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JAMES MALLOY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: ESSEX COUNTY
Plaintiff,	:	DOCKET NO.: <i>L-3320-17</i>
	:	
v.	:	Civil Action
	:	
	:	
EVERGREEN CEMETERY AND	:	COMPLAINT AND JURY DEMAND
CREMATORY, KENNETH WALLACE,	:	
and ABC COMPANIES (1-10) (fictitious	:	
names of unknown entities)	:	
	:	
Defendants.	:	
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Plaintiff, James Malloy (hereinafter, referred to as "Plaintiff") having an address at 1116 Salem Avenue, Hillside, New Jersey, by way of Complaint against Evergreen Cemetery and Crematory, Kenneth Wallace and ABC Companies(1-10) (fictitious names of unknown entities) (collectively hereinafter referred to as "Defendants"), says as follows:

FACTS COMMON TO ALL COUNTS

A. Parties

1. Defendant Evergreen Cemetery and Crematory ("Cemetery") is a cemetery and crematorium located in Elizabeth, Newark and Hillside New Jersey. The Cemetery has offices located at 1137 North Broad Street, Hillside, New Jersey.
2. Defendant Kenneth Wallace (referred to herein as "Defendant Wallace" or

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“Wallace”) was a supervisor/manager at the Cemetery at times relevant in this action.

3. Plaintiff is a veteran of the United States Navy who served during the Vietnam War and was honorably discharged.

4. Plaintiff began his employment with the Cemetery in May, 2000, in the position of grass cutter. Plaintiff cut grass at the Cemetery for approximately six (6) years. In or around 2006 Plaintiff was let go.

5. Plaintiff was re-hired in or around 2008, and thereafter, worked on the burial crew.

6. It was after his assignment to the burial crew that Plaintiff learned of the horrible practice of crushing coffins and bodies in the non-titled grave area of the Cemetery.

7. In the non-titled grave area of the cemetery, coffins would be buried in stacks typically six (6) coffins deep. There were times when the coffins would not be able to be stacked with the top coffin buried deep enough. At those times, the backhoe driver would use the backhoe to crush the coffins in the stack to create room for the coffins to be buried deep enough so the stack could be completed.

8. The practice of crushing coffins and bodies became worse when Defendant Wallace took over as Plaintiff’s supervisor and continued up through the remainder of the time Plaintiff worked at the Cemetery. Wallace on many occasions instructed the backhoe driver to crush the coffins and bodies. Plaintiff recalls Wallace on many occasions hopping in the backhoe and then beating and crushing the coffins and bodies.

9. There were occasions when a deceased person would be buried in black body bags. Plaintiff recalls Wallace jumping in the backhoe and repeatedly beating and crushing the

bodies in the black body bags.

10. On many occasions, Plaintiff pleaded with Wallace to leave the five (5) in the stack alone and not crush them. Plaintiff would ask Wallace to not crush the bodies and simply not put the sixth (6th) body on top and put the body someplace else. Plaintiff would complain that it was not right. Wallace responded by stating things like: we have to put in six; Jim you don't understand we have to put in six; and we must get six in the hole.

11. At times, Plaintiff would tell Wallace, we can bury this guy without breaking up the other bodies. However, if there was not enough room in the stack, Wallace would simply instruct the bodies and coffins to be crushed or crush them himself.

12. Plaintiff often complained to Defendant Wallace that they should not crush the bodies and coffins because this is somebody's loved one, somebody's father, mother, son, or daughter.

13. Defendant Wallace often responded to Plaintiff words to the effect don't worry about it, it's nobody I know.

14. At times when the coffins were crushed, the bodies or body parts were exposed and, if they were not deep enough, would continue to be crushed.

15. Bodies and coffins were crushed typically at least once per week.

16. Throughout his employment and after his employment, Plaintiff experienced emotional distress as a result of the practice of crushing the bodies and coffins. Plaintiff often experiences nightmares and often wakes up at night because he is seeing the bodies being crushed. Plaintiff in his dreams sees body parts and the backhoe crushing the bodies. Plaintiff often sees limbs or skulls fall out of the coffins or body bags.

17. At times, Plaintiff dreams about hearing words coming from underground where the bodies were crushed. Plaintiff never understands the words, but at times awakens in a panic. Plaintiff still has bad dreams and often thinks of the poor souls and their families.

18. Plaintiff stayed and continued to work at the Cemetery for years witnessing the crushing of the coffins and bodies. He continued to work there because he is unskilled, the Cemetery is a short walk from his home, Plaintiff has no driver's license, and he felt he had no choice because he needed the job to live.

19. On August 21, 2015, Plaintiff broke his foot as a result of a piece of a headstone falling on his foot.

20. Plaintiff reported the workplace injury to Wallace, his supervisor, and was placed on medical leave.

21. Plaintiff was cleared to return to work as of November 16, 2015.

22. Approximately one (1) week before his anticipated return to work date, Plaintiff informed Michael Prince and Defendant Wallace that he would be returning to work on November 16, 2015.

23. After reporting to work, Mr. Prince telephoned Defendant Wallace to advise him that Plaintiff had returned to work.

24. Minutes later, Defendant Wallace arrived at the work area and asked to speak to Mr. Prince inside his truck.

25. After speaking with Wallace in the truck, Michael Prince exited the truck and advised Plaintiff that "Kenny says he doesn't need you anymore" and that he is "gonna keep the temp."

26. Plaintiff complained to Doris J. Hawkins, Superintendent concerning Defendants' unlawful decision to not return him to his employment.

27. Ms. Hawkins responded by writing that Plaintiff is not an employee of the Cemetery.

28. Throughout his employment with the Cemetery, the Cemetery controlled all aspects of Plaintiff's employment, including, but not limited to, his hours, his duties and responsibilities, as well as the terms and conditions of his employment, and the decisions concerning his leave and the termination of his employment.

29. As a result of Defendants' conduct, Plaintiff has suffered emotional distress, compensatory, and other damages.

FIRST COUNT

NEW JERSEY LAW AGAINST DISCRIMINATION - RETALIATION

N.J.S.A. 10:5-1 et seq.

30. Plaintiff repeats and realleges each of the allegations of the within Complaint as if set forth at length herein.

31. Defendant Cemetery is an employer under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("NJLAD").

32. Plaintiff is an employee under the NJLAD.

33. Plaintiff broke his foot as a result of a piece of a headstone falling on his foot on or about August 21, 2015.

34. The injuries sustained by Plaintiff as a result of a piece of a headstone falling on his foot, including his broken foot, constitutes a disability under the NJLAD (hereinafter, the

“Disabilities”).

35. Defendants' conduct and/or treatment of Plaintiff, including the termination of his employment, was in retaliation of Plaintiff's exercise, attempted exercise and/or enjoyment of rights provided to him under the NJLAD.

36. The retaliatory actions taken by Defendants against Plaintiff are in violation of the NJLAD.

37. Defendants' acts or omissions were the cause of Plaintiff's harm and Defendants' acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

38. Defendants Wallace and/or Cemetery participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and abetted the NJLAD violations.

39. Defendant ABC Companies (1-10) are employers and/or joint employers under the LAD and/or entities that participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and abetted the LAD violations.

40. As a direct and proximate result of Defendants' violation of the NJLAD, Plaintiff has suffered emotional distress, economic loss and other compensatory damages.

WHEREFORE, Plaintiff demands judgment against Defendants for harm suffered due to the aforesaid violation of the NJLAD as follows:

- A. Back pay and benefits;
- B. Front pay and benefits;
- C. Compensatory damages;

- D. Consequential damages;
- E. Punitive damages;
- F. Pre-judgment interest and enhancements to off-set negative tax consequences;
- G. Reinstatement;
- H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and
- I. Declaring that Defendants have violated the NJLAD and requiring Defendants to take appropriate corrective action to end discrimination in the workplace; and
- J. Such other relief as may be available pursuant to the NJLAD and which the Court deems just and equitable.

SECOND COUNT

**NEW JERSEY LAW AGAINST DISCRIMINATION - DISABILITY DISCRIMINATION
N.J.S.A. 10:5-1 et seq.**

- 41. Plaintiff repeats and realleges each of the allegations of the within Complaint as if set forth at length herein.
- 42. Plaintiff suffered from Disabilities.
- 43. Plaintiff requested that Defendants provide Plaintiff with reasonable accommodations, including a medical leave of absence.

44. Defendants denied and/or interfered with Plaintiff's right to take protected medical leaves of absence, and disciplined and terminated his employment because of his Disabilities.

45. The aforesaid conduct by Defendants was and is a violation of the NJLAD.

46. Defendants Wallace and/or Cemetery participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and abetted the NJLAD violations.

47. Defendant ABC Companies (1-10) are employers and/or joint employers under the LAD and/or entities that participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and abetted the LAD violations.

48. As a direct and proximate result of Defendants' violations of the NJLAD, Plaintiff has suffered emotional distress, economic loss and other compensatory damages.

WHEREFORE, Plaintiff demands judgment against Defendants for harm suffered in violation of the NJLAD as follows:

- A. Back pay and benefits;
- B. Front pay and benefits;
- C. Compensatory damages;
- D. Consequential damages;
- E. Punitive damages;
- F. Pre-judgment interest and enhancements to off-set negative tax consequences;
- G. Reinstatement;

H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and

I. Declaring that Defendants have violated the NJLAD and requiring Defendants to take appropriate corrective action to end discrimination in the workplace; and

J. Such other relief as may be available pursuant to the NJLAD and which the Court deems just and equitable.

THIRD COUNT

NEW JERSEY LAW AGAINST DISCRIMINATION – FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS

N.J.S.A. 10:5-1 et seq.

49. Plaintiff repeats and realleges each of the prior allegations of the within Complaint as if set forth at length herein.

50. Plaintiff requested that Defendants provide him with the reasonable accommodation of a medical leave of absence as a result of his Disabilities.

51. Instead of providing him with the requested reasonable accommodations, Defendants terminated his employment upon his return to work.

52. Defendants further failed to engage in an interactive process in good faith with Plaintiff to determine whether any reasonable accommodations could be made to Plaintiff for Plaintiff's Disabilities.

53. Defendants' failure to provide Plaintiff the reasonable accommodation of a medical leave and return him to his position is a violation of the NJLAD.

54. Defendants' acts or omissions were the cause of Plaintiff's harm and Defendants' acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

55. Defendants Wallace and Cemetery participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and abetted the NJLAD violations.

56. Defendant ABC Companies (1-10) are employers and/or joint employers under the LAD and/or entities that participated in, condoned, ratified, perpetuated, conspired, incited, coerced, induced and/or aided and abetted the LAD violations.

57. As a direct and proximate result of Defendants' violation of the NJLAD, Plaintiff has suffered emotional distress, economic loss and other compensatory damages.

WHEREFORE, Plaintiff demands judgment against Defendants for harm suffered due to the aforesaid violation of the NJLAD as follows:

- A. Back pay and benefits;
- B. Front pay and benefits;
- C. Compensatory damages;
- D. Consequential damages;
- E. Punitive damages;
- F. Pre-judgment interest and enhancements to off-set negative tax consequences;
- G. Reinstatement;

H. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and

I. Declaring that Defendants have violated the NJLAD and requiring Defendants to take appropriate corrective action to end discrimination in the workplace; and

J. Such other relief as may be available pursuant to the NJLAD and which the Court deems just and equitable.

FOURTH COUNT

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

58. Plaintiff repeats and realleges each of the prior allegations of the within Complaint as if set forth at length herein.

59. Defendants' actions in crushing the coffins and bodies to fit more bodies onto the stack were intentional and/or reckless conduct.

60. Defendants acted recklessly in deliberate disregard of a high degree of probability that emotional distress would follow.

61. Defendants' actions were extreme and outrageous. Defendants' actions were so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and are regarded as atrocious, and utterly intolerable in a civilized community.

62. Defendants' actions caused Plaintiff to suffer emotional distress.

63. The emotional distress suffered by Plaintiff was so severe that no reasonable person similarly situated to Plaintiff could be expected to endure it.

64. As a direct and proximate result of Defendants' actions, Plaintiff has suffered emotional distress and other compensatory damages.

WHEREFORE, Plaintiff demands judgment against Defendants for harm suffered due to the aforesaid intentional infliction of emotional distress as follows:

- A. Compensatory damages, including emotional distress;
- B. Consequential damages;
- C. Punitive damages;
- D. Pre-judgment interest and enhancements to off-set negative tax consequences;
- E. Any and all attorneys' fees, expenses and/or costs, including, but not limited to, court costs, expert fees and all attorneys' fees incurred by plaintiff in the prosecution of this suit (including enhancements thereof required to off-set negative tax consequences and/or enhancements otherwise permitted under law); and
- F. Such other relief as may be available pursuant to the law and which the Court deems just and equitable.

SMITH EIBELER, LLC

BY:



ROBERT W. SMITH
Attorneys for Plaintiff

DATED: May 5, 2017