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MICHAEL CAMPBELL, Plaintiff, v. **UNITED PARCEL SERVICE, INC., TIMOTHY MCKEEVER, JEAN GUILLEMETTE, and/or JEAN GUILLEMETT, KELLY GIVEN, and JILL HAYES, jointly, severally and/or in the alternative,** Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY Docket No.: ATL-L-1843-17 Civil Action **COMPLAINT AND JURY DEMAND**

Plaintiff, Michael Campbell, residing in Atlantic County, states by way of Complaint:

PRELIMINARY STATEMENT

1. This civil action alleges retaliatory harassment and constructive discharge under the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et. seq. ("CEPA").

2. CEPA, originally enacted in 1986, made it unlawful for employers to take adverse action against employees who disclose activities which they reasonably believe are illegal, or who provide information to a public body that is investigating possible violations of the law. It

also protects employees from retaliatory firing if they object or refuse to participate in any activity which they believe violates the law, is criminal or fraudulent, or is against clear public policy mandates. This "whistleblower" act has, for almost two decades, attempted to keep New Jersey's workplaces ethical and open, and given workers the freedom to come forward when they suspect wrongdoing.

3. The overriding policy of CEPA is to protect society at large.

4. As the bill's sponsor stated, CEPA's enactment is "important to all New Jersey workers who are concerned about working in a safe environment with honest employers." Linda Lamendola, *Safeguards Enacted for "Whistleblowers,"* The Star Ledger, Sept. 8, 1986.

5. When signing the whistleblower law, former New Jersey Governor Thomas Kean explained CEPA's purpose: It is most unfortunate--but, nonetheless, true--that conscientious employees have been subjected to firing, demotion or suspension for calling attention to illegal activity on the part of his or her employer. It is just as unfortunate that illegal activities have not been brought to light because of the deep-seated fear on the part of an employee that his or her livelihood will be taken away without recourse. . . . . Both CEPA and LAD effectuate important policies. Each seeks to overcome the victimization of employees and to protect those who are especially vulnerable in the workplace from the improper or unlawful exercise of authority by employers. *Office of the Governor, News Release at 1* (Sept. 8, 1986).

PARTIES AND KEY WITNESSES

6. Plaintiff, Michael Campbell (hereafter "Plaintiff") is a resident and citizen of the state of New Jersey. At all times relevant to this Complaint, Plaintiff was employed by the Defendant, United Parcel Service, Inc., in Pleasantville, New Jersey.

7. Plaintiff was an employee of United Parcel Service, Inc, within the meaning of N.J.S.A. 34:19-2(b).

8. The United Parcel Service, Inc., ("Defendant-UPS" or "UPS") is an American package delivery corporation that operates globally, including, but not limited to operations, offices and business within New Jersey.

9. UPS is a company which currently has approximately over 300,000 employees and annual sales of over $61,000,000,000.

10. At all times relevant to this Complaint, UPS was Plaintiff's employer within the meaning of N.J.S.A. 34:19-2(a).

11. At all times relevant, UPS owned and/or operated a warehouse Distribution Center located in Pleasantville, New Jersey.

12. Timothy McKeever ("Defendant-McKeever" or "McKeever") is a resident and employee of the State of New Jersey and was, at all times relevant to the Complaint, a supervisor within the meaning of N.J.S.A. 34:19-2 (d).

13. As a supervisor for UPS, McKeever was in an authoritative and/or supervisory role over Plaintiff assigned to the UPS Pleasantville Distribution Center, and at all times relevant, was an agent delegated with authority to act as an employer, and on behalf of UPS.

14. Kathleen (a/k/a) Kelly Weiner ("Weiner") is a resident of the State of New Jersey and was, at all times relevant to the complaint, the Safety Manager responsible for ensuring safety policies for UPS at the Pleasantville Distribution Center and a supervisor within the meaning of N.J.S.A. 34:19-2 (d).

15. As a Safety Manager for UPS, Weiner was in an authoritative and/or supervisory role over Plaintiff and at all times relevant, was an agent delegated with authority to act as an employer, and on behalf of UPS.

16. Jean Guillemette, and/or Jean Guillemett, also known as "Gil" ("Defendant-Gil" or "Gil") was, at all times relevant to the Complaint, an employee and senior manager for UPS.

17. At all times relevant to the Complaint, Gil was a supervisor within the meaning of N.J.S.A. 34:19-2 (d).

18. As a supervisor for UPS, Gil was in an authoritative and/or supervisory role over Plaintiff assigned to the UPS Pleasantville Distribution Center, and at all times relevant, was an agent delegated with authority to act as an employer, and on behalf of UPS.

19. Kelly Given ("Defendant-Given" or "Given") is a resident and employee of the State of New Jersey and was, at all times relevant to the Complaint, a supervisor within the meaning of N.J.S.A. 34:19-2 (d).

20. As a supervisor for UPS, Given was in an authoritative and/or supervisory role over Plaintiff assigned to the UPS Pleasantville Distribution Center, and at all times relevant, was an agent delegated with authority to act as an employer, and on behalf of UPS.

21. Jill Hayes ("Defendant-Hayes" or "Hayes") is a resident of the State of New Jersey and was, at all times relevant to the Complaint, the Operations Manager responsible for overall operations for UPS at the Pleasantville Distribution Center and a supervisor within the meaning of N.J.S.A. 34:19-2 (d).

22. As an Operations Manager for UPS, Hayes was in an authoritative and/or supervisory role over Plaintiff and at all times relevant, was an agent delegated with authority to act as an employer, and on behalf of UPS.

23. All of the aforementioned employees were working within the course and scope of their employment in relation to the terms, conditions, safety, and termination of employment of Plaintiff.

JURISDICTION

24. The conduct giving rise to the claims described in this Complaint occurred during the course of Defendants' transaction of business in New Jersey.

25. The conduct giving rise to the claims described in this Complaint occurred during the course of Defendants' contracting to provide services in New Jersey.

26. This Court has subject matter jurisdiction over Plaintiff's claims under N.J. Const., art. VI, §3, para. 2 et seq. and other applicable law.

27. This Court has personal jurisdiction over Defendants pursuant to N.J. Ct. R. 4:4-4 and other applicable law.

28. Venue is appropriate in this Court pursuant to N.J. Ct. R. 4:3-2, and other applicable law.

FACTS

Plaintiff Begins Work At UPS

29. The above paragraphs are repeated as if set forth at length herein.

30. Plaintiff sought part time work with the Pleasantville, NJ Branch Distribution warehouse for UPS to supplement his income. Plaintiff was and continues to be employed in a full time Operational Managerial employment position with another company; a job he had and continues to hold for nearly fifteen years.

31. On or about October 15, 2013 Plaintiff was hired to work for UPS as a seasonal "peak" laborer. He was hired to work for the busy Christmas season.

Description of Pleasantville UPS Warehouse

32. The interior of the Pleasantville UPS Distribution Center is approximately 60,000+ square feet.

33. The UPS Pleasantville Distribution Center employs approximately 200 employees on average throughout the year.

34. The interior contains an array of conveyor belts, sorters, and chutes that connect numerous unload positions to the trailer docks.

35. As a package enters the building, it is required to be processed quickly. This involves unloading from a trailer, placement on a conveyor belt or unload roller stand, scanning the barcode and applying a secondary label, sorted, placed on another conveyor belt where it progresses down a "chute/slide" onto a last conveyor belt where it is loaded into the proper

outbound package car (truck), according to the secondary label that was applied a few steps earlier.

36. Thus, when loading or unloading packages from a truck or trailer, workers must thereafter sort through the packages to scan organize and load to appropriate designated package cars for delivery to ultimate destinations.

37. Plaintiff continued to work in a temporary part-time laborer position for UPS until on or about February 15, 2014 when, Plaintiff, after having reached the requisite seniority level, was thereafter afforded permanent part-time laborer work with union protected rights.

38. In or about this time frame, Plaintiff was afforded certain collective negotiated rights as a member of the Teamsters union, Local 133.

Union vs. Management Tensions Due to Unsafe Working Conditions

39. Members of the Teamsters union who work at UPS are reminded daily of management's antagonistic relationship with them.

40. Indeed, the vast majority of the workforce at the Pleasantville Distribution Center consists of part-time workers making as little as $10 an hour working in warehouses and loading trailers, where temperatures in the summer can reach 100 degrees.

41. Workers can handle up to thousands of packages a day.

42. Workers who have been on the job for years--or even for a short time--often suffer pain from repetitive motion, sickness from breathing in dirty and dusty air, and stress inflicted by a management that operates and acts in a crisis mode to get the work done so their numbers are acceptable to their superiors.

43. Plaintiff's assignment on most days as a union laborer, was to the Sort deck where he voluntarily took the control station which was the physically and mentally most difficult of the six (6) unload doors and heaviest flow was on this deck. Plaintiff was responsible for the control of the conveyor belts on the sort deck, the sorting of packages after they were unloaded from tractor trailers and placed them onto various conveyor belts for further distribution.

44. The control station on the sort deck entailed making sure that workers were safe from both restricted egress and falling packages when the belts would jam up.

45. Due to the production flow and bottlenecks in the conveyor system, the problems with egress and falling packages were a regular occurrence.

Plaintiff is Promoted to Part Time Supervisor, Not Provided any Training; Thereafter Plaintiff Reports to His Immediate Supervisor Sexual Harassment but It is Ignored by Management

46. On or about July 6, 2016 Plaintiff was in or near a work area when he heard a male worker using sexually explicit language in reference to a female worker.

47. In particular, the male worker stated words to the effect of wanting to lube up a broom handle and shoving it up the female worker's' ass.

48. Plaintiff, while not having received any training nor training materials on sexual harassment in the workplace, knew this language was inappropriate.

49. Plaintiff immediately reported it to his immediate supervisor, Defendant-McKeever.

50. McKeever stated he would look into it.

51. Based on information and belief, McKeever did not properly handle the report by Plaintiff of sexual harassment.

52. Plaintiff told the female worker that he had reported it to McKeever asked the woman if she wanted him to do anything further, to which she responded "No."

53. Plaintiff reported to his supervisor what he reasonably perceived to be sexual harassment in the workplace in accordance with N.J.S.A. 10:5-12.

Profit for High Level Executives Drives Unsafe, Fast-Paced Heavy Workload for Poorly Paid Low Level Workers

54. Plaintiff learned that low-level managers and supervisors harassed workers trying to force them to work faster, operating in crisis mode to get the work done so that their numbers were acceptable to their superiors.

55. Indeed, according to the Wall Street Journal, top executives got a second pay raise and special stock awards in 2016. At $13.7 million in 2016, UPS CEO David Abney's total compensation was 21 percent higher than the year before.

56. As the Journal reported, "UPS says the higher salary and one-time grants were designed to keep the company's pay competitive with peers, and to tie more of the compensation to future performance." UPS spokesperson Steve Gaut underlined this last point: "The only way the pay is delivered is if the company performs to the target expectations."

57. But for UPS workers, this means more work in the same amount of time, and cost-cutting on workers' needs, like additional staffing, building cleanliness and well-maintained vehicles and equipment--all so that top management can hit their numbers and get those million-dollar bonuses.

58. Plaintiff observed that the workers suffered with more work, more stress, less sleep, and more injuries on the job.

59. Interestingly, on June 14, 2017, it should come as no surprise, the undue stress of the job caused a 38-year-old United Parcel Service driver, Jimmy Lam, to shoot and kill three co-workers, wound two others and then kill himself at the UPS hub in San Francisco in the Potrero Hill neighborhood.

60. Upon information and belief, the work conditions at the San Francisco UPS hub are similar to those at the Pleasantville Center.

The High Volume Conveyor Belts (Picture the famous I Love Lucy Chocolate Factory Scene) Produces Not-So Funny Dangerous Blockage to Means of Egress; Workers Would Be Trapped Inside Without a Means of Egress in Case of Fire or Other Emergency

61. In fact, what Plaintiff observed and reported frequently to his superiors, was that the production rates/process flow of packages that needed to be sorted and loaded, was far too high for the workers to safely process, and packages were falling off or taken off the conveyor belts, during production, and placed in areas which blocked off exit routes.

62. The below are some photographs taken by Plaintiff inside the Pleasantville Distribution Center evidencing the blocked exit routes and extremely unsafe work conditions.

63. Indeed, upon information and belief, on or about September 23, 2013, UPS was cited by the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") for safety hazards found at the company's processing and distribution center at 493 County Road in Secaucus. OSHA's investigation was initiated in response to a complaint and resulted in $45,500 in proposed penalties.

64. UPS Inc. was cited for repeat, serious safety hazards at Secaucus, NJ, processing and distribution center involving blocking of exit routes for failing to ensure unobstructed exit routes.

65. OSHA warned UPS that "Jeopardizing workers' safety will not be tolerated by OSHA. UPS is responsible, like all employers, for providing a safe and healthful workplace for employees."

66. Upon information and belief, these safety violations for blocking means of egress have persisted in New Jersey UPS processing and distribution centers since 2009, including at the Pleasantville distribution center

Plaintiff Observes Worker Get Injured When Tripping on Boxes That Were Blocking an Aisle/Blocked Egress and Reports Unsafe Conditions

67. On or about August 20, 2016 a union worker, Cliff Farrell, tripped on the boxes that were blocking the aisle. In the process, he caught his hand on the edge of a metal shelf in the back of a delivery truck, and dislocated his thumb.

68. Plaintiff instructed Mr. Farrell to cease his work, and reported the injury to his supervisor, Defendant-McKeever.

69. No injury report was filed for this incident.

Plaintiff Reports OSHA Violations (including but not limited to 29 C.F.R. 1910 et seq.)

70. Following his witnessing of this incident, in or about August 2016, Plaintiff began reported the egress problems that he did reasonably believe violated OSHA regulations, to his supervisors, including reports to McKeever and Weiner.

71. Plaintiff's reports to Defendants placed Defendants on notice of various OSHA violations which may be found and confirmed at 29 C.F.R. 1910.

72. Plaintiff reported the safety hazard spurring from the egress problems. In particular, the aisle between the belt and the trucks, which is about two feet wide, recurrently

became cluttered with boxes on the ground, giving workers no way to exit the area. He reported also that this safety hazard violated OSHA regulations.

73. In response to his report, the Plaintiff was told that the problem was caused by the men not loading their boxes into the trucks fast enough, and the management took no steps to remedy the unsafe conditions.

74. Over the months that followed this initial report, Plaintiff did frequently and recurrently report these violations, and management never took action.

Plaintiff is Injured on the Job and Defendants Instruct Him To Falsify His Medical Reports To Avoid A Workers Compensation Issue

75. On or about October 11, 2016, during Plaintiff's shift, he was injured when he was attempting to shuffle past the boxes blocking the aisle between where he was and the loader, after finding a missed package.

76. There were boxes and a rack blocking the aisle between him and the loader, which forced the Plaintiff to step off of the high concrete platform and down to the ground level to attempt to walk the package around the truck and down the driveway between belts.

77. While attempting to find his way through, while carrying an approximately two foot wide box, Plaintiff's right thumb caught the side of a package truck and bent back severely.

78. After the injury, Plaintiff immediately reported the incident to Defendant-Given, and asked for an ice pack. There were no ice packs available, so Plaintiff took a frozen water bottle from the freezer, and held it against his hand.

79. A few minutes later, another supervisor, Vic Triboletti, saw Plaintiff, and gave him an ice pack from his car. Plaintiff then taped the ice pack to his hand, and attempted to

continue to work, but soon found that he couldn't continue working, and was not able to do paperwork because the injured thumb was on his writing hand.

80. Plaintiff then reported back to Defendant-Given in the office and told him he was not able to physically work or do paperwork and asked "what do you want me to do, I'm pretty much useless right now?" to which Given curtly told him to "go supervise."

81. Defendant-Given gave no instructions to Plaintiff about medical attention at any point after reporting the injury and talking to him twice within one-half of hour in the middle of a shift on a Tuesday, and did not file an injury report.

82. After conversations with fellow employees who encouraged Plaintiff to get X-rays, Plaintiff left to go to urgent care. During these conversations, Plaintiff was, on the one hand, encouraged to get the X-rays by his fellow employees, but, on the other hand, was cautioned that the company would fight him if he filed for workers compensation.

83. Although the X-rays did not reveal a broken bone, Plaintiff was informed that he may have a tear or sprain, and the doctor instructed Plaintiff not to return to work for two days, and to follow up with him after.

84. The nurse at urgent care notified Plaintiff that because the injury occurred on the job, that he was required to report it as a workers compensation claim. Although Plaintiff was concerned about doing so, given the rumors of Defendants' disdain for such claims, Plaintiff did abide by the nurse's instructions and reported his claim as an on-the-job injury.

85. The next morning, on October 12, 2016, Plaintiff went to the office to notify the on-duty supervisor, Defendant-Given, about the workers compensation claim, and that he had to go back to the doctor for a follow up visit.

86. Defendant-Given responded to Plaintiff's notification by telling him that Plaintiff was not supposed to go see a doctor without telling him first, and that now that Plaintiff has to tell urgent care what he wants to do, and that he is a "consumer" and should tell the doctors what he wanted regardless of what the nurse told him.

87. Defendant-Given claimed that he wasn't aware that the injury occurred at work, and that Plaintiff was supposed to tell him he was supposed to notify him that the injury occurred at work, and, if he had, that Given would have told him what doctor to go see.

88. Defendant-Given told Plaintiff that if he can work "we'll be good," and that he should have gone to see a company doctor.

89. Given told Plaintiff that Given's boss called him about Plaintiff going to urgent care, and Given told Plaintiff that he told his boss that he didn't know he got hurt at work. Given alleged that he didn't know how Plaintiff injured his thumb.

90. Defendant-Given repeatedly said that "injuries and accidents at UPS are paramount" and that because Plaintiff went to urgent care, it is out of his control.

91. Defendant-Given confirmed that he wanted Plaintiff to drop the medical end of it and see what happens. Given said he did not have to go back to the doctor, and asked him not to go back to urgent care.

92. Given told Plaintiff that "people get fired over" reporting injuries and accidents, but that if Plaintiff needed a day or two off, it would be okay.

93. Shortly after this conversation, Defendant-Given coordinated a conference call with Defendant-Hayes, who agreed with Given that Plaintiff should go back to urgent care and falsify the injury report, so that it would no longer be a workers compensation matter.

94. After being instructed to falsify the report, Plaintiff began asking others if they had similar experiences with on-the-job injuries at UPS, and several employees confirmed similar experiences.

Plaintiff Objects To and Refuses To Falsify the Medical Reports

95. On October 21, 2016, Plaintiff informed Defendant-Givens that he would not falsify the urgent care records because it is illegal and immoral to do so.

Plaintiff Engages in Multiple Protected Activities Within An Atmosphere of Intimidation, Antagonism, and Aggression, Which Made the Working Conditions So Intolerable that No Reasonable Person Could Have Endured Them, Ultimately Resulting in Plaintiff's Constructive Discharge from Employment. See Donelson v. DuPont Chambers Works, 206 N.J. 243, 257 (2011) & Dewelt v. Measurement Specialties, Inc., Civil Action No. 02-cv-3431 (D.N.J. Feb. 15, 2007)

96. Shortly after refusing to falsify records, on October 23, 2016, Plaintiff had an anxiety attack, spurring from the stress associated with these incidents, his employer's requests for him to break the law, and allusions by Defendant-Given that he could lose his job over this..

97. On or about October 24, 2016, Plaintiff again reported egress violations to Weiner, which he reasonably believed violated OSHA regulations (including but not limited to 29 C.F.R. 1910 et seq.).

98. Immediately after these reports, also on October 24, 2016, Plaintiff's supervisors began threatening and intimidating him saying he "was not the guy for the job." They began blaming him for his own injury, criticizing him, and retaliating against him for his reports.

99. Following these events, also on October 24, 2016, Plaintiff returned for his follow up visit to the doctor, who was concerned about Plaintiff's stress levels, and prescribed him anti-anxiety medication, and instructed him not to work until the following week.

100. On or about October 28, 2016, Plaintiff returned to work and Hayes began denying any knowledge of Plaintiff's work-related injury, and other supervisory employees began ignoring and avoiding Plaintiff.

101. During this conversation with Hayes, Plaintiff requested the OSHA injury log and incident report (pursuant to 29 C.F.R. 1904 et seq., and other applicable law), and was told not to be a policeman and to just worry about his job. He was also asked what he was trying to prove.

102. The next business day, Monday, October 31, 2016, another employee cautioned Plaintiff to "watch his back man" and that everyone was talking about him.

103. That same day, two supervisors, McKeever and Hayes, pulled Plaintiff aside, handed him a box, and asked him to re-enact the circumstances that gave rise to his injury. They then made him take IGATE testing. This was in an apparent attempt to "set up" Plaintiff by catching him in some regulatory violation.

104. Also on October 31, 2016, Plaintiff reiterated his request to Hayes for the OSHA injury log and incident report, who first denied all knowledge of such a log, and refused him access.

105. Shortly thereafter, also on October 31, 2016, Hayes called Plaintiff requesting information about the injury to his hand, in an apparent effort to document the injury ex post facto.

106. On November 1, 2016, someone on site began an apparent effort to sabotage Plaintiff's work. Bill Fishman approached Plaintiff at the end of a workday stating that one of the drivers found two packages in his truck at the end of work, even though Plaintiff had already confirmed the truck was empty.

107. Plaintiff immediately suspected that someone had placed these packages in the truck, and inquired of others who told him of rumors of management doing this, and that management would not only do this but also place packages under the belt to sabotage workers, in an effort to get rid of them.

108. Others have reported similar behavior by UPS management, when trying to get rid of UPS employees. In one Florida District Court Case, it was reported that:

> How the presheet audit, how the fabrication went. I go into your truck, I pick out five, six areas. Again, this time the package, one of the small packages, ABC, make sure it has a sequence number on it. I would hide it in my drawer. When the driver came back that night, I would say look Juan or whatever, you have a presheet audit, here are the numbers I'm looking for, I'll be back in minute ... go back in the truck, take the package and throw it back in again ... He's definitely going to come up one short because it was not in the truck, so when that happened, it became an integrity problem. *Thigpen v. United Parcel Servs., Inc.*, 990 So. 2d 639, 643 (Fla. Dist. Ct. App. 2008).

109. On November 2, 2016, Hayes approached the Plaintiff and asked him if he would be willing to switch to the night shift, and also invited him to join the safety committee.

110. Then, Hayes talked to Plaintiff about the injury log, provided Plaintiff a vague print out stated that there were only approximately nine reported injuries in the past thirteen years. A miniscule number given the number of workers on site and injuries Plaintiff had personally witnessed.

111. On or about November 18, 2016, McKeever, for the first time, acknowledged that there were insufficient workers on Plaintiff's belt, and, with regional management coming, he needed more workers, and talked about providing a solution.

112. Through November and December, more people were allowed on the belt and it appeared the egress problems were clearing up.

113. Through this time period, however, Plaintiff was fearful of management, that they were playing the long game, and just waiting to find an excuse to terminate him.

114. In January, again, someone appeared to have sabotaged Plaintiff by placing boxes in a truck after he had checked the truck, making it seem that he was incompetent and unable to perform his duties.

115. Defendant-McKeever had told Plaintiff, prior to attending a training seminar, that "When you're at training, don't talk too much and don't ask questions. Please," insinuating that he didn't want Plaintiff to discuss the recurring regulatory violations during training.

116. After the training, Plaintiff again recognized that he was understaffed, and over the next few months, from January through March, the egress problems started again.

117. Plaintiff was afraid to speak, for fear he would be terminated, yet he consistently asked for more workers and was denied, when reporting the egress problems and safety violations.

118. To rectify the egress problems, Plaintiff did on a couple of occassions place another man on his belt, to prevent the cluttering of boxes.

119. On or about March 7, 2017, Plaintiff did add a man to his belt, only to be chastised by Defendant-McKeever the next day when the quotas were low.

120. McKeever called Plaintiff out in front of everyone, humiliated him, and told him not to do it again.

121. The egress and safety problems persisted through March 20, 2017, when Defendant-Gil, upon the third day of massive egress issues, threatened to "kill" Plaintiff, that is, "to kill this mother fucker."

122. Shortly thereafter Defendant-Gil walked back over to another worker, who he was cursing at moments before.

123. The other worker said "you know if you want to help me..." but the worker was abruptly cut off by Gil who said to Plaintiff "I'll help you, I'll shove my Cock right up your Ass."

124. Defendant-Gil then threatened to fire Plaintiff, who was attempting to clear the egress problems and safety violations that were simultaneously occurring, as Defendants continued to intimidate and harass him.

125. Defendant-Gil and Defendant-Hayes proceeded to "trash talk" the Plaintiff in front of his crew, while standing at the head of his belt and staring him down.

126. The environment of intimidation and agitation continued until it became insurmountable, as Plaintiff and his crew attempted to work through the unsafe conditions while his supervisors taunted and intimidated him.

127. Plaintiff called out to the safety manager begging her to understand the egress issues and safety hazards he was dealing with.

128. The safety manager nodded, but took no further action.

129. Following these events, still on March 20, 2017, Plaintiff completed his shift and attempted to find Defendant-Hayes and Defendant-Gil to discuss the egress and safety issues, as well as what had transpired that day.

130. Plaintiff found Gil first, who responded with "you can fucking talk to whoever you want, I got nothing to say. Go ahead!"

131. The next day, on March 21, 2017, Plaintiff returned to work with a letter of resignation prepared.

132. The intolerable conditions at work, which forced him to attempt to protect his crew from safety violations and egress problems, while simultaneously endure a barrage of threats, profanity, and humiliation, were persistently severe and pervasive.

133. After approaching Defendant-Gil for an apology for demeaning him the day before, Gil refused and reacted with similar crudeness.

134. Learning then that Plaintiff was again understaffed for the day, and would inevitably face continuing egress and safety issues, Plaintiff was forced to resign his position.

135. In his letter of resignation, Plaintiff wrote that,

> The working conditions created by my superiors have become unbearable to the point I am unable to execute all of my duties and I also fear for my safety, as well as the safety of the workers under my supervision.

136. Throughout these months following his initial injury, Plaintiff recurrently reported OSHA violations, including, but not limited to violations of 29 C.F.R. 1904 et seq and 29 C.F.R. 1910 et seq.

137. His reports were ignored, brushed aside, and covered up by management while they entered into a concerted campaign to make his working conditions so intolerable that he would be forced to leave his employment.

138. Ultimately, Defendants' outrageous, coercive, and unconscionable conduct that was deliberately and knowingly aimed at concealing recurring OSHA violations succeeded in compelling Plaintiff's resignation, despite Plaintiff's good faith efforts to maintain employed.

COUNT ONE

(Against All Defendants)

Conscientious Employee Protection Act In Violation of N.J.S.A. 34:19-1 et. seq.

139. All of the foregoing and subsequent paragraphs are incorporated herein by this reference as if stated here in their entirety.

140. Plaintiff engaged in multiple protected activities including, but not limited to, objecting to and refusing to falsify medical and insurance documents, and recurrently objecting to and disclosing violations of OSHA regulations and associated laws and policies.

141. The various statutes that have been implicated by the reporting of wrongdoing by Plaintiff include but are not necessarily limited to the New Jersey State Statutes § 2C:21-4.6. Crime of insurance fraud; § 17:33A-4. Fraud Prevention Act; § 2C:21-4.2; Health Care Claims Fraud; § 34:15-39.1. NJ Workers Compensation Law; New Jersey Law Against Discrimination, § 10:5-1 et seq.; see also, the Federal OSHA laws governing the workplace for Free and Unobstructed Egress at all times/Exit/Egress/Fire Routes Must be Unobstructed and Separated by Fire Resistant Materials, 29 C.F.R. 1904 et seq, 29 C.F.R. 1910 et seq. and 29 C.F.R. 1926.34.

142. Plaintiff had a reasonable belief that Defendants' activities violated regulations, laws, and policies.

143. The disclosing of and objecting to these violations did cause, both factually, and proximately, the constructive discharge of Plaintiff.

144. As a direct and proximate result of Defendants' actions, Plaintiff's rights under the Conscientious Employee Protection Act have been violated, and Plaintiff has suffered damages, and losses, including, but not limited to, monetary losses, income, and benefits.

145. Therefore, Plaintiff sets forth a prima facie case of retaliation under CEPA.

146. Defendants do not have a good faith, legitimate business reason for their retaliation and forcing the constructive discharge of Plaintiff, and if they proffer one, it is manufactured and put forth to disguise the real reason, i.e., retaliation.

147. New Jersey's Conscientious Employee Protection Act (CEPA) "has been described as the most far reaching 'whistleblowing statute' in the nation." *Hernandez v. Montville Twp. Bd. of Educ.*, 354 N.J. Super. 467, 473 (App. Div. 2002) (citing *Melhman v. Mobile Oil Corp.*, 153 N.J. 163, 179 (1998). It was "designed to provide broad protections against employer retaliation for employees acting within the public interest," and is to be "construed liberally to effectuate its important social goal." *Hernandez* at 473 (citing *Abbamont v. Piscataway Twp. Bd. of Educ.*, 138 N.J. 405, 418 (1994)).

148. CEPA was enacted in 1986 to protect from retaliatory action employees who "blow the whistle" on employers engaged in illegal or harmful activity. *Young v. Schering Corp.*, 141 N.J. 16, 23 (1995).

149. CEPA provides, in pertinent part: "An employer shall not take any retaliatory action against an employee because the employee does any of the following: a. ***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: (1) ***is in violation of a law, or a rule or regulation promulgated pursuant to law***, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or (2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity." *N.J.S.A.* 34:19-3(a) (emphasis added).

150. CEPA also provides, in pertinent part: "An employer shall not take any retaliatory action against an employee because the employee does any of the following: ...c. ***Objects to, or refuses to participate in any activity, policy or practice*** which the employee reasonably believes: (1) ***is in violation of a law, or a rule or regulation promulgated pursuant to law***, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care; (2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity; or (3) is

incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment." *N.J.S.A.* 34:19-3(c) (emphasis added).

151. Here, Plaintiff both disclosed and objected to Defendants' policies, practices, and activities that he reasonably believed were in violation of law, regulations, and policy; he was forced to resign and constructively discharged because of it.

PRAYER FOR RELIEF

These premises considered, Plaintiff requests this court enter judgment in his favor on all counts and specifically:

1. Award Plaintiff compensatory damages for all monetary and financial losses, including (but not limited to): past and future loss of income and benefits of employment, lost career and business opportunities and advancement, consequential losses as a result of the hardships caused by Defendants' actions, and other past and future pecuniary losses in an amount to be determined by an enlightened jury;

2. Award Plaintiff compensatory damages for non-pecuniary injuries including (but not limited to): emotional stress, anxiety, shame, embarrassment, humiliation, powerlessness, and indignity, in an amount to be determined by an enlightened jury;

3. Award Plaintiff exemplary and punitive damages in an amount to be determined by an enlightened jury;

4. Award Plaintiff reasonable attorneys' fees and costs of this action, including expert fees, and other fees and costs permitted by law;

5. Award Plaintiff other monetary damages to which he may be entitled to under law;

6. Award Plaintiff appropriate pre-judgment and post-judgment interest; and

7. Award Plaintiff such other relief, including equitable relief and costs, as may be appropriate, fair, and just.

DESIGNATION OF TRIAL COUNSEL

Michelle J. Douglass, Esq., is hereby designated as trial counsel in the above-captioned matter.

CERTIFICATION OF NO OTHER ACTIONS PURSUANT TO RULE 4:5-2

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)

I certify the 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 R. 1:38-7(b).

NOTICE OF LITIGATION HOLD

The parties are hereby required to preserve all physical and electronic information that may be relevant to the issues to be raised, including but not limited 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, close 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, LinkedIn, 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.

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

The obligation to preserve evidence begins when a party knows or should have known that the evidence is relevant to future or current litigation. You are on notice of litigation and therefore have an obligation to suspend your routine document retention/destruction policy and

put in place a 'litigation hold' to ensure preservation of relevant documents." Failure to do so has been found to be 'grossly negligent' and may subject you to punishment.

JURY DEMAND

The Plaintiff hereby demands a trial by jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

MY RIGHTS LAWYERS

Attorneys for Plaintiff

Dated: August 17, 2017

By _____

MICHELLE J. DOUGLASS, ESQ