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BRETT D'ALESSANDRO

BRETT D'ALESSANDRO,

Plaintiff,

v.

CITY OF PATERSON; CITY OF PATERSON FIRE DEPARTMENT; JOSE "JOEY" TORRES; MICHAEL POSTORINO; KEVIN HANCOCK; THE INSTITUTE FOR FORENSIC PSYCHOLOGY; JOHN DOES 1-10 (who are fictitiously named because their true identities are unknown) (in their individual and official capacities) and JOHN DOE CORPORATIONS 1-10 (who are fictitiously named because their true identities are unknown),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: PASSAIC COUNTY

CIVIL ACTION

DOCKET NO.:

COMPLAINT AND JURY DEMAND

Plaintiff BRETT D'ALESSANDRO, a resident of the Township of Verona, County of Essex, State of New Jersey, through his undersigned attorney DONALD F. BURKE, Esq., by way of Complaint against defendants, states as follows:

PARTIES

1. Plaintiff BRETT D'ALESSANDRO is an individual who is a citizen of the State of New Jersey and applied for employment to the defendant CITY OF PATERSON as a Fire-fighter for defendant CITY OF PATERSON FIRE DEPARTMENT.

2. Defendant CITY OF PATERSON and defendant CITY OF PATERSON FIRE DEPARTMENT are employers as that term is defined by the New Jersey Law Against Discrimination, *N.J.S.A. 10:5-1 et seq.* (the “NJLAD”).
3. Defendant CITY OF PATERSON is a municipality in the County of Passaic, State of New Jersey and is a governmental unit which controls the process for selection of employees of the CITY OF PATERSON FIRE DEPARTMENT (the “Department”).
4. The defendant CITY OF PATERSON is an employer, as defined in *N.J.S.A. 10:5-5*.
5. Defendant CITY OF PATERSON FIRE DEPARTMENT is an agency of a governmental unit.
6. Defendant JOSE “JOEY” TORRES was Mayor of the City of Paterson and its Appointing Authority at times relevant to this Complaint.
7. Defendant MICHAEL POSTORINO was Fire Chief for the defendant CITY OF PATERSON FIRE DEPARTMENT at times relevant to this Complaint.
8. Defendant KEVIN HANCOCK was a Deputy Chief and Chief of Operations at times relevant to this Complaint.
9. Defendant THE INSTITUTE FOR FORENSIC PSYCHOLOGY provides pre-employment psychological evaluations of police and other public safety candidates.
10. Defendants JOHN DOES 1-10 are individuals who are employees, agents and/or representatives of defendants who engaged in wrongful and retaliatory conduct towards plaintiff whose true identities are unknown but may be revealed through discovery.
11. Defendants JOHN DOE CORPORATIONS 1-10 represent fictitious unknown entities.

ties that aided and abetted the other defendants in discriminating, harassing and retaliating against plaintiff whose true identities are unknown but may be revealed through discovery.

12. All defendants are named herein in their official and individual capacities for discriminatory and retaliatory conduct in violation of the New Jersey Law Against Discrimination, the New Jersey Civil Rights Act, and the New Jersey Constitution and laws of the State of New Jersey.

JURISDICTION

13. The court has subject-matter jurisdiction over the instant lawsuit, as this action arises under the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 to -49, the New Jersey Civil Rights Act, *N.J.S.A.* 10:6-1 to -2, and other applicable common-law actions.

14. The acts complained of that are attributable to the defendants all occurred within the jurisdiction of this court.

FACTS APPLICABLE TO ALL CLAIMS

15. Plaintiff BRETT D'ALESSANDRO enlisted in the United States Marine Corps. and served in Afghanistan.

16. Plaintiff BRETT D'ALESSANDRO was diagnosed as having Post Traumatic Stress Disorder (PTSD) in connection with his Military Service.

17. Notwithstanding the diagnosis of PTSD, plaintiff BRETT D'ALESSANDRO was determined by the military to be fit to continue military service and determined to be able to perform the duties of his Military Occupational Specialty (MOS).

18. Plaintiff BRETT D'ALESSANDRO took an examination offered by the New Jersey Civil Service Commission to become a Firefighter for the City of Paterson.

19. As a result of the competitive process, plaintiff BRETT D'ALESSANDRO was number three on the List of Eligibles.

20. Despite his high standing on the List of Eligibles, plaintiff BRETT D'ALESSANDRO was not offered the position.

21. Rather, plaintiff BRETT D'ALESSANDRO was advised by defendant CITY OF PATERSON through Deputy Fire Chief, defendant KEVIN HANCOCK, on behalf of defendant MICHAEL POSTORINO and defendant JOSE "JOEY" TORRES, Mayor of the CITY OF PATERSON and its Appointing Authority, to undergo a psychological evaluation by defendant THE INSTITUTE FOR FORENSIC PSYCHOLOGY before he would be considered for appointment.

22. Employers are prohibited from asking disability-related questions before making an offer of employment; referral of a candidate for a medical and/or psychological evaluation prior to making the candidate an offer of employment is prohibited by the New Jersey Administrative Code, *N.J.A.C.* 4A:4-6.5(b); *see also* <https://www.eeoc.gov/policy/docs/psych.html>.

23. These rules were promulgated to safeguard against disability discrimination.

24. Defendant THE INSTITUTE FOR FORENSIC PSYCHOLOGY examined plaintiff BRETT D'ALESSANDRO on or about July 12, 2017.

25. Plaintiff BRETT D'ALESSANDRO provided defendant THE INSTITUTE FOR FO-

RENSIC PSYCHOLOGY the determination of a Military Medical Board that assessed his disability and determined that his condition does not preclude him from performing his military duties.

26. A Military Medical Board that assessed plaintiff's disability determined that plaintiff BRETT D'ALESSANDRO's condition does not preclude him from the reasonable performance of his duties.

27. Notwithstanding the Medical Board's finding that he was fit to continue naval service and reasonably able to perform those duties, plaintiff BRETT D'ALESSANDRO was advised by defendant CITY OF PATERSON through Deputy Fire Chief, defendant KEVIN HANCOCK, on behalf of defendant MICHAEL POSTORINO and defendant JOSE "JOEY" TORRES, Mayor of the CITY OF PATERSON and its Appointing Authority, that he was determined to be psychologically unfit for the position as Firefighter for defendant CITY OF PATERSON and that his name would be removed from the eligible list.

28. Plaintiff BRETT D'ALESSANDRO requested defendant THE INSTITUTE FOR FORENSIC PSYCHOLOGY to provide copies of his medical records and psychological evaluation and they refused his request.

29. Defendant THE INSTITUTE FOR FORENSIC PSYCHOLOGY relies upon an "Informed Consent Agreement and Release for Pre-Employment Psychological Examinations" which plaintiff BRETT D'ALESSANDRO was directed to sign as a condition of being evaluated for employment.

30. The "Informed Consent Agreement and Release for Pre-Employment Psycholog-

ical Examinations" contains a waiver of the right to sue the THE INSTITUTE FOR FORENSIC PSYCHOLOGY and its examiners and provides examinees like plaintiff BRETT D'ALESSANDRO are not entitled to the report, the records relied upon or an explanation of the results.

31. Plaintiff BRETT D'ALESSANDRO was required to sign the "Informed Consent Agreement and Release for Pre-Employment Psychological Examinations" as a condition of proceeding with his application to become a Firefighter for defendant CITY OF PATERSON and he did not voluntarily or knowingly waive his rights to file a claim of discrimination when he signed this form.

32. Requiring plaintiff BRETT D'ALESSANDRO to waive rights violates anti-discrimination laws including the New Jersey Law Against Discrimination.

33. Stereotyping of veterans with PTSD as unable to perform the essential functions of the job as Firefighter is precisely what the NJLAD is designed to prohibit.

34. Plaintiff BRETT D'ALESSANDRO has never been provided with an explanation as to how or why a determination was made that he is not capable of performing the essential functions of the job of Firefighter.

35. In light of the medical board findings that plaintiff BRETT D'ALESSANDRO'S disability does not preclude him from the performance of military duties, plaintiff BRETT D'ALESSANDRO is able to perform the essential functions of the job of Firefighter.

36. Defendant THE INSTITUTE FOR FORENSIC PSYCHOLOGY thus acted in concert with defendants CITY OF PATERSON, CITY OF PATERSON FIRE DEPARTMENT, JOSE

“JOEY” TORRES; MICHAEL POSTORINO and KEVIN HANCOCK in aiding and abetting disability discrimination.

37. In any event, defendants CITY OF PATERSON, CITY OF PATERSON FIRE DEPARTMENT, JOSE “JOEY” TORRES; MICHAEL POSTORINO and KEVIN HANCOCK owed a duty to plaintiff BRETT D’ALESSANDRO to engage in an interactive process to identify any limitations imposed by his disability and whether he can perform the essential functions of the job of Firefighter with or without a reasonable accommodation.

38. Defendants CITY OF PATERSON, CITY OF PATERSON FIRE DEPARTMENT, JOSE “JOEY” TORRES; MICHAEL POSTORINO and/or KEVIN HANCOCK never engaged with plaintiff BRETT D’ALESSANDRO in an interactive process.

39. In light of the above, defendants acting in concert with each other have violated the New Jersey Law Against Discrimination.

FIRST COUNT
VIOLATIONS OF THE NEW JERSEY LAW AGAINST DISCRIMINATION
(Disability Discrimination)

40. Plaintiff BRETT D’ALESSANDRO hereby repeats, realleges and incorporates by reference the paragraphs of this Complaint above as if set forth at length herein.

41. Defendants CITY OF PATERSON and CITY OF PATERSON FIRE DEPARTMENT act through upper level managers and for whom defendants CITY OF PATERSON and CITY OF PATERSON FIRE DEPARTMENT have *respondeat superior* liability.

42. As a direct and proximate result of the conduct of defendants CITY OF PATERSON and CITY OF PATERSON FIRE DEPARTMENT, plaintiff BRETT D’ALESSANDRO has suf-

ferred and continue to suffer loss of earnings and other employment benefits, mental, physical and emotional distress, stress, humiliation, pain, damage to reputation and harm to his career development.

43. By and through the actions described herein, defendants CITY OF PATERSON and CITY OF PATERSON FIRE DEPARTMENT have engaged in a continuing pattern and practice of discrimination against plaintiff BRETT D'ALESSANDRO because of his disability or perceived disability in violation of the NJLAD, *N.J.S.A. 10:5-1, et seq.*

SECOND COUNT
VIOLATIONS OF THE NEW JERSEY LAW AGAINST DISCRIMINATION
(Retaliation)

44. Plaintiff repeats, realleges and incorporates by reference the allegations set above as if set forth at length herein.

45. By and through the actions described herein, defendants CITY OF PATERSON and CITY OF PATERSON FIRE DEPARTMENT, through their agents, servants, employees, independent contractors and co-conspirators, have engaged in a continuing pattern and practice of retaliation against plaintiff BRETT D'ALESSANDRO in violation of the NJLAD, *N.J.S.A. 10:5-1, et seq.*

THIRD COUNT
VIOLATIONS OF THE NEW JERSEY LAW AGAINST DISCRIMINATION
(Aiding and Abetting Discrimination Against Plaintiff)

46. Plaintiff BRETT D'ALESSANDRO repeats, realleges and incorporates by reference the allegations set above as if set forth at length herein.

47. The NJLAD prohibits conduct that aids or abets unlawful discrimination and re-

taliation.

48. Defendant JOSE “JOEY” TORRES is the Appointing Authority and an upper level manager and/or decision maker regarding plaintiff.

49. Defendants CITY OF PATERSON, CITY OF PATERSON FIRE DEPARTMENT, JOSE “JOEY” TORRES; MICHAEL POSTORINO; KEVIN HANCOCK and THE INSTITUTE FOR FORENSIC PSYCHOLOGY intentionally aided and abetted each other in the discrimination and harassment in violation of the NJLAD, *N.J.S.A. 10:5-1 et seq.*

50. As a direct and proximate result of the conduct of defendants CITY OF PATERSON, CITY OF PATERSON FIRE DEPARTMENT, JOSE “JOEY” TORRES; MICHAEL POSTORINO; KEVIN HANCOCK and THE INSTITUTE FOR FORENSIC PSYCHOLOGY, plaintiff BRETT D’ALESSANDRO has suffered and continues to suffer loss of earnings and other employment benefits, mental, physical and emotional distress, stress, humiliation, damage to reputation and harm to his career development.

FOURTH COUNT
VIOLATIONS OF THE NEW JERSEY CIVIL RIGHTS ACT AND THE CONSTITUTION
OF NEW JERSEY

51. Plaintiff BRETT D’ALESSANDRO hereby repeats, realleges and incorporates by reference the paragraphs of this Complaint set forth above as if fully set forth here.

52. The conduct of the defendants individually and jointly has deprived plaintiff of rights secured by the New Jersey Constitution and the New Jersey Civil Rights Act.

53. As set forth more fully above, plaintiff BRETT D’ALESSANDRO was deprived of his right to substantive due process and/or equal protection and/or substantive rights,

privileges and/or immunities secured by the Constitution and/or laws of this State and his exercise or enjoyment of those substantive rights, privileges and/or immunities has been interfered with and/or attempted to be interfered with, by threats, intimidation and/or coercion by defendants who are persons acting under color of state law.

54. Each of the defendants conspired with the other defendants to deprive plaintiff BRETT D'ALESSANDRO of his rights secured by the Constitution and/or laws of this State and his exercise or enjoyment of those substantive rights, privileges and/or immunities has been interfered with and/or attempted to be interfered with, by threats, intimidation and/or coercion by defendants who are persons acting under color of state law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff BRETT D'ALESSANDRO demands judgment against defendants for:

- a. Compensatory damages for loss of wages and benefits, pension losses, pain, suffering, stress, humiliation, mental anguish, and emotional harm;
- b. Damages for harm to reputation and career development;
- c. Consequential damages;
- d. Punitive damages (pecuniary and nonpecuniary), including but not limited to damages for extreme and intentional/negligent infliction of mental and emotional anguish, humiliation, anxiety, and distress;
- e. Reasonable counsel fees, costs and expenses incurred as a result of the defendants' wrongful acts, as provided for by the New Jersey Law Against Discrimination and New Jersey Civil Rights Act;
- f. Injunctive relief requiring remediation of defendants' discrimination and retaliation;

- g. Equitable relief, including restoring the benefits and terms and conditions of employment plaintiff has lost as a result of defendants' wrongful conduct and removing from plaintiff's record reference to matters motivated by discrimination that violates the New Jersey Law Against Discrimination and New Jersey Civil Rights Act; and
- h. Such other general or specific relief and damages, both at law and in equity, to which plaintiff may be justly entitled pursuant to Constitutional provision, statute or common law.

Respectfully submitted,

LAW OFFICE OF DONALD F. BURKE
Attorneys for Plaintiff
BRETT D'ALESSANDRO

By: s/ Donald F. Burke
Donald F. Burke, Esq.

Dated: December 11, 2018

DEMAND FOR JURY TRIAL

Plaintiff BRETT D'ALESSANDRO demands a trial by Jury as to all claims.

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to *Rule 4:5-1(b)(2)*, it is hereby 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 knowledge or 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 other than those identified as JOHN DOE defendants. 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.

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

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).

DEMAND FOR PRODUCTION OF STATEMENTS

Plaintiff demands true and complete copies of any statements made by him pursuant to *Rule* 4:10-2(c). This demand is deemed to be continuing.

DESIGNATION OF TRIAL ATTORNEY

Pursuant to *Rule* 4:25-4, DONALD F. BURKE, ESQUIRE, is hereby designated as trial counsel in the above-captioned action on behalf of plaintiff.

Respectfully submitted,

LAW OFFICE OF DONALD F. BURKE
Attorneys for Plaintiff
BRETT D'ALESSANDRO

By: s/ Donald F. Burke
Donald F. Burke, Esq.

Dated: December 11, 2018