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AUG 29 2017

SUPERIOR COURT OF NJ  
MERCER VICINAGE  
CIVIL DIVISION  
**NOT FILED**

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<p>NATHAN J. JOHNSON,  Plaintiff,  v.  STATE OF NEW JERSEY, AND JOHN DOES 1 THROUGH 25, INCLUSIVE, FICTITIOUS NAMED DEFENDANTS, JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE,  Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION - CAMDEN COUNTY  Docket No.: MER-L-416-14  Civil Action  <b>SECOND AMENDED COMPLAINT (REVISED), DEMAND FOR JURY TRIAL, DESIGNATION OF TRIAL COUNSEL AND DEMAND PURSUANT TO RULE 1:4-8</b></p>
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Plaintiff Nathan J. Johnson, residing in Voorhees, Camden County, New Jersey, by way of Complaint against defendants, says:

**FIRST COUNT**

1. At all relevant times herein, Plaintiff Nathan J. Johnson was an individual, an African-American male, a 1980 graduate of Rutgers University with a double major in the Administration of Justice and in Political Science, and a 1992 graduate of the Rutgers University School of Law, receiving his Juris Doctorate.

2. Plaintiff was admitted to the practice of law in the Commonwealth of Pennsylvania in 1992.

3. At all relevant times herein, Defendant State of New Jersey (“the State”) was Plaintiff’s employer and the employer of John Does 1 through 25, inclusive, fictitious named defendants, which may include every individual mentioned herein as a participant in the discriminatory and retaliatory scheme or practices as referred to herein, the identities of whom are unknown at present.

4. In or about the year 1998, Plaintiff was hired with the Civil Service Title Regulatory Officer 1 – Insurance, for the Financial Solvency Section of the State of New Jersey in its Department of Banking and Insurance, Division of Insurance (“DOBI”), which position Plaintiff filled until approximately the year 2000, when the previous Director, Lisa Levine, left and David Woolsey was promoted to Director, following which Plaintiff worked as the Regulatory Officer, serving as Woolsey’s second in command on issues of financial solvency.

5. In or about April, 2008, Plaintiff a Complaint in the Superior Court of New Jersey, Camden County, Docket No. CAM-L-1816-08 which alleged that Plaintiff was subjected to discrimination on the base of his race, and retaliation for objecting to the racial discrimination.

6. The Plaintiff’s act in filing the civil Complaint in Camden County is protected conduct as defined by the New Jersey Law Against Discrimination (the “LAD”) and the Conscientious Employees Protection Act (“CEPA”).

7. As a result of the initial litigation, the parties took extensive discovery which culminated in the parties amicably resolving the matter in 2011.

8. In 2011, Plaintiff still held the title of Regulatory Officer I and Patrick Mullen served as the Assistant Division Director of Banking.

9. In 2011, an open window policy was instituted, which targeted Plaintiff, as he was one of very few employees whose office had a very large internal window.

10. The newly instituted policy required Plaintiff to keep his window shades and blinds all of the way up at all times, essentially leaving him with little to no privacy within his office.

11. As a result, this created a fish bowl effect designed to intimidate Plaintiff and anyone who would speak with Plaintiff, as it was clear to anyone within view who Plaintiff was speaking to.

12. Prior to Patrick Mullen taking over as the new Assistant Division Director of Banking, that position was held by Tom Hunt.

13. Hunt introduced Plaintiff to Mullen and advised Plaintiff he was now “a direct report to Patrick Mullen” as Plaintiff was also a previous direct report to Hunt.

14. A few weeks later an e-mail was sent out announcing Mullen’s first direct reports meeting.

15. Even though Plaintiff was a direct report for Mullen, he was not copied on the e-mail and received no other notice of the meeting; he only learned it was scheduled through another individual.

16. When Plaintiff appeared to attend the meeting, which he believed he was supposed to do as a direct report to Mullen, Mullen humiliated Plaintiff by standing up in front of everyone in the room and screaming “this meeting is not for you”, at Plaintiff.

17. When Plaintiff responded “it’s a direct reports meeting”, Mullen again screamed at Plaintiff, saying “you don’t belong here,” pointed to the door and screamed “get out”.

18. Despite Plaintiff’s hope for a fresh start after the resolution of his prior lawsuit, that did not occur, as Plaintiff has been continuously subjected to a discriminatory and retaliatory work environment since that time.

19. By way of example of the discriminatory and retaliatory work environment Plaintiff has endured since the resolution of his prior lawsuit, Plaintiff has been ostracized by his supervisors and co-workers, has not been given sufficient work at times, has been excluded from meetings, and has not been informed of some of the most basic happenings in the department, all of which have made it much more difficult for Plaintiff to perform the essential functions of his job.

20. Plaintiff is also continuously excluded from attending off-site, work related, industry seminars that would educate him as to the current trends and happenings in the industry.

21. Plaintiff inquires about said seminars, but is never notified of their existence by the administration, who receives the notices, and only discovers a seminar is occurring when he hears that his co-workers and superiors are attending one at the expense of the State of New Jersey.

22. The exclusion of Plaintiff from the benefit of attending any of the industry seminars given to his coworkers in DOBI is an additional act of discrimination and retaliation in that it prevents Plaintiff from staying up to date on current industry practices and developments, which diminishes him professionally.

23. By way of example, Tom Hunt and Sam Gris attended the NASCUS seminar in June, 2013, and Plaintiff did not even know it was occurring until after it had started.

24. Plaintiff did lodge complaints with Hunt regarding his being kept out of the loop or not being given enough work, after which Hunt would change his behavior for a week or two, by sending Plaintiff some for your information e-mails, but would quickly revert back to the discriminatory and retaliatory conduct.

25. In 2011, Plaintiff was assigned the task of completing a credit union application.

26. The application process for a credit union is very complicated and requires extensive research and time to complete.

27. When Plaintiff began working on that project, he discovered that certain of the application materials were missing and no one within DOBI seemed to know what happened to those materials, this included boilerplate forms historically used by DOBI.

28. It was impossible to complete the credit union application without the application materials and the fact that this impossible assignment was given to Plaintiff is an additional act of discrimination and retaliation against Plaintiff.

29. Plaintiff had conducted extensive research into the credit union project to determine how to redraft the missing boilerplate forms that had previously been approved for use in addition to researching applicable statutes and regulations.

30. The credit union application that Plaintiff was assigned had been pending at DOBI for years prior to Plaintiff's involvement.

31. The company applying for the credit union complained about the slow process, but did not assign any blame to Plaintiff, as he had only recently been given the project and essentially was forced to reinvent the credit union application wheel since all of the materials the department had previously used to handle credit union applications had mysteriously gone missing with no explanation.

32. During this timeframe, due to the missing materials, Plaintiff had questions and had difficulty when he attempted to address them with Hunt and Mullen because the two were rarely available to Plaintiff, which made it even more difficult to perform this daunting task.

33. Hunt and Mullen would either refuse to see Plaintiff to address his concerns or schedule meetings and then push them back or cancel them all together.

34. On or about September 15, 2011, after the company seeking the credit union approval filed a complaint because it had taken years for the process to be completed, the missing credit union application materials mysteriously reappeared in a filing cabinet outside of Plaintiff's office.

35. Additionally, Hunt all of a sudden knew where the files were and casually pointed them out to Plaintiff, which is memorialized in contemporaneous e-mails.

36. Clearly these materials were concealed from Plaintiff in an effort to make the credit union application much more difficult and to set Plaintiff up for failure, all in an effort to continue the discriminatory and retaliatory work environment Plaintiff had been subjected to during his years at DOBI.

37. On or about October 20, 2011, Plaintiff's office was moved to an office adjacent to Tom Hunt's and across the hall from Patrick Mullen's office, in furtherance of the acts of discrimination and retaliation.

38. Hunt and Mullen gave Plaintiff another office with a very large internal window facing a very high traffic area, even though there were other non-window offices available.

39. Plaintiff's filing cabinet blocked a small portion of the window in his office and on or about October 21, 2011, Mullen came into Plaintiff's office and up to Plaintiff's desk and in a very nasty and aggressive manner and in a very loud voice demanded that Plaintiff move his filing cabinet.

40. At that point, Plaintiff calmly and respectfully explained the configuration of his office to Mullen who then interrupted Plaintiff, and in an aggressive, nasty tone again demanded that Plaintiff move the filing cabinet.

41. Plaintiff then memorialized this interaction in a contemporaneous e-mail stating how concerned he was with the aggressive manner in which Mullen addressed him regarding the filing cabinet and questioned why Mullen would have any concern with the configuration of Plaintiff's office; in response, Mullen advised that Plaintiff's file cabinet position violated past director Komjathy's policy.

42. That claim by Mullen regarding Komjathy's policy was nothing but a pretext for discrimination and retaliation as that office policy was not enforced against any employee apart from Plaintiff.

43. Plaintiff then engaged in protected conduct when he, by way of e-mail, advised that he was being singled out and treated differently from others, and that Mullen was selectively enforcing policies against only Plaintiff.

44. Thereafter Hunt flat out lied when he claimed he was present with Mullen when Mullen came into Plaintiff's office over the filing cabinet location.

45. After Plaintiff advised in writing that Hunt was lying, Hunt conceded that he was lying by admitting to Plaintiff that he was not in Plaintiff's office on the day Mullen aggressively demanded Plaintiff move his filing cabinet.

46. In or about November, 2011, Hunt gave Plaintiff a de facto demotion by requiring him to take work directly from individuals who were at least three title ranges below Plaintiff and who made substantially less money; thereby creating a situation whereby Plaintiff's subordinates were controlling Plaintiff's work assignments.

47. When Plaintiff objected to subordinates giving him orders, Hunt advised Plaintiff that Plaintiff's subordinates could and would continue to assign him work.

48. The Plaintiff was required to revise consent orders that lower level investigators were supposed to draft as a part of their job function, which was clearly a de facto demotion and undermined Plaintiff's authority, stature, and standing in the workplace, obviously designed to retaliate and discriminate against and humiliate Plaintiff.

49. Based on Plaintiff's continued objections regarding the discriminatory and retaliatory conduct, Richard O'Brien agreed that it was inappropriate for Plaintiff to be taking orders from individuals who were at least three title ranges below him and determined that Plaintiff was to report directly to Tom Hunt and that no one other than Hunt would be permitted to assign Plaintiff work.

50. Thereafter, in an additional act of discrimination and retaliation, Hunt stopped giving Plaintiff work to perform through 2012, which once again undermined Plaintiff's standing and stature in the workplace, was a de facto demotion, and also made it much more difficult for Plaintiff to gain necessary experience that would allow him to compete or be considered for additional positions within DOBI.

51. Plaintiff would literally beg for work from Hunt, who would give Plaintiff a few assignments, send Plaintiff some FYI e-mails to keep him in the loop for a short period of time, and then would go right back to the discriminatory and retaliatory work environment wherein Plaintiff was given essentially no work to do.

52. On or about December 13, 2011, Mullen and Hunt advised Plaintiff that he would now be the individual responsible for credit union applications, which demonstrated that Plaintiff had handled the credit union application assigned to him earlier in the year in an exemplary manner; however, despite that fact, this was again essentially a de facto demotion and an



additional act of discrimination and retaliation as, on average, only one credit union application was submitted every four years or more.

53. The retaliatory and discriminatory work environment continued through 2012; by way of example, Plaintiff was continually begging for work to do, was left out of meetings, was ostracized by his co-workers and supervisors, and, in a practice that had been ongoing for years, Plaintiff was not presented with a PAR/PEZ assessment review, something which was required by the Civil Service Rules and something that Plaintiff had not received for literally years.

54. Upon information and belief, it is believed that Plaintiff is the only employee in the department who did not receive a PAR/PEZ assessment.

55. The retaliation and discrimination continued into April, 2013, when Plaintiff was called into a meeting with Hunt and Mullen wherein Plaintiff was advised by Mullen that he and Hunt were going to allow Plaintiff's role in OCF to develop in line with the position of a Regulatory Officer I and that they would be assigning Plaintiff additional responsibilities including managing another DOBI employee named Traci Williams.

56. This new assignment was an additional act of discrimination and retaliation as the employee Plaintiff was being asked to supervise, despite Plaintiff's lack of supervisory training or experience, was an African-American individual who was known throughout the department as a problem employee who missed substantial time from work and currently had a discrimination lawsuit against DOBI.

57. Clearly assigning Plaintiff to supervise the only other African-American employee in the department who had brought a discrimination lawsuit against DOBI and putting two African-American employees who sued the department together was another act of discrimination and retaliation as the stigma associated with same undermined Plaintiff in the work environment.

58. This was also a set up for failure as Hunt and Mullen clearly wanted to assign Plaintiff the responsibility of supervising a problem employee so that he would fail and the department could then take appropriate action against Plaintiff.

59. This new assignment was also a de facto demotion, as Hunt and Mullen were once again seeking to have Plaintiff rewrite the enforcement orders for individuals who were at least three titles below Plaintiff, which had occurred approximately 18 months prior and which Plaintiff had objected to.

60. At one point in time Plaintiff overheard DOBI employees indicating that Traci Williams was incompetent, sickly, disabled and lazy, with the last one clearly being an improper racial stereotype for African-Americans, which statement was made in direct violation of the LAD and is further evidence that the State of New Jersey and DOBI do not have adequate training or enforcement mechanisms for their anti-discrimination policies.

61. In an effort to avoid this latest de facto demotion and assignment setting him up to fail, Plaintiff again objected in an additional act of protected conduct, which resulted in a series of meetings with Dana Foraker, Union President Diane Spence-Brown, and Hunt, wherein the file cabinet incident was once again revisited, in response to which Hunt became extremely aggressive, raised his voice, was nasty and disrespectful, and prematurely left the meeting, slamming the door on his way out.

62. Ultimately over the course of weeks and continued objections, Defendants threatened Plaintiff with discipline, which was clearly another act of discrimination and retaliation.

63. This threat of discipline was made despite the fact that Plaintiff indicated that he would comply with the directive to supervise Williams even though it was a de facto demotion and discriminatory and retaliatory in nature.

64. Defendants ultimately relented, given that this was a clear cut act of discrimination and retaliation, that there was no legitimate, non-discriminatory, and non-retaliatory reason for once again giving Plaintiff a de facto demotion and assigning him to the only other African-American in the department with a lawsuit who the administration acknowledges is a problem employee.

65. The discriminatory and retaliatory work environment is expected to continue into the future, as Patrick Mullen has just been elevated to Acting Director of Banking and is awaiting confirmation by the Senate.

66. On or about February 15, 2016 the Plaintiff was served with a Preliminary Notice of Disciplinary Action falsely alleging that plaintiff was incompetent, neglectful in his duties and engaged in conduct unbecoming of public employee and engaged in other insufficient conduct all of which warranted a 5 day suspension.

67. Thereafter the Plaintiff requested a departmental hearing, requested a counsel of his choosing and requested a hearing and expected and sought to have the hearing conducted consistent with the principals of due process, all of which did not occur as Plaintiff was denied counsel of his choosing and was to be subjected to cross examination by an attorney for the Division of Banking and Insurance who was present at all of his civil depositions and without any legal representation of his own all in violation of the Plaintiff's rights.

68. As the result of the extreme deprivation of rights and the fact that the departmental hearing was not conducted consistent with the New Jersey Constitution, the Plaintiff was subjected to a discriminatory and retaliatory suspension for a period of 5 days which suspension was part of the Final Notice of Disciplinary Action which was dated September 19, 2016.

69. In 2016 Plaintiff also received a written warning, which is considered to be a form of discipline, for his use of sick time even though Plaintiff used his sick time consistent with State policy, which was another act of discrimination and retaliation.

70. By way of preliminary notice of disciplinary action, Plaintiff was served with disciplinary charges dated March 22, 2017, in which Defendant State of New Jersey sought to suspend Plaintiff for thirty (30) days, which suspension was motivated by a discriminatory and retaliatory animus.

71. The basis for the charges against Plaintiff were utterly bogus in that Plaintiff was given an impossible workload, denied information and the tools necessary to complete his job was given impossible deadlines and at times, Plaintiff's deadlines were moved up at a moment's notice so that it would be impossible for him to complete the assignment by the new deadline.

72. There was absolutely no legitimate, non-discriminatory or non-retaliatory reason behind the disciplinary charges as until the past year, Plaintiff had been a long-term employee with the State of New Jersey, working there nearly 20 years and until 2016 had faced absolutely no discipline from the State.

73. To further the discriminatory and retaliatory environment, Defendant, State of New Jersey refused to adjourn the aforementioned disciplinary charges which were scheduled for a May 8, 2017, date when Plaintiff provided medical documentation that he would be undergoing a significant medical procedure on his lower spine.

74. Around May 8, 2017, Plaintiff underwent major surgery on his lower back which required a bone graft and the insertion of hardware to help stabilize his back after injuries from a motor vehicle accident.

75. Despite the fact that Plaintiff, through his union, timely requested an adjournment of the departmental hearing given the aforementioned surgery, Defendant State, in an additional act of discrimination and retaliation, refused to adjourn the date and tried Plaintiff in absentia on the disciplinary charges while he was recovering from surgery, thereby denying Plaintiff of his substantive due process rights under the New Jersey Constitution.

76. As a result of Plaintiff not being able to attend his own departmental hearing to defend himself against the bogus disciplinary charges, Plaintiff was suspended for thirty (30) days by way of final notice of disciplinary action dated June 2, 2017.

77. The suspension was clearly discriminatory and retaliatory in nature and the manner in which the hearing went forward denied Plaintiff his constitutional rights under the New Jersey Constitution.

78. As a direct and proximate result of Plaintiff having engaged in protected conduct under CEPA and the LAD, Plaintiff was subjected to retaliation by the defendants as described herein comparable to that which has been recognized as sufficient to support a claim for relief under CEPA and/or the LAD in Shepherd v. Hunterton Developmental Center, 336 N.J.Super. 395, 404, 765 A.2d 217 (App. Div. 2001), *aff'd in relevant part, rev'd in part and remanded*, 174 N.J. 1 (2002); Green v. Jersey City Board of Education, 177 N.J. 434 (2003); Mancini v. Township of Teaneck, 349 N.J.Super. 527, 568-569 (App. Div. 2002), *mod and aff'd*, 174 N.J. 425 (2004); Nardello v. Township of Voorhees, 377 N.J. Super. 428, 435-436 (App. Div. 2005); and Maimone v. City of Atlantic City, 188 N.J. 221 (2006).

79. The conduct of Defendants as described herein was willful, wanton, intentional, occurred with actual malice and is especially egregious involving as it does members of upper management.

80. As a direct and proximate result of the defendants' conduct directed against Plaintiff in violation of the LAD and CEPA, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against the defendants, jointly, severally, and in the alternative for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

### **SECOND COUNT**

81. Plaintiff incorporates paragraphs 1 through 80 as though set forth in full herein.

82. Plaintiff is a member of a protected class since his racial background is African-American.

83. To the extent the conduct against Plaintiff was not motivated by Plaintiff's protected conduct under the LAD and CEPA, the conduct of the defendants was motivated by Plaintiff's race and created a hostile work environment, which was both severe and pervasive, in direct violation of the LAD. Plaintiff's rights under the New Jersey Conscientious Employees Protection Act to be free of reprisals have been violated in a most egregious manner, which conduct was knowing and intentional.

84. The conduct of the defendants as described herein was willful, wanton, intentional, occurred with actual malice and is especially egregious involving as it does members of upper management.

85. As a direct and proximate result of defendants' conduct directed against Plaintiff in violation of CEPA and LAD, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against the defendants for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

**THIRD COUNT**

86. Plaintiff hereby incorporates paragraphs 1 through 85 as though set forth in full herein.

87. Defendant State of New Jersey also had certain obligations pursuant to N.J.S.A. 34:19-7 for which it was deficient.

88. As a direct and proximate result of defendants' violation of N.J.S.A. 34:19-7, Plaintiff has been damaged as set forth herein.

WHEREFORE, Plaintiff demands judgment against the defendant State of New Jersey for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

IONNO & HIGBEE, LLC  
Attorneys for Plaintiff

BY:   
SEBASTIAN B. IONNO

Dated: 8-23-17

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

BY:   
SEBASTIAN B. IONNO

**DESIGNATION OF TRIAL COUNSEL**

Plaintiff hereby designates Sebastian B. Ionno, Esquire as trial counsel in this matter.

BY:   
SEBASTIAN B. IONNO

**CERTIFICATION**

The undersigned counsel certifies that there are no other actions or arbitrations pending or contemplated involving the subject matter of this controversy at this time, and there are no additional known parties who should be joined to the present action at this time. I certify the foregoing to be true. I am aware if the above is willfully false, I am subject to punishment.


BY:   
SEBASTIAN B. IONNO

DATED: 8-23-17



**RULE 1:4-8 DEMAND**

Plaintiff and his counsel hereby demand, pursuant to Rule 1:4-8, that the defendants or their agents, servants, or employees, or attorneys provide any and all facts and documents upon which they base any contention that this Complaint was instituted or continued in whole or in part for improper reasons, or that the claims are, in whole or in part, frivolous or without basis in law or fact.

BY:   
SEBASTIAN B. TONNO

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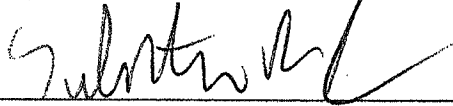
<p>NATHAN J. JOHNSON,</p> <p>Plaintiff,</p> <p>v.</p> <p>STATE OF NEW JERSEY, AND JOHN DOES 1 THROUGH 25, INCLUSIVE, FICTITIOUS NAMED DEFENDANTS, JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE,</p> <p>Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION - CAMDEN COUNTY</p> <p>Docket No.: MER-L-416-14</p> <p>Civil Action</p> <p><b>CONSENT ORDER PERMITTING PLAINTIFF TO REVISE HIS SECOND AMENDED COMPLAINT</b></p>
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THIS MATTER having been brought before the Court by Sebastian B. Ionno, Esquire of Ionno & Higbee, Attorneys at Law, LLC, counsel for Plaintiff, and for good cause appearing,

IT IS, on this 18 day of August, 2017 ORDERED that Plaintiff is permitted to file a Second Amended Complaint solely to correct erroneous paragraph references in the first paragraphs of Counts Two and Three of his Complaint (specifically, paragraphs 81 and 86).

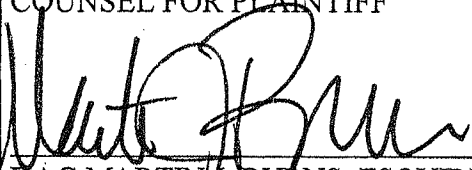
/s/ William Anklowitz, J.S.C.  
J.S.C.

I hereby consent to the foregoing Order



8-2-17

SEBASTIAN B. IONNO, ESQUIRE  
COUNSEL FOR PLAINTIFF



DAG MARTIN J. BURNS, ESQUIRE  
COUNSEL FOR DEFENDANT