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<p>DOMINIC CAPANNA, Plaintiff, v. COUNTY OF GLOUCESTER, EUGENE J. CALDWELL, II, BRAD SCHMIDHEISER, AND JOHN DOES 1 THROUGH 50, INCLUSIVE, FICTITIOUS NAMED DEFENDANTS. JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY CIVIL DIVISION GLOUCESTER COUNTY Docket No.: GLO-L- Civil Action VERIFIED COMPLAINT, ACTION IN LIEU OF PROROGATIVE WRITS, DEMAND FOR JURY TRIAL, DESIGNATION OF TRIAL COUNSEL, AND DEMAND PURSUANT TO RULE 1:4-8</p>
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Plaintiff Dominic Capanna, residing in the Borough of Pitman, County of Gloucester, State of New Jersey, by way of complaint against Defendants says.

COUNT ONE

1. At all relevant times herein, Defendant County of Gloucester ("Defendant County") was a municipal governmental entity and the employer of Plaintiff, the individually named defendants, Warden Eugene J. Caldwell, II ("Defendant Caldwell"), Corrections Officer Brad Schmidheiser ("Defendant Schmidheiser") and certain of the John Doe Defendants, which entity was created pursuant to law and had an obligation pursuant to certain New Jersey statutes and the New Jersey Constitution to provide Plaintiff with a work environment free of retaliation

and interference with the exercise of his Constitutionally protected rights as a citizen of the State of New Jersey.

2. At all relevant times herein, Defendant Caldwell was an individual employed as Warden for the Gloucester County Department of Corrections and who acted within the scope and course of his employment as well as outside the scope and course of his employment when he established and perpetuated a retaliatory work environment and engaged in unlawful retaliatory conduct and other conduct that violated Plaintiff's rights under the New Jersey Constitution and the New Jersey Civil Rights Act of 2004 in retaliation for Plaintiff's participation in various acts of protected conduct as set forth herein.

3. At all relevant times herein, Defendant Schmidheiser was an individual employed as a Corrections Officer for the Gloucester County Department of Corrections ("GCDOC") and who acted within the scope and course of his employment as well as outside the scope and course of his employment when he established and perpetuated a retaliatory work environment and engaged in unlawful retaliatory conduct and other conduct that violated Plaintiff's rights under the New Jersey Constitution and the New Jersey Civil Rights Act of 2004 in retaliation for Plaintiff's participation in various acts of protected conduct as set forth herein.

4. Plaintiff was hired by the Gloucester County Sheriff's Department ("the Sheriff's Department") on or about April 28, 1997 as a Corrections Officer working in the Gloucester County Jail ("the Jail").

5. Plaintiff was a member of the Fraternal Order of Police Local 97 from 1997 through 2013.

6. During that time period, Plaintiff held different positions within Local 97 including Treasurer from 2000-2001, Vice President from 2002-2003, and President from 2008-2011.

7. Plaintiff was also the Grievance Committee Chairperson for Local 97 from 2000-2005.
8. From 1999 to present, Plaintiff has been very active within Local 97, including filing many grievances alleging unfair labor practices against Defendants and filing numerous Open Public Records Act ("OPRA") requests.
9. Prior to April, 2003, the Jail was supervised by the Sheriff, which is an elected position; however, in supervision of the Jail was removed from the Sheriff's Department and shifted to the Gloucester County Board of Chosen Freeholders ("the Freeholders") who have since directly overseen the Jail.
10. In November, 2008, Plaintiff was promoted to the rank of Sergeant.
11. Over the course of Plaintiff's career with Defendant County, he engaged in multiple acts of protected conduct including but not limited to:
 - a. Filing a complaint in 2003-2004 alleging misconduct on the part of former Warden Tevoli that resulted in Warden Tevoli's termination.
 - b. Filing complaints in or about April 2008 alleging the Director of Corrections, Robert Balicki, had inappropriate personal relationships with Corrections Officers, including romantic relationships.
 - c. Making several complaints through several meetings with Chad Bruner, Freeholder Liaison DeMarco, and Freeholder Director Sweeney during October, 2008, regarding Jail Director Balicki's violations of the nepotism policy, how his relationships with rank and file officers, and how the subjects of Balicki's "pillow talk" were making the department staff uncomfortable.
 - d. Leading an initiative in October, 2008, for a vote of no confidence in Balicki and asking the County to terminate Balicki's employment.

e. Advocating in January, 2009, for the return of terminated Officer Beth Lindsey, because Plaintiff reasonably believed she was wrongfully terminated, resulting in Officer Lindsey being reinstated in November, 2009, and a settlement of her claims.

f. Asking for a meeting with Freeholder Director Sweeney to request that he reconsider the termination of CO John Varalli that was recommended by Hearing Officer Adler. When Plaintiff did not receive a quick response from Sweeney, Plaintiff requested a meeting with Chad Bruner, who said he would meet with Plaintiff and that Personnel Director Cannon had an interesting proposal. Plaintiff then met with Bruner and Cannon in the old courthouse, during which meeting Cannon stated that he would not terminate Varalli if Plaintiff dropped a pending arbitration for the County's violation of Varalli's right to a hearing within 30-days, to allow the HED Unit's hours to be changed to 12-12, and for Plaintiff to drop his ULP for his seniority. Plaintiff agreed and then a suspension for Varalli was negotiated because Cannon said he had to suspend him to appease the attorney for the officer Varalli was accused of having harassed. Plaintiff contacted Cannon the next day and told him he could not do the 12-12 shift for the HED Unit, but could drop the other two actions. In response Cannon increased Varalli's suspension, but allowed him to keep his benefits.

g. Advocating in April to July, 2010, against Defendant County's plan to close the female jail and the accompanying Corrections Officer layoffs in part through attending Freeholder meetings.

h. Participating in and assisting Corrections Officer Lacey in filing an EEOC complaint against Defendant County and Sgt. Krulikowski in October, 2010, that

ultimately resulted in a monetary settlement being paid to Lacey and a shift change for Sgt. Krulikowski to separate him from Officer Lacey.

i. Complaining in June, 2011, to Freeholder Larry Wallace that Defendant Caldwell was having an inappropriate relationship and fraternizing with female inmates; at the time, Defendant Caldwell was the Deputy Warden.

j. Filing an Internal Affairs complaint in June, 2011, regarding Defendant Caldwell's inappropriate relationships with female inmates.

k. Contacting the Prosecutor's Office in November, 2011, regarding Defendant Caldwell's inappropriate relationships with female inmates.

12. After Plaintiff's tenure as President of the union ended in January, 2011, Defendant Schmidheiser, and Officer McLaughlin made unfounded allegations regarding Plaintiff and other members of the Executive Committee of Local 97 engaging in inappropriate conduct.

13. Defendant Schmidheiser and Officer McLaughlin sought to have the Plaintiff removed from Local 97 and spread false rumors about Plaintiff both verbally and in writing through e-mails.

14. As a result of the false allegations, Plaintiff received a subpoena from the Camden County Prosecutors Office to appear before the Grand Jury and to turn over the Union tax returns. Plaintiff was never in possession of the tax returns. On information and belief, the Lodge's accountant was also subpoenaed and produced the tax returns and Plaintiff was informed that he was no longer required to appear. No further action has ever been taken by the Camden County Prosecutors Office.

15. In fact, as a result of the bogus allegations referenced above, an independent accountant was brought in to audit the union's books and it was determined that neither Plaintiff, nor

anyone else within the Union's executive committee had engaged in any inappropriate conduct. The report concluded that there had been no misappropriation of any funds, but that it was "clear that the treasurer did not perform his duties in compliance with the by-laws of FOP Lodge 97." Plaintiff takes exception to the manner in which the audit was conducted.

16. Thereafter, Defendant Schmidheiser and Officer McLaughlin sought to and had Plaintiff expelled from the Union; however, Plaintiff successfully appealed their actions through the State Fraternal Order of Police and his Union membership was reinstated in March, 2013.

17. In March, 2013, Defendant County announced that it intended to close the Jail and enter an agreement with other County Jails to house Defendant County's inmates in their jails for a fee.

18. From March-June, 2013, Plaintiff vocally protected and fought against the closing of the Jail, including attending and speaking out at Freeholder meetings in Gloucester, Salem, Cumberland, and Burlington Counties.

19. In June, 2013, Plaintiff was interviewed by Defendant Caldwell for a promotion to Lieutenant, during which meeting Defendant Caldwell acknowledged that he knew Plaintiff had not volunteered for training in the past because Plaintiff wanted to spend time with his daughter.

20. In July, 2013, the Jail was closed and the remaining operations of the GCDOC were ultimately reduced to mainly inmate transportation.

21. In July, 2013, Jodi Doman advised Plaintiff that she had been told by Lt. Bene that Plaintiff was on the "hit list" and Plaintiff is a "trouble maker".

22. On July 1, 2013, Defendant Caldwell was elevated to Warden for the GCDOC.

23. In or about August, 2013, Plaintiff joined the Sergeants Union after being asked to do so by Sgt. Cora.

24. In August, 2013, Plaintiff began to hear rumors that Corrections Officers would be laid off because Plaintiff he filed OPRA requests.

25. In September, 2013, Lt. Bajewicz advised Sgt. Cora that he had been told by Chad Bruner that Plaintiff was filing OPRA requests under the name of his prior business, Five Star Developers.

26. Plaintiff was then passed over for the promotion to Lieutenant he interviewed for in or about July, 2013, which promotions were instead given to Officers who were less qualified and/or have extensive disciplinary histories, one of whom was heavily involved in covering up the September, 2011, beating of inmate Patrick Georgette

27. In fact, one of the individuals who did get promoted to Lieutenant, Lt. Bajewicz, then Sgt. Bajewicz, was identified in the investigation conducted by the Gloucester County Prosecutors Office as having given two of the inmates who carried out the beating of inmate Georgette extra food the night of the beating and then promising them more favorable work details a day or two after the beating.

28. Plaintiff being passed over for the position of Lieutenant was an act of retaliation in direct response to his protected conduct as defined by New Jersey law.

29. In or about November, 2013, Corrections Officer Holmes heard Lt. Bene tell Lt. Bajewicz that Plaintiff was in the way and Bajewicz's response of "What are we going to do about it?"

30. In November, 2013, Plaintiff again engaged in protected conduct when he wrote a report regarding Corrections Officers Davis and Evans, part of which discussed the need to evaluate the department for discrimination, harassment, bullying, and favoritism.

31. In November, 2013, Defendant Caldwell wrote an e-mail criticizing Plaintiff's report regarding the evaluation for discrimination, harassment, bullying, and favoritism.

32. In November, 2013, Plaintiff saw Defendant Schmidheiser return to the GCDOC location at a time when he should have been doing an inmate transfer. A true and accurate copy of the Plaintiff's confidential report is annexed hereto as Exhibit "A" and is being filed under seal given that it is part of an ongoing Internal Affairs investigation.

33. When Plaintiff reviewed video footage, he discovered that Defendant Schmidheiser had neglected to bring his service weapon during the first leg of the inmate transport and then returned to the GCDOC to pick up his service weapon in the middle of the transfer.

34. In direct violation of the rules and regulations, Defendant Schmidheiser failed to advise anyone within his chain of command that he forgot his service weapon and that he was coming back to GCDOC to pick up his service weapon and sought to conceal and falsify reports regarding same.

35. Plaintiff requested that both Defendant Schmidheiser and McCrary write reports as to what transpired on November 21, 2013, simultaneously in separate rooms so they would not be able to coordinate their stories.

36. In response to that lawful order, Defendant Schmidheiser initially refused to comply with Plaintiff's lawful order and went to Lt. Bajewicz in an effort to circumvent and escape Plaintiff's lawful order.

37. After Lt. Bajewicz took Defendant Schmidheiser and McCrary infor a private room and called their Union Representative to discuss what their story was going to be and to devise the false retaliation claim, Defendant Schmidheiser and McCrary then returned and prepared the reports Plaintiff, their superior officer, had ordered them to write.

38. Later that evening Defendant Schmidheiser also wrote a confidential report regarding the incident; however, his report did not focus on his actions or misconduct and instead made a bogus complaint against Plaintiff for retaliation. The existence of that report was disclosed to Plaintiff by the County's attorney, Christine O'Hearn, while interviewing Plaintiff about his Whistleblower Complaint in January, 2014. The complaint was anonymously given to Plaintiff in February, 2014. A true and accurate copy of Defendant Schmidheiser's report is annexed hereto as Exhibit "B" and is being filed under seal given that it is part of an ongoing Internal Affairs investigation.

39. Officer McCrary also filed a report as ordered by Plaintiff. A true and accurate copy of Officer McCrary's report is annexed hereto as Exhibit "C" and is being filed under seal as it is part of an ongoing Internal Affairs investigation.

40. Defendant Schmidheiser's report alleges that Plaintiff ordered him to write the report on Defendant Schmidheiser's failure to carry his service weapon while transferring an inmate and his attempt to conceal that failure as an act of retaliation for Defendant Schmidheiser's prior allegation that Plaintiff had engaged in inappropriate conduct when he was a member of the executive committee for the Union.

41. Defendant Schmidheiser made that allegation of retaliation against Plaintiff with absolutely no factual support and despite the fact that Defendant Schmidheiser actually did transport an inmate without his service weapon and actually did attempt to cover up that misconduct.

42. As a result of Defendant Schmidheiser's bogus retaliation complaint against Plaintiff, Plaintiff received a memorandum from Defendant Caldwell on December 3, 2013, indicating

that Plaintiff would be reassigned to the D shift effective December 9, 2013. A true and accurate copy of that letter is annexed hereto as Exhibit "D".

43. Plaintiff had long worked the day shift and it was known in the department that Plaintiff wished to remain on day shift because night shift would not allow him to spend time with his ten-year-old daughter Reilly.

44. As such the transfer to night shift is clearly retaliatory in nature as Defendant Schmidheiser's allegation of retaliation was manufactured to divert attention from his own misconduct and the transfer to night shift was clearly an act of discipline towards Plaintiff that continues to this day without Plaintiff having ever been given the opportunity to contest or appeal said discipline. The memorandum is annexed hereto as Exhibit "E".

45. Plaintiff has never been given an Internal Affairs Complaint Notification as required by the New Jersey Attorney General Guidelines, which are required to be followed under Plaintiff's bargaining agreement. See the blank internal affairs complaint notification annexed hereto as Exhibit "F".

46. Nor have any charges been brought against Plaintiff to date and there has been no finding that Plaintiff engaged in any type of inappropriate conduct.

47. In fact, in response to the false complaint by Defendant Schmidheiser that was itself retaliatory and the shift change by Defendants Schmidheiser and Caldwell, in December, 2013, Plaintiff filed his own Internal Affairs complaint that he was being retaliated against for his protected conduct, some of which is outlined herein.

48. Despite the fact that more than 180 days have elapsed since Plaintiff was subjected to the involuntary transfer that was both retaliatory and disciplinary in nature, he has not received

any notification as to the results of either investigation into Defendant Schmidheiser's complaint or Plaintiff's complaint.

49. Plaintiff has been subjected to discipline without any substantive due process as required under the New Jersey Constitution and New Jersey Law in that he has been transferred to the night shift for 180 days, which is an egregious violation of Plaintiff's rights.

50. Defendants' conduct is especially egregious and is anticipated to be continuing in nature, has occurred and continues to occur with actual malice, and with the willful and wanton disregard of Plaintiff's civil rights.

51. As a direct and approximate result of the foregoing, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against the Defendants for injunctive relief, compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

SECOND COUNT

52. Plaintiff hereby incorporates paragraphs 1 through 47 as though set forth in full herein.

53. Plaintiff's right under the New Jersey Conscientious Employees Protection Act, N.J.S.A. 34:19-2 et seq. to be free from reprisals has been violated in a most egregious manner, which conduct was knowing and intentional.

54. Plaintiff's rights under N.J.S.A. 30:8-18-2 have been violated as the Defendant Gloucester County has had adequate time to investigate and determine whether or not charges would be appropriate and more than 45 days has elapsed since that time.

WHEREFORE, Plaintiff demands judgment against the Defendants for injunctive relief, compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

THIRD COUNT

- 55. Plaintiff hereby incorporates paragraphs 1 through 50 as though set forth in full herein.
- 56. Defendant LTS also failed to meet certain obligations pursuant to N.J.S.A. 34:19-7.

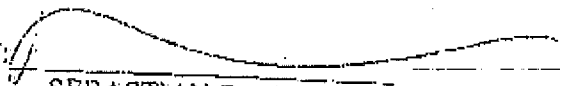
WHEREFORE, Plaintiffs demands judgment against the Defendants for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

FOURTH COUNT

- 57. Plaintiff hereby incorporates paragraphs 1 through 52 as though set forth in full herein.
- 58. Plaintiff's rights under the New Jersey Constitution and the New Jersey Civil Rights Act of 2004 have been violated.

WHEREFORE, Plaintiffs demands judgment against the Defendants for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable including restoring Plaintiff to his day shift.

IONNO & HIGBEE, LLC
Attorneys for Plaintiff

BY: 
SEBASTIAN B. IONNO

Dated: 7/1/14

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

BY: 
SEBASTIAN B. IONNO

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Sebastian B. Ionno, Esquire as trial counsel in this matter.

BY: _____

SEBASTIAN B. IONNO

CERTIFICATION

The undersigned counsel certifies that there are no other actions or arbitrations pending or contemplated involving the subject matter of this controversy at this time, and there are no additional known parties who should be joined to the present action at this time. I certify the foregoing to be true. I am aware if the above is willfully false, I am subject to punishment.

BY: _____

SEBASTIAN B. IONNO

DATED: 7/11/14

RULE 1:4-8 DEMAND

Plaintiff and his counsel hereby demand, pursuant to Rule 1:4-8, that the defendants or their agents, servants, or employees, or attorneys provide any and all facts and documents upon which they base any contention that this Complaint was instituted or continued in whole or in part for improper reasons, or that the claims are, in whole or in part, frivolous or without basis in law or fact.

BY: _____

SEBASTIAN B. IONNO