's history of behavior, apparent racial animus against Plaintiff, and Plaintiff's pending complaint against Kascik.

86. On April 25, 2018, Plaintiff met with Administrator Borges and Township attorney Ellen Horn ("Horn") to review his complaint and answer questions. Plaintiff mentioned that there was another prior event that he believed may have been part of the root cause of the retaliation, but that he had been instructed not to discuss it.

87. During a lunch break from that meeting on April 25, 2018, Plaintiff walked past Kascik's office and saw that Kascik had his right arm straight out and towards his head as if he was about to wave or salute. Plaintiff was disturbed by his behavior and perceived this to be an act of taunting by Kascik, obviously meant for Plaintiff since no one else was nearby.

88. When Plaintiff returned to the interview with Borges and Horn, his hands were shaking as he reported Kascik's actions to Borges and Horn. He told them he felt that Kascik was attempting to intimidate or harass him because of the complaint. Plaintiff, again, requested that an accommodation be made so that his contact with Kascik would be limited, such as putting Kascik on paid leave or switching Plaintiff to nights until the complaint was resolved.

89. Plaintiff advised Borges and Horn that Kascik's harassing behaviors, such as grunting, getting a red face, and saluting when he saw Plaintiff, and the prior act of locking him a room while standing over him with a loaded gun, coupled with Kascik's prior comments of his desire to "gut people" and wear their blood, were giving Plaintiff anxiety every time he walked through the Department. His anxiety would become heightened when he heard footsteps in the squad room, and his sleeping had been affected due to the anxiety.

90. In response, Borges simply gave Plaintiff a phone number for Employee Assistance Services ("EAS"). Before giving Plaintiff the card, Borges made the comment, with Horn present, that the Plaintiff should really talk to someone; she stated that she could tell it was affecting him.

Complainant contacted EAS and had a meeting with an EAS representative.

91. No changes were made to Plaintiff's schedule, and Kascik was not placed on leave, thus exposing Plaintiff to Kascik on a daily basis.

92. Rather than addressing the underlying issues or disciplining Kascik for his actions, Chief Maloney's only solution was to instruct Kascik and Plaintiff to avoid speaking with each other, even on work-related matters. Plaintiff explained to the Chief that performing his duties without contact with Kascik, particularly on matters where he would be responding to calls or at the scene with Kascik as the superior officer, was very difficult and compromising. Maloney did not respond, and exited the room.

93. On May 1, 2018, the Chief asked to speak to Plaintiff, and advised him about a follow-up meeting that Plaintiff was to have with Borges and Horn on May 3, 2018. Plaintiff asked again if he could speak about the April 17, 2017 incident with Borges and Horn, as he had (as instructed) not previously discussed it with them. The Chief stated that he had written a letter to Borges and Horn regarding the April 2017 incident, so Plaintiff would be permitted to talk about it. Plaintiff requested a copy of the letter, but was again denied, and has no information about how the Chief's letter portrayed the Voorhees incident.

94. On May 2, 2018, Plaintiff responded to a call involving a man with a gun at a hospital. Kascik arrived after Plaintiff, walked by Plaintiff without acknowledging him, but instead simply glaring at him, then walked into the hospital. As the scene commander, Kascik failed to engage with Plaintiff or provide any direction, which Plaintiff felt was clearly in retaliation for Plaintiff's complaints. Kascik's actions were a clear message to Plaintiff that Kascik would not "have his back" in critical situations, and Plaintiff feared for his safety.

95. On May 3, 2018, Plaintiff met with Borges and Horn again, and discussed follow-up questions related to the Voorhees incident. Plaintiff confirmed that Borges and Horn had been given the videotape of the incident, and that Horn had viewed it.

96. During that meeting, Plaintiff raised concerns about the integrity of the investigation, particularly since every witness that was interviewed was required to walk past Kascik's office and look him in the eye before and after the interview. Plaintiff had also witnessed several of the witnesses – with whom Kascik had never previously interacted – leaving Kascik's office following a closed door meeting, close in time to when the witnesses were interviewed. Plaintiff expressed his concerns that the investigation had been tainted by threats and/or intimidation to the witnesses by Kascik as their superior officer.

97. Borges and Horn advised Plaintiff that "they had done their best" to keep Plaintiff and Kascik apart. However, Plaintiff still would see Kascik several times daily, and each time Kascik saw Plaintiff, Kascik's face would get very red and angry, leaving Plaintiff feeling insecure about his safety – even in the police station.

98. Plaintiff also informed Borges and Horn that personal items had gone missing from his police mailbox (located in the briefing room) on or around April 21, 2018, including two gold pens and a flash drive, as well as papers in his mailbox being rummaged and moved to another mailbox. In the 19 years prior to these events, Plaintiff never had any of his personal items taken. Despite a complaint about this incident, no formal investigation was conducted, again, against protocol. Despite his report of the missing items to Borges and Horn, no Internal Affairs investigation was initiated.

99. Plaintiff also advised Maloney and Springer about the theft of the gold pens and the flash drive. Plaintiff advised Maloney and Springer that the items went missing after Plaintiff filed

his complaint with human resources on April 17, 2018.

100. Plaintiff also advised Springer that items in Plaintiff's mailbox had been shuffled around and moved into another mailbox. Plaintiff further advised Springer that he did not believe this was a coincidence.

101. Plaintiff also told Springer that Plaintiff had looked for the missing items, to no avail. Springer responded that he would put an entry on the briefing sheet asking anyone who saw the items to return them. Springer never initiated an Internal Affairs investigation into this matter, either.

102. In the meeting on May 3, 2018, as a result of the hostile work environment he faced every day, Plaintiff advised that he feared for his safety and was afraid that Kascik would cause him physical harm. Plaintiff felt that because of Kascik's more increasingly erratic behavior and now knowing that Kascik was aware of his complaints, there was no telling how Kascik would react. Plaintiff had already been exposed to Kascik mumbling under his breath when he passed by, as well as Kascik's face getting red, and Kascik's glaring looks toward the plaintiff, as well as Kascik locking him in the squad room and screaming over him while carrying his duty weapon – none of which Kascik was disciplined for. Plaintiff again asked that Kascik be placed on paid leave pending the investigation. Plaintiff advised that he was considering taking leave to avoid having contact with Kascik.

103. On May 7, 2018, Plaintiff contacted Horn and Borges to supplement his prior report by phone. When Plaintiff completed the call, Kascik walked into the squad room where Plaintiff had made the call and began reviewing reports while standing in too close proximity to Plaintiff. Kascik had never reviewed reports in the squad room before, and Plaintiff felt that Kascik was

making his presence known to Plaintiff as a form of intimidation.

104. Since the filing of the April 2018 complaint, Maloney and Springer have completely altered their demeanor with Plaintiff. They were previously cordial and caring colleagues and friends who maintained a nearly 20-year close personal relationship with Plaintiff and his family. However, since Plaintiff filed the complaint, the Chief and Springer have treated Plaintiff differently. Both were cold and off-putting, making Plaintiff feel as if he did something wrong by filing his complaint. As a result of the filing of the complaint against Kascik, Plaintiff was completely ostracized and shunned by his fellow officers in the Department. Springer specifically told Plaintiff that he will only talk to him about work-related things, but personal relationships are over, despite their 19-year friendship.

105. On May 13, 2018, Plaintiff witnessed a triple fatality while off duty. He went to the scene, identified himself as a police officer, and assisted the injured persons, one of whom died in Plaintiff's arms. The Hopewell Township Rules and Regulations 3:1.6 state that: "While off-duty, police officers shall take appropriate actions as needed in any police matter that comes to their attention within their jurisdiction as authorized by New Jersey law and department written-directive. While off-duty, police officers who take any police related action or any other action which may touch upon or reflect upon their position with the Hopewell Township Police Department shall notify the highest ranking officer on duty as soon as possible and shall submit a written report to the Chief of Police as soon as practical." This policy demonstrates that this matter was work-related.

106. On May 14, 2018, Plaintiff was cleared by his physicians for full duty (from his shoulder surgery). Maloney advised Plaintiff that he would continue to report to Springer due to

the ongoing investigation of his complaint against Kascik.

107. In June 2018, Plaintiff began experiencing panic attacks while responding to calls, and began showing symptoms of work-related stress, anxiety, and post-traumatic stress disorder, which he had never had before.

Plaintiff Uses Personal Time Due to the Hostile Work Environment

108. As a result of the ongoing hostility and work-related stress Plaintiff experienced in the Department, on July 17, 2018, Plaintiff's doctor issued a note keeping Plaintiff out of work for 3 weeks due to work-related stress. The reasons for this work related stress included the anxiety caused by interactions with Kascik with his intimidation and retaliation tactics, as well as witnessing the triple fatality.

109. Plaintiff was advised that the Township was going to review his leave as a potential workers' compensation case. He was later advised that the workers' compensation claim was denied. Plaintiff questioned why his work related stress and anxiety would be denied, when other police officers have gone out on leave for work-related stress and anxiety, including another officer during this same time who was immediately placed on 6 months leave without an investigation into his request for leave. The workers' compensation representative responded by saying that, "after thorough investigation, his claim does not meet the requirements." Plaintiff asked for a letter with the requirements and reason for denial, but did not get a response.

110. On July 19, 2018, Plaintiff received a letter from Hopewell Township's Administrator, Elaine Borges, indicating that his complaint had been investigated by an outside law firm. The letter acknowledged that Plaintiff alleged that Kascik made racially discriminatory remarks, viewed pornographic material in the workplace, and engaged in aggressive, threatening behavior toward Plaintiff on March 22, 2018. The Administrator's letter advised that only the claim about Kascik viewing pornographic material was substantiated. The letter never mentioned

the prior event with Office Voorhees, notwithstanding Plaintiff's discussion with attorney Horn about the Voorhees incident and his confirming with her that she viewed the videotape evidence. On July 20, 2018, following his receipt of the letter, Complainant told Administrator Borges that he feared for his life now that the investigation had concluded, due to potential retaliation from Kascik, Kascik's complete disregard for him on calls they had to take together (including one involving a man with a gun), and given Kascik's prior comments both directed toward him and generally about black people. Plaintiff believed that if an incident took place, Kascik would not have his back and would also intentionally go out of his way not to back up Plaintiff on calls. Plaintiff also believes that Kascik would tell other officers not to back up plaintiff on calls of importance.

111. On July 24, 2018, Plaintiff was advised that he would be reporting to Kascik moving forward. Plaintiff challenged that determination and asked for a reasonable accommodation rather than having him report to Kascik. His request was denied and he was ordered to report to Kascik moving forward.

112. On July 27, 2018, Plaintiff asked for a reasonable accommodation, whereby he would continue to report to Springer and not report to Kascik. Plaintiff's request was denied.

113. Plaintiff submitted an Open Public Records Act ("OPRA") request to obtain the video of the April 2017 incident and all of the documents surrounding the investigation of Complainant's April 2018 complaint, as well as the investigation guidelines. This OPRA request was denied in its entirety.

114. On July 31, 2018, Maloney issued a memorandum to all police personnel regarding training, and titled "[w]e must respect each other in local government." This training was mandated by the Municipal Excess Liability Joint Insurance Fund safety institute. The training

was approximately 11 minutes long, and covered topics such as harassment and discrimination and how they should be handled in local government. The scenarios covered in the training were similar to the complaints that Plaintiff had made. Ironically, this required training took place approximately two months after the Township ruled that Plaintiff's discrimination, harassment, and whistleblower claims were unsubstantiated.

115. The stress of the investigation, coupled with Sherman's fear of further retaliation by Kascik, resulted in Sherman's physician providing a medical note regarding his inability to return to work.

116. With mounting anxiety and panic due to Kascik's escalating anger directed at Plaintiff while on duty, Plaintiff used his accrued sick time to avoid working with Kascik.

117. Shortly thereafter, Plaintiff received notice from the Township that he would be required to meet with the Township's appointed medical provider for a fitness for duty assessment before he would be permitted to return to work.

118. A fellow officer who threatened to kill someone, was not required to undergo a fitness for duty assessment.

119. On October 5, 2018, Plaintiff appeared at the Department to pick up some items. Plaintiff learned that, without prior notice to him, his access card to the police department had been deactivated. This was not normal practice, as in the past, officers had been verbally advised or given a letter telling them that their access had been suspended. He was subsequently informed that if he wished to enter the police department, he was required to provide prior notice to one of the superior officers, who would escort him into the police station. Plaintiff's experience caused him great embarrassment.

The Township's Demand for Plaintiff to Undergo a Fitness For Duty Evaluation

120. On October 9, 2018, after Plaintiff inquired as to whether his access had been suspended, Plaintiff received an e-mail and memorandum from the Chief saying that his access was suspended pending his fitness for duty exam.

121. Plaintiff was further advised that his weapon had been removed from his locker and placed in the armory pending his fitness for duty exam.

122. Also on October 9, 2018, the Township sent Plaintiff a letter, threatening to place him on administrative leave without pay if all of his medical records were not turned over to Dr. Kelly by October 17, 2018.

123. Plaintiff responded that he had delivered records requests to the doctor treating him on September 11 and September 14, 2018, and he was waiting for the request to be fulfilled.

124. Plaintiff then asked for Dr. Kelly's address so that he could hand deliver the documents to her office. Plaintiff then noticed that the address provided by the Township Administrator was different than the address provided in previous paperwork provided by the Administrator.

125. In an October 12, 2018 email to the Chief, Plaintiff inquired as to whether his prior complaints to his superiors as well as his Human Resources complaint had resulted in the filing of an Internal Affairs Investigation by his superiors. The Chief – who stated that he was responsible for Internal Affairs during Springer's absence for training in the Fall of 2018 – confirmed that he had not filed an Internal Affairs investigation.[4]

[4] Assistant District Attorney Doris Galuchie would later fault Plaintiff for not filing such investigation, when Plaintiff had reported all such actions of hostile work environment and retaliation to his Internal Affairs officer, Springer, as well as the Chief.

126. On October 19, 2018, Plaintiff was given a fitness for duty evaluation by Township physician, Dr. Jennifer Kelly. Dr. Kelly reviewed all available information, including medical records, Plaintiff's self-report, and documents provided by the Department. Dr. Kelly concluded that Plaintiff began to experience stress and anxiety in May 2018 as a result of "work-related" issues with a superior. Notwithstanding Dr. Kelly's medical conclusions of work-induced PTSD and work-related anxiety, Plaintiff was forced to return to work without restrictions.

127. After Dr. Kelly's examination, Plaintiff asked several times about his workers' compensation review related to his now more than 4-month absence, and use of his personal time for his work related stress and PTSD related to the hostile work environment. Plaintiff was told that it was out of the hands of the Township and "there was nothing further they could do."

Plaintiff is Required to Return to Work

128. On November 2, 2018, Plaintiff reported for duty at 7:30 a.m. While driving to the Department and upon entering the building, Plaintiff felt extreme panic and anxiety fearing retaliation and because of past threatening behavior by Kascik. At 7:45 a.m., the Chief greeted Plaintiff and advised him that his name was chosen during a recent random drug testing process, although he was out on administrative leave, and that Plaintiff had to immediately submit to a drug test – which he did.

129. Following the drug test, Plaintiff continued to feel symptoms of anxiety and panic due to the events and his exposure at the Department. Plaintiff attempted to complete his paperwork but was unable to do so. Plaintiff relayed to the Chief that he was unable to complete the day and needed to take time off to deal with the work-related stress and anxiety. Chief Maloney did not ask if there was anything he could do to assist the Plaintiff, nor did he ask if he needed medical attention. Plaintiff then began using his own accrued time to avoid contact with Kascik

and the Department.

130. On December 17, 2018, Plaintiff was indirectly advised not to attend monthly staff meetings. After Plaintiff asked about this, Maloney directly told Plaintiff not to attend.

131. On December 28, 2018, Chief Maloney advised Plaintiff that arrangements needed to be made for Plaintiff to surrender his duty weapon. Plaintiff inquired as to why he needed to turn in his duty weapon, since he had been out since Julye 2017 for work-related stress and anxiety. Chief Maloney could not provide a valid reason.

132. Chief Maloney informed Plaintiff that Lieutenant Springer would arrive at his home in 30 minutes to retrieve Plaintiff's duty weapon. Plaintiff objected, stating that he had approximately 30 guests arriving for a holiday gathering. Springer came to Plaintiff's home while some of the guests had arrived, and many more guests were arriving, to retrieve the weapon. These actions caused Plaintiff great embarrassment and shame in front of friends and family. No other person on administrative leave or workers' compensation had previously been asked to turn in their duty weapon.

Plaintiff Is Forced to Use of His Time to Avoid His Harasser

133. Plaintiff then received an e-mail and memorandum advising him not to report for duty until he had been cleared to return. The memorandum also advised Plaintiff that his Township-issued access card had been electronically disabled.

134. On December 31, 2018, Springer advised Plaintiff that he had to copy the Chief on all future e-mails. At no point in Plaintiff's 19-year career had he ever been told to copy the Chief of Police on every e-mail; nor has Plaintiff heard of anyone else having to do that.

135. Also on December 31, 2018, Maloney entered Plaintiff into the Police Officer Scheduling System as using sick time until all of his sick time was exhausted. Maloney then scheduled Plaintiff as off, utilizing compensation time until February 26, 2019, without consulting

Plaintiff.

136. Upon retirement, Plaintiff would be eligible to receive compensation for unused sick time and compensation time. Because Plaintiff was not consulted as to what time he wished to use, Plaintiff would have exhausted sick time and compensation time which would have resulted in him being paid a higher rate upon retirement.

137. Plaintiff then requested to use his allotted time in various ways, depending upon manpower and in accordance with the collective bargaining agreement.

138. Springer advised Plaintiff that he would discuss his request with the Administrator when she returned on January 3, 2019. In Plaintiff's 19-year career, he had never had to ask the Administrator if he could take time off.

139. On January 2, 2019, Plaintiff was advised that he had to use all of his sick time before using any other type of time off. This was in violation of the collective bargaining agreement between the Township and the police union.

140. On January 5, 2019, Plaintiff filed a formal grievance via e-mail to Springer regarding the directive on how he was required to use his time.

141. On January 8, 2019, Plaintiff received an e-mail from the Administrator, advising him that his grievance was granted and that he could utilize his time in accordance with the collective bargaining agreement.

142. Also on January 8, 2019, Plaintiff asked the Administrator if she could find out any information regarding the re-evaluation of Plaintiff's workers' compensation claim. Plaintiff was told that he would be contacted by a representative, but it was out of the Township's hands. In reality, the Township had hired a law firm to defend against Plaintiff's workers' compensation

claim, and had never advised Plaintiff.

143. In December 2018 and on January 15, 2019, Plaintiff asked the Administrator and Susan Newman if they could contact Dr. Kelly, because she had not returned any of Plaintiff's telephone calls over a one-month period. The Administrator responded that "I am sorry but we cannot help you any further with this matter."

144. On January 10, 2019, Plaintiff had a conversation with Springer, and asked Springer about internal affairs procedures regarding crimes/offenses against employees. Plaintiff asked Springer at what point an internal affairs investigation would start automatically, without anyone directly saying that they wanted an investigation to be started. Springer responded by saying that if a crime was reported to him, an internal investigation would be started.

145. Plaintiff then gave Springer the example of the items being stolen from Plaintiff's mailbox. Springer responded that he remembered a May 2018 conversation between Plaintiff and Springer, and "vaguely" recalled Plaintiff saying that he was not sure if the items had been misplaced or stolen.

146. Plaintiff responded that, as police, they were required to use deductive reasoning as to items missing right after Plaintiff had filed a human resources complaint. Plaintiff advised Springer that he did not believe that it had been a coincidence. Still, Springer did not initiate an internal affairs investigation.

147. Rather, Springer responded by stating that he was uncertain if there was still video from April and May 2018 that he could investigate, but he would look into it "if [Plaintiff] wanted him" to do so. This was in violation of the Department's Standard Operating Procedures, pursuant to which it is the obligation of the Internal Affairs officer to conduct and investigate a theft

involving an employee.

As a Result of Plaintiff's Ongoing Hostile Work Environment and Retaliation Claims, Plaintiff Missed an Opportunity to be Considered for Lieutenant

148. On January 16, 2019, Plaintiff asked for a reasonable accommodation to have the Lieutenant's exam be postponed so that he could be considered.

149. Although Plaintiff was advised that his accommodation had been granted by the Chief to insert his ranking into the overall results at a later time, Plaintiff was advised that the test would proceed on January 23, 2019, and the individual with the highest overall score on that date would be named Lieutenant.

150. Based on his action toward Plaintiff, the Chief implied that Plaintiff would not or could not come out first. If Chief Maloney had believed that Plaintiff would or could come out first, the test would have been postponed for all candidates.

151. By taking these actions, Maloney effectively deprived Plaintiff of having any chance to be promoted to lieutenant.

The Mercer County Prosecutor's Office Steps in Sua Sponte

152. On January 18, 2019, First Assistant District Attorney Doris Galuchie of the Mercer County Prosecutor's Office reached out to Plaintiff for the stated purpose of assisting in resolving Plaintiff's ongoing issues. Galuchie offered to provide Plaintiff with a copy of the videotape of the March 2018 incident, as well as the investigation report, but later reneged on such promises.

153. Plaintiff discussed filing Internal Affairs investigations. Galuchie faulted Plaintiff for not filing such complaints previously. Plaintiff explained that he had reported them to Springer and that he believed Springer, his Internal Affairs officer, would investigate as necessary.

154. Galuchie confirmed that she was aware of the allegations the Plaintiff reported and confirmed that the allegations of the theft were not investigated. Galuchie also acknowledged that

an internal affairs investigation was not conducted by the Department, nor was one conducted by the Mercer County Prosecutor's office regarding his claims. Galuchie asked the Plaintiff what he wished to do regarding these matters. This is a clear violation of New Jersey Attorney General guidelines for internal affairs, which require that allegations made against a Chief of Police for failure to act must be investigated by the Prosecutor's Office. Instead, Galuchie asked Plaintiff on numerous occasions how he wanted to handle the situation, thus exposing him to similar treatment that his own Department subjected him to.

155. On January 30, 2019, Plaintiff has a meeting with Galuchie and Detective Brian Cottrell at the Mercer County Prosecutors Office. During that meeting, Plaintiff asked what his options were regarding filing an internal affairs investigation against Kascik and/or a criminal complaint regarding the March 22, 2018 incident and other harassment.

156. Galuchie and Cottrell both said that this was unchartered territory because Kascik was set to retire on February 1, 2019.

157. Plaintiff also inquired about the theft of items from his work mailbox, and why an internal affairs investigation had not been started in accordance with Department and Attorney General guidelines for internal affairs. Galuchie agreed with Plaintiff that an internal affairs investigation should have been conducted.

158. Galuchie also told Plaintiff that Chief Maloney had been reprimanded by Township Administration for not addressing the inappropriate materials that Kascik had watched during business hours.

159. Galuchie also state that she had told Chief Maloney that he did not handle the complaints correctly, and that her office would have handled the investigation completely

differently.

160. At the conclusion of the meeting, Galuchie advised the Plaintiff to think about what he wanted to do and come back to her office on Thursday, January 31, 2019.

161. Plaintiff ultimately filed an Internal Affairs investigation on January 31, 2019, hoping to finally get a fair, unbiased investigation into his complaints. Instead, Plaintiff was told by Galuchie that he (Plaintiff) was retaliating against Kascik and wanted to "hurt Bill and Lance," referring to Springer and Chief Maloney.

162. Galuchie told Plaintiff that since the internal affairs investigation was now started that she would contact the Division of Pensions and Benefits to notify them of the pending internal affairs matter, which would bar Kascik from retiring on February 1, 2019 given the open internal affairs matter. Galuchie advised Plaintiff that she was going to the Township immediately to start the investigation, and that she would contact "pensions" once she got to the Township.

163. Galuchie told Plaintiff that the internal affairs investigation would have to focus on Chief Maloney and Lieutenant Springer, for failure to act and neglect of duty for not addressing the claims earlier.

164. On February 1, 2019, Plaintiff was told that his Internal Affairs complaint was too late, because Kascik had been eligible to retire several days earlier.

165. In reality, publicly-available documents – specifically Township Resolution 19, which was passed at the January 22, 2019 Township Committee Regular Meeting – showed that Kascik was not eligible to retire until February 7, 2019. Documents available on the hopewelltwp.org website also reflected this.

166. Kascik's retirement should not have been effective until the first of the following month, i.e., March 1, 2019.

167. During a staff meeting on February 13, 2019, Chief Maloney stated that the township committee had approved the promotion of a fifth sergeant within the Department. The Department had only four sergeants' positions over the previous 17 years.

168. The officer that was promoted to sergeant, Louis Vastola, then took over Plaintiff's position on "C squad," effective March 8, 2019. By promoting another officer, who took Plaintiff's position on "C squad," the Township indicated that Plaintiff was not part of the Township's plans for the future.

169. The Township's workers' compensation attorney made it clear to Plaintiff's workers' compensation attorney that the Township no longer wanted Plaintiff at the Department.

170. Plaintiff believes and avers that he has been retaliated against due to his complaints against Kascik both in April and May 2017, leading to the continued harassment and hostile work environment when he returned to work in February 2018, which resulted in the retaliation against him by Kascik on March 22, 2018, and the ongoing retaliation he experienced following his April 17, 2018 formal complaint.

171. Township Policy 3.130 prohibits workplace violence and endorses a "Zero Tolerance Policy for workplace violence:"

> "Acts or threats of physical violence including intimidation, harassment, and/or coercion which involve or affect the Township or which occur on Township property will not be tolerated."

Threats or Acts of Violence are defined to include "conduct against a person or property that is sufficiently severe, offensive, or intimidating to alter the employment conditions at the Township, or to create a hostile, abusive or intimidating work environment for one or more Township employees." Examples of prohibited conduct include: "aggressive, hostile, or bullying behavior

that creates a reasonable fear of injury to another person, or subjects another person to emotional distress;" "committing acts motivated by, or related to, harassment based on a protected class, including sexual harassment, or domestic violence;" "Unauthorized possession or inappropriate use of firearms, weapons, or other dangerous devices on Township property." The policy describes some of the warning signs as "physical signs of hard breathing, reddening of complexion, menacing stare, loudness, fast or profane speech;" "acting out either verbally or physically;" "disgruntled employee . . . who is excessively bitter;" and "intense anger, lack of empathy." "If an employee exhibits such behavior, the employee should be monitored and such behavior should be documented."

172. Township Policy 3.150 prohibits harassment in the workplace, stating that the Township is "committed to providing a work environment that is free of discrimination. The Township will not tolerate harassment of or by Township employees toward anyone." "The purpose of the policy is to ensure all Township employees a work environment free from any type of discrimination based upon a protected group status." "Township employees are expected to avoid any behavior or conduct of a harassing or discriminatory nature. The Township prohibits any form of harassment or discrimination related to an employee's actual or perceived protected group status, including race . . ." Stated examples of harassment include: "treating an individual less favorably based on a person's protected group status," "using derogatory or demeaning slurs to refer to a person's protected group status;" "telling ethnic jokes that harass an employee or create a hostile work environment," and "using derogatory references regarding a protected group status."

173. Although the Township has policies in place, as well as a chain of command and reporting and investigation procedure for complaints, Plaintiff believes and avers that the policies

and procedures were not followed. His complaints and requests for help were dismissed, mishandled, and not properly investigated, beginning with his own superiors. His repeated pleas for protection from retaliation and intimidation have been minimized or ignored. Defendants have done nothing more than pay lip-service to their own policies, responding by announcing generically in a staff meeting that everyone should get along and be nice to each other. In fact, Defendants have completely disregarded Plaintiff's complaints, and forced Plaintiff to report to Kascik, although other reasonable alternatives were available.

174. Plaintiff has suffered anxiety, depression, and post-traumatic stress disorder, as documented by a licensed psychologist, and he has missed time from work due to this ongoing discrimination and retaliation from Respondents.

175. Plaintiff has been shunned and retaliated against by his superiors and co-workers and, as a result, he has been forced to work in a hostile work environment.

176. Plaintiff believes, and therefore avers, that the actions of Defendants, specifically Kascik, in the severe and pervasive unlawful discrimination against Plaintiff, by creating a hostile work environment and retaliating against Plaintiff after he complained about such behavior, as well as the inactions of Maloney, the Department, the Township, and to a lesser extent Springer in subjecting Plaintiff to an ongoing hostile work environment, embedded with a culture of bias and racial animus toward Plaintiff, and failing to properly investigate and address Plaintiff's concerns resulted in him being completely ostracized by the Department and suffering anxiety, panic

attacks, depression, and post-traumatic stress, all constituted violations of the New Jersey Law Against Discrimination ("NJLAD") and the New Jersey Conscientious Employee Protection Act ("NJCEPA").

CAUSES OF ACTION

COUNT ONE – VIOLATION OF NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT ("NJCEPA"), N.J.S.A. 34:19-1, *et seq.*

177. Plaintiff, Michael Sherman, hereby repeats the allegations set forth above and makes same a part as if set forth at length herein.

178. Defendants, by committing the above acts, violated the New Jersey Conscientious Employee Protection Act ("NJCEPA"), N.J.S.A. 34:19-1, *et seq.*.

179. Specifically, the Defendants discriminated and/or retaliated against the Plaintiff in his workplace, and created a hostile work environment, including taking actions that negatively or adversely affected Plaintiff's employment, as well as his physical and emotional well-being.

180. Plaintiff reasonably believed that Defendants' conduct violated a law or regulation.

181. Plaintiff performed "whistle-blowing activity" as defined in NJCEPA.

182. Adverse employment actions have been taken against Plaintiff.

183. Plaintiff's whistle-blowing activity caused such adverse employment actions.

184. As a direct and proximate result of Defendants' conduct, Plaintiff was caused to suffer damages, including financial loss, emotional and mental anguish, and other economic and non-economic damages.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for the following relief:

- Compensatory damages, including but not limited to damages for pain and suffering, emotional distress, future medical expenses, and loss of time off;
- Punitive damages;
- Treble damages;
- Attorneys' fees and costs as provided by law; and
- Such other and further relief as the Court may deem just and equitable.

COUNT TWO – VIOLATION OF NEW JERSEY LAW AGAINST DISCRIMINATION ("NJLAD"), N.J.S.A. 10:5-1, *et seq.* – RACIAL DISCRIMINATION/HOSTILE WORK ENVIRONMENT

185. Plaintiff, Michael Sherman, hereby repeats the allegations set forth above and makes same a part as if set forth at length herein.

186. Defendants, by committing the above acts, violated the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1, *et seq.*.

187. Specifically, the Defendants discriminated and/or retaliated against the Plaintiff in his workplace, and created a hostile work environment, including taking actions that negatively or adversely affected Plaintiff's employment, as well as his physical and emotional well-being.

188. Plaintiff suffered intentional discrimination because of his race.

189. The discrimination was pervasive and regular.

190. The discrimination detrimentally affected Plaintiff.

191. The discrimination would detrimentally affect a reasonable person of the same race in Plaintiff's position.

192. Defendants the Township and the Department are responsible and liable for the actions of Defendants Kascik, Maloney, and Springer under the doctrine of respondeat superior.

193. As a direct and proximate result of Defendants' conduct, Plaintiff was caused to suffer damages, including financial loss, emotional and mental anguish, and other economic and non-economic damages.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for the following relief:

- Compensatory damages, including but not limited to damages for pain and suffering, emotional distress, future medical expenses, and loss of time off;
- Punitive damages;
- Treble damages;
- Attorneys' fees and costs as provided by law; and
- Such other and further relief as the Court may deem just and equitable.

COUNT THREE – VIOLATION OF NEW JERSEY
CIVIL RIGHTS ACT, N.J.S.A. 10:6-1, et seq.

194. Plaintiff, Michael Sherman, hereby repeats the allegations set forth above and makes same a part as if set forth at length herein.

195. Defendants, by committing the above acts, violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.*.

196. Specifically, the Defendants discriminated and/or retaliated against the Plaintiff in his workplace, and created a hostile work environment, including taking actions that negatively or adversely affected Plaintiff's employment, as well as his physical and emotional well-being.

197. Defendants acted individually and/or in concert and/or otherwise conspired to violate Plaintiff's due process rights, as set forth in the New Jersey State Constitution and made applicable herein through the New Jersey Civil Rights Act, N.J.S.A. 10-6-1, *et seq.*

198. Defendants, individually, collectively, and/or in concert with one another, retaliated against Plaintiff for his lawful exercise of his duties, as well as his right to bring this action without any retaliation. This constituted a violation of Plaintiff's rights as also set forth in the New Jersey Civil Rights Act, and set forth in the New Jersey Constitution, which give Plaintiff the right to petition and bring causes of action before the Courts, absent retaliation.

199. As a direct and proximate result of Defendants' conduct, Plaintiff was caused to suffer damages, including financial loss, emotional and mental anguish, and other economic and non-economic damages.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for the following relief:

- Compensatory damages, including but not limited to damages for pain and suffering, emotional distress, future medical expenses, and loss of time off;
- Punitive damages;
- Treble damages;
- Attorneys' fees and costs as provided by law; and
- Such other and further relief as the Court may deem just and equitable.

BAZELON LESS & FELDMAN, P.C.
A Pennsylvania Professional Corporation
Attorneys for Plaintiff

Dated: March 19, 2019

/s/ Christina M. Reger

Christina M. Reger, Esq.
NJ Attorney ID No. #014722003
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8000 Sagemore Drive
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Facsimile: 856-988-0194

JURY DEMAND

Plaintiff demands a trial by jury on all issues of the within Complaint.

BAZELON LESS & FELDMAN, P.C.
A Pennsylvania Professional Corporation
Attorneys for Plaintiff

Dated: March 19, 2019

/s/ Christina M. Reger
Christina M. Reger, Esq.
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DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Christina M. Reger, Esq. as trial counsel in this matter.

BAZELON LESS & FELDMAN, P.C.
A Pennsylvania Professional Corporation
Attorneys for Plaintiff

Dated: March 19, 2019

/s/ Christina M. Reger
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RULE 4:5-1 CERTIFICATION

I hereby certify that to the best of my knowledge, information, and belief, the within matter in controversy is not the subject of any other pending or contemplated court actions or arbitration proceedings.

I further certify that to the best of my knowledge, information, and belief, I am not aware of any non-parties who should be joined in the action.

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.

BAZELON LESS & FELDMAN, P.C.
A Pennsylvania Professional Corporation
Attorneys for Plaintiff

Dated: March 19, 2019

/s/ Christina M. Reger
Christina M. Reger, Esq.
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RULE 1:38-7(b) CERTIFICATION

I certify that confidential personal identifiers have been redacted from the documents now submitted to the Court and will be redacted from all documents submitted to the Court in the future in accordance with Rule 1:38-7(b).

BAZELON LESS & FELDMAN, P.C.
A Pennsylvania Professional Corporation
Attorneys for Plaintiff

Dated: March 19, 2019

/s/ Christina M. Reger
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