

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ADAM AUSTINO	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF VINELAND, et al.	:	NO. 20-1151
	:	

MEMORANDUM

Bartle, J.

September 14, 2020

Plaintiff Adam Austino has sued defendants City of Vineland, as well as Anthony Fanucci, Gregory Pacitto, and the Policemen's Benevolent Association, Local 266 ("PBA") ("defendants"). Plaintiff alleges claims for relief for: (1) violation of his First Amendment rights under 42 U.S.C. § 1983; and (2) violation of the New Jersey Conscientious Employee Protection Act, N.J.S.A. § 34:19-1, et seq. ("CEPA"). On September 2, 2020, this Court dismissed the PBA as a defendant for plaintiff's failure to state a claim against it under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Doc. # 33. Before the court is the motion of the remaining defendants City of Vineland, Anthony Fanucci, and Gregory Pacitto likewise to dismiss the complaint for failure to state a claim under Rule 12(b)(6).

I

The following facts are alleged in the complaint and are taken as true for present purposes. Plaintiff is employed

by defendant City of Vineland as a Captain in its Police Department ("VPD"). While working for VPD, plaintiff was also a member of PBA, the union that represents all police personnel employed at the VPD. Defendant Gregory Pacitto is a Sergeant with the VPD and the former president of PBA. Defendant Anthony Fanucci is the Mayor of Vineland.

Plaintiff avers that on "multiple occasions" he reported to state and local authorities that defendants have engaged in "corrupt actions." As a result of his complaints, he claims that defendants "conspired with one another" to retaliate against him. Specifically, plaintiff alleges that defendants retaliated against him because he complained to state and local authorities that: (1) the executive board of the PBA and a VPD Chief of Police had embezzled funds; (2) the VPD Street Crimes Unit engaged in improper practices; (3) he was falsely accused of wiretapping PBA members; (4) he was the improper target of an internal affairs complaint; (5) the Chief of Police did not impose strict enough discipline against certain officers who conducted illegal body searches; (6) plaintiff was passed over for a promotion on two separate occasions; (7) he was the target of a draft complaint that certain members of the PBA wanted to file but never did; (8) certain officers violated an order given by plaintiff; and (9) the hiring of an outside attorney to look into plaintiff's complaints was improper.

II

When reviewing a motion to dismiss under Rule 12(b)(6), the court "accept[s] as true all allegations in plaintiff's complaint as well as all reasonable inferences that can be drawn from them, and [the court] construes them in a light most favorable to the non-movant." Tatis v. Allied Interstate, LLC, 882 F.3d 422, 426 (3d Cir. 2018) (quoting Sheridan v. NGK Metals Corp., 609 F.3d 239, 262 n. 27 (3d Cir. 2010)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Although a complaint need not contain detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a mere formulaic recitation of the elements of a cause of action will not do. Twombly, 550 U.S. at 555. Thus, the factual allegations must be sufficient to raise a plaintiff's right to relief above a speculative level, such that the court may "draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662 (2009) (internal citations and quotations omitted).

III

We first turn to plaintiff's claims that defendants violated his First Amendment rights under 42 U.S.C. § 1983, which provides, in relevant part:

Every person who . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

42 U.S.C. § 1983. Although its language is broad, Section 1983 "is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." Albright v. Oliver, 510 U.S. 266, 271 (1994) (internal citations and quotations omitted).

Defendants argue that this count of the complaint should be dismissed on a number of grounds. We focus on defendant's contention that the count is time-barred.¹

¹ Plaintiff contends that the statute of limitations is irrelevant because he seeks "damages for the retaliation he suffered in the [] years prior to the filing of this complaint" and that the "evidentiary record that supports [his] claims of retaliation go beyond the [] statute of limitations." He further states, without any citation or authority, that when determining whether he suffered retaliation, the "whole record needs to be reviewed" as the complaint "reveals ongoing antagonism from the time he first reported corruption up to the present." This argument is without merit.

The statute of limitations for a Section 1983 claim is “governed by the statute of limitations that applies to personal injury tort claims in the state in which such a claim arises.” Kach v. Hose, 589 F.3d 626, 639 (3d Cir. 2009). Under New Jersey law, personal injury actions are subject to a two-year limitations period. See N.J.S.A. § 2A:14-2(a). The Supreme Court has explained that if a complaint on its face shows that relief is time-barred, it should be dismissed for failure to state a claim. Jones v. Bock, 549 U.S. 199, 215 (2007).

Here, the complaint was initially filed on February 3, 2020.² It contains numerous specific allegations relating to the exercise of plaintiff’s right to speak and to the subsequent retaliation by defendants. The following events all clearly occurred before February 4, 2018 so that any claim relating to them is out of time:

- (1) in 2012, plaintiff reported that the executive board of the PBA was embezzling funds and in response defendants obstructed plaintiff’s investigation and subjected him to repeated harassment and ridicule;

² On March 17, 2020, pursuant to a Court Order, plaintiff filed a redacted version of the original complaint. See Doc. # 16.

- (2) in 2015, plaintiff reported that the Chief of Police had embezzled funds and in response he was demoted to a less desirable tour of duty in the Internal Affairs Unit ("IAU");
- (3) in December 2016, plaintiff undertook efforts to stop abuses and violations committed by the Street Crimes Unit of the VPD and in response, defendants falsely accused plaintiff of wiretapping PBA members and defendant Pacitto filed a "critical incident report" against plaintiff with the IAU;
- (4) in December 2016, plaintiff requested the Chief of Police to disband the Street Crimes Unit which the Chief of Police ignored as retaliation, but the Street Crimes Unit was later disbanded by the next Chief of Police;
- (5) on June 30, 2017, plaintiff filed a notification that he believed he was being retaliated against by defendants; and
- (6) at the end of 2017, plaintiff investigated an illegal body cavity search done by a fellow officer and in response, defendants intervened to lessen disciplinary actions against said officer and in December 2017, defendants promoted the

officer who had done the illegal body search to Captain over plaintiff.

Since these claims are all time-barred, we need not consider whether they would otherwise survive a motion to dismiss.

Defendants next argue that any remaining allegations of retaliation after February 3, 2018 against defendant PBA should be dismissed "for the reasons stated in PBA's motion to dismiss." As noted above, on September 2, 2020, this Court dismissed the PBA as a defendant in this matter because the PBA, as an union, is not a state actor, nor a "person" subject to suit under 42 U.S.C. § 1983. See Doc. # 33. Thus, the following allegations against the PBA for retaliation are no longer part of this action:

- (1) on November 28, 2018, the PBA "trumped false allegations in a draft complaint naming plaintiff" alleging he committed criminal acts, but never filed the draft complaint in court;
- (2) on May 22, 2019, the PBA filed a grievance against plaintiff alleging that he changed the schedule of an officer while the officer was on military leave; and
- (3) the PBA filed other retaliatory grievances against plaintiff as a result of his reporting of "corrupt actions" of defendants.

Plaintiff also alleges that he engaged in other protected speech after February 3, 2018 for which he was the subject of retaliation. The complaint describes this protected speech after February 3, 2018 as follows:

- (1) in August 2018, plaintiff filed a grievance through the Vineland Police Captain's Association requesting that his CEPA complaint from 2017 be investigated;
- (2) between November 2018 and September 2019, plaintiff reported to the Cumberland County Prosecutor's Office and the New Jersey Attorney General's Office that defendant City of Vineland had engaged in insurance fraud;
- (3) in May 2019, he filed another grievance with defendant City of Vineland claiming that the PBA grievance regarding military officer leave was another form of retaliation; and
- (4) in July 2019, plaintiff filed a separate grievance with several parties alleging that an investigation being conducted by a City-hired-attorney into actions of plaintiff was in violation of New Jersey law.

As a result of these grievances, plaintiff asserts that defendants retaliated by not promoting him to Deputy Police

Chief in February 2019 and by hiring an outside attorney to investigate him in May 2019.

Defendants argue that the two retaliatory allegations against the City of Vineland, Anthony Fanucci, and Gregory Pacitto after February 3, 2018 should be dismissed because: (1) the federal court is not the forum to adjudicate the merits of plaintiff's labor grievance; and (2) an internal investigation, in and of itself, does not qualify as adverse employment actions for First Amendment purposes. We agree.

As to the failure to promote plaintiff, the Supreme Court has stated that the First Amendment does not "constitutionalize the employee grievance." Connick v. Myers, 461 U.S. 138, 154 (1983). Indeed plaintiff concedes in his complaint that "on February 14, 2019, [he] filed a grievance regarding the denial of promotion with defendant [City of] Vineland's Personnel Director." Plaintiff has utilized the appropriate grievance process available to him to complain about and resolve this employment dispute. The federal court is not an appropriate vehicle to continue to litigate this issue under Section 1983.

Finally plaintiff alleges that the outside attorney investigation is an adverse employment action. Plaintiff is incorrect. "Investigations, separate from any negative consequences that may result from them, do not generally

constitute adverse employment actions.” Rosati v. Colello, 94 F. Supp. 3d 704, 714 (E.D. Pa. 2015). Significantly, plaintiff does not aver that he has suffered any form of adverse employment action as a result of the investigation.

Accordingly, we will dismiss the remaining two retaliatory allegations against defendants for plaintiff’s failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. As a result, we need not reach the remaining arguments of the defendants.

IV

Plaintiff also asserts state law claims under CEPA.

This New Jersey statute provides, in relevant part:

An employer shall not take any retaliatory action against an employee because the employee . . . discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believes . . . is in violation of a law . . .

N.J.S.A. § 34:19-3c.

This court declines to exercise its supplemental jurisdiction over these claims now that all of plaintiff’s asserted federal claims under Section 1983 are being dismissed. When a court has done so, it has the discretion to decline to exercise supplemental jurisdiction over any remaining state-law claims. See 28 U.S.C. § 1367(c)(3). Where, as here, the

federal claims are dismissed at an early stage of litigation, declination of supplemental jurisdiction is appropriate. See Kach v. Hose, 589 F.3d 626, 650 (3d Cir. 2009). Accordingly, the CEPA state-law claim will be dismissed without prejudice to plaintiff's right to pursue said claims in the state court.

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ADAM AUSTINO	:	CIVIL ACTION
	:	
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ORDER

AND NOW, this 14th day of September 2020, for the reasons set forth in the foregoing Memorandum, it is hereby ORDERED that:

(1) the motion of defendants City of Vineland, Anthony Fanucci, and Gregory Pacitto to dismiss plaintiff's complaint with prejudice (Doc. # 19) is GRANTED insofar as it alleges claims under 42 U.S.C. § 1983; and

(2) the claims of plaintiff under the New Jersey Conscientious Employee Protection Act, N.J.S.A. § 34:19-1, et seq., are DISMISSED without prejudice under 28 U.S.C. § 1367(c).

BY THE COURT:

/s/ Harvey Bartle III

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ADAM R. AUSTINO	:	CIVIL ACTION
167 William Feather Drive	:	
Voorhees, NJ 08043	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
CITY OF VINELAND	:	
640 East Wood Street	:	
Vineland, NJ 08360	:	
and	:	
	:	
ANTHONY FANUCCI	:	
Mayor, City of Vineland	:	
640 East Wood Street	:	
Vineland, NJ 08360	:	
	:	
and	:	
	:	
POLICEMAN'S BENEVOLENT	:	
ASSOCIATION, LOCAL 266	:	
614 East Landis Avenue	:	
Vineland, NJ 08360	:	
and	:	
	:	
GREGORY PACITTO	:	
Sergeant Vineland Police Dept.	:	
111 N. 6th Street	:	
Vineland, NJ 08360	:	
	:	
Defendants	:	

COMPLAINT

1. This is a civil action seeking equitable relief and money damages against Defendants for committing acts, under color of law, which deprived Plaintiff of rights secured under the First

and Fourteenth Amendments of Constitution and laws of the United States and the State of New Jersey; for conspiring for the purpose of impeding and hindering the due course of justice, with intent to harm Plaintiff; and for refusing or neglecting to prevent such deprivations and denials to Plaintiff. Plaintiff also maintains a claim for violation of the New Jersey Conscientious Employee Protection Act.

2. The Court has jurisdiction of this action under 42 U.S. C. § 1983, 1988 and 28 U.S.C. §§ 1331, 1343 and 1367. The Court has jurisdiction over Plaintiff's state law claims pursuant to the doctrine of supplemental jurisdiction.

3. This action properly lies in the District of New Jersey, Civil Division, pursuant to 28 USC §§ 1391(c), 29 USC 1132(e), because the Plaintiff and Defendants reside in New Jersey and Defendant Employer conducts business, has significant contacts in New Jersey and is subject to personal jurisdiction in New Jersey.

4. Plaintiff, Adam R. Austino , is a citizen and resident of Voorhees, New Jersey and the United States of America. At all times relevant, Plaintiff was employed as a Lieutenant or Captain by the VPD.

5. Defendant, City of Vineland, is a local government entity/municipality and is an agent of the State of New Jersey with offices located in Vineland, New Jersey.

6. Defendant, Anthony Fanucci, is the Mayor of Vineland and is employed by the City of Vineland.

7. Defendant, Policeman's Benevolent Association (PBA), Local 266, is the police union, organized under the laws of the State of New Jersey, that represents the police personnel employed by the City of Vineland.

8. Defendant, Gregory Pacitto, is employed by the VPD as a Sergeant, is the former President and current Vice-President of the PBA Local 266.

9. Plaintiff sues each and all Defendants in their individual capacities.

10. At all times material to this Complaint, Defendants, City of Vineland, Fanucci, PBA and Pacitto, acted under color of law and under the color of the statutes, customs, ordinances and usage of the State of New Jersey and City of Vineland.

11. At all times relevant, Defendants acted jointly and in concert with each other. Each individual Defendant had the duty and opportunity to protect the Plaintiff from the unlawful actions of the other Defendants but each Defendant failed and refused to perform such duty, thereby proximately causing Plaintiff's injuries.

12. In the past several years, on multiple occasions, Plaintiff has reported that Defendants have engaged in multiple corrupt actions, conspired with one another and, after Plaintiff exercised his First Amendment Rights to complain of corruption to multiple State authorities, including the Cumberland County Prosecutor's Office and New Jersey Attorney General's Office, Defendants retaliated against Plaintiff with regard to the terms and conditions of his employment, falsely accused Plaintiff of wrong doing, conducted sham investigations meant to harass and humiliate Plaintiff and to trump up false and implausible evidence against Plaintiff.

13. In 2012, Plaintiff reported that the executive board of the PBA was embezzling funds.

14. In response to Plaintiff's reports of criminal acts, the PBA Executive Board and Defendant Pacitto (then the V.P. of the PBA) obstructed Plaintiff's investigation and subjected him to repeated harassment and ridicule.

15. Plaintiff reported his findings to the Cumberland County Prosecutor's Office (CCPO) and a criminal prosecution was undertaken and the President, Steven Buglio, and Treasurer, William Newman, were arrested.

16. Defendants Fanucci and Pacitto, long time friends and political operatives, knew that Plaintiff made the aforesaid allegations to the CCPO.

17. In 2015, Plaintiff, and other members of the VPD, reported that, then Police Chief Timothy Codispoti, had siphoned police funds, opened separate bank accounts with the embezzled funds and used the funds to fund personal political activities.

18. Plaintiff and the other members reported these acts to City of Vineland Business Administrator, Robert Dickenson, and Director of Public Safety, Edwin Alicea and the CCPO. However, though there was clear evidence of criminal actions, the CCPO chose not to prosecute.

19. Plaintiff and other members of the VPD also reported this matter to the VPD Internal Affairs Unit who reported the allegations to Chief Codispoti.

20. At the time of the making these reports, Plaintiff requested to Vineland Management and the CCPO, verbally and in writing, that he be provided protection under New Jersey Conscientious Employee Protection Act ("CEPA"). Specifically, Plaintiff requested protection from retaliation from Chief Codispoti.

21. No CEPA protection was afforded to Plaintiff.

22. Subsequently, Chief Codispoti retaliated against Plaintiff, and the other employees who reported the criminal acts, by demoting him to a less desirable tour of duty in the Internal Affairs Unit.

23. As a Lieutenant in the Internal Affairs Unit ("IAU"), Plaintiff uncovered repeated

egregious violations of the law by the VPD Street Crimes Unit. (“SCU”).

24. The VPD officers assigned to the SCU repeatedly engaged in improper searches; tampered with evidence; tampered with informant payment records; falsified racial profiling data; misused City funds; and, filed false reports.

25. In June of 2016, Plaintiff was promoted to Captain of the VPD by then Mayor Ruben Bermudez. The Mayor is at the top of the chain of command of the VPD. This promotion was strenuously opposed by Chief Codispoti, which can only be described as an act of retaliation.

26. As Captain, Plaintiff’s duties included supervising the SCU. Plaintiff undertook efforts to stop the abuses and civil rights violations committed by the SCU.

27. Plaintiff requested to Chief Codispoti to disband the SCU. Chief Codispoti ignored this request.

28. In or around December of 2016, Chief Codispoti retired. Rudy Beu was appointed as the new Chief. Under Chief Beu, the number of officers assigned to the SCU was reduced in December of 2016 and eventually the SCU was disbanded.

29. In December of 2016, Defendants conspired against Plaintiff and other VPD personnel and falsely accused Plaintiff of engaging in criminal conduct - - namely wiretapping PBA members.

30. The false allegations were made in retaliation for Plaintiff having reported the wrongful conduct of the SCU and for recommending that the officers assigned to the SCU be reduced and that the SCU be disbanded.

31. The CCPO and VPD Internal Affairs Unit investigated the allegations and completely exonerated Plaintiff of any wrong doing.

32. In Fall of 2016, Defendant Fanucci ran for the public office of Mayor of Vineland and was elected.

33. Defendants Fanucci and Pacitto are known to be good friends.

34. After Fanucci became Mayor, he took action to create a new position with a rank of Sergeant. On June 1, 2017, Defendant Fanucci promoted Pacitto to this new position of Sergeant. At that time, Pacitto was also the President of the PBA. In January of 2020, Fanucci again took action to create a new position with the rank of Lieutenant. On February 3, 2020, Pacitto was promoted to this new position of Lieutenant.

35. Shortly after being promoted to Sergeant, on June 10, 2017, Defendant Pacitto conspired with former SCU members, Sgt Adam Shaw and Sgt. Christopher Landi, to trump up vague and false allegations that Plaintiff had engaged in some kind of misconduct. Defendant Pacitto trumped up "critical incident report" against Plaintiff and filed it with the IAU.

36. On June 30, 2017, after the IAU notified Plaintiff of Defendant Pacitto's critical incident report, Plaintiff filed a written notification, under NJ CEPA law, to the City of Vineland that he believed that he was being retaliated against. The written notice requested that the City Management, PBA and their associated police supervisors end the retaliation.

37. Defendant Pacitto's actions were in retaliation against Plaintiff because Plaintiff had previously investigated the SCU and reported multiple instances of wrong doing and civil rights violations.

38. The IAU investigated the allegations. Plaintiff was again exonerated from any wrong doing.

39. Despite the fact that Plaintiff was exonerated, Defendants continued to falsely allege

that Plaintiff and Lt. Matthew Finley were conducting illegal wiretaps. Defendants also took actions to extinguish any IAU investigations regarding illegal and/or wrongful acts that had been committed by the SCU.

40. This was another form of retaliation orchestrated by Defendants.

41. As of the filing of this Complaint, Defendant City of Vineland has not undertaken any action to address Plaintiff's complaints of retaliation under CEPA.

[REDACTED]

44. In December of 2017, Defendant Fanucci took action to create a new position of Captain of VPD. Defendant Pacitto used his influence to assist Lt. Casiano receive the promotion to the newly created position of Captain - - which was immediately after Casiano had

served a suspension for conducting the illegal body cavity search and lying to Plaintiff.

45. After this promotion, Defendants Pacitto and Fanucci conspired to create a new position "Deputy Chief" with the intention of promoting Captain Casiano to the new position.

46. Due to seniority rules, only the Plaintiff satisfied the requirement of holding the position of Captain for one year before a candidate would qualify to be promoted to the position of Deputy Chief. Since Captain Casiano had not been a Captain for the one year period, Defendant Fanucci abandoned the idea of creating the new position until Captain Casiano was eligible.

47. In late 2018, after Casiano became eligible, Defendant Fanucci reincarnated the position of Deputy Chief and promoted Captain Casiano to this position. Plaintiff and one other officer, who had substantially more experience than Casiano, were expressly passed over for this promotion.

48. Though a committee formed to evaluate and interview the applicants for the new deputy chief position recommended that Plaintiff be promoted, Defendant Fanucci ignored the recommendation and, on February 11, 2019, promoted Casiano to Deputy Chief.

49. The promotion of Casiano was a defacto demotion of Plaintiff. Plaintiff went from second in command to third in command. By not being promoted, Plaintiff has lost approximately \$11,000.00 in annual compensation.

50. On August 4, 2018, Plaintiff filed a grievance, through Vineland Police Captain's Association ("VPCA"), requesting that his CEPA complaint from 2017 be investigated and that the retaliation stop.

51. Director of Public Safety Alicea assured Plaintiff that his complaints would be

addressed but nothing further was ever done.

52. Between November of 2018 and September of 2019, on multiple occasions, Plaintiff reported to the CCPO and NJ Attorney General's Office that Defendant City of Vineland had engaged in insurance fraud with regard to fraudulent workers' compensation claims and submitted fraudulent documents to the state health benefits program to obtain reduced health insurance premiums.

53. On November 28, 2018, PBA trumped false allegations in a draft complaint naming Plaintiff, Chief Beu and Captain Finley as Defendants. (A copy of the draft complaint is attached hereto as Ex. "A")

54. A copy of the draft complaint was supplied by Vineland's Solicitor, Richard Tonetta, Esquire, and was intended to intimidate Chief Beu, Plaintiff and Capt. Finley.

55. Among other things, the draft complaint falsely alleged that Plaintiff had committed criminal acts. Plaintiff provided a copy of the draft complaint to the CCPO because it had falsely alleged that Plaintiff had committed criminal acts.

56. On November 30, 2018, Plaintiff sent a request to Solicitor Tonetta requesting clarification of who was filing the complaint and additional details. Tonetta refused to provide further information.

57. On February 14, 2019, Plaintiff filed a grievance regarding the denial of the promotion with Defendant Vineland's Personnel Director.

58. On May 22, 2019, the PBA filed a grievance, based on false allegations, that Plaintiff had changed the schedule of an officer while the officer was on military leave. At the time of the alleged schedule change, Plaintiff was away in Virginia undergoing FBI training. This was one


of several trumped-up retaliatory grievances that the PBA had filed against Plaintiff.

59. Plaintiff filed a grievance with Defendant City (and also informing Alicea and Dickenson) claiming that the PBA grievance was another form of retaliation and seeking relief under CEPA.

60. On May 28, 2019, Mr. Tonetta contacted Plaintiff and informed him that Todd Gelfand, Esquire, had been assigned to investigate the PBA draft complaint and also to investigate Plaintiff's multiple CEPA complaints of retaliation. Tonetta also informed Plaintiff that Mr. Gelfand was counsel for the insurance carrier and would be investigating Plaintiff's complaints and the allegations made by the PBA in the draft complaint.

61. On May 30, 2019, Plaintiff spoke with Mr. Gelfand and Mr. Gelfand informed Plaintiff that he was not investigating Plaintiff's multiple complaints and that he was not hired by the insurance carrier. Gelfand stated that he had been hired by the City of Vineland and only answered to Tonetta and Defendant Fanucci.

62. In June of 2019, emboldened by the actions of Defendant, Lt. Pagnini and Sgt. Armstrong, both friends and/or associates with Defendants Fanucci and Pacitto and officers assigned to the SCU, blatantly violated a direct order from Plaintiff, who is their superior officer. Plaintiff referred this matter to the New Jersey Attorney General's office and notified the IAU.



64. On July 17, 2019, Plaintiff filed a grievance with several parties, including Chief Beu, Director Dickenson and Director Alicea, alleging that the investigation being conducted by Mr. Gelfand was in violation of NJSA 40A:14-181. Plaintiff requested that City Council and

Civilian Review Board oversee his grievance.

65. On July 29, 2019, Directors Alicea and Dickenson denied Plaintiff's grievance regarding Gelfand's investigation.

66. Despite this fact, Defendant City and Fanucci have maintained the appointment of special investigator Gelfand to continue to conduct a sham investigation in violation of N.J.S.A. 40A:14-181.

67. The only reason Defendants City and Fanucci have initiated and sanctioned this investigation is to retaliate against Plaintiff for having previously engaged in protected activities.

68. Plaintiff maintains claims under 42 U.S.C. § 1983, CEPA, NJ Constitution and for malicious prosecution, abuse of process, gross negligence and negligence.

COUNT I - SECTION 1983 - FIRST AMENDMENT
PLAINTIFF V. ALL DEFENDANTS

69. Plaintiff hereby incorporates by reference paragraphs 1 through 68 of this Complaint as though same were fully set forth at length herein.

70. At all times relevant, Defendants retaliated against Plaintiff for exercising his First Amendment rights to freedom of speech with regard to issues that concern the public, including issues regarding unlawful practices, policies and customs of the City of Vineland and PBA.

71. As a direct and proximate result of the acts and omissions of Defendants herein described, the Plaintiff was caused to suffer loss of promotion, economic harm, other money damages, was caused mental emotional pain, anguish and suffering, and had been chilled in his exercise of his rights to freedom of speech and to petition for the redress of grievances under the First and Fourteenth Amendments to the United States Constitution, and, in addition, has suffered the loss of all the Constitutional rights described herein.

72. In the manner described herein, Defendants acted with reckless disregard of Plaintiff's Constitutional rights.

73. Defendants knew or should have known that their actions would or probably would inflict great economic distress and pain and suffering upon Plaintiff.

74. At all times relevant, Defendant, City of Vineland, has failed to train, discipline and/or supervise the actions of the Defendants Fanucci and Pacitto.

75. Defendants, City of Vineland and Fanucci, knew that Defendants Pacitto and PBA, had previously committed similar Constitutional violations, but failed to discipline said Defendants and failed to take any measures to prevent said Defendants from violating Plaintiff's Constitutional rights and from committing similar Constitutional violations in the future.

76. In the manner described herein, Defendants have deprived Plaintiff of his rights to freedom of speech and due process of the law. All of these rights are secured to Plaintiff by provisions of the First, and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983 and 1988.

77. In the manner described herein, Defendants acts are a pattern and practice to deprive Plaintiff of his U.S. Constitutional rights.

COUNT II - C.E.P.A.
PLAINTIFF v. ALL DEFENDANTS

78. Plaintiff incorporates by reference paragraphs 1 through 77 of this Complaint as though same were fully set forth at length herein.

79. By objecting to the fraudulent activity, criminal conduct and wrongful conduct of Defendants, Plaintiff was complaining in good faith about conduct and activity that he reasonably believed was a violation of law, rule or regulation promulgated pursuant to law, was fraudulent,

and was in violation of standards of law enforcement and thus was incompatible with a clear mandate of public policy concerning the public health, safety or welfare.

80. Plaintiff was denied a promotion on account of his report of the aforesaid activity by Defendants, as well as the retaliatory conduct engaged in by Defendants.

81. By the foregoing conduct, Defendant retaliated against Plaintiff for raising complaints and objections about activities, policies or practices that plaintiff reasonably believed constituted a violation of law, rule or regulation promulgated pursuant to law, were fraudulent, and were in violation of standards of academic honesty and thus were incompatible with a clear mandate of public policy concerning the public health, safety or welfare.

82. The failure to promote Plaintiff was wrongful and violated the New Jersey Conscientious Employee Protection Act, *N.J.S.A. 34:19-1 et seq.*, as a result of which, the Plaintiff sustained economic and non-economic damages.

83. The conduct of Defendants warrants an award of punitive damages as the willful participation of Defendants in the malicious failure to promote Plaintiff to the position of Deputy Chief justifies the imposition of punitive damages for the Defendant's reckless indifference to the rights of Plaintiff.

WHEREFORE, Plaintiff demands judgment against the Defendants and each of them, jointly and severally, as follows:

A) Awarding economic and compensatory damages under 42 U.S.C. ¶ 1983, et seq., and the New Jersey Conscientious Employee Protection Act. Awarding compensation for all common law tort remedies to which he is entitled, including lost wages, benefits and mental distress;

B) Appointing Plaintiff to the position of Deputy Chief retroactive to the following date:

February 1, 2019.

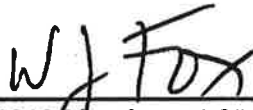
C) Awarding interest calculated at the prevailing rate;

D) Awarding reasonable attorney's fees, and other costs of the action pursuant to the

Section 1983 and C.E.P.A.;

E). Punitive damages; and,

F) Such other relief as this Court shall consider to be fair and equitable.



WILLIAM J. FOX, ESQUIRE
Attorney for Plaintiff, Adam Austino

Date: February 3, 2020