



ERIC M. BERNSTEIN & ASSOCIATES, L.L.C.

34 MOUNTAIN BLVD., BUILDING A
P.O. BOX 4922
WARREN, NEW JERSEY 07059

ATTORNEYS AT LAW

August 3, 2012

JANE E. WILLIAMS-WARREN
CITY CLERK

RECEIVED
CITY OF PATERSON, NJ
2012 AUG - 6 A 9:18
FACSIMILE (732) 805-3346
(732) 805-3360
www.embalaw.com

Jane E. Williams-Warren, Clerk
City of Paterson
City Hall
155 Market Street
Paterson, New Jersey 07505

CITY CLERK
MAIL # 12:514

**Re: Lanisha Makle v. City of Paterson and Municipal Council
Of the City of Paterson, Council President Anthony E. Davis
And Council Members Aslon Goow, Sr., William C. McKoy,
Kenneth M. Morris, Jr., Rigo Rodrigues, Andre Sayegh and
Julio Tavarez , Individually and in their official capacities
Docket No. PAS-L-3172-12
Our File No. C1001-001**

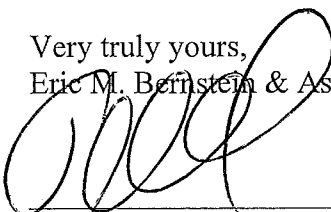
Dear Clerk:

Please be advised that this office represents the Plaintiff, Lanisha Makle, in the above matter.

Enclosed please find an original and one (1) copy of a Summons and a copy of the Complaint which is being served on each Defendant relative to the above matter.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,
Eric M. Bernstein & Associates, L.L.C.

By: 
Philip G. George, Esquire

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PGG/m
Enclosures

AUG - 6 2012

City of Paterson
Law Department

Attorney(s) Philip G. George, Esquire
Office Address Eric M. Bernstein & Associates, L.L.C.
34 Mountain Boulevard, Building A
Town, State, Zip Code Warren, NJ 07059
Telephone Number (732) 805-3360
Attorney(s) for Plaintiff Lanisha Makle

**Superior Court of
New Jersey**

Passaic COUNTY
Law DIVISION

Lanisha Makle,

Docket No: L-3172-12

Plaintiff(s)

Vs.

City of Paterson and Municipal Council of the City of

Paterson, Council President Anthony E. Davis, et al.

Defendant(s)

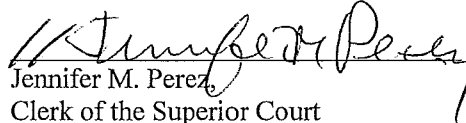
**CIVIL ACTION
SUMMONS**

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.


Jennifer M. Perez
Clerk of the Superior Court

DATED: August 2, 2012

Name of Defendant to Be Served: City of Paterson

Address of Defendant to Be Served: City of Paterson, 155 Market St., Paterson, NJ 07505

NOTE: The Case Information Statement is available at www.njcourts.com.

Directory of Superior Court Deputy Clerk's Offices County Lawyer Referral and Legal Services Offices

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL

(609) 345-3444

LEGAL SERVICES

(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601

LAWYER REFERRAL

(201) 488-0044

LEGAL SERVICES

(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL

(609) 261-4862

LEGAL SERVICES

(800) 496-4570

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice
1st Fl., Suite 150
101 South 5th Street
Camden, NJ 08103

LAWYER REFERRAL

(856) 964-4520

LEGAL SERVICES

(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Cape May Court House, NJ 08210

LAWYER REFERRAL

(609) 463-0313

LEGAL SERVICES

(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
60 West Broad Street
P.O. Box 10
Bridgeton, NJ 08302

LAWYER REFERRAL

(856) 696-5550

LEGAL SERVICES

(856) 691-0494

ESSEX COUNTY:

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102

LAWYER REFERRAL

(973) 622-6204

LEGAL SERVICES

(973) 624-4500

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street
Woodbury, NJ 08096

LAWYER REFERRAL

(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House--1st Floor
583 Newark Ave.
Jersey City, NJ 07306

LAWYER REFERRAL

(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822

LAWYER REFERRAL

(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL

(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court,
Middlesex Vicinage
2nd Floor - Tower
56 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL

(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
Court House
P.O. Box 1269
Freehold, NJ 07728-1269

LAWYER REFERRAL

(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:

Morris County Courthouse
Civil Division
Washington and Court Streets
P. O. Box 910
Morristown, NJ 07963-0910

LAWYER REFERRAL

(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
118 Washington Street, Room 121
P.O. Box 2191
Toms River, NJ 08754-2191

LAWYER REFERRAL

(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY:

Deputy Clerk of the Superior Court
Attn: Civil Case Management Office
92 Market Street
Salem, NJ 08079

LAWYER REFERRAL
(856) 935-5629
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge Street
Somerville, N.J. 08876

LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

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Attorney(s) Philip G. George, Esquire
Office Address Eric M. Bernstein & Associates, L.L.C.
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Attorney(s) for Plaintiff Lanisha Makle

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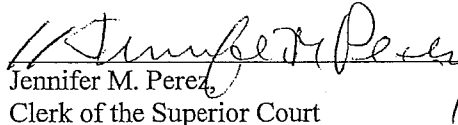
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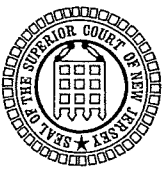
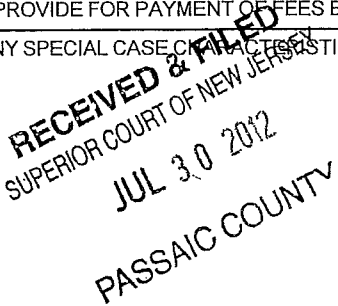

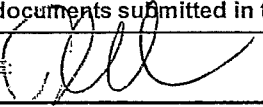
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(908) 354-4340

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Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(908) 475-2010

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	CHG/CK NO.
			AMOUNT:	OVERPAYMENT:
			BATCH NUMBER:	
ATTORNEY / PRO SE NAME Eric M. Bernstein, Esquire		TELEPHONE NUMBER (732) 805-3360	COUNTY OF VENUE Passaic	
FIRM NAME (if applicable) Eric M. Bernstein & Associates, LLC		DOCKET NUMBER (when available) PAS-L-3172-12		
OFFICE ADDRESS 34 Mountain Boulevard, Building A Warren, NJ 07059		DOCUMENT TYPE Verified Complaint/OTSC		
		JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
NAME OF PARTY (e.g., John Doe, Plaintiff) County of Passaic		CAPTION Lanisha Makle v. City of Paterson and Municipal Council of the City of Paterson, Council President Anthony E. Davis and Council Members Ashon Goow, Sr., William C. McKoy, Kenneth M. Morris, Jr., et al.		
CASE TYPE NUMBER (See reverse side for listing) 701		IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS Unknown; Charles Pettiford v. City of Paterson, et al.		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input checked="" type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION Temporary Relief Requested				
				
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION			
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: 		7/30/2012		



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

- | | |
|----------------------------------|--|
| 280 ZELNORM | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 285 STRYKER TRIDENT HIP IMPLANTS | 291 PELVIC MESH/GYNECARE |
| 288 PRUDENTIAL TORT LITIGATION | 292 PELVIC MESH/BARD |
| 289 REGLAN | 293 DEPUY ASR HIP IMPLANT LITIGATION |

Mass Tort (Track IV)

- | | |
|---------------------------------------|--|
| 248 CIBA GEIGY | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX |
| 271 ACCUTANE/ISOTRETINOIN | 284 NUVARING |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 286 LEVAQUIN |
| 278 ZOMETHA/AREDIA | 287 YAZ/YASMIN/OCELLA |
| 279 GADOLINIUM | 601 ASBESTOS |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59

RECEIVED & FILED
SUPERIOR COURT OF NEW JERSEY

JUL 30 2012

PASSAIC COUNTY

ERIC M. BERNSTEIN & ASSOCIATES, L.L.C.
34 Mountain Boulevard, Building A
P.O. Box 4922
Warren, New Jersey 07059
(732) 805-3360; (732) 805-3346 Facsimile
Attorneys for Plaintiff Lanisha Makle
Our File No. C1001-001

LANISHA MAKLE,

Plaintiff,

-vs-

CITY OF PATERSON and MUNICIPAL
COUNCIL OF THE CITY OF
PATERSON, COUNCIL PRESIDENT
ANTHONY E. DAVIS AND COUNCIL
MEMBERS ASLON GOOW, SR.,
WILLIAM C. MCKOY, KENNETH M.
MORRIS, JR., RIGO RODRIGUES,
ANDRÉ SAYEGH and JULIO
TAVAREZ individually and in their
official capacities,

Defendants.

SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: PASSAIC COUNTY
: DOCKET NO. PAS-L- 3172-12

: CIVIL ACTION

: VERIFIED COMPLAINT
: (PREROGATIVE WRIT)

LANISHA MAKLE, residing at 217 East 26th Street, in the City of Paterson, County of
Passaic and State of New Jersey, by way of Complaint against the Defendants, says:

PARTIES

1. Plaintiff is a resident of the Defendant City of Paterson and County of Passaic, and is employed as the Director of Community Development of the City of Paterson, an unclassified position and a Department head position.

2. The Defendant City of Paterson (hereinafter referred to as the “City”) is, on information and belief, a duly constituted municipal corporation of the State of New Jersey pursuant the provisions of the Faulkner Act, *N.J.S.A. 40:69A-1, et seq.*

3. The Defendant Municipal Council of the City of Paterson (hereinafter referred to as the “Municipal Council”) is the duly constituted governing body of the Defendant City of Paterson.

4. The Hon. Jeffrey Jones is the duly elected and constituted Mayor of the City of Paterson.

5. The Defendants Council President Anthony E. Davis and Council Members Aslon Goow, Sr., William C. McKoy, Kenneth M. Morris, Jr., Rigo Rodrigues, André Sayegh and Julio Tavarez are duly elected and constituted Council Members of the Municipal Council of the City of Paterson.

STATEMENT OF FACTS COMMON TO ALL COUNTS

6. On September 7, 2010, Plaintiff was appointed by Mayor Jeffrey Jones to the position of Director of Community Development of the City of Paterson.

7. The position of Director of Community Development is provided for by the Ordinances of the City of Paterson, § 5-83, which provides that:

[t]here shall be a Department of Community Development, the head of which shall be the Community Development Director. Prior to her appointment, the Community Development Director shall be qualified by education, training and at least three years of responsible experience for the duties of her office. The Community Development Director shall receive an annual salary as established by ordinance, to be paid as all other salaries are paid.

8. At the end of August 2011 through the first week of September 2011, Plaintiff was serving as Director of Community Affairs of the City of Paterson when the City was struck by and inundated by Hurricane Irene and then Tropical Storm Lee.

9. Immediately prior to the hurricanes' striking the City of Paterson, Plaintiff was among other Department Heads, Division Managers and other officials called in to meetings with Office of Emergency Management (hereinafter referred to as "OEM") and Federal Emergency Management Administration (hereinafter referred to as "FEMA") personnel regarding emergency preparations in the event that the hurricanes impacted the City of Paterson.

10. Plaintiff along with other Department Heads and Division Managers was advised that they were being mobilized in the event of any emergency services, including possible relocation of residents, provision of shelter, provision of foodstuffs or other services.

11. Plaintiff along with other Department Heads and Division Managers was also advised that FEMA would possibly reimburse the City of Paterson for up to seventy five percent (75%) of its costs related to such emergency services, including costs for wages, salaries and overtime for such emergency responses.

12. Plaintiff along with other Department Heads and Division Managers was further advised that she had to separate her time to reflect her scheduled normal hours for the time of the emergency and one which would reflect the actual hours worked, in order for the City of Paterson to apply for and/or receive reimbursement from FEMA. Plaintiff chose to do so by maintaining two (2) separate sets of time sheets.

13. No mention was made to Plaintiff or, on information and belief, to any other Department Head or Division Manager, regarding the paying or logging of overtime during the emergency.

14. Plaintiff therefore kept track of her time for purposes of FEMA reimbursement and submitted the time sheets to the City of Paterson Business Administrator, Charles Thomas.

Plaintiff worked in excess of sixty (60) hours of overtime during the Hurricane emergency period.

15. On September 22, 2011 Plaintiff as well as other officials of the City of Paterson received a check for overtime payments from the Hurricane emergency for the pay period of August 26, 2011 through September 4, 2011. On information and belief, all salary and wage payments must be approved by the Municipal Council and, further on information and belief, the Municipal Council did enact a resolution authorizing such payments.

16. However, following this payment to Plaintiff and others, Plaintiff was advised that the overtime payment authorized by the Municipal Council was illegal and not permitted to be made. Plaintiff therefore immediately returned the improperly paid overtime payment to the City of Paterson. **Exhibit 1**, copy of cancelled cashier check dated September 30, 2011.

17. On October 11, 2011 the Municipal Council convened and enacted Resolution 11-572, which convened a "Committee of the Whole" in order to investigate payroll operations of the City, which called for such investigations to be conducted in a "fair and impartial manner by the Municipal Council" and that any formal hearings in the investigation would be convened "consistent with due process of law." **Exhibit 2**, Resolution #11-572 adopted October 11, 2011.

18. On various dates between October 12, 2011 and June 12, 2012, the Municipal Council met as a Committee of the Whole in Special Session and conducted examinations of various witnesses, including the Plaintiff. These sessions of the Municipal Council were reduced to a Final Draft by Councilman Kenneth M. Morris, Jr.. **Exhibit 3**, Final Draft Findings and Recommendations of the Paterson Municipal Council's Committee of the Whole.

19. On November 21, 2011, the Deputy City Clerk issued a subpoena to the Honorable Jeffrey Jones, Mayor, to produce employees of the City of Paterson on November 30, 2011 to testify before the Municipal Council. **Exhibit 4.**

20. Plaintiff was not issued a Rice Notice concerning her rights as to such hearings, although the Committee of the Whole had been constituted to investigate her as well as others.

21. On November 30, 2011 the Municipal Council conducted questioning of various employees of the City.

22. On November 30, 2011 the Plaintiff appeared and gave testimony before the Municipal Council. **Exhibit 3**, at 15-17.

23. However, at the November 30, 2011 hearings, all of the witnesses summoned by the aforesaid subpoena upon Mayor Jones were present for a roll call, but were then directed to leave council chambers and subsequently called back in one by one to be questioned by the Committee of the Whole with no other persons, including the Plaintiff or the other subpoenaed witnesses, present.

24. On or about December 15, 2011, the State of New Jersey Department of Community Affairs issued a letter to the Honorable Jeffrey Jones, Mayor, and Members of the Municipal Council indicating that the City's ongoing practice of payment of overtime to managerial employees was improper and that the City should, "moving forward," correct its overtime payment system. **Exhibit 5**, letter from Department of Community Affairs Fiscal Oversight Monitor Knoedler to Mayor Jeffrey Jones.

25. On Information and belief, on February 27, 2012, however, a document entitled as the final version of the Findings and Recommendations of the Paterson Municipal Council's Committee of the Whole had already been received by the City of Paterson City Clerk's Office,

and had been sent on February 22, 2012 to the City Clerk by Councilman Morris from his office at St. Joseph's Hospital and Medical Center in Paterson, where she serves as the Director of Governmental Affairs. **Exhibit 6**, email entitled Draft Overtime Report dated February 22, 2012 with attachment labeled "CONFIDENTIALDRAFT."

26. On May 23, 2012, Plaintiff was issued another Rice Notice by the City Clerk, indicating that the Municipal Council intended to discuss the "Employment of Lanisha Makle" at a special meeting of the Municipal Council on Friday, June 8, 2012. **Exhibit 7**, Rice Notice dated May 23, 2012. Plaintiff was served with this Rice Notice and did not appear on that date.

27. On June 7, 2012, another Rice Notice was issued by the City Clerk Plaintiff, indicating that the Municipal Council intended to discuss the "Employment of Lanisha Makle" at a special meeting of the Municipal Council on Friday, June 14, 2012. **Exhibit 8**, Rice Notice dated June 8, 2012. Plaintiff was not served with this notice.

28. On June 12, 2012, two days prior to the appearance requested of Plaintiff by the Municipal Council, the Municipal Council met and adopted the Findings and Recommendations of the Committee of the Whole by adoption of Resolution # 12-441. **Exhibit 9**.

29. Plaintiff appeared before the Municipal Council at its special meeting on June 14, 2012 with counsel.

30. After Council President Davis called the meeting to order, the City Clerk read an agenda listing resolutions for Executive Session and numerous resolutions for alternate forms of discipline as to Plaintiff and other employees of the City of Paterson.

31. Council President Davis then turned the meeting over to Councilman Morris as the Chairman of the Finance Committee, who then conducted the rest of the meeting.

32. At that time Council President turned over the meeting to Councilman Morris, who advised that he would “try to move through this as expeditiously as possible.” He further stated that the Committee of the Whole had completed its report in October 2011. He stated clearly that, following a lawsuit which had been decided, the Municipal Council had the right to discipline employees “for cause” and that they were proceeding with a “disciplinary hearing” as to Plaintiff and another employee.

33. The Plaintiff was then sworn in, and that she requested that the matter proceed in closed session.

34. Councilman Morris again stated that the “disciplinary hearing” would proceed in Closed Session and the Municipal Council resolved to go into such Closed Session.

35. The Municipal Council then went into Closed Session and then returned to Open Session. The Municipal Council had determined to take formal action as a result of the hearings

36. Councilman Morris then proceeded to announce several resolutions and requested motions on any of the resolutions before the Council. Councilman Goow moved Resolution # 12-401 for a suspension of ninety (90) days and Councilman Tavares seconded the motion.

Exhibit 10.

37. The Resolution received six (6) affirmative votes, no negative votes, but three (3) Council Members were noted to be absent.

38. The City’s Ordinance # 5-23 states that the Municipal Council may:

[r]emove, by at least two-thirds' vote of the whole number of the Council, any municipal officer, other than the Mayor or a member of the Council, for cause, upon notice and an opportunity to be heard.

39. The City's Personnel Policy Manual dated June 10, 2010, states that employees not covered by a collective bargaining agreement may be terminated at will with or without cause, without following any disciplinary system, but subject to applicable due process safeguards.

CAUSES OF ACTION

COUNT ONE

Denial Of Procedural Due Process Rights (42 U.S.C. § 1983)

40. Plaintiff restates the allegations of the Parties and the Statement of Facts Common to All Counts and realleges them and restates them as if more fully set forth at length herein.

41. The Plaintiff has a protected right to procedural due process under the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution before any action is taken against her with regard to her position as Director of Community Development.

42. Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative, violated Plaintiff's said Constitutional rights by conducting fact-finding hearings on November 30, 2011 and other days while excluding all persons, except the witness, from attending and questioning said witnesses.

43. Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative, violated Plaintiff's said Constitutional rights by not permitting any subpoenaed employees to appear at the entire proceedings on November 30, 2011 and other diverse dates of the hearings of the Committee of the Whole or participate in the confrontation of witnesses at such hearings by any persons including, but not limited to, the Plaintiff.

44. Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative, violated Plaintiff's said Constitutional rights by adopting findings of fact regarding Plaintiff's employment with the City of Paterson on June 14, 2012 without notice and an opportunity to be heard concerning such findings.

45. Defendants, or each or all of them, jointly, severally or in the alternative, violated Plaintiff's said Constitutional rights by terminating the Plaintiff on June 14, 2012 based solely on the Final Report of the Committee of the Whole which was adopted on June 12, 2012, without any notice, hearing, access to process to secure the presence of witnesses or right of confrontation, even though the Municipal Council had obtained the aforesaid report nearly four (4) months earlier.

46. At all times relevant herein, the Defendants City of Paterson, Paterson Municipal Council and Anthony E. Davis, Aslon Goow, Sr., William C. McKoy, Kenneth M. Morris, Jr., Rigo Rodrigues, André Sayegh and Julio Tavaréz, or each or all of them, jointly, severally or in the alternative, were acting under color of law.

47. The said violations of Plaintiff's rights were proximately caused by the acts or omissions of the Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative.

48. The Plaintiff has been damaged thereby by loss of salary and benefits and has otherwise been damaged.

WHEREFORE, Plaintiff demands judgment for special, compensatory and punitive damages against all the Defendants, jointly, severally or in the alternative, for costs and fees of this litigation including, but not limited to reasonable attorney fees pursuant to 42 *U.S.C.* § 1983 and 42 *U.S.C.* § 1988, and for all other relief in law or equity as the court may deem appropriate under the circumstances of this case.

COUNT TWO

Denial of Substantive Due Process Rights (42 U.S.C. § 1983)

49. Plaintiff restates the allegations of the Parties, the Statement of Facts Common to All Counts and Count One and realleges them and restates them as if more fully set forth at length herein.

50. The Plaintiff has a protected right to substantive due process under the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution before any action is taken against her with regard to her position as Director of Community Development.

51. The acts of the Defendants aforesaid have denied Plaintiff substantive due process by denying her the ability to examine the evidence against her, by denying her opportunity to address her accusers, by conducting the fact-finding upon which they based their actions out of the presence of the Plaintiff or any other witnesses subpoenaed through the Mayor's office.

52. The process used by the Defendants to conduct the hearings of witnesses on November 30, 2012, and the termination proceedings of June 14, 2012 in reliance on findings adopted on June 12, 2012 without notice to Plaintiff deprived her of a property right and were without reasonable relation to the police power of the Municipal Council for the health, safety or welfare of the community.

53. Further, The process used by the Defendants to conduct the hearings of witnesses on November 30, 2012, and the termination proceedings of June 14, 2012 in reliance on findings adopted on June 12, 2012 without notice to Plaintiff deprived her of a property right by process seeking a result by constitutionally impermissible means which offend traditional notions of proper judicial process.

54. At all times relevant herein, the Defendants City of Paterson, Paterson Municipal Council and Anthony E. Davis, Aslon Goow, Sr., William C. McKoy, Kenneth M. Morris, Jr.,

Rigo Rodrigues, André Sayegh and Julio Tavaréz, or each or all of them, jointly, severally or in the alternative, were acting under color of law.

55. The said violations of Plaintiff's rights were proximately caused by the acts or omissions of the Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative.

56. The Plaintiff has been damaged thereby by loss of salary and benefits and has otherwise been damaged.

WHEREFORE, Plaintiff demands judgment for special, compensatory and punitive damages against all the Defendants, jointly, severally or in the alternative, for costs and fees of this litigation including, but not limited to reasonable attorney fees pursuant to 42 *U.S.C.* § 1983 and 42 *U.S.C.* § 1988, and for all other relief in law or equity as the court may deem appropriate under the circumstances of this case.

COUNT THREE

Violation Of *N.J.S.A.* 10:6-1, *et seq.*, The New Jersey Civil Rights Act

57. Plaintiff restates the allegations of the Parties, the Statement of Facts Common to All Counts and Counts One and Two and realleges them and restates them as if more fully set forth at length herein.

58. The process used by the Defendants to conduct the hearings of witnesses on November 30, 2012, and the termination proceedings of June 14, 2012 in reliance on findings adopted on June 12, 2012 without notice to Plaintiff deprived her of a property right and were without reasonable relation to the police power of the Municipal Council for the health, safety or welfare of the community.

59. Further, The process used by the Defendants to conduct the hearings of witnesses on November 30, 2012, and the termination proceedings of June 14, 2012 in reliance on findings adopted on June 12, 2012 without notice to Plaintiff deprived her of a property right by process seeking a result by constitutionally impermissible means which offend traditional notions of proper judicial process.

60. At all times relevant herein, the Defendants City of Paterson, Paterson Municipal Council and Anthony E. Davis, Aslon Goow, Sr., William C. McKoy, Kenneth M. Morris, Jr., Rigo Rodrigues, André Sayegh and Julio Tavaréz, or each or all of them, jointly, severally or in the alternative, were acting under color of law.

61. The said violations of Plaintiff's rights were proximately caused by the acts or omissions of the Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative.

62. The Plaintiff has been damaged thereby by loss of salary and benefits and has otherwise been damaged.

WHEREFORE, Plaintiff demands judgment for reinstatement to her position, restoration of all salary and benefits, for special, compensatory and punitive damages against all the Defendants, jointly, severally or in the alternative, for costs and fees of this litigation including, but not limited to reasonable attorney fees pursuant to *N.J.S.A. 10:6-1, et seq.* and for all other relief in law or equity as the court may deem appropriate under the circumstances of this case.

COUNT FOUR

Denial of Equal Protection Of The Law (42 U.S.C. § 1983)

63. Plaintiff restates the allegations of the Parties, the Statement of Facts Common to All Counts and Counts One through Four and realleges them and restates them as if more fully set forth at length herein.

64. Plaintiff is entitled to the equal protection of the law pursuant to the United States Constitution in any quasi-judicial proceedings against him.

65. On information and belief, other employees in the unclassified position were afforded protections of the United States Constitution pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments thereto.

66. The Plaintiff was not afforded any of the said protections of adequate notice, opportunity to be heard, to compel and/or confront the testimony of witnesses or to confront the evidence against her which had been gathered outside the presence of the Plaintiff and others.

67. At all times relevant herein, the Defendants City of Paterson, Paterson Municipal Council and Anthony E. Davis, Aslon Goow, Sr., William C. McKoy, Kenneth M. Morris, Jr., Rigo Rodrigues, André Sayegh and Julio Tavarez, or each or all of them, jointly, severally or in the alternative, were acting under color of law.

68. The Plaintiff was not afforded the same rights as other persons who have been disciplined as unclassified employees of the City of Paterson.

69. The said violations of Plaintiff's rights were proximately caused by the acts or omissions of the Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative.

70. The Plaintiff has been damaged thereby by loss of salary and benefits and has otherwise been damaged.

WHEREFORE, Plaintiff demands judgment for reinstatement to her position, restoration of all salary and benefits, for special, compensatory and punitive damages against all the Defendants, jointly, severally or in the alternative, for costs and fees of this litigation including, but not limited to reasonable attorney fees pursuant to *N.J.S.A. 10:6-1, et seq.* and for all other relief in law or equity as the court may deem appropriate under the circumstances of this case.

COUNT FIVE

Municipal Liability Under 42 U.S.C. § 1983

71. Plaintiff restates the allegations of the Parties, the Statement of Facts Common to All Counts and Counts One through Four and realleges them and restates them as if more fully set forth at length herein.

72. The aforesaid acts of the Municipal Council and the Defendants Anthony E. Davis, Aslon Goow, Sr., William C. McKoy, Kenneth M. Morris, Jr., Rigo Rodrigues, André Sayegh and Julio Tavaréz, or each or all of them, jointly, severally or in the alternative, commencing on October 11, 2011 and continuing through the November 30, 2011 hearings and through the June 14, 2012 discipline of the Plaintiff constituted a pattern, practice or custom of conducting hearings concerning discipline of employees without adequate notice, opportunity to be heard, compel the attendance of and/or confront witnesses, constituted a pattern, practice or custom of conducting hearings concerning discipline of employees relying upon inadmissible and/or improperly obtained evidence in disciplinary proceedings and constituted a pattern, practice or

custom of imposing discipline upon employees without adequate procedural and substantive protections guaranteed by the Constitutions of the State of New Jersey and the United States.

73. At all times relevant herein, the Defendants City of Paterson, Paterson Municipal Council and Anthony E. Davis, Aslon Goow, Sr., William C. McKoy, Kenneth M. Morris, Jr., Rigo Rodrigues, André Sayegh and Julio Tavaréz, or each or all of them, jointly, severally or in the alternative, were acting under color of law.

74. At all times the Defendants Paterson Municipal Council and Anthony Davis, Aslon Goow, William C. McKoy, Kenneth Morris, Rigo Rodrigues, André Sayegh and Julio Tavaréz, or each or all of them, jointly, severally or in the alternative, professed to be acting on behalf of the Defendant City of Paterson.

75. The Defendant City of Paterson is liable for the said acts and omissions of the other Defendants.

76. The said violations of Plaintiff's rights were proximately caused by the acts or omissions of the Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative.

77. The Plaintiff has been damaged thereby by loss of salary and benefits and has otherwise been damaged.

WHEREFORE, Plaintiff demands judgment for reinstatement to her position, restoration of all salary and benefits, for special, compensatory and punitive damages against all the Defendants, jointly, severally or in the alternative, for costs and fees of this litigation including, but not limited to reasonable attorney fees pursuant to *N.J.S.A. 10:6-1, et seq.* and for all other relief in law or equity as the court may deem appropriate under the circumstances of this case.

COUNT SIX

Violation of Open Public Meetings Act

78. Plaintiff restates the allegations of the Parties, the Statement of Facts Common to All Counts and Counts One through Five and realleges them and restates them as if more fully set forth at length herein.

79. The Defendants, or each or all of them, jointly, severally or in the alternative, constitute a public body subject to the requirements of the New Jersey Open Public Meetings Act, *N.J.S.A. 10:4-6, et seq.*, (hereafter referred to as the "OPMA").

80. OPMA prohibits the exclusion of the public from any meeting of a public body as follows:

[e]xcept as provided by subsection b. of this section all meetings of public bodies shall be open to the public at all times. Nothing in this act shall be construed to limit the discretion of a public body to permit, prohibit or regulate the active participation of the public at any meeting, except that a municipal governing body and a board of education shall be required to set aside a portion of every meeting of the municipal governing body or board of education, the length of the portion to be determined by the municipal governing body or board of education, for public comment on any governmental or school district issue that a member of the public feels may be of concern to the residents of the municipality or school district.

81. The Defendants conducted business as aforesaid as a Committee of the Whole while excluding members of the public including, but not limited to, persons subpoenaed to appear before it and the Plaintiff, from its conducting of questioning of City Employees during its hearings between October 11, 2011 and June 12, 2012 which was otherwise conducted in open public session.

82. The Defendants did not permit or conduct a public comment portion during the said proceedings wherein any member of the public could speak to the topics presented or any other matter of public interest.

83. The actions and omissions aforesaid violated OPMA in that the Defendants, while acting as a Committee of the Whole, conducted meetings while excluding members of the public and while not permitting or conducting public comment.

84. All actions taken by the Committee as a Whole and all actions of the Defendant Municipal Council in reliance on the actions of the Committee as a whole are therefore void as a matter of law pursuant to *N.J.S.A. 10:4-12* and *N.J.S.A. 10:4-15*.

85. The said violations of Plaintiff's rights were proximately caused by the acts or omissions of the Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative.

86. The Plaintiff has been damaged thereby by loss of his position, loss of salary and benefits and has otherwise been damaged.

WHEREFORE, Plaintiff demands judgment pursuant to *N.J.S.A. 10:4-15* declaring Resolution #12-401 null, void and contrary to law, directing the City of Paterson to reinstate her to her position of Director of Community Development, retroactive to June 14, 2012, restoration of all salary and benefits (back and current) and for special, compensatory and punitive damages against all the Defendants, jointly, severally or in the alternative, for costs and fees of this litigation including, but not limited to reasonable attorney fees pursuant to *N.J.S.A. 10:6-1, et seq.* and for all other relief in law or equity as the court may deem appropriate under the circumstances of this case.

COUNT SEVEN

Action In Lieu of Prerogative Writ

87. Plaintiff restates the allegations of the Parties, the Statement of Facts Common to All Counts and Counts One through Six and realleges them and restates them as if more fully set forth at length herein.

88. The Defendant City of Paterson is a municipal entity incorporated under the statutes made and provided in the Optional Municipal Charter Law ("Faulkner Act"), *N.J.S.A.* 40:69A-1, *et seq.*

89. The Director of Community Development by ordinance serves at the will of the Mayor pursuant to Paterson City Ordinance § 5-6, which states that:

[e]ach department shall be headed by a director, who shall be appointed by the Mayor with the advice and consent of the Council. Each department head shall serve during the term of office of the Mayor appointing him, and until the appointment and qualification of his successor.

The Mayor may, in his discretion, remove any department head after notice and an opportunity to be heard. Prior to removing a department head, the Mayor shall first file written notice of the intention with the Council and such 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.

90. Under the Faulkner Act, when elected council members desire to communicate with municipal employees in a mayor-council municipality, they must do so solely through the Mayor or his designee under the doctrine of Separation of Powers and pursuant to *N.J.S.A.* 40:69A-37.1.

91. The acts of the Committee of the Whole in summoning the Plaintiff, Director of Community Development, for questioning as aforesaid violated the Doctrine of Separation of Powers embodied in the Faulkner Act and the Ordinances made and provided in the City of Paterson.

92. The said acts of the Municipal Council and the Defendant Council Members further were null and void as a matter of law for failing to provide the due process guaranteed by the aforesaid policies and procedures of the City of Paterson in such cases made and provided.

93. Further, in any case such vote must be by a two thirds (2/3) majority of the authorized number of the members of the Municipal Council.

94. The affirmative vote of the Municipal Council for the Resolution suspending the Plaintiff was 6-0-0, with three (3) members absent.

95. Councilman Morris had an inherent conflict with the vote against the Plaintiff because his position as Director of Governmental Affairs for an entity or group of entities for whom he was in negotiation with the same City of Paterson in which he served as an elected official.

96. The negotiations involved, among other things, tax abatements and other redevelopment opportunities with the City which were the direct and ongoing responsibility of the Plaintiff in her role as Director of Community Development, an office with direct responsibility for the redevelopment work of Councilman Morris' client(s) and/or employer.

97. The Plaintiff avers that such irreconcilable conflict should have excluded Councilman Morris from any consideration or vote regarding Plaintiff's position or employment.

98. The vote for the suspension of the Plaintiff was not therefore carried by a two thirds (2/3) majority of the council members entitled to vote thereon.

99. The vote was therefore null and void as a matter of law.

100. The Defendant City of Paterson is liable for the said acts and omissions of the other Defendants.

101. The said violations of Plaintiff's rights were proximately caused by the acts or omissions of the Defendants as aforesaid, or each or all of them, jointly, severally or in the alternative.

102. The Plaintiff has been damaged thereby by loss of salary and benefits and has otherwise been damaged.

WHEREFORE, Plaintiff demands judgment declaring Resolution #12-387 null, void and contrary to law, directing the City of Paterson to reinstate her to her position of Director of Community Development, retroactive to June 14, 2012, restoration of all salary and benefits (back and current) and for special, compensatory and punitive damages against all the Defendants, jointly, severally or in the alternative, for costs and fees of this litigation including, but not limited to reasonable attorney fees pursuant to *N.J.S.A. 10:6-1, et seq.* and for all other relief in law or equity as the court may deem appropriate under the circumstances of this case.

COUNT EIGHT

Declaratory Action - Request For Relief For Reinstatement

103. Plaintiff restates the allegations of the Parties, the Statement of Facts Common to All Counts and Counts One through Seven and realleges them and restates them as if more fully set forth at length herein.

104. Plaintiff avers that she will suffer irreparable harm if he continues to be terminated from her employment as Director of Community Development, in that she will be discontinued from receiving a salary and, while unemployed, may suffer loss of pensionability through State pension plan provisions.

105. Plaintiff further avers that there will be no hardship imposed upon Defendants in returning her to her position as Director of Community Development, in that she had long ago

returned any sums which the Defendant City of Paterson had authorized and paid to her, but which were later held to be non-payable by the State of New Jersey, Department of Community Affairs and further in that Plaintiff would not and does not report to, nor is she supervised by, any of the named Defendants.

106. Plaintiff further avers that there are no contested facts and that all the necessary facts in this matter are matters of record upon which she has relied.

107. Plaintiff further avers that she is entitled to reinstatement pending the outcome of this matter under the authority of *Crowe v. DeGioia*, 90 N.J. 126 (1982) and the cases made and provided in such cases against the Defendants, and that the interests of justice are served by ordering her reinstatement pending further actions in this matter.

108. Plaintiff further avers that she is entitled to reinstatement pending the outcome of this matter under the authority of *N.J.S.A. 10:6-1, et seq.*, the New Jersey Civil Rights Act, and the cases made and provided in such cases against the Defendants, and that the interests of justice are served by ordering her reinstatement pending further actions in this matter.

WHEREFORE, Plaintiff demands judgment for a declaration and Order of this court that her reinstatement to her position as Director of Community Development, retroactive to June 14, 2012,, restore to her all of her salary and benefits (back and current) and, for special, compensatory and punitive damages against all the Defendants, jointly, and/or severally or in the alternative, for costs and fees of this litigation including, but not limited to reasonable attorney fees pursuant to *N.J.S.A. 10:6-1, et seq.* and for all other relief in law or equity as the court may deem appropriate under the circumstances of this case.

JURY DEMAND

Plaintiff hereby demands a jury trial as to all claims or Counts set forth now or later in the Complaint.

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies that the matter in controversy is not the subject of any pending lawsuit and is not the subject of any administrative actions, and that the matter is not the subject of any pending arbitration or mediation.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c) Philip G. George, Esquire and Eric M. Bernstein, Esquire of the Law Firm of Eric M. Bernstein & Associates, LLC are designated as trial counsel of record for the Plaintiff in the above captioned matter.

DEMAND FOR ANSWERS TO INTERROGATORIES

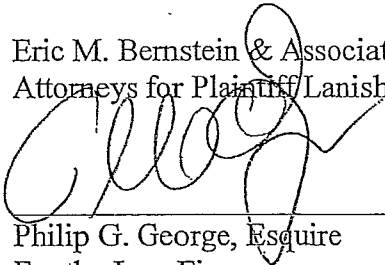
Pursuant to R. 4:17-1(b)(2), the Plaintiff hereby demands that the Defendants provide answers to Uniform Answers to Interrogatories Form C and Supplemental Interrogatories within the time provided by the Rules of Court.

CERTIFICATION OF SERVICE PURSUANT TO R. 4:6-1(d)

The undersigned certifies that a true copy of the within Complaint was, or will be, served upon all parties herein within the time period allowed by R. 4:6-1 or other Rule or Rules in such cases made and provided.

Dated: July 20, 2012

Eric M. Bernstein & Associates, LLC
Attorneys for Plaintiff Lanisha Makle

By: 
Philip G. George, Esquire
For the Law Firm

VERIFICATION BY CERTIFICATION

1. I am Lanisha Makle, residing at 217 East 26th Street, in the City of Paterson, County of Passaic and State of New Jersey, and I am the Plaintiff in the above entitled matter.

2. I have read the foregoing Complaint and on my own personal knowledge I know that the facts set forth herein are true and they are incorporated in this Certification by reference.

3. I hereby 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 may be subject to punishment.

Dated: 7/27/2012



LANISHA MAKLE

09-30-11 13:18:33

102225

Lanisha Makle

0612

OVER TIME REPYMNT

CHECK NUMBER: 000612210

CHECK AMOUNT:

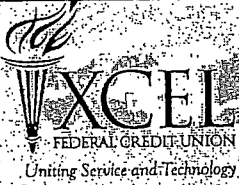
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CITY OF PATERSON

DETACH THIS PORTION BEFORE DEPOSITING

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09-30-11

MEMBERS UNITED CORPORATE FCU
ALBANY, NY

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AMOUNT

*****3,660.44

VOID AFTER 90 DAYS

PAY THE SUM OF THREE THOUSAND SIX HUNDRED SIXTY AND 44 DOLLARS

PAY TO THE ORDER OF CITY OF PATERSON

REF OVER TIME REPYMNT

Linda McLadden
AUTHORIZED SIGNATURE

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Resolution of the City of Paterson, N.J.

No. 14

Res. # 11:572

Date of Adoption OCTOBER 11, 2011

Division

Factual Contents Certified By

TITLE:

**RESOLUTION ESTABLISHING A
COMMITTEE OF THE WHOLE TO
INVESTIGATE PAYROLL EXPENDITURES
OF THE CITY OF PATERSON**

Title

Date

Approved As to Form and Legality on Basis
of Facts Set Forth

Saul J. Form 10/14/11
CORPORATION COUNSEL Date

COUNCILPERSON ANDRE SAYEGH Introducing the Following Resolution:

WHEREAS, the Municipal Council of the City of Paterson has the right under the Code of Paterson (T.C.O.P.) 5-23.A. to investigate the conduct of any department, office or agency of the municipal government; and

WHEREAS, the Municipal Council of the City of Paterson has the power under the Faulkner Act, N.J.S.A. 40:69A-37.1, to conduct such an investigation as a Committee of the Whole; and

WHEREAS, the members of the City Council have determined that the operations of the City of Paterson should be investigated by a Committee of the Whole as to payroll expenditures, including overtime payments for the Mayor, City Directors and other City employees; and

WHEREAS, the Municipal Council of the City of Paterson recognizes that the Executive Branch has the administrative responsibilities to conduct City business while the Municipal Council has authority to legislate and review the operations of government; and

WHEREAS, pressing concerns require a prompt review and investigation of the payroll operations of the City of Paterson.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF PATERSON AS FOLLOWS:

1. The City Council hereby establishes a Committee of the Whole to conduct an investigation of the payroll operations of the City of Paterson.
2. Said hearings shall be conducted in a fair and impartial manner by the Municipal Council.
3. Corporation Counsel is hereby directed to supply legal counsel to advise the Municipal Council on all procedural issues relevant to this matter.
4. In the event that the Municipal Council determines that individual personnel matters should be reviewed and investigated by the Municipal Council, one or more Executive Sessions will be scheduled as required by the Open Public Meetings Act and any employee in question shall be served by the City Clerk with a *Rice Notice*, as required by law. Such employees shall have individual personnel matters discussed in an Executive Session unless said employees waive their right to a confidential review and request that such hearings be conducted in a Public Session.
5. Said formal hearings in this investigation shall convene as soon as possible, consistent with due process of law.

RESOLUTION ESTABLISHING A
 COMMITTEE OF THE WHOLE TO
 INVESTIGATE PAYROLL EXPENDITURES
 OF THE CITY OF PATERSON
 Page 2 of 2

STATEMENT OF PURPOSE

This Resolution is intended to authorize a Committee of the Whole of the Municipal Council to investigate the payroll operations of the City of Paterson.

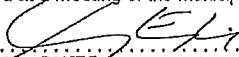
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SECONDED BY COUNCILPERSON . . . RIGO RODRIGUEZ

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RECORD OF COUNCIL VOTE ON FINAL PASSAGE	AYE	NAY	ABSTAIN	ABSENT
1. AMES-GARNES, VERADENE				X
2. DAVIS, ANTHONY	X			
3. GOOW, ASLON	X			
4. MCKOY, WILLIAM C.	X			
5. MORRIS, KENNETH	X			
6. RODRIGUEZ, RIGO	X			
7. SAYEGH, ANDRÉ	X			
8. TAVAREZ, JULIO	X			
9. WIMBERLY, BENJIE E.	X			

Adopted at a meeting of the Municipal Council of the City of Paterson, N.J., . . . OCTOBER 11, 2011


 ANTHONY DAVIS, President of the Council


 SONIA GORDON, DEPUTY City Clerk

This Resolution when adopted must remain in the custody of the City Clerk. Certified copies are available.

FINAL DRAFT

**Findings and Recommendations of the Paterson Municipal
Council's Committee of the Whole
Convened on October 11, 2011
To Investigate Payments made to City Officials**

•
Prepared by: Kenneth M. Morris, Jr. MHA, MA
Chairman, Finance Committee, Paterson Municipal Council

•
Reviewed, Amended and Approved by the Paterson Municipal Council's
Committee of the Whole

Contained herein are the findings and recommendations of the city of Paterson Municipal Council's Committee of the Whole based on the investigative inquiry into the monetary payments made to compensate certain elected, and appointed officials, executive employees, and management staff as a result of hours worked during Hurricane Irene and Tropical Storm Lee which occurred in September of 2011.

The findings and recommendation contained herein hereby represent the wishes of the members of the Municipal Council's Committee of the Whole convened on October 11, 2011, by right under the Code of Paterson (T.C.O.P) 5-23.A., to investigate the conduct of any department, office or agency of the municipal government and also by the power and privileges bestowed under the Faulkner Act, N.J.S.A 40:69A-37.1, to conduct such an investigation as a Committee of the Whole and therefore chose by this authority to investigate payments made to elected and appointed officials and senior executive and management staff in relationship to hours worked during the events that occurred in September.

These recommendations are premised on an exhaustive review of over 26 hours of video recorded testimony taken over a seven-day period.

The Municipal Council hereby confirms and ratifies that the actions described herein have been formally approved by a majority of the full membership of the Municipal Council and attest to the recommendation contained herein.

I, Anthony E. Davis, Council President, 1st Ward Councilman, agree and attest to the findings and recommendation contained herein: _____

I, Julio Tavarez, Council Vice President, 5th Ward Councilman, agree and attest to the findings and recommendation contained herein: _____

I, Alson Goow, Sr., 2nd Ward Councilman, agree and attest to the findings and recommendation contained herein: _____

I, William C. McKoy, 3rd Ward Councilman, agree and attest to the findings and recommendation contained herein: _____

Vera Ames-Garnes, 4th Ward Councilwoman – Absent during the proceedings.

I, Andre Sayagh, 6th Ward Councilman, agree and attest to the findings and recommendation contained herein: _____

I, Kenneth M. Morris, Jr. MHA, MA, Councilman-At-Large, agree and attest to the findings and recommendation contained herein: _____

I, Rigo Rodriguez, Councilman-At-Large, agree and attest to the findings and recommendation contained herein: _____

Councilman Wimberly took part in the proceeding but is no longer a sitting Councilman in the city of Paterson and therefore unable to agree or attest to the findings contained herein.

The following individuals were hereby respectfully demanded to appear on October 20, 2011 and days following to produce testimony before the Committee of the Whole.

Each individual was duly sworn under oath to produce such testimony in a truthful deliberate manner. Such testimony was to be free of knowing falsehoods, and or misleading statements and or attestations. Testimony was produced with the full knowledge that any false and or misleading testimony could result in the immediate termination of the person providing such testimony from the employ of the city of Paterson by a majority vote of the membership of the Paterson Municipal Council.

1. Mayor, Jeffery Jones.
2. Business Administrator, Charles Thomas, Esq.
3. Chief of Staff/ Confidential Aid to the Mayor, Charles Pettiford.
4. Community Development Director, Lanisha Makle.
5. Department of Health and Human Services Director, Donna Nelson-Ivy.
6. Department of Public Works Director, Christopher Coke.
7. Police Lieutenant Patrick Papagni. *(Absent)*
8. Chief of Police James Wittig.
9. Public Safety and OEM Director, Glenn Brown.
10. Personnel Director, Betty Taylor.
11. Budget Officer, Russell Forenza.
12. Finance Director, Anthony Zambrano.
13. Chief Auditor, Charles Scanella.
14. Police Sergeant, Kelly A. Hemming *(Absent)*
15. Police Detective, Antonio Blasucci *(Absent)*
16. Police Sergeant, Alex W. Popov *(Absent)*
17. Police Sergeant, Manuel Hernandez *(Absent)*
18. Police Sergeant, Lazzaro J. Mazza, Jr. *(Absent)*
19. Police Sergeant, Christopher O. Straub *(Absent)*
20. Deputy Police Chief, William Fraher. *(Absent)*
21. Deputy Coordinator of OEM, Ronda Thompson.
22. Deputy Fire Chief, Kevin Hancock.
23. Deputy Police Chief, Danny Nichols. *(Absent)*
24. Health Division Nursing Director Kate Bond. *(Absent)*
25. Health Officer, Trevor Weigle.
26. Principle Account Clerk, Joan Chisolm

Respondent: Ms. Betty Taylor, Acting Personnel Director
Time in position: July 1, 2010 to present
Job Responsibilities: Oversee Personnel, Payroll, Health, Pension all personnel Functions in the city of Paterson
Represented by Counsel NO
Date: Special Meeting of November 30, 2011 – Desk KM1

Finding(s):

Ms. Taylor did not demonstrate that she possesses a fundamental knowledge of the functions of the division she has been entrusted to manage. The Committee also finds that Ms. Taylor has no or limited knowledge of personnel policies, procedures, contracts of employment and or the management of human resources relative to the city of Paterson.

MS. Taylor also testified that she would approve payments for overtime for exempt non-union employees if the BA or the Mayor approved it. (Marker 43:35-53 – Desk: KM: 1)

The Committee finds that Ms Taylor systematically processed and allowed overtime payments to be made to city employees without the proper documentation, and or verification of hours claimed to have worked. The Committee also finds that she did seek verification of time worked by supervised staff by a senior staff member, supervisor, manager, or any designated person of authority.

Ms. Taylor was unable on several occasions during her testimony to reference any existing policies that would allow for the payment of overtime to management and/or senior staff. (Marker 44:37 – Disk: KM: 1)

Ms. Taylor under sworn oath, testified that she relied solely on signed time sheets that others had self approved and or time sheets that were submitted by individuals claiming to have worked overtime hours as verification to process overtime payments to those individuals.

Several times during her testimony, Ms. Taylor asserted that she received time sheets without the proper supporting documents yet still continued to process these documents for payment.

Ms. Taylor testified that on those occasions when an employee is called into service on a scheduled furlough day they would be assigned another day off. She further testified that when the city is closed during a time of emergency, if an employee is called into service then he or she would receive overtime compensation because the city is closed.

Ms. Taylor testified that it was for this reason she authorized the issuing of checks for overtime payments to those employees called into services during furlough days. (Marker 1:07:14 –1:07:53– Disk: KM: 1)

The Committee finds this assertion to be flawed based on the premise that during scheduled furlough days the city is mandated to be closed to all employees except for

uniformed personnel. The Committee concludes there is no distinction between being closed during a time of an emergency and being closed as a result of a furlough day, and therefore is of the opinion that if an employee is called into work on these types of days he or she should receive another day off as compensation.

The Committee confirmed that Ms. Taylor verified a biweekly time sheet for the purpose of allocating overtime payments to an employee not under her direct supervision, nor was this employee a staff member of her division. (Exhibit: A).

Ms Taylor testified that despite no enabling city policy she concluded that the Mayor should be paid overtime based solely on a signed time sheet.
(Marker 54:59– Disk: KM: 1)

Ms. Taylor testified that many employees do not use the city’s Time Track System.
(Marker 1:38:30 – Desk: KM: 1)

The Committee also concludes based on the testimony of Ms. Taylor that there is no meaningful management controls in place to ensure the proper tracking of an employee’s time so as to ensure that hours recorded are properly compensated.

Recommendation(s):

1. The Council will convene a meeting upon notice to Ms. Taylor and provide her with an opportunity to be heard as to why it should not terminate her employment with the city of Paterson in accordance with the letter of the Division of Community Affairs i dated December 15, 2011 and in accordance with N.J.S.A. :40:69A-37.
2. The Committee finds that overtime payments provided to Ms. Taylor were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning July 1, 2010 to present. The Committee further orders that overtime payments be returned to the city of Paterson for the period beginning July 1, 2010 to present in full.
3. The Committee has determined that the position of Director of Personnel is an Exempt position and therefore any persons serving in said position in either acting and/or permanent capacity is not entitled to overtime compensation for work performed in excess of 7 hours per day or 35 hours per week. Nor is any person serving in this position in either acting or permanent capacity entitled to receive overtime compensation for work performed on scheduled holidays, weekends or any scheduled day off.

Respondent: Mr. Charles Pettiford, Confidential Aid to the Mayor/COS
Time in position: July 1, 2010 to present
Job Responsibilities: Act as the lead in the office of the Mayor, responsible for all activities in the office of the Mayor.
Represented by Counsel YES
Date: Special Meeting of November 30, 2011 – Desk KM1
Finding(s):
The Committee found Mr. Pettiford’s testimony to be purposely supercilious and evasive with the sole intent and purpose to be disruptive and designed to unnecessarily prolong the Committee’s investigation.

During his testimony, Mr. Pettiford demonstrated an inability to clearly define the role, duties, responsibilities, and job function(s) in his position as Confidential Aid to the Mayor / Chief of Staff,.

Mr. Pettiford falsely testified that he did not sign a time sheet verifying overtime hours worked by Mayor Jeffery Jones. (Marker 2:26:43 – 2:26:57– Disk: KM: 1).

The Committee finds this statement to be false based on the testimony of Ms. Taylor who testified that Mr. Pettiford signed and verified Mayor Jones’ time sheet.
(Marker 53:15– Disk: KM: 1)

Mr. Pettiford was handed a copy of the Mayor’s time sheet Exhibit MC: 1, to review. This exhibit clearly showed Mr. Pettiford’s signature as verification of the overtime the Mayor allegedly worked during the recent disasters.

Mayor Jones testified that he did not submit any documentation for overtime compensation. (Marker 02:18-21 – Desk: KM: 7) The Committee concludes that Mr. Pettiford may have acted without the consent of his direct supervisor in submitting a time sheet on behalf. The Committee further concludes that this action constitutes an action outside of his scope of responsibility and constitutes a gross misrepresentation of his authority.

Mr. Pettiford testified that he is deemed a First Responder, and therefore is considered an Essential Employee based on FEMA guidelines. He further testified that this status was based on the completion of an online course to become a First Responder.
(Marker 23:38 – Disk: KM: 2)

When asked if he had completed the entire course referenced in his testimony Mr. Pettiford responded no.

The Committee finds Mr. Pettiford testimony that he is a qualified First Responder to be totally without merit and false.

Mr. Pettiford testified that at no other time during his employment with the city of Paterson did he receive overtime compensation.

FEMA guidelines clearly state that in order for an employee to be eligible to receive overtime compensation supported by FEMA they must have received overtime compensation at another time during their employment with the agency making the application.

The Committee finds that based on Section 403; 407 and 502 of the Stanford Act of the FEMA guidelines that Mr. Pettiford's assertion as to his eligibility to receive overtime compensation is false.

Mr. Pettiford testified that he both signed his own time sheet and verified the hours he submitted for his overtime payments. (Marker 32:38 – Disk: KM: 2)

The Committee finds employee self-verification of official payroll documents to be unacceptable and demonstrates a major flaw in the management control systems within the Payroll Department.

Ms. Makle, Director of Community Development testified that unlike Mr. Pettiford, she did not consider herself to be a First Responder despite taken the ICS 100 course on incidence commend.

Ms. Makle testified she could not recall being told by completing the course she would be considered a First Responder. She also confirmed that the certificate (LM2) she received upon completing the course did include the words First Responder anywhere on the document. (Marker 12:30:00– Disk: KM: 6)

This is a direct contradiction to the position taken by Mr. Pettiford regarding his status as a First Responder.

Mr. Pettiford during later testimony recanted his earlier testimony and said he believes that he is not a qualified First Responder but had taken a course. (Marker 1:21:21 – Disk: KM: 4)

Mr. Pettiford confirmed during later testimony that he is an exempt employee and therefore not entitled to overtime compensation. (Marker 00:20:27– Disk: KM: 12)

Recommendation(s):

1. The Committee finds that Mr. Pettiford inability to clearly articulate his role, duties, responsibilities, and job function(s) as Confidential Aid to the Mayor / Chief of Staff, a clear indication that the position of Chief of Staff / Confidential Aid to the Mayor is superfluous and questions the need for such a taxpayer supported position The Council will convene a meeting upon notice to Mr. Pettiford and provide him with an opportunity to be heard as to why it should not terminate him from his employment with the city of Paterson in accordance with

N.J.S.A.:40:69A-37. The Committee finds that overtime payments provided to Mr. Pettiford were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning July 1, 2010 to present. The Committee further orders that overtime payments be returned to the city of Paterson for the period beginning July 1, 2010 to present in full.

2. The Director of the Office of Emergency Management also testified that Mr. Pettiford was not considered essential personnel and in fact was not required to be present at the height of the emergency providing assistance to flood victims located at Riverview Towers. The Committee finds this further illustrates that Mr. Pettiford's presence during Hurricane Irene and Tropical Storm Lee to be unnecessary.
3. The Committee has determined that the position of Chief of Staff / Confidential Secretary is an Exempt position and therefore any persons serving in this position in acting or permanent capacity is not entitled to overtime compensation for work performed in excess of 7 hours per day or 35 hours per week. Nor is any person serving in this position in both an acting and/or permanent capacity entitled to receive overtime compensation for work performed on scheduled holidays, weekends or scheduled days off.

Respondent:	Mr. Charles Thomas, Esq., Business Administrator
Time in position:	July 1, 2010 to present
Job Responsibilities:	Day to day operations of administrative functions of the city. Heads the Division of Personnel, IT, and Public Defenders office.
Represented by Counsel	YES
Date:	Special Meeting of December 1, 2011 – Desk KM3

Finding(s):

Mr. Thomas acknowledged in a prepared statement his fault in accepting inappropriate overtime payments in connection with the hours worked during Hurricane Irene and Tropical Storm Lee.

He further stated that his belief that he was entitled to overtime compensation as a result of hours worked during the recent disasters was based on the directions he received by Administrative personnel.

Mr. Thomas testified that he is familiar with the collective bargaining agreements currently in place in the city and is responsible for negotiating many if not all of those agreements. (Marker 24:38 – 25:09: Disk: KM: 3).

However Mr. Thomas was unable to reference any collective bargaining agreement that would allow for the payment of overtime to exempt or salaried employees.

Mr. Thomas testified that based on his understanding of the personnel policy exempt employees are prohibited from receiving overtime compensation. (Marker 27:46 – 27:08: Disk: KM: 3)

Mr. Thomas testified that he did on occasion sign both his time sheet as well as that of other senior level exempt staff that would allow them to be paid overtime compensation. Mr. Thomas testified that the Mayor, Jeffrey Jones is his direct supervisor but does not verify overtime he claims to have worked. (Marker 32:59 – Disk: KM: 3).

Mr. Thomas testified that he determines whether he should work overtime not his direct supervisor. (Marker 35:10 – Disk: KM: 3)

Mr. Thomas testified that on those occasions when he received overtime compensation he did so as both the Business Administrator and Affirmative Action Officer, despite testifying that his title as Business Administrator is an exempt title and therefore is not entitled to overtime compensation.

Mr. Thomas testified that when he received overtime compensation for performing duties as the Affirmative Action Officer his compensation was calculated based on his salary as a Business Administrator. (Marker 44:38 – Disk: KM: 3)

The Committee finds based on Mr. Thomas' assertion that no specialized training, certification, analytical ability and or deductive reasoning is required to perform the duties of Affirmative Action Officer his decision to assume those duties as opposed to assigning those duties to a lower level management position constitutes a lack of managerial acumen.

Further, the Committee finds relative to this issue Mr. Thomas decision to assume those duties with the knowledge that doing so would require him to work hours in excess of his normal work day hours, and as a result submitted documents in order to receive overtime compensation demonstrates a serious breach in his fiduciary responsibility as senior level cabinet member in the city of Paterson.

Mr. Thomas testified that the incidence management training he received along with other departmental directors was basic and nature and did not certified them to be required to respond to incidence of emergencies and or disasters. This is a contradiction to earlier testimony given by Mr. Pettiford. (Marker 54:06 – 25:09: Disk: KM: 3)

Mr. Thomas testified that he consulted the OEM Director as to whether Directors who were called into services during Hurricane Irene and Tropical Storm Lee would receive overtime compensation and was told that their role was a qualified activity and therefore a reimbursable expense under FEMA. (Marker 1:02:54 – 1:04:05: Disk: KM: 3).

The Director of OEM during his testimony disputes this assertion.

The Director of OEM also testified that he did not receive overtime compensation for worked performed during Hurricane Irene and Tropical Storm Lee. However, Mr. Thomas testified that a past practices he relied to justify overtime payments made to senior personnel was that under prior administrations the OEM Director and other Directors within the city had received overtime compensation during times of emergencies.

The Committee finds based on the testimony of the OEM Director this reasoning to be flawed.

Mr. Thomas affirmed that he received overtime compensation for duties performed as the Business Administrator during evening Council meetings.
(Marker 1:09:46 – Disk: KM: 3).

The Committee finds based on earlier testimony by Mr. Thomas that he understood his position as Business Administrator is an exempt position and therefore did not qualify for overtime compensation.

The committee concludes that Mr. Thomas would submission of documentation for overtime compensation for performing his assigned duties as Business Administrator to be of great concern and may constitute fraud.

Mr. Thomas repeatedly testified that he requested the city's Assistant Personnel Director to investigate the amount of compensation he received as a result of working overtime.

He further testified that he questioned why he was being compensated at a rate of time-in-half as opposed to straight time for the hours he worked during Council meetings and hours he worked performing the duties of Affirmative Action Officer. Yet, despite these concerns Mr. Thomas continued to cash the checks issued to him compensating him at a rate he deemed inappropriate.

The Committee finds that Mr. Thomas by his own admission recognized and understands the prohibition against exempt and or salaried employees receiving overtime compensation unless otherwise permitted by an existing collective bargaining agreement yet, still not only accepted overtime compensation for himself but attested to time sheets which allowed other exempted and or salaried personnel to receive overtime compensation.

Recommendation(s):

1. The Committee finds that overtime payments provided to Mr. Thomas were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning July 1, 2010 to present. The

Committee further orders that overtime payments be returned to the city of Paterson for the period beginning July 1, 2010 to present.

2. The Committee finds the practice of a subordinate choosing to perform work in hours in excess of his normal work day for the purpose of incurring overtime to be an unacceptable practice and immediately orders that this practice is ended.
3. The Committee finds that Mr. Thomas' assertion that he received direction from the Director of OEM to submit documentation to receive overtime compensation to be a misrepresentation of the facts and whereas the Committee finds these actions to be a gross dereliction of the duties of Mr. Thomas' position and therefore orders that he be suspended without pay. The Council will convene a meeting upon notice to Mr. Thomas and provide him with an opportunity to be heard as to why it should not suspend him without pay for a determined number of days.
4. The Committee has determined that the position of Business Administrator is an Exempt position and therefore any persons serving in this position in acting or permanent capacity is not entitled to overtime compensation for work performed in excess of 8 hours a day or 40 hours a week. Nor is any person serving in this position in both an acting and/or permanent capacity entitled to receive overtime compensation for work performed on scheduled holidays, weekends or scheduled days off.

Respondent:	Glenn Brown, Director of Public Safety and OEM
Time in position:	May 1, 2009 to present
Job Responsibilities:	Responsible for the oversight and direction of the Police and Fire Department.
Represented by Counsel	NO
Date:	Special Meeting of December 1, 2011 – Desk KM: 4

Finding(s):

Mr. Brown testified that the definition of a First Responder refers to sworn Police and Fire personnel. (Marker 9:14 – Disk: KM: 4)

The Committee agrees with this definition and therefore concludes that any personnel that fall outside of this description is not a qualified First Responder.

Mr. Brown testified that in addition to himself, Police and Fire personnel the only designated First Responder within the city of Paterson is Deputy Director Ronda Thompson. (Marker 11:10 – Disk: KM: 4)

Mr. Brown also contradicted his earlier testimony by later testifying that the Mayor, Business Administrators, Directors of Health and Human Services, Community Development, and Public Works are considered to be First Responders based on his understanding.

The Committee finds this testimony to be false given none of the individuals named completed any course that would qualify them to be a Certified First Responder, nor are any of the above named individuals uniformed personnel.

Mr. Brown testified that at no other time during his tenure as Director of OEM for the city of Paterson did the Mayor or the Business Administrator of past administrations received overtime.

Mr. Brown testified that at no time did the OEM Department assume the responsibility of who should be compensated for their work during Hurricane Irene or Tropical Storm Lee. (Marker 00:26:36 – Disk: KM: 4).

Mr. Brown also testified that at no time did the OEM Department assume the function of administering payroll for other Departments and Divisions. (Marker 00:28:12 – Disk: KM: 4)

The Committee finds this testimony to be in direct contradiction to testimony given by the Mayor and other Department Heads, and therefore finds the testimony given by the Mayor and other senior staff relative to this topic to be false.

Mr. Brown testified that the Mayor and Departments heads do not qualify for overtime compensation under FEMA protective measures guidelines.

Mr. Brown testified that absent an existing contractual agreement any overtime expenses incurred during Hurricane Irene and Tropical Lee should not have been submitted for reimbursement. (Marker 1: 08:15 – Disk: KM: 4)

The Committee concludes based on this assertion that any documentation submitted to FEMA for the purpose of reimbursement of overtime payments to have been done in error.

The Committee also finds no documentation should have been submitted to FEMA for overtime reimbursement for non-contractual employees nor should have overtime compensation been afforded to those non-contractual employees who received it.

Mr. Brown testified that at no time did he request that time sheets be submitted to him for reimbursement for overtime for the Mayor, Business Administrator or any senior level staff member. (Marker 1:14:28 – Disk: KM: 4)

Recommendation(s):

1. The Committee recommends that all future designated disaster the Director of OEM verify all hours worked in order to confirm that hours worked are a reimbursable activity under FEMA guidelines.
2. The Committee orders that any procedures related to staff functions during disasters be provided in writing with a copy provided to the Public Safety Committee.

Respondent: Christopher Coke, Director Department of Public Works
Time in position: September 6, 2010 to present
Job Responsibilities: Responsible for the management of the Department of Public works
Represented by Counsel NO
Date: Special Meeting of December 2, 2011 – Desk KM: 5

Finding(s):

Mr. Coke read a prepared statement where he indicated that he worked 114 hours during Hurricane Irene and Tropical Storm Lee. As a result of this work Mr. Coke felt justified

in his belief that being required to return the overtime payment he received to be unjust. (Marker 15:17— Disk: KM: 5)

Mr. Coke testified that based on National Incidence Management System he is deemed a First Responder.

The Committee finds that the position of Director of Public Works in and of itself does not in fact automatically qualify the person employed in the position as a First Responder.

The Committee finds the explanation provided by Mr. Coke when referencing the the National Incidence Management System guidelines with regard to Public Work employees as qualifying and being necessary to be first at a scene of a designated disaster, thereby justifying that these non-salaried employees are entitled to overtime compensation to be misinterpreted and inappropriately applied to the position of Director of the Public works.

The Committee finds that based on the Federal Fair Labor Standards Act the position of Director of Public Works is an exempt position.

Mr. Coke testified that he makes the decision as to whether to report to work when a disaster is declared in the city. The Business Administrator under cross-examination disputes this assertion. (Marker 1:27-53 – Disk: KM: 5)

Recommendation(s):

1. Mr. Coke confirmed that he received compensation when he is given a day-off due to an emergency at a normal rate of pay. He further confirmed that if he is called into work on a scheduled day off he receives compensation at a rate of time-and-half in addition to being compensation at a normal rate of pay for the day. The Committee finds this practice to be fiscally irresponsible and orders that the practice of providing double compensation during declarative and or furlough days be ended.

2. The Committee finds that overtime payments provided to Mr. Coke were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning September 1, 2010 to present. The Committee further orders that overtime payments be returned to the city of Paterson for the period beginning September 1, 2010 to present.
3. The Committee has determined that the position of Director of Public Works is an Exempt position and therefore any persons serving in this position in acting or permanent capacity is not entitled to overtime compensation for work performed in excess of 8 hours per day or 40 hours per week. Nor is any person serving in this position in both an acting and/or permanent capacity entitled to receive overtime compensation for work performed on scheduled holidays, weekends or scheduled days off.

Respondent: Russel Forenza, Budget Officer
Time in position: TBD
Job Responsibilities: Responsible for the management of f budgets and controls
Represented by Counsel YES but released at the direction of the Mr. Forenza
Date: Special Meeting of December 2, 2011 – Desk KM: 5

Findings:

Mr. Forenza testified that at no time did an employee directly consult with him as to whether they qualified for overtime compensation as an exempt employee.

Mr. Forenza through his testimony confirmed that he had on several occasions received overtime compensated for hours worked in excess of what is considered his normal work day and or week despite being an exempt and or salaried employee.

Recommendations:

1. The Committee has determined that the position of Budget Officer is an Exempt position and therefore any persons serving in this position in both an acting and/or permanent capacity is not entitled to overtime compensation for work performed in excess of 8 hours per day or 40 hours per week. Nor is any person serving in this position in both an acting and/or permanent capacity entitled to receive overtime compensation for work performed on scheduled holidays, weekends or scheduled days off.
2. The Committee finds that overtime payments provided to Mr. Forenza were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning September 1, 2010 to present. The Committee further orders that overtime payments be returned to the city of Paterson for the period beginning September 1, 2010 to present.

Respondent: Lanisha Makle, Director of Community Development
Time in position: September 7, 2010 to present
Job Responsibilities: Responsible for the management of the Department of Community Development. Oversee HOME Program; Block Grants, ESG, and ESP.
Represented by Counsel YES
Date: Special Meeting of December 2, 2011 – Desk KM: 5 and 6

Findings:

Ms. Makle testified when employed as the Director of the Work Force Investment Board she would on occasion work in excess of 40 hours per week and during those time she did not receive overtime compensation for the hours worked.

(Marker 1:52:20 – Disk: KM: 5)

The Committee finds based on this statement that Ms. Makle has a superficial understanding of the prohibition of exempt and or salaried employees qualifying to receive overtime compensation unless otherwise specified by a preexisting contractual agreement.

Ms. Makle testified that on those weeks she would work in excess of 40 hours she did not put in for overtime compensation. (Marker 1:52:50 – Disk: KM: 5)

Ms. Makle further testified that the reason she did not submit documentation to be compensated for overtime was that the Mayor had a policy that “we don’t get paid overtime.” (Marker 1:59:15 – Disk: KM: 5)

The Committee finds this statement to substantiate its position that Ms. Makle was aware that her current position as Director of Community Development is not entitled to overtime compensation.

Ms. Makle testified that she did not consider herself to be a First Responder. Yet she submitted documentation to be compensated for overtime during the recent disasters. (Marker 2:04:47 – Disk: KM: 5)

The Committee finds Ms. Makle’s action to contradict the statements made by Mr. Pettiford, Mr. Coke, and Ms. Ivy that based on their classification as a First Responder they were deemed eligible to submit documentation for overtime compensation for their work during Hurricane Irene and Tropical Storm Lee.

Ms. Makle testified that she attested to the overtime hours she worked by her signature on a time sheet that was later verified by the Business Administrator by affixing his signature to the aforementioned time sheet.

(Marker 2:05:25 – Disk: Disk: KM: 5).

The Committee was unable to verify Ms. Makle statement regarding her time sheet given there was no such documentation provided as part of her discovery and therefore finds this assertion to be false.

Ms. Makle later provided the alleged missing time sheet marked (LM1).

The Committee is extremely concerned that (LM1), was falsely created in order to produce a document to support the earlier testimony of Ms. Makle on this issue.

The Committee finds after its examination of the (LM1), that an earlier time sheet (MC5) that was provided as part of discovery submitted by Ms. Makle for overtime compensation were exactly the same except that the later submitted time sheet (LM1), contained the signature of the Business Administrator. The Committee finds that this coincidence to be overly suspect.

Ms. Makle testified that Department Heads were instructed to segregate time worked during the disaster from normal hours worked as the reason she submitted two separate time sheets. She also testified that was a city wide directive.
(Marker 01:30:00– Disk: KM: 6)

The Committee was unable to verify that there was a directive to provide two separate time sheets to be one issued city wide given no other department head submitted two separate time sheets for overtime compensation for worked performed during the recent disasters. Nor did any other Department Director provide two separate time sheets as part of their discovery, and therefore the Committee finds Ms. Makle testimony on this issue to be false.

Ms. Makle testified that she worked several days during the floods to coordinate home inspections in order to facilitate the safe return of homeowners impacted by the floods to their residence. Yet the document she provided for discovery only indicated that this activity occurred over one day period. (Marker 09:59:00– Disk: KM: 6)

Ms. Makle testified that she along with all Department Heads were instructed to keep track of time worked so that it can be turned in for FEMA reimbursement by Mr. Zambrano. (Marker 00:30:58 – Disk: KM: 6)

During Ms. Makle testimony it was discovered that two time sheets were submitted on behalf of Ms. Makle for overtime compensation during the recent disasters. Both time sheets recorded the exact number of hours and the time those hours was worked. However, one time sheet was signed and approved by Ms. Makle (MC9) The other signed and approved by Ms. Taylor (MC10). Each time sheet also recorded different dates.

Ms. Makle testified that she submitted (MC9) as the time sheet she submitted for overtime compensation.

The Committee finds that the time sheets marked (MC9 and MC10) to be identical in the information contained at the top of the documents that show the amount of hours worked. It also must be noted that the information was handwritten indicating that the documents were likely photocopied.

Mr. Zambrano later testified that the existence of two separate but identical documents which contained two separate authorizing signature to certify time to be an abnormality. (Marker 01:30:37 – Disk: KM: 6)

The Committee finds that given the fact that (MC9) was authorized via signature by Ms. Makle and (MC10) was authorized via signature by Ms. Taylor, (MC10) was intended to misrepresent the authorization and verification of overtime worked.

Ms. Makle testified that Ms. Joan Chasim prepared her time sheet yet later testified that any employee could have had access to the biweekly time sheets. Therefore, the Committee concludes that her assertion that no one other than Ms. Chasim could have prepared the duplicate time sheet on her behalf to be erroneous. (Marker 01:24:58 – Disk: KM: 7)

Ms. Makle testified that the Business Administrator reviewed her time sheet. (Marker 01:25:58 – Disk: KM: 7)

The Business Administrator later testified that he did not see Director Makle's time sheet. That it went directly to Personnel. (Marker 01:48:36 – Disk: KM: 7)

Recommendations:

1. The Committee finds that overtime payments provided to Ms. Makle were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning September 1, 2010 to present. The Committee further orders that overtime payments be returned to the city of Paterson for the period beginning September 1, 2010 to present.
2. The Committee finds sufficient cause to find that Ms. Makle and Ms. Taylor conspired to defraud and misrepresent the time recorded on an official time recording instrument, and recommends that Ms. Makle and Ms. Taylor be suspended without compensation. The Council will convene a meeting upon notice to both Ms. Taylor and Ms. Makle and provide them with an opportunity to be heard as to why they should not be suspended without pay for a determined number of days. and or other actions the Council deems proper.
3. The Committee has determined that the position of Director of Community Development is an Exempt position and therefore, any persons serving in this position in acting or permanent capacity is not entitled to overtime compensation for work performed in excess of 8 hours per day or 40 hours per week. Nor is any person serving in this position in both an acting and/or permanent capacity entitled to receive overtime compensation for work performed on scheduled holidays, weekends or scheduled days off.

Respondent: Anthony Zambrano, Acting Finance Director / Controller
Time in position: TBD
Job Responsibilities: Responsible for the management of the Department of
Represented by Counsel NO
Date: Special Meeting of December 2, 2011 – Desk KM: 6

Findings:

Mr. Zambrano testified that at no time did he instruct any staff member to keep track of overtime worked and submit time worked to FEMA reimbursement.

(Marker 01:06:24 –Desk: KM: 6).

The Committee finds that this testimony contradicts earlier testimony given by Ms. Makle that she was instructed by Mr. Anthony Zambrano to submit documentation for overtime reimbursement from FEMA. Ms. Makle testimony was reread by the Stenographer to confirm this finding. (Marker 1:12:36 – Disk: KM: 6)

Recommendation:

The Committee has great concerns that the Director of Finance at a minimum had knowledge of questionable expenditures being made to compensate non-eligible employees for overtime hours worked and or approved the issuance of off-line checks to senior staff members for overtime hours worked and recommends a formal statement be issued expressing this concern to be placed in the file of the Director of Finance.

Respondent: Joan Chisolm, Principle Account Clerk, Department of
Community Development
Time in position: February, 1995 to October, 2000 and January, 2003
to present
Job Responsibilities: Responsible for preparing the payroll sheets and payment
of bill for the department.
Represented by Counsel NO
Date: Special Meeting of December 14, 2011 – Desk KM: 7

Findings:

Ms. Chisolm testimony contradicts the earlier testimony given by Ms. Lanisha Makle that Ms. Chisolm signed documents that authorized the payment of overtime compensation for Community Development staff members. Ms. Chisolm stated that she only prepared the payroll sheets. (Marker 00:25:07 – Disk: KM: 7)

Ms. Chisolm testified that she was responsible for preparing the payroll sheets for the Department of Community Development from 2007 to 2011.

Ms. Chisolm testified that beginning with the pay period ending September 2, 2011 she no longer was responsible for preparing payroll sheets for the Community Development Department and was informed that the department's secretary would now be responsible for performing this function. (Marker 00:35:46 – Disk: KM: 7)

Ms. Chisolm testified that the individual employees of the Department prepare overtime time sheets, and at no time did she prepare an overtime time sheet for any departmental employee. (Marker 00:36:58 – Disk: KM: 7)

Ms. Chisolm testified that backup documentation is required to input data for overtime compensation on the biweekly timesheets. (Marker 00:39:10 – Disk: KM: 7)

Ms. Chisolm testified that at no time did she have possession of Ms. Makle overtime authorization form (MC9). (Marker 00:40:40 – Disk: KM: 7).

Ms Chisolm testified that the payroll document she prepared represented 105 hours and not the 85 hours reflected on exhibit (MC9).

The Committee finds that (MC9) was submitted in order to misrepresent the amount of overtime hours recorded for Ms. Makle.

Ms. Chisolm testified that nether overtime authorization form (MC9 / MC10) accompanied the biweekly payroll sheet she prepared for Ms. Makle. That the exhibit marked (JC1) was the supporting documentation she depended on when preparing the biweekly timesheet for Ms. Makle. (Marker 00:47:04 – Disk: KM: 7).

She further testified that both (MC9 and MC10) which shows her as preparing of these documents were in fact not prepared by her.
(Marker 00:49:58 – Disk: KM: 7)

Ms. Chisolm testified that the documents were computer generated documents with her signature electronically imprinted on the forms.

The Committee finds the testimony given by Ms. Chisolm on this matter to be credible and accepts that she did not prepare exhibits (MC9 and MC10).

The Committee inquired of Ms. Chisolm as to why she no longer had the responsibility of preparing the payroll documentation for the Department of Community Development. The Committee also inquired if was she given an explanation and or reason why she would no longer be responsible for performing these duties.

Ms. Chisolm responded that she did not know the reason(s) she was removed from her position and was not given an explanation. (Marker 00:55:48 – Disk: KM: 7)

When asked directly if she felt she was instructed that she would no longer be responsible for preparing payroll documentation and subsequently removed from her position was

because she ask the Director Makle for backup documentation to record her overtime which was not supplied be required as part of the necessary documentation needed to verify the amount of overtime hours the Director worked, she confirmed that she felt the responsibility for preparing payroll documents and her subsequent removal from her position was a result of her requesting backup documentation from Director Makle.

Recommendations:

1. The Committee finds no cause for disciplinary action against Ms. Joan Chisolm and therefore has no recommendations.
2. The Committee further finds that Ms. Chisolm cooperated fully with the Committee's investigation in an extremely truthful manner and commends her for her honesty and exemplary representation of the employees of Paterson.

Respondent: Jeffery Jones, Mayor
Time in position: July 1, 2010 to present
Job Responsibilities: Chief Executive Officer, City of Paterson
Represented by Counsel YES
Date: Special Meeting of December 14, 2011 – Desk KM: 7
Findings:

The Committee finds that the Mayor's inability to discern the differences between an exempt and non-exempt position to be of considerable concern given his role as Chief Executive Officer of the City of Paterson.

The Mayor testified that he is fully aware that he is not entitled to receive overtime compensation, Quote, " I am not entitled to any additional compensation, overtime. I know it, my staff knows it."

The Committee finds this assertion to be a complete contradiction to the position the Mayor took at the beginning of the public outcry around him and his staff accepting overtime compensation for hours worked during Hurricane Irene and Tropical Storm Lee given he publicly argued that he was unsure as to whether or not he was entitled to overtime compensation. (Marker 02:15-35 – Desk: KM: 7) (Reference news articles.)

The Mayor testified that it was the Director of the Office of Emergency Management who made the decision to call senior staff into service during the recent disasters. (Marker 02:31-54 – Desk: KM: 7).

This is contrary to testimony given by senior staff members.

The Committee found the Mayor's testimony and response to the Committee's inquiry to be purposely evasive and misleading and as a result concludes that Mayor had no intention of cooperating fully with the Committee's investigation as he had previously stated.

The Mayor testified that the directive and or authorization for cabinet members to submit

documentation to FEMA came from the OEM Director.
(Marker 00:14-51 – Desk: KM: 8).

Earlier testimony by Mr. Brown, Director of OEM refuted this assertion.
(Marker 00:26-36 – Desk: KM: 4)

The Mayor testified that he first became aware that he was not entitled to receive overtime on July 1, 1996. . (Marker 00:33-13 – Desk: KM: 8)

The Committee finds this statement to be disingenuous given at no time after receiving a check from the city Paterson as a result of working overtime hours during Hurricane Irene and Tropical Storm Lee, did he affirmatively reject being compensated for the overtime hours worked.

The Mayor testified that at no time did he authorize any of his Department Directors to receive overtime during the recent disasters. (Marker 01:21-46 – Desk: KM: 8)

The Committee did not receive any testimony from any witness called that would confirm this statement. When questioned as to whether he would implement the directives contained in the letter issued by Mr. Thomas Neff, Department of Community Affairs, State of New Jersey, the Mayor responded that he is of the opinion that the directives issued by the

Department of Community Affairs in a letter dated December 15, 2011, (MC:15) were only recommendations. (Marker 01:17-10 – Desk: KM: FD)

The Committee feels that the directives contained in the letter issued by the Department of Community Affairs dated December 15, 2011 or not meant to be recommendations but are in fact edicts, and should be implemented immediately.

Subsequent testimony by the Mayor provided a clear indication to the Committee that the directives contained in the letter issued by the Department of Community Affairs (MC:15) were not going to be considered and or implemented by the Administration. The Committee therefore will within the powers bestowed upon the Committee of the Whole by statue will move to implement all the directives outlined in (MC:15) without delay.

The Mayor testified that he issued a directive to Department Directors instructing them to return the erroneous overtime payments prior to the receiving the order by the Department of Community Affairs to return the checks.

The Committee finds no evidence that the Mayor issued such a directive and therefore considers the statement to be counterfactual. (Marker 01:32-20 – Desk: KM: FD)

The Mayor was read back earlier testimony he given to Committee, quoted “I am not entitled to any overtime, I know it, my staff knows it.” The Mayor confirmed this was his testimony, and if he agreed with the statement in which he replied in the affirmative.

(Marker 02:01-05 – Desk: KM: FD)

The Committee inquired that if in fact he agreed with his statement, then why would Mr. Petifford who is a member of his staff submit documents in order for the Mayor to receive overtime payments as a result of hours worked during the recent disasters.

The Mayor replied that his statement was reflective of his positions after a dialog with staff. However, from the onset of the Committee's inquiry as well as from the beginning of public dialog concerning this issue, the Mayor had taken a firm position that he has yet to determine whether he was entailed to overtime payment.

Recommendations:

1. The Committee finds that overtime payments provided to Mayor Jeffery Jones were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning July 1, 2010 to present. The Committee further orders that overtime payments be returned to the city of Paterson for the period beginning September 1, 2010 to present.
2. The Committee finds the testimony given by the Mayor that he had no knowledge that hours worked during the recent disasters were being submitted to FEMA for the purpose of reimbursement to be false. The Committee concludes that the Mayor was not only fully aware that hours were being submitted on his behalf but actively took part in the processes that lead up to the submissions of relevant documents. The Committee therefore recommends a resolution be drawn for consideration of a Vote of No Confidence in the Mayor on this issue.

Respondent:	Donna Nelson-Ivy, Director of Health and Human Resources
Time in position:	July 1, 2010 to present
Job Responsibilities:	Chief Executive Officer, City of Paterson
Represented by Counsel	NO
Date:	Special Meeting of December 9, 2011 – Desk KM: 9

Findings:

Ms. Ivy testified that in instances when she worked hours that exceeded the amount of hours she worked during a normal work day she did not receive additional compensation for those hours. (Marker 00:15-44 – Desk: KM: 9)

Ms. Ivy testified that when she is scheduled to be off from work she is obligated to report to work during times of emergencies and during these time did not receive additional compensation for time worked. (Marker 00:17-13 – Desk: KM: 9)

The Committee finds this statement by Ms. Ivy to confirm that she did not have an

expectation of receiving additional compensation for hour worked in excess of what is considered a normal work day for her position.

Ms. Ivy testified that the OEM Director and the Director of Finance instructed her to submit documents her time she worked during Hurricane Irene and Tropical Storm Lee for the purpose of submitting documentation to FEMA for reimbursement.

(Marker 00:25-10 – Desk: KM: 9)

The Committee finds that FEMA guidelines are specific as to who is eligible to receive overtime compensation as a result of work performed during times of disasters and this directive if given was done in error.

Ms. Ivy testified that she now recognizes that signing her own time sheet attesting to overtime hours worked was a mistake and should not have happened.

Ms. Ivy testified that she never received instructions from her direct Supervisor (Business Administrator) to use the Time-Track System. (Marker 00:50-10 – Desk: KM: 9)

Ms. Ivy testified that the Bio-terrorism grant is used to compensate nurses who perform emergency duties for the 6 towns we have shared service agreements in place, and cannot be used to compensate those employees in times of emergencies.

(Marker 01:07-40 – Desk: KM: 9)

The Committee needs clarification as to why nurses received additional compensation when called in as a result of the recent emergency when they receive a stipend to respond to emergencies.

Ms. Ivy testified based on her understanding of her job function(s) she is deemed an essential employee in times of an emergency, and this is a normal function of her job.

(Marker 01:21-25 – Desk: KM: 9)

However, Mr. Thomas, Ms. Ivy's direct supervisor testified that he at no time indicate to Ms. Ivy that she would be considered an essential employee during times of disasters.

(Marker 01:36-10 – Desk: KM: 9)

The Committee finds that if factually the position of Director of Health and Human Service is deemed an essential position, a person serving in that position is not entitled to additional compensation when required to respond to an emergency.

Recommendations:

1. The Committee finds that overtime payments provided to Ms. Donna Nelson-Ivy were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning July 1, 2010 to present. The Committee further orders that overtime payments be returned to the city of Paterson for the period beginning September 1, 2010 to present.
2. The Committee recommends that available overtime hours be equally and fairly

shared among eligible employees within the Department of Health and Human Services, and a log be maintained which verifies that available overtime hours have been fairly distributed among all eligible department of Health and Human Service employees. This log is to be shared with the Health and Human Services Committee on a monthly basis.

3. The Committee orders that the Director of Health and Human Services utilize the city's Time-Track System as a condition of receiving future compensation.
4. The Committee has determined that the position of Director of Health and Human Services is an Exempt position and therefore, any persons serving in this position in acting or permanent capacity is not entitled to overtime compensation for work performed in excess of 8 hours per day or 40 hours per week. Nor is any person serving in this position in both an acting and/or permanent capacity entitled to receive overtime compensation for work performed on scheduled holidays, weekends or scheduled days off.

Respondent:	James Wittig, Chief of Police
Time in position:	January 6, 2006 to present
Job Responsibilities:	Supervision of the Paterson Police Department
Represented by Counsel	YES
Date:	Special Meeting of December 9, 2011 – Desk KM: 9

Findings:

Mr. Wittig testified that the additional 87 hours he worked during the recent disaster were in his opinion not considered hours eligible for overtime compensation.

(Marker 02:10:23 – Desk: KM: 9)

Mr. Wittig testified that he could not provide the Committee with the number of uniformed personnel that were called into services during the recent disasters.

(Marker 02:14:42 – Desk: KM: 9)

The Committee finds the Chief's inability to provide specific detail concerning the deployment of personnel during the recent disasters to be of a great concern and highlights major flaws in the chain of command.

Mr. Wittig testified that it is his understanding that FEMA will reimburse municipalities up to 75% of the rank of Lieutenant. (Marker 02:20:23 – Desk: KM: 9)

The Committee is extremely troubled and disappointed in the refusal of the Paterson Police Department to take part in its investigation and deems this action to be insubordinate and a serious breach of the public's trust and adds to the erosion of public confidence in law enforcement.

The Committee is desirous of pursuing every option available to seek to reprimand those individuals who are responsible for the refusal of the Public Safety officials to take part in the Committee's investigation inclusive of suspension and termination.

Recommendations:

1. The Committee orders that all documentation be provided that clearly outlines the number of uniformed personnel that was called into services during Hurricane Irene and Tropical Storm Lee, in addition to their assigned stations and specific duties.
2. The Committee demands that a detailed duty sheet for the highest earning officers that were called into service be produced for review by the Municipal Council. (Refer to list in discovery)
3. The Committee recommends that during times of emergencies and/or disaster that a daily log of all overtime worked be provided to the OEM Director. The Committee further recommends that the OEM Director attest to the overtime worked by affixing his or her signature to the overtime log sheet(s) submitted.

Respondent: Paul Forsman, Esq. Acting Corporation Council
Time in position: July 1, 2010 to present
Job Responsibilities: Responsible for the oversight of the Department of Law City's Chief Legal Advisor
Represented by Counsel NO
Date: Special Meeting of December 15, 2011 – Desk KM: 11

Findings:

Mr. Forsman testified when serving as Council to the department of Community Development he was not aware of the existence of any contracts, agreements and or polices that would allow for the payment of overtime to the Director of Community Development. (Marker 00:24:29 – Desk: KM: 11)

Mr. Forsman testified that contracts to be negotiated on behalf of the city would be reviewed by his office. (Marker 00:28:01 – Desk: KM: 11)

The Committee therefore determines that if there is currently a contract awarding overtime compensation to senior management and/or salaried or exempt personnel the Corporation Council office would have been aware of it, and therefore concludes no such contract(s) exist.

Mr. Forsman testified that at no time prior to or during the overtime investigation by the Committee of the Whole had he been instructed by anyone to research the existence of any policies, enabling legislation, or contracts that would allow for the payment of overtime to senior management and or exempt personnel.
(Marker 00:32:20 – Desk: KM: 11)

The Committee finds that if the Administration conducted a thorough analysis of whether overtime compensation was allowed to be paid to senior level staff in times of emergencies an initial step in their investigation would be to contact the office of Corporation Council and instruct the office to research the existence of any contracts, policies, and or legislation that would allow for this practice, and therefore concludes that any analysis performed by the Administration absent this research would be severely deficient and flawed.

Mr. Forsman testified that the Mayor nor any member of his staff consulted him as to whether they would be allowed to receive overtime compensation as a result of hours worked during Hurricane Irene and Tropical Storm Lee.

(Marker 00:35:00 – Desk: KM: 11)

The Committee finds that the fact that the Administration did not consult with the city's lead consul before providing overtime compensation to senior staff and or exempt employees to be irresponsible and reckless.

Recommendations:

1. None

Respondent:	Charles Scanella, Chief Internal Auditor
Time in position:	≥ 33 Years
Job Responsibilities:	Responsible for safe guarding the assets of the city
Represented by Counsel	NO
Date:	Special Meeting of December 15, 2011 – Desk KM: 11

Findings:

Mr. Scanella testified that the results of an internal analysis he conducted (Exhibit CS: 1) of overtime payments made to seven administrative staff members resulted in vast recording inconsistencies, and showed there to be no supporting documentation to support the hours recorded. In addition, some of the data reported on the biweekly time sheets was redacted. Also, hours were reduced inconsistent with reported time worked. Lastly, the analysis showed self-authorizing of time worked and or lack of an authorizing signature. (Marker 00:59:10 – Desk: KM: 11)

Mr. Scanella testified that the discrepancies found during his analysis were consistent to all seven employees for which data was supplied. (Marker 01:01:05 – Desk: KM: 11)

Recommendations:

1. Order a comprehensive audit be performed of the entire payroll system of the city as well as time and attendance procedures by an independent external auditing firm.
2. Conduct quarterly audits of overtime expenditures for all city employees with the findings provided to the Municipal Council's Finance Committee.

3. Perform a comprehensive review of the city's Time-Track system and modified and upgrade as necessary.
4. The orders that the duties of the Chief Auditor be dedicated full-time to performing internal audits of the city's payroll and operational expenditures.
5. The Committee further finds that Mr. Scanella cooperated fully with the Committee's investigation in an extremely truthful manner and commends him for his honesty and exemplary representation of the employees of Paterson.

Respondent: Trevor John Weigle, Health Officer, City of Paterson
Time in position: June 1, 2011 to present
Job Responsibilities: Responsible for the Division of Health and Environmental Health
Represented by Counsel: YES
Date: Special Meeting of December 21, 2011 – Desk KM: FD

Findings:

Mr. Weigle testified that the only occurrence where he received monetary compensation for working overtime is when he worked during the recent disasters.

(Marker 00:35:56 – Desk: KM: FD)

FEMA guidelines clearly state that in order for an employee to be eligible to receive overtime compensation supported by FEMA they must have received overtime compensation at another time during their employment with the agency making the application.

Mr. Weigle testified that whenever he had worked hours in excess of his normal workday in the past he received compensation time in lieu of overtime pay.

Mr. Weigle also testified that his employment with the city is not governed by a contract.

(Marker 00:38:27 – Desk: KM: FD)

The Committee finds that responding to public health emergencies or any emergencies deemed necessary to have the presence of a qualified city health officer is a normal function of the job and therefore does not qualify for compensation above and beyond the normal compensation set by statute.

Recommendations:

1. The Committee finds that overtime payments provided to Mr. Trevor Weigle were inappropriate and orders that the Director of Finance provide a full accounting of all overtime payments made for the period beginning July 1, 2010 to present. The Committee further orders that overtime payments be returned to the city of Paterson for the period beginning September 1, 2010 to present.

Global Findings:

The Mayor issued Executive Order No: 4-2010 – The Suspension of Powers of City of Paterson Departments, Divisions and Offices to Authorize or Require Overtime Work or to Allow Overtime Pay on 7/27/2010. This order prevented any employee within the city of Paterson from performing overtime work or to be entitled to overtime compensation without the express approval of the Mayor or the Business Administrator. Exhibit: B.

Yet overtime hours were worked and submitted for payment without prior approvals as required by Executive Order 4-2010.

The city of Paterson Personnel Policy states that exempt employee do not receive overtime compensation in the form of a negotiable instrument but, must take compensatory time for those hours worked in excess of a normal work day or week. Page V-7. Exhibit: C

Mr. Thomas testified that he sent written instructions to the Personnel Director that any overtime hours worked during the flood are not to exceed 12 hours per day. This order applied to all employees and elected officials. However, The Mayor and many senior staff did not comply with this order. (Marker 01:31:45 – Disk: KM: 6)

The Committee had ask that any analysis performed regarding the payment of overtime worked during Hurricane Irene and Tropical Storm Lee be provided as part of discovery.

The Committee learned via the testimony of Mr. Charles Scanella that an analysis was performed, yet was not provided as part of discovery. After a review of the analysis the Committee has determined that the findings of the analysis did not support the overtime compensation paid to the Mayor and members of his senior staff and therefore concludes that the analysis was purposely not included in the documents provided by the Administration as part of their discovery suggesting that the Administration did not intend to cooperate fully in the Committee's investigation.

What is of a great concern to the Committee is that FEMA may determine that all or part of the expenses incurred during Hurricane Irene and Tropical Storm Lee may not qualify for reimbursement.

Global Recommendations:

1. The Committee recommends that the Municipal Council memorialize through resolution those Cabinet level positions that will not be entitled to overtime compensation.

2. The Committee recommends that during work days where city employees are given a day off as a result of an emergency, that it becomes necessary for that employee to report to work they are compensated at their normal rate of pay and given compensatory time for hours worked.
3. Any employee determined to be a professional employee under the Fair Labor Act will not be deemed eligible for overtime compensation for any hours worked in excess of 8 hours per day or 35 hours per week unless the payment of overtime compensation is required by an existing contractual agreement.
4. The Committee mandates that the Director of OEM provide it a list of all individuals who are certified as First Responders within the city's Administration, in addition to an opinion from FEMA confirming these employees to be certified First Responders.
5. The Committee recommends that all Senior Level staff positions be considered to be on-call positions. If these employees are given a paid scheduled day off on a day that would be considered a normal work day and are called into work they will received no additional compensation beyond their normal rate of pay unless required by an existing contractual agreement.
6. The Committee recommends that the Mayor give written attestation to all overtime hours worked by members of cabinet.
7. The Committee recommends that the Divisions of Payroll be placed under the jurisdiction of the Department of Finance.
8. The Committee orders that the Administration implement a policy that all employees utilize the hand scanner (Time-Track System) to record hours worked as a condition of employment.
9. The Committee orders that all employees utilize the Time-Track system as a condition of being paid for hour worked.
10. The Committee also finds that Local PBA and SOA police officer's union refusal to take part in these proceedings in addition to their refusal to provide documentation which verifies the amount of overtime worked to be an overt indication of their disregard for the Municipal Council's authority and recommends that all legal options be explored to reprimand those officers who willing refused to abide by the order to appear.
11. The Committee recommends that a citywide policy be immediately implemented which expressly prohibits an individual employee from self-approving overtime hours worked.
12. The Committee recommends that in all instances where the Mayor of the city of Paterson needs to verify and or documents hours worked that the Business Administrator is the sole approving authority that verifies time worked by the Mayor. The Committee also orders that within 24 hours a copy of the approval of those hours worked by the Mayor be forwarded to the Chair of the Finance Committee.

Resolutions and Ordinance:

1. A Resolution of No Confidence in the Mayor of the City Paterson.
2. A Resolution condemning the actions taken by Local PBA #1 and SOA with regard to their refusal to appear before the Municipal Council's Committee of the Whole.
3. An Ordinance that prohibits any additional compensation for hours worked in excess of 7 hours per day and or 32 hours per week by any senior level staff member, Cabinet member, Director, and or any employee considered to be exempt and or salaried unless otherwise required by a existing contractual agreement.
4. An Ordinance that requires that verifying documentation is provided to the Municipal Council's Finance and Public Safety Committees prior to the payment of any overtime compensation to the Divisions of Police and Fire.
5. An Ordinance placing the Division of Payroll under the jurisdiction of the Finance Department.
6. A policy that requires that both the Business Administrator, Public Safety Director verify in attest to all overtime worked by the Paterson Police and Fire Departments.

Recorded Testimony Desk Log:

- Desk: KM: 1 – 11/30/11
- Desk: KM: 2 – 11/30/11
- Desk: KM: 3 – 12/1/11
- Desk: KM: 4 – 12/1/11
- Desk: KM: 5 – 12/2/11
- Desk: KM: 6 – 12/2/11
- Desk: KM: 7 – 12/14/11
- Desk: KM: 8 – 12/14/11
- Desk: KM: 9 – 12/9/11
- Desk: KM: 10 – 12/9/12
- Desk KM: 11 – 12/15/12
- Desk KM: 12 – 12/15/12
- Desk KM: FD – 12/21/12

The Committee will continue its investigation into the erroneous overtime payments made to the Division of Police and Fire and the Division of Health at a date to be later determined.

De Marco & De Marco, Esquires
912 Belmont Avenue
North Haledon, New Jersey 07508
(973) 427-8843 Phone
Special Counsel to the Municipal Council
of the City of Paterson

IN THE MATTER OF OVERTIME :
PAYMENTS AND PAYROLL :
EXPENDITURES OF THE CITY OF :
PATERSON :

MUNICIPAL COUNCIL OF THE
CITY OF PATERSON SITTING
AS A COMMITTEE OF THE WHOLE

SUBPOENA AD TESTIFICANDUM

TO: The Honorable Jeffrey Jones
Mayor of the City of Paterson
155 Market Street
Paterson, New Jersey 07505

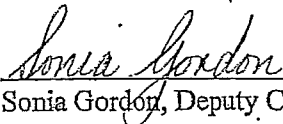
PURSUANT TO N.J.S.A. 40:69A-37 and -37.1, §5-23 of the Code of the City of Paterson and other applicable law, **YOU ARE HEREBY COMMANDED** to produce for testimony before the Municipal Council of the City of Paterson sitting as a Committee of the Whole in the above-captioned matter on Wednesday, November 30, 2011 at 8:00 p.m. and throughout the continuation of the hearings in this matter at the City Hall of the City of Paterson, Chambers of the Municipal Council located 155 Market Street, Paterson, New Jersey the following officers and employees of the City of Paterson:

1. The Honorable Jeffrey Jones, Mayor
2. Charles Thomas, Esq., Business Administrator
3. Charles Pettiford, Chief of Staff
4. Anthony Zambrano, Finance Director
5. Glenn L. Brown, Public Safety and OEM Director
6. Christopher Coke, Department of Public Works Director
7. Donna Nelson-Ivy, Department of Health and Human Services Director
8. Lanisha Makle, Community Development Director
9. Betty Taylor, Personnel Director
10. Patrick Papagni, Police Lieutenant
11. James Wittig, Chief of Police
12. Russell Forenza, Budget Officer
13. Kelly A. Hemming, Police Sergeant
14. Antonio Blasucci, Police Detective
15. Alex W. Popov, Police Sergeant

16. Manuel Hernandez, Police Sergeant
17. Lazzaro J. Mazza, Jr., Police Sergeant
18. Christopher O. Straub, Police Sergeant
19. William Fraher, Deputy Police Chief
20. Rhonda Thompson, Deputy Coordinator of OEM
21. Kevin Hancock, Deputy Fire Chief
22. Danny Nichols, Deputy Police Chief
23. Kate Bond, Health Division Nursing Director
24. Trevor Weigle, Health Officer

Failure to appear according to the command of this Subpoena may subject you to a penalty, damages in a Civil Suit and punishment for contempt of Court.

Dated: November 21, 2011



Sonia Gordon, Deputy City Clerk

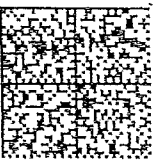


WILLIAMS-V... N
 City Clerk, RMC, CMC, MMC
 CITY HALL
 155 MARKET STREET
 PATERSON, NEW JERSEY 07505

Charles Pettiford
 710 East 27th Street
 Paterson, NJ 07504

07504-2022

Paterson, NJ 07504



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