

COSTELLO & MAINS, LLC

By: Daniel T. Silverman, Esquire
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 Attorneys for Plaintiff

IBN CURRY,

Plaintiff,

vs.

TOWNSHIP OF BELLEVILLE;
 BELLEVILLE FIRE DEPARTMENT and
 JOHN DOES 1-5 AND 6-10,

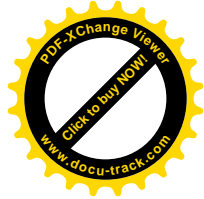
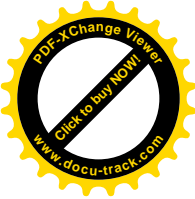
Defendants.

:
 : SUPERIOR COURT OF NEW JERSEY
 : ESSEX COUNTY – LAW DIVISION
 :
 : CIVIL ACTION
 :
 :
 : DOCKET NO:
 : **COMPLAINT AND JURY DEMAND**
 :
 :

Plaintiff, Ibn Curry, residing in Belleville, New Jersey, by way of Complaint against the defendants, says:

Preliminary Statement

This matter is opened to the Court under the New Jersey Law Against Discrimination (“LAD”) alleging disability discrimination, perception of disability discrimination and failure to accommodate. Claim is also brought under the New Jersey Civil Rights Act (“CRA”).

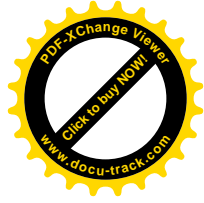
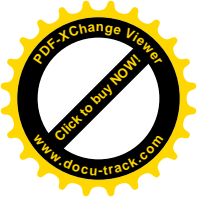


Identification of Parties

1. Plaintiff Ibn Curry is, at all relevant times herein, a resident of the State of New Jersey and was an employee of the defendants.
2. Defendant Township of Belleville is, at all relevant times herein, a municipal entity subject to suit under the LAD and CRA and the employer of the plaintiff.
3. Defendant Belleville Fire Department is, at all times relevant herein, a municipal entity subject to suit under the LAD and CRA and the employer of the plaintiff.
4. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals and/or entities who, on the basis of their direct acts or on the basis of *respondeat superior*, are answerable to the plaintiff for the acts set forth herein.

General Allegations

5. Plaintiff was employed by the defendants from on or about September 10, 2015 until his unlawful discharge on or about April 7, 2017.
6. At all times, plaintiff performed up to and beyond the reasonable expectations of his employer.
7. Defendants employed plaintiff as a Firefighter and Emergency Medical Technician.
8. Plaintiff started his employment on September 10, 2015 and on September 14, 2015 began basic firefighter training.
9. During that training, plaintiff suffered injury to his left knee and was diagnosed with a fracture of the medial tibia plateau.
10. All treatment for that injury was provided through defendants' workers' compensation provider, Dr. Wayne Colizza.



11. On or about December 14, 2015, Dr. Colizza opined that plaintiff had reached maximum medical improvement and discharged plaintiff from his care.

12. Defendants then placed plaintiff on unpaid administrative leave until April 4, 2016, the date of the next firefighter training.

13. On or about April 4, 2016, defendants again assigned plaintiff to go through firefighter training.

14. Unfortunately, during that training, plaintiff again suffered injury to his knee and was ultimately diagnosed with patellar tendon tear, medial collateral ligament tear, and lateral collateral ligament tear.

15. Plaintiff was, however, able to complete the firefighter and EMT trainings.

16. On or about August 10, 2016, Dr. Colizza performed surgery in an attempt to repair plaintiff's knee.

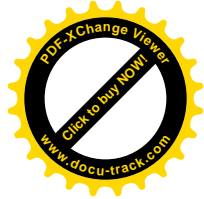
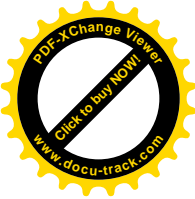
17. Following the surgery, Dr. Colizza placed plaintiff out of work and returned plaintiff to work light duty on November 1, 2016.

18. As a result of that light duty, plaintiff was assigned dispatch and desk work.

19. On or about January 20, 2017, Dr. Colizza contacted plaintiff and advised that defendants had requested a Functional Capacity Evaluation ("FCE").

20. Plaintiff submitted to the FCE on February 8, 2017 with a medical provider selected by and paid by defendants.

21. Plaintiff then returned to Dr. Colizza, who stated that he believed plaintiff had reached maximum medical improvement and again discharged plaintiff from his care.



22. On or about March 7, 2017, plaintiff contacted his workers' compensation case worker, Leslie Haug, and advised that he wanted a second opinion, as he did not believe that the knee injury was permanent.

23. Ms. Haug stated that plaintiff would need to close out his workers' compensation file and then speak to his employer about having it reopened to be seen by a second doctor.

24. Plaintiff then spoke to defendants' Deputy Chief George Pedalino and advised that he wanted a second medical opinion.

25. Later that day, plaintiff was called into the office of defendants' Chief, Robert Caruso.

26. Chief Caruso advised that plaintiff was being terminated as a result of the doctor's conclusion that the injury was permanent.

27. To that point, plaintiff had only been medically examined by physicians designated by defendants.

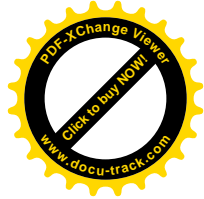
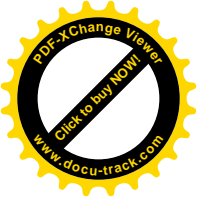
28. Chief Caruso advised plaintiff to use his accrued vacation time and that the termination would be delayed until April 7, 2017.

29. On or about March 21, 2017, plaintiff treated with Dr. Andrew Levy, who did not consider plaintiff's injury permanent, and scheduled plaintiff for surgery on April 10, 2017.

30. Regardless, on April 7, 2017, defendants terminated plaintiff's employment.

31. A determinative and/or motivating factor in the discharge was plaintiff's status as a disabled person.

32. In addition and/or in the alternative, a determinative and/or motivating factor in the discharge was defendants' perceptions held regarding plaintiff's status as a disabled person.



33. N.J.S.A.40A:14-19.1(b) provides “A firefighter who has been injured in the performance of the firefighters duties shall not be discharged from employment as a result of a determination, based upon a medical examination by a physician designated by the employer of the firefighter, that the firefighter is physically incapacitated due to the injuries for the performance of the firefighter’s usual duties or any other available duties in the firefighting unit which the employer is willing to sign assign to the firefighter.”

34. Terminating plaintiff in violation of that statute constituted a deprivation of property without due process.

35. Specifically, plaintiff was deprived of his employment, relationship with defendants, and anticipated income.

36. Defendants had a past practice of allowing individuals to remain on light duty, including the permanent assignment of George DelGrady to desk duty as a result of a cardiac condition.

37. Defendants failed to reasonably accommodate the plaintiff.

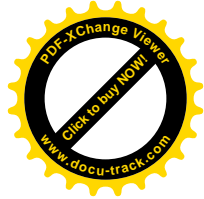
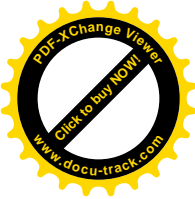
38. As a result of the actions of defendants, plaintiff has been forced to suffer economic and emotional harm.

39. Because the conduct of defendants was egregious and because members of upper management participated in the same and/or were willfully indifferent to the same, punitive damages are warranted.

COUNT I

LAD – Disability Discrimination

40. Plaintiff hereby repeats and realleges paragraphs 1 through 39, as though fully set forth herein.



41. For the reasons set forth above, the defendants engaged in disability discrimination such that the defendants are liable to plaintiff under the LAD.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, noneconomic compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equal back pay, equal front pay, equal reinstatement and any other relief the Court deems equitable and just.

COUNT II

LAD – Perception of Disability Discrimination

42. Plaintiff hereby repeats and realleges paragraphs 1 through 41, as though fully set forth herein.

43. For the reasons set forth above, the defendants engaged in discrimination on the basis of perceptions held regarding disability such that defendants are liable to plaintiff under the LAD.

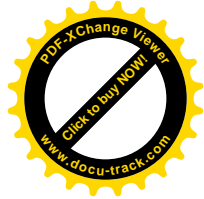
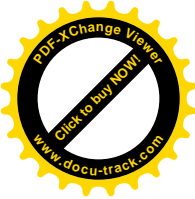
WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, noneconomic compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equal back pay, equal front pay, equal reinstatement and any other relief the Court deems equitable and just.

COUNT III

LAD – Failure to Accommodate

44. Plaintiff hereby repeats and realleges paragraphs 1 through 43, as though fully set forth herein.

45. For the reasons set forth above, the defendants failed to accommodate plaintiff's disability such that defendants are liable to plaintiff under the LAD.



WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, noneconomic compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equal back pay, equal front pay, equal reinstatement and any other relief the Court deems equitable and just.

COUNT IV

CRA – Denial of Due Process

46. Plaintiff hereby repeats and realleges paragraphs 1 through 45, as though fully set forth herein.

47. For the reasons set forth above, the defendants have violated plaintiff's due process rights such that defendants are liable to plaintiff under the CRA.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, noneconomic compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equal back pay, equal front pay, equal reinstatement and any other relief the Court deems equitable and just.

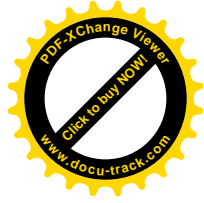
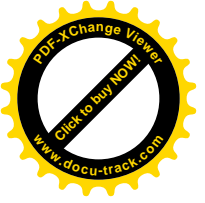
COUNT V

Request for Equitable Relief

48. Plaintiff hereby repeats and realleges paragraphs 1 through 47, as though fully set forth herein.

49. Plaintiff requests the following equitable remedies and relief in this matter.

50. Plaintiff requests a declaration by this Court that the practices contested herein violate New Jersey law as set forth herein.



51. Plaintiff requests that this Court order the defendants to cease and desist all conduct inconsistent with the claims made herein going forward, both as to the specific plaintiff and as to all other individuals similarly situated.

52. To the extent that plaintiff was separated from employment and to the extent that the separation is contested herein, plaintiff requests equitable reinstatement, with equitable back pay and front pay.

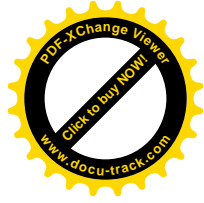
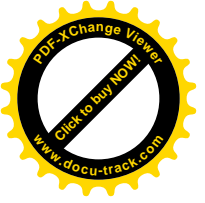
53. Plaintiff requests, that in the event that equitable reinstatement and/or equitable back pay and equitable front pay is ordered to the plaintiff, that all lost wages, benefits, fringe benefits and other remuneration is also equitably restored to the plaintiff.

54. Plaintiff requests that the Court equitably order the defendants to pay costs and attorneys' fees along with statutory and required enhancements to said attorneys' fees.

55. Plaintiff requests that the Court order the defendants to alter their files so as to expunge any reference to which the Court finds violates the statutes implicated herein.

56. Plaintiff requests that the Court do such other equity as is reasonable, appropriate and just.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit,

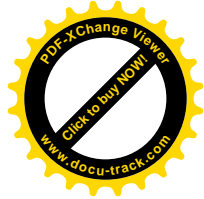
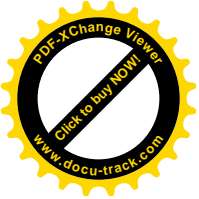


attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

COSTELLO & MAINS, LLC

Dated: January 18, 2018

By: /s/ Daniel T. Silverman
Daniel T. Silverman



DEMAND TO PRESERVE EVIDENCE

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

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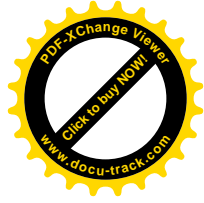
By: /s/ Daniel T. Silverman
Daniel T. Silverman

JURY DEMAND

Plaintiff hereby demands a trial by jury.

COSTELLO & MAINS, LLC

By: /s/ Daniel T. Silverman
Daniel T. Silverman



RULE 4:5-1 CERTIFICATION

1. I am licensed to practice law in New Jersey and am responsible for the captioned matter.
2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

COSTELLO & MAINS, LLC

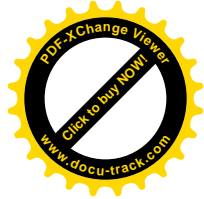
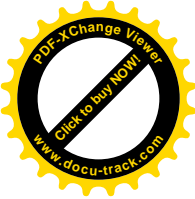
By: /s/ Daniel T. Silverman
Daniel T. Silverman

DESIGNATION OF TRIAL COUNSEL

Daniel T. Silverman, Esquire, of the law firm of Costello & Mains, LLC, is hereby-designated trial counsel.

COSTELLO & MAINS, LLC

By: /s/ Daniel T. Silverman
Daniel T. Silverman



Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-000406-18

Case Caption: CURRY IBN VS TOWNSHIP OF BELLEVILLE

Case Initiation Date: 01/18/2018

Attorney Name: DANIEL T SILVERMAN

Firm Name: COSTELLO & MAINS, LLC

Address: 18000 HORIZON WAY STE 800

MT LAUREL NJ 080544319

Phone:

Name of Party: PLAINTIFF : CURRY, IBN

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

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)*

01/18/2018

Dated

/s/ DANIEL T SILVERMAN

Signed