

David M. Weissman, Esquire
Attorney I.D. No. 027141993
DuBOIS, SHEEHAN, HAMILTON, LEVIN & WEISSMAN
511 Cooper Street
Camden, NJ 08102
(856) 365-7665
Attorneys for Plaintiff

APR 17 2014

KEIR WALDEN and EDENA WALDEN,	:	SUPERIOR COURT OF NEW JERSEY
h/w,	:	LAW DIVISION
Plaintiff,	:	GLOUCESTER COUNTY
V.	:	DOCKET NO. <i>GLD-L-589-14</i>
WILLIAM PETTIT, TOWNSHIP OF	:	CIVIL ACTION
FRANKLIN, FRANKLIN TOWNSHIP	:	
AMBULANCE CORPS, ABC CORP.	:	COMPLAINT AND JURY DEMAND
and JOHN DOE (fict.),	:	
Defendants.	:	

Plaintiffs, KEIR WALDEN and EDENA WALDEN, residing in
Clayton, New Jersey, by way of Complaint, say:

FIRST COUNT

1. At all times referred to herein, plaintiff, KEIR WALDEN, was operating his motor vehicle on or near Front Street in Elmer, New Jersey.

2. At all times referred to herein, defendant, WILLIAM PETTIT and/or JOHN DOE (fictitious), was operating an ambulance or other vehicle traveling on or near the aforesaid road in the aforesaid municipality

3. On or about April 29, 2013, the vehicle being driven by WILLIAM PETTIT and/or JOHN DOE suddenly crashed into the

rear of the vehicle in which plaintiff was traveling at the aforesaid location.

4. The aforementioned collision between the vehicles was a direct and proximate result of the defendant, WILLIAM PETTIT's careless and negligent operation of his vehicle.

5. Defendant, WILLIAM PETTIT's negligent conduct included, but was not limited to his failure to do the following:

- a.) properly control the vehicle.
- b.) properly maintain the vehicle.
- c.) make proper observations.
- d.) obey the rules and laws governing motor vehicle operation.
- e.) take actions to avoid the collision.
- f.) use due caution.

6. As a direct and proximate result of the collision, plaintiff, KEIR WALDEN, was thrown about the inside of the vehicle, causing him to sustain multiple, serious, disabling and permanent injuries which, among other things, caused plaintiff to:

- a.) require arduous and prolonged medical treatment and tests.
- b.) be unable to perform usual and normal activities.
- c.) be disabled from working.
- d.) expend and be required in the future to expend substantial sums of money for medical and other rehabilitative care.

e.) endure and in the future be required to endure great pain and suffering.

f.) be permanently unable to function at the level enjoyed prior to the collision.

7. Plaintiff has given the requisite notice for proceeding with his claims under Title 59.

WHEREFORE in the First Count, plaintiff, KEIR WALDEN, demands judgment against defendant, WILLIAM PETTIT and/or JOHN DOE, jointly, severally, and/or in the alternative, for damages, together with interest and costs of suit.

SECOND COUNT

1. Plaintiffs repeat each and every allegation contained in the First Count and incorporate them herein as though fully set forth at length.

2. The aforementioned collision between the vehicles was directly and proximately caused or contributed to by defendant, TOWNSHIP OF FRANKLIN, FRANKLIN TOWNSHIP AMBULANCE CORPS and/or ABC CORP (fictitious), which was the public entity that owned, leased or otherwise controlled the vehicle driven by WILLIAM PETTIT and/or was the employer of WILLIAM PETTIT at the time of the accident.

3. The defendants' negligent conduct included, but was not limited to, its failure to do the following:

a.) properly maintain the vehicle.

b.) instruct defendant, WILLIAM PETTIT and/or JOHN DOE, on the safe operation of the vehicle.

c.) entrusting the vehicle to someone whom it knew or should have known was incapable of driving in a safe manner.

d.) properly hire, screen, train and supervise WILLIAM PETTIT and/or JOHN DOE in the performance of his duties.

4. This defendant is also vicariously liable for the negligence of WILLIAM PETTIT and/or JOHN DOE.

5. As a direct and proximate result of defendant, TOWNSHIP OF FRANKLIN, FRANKLIN TOWNSHIP AMBULANCE CORPS and/or JOHN DOE's negligence as aforesaid, plaintiff was caused to sustain the injuries set forth herein.

WHEREFORE in the Second Count, plaintiff, KEIR WALDEN, demands judgment against defendant, TOWNSHIP OF FRANKLIN, FRANKLIN TOWNSHIP AMBULANCE CORPS and/or ABC CORP., jointly, severally, and/or in the alternative, for damages, together with interest and costs of suit.

THIRD COUNT

1. Plaintiffs repeat each and every allegation contained in the First and Second Counts and incorporate them herein as though fully set forth.

2. Plaintiff, EDENA WALDEN, is the wife of plaintiff, KEIR WALDEN.

3. As a result of the injuries and disabilities sustained by plaintiff, KEIR WALDEN, as set forth herein, plaintiff, EDENA WALDEN, sustained damages per quod. These damages include by way of example and not limitation the following:

a.) the loss of her husband's services, society and consortium.

b.) the incurring of substantial expense for her husband's care and treatment.

c.) the loss of household income.

d.) the costs associated with aiding in her husband's care and treatment.

WHEREFORE, in the Third Count, plaintiff, EDENA WALDEN demands judgment against defendants, jointly, severally and/or in the alternative for damages, interest and costs of suit.

DuBOIS, SHEEHAN, HAMILTON, LEVIN &
WEISSMAN
Attorneys for Plaintiff

By: 

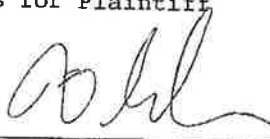
David M. Weissman

Dated: April 14, 2014

CERTIFICATION PURSUANT TO R.4:5-1

I certify that to the best of my knowledge and/or belief the matter in controversy is not the subject of any other action pending in any Court or of a pending or contemplated arbitration proceeding. There are no other parties known who should be joined in this action.

DuBOIS, SHEEHAN, HAMILTON, LEVIN &
WEISSMAN
Attorneys for Plaintiff

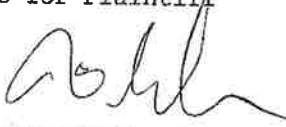
By: 
David M. Weissman

Dated: April 14, 2014

DESIGNATION OF TRIAL COUNSEL

David M. Weissman, Esquire of DuBois, Sheehan, Hamilton,
Levin & Weissman is hereby designated as Trial Counsel in these
proceedings.

DuBOIS, SHEEHAN, HAMILTON, LEVIN &
WEISSMAN
Attorneys for Plaintiff

By: 
David M. Weissman

Dated: April 14, 2014

JURY DEMAND

Plaintiff demands a trial by jury as to all issues.

DuBOIS, SHEEHAN, HAMILTON, LEVIN &
WEISSMAN
Attorneys for Plaintiff

By: 
David M. Weissman

Dated: April 14, 2014

RELEASE

This Release, dated _____, is given

BY the Releasor (s), William Pettit, Township of Franklin, Franklin Township Ambulance Corps.; Qual-Lynx and the Gloucester, Salem, Cumberland County's Municipal Joint Insurance Fund

referred hereafter to as "I",

TO Releasees, Glatfelter Claims Management, Inc., Millville Rescue Squad, their agents, servants, employees, American Alternative Insurance Corporation.

referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. **Release.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I further acknowledge that I have specifically discussed this provision of this Release with my attorneys. I specifically release the following claims: Any and all claims of any nature including any crossclaim for contribution, indemnity (including common law or contractual indemnity) as expressed by prior pleadings and claims in the matter of Walden v. Pettit et. al., more specifically described in Docket Number GLO-L-589-14.

2. **Payment.** I have been paid a total of (\$2,500.00), in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

3. **Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate. It is agreed that payment in the form of a check shall issue payable to Releasor JIF.

4. **Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witness or Attested by:

(Seal)

STATE OF NEW JERSEY, COUNTY OF Gloucester

: SS.:

I CERTIFY that on October 24, 2016

William Slusser personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

Prepared by: (Print signer's name below signature)

David S. DeWese

DAVID S. DEWESE

Attorney At Law

State of New Jersey

Sworn to and subscribed before me

this 24th day of October

2016

William Slusser

(Print name and title below signature)

William Slusser

Fund Chair

Tricounty Mun. JIF

SM

UNITED STATES BANKRUPTCY COURT

In Re PETER D DIPIETRO
DEBTOR

Peter DiPietro,
Plaintiff, Creditor, Claimant

Case No. 20-10358-JNP
Chapter 7

v.

Qual Lynx,
Defendant, Debtor

Judge Jerrold N Poslusny Jr.

RECEIVED

MAY 11 2020

Adv. Proc. 20-01042-JNP

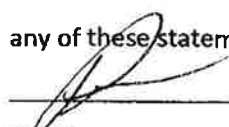
QUAL-LYNX EHT

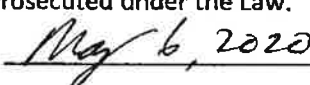
Motion for Replevin

1. Plaintiff, Peter DiPietro, as the creditor, states the following:
2. Any Order for Lack of Prosecution is moot because Judge Jerrold N. Poslusny Jr. erroneously dismissed the plaintiff's bankruptcy only two (2) days after the plaintiff received his Summons and Notice of Pretrial Conference in an Adversary Proceeding.
3. Since Judge Jerrold N. Poslusny dismissed the case without any reason the plaintiff had to make Steven Mnuchin, MR SECRETARY, fiduciary in this matter to make sure that the plaintiff is entitled to justice, something District Court Judges are incapable.
4. The plaintiff is the rightful owner of claim No. 001192494 and believed be valued over \$400,000,000.00 (Four Hundred Million Dollars).
5. Since 2014, Employees at Qual Lynx repeatedly refused to allow the plaintiff to access his claim.
6. Defendant Qual Lynx must release the funds to plaintiff immediately and pay Ten times (10x) the amount in Punitive Damages.

Attached Form W-9 and Form 56

I certify that the forgoing statement made by me are true and correct to the best of my knowledge, if any of these statements are made willfully false then I know I could be prosecuted under the Law.


Peter DiPietro


Date

UNITED STATES BANKRUPTCY COURT

District of New Jersey
401 Market Street
Camden, NJ 08102

In Re: Peter D Dipietro
Debtor

Case No.: 20-10358-JNP
Chapter 7

Peter D Dipietro
Plaintiff

v.

Qual Lynx
Defendant

Adv. Proc. No. 20-01042-JNP

Judge: Jerrold N. Poslusny Jr.

**NOTICE OF JUDGMENT OR ORDER
Pursuant to Fed. R. Bankr. P. 9022**

Please be advised that on April 29, 2020, the court entered the following judgment or order on the court's docket in the above-captioned case:

Document Number: 3

Order to Show Cause re: For Lack Of Prosecution. Service of notice of the entry of this order pursuant to Rule 9022 was made on the appropriate parties. See BNC Certificate of Notice. Signed on 4/29/2020. Show Cause hearing to be held on 5/26/2020 at 02:00 PM at JNP - Courtroom 4C. Camden. (kvr)

Parties may review the order by accessing it through PACER or the court's electronic case filing system (CM/ECF). Public terminals for viewing are also available at the courthouse in each vicinage.

Dated: April 29, 2020

JAN: kvr

Jeanne Naughton
Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Peter DiPietro,	:	ADVERSARY PROCEEDING
Plaintiff/claimant	:	Complaint
v.	:	Case 20-10358
Qual Lynx,	:	Claim for Replevin
Defendant/debtor	:	F.R.C.P. 64
	/	

CLAIM FOR REPLEVIN

Plaintiff/Claimant, Peter DiPietro, who enters this venue as
"attorney in fact" claims the following:

1. Plaintiff/Claimant claims he filed for chapter 7 Bankruptcy
on January 9, 2020.
2. Plaintiff/Claimant attaches his Notarized form 411A as
proof that claimant is attorney in fact.
3. Plaintiff/Claimant filed his New Jersey General Durable
Power of Attorney under UCC #53757302.
4. Plaintiff/Claimant did not abandon his property known as
claim #001192494, therefore is the rightful owner,
entitlement holder, grantor/settlor/beneficiary of claim
#001192494 (see attached Proof of claim).
5. The plaintiff/claimant has made several attempts to have
this settlement to him. All attempts have been completely
ignored by employees of Qual Lynx.
6. The plaintiff/claimant believes that claim #001192494 to be
valued over \$100,000,000.00 (One hundred million dollars)

and is currently accumulating interest plus profits from trading.

7. Claim #001192494 is the property of Plaintiff/Claimant Peter DiPietro and therefore it must be released to the claimant immediately.
8. As proof the Plaintiff/Claimant attaches to his claim is: Official Form 411A (12/18); UCC-1 Financing Statement; Receipt of Claim Acknowledgement; Official Form 410 Proof of Claim; and B1330 (form 1330) (12/15).
9. The fact that the Plaintiff/Claimant is the rightful owner of Claim #001192494 cannot be disputed.

VERIFICATION

I hereby declare, certify and affirm, pursuant to the penalties of perjury under the laws of the United States, that all of the above and foregoing representations are true and correct to the best of my knowledge, information and belief. Executed in Newfield, New Jersey this 22 day of January, 2020.

 attorney in fact

Peter DiPietro



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

PETER D. DIPIETRO,

Debtor.

Order Filed on June 29, 2020
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Case No. 20-10358 (JNP)

Chapter 7

ORDER DENYING MOTION TO RESINSTATE CIVIL ACTION

The relief set forth on the following page, numbered two (2), is hereby **ORDERED**.

DATED: June 29, 2020

A handwritten signature in black ink, appearing to read "Jerrold N. Poslusny, Jr.", is written over a horizontal line.

Honorable Jerrold N. Poslusny, Jr.
United States Bankruptcy Court

Page 2

Peter D. DiPietro

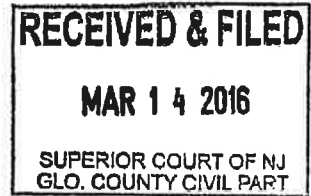
Case No. 20-10358 (JNP)

Order Denying Motion to Reinstate Civil Action

This matter having been brought before the Court upon the motion by Peter D. DiPietro (the “Debtor”) to reopen and reinstate case number 19-cv-17014, which was pending before and dismissed by the District Court (the “Motion”); a hearing having been held on this matter on June 25, 2020 (the “Hearing”) at which the Debtor appeared; the Court having considered all of the papers submitted together with the arguments presented at the Hearing; and for the reasons stated on the record at the Hearing, it is hereby **ORDERED**:

1. The Motion is **DENIED**.

Andrew A. Ballerini, Esquire - #023061980
LAW OFFICES OF ANDREW A. BALLERINI
Cherry Tree Corporate Center
535 Route 38, Suite 328
Cherry Hill, New Jersey 08002
(856) 665-7140
Attorney for Plaintiff



KELLY SORENSON,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION
vs.	:	GLOUCESTER COUNTY
KERRILYNN M. McDONALD, and/or	:	DOCKET # L 332-16
JOHN DOE #1 and/or JOHN DOE #2	:	
and/or JOHN DOE #3, and/or	:	
RABECCA D. DONIA, and/or JOHN	:	
DOE #4 and/or SCOTT B. DONIA,	:	
and/or JOHN DOE #5, and/or JOHN	:	
DOE #6, and/or CARL BIRD, and/or:	:	
ROBIN BIRD, and/or JOHN DOE #7,	:	
and/or JOHN DOE PREDECESSOR IN	:	
TITLE #8-10, TOWNSHIP OF	:	
FRANKLIN, and/or COUNTY OF	:	
GLOUCESTER, jointly, severally,	:	
and/or in the alternative,	:	COMPLAINT AND DEMAND FOR
Defendants.	:	JURY TRIAL

The Plaintiff, Kelly Sorenson, residing at 313 West Chestnut Street, Borough of Clayton, County of Gloucester, and State of New Jersey, by way of Complaint against the Defendants, says:

FIRST COUNT

1. On or about March 23, 2014, the Plaintiff, Kelly Sorenson, was the passenger of a motor vehicle operated by Defendant, Kerrilynn M. McDonald and/or John Doe #1, which was

traveling in a westerly direction on Washington Avenue, at or near the intersection of Fries Mills Road, Township of Franklin, County of Gloucester, and State of New Jersey.

2. At the aforesaid time and place, Defendant, Kerrilynn M. McDonald, and/or John Doe #1, did operate her motor vehicle in such a negligent, careless and reckless manner so as to cause injury to Plaintiff, Kelly Sorenson.

3. The negligence, carelessness and recklessness of the Defendant, Kerrilynn M. McDonald, and/or John Doe #1, consisted of, but was not limited to, negligently entering an intersection with an obstructed site triangle, failure to obey a traffic signal, failure to yield to oncoming traffic, failure to make the proper observation, failure to keep her motor vehicle under control, operating at excessive speed under the circumstances, failure to properly utilize her braking apparatus, failure to sound a warning, and operating her vehicle in disregard of the rights of others upon the highways of the state.

4. As a result of the negligence, carelessness and recklessness of the Defendant, Kerrilynn M. McDonald, and/or John Doe #1, the Plaintiff, Kelly Sorenson, did suffer, is suffering and will in the future suffer from personal injuries, did expend, is expending, and will in the future be forced to expend large sums of money for the purpose of rectifying said injuries; and has otherwise been damaged.

5. The Plaintiff's injuries satisfy the requirements of N.J.S.A. 39:6A-8(b).

WHEREFORE, the Plaintiff, Kelly Sorenson, demands judgment against the Defendant, Kerrilynn M. McDonald, and/or John Doe #1, for damages, interest, attorney's fees and costs of suit.

SECOND COUNT

1. All of the paragraphs of the First Count are hereinafter repeated, and incorporated herein by this reference but for the sake of brevity, are not set forth at length.

2. At the aforesaid time and place, the Defendant, Kerrilynn M. McDonald, and/or John Doe #2, did so negligently maintain and/or entrusted its vehicle to Defendant, Kerrilynn M. McDonald, and/or John Doe #1, causing the aforementioned collision, and therefore, Defendant, Kerrilynn M. McDonald, and/or John Doe #2, is otherwise negligent.

3. As a result of the negligence, carelessness and recklessness of the Defendant, Kerrilynn M. McDonald, and/or John Doe #2, the Plaintiff, Kelly Sorenson, did suffer, is suffering and will in the future suffer from personal injuries, did expend, is expending, and will in the future be forced to expend large sums of money for the purpose of rectifying said injuries; and has otherwise been damaged.

4. The Plaintiff's injuries satisfy the requirements of N.J.S.A. 39:6A-8 (b).

WHEREFORE, the Plaintiff, Kelly Sorenson, demands judgment against the Defendant, Kerrilynn M. McDonald, and/or John Doe #2, for damages, interest, attorney's fees and costs of suit.

THIRD COUNT

1. All of the paragraphs of the First Count, and Second Count are hereinafter repeated, and incorporated herein by this reference but for the sake of brevity, are not set forth at length.

2. At the aforesaid time and place, the Defendant, Kerrilynn M. McDonald, and/or John Doe #1, was acting as an agent, servant and/or employee of the Defendant, John Doe #3, and therefore, any acts of negligence against Defendant, Kerrilynn M. McDonald, and/or John Doe #1, is imputed as to Defendant, John Doe #3, through the doctrine of Respondeat Superior.

3. As a result of the negligence, carelessness and recklessness of the Defendant, John Doe #3, the Plaintiff, Dawn Warrington, did suffer, is suffering and will in the future suffer from personal injuries, did expend, is expending, and will in the future be forced to expend large sums of money for the purpose of rectifying said injuries; and has otherwise been damaged.

4. The Plaintiff's injuries satisfy the requirements of N.J.S.A. 39:6A-8(b).

WHEREFORE, the Plaintiff, Kelly Sorenson, demands judgment against the Defendant, John Doe #3, for damages, interest, attorney's fees and costs of suit.

FOURTH COUNT

1. All of the paragraphs of the First Count, Second Count and Third Count are herein after repeated and incorporated herein, by this reference, but for the sake of brevity are not set forth at length.

2. At the aforesaid time and place, the Defendant, Rabecca D. Donia and/or John Doe #4, was the operator of a motor vehicle owned by Defendants, Scott B. Donia, and/or John Doe #5, traveling in a southerly direction on Fries Mills Road, at or near the intersection of Washington Avenue, in the Township of Franklin, County of Gloucester, and State of New Jersey.

3. At the aforesaid time and place, Defendant, Rabecca D. Donia and/or John Doe #4, did operate her motor vehicle in such a negligent, careless and reckless manner so as to strike Defendant, Kerrilynn M. McDonald's, vehicle causing injury to passenger Plaintiff, Kelly Sorenson.

4. The negligence, carelessness and recklessness of the Defendant, Rabecca D. Donia, and/or John Doe #4, consisted of, but was not limited to, careless driving, failure to make the proper observation, failure to keep her motor vehicle under control, operating at excessive speed under the circumstances, failure to properly utilize his braking apparatus, failure to sound a warning, and operating her vehicle in disregard of the rights of others upon the highways of the state.

5. As a result of the negligence, carelessness and recklessness of the Defendant, Rabecca D. Donia, and/or John Doe #1, the Plaintiff, Kelly Sorenson, did suffer, is suffering and will in the future suffer from personal injuries and economic losses, did expend, is expending, and will in the future be forced to expend large sums of money for the purpose of rectifying said injuries; and has otherwise been damaged.

6. The Plaintiff's injuries satisfy the requirements of N.J.S.A. 39:6A-8(b).

WHEREFORE, the Plaintiff, Kelly Sorenson, demands judgment against the Defendant, Rabecca D. Donia, and/or John Doe #4, for damages, interest, attorney's fees and costs of suit.

FIFTH COUNT

1. All of the paragraphs of the First Count, Second Count, Third Count and Fourth Count are hereinafter repeated, and incorporated herein by this reference but for the sake of brevity, are not set forth at length.

2. At the aforesaid time and place, the Defendant, Scott B. Donia, and/or John Doe #5, did so negligently maintain and/or entrust his vehicle to Defendant, Rabecca D. Donia, and/or John Doe #4, causing the aforementioned collision, and therefore, Defendants, Scott B. Donia, and/or John Doe #5, are otherwise negligent.

3. As a result of the negligence, carelessness and recklessness of the Defendants, Scott B. Donia, and/or John Doe #5, the Plaintiff, Kelly Sorenson, did suffer, is suffering and will in the future suffer from personal injuries and economic losses, did expend, is expending, and will in the future be forced to expend large sums of money for the purpose of rectifying said injuries; and has otherwise been damaged.

4. The Plaintiff's injuries satisfy the requirements of N.J.S.A. 39:6A-8(b).

WHEREFORE, the Plaintiff, Kelly Sorenson, demands judgment against the Defendants, Scott B. Donia, and/or John Doe #5, for damages, interest, attorney's fees and costs of suit.

SIXTH COUNT

1. All of the paragraphs of the First Count, Second Count, Third Count, Fourth Count and Fifth Count are hereinafter repeated, and incorporated herein by this reference but for the sake of brevity, are not set forth at length.

2. At the aforesaid time and place, the Defendant, Rabecca D. Donia, and/or John Doe #4, was acting as an agent, servant and/or employee of the Defendants, Scott B. Donia, and/or John Doe #5 and/or John Doe #3, and therefore, any acts of negligence against Defendant, Rabecca D. Donia, and/or John Doe #4, is imputed as to Defendant, Scott B. Donia, and/or John Doe #5 and/or John Doe #6, through the doctrine of Respondeat Superior.

3. As a result of the negligence, carelessness and recklessness of the Defendant, Scott B. Donia, and/or John Doe #5 and/or John Doe #6, the Plaintiff, Kelly Sorenson, did suffer, is suffering and will in the future suffer from personal injuries and economic losses, did expend, is expending, and will in the future be forced to expend large sums of money for the purpose of rectifying said injuries; and has otherwise been damaged.

4. The Plaintiff's injuries satisfy the requirements of N.J.S.A. 39:6A-8(b).

WHEREFORE, the Plaintiff, Kelly Sorenson, demands judgment against the Defendant, Scott B. Donia, and/or John Doe #5 and/or John Doe #6, for damages, interest, attorney's fees and costs of suit.

SEVENTH COUNT

1. All of the paragraphs of the First Count, Second Count, Third Count, Fourth Count, Fifth Count and Sixth Count are hereinafter repeated, and incorporated herein by this reference but for the sake of brevity, are not set forth at length.

2. Defendants, Carl Bird and/or Robin Bird and/or John Doe #7, are the property owners of 1210 Washington Avenue, Township of Franklin, County of Gloucester and State of New Jersey.

3. Defendants, Carl Bird and/or Robin Bird and/or John Doe #7 and/or John Doe Predecessor in Title #8-10, installed and/or maintained trees, shrubbery, plants and other

landscaping in the site triangle of Washington Avenue and Fries Mill Road, Township of Franklin, County of Gloucester and State of New Jersey for a period years.

4. Defendants, Carl Bird and/or Robin Bird and/or John Doe #7 and/or John Doe Predecessor in Title #8-10, negligently created the condition and/or negligently allowed the condition to remain once created.

5. The Defendants, Carl Bird and/or Robin Bird and/or John Doe #7 and/or John Doe Predecessor in Title #8-10, were negligent in that they created an obstruction to vision for motorist using the roadways which contributed to the happening of the accident and the injuries to Plaintiff, Kelly Sorenson. Their negligence consisted of creating an obstructed line vision for motorists lawfully using the roadways. Their negligence continued by failure to eliminate the unsafe condition prior to the subject accident.

6. As a result of the negligence, carelessness and recklessness of the Defendants, Carl Bird and/or Robin Bird and/or John Doe #7 and/or John Doe Predecessor in Title #8-10, the Plaintiff, Kelly Sorenson, did suffer, is suffering and will in the future suffer from personal injuries and economic losses including but not limited to property damage, wage loss and other out of pocket expenses, did expend, is expending, and will in the future be forced to expend large sums of money for the purpose of rectifying said injuries; and has otherwise been damaged.

7. The Plaintiff's injuries satisfy the requirements of N.J.S.A. 39:6A-8(b).

WHEREFORE, Plaintiff, Kelly Sorenson, demands judgment against the Defendant, Carl Bird and/or Robin Bird and/or John Doe #7 and/or John Doe Predecessor in Title #8-10, for damages, plus interest, costs of suit, and attorneys fees.

EIGHTH COUNT

1. All of the paragraphs of the First Count, Second Count, Third Count, Fourth Count, Fifth Count, Sixth Count and Seventh Count are hereinafter repeated, and incorporated herein by this reference but for the sake of brevity, are not set forth at length.

2. At the aforementioned date and place, there was an obstruction in the site triangle at the intersection of Washington Avenue and Fries Mill Road, in the Township of Franklin, County of Gloucester and State of New Jersey for motorists lawfully using both roadways.

3. This intersection of Washington Avenue and Fries Mill Road involves both a Township and County road.

4. Both the Township of Franklin and County of Gloucester, are responsible for maintaining the site triangle at this intersection in a safe condition for the operation of motorists.

5. On the aforementioned date and place, there was a dangerous condition existing at the intersection. Motorist on both the roads were faced with an obstructed site triangle caused by trees, bushes, plants and landscaping on the property

known as 1210 Washington Avenue, Township of Franklin, County of Gloucester and State of New Jersey.

6. The obstructed site triangle was a proximate cause of injury to Plaintiff, Kelly Sorenson.

7. This obstructed site triangle created the foreseeable risk of the kind of injuries suffered by the Plaintiff, Kelly Sorenson.

8. Both the Township of Franklin and the County of Gloucester negligently maintained the intersection to allow an obstructed site triangle for those traveling on Washington Avenue and Fries Mill Road at their intersection.

9. The obstructed site triangle existed for an extended period of time.

10. The obstructed site triangle was the result of the negligent or wrongful act or omissions of public employees of both the Township of Franklin and the County of Gloucester within the scope of their employment.

11. Both public entities, Township of Franklin and County of Gloucester, had actual and/or constructive notice of the dangerous condition for a sufficient time prior to the accident to have taken measures to protect against the dangerous condition;

12. The actions or inactions of the public entities, Township of Franklin and County of Gloucester, in their maintenance of the roadway to protect against this condition was palpably unreasonable.

13. Notice was sent to both these public entities pursuant to N.J.S.A. 59:8-8.

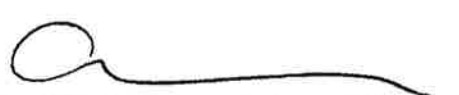
14. As a result of the actions or inactions of the public entities, Township of Franklin and County of Gloucester, the Plaintiff, Kelly Sorenson, did suffer, is suffering and will in the future suffer from personal injuries and economic losses including but not limited to property damage, wage loss and other out of pocket expenses, did expend, is expending, and will in the future be forced to expend large sums of money for the purpose of rectifying said injuries; and has otherwise been damaged.

15. The Plaintiff's injuries satisfy the requirements of N.J.S.A. 59:9-2.

WHEREFORE, Plaintiff, Kelly Sorenson, demands judgment against the Defendants, Township of Franklin and County of Gloucester, for damages, plus interest, costs of suit, and attorneys fees.

DATED:

3/11/16

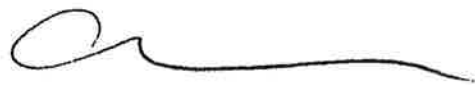

ANDREW A. BALLERINI, ESQUIRE
Attorney for Plaintiff

CERTIFICATION

I further certify pursuant to Rule 4:5-1 that I know of no other proceedings pending or that are contemplating in any court or arbitration proceeding that concerns this subject matter and know of no other parties that need be joined with action.

DATED:

3/11/16

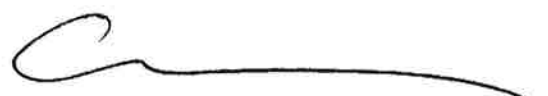

ANDREW A. BALLERINI, ESQUIRE
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Demand is hereby made for trial by jury as to all factual issues.

DATED:

3/11/16

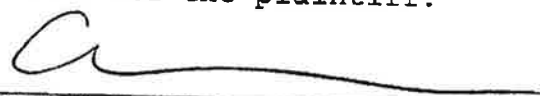

ANDREW A. BALLERINI, ESQUIRE
Attorney for Plaintiff

DESIGNATION OF TRIAL COUNSEL

Please be advised that Andrew A. Ballerini, Esquire, is hereby designated as trial counsel for the plaintiff.

DATED:

3/11/16


ANDREW A. BALLERINI, ESQUIRE
Attorney for Plaintiff

all
done

38

12,949E/jam
Erin R. Thompson, Esquire #018371990
BIRCHMEIER & POWELL LLC
ATTORNEYS AT LAW
1891 State Highway 50, PO Box 582
Tuckahoe, NJ 08250
(609) 628-3414

Attorneys for Defendant Township of Franklin

Plaintiff
KELLY SORENSON

v.

Defendants
KERRILYNN M. MCDONALD, et al and/or
JOHN DOE #1 and/or JOHN DOE #2 and/or
JOHN DOE #3, and/or REBECCA D. DONIA
and/or JOHN DOE #4 and/or SCOTT B. DONIA
and/or JOHN DOE #5 and/or JOHN DOE #6,
and/or CARL BIRD, and/or ROBIN BIRD
and/or JOHN DOE #7 and/or JOHN DOE
PREDECESSOR IN TITLE #8-10, TOWNSHIP
OF FRANKLIN, and/or COUNTY OF
GLOUCESTER, j/s/a

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

DOCKET NO. GLO-L-332-16

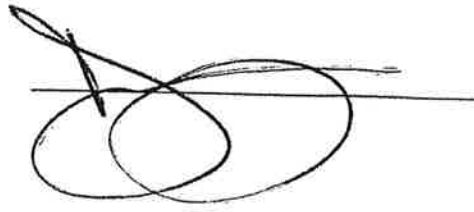
CIVIL ACTION
ORDER

THIS MATTER having been brought before the Court by Birchmeier & Powell LLC,
attorneys for defendant Franklin Township;

AND GOOD CAUSE having been shown;

IT IS on this 15 day of Sept, 2017, ORDERED that summary
judgment be and is hereby granted in favor of defendant, Township of Franklin, dismissing any
and all claims and Crossclaims asserted against it, with prejudice.

IT IS FURTHER ORDERED that a copy of this Order be served upon all parties within
seven days of the receipt of this Order.



Apr. 22. 2015 9:21AM

No. 4498 P. 1

MY RIGHTS LAWYERS, L.L.C.

424 Bethel Road.

Somers Point, NJ 08244

Phone 609 788-3595; Facsimile 609 788-3599

Email: mjd@myrightslawyers.com

Attorneys for Plaintiffs, Michelle Robey and Joseph Robey

APR 10 2015

MICHELLE ROBEY & JOSEPH ROBEY Plaintiff, vs. THE STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION; THE TOWNSHIP OF FRANKLIN; VINCENT FALCIANI, JR. Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION GLOUCESTER COUNTY Docket No. L470-15 Civil Action COMPLAINT & JURY DEMAND
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15-1631

Plaintiffs, Michelle and Joseph Robey, residing in Gloucester County and the State of New Jersey by way of Complaint and Order to Show Cause against the Defendants herein say:

PREAMBLE

The Robeys purchased and moved to their home in Newfield, New Jersey in 2001. Plaintiff chose Franklin Township because it had a reputation for a good school district. The Robeys had some money set aside and planned to renovate the kitchen and the bathroom. However, it soon became clear that this would be impossible.

In 2007, their home flooded for the first time. At first, the Robeys just assumed it was an unusually bad storm. However, since 2007, their property had flooded every time there is even a moderately heavy rainfall. The home does not have a basement.

In 2009 water rushed into the first floor laundry room, destroying the washer, dryer and heater, all of which were submerged in water.

The Robeys used their best efforts to combat against the water, piling sandbags around the perimeter of the home, pumping out gallons of water, and turning off the heat and electricity so as not to be electrocuted in their own home.

Thereafter, the Robeys were informed that the water was coming from their neighbor, Vincent Falciani, Jr.'s adjacent property. The Robeys contacted Falciani, who refused to address the problem. Instead, he told the Robeys to resort to legal action.

The Robeys learned that in 2000, Falciani had expanded the warehouse on his land and that the Township had waived certain permit requirements normally required of such projects. When the Robeys reached out to the Township for assistance, they were told there was nothing they could do because the matter involved private property.

In or about 2012, to make matters worse, the State of New Jersey, Department of Transportation, exacerbated the low lying lands prone to flooding and prone to heightened flooding due to Falciani's illegal alteration of the land and the Township of Franklin's waiver of same, when it widened and super-elevated Route 40/Harding Highway, but failed to make provisions to install a storm drainage system at this natural, geographic low point.

In 2013, the Robeys also reached out to the State Department of Environmental Protection, which determined that Falciani maintained an insufficient retention pond on his property, which was unable to contain excess storm water. While Falciani did agree to fix the retention pond, he also began construction on the warehouse parking lot. The material he used—hot asphalt comprised of crushed concrete—cannot absorb water, resulting in further flooding and damage to the Robeys' property. The Township was able to stop the project and an investigation is allegedly ongoing.

However, this does not change the fact that the Robeys' property continues to flood with every heavy rainstorm. Accordingly, by way of this Complaint, Plaintiffs, Michelle and Joseph Robey, seek equitable and compensatory relief compelling Defendants to take whatever action is necessary to stop the continuous flooding of Plaintiffs' home.

THE PARTIES

1. Plaintiffs, Michelle and Joseph Robey, reside at 130 Morris Avenue, Newfield, New Jersey 08334.
2. Defendant, the Township of Franklin, is a municipality located in Gloucester County, New Jersey. Its municipal office is located at 1571 Delsea Drive, Franklinville, New Jersey 08322.
3. Defendant Vincent Falciani, Jr., resides at and/or owns the adjacent property to Plaintiff's residence.

4. Defendant, the State of New Jersey, Department of Transportation, pursuant to New Jersey Statutes Annotated (N.J.S.A.) 27:1A-1, the New Jersey Department of Transportation (NJDOT) is organized in order to apply the full resources of the State "in a coordinated and integrated matter to solve or assist in the solution of the problems of all modes of transportation; to promote an efficient, fully integrated and balanced transportation system for the State; to prepare and implement comprehensive plans and programs for all modes of transportation development in the State; and to coordinate the transportation activities of State agencies, State-created public authorities, and other public agencies with transportation responsibilities within the State." New Jersey Statute Title 27 governs the authority of the State of New Jersey as it pertains to Highways.

STATEMENT OF FACTS

5. Plaintiffs, Michelle and Joseph Robey, purchased their home in Franklin Township in or around December 2001 for \$81,222.00.
6. In or around 2007 their property and home flooded for the first time.
7. However, on or about December 26, 2009 the flooding became truly destructive.
8. The Robeys called the Malaga Fire Department. When they arrived, one firefighter, Anthony Baldosaro told the Robeys that the water was coming from Mr. Falciani's warehouse, located at 2676 Harding Highway, Newfield, New Jersey. The firefighters pumped the water as best they could but it had nowhere to go. The Robeys' home resembled a small island.

9. The day after the floor, Mrs. Robey contacted the Franklin Township Public Works and was also told that the water flooding their home was coming from Falciani's warehouse but, because the warehouse was private property, there was nothing the Township could do.
10. After speaking with Public Works Department, Plaintiff went to Franklin Township and spoke to former zoning officer, Bob Errera, who also expressed his belief that the water was coming from the Falciani property.
11. The Robeys learned that Falciani owned properties on both sides of her home and had previously owned the Liberty Bell Motel, located nearby, at 2656 Harding Highway.

2000: Falciani Expands His Warehouse

12. In or around 2000, Franklin Township waived site plan review and approval of Falciani's proposed plan to expand and modify his warehouse located on Harding Highway and Morris Avenue. (Exhibit "A", Franklin Township Planning Board Resolution No. SP 4-00)
13. Falciani's engineer, Steven Filipone, testified the Planning Board that Falciani's existing water structure would be sufficient to hold any storm water run-off. ("There will apparently be no additional storm run-off as a result of this development. Existing lighting above the loading platform appears to be sufficient.")

14. In or around 2009, Mrs. Robey met with former Mayor Pat Dougherty, Joe Petsch, former Solicitor William Ziegler, and administrator Mike DiGiorgio.
15. In the meeting, Mrs. Robey was told that since Franklin Township “waived” Falciani’s site plans, there was nothing they could do to address the problem.
16. DiGiorgio, however, arranged for a mediation between Falciani and the Robeys, at Falciani’s warehouse. During the meeting Falciani made it clear that he had no intention on fixing the problem. He told the Robeys, “Sue me.”
17. In or around this time frame, large pools of water in and around the Plaintiffs’ home became stagnant and was an attractive nuisance for mosquito larvae, rodents and deer, which are major carriers of ticks. This unsafe condition has caused the Plaintiffs to become sick and to abandon their home on numerous occasions. Their home is largely uninhabitable and totally unmarketable, making it worthless.
18. By 2010 the Robeys were forced to take out a \$57,730 Small Business Association (SBA) loan in order to repair the damage to their home, including replacing the septic system, French drain and air conditioner. The Robeys also spent an additional \$8,460 from their own savings to pay for new sandbags, a new well, water testing and softener, and a new shed. Yet there are other damages they cannot afford to fix, such as mold in the laundry room. The Robeys also suspect that there may be damage to the foundation of the home as well.

19. In 2012, after receiving no assistance from Franklin Township, the Robeys contacted Jim Grob, Environmental Specialist at the New Jersey Department of Environmental Protection.
20. Grob visited the Robeys home on multiple occasions and cited Falciano for have an insufficient retention pond, which was incapable of holding storm water run-off. (**Exhibit "B"**, December 27, 2012 Inspection Summary Report for Falciani Farmers Packing Supply Inc., finding the site out of compliance ("Needs to apply for storm water permit." "Discharging pollutants to the ground waters of the State without a valid NJPDES permit issued by the Department.") and December 27, 2012 Inspection Report for Liberty Bell Motel, finding the site out of compliance.)
21. Grob told Falciani to make his pond 3,000 square feet deeper.

2013: Falciani Restructures Warehouse Parking Lot

22. In 2013, Falciani made adjustments to the retention pond but also began restructuring his warehouse parking lot by pouring hot mix asphalt across the surface of his trailer storage lot, just upstream of the natural low area along the Robeys' home. In completing the project, he used crushed concrete, which is not permeable so cannot absorb water, and therefore has caused flooding on the Robeys' property ever since.
23. Falciani did not obtain permits from the Township for this paving project, which was completed by Asphalt Paving. (Asphalt Paving is owned and operated by

John Gravenor, member of the Franklin Township Zoning Board.) The Township improperly issued said permits.

24. The Robeys contacted the new zoning officer, Robert Berducci, Mayor Edward Leopardi and Franklin Township engineer, Theodore Wilkinson.
25. Upon inspection of the site, Wilkinson wrote a letter addressed to the Township Zoning Officer Robert Berducci and Township Solicitor, Timothy Scaffidi, outlining his findings. (**Exhibit "C"**, March 17, 2014 Letter from Wilkinson to Berducci and Scaffidi) Wilkinson explained, "The parcels of land, including, but not limited to 130 Morris Avenue, are located at the natural low point, and this area is prone to flooding. There are no drainage structures or pipes beneath Morris Avenue or Rt 40 to permit positive drainage from this corner."
26. In or about 2012 the New Jersey Department of Transportation widened and super-elevated Route 40/Harding Highway, but failed to make provisions to install a storm drainage system at this natural, geographic low point.
27. Wilkinson noted that Falciani's warehouse facility had recently completed a number of site improvements using impermeable material that "may adversely impact downstream drainage." Wilkinson also noted that in reviewing files at the planning board, they could not "find any documentation or engineering reports that support the construction of such a large area of new impervious areas." He found that the "low-lying area completely floods, and eventually encroaches on private lands." The site improvements by Falciani were made without proper planning board approval.

28. Wilkinson recommended that the Township “enforce the original approvals for this site expansion, which consists of a clean stone parking area with no increase in impervious areas.”

29. The Robeys were informed that an investigation had been initiated.

30. In May 2014, Wilkinson wrote to Mayor Leopardi, Township Committed members, and Berducci with the findings of his investigation. (Exhibit “D”, May 13, 2014 Letter) Wilkinson’s report acknowledged that due to naturally occurring geographic conditions, Falciani’s trucking facility is not directly responsible for the surface water runoff behind the Robeys’ property. However, the report notes that Falciani’s retention basin constructed in recent years and adjusted at the direction of the State of New Jersey, Department of Transportation, “becomes inundated with off-site upstream runoff[.]” Wilkinson states that the “basin is an issue that should be reviewed and assessed by the Soil Conservation District and State Department of Agriculture,” who are copied on the letter.

31. On or about February 28, 2014, the Township Engineer drafted a Report stating:

Re: Falciani Warehouse Expansion Project – Resolution No. SP4-00
Block 5065, Lot 6
Apparent Downstream Flooding in area of 130 Morris Avenue & Route 40

Dear Chairman & Planning Board Members & Solicitor:

We have been directed by Mayor & Committee to investigate a flooding concern at the southeast corner of Morris Avenue and Route 40. The parcels of land, including, but not limited to 130 Morris Avenue, are located at the natural low-point, and this area has is prone to flooding. There are no drainage structures or pipes beneath Morris Avenue or Rt 40 to permit positive drainage from this corner.

The warehouse facility located on Block 5065, Lot 6 recently completed a number of site improvements, including the placement of a large area of hot mix asphalt surface course. This surface was laid down in the area of the trailer storage, just upstream of the natural low area along Morris Avenue.

It appears that the local approvals from 2000 limited the site work to the placement of crushed stone in the expansion areas, as indicated in the attached documents.

In the best interest of the Township of Franklin, and the landowners in this watershed, we recommend that a full investigation be made into the site planning, drainage assessments and related impacts that this new impervious area has on the downstream properties.

Recommendation to Board:

On behalf of the Township, we recommend that any pending planning board applications relative to Block 5065, Lot 6 be tabled until a full investigation is made by the township and the planning board engineer, relative to the construction of a large area of new impervious area without prior approvals.

We are forwarding this letter to the construction official as well as the planning board engineer's office.

32. The Robeys were able to halt the construction on the project. The Robeys have been told by the Township of Franklin that an investigation is ongoing, however, this appears to be untrue.
33. To date, the Robeys' home and surrounding property continues to flood most every time it rains. Robey's are unaware of any on-going investigation.
34. On or about October 2, 2014, Plaintiffs forwarded to the State of New Jersey and to the Township of Franklin, Tort Claims Notices. Plaintiffs have satisfied their statutory requirements under the New Jersey Tort Claims Notice provisions, N.J.S.A. 59:1-1 et. seq.

LEGAL CLAIMS

Count I

Negligence and Strict Liability

35. The above paragraphs are incorporated herein as if set forth at length.
36. In or about 2012 the State of New Jersey, Department of Transportation (NJDOT) caused an increased flood and/or erosion hazard on adjacent lands, i.e., Plaintiffs' residence, by grading or filling land at or near State Highway Route 40/Harding Highway and Malaga Road without making provision for adequate structural measures to prevent flooding to the adjacent landowner property. Moreover, Defendant NJDOT failed to maintain ditches and/or stormwater facilities with regard to its construction of and around State Highway Route 40.

37. In 2013, Defendant Falciani completed the placement of over a half-acres of new asphalt surfaces. Yet Defendant Falciani failed to receive zoning board approvals or construction permits to lay down any new hot mix asphalt on his property. Falciani caused and/or contributed to the flood, erosion and associated economic flood losses suffered by Plaintiffs.

38. Defendant, NJDOT is strictly liable and /or liable for its negligence with regard to the damage to Plaintiffs residence arising and/or proximately caused by the construction regarding State Highway Route 40 which has caused and continues to cause increased hazards such as flooding and erosion of Plaintiffs' property.

39. Defendant, the Township of Franklin acted unreasonably when it afforded a waiver to Falciani thereby permitting the construction of a hazardous condition on property it knew or should have known was flood prone. Franklin Township acted unreasonably and negligently because its government officials had knowledge of potential flood problems, the foreseeability of floods and resulting damage to individual landowners, including the Plaintiffs.

WHEREFORE, Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon them by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants illegal acts, attorney's fees and costs of suit, punitive damages and any other damages the Court deems fair and just.

Count II

Nuisance and Continuing Storm Water Trespass

40. The above paragraphs are incorporated herein as if set forth at length.
41. “The essence of a private nuisance is an unreasonable interference with the use and enjoyment of land.” Sans v. Ramsey Golf & Country Club, Inc. 29 N.J. 438, 448 (1959).
42. A dangerous condition is defined as “a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which is it reasonably foreseeable that it will be used.” N.J.S.A. 59:4-1(a).
43. The New Jersey Supreme Court has held that “public entity liability for nuisance is recognized [as a dangerous condition of property] under the Tort Claims Act.” Gourley v. Township of Monroe, No. A-1595-11T2, N.J. Super. LEXIS34, at *10-11 (App. Div. Jan. 8, 2013) (citing Birchwood Lakes Colony Club, Inc. v. Borough of Medford Lakes, 90 N.J. 582, 593 (1982)).
44. In the present instance, Defendants have created a nuisance and failed to remedy the situation so as to prevent water on Defendant Falciani’s property and the overflow water created by same and from the off-site overflow of water created by the State Defendant’s actions causing an excess of water flowing over to the Robeys’ property, resulting in unsafe physical conditions and significant property damages to the Robeys’ home and surrounding property.

WHEREFORE, Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon them by Defendants, including, but

not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants illegal acts, attorney's fees and costs of suit, punitive damages and any other damages the Court deems fair and just.

Count III

Violation of the New Jersey Civil Rights Act: Violation of Article I, Paragraph 20 and Article IV, Paragraph 26 of the New Jersey State Constitution and the Takings Clause of the Fifth Amendment of the United States Constitution

45. The above paragraphs are incorporated herein as if set forth at length.
46. New Jersey Civil Rights Act permits any person who has been deprived of any substantive rights secured by the Constitution to bring a civil action for damages and for injunctive or other appropriate relief. N.J.S.A. § 10:6-2(c). The Court may also award the prevailing party reasonable attorney's fees and costs. Id. § 10:6-2(f).
47. The New Jersey Constitution, N.J. CONST. ART I, PARA. 20 and N.J. CONST. ART. IV, PARA. 3, provided protections against governmental takings of private property without just compensation, coextensive with the Takings Clause of the Fifth Amendment, U.S. CONST. AMEND. V. Mansoldo v. State, 187 N.J. 50, 58 (2006).
48. A constitutional taking may occur in one of two ways: (1) via physical taking, in which the government takes title to private property or "authorizes a physical occupation [or appropriation] of property"; or, (2) via regulatory taking, through which a government regulation deprives the property owner of all economically

viable use of their land. Yee v. Escondido, 503 U.S. 519, 522 (1992); Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1015 (1992); Gardner v. N.J. Pinelands Comm'n, 125 N.J. 193, 205 (1991); Littman v. Gimello, 115 N.J. 154, 161-62 (1989); Washington Mkt. Enters v. City of Trenton, 68 N.J. 107, 117-18 (1975).

49. Here, when the New Jersey Department of Transportation widened and super-elevated Route 40/Harding Highway, it was acting in a “proprietary” rather than “governmental capacity” and thereby made no provisions to install a storm drainage system at this natural, geographic low point. As a result, there is routine and continuous flooding of the Robeys’ property from the upstream watershed area. The State’s negligence expansion of Route 40 has rendered the Robeys’ property virtually valueless.
50. In addition, the Township of Franklin’s willful or negligent enforcement of its permit and zoning regulations and local ordinances have allowed for Falciani to carry out improvement projects on his property, e.g. installation of the hot mix asphalt, have further exacerbated the flooding on the Robeys’ land.
51. The actions of the State of New Jersey and the Township of Franklin constitute a taking of the Robeys’ property.
52. Regardless of the exact method employed, where a taking occurs, the Takings Clause requires the government to compensate the property owner. Escondido, supra, at 522.
53. Under common law and state tort claim acts, governments do not enjoy sovereign immunity and are therefore subject to suit when they create nuisances

or physically “take” private property without payment of just compensation. Fills, drainage and structures often result in physical water and erosion damage to other properties and a resulting “taking”.

WHEREFORE, Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon them by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants illegal acts, attorney’s fees and costs of suit, punitive damages and any other damages the Court deems fair and just.

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION OF NO OTHER ACTIONS PURSUANT TO

RULE 4:5-2

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In

addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

JURY DEMAND

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

MY RIGHTS LAWYERS, LLC

By:


MICHELLE J. DOUGLASS, ESQ.
Attorney for Plaintiff

Date: April 6, 2015

My Rights Lawyers, LLC

Michelle J. Douglass, Esq.

424 Bethel Road

Somers Point, New Jersey

Phone 609 788-3595; Facsimile 609 788-3599

Email: mjd@myrightslawyers.com

Attorneys for Plaintiffs', Michelle Robey & Joseph Robey

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY VICINAGE OF CAMDEN**

**MICHELLE ROBEY and JOSEPH
ROBEY,**

Plaintiffs',

vs.

**THE STATE OF NEW JERSEY
DEPARTMENT OF
TRANSPORTATION, THE
TOWNSHIP OF FRANKLIN, and
VINCENT FALCIANI, JR.,**

Defendants'.

Civil Action No.: 1:15-cv-03620-JBS-AMD

NOTICE OF VOLUNTARY DISMISSAL

**NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE PURSUANT TO
F.R.C.P. 41(a) (1) (A) (i)**

PLEASE TAKE NOTICE that Plaintiffs', MICHELLE ROBEY and JOSEPH ROBEY, ("Plaintiffs'"), pursuant to Federal Rule of Civil Procedure 41(a)(1), hereby voluntarily dismisses all Federal Claims asserted in the Complaint in this action without prejudice as to Defendant, the TOWNSHIP OF FRANKLIN.

Defendant has not answered Plaintiff's Complaint, nor filed a motion for summary judgment. Accordingly, this matter may be dismissed without prejudice and without an Order of the Court.

MY RIGHTS LAWYERS, L.L.C.

Attorneys for Plaintiffs',

Michelle Robey & Joseph Robey

So Ordered this 24th day
of June, 2015
Glenn H. Anderson

MY RIGHTS LAWYERS, L.L.C.

424 Bethel Road

Somers Point, NJ 08244

Phone 609 788-3595; Facsimile 609 788-3599

Email: mjd@myrightslawyers.com

Attorneys for Plaintiffs, Michelle Robey and Joseph Robey

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY VICINAGE OF CAMDEN**

MICHELLE ROBEY & JOSEPH ROBEY, Plaintiffs, vs. VINCENT FALCIANI, JR., FALCIANI'S FARMER'S PACKING SUPPLY, INC., JOHN GRAVENOR, in his individual capacity, his ownership and/or employee capacity of Asphalt Paving Co. and in his capacity as a member and/or Chairman of the Franklin Township Zoning Board, ASPHALT PAVING CORP., FRANKLIN TOWNSHIP ZONING BOARD OF ADJUSTMENT and FRANKLIN TOWNSHIP ZONING CODE ENFORCEMENT OFFICER, ROBERT BERDUCCI, Defendants.	AMENDED COMPLAINT and ACTION IN LIEU OF PREROGATIVE WRITS AS TO FRANKLIN TOWNSHIP PLANNING AND ZONING OFFICER TO ENFORCE CLEAR VIOLATIONS OF ZONING LAWS, PERMANENT INJUNCTIVE RELIEF & JURY DEMAND Civil Action No.: 1:15-cv-03620-JBS-AMD
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JURISDICTION

The Federal Court lacks any jurisdiction over this matter.

This matter was removed to Federal Court by Notice of Removal filed by
Defendant, the State of New Jersey Department of Transportation. *Doc. 1.*

On August 10, 2015 Plaintiff filed a Stipulation of Dismissal as to the State of New Jersey. None of the parties have filed an Answer to the Complaint. Plaintiff files this Amended Complaint without notice of motion pursuant to Fed. R. Civ. P. 15 (a) (1).

The Amended Complaint does not assert any Federal claims. There is no diversity of jurisdiction . The Federal Court lacks jurisdiction over the matters raised in Plaintiff's Amended Complaint. This Amended Complaint should be remanded to State Court pursuant to 28 U.S. Code § 1447 (c).

PREAMBLE

Courts have followed the maxim “Sic utere tuo ut alienum non laedas,” or “so use your own property that you do not injure another’s property.” See *Keystone Bituminous Coal Association v. DeBenedictis*, 480 U.S. 470 (1987) and many cases cited therein. This maxim characterizes overall landowner rights and duties pursuant to common law nuisance, trespass, strict liability, negligence, riparian rights, surface water law rights and duties (many jurisdictions), and statutory liability. At common law, no landowner (public or private) has a right to use his or her land in a manner that substantially increases flood or erosion damages on adjacent lands.

In 2001 the Robeys purchased and moved to their home in Newfield, New Jersey. Plaintiffs chose Franklin Township because it had a reputation for a good school district. The Robeys are of modest means and scraped up enough savings to purchase their single dwelling

home with plans to renovate the kitchen and the bathroom. However, it soon became clear that this would be impossible.

The Robey's home has become worthless due to regular inundation of runoff water (flooding) caused by the overflow of an illegally (without permits or municipal approval) installed stormwater retention basin by Defendant Vincent J. Falciani, Jr. (Falciani). Falciani on his adjoining commercially operated land and due to his illegally (without permit and government approval) installed asphalt driveway. The illegal asphalt driveway made drastic changes to the grade leveling of the land causing the creation of an impermeable slope down and towards the Robey's land which in turn causes rain water to pour down into and flood the Robey's land with each moderate rainfall.

Falciani has violated a number of laws in his unauthorized construction of the retention pond and unauthorized paving of a driveway (and unauthorized installation of a 6 ft. chain link fence around the perimeter of the commercial property) which include violations of Ordinance 0-005-07 Stormwater Control Ordinance for Franklin Township; Ordinance Code § 151-33 and -36; Township Ordinance Code §202-2; Township Ordinance Code §226- 3 and -4; Township Ordinance Code §226-8; §253-20 through 32; Township Ordinance Code §253-77; Township Ordinance Code § 253-190.0; Township Ordinance Code §295-1; Township Ordinance Code §295-4 and -7; Township Ordinance Code §302-3; Township Ordinance Code § 325-3; Township Ordinance Code §333-7; Township Ordinance Code § 360-29; Township

Ordinance Code §364-2; Township Ordinance Code §404-2 (F); and, N.J.A.C.

7:8-1.1 et seq. (Exhibit A, See Collectively all Ordinances:

- (1) Ordinance 0-005-07 Stormwater Control Ordinance for Franklin Township;
- (2) Ordinance Code § 151-33 and -36;
- (3) Township Ordinance Code §202-2;
- (4) Township Ordinance Code §226- 3 and -4;
- (5) Township Ordinance Code §226-8; §253-20 through 32; Township Ordinance Code §253-77;
- (6) Township Ordinance Code § 253-190.0;
- (7) Township Ordinance Code §295-1;
- (8) Township Ordinance Code §295-4 and -7;
- (9) Township Ordinance Code §302-3;
- (10) Township Ordinance Code § 325-3;
- (11) Township Ordinance Code §333-7;
- (12) Township Ordinance Code § 360-29;
- (13) Township Ordinance Code §364-2;
- (14) Township Ordinance Code §404-2 (F) ;and,
- (15) N.J.A.C. 7:8-1.1 et seq.)

The Township of Franklin has refused to enforce known violations by Falciani of the zoning laws, including the above mentioned zoning ordinances as well as refusing to enforce the violations by Falciani of Resolutions which granted him use variances when he surpassed those uses.

Plaintiffs, Michelle and Joseph Robey, residing in Gloucester County and the State of New Jersey by way of Complaint and Order to Show Cause against the Defendants herein say:

THE PARTIES

1. Plaintiffs, Michelle and Joseph Robey, reside at 130 Morris Avenue, Newfield, New Jersey 08334.
2. Defendant, Franklin Township Zoning Board of Adjustment, is a municipal board responsible for protecting the integrity of the Master Plan and the Zoning Ordinance and is located in Gloucester County, New Jersey. Its municipal office is located at 1571 Delsea Drive, Franklinville, New Jersey 08322.
3. The Zoning Board of Adjustment is also responsible for the protection of the health, safety and welfare of persons and property within Franklin Township by overseeing and requiring permitting which seeks to ensure the proper operation and closure of all soil or earth removal activities, storm water activities and to prevent unnecessary flooding and/or water contamination within the township.
4. At all times relevant, Defendant John Gravenor ("Gravenor") is appointed and sits as the Chairman of the Franklin Township Zoning Board and in this capacity has a duty and responsibility to avoid conflicts with compromise the integrity of the Franklin Township Master Plan and Zoning Ordinances.
5. Gravenor is also the Vice President of Asphalt Paving Corp. and/or an employee of Asphalt Paving Corp.

6. Defendant Asphalt Paving Corp., founded in 1952, is a small highway & street construction company in Malaga, New Jersey. It has 15 full time employees and generates an estimated \$1.7 million in annual revenue and is located at 378 Elmwood Ave, Malaga, New Jersey.
7. Defendant Zoning Code Enforcement Officer Robert Berducci responsible for enforcement of the Township's Zoning Code and responding to complaints and concerns made by citizens and homeowners regarding violations of the Zoning Code and is responsible for the investigation and inspection of reports, concerns and complaints that concern community development, safety and welfare in compliance with the Master Plan and Zoning Ordinances.
8. Defendant Vincent Falciani, Jr., ("Falciani") resides at and/or owns the adjacent property to Plaintiff's residence. Defendant's property is located at 2676 Harding Hwy, Malaga and/or Newfield, New Jersey at Block 5065, Lot 6 and is operated as a commercial establishment known as Falciani's Farmer's Packing Supply Co.
9. Defendant, Falciani's Farmer's Packing Supply Co. ("Falciani's Farmer's Supply") is a warehouse facility located at Block 5065, Lot 6 in Franklin Township and which operates a commercial farmer's packaging and trucking business and stores fuel pumps and stores and operates more than 18 tractor trailers on the property. It is also the site of an illegally installed retention storm water overflow basin, an illegally installed asphalt driveway over which tractor trailer vehicles operate and an illegally installed commercial chain link 6 ft fence.

STATEMENT OF FACTS

Flooding/Infestation/Destruction

2001: Robey's Buy Home; No Flooding

2007: Falciani Paves Driveway for Tractor Trailers with Crushed Concrete Without Zoning Approval-The Flooding Begins

10. Plaintiffs, Michelle and Joseph Robey, purchased their home in Franklin Township in or around December 2001 for \$81,222.00.
11. In or around 2007 their property and home flooded for the first time. Prior to 2007, the Robey's never experienced any flooding to their home.
12. The flooding was caused directly and exclusively by the illegal and unauthorized clearance of dirt and land for the installation of a paved crushed stone driveway by Falciani and Falciani's Farmer's Packing Supply. Falciani planned the regrading and paving of the land beginning in or before 2006 when he planted trees to act as a barrier to obscure from sight the construction equipment eventually to be used to move grass and dirt from the areas he planned to pave with crushed concrete.

13. In 2007, photographs taken atop the Robey's roof to capture the roof repair also depict the construction equipment and the clearing of dirt to expand the driveway parking lot area on the Falciani property. Shortly after, Falciani completed an expanded parking lot surfaced with crushed concrete which created an additional parking for 12 trailers. The trailers were added to the site and are parked at the site at any given time. (*Exhibit B, See Collectively Photographs of area from 2007 through 2015*)

14. The 2007 work by Falciani was done without permit or approval and is in violation of Township Ordinance Code §202-2; Township Ordinance Code §226- 3 and -4; Township Ordinance Code §226-8; §253-20 through 32; Township Ordinance Code §253-77; Township Ordinance Code § 253-190.0.

Background:

1993-Falciani Received Site Plan Approval for His Existing Warehouse and was Granted a Variance for 5 Parking Spaces and Paving with Gravel and Crushed Stone;

2000-Falciani Applied For a Waiver of a Site Plan Review and Approval to Modify the Circulation and Loading Area which was Approved by the Zoning Board for "Crushed Stone"—Not Crushed Concrete; Falciani Represented that there would be NO Additional Storm Waiver Runoff as a Result of His Waiver and Modification Requests;

2005- Falciani Receives Approval for Waiver of Full Site Plan Review for a 6,300 sq. ft. Expansion of Warehouse on Top of "Existing Concrete Pad and Crushed Concrete" (for which he never had prior approval-approvals previously have been for "gravel and crushed stone only) and Represented that the "Existing Basin" Would Be Sufficient to Handle Any Increase in Stormwater Runoff.

15. In or about 1993 Falciani received site plan review approval by the Franklin Township Zoning Board for the property where the Farmer's Packing Supply Co. is now located. Franklin Township requires site plans for all development

projects that are reviewed by local officials. A site plan is a detailed graphic and written document that shows how a site will be developed. It is a legally binding, professionally prepared proposal for the use and development of a parcel of land.

(Exhibit C. Resolution of Findings and Conclusions of Planning Board of the Franklin Township, SP 4-93).

16. Upon information and belief, the site plan review mentioned in the above paragraph did not include approval for the construction of the stormwater retention basin as it is now configured nor did Falciani receive approval at any time from the New Jersey Department of Environmental Protection for the storm runoff basin.
17. The stormwater retention basin was created by Falciani without proper government approval and is currently in violation of the law that controls stormwater retention basins for commercial properties.
18. A stormwater basin is a structure used to detain and treat stormwater runoff. Basins to help prevent flooding, especially flash flooding. Stormwater basins are generally proposed as part of a larger residential or commercial project which has triggered compliance with the Stormwater Management rules at N.J.A.C. 7:8.
19. A review of the New Jersey Department of Environmental Protection, Division of Land Use Regulation online mapping service fails to reveal that any permit was ever granted to Falciani for and /or relating to stormwater basin construction, repair, and/or reconstruction.

20. Upon information and belief, no permit (s) were ever granted to Falciani to lawfully build and maintain a stormwater basin on his property located at Harding Hwy and Morris Avenue.
21. In or around July 2000, Franklin Township waived site plan review and approval of Falciani's proposed plan to expand and modify his warehouse located on Harding Highway and Morris Avenue. (*Exhibit D, Franklin Township Planning Board Resolution No. SP 4-00*)
22. Falciani, together with his Engineer, represented to the Franklin Township Zoning Board that there will be no additional parking or run-off water created by the development proposed by his waiver of site plan review request in June-July 2000.
23. The parking, however, increased from several trailers to now more than 18 tractor trailers on site at Falciani's property. In 1993 Falciani received approval for 5 parking spaces. Over the years he has represented that any site plan review/waiver/variance would not increase the number of parking spaces. This is a falsehood. (*Exhibit "C"*).
24. In 2005 Falciani received approval for a waiver of full site plan review for a 6,300 sq. ft. expansion of his warehouse on top of what he characterized as "existing concrete pad and crushed concrete" (for which he never had prior approval-approvals previously were for "gravel and crushed stone only) and he further represented that the "existing basin" would be sufficient to handle any increase in storm water runoff. (*Exhibit D, 2005 Resolution*)

25. Currently, there are more than 18 parking spaces on which 18 separate 18 wheeler trailers are located.
26. Despite there being parking spaces created by Falciani for more than 18 trailers, he has never been permitted to create more than 5 parking spaces per initial site plan approval and per any subsequent application for waiver and/or use variance.
27. The parking spaces created by Falciani were created by using a combination of crushed concrete and asphalt for which he has never received zoning board approval.
28. In or about 2007, the storm water runoff dramatically increased as soon as Falciani dug up and redistributed ground and paved the ground with non-permeable material (crushed concrete) in order to create a driveway and parking for the additional tractor trailers. (*Exhibit B, See 2007 Photos*)
29. Permeable paved areas are a method of reducing impervious land coverage while simultaneously providing a stable load bearing surface. While forming a surface suitable for walking and driving, permeable pavements also contain sufficient void space to infiltrate runoff into soil.
30. By making paved areas permeable, impervious surface coverage can be reduced without sacrificing intensity of use.
31. There are three main categories of permeable pavements: poured-in-place, unit pavers-on-sand, and granular materials. A typical component of these permeable pavements is a reservoir base course. This base course provides a stable load-bearing surface as well as an underground reservoir for water storage. The

base course must meet two requirements: • it must be open graded, meaning that the particles are of a limited size range, with no fines, so that small particles do not choke the voids between large particles. Open-graded crushed stone of all sizes has a 38 to 40% void space, allowing for substantial subsurface water storage. • it must be crushed stone, not crushed concrete.

32. Crushed concrete is not permeable.
33. Rounded river gravel will tend to rotate under pressure, causing the surface structure to deform. Permeable paved areas must be laid on a relatively flat slope, generally 5% or flatter. If permeable pavements are laid on slopes, the underlying base course tends to migrate downhill, causing the surface to deform.
34. Here, Falciani disregarded proper zoning and engineer laws and used crushed concrete without a proper grade, retention basis and significantly redistributed the land and slope of the land so that runoff water poured into the Robey's property which in turn creates a small germ infested lake and other unsafe and unsanitary conditions at anytime it moderately rains.
35. The storm water runoff now flows into the Robey's lower lying land flooding it any time it rained with any degree of moderation.
36. It was further represented by Falciani in June-July 2000 as part of his waiver application, that the "existing loading platform can be accessed from one side at the present time. The applicant proposes to make modifications to allow access to both sides of the loading dock, an additional driveway and maneuvering area

for trucks will be of crushed stone surface...” and “no additional storm water run-off as a result of this development.” (*Exhibit A*).

37. The Zoning Board approved Falciani’s site plan review waiver on July 18, 2000 finding that there will be no “substantial detriment to the public good and will not substantially impair the intent and purpose of the Township of Franklin Land Use Ordinance or Master Plan.” (*Exhibit C, Franklin Township Planning Board Resolution No. SP 4-00*)

38. The repaving of the driveway and maneuvering area for trucks in fact caused significant additional storm water runoff , so much so that the Robeys were soon forced to invest in sandbags which they were required to install three layers high around the entire perimeter of their house to help shield their home from the frequent inundation of stormwater runoff emanating from the Falciani development.

2009: The Flooding to Robey's Property Becomes Significantly Dangerous and Destructive

39. On or about December 26, 2009 the flooding became truly destructive.

40. The Robeys called the Malaga Fire Department. When they arrived, one firefighter, Anthony Baldosaro told the Robeys that the water was coming from Falciani’s warehouse, located at 2676 Harding Highway, Newfield, New Jersey. The firefighters pumped the water out of the Robey's yard and out of their house as best they could but it had nowhere to go. The Robeys’ home resembled a small island.

41. The day after the flood, Mrs. Robey contacted the Franklin Township Public Works and was also told that the water flooding their home was coming from Falciani's warehouse but, because the warehouse was private property, there was nothing the Township could do.
42. After speaking with Public Works Department, Plaintiff went to Franklin Township and spoke to former zoning officer, Bob Errera, who also expressed his belief that the water was coming from the Falciani property.
43. The Robeys learned that Falciani owned properties on both sides of their home and had previously owned the Liberty Bell Motel, located nearby, at 2656 Harding Highway. This fact is significant in that Falciani apparently constructed the stormwater basin when he owned the Liberty Bell Motel when the construction went undetected because the basin was surrounded, at that time, by only land owned by Falciani. Moreover, the location of the basin is so close, less than 150 feet from the rear of the property line of the Liberty Bell Motel, creating a dangerous condition to the small children and other full time occupants of the Liberty Bell Motel.
44. Upon information and belief the set back between the basin and the Liberty Bell Motel is nonconforming and in violation of the law.
45. In or around 2009, Mrs. Robey met with former Mayor Pat Dougherty, Joe Petsch, former Solicitor William Ziegler, and Business Administrator Mike DiGiorgio.

46. In the meeting, Mrs. Robey was told that since Franklin Township “waived” Falciani’s site plans, there was nothing they could do to address the problem.
47. DiGiorgio, however, arranged for a mediation between Falciani and the Robeys, at Falciani’s warehouse. During the meeting Falciani made it clear that he had no intention on fixing the problem. He arrogantly replied to the Robeys, “Sue me.”
48. In or around this time frame, large pools of water in and around the Plaintiffs’ home became stagnant and was an attractive nuisance for mosquito larvae, rodents and deer, which are major carriers of ticks. This unsafe condition has caused the Plaintiffs to become sick and to abandon their home on numerous occasions.

2010: Robeys are Forced to Take Out a Small Business Emergency Relief Loan Causing Them to Instantly Become Nearly \$60,000.00 in Debt Due to the Falciani Caused Flooding

49. On or about June 12, 2010, the Robeys were forced to take out a \$57,730 Small Business Association (SBA) loan in order to repair the damage to their home, including replacing the septic system, French drain and air conditioner. Also, a concrete elevated slab was installed to replace their car port in order to attempt to elevate the rear part of their home (which is the area that most closely abuts the Falciani property) to stave off some of the detrimental consequences of the by-now regular flooding. (*Exhibit F, 2010 SBA Loan*)
50. In an effort to obtain some assistance from Franklin Township governing officials, Michelle Robey wrote as follows:

*This should say waved site plans
not permits.*

Mayor Dougherty,

I live at 130 Morris Ave. My family and I have lived in this house for seven years; we have never had a problem with flooding. In 2007, my house flooded for the first time. At that time, I had no idea why this was happening. Then, my home flooded again on December 26, 2009. Fortunately, Malaga Fire Department came to my home. I do not have a basement, and the water was coming into my laundry room. The Fire Department informed me that the water was coming from Mr. Falciani's warehouse. From knowing this, I contacted the Public Works Department. Public Works came out and looked at the water that was coming into my property. I was told that the water was coming from Mr. Falciani's property, the same thing the Fire Department told me. Since it is private property, Public Works said their hands are "tied".

From there, I contacted Bob Errera, who is the Zoning Officer of Code Management. I showed him the set of photos that are from the two floods (See attached photos). He informed me also that the water was coming from Falciani's property, due to an expansion on his warehouse property on approximately January 2006. He also said that the Franklin Township Planning Board waved his permits. (See attached documents) In the highlighted area, you will see that "the applicant presented testimony of the existing basin would be sufficient to handle any negative increase in storm water run off." Obviously, this is not the case.

Before the recent February 5th, 2010 snowstorm began, I contacted Patricia Knobloch. I asked if the Township of Public Works could sandbag around my fence to prevent future flooding. She told me that they would not sandbag my property and that "all my time and energy that I am putting on calling the Township should be used on approaching Mr. Falciani and his engineer or a lawyer." I told her that he was not approachable and that I did not create this problem. Franklin Township did by waving his permit.

There are so many dangers if this situation is not resolved. For example, I have recently chased off a child from Mr. Falciani's "frozen" lake, which is deep enough that the child could have drowned. What would have happened if I were not home? With the warm weather approaching, I am concerned about the hazards of contamination. Just to name a few, stagnant water may bring germs and disease. Also mosquito larva, geese feces that could contaminate our wells!

I personally cannot afford a lawyer to fix a problem that I did not create. I hope as the mayor of Franklin Township, that you can help me resolve this situation. Thank you.

Michelle Robey
(856) 694-6501
(856) 366-6691
130 Morris Ave
Newfield, NJ 08344

51.

(Exhibit G, Robey Letter).

2011: Flooding Becomes Severe to Extent that the New Well Installed by Robeys from SBA loan Collapses, Ruins Home Foundation and Inundates Home with Water

52. In 2011, after a storm and after the installation of their brand new Well, the runoff water became so bad that it completely flooded out the Robey's property causing the well to sink and collapse. This in turn caused flooding inside their home requiring it to be pumped out but ruining the foundation. (Exhibit B, Photos of collapsed well)
53. The flooding damaged the hot water heater, water filter system and washer and dryer. The laundry room and crawl space became a submerged water danger zone. The Robeys feared electrical harm and worse, death from electrocution and/or bacteria from mold.
54. The Robeys also spent an additional \$8,460 from their own savings to pay for new sandbags, a new well, water testing and softener, and a new shed. Yet there are other damages they cannot afford to fix, such as mold in the laundry room and crawl space. The Robeys also suspect that there may be damage to the foundation of the home as well. (Exhibit H, Receipts totalling near \$10,000.00)

2012: DEP Involvement Due to Franklin Township Refusal to Get Involved

55. In 2012, after receiving no assistance from Franklin Township, the Robeys contacted Jim Grob, Environmental Specialist at the New Jersey Department of Environmental Protection.
56. Grob visited the Robeys home on multiple occasions and cited Falciani for have an insufficient retention pond, which was incapable of holding stormwater runoff. (*Exhibit I, December 27, 2012 Inspection Summary Report for Falciani Farmer's Packing Supply Inc., finding the site out of compliance ("Needs to apply for storm water permit." "Discharging pollutants to the ground waters of the State without a valid NJPDES permit issued by the Department.") and December 27, 2012 Inspection Report for Liberty Bell Motel, finding the site out of compliance.*)
57. Grob told Falciani to make his retention basin 3,000 square feet deeper.
58. The retention pond continued to overflow.
59. The water water runoff continued to flood out the Robeys' property causing increasing damage and further making their lives hopeless.
60. To date, the retention basis has not been properly constructed nor properly enlarged.
61. A hose several hundreds of feet long has been illegally installed from the basis which carries storm water runoff water from the basin to a wooded area.
62. Also, anytime there is a moderate to significant rainfall, Falciani directed his employees to install a sump pump which funnels storm water runoff from his

land and directed towards the Robey's property in order to alleviate flooding to his warehouse operations but which causes further and increased flooding to the Robeys' property.

2013: Falciani Restructures Warehouse Parking Lot-Asphalt Parking Lot Creating a Hopelessly Impermeable Surface and Further Exacerbates Flooding for the Robeys. Flooding Now Occurs Seemingly on a Monthly Basis.

63. On or about Jan 17, 2014 an Inspection Summary was issued by the NJDEP indicating that Falciani still needed to apply for a stormwater permit-Falciani was found to be discharging pollutants to the groundwaters of the State without a valid NJPDES permit issued by the NJDEP.

64. In 2013, Falciani made adjustments to the retention pond but also began restructuring his warehouse parking lot by pouring hot mix asphalt across the surface of his trailer storage lot, just upstream of the natural low area along the Robeys' home. In completing the project, he used crushed concrete, which is not permeable so cannot absorb water, and therefore has caused flooding on the Robeys' property ever since.

65. Falciani did not obtain permits from the Township for this paving project, which was completed by Asphalt Paving Corp.

66. Asphalt Paving Corp. is owned and/or operated by and/or a significant interest in the business is had by John Gravenor, Chairman of the Franklin Township Zoning Board.

67. In or about July 2013 the NJDEP through Jim Grob asked whether trucking was a part of the operation of facility and what the fuel pumps are being used for because these activities could be subject to regulation.
68. While Falciani represented through Filippone that there was no vehicle maintenance occurring on the property, the query about whether trucking was a part of the operation and why there are fuel pumps on the site went unanswered.
69. There are currently 18 or more-18 wheel trailers that sit on the property and are operated by tractors.
70. It looks like the facility is being used as trucking and warehouse operation per SIC 4226 because of the trucking and fueling. The NJDEP asked from Kevin Ball, the permit manager for Gloucester County to evaluate the situation.
71. To date, it appears that neither the Township of Franklin nor the Gloucester County officials have evaluated the operation of the Falciani facility for SIC usage and it is required to be evaluated as part of the NJDEP application.
72. In or about September 2013 Engineer Steven Filippone on behalf of Falciani asked to begin emptying the stormwater basin. The pump was discharging into the woods onto Falciani Is property in order to enlarge the basis to 3,000 sf. as required by the NJDEP.
73. The NJDEP final rules, which were published in 2004, required all municipalities and certain county operations to obtain permits for non-point source stormwater discharges, to adopt new stormwater standards for existing and new development, and to comply with a wide range of permit conditions.

74. A stormwater basin is a structure used to detain and treat stormwater runoff.

Basins help prevent flooding, especially flash flooding, along New Jersey's watercourses. Stormwater basins are generally proposed as part of a larger residential or commercial project which has triggered compliance with the Stormwater Management rules at N.J.A.C. 7:8 stormwater management plans and municipal stormwater management plans under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; and the Flow"Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice or gravity. "Impervious surface" means a surface that has been covered with a layer of material so that it is highly resistant to infiltration by water.

75. "Lead planning agency" means one or more public entities having stormwater management planning authority designated by the regional stormwater management planning committee pursuant to N.J.A.C. 7:8-3.2, that serves as the primary representative of the committee.

76. "Major development" means any "development" that provides for ultimately disturbing one or more acres of land or increasing impervious surface by one-quarter acre or more. Disturbance for the purpose of this rule is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation. Projects undertaken by any government agency which otherwise meet the definition of "major

development" but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered "major development."

77. Per N.J.A.C. 7:8-4.3 (a) A municipality shall adopt a municipal stormwater management plan as an integral part of its master plan. The requirements in N.J.A.C. 7:8-4.2(c) 8 and 9 became operative February 2, 2006.

78. According to N.J.A.C. 7:8-4.6 a municipality may grant a variance or exemption from the design and performance standards for stormwater management measures set forth in its approved municipal stormwater management plan and stormwater control ordinance (s), provided the municipal plan includes a mitigation plan in accordance with N.J.A.C. 7:8-4.2(c)11 and the municipality submits a written report to the county review agency and the Department describing the variance or exemption.

79. Falciani does not comply with the stormwater regulations as cited above.

80. John Gravenor violated his ethical and statutory duties to adhere to, implement, enforce and carry out the zoning rules and regulations on behalf of the Township of Franklin is actively participating in the paving of his brother-in-law, Falciani's property with asphalt which is in direct violation of the Zoning laws and ordinances.

2014: The New Administration for Franklin Township Does the Right Thing and Attempts to Assist the Robeys. Township Engineer Theodore Wilkinson Finds Violations

81. In or about February 2014, the Robeys contacted the new zoning officer, Robert Berducci, Mayor Edward Leopardi and Franklin Township engineer, Theodore Wilkinson.

82. On or about February 28, 2014, the Township Engineer drafted a Report (Exhibit D) stating:

Re: Falciani Warehouse Expansion Project -- Resolution No. SP4-00
Block 5065, Lot 6
Apparent Downstream Flooding in area of 130 Morris Avenue & Route 40

Dear Chairman & Planning Board Members & Solicitor:

We have been directed by Mayor & Committee to investigate a flooding concern at the southeast corner of Morris Avenue and Route 40. The parcels of land, including, but not limited to 130 Morris Avenue, are located at the natural low-point, and this area has is prone to flooding. There are no drainage structures or pipes beneath Morris Avenue or Rt 40 to permit positive drainage from this corner.

The warehouse facility located on Block 5065, Lot 6 recently completed a number of site improvements, including the placement of a large area of hot mix asphalt surface course. This surface was laid down in the area of the trailer storage, just upstream of the natural low area along Morris Avenue.

It appears that the local approvals from 2000 limited the site work to the placement of crushed stone in the expansion areas, as indicated in the attached documents.

In the best interest of the Township of Franklin, and the landowners in this watershed, we recommend that a full investigation be made into the site planning, drainage assessments and related impacts that this new impervious area has on the downstream properties.

Recommendation to Board:

On behalf of the Township, we recommend that any pending planning board applications relative to Block 5065, Lot 6 be tabled until a full investigation is made by the township and the planning board engineer, relative to the construction of a large area of new impervious area without prior approvals.

We are forwarding this letter to the construction official as well as the planning board engineer's office.

83. On March 4, 2014 the minutes from Zoning Board Hearing on ZB14-02 Vincent Falciani B5065 L6 Use Variance/Site Plan Waiver-Fence Harding Highway reads as follows:

84. "Mr. Borelli states all papers are in order. John Gravenor recuses himself as he has a conflict of interest and steps down from dais and states Vice Chairman Fred Schiavone will take over chairing the meeting. Mr. Schiavone, Vice Chairman states that Mr. Dittmar will be seated in the absence of Mr. Gravenor. Vincent J. (Jim) Falciani of Harding Highway is sworn in and states he wants to put a sliding gate with fence up 250' back from the front of his property. Steven L. Filippone, PE, PP, CME of Engineering Design Associates of Ocean View, NJ is sworn in and states he is here to help Mr. Falciani. The business has been there for 63 years. In 1981, there was a theft of a truck and in the past ten years, they have stolen pallets and someone actually stole a trailer. Jim Falciani wanted to put up 400' of chain link fence and he got permit. Mr. Falciani was denied front yard fence and slide gate, driveway is owned by Mr. Falciani. Mr. Filippone provides 2 aerials to be marked A1 & A2. Upon a motion by Mr. DeCesari, seconded by Mr. Brandt, all in favor, to open the public portion. Motion passed. *Michelle Robey of 130 Morris is sworn in and asks about drainage, water and truck applicant parks trucks of Morris Avenue and kids have to go around to cross street. Ms. Robey continues with history of what has transpired through the years, with site plans, she complained to DEP, has pictures of everything, in past she met with Administrator and Falciani and*

retention basin overflowing. Mr. Schiavone states this has nothing to do with the application of fence and sliding gate. Mr. Borelli states notice was for fence and sliding gate but there is *notice of modification of site plan waiver for minor modifications and improvements*, perhaps we should ask applicant if there was something additional. *Ms. Robey states that is what she was interested in where the notice said modification.* Vincent James Falciani is sworn in and states that his application is only for a fence and sliding gate to stop theft and secure his lot. Mr. Falciani states once fence and gate go up, he will take truck off of Morris Avenue. *Mr. Filippone reiterates that this application is only for fence and sliding gate, nothing more.* Upon a motion by Mr. DeCesari, seconded by Mr. Brandt, all in favor, to close the public portion. Motion passed. *Mr. Borelli understands that what Ms. Robey is speaking of is currently being investigated by Township officials, not something the Planning Board will address.* Upon a motion by Mr. Brandt, seconded by Mr. Gaetano, to approve SP14-02 for Fence and sliding gate only. Roll Call Vote: Mr. Iglesias, yes; Mr. DeCesari, yes; Mr. Gaetano, yes; Mr. Brandt, yes; Mr. Leo, yes; Mr. Dittmar, yes; Mr. Schiavone, yes. Motion passed. (*Exhibit K, March 4, 2014 Zoning Board Minutes*)

85. The Robeys were able to halt the construction on the project to make “minor modifications and improvements.” The Robeys have been told by the Township of Franklin that an investigation is ongoing. however, this appears to be untrue.
86. Upon inspection of the site thereafter, Wilkinson wrote a letter addressed to the Township Zoning Officer Robert Berducci and Township Solicitor, Timothy

Scaffidi, outlining his findings. (Exhibit L, March 17, 2014 Letter from Wilkinson to Berducci and Scaffidi).

87. Wilkinson explained, "The parcels of land, including, but not limited to 130 Morris Avenue, are located at the natural low point, and this area is prone to flooding. There are no drainage structures or pipes beneath Morris Avenue or Rt 40 to permit positive drainage from this corner." (Exhibit L)
88. Wilkinson noted that Falciani's warehouse facility ***had recently completed a number of site improvements using impermeable material*** that "may adversely impact downstream drainage." (Exhibit L)
89. These recent improvements were the paving of areas with asphalt by John Gravenor employed by and/or operating the company which did the construction, i.e., Asphalt Paving Corp.
90. ***Wilkinson also noted that in reviewing files at the planning board, they could not "find any documentation or engineering reports that support the construction of such a large area of new impervious areas." He found that the "low-lying area completely floods, and eventually encroaches on private lands."*** (Exhibit L)
91. **It was determined that the site improvements by Falciani were made without proper planning board approval.** (Exhibit L)
92. ***Wilkinson recommended that the Township "enforce the original approvals for this site expansion, which consists of a clean stone parking area with no increase in impervious areas."*** (Exhibit L)

93. In May 13, 2014, Wilkinson wrote to Mayor Leopardi, Township Committed members, and Berducci with the findings of his investigation. (Exhibit M, May 13, 2014 Letter).
94. Wilkinson's May 13, 2014 report report notes that Falciani's retention basin constructed in recent years and adjusted at the direction of the State of New Jersey, Department of Transportation, "becomes inundated with off-site upstream runoff[.]" Wilkinson states that the "basin is an issue that should be reviewed and assessed by the Soil Conservation District and State Department of Agriculture," who are copied on the letter. (Exhibit M)
95. To date, the Robeys' home and surrounding property continues to flood most every time it rains.
96. On or about April 14, 2014 Falciani was cited by the Township of Franklin with violation of zoning laws for installation of asphalt paving by John Gravenor, the Chairman of the Zoning Board of Adjustment for Franklin Township through his

company, Asphalt Paving Corp. as follows:



Township of Franklin
Community Development Dept.
1571 Delsea Dr.
Franklin, NJ 08322
856-694-1234

FALCIANI, VINCENT J JR & EILEEN
PO BOX 708
MALAGA, NJ 08328

04/14/14

Re: Site Address: 2676 HARDING HWY
Site City: Franklin
Block: 5065 Lot: 6 Qual:
Reference No.: 20140017
Comply by: 05/15/2014

Please be advised that you have been found in violation of the following code(s). See Attachments.

Complaint Details:

Installed asphalt paving without approvals.

Very Truly Yours

Robert Berducci

Sent by Certified Mail: 70123050000023201125

Agent	☒
Addressee	☒
Date of Delivery	4/14/14
Yes	☒
No	☐
for Merchandise	☐
Yes	☐
No	☐

97. (Exhibit N, April 14, 2014 Notice of Violation by Township of Franklin to Falciani for Paving without approvals.)

98. The Notice of Violation issued by Franklin Township to Falciani provided a deadline date of May 15, 2014 by which Falciani was to have become in compliance with the zoning codes.

2015: Falciani Continues to Pave with Asphalt and Disregards The Tp. Engineer's Cease and Desist Order.

99. In 2015, for just about every month, the Robeys have experienced flooding to the extent that it has captured media attention.

100. The conditions created by Falciani by the constant expansion and paving with impermeable materials continues to worsen and worsen the conditions that cause the near constant flooding to the Robey's property.

101. The Robeys are not able to sell their home. It is not even marketable. The Robeys are trapped in desperation and live within a home that may fairly be characterized as swamp flood land.

102. Their pleas to Township officials are largely ignored and Tp officials refuse to assist., enforce the zoning ordinance despite several attempts by the Robey's to enforce compliance.

103. The Robeys have filed municipal court and zoning violations complaints. These have been ignored.

LEGAL CLAIMS

Count I

Fraud, Conflict of Interest and Manifest Abuse of the Zoning Power as to Defendants John Gravenor, Asphalt Paving Corp and Falciani and Falciani Farmer's Packing Supply, Inc.

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

105. Under the New Jersey Constitution, the state legislature is authorized to adopt laws to protect the public health, safety, morals, and general welfare of the people.

106. The legislature has, in turn, delegated significant authority to regulate land use to the local level. Specific authority has been delegated to municipalities to adopt comprehensive plans and zoning laws and to adopt subdivision and site plan regulations. General authority to legislate with regard to the public health, safety and welfare and the physical environment is delegated under the General Municipal Law.

107. The Zoning Board of Adjustment of the Township of Franklin is a governing body whose members are appointed in accordance with the zoning ordinance and local law.

108. Zoning Board members are meant to implement the municipality's development objectives and protect the health, safety and general welfare of the people, it follows that there are strict rules governing the actions of the Zoning Board of Adjustment members as it pertains to the enforcement of the zoning laws.

109. Defendant John Gravenor and Defendant Asphalt Paving Corp. committed fraud, ethics violations and engaged in a manifest abuse of power in the use of Governor's position as Chair of the Zoning Board to financially benefit himself, Asphalt Paving Corp. and the interests of Falciani by by-passing and/or violating and/or permitting the zoning laws to be violated as more fully described above.

110. As a direct and proximate result of the Defendants, Gravenor, Asphalt Paving Corp., Falciani and Falciani's Farmer's Packing Supply, Inc., the Robeys have suffered material hardships including those that have caused damages in the form of financial, personal and real property.

WHEREFORE, Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon them by Defendants, including, but

not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants illegal acts, attorney's fees and costs of suit, punitive damages and any other damages the Court deems fair and just.

Count II

Nuisance and Continuing Storm Water Trespass-Defendants, Gravenor, Asphalt Paving Corp., Falciani and Falciani's Farmer's Packing Supply, Inc.

111. The above paragraphs are incorporated herein as if set forth at length.
112. "The essence of a private nuisance is an unreasonable interference with the use and enjoyment of land." Sans v. Ramsey Golf & Country Club, Inc. 29 N.J. 438, 448 (1959).
113. A dangerous condition is defined as "a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which is it reasonably foreseeable that it will be used." N.J.S.A. 59:4-1(a).
114. In the present instance, Defendants have created a nuisance and failed to remedy the situation so as to prevent water on Defendant Falciani's property and the overflow water created by same and from the off-site overflow of water created by the Defendant's actions causing an excess of water flowing over to the Robeys' property, resulting in unsafe physical conditions and significant property damages to the Robeys' home and surrounding property.

115. No landowner (public or private) has a right to use his or her land in a manner that substantially interferes, in a physical sense, with the use of adjacent lands.

116. "Reasonable" conduct is usually no defense against a nuisance suit, although reasonableness is relevant to a determination of nuisance in some contexts and the type of relief available. Principal activities which increase natural hazard losses on adjacent lands and may be subject to nuisance suits include: dikes, dams, levees, grading, construction of roads and other land alterations which increase flood heights and velocities on other lands; erosion control structures such as groins and seawalls which increase erosion and/or flooding on other lands; and mudslide, landslide, and other ground failure structures that increase rather than decrease damages on adjacent lands.

117. The above acts describe a physical invasion of private property such as to render Robey's property uninhabitable due to the excessive flooding.

118. Defendants, Falciani and Falciani's Farmer's Packing Supply Inc., Gravenor and Asphalt Paving Corp. have caused substantial damage to the Robey's land by increasing the flow of surface water and/or by channeling that flow to a point other than the point of natural discharge.

WHEREFORE, Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon them by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and

daily stress caused by Defendants illegal acts, attorney's fees and costs of suit, punitive damages and any other damages the Court deems fair and just.

Count III

Negligence-Falciani and Falciani's Farmer's Packing Supply Inc.

119. The above paragraphs are incorporated herein as if set forth at length.
120. Defendants Falciani and Falciani's Farmer's Packing Supply Inc are negligent for the damage caused by their actions as described in more detail above.
121. Defendants have a duty to other members of society, including the Robeys, to act "reasonably" in a manner so as not to cause damage to other members of society.
122. Defendants have created an unreasonable risk of injury and damage to Plaintiffs.
123. Defendants have created a risk of harm, injury and damage that is unreasonable such as paving and other land alterations which are in violation of zoning codes such that Defendants actions have created flood inducing hazard.

WHEREFORE, Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon them by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants illegal acts, attorney's fees and costs of suit, punitive damages and any other damages the Court deems fair and just.

Count IV

Action in lieu of Prerogative Writs to Compel the Township of Franklin Zoning Board and Zoning Officer Robert Berducci to Enforce Zoning Code and to Protect the Safety and Welfare of its Residents

124. The above paragraphs are incorporated herein as if set forth at length.
125. Defendants the Franklin Township Zoning Board of Adjustment and Zoning Code Enforcement Officer, Robert Berducci have disregarded Plaintiffs' repeated complaints that a neighboring property owner was ignoring applicable zoning restrictions, construction codes, and flood water and/or storm water protection ordinances, to the detriment of Plaintiffs and their property.
126. Defendants knew or should have known that at all relevant times Defendants Falciani and Falciani's Farmer's Packing Supply Inc have violated the following laws: (1) Ordinance 0-005-07 Stormwater Control Ordinance for Franklin Township; (2) Ordinance Code § 151-33 and -36; (3) Township Ordinance Code §202-2; (4) Township Ordinance Code §226- 3 and -4; (5) Township Ordinance Code §226-8; §253-20 through 32; Township Ordinance Code §253-77;(6) Township Ordinance Code § 253-190.0; (7) Township Ordinance Code §295-1; (8) Township Ordinance Code §295-4 and -7; (9) Township Ordinance Code §302-3; (10) Township Ordinance Code § 325-3; (11) Township Ordinance Code §333-7; (12) Township Ordinance Code § 360-29; (13) Township Ordinance Code §364-2; (14) Township Ordinance Code §404-2 (F) ;and, (15) N.J.A.C. 7:8-1.1 et seq.
127. Mandamus is available where, as here, there is a clear violation of a zoning ordinance that has especially affected the plaintiff, and the agency or agency

personnel have failed to respond to that violation despite having been notified of that violation.

128. The Writ of Mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities.

129. Moreover Defendants have issued notice of violation to Falciani on or about April 14, 2014 for improperly paving with asphalt and have not enforced the violation notice against Falciani nor otherwise required the removal of the asphalt despite having received repeated complaints and concerns and requests for assistance by Plaintiffs who are adversely affected by the dangerous condition created by the zoning ordinance violation.

130. Plaintiffs are not required to exhaust administrative remedies. Since this case arises from municipal inaction, rather than any affirmative act of the local government, there is no “realistic alternative form of administrative relief” to exhaust, and a prerogative writ suit in lieu of mandamus is proper. See, *Mullen v. The Ippolito Corporation*, 428 N.J. Super. 85 (App. Div. 2012).

131. Plaintiffs seek a Court Order compelling Defendants Township of Franklin Zoning Board and Zoning Officer Robert Berducci to Enforce Zoning Code and Ordinances so as to prevent, stop and remedy the flooding caused by the dangerous condition created by Defendants Falciani and Falciani’s Farmer’s Packing Supply, Inc. which has especially affected Plaintiffs as more fully described above.

WHEREFORE, Plaintiffs demand judgment against the Defendants for:

a. An Order in lieu of prerogative writs requiring Defendants to enforce the zoning laws and ordinances against Defendant Falciani so as to stop, prevent and remedy the flooding caused by the creation of the dangerous condition of Defendant Falciani's land;

b. A mandatory injunction requiring Defendants to enforce any and all notice violations issued against Falciani;

c. For costs of suit and fees to reimburse Plaintiffs for having to file this action, and for other relief the Court deems fair and just.

DESIGNATION OF TRIAL COUNSEL

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

JURY DEMAND

The plaintiff hereby demands a trial by jury on all of the triable issues of this complaint.

MY RIGHTS LAWYERS, LLC

By: _____

MICHELLE J. DOUGLASS, ESQ.
Attorney for Plaintiff

Date: August 13, 2015

My Rights Lawyers, LLC

Michelle J. Douglass, Esq.

424 Bethel Road

Somers Point, New Jersey

Phone 609 788-3595; Facsimile 609 788-3599

Email: mjd@myrightslawyers.com

Attorneys for Plaintiffs', Michelle Robey & Joseph Robey

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY VICINAGE OF CAMDEN**

MICHELLE ROBEY and JOSEPH ROBEY,	
Plaintiffs',	Civil Action No.: 1:15-cv-03620-JBS-AMD
vs.	NOTICE OF VOLUNTARY DISMISSAL
THE STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION, THE TOWNSHIP OF FRANKLIN, and VINCENT FALCIANI, JR.,	
Defendants'.	

**NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE PURSUANT TO
F.R.C.P. 41(a) (1) (A) (i)**

PLEASE TAKE NOTICE that Plaintiffs', MICHELLE ROBEY and JOSEPH ROBEY, ("Plaintiffs"), pursuant to Federal Rule of Civil Procedure 41(a)(1), hereby voluntarily dismisses all Federal Claims asserted in the Complaint in this action without prejudice as to all Defendants.

Defendants have not answered Plaintiff's Complaint, nor filed a motion for summary judgment. Accordingly, this matter may be dismissed without prejudice and without an Order of the Court.

MY RIGHTS LAWYERS, L.L.C.
Attorneys for Plaintiffs',
Michelle Robey & Joseph Robey

/s/ Michelle J. Douglass,

Michelle J. Douglass, Esq.

Date: August 25, 2015

CERTIFICATE OF SERVICE

I, Andrea Ely, certify that on August 25, 2015, I served the above and foregoing Plaintiff's Notice of Voluntary Dismissal Without Prejudice Pursuant to Federal Rule of Civil Procedure 41(a) (1), by causing true and accurate copies of such paper to be filed and transmitted to the persons shown below via the Court's CM/ECF electronic filing system, on this the 24th day of August, 2015.

**Robert A. Baxter, Esquire
Craig, Annin, & Baxter
41 Grove Street
Haddonfield, New Jersey 08033**

**Andrew Kuntz, D.A.G.
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 116
Trenton, New Jersey 08625**

**Angelo J. Falciani, Esquire
39 South Broad Street, Suite #3
Woodbury, New Jersey 08096**

Dated: August 25, 2015

/s/ Andrea Ely

Andrea Ely, Legal Assistant to
Michelle J. Douglass, Esquire

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**LOMURRO, MUNSON, COMER, BROWN
& SCHOTTLAND, LLC**

4 Paragon Way, Suite 100

Phone: (732) 414-0300

Fax: (732) 431-4043

Attorneys for Plaintiffs

MICHELE HARDING as Administratrix ad
Prosequendum for the heirs-at-law of
MATTHEW MCKLOSKEY, deceased,
Administratrix of the Estate of MATTHEW
MCKLOSKEY, deceased, and MICHELE
HARDING, Individually,

Plaintiffs.

vs.

FRANKLIN TOWNSHIP, NICHOLAS
LOCILENTO, GLOUCESTER COUNTY
SEAN DALTON and JOHN/JANE DOE(S)
1-15,

Defendants.

CIVIL ACTION

Civ. No.: 1:15-cv-04171-JHR-AMD

**THIRD AMENDED
COMPLAINT AND JURY DEMAND**

INTRODUCTION

This action under 42 U.S.C. § 1983 and additional state law claims related to
Matthew McCloskey being struck and killed by the police cruiser of Officer
Nicholas Locilento on an unsafe road.

PARTIES

6. 1. Plaintiff, Michelle Harding as administrator for the Estate of Matthew
McCloskey, and an individual with an address at 133 Elmer Street,
Franklinville, NJ, 08322.

- A** 2. Defendant, Franklin Township is a public municipal body and corporation within the State of New Jersey located in Gloucester County with an address of 1581 Delsea Drive, Franklinville New Jersey, 08322 that owns, operates, manages, directs and controls the Franklin Township Police Department which employed and all relevant times Nicholas Locilento and the currently unnamed and unknown Police officers and administrators referred to in the caption above who has received notice pursuant to Pursuant to N.J.S.A. 59:8-8.
- 6.** 3. Defendant, SEAN DALTON of the Gloucester County Prosecutors Office, is a governmental entity of the STATE OF NEW JERSEY with 70 Hunter St. Woodbury, NJ 08096, who has received notice pursuant to Pursuant to N.J.S.A. 59:8-8.
- A.** 4. NICHOLAS LOCILENTO is an employee and/or agent of FRANKLIN TOWNSHIP, acting under the color of state, county, township and/or other entities law, statutes, ordinances, polices, regulations and/or procedures and are being sued in his official and individual capacity.
- 6.** 5. At all times relevant herein, defendant, GLOUCESTER COUNTY, was and is a public entity organized and existing pursuant to the laws of the State of New Jersey, with a place of business at 2 South Broad Street, Woodbury, New Jersey, 08096.
- 6.** 6. Defendants, JOHN/JANE DOE(S) 1-15, fictitious names, are and at all times relevant to this action are individuals, corporations, business entities, parties, government employees, builders, contractors, servants, agents employees, owners, operators, police officers, safety officers, sergeants and/or any other member of the Police Department, vehicle safety officers, supervisors, managers, and/or any other person entrusted with the hiring, supervision, maintenance, staffing, route management, policy and/or procedure management for the Township of Franklin or State of New Jersey related to the incident in this complaint acting under the color of state, county, township and/or other entities,

statutes, ordinances, policies, regulations and/or procedures and are being sued in his official and individual capacity.

JURISDICTION AND VENUE

- I.** 7. All prior paragraphs are adopted by reference and realleged as though fully set forth.
- E.** 8. This action is brought pursuant to 42 U.S.C. § 1983. Jurisdiction is based on 28 U.S.C. § 1331 and 1343(a)(1), (3) and (4) and the aforementioned statutory provision.
9. Plaintiff further invokes the supplemental jurisdiction of this Court to hear and adjudicate state law claims pursuant to 28 U.S.C. § 1367 (a).
10. Venue is proper under USC 1391 (b)(1) and (2) pursuant to the parties residing and the incident occurring in Gloucester County, New Jersey.

FACTUAL ALLEGATIONS

- I.** 11. All prior paragraphs are adopted by reference and re-alleged as though fully set forth herein.
- A.** 12. On or around, December 28, 2014, in or around 7:00pm, MATTHEW MCKLOSKEY, was walking with two friends from a location close to his home on 133 Elmer St, Franklinville, NJ in or around the 3100 block of Delsea Drive, Franklinville, New Jersey 08322.
- F.** 13. Matthew was 10 years old and a child of tender years.
14. The two friends were also minors and their names are intentionally left out to protect their identity.
15. Matthew was walking less than a mile away from where he had started walking.
- E.** 16. Matthew's route required him to cross Route 47 also known as Delsea Drive to get to the home.

8. 17. At the time Matthew was crossing Delsea Drive/Rt 47, a Franklin Township Police Officer, who at all times relevant was acting under the scope of his employment and color of law, was driving in or around 80 mph on Rt. 47/Delsea Drive responding to a non-emergency call on Willow Grove Road.
8. 18. The Officer was NICHOLAS LOCILENTO who had fairly recently been hired by Franklin Township.
8. 19. Officer NICHOLAS LOCILENTO, pursuant to the procedures and policies of the police department, had complete discretion as his speed limit, use of lights, use of sirens and related safety precautions to better be in control of his vehicle and/or alert the general public as to his speed.
8. 20. Officer NICHOLAS LOCILENTO with an understating that:
- i. He was responding to a non-emergency call that was less than three miles away.
 - ii. He was driving in or around 80 mph.
 - iii. It was dark. (around 7:00pm)
 - iv. It was raining (pursuant to Weather Data)
 - v. There were less than ideal road conditions (rain covered roads)
 - vi. There were children of tender years living and playing in the neighborhood (30% of the population in the county were minors according to census data)
8. 21. Officer NICHOLAS LOCILENTO with an understanding of these factors used his discretion to drive in or around 80 mph without lights and sirens given the aforementioned conditions.
8. 22. Officer NICHOLAS LOCILENTO made this decision based all or in part on the directions, policy, training and procedures of the Franklin County Police Department and/or Gloucester County.

- 6. 23. The risk of death to Matthew, a child of tender years, was further exacerbated by the failure of the NEW JERSEY DEPARTMENT OF TRANSPORTATION to act and thus create safe conditions for its residents.
- 6. 24. Despite Delsea Drive/Rt. 47 crossing through a residential neighborhood with a school and a significant population of minor children, Matthew McKloskey did not have the aide of reduced speed, proper signage, rumble strips, pedestrian crossing and/or other related safety precautions for the residents despite the makeup of the neighborhood on his travel home.
- D. 25. The State of New Jersey and all relevant government entities were on notice of the dangers of this road pursuant to letters and proposed legislation sent by politicians proposing changes and national data reports indicating the RT. 47 is the most dangerous road in the County.
- D. 26. Despite this knowledge and warning, The State of New Jersey and all relevant

government entities failed to act.

- D. 27. The injuries were the proximate result of the actions of the Defendants.
- D. 28. Matthew died as a result of the failings of the Defendants.

FIRST CAUSE OF ACTION

MONELL ALLEGATIONS TOWARDS FRANKLIN TOWNSHIP AND SEAN DALTON AS TO THE POLICES AND PROCEDURES OF THE FRANKLIN TOWNSHIP POLICE DEPARTMENT (BOTH JOINTLY AND SEVERALLY) (42 U.S.C. § 1983)

- I. 29. All prior paragraphs are adopted by reference and re-alleged as though fully set forth.
- D. 30. Based upon the principles set forth in *Monell v New York City Department Of Social Services*, 436 U.S. 658, FRANKLIN TOWNSHIP and SEAN DALTON, through the Gloucester County Prosecutors Office, whether jointly or severally, through it employees, agents and/or any other party failed in its duties when it failed to properly train, monitor, provide adequate supervision, and/or otherwise manage its employees on:
 - a. The proper policies, practices and procedures in responding to non-emergency calls. Including but not limited to allowing complete discretion to rookie officers as to their speed limit, use of lights, use of sirens and related safety precautions to better be in control of his vehicle and/or alert the general public as to his speed. Including but not limited to failure to include policies and procedures related to the road conditions, weather, experience of the officer and type of neighborhood;
 - b. The monitoring of police officers whom it knew or should have known were suffering from emotional and/or psychological problems which impaired their ability to function as officers.
 - c. The failure to identify and take remedial, training or disciplinary action against police officers who were subject of prior civilian or internal complaints of misconduct.

d. FRANKLIN TOWNSHIP AND SEAN DALTON, through the Gloucester County Prosecutors Office, whether jointly or severally, as alleged in the Factual Allegations, violated the rights, privileges, and immunities secured by the Constitution and laws of the United States, including but not limited those secured by the Fourth amendment to the Constitution.

- B. 31. The policies and procedures were those of Franklin County.
- B. 32. The aforesaid Policies and Procedures were developed by Franklin County and The Gloucester County Prosecutors Office.
- E. 33. A quote from Mike Rock, former police chief, makes a statement indicating the Gloucester County Prosecutors Office participated in making the policies and procedures.
- E. 34. A quote from Franklin Township Police Chief Mike Rock:
"I certainly anticipate, based on a conversation that I had with prosecutor (Sean) Dalton, that the policy review is going to be a big part of their recommendations"
- E. 35. This is an admission from the Police Chief at the time that Sean Dalton and the Gloucester County Prosecutors Office played a part in developing the Policies and Procedures as, again, "Dalton's review will be a big part"
- G. 36. Sean Dalton, through the prosecutor's office played a big part in the policies and procedures.
- E. 37. This is in addition to Franklin Township who developed the Policies and procedures as to Emergency and Non-Emergency Calls.
- D. 38. "[T]he need for more or different training [was] so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need." City of Canton, 489 U.S. at 390, 109 S.Ct. at 1205.
- D. 39. Further, Franklin Township and SEAN DALTON, through the Gloucester County Prosecutors Office, whether jointly or severally created a custom and/or culture that led to the reckless, callous and/or deliberate indifference of the

Police Officers in regards to implementing safety procedures while on non-emergency calls to prevent the injury of citizens.

- D. 40. The Defendants have by the above described actions were the proximate cause of Matthews injuries and deprived Plaintiff of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. §1983.
- D. 41. The injuries were the proximate result of the actions of the Defendants.
- D. 42. Matthew died as a result of the failings of the Defendants.

WHEREFORE, Plaintiff requests compensatory damages, punitive and/or other available damages along with Reasonable Attorney's Fees and costs and such other and further relief as appears reasonable and just. A jury trial as to each Defendant as to each count.

SECOND CAUSE OF ACTION

NICHOLAS LOCILENTO IN HIS INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY BOTH JOINTLY AND SEVERALLY IN VIOLATION OF THE CIVIL RIGHTS OF MATTHEW MCKLOSKY

- I. 43. Plaintiff incorporates all prior paragraphs as though fully set forth herein.
- B. 44. NICHOLS LOCILENTO used "reckless or callous indifference" in his decision to drive in or around 80 mph without lights or sirens given the aforementioned factors when he left the Franklin Township Police Station. Conduct is in reckless disregard of the plaintiff's rights it: under the circumstances, it reflects complete indifference to the plaintiff's safety and/or rights of Matthew in the face of a perceived risk of harm and right to life in violation of federal law.
- B. 45. The Defendant has either through his aforementioned actions or in conjunction with other factors was the proximate cause of Matthew's death and deprived Plaintiff of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff requests compensatory damages, punitive and/or other available damages along with Reasonable Attorney's Fees and costs and such other and further relief as appears reasonable and just. A jury trial as to each Defendant as to each count.

**THIRD CAUSE OF ACTION PLAINTIFFS V. FRANKLIN
TOWNSHIP NEGLIGENT TRAINING
(Jointly and/or severally)**

- I.** 46. Plaintiff incorporates all prior paragraphs as set forth fully herein.
- B.** 47. Defendants Franklin Township, Franklin Township Police Department, jointly and/or severally whether intentional, negligent, careless or reckless in failing to afford employees and/or other agents the proper and special training necessary for the duties they could foreseeably be expected to perform in the course of the employment in that defendants received inadequate training regarding the response to non-emergency calls and calls generally.
- B.** 48. The actions were the custom or policies of the Franklin County and the Police Department.
- D.** 49. The Defendants either through his aforementioned actions or in conjunction with other factors were the proximate cause of Matthew's injuries and subsequent death.

WHEREFORE, plaintiffs demands judgment against defendant, plus interest and costs for actual, compensatory, punitive, delay and all other relevant damages to be determined by the court.

**FOURTH CAUSE OF ACTION
PLAINTIFFS V. FRANKLIN TOWNSHIP RESPONDENT SUPERIOR
(Jointly and Severally)**

- I.** 50. Plaintiff incorporates all prior paragraphs as set forth fully herein.

- D. 51. At all times material and relevant herein and at the time that the individual defendant(s) committed the intentional, negligent and/or reckless acts described herein, the individual defendants were acting within the scope of their authority and employment as employed police officers and/or other agents, employees, managers, directors and/or other agents and servants of Franklin Township in pursuance of the authority given such employees by defendants and such employees were acting or attempting to act in the interest of defendants and pursuant to instructions and/or inaction of Franklin Township.
- D. 52. Defendants Gloucester County and Franklin Township, Franklin Township Police Department, jointly and/or severally is liable in respondent superior.
- D. 53. Defendants Gloucester County and Franklin Township, Franklin Township Police Department, jointly and/or severally as a direct and proximate and/or in conjunction with others through their aforementioned actions and/or in conjunction with other factors described above, decedent's body was severely injured, and as a further direct and proximate result of defendant's negligence, decedent died.

WHEREFORE, plaintiff's demands judgment against defendant, plus interest and costs for actual, compensatory, punitive, delay and all other relevant damages to be determined by the court.

**FIFTH CAUSE OF ACTION
PLAINTIFFS V. NICHOLAS LOCILENTO
WRONGFUL DEATH AND SURVIVAL ACTION**

- I. 54. All prior paragraphs are hereby incorporated by inference.
- B. 55. The NICHOLAS LOCILENTO whether intentional, negligent, careless or reckless did not respond to the non-emergency call in an appropriate manner when he drove in or around 80 mph without light or sirens with an understating that:

vii. He was responding to a non-emergency call that was less than three miles away.

viii. It was dark. (7:00pm)

ix. It was raining (pursuant to Weather Data)

x. There were less than ideal road conditions (rain covered roads)

xi. There were children offender years living and playing in the neighborhood (30% of the population in the county were minors according to census data)

B. 56. The NICHOLAS LOCILENTO as a direct and proximate result through their aforementioned actions and/or in conjunction with other factors described above, decedent's body was severely injured, and as a further direct and proximate result of defendant's negligence, decedent died.

F. 57. Decedent is survived by Michelle Harding, mother, who is entitled to take decedent's intestate personal property, and who have suffered pecuniary injury, including the loss of decedent's financial support, as a direct and proximate result of decedent's death.

D. 58. The Defendants either through his aforementioned actions or in conjunction with other factors were the proximate cause of Matthew's injuries and subsequent death.

A. 59. Decedent's death occurred on December 28, 2104. This action was commenced on within two years of descendant's death.

F. 60. Matthew, at the time of his death, was 10 years of age, in good health, able-bodied, with a substantial earning power, and having a long life expectancy; he was living with the plaintiff, who was entitled to his services and earnings, as well as to the care, comfort and support that Matthew would have been able to furnish the plaintiff; by reason of the defendant's negligence.

- D.** 61. The defendants have deprived the plaintiff, as the mother of Matthew, of the services, support, care, loss of the child's companionship, advice, future financial support and attention of Matthew and plaintiff has incurred hospital, medical and funeral expenses on behalf of the deceased, all to plaintiff's damage.
- E.** 62. The pain and suffering and other loss experienced by the decedent from the time of the alleged negligence and resulting injury until the time of death.

WHEREFORE, plaintiff's demand judgment against defendant, plus interest and costs for actual, compensatory, punitive, delay and all other relevant damages to be determined by the court. In addition but not limited to damages specifically entitled and plead herein pursuant to N.J.S.A. 2A:15-3 related to recoverable Damages listed within the statute.

**SIXTH CAUSE OF ACTION
PLAINTIFFS V. NICHOLAS LOCILENTO
NEGLIGENCE**

- I.** 63. Plaintiff incorporates all prior paragraphs as set forth fully herein.
- I.** 64. All prior paragraphs are hereby incorporated by inference.
- B.** 65. NICHOLAS LOCILENTO whether intentional, negligent, careless or reckless did not respond to the non-emergency call in an appropriate manner when he drove in or around 80 mph without light or sirens with an understating that:
- xii. He was responding to a non-emergency call that was less than three miles away.
 - xiii. It was dark. (7:00 pm)
 - xiv. It was raining (pursuant to Weather Data)
 - xv. There were less than ideal road conditions (rain covered roads)
 - xvi. There were children of tender years living and playing in the neighborhood
(30% of the population in the county were minors according to census data)

- B.** 66. That NICHOLAS LOCILENTO as a direct and proximate result through their aforementioned actions and/or in conjunction with other factors described above, decedent's body was severely injured, and as a further direct and proximate result of defendant's negligence, decedent died.

WHEREFORE, Plaintiffs demands judgment against defendant, plus interest and costs for actual, compensatory, punitive, delay and all other relevant damages to be determined by the court.

**SEVENTH CAUSE OF ACTION
PLAINTIFFS V. FRANKLIN TOWNSHIP
WRONGFUL DEATH AND SURVIVAL ACTION**

- I.** 67. All prior paragraphs are adopted by reference and realleged as though fully set forth.
- B.** 68. FRANKLIN TOWNSHIP through its employees, agents and/or any other party failed in its duties when it failed to properly train, monitor, provide adequate supervision, and/or otherwise manage its employees on:
- e. The proper policies, practices and procedures in responding to non-emergency calls. Including but not limited to allowing complete discretion to rookie officers as to their speed limit, use of lights, use of sirens and related safety precautions to better be in control of his vehicle and/or alert the general public as to his speed. Including but not limited to failure to include policies and procedures related to the road conditions, weather, experience of the officer and type of neighborhood;
 - f. The monitoring of police officers whom it knew or should have known were suffering from emotional and/or psychological problems which impaired their ability to function as officers.
 - g. The failure to identify and take remedial, training or disciplinary action against police officers who were subject of prior civilian or internal complaints of misconduct.

- h. FRANKLIN TOWNSHIP as alleged in the Factual Allegations, violated the rights, privileges, and immunities secured by the Constitution and laws of the United States, including but not limited those secured by the Fourth amendment to the Constitution.
- B.** 69. "[T]he need for more or different training [was] so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need." City of Canton, 489 U.S. at 390, 109 S.Ct. at 1205.
- 6.** 70. Further, Franklin Township and Gloucester County, whether jointly or severally created a custom and/or culture that led to the reckless, callous and/or deliberate indifference of the Police Officers in regards to implementing safety procedures while on non-emergency calls to prevent the injury of citizens.
- 6.** 71. The Defendants have by the above described actions were the proximate cause of Matthew's injuries and deprived Plaintiff of rights.
- 6.** 72. The injuries were the proximate result of the actions of the Defendants.
- 6.** 73. Matthew died as a result of the failings of the Defendants.
- F.** 74. Decedent is survived by Michelle Harding, mother, who is entitled to take decedent's intestate personal property, and who have suffered pecuniary injury, including the loss of decedent's financial support, as a direct and proximate result of decedent's death.
- 6.** 75. The Defendants either through his aforementioned actions or in conjunction with other factors were the proximate cause of Matthew's injuries and subsequent death.
- A.** 76. Decedent's death occurred on December 28, 2104. This action was commenced on within two years of descendant's death.

F. 77. Matthew, at the time of his death, was 10 years of age, in good health, able-bodied, with a substantial earning power, and having a long life expectancy; he was living with the plaintiff, who was entitled to his services and earnings, as well as to the care, comfort and support that Matthew would have been able to furnish the plaintiff; by reason of the defendant's negligence.

D. 78. The defendants have deprived the plaintiff, as the mother of Matthew, of the services, support, care, loss of the child's companionship, advice, future financial support and attention of Matthew and plaintiff has incurred hospital, medical and funeral expenses on behalf of the deceased, all to plaintiff's damage.

E. 79. The pain and suffering and other loss experienced by the decedent from the time of the alleged negligence and resulting injury until the time of death.

WHEREFORE, plaintiff's demands judgment against defendant, plus interest and costs for actual, compensatory, punitive, delay and all other relevant damages to be determined by the court. In addition but not limited to damages specifically entitled and plead herein pursuant to N.J.S.A. 2A:15-3 related to recoverable Damages listed within the statute.

EIGHTH CAUSE OF ACTION

MONELL CLAIMS AGAINST GLOUCESTER COUNTY

I. 80. Plaintiff incorporates the averments of paragraphs 1 through 79 as if fully set forth at length herein.

G. 81. Based upon the principles set forth in Monell v. New York City Department of Social Services, 436 U.S. 658, defendant GLOUCESTER COUNTY either individually or jointly with the other defendants, whether intentional, negligent, careless or reckless, through the actions of defendant Gloucester County Prosecutor SEAN DALTON or other agents, servants and employees

of GLOUCESTER COUNTY failed in their duties and violated MATTHEW MCKLOSKEY's civil rights by:

a. failing to establish policies, practices and procedures in responding to non-emergency calls. Including, but not limited to, allowing complete discretion to rookie officers as to their speed limit, use of lights, use of sirens and related safety precautions to better be in control of their vehicle and/or alert the general public as to their speed; and the failure to include policies and procedures related to the road conditions, weather, experience of the officer and type of neighborhood within which the officer is traveling. The policies and procedures developed by the defendants allowed the officers of defendant FRANKLIN TOWNSHIP, including defendant, NICHOLAS LOCILENTO, to act with reckless, callous, deliberate indifference and/or willful disregard to the safety of the public in response to non-emergency calls as to fail to prevent injuries of citizens.

b. failing to provide adequate training regarding the response to non-emergency calls. Including, but not limited to, allowing complete discretion to rookie officers as to their speed limit, use of lights, use of sirens and related safety precautions to better be in control of their vehicle and/or alert the general public as to their speed; and the failure to include policies and procedures related to the road conditions, weather, experience of the officer and type of neighborhood within which the officer is traveling.

c. monitoring of police officers whom it knew or should have known were suffering emotional and/or psychological problems which impaired their ability to function as officers.

d. failing to identify and take remedial, training or disciplinary action against police officers who were subject of prior civilian or internal complaints of misconduct or otherwise put the general public at risk of injury or harm.

e. allowing a dangerous custom or practice to form among the police officers of defendant FRANKLIN TOWNSHIP including defendant, NICHOLAS LOCILENTO, in responding to non-emergency calls. Said dangerous customs and practices include, but are not limited to, allowing police officers including defendant, NICHOLAS LOCILENTO, to use excessive speed in response to non-emergency calls without due regard to road conditions, weather, lighting, and other vehicle and pedestrian traffic.

6. 82. The above actions of defendant GLOUCESTER COUNTY, whether jointly or severally, with other defendants, violated the rights, privileges, and immunities secured by the Constitution and laws of the United States, including but not limited to those secured by the Fourth amendment to the United States Constitution.

6. 83. As a direct and proximate result of the aforesaid actions of defendant, MATTHEW MCKLOSKEY was caused to sustain great conscious pain and suffering, and severe personal injuries resulting in his death.

WHEREFORE, Plaintiffs hereby demand judgment in their favor and against defendant for compensatory damages, punitive damages, attorney's fees pursuant to 42 U.S.C. § 1988, and for costs, fees and any other relief as appears reasonable and just.

NINTH CAUSE OF ACTION

VIOLATION OF ARTICLE I, PARAGRAPH 7 OF THE NEW JERSEY CONSTITUTION AND THE NEW JERSEY CIVIL RIGHTS STATUTE, N.J.S.A. 10:6-1, ET SEQ. AGAINST GLOUCESTER COUNTY

- I. 84. Plaintiff incorporates the averments of paragraphs 1 through 83 as if fully set forth at length herein.

6. 85. The conduct of defendants, GLOUCESTER COUNTY, either individually or jointly with the other defendants as described and outlined in the prior Causes of Actions also constitute violations of Article I, paragraph 7 of the New Jersey Constitution and New Jersey Civil Rights Statute, N.J.S.A. 10:6-1, et seq.

86. As a direct and proximate result of the defendant, GLOUCESTER COUNTY's violations of Article I, paragraph 7 of the New Jersey Constitution and New Jersey Civil Rights Statute, N.J.S.A. 10:6-1, et seq., MATTHEW MCKLOSKEY was caused to sustain great conscious pain and suffering, and severe personal injuries resulting in his death.

WHEREFORE, Plaintiffs hereby demand judgment in their favor and against defendant, GLOUCESTER COUNTY for compensatory damages, punitive damages, and for costs, attorney's fees and any other relief as appears reasonable and just.

TENTH CAUSE OF ACTION

SURVIVORSHIP CLAIM AGAINST GLOUCESTER COUNTY

- I. 87. Plaintiff incorporates the averments of paragraphs 1 through 86 as if fully set forth at length herein.

6. 88. The conduct of defendant, GLOUCESTER COUNTY, either individually or jointly with the other defendants, as described and outlined in the prior Causes of Actions in violating the civil rights of MATTHEW MCKLOSKEY including all violations of 42 U.S.C. § 1983 and Article I, paragraph 7 of the New Jersey Constitution and New Jersey Civil Rights Statute, N.J.S.A. 10:6-1, et seq. therein enumerated in those causes of action and all prior paragraphs of this Complaint, lead to the death of MATTHEW MCKLOSKEY on December 28, 2014.

87. As a direct and proximate result of the aforesaid actions of defendant, GLOUCESTER COUNTY, and decedent MATTHEW MCKLOSKEY was caused to sustain severe personal injuries and great conscious pain and suffering, from the time of the incident until his death.

A. 88. MATTHEW MCKLOSKEY is survived by his mother, MICHELLE HARDING who is his heir-at-law and entitled to his intestate personal property. MICHELLE HARDING was appointed Administratrix of the Estate of MATTHEW MCKLOSKEY and as such, she is entitled to bring this action.

6. 89. Pursuant to N.J.S.A. 2A:15-3, the Estate of MATTHEW MCKLOSKEY is entitled to be compensated for the decedent's conscious pain and suffering from the time of the incident until the time of his death which are a direct and proximate result of the actions of defendant, GLOUCESTER COUNTY.

WHEREFORE, Plaintiffs hereby demand judgment in their favor and against defendant, GLOUCESTER COUNTY for compensatory damages, punitive damages, and for costs, attorney's fees and any other relief as appears reasonable and just.

ELEVENTH CAUSE OF ACTION

WRONGFUL DEATH CLAIM AGAINST GLOUCESTER COUNTY

I. 90. Plaintiff incorporates the averments of paragraphs 1 through 89 as if fully set forth at length herein.

6. 91. The conduct of defendant GLOUCESTER COUNTY, either individually or jointly with the other defendants as described and outlined in the prior Causes of Actions in violating the

civil rights of MATTHEW MCKLOSKEY including all violations of 42 U.S.C. § 1983 and Article I, paragraph 7 of the New Jersey Constitution and New Jersey Civil Rights Statute, N.J.S.A. 10:6-1, et seq. therein enumerated in those causes of action and all prior paragraphs of this Complaint, lead to the death of MATTHEW MCKLOSKEY on December 28, 2014.

6. 92. As a direct and proximate result of the aforesaid actions of defendant GLOUCESTER COUNTY, decedent MATTHEW MCKLOSKEY was caused to sustain great conscious pain and suffering as well as mortal injuries which proved fatal all to the pecuniary damage and economic loss to decedent's dependents and heirs-at-law.

A. 93. MATTHEW MCKLOSKEY is survived by his mother, MICHELLE HARDING who is his heir-at-law and entitled to his intestate personal property and who has suffered pecuniary injury, including the loss of decedent's financial support as a direct and proximate result of decedent's death.

A. 94. MICHELLE HARDING was appointed Administratrix of the Estate of MATTHEW MCKLOSKEY and as such, pursuant to N.J.S.A. 2A:31-2 of the New Jersey Wrongful Death Statute is entitled to bring this action. As Administratrix of the Estate of MATTHEW MCKLOSKEY, MICHELLE HARDING started this action within two years of the death of MATTHEW MCKLOSKEY on December 28, 2014.

F. 95. MATTHEW MCKLOSKEY, at the time of his death, was 10 years of age, in good health, able-bodied, with a substantial earning power, and having a long life expectancy; he was living with the Plaintiff, MICHELLE HARDING, who was entitled to his services and earnings as well as to the care, comfort and support that MATTHEW MCKLOSKEY would have been able to furnish her.

6. 96. Defendant GLOUCESTER COUNTY has deprived Plaintiff, MICHELLE HARDING, as the mother of MATTHEW MCKLOSKEY, of the services, support, care, loss of child's companionship, advice, future financial support and attention of MATTHEW MCKLOSKEY and

Plaintiff has incurred hospital, medical and funeral expenses on behalf of the deceased, all to Plaintiff, MICHELLE HARDING's damage.

WHEREFORE, Plaintiffs hereby demand judgment in their favor and against defendant, GLOUCESTER COUNTY for compensatory damages, punitive damages, and for costs, attorney's fees and any other relief as appears reasonable and just.

TWELFTH CAUSE OF ACTION

RESPONDENT SUPERIOR CLAIM AGAINST GLOUCESTER COUNTY

- I.** 97. Plaintiff incorporates the averments of paragraphs 1 through 96 as if fully set forth at length herein.
- D.** 98. At all times relevant herein and at the time the individual defendants NICHOLAS LOCILENTO, SEAN DALTON and JOHN/JANE DOES 1-15, committed the intentional, negligent and/or reckless acts described herein, the individual defendants were acting within the scope of their authority and employment as police officers, prosecutors, and/or other agents, servants, employees, managers, directors or supervisors of defendant GLOUCESTER COUNTY in pursuance of the authority given such individuals by defendant GLOUCESTER COUNTY and such individuals were acting or attempting to act in the interest of defendant GLOUCESTER pursuant to instructions, commands, orders and/or inactions of defendant GLOUCESTER COUNTY.
- 6.** 99. Defendant GLOUCESTER COUNTY is liable for these individual defendants in respondeat superior.
- 6.** 100. Defendant GLOUCESTER COUNTY as a direct and proximate result and/or in conjunction with others through their aforementioned actions or inactions and/or in conjunction with other factors described herein, caused severe personal injuries to MATTHEW MCKLOSKEY resulting in great conscious pain and suffering, and ultimately the death of MATTHEW MCKLOSKEY.

WHEREFORE, Plaintiffs hereby demand judgment in their favor and against defendant for compensatory damages, punitive damages, and for costs, attorney's fees and any other relief as appears reasonable and just.

DEMAND FOR PUNITIVE DAMAGES

D 6. 101. The actions of the Individual Defendants detailed herein are outrageous, in that they propagated a policy even though they know for act that their actions are unconstitutional.

DEMAND FOR A JURY TRIAL

The Plaintiffs hereby demand a trial by jury as to all issues.

LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC
Attorneys for Plaintiffs

By: 
MATTHEW A. SCHIAPPA, ESQ.

Dated: December 27, 2016

SEP Δs 1 2 3 4 5 6 7 8 9
K, L, M, P, Q, R, 11, 30, 32

TITLE 59

18, 19, 20, 29, 26, 95

10, 11, 12, 13, 14, 15

CIVIL RIGHTS 19 21

2, 4, 5, 10, 11, 12, 13, 14, 26, 27, 31,

16, 17, 18, 20, 22, 23, 24, 25, 26

U JURY DEMAND -

DESIGNATION TRIAL COUNSE

FED CERT

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE, [consisting of four (4) pages] dated **June 26, 2018**, is given:
BY: MICHELE HARDING, as Administratrix Ad Prosequendum for the heirs-at-law of MATTHEW McCLOSKEY, deceased; Administratrix of the Estate of MATTHEW McCLOSKEY, deceased and MICHELE HARDING, individually, collectively referred to in this Release as "I", "me" and Releasor")

TO: FRANKLIN TOWNSHIP; NICHOLAS LOCILENTO; GLOUCESTER, CUMBERLAND AND SALEM COUNTIES MUNICIPAL JOINT INSURANCE FUND and MUNICIPAL EXCESS LIABILITY FUND, (collectively referred to in this Release as "you" and "Releasee"). If more than one person signs this Release, "I", "me", and "Releasor" shall mean each person who signs this Release. "You" and "Release" include any and all agents and employees of each Releasee, and it is specifically intended that all such agents and employees are covered by this Release.

1. RELEASE: I release and give up any and all claims and rights which I may have against you, except those things which may remain to be done according to the terms of this document. This releases all claims and rights which I may have had against you at any time, including any and all claims which are not specifically mentioned in this Release, and any claims and rights which I may hereafter have against you. This Release applies to claims resulting from anything which has happened up to now. More specifically, but not in limitation, I release the following claims:

ANY AND ALL CLAIMS AND RIGHTS WHICH EXIST NOW OR HEREAFTER MAY BE ASSERTED, including but not limited to claims for compensatory and punitive damages, all claims for loss of income, all claims for attorneys fees and costs and all claims for all other losses, including claims of pecuniary loss, injury or damage as those terms are defined in the Wrongful Death Act (N.J.S.A. 2A:31-1 et. seq.), sustained by Releasor, Releasor's estate, Releasor's heirs, and those claiming under the Releasor. It is expressly understood and agreed by me that a substantial reason and consideration for you in settling this matter and agreeing to pay the monies set forth in this Release, is that his settlement, releases and eliminates any and all claims which I or others may have now or in the future, absent this Release, for the death of the Plaintiff in this matter. I further understand and agree that under the present law in New Jersey, absent this Release, my heirs and others may have claims against you for my death. I further understand and agree that by executing this Release and accepting the money set forth below, I acknowledge that I have received fair, just and adequate consideration for all claims, both inter vivo and for the death of Plaintiff. This Release arises out of the incident which is the subject of an action filed in the United States District Court for the District of New Jersey, under Civil Action No. 1:15-cv-04171, entitled MICHELE HARDING, as Administratrix Ad Prosequendum for the heirs-at-law of MATTHEW McCLOSKEY, deceased; Administratrix of the Estate of MATTHEW McCLOSKEY, deceased and MICHELE HARDING, individually (Plaintiffs) v. FRANKLIN TOWNSHIP; NICHOLAS LOCILENTO, GLOUCESTER COUNTY; SEAN DALTON and JOHN/JANE DOES 1-15 (Defendants).

Release and Settlement Agreement
Page Two

I further understand and agree that if any claims are made against you at any time in the future by the Releasor directly, or by others claiming to be beneficiaries, representatives, or heirs of the Releasor, for pecuniary losses or damages and as defined in the Wrongful Death Act, that you shall be entitled to be indemnified by the Releasor, the Releasor's Estate and/or the Releasor's heirs, executors, administrators, and personal representatives for any sums expended in paying any such claims and/or defending against said claims, including but not limited to attorney's fees, all costs of suit, and interest.

I further release and give up any and all claims under Title VII of the Civil Rights Act of 1964 and any other federal, state or local, civil or human rights law or any other local, state or federal law, regulation or ordinance, any provision of any federal or state constitution, any public policy, contract, tort or common law, or any losses, injuries or damages.

In the event I shall receive any monies from any person who thereafter seeks subrogation, contribution, and/or indemnification from you, I shall indemnify and hold you harmless for any money spent in paying and/or defending against these claims, including but not limited to attorneys' fees, costs of suit, and interest.

It is further understood and agreed that the acceptance of said money is in full accord and satisfaction, and in compromise of, all disputed claims, and that the payment thereof is not an admission of liability but is made by the Gloucester, Cumberland and Salem Counties Municipal Joint Insurance Fund and Municipal Excess Liability Fund with the authorization of the Defendants, for the sole purpose of terminating the litigation between the parties.

2. CONFIDENTIALITY: The parties agree that this Release contains no confidentiality agreement.

3. NON-DISPARAGEMENT: The Parties agree not to make any disparaging statements concerning one another, or to defame one another in any manner to any person or entity. The Parties agree not to authorize any person or entity to make any disparaging statements about one another or to defame one another to any person or entity.

4. LIENS: I hereby certify that no liens exist against the proceeds of this settlement that are being paid to me or that if any liens do exist, they will be paid in full, or compromised and released by me from the amount stated in paragraph 5 of this Release. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien, I agree that I will pay that lien in full. This Release is intended to include all liens, including but not limited to attorney's liens, child support liens, medical provider liens, Medicare and Medicaid liens, worker's

Release and Settlement Agreement
Page Three

compensation liens, all statutory or common law liens, and judgment liens. Releasor's attorney has investigated the existence of such liens and I am making this statement based upon information known to me and/or supplied to me by my attorney. Therefore, I agree to indemnify and hold you harmless in connection with any claims made against you by reason of liens against the proceeds of this settlement. In the event a claim is hereafter made against you by anyone seeking payment of liens, the Releasor will indemnify and hold you harmless for any money spent in paying any such liens and/or defending against such a claim, including but not limited to attorney's fees, costs of suit, and interest.

5. PAYMENT: I have been paid a total of **\$1.5 MILLION DOLLARS** in full payment for making this Release. I agree that I will not seek anything further, including any other payment from you.

6. WHO IS BOUND: I am bound by this Release. Anyone who succeeds to my rights and responsibilities, and all heirs, executors, and administrators are also bound. I specifically understand that all of the terms and conditions of the Release are for the benefit of, and are binding upon, me, my heirs, and anyone else who succeeds to our rights and responsibilities. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

7. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT: I represent and warrant that no other person or entity has any interest in the claims, demands, obligations or causes of action referred to in this Release except as otherwise set forth herein, and that I have the sole right and exclusive authority to execute this Settlement Agreement and receive the sum specified in it; and that I have not sold, assigned transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release.

8. ENTIRE AGREEMENT: This Agreement contains the sole and entire Agreement between the Parties other than the document referenced in subsequent paragraph. Plaintiff represents and acknowledges that, prior to executing this Agreement, she consulted with her attorney and that she has had ample time to do so, and that he obtained the advice of her counsel prior to making the decision to execute this Agreement, and that she has not relied upon any representation or statement not set forth in this Agreement made by any other party hereto, or their counsel or representatives, with regard to the subject matter of this Agreement.

As part of this Agreement and in consideration thereof by Plaintiff, Defendant Franklin Township has agreed to pass a municipal Resolution to be effective this year and henceforth wherein Matthew McCloskey will be honored at the annual "Community Day" held in Franklin Township. The Resolution and its specific terms agreed upon by the parties as well as any other documents which need to be executed to effectuate the Resolution will be considered part of this Agreement as if its terms were set forth at length herein.

Release and Settlement Agreement
Page Four

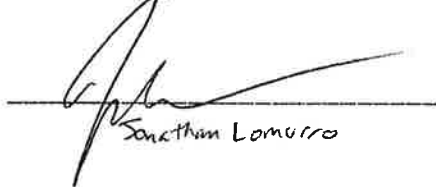
No other promises or agreements shall be binding unless in writing, signed by the Parties hereto, and expressly stated to represent an amendment to this Agreement.

9. SEVERABILITY: The Parties agree that if any Court declares any portion of this Agreement unenforceable, the remaining portion or portions shall be fully enforceable. Plaintiff hereby understands and agrees that she has sought and received the advice of her attorney prior to executing this Agreement, and that she has had ample time to do so and that she knowingly and voluntarily has decided to settle her claims against Releasee after thoroughly reviewing this Agreement with her attorney.

10. GOVERNING LAW: This Release shall be governed by, and construed and interpreted according to, the laws of the State of New Jersey.

11. ADDITIONAL DOCUMENTS: All parties agree to cooperate fully and execute any and all supplementary documents and to take all actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release.

Witnessed or Attested:


Sonathan Lomuro


**MICHELE HARDING as Administratrix Ad
Prosequendum for the heirs-at-law of
MATTHEW McCLOSKEY, deceased;
Administratrix of the Estate of MATTHEW
McCLOSKEY, deceased and MICHELE
HARDING, individually**

STATE OF NEW JERSEY :

COUNTY OF Gloucester **:SS.:**

I CERTIFY that on June 26, 2018, Michele Harding
came before me and acknowledged under oath, to my satisfaction, that this person is
named in and personally signed this document and signed, sealed and delivered this
document as his/her act or deed.


Matthew A. Schiappa
Attorney-at-law
State of New Jersey
Notary Public

MARK J. MOLZ, ESQUIRE
1400 Route 38 East, Box 577
Hainesport, New Jersey 08036
(609) 267-8884
Attorney for Plaintiff(s)
Attorney ID No. 038271985

RECEIVED & FILED

NOV 03 2016

SUPERIOR COURT OF NJ
GLO. COUNTY CIVIL PART

RAYMOND MELINCAVAGE and : SUPERIOR COURT OF NEW JERSEY
KATHLEEN M. MELINCAVAGE : GLOUCESTER COUNTY
His wife : LAW DIVISION
: DOCKET NO. L1384-16

Plaintiff(s),

vs.

: Civil Action (Tort/Contract)

FRANKLIN TOWNSHIP POLICE :
DEPARTMENT, OFFICER D. :
JERNEGAN, MONROE :
TOWNSHIP POLICE :
DEPARTMENT, OFFICER DEREK :
E. JACOBUS, KENNEDY :
MEMORIAL HOSPITAL, DANIEL :
WEEKS, DO., KISHAN PATEL, :
DO., JAN MINSKY, RN., MICHAEL :
NOSEL, RN, JOHN DOES 1-10; : COMPLAINT
individually, jointly & severally; : WITH JURY DEMAND
: AND DISCOVERY REQUESTS
Defendants. :

Raymond Melincavage and Kathleen M. Melincavage residing at 630 Marino Avenue,
Blackwood, New Jersey 08012 by way of complaint state:

1. At all relevant times, Defendant Franklin Township Police Department maintains principal offices and facilities at 1672 Coles Mill Road, Franklinville, New Jersey 08322.
2. At all relevant times, Defendant Officer D. Jernegan is a police officer employed by the Township of Franklin which maintains principal offices and facilities at 1672 Coles Mill Road, Franklinville, New Jersey 08322.

3. At all relevant times, Defendant Monroe Township Police Department maintains principal offices and facilities at 125 Virginia Avenue, Williamstown, New Jersey 08094.
4. At all relevant times, Defendant Patrolman Derek E. Jacobus, (7184) was a police officer employed by the Township of Monroe which maintains principal offices and facilities at 125 Virginia Avenue, Williamstown, New Jersey 08094.
5. At all relevant times, Kennedy Memorial Hospital maintains principal offices and facilities at 540 Egg Harbor Road, Sewell Township, Gloucester County.
6. The Defendant Daniel Weeks DO was a medical doctor licensed by the State of New Jersey and maintains principal offices and facilities at 540 Egg Harbor Road, Sewell Township, Gloucester County.
7. The Defendant Kishan Patel DO was a medical student/resident and maintains principal offices and facilities at 540 Egg Harbor Road, Sewell Township, Gloucester County.
8. At all relevant times Defendant Jan Minsky RN was a medical nurse licensed with the State of New Jersey with principal offices located at 540 Egg Harbor Road, Sewell Township, Gloucester County.
9. At all relevant times Defendant Michael Nosel, RN, was a nurse licensed by the State of New Jersey with principal offices located at 540 Egg Harbor Road, Sewell Township, Gloucester County.
10. John Doe 1-10 is a fictitious designation for a nurse including RN, RNDS, LPN or practical nurse who provided care to the Plaintiff including inspection and skin care.

11. John Doe 1-10 is also a fictitious designation for a Medical Doctor or other professional or medical provider or group, professional association or other business entity who provided care to the Plaintiff including inspection and skin care.
12. The principal is responsible for the acts or omissions of its agents, servants or assigns.

COUNT I

1. Plaintiff repeats the previous allegations as though set forth at length herein.
2. On or about November 4, 2014, the Plaintiff Raymond Melincavage was traveling in a company truck on his way to work.
3. Plaintiff Raymond Melincavage did not feel well and pulled over to the side of the road in Franklin Township.
4. Plaintiff Raymond Melincavage's truck was running but he passed out.
5. Patrol Officer D. Jernegan (badge number 1148) arrived on the scene.
6. During his initial encounter with Officer Jernegan at the Franklin Township police department, observations were made the Mr. Melincavage appeared sleepy, his eyelids were droopy and that he was not making sense.
7. Mr. Melincavage was unable to complete physical balance tests and was placed under arrest for DWI.
8. It was later determined that he had a blood alcohol of .00 and that repeated administrations of Narcan did not affect his worsening health.
9. If Mr. Melincavage was under the influence of oxycodone or oxycotton, it would be expected that the Narcan would have made a significant change for the better in his breathing and physical capabilities.

10. The original EMT's came to the scene at 10:00 and did not provide any medical treatment.
11. Next, Patrolman D. Jernegan took the Plaintiff Raymond Melincavage to Franklin Township where he was administered an Alcotest and came back .00.
12. Patrolman D. Jernegan next transported the Plaintiff Raymond Melincavage to the Monroe Township police department where he took a second Alcotest which came back .00.
13. Plaintiff was further detained and given a drug recognition evaluation by Defendant Patrolman Derek E. Jacobus who is apparently certified by the International Association of Chiefs of Police.
14. All the while, Plaintiff Raymond Melincavage was experiencing dehydration, pneumonia, kidney failure and a heart attack.
15. Defendants Franklin Township Police Department, Officer D. Jernegan, Monroe Township Police Department, Patrolman Derek E. Jacobus and/or John Doe 1-10 deprived Plaintiff Raymond Melincavage of his civil rights by holding him in custody and depriving him of hydration, diagnosis and/or medical treatment during his episode(s) of systemic failure.
16. As a direct and proximate result of these civil rights violation(s) by Defendants Franklin Township Police Department, Officer D. Jernegan, Monroe Township Police Department, Patrolman Derek E. Jacobus and/or John Doe 1-10, Plaintiff Raymond Melincavage suffered serious bodily injury and experienced pain and suffering, stress, worsening of pre-existing conditions and morbidities and injuries both temporary and permanent.

WHEREFORE, Plaintiff Raymond Melincavage demands judgment on this Count against Defendants Franklin Township Police Department, Officer D. Jernegan, Monroe Township Police Department, Patrolman Derek E. Jacobus and/or John Doe 1-10 for compensatory damages, interest, attorney's fees and costs of suit.

COUNT II

17. Plaintiff repeats the previous allegations as though set forth at length herein.
18. Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 had a duty to properly diagnose, treat and/or monitor their patient Raymond Melincavage.
19. Defendants Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 violated standards of care and/or hospital protocol by failing to notify the attending physicians of Plaintiff's worsening condition.
20. Defendants Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 violated standards of care and/or hospital protocol by failing to care for Plaintiff in connection with his pre-existing conditions and/or his dehydration, stress and worsening condition.
21. The above said negligence and/or deviations from applicable standards of care by Defendants Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 was a proximate cause of severe injury, pain and disability, physical and emotional harm to Plaintiff Raymond Melincavage.

WHEREFORE, Plaintiff Raymond Melincavage demands judgment on this Count against Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 for compensatory damages, interest, attorney's fees and costs of suit.

COUNT II

22. Plaintiffs repeats the previous allegations as though set forth at length herein.
23. Defendant Daniel Weeks DO was the emergency department attending physician.
24. Defendant Kishan Patel DO was a medical student/resident who did the initial evaluation and entered orders in the emergency department but wasn't licensed until 5/11/16
25. Defendant Jan Minsky RN was the ED triage nurse who performed no physical assessment
26. Defendant Michael Nosel RN was the ED nurse who did not pre/post narcan evaluation or initial assessment.
27. No Narcan was administered at 10:00 a.m. despite the Defendants belief that Plaintiff was under the influence of narcotics.
28. The narcan administered at 1:00 p.m. had no effect and was repeated with no effect leading to the conclusion that there was no narcotic intoxication.
29. The emergency department staff received the patient at 13:56, nearly four hours after the initial stop by the police. There was no physical assessment completed by a nurse.
30. Plaintiff Raymond Melincavage was seen by Dr. Patel at 14:28 who was a medical student or resident. Plaintiff Raymond Melincavage was described as sleepy but

arousable, he was also described by the same author as alert and oriented to persons, place and time.

31. Dr. Patel noted, "symptoms not reviewed, unable, emergency room caveat revoked due to intoxicated patient". This was done despite two blood alcohol tests and a negative ethyl alcohol level in the ED.

32. At 16:45 the Plaintiff Raymond Melincavage was seen by Neveen Malik, DO, admitting/attending at the ICU shortly after three doses of narcan at 15:40, 16:13, and 16:28 with no noticeable improvement in mentation.

33. In fact Plaintiff Raymond Melincavage had deteriorated post-narcan, RR 14, 93% 4L.

34. A history and physical dictated at 17:06 described Plaintiff Raymond Melincavage as unresponsive and acknowledged his history of obstructive sleep apnea but does not suggest intubation, C-Pap or Bi-Pap.

35. Nothing was done by medical defendants to address history of obstructive sleep apnea and somnolent mental status.

36. Changes in mental status went unaddressed, no arterial blood gas draw to determine if the plaintiff was retaining CO₂, no cardiac enzyme and no psyche evaluation after the administration of the narcan.

37. Eventually, the plaintiff was discharged from the hospital with a heart attack that was undiagnosed.

38. Plaintiff Raymond Melincavage never returned to work because of his injuries and has required oxygen twenty four hours per day, every day.

39. Plaintiff Raymond Melincavage lost his job at approximately \$47,000 per year plus benefits. He also suffers from short term memory loss. The 99.9% blockage in in LED was never discovered resulting in the need for surgery January 2015.

40. As a result of the negligence of Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10, and breach of the obligation of informed consent as aforesaid, Plaintiff Raymond Melincavage was caused to suffer serious and permanent injuries, damages, losses and expenses and such other damages as discovery may reveal.

41. The negligence and breach of the duty of informed consent by DefendantS Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 and was a proximate cause of severe emotional and physical harm to Plaintiff, Raymond Melincavage, and/or significantly increased his risk of harm and/or cost Mr. Melincavage a significant chance at a better outcome.

WHEREFORE, Plaintiff demands judgment on this Count against Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 for compensatory damages, interest, attorney's fees and costs of suit.

COUNT VI

42. Plaintiff repeats the previous allegations as though set forth at length herein.

43. Defendant Kennedy Memorial Hospital is a business entity providing medical services and care to patients.

44. At all times relevant hereto, and/or John Doe 1-10 acted as an agent, servant and/or employee of Defendant Kennedy Memorial Hospital; alternatively, these

Defendant(s) was/were ostensibly an agent of Defendant Kennedy Memorial Hospital pursuant to Arthur v. St. Peters Hospital, 169 NJ Super. 575 (Law Div. 1979).

45. At all times relevant hereto, Defendants Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 had a duty to follow the rules, regulations and protocols of Defendant Kennedy Memorial Hospital.
46. Defendant Kennedy Memorial Hospital is/was responsible to use proper care in the hiring, supervising of and continuing medical education of Defendants, Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10.
47. Defendant Kennedy Memorial Hospital is/was negligent in the hiring, supervising of and continuing medical education of Defendants Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10.
48. Defendant Kennedy Memorial Hospital is responsible for the negligent acts committed by Defendant's Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 or each of them and the damages suffered by Plaintiff Raymond Melincavage as a result thereof.
49. Alternatively, as a result of the negligence of an agent, servant and/or employee of Defendant Kennedy Memorial Hospital, or due to the negligence of any ostensible agents as aforesaid, Defendant Kennedy Memorial Hospital is/was responsible under the doctrine of respondeat superior.

50. Plaintiff Raymond Melincavage was caused to suffer serious and permanent injuries, damages, losses and expenses, and such other damages as discovery may reveal, and is Defendants are responsible for same by virtue of its own direct negligence/breach of duty as well as under the doctrine of respondeat superior.

WHEREFORE, Plaintiff Raymond Melincavage demands judgment on this Count against Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 jointly, severally and in the alternative, for compensatory damages, interest, attorney's fees and costs of suit.

COUNT VI

51. Plaintiffs repeat each and every allegation in the preceding Counts as though set forth at length herein.

52. Plaintiffs allege that an insufficient amount of time has passed within which to determine the identity of any other medical personnel, individuals or entities whose negligence may be responsible in whole or in part for the care of treatment of Plaintiff.

53. For the purposes of the within Complaint, said individuals and business entities have been designated as John Doe 1-10.

54. Plaintiff, pursuant to the Rules of Court for the State of New Jersey, reserve the right to amend the within Complaint to add additional Defendants when and if the identity of said individuals or business entities become known.

WHEREFORE, Plaintiffs Raymond Melincavage demands judgment on this Count against John Does Medical Providers, nurses, Practitioners 1-10 (multiple fictitious entities) for compensatory damages, interest, attorney's fees and costs of suit.

COUNT VII

55. Plaintiffs repeat each and every allegation in the preceding Counts as though set forth at length herein.

56. Plaintiffs allege that the care and actions of Defendants Defendants Kennedy Memorial Hospital, Daniel Weeks DO, Kishan Patel DO, Jan Minsky RN, Michael Nosel, RN, and/or John Doe 1-10 were willful, wanton and reckless and should result in the imposition of punitive damages.

WHEREFORE, Plaintiff Raymond Melincavage demands judgment on this Count against Defendants and/or John Doe 1-10 jointly, severally and in the alternative, for punitive damages, compensatory damages, interest, attorney's fees and costs of suit.

COUNT VIII

57. Plaintiffs repeat each and every allegation in the preceding Counts as though set forth at length herein.

58. Plaintiff Kathleen Melincavage is the legal wife of Plaintiff Raymond Melincavage and is entitled to his usual good humor, care and consortium.

59. Plaintiff Kathleen Melincavage, by virtue of the acts and omissions set forth herein, has been deprived of her husband's good humor, care and consortium.

WHEREFORE, Plaintiff Kathleen Melincavage demands judgment on this Count against Defendants and/or John Doe 1-10 jointly, severally and in the alternative, for punitive damages, compensatory damages, interest, attorney's fees and costs of suit.

MARK J. MOLZ, ESQUIRE
ATTORNEY FOR Plaintiff(s)

DATED: October 26, 2016

By: 
Mark J. Molz, Esquire

JURY DEMAND

Plaintiff's hereby demands a trial by jury on all issues raised by these pleadings.

NOTICE OF PER DIEM TIME-UNIT CLOSING ARGUMENT

PLEASE TAKE NOTICE that Plaintiff(s) will use per diem argument during closing argument at Trial and suggest to Jury that unliquidated damages be calculated on a time-unit basis without reference to a specific sum, pursuant to Rule 1:7-1(b). Proper explanatory instructions to jury shall be requested in accordance with the Rule.

DEMAND FOR DESIGNATION OF SPECIALTY

Plaintiff demands that each named medical defendant declare his/her medical training and/or specialty.

DEMAND FOR TRANSCRIPTION OF ALL RECORDS

Plaintiff demands that each named medical defendant transcribe all records in complete legible form,

DESIGNATION OF TRIAL COUNSEL

Mark J. Molz, Esquire is hereby designated as Trial Counsel in the within litigation pursuant to R. 4:25-4.

DEMAND FOR INSURANCE COVERAGE

In accordance with R. 4:10-2, Defendants are demanded to provide a complete copy of their applicable liability insurance policies including any excess or umbrella policies with declaration sheets within thirty (30) days of service of this Complaint.

DEMAND FOR DOCUMENTS

Plaintiffs demand that, within thirty (30) days of service of this Complaint, each Defendant produce legible copies of their complete files regarding the Plaintiff, all facts and findings of any review, self critical analysis [or similar peer review] and those documents requested in the attached Notice to Produce.

DEMAND FOR TRANSCRIPTION

Plaintiffs demand that each Defendant produce a typed transcription of any and all of his/her handwritten office records and hospital records, within thirty (30) days of service of the Complaint.

NOTICE OF DEPOSITION OF ANSWERING DEFENDANT

Pursuant to R. 4:14 of the New Jersey Court Rules, Plaintiff(s) hereby demand that the answering party (or, if answering party is a non-individual entity, answering party's designated representative most knowledgeable of the circumstances described in the pleadings) appear at the Law Offices of Mark J. Molz, 1400 Route 38 East, Hainesport, New Jersey at 10:00 a.m. on the 35th day following service of this Summons and Complaint, at which time said deponent(s) shall give testimony by Deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths, and shall produce originals (or true copies if originals unavailable) of all documents and things requested in the attached Request for Production of Documents, and shall provide full and complete answers to all Interrogatories propounded herein. Answering party is required to contact the Law Offices of Mark J. Molz at (609) 267-8884 prior to the date of deposition to confirm appearance. Failure to appear for Deposition in accordance with this Demand will subject answering party to penalties and sanctions as allowed by the New Jersey Court Rules. Failure to produce all requested documents and things, or failure to give complete answers to Interrogatories, at or before the Deposition will result in the Deposition being taken again after such responses are provided.

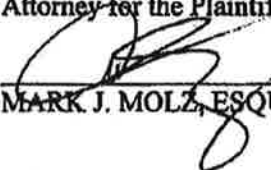
CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that to the best of my knowledge, information and belief that this matter in controversy is not the subject of any other action pending in any court or in any arbitration proceeding, nor is any other action or arbitration proceeding contemplated. To the best of my knowledge at this time, all parties who should have been joined in this action have been joined.

MARK J. MOLZ, ESQUIRE
Attorney for the Plaintiff

Dated: October 26, 2016

By:


MARK J. MOLZ, ESQUIRE

13,054]

James R. Birchmeier, Esquire

Attorney ID#: 022821986

BIRCHMEIER & POWELL LLC

Counsellors at Law

1891 State Highway 50

P.O. Box 582

Tuckahoe, New Jersey 08250

(609) 628-3414

Attorneys for Defendants, Franklin Township Police Department; Police Officer D. Jernegan;
Monroe Township Police Department and Police Officer, Derek E. Jacobus

Plaintiffs, RAYMOND MELINCAVAGE and KATHLEEN MELINCAVAGE, his wife, v. Defendants, FRANKLIN TOWNSHIP POLICE DEPARTMENT; OFFICER D. JERNEGAN; MONROE TOWNSHIP POLICE DEPARTMENT; OFFICER DEREK E. JACOBUS; KENNEDY MEMORIAL HOSPITAL; DANIEL WEEKS, D.O.; KISHAN PATEL, D.O.; JAN MINSKY, RN; MICHAEL NOSEL, RN; JOHN DOES 1-10	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – GLOUCESTER COUNTY DOCKET NO. GLO-L-1384-16 Civil Action ORDER GRANTING SUMMARY JUDGMENT AND DISMISSING PLAINTIFFS' COMPLAINT
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THIS MATTER having been brought before the Court of a Motion filed by James R. Birchmeier, Esquire of Birchmeier & Powell, LLC Attorneys for Defendants, Franklin Township Police Department; Police Officer D. Jernegan; Monroe Township Police Department and Police Officer, Derek E. Jacobus, and the Court having heard the arguments of counsel, and having considered same, and no cause being shown to the contrary;

IT IS on this 25th day of January, ²⁰¹⁹~~2017~~, ORDERED AND ADJUDGED that summary judgment is hereby GRANTED and Plaintiffs' Complaint be and is hereby dismissed with prejudice as to the Defendants, Franklin Township Police Department; Police Officer D. Jernegan; Monroe Township Police Department and Police Officer, Derek E. Jacobus.



Darrell M. Fineman, J.S.C.

File No. 01005-2801-TMW/MKW
Law Offices
PARKER McCAY P.A.
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, New Jersey 08054
(856) 596-8900

Mary Kay Wysocki, Esquire Attorney ID No.: 055631993

Attorneys for Defendants, Kennedy University Hospital, Inc. (Incorrectly impleaded as Kennedy Memorial Hospital), Jan Minsky, R.N. and Michael Nosal, R.N. (Incorrectly impleaded as Michael Nosel, R.N.)

RAYMOND MELINCAVAGE and
KATHLEEN M. MELINCAVAGE His
wife,

Plaintiff(s),

v.

FRANKLIN TOWNSHP POLICE
DEPARTMENT, OFFICER D.
JERNEGAN, MONROE TOWNSHIP
POLICE DEPARTMENT, OFFICER
DEREK E. JACOBUS, KENNEDY
MEMORIAL HOSPITAL, DANIEL
WEEKS, DO., KISHAN PATEL, DO.,
JAN MINSKY, RN., MICHAEL NOSEL,
RN, JOHN DOES 1-10; individually,
jointly & severally,

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY
DOCKET NO. GLO-L-1384-16

CIVIL ACTION

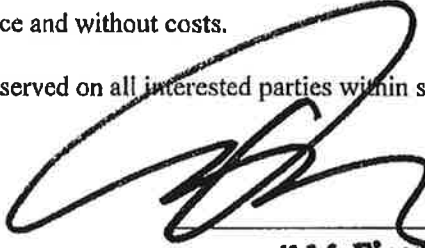
**ORDER GRANTING SUMMARY
JUDGMENT**

Application having been made by Parker McCay P.A., attorneys for Defendants,
Kennedy University Hospital, Inc. (Incorrectly impleaded as Kennedy Memorial Hospital), Jan
Minsky, R.N. and Michael Nosal, R.N. (Incorrectly impleaded as Michael Nosel, R.N.), for an
Order granting Summary Judgment, and for good cause shown:

IT IS ORDERED on this 25th day of January 2019, that Summary Judgment is
hereby granted in favor of Defendants, Kennedy University Hospital, Inc. (Incorrectly

impleaded as Kennedy Memorial Hospital), Jan Minsky, R.N. and Michael Nosal, R.N.
(Incorrectly impleaded as Michael Nosel, R.N.), dismissing the Complaint and any and all
Claims and Crossclaims with Prejudice and without costs.

A copy of this Order shall be served on all interested parties within seven (7) days of
the date hereof.


Darrell M. Fineman, J.S.C.

☒ **OPPOSED**

☐ **UNOPPOSED**

HAGNER & ZOHLMAN, LLC

ATTORNEYS AT LAW

57 Kresson Road

Cherry Hill, New Jersey 08034

Tel. (856) 663-9090

Fax. (856) 663-9199

Attorneys for Plaintiffs, Rhonda McCoy and Terrence McCoy

By: **John A. Zohlman, III., Esq. (017481991)**

RHONDA McCOY and TERRENCE
McCOY, husband and wife,

Plaintiffs,

v.

KATELYN M. BRANIN, FRANKLIN
TOWNSHIP, FRANKLIN TOWNSHIP
AMBULANCE SQUAD, MILLVILLE
RESCUE SQUAD, JOHN DOES 1-10, JANE
DOES 1-10 and ABC COMPANIES
1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
GLOUCESTER COUNTY
LAW DIVISION

DOCKET NO.:

Civil Action

**COMPLAINT, JURY DEMAND and
DEMAND FOR DISCOVERY**

Plaintiffs, Rhonda McCoy and Terrence McCoy, by way of Complaint against
Defendants Katelyn M. Branin, Franklin Township, Franklin Township Ambulance Squad,
Millville Rescue Squad, John Does 1-10, Janes Does 1-10, and ABC Companies 1-10, state as
follows:

THE PARTIES

1. Plaintiffs, Rhonda McCoy and Terrence McCoy, are married individuals who reside at 610
Lantern Way, Franklinville, NJ 08322.
2. Defendant, Katelyn M. Branin, upon information and belief, is an individual who resides at
39 Dorset Avenue, Millville, NJ 08332.

3. Defendant Franklin Township is a public entity in Gloucester County, New Jersey that employed Defendant Katelyn M. Branin and/or John Does 1-10 and/or Jane Does 1-10, had the right to control and/or supervise their daily work activities, and/or were otherwise vicariously liable for the acts and/or omissions of those who caused and/or contributed to the incident, damages, and/or injuries alleged herein.
4. Upon information and belief, Defendant Franklin Township Ambulance Squad is employed by the Township to provide emergency medical services to the Township and employed Defendant Katelyn M. Branin and/or John Does 1-10 and/or Jane Does 1-10, had the right to control and/or supervise their daily work activities, and/or were otherwise vicariously liable for the acts and/or omissions of those who caused and/or contributed to the incident, damages, and/or injuries alleged herein.
5. Upon information and belief, Millville Rescue Squad is employed by Franklin Township or has a contractual obligation with Franklin Township to provide emergency medical services to the Township and employed Defendant Katelyn M. Branin and/or John Does 1-10 and/or Jane Does 1-10, had the right to control and/or supervise their daily work activities, and/or were otherwise vicariously liable for the acts and/or omissions of those who caused and/or contributed to the incident, damages, and/or injuries alleged herein
6. Defendants, John Does 1-10 are, despite investigation, presently unknown, and in accordance with R. 4:26-4, are fictitiously named individuals, agents, servants, and/or employees who caused or contributed to the incident, damages, and injuries alleged herein, and/or are vicariously liable for the acts and/or omissions of those who did cause or contribute to the incident, damages, and/or injuries alleged herein.

7. Defendants, Jane Does 1-10 are, despite investigation, presently unknown, and in accordance with R. 4:26-4, are fictitiously named individuals, agents, servants, and/or employees who caused or contributed to the incident, damages, and injuries alleged herein, and/or are vicariously liable for the acts and/or omissions of those who did cause or contribute to the incident, damages, and/or injuries alleged herein
8. Defendants, ABC Companies 1-10 are, despite investigation, presently unknown, and in accordance with R.4:26-4, are fictitiously named agencies, entities, corporations, holding corporations, subsidiaries, contractors, subcontracts, independent contractors, manufacturers, installers, designers, suppliers, limited liability companies, partnerships, and/or sole proprietorships that employed John Does 1-10 and/or Jane Does 1-10, had the right to control and/or supervise their daily work activities, and/or were otherwise vicariously liable for the acts and/or omissions of those who caused and/or contributed to the incident, damages, and/or injuries alleged herein, and/or were liable for the defective manufacture of any equipment, parts, devices, tools, or any similar or dissimilar items related in any way to the incident, damages, and/or injuries alleged herein.

ALLEGATIONS OF COMMON FACT

9. On or about March 2, 2017, Plaintiff Rhonda McCoy was traveling north on Stanton Avenue towards the intersection with Grant Avenue in Franklin Township, New Jersey, when she was suddenly and unexpectedly struck by a motor vehicle being driven by Katelyn M. Branin in her course of employment with the Township of Franklin Ambulance Squad and/or Millville Rescue Squad.

10. At said time and place, Defendant Branin operated her vehicle in a negligent manner by disregarding a stop sign in the right of way of Plaintiff Rhonda McCoy causing a collision.
11. At all relevant times hereto, Defendant Branin was operating her vehicle in a negligent, reckless, and/or otherwise unsafe manner, resulting in a motor vehicle accident which directly and proximately caused damages to the Plaintiff.
12. On or about May 9, 2017, Plaintiffs filed a Notice of Torts Claim and served same upon the Township of Franklin in advance of the institution of the lawsuit and more than six (6) months has elapsed since service of the Notice of Tort Claim.

COUNT ONE: NEGLIGENCE
(Plaintiff Rhonda McCoy v. Defendant Branin)

13. Plaintiffs repeat and incorporate all of the previous allegations in Court One as it fully set forth herein.
14. On or about March 2, 2017, Defendant Katelyn Branin was operating her vehicle in a dangerous and negligent manner at the intersection of Grant Avenue and Stanton Avenue in Franklin Township, New Jersey, resulting in a motor vehicle accident.
15. At all relevant times, Defendant Katelyn Branin had a duty to operate her motor vehicle in a safe and reasonable manner.
16. The March 2, 2017 accident and resulting damages sustained by the Plaintiff were caused by the negligence, gross negligence, carelessness, recklessness, and/or negligent acts and/or omissions of, among others, Defendant Katelyn Branin.
17. As a direct and proximate result of the negligence of Defendant Katelyn Branin, Plaintiff sustained temporary and permanent bodily injuries, economic losses, endured and will endure great pain and suffering, has been and will be compelled to seek the services of

other medical help in an attempt to cure herself of said injuries, and has been and will be prevented from attending to her normal business affairs.

WHEREFORE, Plaintiff Rhonda McCoy demands Judgment against Defendant Katelyn Branin, jointly, severally, and/or in the alternative, for compensatory damages, interest, counsel fees, taxed costs of suit, and such other damages and further relief as the Court deems just and equitable under the circumstances.

COUNT TWO: NEGLIGENCE
(Plaintiff Rhonda McCoy v. Defendant Township of Franklin)

18. Plaintiffs repeat and incorporate all of the previous allegations as it fully set forth herein.
19. On or about March 2, 2017 at approximately 8:20 a.m., Defendant Katelyn Branin was an officer, employee, servant, agent, representative and/or appointee of Defendant Township of Franklin.
20. Defendant Township of Franklin was responsible for the negligent acts of its officer, employee, servant, agent, representative and/or appointee Defendant Katelyn Branin under the Doctrine of *Respondeat Superior*.
21. As a result of the negligence of Defendant Township of Franklin as aforesaid, Plaintiff sustained temporary and permanent bodily injuries, economic losses, endured and will endure great pain and suffering, has been and will be compelled to seek the services of other medical help in an attempt to cure herself of said injuries, and has been and will be prevented from attending to her normal business affairs.

WHEREFORE, Plaintiff Rhonda McCoy demands Judgment against Defendant Township of Franklin, jointly, severally, and/or in the alternative, for compensatory damages, interest, counsel fees, taxed costs of suit, and such other damages and further relief as the Court deems just and equitable under the circumstances.

COUNT THREE: NEGLIGENCE
(Plaintiff Rhonda McCoy v. Defendant Township of Franklin Ambulance Squad)

22. Plaintiffs repeat and incorporate all of the previous allegations as it fully set forth herein.
23. On or about March 2, 2017 at approximately 8:20 a.m., Defendant Katelyn Branin was an officer, employee, servant, agent, representative and/or appointee of Defendant Township of Franklin Ambulance Squad.
24. Defendant Township of Franklin Ambulance Squad was responsible for the negligent acts of its officer, employee, servant, agent, representative and/or appointee Defendant Katelyn Branin under the Doctrine of *Respondeat Superior*.
25. As a result of the negligence of Defendant Township of Franklin Ambulance Squad as aforesaid, Plaintiff sustained temporary and permanent bodily injuries, economic losses, endured and will endure great pain and suffering, has been and will be compelled to seek the services of other medical help in an attempt to cure herself of said injuries, and has been and will be prevented from attending to her normal business affairs.

WHEREFORE, Plaintiff Rhonda McCoy demands Judgment against Defendant Township of Franklin Ambulance Squad jointly, severally, and/or in the alternative, for compensatory damages, interest, counsel fees, taxed costs of suit, and such other damages and further relief as the Court deems just and equitable under the circumstances.

COUNT FOUR: NEGLIGENCE
(Plaintiff Rhonda McCoy v. Defendant Millville Rescue Squad)

26. Plaintiffs repeat and incorporate all of the previous allegations as it fully set forth herein.
27. On or about March 2, 2017 at approximately 8:20 a.m., Defendant Katelyn Branin was an officer, employee, servant, agent, representative and/or appointee of Defendant Millville Rescue Squad.

28. Defendant Millville Rescue Squad was responsible for the negligent acts of its officer, employee, servant, agent, representative and/or appointee Defendant Katelyn Branin under the Doctrine of *Respondeat Superior*.

29. As a result of the negligence of Defendant Millville Rescue Squad as aforesaid, Plaintiff sustained temporary and permanent bodily injuries, economic losses, endured and will endure great pain and suffering, has been and will be compelled to seek the services of other medical help in an attempt to cure herself of said injuries, and has been and will be prevented from attending to her normal business affairs.

WHEREFORE, Plaintiff Rhonda McCoy demands Judgment against Defendant Millville Rescue Squad jointly, severally, and/or in the alternative, for compensatory damages, interest, counsel fees, taxed costs of suit, and such other damages and further relief as the Court deems just and equitable under the circumstances.

COUNT FIVE: NEGLIGENCE
(Plaintiff Rhonda McCoy v. Defendants John Does 1-10, Jane Does 1-10, and
ABC Companies 1-10)

30. Plaintiffs repeat and incorporate all of the previous allegations as it fully set forth herein.

31. On or about March 2, 2017, Defendants John Does 1-10, Janes Does 1-10, and/or ABC Companies 1-10 was/were operating a vehicle in a dangerous and negligent manner on or near the intersection of Stanton and Grant Avenues in Franklin Township, New Jersey and/or was/were otherwise present and acting in a dangerous and negligent manner on or near the intersection of Stanton and Grant Avenues in Franklin Township, New Jersey.

32. At all relevant times, Defendants John Does 1-10, Janes Does 1-10, and/or ABC Companies 1-10 had a duty to ensure that he/she/it was operating his/her/its motor

vehicle in a safe and reasonable manner and/or had a duty to ensure he/she/it was acting in a safe and reasonable manner.

33. The March 2, 2017 accident and resulting damages sustained by the Plaintiff were caused by the negligence, gross negligence, carelessness, recklessness, and/or negligent acts and/or omissions of, among others, Defendants John Does 1-10, Janes Does 1-10, and/or ABC Companies 1-10.
34. As a direct and proximate result of the negligence of Defendants John Does 1-10, Janes Does 1-10, and/or ABC Companies 1-10, Plaintiff sustained temporary and permanent bodily injuries, economic losses, endured and will endure great pain and suffering, has been and will be compelled to seek the services of other medical help in an attempt to cure herself of said injuries, and has been and will be prevented from attending to her normal business affairs.

WHEREFORE, Plaintiff Rhonda McCoy demands Judgment against Defendants John Does 1-10, Janes Does 1-10, and/or ABC Companies 1-10, jointly, severally, and/or in the alternative, for compensatory damages, interest, counsel fees, taxed costs of suit, and such other damages and further relief as the Court deems just and equitable under the circumstances.

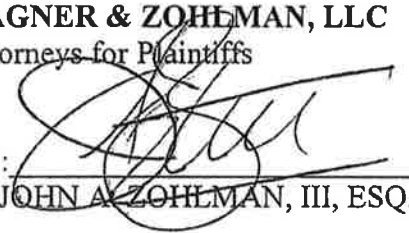
COUNT SIX: LOSS OF CONSORTIUM
(Plaintiff Terrence McCoy v. All Defendants)

35. Plaintiffs repeat and incorporate all of the previous allegations as it fully set forth herein.
36. At all relevant times hereto, Plaintiffs Rhonda McCoy and Terrence McCoy were lawfully married.
37. By virtue of the foregoing acts, Plaintiff Terrence McCoy has and will in the future be denied the aid, comfort, companionship, society, and consortium of Plaintiff Rhonda McCoy.

WHEREFORE, Plaintiff Terrence McCoy demands Judgment against all Defendants, Katelyn M. Branin, Franklin Township, Franklin Township Ambulance Squad, Millville Rescue Squad, John Does 1-10, Janes Does 1-10, and ABC Companies 1-10, jointly, severally, and/or in the alternative, for compensatory damages, interest, counsel fees, taxed costs of suit, and such other damages and further relief as the Court deems just and equitable under the circumstances.

HAGNER & ZOHLMAN, LLC
Attorneys for Plaintiffs

DATED: 12/10/18

BY: 
JOHN A. ZOHLMAN, III, ESQ.

JURY TRIAL DEMAND

PLEASE TAKE NOTICE that Plaintiffs, Rhonda McCoy and Terrence McCoy, hereby demand a trial by jury as to all issues so triable.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that, pursuant to R. 4:25-4, John A. Zohlman, III, Esquire is hereby designated as trial counsel on behalf of Plaintiffs, Rhonda McCoy and Terrence McCoy.

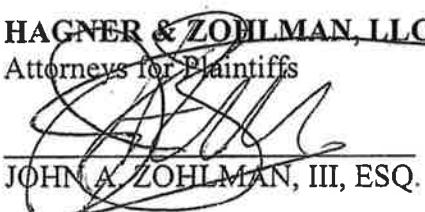
NOTICE PURSUANT TO RULE 1:5-1(a) and 4:17-4(c)

PLEASE TAKE NOTICE that Plaintiffs, Rhonda McCoy and Terrence McCoy, hereby demand that all Defendants serve pleadings, respond to the Form C and C-1 Interrogatories, and receiving answers thereto, serve copies of all such pleadings and answered Interrogatories upon the undersigned attorneys for the Plaintiff. Please take further notice that this is a continuing demand.

HAGNER & ZOHLMAN, LLC
Attorneys for Plaintiffs

DATED: 12/10/18

BY:


JOHN A. ZOHLMAN, III, ESQ.

CERTIFICATION

I, John A. Zohlman, III, Esquire, am admitted to practice before the Courts of the State of New Jersey. Pursuant to R. 4:5-1, I hereby certify that:

1. I am the attorney handling the case for the Plaintiffs in the above-captioned matter.
2. To the best of my knowledge, information and belief, this matter is not the subject of any other pending action or arbitration proceeding, and no other action or arbitration proceeding is contemplated at this time.
3. To the best of my knowledge, information and belief, there are no other persons or entities that should presently be joined in this action.

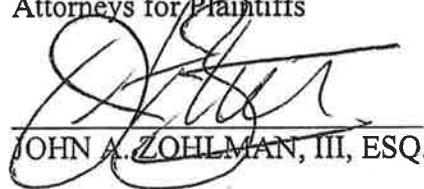
I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

HAGNER & ZOHLMAN, LLC

Attorneys for Plaintiffs

DATED: 12/10/18

BY:


JOHN A. ZOHLMAN, III, ESQ.

Edward N. Romanik, Esq.

#035151996

Birchmeier & Powell LLC

1891 State Highway 50

P.O. Box 582

Tuckahoe, NJ 08250-0582

[609]628-3414

Attorneys for Defendant, Township of Franklin

13,393R/acc

Plaintiff,
RHONDA McCOY & TERRENCE McCOY,
husband and wife,

vs

Defendants,
KATELYN M. BRANIN; FRANKLIN
TOWNSHIP; FRANKLIN TOWNSHIP
AMBULANCE SQUAD; MILLVILLE RESCUE
SQUAD; John Does 1-10; Janes Does 1-10 &
ABC Cos. 1-10.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

Docket No. GLO-L-1456-18

Civil Action

Plaintiff,
LIBERTY MUTUAL INSURANCE
COMPANY, a Corporation individually and as
subrogee of RHONDA McCOY

vs

Defendants,
MILLVILLE RESCUE SQUAD, INC., A
COMPANY, Corporation and/or other
business entity; KATELYN M. BRANIN;
TOWNSHIP OF FRANKLIN, a municipal
corporation; GLOUCESTER SALEM
CUMBERLAND MUNICIPAL JOINT
INSURANCE FUND; OLD REPUBLIC
INSURANCE COMPANY; John Does et als

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

Docket No. GLO-L-130-19

Civil Action

Order

THIS MATTER having been brought before the Court on motion of Birchmeier & Powell LLC, attorneys for defendant, Township of Franklin, for an Order granting summary judgment and dismissing plaintiff's Complaint with prejudice; and

THE COURT having considered the matter; and

FOR GOOD cause appearing;

IT IS on this 19th day of June, 2020, ORDERED that summary judgment be and is hereby granted and plaintiff's Complaint is dismissed, as well as all counter-claims and/or cross-claims, with prejudice as to defendants, Township of Franklin.

/s/ Timothy W. Chell, P.J. Cv.

J.S.C.

In deciding whether a genuine issue of material fact exists to preclude summary judgment, the Court must consider whether the competent evidential materials presented, viewed in the light most favorable to the non-moving party, "are sufficient to permit a rational fact finder to resolve the alleged dispute issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). The Brill Court established that the inquiry of the proofs on summary judgment is akin to the standard for involuntary dismissal under R. 4:37-2 (b) such that a motion for summary judgment must be denied where the evidence, together with all legitimate inferences therefrom, could sustain a judgment in the non-moving party's favor. Id. at 535. At the same time, where it appears that the evidence is so skewed in favor of one party that the party should prevail as a matter of law, the Court should not refrain from granting summary judgment. Id. at 541.

Under New Jersey law, "the owner of an automobile may be liable for injury from the operation of that care placed in the hands of one he knows or reasonably to know is incompetent to operate so that the owner ought reasonably to anticipate that in its operation injury will be done to others." Mead v. Wiley M.E. Church, 4 N.J. 200, 206, (1950). "New Jersey law...does not impose liability on the owner of a motor vehicle for the negligence of a permissive user who is not the owner's agent." Dolan v. Sea Transfer Corp., 398 N.J. Super. 313, 321 (App. Div. 2008). "Liability is imposed on the matter where injury occurs as a result of the actions of the servant if it is of the kind that the servant is employed to perform; it occurs substantially within the authorized time and place limits; and it is actuated, at least in part, by a purpose to serve the master." DiCosala v. Kay, 91 N.J. 159, 169 (1989).

The Court finds that there is no genuine issue of material fact in this case. The Plaintiff has not opposed the motion. The Court finds that the motion is uncontested and therefore the Defendant's statement of material facts must be accepted as true by the Court. The Court finds that Defendant Katelyn Branin was an employee of the Millville Rescue Squad, Inc. performing duties in Franklin Township under the Emergency Medical Services Staffing Agreement between the Township and the Rescue Squad. She was not operating the ambulance vehicle as an agent, servant or employee to Franklin Township. The Court further finds that there has been no

evidence put forward to establish that there was any defect with the vehicle or that it was not operating at optimal condition. For the foregoing reasons, the Court finds that the complaint against Katelyn Branin must be dismissed with prejudice.

ORDER OF THE COURT

Weighing all of the evidence together, the Court finds that there are no genuine issue of material fact remaining. It is evident, Katelyn Branin was not operating the Franklin Township ambulance as an agent, servant and/or employee of Franklin Township.

Accordingly, the Defendant's Motion for Summary Judgment is GRANTED.

Edward N. Romanik, Esq.
 #035151996
Birchmeier & Powell LLC
 1891 State Highway 50
 P.O. Box 582
 Tuckahoe, NJ 08250-0582
 [609]628-3414
 Attorneys for Defendants, Township of Franklin
 & Gloucester Salem Cumberland Municipal JIF
 13,393.1R/acc

Plaintiff, LIBERTY MUTUAL INSURANCE COMPANY, a Corporation individually and as subrogee of RHONDA McCOY vs Defendants, MILLVILLE RESCUE SQUAD, INC., A COMPANY, Corporation and/or other business entity; KATELYN M. BRANIN; TOWNSHIP OF FRANKLIN, a municipal corporation; GLOUCESTER SALEM CUMBERLAND MUNICIPAL JOINT INSURANCE FUND; OLD REPUBLIC INSURANCE COMPANY; John Does et als	SUPERIOR COURT OF NEW JERSEY LAW DIVISION GLOUCESTER COUNTY Docket No. GLO-L-130-19 Civil Action
Plaintiff, LIBERTY MUTUAL INSURANCE COMPANY, a Corporation individually and as subrogee of RHONDA McCOY vs Defendants, MILLVILLE RESCUE SQUAD, INC., A COMPANY, Corporation and/or other business entity; KATELYN M. BRANIN; TOWNSHIP OF FRANKLIN, a municipal corporation; GLOUCESTER SALEM CUMBERLAND MUNICIPAL JOINT INSURANCE FUND; OLD REPUBLIC INSURANCE COMPANY; John Does et als	SUPERIOR COURT OF NEW JERSEY LAW DIVISION GLOUCESTER COUNTY Docket No. GLO-L-130-19 Civil Action Order

THIS MATTER having been brought before the Court on motion of Birchmeier & Powell LLC, attorneys for defendants, Township of Franklin and the Franklin Township Ambulance Squad, for an Order granting defense and indemnification to these defendants; and

THE COURT having considered the matter; and

FOR GOOD cause appearing;

IT IS on this 22nd day of November, 2019, ORDERED that

defendant, Millville Rescue Squad, be and is hereby ordered to provide a defense to defendants, Township of Franklin ~~and the Franklin Township Ambulance Squad,~~ and to indemnify defendants, Township of Franklin ~~and the Franklin Township Ambulance Squad.~~

/s/ Timothy W. Chell

Timothy W. Chell, P.J.Cv.

In deciding whether a genuine issue of material fact exists to preclude summary judgment, the Court must consider whether the competent evidential materials presented, viewed in the light most favorable to the non-moving party, "are sufficient to permit a rational fact finder to resolve the alleged dispute issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). The Brill Court established that the inquiry of the proofs on summary judgment is akin to the standard for involuntary dismissal under R. 4:37-2(b) such that a motion for summary judgment must be denied where the evidence, together with all legitimate inferences therefrom, could sustain a judgment in the non-moving party's favor. Id. at 535. At the same time, where it appears that the evidence is so skewed in favor of one party that the party should prevail as a matter of law, the Court should not refrain from granting summary judgment. Id. at 541.

Indemnity contracts are interpreted in accordance with the rules governing the construction of contracts generally. Ramos v. Browning Ferris Industries, Inc., 103 N.J. 177 (1986). Generally, contracts are given their plain and ordinary meaning. M.J. Paquet, Inc. v. N.J. Dept. of Transp., 171 N.J. 378, 396 (2002) *citing* Nester v. O'Donnell, 301 N.J. Super. 198, 210, (App.Div.1997). The court must enforce the terms of the contract as written when they are clear. County of Morris v. Fauver, 153 N.J. 80, 103 (1998) *citing* Koshliek v. Bd. of Chosen Freeholders of Passaic County, 144 N.J. Super. 336, 344 (Law Div.1976). "A court has no power to rewrite the contract of the parties by substituting a new or different provision from what is clearly expressed in the instrument." E. Brunswick Sewerage Auth. V. E. Mill Assocs., 365 N.J. Super. 120, 125 (App.Div.2004). Nor may a court "make a better contract for either party, or supply terms that have not been agreed upon." Bar on the Pier, Inc. v. Bassinder, 358 N.J. Super. 473, 480 (App.Div. 2003) *citing* Graziano v. Grant, 326 N.J. Super. 328, 342 (App.Div.1999).

The Court finds that there was no certification attached to Defendants' motion besides the certification in regards to service. The Court may not consider facts intended to be relied upon in a summary judgement motion which do not already appear on the record and are not judicially noticeable without an affidavit or testimony. *See Wells Fargo Bank, N.A. v. Ford*, 418 N.J. Super. 592, 599-600 (App. Div. 2011); *Celino v. Gen. Accident Ins.*, 211 N.J. Super. 538, 544 (App.Div.1986). However, the Exhibit at the core of this motion is Defendants Exhibit B, the Emergency Medical Services Staffing Agreement. The Court finds that neither party has raised any issues with this document or made an allegation it is not authentic. The Court finds that Responding Defendant has attached their own copy of this document as their Exhibit A and submitted a certification as to their own exhibits. The Court will consider this exhibit when deciding the motion.

The Court finds that Millville Rescue Squad is required to indemnify Franklin Township for claims that "result from the acts or omissions of Agency, Agency's employees, if any, and Agency's agents." Emergency Medical Service Staffing Agreement. Exhibit A to Def.s' Opp. to Defs.' Mot. for Summ. J. The Court finds that a determination of liability on the part of Millville Rescue Squad is not required for this provision of the agreement to be triggered based on the plain meaning of the words in the agreement. The Court finds that this matter is a claim that results from the acts or omissions of the employee of the agency. The Court finds that the provision has been triggered and Millville Rescue Squad is required to indemnify Franklin Township.

The Court finds that even if Millville Rescue Squad were to be indemnified by the JIF, who already insure The Township of Franklin, it does not matter to a finding of whether Millville Rescue Squad was required to indemnify the Township of Franklin under the Emergency Medical Service Staffing Agreement. Defendant does not cite to any case law that would suggest that a redundancy or possible co-primary coverage status would preclude a finding for indemnification. The Court finds that being redundant or co-primary does not preclude a finding that Millville Rescue Squad was required to indemnify the Township of Franklin under the Emergency Medical Service Staffing Agreement.

The Court finds that the Franklin Township Ambulance Squad was not a party to the Emergency Medical Service Staffing Agreement. The Court finds that moving Defendants have stated and Responding Defendant has not contested that Franklin Township Ambulance Squad was an entity within the Township of Franklin at the time the agreement was signed and at the time the accident occurred and now no longer exists.

ORDER OF THE COURT

Weighing all the evidence together, the Court finds that Millville Rescue Squad is required to indemnify the Township of Franklin. The Court finds that it is uncontested that the Franklin Township Ambulance Squad is no longer a continuing entity and, as such, Millville Rescue squad is not required to indemnify the Franklin Township Ambulance Squad.

Accordingly, the Defendant's Motion for Summary Judgment is GRANTED IN PART AND DENIED IN PART.

JAMES S. TAYLOR, Esq.
HOFFMAN ♦DIMUZIO
1739-1753 Delsea Drive
Post Office Box 285
Franklinville, NJ 08322
(856) 694-3942
Attorney for Plaintiff Leonard S. Vidovic

LEONARD S. VIDOVIC,

Plaintiff,

vs.

KAREN B. BELL, MANAGED CARE
STRATEGIC ADVISORS, LLC, STELLAR
MANAGED CARE CONSULTING, LLC,
TOWNSHIP OF FRANKLIN, COUNTY OF
GLOUCESTER, STATE OF NEW JERSEY,
ATLANTIC CITY ELECTRIC, LUMBARJACK
TREE PROS, LUMBERJACK TREE PROS,
INC., JOHN DOE (fictitious name) and
RICHARD ROES 1-10 (fictitious names), ABC
CORP. 1-10 individually, jointly, severally and in
the alternative,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CAMDEN COUNTY
LAW DIVISION

DOCKET No. CAM-L-

CIVIL ACTION

***COMPLAINT AND DEMAND FOR
JURY TRIAL***

The Plaintiff, Leonard S. Vidovic, residing at 424 Prosser Avenue, Williamstown, New Jersey, by way of Complaint against the Defendants, says:

FIRST COUNT

1. On or about January 10, 2019 the Plaintiff, Leonard S. Vidovic, was operating an articulated loader on Williamstown Road in Franklinville, New Jersey.

2. At the same time and place aforementioned, the Defendant, Karen B. Bell, and/or John Doe, fictitious name, representing an individual who may have been operating the Bell vehicle, was the operator of a vehicle and proceeding East on Williamstown Road in Franklinville, New Jersey.

3. At the same time and place the Defendant, Karen B. Bell, and/or John Doe, fictitious name, negligently operated her motor vehicle on the date and time in question in that she failed to apply her brakes in a timely fashion so as to avoid a collision, failed to maintain safe vehicle speed and distance between his vehicle and other vehicles in the roadway, failed to exercise due care in the operation of a motor vehicle, and was otherwise negligent, inattentive, and careless, said negligence resulting in the vehicle operated by defendant, Karen B. Bell, or John Doe, fictitious name, striking the vehicle operated by Plaintiff, Leonard S. Vidovic.

4. As a direct and proximate result of the negligence of the Defendant, Karen B. Bell and/or John Doe, fictitious name, as aforementioned, the Plaintiff, Leonard S. Vidovic, suffered severe and painful bodily injuries said injuries causing him great pain and suffering, incapacitating him from his usual work and activities, necessitating his receiving medical treatment and will, in the future, cause him great pain and suffering, and will, in the future, necessitate him receiving medical treatment and will, in the future, cause him to avoid his usual work and activities. Additionally, Plaintiff, Leonard S. Vidovic., has incurred other "out-of-pocket" losses as a direct and proximate result of the negligence of the Defendant, Karen B. Bell and/or John Doe, as aforementioned.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendant, Karen B. Bell, and/or John Doe, fictitious name, for reasonable damages, together with interest, attorney's fees and costs of suit.

SECOND COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Count and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, Defendant, Karen B. Bell and/or John Doe, fictitious name, was acting as the agent, servant, and/or representative of the Defendant, Managed Care Strategic Advisors, LLC. Therefore, any negligent acts by Defendants, Karen B. Bell and/or John Doe, fictitious name, are the responsibility of and imputed to the Defendant, Managed Care Strategic Advisors, LLC.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendant, Managed Care Strategic Advisors, LLC for reasonable damages, together with interest, attorney's fees and costs of suit, jointly, severally, and/or in the alternative.

THIRD COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, Defendant, Karen B. Bell and/or John Doe, fictitious name, was acting as the agent, servant, and/or representative of the Defendant, Stellar Managed Care Consulting, LLC. Therefore, any negligent acts by Defendants, Karen B. Bell and/or John Doe, fictitious name, are the responsibility of and imputed to the Defendant, Stellar Managed Care Consulting, LLC.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendant, Stellar Managed Care Consulting, LLC for reasonable damages, together with interest, attorney's fees and costs of suit, jointly, severally, and/or in the alternative.

FOURTH COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, Defendant, Karen B. Bell and/or John Doe, fictitious name, was acting as the agent, servant, and/or representative of the Defendants, Richard Roes 1-10, fictitious names, representing individuals, corporations, partnerships, sole proprietorships, or other such entities doing business in the State of New Jersey, whose identities cannot reasonably be ascertained at this time. Therefore, any negligent acts by Defendants, Karen B. Bell and/or John Doe, fictitious name, are the responsibility of and imputed to the Defendant, Richard Roes 1-10, fictitious names.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendants, Richard Roes 1-10, fictitious names, representing individuals, corporations, partnerships, sole proprietorships, or other such entities doing business in the State of New Jersey, whose identities cannot reasonably be ascertained at this time for reasonable damages, together with interest, attorney's fees and costs of suit, jointly, severally, and/or in the alternative.

FIFTH COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, the Defendant, Township of Franklin, were responsible, in whole or in part, for the ownership, control, maintenance and/or care of the property, specifically the street light, located at the scene of the accident on Williamstown Road, Franklin Township, New Jersey, including ensuring that the street light was working properly for those who traveled on Williamstown Road, such as the Plaintiff.

3. At all relevant times hereto, Defendant, Township of Franklin, were negligent in that they failed to keep Williamstown Road safe, including the failure to properly maintain and repair the street lights, the failure to warn of the presence of a dangerous condition,

and permitted the road to otherwise be in a dangerous condition which amounted to negligence that caused the Plaintiff to be hit by Defendant, Karen B. Bell, and suffer harm.

4. As a direct and proximate result of the negligence of the Defendant, Township of Franklin, the Plaintiff sustained severe and painful bodily injuries; which injuries caused and may cause him pain and suffering; incapacitated and may incapacitate him from his usual activities; require and may require him to receive medical care; caused him to suffer loss of his activities and enjoyment of life; and caused and may cause him to suffer other losses.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendant, Township of Franklin, for reasonable damages, together with interest, attorney's fees and costs of suit.

SIXTH COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, the Defendant, County of Gloucester, was responsible, in whole or in part, for the ownership, control, maintenance and/or care of the property, specifically the street light, located at the scene of the accident on Williamstown Road, Franklin Township, New Jersey, including ensuring that the street light was working properly for those who traveled on Williamstown Road, such as the Plaintiff.

3. At all relevant times hereto, Defendant, County of Gloucester, were negligent in that they failed to keep Williamstown Road safe, including the failure to properly maintain and repair the street lights, the failure to warn of the presence of a dangerous condition, and permitted the road to otherwise be in a dangerous condition which amounted to negligence that caused the Plaintiff to be hit by Defendant, Karen B. Bell, and suffer harm.

4. As a direct and proximate result of the negligence of the Defendant, County of Gloucester, the Plaintiff sustained severe and painful bodily injuries; which injuries caused and may cause him pain and suffering; incapacitated and may incapacitate him from his usual activities; require and may require him to receive medical care; caused him to suffer loss of his activities and enjoyment of life; and caused and may cause him to suffer other losses.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendant, County of Gloucester, for reasonable damages, together with interest, attorney's fees and costs of suit.

SEVENTH COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, the Defendant, State of New Jersey, was responsible, in whole or in part, for the ownership, control, maintenance and/or care of the property, specifically the street light, located at the scene of the accident on Williamstown Road, Franklin Township, New Jersey, including ensuring that the street light was working properly for those who traveled on Williamstown Road, such as the Plaintiff.

3. At all relevant times hereto, Defendant, State of New Jersey, were negligent in that they failed to keep Williamstown Road safe, including the failure to properly maintain and repair the street lights, the failure to warn of the presence of a dangerous condition, and permitted the road to otherwise be in a dangerous condition which amounted to negligence that caused the Plaintiff to be hit by Defendant, Karen B. Bell, and suffer harm.

4. As a direct and proximate result of the negligence of the Defendant, State of New Jersey, the Plaintiff sustained severe and painful bodily injuries; which injuries caused and may

cause him pain and suffering; incapacitated and may incapacitate him from his usual activities; require and may require him to receive medical care; caused him to suffer loss of his activities and enjoyment of life; and caused and may cause him to suffer other losses.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendant, State of New Jersey, for reasonable damages, together with interest, attorney's fees and costs of suit.

EIGHTH COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, the Defendant, Atlantic City Electric, was responsible, in whole or in part, for the ownership, control, maintenance and/or care of the property, specifically the street light, located at the scene of the accident on Williamstown Road, Franklin Township, New Jersey, including ensuring that the street light was working properly for those who traveled on Williamstown Road, such as the Plaintiff.

3. At all relevant times hereto, Defendant, Atlantic City Electric, were negligent in that they failed to keep Williamstown Road safe, including the failure to properly maintain and repair the street lights, the failure to warn of the presence of a dangerous condition, and permitted the road to otherwise be in a dangerous condition which amounted to negligence that caused the Plaintiff to be hit by Defendant, Karen B. Bell, and suffer harm.

4. As a direct and proximate result of the negligence of the Defendant, Atlantic City Electric, the Plaintiff sustained severe and painful bodily injuries; which injuries caused and may cause him pain and suffering; incapacitated and may incapacitate him from his usual activities;

require and may require him to receive medical care; caused him to suffer loss of his activities and enjoyment of life; and caused and may cause him to suffer other losses.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendant, Atlantic City Electric, for reasonable damages, together with interest, attorney's fees and costs of suit.

NINTH COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, Plaintiff, Leonard S. Vidovic, was in the course of his employment and operating an articulated trailer on behalf of his employers, Defendants, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc

3. At all relevant times hereto, the Defendants, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., was responsible, in whole or in part, for the ownership, control, maintenance and/or care of the vehicle, specifically the articulated loader, that Plaintiff, Leonard S. Vidovic, was operating at the time of his accident.

4. At all relevant times hereto, Defendants, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., were negligent in that they failed to keep the articulated loader safe, including the failure to properly maintain and repair the articulated loader, failed to ensure that the articulated loader had working lights, the failure to warn of the presence of this dangerous condition, and permitted the articulated loader to otherwise be in a dangerous condition which amounted to negligence that caused the Plaintiff to be hit by Defendant, Karen B. Bell, and suffer harm.

5. At all relevant times hereto, Defendants, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., knowingly, and with extreme recklessness, allowed their employee, Plaintiff, Leonard S. Vidovic, to operate an articulated loader that did not have working lights. Whereby, the conduct of the Defendant-employer, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., constitutes an intentional wrong exception to the New Jersey Workers' Compensation bar consistent with Laidlow v. Hariton and its progeny.

6. As a direct and proximate result of the extreme recklessness of the Defendants, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., the Plaintiff sustained severe and painful bodily injuries; which injuries caused and may cause him pain and suffering; incapacitated and may incapacitate him from his usual activities; require and may require him to receive medical care; caused him to suffer loss of his activities and enjoyment of life; and caused and may cause him to suffer other losses.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendants, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., for reasonable damages, together with interest, attorney's fees and costs of suit.

TENTH COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

2. At all relevant times hereto, Defendants, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., was acting as the agent, servant, and/or representative of the Defendants, ABC Corp. 1-10, fictitious names, representing individuals, corporations, partnerships, sole proprietorships, or other such entities doing business in the State of New Jersey, whose identities cannot reasonably be ascertained at this time. Therefore, any negligent

and/or extreme reckless acts by Defendants, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., are the responsibility of and imputed to the defendants, ABC Corp. 1-10, fictitious names.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands judgment against the Defendants, ABC Corp. 1-10, fictitious names, representing individuals, corporations, partnerships, sole proprietorships, or other such entities doing business in the State of New Jersey, whose identities cannot reasonably be ascertained at this time for reasonable damages, together with interest, attorney's fees and costs of suit, jointly, severally, and/or in the alternative.

ELEVENTH COUNT

1. Plaintiff, Leonard S. Vidovic, repeats the allegations of the preceding Counts and incorporate same into this Count as if fully set forth at length herein.

WHEREFORE, Plaintiff, Leonard S. Vidovic, demands Judgment against the Defendants, Karen B. Bell and/or John Doe, fictitious name, Managed Care Strategic Advisors, LLC, Stellar Managed Care Consulting, LLC, Atlantic City Electric, Township of Franklin, County of Gloucester, State of New Jersey, Lumberjack Tree Pros and/or Lumberjack Tree Pros, Inc., Richard Roes 1-10, and ABC Corp. 1-10, fictitious names, representing individuals, corporations, partnerships, sole proprietorships, or other such entities doing business in the State of New Jersey, whose identities cannot reasonably be ascertained at this time for reasonable damages, together with interest, attorney's fees and costs of suit, jointly, severally, and/or in the alternative.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, the undersigned is designated as trial counsel.

JURY TRIAL DEMAND

Plaintiff demands a Trial by jury on all issues of law and fact.

NOTICE PURSUANT TO RULE 1:5-1(a)

TAKE NOTICE that the undersigned attorneys, counsel for Plaintiff, does hereby demand, pursuant to Rules 1:5-1(a) and 4:17-4(c) that each party herein serving pleadings and Interrogatories and receiving answers thereto, serve copies of all such pleadings and answered Interrogatories received from any party, including any documents, papers and other material referred to therein, upon the undersigned attorneys, and TAKE NOTICE that this is a continuing demand.

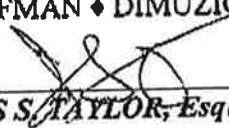
NOTICE PURSUANT TO RULES 4:17-1, -2 and -4

TAKE NOTICE that upon the service of this Complaint on any and all Defendants, it is deemed to have been simultaneously served with the appropriate Uniform Interrogatories and answers to these Uniform Interrogatories shall be served to the propounding party within 60 days after the Answer to the Complaint has been filed. Plaintiff hereby demands responsive answers to Form C and Form C1 Interrogatories within the time prescribed by the above-referenced New Jersey Court Rules from all Defendants.

CERTIFICATION

Pursuant to R. 4:5-1, the undersigned hereby certifies that, to his knowledge, this matter is not the subject of any other lawsuit filed or contemplated and is unaware of any other actions or parties which should be included in this pleading.

HOFFMAN ♦ DIMUZIO

By: 

JAMES S. TAYLOR, Esquire

Attorney for Plaintiff, Leonard S. Vidovic

Dated: December 29, 2020

JARVE KAPLAN GRANATO STARR, LLC

Anthony Granato, Esquire – Attorney ID: 043631987

Katherine M. Jarve, Esquire – Attorney ID: 079672013

10 Lake Center Executive Park

401 Route 73 North, Suite 204

Marlton, NJ 08053

Tel (856) 235-9500

Fax (856) 235-9502

Attorneys for Plaintiff

JONATHAN CARDOSO BAEZ, A
MINOR BY HIS GUARDIAN AT
LITEM, LETITIA BAEZ, AND
LETITIA BAEZ, GENERAL
ADMINISTRATRIX AND
ADMINISTRATRIX AD
PROSEQUENDEM FOR THE
ESTATES OF JOSE CARDOSO AND
ADRIANA BAEZ, DECEASED,

Plaintiffs,

v.

MICHAEL BRANCU; C THREE
LOGISTICS, LLC; TOWNSHIP OF
FRANKLIN; COUNTY OF
GLOUCESTER; STATE OF NEW
JERSEY; and JOHN DOE AND JOHN
DOE COMPANY 1-10 (John Doe and
John Doe Company 1-10 being fictitious
names), i/j/s/a,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—GLOUCESTER COUNTY

DOCKET NO.: GLO-L

CIVIL ACTION

COMPLAINT AND
DEMAND FOR JURY TRIAL

The minor Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, General Administratrix and Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, residing at 15 Taylor Street, Bridgeton, New Jersey by way of Complaint herein say:

1. This is a personal injury and wrongful death claim/action arising from a July 7, 2019 motor vehicle accident. The Plaintiffs bring the claims pursuant to the laws of New Jersey, including the Wrongful Death and Survival Acts of New Jersey.

2. Letitia Baez is the guardian ad litem of Jonathan Cardoso Baez, a minor.

3. On or about July 17, 2020, Letitia Baez was named General Administratrix and Administratrix Ad Prosequendum of the Estate of Jose Cardoso, deceased, by the Cumberland County Surrogate's Court for the purpose of prosecuting a claim for the Estate of Jose Cardoso, deceased, against the Defendant for the death of Jose Cardoso. Plaintiff thereupon qualified and thereafter acted and is still acting in such capacity.

4. On or about July 17, 2020, Letitia Baez was named and General Administratrix and Administratrix Ad Prosequendum of the Estate of Adriana Baez, deceased, by the Cumberland County Surrogate's Court for the purpose of prosecuting a claim for the Estate of Adriana Baez, deceased, against the Defendant for the death of Adriana Baez. Plaintiff thereupon qualified and thereafter acted and is still acting in such capacity.

5. On or about July 7, 2019, the minor Plaintiff, Jonathan Cardoso Baez and his natural parents, Jose Cardoso and Adriana Baez, were passengers in a 2005 Mazda 3 owned and operated by Mariela Cardoso Baez traveling southbound on Lake Road at or near its intersection with West Boulevard in Franklin Township, Gloucester County, New Jersey.

6. At the time and place aforesaid, Defendant Michael Brancu was the operator of a 2019 Kentworth T880 tractor-trailer owned by Defendant C Three Logistics, LLC traveling westbound on West Boulevard in Franklin Township, Gloucester County, New Jersey.

7. Defendant Michael Brancu did carelessly, recklessly and negligently operate the 2019 Kentworth T880 tractor-trailer so as to cause it to strike the 2005 Mazda 3 in which the

minor Plaintiff Jonathan Cardoso Baez and his natural parents, Jose Cardoso and Adriana Baez, were passengers.

8. The accident was proximately caused by the carelessness and negligence of Defendant Michael Brancu in that he failed to make proper observations, failed to use his braking apparatus properly, failed to take proper evasive actions, was traveling at an excessive rate of speed under the circumstances, was in disregard of the rights of others using the highway and was otherwise negligent and in violation of the Motor Vehicle Statutes of the State of New Jersey.

9. Defendant Three C Logistics, LLC is vicariously liable for the actions of the Defendant Michael Brancu and its independent negligence was a cause of the accident.

10. Additionally, the location of the accident was the responsibility of the governmental entity Defendants and the location of the accident was in a dangerous condition which was a cause of the accident.

11. The John Doe Defendants are individuals, corporations, partnerships, or other business entities, and/or governmental bodies who were responsible for the accident, the operation of the vehicles involved in the accident, and/or the accident location. Presently, the identities of these Defendants are unknown.

12. As a direct and proximate result of the negligence of the Defendants the minor Plaintiff Jonathan Cardoso Baez suffered, is suffering and may in the future suffer great pain and discomfort, has incurred, is incurring, and may in the future be caused to incur great expenses for hospital and/or medical treatment in an effort to rectify said injuries, has lost income earning capacity and has been otherwise injured and damaged.

13. Furthermore, the minor Plaintiff Jonathan Cardoso Baez was in the zone of

danger at the time of the accident and the minor witnessed the negligence of the Defendants Michael Brancu and C Three Logistics, LLC and witnessed the injuries and deaths of his parents.

14. As a direct and proximate result of the negligence of the Defendants, Plaintiff's decedents, Jose Cardoso and Adriana Baez, sustained injuries resulting in their deaths on July 7, 2019 and their dependents suffered pecuniary damages and sums of money were expended for funeral and burial costs, for which the estates of the decedents were liable.

15. Plaintiff's decedents, Jose Cardoso and Adriana Baez, left surviving them one child, the minor Plaintiff Jonathan Cardoso Baez, who was dependent upon Jose Cardoso and Adriana Baez and who sustained pecuniary damages from the deaths of Jose Cardoso and Adriana Baez.

16. There is, and at the time of the accident hereinafter set forth was, in force and effect in the State of New Jersey, a Wrongful Death statute known and designated as N.J.S.A. 2A:31-1 et. seq. Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, brings this action pursuant to the provisions thereof for the benefit of the decedents' survivors.

17. There is, and at the time of the accident hereinafter set forth was, in force and effect in the State of New Jersey a Survival statute known as N.J.S.A. 2A:15-3. Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, brings this action pursuant to the provisions thereof on behalf of the decedents' estates.

18. This action is brought within two years of the date of deaths of Jose Cardoso and Adriana Baez.

COUNT ONE – PLAINTIFFS v. DEFENDANT MICHAEL BRANCU

19. All of the allegations set forth in the above paragraphs are incorporated herein and

a made a part hereof as if fully set forth.

20. Defendant Michael Brancu was negligent and/or careless, and/or reckless in the following particular respects:

- a. Striking the vehicle in which the minor Plaintiff and the Plaintiff's decedents occupied;
- b. Failing to use due caution while approaching an intersection;
- c. Failing to reduce the speed of his vehicle as it approached the intersection;
- d. Failing to yield the right of way to the vehicle in which the Plaintiff minor and the Plaintiff's decedents occupied;
- e. Traveling at an excessive rate of speed;
- f. Failing to remain alert and attentive while driving;
- g. Failing to take proper evasive actions;
- h. Driving in a distracted fashion;
- i. Failing to maintain proper and adequate control of his vehicle;
- j. Operating his vehicle without due regard for the rights and safety of others on the roadway, including the Plaintiff minor and the Plaintiff's decedents.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, demands judgment against the Defendant Michael Brancu for damages together with interest and costs of suit.

COUNT TWO – PLAINTIFFS v. DEFENDANT C THREE LOGISTICS, LLC

21. All of the allegations set forth in the above paragraphs are incorporated herein and a made a part hereof as if fully set forth.

22. At the time and place aforesaid, Defendant Michael Brancu, as the agent, servant and/or employee of Defendant C Three Logistics, LLC, was operating a 2019 Kentworth T880

tractor-trailer owned, leased and/or controlled by the Defendant C Three Logistics, LLC, and as such agent, servant and/or employee, his acts of negligence are therefore imputed to the Defendant C Three Logistics, LLC.

23. Additionally, the independent negligence of C Three Logistics, LLC was a cause of the injuries and deaths described herein.

24. Defendant C Three Logistics, LLC was negligent in the entrustment of the vehicle to the Defendant Michael Brancu.

25. Furthermore the Defendant C Three Logistics, LLC was negligent and/or careless, and/or reckless in the following particular respects:

- a. Failing to properly maintain the vehicle involved in the accident which is the subject of this Complaint;
- b. Failing to have proper policies and procedures concerning the operation of its motor vehicles;
- c. Failing to have proper policies and procedures concerning the weight load of its vehicles and the operation of the vehicles considering the weight load of the vehicle;
- d. Failing to properly monitor the operation of its vehicles;
- e. Failing to have proper policies and procedures concerning monitoring of the operation of its motor vehicles;
- f. Failing to properly train the drivers of its motor vehicles, including the Defendant Michael Brancu;
- g. Negligently entrusting the vehicle to the Defendant Michael Brancu; and
- h. Being otherwise negligent.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, demands judgment against the Defendant C Three

Logistics, LLC for damages together with interest and costs of suit.

COUNT THREE – PLAINTIFFS v. DEFENDANT TOWNSHIP OF FRANKLIN

26. All of the allegations set forth in the above paragraphs are incorporated herein and made a part hereof as if fully set forth.

27. Defendant Township of Franklin owned, managed and/or controlled the intersection of Lake Road and West Boulevard in Franklin Township, Gloucester County, New Jersey and created and maintained the intersection, throwaways, traffic signs, signals and the surrounding area.

28. The intersection and approach to the intersection was confusing, was a dangerous condition and was a direct and proximate cause of the accident which is the subject of this Complaint.

29. Defendant Township of Franklin improperly and negligently located/placed a stop sign at the intersection in a manner that misinformed operators of motor vehicles on the roadway.

30. Defendant Township of Franklin by its actions and inactions created the dangerous unsafe condition of the roadways which are the subject of this Complaint, and as a result, notice of the unsafe condition is not required.

31. Defendant Township of Franklin was palpably unreasonable, careless and negligent in creating the aforementioned unsafe condition, in its failure to properly maintain the roadway in a safe condition and in its failure to exercise proper control, supervision, maintenance, repair and general safekeeping of said roadway, despite the fact that it was known or should have known that a dangerous and hazardous condition existed in the roadway.

32. Defendant Township of Franklin was palpably unreasonable, careless and negligent in failing to abate the dangerous condition.

33. Defendant Township of Franklin was otherwise negligent.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, demands judgment against the Defendant Township of Franklin for damages together with interest and costs of suit.

COUNT FOUR – PLAINTIFFS v. DEFENDANT COUNTY OF GLOUCESTER

34. All of the allegations set forth in the above paragraphs are incorporated herein and made a part hereof as if fully set forth.

35. Defendant County of Gloucester owned, managed and/or controlled the intersection of Lake Road and West Boulevard in Franklin Township, Gloucester County, New Jersey and created and maintained the intersection, throwaways, traffic signs, signals and the surrounding area.

36. The intersection and approach to the intersection was confusing, was a dangerous condition and was a direct and proximate cause of the accident which is the subject of this Complaint.

37. Defendant County of Gloucester improperly and negligently located/placed a stop sign at the intersection in a manner that misinformed operators of motor vehicles on the roadway.

38. Defendant County of Gloucester by its actions and inactions created the dangerous unsafe condition of the roadways which are the subject of this Complaint, and as a result, notice of the dangerous condition is not required.

39. Defendant County of Gloucester was palpably unreasonable, careless and negligent in creating the aforementioned unsafe condition, in its failure to properly maintain the

roadway in a safe condition and in its failure to exercise proper control, supervision, maintenance, repair and general safekeeping of said roadway, despite the fact that it was known or should have known that a dangerous and hazardous condition existed in the roadway.

40. Defendant County of Gloucester was palpably unreasonable, careless and negligent in failing to abate the dangerous condition.

41. Defendant County of Gloucester was otherwise negligent.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, demands judgment against the Defendant County of Gloucester for damages together with interest and costs of suit.

COUNT FIVE – PLAINTIFFS v. DEFENDANT THE STATE OF NEW JERSEY

42. All of the allegations set forth in the above paragraphs are incorporated herein and made a part hereof as if fully set forth.

43. Defendant State of New Jersey owned, managed and/or controlled the intersection of Lake Road and West Boulevard in Franklin Township, Gloucester County, New Jersey and created and maintained the intersection, throwaways, traffic signs, signals and the surrounding area.

44. The intersection and approach to the intersection was confusing, was a dangerous condition and was a direct and proximate cause of the accident which is the subject of this Complaint.

45. Defendant State of New Jersey improperly and negligently located/placed a stop sign at the intersection in a manner that misinformed operators of motor vehicles on the roadway.

46. Defendant State of New Jersey by its actions and inactions created the dangerous

unsafe condition of the roadways which are the subject of this complaint, and as a result, notice of the dangerous condition is not required.

47. Defendant State of New Jersey was palpably unreasonable, careless and negligent in creating the aforementioned unsafe condition, in its failure to properly maintain the roadway in a safe condition and in its failure to exercise proper control, supervision, maintenance, repair and general safekeeping of said roadway, despite the fact that it was known or should have known that a dangerous and hazardous condition existed in the roadway.

48. Defendant State of New Jersey was palpably unreasonable, careless and negligent in failing to abate the dangerous condition.

49. Defendant State of New Jersey was otherwise negligent.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, demands judgment against the Defendant State of New Jersey for damages together with interest and costs of suit.

**COUNT SIX – PLAINTIFF JONATHAN CARDOSO BAEZ, A MINOR v. DEFENDANTS
MICHAEL P. BRANCU AND C THREE LOGISTICS, LLC**

50. All of the allegations set forth in the above paragraphs are incorporated herein and made a part hereof as if fully set forth.

51. Jonathan Cardoso Baez was in the zone of danger and witnessed the negligence of the Defendants Michael Brancu and C Three Logistics, LLC and the deaths of his parents.

52. The Defendant C Three Logistics, LLC is vicariously liable for the actions of its agent the Defendant Michael Brancu.

53. The Defendants negligently inflicted emotional distress on the Plaintiff minor Jonathan Cardoso Baez.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, demands judgment against the Defendants Michael Brancu and C Three Logistics, LLC for damages together with interest and costs of suit.

COUNT SEVEN – PLAINTIFFS v. THE JOHN DOE DEFENDANTS

54. All of the allegations set forth in the above paragraphs are incorporated herein and made a part hereof as if fully set forth.

55. The John Doe Defendants are individuals, corporations, partnerships, or other business entities, and/or governmental bodies who were responsible for the accident, the operation of the vehicles involved in the accident, and/or the accident location. Presently, the identities of these Defendants are unknown.

56. At the time and place aforesaid, Defendant Michael Brancu as the agent, servant and/or employee of the Defendant John Doe and/or John Doe Company 1-10 (John Doe and/or John Doe Company 1-10 being fictitious names) was operating a 2019 Kentworth T880 tractor-trailer owned, leased, and/or controlled by the Defendant John Doe and/or John Doe Company 1-10 (John Doe and/or John Doe Company 1-10 being fictitious names) and as such agent, servant and/or employee, his acts of negligence are therefore imputed to the Defendant John Doe and/or John Doe Company 1-10 (John Doe and/or John Doe Company 1-10 being fictitious names).

57. Defendant John Doe and/or John Doe Company 1-10 (John Doe and/or John Doe Company 1-10 being fictitious names) was negligent in the entrustment, maintenance and control of the vehicle, and was otherwise negligent and in violation of the Motor Vehicle Statutes of the State of New Jersey.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates

of Jose Cardoso and Adriana Baez, deceased, demands judgment against the Defendants John Doe and/or John Doe Company 1-10 (John Doe and/or John Doe Company 1-10 being fictitious names.

COUNT EIGHT – PLAINTIFFS v. ALL DEFENDANTS
PUNITIVE DAMAGES

58. All of the allegations set forth in the above paragraphs are incorporated herein and a made a part hereof as if fully set forth.

59. On the aforesaid date, the actions and inactions of Defendants were outrageous, reckless and the grossly negligent and caused the serious injuries and the deaths which are the subject of this Complaint.

60. As a direct and proximate result of the outrageous, reckless and grossly negligent conduct of Defendants, the minor Plaintiff was seriously injured as described herein and the Plaintiff's decedent's died.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, demands judgment against all Defendants for punitive damages together with interest and costs of suit.

COUNT NINE – PLAINTIFFS v. ALL DEFENDANTS

61. All of the allegations set forth in the above paragraphs are incorporated herein and a made a part hereof as if fully set forth.

62. All of the Defendants herein are jointly and severally liable for the injuries, damages and deaths which are the subject of this Complaint.

WHEREFORE, Plaintiff Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Plaintiff Letitia Baez, as the Administratrix Ad Prosequendum for the Estates

of Jose Cardoso and Adriana Baez, deceased, demands judgment against the Defendants Michael Brancu, C Three Logistics, LLC, Township of Franklin, County of Gloucester, State of New Jersey and John Doe and/or John Doe Company 1-10 (John Doe and/or John Doe Company 1-10 being fictitious names.

GUARDIAN AD LITEM CERTIFICATE

I, Anthony Granato, Esquire, an attorney at law for the State of New Jersey, hereby certify as follows:

1. The Plaintiff, Jonathan Cardoso Baez, is a minor child at the age of thirteen (13) years.
2. Letitia Baez has been awarded sole custody and legal rights of the minor Plaintiff, Jonathan Cardoso Baez, by order of the Chancery Division Family Part of the Cumberland County Superior Court.
3. Letitia Baez does not have any interest in this action contrary to the interest of the minor Plaintiff, Jonathan Cardoso Baez.
4. Letitia Baez has consented to act as Guardian ad Litem of Jonathan Cardoso Baez in this action.

JURY DEMAND

The Plaintiffs, Jonathan Cardoso Baez, a minor by his guardian ad litem, Letitia Baez, and Letitia Baez, General Administratrix and Administratrix Ad Prosequendum for the Estates of Jose Cardoso and Adriana Baez, deceased, hereby demand trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that pursuant to Rule 4:25-4, Anthony Granato, Esquire is hereby designated as trial counsel in the above matter.

NOTICE PURSUANT TO RULE 1:7-1a (b)

PLEASE TAKE NOTICE that, to the extent applicable, Plaintiffs may, at the time of closing argument, suggest to the trier of the fact with respect to any element of damages, that unliquidated damages be calculated on a time-unit basis, without reference to the specific sum.

**DEMAND FOR COMPLIANCE WITH NEW JERSEY
COURT RULES 1:5-1(a) and 4:17-4(c)**

PLEASE TAKE NOTICE that the undersigned attorney, counsel for Plaintiffs, hereby demand, pursuant to the provisions of R. 1:5 (a) and R. 4:17-4 (c), that each party serving pleadings or interrogatories and receiving responses thereto shall serve copies of all such pleadings, interrogatories and responses thereto the undersigned.

DEMAND FOR ANSWERS TO INTERROGATORIES

PLEASE TAKE NOTICE that the Plaintiffs hereby demands responses to Form C and C(1) Interrogatories within the time proscribed by the New Jersey Court Rules from each and every Defendant.

CERTIFICATION PURSUANT TO R. 4:5-1

The matter in controversy is the subject of another action GEICO v. Taylor-Dolson, et. al. Superior Court of New Jersey Atlantic County, Docket No. ATL-L-3539-20, which will be the subject of a motion to consolidate this pending action with the Atlantic County action. There are no other related pending actions. There are no other parties known who should be joined in this action at this time.

JARVE KAPLAN GRANATO STARR, LLC

Anthony Granato /s/

ANTHONY GRANATO

Dated: November 12, 2020

ALAN K. BERLINER, ESQ. ID# 011391989
JAVERBAUM WURGAFT HICKS
KAHN WIKSTROM & SININS, P.C.
201 WASHINGTON STREET
NEWARK, NJ 07102
(973) 973-379-4200
ATTORNEY FOR PLAINTIFF(S)

CARLOS FAIBISCH

Plaintiff,

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – ESSEX COUNTY

DOCKET NO.: ~~ESX-C-3177-21~~

Civil Action

WAWA, RIGGINS GAS STATION,
RIGGINS INC., STATE OF NEW
JERSEY, DEPARTMENT OF
TRANSPORTATION, COUNTY
OF GLOUCESTER, TOWNSHIP OF
FRANKLIN, FRANKLIN TOWNSHIP
POLICE DEPARTMENT, JOHN DOES
1-5, ABC CORPS 1-5
Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff, Carlos Faibisch residing at 18230 Abby Glen Way, Houston, Texas, by way of Complaint, says:

COUNT ONE

1. On or about August 22, 2020, the Plaintiff Carlos Faibisch was a pedestrian on Delsea Drive, Franklin Township and was struck by a motor vehicle.

2. On or about August 22, 2020 in the Township of Franklin, County of Gloucester and State of New Jersey, plaintiff was lawfully upon the premises owned operated, maintained, constructed, controlled, supervised and/or leased by defendants Wawa, Riggins Gas Station, Riggins Inc., State of New Jersey, Department of Transportation, County of Gloucester, Township of Franklin, Franklin Township Police Department John Does (1-5) and ABC Corps. (1-5), said premises being at Delsea Drive, Franklin Township, New Jersey.

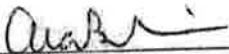
3. The area of the accident is a heavily travelled roadway. The parking lots at Wawa and Riggins cannot accommodate the volume of trucks/cars. The overflow traffic of trucks/cars from the WAWA and Riggins park on shoulders of Delsea Drive, despite the posting of "no parking" signs.

4. Defendants State of New Jersey, Department of Transportation, County of Gloucester, Township of Franklin, Franklin Township Police Department acted palpably unreasonable in

failing to enforce the "no parking" signs/rule in the area of the accident. As a result, multiple trucks/vehicles were parked along both shoulders on either side of Delsea Drive, thereby blocking Plaintiff's line of sight when attempting to cross the roadway.

5. As a result of defendants' negligence and carelessness, including, but not limited to failure to properly maintain the parking lots and roadway at the location, plaintiff was caused to sustain severe and permanent injuries to his body as a result of being struck by a car; he was required to expend great sums of money in an attempt to cure himself of his injuries; he sustained permanent injuries, he did suffer and will suffer great pain of mind and body in the future; he was unable to continue in his normal course of activities; and he was otherwise injured.

WHEREFORE, plaintiff Carlos Faibisch demands judgment against the defendants Wawa, Riggins Gas Station, Riggins Inc., State of New Jersey, Department of Transportation, County of Gloucester, Township of Franklin, Franklin Township Police Department, John Does (1-5) and ABC Corps., jointly and/or severally together with interest and costs of suit.

By: 
ALAN BERLINER, ESQ,

Dated: April 19, 2021