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*Attorney for Plaintiff*

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MICHAEL WARREN,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION – MERCER COUNTY
Plaintiff,	:	DOCKET NO.:
	:	
v.	:	
	:	Civil Action
TOWNSHIP OF HAMILTON;	:	
CHRISTOPHER TOZZI;	:	
RAY KRAJCSOVICS,	:	<b>COMPLAINT, JURY DEMAND,</b>
JOHN DOES 1-10, and	:	<b>DEMAND FOR INSURANCE, AND</b>
ABC CORPORATIONS 1-10,	:	<b>DESIGNATION OF TRIAL COUNSEL</b>
	:	
Defendants.	:	
	:	

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Plaintiff, Michael Warren (“Plaintiff”), by way of Complaint against the Township of Hamilton (“Defendant Hamilton”), Christopher Tozzi (“Defendant Chief Tozzi”), and Ray Krajcsovics (“Defendant Krajcsovics”) (collectively referred to as “Defendants”), alleges as follows:

**I. PARTIES**

1. Plaintiff is an individual residing in New Jersey. At all times relevant hereto, Plaintiff was employed by Defendant Hamilton as a Firefighter with the Hamilton Fire Department.

2. Defendant Hamilton is a township in Mercer County organized and existing under the laws of the State of New Jersey, and at all times relevant hereto was the employer of Plaintiff.

3. Defendant Chief Tozzi, at all times relevant hereto, is employed by Defendant Hamilton as the Chief of the Hamilton Fire Department. This claim is brought against Defendant Chief Tozzi in his individual capacity and/or as an agent or servant of Defendant Hamilton during the course of his employment.

4. Defendant Krajcsovics, at all times relevant hereto, is a firefighter employed by Defendant Hamilton. This claim is brought against Defendant Krajcsovics in his individual capacity and/or as an agent or servant of Defendant Hamilton during the course of his employment.

5. Defendant ABC Corporations 1 through 10 are currently unidentified business entities who have acted in concert with the named Defendants and/or currently unidentified business entities responsible for the creation and/or implementation of anti-discrimination, harassment, and/or retaliation policies of Defendant Hamilton and/or currently unidentified business entities who have liability for the damages suffered by Plaintiff under any theory advanced therein.

6. Defendants John Does 1 through 10 are currently unidentified individuals who acted in concert with the named Defendants and/or currently unidentified individuals responsible for the creation and/or implementation of anti-discrimination, harassment, and/or retaliation policies for Defendant Hamilton and/or are currently unidentified individuals who may have liability for damages suffered by Plaintiff under any theory advanced herein.

## **II. FACTUAL ALLEGATIONS**

7. Plaintiff is a black male who began his employment as a Firefighter with Defendant Hamilton in 2019. At all times relevant hereto, Plaintiff was qualified for his job and performed it well.

8. On February 27, 2022, Plaintiff was present in the Colonial Fire House during the course of the performance of his work duties. A person affiliated with the Colonial Fire House, believed to be a volunteer or retired firefighter, looked in Plaintiff's direction and stated, "Oh, we have a color boy here." Plaintiff was deeply offended by the blatantly racist statement, and he suffered emotional distress as result thereof. Plaintiff reported the racial slur to a Captain in the Fire Department. The matter was investigated by Defendant Hamilton and Plaintiff's claims were substantiated.

9. In March 2023, Plaintiff responded to a call during which he observed and came into close contact with a deceased baby. The encounter was traumatic for Plaintiff. Soon after, Plaintiff went on leave for several weeks and then returned to his position.

10. In August 2023, Plaintiff was notified that he would be required to undergo a fit for duty exam, including a baseless and racist inquiry into whether he had any pending restraining orders or criminal charges. Plaintiff inquired into the basis of Defendant Hamilton's decision to subject him to a fit for duty exam, and Plaintiff complained of a lack of a basis for him to be subjected to same.

11. The union filed a grievance on Plaintiff's behalf, which was denied by Defendant Hamilton and/or Defendant Chief Tozzi. Based on a memo issued by Business Administrator Kathryn Monzo on October 10, 2023, Defendant Hamilton articulated its reasoning for requiring the fit for duty exam by stating, "Based on case law, if an employer believes that an employee's medical condition affects the employee's work performance, job duties, or poses a threat to health, safety or welfare, and the employer has either directly observed, or obtained 'reliable information received from credible sources' they can require a fit for duty exam."

12. Despite Defendant Hamilton's claim that Plaintiff may have been unfit for duty, Defendant Hamilton did not place Plaintiff on administrative leave, but rather scrambled for approximately two months to justify its position that Plaintiff required a fit for duty exam and review of pending restraining orders and criminal charges. During that time, Plaintiff waited weeks for a clear explanation as to why the fit for duty exam was ordered, and he lived with the stress, anxiety, frustration, and fear that it was ordered in retaliation for him complaining of racial discrimination at the Colonial Fire House. At any time leading up to Plaintiff's mandatory fit for duty exam, Defendant Hamilton could have reversed course and revoked its order that Plaintiff attend a fit for duty exam, but it refused to do so.

13. On October 6, 2023, Plaintiff sent an email to Defendant Chief Tozzi, Personnel Officer Louis Guarino, and Assistant Business Administrator Joy Kerlin, in which he begrudgingly stated, in part, "Approaching my psychiatric 'Fit for Duty' test that is scheduled, I would like it known that I am agreeing to take these 'assessment'; however, I would like it on record that I do not believe there is any reason for the requested testing that I am being made to go through. **I believe this is being done in retaliation and I feel harassed throughout this situation.**" [Empasis added].

14. After his grievance was denied, Plaintiff submitted to the fit for duty exam under protest, and Plaintiff was determined to be fit for duty.

15. On October 19, 2023, Plaintiff sought to file a formal complaint and attempted to make use of the Defendant Hamilton's alleged "open-door" policy, but Plaintiff was told that he "can't just show up expecting to meet."

16. On October 25, 2023, Plaintiff submitted a written complaint via email to Assistant Business Administrator Joy Kerlin, which stated, in part, "I was harassed and

discriminated against by Hamilton Township Fire Department Fire Chief Chris Tozzi and the Hamilton Township Administration. Relation being Fire Chief and Administration as an employee.” In the detailed complaint, Plaintiff elaborated that he believed he was “[c]ontinuing to feel discriminated against, harassed, and a victim of retaliation (stemming back to the racist event at the Colonial Fire House)” and he highlighted the fact that only three of the 135 members of the Fire Department were black.

17. Plaintiff further articulated his beliefs and concerns of racist beliefs held by leadership in Defendant Hamilton’s administration by producing social media posts from Defendant Chief Tozzi’s social media pages, including the use on the “N” word, as depicted below:



18. Plaintiff also produced screenshots of Defendant Chief Tozzi's Twitter account in which Defendant Chief Tozzi retweeted statements such as "Happy George Floyd Day, everyone" and "Race is a business-don't you ever forget that."

19. According to Defendant Hamilton's alleged policies and procedures, Defendant Hamilton purports to maintain a confidential "Complaint Resolution Procedure" which states:

The Township strongly encourages you to utilize this complaint resolution procedure. The Township welcomes the opportunity to promptly investigate and remediate any instances of harassment.

1. Any employee or applicant who believes they have been subject to harassment in violation of this policy should report such a complaint to the Personnel Office or his/her designee. If that would prove to be uncomfortable, the employee may contact the Business Administrator or any supervisor to report such a complaint. It is part of your job duty, as an employee of the Township, to report incidents of harassment.

Most importantly, employees may rest assured that they are encouraged to bring complaints to the attention of the Township. No employee will be retaliated against for bringing in good faith any such information to the Township's attention.

**All information regarding harassment and/or CEPA complaints will be kept in confidence to the greatest extent practical and appropriate under the circumstances.**

[Emphasis added].

20. In October 2023, Plaintiff was on temporary assignment at a firehouse other than the firehouse that was his primary work assignment. While on temporary assignment, Plaintiff worked alongside of firefighters with whom he has less familiar than those whom he worked with at his primary assignment.

21. Despite Defendant Hamilton's alleged strict policy on holding complaints confidential, Defendant Hamilton and members of its administration, including Defendant Chief Tozzi, intentionally violated that policy in their handling of Plaintiff's complaints and allowed

the matter to quickly and dangerously spiral out of control. Rather than complying with the Township of Hamilton's alleged complaint policies and procedures, which existed only on paper, Defendant Chief Tozzi and/or other members of the administration openly complained about Plaintiff's discrimination complaint to other members of the Fire Department and created a dangerous and hostile work environment in which Plaintiff was subjected to retaliation.

22. Only two days later, on October 27, 2023, while on duty and in front of several colleagues, a coworker who is a close friend of Defendant Chief Tozzi – Defendant Krajcsovics – approached Plaintiff and verbally assaulted him for making the complaint. Soon after the retaliatory act began, Plaintiff grabbed his phone to record the encounter. In the recording, Defendant Krajcsovics can be clearly heard berating Plaintiff by stating, “I don't need to know the whole story. The guy's best friend is fucking black, and he invited a black person into his fucking fire house. That's really a racist!” Plaintiff responded, “Without knowing the whole story, that's pretty bold of you,” to which Defendant Krajcsovics replied, “I know enough.”

23. At that moment, Plaintiff believed he was not safe working in other firehouses on temporary assignment, and he feared further verbal or physical acts of retaliation from other firefighters who were friends of Defendant Chief Tozzi.

24. In truth and in fact, any reasonable employee and/or black employee would have considered the intentional dissemination of Plaintiff's complaint to his colleagues, including Defendant Krajcsovics and his harassing and retaliatory actions, as being sufficiently severe or pervasive to alter the conditions of employment and make the working environment hostile or abusive.

25. As of that date, Plaintiff was scheduled to remain on temporary assignment until December 2023. Out of fear for his safety and to avoid future harassment and retaliation at that

firehouse, Plaintiff believed he had no choice but to request leave for the remainder of that temporary assignment.

26. The events at issue and the conduct of the Defendants forced Plaintiff to take an unpaid leave until he was scheduled to return to work at his primary assignment in December 2023, where he believed he would be able to work in a less hostile environment.

27. In truth and in fact, Plaintiff had no choice but to take unpaid leave in order to remove himself from the hostile work environment until a safe return to work was secured. The unprofessionalism and animosity towards Plaintiff were on full display for all to see, serving as a deterrent against all other individuals making future complaints of discrimination, harassment, and retaliation against Defendant Hamilton and Defendant Chief Tozzi.

28. In the time since Plaintiff returned to work, a young white female firefighter complained of sex-based discrimination and harassment and – rightfully so – was granted paid leave for an extended period of time, which was not offered to Plaintiff. The white female firefighter received preferential treatment because of her skin color, or, in the alternative, Plaintiff received a disparately inferior response due to his skin color. Even Defendant Krajcsovics treated the white female employee favorably, and he did not publicly berate her for complaining of unlawful treatment in the workplace.

29. The race-based discrimination, harassment, and retaliation inflicted on Plaintiff severe emotional distress, and Plaintiff is forced to live with the trauma, stress, fear, anxiety, anger, frustration, and embarrassment that persists as a result thereof.



**FIRST COUNT**  
**Violation of the Conscientious Employee Protection Act**  
**(Unlawful Retaliation and Hostile Work Environment)**

30. Plaintiff repeats and realleges the previous allegations and paragraphs of the Complaint as if more fully set forth herein.

31. Each named Defendant qualifies as an “employer” under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq. (CEPA).

32. At the times he made his objections, Plaintiff believed he was reporting clear violations of federal and New Jersey laws, statutes, rules, regulations, and public policy to Defendant Hamilton and Defendant Chief Tozzi, including violations of the New Jersey Law Against Discrimination.

33. Plaintiff was also refusing to participate in activity he reasonably believed was illegal and in violation of New Jersey laws, statutes, rules, regulations, and clear mandates of public policy.

34. Plaintiff’s complaints of discriminatory, harassing, and retaliatory conduct were protected activity under CEPA

35. In retaliation for Plaintiff engaging in protected activity, Defendant Hamilton and Defendant Chief Tozzi:

a. Despite not seeing a need to place Plaintiff on administrative leave for approximately two months, forced Plaintiff to submit to a fit for duty exam over Plaintiff’s objections, including a baseless review of pending restraining orders and criminal charges against Plaintiff, and

b. Disseminated the content of Plaintiff's complaint of discrimination, harassment, and retaliation to Defendant Chief Tozzi's close friends in the Fire Department, which foreseeably caused Plaintiff to suffer further harassment and retaliation in the workplace.

36. At the time these acts of retaliation occurred, by their own admissions, Defendant Hamilton and Defendant Chief Tozzi believed Plaintiff was suffering from post-traumatic stress disorder and other forms of emotional distress, yet decided to subject him to retaliation, causing Plaintiff mental and emotional harm.

37. Plaintiff was also treated disparately in that he was subjected to a fit for duty exam, while Defendant Chief Tozzi was not forced to undergo a fit for duty exam after questions were raised as to his performance and mental health by members of the Fire Department.

38. In addition, Defendant Krajcsovics actively participated in the retaliation against Plaintiff, on behalf of or in the interest of Defendant Hamilton and/or Defendant Chief Tozzi, directly and as an individual aiding and abetting his co-defendants in their retaliation.

39. The above-described conduct would not have occurred but for Plaintiff engaging in protected activity under CEPA.

40. In truth and in fact, considering the facts and circumstances of Plaintiff's employment prior to that date, any reasonable employee would have considered the dissemination of Plaintiff's complaint to his colleagues, and the retaliatory harassment that followed, as being sufficiently severe or pervasive to alter the conditions of employment and make the working environment hostile or abusive.

41. In addition or in the alternative, considering the facts and circumstances of Plaintiff's employment prior to that date, any reasonable black employee would have considered the dissemination of Plaintiff's complaint to his colleagues, and the retaliatory harassment that

followed, as being sufficiently severe or pervasive to alter the conditions of employment and make the working environment hostile or abusive, especially in light of the past racist slur made against Plaintiff in the workplace.

42. As the employer and/or supervisor of Plaintiff, Defendant Hamilton and Defendant Chief Tozzi are vicariously, strictly, and/or directly liable to Plaintiff pursuant to CEPA for the discrimination, harassment, and retaliation against Plaintiff after he engaged in protected activity; and/or Defendants were deliberately indifferent, reckless, negligent, and/or tacitly approved the discrimination, harassment, hostile work environment, and/or retaliation; and/or Defendants failed to create and/or have in place well-publicized and enforced anti-harassment and retaliation policies, effective formal and informal complaint structures, training, and/or monitoring mechanisms for same despite the foreseeability of harassment, discrimination, and retaliation in the workplace; and/or by having actual knowledge of the harassment, discrimination, and retaliation against Plaintiff and failing to promptly and effectively act to stop it.

43. As discussed above, Defendant Chief Tozzi and Defendant Krajcsovics had direct involvement in the discrimination, harassment, and retaliation against Plaintiff. Defendant Chief Tozzi and Defendant Krajcsovics aided in conduct that caused injury to Plaintiff, were generally aware of their role in the unlawful conduct, and knowingly and substantially assisted in the unlawful conduct.

44. As a proximate result of the aforementioned acts and omissions set forth herein, Plaintiff has sustained damages.

45. The upper-level managers of Defendant Hamilton, including Defendant Chief Tozzi, knew or should have known about the retaliatory and adverse employment action taken against Plaintiff, and rather than stop it, allowed them to happen and participated in it.

46. Plaintiff suffered and continues to suffer emotional distress due to the retaliation and hostile work environment.

47. Plaintiff suffered financial loss as a result thereof, which contributed to Plaintiff's emotional distress.

48. Lastly, the intentional and malicious actions of Defendant Hamilton, including its owners and upper-level managers, including Defendant Chief Tozzi, justify the imposition of punitive damages.

**WHEREFORE**, Plaintiff demands judgment in his favor and against Defendants on this Count, together with compensatory and equitable relief, all remedies available under CEPA, punitive damages, pre-and post-judgment interest, attorneys' fees and costs of suit, and for such other relief that the Court deems equitable and just. More specifically, Plaintiff demands judgment against Defendants for harm suffered in violation of the CEPA as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Statutory damages;
- D. Punitive damages;
- E. Prejudgment interest and enhancements to off-set negative tax consequences;
- F. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- G. Such other relief as may be available pursuant to the CEPA and which the Court deems just and equitable;
- H. Ordering Defendants to take appropriate corrective action to stop and prevent retaliation at the workplace;
- I. Ordering Defendants to take appropriate corrective action to stop and prevent harassment and retaliation in the workplace;

- J. Ordering Defendants to undergo anti-discrimination training;
- K. Ordering Defendants to undergo anti-retaliation training;
- L. Ordering Defendants to undergo anti-harassment training;
- M. Ordering Defendants to undergo workplace civility training;
- N. Ordering Defendants to undergo bystander intervention training;
- O. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-discrimination training;
- P. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-retaliation training;
- Q. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-harassment training;
- R. Ordering Defendants to engage a research organization to assess the effectiveness of their workplace civility training;
- S. Ordering Defendants to engage a research organization to assess the effectiveness of their bystander intervention training;
- T. Ordering Defendants to identify an appropriate professional to investigate any future complaints of discrimination;
- U. Ordering Defendants to identify an appropriate professional to investigate any future complaints of harassment;
- V. Ordering Defendants to identify an appropriate professional to investigate any future complaints of retaliation; and
- W. Such other relief as may be available and which the Court deems just and equitable.

**SECOND COUNT**

**Violation of the Conscientious Employee Protection Act**  
**(Constructive Unpaid Forced Leave)**

49. Plaintiff repeats and realleges the previous allegations and paragraphs of the Complaint as if more fully set forth herein.

50. The retaliatory acts of the Defendants to disseminate Plaintiff's complaints of discrimination, harassment, and retaliation, and the harassing verbal assault by Defendant Krajcsovics, created a hostile work environment.

51. Considering the facts and circumstances of Plaintiff's employment prior to that date, a reasonable person would have perceived the threat to Plaintiff's safety as so intolerable that Plaintiff was justified in removing himself from the workplace until Defendant Hamilton

and Defendant Chief Tozzi could remedy the unsafe working conditions that they created for Plaintiff.

52. In addition or in the alternative, considering the facts and circumstances of Plaintiff's employment prior to that date, a reasonable black person would have perceived the threat to Plaintiff's safety as so intolerable that Plaintiff was justified in removing himself from the workplace until Defendant Hamilton and Defendant Chief Tozzi could remedy the unsafe working conditions that they created for Plaintiff.

53. As a result, Plaintiff was constructively forced to take an unpaid leave until December 2023, causing Plaintiff emotional distress and financial loss.

54. Plaintiff suffered and continues to suffer emotional distress due to the retaliation and hostile work environment.

55. Plaintiff suffered financial loss as a result thereof, which contributed to Plaintiff's emotional distress.

56. Lastly, the intentional and malicious actions of Defendant Hamilton, including its owners and upper-level managers, including Defendant Chief Tozzi, justify the imposition of punitive damages.

**WHEREFORE**, Plaintiff demands judgment in his favor and against Defendants on this Count, together with compensatory and equitable relief, all remedies available under CEPA, punitive damages, pre-and post-judgment interest, attorneys' fees and costs of suit, and for such other relief that the Court deems equitable and just. More specifically, Plaintiff demands judgment against Defendants for harm suffered in violation of the CEPA as follows:

- A. Compensatory damages;
- B. Consequential damages;
- C. Statutory damages;
- D. Punitive damages;

- E. Prejudgment interest and enhancements to off-set negative tax consequences;
- F. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by Plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law);
- G. Such other relief as may be available pursuant to the CEPA and which the Court deems just and equitable;
- H. Ordering Defendants to take appropriate corrective action to stop and prevent retaliation at the workplace;
- I. Ordering Defendants to take appropriate corrective action to stop and prevent harassment and retaliation in the workplace;
- J. Ordering Defendants to undergo anti-discrimination training;
- K. Ordering Defendants to undergo anti-retaliation training;
- L. Ordering Defendants to undergo anti-harassment training;
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- O. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-discrimination training;
- P. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-retaliation training;
- Q. Ordering Defendants to engage a research organization to assess the effectiveness of their anti-harassment training;
- R. Ordering Defendants to engage a research organization to assess the effectiveness of their workplace civility training;
- S. Ordering Defendants to engage a research organization to assess the effectiveness of their bystander intervention training;
- T. Ordering Defendants to identify an appropriate professional to investigate any future complaints of discrimination;
- U. Ordering Defendants to identify an appropriate professional to investigate any future complaints of harassment;
- V. Ordering Defendants to identify an appropriate professional to investigate any future complaints of retaliation; and
- W. Such other relief as may be available and which the Court deems just and equitable.

**JURY DEMAND**

Pursuant to R. 4:35-1, Plaintiff demands a trial by jury for all issues so triable.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Christopher J. Keating, Esquire is hereby designated as trial counsel.

**DEMAND FOR INSURANCE INFORMATION**

Pursuant to R. 4:10-2(b), Plaintiff hereby demands production of a copy of all insurance agreements under which the defendants may be covered to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

**CERTIFICATION PURSUANT TO R. 4:5-1**

I certify that, to the best of my knowledge, the matter in controversy is not the subject matter of an action or arbitration proceeding pending in any jurisdiction and no other action or arbitration proceeding is contemplated. At the present time, I do not know the names of any other parties who should be joined in this action.

**KEATING LAW FIRM, LLC**  
*Attorney for Plaintiff*

/s/ Christopher J. Keating  
Christopher J. Keating, Esquire

Date: March 25, 2024