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 Superior Court of New Jersey
 NOV 30 2010
 CIVIL CASE MANAGEMENT
 UNION COUNTY

ANTHONY FOTI,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION – UNION COUNTY
	:	
Plaintiff,	:	
	:	DOCKET NUMBER UNCL- 4734-10
	:	
v.	:	CIVIL ACTION
	:	
COUNTY OF UNION,	:	
DEPARTMENT OF CORRECTIONS,	:	
	:	COMPLAINT, JURY DEMAND,
Defendant.	:	DESIGNATION OF TRIAL COUNSEL
	:	AND CERTIFICATION

Plaintiff, Anthony Foti, by and through his attorney, The Toscano Law Firm, LLC, with offices located at 80 Bloomfield Ave., Suite 101, Caldwell, New Jersey, by way of Complaint and Jury Demand against the defendant, state as follows:

THE PARTIES

1. The plaintiff, Anthony Foti, hereinafter referred to as “plaintiff”, currently resides at Spring Court, Tinton Falls, in the County of Monmouth, in the State of New Jersey. At all relevant times mentioned herein, he was a corrections officer employed by the County of Union. He was an excellent officer in his own right.
2. The defendant, County of Union, Department of Corrections, hereinafter referred to as “defendant”, is a county entity formed and operated pursuant to the laws of the State of New Jersey, and employed plaintiff within its Department of Corrections.

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RELEVANT FACTUAL AVERMENTS

3. At all times mentioned hereinafter, Anthony Foti was designated by Civil Service as a Corrections Officer.
4. Plaintiff was injured on the job during the calendar year 2008, when he was viciously attacked by an inmate. Plaintiff suffered injuries which included disc and right leg damage.
5. Thereafter, plaintiff was told by certain superior officers that the County was going to terminate and/or cease paying him because he did not opt to undergo a surgical procedure which the County mandated he undergo. However, past practice over the years could have easily resulted in the defendant offering the plaintiff a “modified duty” position, which position he could have and would have remained in until the day he retired..
6. Plaintiff was flabbergasted, as this untenable position he was placed in made no logical sense whatsoever.
7. As mentioned, the plaintiff’s disability would **not** have disallowed continued employment with the defendant if the defendant offered him “modified duty”, which was offered to other(s) in his like circumstance over the years. These persons, upon information and belief, were Michael Hoffert, Paul Cuva, John Cutrufello, Pat Mauko and Kevin McCleve. He was and continues to be entirely able to work in a “modified duty” capacity.
8. Further compounding the inappropriate/illegal treatment of the plaintiff, plaintiff was told at a separate date and time by a certain individual/employee “just get a doctor to say you don’t need an operation and then have him send you to therapy- we will then pay you”. Of course, the plaintiff wanted no part of this illegal and contradictory suggestion.
9. Facing a total cessation of his pay and termination, plaintiff had no alternative but to file for accidental disability, which was in fact granted to him on/about June 8, 2009. His forced retirement/wrongful discharge date was retroactive to January 1, 2009.

10. Plaintiff would have never retired on January 1, 2009 if the defendant did not discriminate against him because of his disability that he suffered on the job in 2008. It was clear all along that the defendant intended to get rid of the plaintiff because he was outspoken as a union representative for years, among other reasons. The disability suffered by the plaintiff was nefariously utilized by the defendant as an illegal and pretextual reason to separate the plaintiff from his employ.

11. The defendant intended all along to discriminate against the plaintiff because of his "disability". Further, the defendant purposely and with malice violated the plaintiff's civil rights, as well as his state statutory rights by engaging in the abhorrent and illegal fashion as laid out hereinbefore.

A. (NEW JERSEY LAW AGAINST DISCRIMINATION, NJSA 10:5-1, 10:5-4.1, ET SEQ)

12. During all periods relevant to this cause of action, the plaintiff was an employee of defendant County of Union, Department of Corrections within the meaning of N.J.S.A. 10:5-1, et seq.

13. Defendant County of Union, Department of Corrections was the employer as defined by N.J.S.A. 10:5-5.

14. These defendants willfully and/or grossly negligently failed to provide meaningful training regarding discrimination, retaliation and harassment of its employees. By and through the actions described herein, defendants have discriminated against plaintiff and created a harassing and hostile work environment for him because of his disability, in violation of the NJLAD.

15. As a direct and proximate result of defendants' actions, plaintiff has suffered and continues to suffer severe mental anguish, humiliation, pain, distress and reputational damages as well as loss of earnings and other employment benefits.

16. Defendant County of Union, Department of Corrections, negligently, recklessly and/or intentionally:

- a) failed to have in place a well-publicized and enforced anti-discrimination, anti-harassment and anti-retaliation policy;
- b) failed to properly train its employees regarding compliance with any anti-discrimination, anti-harassment and anti-retaliation policy promulgated by defendants;
- c) failed to properly supervise its employees to ensure compliance with any anti-discrimination, anti-harassment and anti-retaliation policy promulgated by defendants;
- d) failed to make an unequivocal commitment from the top of the organization that any anti-discrimination, anti-harassment and anti-retaliation policy is not just words but backed up by consistent practice; and
- e) failed to protect plaintiff and others similarly situated from discrimination, abusive harassment, and retaliation in the workplace.

17. Based on the foregoing, defendant negligently, recklessly and/or intentionally failed to take prompt, appropriate and/or reasonable remedies to prevent, stop and remedy the discrimination, harassment and retaliation aimed at plaintiff. By and through their agents, defendants fostered a discriminatory, harassing and retaliatory atmosphere and allowed actions which constitute harassment and retaliation in violation of the NJLAD.

B. (NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-2(C))

18. By virtue of the above, plaintiff has been deprived of his substantive due process and equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or his substantive due process and equal protection rights, privileges or immunities

secured by the Constitution or laws of this State of New Jersey, and his exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with, by threats, intimidation or coercion by the individual defendants herein, who at all times were acting under color of law.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs demand judgment as follows:

- (a) That this court accept jurisdiction over this matter;
- (b) For compensatory and punitive damages;
- (c) For all attorney fees associated with this matter, and
- (d) For such/any other relief that this Court deems equitable and just.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 4:35-1, the plaintiff, Anthony Foti, herein demand a trial by jury.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4 and Rule 4:5-1(c), Patrick P. Toscano, Jr., is hereby designated trial counsel for the plaintiff Anthony Foti.

CERTIFICATION PUSUANT TO RULE 4:5-1


I hereby certify that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding.

I also certify that at the present time no other action or arbitration with respect to the

matter in controversy is contemplated.

On the basis of the present knowledge, I am aware of no other party or parties who should be joined in this action.

Dated: November 18, 2010

By: 
Patrick P. Toscano, Jr.
Attorney for Plaintiff