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SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY

AUG 13 2015

REC'D & FILED
CIVIL CASE
MANAGEMENT OFFICE

DONALD HYMER, JR.,

Plaintiff,

v.

CITY OF BRIDGETON; TIFFANY
DURHAM; and JOHN DOES 1-10
(fictitious names of entities and/or
individuals whose identities are presently
unknown), individually, jointly, severally
and/or in the alternative,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CUMBERLAND COUNTY

CIVIL ACTION

DOCKET NO.: Cum L-570-15

COMPLAINT AND JURY DEMAND

The Plaintiff, DONALD HYMER, JR., by way of complaint against the Defendants, CITY OF BRIDGETON; TIFFANY DURHAM; and JOHN DOES 1-10, states as follows:

FACTS IN COMMON TO ALL CAUSES OF ACTION

1. Upon information and belief, at all relevant times herein, Defendant CITY OF BRIDGETON ("Bridgeton" and/or "Defendants") is a New Jersey city governed by the Faulkner Act system of municipal government and is located in Cumberland County.
2. Upon information and belief, Defendant TIFFANY DURHAM ("Durham" and/or "Defendants") is the Emergency Medical Technician Supervisor for the Bridgeton Fire Department and, at all relevant times, had supervisory authority over the Plaintiff.

Defendant Durham was the individual who was involved in, and/or made, the decision not to promote the Plaintiff and eventually to terminate him. Upon information and belief, Durham resides in Cumberland County, New Jersey.

3. Defendants Bridgeton and Durham shall hereafter be referred to collectively as "Defendants."
4. Upon information and belief, Defendants shared joint control and responsibility over employee discipline, promotions, and terminations at the Bridgeton Fire Department. As such, Plaintiff was subject to an employment relationship with all Defendants.
5. The Plaintiff, Donald Hymer, Jr. ("Mr. Hymer" and/or "Plaintiff"), was employed by Defendants from August 2012 to July 2014, and again from August 2014 until his unlawful termination on May 29, 2015. Mr. Hymer resides in Cumberland County, New Jersey.
6. At the time of his termination, Plaintiff was working as a part-time Emergency Medical Technician (hereafter "EMT") at the Birdgeton Fire Department and was performing his job duties to the reasonable expectation of his employer.
7. Accordingly, venue is properly laid in accordance with R.4:3 2(a) and (b) as Plaintiff's cause of action arose in Cumberland County, New Jersey.
8. Throughout the duration of his employment, Plaintiff consistently received excellent performance reviews based on his hard work and dedication to the Defendants.
9. During the course of his employment, Plaintiff was subjected to unlawful harassment, discrimination, and retaliation, as detailed below.
10. Despite his exemplary employment record, Mr. Hymer became a target of Defendants because of his perceived sexual orientation.

11. Mr. Hymer was subjected to repeated and severe discriminatory treatment on the basis of his perceived sexual orientation.
12. Mr. Hymer's perceived sexual orientation was the subject of mockery and jokes during an interview for a full-time EMT position on March 3, 2015.
13. During the interview, which was attended by the Chief, Captains, and Lieutenants of the Bridgeton Fire Department, Defendant Durham stated to Mr. Hymer, "You need to watch who you hang out with! I saw pictures of you and [male friend] spooning on Facebook!"
14. The other interviewers proceeded to laugh loudly at Mr. Hymer.
15. On or about March 16, 2015, Plaintiff was informed that he did not receive the promotion to the full-time EMT position with the Fire Department.
16. Mr. Hymer was not selected for the available promotion even though he had the highest seniority of the interviewees.
17. Mr. Hymer was subjected to discriminatory harassment while employed at the Bridgeton Fire Department, including but not limited to, the following:
 - a. Being called "faggot" by multiple coworkers;
 - b. Being asked by supervisor Defendant Durham, "Do you know what side of the fence you are on?"
 - c. Being repeatedly called "gay" in a derogatory manner;
 - d. Multiple coworkers have discussed and mocked Mr. Hymer's sexual orientation on social media, including Facebook and Instagram. Upon information and belief, Defendant Durham was aware of these posts;

e. On or about April 27, 2015, a coworker posted an unauthorized picture of Mr. Hymer on the internet with the caption "Gentlemen: He's single and ready to mingle. Donald Evelyn Hymer. Check him out..."

18. After refusing to provide Plaintiff with a full-time position, Defendants allegedly instituted a new scheduling policy that prevented Mr. Hymer from working his normal amount of shifts. Despite several attempts by Mr. Hymer to effectuate a scheduling compromise, Defendants prevented Plaintiff's continued employment.
19. On May 29, 2015, was ostensibly terminated when Defendants refused to schedule any more shifts for him and placed him on the "do not call" list.

COUNT ONE:
VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION,
N.J.S.A. 10:5-12, et seq.
FAILURE TO PROMOTE ON THE BASIS OF SEXUAL ORIENTATION

20. The Plaintiff repeats, reiterates and incorporates by reference all of the allegations and counts made in the previous Counts and paragraphs of this Complaint as if set forth herein at length.
21. Defendants perceived Mr. Hymer to be a homosexual male.
22. The harassment, mistreatment, and sexual orientation discrimination suffered by the Plaintiff, as described above in the preceding Count and paragraphs, culminated in Defendants failing to promote Mr. Hymer in March 2015.
23. The actions taken against the Plaintiff, and the conduct complained of by the Plaintiff, would not have occurred but for Mr. Hymer's perceived sexual orientation.
24. As a result of the discriminatory acts of the Defendants, the Plaintiff lost a higher salary, job opportunities, advancement opportunities, and other pecuniary losses.

25. As a direct and proximate result of the discriminatory and outrageous actions of the Defendants, the Plaintiff has suffered severe emotional distress, pain and suffering, humiliation, and damage to his reputation.
26. The Defendants' acts were performed with malice and reckless indifference to the Plaintiff's protected rights.
27. The willful indifference and participation of upper management creates liability against the City of Bridgeton.
28. Defendant Durham directly participated in the decision to terminate the Plaintiff and therefore is individually liable pursuant to NJLAD.
29. The willful and deliberate discriminatory acts of the Defendants, including management, were outrageous, and beyond all bounds of human decency, thus justifying the imposition of punitive damages.
30. The Defendants' actions described above constitute sexual orientation discrimination and wrongful failure to promote in violation of the NJLAD.

WHEREFORE, the Plaintiffs demand judgment against all of the Defendants, jointly, severally, and alternatively, for compensatory damages, including damages for emotional distress, loss of reputation, and other personal injury, back pay, front pay, consequential damages, punitive damages, pre- and post-judgment interest, reasonable attorney's fees enhanced under the NJLAD, and cost of suit.

COUNT TWO:
VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION
N.J.S.A. 10:5-1, et. seq.
HOSTILE WORKING ENVIRONMENT ON THE BASIS OF
SEXUAL ORIENTATION

31. The Plaintiff repeats, reiterates and incorporates by reference all of the allegations and counts made in the previous Counts and paragraphs of this Complaint as if set forth herein at length.
32. During Plaintiff's employment, Defendant Durham, Plaintiff's supervisor, frequently made unwelcome comments of an offensive nature about Plaintiff's perceived sexual orientation and allowed coworkers to do the same. This created a hostile working environment for Mr. Hymer.
33. Defendants treated perceived straight workers differently than perceived gay workers. Defendant Durham was aware of this behavior, encouraged it, and actually participated in it.
34. Defendants failed to enact any remedial measures to protect the Plaintiff from the repeated and consistent harassment.
35. During the course of Plaintiff's employment, he was subjected to a pattern and practice of blatant acts of discrimination based on his perceived sexual orientation, which offended, embarrassed, and humiliated him.
36. The harassment and actions alleged herein were made against Plaintiff because of his perceived sexual orientation.
37. The conduct complained of above by the Plaintiff was severe and pervasive enough to make a reasonable person believe that the conditions of his employment was altered and that the working environment was hostile and abusive.

38. The conduct complained of herein did, in fact, make the Plaintiff believe that the conditions of his employment was altered and that the working environment was hostile and abusive because of his race and national origin.
39. The Defendants discriminated against Plaintiff in the terms and conditions of his employment, and failed to take any effective remedial measures to prevent further sexual orientation harassment against Plaintiff.
40. By discriminating against Plaintiff based on his perceived sexual orientation, the Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* ("NJLAD").
41. The Defendants' acts were performed with malice and a reckless indifference to Plaintiff's protected rights.
42. The alleged actions were outrageous and beyond all bounds of human decency, justifying the imposition of punitive damages against the Defendants.
43. The actual participation and willful indifference of upper management creates liability against Defendant City of Bridgeton.
44. Defendant Durham directly participated in the discrimination and therefore is individually liable pursuant to NJLAD.
45. Defendant Durham aided and abetted the discrimination and therefore is individually liable pursuant to NJLAD.
46. As a result of the Defendant's intentional and outrageous actions toward the Mr. Hymer as detailed in the previous paragraphs of this Complaint, Plaintiffs have suffered, and continues to suffer, extreme emotional distress, anxiety, embarrassment, humiliation, monetary, emotional, reputational, and other personal injuries.

WHEREFORE, the Plaintiff demands judgment against the Defendants jointly, severally, and alternatively, for compensatory damages, including financial damages, damages for emotional distress, physical injury, loss of reputation and other personal injury, consequential damages, punitive damages, statutory damages, enhancement for tax consequences, pre- and post-judgment interest, costs of suit and any other relief this Court deems just.

COUNT THREE:
VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION,
N.J.S.A. 10:5-12, et seq.
WRONGFUL TERMINATION ON THE BASIS OF SEXUAL ORIENTATION

47. The Plaintiff repeats, reiterates and incorporates by reference all of the allegations and counts made in the previous Counts and paragraphs of this Complaint as if set forth herein at length.
48. The harassment, mistreatment, and sexual orientation discrimination suffered by the Plaintiff, as described above in the preceding Count and paragraphs, culminated in Defendants failing to promote Mr. Hymer in March 2015.
49. After refusing to provide Plaintiff with a full-time position, Defendants allegedly instituted a new scheduling policy that prevented Mr. Hymer from working his normal amount of shifts. Despite several attempts by Mr. Hymer to effectuate a scheduling compromise, Defendants prevented Plaintiff's continued employment.
50. On May 29, 2015, was ostensibly terminated when Defendants refused to schedule any more shifts for him and placed him on the "do not call" list.
51. The actions taken against the Plaintiff, and the conduct complained of by the Plaintiff, would not have occurred but for Plaintiff's perceived sexual orientation.

52. As a result of the discriminatory acts of the Defendants, the Plaintiff lost his salary, job opportunities, advancement opportunities, and other pecuniary losses.
53. As a direct and proximate result of the discriminatory and outrageous actions of the Defendants, the Plaintiff has suffered severe emotional distress, pain and suffering, humiliation, and damage to his reputation.
54. The Defendants' acts were performed with malice and reckless indifference to the Plaintiff's protected rights.
55. The willful indifference and participation of upper management creates liability against Defendant City of Bridgeton.
56. Defendant Durham directly participated in the decision to terminate the Plaintiff and therefore is individually liable pursuant to NJLAD.
57. The willful and deliberate discriminatory acts of the Defendants, including management, were outrageous, and beyond all bounds of human decency, thus justifying the imposition of punitive damages.
58. The Defendants' actions described above constitute sexual orientation discrimination and wrongful termination in violation of the NJLAD.

WHEREFORE, the Plaintiffs demand judgment against all of the Defendants, jointly, severally, and alternatively, for compensatory damages, including damages for emotional distress, loss of reputation, and other personal injury, back pay, front pay, consequential damages, punitive damages, pre- and post-judgment interest, reasonable attorney's fees enhanced under the NJLAD, and cost of suit.

COUNT FOUR
JOHN DOES

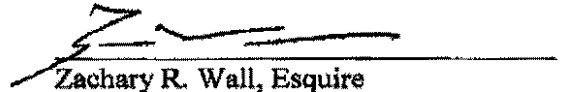
59. The Plaintiff repeats, reiterates and incorporates by reference all of the allegations and counts made in the previous Counts and paragraphs of this Complaint as if set forth herein at length.

60. Although the Plaintiff believes that the acts complained of were performed or caused by the named Defendants, the Plaintiff cannot be sure that the named Defendants are the only entities liable for the actions complained of. Therefore, the Plaintiff has named John Doe(s) 1-10, fictitious person(s) or corporation(s) as defendant(s) to this action.

61. The terms "Defendant" and "Defendants" as used in all of the above Counts and paragraphs should therefore be defined and read as "Defendant(s) and/or John Doe(s)".

WHEREFORE, the Plaintiff demands Judgment against John Doe(s) 1-10, jointly, severally and in the alternative, for all damages requested in the previous counts.

Dated: August 11, 2015



Zachary R. Wall, Esquire
Attorney for the Plaintiff

JURY DEMAND

Plaintiff demands trial by jury as to all of the triable issues of this complaint, pursuant to R. 1:8-2(b) and R. 4:35-1(a).

DESIGNATION OF TRIAL COUNSEL

PURSUANT to the provisions of Rule 4:25-4, the Court is advised that Zachary R. Wall, Esquire, is hereby designated as trial counsel.

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to Rule 4:5-1, it is stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also, to the best of our belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

NOTICE REGARDING NON-DESTRUCTION OF EVIDENCE

Please be advised and noticed that the Defendant(s) should refrain from destroying, disposing or altering any potential evidence in its possession which would relate in any way to this matter. Please also be advised and noticed that this includes any and all electronic records, including but not limited to the hard drives on any and all computers and/or servers. To that end:


A. The Defendant(s) should not initiate any procedures which would alter any active, deleted, or fragmented files. Such procedures may include, but are not limited to: storing (saving) newly created files to existing drives and diskettes; loading new software, such as application programs; running data compression and disk defragmentation (optimization) routines; or the use of utility programs to permanently wipe files, disks or drives.

B. The Defendant(s) should stop any rotation, alteration, and/or destruction of electronic media that may result in the alteration or loss of any electronic data. Backup tapes and disks should be pulled from their rotation queues and be replaced with new tapes.

C. The Defendant(s) should not alter and/or erase active files, deleted files, or file fragments on any electronic media that may have any relation to this matter.

D. The Defendant(s) should not dispose of any electronic media storage devices replaced due to failure, upgrade, and/or lease expiration that may contain electronic data having any relation to this matter.

Dated: August 11, 2015



Zachary R. Wall, Esquire
WALL & LONDON LLC
Attorney for the Plaintiff

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement, dated March 24, 2017, is given

BY the Releasor: **DONALD HYMER, JR.**, residing at 27 South Woodruff Road, New Jersey, 08302; referred to as "I",

TO the Releasee: **CITY OF BRIDGETON;**

and any and all subsidiaries thereof, and all other persons, firms, and corporations, who might be liable of and from any and all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses and compensation, on account of, or in any way growing out of the subject matter of this Release, referred to as "You" or "City".

1. Definitions.

"Effective Date" is defined as the Date this Release and Settlement Agreement is executed by the Releasor.

2. Release.

General Release. I release and give up any and all claims and rights which I may have against You. This Releases all claims, including those of which I am not aware and those not mentioned in this Release, including but not limited to the instant action, captioned **Donald Hymer, Jr. v. City of Bridgeton, et al**, filed in the Superior Court of Jersey, Law Division, Cumberland County, bearing Docket Number CUM-L-570-15, and claims for attorney's fees. It is expressly agreed and understood that this release is a GENERAL RELEASE.

Specific Release. Without limiting the foregoing General Release, I release the City from all rights and claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Civil Rights Acts of 1866 and 1991, the Americans with Disabilities Act of 1990, the Employee Retirement Income Security Act of 1974, the Equal Pay Act of 1963, the Fair Labor Standards Act, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Occupational Safety and Health Act of 1970, the Worker Adjustment and Retraining Notification Act of 1989, the National Labor Relations Act of 1935, the Sarbanes Oxley Act of 2002, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act, the New Jersey Family Leave Act, the New Jersey Wage and Hour Law, as well as any other federal, state, or local statute, regulation, or common law regarding employment, employment discrimination, retaliation, equal opportunity, or wage and hour. I specifically understand that I am releasing claims based on age, race, color, sex, sexual orientation, marital status, religion, national origin, citizenship, veteran status, disability, and other legally protected categories, as well as any compensation-related claims, including any and all claims arising under any federal, state, or

local law, claims for breach of contract, any tortious act or other civil wrong, attorneys' fees, and all compensation and benefit claims.

3. Payment.

In consideration of making this Release, You have agreed to pay me the sum of NINETY THOUSAND DOLLARS (\$90,000.00), inclusive of all attorneys' fees and costs in full settlement of all claims which were or could have been asserted in this matter against the City of Bridgeton, its agents, employees, and officials. Payment will be made within Thirty (30) days of the Effective Date of this Agreement.

4. Taxability.

I shall pay any and all taxes associated with the settlement consideration set forth above. I further agree that neither You nor Your counsel have made representations to me concerning the taxability of the amounts to be paid herewith. It is further understood that in the event a taxing entity ultimately determines that any or all of the foregoing amounts constitute income for which any taxes remain due and owing, I shall be responsible for the payment of all such taxes and shall hold You and Your counsel harmless. I shall defend, indemnify and hold the City harmless from claims for taxes, interest and penalties made by any taxing authorities on account of any alleged failure by me to properly declare the consideration to any such taxing authority.

5. Hold Harmless

I agree that if any claims, suits or liens are asserted against me in connection with injuries or other losses, either under Workers Compensation laws, by any provider of medical, dental or hospital services, or by the State of New Jersey, or any governmental body, including welfare boards, I will indemnify and hold You or your agents and your counsel, Gebhardt & Kiefer, P.C., and Nationwide Insurance Company, harmless against such claims suits or liens. I represent that I have not received any conditional payment from Medicare or Medicaid and am not currently entitled to receive any Medicare or Medicaid benefits, and that no injuries have occurred that are related to my claims against you which would lead to any future claims for Medicare or Medicaid benefit.

6. Liens

I agree to satisfy any liens against the proceeds of the settlement including, but not limited to outstanding medical bills, workers' compensation liens, Medicare/Medicaid liens, etc., and agree to indemnify and otherwise hold harmless releasees from claims arising out of or in connection with said liens.

I agree and represent that I will be responsible for the complete payment and discharge of any and all liens, subrogation claims and statutory rights of reimbursement, of any kind or type whatsoever arising out of or in connection with any and all injuries and damages sustained by me or alleged to be sustained by me in the suit being released by this document, including, but not limited to those physicians, hospitals and any and all other medical/health care providers,

workers' compensation insurance, no fault insurers, health benefit insurers, federal, military hospital and veteran's benefits providers, Medicare, Medicaid and ERISA plan providers.

7. Release as a Final and Binding Disposition

I agree that this Release shall operate as a final and binding disposition of all disputes as to the legal liability for and as to nature and extent of any damages, claimed from Releasees by Releasor. Further, the payment of the sum recited in Paragraph Three (3) above, represents a full accord and satisfaction of the disputed claim.

This Release is given without admission of liability or wrongdoing having been made by the Releasees who specifically deny any liability or wrongdoing, for purposes of amicably resolving the differences between the parties. The settlement was initiated by the insurance carrier for Releasees and payment is made by said carrier.

8. Who is Bound.

I am bound by this Release. Anyone who succeeds to my rights or responsibilities, such as my heirs or the executors of my estate is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executors of your estate.

9. Confidentiality.

To the extent permitted by law, this settlement shall be confidential.

10. Additional settlement terms

In further consideration of making this Release, I agree that my resignation as EMT for the City will be effective as of the date of the execution of this Release and Settlement Agreement.

11. Representation by Counsel.

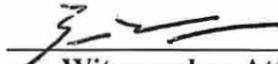
I acknowledge that I have been represented by Zachary R. Wall, Esq., of the law firm of Wall & London, LLC, regarding the action described in Paragraph two (2), and have reviewed the provisions and conditions contained herein with my attorney, have executed this Release and Settlement Agreement with the advice and consent of my attorney, and hereby authorize and instruct my attorney to perform all acts necessary to carry out the intent and purpose of this Release and Settlement Agreement.

15. Release Governed by the Laws of the State of New Jersey.

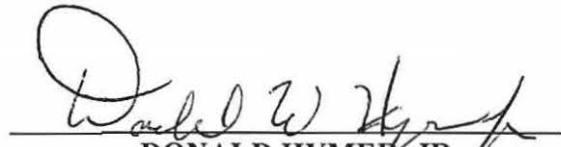
I agree that this Release shall be governed by and construed in accordance with the laws of the State of New Jersey. Furthermore, if any part or provision of this Release shall be held void or invalid, the remaining provisions shall remain in full force and effect.

16. Signatures.

I understand and agree to the terms of this Release and Settlement Agreement. If this Release is made by a corporation, its proper corporate officers sign and its corporate seal is affixed.



Witnessed or Attested by
Zachary R. Wall, Esquire



DONALD HYMER, JR.

STATE OF NEW JERSEY)
: SS.
COUNTY OF Camden)

I certify that on March 24, 2017, DONALD HYMER, JR., personally came before me and acknowledged under oath, to my satisfaction, that he:

- (a) is named in and did personally sign this document: and
- (b) signed, sealed and delivered this document as his or her act and deed.

Amyra M. Moore
A Notary Public of the State of New Jersey

My Commission Expires: January 8th 2021

-NOTARIAL SEAL-

