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.....		SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: ESSEX COUNTY
NEW JERSEY TRANSIT CORPORATION,	:	
	:	Docket No.
Plaintiff.	:	
	:	<u>CIVIL ACTION</u>
v.	:	
	:	<u>COMPLAINT</u>
TODD CHARLES BARRETTA,	:	
	:	
Defendant.	:	
.....		

Plaintiff New Jersey Transit Corporation (“NJ TRANSIT”), by and through its undersigned attorneys, as and for its Complaint against Defendant Todd Charles Barretta (“Barretta”), alleges as follows:

NATURE OF THE ACTION

1. This is an action pursuant to N.J.S.A. 2A:16-50 et seq. for a declaratory judgment that NJ TRANSIT’s conduct in demoting, suspending, and ultimately terminating Barretta as NJ TRANSIT’s Chief Compliance Officer (“CCO”) did not violate the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. (“CEPA”). NJ TRANSIT also seeks to enjoin Barretta’s unauthorized use and disclosure of NJ TRANSIT’s confidential and privileged

information, and seeks damages arising from Barretta's breaches of loyalty while he was the CCO at NJ TRANSIT.

2. Barretta worked at NJ TRANSIT for fewer than six months in 2017. During his short tenure at NJ TRANSIT, Barretta failed to satisfy his core job responsibilities of working collaboratively with other NJ TRANSIT employees and departments to develop and implement systems and strategies at NJ TRANSIT to ensure corporate compliance with applicable legal and regulatory requirements, internal policies, and risk management plans.

3. Moreover, during the short time he was with NJ TRANSIT, Barretta engaged in self-dealing to the detriment of NJ TRANSIT. In violation of a NJ TRANSIT policy Barretta was hired to implement, Barretta used a NJ TRANSIT vehicle for nearly two months for personal purposes and then falsified the monthly mileage reports to indicate that he was using it for business purposes.

4. In light of Barretta's performance failures and self-dealing, NJ TRANSIT demoted, suspended, and then ultimately terminated him.

5. In response to these legitimate employment actions taken by NJ TRANSIT, Barretta has set out on a campaign to malign NJ TRANSIT and its leadership. This includes: (1) giving false, inaccurate, or otherwise misleading testimony before committees of the New Jersey Legislature, in which he attempted to weave a narrative that NJ TRANSIT's employment decisions constituted a violation of CEPA; (2) refusing to return NJ TRANSIT property; and (3) improperly leaking and disseminating privileged records that he has wrongfully retained since his termination, notwithstanding a legitimate demand by NJ TRANSIT to return such records.

6. NJ TRANSIT now brings this action to obtain declaratory relief concerning the allegations and accusations made by Barretta, to cease the unauthorized distribution by Barretta

of NJ TRANSIT's confidential and privileged records, and to seek appropriate compensation for Barretta's breach of the duty of loyalty while an employee of NJ TRANSIT.

THE PARTIES

7. NJ TRANSIT is an instrumentality of the State of New Jersey, established pursuant to the New Jersey Public Transportation Act of 1979, N.J.S.A. 27:25-1 et seq., to provide safe, efficient, responsive, and coordinated public transportation in New Jersey.

8. NJ TRANSIT is the nation's largest statewide public transportation system and the third largest provider of bus, rail, and light rail transit, linking major points in New Jersey, New York, and Philadelphia, and covering a service area of 5,325 square miles. NJ TRANSIT operates a fleet of approximately 2,000 buses, 700 trains, and 45 light rail cars, and provides nearly 223 million passenger trips each year on 236 bus routes and 11 rail lines.

9. NJ TRANSIT is organized under the laws of New Jersey and has a principal place of business at One Penn Plaza East, Newark, New Jersey 07105.

10. Upon information and belief, Barretta is a resident of New Jersey. From March 6, 2017 through August 21, 2017, Barretta was employed by NJ TRANSIT in the position of CCO and worked at NJ TRANSIT's offices at One Penn Plaza East, Newark, New Jersey 07105.

JURISDICTION AND VENUE

11. This Court has general subject matter jurisdiction pursuant to the New Jersey Declaratory Judgments Act, N.J.S.A. 2A:16-50 et seq., to determine questions of actual controversy between the parties to this action as more fully set forth herein.

12. This Court has jurisdiction over Barretta because at all times relevant to the allegations and claims in the Verified Complaint, Barretta was a resident of New Jersey and because the conduct giving rise to this lawsuit occurred in New Jersey.

13. Venue is proper in the County pursuant to Rule 4:3-2(a)(2) because the causes of action arose in this County.

FACTUAL ALLEGATIONS

Barretta's Short Tenure at NJ TRANSIT

14. In late 2016, NJ TRANSIT determined that it was necessary to create and fill the position of CCO.

15. As recognized in the job description, the CCO was envisioned as a key member of senior leadership charged with developing and implementing systems and strategies to ensure each operating unit of NJ TRANSIT complies with applicable legal and regulatory requirements, internal policies, and risk management plans. The CCO was to function independently of the operating units of NJ TRANSIT.

16. In December of 2016, NJ TRANSIT posted an opening for the position of CCO at NJ TRANSIT.

17. As part of its extensive search for qualified candidates, NJ TRANSIT received and reviewed over 130 applications, including a resume submitted by Barretta.

18. NJ TRANSIT interviewed Barretta on January 30, 2017.

19. Barretta did not have prior experience working for a public agency. He nevertheless claimed that his prior consulting work exposed him to collaborative environments similar to that at NJ TRANSIT, and represented that he would be capable of performing the tasks associated with CCO for NJ TRANSIT.

20. On February 14, 2017, NJ TRANSIT offered Barretta the CCO position, at an annual salary of \$175,000, contingent upon his successful completion of the pre-employment process. His offer did not include a vehicle.

21. NJ TRANSIT's offer letter to Barretta made clear that "as an employee at-will [NJ TRANSIT] reserve[d] the right to alter, modify or end [his] employment at any time, with or without just cause."

22. Barretta accepted NJ TRANSIT's employment offer on February 15, 2017.

23. Barretta began his employment at NJ TRANSIT on March 6, 2017.

24. Shortly after Barretta began his employment with NJ TRANSIT, it became clear that he did not have the aptitude or experience to handle the complex compliance issues associated with operating a public transit agency.

25. Specifically, Barretta was incapable of devising viable solutions for the compliance issues facing NJ TRANSIT.

26. Barretta's failures were further exacerbated by his inability to work collaboratively with other NJ TRANSIT employees and departments. He refused to listen to, or learn from, employees with subject matter expertise who had spent far more time than he working at NJ TRANSIT, and instead insisted that he was right and knew everything related to the operations of NJ TRANSIT while dismissing the opinions of his co-workers.

27. Barretta continually made recommendations that ignored applicable legal requirements, disregarded unique circumstances applicable to a public agency like NJ TRANSIT, or were otherwise unworkable and unrealistic.

28. On multiple occasions NJ TRANSIT leadership engaged with Barretta to explain that his confrontational attitude was not appropriate, and to attempt to assist him to satisfactorily perform his job. Despite these efforts, Barretta's performance did not improve.

29. After a few months, it became clear that Barretta was not a good fit for the CCO position at NJ TRANSIT, either in ability or temperament.

30. In or about June 2017, NJ TRANSIT determined that Barretta should be removed from his position as CCO.

31. Nevertheless, NJ TRANSIT wanted to find an appropriate fit for Barretta within the organization, and thereby give him the opportunity to succeed in a position more suited to his skillset.

32. Barretta was out of the office from June 24, 2017 through July 9, 2017; he took a scheduled vacation, two floating holidays and two bereavement days.

33. Upon his return, Steven H. Santoro, the Executive Director of NJ TRANSIT, personally met with Barretta. Santoro explained to Barretta that Barretta had not been performing adequately as NJ TRANSIT's CCO, and that a position of that importance in NJ TRANSIT required someone with more experience handling such issues for governmental entities.

34. Santoro informed Barretta that he would no longer serve as NJ TRANSIT's CCO, but that NJ TRANSIT would find a more suitable role for him.

Barretta Improperly Retained and Utilized a NJ TRANSIT Vehicle

35. Independent of Barretta's shortcomings as NJ TRANSIT's CCO, NJ TRANSIT came to learn that Barretta had been committing flagrant violations of NJ TRANSIT's policy governing its vehicles—one of the very policies that he, as CCO, was hired to oversee.

36. NJ TRANSIT's policy regarding the use of non-revenue vehicles is set forth in Policy No. 2.02 (the "Policy"). It is applicable to all NJ TRANSIT employees, including the Chief Compliance Officer. A copy of the Policy is attached hereto as **Exhibit A**.

37. Under the Policy, there are four (4) categories of non-revenue vehicles. Category 1 Vehicles are assigned to individual NJ TRANSIT employees on a 24 hour, 7 day a week basis

to positions in which around-the-clock vehicle assignment is critical to job performance. Category 2 Vehicles are assigned to a specific NJ TRANSIT division, department, or cost center. Category 3 Vehicles are assigned to a location-based general pool and made available to NJ TRANSIT employees at that location upon request to handle short-term business needs when Category 2 Vehicles are not available. Category 4 Vehicles are assigned to project management employees for the duration of a project and may be used on a 24/7 basis, as needed.

38. The Policy specified that using a NJ TRANSIT vehicle for commutation to and from an employee's residence is generally prohibited, unless the vehicle is a Category 1 Vehicle and business necessity warrants such an exception. Exhibit A, Section VI(D).

39. The Policy specifically prohibits the carrying of individuals who are not employees of NJ TRANSIT, or who are participating in NJ TRANSIT business. Exhibit A, Section VI(B).

40. The Policy also prohibits the use of NJ TRANSIT vehicles for personal use. It explicitly prohibits using such vehicles for personal errands, including any form of shopping or personal business during lunch or break periods. Exhibit A, Section VI(F).

41. The Policy clearly states that failure to comply with its provisions "may result in restriction or revocation of current and future vehicle assignments or vehicle use, and/or disciplinary action up to and including termination of employment." Exhibit A, Section III.

42. As CCO, it was Barretta's job to be familiar with, and to ensure compliance with, the Policy.

43. On May 8, 2017, Barretta reached out to the Manager of Support Services and Fleet Administration and requested the use of a NJ TRANSIT vehicle for one week for work purposes.

44. By definition, this request was for a Category 3 Vehicle. While Barretta expressed the desire for a Category 1 Vehicle, he was informed that authorization for a Category 1 Vehicle had to come from the Executive Director, Santoro. Barretta did not have such an authorization from Santoro.

45. Upon taking possession of the Category 3 Vehicle, Barretta represented that he was familiar with the Policy.

46. In accordance with the Policy, the Category 3 Vehicle could not be used for personal use, could not be used for commuting, and could not be used to carry passengers who were not NJ TRANSIT employees. Pursuant to the Policy, any employee who violated these restrictions—including Barretta—would be subject to discipline, including dismissal.

47. Barretta did not return Category 3 Vehicle at the conclusion of the promised one-week period. Instead, he represented to the fleet manager that he would produce evidence that Santoro provided Barretta with authorization to retain the vehicle as a Category 1 Vehicle.

48. Santoro never provided Barretta that authorization.

49. As of Wednesday, July 5, 2017, the fleet manager had been waiting for almost two months for the promised Category 1 Vehicle authorization. Barretta still had failed to deliver it. On that date, the fleet manager accordingly instructed Barretta to return the Category 3 Vehicle.

50. Barretta, who was on vacation at the time, stated that he would be back on Monday, July 10, at which point he would obtain the long-promised authorization for the Category 1 Vehicle.

51. It was around this time, and under these circumstances, that NJ TRANSIT staff began looking into Barretta's use of the Category 3 Vehicle. Those preliminary reviews lead NJ TRANSIT staff to suspect that Barretta was potentially violating the Policy.

52. At the post-vacation meeting between Barretta and Santoro, during which Santoro informed Barretta that he was not suited for the position of CCO, Barretta inquired if Santoro would sign a Category 1 Vehicle authorization for Barretta so he could keep the NJ TRANSIT vehicle. Santoro declined the request.

53. During the course of the conversation, Barretta was asked if he knew that the Policy prohibited personal use of NJ TRANSIT vehicles. Barretta stated that he did know this prohibition, but also stated that any personal use he made of the NJ TRANSITS vehicle was "de minimis."

54. During the conversation Barretta was informed that NJ TRANSIT would be taking a closer look at his use of the Category 3 Vehicle.

55. In the weeks that followed, NJ TRANSIT staff conducted the promised review.

56. All NJ TRANSIT non-revenue vehicles are equipped with GPS locators that allow NJ TRANSIT to locate and track vehicle usage. NJ TRANSIT's investigation included a review of GPS records for Barretta's vehicle. The results were astonishing.

57. NJ TRANSIT's investigation revealed that Barretta repeatedly used the NJ TRANSIT vehicle for personal use, not only on work days, but also on his days off. It also revealed that Barretta had unauthorized passengers in the vehicle on an almost daily basis, and that he used the Category 3 Vehicle to commute to work almost every day. All of these activities are expressly prohibited under the Policy.

58. In addition to his misuse of the vehicle and numerous violations of the Policy, Barretta misrepresented on monthly vehicle reports that he used the vehicle exclusively for business purposes. GPS records make plain that the vehicle was used on a daily basis for commuting as well personal use and that almost none of the miles were business-related.

59. From May 8 through July 10, Barretta put more than 2000 miles on the NJ TRANSIT vehicle. Less than 10 percent of those miles were for legitimate business purposes. Indeed, upon information and belief, Barretta used the vehicle a total of six (6) times for legitimate business purposes.

60. Barretta's misuse of the vehicle, which began as soon as he obtained it, is indicative of the utter disregard he had for the Policy and the governmental property entrusted to him by NJ TRANSIT.

61. On May 8, 2017, his very first day with the car, Barretta—whose job was to enforce the Policy, and who represented that day that he knew the requirements of the Policy—misused the vehicle in clear violation of the Policy. GPS records indicate that Barretta stopped at Franklin Elementary School in Summit, New Jersey and, upon information and belief, picked up his child from school. From there, GPS records show Barretta traveled to Best Buy in Union where he spent approximately an hour before returning to his residence. Upon information and belief, Barretta's child, an unauthorized passenger, accompanied him on these trips.

62. On May 9, 2017, Barretta again violated the Policy when he used the Category 3 Vehicle to commute to and from work. He also used the car to drive to Marshalls, a retail establishment, where, upon information and belief, he spent more than an hour shopping.

63. On May 10, 2017, Barretta again stopped at Franklin Elementary School in Summit before commuting to work. Upon information and belief, Barretta was accompanied on this trip to Franklin Elementary by his child, an unauthorized passenger.

64. Later that same day, Barretta drove the vehicle from NJ TRANSIT's headquarters to a facility in his hometown of Summit that hosts after-school activities. From there, Barretta stopped at his home, and then several retail establishments before returning to the after-school facility. Barretta subsequently drove and parked in downtown Summit for a short time before eventually returning home. Upon information and belief, Barretta was accompanied by his child, an unauthorized passenger. Thereafter, Barretta again kept the vehicle overnight at his residence in violation of the Policy.

65. Remarkably, Barretta used the vehicle to commute daily from his home in Summit to NJ TRANSIT Headquarters in Newark despite the fact that he lives less than one-tenth of a mile from the NJ TRANSIT station in New Providence, which afforded him easy access to Newark on NJ TRANSIT trains.

66. Between May 8, 2017 and July 10, 2017, Barretta violated the Policy on an almost daily basis. What's more, Barretta misrepresented on his motor vehicle reports that the entirety of the miles he put on the vehicle were for legitimate business purposes.

67. Between May 8, 2017 and July 10, 2017, Barretta made more than 108 stops for personal errands or shopping. When combined with his stops at his child's school and after-school facility, Barretta averaged more than three (3) stops per day that violated the Policy, not to mention his unauthorized commute to work. Upon information and belief, Barretta was accompanied by his child in the vehicle for a significant number of these trips.

68. Among the more appalling violations of the Policy occurred after NJ TRANSIT requested that Barretta return the vehicle, while Barretta was still on vacation. On Saturday, July 9, 2017, Barretta drove from his home in Summit, New Jersey to Astoria, New York where he visited a residential location and upon information and belief, spent more than an hour shopping before making other personal stops and ultimately returning to his home in Summit, New Jersey. In total, Barretta drove more than 78 miles on personal trips the final Saturday before he returned the car, while he was on vacation.

69. In short, the investigation revealed that NJ TRANSIT's CCO—whose very job included overseeing the Policy—was committing daily, flagrant violations of the Policy. And the only reason he was able to commit these violations for so long was because he had claimed to the fleet manager that a Category 1 Vehicle authorization was forthcoming, when in fact it was not.

70. On August 4, 2017, NJ TRANSIT suspended Barretta for 30 days pending further investigation into policy violations and other possible misconduct.

Barretta Refuses to Cooperate with the Investigation

71. One of the main purposes of the investigation was to afford Barretta the opportunity to explain his use of the Category 3 Vehicle, and thereby attempt to justify why he had not committed what NJ TRANSIT deemed egregious violations of the Policy.

72. Pursuant to NJ TRANSIT policies and procedures—which policies and procedures are followed by many public agencies throughout the State—employees are not permitted to have counsel present when participating in an investigatory interview with Human Resources. Instead, the investigatory interview is a process whereby both parties, neither of whom are represented by counsel, can discuss the facts at issue.

73. Barretta was originally asked to come to NJ TRANSIT on August 10, 2017 for an investigatory interview. At Barretta's request, the interview was rescheduled to August 14, 2017.

74. The evening before his scheduled interview, Barretta suddenly requested that Santoro personally be present at the investigatory interview. Executive Directors do not generally participate in employee investigatory interviews. Those matters are handled by Human Resources. Accordingly, Barretta's request was denied.

75. The interview was rescheduled to August 16, 2017. Barretta was directed to bring his NJ TRANSIT-issued laptop computer, iPad, and iPhone to the interview, so that they could be returned to NJ TRANSIT.

76. Barretta appeared at NJ TRANSIT on August 16, 2017 with counsel. Barretta refused to participate in the interview without counsel present, which is inconsistent with the process for investigatory interviews. Accordingly, the investigatory interview was not held that day.

77. On August 16, Barretta did bring the NJ TRANSIT iPad and iPhone, but failed to bring the NJ TRANSIT laptop as instructed. NJ TRANSIT staff informed him that they would send personnel with him to his home to retrieve it that day. Barretta responded that this was impossible, since Barretta had left NJ TRANSIT's laptop in Connecticut.

78. Barretta promised that he would be able to bring the laptop to NJ TRANSIT by Friday, August 18.

79. On August 17, the Assistant Executive Director, Human Resources, emailed Barretta the following clear instructions:

You stated you will return NJ TRANSIT's laptop on Friday, August 18, 2017. Please plan to arrive prior to noon. Upon your

arrival on Friday please notify security you are there to see me [the Assistant Executive Director, Human Resources]. I will bring a representative from Information Technology with me to the lobby to retrieve the laptop. At this time you will be given one final opportunity to answer questions related to the Non-Revenue Vehicle Use Policy 2.02, as well as answer questions related to your electronic documents and Information Technology policies and procedures. Should you decide not to avail yourself to the process to explain the facts as they currently exist we will proceed with our decision without your input.

80. Barretta did not appear at NJ TRANSIT's office or return his laptop computer prior to 12:00 p.m. on August 18, 2017. Indeed, he refused to participate in the investigatory interview process at all or otherwise offer any attempted explanation for his clear misuse of the Category 3 Vehicle.

81. Instead, Barretta briefly stopped by the security desk shortly before 7:00 pm on Friday, August 18—long after the close of business—and left the laptop with a security guard. He did not inform anyone else in NJ TRANSIT that he had returned the laptop that evening before the weekend.

82. On August 21, 2017, NJ TRANSIT terminated Barretta's employment.

Barretta Maligns NJ TRANSIT Before Legislative Committees

83. Upon information and belief, on or about the time Barretta was suspended on August 4, 2017, he contacted a member of the Assembly Judiciary Committee.

84. On August 25, 2017, the same week that Barretta was terminated, Barretta provided testimony at a joint hearing in front of the Assembly Judiciary Committee and Senate Legislative Oversight Committee (the "August 25 Hearing").

85. Much of Barretta's testimony at the August 25 Hearing was false, inaccurate, and misleading, and had the effect of casting unjust aspersions on NJ TRANSIT:+++

(a) For example, Barretta testified that although as CCO he was promised a budget, he was never given one. The effect of the testimony was to imply that NJ TRANSIT did not take the position of CCO seriously and thus did not afford Barretta the tools he needed to succeed. The testimony was patently false. Barretta actually had a NJ TRANSIT budget of \$1.4773 million, which included an authorization to hire necessary staff. Barretta knew that the CCO had this approved budget, yet he testified to the contrary before the legislative committees.

(b) Barretta also testified that he was advised to mark communications “privileged” to avoid public records obligations. This testimony is demonstrably false. In reality, on a prior occasion Mr. Barretta had incorrectly labeled one of his communications as attorney work product, even though he is not a licensed attorney. He was advised by counsel when it was and was not appropriate to use the label “attorney work product,” and instructed that communications between himself and counsel seeking legal advice should be labeled “attorney-client communication.”

(c) Barretta broadly claimed that NJ TRANSIT’s policies were outdated and not in compliance with federal requirements. As an example, he asserted that federal regulations require direct observation of urine testing for rail operators, but that NJ TRANSIT’s policies do not contain such a requirement. The testimony was inaccurate. NJ TRANSIT’s various drug and alcohol policies specifically require direct observation of urine testing.

(d) Barretta testified that he prepared several memoranda, with specific dates and on specific subjects, in which he allegedly raised a host of concerns about NJ TRANSIT’s systems, staffing, and procedures. The testimony is false. Certain of the alleged records do not even appear to exist, and those that do exist do not set forth the assertions that Mr. Barretta claimed.

(e) Barretta testified that he had a meeting with Executive Director Santoro on May 2, 2017 where he was admonished for putting certain findings and recommendations in writing. The assertion is false. Not only was the admonishment never given, but the meeting never even occurred—Santoro was out of the office that day and had a flight out of JFK Airport for a personal trip overseas.

(f) Barretta testified that he witnessed engineer testing where answers were being provided to the engineers during the testing. He called the practice “outrageous,” implying the NJ TRANSIT was somehow rigging the tests of its employees. However, he failed to mention (either out of misinformation or misdirection) that he witnessed the second day of a two-day class for engineers where the first day involved the certification testing required by the Code of Federal Regulations and the second day was an interactive, educational program provided by NJ TRANSIT’s Rail Training Department. Part of the curriculum for this second day (the part that Barretta witnessed) included a group dialogue where quiz questions were discussed openly, so that the employees could learn as a group. There were no certifications involved with the second day of classes.

(g) Barretta similarly testified that no one ever told him why he was suspended, implying that NJ TRANSIT staff was somehow hiding ulterior motives for its conduct. The assertion is false. Santoro told Barretta in a face-to-face meeting that he was being investigated for potential violations of the Policy.

86. In short, Barretta used his legislative testimony as a vehicle to portray himself as a model employee who was only trying to right a wayward organization; to accuse NJ TRANSIT as an institution, as well as its leadership, of gross incompetence; and to otherwise claim that he

was somehow suspended and terminated for improper and/or retaliatory reasons, purportedly in violation of CEPA.

Barretta Discloses NJ TRANSIT's Confidential and Privileged Information

87. At the time of his suspension, Barretta was in possession of a laptop computer that was the property of NJ TRANSIT and contained materials that were the property of NJ TRANSIT.

88. A significant number of the materials in Barretta's possession were confidential and/or subject to various privileges belonging to NJ TRANSIT.

89. In addition, upon information and belief, prior to his suspension, Barretta removed property, in the form of documents and electronic files, belonging to NJ TRANSIT from NJ TRANSIT's facilities.

90. Upon information and belief, Barretta also removed, copied, or transferred NJ TRANSIT documents and/or electronic files from his laptop computer to other storage device(s).

91. Upon information and belief, Barretta provided the Assembly Judiciary Committee with NJ TRANSIT documents and electronic files. Indeed, at the August 25 Hearing, it was specifically recognized that Barretta had provided such information to the Committee.

92. The documents and/or electronic files provided by Barretta to the Assembly Judiciary Committee are the property of NJ TRANSIT. Further, a number of those documents are protected from disclosure by various privileges, including, but not limited to, the attorney-client privilege and the deliberative process privilege.

93. For example, on information and belief, Barretta gave the Assembly Judiciary Committee documents seeking and reflecting legal advice from NJ TRANSIT's counsel and internal audit reports that are subject to the deliberative process privilege.

94. Barretta similarly disclosed confidential advice given by NJ TRANSIT's attorneys to NJ TRANSIT, including members of NJ TRANSIT's Board of Directors.

95. Despite having no authority to do so, Barretta disclosed those privileged documents and/or electronic files to the Assembly Judiciary Committee.

96. Subsequent to Barretta giving NJ TRANSIT's confidential and privileged materials to the Assembly Judiciary Committee, certain of NJ TRANSIT's confidential and privileged documents were also provided to the press. Copies of articles repeating that members of the press had acquired NJ TRANSIT's confidential records are attached hereto as **Exhibit B**.

97. Neither Barretta, nor any person to whom he improperly provided NJ TRANSIT's records, had authority to waive the privileges applicable to the subject NJ TRANSIT records.

98. On August 31, 2017, NJ TRANSIT demanded, through counsel, that Barretta return NJ TRANSIT's privileged records in his possession by September 1, 2017. A copy of the demand letter is attached hereto as **Exhibit C**.

99. On September 1, 2017, Barretta responded, through counsel, that he would not return NJ TRANSIT records. He would neither deny that he had such records, nor would he deny that he had been improperly disseminating those records to the public. A copy of the response letter is attached hereto as **Exhibit D**.

100. As of the date of filing this Verified Complaint, Barretta still refuses to return NJ TRANSIT's records.

FIRST CAUSE OF ACTION

Declaratory Judgment – No Violation of CEPA

101. NJ TRANSIT repeats and realleges each and every allegation set forth in paragraphs 1 to 100 above as if fully set forth herein.

102. NJ TRANSIT seeks a declaratory judgment that its actions with respect to demoting, suspending, and terminating Barretta did not violate CEPA.

103. Barretta's testimony at the August 25 Hearing indicates that NJ TRANSIT took action against him in retaliation for voicing concerns to his supervisor regarding NJ TRANSIT's systems, staffing, and culture.

104. In reality, NJ TRANSIT demoted, suspended, and terminated Barretta because of his job performance failures and his repeated violation of one of NJ TRANSIT's policies that Barretta was charged with implementing.

105. An actionable and justiciable controversy exists between NJ TRANSIT and Barretta concerning whether NJ TRANSIT's actions in demoting, suspending, and terminating Barretta violated CEPA.

106. NJ TRANSIT is entitled to a declaration that it did not violate CEPA and that its actions with respect to Barretta's employment were not retaliatory.

107. The issuance of declaratory relief will terminate the existing CEPA controversy between the parties.

SECOND CAUSE OF ACTION

Breach of Duty of Loyalty

108. NJ TRANSIT repeats and realleges each and every allegation set forth in paragraphs 1 to 107 above as if fully set forth herein.

109. By virtue of his position as CCO of NJ TRANSIT, Barretta owed a duty of loyalty to NJ TRANSIT.

110. Barretta's unauthorized personal use of a NJ TRANSIT vehicle violated NJ TRANSIT Policy 2.02 and was against NJ TRANSIT's interests.

111. Barretta's self-dealing with respect to the NJ TRANSIT vehicle violated his duty of loyalty to NJ TRANSIT.

112. As a result of Barretta's breach of his duty of loyalty, NJ TRANSIT has been damaged in an amount to be proven at trial. Furthermore, Barretta was highly compensated by NJ TRANSIT during the period of time when he engaged in acts of disloyalty towards NJ TRANSIT.

THIRD CAUSE OF ACTION

Injunctive Relief

113. NJ TRANSIT repeats and realleges each and every allegation set forth in paragraphs 1 to 112 above as if fully set forth herein.

114. While Barretta was CCO at NJ TRANSIT, he had access to confidential and privileged information.

115. Barretta is not, and has never been, authorized to waive NJ TRANSIT's privileges over those records.

116. Without NJ TRANSIT's knowledge or consent, Barretta shared NJ TRANSIT's confidential and privileged information with a member or members of the Assembly Judiciary Committee and/or Senate Legislative Oversight Committee.

117. Upon information and belief, without NJ TRANSIT's knowledge or consent, Barretta also shared NJ TRANSIT's confidential and privileged information with members of the media.

118. Once NJ TRANSIT learned that Barretta had disclosed NJ TRANSIT's confidential and privileged information, it immediately demanded that Barretta return the information to NJ TRANSIT.

119. Barretta has not complied with NJ TRANSIT's request and has not returned the NJ TRANSIT confidential and privileged information that is in his possession.

120. NJ TRANSIT has been irreparably harmed by Barretta's disclosures of NJ TRANSIT's confidential and privileged information.

121. Additional disclosures of NJ TRANSIT's confidential and privileged information by Barretta will further prejudice NJ TRANSIT. On the other hand, Barretta will not be prejudiced if enjoined from using or disclosing further NJ TRANSIT's confidential and privileged information, as he has no rights to NJ TRANSIT's property.

122. NJ TRANSIT has no adequate remedy at law to remedy Barretta's unauthorized use and disclosure of its confidential and privileged information.

PRAYER FOR RELIEF

WHEREFORE, NJ TRANSIT requests:

1. A declaration that NJ TRANSIT's demotion, suspension and termination of Defendant did not violate New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.
2. An Order finding that Defendant breached his duty of loyalty to NJ TRANSIT and awarding damages in an amount to be determined at trial.
3. An Order permanently enjoining Defendant from further disseminating NJ TRANSIT's property and requiring Defendant to return all of NJ TRANSIT's property in his possession.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4, the Court is advised that Deputy Attorney General James M. Duttera is hereby designated as trial counsel.

CERTIFICATIONS

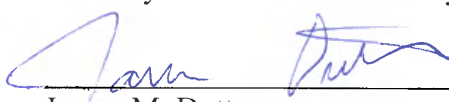
Pursuant to Rule 4:5-1, I hereby certify that the within matter is not the subject of any other action or arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

I further certify that at this time, I know of no other party that should be joined in this action.

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).

CHRISTOPHER S. PORRINO
Attorney General of New Jersey


Dated: September 7, 2017

BY: 

James M. Duttera
Deputy Attorney General

*Attorneys for Plaintiff,
New Jersey Transit Corporation*

Exhibit “A”

Policy Number 2.02	Supersedes 2.02 - Amended 4/2006	Effective Date 05/1/15
Manual General Administration	Source Non-Revenue Fleet Services	Key Subject Non-Revenue Vehicles
Title ASSIGNMENT AND USE OF NON-REVENUE VEHICLES		
Applies to All NJ TRANSIT Employees		

I. **PURPOSE**

This document states NJ TRANSIT policy regarding the assignment, use and control of non-revenue vehicles.

II. **DEFINITIONS**

Authorized Vehicle Allocation (also referred to as "Table of Allowance") - The number of vehicles assigned to a particular department based upon demonstrated usage.

Category 1 Vehicle - A non-revenue vehicle assigned to an individual NJ TRANSIT employee on a 24 hour, 7 day per week basis. These vehicles are assigned to positions in which around-the-clock vehicle assignment is critical to performance of the employee's job.

Category 2 Vehicle - A non-revenue vehicle assigned to a specific NJ TRANSIT division, department or cost center. If such a vehicle is assigned to a production group, one of the employees in the group may be designated as the primary operator.

Category 3 Vehicle - A non-revenue vehicle assigned to a location-based general pool and made available to NJ TRANSIT employees of that location upon request to handle short-term business needs when department vehicles are not available.

Category 4 Vehicle - A non-revenue vehicle assigned to a project management employee for the duration of a project. It may be used on a 24/7 basis, as needed.

Commutation - Direct travel between an employee's residence and the official work location.

Director - For the purposes of this policy, a management employee bearing the title of Deputy General Manager, Senior Director, Director, Chief Engineer, Chief of Project Management, Chief of New Light Rail Construction, Chief Planner, Division Engineer, General Superintendent or Executive Assistant to an Executive Management Team member.

Employee - A person hired by NJ TRANSIT on a salaried or wage basis, who is not a consultant or a contractor for the organization.

Global Position System (GPS) - is a satellite navigational system that provides location and time information. Many Non-Revenue Fleet vehicles are equipped with GPS.

Manager - For the purposes of this policy, a management employee bearing the title of Manager, Shop Superintendent, Assistant Superintendent or Line Engineer.

Non-Revenue Vehicle - All highway automotive vehicles including, but not limited to, sedans, station-wagons, trucks, vans, or other specially equipped maintenance or service vehicles which are owned or leased by NJ TRANSIT and used to conduct NJ TRANSIT business. This category includes non-revenue vehicles purchased or leased as part of state- and federally-funded grant projects. Vehicles assigned to private carriers are excluded from this policy.

State of Permanent Residence - The State of an employee's permanent residence as shown on his/her paycheck.

Vehicle Coordinator - An employee assigned by a General Manager, Assistant Executive Director or a Department Head to oversee, control and report on the assignment and use of vehicles. In the absence of a designated Vehicle Coordinator, a Department Director will be considered responsible for this function.

Work Vehicle - A non-revenue vehicle that is either manufactured as a specialized vehicle or frequently carries items such as equipment, materials, tools, instruments, repair kits, or first-aid kits to conduct physical work on NJ TRANSIT property, or is used for supervision of day-to-day revenue service. All other vehicles shall be classified as transportation vehicles. Due to their direct involvement in facilitating revenue operations, Work Vehicles shall take priority over transportation vehicles for items such as replacement, major repairs, assignment of spares, multiple fueling provisions, etc.

III. **POLICY**

All NJ TRANSIT-owned and leased non-revenue vehicles are to be used for conducting authorized NJ TRANSIT business only. These vehicles will be assigned and operated according to the procedural guidelines outlined in this policy.

Failure to comply with this policy and the guidelines contained herein may result in restriction or revocation of current and future vehicle assignments or vehicle use, and/or disciplinary action up to and including termination of employment.

All complaints regarding a potential misuse of a NJ TRANSIT Non-Revenue fleet vehicle should be forwarded to the Manager of Support Services and Fleet Administration. All complaints will remain confidential.

IV. **MANAGEMENT OF NON-REVENUE VEHICLES**

Under the general direction of the Chief of Procurement and Support Services, the Non-Revenue Fleet Services department shall be responsible for the overall management and control of all non-revenue vehicles, including, but not limited to, the following responsibilities:

1. Periodic review and revision of this policy as appropriate and issuance of supplemental procedures
2. Developing and maintaining, in coordination with user departments, an authorized operating fleet of all non-revenue vehicles
3. Developing the plan and budget for the purchase/lease of vehicles
4. Planning and monitoring fueling programs and assignment of gasoline credit cards
5. Monitoring the maintenance of vehicles and reviewing expensive repairs as advised by the Maintenance Department

6. Maintaining current registrations, inspections, permits, gasoline credit cards, E-Z Pass tags and motor vehicle identification cards for each vehicle and distributing the appropriate documents
7. Monitoring violations/fines, unusual occurrences, accidents, washing, etc.
8. Managing a central pool of vehicles to handle short-term business needs at Corporate Headquarters and other NJ TRANSIT facilities as appropriate
9. Providing for the proper disposition of vehicles that have exceeded their useful life
10. Monitoring compliance with this policy and related policies and procedures.
11. Monitoring GPS technology, access rights and the reporting of violations.
12. Periodically auditing vehicle usage to ensure compliance of this policy.

V. ASSIGNMENT OF NON-REVENUE VEHICLES

A. Authorized Vehicle Allocation

Authorized vehicle allocation for all non-revenue vehicles shall be determined by the Chief of Procurement and Support Services based on demonstrated usage. He/she shall periodically apprise the Executive Director of the status of vehicle allocation.

B. Guidelines for Increase in Fleet

Justification for an increase in the fleet shall contain all of the following information:

1. Reason(s) additional vehicles are needed
2. The total number and type of vehicles currently assigned to the requesting Department Director
3. The size of the staff, the complexity of the projects handled within the Department and how each vehicle is currently utilized
4. Reason(s) existing vehicles are not sufficient
5. Explanation of anticipated use, including purpose and mileage and support documentation.
6. Whether vehicles will be charged to the Operating or Capital budget.

C. Assignment of Category 1 Vehicles

The assignment of Category 1 vehicles shall be limited to positions in which around-the-clock vehicle assignment is critical to the employee performing his/her job or positions in which it is in the Corporation's financial interest or is assigned at the discretion of the Executive Director. Vehicles assigned as terms of employment for a particular position shall be exempt from justification.

The justification for a Category 1 vehicles shall describe the nature of the job responsibilities and meet all of the following criteria (see Exhibit 1).

1. Specialized Technician or Operations Discipline
2. Provides critical 24/7 emergency response for situations such as service disruptions, communication failures, accidents, drug testing, FRA rule infraction, etc.
3. Needs tools/material or specifically equipped vehicle
4. Is dispatched to various locations throughout system.

Category 1 vehicles shall be returned immediately to the Non-Revenue Fleet Services Department for reallocation upon expiration of the assignment, when the employee leaves NJ TRANSIT or when it is determined by the appropriate AED or VP&GM that the vehicle is no longer needed.

Vehicles will generally be parked off the street at the employee's home during off hours, and shall not be used for personal business.

Vehicles shall be made available to other NJ TRANSIT employees when they are not being used by the assignees.

Prior to commencing vacation or other extended absence, the assignee shall transfer the vehicle to the individual temporarily assigned to the position or to the appropriate vehicle pool.

Vehicle assignees shall be responsible for filing a completed "Monthly Vehicle Report" (Exhibit 8a) within 10 days of the end of each calendar month.

D. Assignment of Category 2 Vehicles

The assignment of Category 2 vehicles shall be limited to departments that have a demonstrated need for a vehicle or vehicles on a regular basis.

The justification for Category 2 vehicles shall contain all of the following information:

1. A vehicle is needed in connection with special circumstances, job duties or projects that require regular or frequent travel between NJ TRANSIT properties and/or affiliate locations, and/or other locations on NJ TRANSIT business.
2. The site(s) to be visited cannot be economically or conveniently accessed by public transportation
3. The travel requirements are in excess of 75% per month as supported by data from previous quarter or quarters
4. Circumstances require the use of specially equipped vehicles, such as high-rails, flatbeds, boom trucks or other special-purpose vehicles, that cannot be met with vehicles from other departments.
5. Category 2 vehicles must be parked at a secure NJ TRANSIT facility overnight when the vehicle is not in use. Category 2 vehicles are not to be taken to an employee's home overnight unless the employee has written approval from his supervisor and Non-Revenue Fleet Services.

E. Assignment of Category 3 Vehicles

1. The allocation of non-revenue vehicles to Category 3 pools for short-term business needs is the responsibility of the Fleet Services Department in accordance with the authorized

vehicle allocation.

2. Category 3 pool vehicles are assigned for short-term business needs on an as-needed basis and must not be signed out until 30 minutes prior to an employees scheduled trip. Category 3 vehicles can only be taken overnight with written approval of the person's supervisor and Non-Revenue Fleet Services.

F. Assignment of Category 4 Vehicles

All provisions shown in Section V-C for Category 1 vehicles will apply to these vehicles for the duration of the specific project.

G. NJ TRANSIT Logo

The exterior of all vehicles shall clearly exhibit the NJ TRANSIT logo. However, when necessary to maintain confidentiality of operations, vehicles may be exempted from this requirement.

H. Color of Vehicles

The exterior color of all non-revenue vehicles shall be white. Vehicles of other colors may be purchased for specific use only with prior authorization.

I. Approval of Proposals

A proposal for an increase in vehicle allocation, a Category 1 vehicle assignment, exemption from the NJ TRANSIT logo requirement or assignment of a vehicle with other than a white exterior must be prepared according to the justification guidelines outlined in Section V above and forwarded to Non-Revenue Fleet Services for review and approval. Requests for assignment of Category 1 vehicles will require the approval of the Executive Director.

J. Change in Vehicle Assignment

When a vehicle is reassigned to another operator, the department must complete the Vehicle Assignment Change Form (Exhibit 2) and submit it to Non-Revenue Fleet Services.

VI. **USE OF NON-REVENUE VEHICLES**

A. General Conditions - All Non-Revenue Vehicles

1. The driver must perform a pre-trip inspection to determine if the vehicle is safe to operate, free of any damage or mechanical issues that might impact one's ability to operate the vehicle. Any damage, mechanical failure or break down must be immediately reported to the Security Officer at Headquarters' Front Desk. (973-491-8251)
2. Employees will use public transportation when conducting NJ TRANSIT business whenever it is cost-effective, unless using public transportation is not time-effective, even if a company vehicle is available. (See guidelines in Exhibit 3 for additional information.)
3. Personal vehicles may be used when it is economical, saves time or reduces overnight use of a company vehicle significantly. If an employee uses his/her personal vehicle, the employee is eligible for mileage reimbursement, which will be charged against his/her departmental budget.
4. Only NJ TRANSIT employees conducting NJ TRANSIT business may operate an NJ TRANSIT fleet vehicle. **Non-employees are not authorized to operate any NJ**

TRANSIT fleet vehicle.

B. Passengers

Only employees and/or individuals connected with or participating in NJ TRANSIT business may be carried as passengers in NJ TRANSIT vehicles.

C. Vehicle Operation

Vehicles shall be operated in a safe manner that will not cause injury to person(s), damage to property or abnormal vehicle maintenance or repair needs. If an employee has a physical and/or mental condition which may impair his/her ability to comply with this requirement, s(he) must notify the Medical Services Division immediately so that a determination may be made regarding his/her fitness to operate an NJ TRANSIT vehicle.

NJ TRANSIT employees must operate non-revenue vehicles in a safe and responsible manner and be free of the effects of alcohol and other mind-altering drugs when operating them. Any non-agreement employee found using a non-revenue vehicle while impaired by or under the influence of drugs or alcohol will be subject to the provisions of Corporate-wide Policy No. 2.16, Employee Discipline, and NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy. Any agreement employee using a non-revenue vehicle under the influence of drugs or alcohol will be subject to the applicable provisions of the labor agreement that covers his/her position and NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy.

D. Commutation

1. Where appropriate, authorization may be granted by an employee's supervisor for overnight use if the return of the vehicle to its usual location would be inconvenient or inefficient. Should such authorization be required for an employee or a vehicle in excess of four (4) occurrences per month, a 24-hour authorization for a Category 1 or 4 vehicle should be obtained.
2. NJ TRANSIT non-revenue vehicles are not generally assigned for the purpose of providing personal transportation to employees who work after normal business hours. However, managers may authorize the use of company vehicles in unusual circumstances on an "as-needed" daily basis.
3. As required by business necessity, Category 1 vehicles may be used by the assignee for personal commutation to and from work.

E. Taxation on Commutation Usage

Internal Revenue Service regulations require that an employee using a company-owned vehicle for commutation include the value of the commutation usage in his/her gross income for tax purposes (see Exhibit 4).

F. Personal Use of Vehicles

The personal use of vehicles is prohibited. However, during normal work hours the vehicle could be used for authorized lunch and break periods. The use of a fleet vehicle for personal errands, any form of shopping or personal business activity during the authorized lunch or break period is prohibited. The need for emergency medical treatment, or prescription drugs in an urgent situation, would not be considered as unauthorized use.

G. Driver's License

1. In order to operate a fleet vehicle, an employee must possess a valid driver's license from the state of his/her permanent residence.

Any type of restriction (such as a suspension or revocation of an employee's driver's license as a result of driving while intoxicated (DWI), an accumulation of excessive points due to moving violations), which will invalidate the individual's driver's license will prohibit him/her from operating an NJ TRANSIT fleet vehicle. In addition, driving an NJ TRANSIT vehicle while impaired by or under the influence of alcohol or drugs is a dischargeable offense under NJ TRANSIT's Drug- and Alcohol-Free Workplace Policy.

If an employee's driving privileges are restricted as a result of an incident which occurred while (s)he was operating an NJ TRANSIT non-revenue fleet vehicle, the employee may be permanently prohibited from operating a non-revenue fleet vehicle. Any recommendation to permanently prohibit an employee from operating a non-revenue fleet vehicle must be approved by the employee's department management, up to and including the AED, VP&GM, CFO, etc., and referred to the AED, Human Resources for review and final approval after consultation with the Executive Director.

2. If the use of a vehicle is a requirement of an employee's position, it is the employee's responsibility to inform his/her supervisor immediately of any restriction of his/her driver's license. Failure to comply with this requirement or misrepresentation of the status of one's driver's license will subject the employee to disciplinary action, up to and including termination of employment.

An employee whose current position requires him/her to operate a vehicle and whose driving privileges are restricted as a result of an incident which occurred while (s)he was operating a non-NJ TRANSIT vehicle may be placed on leave without pay or in another position which does not require the use of the fleet vehicle (if such a position is available and the employee meets the requirements for it) for the duration of the period during which his/her driving privileges are restricted, up to a maximum of six (6) months.

3. Employees must possess a minimum of one (1) year's driving experience after receipt of their first driver's license. An employee who has less than one year's driving experience must attend the appropriate in-company driver training program conducted by the Bus Technical Training and Safety Division, before (s)he will be able to operate a non-revenue vehicle.

H. Compliance With Laws

All NJ TRANSIT vehicles must be operated and maintained in conformance with state and local regulations. Vehicles are not to be operated without current, valid inspection stickers, registrations and Motor Vehicle Identification Card. The driver is responsible for verifying the presence and validity of all documentation prior to using the vehicle. The use of a cell phone while driving a fleet vehicle is only permitted when conducting official business and only when a hands-free device is utilized. Texting while operating a fleet vehicle is strictly prohibited.

I. Violations

1. Employees are responsible for resolving traffic, parking and E-Z Pass violations incurred while driving fleet vehicles. Employees may choose to either pay for violations or plead not guilty and go to court to defend themselves. Employees who fail to pay fines incurred while operating a NJ TRANSIT vehicle can have their privileges suspended until the fine is paid in full.
2. If records identifying the driver of a vehicle that is the subject of a violation notice received in the mail do not exist, the Department Director to whom the vehicle was

assigned shall be responsible for prompt disposition.

3. In the event that a violation results in the need for legal representation, such representation may be provided by NJ TRANSIT at the discretion of senior management in consultation with the Division of Law.

J. NJ TRANSIT Vehicle Identification and Fixed Asset Tags

1. Each vehicle is assigned an NJ TRANSIT vehicle number, which corresponds to the Fixed Asset Identification Number.
2. The vehicle number is affixed to the exterior of a vehicle at an appropriate location and shall be maintained in good readable condition.
3. The Fixed Asset Identification Number is affixed inside a vehicle at an appropriate location and shall be maintained in good readable condition.

K. Bumper or Other Stickers

No stickers (including bumper stickers) are to be placed in or on any non-revenue vehicle by any employee without prior approval from Non-Revenue Fleet Services.

L. Parking

1. Employees shall seek to avoid parking in areas that may cause the appearance of impropriety. On-street parking should be avoided as much as possible.
2. All doors of the vehicle must be locked when it is parked to ensure security of company as well as personal property.

M. Reimbursable Expenses

NJ TRANSIT will reimburse employees for the following expenses incurred while using NJ TRANSIT vehicles to conduct authorized business:

- Tolls
- Parking fees
- Fuel (see Guidelines for Obtaining Fuel in Exhibit 8, attached)
- Lubricants (only to the extent necessary to top off fluid levels)
- Car wash, interior and exterior (monthly wash is suggested)

N. Personal Property

1. NJ TRANSIT is not responsible for theft, loss of, or damage to personal property of employees.
2. All personal property, as well as refuse, must be removed by the employee upon return of the vehicle to the storage site.

O. No Smoking

Smoking is **not** permitted in any NJ TRANSIT non-revenue vehicle.

P. Accidents, Breakdowns or Other Unusual Occurrences

1. Any accident, breakdown or other unusual occurrence must be reported by the employee to his/her supervisor as soon as practicable, given the nature and circumstances of the event. Medical and safety needs are to be accorded priority in all cases, but in no case should the employee's notification to the supervisor be delayed for more than 24 hours.
2. A Motor Vehicle Accident/Motor Vehicle Occurrence Report (Exhibit 5) shall be submitted to Risk Management/Claims within 24 hours of any accident or incident involving an NJ TRANSIT fleet vehicle, regardless of whether there is any apparent damage or personal injury. Failure to turn in a report can result in the suspension of the employee's ability to operate a vehicle until the report is submitted.
3. If another vehicle is involved in the accident the employee must call the local police department where the accident occurred once the vehicle is moved to the side of the road for the employee's safety. If the vehicle cannot be moved, the employee must seek safety first and then call the local police department. After the police have taken their report it is the responsibility of the employee to obtain a copy of the police report once it becomes available and forward it along with the incident report to the departments listed on the incident report.
4. Accidents that are determined to be at fault (employee was responsible for causing the accident) will be reviewed by Non-Revenue Fleet Services, Bus or Rail Safety and Human Resources to determine if the employee needs to attend a driver safety course. At fault accidents will become part of an employee's record for future accidents\violations and will be reviewed to see if the employee should continue to operate a NJ TRANSIT vehicle.
5. Accidents or breakdowns occurring during business hours in the North Jersey area shall be reported to the Non-Revenue Vehicle Shop, and to the Northern Division Control Center OR the Rail Trouble Desk after working hours and the Non-Revenue Fleet Services Department..
6. Accidents or breakdowns occurring during normal working hours in the South Jersey area shall be reported to the Washington Township garage, and to the Southern Division Control Center after working hours and the Non-Revenue Fleet Services Department..
7. Loss of registration, keys, license plates, credit cards or E-Z Pass tags shall be reported immediately to the Fleet Services Department.

Q. Maintenance and Repairs

All non-revenue vehicles in the Northern New Jersey area shall be serviced and repaired by the Non-Revenue Vehicle Shop in Newark. All non-revenue vehicles in the Southern New Jersey area shall be serviced and repaired by the Southern Division Shops. When a vehicle is due for preventive maintenance, the driver of an individually assigned vehicle and the department vehicle coordinator are responsible for ensuring that the vehicle receives the required service. Failure to adhere to this requirement could result in the vehicle being recalled. Non-Revenue Fleet Services maintenance intervals are noted in Exhibit 6.

R. Project Management for the Procurement of Non-Revenue Vehicles

Project management for the procurement of certain designated Non-Revenue Fleet vehicles shall be handled by the Equipment Design and Engineering Unit, as determined by the Non-Revenue Fleet Vehicles Department. This shall include preparing of specifications, bid documents,

acceptance inspections and preparing vehicles for service upon final approval from the Manager of Support Services & Fleet Administration.

S. Removal and Addition of Major Equipment

Before permanent removal or addition of equipment costing \$5,000 or more, prior authorization shall be obtained from Non-Revenue Fleet Services. All vehicle modifications regardless of cost should be coordinated with the respective Non-Revenue Vehicle Shop.

T. Vendor Contact

Vehicle user departments shall not contact vendors for delivery of vehicles/spare parts or for installation of additional equipment. Users shall contact Non-Revenue Fleet Services or Procurement staff as appropriate.

U. Fueling

Vehicles shall be fueled with unleaded regular gasoline or the least expensive appropriate fuel. For details, see Exhibit 7.

V. E-Z Pass Tags

E-Z Pass tags will be installed on all non-revenue vehicles.

E-Z Pass tags on NJ TRANSIT Non-Revenue vehicles may be installed and removed only by authorized NJ TRANSIT shops. No other person is authorized to install or remove E-Z Pass tags on NJ TRANSIT Non-Revenue vehicles or to transfer the E-Z Pass tag from one vehicle to another. Theft, loss, malfunction or damage to E-Z Pass tags must be reported to Non-Revenue Fleet Services.

VII. **PREPARATION AND SUBMISSION OF MONTHLY VEHICLE REPORTS**

A Monthly Vehicle Report Form (Exhibit 8a) shall be maintained inside each vehicle. For all heavy-duty trucks above 26,000 pounds gross vehicle weight the Monthly Heavy-Duty Truck Report (Exhibit 8b) shall apply. The primary vehicle operator shall be responsible for completing the Monthly Report, submitting it to his/her Supervisor for review and then forwarding it to Non-Revenue Fleet Services within five (5) days of the end of each calendar month. In the absence of a primary operator, the Department Director will be responsible for timely completion and submission of the Monthly Vehicle Report.

A Monthly Vehicle Report must be submitted regardless of whether or not the vehicle is being used actively. In such cases, the report should contain a brief explanation of why the vehicle was not used. If a vehicle is lent to another department, the original department is responsible to ensure the submission of the completed monthly report. Three (3) periods of non-use or low usage in one (1) year will be considered reason to recall the vehicle.

VIII. **RESPONSIBILITIES**

A. Department Director

1. Informing their employees of the content of this policy and ensuring compliance with same.
2. Addressing vehicle issues such as violations, personal use, driver training, accident reports, monthly reports, etc., in a timely fashion.

All forms in the policy have specific signature requirements. If the appropriate level employee is not available, a senior level approval is to be obtained. Approval of monthly vehicle and accident reports may be delegated from the Department Manager to the Department Vehicle Coordinator or a non-agreement supervisor.

B. Vehicle Coordinator

Vehicle Coordinators are responsible for:

1. Filing a completed Monthly Vehicle Report within 5 days of the end of each calendar month and forwarding it to Non-Revenue Fleet Services.
2. Verifying that the operators possess the required driving license
3. Ensuring the distribution of registrations, motor vehicle identification cards and gasoline credit cards
4. Monitoring that a copy of this Policy and a set of forms are placed in every vehicle for reference
5. Monitoring compliance with the policy and related procedures.

C. Vehicle User

Vehicle Users are responsible for:

1. Ensuring that they are able to operate a vehicle safely and in accordance with all applicable laws and seeking a determination from Medical Services if they have a physical and/or mental condition which may impair their ability to do this
2. Possessing a current, valid driver's license whenever they operate an NJ TRANSIT fleet vehicle
3. Presenting an Employee ID pass when obtaining the keys for a non-revenue reserved vehicle
4. Ensuring that overnight use is documented and authorized by a Department Manager or Supervisor
5. Returning the vehicle and keys within the time frame originally requested
6. Removing all refuse and personal property from the vehicle
7. Removing snow and ice from non-revenue vehicles
8. Returning the vehicle with a half (1/2) tank of fuel or more
9. Completing the usage in the appropriate Monthly Vehicle Report (see Exhibit 8) maintained inside the vehicle. Any gaps or discrepancies must be reported to the Vehicle Coordinator immediately upon return of the vehicle
10. Completing the Motor Vehicle Accident Report/Unusual Occurrence Report notification in the event of an accident

11. Completing the Assignment Change Form (Exhibit 2) when a vehicle is reassigned to another operator
12. Operating the vehicle in accordance with this policy, motor vehicle regulations and related procedures.
13. Promptly reporting the unauthorized use, loss, theft or malfunction of a credit card or an E-Z Pass tag to their Supervisor and Non-Revenue Fleet Services

Note: Any injuries sustained while operating an NJ TRANSIT vehicle on agency business shall be reported to the Risk Management/Claims Department within 24 hours of the occurrence. The employee's claim and/or medical and/or other expenses shall be submitted pursuant to New Jersey Statutes Title 39, Motor Vehicles and Traffic Regulation, and any other applicable and valid automobile and insurance laws. In the event of any recovery from a third party, the employee shall reimburse NJ TRANSIT for all amounts spent by the agency in revolving the employee's medical and other expense claims arising from such accident.

IX. CROSS-REFERENCES

A. Corporate-wide Policy & Procedures (Amended 4/2006)

2.04A - Issuance and Use of Wireless Communication Devices & Services

2.09 - Travel & Business Expense Reimbursement

2.19 - Approval Authority for Purchase/Check Requisitions

3.16 - Employee Discipline

3.25 - Drug- and Alcohol-Free Workplace - Core Policy

3.25A - Drug- and Alcohol-Free Workplace Policy - Addendum I

3.25B - Drug- and Alcohol-Free Workplace Policy - Addendum II

3.25C - Drug- and Alcohol-Free Workplace Policy - Addendum III

4.01 - Fixed Asset Definitions

B. EXHIBITS

Exhibit 1 - Request for Assignment of Category 1 Vehicle

Exhibit 2 - Non-Revenue Vehicle Assignment Change Form

Exhibit 3 - Public Transportation vs. Use of NJ TRANSIT-Owned Non-Revenue Vehicles

Exhibit 4 - Reporting the Taxable Value of Communication Usage

Exhibit 5 - Reporting of Motor Vehicle Accidents

Exhibits 5a/b/c - Non-Revenue Motor Vehicle Accident/Occurrence Report

Exhibit 6 - Maintenance, Repairs, and Breakdowns

Exhibit 7 - Obtaining Fuel for Non-Revenue Vehicles

Exhibit 7a - NJ TRANSIT Bus Garages for Gasoline and Diesel Fuels

Exhibit 8a - Non-Revenue Fleet Monthly Vehicle Report (MVR)

Exhibit 8b - Monthly Heavy Duty Truck Report (MVR-IRP)

Exhibit “B”

POLITICO

POLITICO NEW JERSEY





Testifying before members of both houses of the Legislature, Todd C. Barretta said he was fired this month after his repeated attempts to raise concerns about systemic issues at NJ Transit. | Getty

Fired NJ Transit executive raised concerns about the agency after just days on the job

By RYAN HUTCHINS | 08/30/2017 04:17 PM EDT

The fired NJ Transit executive whose sweeping allegations of patronage and incompetence were dismissed this week as “false and retaliatory” had documented many of his concerns in memos dating back to his first weeks at the troubled agency.

Just days into his job as the chief compliance officer for the rail and bus company, Todd C. Barretta wrote his boss, Executive Director Steve Santoro, saying he’d already identified a number of “areas of concern.”

“Several immediate compliance and potential risk management issues, inter alia, were revealed during the course of my information acquisition including document storage, retrieval, and review; the coordination of response to official inquiry; processing of employee background checks; and management of contracts,” Barretta wrote on March 10 in a memo summarizing his first week in the position.

The memo was among numerous documents Barretta provided to lawmakers before his bombshell testimony on Friday, when he said NJ Transit had become a “runaway train” that’s “in great need of assistance.”

Testifying before members of both houses of the Legislature, Barretta said he was fired this month after his repeated attempts to raise concerns about systemic issues at NJ Transit.

He said the agency had failed to update important policies for more than a decade, kept key positions empty, or inappropriately staffed, and has systems so antiquated federal railroad officials were unable to complete their inspection work.

Gov. Chris Christie dismissed the allegations on Monday as the fabrications of a disgruntled former employee who had been suspended for misusing his company car and fired for not returning a company laptop.

But the records Barretta provided to lawmakers, obtained this week by POLITICO New Jersey, show he had documented many of his concerns in writing, raising them well before his suspension and firing.

The documents also reveal the U.S. Department of Labor has been investigating the agency for potential abuses of the federal Family Medical Leave Act, a 1993 law that gives some workers the right to take unpaid, job-protected leave for specified family and medical reasons.

By June, Barretta had come to view the issues inside the agency — the operator of a sprawling bus network, an urban light-rail system and the nation's second-busiest commuter railroad — in stark and sobering terms.

After reviewing an internal audit that looked at the agency's FMLA compliance, Barretta wrote Santoro about the findings, saying in a June 2 memo that the issues raised were widespread.

“Unfortunately, the prevailing themes dominating the perceived weaknesses and deficiencies therein are not entirely unique to the management of the FMLA compliance but rather represent a mere manifestation of the larger issues coupled with defects in mindset and an overall poor corporate culture that permeates and plagues or organization.”

Barretta said during his testimony on Friday that Santoro had told him to remove those comments from his memo. He resubmitted a redacted form three days later.

He claimed during the hearing that the executive director had also told him on other occasions not to put some of his criticisms in writing and warned him the agency didn't want a “gotcha guy.”

Santoro denies those claims.

The issues with the FMLA program are significant, according to the internal audit that prompted Barretta's memo. There are about 1,500 employees approved to take leave through the program, or about 10 percent of the agency's workforce.

The report, written by Warren Hersh, the agency's auditor general, found that many workers had taken FMLA leave on short notice and for short periods of times. That had resulted in canceled trains and buses, had pushed up overtime costs and may have jeopardized safety by delaying key repairs, Hersh wrote in the May audit report.

Lenore Uddyback-Fortson, a spokeswoman for the Department of Labor, said its investigation into NJ Transit remains open and under the purview of its district office in North Jersey.

In a statement Wednesday, NJ Transit said it is "working" with the labor department to look at the program and that executives there "welcome this review." Spokesman Jim Smith said Santoro requested the internal audit of the program in January — before the federal inquiry — "based on indications it may have an impact on the delivery of our daily service."

"Prior to that audit, NJ TRANSIT also pursued and is implementing a technology program to track FMLA throughout the organization," Smith said. "It is important to note that NJ TRANSIT identified and was addressing this issue prior to the Executive Director's establishment of a chief compliance position and the DOL's review."

Barretta did not respond to requests for comment this week, but he spoke to NJ Advance Media, which first reported on the FMLA issues

and Barretta's memos on Wednesday afternoon.

"This is one of the major contributing causes of the manpower shortages at NJ Transit, and nobody acknowledged it until they got scared that some regulator was coming in to look at it," Barretta told the news outlet.

Last week's testimony — described as shocking by lawmakers who were in the room — came as part of series of hearings that have been held by the Assembly Judiciary Committee and the Senate Legislative Oversight Committee.

The hearings initially focused on last year's deadly train crash in Hoboken, but have since expanded to include a deeper look at safety issues, financial concerns and political appointments at NJ Transit.

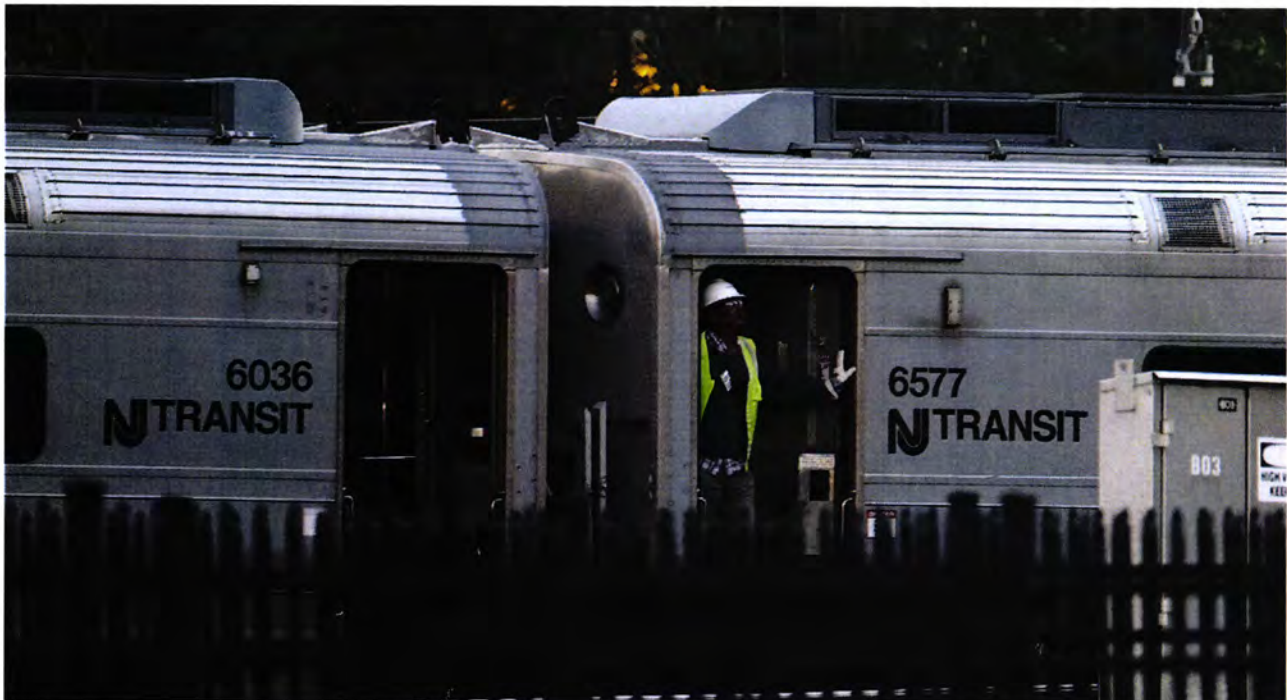
Last month, after saying lawmakers had been "stonewalled" by the agency and the Christie administration, the Judiciary Committee issued a sweeping subpoena seeking documents related to the hiring and promotion of top staff members since January 2010, when Christie took office.

The agency had also been under investigation by the Federal Railroad Administration before the crash in Hoboken. That inquiry had remained open as of January, but it's unclear if it has been closed since.

Democratic gubernatorial nominee Phil Murphy, a former Goldman Sachs executive, said this week he was appalled at the allegations Barretta made and called for corrective action.

Lt. Gov. Kim Guadagno, the Republican nominee, said Tuesday she wasn't sure if the testimony was credible, noting she hadn't seen it. But she said, if elected, she would evaluate the employment of every political appointee at the agency.

"I've presented a transportation plan that requires a top-to-bottom review of everything that's going on in transportation," Guadagno told reporters at an unrelated event. "I have said that I would accept the resignation of every person you're entitled to accept the resignation of and make them reapply for their jobs."



The Federal Railroad Administration had been looking at NJ Transit's safety record and finances before last year's commuter train crash in Hoboken. | AP Photo/Julio Cortez

As Democrats sound alarm. Christie calls NJ Transit allegations 'false and retaliatory'

By **RYAN HUTCHINS** | 08/28/2017 06:35 PM EDT

Gov. Chris Christie on Monday dismissed the bombshell allegations of NJ Transit's fired chief compliance officer as "false and retaliatory,"

even as Democratic gubernatorial nominee Phil Murphy said he was stunned by the remarks and called for corrective action.

The comments come three days after Todd C. Barretta, who was hired earlier this year to take a deep look at potential risks at the troubled commuter agency, said he had been terminated this month after repeated attempts to sound the alarm about what he saw there.

Barretta told lawmakers in Trenton on Friday that NJ Transit was run by unqualified people and had become a “runaway train” that’s “in great need of assistance.” He said the agency had failed to update important policies for more than a decade, kept key positions empty, or inappropriately staffed and has systems so antiquated federal railroad officials were unable to complete their inspection work.

“Simply, it is a toxic environment that promotes a culture that was not accepting of any corrective course,” Barretta told lawmakers. “... I witnessed more occurrences of agency-wide mismanagement, fueled by ignorance, arrogance, hypocrisy, incompetence, patronage, cover-up and corruption, than one can reasonable expect to experience throughout his entire career.”

Christie dismissed those allegations as the fabrications of a disgruntled former employee who was suspended for misusing his company car and then fired for not returning a work laptop.

“The fact is that, as time goes on, this person will be more and more discredited because, quite frankly, New Jersey Transit made a mistake, and the mistake they made was hiring this guy in the first place,” Christie said after an unrelated event in Newark. “Because you can’t

have a chief compliance officer who can't follow the rules himself and is misusing his company car, is misusing his company computer for personal uses.”

Barretta did not immediately respond to an email seeking comment on Monday, but had provided a receipt to lawmakers that showed he had, in fact, returned the laptop in question.

Despite the governor's caustic reaction, many Democrats were taking the claims seriously.

Murphy, the former U.S. ambassador to Germany and leading contender to replace Christie in January, said these latest allegations against NJ Transit — including claims top staffers tried repeatedly to silence Barretta — were jarring.

“Listen, I already thought that we were in crisis with NJ Transit, then I read his testimony and I wanted to go back to bed and pull the covers over my head,” Murphy told reporters after an event in Newark that came a short time after Christie's. “His testimony was shocking.”

Barretta's testimony came during a joint hearing held by the Assembly Judiciary Committee and Senate Legislative Oversight Committee. The two committees have been looking closely at NJ Transit's operations since last year's deadly train crash in Hoboken.

Christie, who for months has rejected claims NJ Transit is in rough financial shape despite regular capital fund raids and some of the worst on-time performances in the nation, attacked lawmakers for even allowing Barretta to testify before them. He called out

Assemblyman John McKeon, the Democratic chairman of the Judiciary Committee.

“What he did this week was false and retaliatory testimony urged on by political hacks, like John McKeon, who can’t find any scandal at New Jersey Transit so they want to try to manufacture one,” Christie told reporters.

Even after nearly a year of public hearings and an examination of thousands of pages of internal documents, McKeon and other lawmakers said they were disturbed by the testimony of Barretta, who said he thought NJ Transit was in such a dire situation he wouldn’t feel comfortable letting his son ride on NJ Transit trains or buses.

McKeon said Monday it was ludicrous for the governor to dismiss the claims; there are numerous records, prepared by Barretta, that support the allegations.

“These are tangible documents. These aren’t just he said, he said,” McKeon, who represents Essex and Morris counties, said in a phone interview. “They have to be accountable and answer to all that.”

It’s unclear what actions could occur next.

McKeon, who recently issued a subpoena to NJ Transit seeking numerous documents, said he and Sen. Bob Gordon, the oversight chairman, are likely to hold additional hearings in the coming months. He also said there may be a need for the state Attorney General’s Office or NJ Transit’s own inspector general to look closely at the allegations.

The Federal Railroad Administration had been looking at NJ Transit's safety record and finances before last year's commuter train crash in Hoboken, which left one person dead and more than 100 others injured. It's unclear if the inquiry continues today, but it was said to have remained open in January when President Donald Trump took office.

Regardless of what sort of investigation takes place, McKeon said, the agency is in need of a complete overhaul.

"At this point, it's a matter of pointing out how poorly it's been managed and being in a position to tear it down and built it back up again," he said.

Katherine Landergan and Linh Tat contributed to this report.

NEW JERSEY POLITICS

NJ Transit workers are abusing family leave time, agency audit says

36

Updated on August 30, 2017 at 4:02 PM

Posted on August 30, 2017 at 11:45 AM



Commuters leave an NJ Transit train in Hoboken Terminal as another arrives. A new federal probe is examining whether abuse of the Family Medical Leave Act by NJ Transit rail and bus operators is behind excessive service cancellations and delays for NJ Transit's passengers. (Larry Higgs | NJ Advance Media for NJ.com)

By Claude Brodesser-Akner, cbrodesser@njadvancemedia.com,
NJ Advance Media for NJ.com

TRENTON -- The U.S. Department of Labor is investigating NJ Transit for widespread abuse of the federal Family Medical Leave Act, NJ Advance Media has learned.

Alleged abuses by rail and bus operations employees have resulted in "delays and cancellations of service due to unavailability of rail crews, bus operations and light rail operators," "higher costs" from overtime paid to their replacements and compromised safety due to "delay in making mechanical and signal repairs," according to an internal audit conducted in May and obtained by NJ Advance Media.

The audit found a history of NJ Transit employees who "call-out to use FMLA time just before their shift is scheduled to begin, or even it has begun." The practice has left managers with "gaps in operational coverage" that incur additional overtime costs for NJ Transit, according to the audit.

Additionally, a memo written a month later to NJ Transit's executive director Steve Santoro by former chief compliance officer Todd Barretta warned that NJ Transit's deficiencies are not just related to FMLA compliance, but rather represented "an overall poor corporate culture that permeates and plagues our organization."

"It's an agency out of control and it needs to be turned around, immediately," said Assemblyman John McKeon, D-Essex, co-chair of a joint legislative oversight committee that has been investigating NJ Transit since a derailment at New York's Penn Station last April.

In his June 2 memo, Barretta warned that "NJT's leniency results in an off the charts rate of employees approved for FMLA" and that the agency's "weaknesses have fostered a culture of FMLA abuse."

Some 1,500 NJ Transit's employees were approved for unpaid family medical leave as of mid-May -- a figure representing more than 10 percent of the entire workforce at the nation's second largest railroad -- according to the May audit.

Barretta was fired as compliance officer earlier this month by NJ Transit for misusing a company car after five months at the agency.

The documents were provided by two sources who requested anonymity because they were not authorized to speak publicly about the federal investigation.



Fired NJ Transit Chief Compliance Office Todd C.

Barretta testified before the Legislature about the railroads many problems on Friday, August 25th, 2017 (Credit: NJ Advance Media for NJ.com)

On Friday, Barretta testified before McKeon's committee about an agency rife with mismanagement that had put passenger safety at risk. He made no reference to the pending federal investigation.

On Monday, Gov. Chris Christie assailed Barretta as giving "false and retaliatory testimony, urged on by political hacks like (Assemblyman) John McKeon, who can't find any scandal at NJ Transit, and so they want to try to manufacture one."

On Tuesday evening, Barretta confirmed he'd warned of Santoro about "alarming" FMLA abuses, adding that they had contributed to a summer marked by numerous rail and bus service delays and cancellations.

"This is one of the major contributing causes of the manpower shortages at NJ Transit, and nobody acknowledged it until they got scared that some regulator was coming in to look at it," Barretta said.

The Family and Medical Leave Act of 1993 is a federal law requiring covered employers to provide employees with job-protected, unpaid leave for qualified medical and family reasons.

Under the FMLA, eligible employees can take up to 12 weeks of unpaid leave during any 12-month period to contend with a serious health condition of their own, or for a parent, spouse or child.

The internal report written in May by Warren Hersh, the agency's auditor general, detailed the widespread use of the FMLA for last-minute or even after-the-fact absences and called for "immediate corrective action." Hersh's audit also found the manpower shortages left NJ Transit "clearly deficient in critical ways exposing the organization to unacceptable risk levels."

Hersh's audit found that "intermittent FMLA (i.e. using FMLA time in short blocks -- a day or days, or even hours) is more prevalent at NJT than the use of consecutive FMLA time (weeks for surgical recuperation, maternity leave, etc.)"

It also noted that there "are instances where employees call out to use FMLA time just before their shift is scheduled to begin or even after it has begun...leaving managers with gaps of operational coverage."

And the report concluded that because "a high concentration" of employees taking time off via the FMLA were "in bus and rail operations" and most were using intermittent leave, the risks to NJ Transit's passengers were becoming exponential.

As NJ Advance Media reported earlier this summer, of the 112 total NJ Transit trains canceled between July 1 and July 17, only 40 were not blamed on crew shortages.

The FMLA abuse reportedly comes from unions pushing back against recently implemented policies requiring stricter attendance, according to the May audit.

"There is a direct correlation with stricter time and attendance policies and the increase in FMLA applications," wrote Hersh. "It was noted that certain unions are encouraging their members to apply for FMLA coverage due to a revised occurrence-based attendance policy."

It's not clear when the new attendance policy took effect, but Hersh wrote that after it did, bus operations saw FMLA certifications increase 400 percent -- from approximately 200 applications to 800, out of 3,500 bus operators.

On Tuesday evening, an NJ Transit spokeswoman, Lisa Torbic, declined to answer questions about the federal and state probes into NJ Transit, but did email a statement.

"NJ TRANSIT is working with the Department of Labor in its review of NJ TRANSIT's FMLA program. We welcome this review. In fact, prior to the DOL's review, Executive Director Steven Santoro asked the Auditor General to conduct an internal audit of

the program based on indications it may have an impact on the delivery of our daily service. In addition, NJ TRANSIT will be implementing a technology application to improve FMLA tracking across the organization."

Calls placed to Hersh were not returned.

A Philadelphia-based regional spokeswoman for the U.S. Dept. of Labor, Lenore Uddyback-Fortson, confirmed the federal probe, but declined to comment further.

Claude Brodesser-Akner may be reached at cbrodesser@njadvancemedia.com. Follow him on Twitter [@ClaudeBrodesser](https://twitter.com/ClaudeBrodesser). Find [NJ.com Politics](#) on Facebook.

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Exhibit “C”



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Governor

KIM GUADAGNO
Lt. Governor

CHRISTOPHER S. PORRINO
Attorney General

MICHELLE L. MILLER
Acting Director

August 31, 2017

Via Electronic and Overnight Mail

William D. Russiello, Esq.
 Leslie & Russiello, Attorneys at Law
 45 Essex Street, 3rd Floor
 Hackensack, New Jersey 07601-5606
wrussiello@cs.com

Dear Mr. Russiello,

On behalf of New Jersey Transit Corporation ("NJ TRANSIT") I write concerning your client, Todd C. Barretta. As you are aware, on August 25, 2017, Mr. Barretta offered testimony before the New Jersey Assembly Judiciary Committee concerning his previous employment at NJ TRANSIT. In the course of that testimony, Mr. Barretta made numerous statements concerning his employment and former coworkers that were false, misleading, or otherwise inaccurate. Those statements included, but were not limited to, matters concerning his employment history at NJ TRANSIT and allegations regarding his termination.

It also came to light during the August 25 testimony that Mr. Barretta had publicly disseminated certain records belonging to NJ TRANSIT without NJ TRANSIT's knowledge or consent. Certain of those documents are protected by privileges belonging to NJ TRANSIT, which privileges Mr. Barretta is not, and has never been, authorized to waive. NJ TRANSIT has since learned that the certain of the records in question have also been transmitted to the media.

If Mr. Barretta is in possession of any NJ TRANSIT records, Mr. Barretta is immediately to return all such records to NJ TRANSIT. Likewise, Mr. Barretta should instruct anyone to whom he disclosed these materials, including but not limited to



August 31, 2017

Page 2

anyone affiliated with the Assembly Judiciary Committee or the Senate Legislative Oversight Committee or the media, to immediately return the material to NJ TRANSIT. Neither Mr. Barretta, nor anyone to whom he has distributed such information, is authorized to use, retain, or distribute such material. If Mr. Barretta fails to comply with this instruction, NJ TRANSIT reserves the right to take appropriate legal action.

Please respond to this letter in writing no later than tomorrow, September 1, 2017, returning all of NJ TRANSIT's records and committing to comply with the above instructions.

This letter is sent without prejudice to NJ TRANSIT's rights in law or equity, all of which are expressly reserved.

Sincerely,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

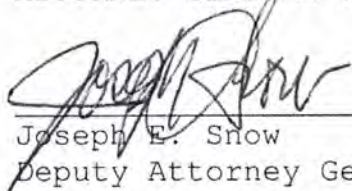

By: Joseph E. Snow
Deputy Attorney General

Exhibit “D”

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Jesse B. Leslie (1921-1987)

Successor to
Westrvelt & Leslie

State of New Jersey
Office of the Attorney General
Dept. of Law and Public Safety
Division of Law
Att'n: Josph Snow, DAG
PO Box 2246
Newark, NJ 07105-2246

September 1, 2017
Re: Todd C. Barretta;

Dear Mr. Snow;

In regard to your letter of August 31, which I received by e-mail today, we reply as follows:

- 1) Your request, upon threat of imminent un-specified legal action against Mr. Barretta, to reply within 24 hours (by September 1) is un-reasonable, and discourteous, considering that I have not been able to contact my client today, and would, in any event, be considered very short notice.
- 2) Please be advised that Mr. Barretta truthfully testified at the New Jersey Assembly Judiciary Committee on August 25. None of his statements were false, misleading or otherwise inaccurate. If the personnel about whom Mr. Barretta testified are upset over his testimony concerning their actions, we suggest that they modify their behavior, rather than attempt to silence Mr. Barretta by intimidation or pursue retaliatory actions against him.
- 3) Your generalized demands that Mr. Barretta return any NJ Transit records he may possess; your assertion that such records are privileged; your demand that he not disseminate any such records or information to the Assembly Judiciary Committee or the Legislative Oversight Committee, the news media or anyone else, are astonishing their vagueness, breadth, disrespect for the New Jersey Assembly's legislative authority, the Constitutional rights of a free press and the public's right to know. You have not cited any authority for your sweeping demands. You have not specified what information or records to which you are referring.
- 4) We suggest that you contact State Sen. Bob Gordon of the Senate Oversight Committee and demand that he return any such records or information which the Committee may possess, and demand that they not disseminate the information.

yours,

RUSSIELLO

By: _____

Russiello, Esq.

Sincerely

LESLIE &

William D.

mtf/WDR

Barretta reply to Snow .wpd]