

Matthew A. Lubber, Esq. – NJ ID # 017302010
mal@njlegal.com
Peter M. Draper, Esq. – NJ ID # 012112012
pmd@njlegal.com
R. Armen McOmber, Esq. – NJ ID # 018251998
ram@njlegal.com
Christian V. McOmber, Esq. – NJ ID # 012292010
cvm@njlegal.com
McOMBER & McOMBER, P.C.
30 S. Maple Avenue
Marlton, NJ 08053
(856) 985-9800 Phone/ (732) 530-8545 Fax
Attorneys for Plaintiff Andrew Poulos

<p>ANDREW POULOS,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, JOSHUA LICHTBLAU, ABC CORPORATIONS 1-5 (fictitious names describing presently unidentified business entities) and JOHN DOES 1-5 (fictitious names describing presently unidentified individuals),</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MERCER COUNTY</p> <p>DOCKET NO.:</p> <p style="text-align: center;"><u>Civil Action</u></p> <p style="text-align: center;">COMPLAINT & DEMAND FOR TRIAL BY JURY</p>
--	--

Plaintiff Andrew Poulos (“Plaintiff”), by way of Complaint against Defendant The State of New Jersey, Office of the State Comptroller (“Defendant OSC”) and Defendant Joshua Lichtblau (collectively “Defendants”), alleges as follows:

INTRODUCTION

1. This is an action brought under the Conscientious Employee Protection Act (“CEPA”) that arises out of the unlawful retaliatory termination of a dedicated state employee. Prior to his termination in December 2017, Plaintiff spent more than four years as the lead investigator for “Operation Blue Claw,” a high profile federal and state investigation focusing on Medicaid fraud committed by numerous members of the Orthodox Jewish community in

Lakewood, New Jersey. For years, Plaintiff played a critical role in exposing fraudulent conduct, in culling the extensive documentary evidence needed to support and justify numerous criminal prosecutions, and in assisting the state's recovery of millions of dollars in Medicaid funds.

2. Despite having been praised for his hard work, his dedication, and his diligence in bringing Medicaid fraud criminals to justice not three months before his sudden termination, and despite having received not one single disciplinary action or reprimand at any point in time in his six-year career with Defendant OSC, Plaintiff was removed from the investigation just days after he exposed his superior's attempted fraud and terminated two weeks later. Even worse, since his termination, Defendants have engaged in a public smear campaign, by making false accusations regarding Plaintiff's conduct to various media outlets in a transparent attempt to justify his unlawful termination and to save political face.

3. Fortunately, New Jersey law provides redress for employees subjected to such conduct. Plaintiff accordingly brings this lawsuit, not only to recover compensatory and punitive damages, lost wages, attorneys' fees, costs, and such other relief as the Court deems equitable and just, but to expose a politically motivated cover up pertaining to one of New Jersey's most important criminal investigations in recent history.

PARTIES

4. Plaintiff is an individual residing in Ocean County, New Jersey. At all relevant times hereto, Plaintiff was employed as an Investigator by Defendant OSC in the Medicaid Fraud Division ("MFD") as a Supervising Investigator from November 2011 through his unlawful termination on December 29, 2017.

5. Defendant OSC is an independent state agency that conducts audits and investigations of government agencies throughout New Jersey. Defendant OSC also reviews

government contracts and works to detect and prevent Medicaid Fraud. At all times relevant hereto, Defendant OSC is an “employer” as defined under the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 *et. seq.* (“CEPA”).

6. Defendant Lichtblau is employed by Defendant OSC as the Director of the MFD. This claim is brought against Defendant Lichtblau in his individual capacity and/or as an agent or servant of Defendant OSC during the course of his employment.

7. Defendant ABC Corporations 1 through 5 are currently unidentified business entities who have acted in concert with Defendants, and/or currently unidentified business entities or state agencies responsible for the creation and/or implementation of anti-retaliation policies of Defendant OSC, and/or currently unidentified business entities who have liability for the damages suffered by Plaintiff under any theory advanced therein.

8. Defendants John Does 1 through 5 are currently unidentified individuals who acted in concert with Defendants and/or currently unidentified individuals responsible for the creation and/or implementation of anti-retaliation policies of Defendant OSC and are currently unidentified individuals who may have liability for the damages suffered by Plaintiff under any theory advanced herein.

FACTS COMMON TO ALL CLAIMS

Plaintiff’s Employment with Defendant OSC

9. Plaintiff repeats each allegation set forth above as if set forth fully herein at length.

10. Plaintiff was employed within Defendant OSC’s MFD as a Supervising Investigator from November 2011 through his unlawful termination on December 29, 2017. In this position, Plaintiff earned \$95,300.00 per year.

11. Phillip J. Degnan is the current New Jersey State Comptroller. Mr. Degnan has

held that position since October 2015.

12. Robert Graves is employed by Defendant OSC as the Investigation Chief for the MFD.

13. Kay Ehrenkrantz is employed by Defendant OSC as the Deputy Direction for the MFD.

14. At all relevant times, Plaintiff reported to Mr. Degnan, Mr. Graves, Ms. Ehrenkrantz, and Defendant Lichtblau.

15. Upon his hiring, Plaintiff was immediately tasked by Mr. Graves to assist in drafting policies and procedures for the MFD Investigation Unit because, at the time, none existed.

16. From 2011 to 2013, Plaintiff's job responsibilities focused on supervising fraud investigations related to Medicaid providers, such as physicians, dentists, adult day care centers, hospitals, etc.

17. In 2013, however, Plaintiff's job shifted to supervising a team conducting fraud investigations of "recipient fraud."¹

18. That same year, Plaintiff was selected by the U.S. Department of Justice, Medicaid Integrity Institute in Columbia, South Carolina to become a faculty member instructing investigators from other states on basic and specialized investigative skills. This was a very significant assignment, which Plaintiff held from 2013 to 2015, reserved only for skilled and dedicated investigators.

Plaintiff's Involvement With "Operation Blue Claw"

19. In 2014, while investigating several cases where the Medicaid recipients were from Lakewood, New Jersey, department investigators noticed that all of the cases looked very similar,

¹ Recipient fraud is when an individual obtains Medicaid benefits through illicit means, i.e., knowingly misrepresenting income or household information.

namely, the fraudulent schemes implicated the same kind of financial transaction.

20. In late 2014, Defendant OSC began an investigative operation known as “Operation Blue Claw.” Operation Blue Claw was a focused investigation of dozens of Medicaid recipients from the Orthodox Jewish community in Lakewood, New Jersey.

21. Plaintiff was the point person for the entire operation. He was responsible for supervising the investigations, communicating with partner agencies, and briefing the MFD Director, Deputy Director, and Chief of Investigations.

22. Operation Blue Claw was a joint effort by the MFD, the Federal Bureau of Investigations (“FBI”), Ocean County Prosecutor’s Office (“OCPO”), Social Security Administration – Office of Inspector General, and the New Jersey Department of the Treasury – Office of Criminal Investigations.

23. As discussed below, Plaintiff was also responsible for working with key management officials at the Comptroller’s Office to create what was officially known as the “Ocean County Recipient Voluntary Disclosure Program,” but is more widely known as the “Amnesty Program” (hereinafter “Amnesty Program”).

24. Operation Blue Claw formally commenced in February of 2015.

25. In latter half of 2016, there was a meeting among key investigation officials at the OCPO to discuss Operation Blue Claw, with attendees including but not limited to: Plaintiff, the Ocean County Prosecutor Joe Coronato, the Chief of Detectives for the OCPO, two Senior Assistant Prosecutors for the OCPO, a Detective Sergeant for the OCPO, and an FBI agent. This meeting was to discuss the prosecution of the Operation Blue Claw cases.

26. During this meeting, Prosecutor Coronato recommended that the State offer some type of “amnesty” to allow Medicaid recipients to turn themselves in and pay back the State.

Prosecutor Coronato stated the OCPO had already warned the Lakewood Orthodox community to cease committing welfare fraud. He further explained it was time to make a statement by making arrests; that his office would make several arrests each month for several months to deter the community at large; and that after the arrests, the State could announce an amnesty program, so the community would be properly motivated to participate.

27. Prosecutor Coronato also stated that, after the Amnesty Program was concluded, he wanted to prosecute three or four additional cases to deter the community again – and then another amnesty Program could be offered. Prosecutor Coronato explained he would arrange a meeting with the Lakewood “Vaad” – a voluntary organization of leaders and businessmen, who represent a significant portion of the Orthodox Jewish community in Lakewood, New Jersey in public policy issues – to further inform the community of these measures. The plan was to use the Vaad to make the program successful.²

28. After the meeting, Plaintiff briefed MFD management on the meeting.

29. In December 2016, Plaintiff, along with Defendant Lichtblau, Mr. Graves, and Kay Ehrenkrantz, MFD Deputy Director, designed the Amnesty Program.

30. On January 9, 2017, Defendant Lichtblau emailed the Comptroller, Phil Degnan, with a summary of the Amnesty Program and requested permission to move forward on its implementation. ***Mr. Degnan signed off on the Amnesty Program approximately one week later.***

31. On January 24, 2017, Plaintiff emailed OCPO Detective Sgt. Mark Malinowski and OCPO Senior Assistant Prosecutor Martin Anton to advise that Mr. Degnan had signed off on a temporary disclosure program.

² As discussed below, after several arrests were made, former State Comptroller Matthew A. Boxer, Esq. became involved in these meetings. Mr. Boxer appeared in his capacity as an attorney at the meeting and represented the interests of the Vaad.

32. In June 2017, the criminal arrests for Operation Blue Claw commenced, which resulted in considerable national and local press.

33. On June 26, 2017, members of the Lakewood community, namely attorney Yosef Jacobvitch, Esq. (“Mr. Jacobvitch”), Lakewood Mayor Meir Lichtenstein (“Mr. Lichtenstein”), and Moshe Tress (“Mr. Tress”), requested a meeting with Plaintiff at the MFD office in Trenton. At this meeting, Mr. Lichtenstein advised Plaintiff that he had learned from his conversations with the OCPO that the MFD would be offering an amnesty program in the future that would permit individuals in receipt of Medicaid benefits to turn themselves in and pay back what they received without being criminally charged. Plaintiff advised that the Amnesty Program had not yet been finalized. Plaintiff further cautioned that if word of the Amnesty Program was prematurely spread around the Lakewood community, it would diminish the effect of the criminal operation and the MFD would have no other option but to abandoned the program entirely. Mr. Jacobvitch, Mr. Lichtenstein, and Mr. Tress agreed not to leak any information concerning the Amnesty Program until same was officially introduced to the community. However, Mr. Tress and Mr. Lichtenstein advised Plaintiff that it would be in the State’s best interest to open up the program for 120 days to accommodate the anticipated number of families that would take advantage of it. Plaintiff advised that he would relay this information to the appropriate management officials.

34. On June 30, 2017, Defendant Lichthblau sent an email to all MFD employees praising Plaintiff’s work on Operation Blue Claw and noting how instrumental his work and dedication was to its success, stating:

The number of arrests, size, type and array of alleged public benefits fraud, and obvious complexity of the purported crimes all contributed to making the Lakewood actions front page news stories this week. *What the press and public do not know and cannot see when these actions come to light, however, is the planning, years of hard work and perseverance that went into meticulously*

building these cases. That is where Supervising Investigator Andrew Poulos, with steady guidance from Chief of Investigations Robert Graves, and Investigators Dennis Grant, Syed Hussaini, Richard Krattenmaker, Gerald Krehl, Anthony Mihalow, John Mongrella, Matthew O'Mullan, and Bhupendra Patel *in the Recipient Fraud Unit come into the picture*. Over two years ago, Andrew and Investigators in his group began working on what we now call Operation Blue Claw, a multi-agency approach to tackling what is alleged to be rampant abuse of various federal, state and local government programs in Lakewood. When the Recipient Fraud Unit, following Andrew's methodical plan, began to assemble what would become the foundation for these benefits fraud cases they could not know how many targets would be involved, the number of programs affected, and how much money was improperly obtained as a result of these alleged actions. As they uncovered more and more evidence of apparent wrongdoing, they realized the gravity of the situation and the amount of work that laid ahead. That realization, however, did not deter them.

Despite what they knew would be a long road ahead, for each suspected case of fraud, Andrew and Investigators in the Recipient Fraud Unit began by assembling Medicaid application materials of those who may have qualified for Medicaid using false income, marital status and/or dependent information. The MFD team then obtained a range of information from outside sources to determine whether the application information was verifiably false. Then, the Investigators prepared detailed income schedules and, applying Medicaid program rules, determined whether the evidence demonstrated whether the target was, in fact, eligible for Medicaid during the period in question. With that information, the Investigators worked with counterparts in the Ocean County Prosecutor's Office; the Division of Taxation, Office of Criminal Investigations; and federal Social Security Administration personnel to determine whether the targets may have committed fraud against any other programs. Following a well thought out plan, MFD Investigators prioritized the compiled information into groups based on the apparent amount of benefits fraud. Through this process, the MFD team prepared the complete package of investigative materials, including all support for each potential fraud charge involving the Medicaid program, and began to send these packages to the task force members for consideration of criminal charges. After Andrew and the MFD team sent one package of information to task force members in the OCPO and FBI, it moved on to the next group to complete and send over to our law enforcement counterparts.

The process above may sound like a relatively easy set of steps designed to move in a conveyor belt fashion to a predetermined outcome – arrests. In investigations, however, little is easy or moves in a manner that resembles a conveyor belt. Despite numerous obstacles, including difficulty obtaining information and challenges stemming from working with outside parties that may have divergent interests, our investigative team assiduously followed Andrew’s plan and, as a result, were able to keep our portion of the project on track. In addition, throughout this process, we interacted with our federal, state and county counterparts with tact and respect and, as a result, earned their trust. The results of Operation Blue Claw to date demonstrate that with the right leadership, plan, hard work and a heavy dose of perseverance, we can be wildly successful.

Since MFD has been in existence, to my knowledge, we have recovered money in only a handful of recipient fraud cases. In contrast, we anticipate that the cases we are working on as part of Operation Blue Claw will lead to numerous recoveries. In addition, as we have already seen through news accounts and reports of lines of Medicaid beneficiaries who are trying to submit “corrections” to their government program application records, our efforts already have led to positive changes in the community. In sum, although we are in the early stages of this case in terms of the outcomes and this effort is ongoing, we are off to an excellent start. ***We applaud the excellent leadership exhibited by Robert and Andrew*** and the work of Dennis, Syed, Richard, Gerald, Anthony, John, Matthew, and Bhupendra. Their collective effort demonstrates that our office can “punch above its weight class.” Congratulations to our office for this fine work, particularly to those who were on the front lines. And, stay tuned for more on Operation Blue Claw...

(Emphasis added).

35. Mr. Degnan then followed suit by forwarding that email to the entire Agency. Notably, Mr. Degnan declared the results to be “truly extraordinary,” and of the type that “speak for themselves.”

36. The success of Operation Blue Claw resulted in a high volume of immediate arrests, all of which occurred in a matter of weeks (rather than months, as originally planned). As such there was now a need to accelerate the launch of the Amnesty Program. The launch of the program took considerable communication between Plaintiff, Defendant Lichblau, Ms. Ehrenkrantz, and

Mr. Graves. There were also several phone calls with the OCPO and other stakeholders.

37. In July 2017, as part of the preparation of the launch of the Amnesty Program, it was communicated to the MFD by Prosecutor Coronato that it would be problematic if the State was granting amnesty for losses of more than \$75,000.00 – the threshold for a second-degree criminal charge. Prosecutor Coronato explained it would be easier to justify amnesty for third-degree level losses (those losses less than \$75,000.00) since there is no presumption of incarceration with a third-degree crime. In turn, a meeting was held between Plaintiff, Defendant Lichthblau, and Ms. Ehrenkrantz, where it was decided that any Amnesty Program cases that had loss amounts over \$75,000.00 would be reduced so the improper benefits received was under \$75,000.00.³

38. In a July 27, 2017 memorandum from Defendant Lichthblau to Mr. Degnan, Defendant Lichthblau advised that as part of the Amnesty Program, the MFD would not seek full repayment of Medicaid benefits associated with the applicant's children so as to keep the amounts under \$75,000.00, thereby reducing the chance the agreed upon amount would result in second degree charges. In other words, there was never any intention on the part of the MFD to have "full" or "complete" repayment of improperly received benefits from those participating in the Amnesty Program, despite public statements to the contrary.

39. Furthermore, in August 2017, there were dozens of other Operation Blue Claw targets whose cases were not yet completed. MFD management decided to send letters to these recipients, encouraging them to apply for the Amnesty Program. This information was then communicated to the Vaad through Mr. Jacobovitch. The message communicated to Mr.

³ Notably, before the Amnesty Program even launched, Plaintiff was directed to reduce loss amounts and reduce recovery amounts where necessary. Under MFD Policy 224, Supervising Investigators in Medicaid Benefits fraud (recipient) matters have authorization to negotiate civil settlements in cases under \$250,000.00 without the involvement or review by an agency Regulatory Officer.

Jacobovitch was clear – if a member of the Lakewood community received one of these letters they needed to apply for the program or potentially face criminal prosecution.

40. That same month, there were several individuals whose cases were complete, but were not sent with the original batch of Operation Blue Claw cases to the prosecutor. Defendant Lichthblau and Ms. Ehrenkrantz decided the MFD would bring those individuals in for a “show and tell.” After showing them the evidence, the goal was to encourage the recipients to enter the Amnesty Program.

41. Notably, one of these individuals was represented by Matthew Boxer, Esq., the former State Comptroller and counsel to the Vaad. Defendant Lichthblau and Ms. Ehrenkrantz required Plaintiff to update them both on every aspect of this particular matter because it involved Mr. Boxer. Said simply, everyone was aware that Plaintiff was communicating with Mr. Boxer and that Mr. Boxer’s client’s matter was settled for less than the full amount identified.

42. On September 7, 2017, just prior to the launch of the Amnesty Program, Mr. Degnan sent out an agency wide email praising Plaintiff’s work involved in creating the program.

43. That same day, Plaintiff met with Mr. Jacobovitch at his office in Lakewood. The purpose of this meeting was to discuss the launch of the details of the Amnesty Program, coordination with the Vaad, and the upcoming public information session. Mr. Jacobovitch advised Plaintiff that no one from Lakewood community will be showing up to the public information session because they “didn’t want to be branded as a thief.” Mr. Jacobovitch also advised he expected about 300 members of the community to apply for the program.

44. On September 11, 2017, Plaintiff briefed Defendant Lichthblau and Ms. Ehrenkrantz on the meeting with Mr. Jacobovitch. Plaintiff advised he was scheduled to meet with Mr. Degnan later in the morning. ***Defendant Lichthblau specifically advised Plaintiff not to share the Amnesty***

Program estimates with Defendant OSC management because Defendant Lichtblau wanted to keep the expectation for the program low so that when high numbers came it, the program would be viewed as a large success.

45. On September 14, 2017, Elissa Westbrook-Smith, Chief of Staff, sent out an agency wide email praising Plaintiff on creating a joint MFD/Social Security Administration state/federal fraud task force.

46. On October 18, 2017, Mr. Degnan held the annual meeting of the State Comptroller's Office, during which Plaintiff was asked to give a presentation on Operation Blue Claw and the Amnesty Program. At that same meeting Mr. Degnan awarded Plaintiff, and his team, the Comptroller's Award for Excellence.

47. On October 23, 2017, Plaintiff met with Mr. Jacobovitch at the Ocean County Board of Social Services. Justin Berardo, a regulatory officer, also attended the meeting. The purpose of the meeting was to meet with several applicants to execute settlement agreements. Mr. Jacobovitch advised that no applicants will appear in person at the Board of Social Services because they were afraid the press would be waiting. Later that day, Plaintiff went to Mr. Jacobovitch's office to pick up the agreements. At this time, Mr. Jacobovitch relayed a message from the Vaad about sending another round of letters out to potential program applicants.

48. Notably, Plaintiff never signed *any* settlement agreement under the Amnesty Program. While Plaintiff did negotiate the settlements, the ultimate signer of the agreement was a regulatory officer and Defendant Lichtblau.

49. On October 24, 2017, Plaintiff briefed Defendant Lichtblau and Ms. Ehrenkrantz on the meeting with Mr. Jacobovitch. Defendant Lichtblau and Ms. Ehrenkrantz in turn authorized a deviation from the program requirements, so that anyone represented by an attorney did not have

to appear in person to execute settlement agreements. As it pertained to the Vaad's request, Defendant Lichtblau asked Plaintiff to draft a proposed letter for approval. Plaintiff then submitted the draft letter to the MFD management and the proposed letter was forwarded to Mr. Degnan by Lichtblau.

50. On November 1, 2017, Plaintiff met with two other attorneys, Stacy Biancamano ("Ms. Biancamano") and Dan Holzapfel ("Mr. Holzapfel"). The meeting took place at Plaintiff's office in Trenton. The purpose of the meeting was to discuss several of the attorneys' Amnesty Program clients. During the meeting, the attorneys advised Plaintiff that a prominent rabbi in Lakewood, New Jersey was going to hold a triage session – this was so all the attorneys and potential program applicants could be at one location to discuss several additional mechanisms for encouraging community participation. Plaintiff briefed Ms. Ehrenkrantz immediately after the meeting.

51. On November 23, 2017, Plaintiff was contacted by Mr. Jacobovitch to schedule a meeting at the MFD's office in Trenton. The meeting took place on November 27, 2017. Mr. Jacobovitch and Moshe Tress attended this meeting. Mr. Jacobovitch conveyed that he had numerous applicants for the program that wanted to pay back the full amount owed, but he explained his clients could not do so within the six-month time frame. He further explained that, if the MFD would *not* permit an extension of time, then his clients requested that the repayment amounts be lowered so payments could be made within the six-month time frame.

52. *That same day, Plaintiff took the request directly to MFD management.* At a meeting that took place in Defendant Lichtblau's office, Defendant Lichtblau decided to authorize the lowering of the repayment amounts. As Plaintiff detailed in a meeting memorandum dated November 27, 2017:

...TRESS than interjected and advised SINV Poulos that if the terms of repayment could be extended out to 24 months or longer, that he believes a lot more individuals could afford to pay back the benefits. ***SINV Poulos advised JACOBOVITCH and TRESS that any decision on repayment terms would be out of his control, however he would bring the issue up with the Director...***SINV Poulos advised both JACOBOVITCH and TRESS that he would also bring that issue up with the Director to see what, if anything, can be done.

The meeting concluded at approximately 12:45 PM. All parties were escorted out by SINV Poulos.

Immediately after escorting the parties out, SINV Poulos briefed Deputy Director Kay EHRENKRANTZ on what was discussed. Deputy Director EHRENKRANTZ advised SINV Poulos that it should be discussed with Director Josh LICHTBLAU. SINV Poulos, Director LICHTBLAU, Deputy Director EHRENKRANTZ, and Chief of Investigations Robert GRAVES met in the Director's office to discuss. SINV Poulos briefed Director LICHTBLAU on the conversation he had with JACOBOVITCH and TRESS. Regarding the issue of an extension of time to repay the improper benefits, Director LICHTBLAU advised that he was not willing to bring that issue to the Comptroller. Director LICHTBLAU stated that if we delayed slightly in the signing of the settlement agreement to the middle of January that would afford applicants approximately another month. SINV Poulos advised Director LICHTBLAU that when Taxation determines that someone owes back taxes they offer a payment plan because they understand that individuals do not have access to a large sum of money to pay it all back at one time and that based on his meeting with JACOBOVITCH and TRESS that individuals could not come up with the funds in that amount of time and since they can't come up with the funds in the 6 month time frame, than they see no point in applying for the program since they would default on its terms and be subject to prosecution anyway. Director LICHTBLAU advised that we have publicly said 6 months and he did not think the Comptroller would revise it.

SINV Poulos then brought up the topic of negotiating the repayment amounts down to reasonable amounts so payment can be made in the time frame. Director LICHTBLAU opened up the topic for discussion. Chief GRAVES indicated he would be hesitant to reduce the repayment amounts by large sums given what had already been disseminated in public. Deputy Director EHRENKRANTZ agreed that altering the time frame would be problematic but reducing the repayment amounts would drive more people into the

program and would be no different that the civil settlement negotiation process that the MFD uses. SINV Poulos opinioned that the purpose of the program was to reduce the MFD case load by bringing people into compliance without prosecution. If they were prosecuted and given PTI or Probation they would have the duration of that time, anywhere from 12 to 36 months to pay restitution. Director LICHTBLAU agreed that reducing the repayment amounts for those with financial hardship would bring more individuals into the program. ***Director LICHTBLAU authorized SINV Poulos to negotiate the repayment amounts to address those with legitimate financial hardships.*** Director LICHTBLAU further advised that if negotiating the repayment amount did not work that he would then he revisit the issue of the increasing the repayment terms with the Comptroller.

(Emphasis added).

53. On November 28, 2017, Plaintiff emailed Mr. Jacobovitch to request a telephone call. During that telephone conversation, Plaintiff outlined Defendant Lichtblau's decision that no additional time would be granted, but the MFD authorized lower repayment amounts for those applicants with a legitimate financial need. Plaintiff further advised that since the MFD is not reviewing financial documents as part of the program, Mr. Jacobovitch would have to explain each applicant's financial hardship. Mr. Jacobovitch advised Plaintiff that a group of applicants he referred to in the meeting the day prior all fell into the category of financial hardship. Plaintiff also advised Mr. Jacobovitch that this would not apply to any applicant for which he had already executed a settlement agreement. Mr. Jacobovitch then advised Plaintiff that the applicants would be taking out loans to repay the reduced amount. Plaintiff advised Mr. Jacobovitch that if his clients were legitimately obtaining loans to repay the amount, payment within 30 days was a condition of the lower repayment amount.⁴

54. On December 1, 2017, Plaintiff received a phone call from Mr. Boxer. The purpose

⁴ Notably, in the normal course, when MFD negotiates civil settlements with providers or recipients due to financial hardship, MFD requires a complete financial disclosure.

of the call was to convey that the client he represented in the program “feels” he got a “bad deal” because he heard other people were getting a “better deal.”⁵ Plaintiff advised Mr. Boxer that his client already was given a reduced repayment amount and that he already executed a settlement agreement. Plaintiff advised Mr. Boxer to contact Defendant Lichtblau directly to further discuss the issue. Thereafter, Plaintiff briefed Defendant Lichtblau, Ms. Ehrenkratz, and Mr. Graves of his December 1st telephone conversation with Mr. Boxer.

55. Upon information and belief, Defendant Lichtblau and Mr. Boxer engaged in a conversation concerning any opportunity Mr. Boxer’s client had to renegotiate his prior settlement agreement and receive a “better deal.”

56. Upon information and belief, Defendant Lichtblau then reported the issue regarding Mr. Boxer’s client to Mr. Degnan, wherein Mr. Degnan advised that he was not aware that Amnesty Program cases were settling for less than 100% of the identified amount owed.

57. Upon information and belief, Defendant Lichtblau, in order to save face and conceal the fact that he had been the one to authorize settlement of less than 100% of the identified amount owed, advised Degnan that Plaintiff had done so with MFD management’s knowledge. This false statement to Mr. Degnan resulted in Plaintiff’s removal from his involvement with the Amnesty Program. These actions would ultimately set the stage for Plaintiff’s termination from his employment with Defendant OSC entirely.

Plaintiff Is Immediately Terminated After Blowing the Whistle

58. At no point in time was Plaintiff ever advised that he was no longer authorized to continue to negotiate settlements for less than 100% of the full amount identified.

⁵ Meaning that other Amnesty Program participants were required to pay back even less money than the reduced amount Mr. Boxer’s client had agreed to repay pursuant to his settlement agreement.

59. Nevertheless, on Friday, December 8, 2017, Plaintiff was called into an impromptu meeting in the MFD Director's office. Defendant Lichtblau, Mr. Graves, and Don Catinello, Supervising Regulatory Officer, were present for the meeting. To Plaintiff's surprise, Defendant Lichtblau advised that, pursuant to Mr. Degnan's orders, Plaintiff was to have no further role in the Amnesty Program and to have no further contact with attorneys regarding program applications or settlements.

60. Plaintiff was shocked by this directive. Plaintiff then inquired as to what Defendant Lichtblau told Mr. Degnan about settling some of the program matters for less than the full amount. ***Remarkably, Defendant Lichtblau stated he told Mr. Degnan that he did not know whether cases were settled for less than 100% of identified amount owed.***

61. Defendant Lichtblau then directed Plaintiff to contact all of the attorneys representing disclosure program applicants and advise them that all further communications should be directed to him, Mr. Graves, and Mr. Catinello.

62. After the meeting, Plaintiff went to Mr. Graves's office. Plaintiff explained to Mr. Graves that Defendant Lichtblau was lying to Mr. Degnan. Mr. Graves advised Plaintiff that he was not a party to the discussions, so he did not know what was said.

63. On Monday, December 11, 2017, Plaintiff was called into another meeting in the MFD Director's office. Defendants Lichtblau and Mr. Graves were present, along with Regulatory Officer Justin Berardo. At the onset of the meeting, Defendant Lichtblau stated that he was trying to get a handle on all settlements related to the program. Defendant Lichtblau requested that Plaintiff upload all related materials to the network. At this meeting, Plaintiff also advised Defendant Lichtblau that he was on his way to a meeting at the U.S. Attorney's Office regarding one of the criminal cases. At no time did Defendant Lichtblau advise Plaintiff not to attend or

represent the MFD at that meeting, and there was absolutely no indication that Plaintiff's employment was about to abruptly end.

64. That same day, at 11:04a.m., Plaintiff sent an email to Elissa Westbrook-Smith, Chief of Staff, requesting that she transfer an employee's performance evaluation. At 1:28p.m., Mr. Westbrook-Smith acknowledged the email and advised that it was fixed. Once again, while Plaintiff was shocked he was removed from the Amnesty Program, there was still no indication that his job was in jeopardy.

65. At 12:49p.m., Plaintiff sent an email to Mr. Graves with the aforementioned memorandums, which clearly indicate and document that Mr. Degnan was not being told the truth regarding the operations of the Amnesty Program to include the settling of cases for less than the full amount, and that Defendant Lichtblau was withholding key details concerning Amnesty Program settlements and Program operations from Mr. Degnan. Specifically, in pertinent part, Plaintiff's email to Mr. Graves read:

Robert:

This email is to address the meetings we had with [Defendant Lichtblau] on Friday (December 8th) and today (December 11th). It is clear from the tone and questions in these meeting that [Mr. Degnan] has the impression that actions taken by me during the [Amnesty Program] were done unilaterally without oversight from MFD management, including the settling of [Amnesty Program] cases for less than full amount. I have from inception of the program until now worked extremely hard and diligently towards the success of this program with full knowledge and guidance from [Defendant Lichtblau] and [Ms. Ehrenkratz]. ***My complete removal from all aspects of the [Amnesty Program], without explanation, is an indication of me being accused of some form of misconduct and it is my belief that [Mr. Degnan] has not been provided an accurate accounting of the operation of the program.***

(Emphasis added).

66. At 1:04p.m., Plaintiff sent a copy of this email with the attached memos to Ms. Westbrook-Smith. At 1:28p.m. she acknowledged receipt of the email and memos.

67. Plaintiff then met with Mr. Graves, at which time he advised Plaintiff that he was obligated to send Plaintiff's 12:50p.m. email and attached memorandums to Defendant Lichtblau for review.⁶ Plaintiff then advised Graves that he had copied Ms. Westbrook-Smith on the email and memos.

68. Thereafter, Defendants began taking the necessary steps to retaliate against Plaintiff by wrongfully terminating his employment as subtly as possible.

69. On Tuesday, December 12, 2017, Plaintiff received a text message from Detective Sergeant Mark Malinowski of the OCPO inquiring as to whether Plaintiff was removed from his current position. This was the first instance where Plaintiff had heard anything concerning his employment possibly being terminated.

70. The following day, Wednesday, December 13, 2017, having still not received any information that his employment was terminated, Plaintiff responded to the text message by saying, "Not to my knowledge. Lol Why?" During a subsequent phone call Sgt. Malinowski, he told Plaintiff that OCPO management learned from a member of the Lakewood Orthodox community that Plaintiff was removed from his position. Plaintiff advised Sgt. Malinowski that on December 8, 2017, he was advised he was no longer the point person for the voluntary disclosure program, but was still very much employed by the State. Sgt. Malinowski reiterated what he learned and explained the information was being spread around the community, i.e., that Plaintiff no longer had anything to do with the Lakewood related operations.

⁶ Ms. Ehrenkratz was on vacation and Defendant Lichtblau was next in the chain of command.

71. In addition, on December 13th, Plaintiff had an in-person with Mr. Graves and advised him of the conversation. Mr. Graves advised he had absolutely no idea what was going on. After this conversation, Plaintiff followed up by sending an email to Mr. Graves (also copying Elissa Westbrook-Smith, Chief of Staff), advising of the conversation with Sgt. Malinowski. Plaintiff also complained that the Defendant OSC's actions, i.e., releasing internal Defendant OSC discussions to the OCPO and the Lakewood community, had severely damaged his reputation and compromised fraud investigations in Ocean County.

72. On Thursday, December 14, 2017, Plaintiff again met in person with Mr. Graves to discuss a meeting he was attending at the offices of Horizon NJ in West Trenton at 10:00a.m. The purpose of the meeting was to discuss that the Horizon NJ Special Investigations Unit had numerous recipient fraud matters to refer to the Agency. After the meeting, Plaintiff met with Mr. Graves to discuss what transpired at the Horizon NJ meeting. There was no indication or suggestion during this meeting that Plaintiff's employment was in jeopardy.

73. Around 12:30p.m. that day, after meeting with Mr. Graves, Plaintiff left for lunch. When he returned to the office, however, he could no longer gain access to his computer. While Plaintiff was on the phone with IT support, Defendant Lichtblau and Defendant Westbrook-Smith entered his office and told him to hang up the phone. Defendant Lichtblau and Defendant Westbrook-Smith explained that they revoked Plaintiff's computer access.

74. Defendant Westbrook-Smith then handed Plaintiff a letter advising that his unclassified position would be discontinued as of December 29, 2017. Plaintiff was, once again, shocked. Plaintiff advised he had been an exemplary employee for his entire tenure with the agency and asked for an explanation. Defendant Westbrook-Smith stated that the agency did not have to give him an explanation and that the position was being discontinued. Despite repeated

attempts for an explanation, Defendants refused. Defendant Westbrook-Smith required Plaintiff to hand over his laptop and state-issued phone immediately. Defendant Westbrook-Smith stated that Plaintiff could remain in the office until December 29, 2017 or he could use accumulated leave time. Defendant Lichtblau did not say one word during this entire meeting.

75. Remarkably, Plaintiff's computer contained encrypted digital files of hundreds of Lakewood fraud cases that had not yet been investigated. With the end of Amnesty Program, these cases were now subject to full prosecution. The MFD had full knowledge that Plaintiff was the only one that had access to information regarding these cases, though no one from MFD ever asked, even to this day, where these cases were stored or for the encryption key. In short, upon information and belief, these cases were not, as they could not be, investigated and prosecuted.

76. Immediately thereafter, Plaintiff asked Mr. Graves to come to his office. Plaintiff explained he was terminated. ***Mr. Graves was shocked and said no one had even spoken to him about it. Mr. Graves stated the only thing he did was forward Plaintiff's emails on December 11, 2017 and December 13, 2017 directly to Defendant Lichtblau.*** Mr. Graves reiterated he had absolutely no idea that any of this was happening.

77. Over the next week, Plaintiff use his accumulated leave, only returning to the office on Friday, December 22, 2017 to clean out personal items and turn in credentials and keys. From December 26, 2017 to December 29, 2017, Plaintiff used the remainder of his accumulated leave.

78. Clearly, immediately after receiving and reviewing Plaintiff's December 11th and December 13th emails from Mr. Graves, Defendant Lichtblau retaliated against Plaintiff by instructing and/or authorizing the termination of Plaintiff's employment because Plaintiff's emails contradicted Defendant Lichtblau's fabrication to Mr. Degnan that he was unaware that Plaintiff

was in fact authorized to settle Amnesty Program cases for less than 100% of the identified amount owed.

79. Defendants claimed basis for terminating Plaintiff, i.e., that he was not authorized to execute Amnesty Program settlement agreements for less than 100% of the identified amount owed, is purely pretextual in nature as it is completely contradicted by the attached emails and memorandums cited throughout this Complaint. At no time did Defendants advise Plaintiff of the reason for his termination.

Defendants Engage in a Cover-Up to Save Political Face

80. On September 6, 2018, Mr. Degnan was nominated by Lt. Governor Sheila Oliver (in her capacity as Acting Governor) to be a Superior Court Judge.

81. On October 18, 2018, the Asbury Park Press published a story regarding the Amnesty Program and how an elected official of the Lakewood Township School Board was granted Amnesty and only had to pay back half of the money owed. The story and subsequent news coverage were extremely critical of Mr. Degnan.

82. On October 19, 2018, in response to the negative news coverage, Mr. Degnan released a public report regarding the Amnesty Program that blamed an “employee” who was acting without knowledge of his chain of command, for making deals to repay money less than the full amount, and for communicating directly with attorneys against protocols.

83. On October 20, 2018, Plaintiff was identified as that employee in news reports. Mr. Degnan told the press that Plaintiff was removed on December 12, 2017, which corresponded to the last day of the disclosure program. This statement was false – Plaintiff received his termination letter on December 14, 2017, and his last day was December 29, 2017. Mr. Degnan communicated

the December 12th date to the press so there would be no doubt at which employee he was blaming (Plaintiff).

84. On October 26, 2018, the Asbury Park Press published another news story that reported they have reviewed Plaintiff's internal memos, which indicated that the negotiated settlements were approved by Defendant Lichtblau and Ms. Ehrenkrantz and that Mr. Graves had knowledge of the approval.

85. Mr. Degnan then released another statement, advising that there was an internal investigation where he learned of the deals three days before the end of the program. The statement went on to say that the portion of Plaintiff's memos regarding the discussion regarding settlements never happened. Notably, Mr. Degnan issued this statement knowing full-well that there was never any internal investigation before Plaintiff was terminated. Indeed, at the time of his termination, Ms. Ehrenkrantz was on vacation, no one ever spoke to Mr. Graves, and no one ever spoke to Plaintiff.

86. Defendants motivation to terminate Plaintiff is clearly based upon their need to save political face with both the public and Mr. Degnan, and to further cover up the fact that Defendants' failed to keep Mr. Degnan advised of the details of the Amnesty Program settlements.

87. When Plaintiff blew the whistle on Defendants' misrepresentations to Mr. Degnan and further revealed the conspiracy perpetuated by Defendants against him, Defendants took immediate action to unlawfully terminate Plaintiff's employment, thereby allowing Plaintiff to serve as a "scapegoat," and further allowing Defendants to stay in the good-graces of Mr. Degnan.

88. Plaintiff's whistle-blowing concerns and falls squarely within Defendants' statutory obligation to prevent engaging in conduct which would cast doubt upon their trust and candor as state employees under N.J.S.A. 52:13D-23(e)(7): "No state officer or employee or

special state officer or employee should knowingly acting in any way that might reasonably be expected to create an impression of suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a state officer or employee or special state officer or employee.”

89. Furthermore, Plaintiff’s whistle-blowing, which revealed a civil conspiracy amongst the Defendants to withhold information from and/or provide fabricated/fraudulent information to Mr. Degnan about the Amnesty Program is entirely reasonable under the circumstances, presents a reasonable belief that Defendants were engaged in illicit conduct.

90. Indeed, the timing of Plaintiff’s whistle-blowing emails and termination speaks volumes of Defendants’ motives and intent. In short, Plaintiff blew the whistle on December 11, 2017, and was issued a termination letter a mere three (3) days later on December 14, 2017, which leads to a presumption that Defendants retaliated against Plaintiff as a result of blowing the whistle.

91. Notably, it was not until after Plaintiff blew the whistle was his employment ever in jeopardy. As stated throughout the attached emails, Plaintiff was an exemplary employee, herald for his accomplishments, achievements, and dedication to the MFD. It was only after Plaintiff blew the whistle was his position no longer needed.

92. Thus, any justification Defendants offer for Plaintiff’s termination is purely pretextual.

COUNT ONE

**RETALIATION IN VIOLATION OF NEW JERSEY
CONSCIENTIOUS EMPLOYEE PROTECTION ACT (“CEPA”)**

93. Plaintiff repeats each and every allegation set forth above as if set forth fully herein at length.

94. CEPA’s purpose, as pronounced by the New Jersey Supreme Court, “is to protect and encourage employees to report illegal or unethical workplace activities and to discourage ... employers from engaging in such conduct.”

95. CEPA specifically provides that:

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;

b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship, 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, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into the quality of patient care; or

- 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.

96. CEPA goal to “prevent retaliation against those employees who object to employer conduct which they reasonably believe to be unlawful.”

97. As set forth above, Plaintiff reported, protested and/or complained of Defendants’ unlawful behavior.

98. Defendants had knowledge of Plaintiff’s complaints and/or protests.

99. As a direct result of Plaintiff raising complaints and/or reporting his belief that Defendants were engaging in unlawful conduct, Defendants took retaliatory action against Plaintiff by discharging him from employment.

100. Defendants are vicariously, strictly, and/or directly liable to Plaintiff for an unlawful retaliatory discharge in violation of CEPA, pursuant to N.J.S.A. 34:19-1, et seq.

101. As a proximate result of the aforementioned acts and omissions set forth herein, Plaintiff has sustained damages.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants on this Count, together with compensatory and equitable relief, all remedies available under CEPA, punitive damages, pre-and post-judgment interest, attorney's fees and costs of suit, and for such other relief that the Court deems equitable and just.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues.

McOMBER & McOMBER, P.C.
Attorneys for Plaintiff

By: /s/ Matthew A. Luber
Matthew A. Luber, Esq.

Dated: October 30, 2018

DESIGNATION OF TRIAL COUNSEL

Pursuant to *Rule* 4:25-4, MATTHEW A. LUBER, ESQUIRE is hereby designated as trial counsel for Plaintiff.

CERTIFICATION

Pursuant to *Rule* 4:5-1, it is hereby certified that, to the best of my knowledge, there are no other civil actions or arbitration proceedings involving this matter with respect to this matter and no other parties need to be joined at this time. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

McOMBER & McOMBER, P.C.
Attorneys for Plaintiff

By: /s/ Matthew A. Luber
Matthew A. Luber, Esq.

Dated: October 30, 2018

Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-002263-18

Case Caption: POULOS ANDREW VS STATE OF NJ, OFFICE OF THE

Case Initiation Date: 10/30/2018

Attorney Name: MATTHEW ALLEN LUBER

Firm Name: MC OMBER & MC OMBER, PC

Address: 54 SHREWSBURY AVENUE
RED BANK NJ 07701

Phone:

Name of Party: PLAINTIFF : POULOS, ANDREW

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that 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 *Rule 1:38-7(b)*

10/30/2018
Dated

/s/ MATTHEW ALLEN LUBER
Signed