

RECEIVED
JUL 8 2008
TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

§ 87(2)(b)

2. Plaintiff, James K. Cullen, is an individual who is a citizen in the State of New Jersey and resides in Jefferson Township, 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. Defendant John F. Kruse is an individual who is a citizen of the State of New Jersey and may be served with process by serving a copy of the Summons and Complaint to 101 Louis Lane, Hackettstown, New Jersey 07840. Defendant, Michael N. Ubertaccio, is an individual who is a citizen in the State of New Jersey and may be served by serving a copy of the Summons and Complaint to 15 Bock Hoven Lane, Morristown New Jersey 07960.

II. JURISDICTION & VENUE

5. The Court has jurisdiction over the lawsuit, according to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301-4333; under 28 U.S.C. 1331, as this action arises under the First and Fourteenth Amendments of the U.S. Constitution, Civil Rights Act 42 U.S.C. §1983; the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. § 10:5 et seq. Venue is appropriate in the district under 28 U.S.C. §1391 and 38 U.S.C. §4323(b). Additionally, all events giving rise to these claims occurred in this district.

III. EXHAUSTION OF ADMINISTRATIVE PROCEDURES

6. Plaintiff filed charges of discrimination, harassment, and retaliation as an Employment Practices Complaint with the Defendant Town of Morristown Employment Practices Officer ("EPO"). The matters were formally investigated. On or about May 8, 2008 Defendant Morristown determined the allegations were true and has violated Morristown town policy.

IV. STATEMENT OF FACTS

7. Plaintiff, James K. Cullen, has been an employee with the Morristown Police Department for over twenty-two (22) years. Plaintiff is currently employed as a Lieutenant.

8. Throughout his numerous years of service Plaintiff has always performed well as an employee of the Morristown Police Department. Plaintiff has served with the United States Coast Guard as a reservist since enlisting in 1997.

9. While employed at the Morristown Police Department, Plaintiff has continued to enhance his skills and abilities for leadership and professional service by continuing his education and training. Plaintiff graduated *Summa Cum Laude* from Farleigh Dickinson University in May of 1998. Plaintiff received his Masters in Administrative Science from Farleigh Dickinson's Public Administration Institute. Plaintiff also was accepted into the Juris Doctorate program at Rutgers' University.

10. Plaintiff has made both formal and informal complaints about the actions of Defendant Demnitz, Defendant Kruse, and Defendant Ubertaccio. Town of Morristown officials have been aware of the discriminatory and retaliatory customs and practices existing at the Morristown Police Department. Defendant administrators failed to take action to quell such illegal acts.

11. Plaintiff has been retaliated against by the Defendants. Plaintiff placed first on the promotional exam for Sergeant. Plaintiff was bypassed for the promotion and the individual who placed second was selected. Plaintiff was again bypassed when the third candidate on the list was promoted. Plaintiff was bypassed a third time in when the fifth candidate on the list was promoted, despite Plaintiff first placement. It was not until after receiving both his Bachelor's and Master's degrees and five (5) years as the first candidate on the promotion list, that Plaintiff was promoted to Sergeant.

12. Plaintiff announced his growing interest in and intention to join the United States Coast Guard. This news met with ridicule and mockery by other officers, specifically Defendants Demnitz and Ubertaccio. Inappropriate drawings and depictions of Plaintiff relating to his interest in the Coast Guard began appearing on Plaintiff's locker, personal property, and paycheck envelopes. This included but is not limited to phallic symbols.

13. Plaintiff enlisted in the United States Coast Guard Reserve. In December of 1997 Plaintiff attended Reserve Enlisted Basic Indoctrination, and in January of 1998 Plaintiff began drilling with the reserve unit in Cape May, New Jersey. Defendants knew of Plaintiff's involvement in the military.

14. Upon announcing his intention to enlist in the United States Coast Guard and his subsequent enlistment, Plaintiff began experiencing a practice and pattern of discrimination and harassment. When Plaintiff contacted the recruiting offices in Newark, New Jersey and Philadelphia, Pennsylvania he was met with unexpected animosity and resistance from the recruiters. Plaintiff later learned that Defendant, Karl Peter Demnitz, had contacted the recruiting offices in an attempt to interfere with Plaintiff's enlistment.

15. After nearly three (3) years of harassment, humiliation and discrimination, Plaintiff filed a formal complaint. After his initial meeting with Business Administrator Eric Maurer to discuss the harassment and complaint, in which Plaintiff provided examples and evidence of the repeated harassment, Plaintiff was informed that an investigation would be conducted and he would be contacted with the results. Plaintiff never received any information or notification of an investigation or its conclusions, nor was any action taken against those responsible for the harassment.

16. In anticipation of his attendance of night classes for law school, Plaintiff chose to exercise his seniority and be moved from the night shift to the "A" side day shift (7:00 AM – 5:30 PM) for the calendar year. Plaintiff also informed Morristown Police

Department of his acceptance into Law School and of his class schedule, with classes beginning at 6:00 PM. In March 1998, Plaintiff was advised that he was being moved from this requested day shift to an afternoon overlap shift (9:45 AM – 8:30 PM), making it impossible for him to attend his evening classes. The reason given for this change by Captain Gensch was that Francis Locascio, another military reservist, had been removed from the Detective Bureau and placed back on dayshift parole and Captain Gensch would not allow two (2) military reservists to work together on the same shift. Plaintiff requested an alternative day shift (“B” shift), however, a junior officer was assigned to the “B” shift instead. Plaintiff advised Defendant Demnitz that these actions are in violation of the of the department’s longstanding practices of granting seniority rights in shift assignments, and also in violation of the United States Employment and Reemployment Rights Act (USERRA).

17. After unsuccessful attempts to remedy the shift issue internally, Plaintiff was forced to file a formal grievance with the United States Department of Labor for being denied a benefit of the workplace (seniority-based shift choice), and the United States Department of Labor contacted the Business Administrator to advise they had opened a file (Case No. 02-NJ-1998-00014-20-G) to investigate the matter.

18. Immediately after Plaintiff exercised his rights under USERRA, he began experiencing retaliatory discrimination and acts of discipline. Plaintiff was informed that the vacation days he had chosen over six (6) months ago were now being denied. Plaintiff was advised by Defendant, Karl Peter Demnitz, that since Plaintiff had chosen to fight the department (referring to Plaintiff’s USERRA / DOL-VETS complaint) he must now suffer the consequences. Additionally, the Chief of Police refused to allow other officers to switch or swap shifts with Plaintiff for the days in question. Plaintiff filed a formal grievance with the Morristown Police Department and once again contacted the United States Department of Labor Veterans Employment and Training Services to advise that he was now being subject to retaliatory actions for exercising his rights under USERRA.

19. The discrimination and retaliation Plaintiff suffered greatly impacted his current as well as future income and employability. He was denied numerous training opportunities, special assignment, and various other programs with the Morristown Police Department, including but not limited to bike patrol, detective bureau, Emergency Response Team, and county and regional task forces.

20. In another act of retaliatory discrimination, Plaintiff was advised by Defendant Demnitz that the Morristown Police Department had received a call from the United States Coast Guard. Plaintiff advised that an investigator from the United States Office of Personnel Management had probably contacted the Department to verify his employment and to ask questions as part of Plaintiff's National Security Clearance background check. Defendant Demnitz threatened to say negative things to the investigator with the intent to ruin Plaintiff's military aspirations. Defendant Demnitz then advised Plaintiff that even if he did not say anything negative at the time, Plaintiff should not forget that Defendant could always make a negative phone call at any time to the United States Coast Guard if he chose to do so.

21. A Personnel Action Report was filed against Plaintiff stating: "In accordance with policy and contract, indefinite leave of absence WITHOUT PAY for duration of (involuntary) active military service." This referred to Plaintiff's immediate response to New York on the morning of the September 11, 2001 terrorist attacks, and his mobilization to active duty for the following three (3) months. Moreover, Defendant Demnitz stated to Morristown police officers that, "SGT Cullen had better decide whether he's going to be a cop or a Coast Guardsman, because a man can't serve two masters." He then conveyed his intention to promote someone other than Plaintiff to Lieutenant, since Plaintiff was away on active military duty.

22. On March 31, 2003, Plaintiff was called to active duty in support of Operation Iraqi Freedom. While on active duty Defendant Demnitz contacted Plaintiff's Coast Guard command demanding proof of his service and a copy of his orders. Moreover, Defendant Demnitz billed Plaintiff for three (3) vacation days for his first

three (3) days of military leave.

23. Between 2003 and 2004, Defendant Demnitz approached several military reserve members under Plaintiff's command attempting to get information regarding Plaintiff's military service. Defendant Demnitz claimed Plaintiff was trying to "scam" the taxpayers and that he believed Plaintiff did not intend to return to the Morristown Police Department after release from active duty.

24. Although Plaintiff was on a military leave of absence, Defendant Demnitz launched an internal affairs investigation into Plaintiff and ordered Plaintiff to submit to a fitness-for-duty evaluation. Plaintiff attended under protest since he was not currently employed by the Morristown Police Department as a police officer. After the exam Plaintiff requested a fitness for duty evaluation from a federal psychiatrist through his military chain of command. The federal psychiatrist pronounced Plaintiff fully fit for law enforcement duty.

25. Defendant Demnitz contacted Plaintiff's military supervisor to advise him that Plaintiff failed the department ordered fitness-for-duty evaluation, and that Plaintiff should not be allowed to carry a weapon. Defendant Demnitz proceeded to reveal illegally obtained information from his internal affairs investigation to an outside party. Defendant Demnitz suspended Plaintiff without pay, cutting off his municipal-ordered differential pay and pension contributions.

26. Thereafter, Defendant Demnitz contacted Plaintiff's military supervisor, inquiring about Plaintiff's "activation status." Defendants ignored orders from the Morris County Prosecutor not to reveal information from internal affairs investigations to outside parties by advising Plaintiff's supervisor that he was conducting an investigation to see whether Plaintiff is trying to "financially capitalize" on his activation. Plaintiff's military supervisor advised Defendant Demnitz to put his request in writing so it could be routed through the proper channels. Defendant Demnitz called back a short while later enraged and attempted to intimidate Plaintiff's military supervisor. Plaintiff's military supervisor

reported Defendant Demnitz's conduct to the Morris County Prosecutor's Office.

27. Plaintiff was released from active military duty and returned to duty with the Morristown Police Department. Defendant Demnitz refused to allow Plaintiff to carry a weapon for the rest of the month and suggested Plaintiff use his vacation time.

28. On December 28, 2006 Plaintiff had a meeting with Defendant, Chief of Police Demnitz. During the course of this meeting, Defendant Demnitz admitted that he and Defendant Ubertaccio immediately think "scam" whenever they are informed Plaintiff has military orders, and regularly voice this opinion to others within the Morristown Police Department. When Plaintiff inquired as to what he had done to generate such a perception, Defendant Demnitz began his reply by referencing a retired detective who also served in the United States Air Force Reserve, and said, "Anybody that goes in the Reserves is dead meat." Defendant Demnitz further admitted to having kept a "secret file" on Plaintiff and his military service for over a decade.

29. During the conversation between Plaintiff and Defendant Chief of Police Demnitz, Plaintiff expressed he did not care whether Defendant Ubertaccio or other officers considered Plaintiff's military service a scam; his grievance lied with the actions taken against him because of his military service. Defendant Demnitz initially replied that the officers could "talk"; however after Plaintiff explained the law under USERRA, Defendant Demnitz conceded, "OK, I gotcha: hostile work environment." Defendant further admitted to Plaintiff that he had a conversation with the Business Administrator regarding removing certain negative documentation in Plaintiff's file that were there primarily because of Defendant Ubertaccio's dislike for Plaintiff. Defendant Demnitz advised he had told the Business Administrator, "You know, Jim Cullen will probably have a case."

30. Plaintiff began wearing a red military service stripe on his uniform sleeve like all other members of the Department who have served in the military. Defendant Demnitz sent a memo throughout the office advising all "unauthorized persons" to

remove the red military service stripe from their uniform sleeve. Plaintiff wrote a formal request to Defendant, Michael Ubertaccio requesting permission to continue wearing a military service stripe on the sleeve of his uniform. This request was denied by Defendant Demnitz. On April 4, 2007 the Mayor of Morristown issued an executive order allowing all police employees who are military service members or veterans to wear the red military service stripe. Defendant, Karl Peter Demnitz expressed immediate anger and resentment toward Plaintiff, and on April 7, 2007 in a retaliatory action Defendant Demnitz advised Plaintiff that he would no longer be allowing Plaintiff to use OTW (owed time that is compensable at time plus one half hourly pay rate) to work "side" jobs, as is common practice and privilege amongst department members, effectually denying Plaintiff a benefit of employment.

31. Plaintiff is forced to endure this practice of discrimination and harassment both in and outside his work environment. Defendant Demnitz has called Plaintiff when he is off duty or at his home on numerous occasions to harass and ridicule Plaintiff. He frequently degrades his military service, questions his authority to wear the red stripe on his uniform sleeve, attacks his personal life and his marriage, and threatens to demote Plaintiff.

32. Defendants, Town of Morristown, Karl Peter Demnitz, John F. Kruse, and Michael Ubertaccio have a pattern and practice of discrimination and harassment of Plaintiff, creating a hostile and offensive work environment and intentionally inflicting emotional distress on Plaintiff, while also hindering his opportunity for advancement and his ability to perform his duties adequately. Defendants have engaged in a pattern of selective enforcement of its published rules and regulations.

33. Plaintiff was targeted for campaigns of discipline aimed at destroying and impeding his career by the actions of the Defendants. When Plaintiff complained in years past to the Town of Morristown, no action was immediately taken. Plaintiff prevailed upon the Defendant Town of Morristown's newly appointed Business Administrator, and the charges and complaints were accepted. The independent

investigator, David Corrigan, investigated and found town policy had indeed been violated by Defendants toward Plaintiff.

34. The investigation concluded the discriminatory and illegal practices committed by Defendant Chief Demnitz, Defendant Kruse, and Defendant Ubertaccio are not isolated but a product of overt and subtler training, practices, customs, and culture within the Morristown Police Department. These Defendants have employed tactics to maintain this system of fear and intimidation against Plaintiff (and others), including but not limited to: initiating sham Internal Affairs Investigations, physically defacing and ridiculing Plaintiff's property, name and likeness; destruction and deprivation of the Plaintiff's livelihood by denying back pay, overtime, paid reimbursed outside work, and military benefits.

35. Defendants have been recklessly indifferent to the danger and effects of their actions as well as MPD and New Jersey State policies and customs. In the face of this campaign of hostility and harassment, Plaintiff has suffered damages, stress, and anxiety. In May 2008, the Corrigan Investigation concluded Morristown Policy had indeed been violated against Plaintiff Cullen.

V. STATEMENT OF CLAIMS

A. UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT ACT OF 1994 (USERRA) 38 U.S.C. 4301-4333 (DISCRIMINATION)

36. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 35 as if fully set forth herein. This cause of action is pled against Defendant Town of Morristown.

37. Plaintiff is an employee within the meaning of USERRA. As a member of the United States Coast Guard Reserves, Plaintiff is a member of a protected class under the Uniformed Services Employment and Reemployment Act of 1994.

38. Defendant, the Town of Morristown, is an employer within the meaning of USERRA, and as such is prohibited from discriminating against Plaintiff on the basis of his protected service in the uniformed services and on the basis of actions taken to enforce or exercise rights provided for under USERRA.

39. Defendant Town of Morristown is an employer within the meaning of USERRA, and as such are prohibited from discriminating against Plaintiff on the basis of his protected service in the uniformed services and on the basis of actions taken to enforce or exercise rights provided for under USERRA. Defendant Morristown has knowledge that Plaintiff's USERRA rights were being violated, yet took no action.

40. Defendant participated in an unlawful employment acts when Plaintiff was discriminated against in compensation, terms, conditions, and privileges of employment on the basis of his protected service in the Armed Forces. Defendants admittedly discriminated and harassed Plaintiff because of his enlistment in the United States Coast Guard Reserve.

41. Defendants' violations of USERRA include but are not limited to: failure to promote Plaintiff. Defendant Demnitz openly opposed Plaintiff's attempt to exercise Plaintiff's rights under USERRA by writing the Department of Personnel and objecting to Plaintiff's request for promotion testing. Plaintiff was denied overtime due to his military service. Plaintiff was denied seniority due to his military service. Plaintiff's ability to perform unfettered in the workplace was infringed upon by Defendants' constant and excessive badgering and creation of a hostile work environment. Defendant Demnitz even went as far as question the "activation status" of Plaintiff by screaming at the Commanding Officer of the U.S. Coast Guard Tactical Operations of New York/New Jersey while Plaintiff was activated under Title 10 U.S.C.

42. Plaintiff is entitled to compensatory as well as liquidated damages for these violations of USERRA.

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

43. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 42 as if fully set forth herein. This cause of action is pled against Defendants, Town of Morristown, Karl Peter Demnitz, individually, John F. Kruse, and Michael Ubertaccio, individually.

44. Plaintiff belongs to class protected under the New Jersey Law Against Discrimination (NJLAD) § 10.5 et seq. by virtue of his liability for service in the Armed Forces of the United States of America.

45. Plaintiff belongs to a class protected under NJLAD because Plaintiff 1) opposed the practices and acts outlawed by the NJLAD; and 2) Plaintiff filed complaints, assisted in proceedings, and participated in proceedings under NJLAD.

46. 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 his liability for service to the Armed Forces. Defendants Demnitz, Kruse, and Ubertaccio aided, abetted, incited, compelled and coerced the doing of acts which were prohibited. Defendants Kruse and Ubertaccio knowingly offered assistance and encouragement to Defendant Demnitz to violate the rights of Plaintiff.

47. Defendants participated in unlawful employment acts when Plaintiff was discriminated against in compensation, terms, conditions, and privileges of employment on the basis of his protected service in the Armed Forces as well as retaliation for protected activity.

48. 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 Plaintiff's employment.

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

C. VIOLATIONS OF FIRST & FOURTEENTH AMENDMENTS,
U.S. CONSTITUTION

50. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 49 as if fully set forth herein. During times of Plaintiff's employment, Defendants wrongfully punished plaintiff because he spoke publicly, and at times criticized management's actions. Defendants Demnitz, Kruse, and Ubertaccio were at the time employees and were acting within the scope of their employment and acting under the color of the laws and regulations under the State of New Jersey. Plaintiff's actions and statements involved matters of political, social, or other concern and are constitutionally protected under the First and Fourteenth Amendments.

51. Defendant's Morristown's supervisory employees deprived the Plaintiff of his rights under the First Amendment and Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. §1983.

52. The policy and custom developed and fostered by the Defendants discouraged employees from publicly discussing any matter that would cast the Town of Morristown, specifically the Police Department in a negative light; this was accomplished by taking and threatening to take adverse employment action. The exercise of these established policies and custom resulted in the violation of Plaintiff's right of free speech, 42 U.S.C. §1983.

53. Plaintiff's speech was a substantial and motivating factor in defendants' decision to harass and retaliate against the Plaintiff. Defendants acted to chill plaintiff's speech, discredit him by damaging his reputation, and punish him for exercising his free-speech rights.

54. Furthermore, Plaintiff's interest in his actions and statements outweighs any interest of the Defendants in promotion of the efficient operation and administering of service.

D. COMMON LAW CLAIMS

55. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 54 as if fully set forth herein. Defendants Demnitz, Kruse, and Ubertaccio made and continue to make defamatory statements about Plaintiff that are false. These statements include, but not limited to, "Jim Cullen is under investigation by Internal Affairs for "trying to financially capitalize" from his civilian employer by volunteering to stay on active military duty." (statement made to the U.S. Coast Guard personnel and several individuals). Defendants also have alleged, "Plaintiff (Cullen) allegedly raped this girl (name withheld)." Those false statements, and others, and documents are published to third parties, and Plaintiff continues to be harmed by such defamatory statements. Each distinct publication of the defamatory statements and records inflict an independent injury from which a separate cause of action continues to arise. Defamatory statements injuring Plaintiff's employment in his chosen occupation or imputing a crime is defamatory *per se*.

56. Defendants breached the terms and conditions of employment, specifically Ordinance O-37-02, entitled *Ordinance Establishing Compensation Policy for Town Employees Who Are Called to Active Duty In the Reserve and Organized Militia, Including National Guard*.

VI. TRIAL BY JURY

57. Plaintiff hereby demands trial by jury of his peers.

VII. PRAYER

58. Wherefore Plaintiff, James K. Cullen, requests judgment against Defendants, Town of Morristown, Karl Peter Demnitz, individually, John F. Kruse, Individually, and Michael Ubertaccio, individually, successors and all persons in active concert or participation with it, as follows:

a. Enjoin Defendants from taking any action against Plaintiff Cullen that fails to comply with the provisions of USERRA and NJLAD. Presentation of a hostility free workplace, free from any and all discrimination and retaliation from co-workers, supervisors, administration, and management; and

b. compensatory damages for lost earnings, damage to earnings capacity, damage to reputation in the past and future, and damage to pension and retirement benefits. Damages (pecuniary and non-pecuniary), including but not limited to damages for mental and emotional anguish, humiliation, anxiety, and distress in the amount of **\$3,250,000.00** and under all statute and common law violations herein pled; and

c. attorney's fees, costs, and expenses incurred as a result of Defendants' discriminatory acts, as provided for by USERRA, NJLAD, common law violations, and other applicable statutes; and

d. prejudgment and post judgment interest; and

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, LLC

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Peter J. Cresci, Esq. /s/

By: _____

PETER J. CRESCI (PJC 7693)

ATTORNEY FOR PLAINTIFF