

My Rights Lawyers, L.L.C.

The Douglass Employment Law Group
Michelle J. Douglass, Esq.
Attorney Id. No. 025091988
424 Bethel Road
Somers Point, New Jersey 08224
Phone 609 788-3595; Facsimile 609 788-3599
Email: mjd@myrightslawyers.com
Attorneys for Plaintiff, William Lutz

WILLIAM LUTZ Plaintiffs, vs. THE CITY OF VINELAND, ANTHONY FANUCCI, ROBERT PINIZZOTTO. Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CUMBERLAND COUNTY Docket No. CUM-L-224-14 Civil Action THIRD AMENDED COMPLAINT & JURY DEMAND
--	--

PRELIMINARY STATEMENT

A dedicated public servant for over twenty years, Plaintiff William Lutz is the former Business Administrator for the City of Vineland. On June 12, 2014, Plaintiff was fired from his position in retaliation for certain whistleblowing activity, trying to expose irregularities and potential fraud concerning the use of public monies by elected and other city government officials.

In September 2013 Plaintiff was appointed Vineland Business Administrator by then newly-elected Mayor Rueben Bermudez. Both Mayor Bermudez and Plaintiff inherited many unresolved problems from the prior administration, including the inactive investigation into

alleged fraud and misuse of Vineland UEZ¹ monies and the Landis Theater Project. The Landis Theater Project, also known as the part of the Four Corners Project, was a 2007-08 plan to redevelop the adjacent properties located at the intersection of Landis Avenue and East Avenue in Vineland. The project used both private and public funding and involved many current and former members of City government including Council President Anthony Fanucci, who served on the Landis Theater Board of Directors and City Solicitor Rick Tonetta, who drafted the contract between the City and Developer Hans Lampert.

An investigation had been initiated in 2012 but then was effectively abandoned by the former administration, who neglected to pay the outstanding invoices owed to Holman Frenia Allison, P.C., the forensic accounting firm retained to conduct the investigation after developer Hans Lampert threatened an injunction against the City.

In the Fall of 2013, Mayor Bermudez tasked Plaintiff with ensuring the outstanding bill was paid to Holman Frenia. Once Plaintiff arranged for the bill to be paid, Holman Frenia released its initial report, which raised serious questions about potential financial mismanagement and impropriety. Most importantly, the report suggested possible wrongdoing on the part of City officials.

¹ According to the State website, “New Jersey's Urban Enterprise (UEZ) Program, enacted in 1983, is in the Department of Community Affairs. The UEZ Program exists to foster an economic climate that revitalizes designated urban communities and stimulates their growth by encouraging businesses to develop and create private sector jobs through public and private investment.” See <http://www.nj.gov/dca/affiliates/uez/>.

With the Mayor's approval, Plaintiff re-initiated the investigation of the Landis Theater Project, unwittingly sparking a maelstrom of controversy and ire. (Indeed, a special unit of the New Jersey State Police and the FBI are now looking into criminal implications.)

In retaliation for voicing concerns over potential misconduct of City officials, Plaintiff found himself the victim of a smear campaign orchestrated by Tonetta to distract from the investigation into alleged fraud and misuse of Vineland UEZ monies and the Landis Theater Project. Tonetta was openly critical of the investigation and Plaintiff's involvement in same, and even tried to have Plaintiff—the Business Administrator!—excluded from participating.

Not only was Tonetta critical of the investigation, he sought to sabotage it. And, to a large extent, he was successful. Holman Frenia withdrew their services, explaining, “The primary reason for our withdrawal is, *inter alia*, the integrity and independence of the Investigation has been compromised and is beyond repair.” (**February 11, 2014 Letter from Ambrosio & Tomczak to Mayor and Council**) The letter places much of the blame on Tonetta.

In addition, we are withdrawing from the Investigation because the independence and integrity of the Investigation has been compromised primarily by the actions of Mr. Tonetta and his communications with Council President Anthony Fanucci. Indeed, although Mr. Tonetta has recused himself from this matter entirely, Mr. Tonetta, despite his recusal, on at least one occasion, has provided his opinions regarding the formation of the Committee, the manner in which the Investigation should be conducted, and whether or not the Investigation should be conducted at all. Those opinions were provided to the Council, including Council President Fanucci, who is also recused from the Investigation. Most recently, Mr. Tonetta has attempted to direct the conduct of the Investigation by requesting that a City employee also be recused from any involvement whatsoever in the Investigation. These actions have caused us to conclude that the Investigation cannot be conducted independently and, as such, has compromised its integrity beyond repair.

After receiving the report, *City Council voted to postpone the investigation*, all the while taking *no action* to address Tonetta's apparent meddling. Why? Tonetta is a powerful, lifetime Vineland politico, but his ability to influence (bully?) other City officials to bend to his will threatens to undermine the very legitimacy and credibility of City government.

While "postponing" the Landis Theater Investigation, Council chose instead to investigate Plaintiff! Twice. First for bizarre, convoluted allegations that he told a City Council member that he was a witness to a bribe (Plaintiff neither witnessed a bribe nor told anyone he had); and next, into his "performance and conduct" as Business Administrator.

Both of these investigations were fishing expeditions intended to harass and intimidate Plaintiff; the second, initiated after the filing of Plaintiff's initial Complaint, in violation of the

New Jersey Conscientious Employee Protection Act, which prohibits employers from retaliating against employees who have brought suit against them. N.J.S.A. 34:19-3.

City Council went so far as to issue Plaintiff a subpoena, signed by formerly named defendant Anthony Fanucci, in an attempt to force Plaintiff to answer questions about this litigation by circumventing the civil discovery process. When Plaintiff refused to participate, without the benefit of counsel, in the illegal and retaliatory investigation, he was fired for “contempt.”

The City of Vineland has been operating as a fiefdom, its power unchecked, for far too long. Plaintiff sought to challenge the status quo by calling attention to a very real matter of potential government corruption. As a consequence, he was fired and his name run through the mud in the press. Who else will fall in an effort to have the Landis Theater Project properly investigated? The public is entitled to have these questions answered.

THE PARTIES & OTHER INVOLVED INDIVIDUALS

1. Plaintiff, William Lutz is the former Business Administrator for the City of Vineland. He was illegally terminated from employment on June 12, 2014.
2. Plaintiff, Luis Corchado is a pastor and tax-paying citizen of the City of Vineland.

3. Defendant, the City of Vineland, is a city in Cumberland County, New Jersey operating under the New Jersey Civil Service Commission statutes and regulations. The Vineland City Hall is located at 640 E. Wood Street, Vineland, New Jersey 08360.
4. Richard Tonetta is the City Solicitor for the City of Vineland.
5. Anthony Fanucci is the president of the City of Vineland's City Council.
6. Angela Calakos is a councilperson on the City of Vineland's City Council.
7. Sandra Forosisky is the Director of Economic Development for the City of Vineland. Among other duties, she is the record keeper of New Jersey Urban Enterprise Zone money transactions.
8. Ruben Bermudez is the Mayor of the City of Vineland.
9. Hans Lampert is the developer who entered into a Redevelopment and Participation agreement with the City of Vineland in 2008 to redevelop four (4) quadrants consisting of the four (4) corners and adjacent properties at the intersection of Landis Avenue and East Avenue in the City of Vineland.
10. Holman Frenia Allison, P.C. ("Holman Frenia") is a certified public accounting and consulting firm. Holman Frenia was hired by the City of Vineland to conduct a forensic investigation into the Landis Theater Project.
11. Ambrosio & Tomczak is the law firm representing Holman Frenia.
12. Roxanna Tosto is the Comptroller for the City of Vineland.

13. Robert J. Pinizzotto, Esquire has been retained as “Special Council” by the City of Vineland to oversee the investigation into Plaintiff.

STATEMENT OF FACTS

14. The City of Vineland operates under the Mayor-Council Plan of New Jersey’s Optional Municipal Charter Law, also known as the Faulkner Act. See N.J.S.A. 40:69A-32. There are two (2) separate and co-equal power centers, each elected by the people; the Mayor as chief executive and the Council as municipal legislature.
15. There are five (5) members of City Council: Anthony Fanucci (President); Angela Calakos; Maritza Gonzalez; John Precopio; and Paul Spinelli.
16. On or about September 3, 2013, Plaintiff was appointed Business Administrator by Mayor Bermudez.
17. The appointment was contentious. The Mayor chose Plaintiff without the blessing of City Council, who wanted to appoint former mayor Perry Barse, a political rival of Mayor Bermudez. The appointment passed by a 3-2 vote, but both Council President and Vice President Spinelli voting nay.
18. Subsequently, City Council voted to lower Plaintiff’s salary from the advertised annual amount of \$95,000, to the significantly decreased amount of \$86,000.

19. Plaintiff was never provided with an “official” reason for the decrease, however, unofficially it was understood that Council was trying to discourage Plaintiff from accepting the position because Council wanted to fill the position with another individual, Perry Barse, Vineland’s former mayor.
20. The position of Business Administrator proved to be a rigorous and demanding job; but Plaintiff was up to the challenge.
21. However, upon assuming the position, Plaintiff was a vocal critic and strident reformer of unlawful City practices. As a result, he became a target.

First Amendment Protected Speech and Matters of Public Concern: Plaintiff Re-Initiates the Landis Theater Project Investigation, Implicating City Officials of Potential Fraud and Misconduct

22. In or around September 2013, Mayor Bermudez was interviewed by the FBI regarding the Landis Theater Foundation. Lutz too has been interviewed by criminal authorities.
23. By way of background, in 2007, City Council adopted Resolution 2007-94, designation Eastern Pacific Development/Hans Lampert as the redeveloper to redevelop four (4) quadrants consisting of the four (4) corners and adjacent properties at the intersection of Landis Avenue and East Avenue in the City of Vineland. **(Resolution No. 2013-482)**
24. The City and Hans Lampert subsequently entered into a Redevelopment and Participation agreement dated January 15, 2008. (This, even though Lampert was not the lowest bidder during the selection process.)

25. At the time, Tonetta was serving as Associate City Solicitor. Under the orders of then Mayor Perry Barse, Tonetta drafted the contract between the City and Lampert.
26. The Landis Theater Project was funded by loans made, directly or indirectly, by the City of Vineland and/or loans authorized by, and/or approved by the City, including monies generated through the City's participation in the Urban Enterprises Zone Program (UEZ).
27. In or around September 2013, Mayor Bermudez briefed Plaintiff in greater depth regarding the Landis Theater. The Mayor asked Plaintiff to research and ensure that payment—outstanding in the amount of approximately \$8,000 as of December 2012—was made to Holman Frenia for work done under the prior administration.
28. Plaintiff asked Assistant Business Administrator Denise Monaco to determine whether the bill was paid. Monaco discovered that it had not been paid and thereafter contacted City Comptroller Roxanne Tosto to begin the payment process for this overdue bill.
29. Plaintiff was surprised to meet with resistance from Tosto who, despite being informed as to the importance of this effort, hesitated to act in accordance with the Mayor's request and the terms of the contract to assign a specific line item to pay for this service. It was not until in or around the end of September 2013, following Plaintiff's direct request to have the matter resolved, that payment was finally completed. **(September 26, 2013 Letter from Mayor Bermudez to Keith Ingling)**
30. In or around October 2013, Plaintiff and Mayor Bermudez met with Holman Frenia and obtained the four (4) page report on the forensic investigation. As the investigation was not completed, the

report did not include the names of any of the targeted individuals. The identities of the possible targets, however, is capable of inference from the context of the report. **(October 15, 2013**

Holman Frenia Report)

31. The report, addressed to Mayor Bermudez, provides just as many questions as answers, partly due to the City's inability or unwillingness to execute authorizations permitting Holman Frenia from obtaining certain information relevant to the investigation:

Therefore, on January 22, 2013 we met in your office. This was the only meeting we had regarding this engagement. You'll recall that the meeting was also attended by certain members of your administration and Gregory Tomczak, Esquire. During the meeting, I advised you and your administration that as of December 18, 2012, our examination had resulted in several unanswered questions regarding various issues. In as much as we have not received authorization to pursue the answers to those questions, our outstanding questions remain unanswered. The unanswered questions are as follows, with "information" being defined as documents that were provided to us and/or knowledge that we gained from conducting interviews. Furthermore, in all instances and at all times, City Officials and witnesses will be referred to in the plural form, instead of the singular form, in an attempt to protect the identities of these individual because this investigation was not completed:

32. The report raises many troubling and, as of yet, unanswered questions.
33. It is also clear that Holman Frenia was not working with the City's full cooperation, casting doubt on the City's genuine interest in uncovering the truth. For instance, Holman Frenia was instructed by City Officials not to contact US Bank for copies of relevant documents because they did not want US Bank to become aware of the investigation.
34. The report also raises concerns regarding conflict of interest:

(See,

Exhibit

"10")

7.) Information received to date indicates that City Officials involved in this project have been involved in Civil litigation, as an adversarial party, with at least one of the contractors involved in this project. If this information is accurate, did it create a conflict of interest for the City Officials?

35. On the basis of that report, and acting on behalf of Mayor Bermudez, Plaintiff requested City Council action on the continuation of the investigation, inclusive of the establishment of a Municipal Investigation Committee to pursue, and hopefully resolve, any and all concerns surrounding the Landis Theater Foundation and its financial management.
36. Also in or around October 2013, Plaintiff was approached by Joseph Isabella, Director of Vineland Municipal Utilities, on behalf of Hans Lambert. Isabella invited Plaintiff to lunch to discuss the continued investigation into the legalities and suspected misappropriation of government monies involving the Landis Theater Project. Plaintiff knew the invitation was inappropriate and declined.
37. Plaintiff later received an email from Isabella expressing his disappointment and questioning Plaintiff's insistence to continue the investigation.
38. Plaintiff submitted the resolution to continue the investigation at a closed session of City Council.
39. A resolution was passed requiring Council President Fanucci and City Solicitor Tonetta to recuse themselves because they had both been named as possible targets of the investigation. (**Resolution No. 2013-457**, *A Resolution Authorizing the Exclusion of the Public Council President and City Solicitor From a Meeting Between the Mayor, City Clerk, Business*

Administrator and Staff, Representatives of Holman Frenia Allison, P.C. and the Remaining Council Members of the City of Vineland Concerning Tactics and Techniques Utilized in Protecting the Safety and Property of the Public, Provided That Their Disclosure Could Impair That Protection, or Investigations of Violations or Possible Violations of the Law and Authorizing Disclosure of Minutes of Said Meeting); (November 15, 2013 Email from Plaintiff to Tonetta)

40. During the closed session, Vice President Spinelli made several objections and claimed that re-opening the investigation was “a waste of time and taxpayer money.” At one point he attempted to obtain a copy of the forensic report, which was considered confidential pending the resolution of the investigation.
41. It was a contentious council meeting and until its conclusion, it was not clear how the Council would vote. During the session, Mayor Bermudez called for Solicitor Tonetta’s resignation due to revelations surrounding his involvement with the Landis Theater.
42. Pursuant to N.J.S.A. 40:69A-43(c), “[t]he mayor may in his discretion remove any department head...after notice and an opportunity to be heard. Prior to removal the mayor shall first write written notice of his intention with the council, and removal shall become effective on the 20th day after the filing of such notice unless the council shall prior thereto have adopted a resolution by a two-thirds vote of the whole number of the council, disapproving the removal.”
43. Despite objections made by Spinelli, Council voted to include the investigation on the agenda for consideration. It was later passed: three (3) approved (Calakos, Procopio, Gonzalez); one (1) opposed (Spinelli); and one (1) abstained (Fanucci).

44. City Council thereafter passed Resolution No. 2013-482, A Resolution for Creation of a Municipal Investigation Committee, Pursuant to N.J.S.A. 40:48-25 *et seq.*
45. The Committee was comprised of two (2) members of City Council, Angela Calakos and John Precopio.
46. The law firm of Ambrosio & Tomczak was retained to serve as Special Counsel to the Investigative Committee. **(November 26, 2013 Resolution No. 2013-483 authorizing an agreement for professional services with Holman Frenia)**

Tonetta Seeks to Sabotage the Landis Theater Investigation and Plaintiff is the Subject of an Unlawful, Retaliatory Witch-Hunt

47. According to a January 27, 2014 memo issued by Vineland Police Chief Timothy P. Codispoti, on November 22, 2013, Councilwoman Angela Calakos contacted police regarding a bizarre and wildly false allegation. **(January 27, 2014 Memo from Codispoti to City Council)**
48. She claimed that Plaintiff told her about a bribery attempt involving Landis Sewerage Authority Director Dennis Palmer and City Solicitor Rick Tonetta. Calakos falsely alleged that Plaintiff commented to her that he had been a witness to an offer by Palmer to Tonetta and/or Lutz of cash in an exchange for a political favor.
49. Notably, Calakos contacted the Vineland City Police only after she “consulted” with Tonetta who advised her to report the false bribery allegation to the police.
50. In turn, Tonetta repeated the story to Palmer. (Tonetta is the legal representative for Vineland. Why would he subject his client—the City and Plaintiff as its Business Administrator—to

potential liability? In fact, Palmer has since filed a tort claims notice against both the City and Plaintiff for defamation.)

51. The Vineland Police Department notified the Cumberland County Prosecutor's Office, who initiated an investigation. Interestingly, the subject of the Vineland City Police Department and the Cumberland County Prosecutor investigations was not the alleged bribe itself—that is, Calakos and Tonetta seemed not to complain that an alleged bribe had taken place (they assumed it had not). Instead, the investigation into wrongdoing focused solely on Plaintiff.
52. The Prosecutor subsequently cleared Plaintiff of any wrongdoing and according to Vineland City Police Chief, the matter was directed back to “the appropriate authority due to the ethical/employee misconduct implications of the incident.” Plaintiff denied ever hearing any such exchange between Palmer and Tonetta, let alone repeating it to Calakos.
53. But Palmer—without consulting anyone to verify the facts and *before* the Cumberland County Prosecutor's Office completed its investigation—staged his own press conference wherein he accused Plaintiff of making false allegations, i.e. the attempted bribery, against him
54. The concocted story by Calakos and Tonetta was devised shortly after a much publicized initiative by Vineland City Mayor Bermudez and Plaintiff to dissolve the autonomous Landis Sewerage Authority and merge it with the City's municipal electric and water utilities.
55. According to reports by a local newspaper, Palmer expressed anger at the initiative and was “scathing” about the possible takeover of the authority. The LSA thereafter is reported to have

contributed \$434,850 to the 2013 Vineland municipal budget, which quelled further talks about a City take-over of the LSA. **(July 25, 2013 Daily Journal article)**

56. Also on or about January 27, 2014, City Council President Fanucci notified Mayor Bermudez that City Council would immediately investigate the “extremely serious” allegations of “bribery.” **(January 27, 2014 Email from Fanucci to Bermudez)**

57. Though, curiously, as explained below, there was *no investigation into “bribery,”* but only an investigation into Plaintiff.

58. On January 31, 2014, Plaintiff was issued a Rice Notice² indicating that the Vineland City Council would discuss “a personnel matter” involving his position as Business Administrator at a special meeting held on February 4, 2014.

59. In accordance with the rights afforded him under N.J.S.A. 10:4-12b(8), Plaintiff requested that Council discuss all matters pertaining to him in a *public* session.

60. However, during the special meeting on February 4, Council, in violation of N.J.S.A. 10:4-12b(8), *held no public discussion* of Plaintiff’s “personnel issue” on the record and instead, unanimously passed Resolution No. 2014-57 in closed session, “Authorizing the Execution of a Professional

² See New Jersey’s Open Public Meetings Act, N.J.S.A. 10:4-12b(8), A public body may go into closed sessions when discussing “[a]ny matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.” (emphasis supplied)

Services Agreement for the Investigation of Personnel Matters Involving the City of Vineland Business Administrator.” And, as such, an investigation was commenced.

61. Pursuant to the resolution, on or about February 4, 2014 attorney Robert Pinizzotto was retained to conduct the investigation. **(February 4, 2014 Resolution No. 2014-57)**

62. Tonetta was curiously and openly critical of Plaintiff’s involvement in the Landis Theater/Four Corners investigation regarding the unaccounted for government funds. Until recently, Tonetta had no basis to request City Council to remove Plaintiff from the Landis Theater/Four Corners investigation. On January 29, 2014 Tonetta wrote to City Council, however, demanding the recusal of Lutz from the Landis Theater investigation because of Plaintiff’s so-called false allegations against Tonetta regarding the bribe. This excuse is pre-textual. Tonetta, as the City’s Solicitor, however, has a legal obligation to advance an investigation into misuse and fraud of government funds. Indeed, Tonetta should have recognized Plaintiff’s role as the City’s Business Administrator, which entails in large part, accounting and reconciliation of the City’s funds and expenditures. **(January 29, 2014 Email from Tonetta to City Council)**

63. Tonetta wrote, in part:

I am very much concerned that Mr. Lutz continues to be involved with this investigation based upon the alleged accusations made by Mr. Lutz regarding me and am respectfully requesting that Council, as the investigating body or the committee, immediately advise Mr. Lutz in writing that he must recuse himself from this investigation and have no further input for any reason regarding the same. I believe he may attempt to further damage my reputation as he is clearly not impartial. At this point I do not know what, if anything derogatory, has been said about me, but based upon past events I have no doubt that the investigating team including the attorney and auditor have been told misgivings about me by Mr. Lutz. I am surely aware of statements allegedly made by him to several Councilmembers and employees of City Hall of a derogatory nature.

Procedural and Ethical Concerns Related to the City's Investigation of Plaintiff

64. As a preliminary matter, it should be questioned why Plaintiff was the one being investigated. He repeatedly denied making any statements about an alleged bribe. But why haven't the bribery allegations been explored? Why is the City so keen on digging up (non-existent) dirt on Plaintiff, yet so reluctant to unearth potential real wrongdoing?
65. The validity of the resolution appointing Robert Pinizzotto to investigate Plaintiff also remains in question. First, it was passed without public discussion, in violation of State statute and in violation of Plaintiff's request for a public discussion pursuant to his rights under the Rice law.
66. Next, it was introduced as a "walk on" proposal to the meeting agenda, meaning it was introduced *by* City Council *to* City Council, as opposed to by the Executive Branch (either the mayor or the business administrator) to the Legislative Branch (City Council). (Ironically, upon taking office, Plaintiff spoke out against and tried to correct this seemingly routine practice by City Council as it directly violates the Faulkner Act's separation of powers provision.)
67. Further, the Resolution's accompanying certification, executed by City Comptroller Roxanne Tosto, was not presented to the mayor for his executive approval.
68. On or about February 6, 2014, Mayor Bermudez sent a letter to Council President Fanucci challenging the legitimacy of the resolution authorizing the investigation into Plaintiff. The Mayor directed attorney Pinizzotto "not to commence performing under this illegal

contract or otherwise risk not being paid for doing so [.]” (**February 6, 2014 Letter from Mayor Bermudez to Fanucci**)

69. On or about February 14, 2014, Mayor Bermudez sent an email to Tonetta asking him “to immediately produce any ‘contract’ draft, pending or otherwise, in any form or stage whatsoever relating to the City Council investigation in which an attorney [Pinizzotto] (or other professional) has been supposedly retained.” (**February 14, 2014 Emails between Mayor Bermudez and Solicitor Tonetta**)

70. Tonetta responded that he was “unaware of any contract.”

71. As referenced by the Mayor, N.J.S.A. 40:69A-40(c), Mayoral Duties, provides, “The mayor shall [s]upervise, direct and control all departments of the municipal government and shall require each department to make an annual and such other reports on its work as he may deem desirable.”

72. Further, subsections (g) and (j) provide, respectively, “The Mayor shall [s]ign all contracts, bonds or other instruments requiring the consent of the municipality; [and] [n]egotiate contracts for the municipality, subject to council approval.”

73. Here, there was no contract presented to the Mayor for his signature regarding the hiring of Attorney Pinizzotto. See Newark v. James, 183 N.J. 361, 363 (2005) (Holding that the Faulkner Act “allocated the responsibility for initiating, negotiating, and signing contracts to the mayor of the municipality, while the city council is charges with approving or rejecting contracts presented to it by the mayor.”)

74. Pinizzotto filed a Third Party Complaint, The Municipal Council of the City of Vineland v. Mayor Bermudez, Docket No. C-05-14, to compel the Chief Financial Officer to certify funds available to engage Pinizzotto's services to conduct the investigation in Plaintiff. However, the application was subsequently withdrawn.

Forensic Accounting Firm Withdraws Because the Investigation Was 'Compromised' By Tonetta

75. On or about February 11, 2014, the law firm Ambrosio & Tomczak sent a letter to Mayor Bermudez indicating that their client, the forensic accounting firm Holman Frenia Allison, P.C., was withdrawing from the Landis Theater Project investigation and terminating all services associated with same.

76. The letter, signed by Gregory E. Tomczak and Keith Ingling of Holman Frenia, states, "The primary reason for our withdrawal is, *inter alia*, the integrity and independence of the Investigation has been compromised and is beyond repair."

77. The letter, in part, faults Tonetta for tainting the investigation:

***P
M
U
P***

In addition, we are withdrawing from the Investigation because the independence and integrity of the Investigation has been compromised primarily by the actions of Mr. Tonetta and his communications with Council President Anthony Fanucci. Indeed, although Mr. Tonetta has recused himself from this matter entirely, Mr. Tonetta, despite his recusal, on at least one occasion, has provided his opinions regarding the formation of the Committee, the manner in which the Investigation should be conducted, and whether or not the Investigation should be conducted at all. Those opinions were provided to the Council, including Council President Fanucci, who is also recused from the Investigation. Most recently, Mr. Tonetta has attempted to direct the conduction of the Investigation by requesting that a City employee also be recused from any involvement whatsoever in the Investigation. These actions have caused us to conclude that the Investigation cannot be conducted independently and, as such, has compromised its integrity beyond repair.

78. Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law. New Jersey State Constitution, Article VII - Public Officers and Employees Section 1, Paragraph 2

79. Plaintiff has also reported and/or refused to participate in several attempts at nepotism.

Three (3) specific incidents are notable.

80. First, on or around September 23, 2013, Plaintiff was approached by City Council President Fanucci in regards to hiring a senior-ranking IT professional to work on the City's IT staff. Fanucci sought to place an individual named Anthony Rizzo in the position.

81. Fanucci wanted Plaintiff to circumnavigate the proper civil service process by which new City employees are hired. Not only was it an attempt at nepotism, but Rizzo had not even applied for the position, which had been posted in May.

82. Plaintiff responded that he would look into the matter but suspected that, given the circumstances, Rizzo would not likely be eligible for the position since he had not applied.

See, N.J.S.A. 11A:2-23; N.J.S.A. 11A:3-2.1.

83. Fanucci appeared angered that Plaintiff did not adhere to his request and thereafter ceased direct communication with Plaintiff. (Prior to that time Fanucci would contact Plaintiff on a near daily basis to discuss matters of City operations.)
84. Second, in or around October 2013, Councilperson Maritza Gonzalez placed a letter on Plaintiff's desk, asking him to facilitate the hiring of James Dzierwinski. (**Letter from Maritza Gonzalez to Plaintiff regarding James Dzierwinski**)
85. Plaintiff found the request strange. Again, not only was Gonzalez attempting to side-step the Civil Service hiring process, James Dzierwinski had not applied on his own to any open public works position. See, N.J.S.A. 11A:2-23, N.J.S.A. 11A:3-2.1 and N.J.S.A. 11A:4-1, et seq.
86. Plaintiff received a third request for a "favor" in or around Fall 2013.
87. Councilperson Angela Calakos approached Plaintiff about hiring her husband. (**Resume and Accompanying Documentation Regarding Byron A. Calakos**)
88. Plaintiff took the resume but explained that Calakos' husband would have to go through the Civil Service hiring process like every other employee. Id.
89. Calakos expressed anger at Plaintiff for failing to "help" her husband.
90. Calakos specifically asked Plaintiff and the Mayor not to communicate with her about the request via email, lest someone file an Open Public Records Act (OPRA) request seeking those documents.

91. Plaintiff has worked in various capacities in local government for over two (2) decades.

Yet he was astonished by the apparent culture of nepotism that permeated the City of Vineland. Despite the strict Civil Service prescriptions that are supposed to govern the hiring of City employees, it was a common occurrence for Plaintiff to find resumes left on his desk by fellow co-workers.

Tonetta Has No Legal or Moral Authority to Act as City Solicitor

92. Municipalities are required by N.J.S.A. 40A:9-139 to appoint a municipal attorney, and by N.J.S.A. 40A:9-165 to determine the salary to be paid to the attorney by ordinance. All forms of compensation paid by a municipality to the attorney need not be authorized by ordinance; two methods of compensation, one setting a fixed salary by ordinance and the other authorizing a professional services contract for additional nonrecurring services at an hourly rate pursuant to N.J.S.A. 40A:11-5(1)(a)(i), can exist in harmony, whether the same person is appointed to both positions or whether different persons are appointed. Loigman v. Township Committee of Tp. of Middletown, 409 N.J. Super. 1, 975 A.2d 999, 2009 N.J. Super. LEXIS 190 (App. Div. 2009).

93. Here, Tonetta was appointed on or about January 4, 2013. Pursuant to Chapter 84-7 of the Code of the City of Vineland (since amended), Tonetta was to receive “\$125,000 per year, along with reimbursable expenses not to exceed \$35,000.”

94. As City Solicitor, Tonetta was required to enter into a contract with the City to account for his “additional nonrecurring services” pursuant N.J.S.A. 40A:11-5(1)(a)(i). This did not

occur. (40A:11-5. Exceptions. Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body if: (1) The subject matter thereof consists of: (a) (i) Professional services. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in the official newspaper, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality, or, in the case of a contracting unit created by more than one county or municipality, of the counties or municipalities creating such contracting unit.) Here, Tonetta simply billed the City for additional expenses occurred in the operation of his private law firm.

95. A public office is not created for the benefit of the holder but rather for the purposes of carrying out the operations of government. There is no vested interest or contractual commitment which can frustrate the legislative policy. The prospective emoluments of office are not the property of the incumbent and can be divested at the will of the Legislature absent constitutional protection. De Marco v. Board of Freeholders of Bergen City, 21 N.J. 136, 121 A.2d 396 (1956)
96. City Council passed a Resolution, appointing Tonetta as City Solicitor for a term of four (4) years—from January 5, 2013 through December 31, 2016. (**Resolution No. 2013-3**)

97. On or about November 15, 2013, Mayor Bermudez gave Tonetta the option to resign or be removed as City Solicitor. Tonetta chose not to resign and was terminated. Among other issues, the Mayor objected to Tonetta seeking—and receiving!—reimbursement from the City for expenses associated with his private law office. Also, as discussed above, the Mayor had concerns that Tonetta had interfered with the Landis Theater Investigation.
98. However, City Council voted unanimously 5-0 to override the Mayor’s decision to terminate Tonetta. **(November 25, 2013 Resolution No. 2013-507)**
99. In addition, from his appointment on January 5, 2013 through on or about January 14, 2014, Tonetta was permitted to bill the City for *expenses related to his private law practice*, including office payroll, office rental and phone and internet bills. Tonetta was in the practice of billing the City in the amount of over \$3,000 per month for costs unrelated to City business. **(Tonetta’s Invoices)** Local Vineland ordinance does not allow for the reimbursement of such expenses. See VINELAND, N.J. CODE, § 84-7.
100. On or about June 25, 2013, the New Jersey State Comptroller released a report finding “repeated waste of taxpayer dollars on excessive or improper payment for legal services[.]” **(June 25, 2013 Letter from the New Jersey Comptroller and October 23, 2013 Letter from the New Jersey Comptroller to City of Vineland Business Administrator Denise Monaco)**
101. The report describes arrangements not unlike that between Tonetta and the City. Id. “For example, [the Office of the State Comptroller] found that two of the local

governments paid their legal counsel at hourly rates for ***routine clerical and administrative work*** that should have been free of charge under the attorney's contract."

(Emphasis added).

102. In or about October 23, 2013, the State Comptroller sent a letter to then Acting Business Administrator Denise Monaco advising her of the report and requesting additional information to determine Tonetta's eligibility status for membership in the New Jersey Public Employees' Retirement System (PERS). (It appears that Tonetta may also have been improperly enrolled in this system.) Id.
103. After receipt of the Comptroller's report, the City took steps to modify Tonetta's method of payment to comply with state guidelines by passing a Resolution increasing his salary.
104. Shockingly, while formally prohibiting Tonetta from billing the City for expenses related to his private law practice, City Council ***voted to increase Tonetta's salary by \$30,000, a 24% increase.*** Thus, the City Council voted to pay Tonetta the amount of \$155,000.00 a year as a contract attorney and in essence, they agreed to pay him for the operating of his private law practice. (**Ordinance No. 2013-68**)
105. (For purposes of comparison, in 2013 the City Solicitor for Atlantic City, a full-time position, was paid a salary of \$99,511.53. Atlantic City, New Jersey Ordinance No. 61-2013.)

106. On or about January 21, 2014, Mayor Bermudez stated his opposition and veto of the ordinance, noting, in part, that “[t]he City of Vineland cannot afford a \$30,000.00 annual increase in salary for the City Solicitor in addition to the \$125,000.00 the position already earns, and the taxpayers should not be expected to pay for such a reoccurring expense going forward. **(January 21, 2014 Letter from Mayor Bermudez to the Municipal Clerk)** Bermudez also noted that it was inappropriate for the Council to initial a salary increase without his involvement; that the action would more appropriately be taken at the organizations meeting held every four (4) years; that Council’s actions send the wrong message to administrations that cannot expect a similar “exorbitant increase in salary”; and that the proposed salary increase is “unconscionable” and “out of line with the City’s fiscal budget reality.” Woods, Don, *Vineland council unites to overturn Mayor Bermudez’s solicitor salary veto*, SOUTH JERSEY TIMES, Jan. 29, 2014.

107. On or about January 28, 2014, City Council passed a resolution overriding the Mayor’s veto, indicating only that, with 2/3 vote, they had the power to do same.

Tonetta’s Attempts at Sabotage Prove Successful: City Council Postpones Investigation into the Landis Theater Project

108. On or about February 19, 2014, City Council passed a motion to “postpone” the forensic investigation into the Landis Theater Project. **(February 19, 2014 City Council Special Meeting Public Notice)**

109. The investigation could not move forward without the services of Holman Frenia, who withdrew after Tonetta and others stonewalled their access to relevant information and compromised the integrity of the investigation.
110. As of yet, a replacement firm has not been retained.
111. Tonetta is also prevented Plaintiff from carrying out the key functions of his position as Business Administrator, which include, pursuant to N.J.S.A. 40:69A-44, (a) Assist in the preparation of the budget; (b) Administer a centralized purchasing system; (c) Be responsible for the development and administration of a sound personnel system; and; (d) Perform such other duties as council may prescribe.;(e) The governing body of the municipality may provide, by ordinance, that the business administrator also shall, subject to the direction of the mayor, supervise the administration of each of the departments established by ordinance. For this purpose, he ***shall have power to investigate the organization and operation of any and all departments***, to prescribe standards and rules of administrative practice and procedure, and to consult with the heads of the departments under his jurisdiction; provided that with respect to any department of law or department of audit, accounts or control, the authority of the business administrator under this subsection shall extend only to matters of budgeting, personnel and purchasing. (Emphasis supplied.)
112. This is what Plaintiff was trying to do—investigate government operations. But Tonetta thwarted Plaintiff’s efforts.

Defendant Uses Intimidation Tactics to Further Retaliate Against Plaintiff

113. On or about February 20, 2014, two (2) members of the Vineland Police Department, Detective Lenny Wolff and Detective Paul Schadinger (Internal Affairs) arrived unannounced at Plaintiff's office. The officers asked Plaintiff if he had witnessed "any criminality taking place in Vineland" and whether Plaintiff had spoken to any "outside law enforcement agencies" regarding same. **(February 21, 2014 Email Exchange Between Plaintiff and Chief Codispoti)**
114. While Plaintiff was aware that Chief Codispoti, Tonetta and City Council knew that he was participating with the FBI, Plaintiff firmly responded that even if he were speaking with outside law enforcement, he would not be at liberty to share that information with the detectives.
115. The circumstances surrounding of the officers' visit was peculiar. Why not call first? Why send two officers? Who had directed this inquiry?
116. Also notable was the timing of the visit, which came on the heels of attorney Robert Pinizzotto's email to Plaintiff's counsel, seeking to learn the "specific allegations" Plaintiff had regarding the UEZ funds and the involvement of Tonetta and Fanucci in the misappropriation of the UEZ funds. **(February 12, 2014 Email from Pinizzotto to Michelle Douglass)**
117. Who instructed Pinizzotto to make such a request? Per Resolution No. 2014-57, Pinizzotto was retained to investigate "personnel matters" involving Plaintiff, i.e. the

bogus story that Plaintiff had witnessed an attempted bribe and then reported same to Councilperson Calakos.

118. Why then, would Pinizzotto—and the Vineland Police Department—choose to engage in inquiries to determine what damaging information Plaintiff had on City officials? This is not Pinizzotto or the Vineland Police Department’s role, yet their involvement suggests other City officials have serious concerns about Plaintiff as a whistleblower.

119. Pinizzotto is not operating under a proper service contract. What’s more, his recent actions are outside the scope of Resolution 2014-57. Instead of merely investigating the circumstance surrounding the alleged attempted bribe, Pinizzotto began looking into Plaintiff’s credentials and competency, even though neither of these issues had ever been raised prior.

Plaintiff’s (Initial) Claims Against the City

120. Plaintiff engaged in several acts of statutorily protected conduct including: questioning and reforming the City’s illegal practice for placing items on City Council’s meeting agenda; and re-initiating a forensic investigation into possible wrongdoing associated with the Landis Theater project, e.g. irregular accounting, misuse of UEZ funds.

121. Public employees have a constitutional right to speak on matters of public concern without fear of retaliation. See Baldassare v. New Jersey, 250 F.3d 188, 194 (3d Cir. 2001).

122. Here, the Defendant has retaliated against Plaintiff for speaking out against alleged governmental improprieties. Government officials have maligned Plaintiff's name both at work and in the press. His future employment opportunities have been jeopardized. He has been verbally intimidated by local law enforcement.
123. Such retaliation is impermissible pursuant to the New Jersey Civil Rights Act. N.J.S.A. 10:6-2(c) (Permitting anyone who has been deprived of any substantive rights secured by the Constitution to bring a civil action for damages).
124. In addition, Plaintiff also has a defamation claim against Councilperson Angela Calakos and the City of Vineland for Calakos' false and disparaging claims that Plaintiff wrongfully accused others of attempted bribery.
125. As a result of the City and its agents' actions, Plaintiff has experienced both economic and reputational damage. In fact, since the start of his employ, Plaintiff has been paid an unjustly reduced salary in political retaliation for being the Mayor's appointee. The position of Business Administrator was advertised as carrying a salary of \$95,000 annually.
126. However, it is the damage to Plaintiff's professional reputation will prove far more injurious than a petty salary cut. Plaintiff's employability has been severely compromised as a result of the City's actions. Defendant and its agents have supplied media outlets across the state with damaging propagandized information. On January 29, 2014, The Daily Journal features an editorial calling for Lutz's suspension. (**January 29, 2014**

Editorial) The South Jersey Times has run several articles on the story. **(January 23 and February 6, 2014 articles)**

Events Occurring Subsequent to Plaintiff's Initial Complaint

127. On or about March 26, 2014, Plaintiff filed his Initial Complaint. However, in the intervening months, additional events have occurred compelling Plaintiff to file this Second Amended Complaint.
128. Shortly after the filing of the Initial Complaint, Plaintiff began having difficulties with his phone extensions and began to suspect that his office telephone calls were being monitored. On or about April 10, 2014, he contacted Victor B. Terenik, Jr., Director of Information Systems for the City of Vineland. **(April 14, 2014 Email from Victor Terenik to Plaintiff)**
129. Terenik and Vince Strozyk, Network Administrator discovered that Plaintiff's extension had been "accessed" via the locked phone room but were unable to determine by whom. **(April 14, 2014 Email from Victor Terenik to Plaintiff)** Terenik "recommend[ed] that the locks be changed" and an "access control" be added to the door in order to monitor who can log access to the room. Id.
130. Despite the push-back, Plaintiff continued to seek answers regarding the Four Corners Project. On or about April 24, 2014, he again sent a formal request to Sandra Forosisky for

all the documents and files pertaining to same. (**April 24, 2014 Email from Plaintiff to Sandra Forosisky**).

City Council Continues to Ignore the Landis Theater Project, Choosing to Create a Municipal Investigative Committee to Investigate Plaintiff

131. Immediately after Plaintiff filed his Initial Complaint, on or about April 15, 2014 City Council held a Special Session whereby it passed “A Resolution Creating A Municipal Investigation Committee Pursuant to N.J.S.A. 40:69A-37.” According to the Resolution, City Council intended on “investigating the hiring process, performance and conduct of [Plaintiff] the Business Administrator of the City of Vineland.” City Council was to serve as the investigating body for said purpose. The Law Firm of Robert J. Pinizzotto was to serve as Special Counsel to the Committee. (**Resolution No. 2014-153**)
132. News of the investigation made local news. See Joseph E. Smith, *Lutz probe approved by council*, THE ASBURY PARK PRESS, April 16, 2014.
133. On or about June 3, 2014, Plaintiff received a subpoena for his testimony. The subpoena commanded him to “appear before the Municipal Investigation Committee and/or their legal representative, on June 12, 2014” to testify as to his knowledge of the functioning of the Office of Business Administration. The subpoena was signed by Anthony Fanucci, President of City Council and a former named Defendant in this litigation. (**May 30, 2014 Letter from Robert J. Pinizzotto, Esq. to Plaintiff**)

134. Plaintiff's counsel wrote to Pinizzotto to determine whether the subpoena was intended to required Plaintiff's appearance to answer questions about the claims in his lawsuit. (**June 3, 2014 Letter from Michelle J. Douglass, Esq. to Robert Pinizzotto, Esq.**) Pinizzotto responded affirmatively. (**June 3, 2014 Letter from Pinizzotto to Douglass**)
135. Fanucci was previously a named Defendant in this lawsuit. Yet he issued a subpoena for Plaintiff to appear without counsel, before Pinizzotto and City Council to answer questions about the allegations in his lawsuit!
136. Plaintiff did not to appear because the Committee intended to question Plaintiff about his lawsuit. This would have violated the legal discovery process.
137. Not only do the Rules of Professional Conduct forbid Pinizzotto and the other (formerly) named Defendants in this lawsuit to question Plaintiff without his attorney present, the laws governing civil lawsuits may not be contravened or circumvented by a supposed "legislative" power to investigate.

Plaintiff is Forced to Take a Medical Leave of Absence

138. Defendant's actions began to negatively affect Plaintiff's health. He began seeking medical treatment for stress and anxiety and was diagnosed with depression and a general anxiety disorder. His medical provider advised that he take medical leave of absence from work. On or about June 11, 2014, Plaintiff sent a letter to Mayor Bermudez requesting a

two (2) weeks leave of absence. (**June 11, 2014 Letter from Plaintiff to Mayor Bermudez enclosing a June 11, 2014 Letter from Jo Ann Kurek, LCSW**)

Plaintiff is Wrongfully Terminated

139. On or about June 5, 2014, Plaintiff received a “Rice” Notice informing him that on June 12, 2014, City Council would be discussing a “personnel matter” related to his position as Business Administrator. (**June 5, 2014 Letter from Keith Petrosky to Plaintiff**)
140. On or about June 10, 2014, the City also circulated a Public Notice announcing a Special Meeting for June 12, 2014, “expected to include a resolution concerning personnel matters.” Plaintiff, members of City government, as well as members of the press were noticed by City Council and Tonetta. (**June 10, 2014 Public Notice**) Plaintiff was aware that “personnel matters” was a reference to his own employment status.
141. On or about June 12, 2014, City Council unanimously voted to terminate Plaintiff for “contempt” for failing to appear before the Investigative Committee.
142. Notably, the Committee had found no substantive reasons for the termination, e.g. work performance. Instead, the grounds were procedural—failing to appear before the committee—demonstrating that the Council was determined to fire Plaintiff even if good cause connected to his work could not be shown.
143. What’s more, Plaintiff’s termination was procedurally improper for four (4) key reasons.

144. First, the City violated Plaintiff's due process rights because it never provided him with an opportunity to be heard. This constitutes a violation of the Faulkner Act. N.J.S.A. 40:69A-37(b) ("The council, in addition to such other powers and duties as may be conferred upon it by this charter or otherwise by general law, may: (b) Remove, by at least two-thirds vote of the whole number of the council, any municipal officer, other than the mayor or a member of council, for cause, upon notice and an opportunity to be heard.")

145. Plaintiff was not provided with lawful notice or process before he was fired in violation of N.J.S.A. 40:69A-37(b). Indeed, the Defendant's cited reason for terminating Plaintiff's employment is bogus. Defendant claims that it fired Plaintiff because he did not attend the investigation in response to a subpoena issued by Fanucci, a former named Defendant in Plaintiff's lawsuit. Moreover, the subpoena was issued in order to improperly question Lutz about the allegations of his lawsuit. Pinizzotto was asked and he confirmed in writing that the investigation sought to ask Lutz about allegations in his lawsuit. **(June 3, 2014 Letter from Robert Pinizzotto to Michelle Douglass)** Mr.

Pinizzotto explicitly stated in his June 3 letter:

As to the whether or not "any of the information sought to be obtained relates in any way to the lawsuit currently filed by Mr. Lutz against Mr. Fanucci," please be advised that if any information contained in Mr. Lutz's complaint is relevant to the Municipal Council's investigation, same may be inquired about at the time the Municipal Council obtains the testimony of Mr. Lutz to be taken on June 12th, 2014.

146. Second, the statute by which the City fired Plaintiff, N.J.S.A. 40:69A-167, does not apply here. N.J.S.A. 40:69A-167, Failure to appear or testify before court, legislative

committee or Governor states: “If any person hereafter elected or appointed to any office or position in a municipality governed under this act shall, after *lawful notice or process*, willfully refuse or fail to appear before... any legislative committee... or ... refuse to testify or to answer any question regarding the property, government or affairs of the municipality, or regarding his nomination, election appointment or official conduct on the ground that his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he may be asked to testify, may be removed from office by the governing body of the municipality in its discretion.”

147. Defendant has misread and thus misapplied this statute. Plaintiff did not refuse to testify as to any matter that would tend to incriminate him (criminally) nor did he refuse to waive immunity from prosecution. That is, there were no grounds upon which the City could terminate Plaintiff’s employment based on this statute, N.J.S.A. 40:69A-167. Plaintiff did not appear and did not testify because to do so would be tantamount to engaging in the same illegal conduct of Defendant and/or condoning the Defendant’s illegal subpoena and investigation designed to retaliate against him and to circumvent the proper legal channels for the conducting of discovery in civil lawsuits.

148. Third, the investigatory body and the investigation are void as a matter of law. Pinizzotto was never legally nor properly authorized to represent or counsel the committee. City Council may have passed a Resolution appointing Pinizzotto, but such

action is not legal and binding to authorize Pinizzotto to perform services on behalf of the City without the Mayor having first hired him.

149. The New Jersey Supreme Court in Newark v. James, 183 N.J. 361, 370 (2005) was presented with the issue of “whether City Council has the implied authority to enter into contracts in furtherance of its statutory duties under N.J.S.A. 40:69A-36.” The Court answered the question, unequivocally, in the negative: “The Faulkner Act's mandate is clear and unmistakable: the Mayor is charged with the duty to negotiate and sign, subject to City Council's approval, contracts that bind the City, N.J.S.A. 40:69A-40(j) and -40(g), and City Council is charged with the duty of “[a]pproval of contracts presented by the mayor.” N.J.S.A. 40:69A-36(l). There can be no room here for the interpretation advanced by City Council that would reserve the responsibility for negotiating and signing contracts for City Council's consultants to City Council alone.” Id. at 371.

150. The Court in Newark v. James rejected City Council argument that the “because Section 5 of the Local Public Contract Law, N.J.S.A. 40A:11-5, allows the governing body to purchase professional services by resolution and without public advertisements or competitive bids, it can purchase professional services without any input from the Mayor.” Id. at 374. The Court found that such an expansive reading of the Local Public Contract Law “is contrary to the balanced scheme created by the mayor-council plan of government under the Faulkner Act. As provided by the relevant provisions of the Optional Municipal

Charter Law, N.J.S.A. 40:69A-32(a), the governing body of a mayor-council municipality consists of both the mayor and the council.” Id.

151. Lastly, both the investigation and the subsequent termination are retaliatory. The investigation (allegedly into Plaintiff’s qualifications and conduct) was initiated only after he had brought suit against the City. Filing a lawsuit constitutes protected activity under the Conscientious Employee Protection Act. It is blatantly evident that both the legally unauthorized investigation, hiring of Pinizzotto to conduct the investigation and the illegal subpoena issued by Fanuci as well as the termination of Plaintiff are a directly and causally connected to his lawsuit asserting numerous violations of the law against Defendant.

152. On or about May 4, 2016 the deposition of Robert Pinizzotto, Esq. was conducted which confirms that Plaintiff was not afforded the substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State.

153. Defendants purposefully misrepresented to Plaintiff and the public that it was authorized to conduct an investigation into the Plaintiff’s “personnel matters.”

154. Indeed, the deposition of Robert Pinizzotto, Esq. reveals that the Defendants misrepresented that it had reached an agreement with Mayor Bermudez to hire Robert Pinizzotto to conduct an investigation into the Plaintiff.

155. In fact, Defendants had no such agreement with Mayor Bermudez and there is no written evidence that an agreement was reached.
156. On May 4, 2016, it was learned by Plaintiff that the Defendants illegally and improperly signed a contract for Professional Services to hire Robert Pinizzotto, Esq. without obtaining the signature of Mayor Bermudez in violation of the Faulkner Act, N.J.S.A. 40:69A-32.
157. It was further learned that Pinizzotto was paid from funds not appropriately authorized for his payment nor were any checks provided to Pinizzotto signed by the Mayor in contravention of N.J.S.A. 40:69A-130 and -149.14.
158. Thus, the investigation of Plaintiff conducted by Robert Pinizzotto, Esq. and all the actions that followed his illegal hire are void, null and illegal as a matter of law.
159. Moreover, it has been confirmed that the subpoena issued to Plaintiff was issued by Robert Pinizzotto, not by Anthony Fanucci, for Plaintiff to attend the investigation was illegally issued and/or improperly served further rendering the termination of Plaintiff illegal, null and void as a matter of law.
160. Additionally, the investigative file maintained by Pinizzotto regarding Lutz contained numerous violations of privacy issues such as the possession of Plaintiff's social security number, date of birth and address-none of which were authorized by Lutz for Pinizzotto to possess or use. Defendants provided the personal information to Pinizzotto in violation of Plaintiff's privacy rights.

161. Moreover, the Plaintiff's social security, address and date of birth and that of his e-wife were impermissibly used by Pinizzotto to issue various subpoenas duces tecum to obtain records not authorized by Plaintiff; and to conduct background checks and driving records in violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 ("FCRA")³, the Driver Privacy and Protection Act ("DPPA"), N.J.S.A. 39:2-3.3 and - 3.4⁴.
162. The entire investigation initiated by City Council without the consent and approval by Mayor Bermudez has been plagued by statutory and regulatory violations causing it to be an egregious abuse of process in violation of Plaintiff's substantive and procedural rights.

COUNT I

VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT N.J.S.A. 10:6-1, ET SEQ. FOR FIRST AMENDMENT PROTECTED SPEECH AND POLITICAL ASSOCIATION

163. The New Jersey Constitution protects freedom of speech and political association.
Article I, para. 19.

³ The Fair Credit Reporting Act, 15 U.S.C. § 1681 ("FCRA") is U.S. Federal Government legislation enacted to promote the accuracy, fairness, and privacy of consumer information contained in the files of consumer reporting agencies.

⁴ The enactment of Sections 3.3 and 3.4 places New Jersey in compliance with the federal Driver's Privacy Protection Act, 19 U.S.C. ¶ 2721-2725, which prohibits states from disclosing personal information contained in motor vehicle records except under certain, specified circumstances. N.J.S.A. 39:2-3.4(c)(1) provides that the personal information listed above "shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft" and may be disclosed "[f]or use by any government agency, including any court or law enforcement agency in carrying out its functions." In Plaintiff's case, Pinizzotto was in violation of the Faulkner Act and not properly charged or authorized to act on behalf of any legitimate purpose in obtaining the driving records of Plaintiff from the New Jersey State Police.

164. The harassment Plaintiff William Lutz endured as a result of exercising his free speech rights is a violation of the New Jersey Civil Rights Act.
165. Public employees have a constitutional right to speak on matters of public concern without fear of retaliation. See Baldassare v. New Jersey, 250 F.3d 188, 194 (3d Cir. 2001).
166. The New Jersey Civil Rights Act permits any person who has been deprived of any substantive rights secured by the Constitution to bring a civil action for damages and for injunctive or other appropriate relief. N.J.S.A. § 10:6-2(c). The Court may also award the prevailing party reasonable attorney's fees and costs. Id. § 10:6-2(f).
167. A public employee's retaliation claim is analyzed under a three-pronged test. Latessa v. New Jersey Racing Com'n, 113 F.3d 1313, 1319 (3d Cir. 1997); Green v. Philadelphia Hous. Auth., 105 F.3d 882, 885 (3d Cir. 1997). Our jurisprudence governing political association retaliation claims under the First Amendment has its origins in the Supreme Court's "trilogy" of "political patronage cases." Goodman v. Pa. Tpk. Comm'n, 293 F.3d 655, 663 (3d Cir. 2002) (citing Elrod v. Burns, 427 U.S. 347 (1976); Branti v. Finkel, 445 U.S. 507 (1980); Rutan v. Republican Party of Ill., 497 U.S. 62 (1990)). From these cases and their progeny, "we have derived a three-part test to establish a claim of discrimination based on political patronage in violation of the First Amendment." Galli v. N.J. Meadowlands Comm'n, 490 F.3d 265, 271 (3d Cir. 2007). First, the plaintiff must establish that he "was employed at a public agency in a position that does not require

political affiliation.” Id. Second, the plaintiff must show that she engaged in conduct protected by the First Amendment. Id. And finally, the plaintiff must prove that the constitutionally-protected conduct was a substantial or motivating factor for the adverse employment action. Id.

168. Plaintiff was employed as the Business Administrator with the Defendant, a position where political affiliation is not “an appropriate requirement for the effective performance of the public office involved.” Branti, supra, at 518; Elrod, supra, at 367. Similarly, Plaintiff’s political support of Mayor Bermudez was constitutionally protected conduct. Branti, supra, at 519.

169. To ultimately prevail on a protected speech claim, the plaintiff must demonstrate: (1) that he engaged in speech that is protected; (2) that his speech was a motivating factor in the alleged retaliatory act; and (3) that defendant cannot show by a preponderance of the evidence that, even in the absence of the protected speech, the adverse action at issue would have been taken. Watters v. City of Philadelphia, 55 F.3d 886, 892 (3d Cir. 1995).

170. Plaintiff has engaged in protected speech on topics of public concern, including calling attention to the need for further investigation into the Landis Theater Project after the initial report submitted by Holman Frenia raised troubling questions of potential fraud, misappropriation and the misuse of public funds by City officials, e.g. City Solicitor Rick Tonetta and City Council President Anthony Fanucci. Plaintiff also voiced disapproval about Vineland’s culture of nepotism, violations of the New Jersey Civil Service laws and

improper procedures regarding City Council meeting agendas. In response, Plaintiff has been retaliated against in the form of a bogus personnel investigation and continuous harassment and intimidation.

WHEREFORE, Plaintiff seeks damages to vindicate his rights under the laws and remedy the egregious loss and damages inflicted upon him by Defendant, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, everyday and daily stress caused by Defendant's illegal acts, punitive damages and any other damages the Court deems fair and just.

Count II

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

171. The above paragraphs are incorporated herein as if set forth at length.
172. Plaintiff William Lutz's wrongful termination is a violation of the Conscientious Employee Protection Act.
173. The Conscientious Employee Protection Act ("CEPA") is New Jersey's "whistleblower" statute. It protects employees from retaliation by an employer for reporting, threatening to disclose or refusing to participate in the employer's unlawful activity. N.J.S.A. 34:19-3; D'Annunzio v. Prudential Ins. Co. of Am., 192 N.J. 110, 120

(2007) (“CEPA prohibits an employer from taking adverse employment action against any employee who exposed an employer’s criminal, fraudulent, or corrupt activities.”)

174. The filing of lawsuit or other complaint to a government body constituted protected whistleblower activity under the law. See e.g. Sandom v. Travelers Mortg. Services, Inc., 752 F. Supp. 1240, 1244 (D.N.J. 1990) (holding that retaliation for filing an EEOC claim could serve as the basis for a CEPA claim).

175. “[T]he core value that infuses CEPA is the legislative determination to protect from retaliatory discharge those employees who, ‘believing that the public interest overrides the interest in [they] serve[], publicly blow[] the whistle [because] the organization is involved in corrupt, illegal, fraudulent or harmful activity.’” Mehlman v. Mobile Oil Corp., 153 N.J. 163, 187-88 (1998) (citing Ralph Nader et al., *Whistleblowing: The Report of the Conference on Professional Responsibility* (1972)).

176. “The [other] core value embodied in CEPA is that employees courageous enough to object to illegal, fraudulent or harmful activity by their employers in order to protect the public welfare deserve to be shielded from retaliation by their employers.” Id. at 195.

177. In the present case, Plaintiff filed this lawsuit alleging illegal conduct on the part of Defendant. Plaintiff was then terminated for same, in direct violation of CEPA.

WHEREFORE, Plaintiff seeks damages to vindicate his rights under the laws and remedy the egregious loss and damages inflicted upon him by Defendant, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm

and injury, physical illness, economic damages, injunctive and equitable relief, everyday and daily stress caused by Defendant's illegal acts, punitive damages and any other damages the Court deems fair and just.

COUNT III

VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT N.J.S.A. 10:6-2 (VIOLATIONS OF THE FAULKNER ACT)

178. The above paragraphs are incorporated herein as if set forth at length.
179. The Vineland City Council's violations of the Faulkner Act as described above, has deprived Plaintiff of the substantive right to be subject to an investigation by a duly appointed and contracted investigator; and for a properly constituted and conducted legislative investigation.
180. Plaintiff is the intended beneficiary of the Faulkner Act provisions, N.J.S.A. 40:69A-32 and N.J.S.A. 40:69A-40(j) and -40(g); N.J.S.A., 40:69A-36(l), N.J.S.A. 40:69A-44, N.J.S.A. 40:69A-87, N.J.S.A. 40:69A-91, N.J.S.A. 40:69A-149.9, N.J.S.A. 40:69A-149-14; and N.J.S.A. 40:69-167.
181. N.J.S.A. 40:69A-167 provides: Failure to appear or testify before court, legislative committee or Governor ***If any person*** hereafter elected or ***appointed to any office*** or position in a municipality governed under this act shall, after lawful notice or process, willfully refuse or fail to appear before any court, any legislative committee, or the Governor, or having appeared shall refuse to testify or to answer any question regarding

the property, government or affairs of the municipality, or regarding his nomination, election appointment or official conduct on the ground that his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any such matter in relation to which he may be asked to testify, may be removed from office by the governing body of the municipality in its discretion. Any person removed from office pursuant to this section shall not thereafter be eligible for election or appointment to any office or employment in such municipality.

182. Clearly, Plaintiff, as an appointed official of the City of Vineland is an intended beneficiary of the Faulkner Act, in particular N.J.S.A. 40:69A-167, because he had not been provided proper process requiring his attendance at the legislative committee because Defendants failed to serve him with a subpoena in accordance with Court rules and Statute which require personal service of subpoenas ad testificandum.

183. Plaintiff was terminated from employment based on a purported violation of the N.J.S.A. 40:69A-167; yet, the investigative “legislative committee” had not been properly constituted and was being orchestrated by Robert Pinizzotto, who was illegally hired by City council (he did not have a contract signed by the Mayor and none of the payments made by City council to Pinizzotto were by check signed by the Mayor as required by N.J.S.A.40:69A:40 (g) and -(j) and N.J.S.A. 40:69A-130 and -149-14.

184. On or about June 12, 2014 Defendants terminated the employment of Lutz for purported violation of N.J.S.A. 40:69A-167.

185. As a direct and proximate result of Defendants violation of Plaintiff's substantive rights in derogation of the provisions of the Faulkner Act.

186. The violations of state statutory law are actionable under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 (c).

WHEREFORE, Plaintiff seeks damages to vindicate his rights under the laws and remedy the egregious loss and damages inflicted upon him by Defendant, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, everyday and daily stress caused by Defendant's illegal acts, punitive damages and injunctive relief and any other damages the Court deems fair and just.

COUNT III

ABUSE OF PROCESS

187. The above paragraphs are incorporated herein as if set forth at length.

188. Defendants employed a process governed by the Faulkner Act in a manner not contemplated by law in that Vineland City Council unilaterally and in derogation of its legislative duties did usurp the powers of the Mayor by entering into a contract with Robert Pinizzotto.

189. Indeed, City Council in hiring Robert Pinizzotto, Esq. to conduct a legislative investigation in the absence of a contract signed by Mayor Bermudez and without his consent is a direct violation of the Faulkner Act, N.J.S.A. 40:69A-36 and 40.
190. City Council hiring and paying for a private investigator to investigate the Plaintiff and the Mayor without having an executed a contract signed by the Mayor and without the approval of the Mayor or a Court of Law in violation of the Faulkner Act and the Local Government Finance Contract Laws.
191. City Council also abused and purposefully overstepped its boundaries by permitting Pinizzotto to contract with an unauthorized private investigator to conduct a credit report and background investigation on Plaintiff and on Mayor Bermudez and the ex-wife of Plaintiff without the approval, consent or knowledge of Plaintiff, Mayor Bermudez and/or Marielis Velez-Lutz, the ex-wife of Lutz. Indeed, the Fair Credit Reporting Act requires that such credit reports/background checks be made with the knowledge and consent of the party who is the subject of the background check.
192. Moreover there were numerous subpoenas ad testificandum and subpoena duces tecum that did not provide witnesses with the requisite ten day notice to respond, that were not personally served and which purposefully were not provided to Plaintiff by way of copy so that he might challenge the illegally and/or impermissibly issued subpoeans in violation of State statute and Court rules.

193. Finally, City Council terminated Plaintiff's employment premised on purported authority to act but in reality, it abused, misrepresented and falsified its authority to act.
194. As a direct and proximate result of the Defendant's actions as described above, Defendant made an improper, illegal and perverted use of the legal procedure, that is to say, its resort to the legal process was neither warranted nor authorized by law.
195. Moreover, Defendant had an ulterior motive in initiating the legal process, to wit, to terminate Plaintiff from his employment due to his conflicts with Richard Tonetta, City Solicitor (who viewed Plaintiff as the reason for mayor Bermudez having attempted to terminate his contract for Professional Services with the City of Vineland; and with Angela Calakos due to Plaintiff's refusal to hire her husband in violation of the merit based civil service laws) and due to Plaintiff's attempts to bring to light the concerns raised in the Holman Frenia report which identified misappropriation of funding involving the Landis Theater Project.

WHEREFORE, Plaintiff seeks damages to vindicate his rights under the laws and remedy the egregious loss and damages inflicted upon him by Defendant, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, everyday and daily stress caused by Defendant's illegal acts, punitive damages and injunctive relief and any other damages the Court deems fair and just.

COUNT III

FAIR CREDIT REPORTING ACT-PRIVACY-UNAUTHORIZED-IMPERMISSIBLE PURPOSE

196. The above paragraphs are incorporated herein as if set forth at length.

197. The Fair Credit Reporting Act, 15 U.S.C. § 1681§ 603, provides: (c) The term “consumer” means an individual.

198. The Fair Credit Reporting Act, 15 U.S.C. § 1681 § 603, provides: (d) Consumer Report
(1) In general. The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 604 [§ 1681b].

199. § 603 (f) provides: the term “consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties,

and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

200. § 603 (h) provides: The term “employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

201. § 603 (k) provides: (1) Actions included. The term “adverse action” (B)(iv) an action taken or determination that is (II) adverse to the interests of the consumer.

202. § 604. Permissible purposes of consumer reports [15 U.S.C. § 1681b] identifies the Conditions for Furnishing and Using Consumer Reports for Employment Purposes as follows: (1) Certification from user. A consumer reporting agency may furnish a consumer report for employment purposes only if (A) the person who obtains such report from the agency certifies to the agency that (i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and (ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and (B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer’s rights under this title, as prescribed by the Bureau under section 609(c)(3) [§ 1681g]. (2) Disclosure to Consumer. (A) In general. Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment

purposes with respect to any consumer, unless – (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and (ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

203. § 604. Permissible purposes of consumer reports [15 U.S.C. § 1681b] (f) provides: Certain use or obtaining of information prohibited. A person shall not use or obtain a consumer report for any purpose unless (1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and (2) the purpose is certified in accordance with section 607 [§ 1681e] by a prospective user of the report through a general or specific certification.
204. Plaintiff is a consumer.
205. Defendant is the employer of Plaintiff at the times relevant to this claim.
206. At no time relevant did Plaintiff provide authorization to the Defendant to obtain a consumer report.
207. Defendant was required under the FCRA to obtain authorization from Plaintiff each and every time it obtained a background check and /or consumer report.
208. Defendant was required under the FCRA to provide notice to Plaintiff each and every time that it sought a consumer report on Plaintiff.

209. Defendant neither obtain authorization or provided Plaintiff with notice that it was obtaining a consumer report on Plaintiff.
210. In or about May 2014 Defendant did obtain a consumer report on Plaintiff.
211. In or about May 2014, Defendant provided information that was protected and confidential to Robert Pinizzotto, who was not authorized to receive such information, such as the Plaintiff's social security, date of birth and address for purposes of obtaining a consumer report.
212. Defendant by and through Robert Pinizzotto who hired another third party, consumer reporting agency, Atlantic Investigations, LLC, sought and did obtain a consumer report on Plaintiff, an employee, without his authorization or knowledge.
213. Defendants had no legitimate purpose to obtain a consumer report as the legislative investigation conducted by Pinizzotto was invalid, unauthorized by law and was not described by Resolution as being for the purpose, in any event, to uncover suspected employment "misconduct." Moreover, Pinizzotto was not a bona fide agent of Defendant in that he was never legally and permissibly hired to act for the City of Vineland.
214. Defendant used the consumer report, i.e., "comprehensive report" which contained Plaintiff's social security number and other personal indicators as well as criminal history, judgment history, mortgage history, tax history and other non-public information for impermissible employment related reasons.

215. As a direct and proximate result of Defendant having obtained illegally a consumer report on Plaintiff it took adverse action in that it took and/or made a determination that is adverse to the interests of the consumer.

WHEREFORE, Plaintiff seeks damages to vindicate his rights under the laws and remedy the egregious loss and damages inflicted upon him by Defendant, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, everyday and daily stress caused by Defendant's illegal acts, punitive damages and injunctive relief and any other damages the Court deems fair and just.

COUNT IV

DRIVER PRIVACY PROTECTION ACT VIOLATIONS-CRA CLAIMS

216. The above paragraphs are incorporated herein as if set forth at length.

217. Defendant, by and through the actions of Robert Pinizzotto impermissibly requested and obtained motor vehicle records for Plaintiff in violation of the Driver Privacy and Protection Act, N.J.S.A. 39:2-3.3

218. Defendant, by and through the actions of Robert Pinizzotto misrepresented to the New Jersey State Police, the Division of Motor Vehicles and/or municipal governmental agencies that it had a legal and/or permissible basis to request and obtain the driving records for Plaintiff.

219. The violations of state statutory law are actionable under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 (c).

WHEREFORE, Plaintiff seeks damages to vindicate his rights under the laws and remedy the egregious loss and damages inflicted upon him by Defendant, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, everyday and daily stress caused by Defendant's illegal acts, punitive damages and injunctive relief and any other damages the Court deems 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.

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, LLC

Attorneys for Plaintiff

By:  

MICHELLE J. DOUGLASS

May 9, 2016 / 8-10-2016