

CRESCI LAW FIRM

A Limited Liability Company

Peter J. Cresci, Esq.
Drew M. Pratko, Esq.

830 Avenue A, PO Box 74
Bayonne, New Jersey 07002
Telephone: (201) 436-4126/7
Telecopier: (201) 436-9220

Rec'd 3/1/12
1 Rockefeller Plaza, Suite 1427
New York, New York 10020
Telephone: (212) 332-1346
Telecopier: (212) 332-1334

10175 Campbell Road
Paris, New York 13456
Telephone: (315) 368-7764
Telecopier: (315) 737-0042

E-mail: Crescilegal@gmail.com

February 27, 2012

Town of Morristown
Matthew Stechanuer, Clerk
200 South Street
Morristown, New Jersey 07963

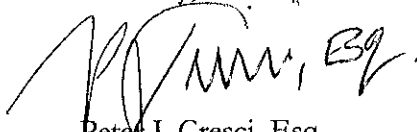
Re: **James Lonergan v. The Town of Morristown and Karl Peter Demnitz**
Case No. 2:11-CV-07035-ES-CLW
Our File No. 07-5731

Dear Mr. Stechanuer:

Pursuant to the above-captioned matter, enclosed please find one (1) copy of summons, one (1) copy of the complaint, and one (1) copy of the Civil Cover Sheet filed electronically on December 1, 2011.

Thank you for your time and cooperation in this matter. If you have any questions, I may be contacted at my office (201) 436-4126/4127.

Sincerely,


Peter J. Cresci, Esq.
For the Firm

Encl.

CF: James Lonergan

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES LONERGAN,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

TOWN OF MORRISTOWN, ET AL.,
Defendant

CASE NUMBER: 2:11-CV-07035-ES-CLW

TO: *(Name and address of Defendant):*

Town of Morristown
Matthew Stechauner, Clerk
200 South Street
Morristown, NJ 07960

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Cresci Law Firm LLC
830 Avenue A, PO Box 74
Bayonne, NJ 07002

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

WILLIAM T. WALSH

CLERK

LEROY DUNBAR

(By) DEPUTY CLERK



ISSUED ON 2011-12-05 16:24:29.0, Clerk
USDC NJD

Peter J. Cresci, Esq. (PC7693)
CRESCI, LLC
PO Box 74, 830 Avenue A
Bayonne, New Jersey 07002-0074
(201) 436-4126 Tel.
Attorney for the Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAMES LONERGAN

PLAINTIFF.

V.

TOWN OF MORRISTOWN and
KARL PETER DEMNITZ, Individually,

DEFENDANTS.

§
§
§
§
§
§
§
§
§
§

CAUSE NO. 11-CV-07035

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

1. COMES NOW, James Lonergan, Plaintiff in the above entitled lawsuit, and states the following as his complaint against the Defendant, Town of Morristown and Karl Peter Demnitz, Individually.

I. PARTIES

2. Plaintiff, James Lonergan, is an individual who is a citizen in the State of New Jersey and resides in Ledgewood, New Jersey and can be reached at the following address: c/o Cresci, LLC, P.O. Box 74, 830 Avenue A, Bayonne, New Jersey 07002.

3. Defendant, Town of Morristown, is an incorporated town in New Jersey, authorized to do business in the State of New Jersey and may be served with process by serving a copy of the Summons and Complaint to: Matthew Stechanuer, Clerk, 200 South Street, Morristown, New Jersey 07963-0914.

4. Defendant, Karl Peter Demnitz, is an individual who is a citizen in the State of New Jersey and may be served with process by serving a copy of the Summons and Complaint to 23 Academy Road, Morris Plains, New Jersey 07950-2418.

II. JURISDICTION & VENUE

5. The Court has jurisdiction over the lawsuit, according to 28 U.S.C. §1331, because this action arises under the FMLA, 29 U.S.C. § 2611, et seq., the Rehabilitation Act, 29 U.S.C. § 701; the Older Workers Benefits Protection Act (OWBPA), the Conscientious Employee Protection Act (CEPA), N.J.S.A. § 34:19-1, The New Jersey Law Against Discrimination (NJLAD) N.J.S.A. § 10.5, and under 42 U.S.C. §1983 for reprisal and retaliation, as this action arises under the First Amendment of the U.S. Constitution, and other common law torts such as

III. EXHAUSTION OF ADMINISTRATIVE PROCEDURES

6. All required administrative procedures, if any, were exhausted.

IV. STATEMENT OF FACTS

7. Plaintiff, James M. Lonergan, has been an employee of the Town of Morristown for almost three decades. He was one of the older members of the Morristown Police Department.

8. Throughout his numerous years at the Town of Morristown his qualifications and performance had been exemplary. Plaintiff has served as both a patrolling police officer, as well as a detective in the Department.

9. Despite his superior performance on the job, Plaintiff is subject to discrimination and harassment, reprisal, hostile working environment, and infliction of emotional distress.

10. In order to effectuate a younger work force, Defendant, Town of Morristown, and Karl Peter Demnitz reprised and retaliated against Plaintiff, James M. Lonergan on the basis of his age.

11. Plaintiff's participation in protected activities also played a significant role in the reprisal and retaliation Plaintiff endured. Plaintiff was well known to voice his opinion in the department, and as such is subjected to retaliation and reprisal, discrimination and hostile workplace harassment at the hands of Defendant Demnitz and Police Department superiors.

12. Plaintiff is also subjected to a practice and pattern of reprisal. When Plaintiff came forward with complaints of inappropriate conduct and/or harassment, he was immediately subjected to retaliatory and discriminatory actions.

13. When Plaintiff sought remedy through the chain of command regarding inappropriate conduct of his superiors he was not given fair and unbiased treatment. Plaintiff had come forward to Defendant, Karl Peter Demnitz with a complaint against Lt. Meehan and Captain Kruse. Subsequent Lt. Meehan and Captain Kruse were placed in charge of investigating Plaintiff's conduct in an Internal Affairs Complaint. Plaintiff voiced his concern that neither would be able to conduct a fair and unbiased investigation. Plaintiff was denied a change of supervisors conducting his investigation via letter by Defendant, Karl Peter Demnitz.

14. In furtherance of the reprisal, retaliation and hostile treatment that Plaintiff endured, allegations of misconduct were brought against Plaintiff, he was often subjected to incomplete investigations, premature judgments, and disregard of witnesses. Plaintiff was forced to undergo an excessive amount of Fitness for Duty exams without good cause or reason, which caused the Plaintiff emotional distress.

15. Ultimately because of his protected communications, filing of employee complaints against Chief Demnitz, in order to effectuate a younger and lesser paid workforce, Plaintiff was constructively discharged and forced to retire in December 2009.

V. STATEMENT OF CLAIMS

A. FAMILY AND MEDICAL LEAVE ACT, 29 U.S.C. § 2611, ET SEQ.

16. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 15 as fully set forth herein. This cause of action is pled against Defendant, Hudson County.

17. Plaintiff is an eligible employee within the meaning of the FMLA. Plaintiff was employed by the Defendant for at least 12 months and for at least 1,250 hours of service during the previous 12-month period, 29 U.S.C. §2611(2). Defendant Town of Morristown is an employer within the meaning of the FMLA, 29 U.S.C. §2611(4).

18. The Family Medical Leave Act (FMLA) requires employees of fifty or more employees to provide up to twelve (12) weeks of unpaid job related leave to eligible employees for certain medical reasons. The reasons for taking a leave are limited to take medical leave when the employee is unable to work because of a serious health condition. Employees must be restored to their original or equivalent position with equivalent pay, benefits and other employment terms. Further, the Defendant must maintain the provisions that would have been provided if the employee had continued in employment continuously for the duration of such leave.

19. It is unlawful for the Defendant to deny or refuse a covered employee the rights of the FMLA or to discriminate and retaliate against the individual for exercising these rights (See 29 U.S.C § 2611(a)(1) & (2)). Defendant intentionally discriminated against the Plaintiff, due to the medical leave he had taken due to his serious health condition, by demoting Plaintiff and reducing his pay thus violating the FMLA.

B. REHABILITATION ACT OF 1973, 29 U.S.C. § 701

20. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 as it fully set forth herein. This cause of action is pled against Defendant.

21. Plaintiff belongs to a class protected under the Rehabilitation Act of 1973 by virtue of the fact Plaintiff is a qualified person, as he suffered physical disabilities. The Rehabilitation Act of 1973, Section 504, forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services. Plaintiff is otherwise qualified to perform the essential functions of Police Officer.

22. Plaintiff is a qualified person with a disability under the Rehabilitation Act of 1973, Section 504, as individuals with disabilities are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. For purposes of employment, qualified individuals with disabilities are persons who, with reasonable accommodations, can perform the essential functions of the job for which they have applied or have been hired to perform. Reasonable accommodation means an employer is required to take reasonable steps to accommodate an employee's disability unless it would cause the employer undue hardship. Defendant Town of Morristown failed to take such steps.

23. Plaintiff requested temporary, reasonable, and minimal accommodations upon returning to work, per his doctors' instructions for his recovery. Defendant Town of Morristown supervising employees harassed and embarrassed Plaintiff as a result of this request. Defendants demoted Plaintiff from his position as Detective and then constructively discharged the Police Officer, resulting in lost pay and benefits.

24. Defendant wrongly discriminated against Plaintiff because of his disability and recovery. Through this illegal discrimination, Defendant Town of Morristown

violated the Rehabilitation Act of 1973.

C.

CIVIL RIGHTS ACT 42 U.S.C. §1983;
First & Fourteenth Amendment Violations

25. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 24 as if fully set forth herein. Plaintiff was a public employee of the Town of Morristown.

26. Defendants Employee, Karl Peter Demnitz and others employed by the Defendant Town of Morristown deprived Plaintiff of his rights under the First and Fourteenth Amendments to the U.S. Constitution in violation of 42 U.S. 1983.

27. Defendant's employees were acting under the color of laws and regulations of the State of New Jersey and Town of Morristown. The Defendant's employees have developed a policy and custom within the Town of Morristown that discourages employees from publicly discussing any matter that would cast the Police Chief and the Town of Morristown in a negative light, such as fraud, waste, and abuse. This is accomplished by threatening and taking adverse action. The exercise of these established policies and customs resulted in violations of Plaintiff's right of free speech.

28. Plaintiff's actions and statements involved a matter of political, social, and other concern that are constitutionally protected under the First Amendment. Further, Plaintiff's interests in his actions and statements outweigh any interest in Town of Morristown promoting the efficiency of their government services.

29. Plaintiff's speech and actions were the substantial motivating factor in Defendant's decision to subject him to a hostile work environment, falsely accuse Plaintiff, maliciously prosecute him, violate his Privacy Rights, violate his HIPAA rights, and ultimately to terminate Plaintiff. Defendants Demnitz and Town of Morristown

acted intentionally to chill Plaintiff's speech, discredit him, damaging his reputation, and punish him for exercising his right to free-speech.

D. NEW JERSEY LAW AGAINST DISCRIMINATION (LAD) CHARGES
N.J.S.A. § 10:5 et seq. (Disability & Retaliation)

30. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 29 as fully set forth herein. This cause of action is pled against Defendant Town of Morristown and Defendant Karl Peter Demnitz.

31. Plaintiff belongs to a class protected under the New Jersey Law Against Discrimination (LAD) N.J.S.A. § 10:5 et seq., by virtue of the fact Plaintiff, as employed, is a qualified person with able qualities and recognized disability. The NJLAD protects all members from any and all discrimination and retaliation from their employers or any term or condition of employment.

32. Defendants were in violation of the NJLAD when Defendants intentionally discriminated against Plaintiff by continually subjecting Plaintiff to a hostile work environment, failing to accommodate Plaintiff, and reprising against Plaintiff for his protected NJLAD activity.

33. Defendants intentionally discriminated and retaliated against Plaintiff by failing to reasonably accommodate Plaintiff so as to reasonably perform his job as a Police Officer.

34. Defendants created a hostile work environment due to Plaintiff exercising his rights under NJLAD and the Rehabilitation Act. Defendants Town of Morristown and Karl Peter Demnitz utilized threats, intimidation, and took retaliatory actions to punish Plaintiff for exercising his rights.

E. **NEW JERSEY LAW AGAINST DISCRIMINATION (NJLAD), N.J.S.A. § 10.5 et seq. (Age)**

35. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 34 as if fully set forth herein. This cause of action is pled against Defendants, Town of Morristown and Karl Peter Demnitz, individually.

36. Plaintiff belongs to a class protected under NJLAD by virtue of his age (56).

37. Defendant Town of Morristown is an employer within the meaning of NJLAD, and as such is prohibited from discriminating and retaliating against Plaintiff in the terms, conditions, and benefits of his employment on the basis of age. NJLAD protects all members from any and all discrimination from their employers or any term or condition of employment to encourage or discourage membership in any labor organization.

38. Defendants participated in an unlawful employment act when they discriminated against Plaintiff in compensation, terms, conditions, and privileges of employment due to his age, by constructively discharging Plaintiff.

39. Defendants' constant practice and pattern of discrimination and harassment created an intimidating, offensive, and hostile working environment for Plaintiff that is severe and pervasive. The Defendants' actions affected the terms and conditions of Plaintiffs employment.

40. Plaintiff is entitled to compensatory as well as punitive damages for these violations of the New Jersey Law Against Discrimination.

F. **COMMON LAW CLAIMS**

41. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 40 as if fully set forth herein. Federal and state law demonstrate a clear mandate for public policy. Because Plaintiff was constructively discharged for his complaints; his

- d. prejudgment and post judgment interest;
- e. Costs of suit; and
- f. any and all other general or specific relief, both at law and in equity, to which Plaintiff may be entitled to.

Respectfully submitted,

CRESCI LAW FIRM, LLC
PO Box 74, 830 Avenue A
Bayonne, New Jersey 07002-0074
Telephone: (201) 436-4126/4127
Telecopier: (201) 436-9220

Peter J. Cresci, Esq. /s/

By: _____
PETER J. CRESCI (PJC 7693)
ATTORNEY FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

James Lonergan

(b) County of Residence of First Listed Plaintiff Morris

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Cresci Law Firm LLC
830 Avenue A, PO Box 74, Bayonne, New Jersey 07002
(201) 436-4126
Crescilegal@aol.com

DEFENDANTS

Town of Morristown and Karl Peter Demnitz, Individually

County of Residence of First Listed Defendant Morris

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☒ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence ☐ 530 General Habeas Corpus: ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainee ☐ 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983, 1st Amendment, OWBPA 29 U.S.C. § 621-634
 Brief description of cause:
 Employment discrimination and retaliation due to protected activity and age.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 1,000,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

12/01/2011

SIGNATURE OF ATTORNEY OF RECORD

Peter J. Cresci, Esq.

Digitally signed by Peter J. Cresci, Esq.
 DN: cn=Peter J. Cresci, Esq., o=Cresci Law Firm LLC, ou=New Jersey, email=peter.j.cresci@clwllc.com, c=US
 Date: 2011.12.01 12:00:00 -0500