

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----X
LAUREN HOFFMAN,

Plaintiff,

Docket No.:

**CIVIL COMPLAINT AND
DEMAND FOR JURY TRIAL**

PHILIP EMANUELE, DETECTIVE
SARGEANT RICHARD H. COFFEY,
SARGEANT THERESA HEALY,
DETECTIVE LIEUTENANT
LAWRENCE TYLER, LIEUTENANT
DANIEL M. GUTHRIE, POLICE
CHIEF MICHAEL GOLDFARB, THE
BOROUGH OF EATONTOWN NEW
JERSEY, THE EATONTOWN
BOROUGH POLICE DEPARTMENT,
and JOHN DOE NUMBERS ONE
through TEN, real names unknown,
representing individuals and/or
entities which deprived Plaintiff of her
civil rights, or otherwise caused injury
to the Plaintiff, as alleged in this
Complaint,

Defendants.
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I. INTRODUCTION.

Plaintiff, by and through her undersigned counsel, William P. Perniciaro, hereby files this Complaint against the defendants PHILIP EMANUELE, DETECTIVE SARGEANT RICHARD H. COFFEY, SARGEANT THERESA HEALY, DETECTIVE LIEUTENANT LAWRENCE TYLER, LIEUTENANT DANIEL M. GUTHRIE, POLICE CHIEF MICHAEL GOLDFARB,¹ THE BOROUGH OF EATONTOWN NEW JERSEY, THE EATONTOWN BOROUGH POLICE DEPARTMENT, and JOHN DOE NUMBERS ONE through TEN, alleged to have unlawfully deprived Plaintiff of her Civil Rights, and caused her damage, in violation of a portion of the Civil Rights Act of 1871, codified at 42 U.S.C. §1983 to 1988.

Plaintiff also files pendant claims, See 28 U.S.C. 1367(a) (Supplemental Jurisdiction of State Claims), under the New Jersey Tort Claims Act (NJTCA), N.J.S.A. 59:1-1, et seq., directly against THE BOROUGH OF EATONTOWN NEW JERSEY, THE EATONTOWN BOROUGH POLICE DEPARTMENT, and the individual Defendants, all EATONTOWN borough employees.

Plaintiff alleges as follows:

¹ Later in the Complaint the defendants, for convenience, will simply be referenced by their surnames.

II. NATURE of ACTION.

1. The Plaintiff alleges on February 16, 2012, she was abducted and raped in the back of a police van by PHILIP EMANUELE (hereinafter "EMANUELE"), a former detective for THE BOROUGH OF EATONTOWN NEW JERSEY (hereinafter "EATONTOWN") and THE EATONTOWN BOROUGH POLICE DEPARTMENT (hereinafter the "DEPARTMENT").
2. This occurred while Plaintiff was attempting to perform her role as a Confidential Informant ("CI") in a narcotics investigation under EMANUELE's, and the DEPARTMENT's, custody and care.
3. This action seeks damages, punitive damages, pre-judgment interest, costs and attorney's fees, as a result of the acts of EATONTOWN and the DEPARTMENT, and its agents servants and employees, EMANUELE, DETECTIVE SARGEANT RICHARD H. COFFEY, SARGEANT THERESA HEALY, DETECTIVE LIEUTENANT LAWRENCE TYLER, LIEUTENANT DANIEL M. GUTHRIE, POLICE CHIEF MICHAEL GOLDFARB, and JOHN DOE NUMBERS ONE through TEN, in depriving Plaintiff of her Civil Rights in violation of the Civil Rights Act of 1871 (42 U.S.C. §1983)("§1983") which provides redress for deprivation of any rights, privileges, or

immunities secured by the United States Constitution (the "Constitution") and laws.

4. Specifically §1983 provides as follows:

"Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

5. Several theories of liability under §1983 are presented including, but not limited to, EMANUELE's direct responsibility under §1983, as well as EATONTOWN's and the DEPARTMENT's municipal (Monell) liability, and/or the Deliberate Indifference of the remaining individual defendants as set forth in controlling case law.

6. The defendants are liable, both individually and/or vicariously, in an individual and/or official capacity, or as a municipality (EATONTOWN and/or the DEPARTMENT).

7. This action also invokes the New Jersey Tort Claims Act (N.J.S.A. §59:1-1, et seq.) which allows for suits against New Jersey municipal employees and governments.

8. N.J.S.A 59:3-14 also expressly precludes sovereign immunity for EMANUELE's intentional torts:

Public employee immunity—exception

a. Nothing in this act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

b. Nothing in this act shall exonerate a public employee from the full measure of recovery applicable to a person in the private sector if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

9. N.J.S.A. 59:3-1(a)(Liability Generally) also provides for the liability of municipal employees for their reckless, deliberately indifferent, and/or negligent acts:

“Except as otherwise provided by this act, a public employee is liable for injury caused by his act or omission to the same extent as a private person.”

10. This portion of the case focuses on the remaining individual defendants, in failing to properly supervise EMANUELE, negligently executing their duties in failing to take proper steps to prevent the

injury allegedly inflicted by EMANUELE, reckless and deliberately disregarding their duties, and in negligently inflicting emotional distress.

11. N.J.S.A 59:2-2(a)(Liability of Public Entity) also precludes sovereign immunity for municipalities as follows:

“A public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances.”

12. This sets out the liability of EATONTOWN and/or the DEPARTMENT for the negligence of its employees (the individual defendants herein) in failing to properly supervise EMANUELE, negligently executing their duties in regard to the injury inflicted by EMANUELE, and/or negligently inflicting emotional distress.

13. This is supported by New Jersey case law, including, but not limited to, matters of municipal liability in cases of sexual assault of individuals in the custody and care of a municipal employee.

III. JURISDICTION.

14. The court has original Subject Matter Jurisdiction of this action pursuant to 28 U.S.C. §1331 which states the “The district courts shall

have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

15. This case arises under the laws of the United States in that it is filed to obtain the remedy set forth in a portion of the federal Civil Rights Act of 1871, a federal law codified at 42 U.S.C. §1983 (“§1983”).

16. The court also has original jurisdiction of this action pursuant to 28 U.S.C. § 1343(a)(3) which states the:

“The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person ... [t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.”

17. This action expressly seeks redress for “deprivation of ... rights, privileges, or immunities secured by the [United States] Constitution and laws.”

18. The court further has pendant jurisdiction of the New Jersey Tort Claims causes of action under 28 U.S.C. 1367(a)(Supplemental Jurisdiction of State Claims) which allows for:

“jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that

they form part of the same case or controversy under Article III of the United States Constitution.”

19. Plaintiff's state law based causes of action, under the New Jersey Tort Claims Act, arise out of the same core and/or nucleus of operative facts as the federal claims under §1983, i.e.: the direct sexual assault by EMANUELE, or the negligence and/or Deliberate Indifference of EATONTOWN, the DEPARTMENT, and its public employees (the individual defendants herein).

20. The court has *in personam* jurisdiction over all the Defendants since all are domiciled in the State of New Jersey, and/or had continuous and systematic contacts with the State by virtue of their employment and/or alleged wrongful actions in New Jersey.

IV. VENUE.

21. Venue is predicated on 28 U.S.C. § 1391(b), as the defendants reside in this district and/or a substantial part of the events or omissions giving rise to the claim occurred in the District of New Jersey.

V. NOTICE OF CLAIM.

22. On May 9, 2012, the Plaintiff duly served a Notice of Claim on EATONTOWN, on the form provided by the Borough, for purposes of

satisfying the N.J.S.A. 59:8-8 requiring a claimant to specify the facts and circumstances of Plaintiff's claim against the Borough, and its agents, servants, and employees (the individual defendants herein).

23. More than six (6) months have elapsed, giving the Borough the statutory time to adjust and/or settle this claim under NJTCA.

24. Plaintiff has offered all of the material set forth in this complaint, including all exhibits and research, to the representatives of the defendants.

25. Plaintiff has further complied with all NJTCA requirements for the provision of medical authorizations or other information requested by EATONTOWN.

26. Plaintiff has also provided an open line of communication in order to avoid the filing of this action.

27. Neither the Borough, nor any individual defendant, has offered to adjust and/or settle this claim.

VI. THE PARTIES.

28. At all times relevant herein, the Plaintiff LAUREN HOFFMAN, is a resident of Monmouth County, New Jersey, and was falsely cast as a Confidential Informant ("CI") under the custody and control of public

employees of EATONTOWN and the DEPARTMENT between December 21, 2011 and February 17, 2012.

29. Defendant EATONTOWN, at all times relevant herein, is a borough in Monmouth County, New Jersey.

30. EATONTOWN, at all times relevant herein, exists and operates under a Borough form of government pursuant to N.J.S.A. §40A:60-1 et. seq.

31. N.J.S.A. §40A:60-1(b) allows a Borough to be sued in a court of law.

32. EATONTOWN, at all times relevant herein, employed the individual defendants set forth below as public employees.

33. Defendant, the DEPARTMENT, is an executive agency of EATONTOWN responsible for safeguarding the lives and property in EATONTOWN, to reduce the fear and incidence of crime, to enhance public safety, and to maintain public confidence by serving with honor and integrity.²

34. Defendant EMANUELE, at all times relevant herein, is a resident of Brick Township, Monmouth County, New Jersey.

² See <http://eatontownnj.com/police/>

35. EMANUELE, between December 11, 2011, and June of 2012, was employed as a detective for the DEPARTMENT Detective Bureau.

36. EMANUELE forfeited his position on November 30, 2012 as a result of his conviction for Criminal Coercion (N.J.S.A. 2C:13-5) and Tampering with or Fabricating Physical Evidence (N.J.S.A. 2C:28-6).

37. This criminal conduct was directed toward the Plaintiff.

38. EMANUELE, at all times relevant herein, was responsible for reporting directly to the DETECTIVE SERGEANT COFFEY (hereinafter "COFFEY") who is responsible for the supervision of all Bureau activities and is answerable to the DETECTIVE LIEUTENANT LAWRENCE TYLER (Investigations Commander). **See Exhibit A, DEPARTMENT General Order 06-CH11-01(III)(C)(8)³; and Exhibit B, Eatontown Police DEPARTMENT 2011 Annual Report (Page 20).**

39. EMANUELE'S duties also included, but were not limited to: Criminal, background, missing person, death, suicide, Controlled Dangerous Substance, wanted person, firearms applicant, peddlers/solicitor, alcohol licensing, bias-incident, and other

³ Compliance with General Orders is mandatory. See General Order 05-CH12-01(IV)(C)(EXHIBIT AA).

investigations; Arrest and search warrant preparation including affidavits/subpoenas; Warrant service and execution; Forensic identification; Domestic Violence intervention; Megan's Law compliance; Asset forfeiture; Case management including **submission of all follow-up investigation reports to the Detective Sergeant for signature**; Entry of all completed reports in the police department electronic records management system (ENFORSYS); Investigation Reports including, but not limited to, date of activity; relevant weather or situational conditions at the scene (i.e. a fire, crowd), physical evidence, circumstantial evidence relevant to the investigation, investigative facts and any other pertinent information, name, address, telephone numbers of victims, witness, and suspects if known, results of interviews with the complainant, victim, witnesses, or suspects, status of investigation and signature of the investigating detective; Interviewing victims/witnesses; Interrogating suspects; Obtaining written/taped statements; Identifying and apprehending offenders; Identifying criminal activity; Investigating suspicious activity; Crime scene documentation/sketches; Evidence identification/collection; Planning, organizing, and conducting searches; Arranging for polygraph examinations; Surveillance and

Operation of surveillance equipment; Identifying stolen property; Court preparation/testifying; Preparation/execution of arrest warrants; **Developing informants**; Performing covert operations; Investigating suspicious deaths; Attending autopsies; Preparing written reports; Preparing intelligence reports; Disseminating appropriate case information; Familiarization with Federal, State, and local laws; Attending briefings and sharing knowledge/intelligence information, Assisting patrol with preliminary investigations; Participating in multi-jurisdictional operations/investigations; All other duties as required by Bureau assignment; Photo identification of all persons arrested in the borough; and maintenance of equipment and supplies that are utilized by the Detective Bureau.

40. Defendant COFFEY, at all times relevant herein, on information and belief, is a resident of Monmouth County, New Jersey.

41. COFFEY, at all times relevant herein, was the supervisor of DEPARTMENT detectives including direct supervision of PHILIP EMANUELE.

42. COFFEY, see DEPARTMENT General Order **06-CH11-01 (Exhibit A) and General Order 08-CH12-04(IV)(B)(4)(Sergeants)(Exhibit C)**, DEPARTMENT 2011 Annual

Report (**Exhibit B**), and DEPARTMENT Rules and Regulation §§2:3.4 (**Exhibit D**), at all times relevant herein, was responsible for the **immediate supervision of officers on duty and officers assigned to special duty** in their respective assignments; **Close supervision of the activities of their subordinates**, making corrections where necessary and commending where appropriate; Maintaining a military relationship with their subordinates and requiring a proper attitude by these subordinates to their position as supervisors; Setting an example to all subordinates in sobriety, dignity, courtesy, discretion, diligence and observance of proper discipline and shall at all times appear neatly attired, clean in person and equipment; Thorough acquaintance with the capabilities of officers under their supervision and impartially **reporting, in writing, to their commanding officer every case of misconduct, incompetence, neglect of duty or any violation of the rules and regulations on the part of such police officer; Particular familiarization with all subjects pertaining to the duties of an officer**, and assisting and instructing the officers under his supervision in the proper discharge of their duties and **shall be held strictly responsible for their efficiency, discipline and general good conduct and appearance; Proper performance of**

police duties from members of the DEPARTMENT assigned to his supervision; Proper conduct and appearance of officers under his supervision and **would be deemed guilty of neglect of duty** when those under their command or supervision are habitually lax and indifferent in the performance of their duties; Scrutinizing and following up on the activities of officers under their charge, with the view of ascertaining whether police duties are properly and efficiently performed, and instructions properly carried out; Enforcement of the law, Prevention of crime and arrest of offenders; Observing and communicating with officers/civilians under his supervision as often as possible during his tour of duty; Current knowledge and understanding of the DEPARTMENT's policies and procedures; Following of policy and procedure and in turn requiring his subordinates to adhere to policy and procedure; setting an example; Case management of all criminal cases, following up on all criminal cases assigned to a detective, Reviewing all police reports involving indictable offenses, making corrections to police reports prior to their being logged into the records bureau; Provision of on-the-job training as needed for efficient operation and coordination of effort when more than one member or

employee is involved; Exercise direct command in a manner that assures the good order, conduct, discipline, and efficiency of subordinates outside their usual spheres of supervision if the police objective or reputation of the DEPARTMENT so requires or if no other provision is made for personnel temporarily unsupervised; **Enforcement of DEPARTMENT rules, regulations, and requiring compliance with DEPARTMENT policies and procedures;** Inspection of activities, personnel, and equipment under their supervision and **initiation of suitable action in the event of a failure, error, violation, misconduct, or neglect of duty by a subordinate;** **Having a working knowledge of the duties and responsibilities of his subordinates, observing contacts made with the public by his subordinates and being available for assistance or instruction as may be required;** Responding to calls of serious emergencies, crimes in progress, assaults, and others unless actively engaged in a police incident; Observing the conduct of the assigned personnel taking active charge when necessary; **Frequently querying the personnel under their supervision to ascertain their knowledge with respect to the rules and regulations and all other matters pertaining to their duties, and**

when it appears that an officer is ignorant of his/her duties and after a reasonable period of instruction, he/she still shows no indication of improvement, or, if for any reason, a Sergeant believes that an officer under his/her supervision is either mentally or physically unfit for duty, he/she shall promptly inform his/her commanding officer, in writing, of his/her observation; Prior to the beginning of a shift, conducting a shape-up to make his/her subordinates aware of current information, criminal activity or any special details; Assigning of special details during their shift in the areas of crime prevention and/or motor vehicle enforcement; and other duties. **Emphasis supplied.**

43. Defendant SARGEANT THERESA HEALY (hereinafter "HEALY"), at all times relevant herein, on information and belief, is a resident of Monmouth County, New Jersey.

44. HEALY was the Shift Supervisor on duty the night Plaintiff was Sexually Assaulted by EMANUELE.

45. HEALY was responsible for the same duties as COFFEY.

46. In addition, HEALY had the additional obligation to **approve all use of DEPARTMENT vehicles, including the van in which EMANUELE abducted and raped the Plaintiff**, pursuant to

DEPARTMENT Rule and Regulation 3:4.4 (DEPARTMENT Vehicles Use)(**Exhibit E**). **Emphasis supplied.**

47. HEALY is charged with the knowledge of EMANUELE's meeting **alone** in a van with Plaintiff, a CI.

48. Defendant DETECTIVE LIEUTENANT LAWRENCE TYLER (hereinafter "TYLER"), at all times relevant herein, on information and belief, is a resident of Monmouth County, New Jersey.

49. TYLER, at all times relevant herein, was the commander of the DEPARTMENT's Detective Bureau.

50. TYLER, **see DEPARTMENT General Order 06-CH11-01 (Exhibit A) and General Order 08-CH12-04(IV)(B)(3)(Lieutenants)(Exhibit C), DEPARTMENT 2011 Annual Report (Exhibit B)(Pages 17, 28), and Eatontown Municipal Code § A361-7 (Supervision and authority)(Exhibit F)**, at all times relevant herein, was **responsible for the DEPARTMENT's follow-up investigations of reported crimes and specialized investigations of drug and street crimes; Oversight of all investigations; Management of the Detective Bureau for efficient and effective operation; Analyzing reports and observing operations, conditions, facilities, equipment and technology to evaluate the effectiveness and**

efficiency of the Detective Bureau; Formulating, recommending and implementing strategies, tactics, procedures and methods of operation as needed to improve services or respond to changing conditions; **Deploying and scheduling Detective Bureau personnel to meet the needs of the DEPARTMENT and the community on a day-to-day basis** and in special or emergency circumstances; Delegation of work and assignments to subordinate personnel, **and following up to ensure prompt and proper completion; Evaluation of the performance of all personnel in the Detective Bureau;** Conferring with Investigations Division personnel and others with regard to divisional functions, services and operations; Direction of the initial training of new Investigations Division employees and recommendation for appropriate in-service training and continuing education for all division personnel to meet DEPARTMENT and professional requirements; **Ensuring that all Investigations Division personnel are informed of changes in laws, policies or procedures** that may affect the operation of the division; **General responsibility** for the efficiency and discipline of the Detective Bureau and the **enforcement of the rules and regulations** applicable

thereto; and other duties as required or assigned by superiors.

Emphasis Supplied.

51. The Defendant LIEUTENANT DANIEL M. GUTHRIE (hereinafter "GUTHRIE"), at all times relevant herein, on information and belief, is a resident of Monmouth County, New Jersey.

52. GUTHRIE, at all times relevant herein, was the Commander of the DEPARTMENT's Operations Division.

53. GUTHRIE, **see DEPARTMENT General Order 06-CH11-01 (Exhibit A) and General Order 08-CH12-04(IV)(B)(3)(Lieutenants)(Exhibit C) and DEPARTMENT Rules and Regulations 2:3.2 (Commanding Officers)(Exhibit G)** at all times relevant herein, was responsible for the direction and control of personnel under his command to **assure the proper performance of duties and adherence to established rules, regulations, policies, and procedures**; Providing for continuation of command and supervision in his absence; Development and maintenance of *Espirit de Corps* and loyalty to the DEPARTMENT; Maintenance of discipline and moral within the command and the investigation of personnel complaints not assigned elsewhere; Promoting of harmony and cooperation with other units of the DEPARTMENT; Initiation of proper

action in cases or situations not regularly assigned to his command **when a delay in taking may result in failure to perform a police duty**; Organization and assignment of duties within his unit to assure proper performance of DEPARTMENT functions and those of his command; Preparation of required correspondence, reports, and maintenance of records relating to the activities of his command; Assurance that information is communicated up and down the chain of command as required; **Assurance that quarters, equipment, supplies and material assigned to his command are correctly used and maintained**; Scheduling and assignment of all Patrol Bureau personnel; Managing the activities of the Patrol Bureau for efficient and effective operation in the protection of life and property, Preservation of peace and order, Prevention and suppression of crime, Arrest and prosecution of offenders, Recovery and return of stolen property and the regulation of traffic; Analyzing reports and observation of operations, conditions, facilities, equipment and technology to evaluate the effectiveness and efficiency of police services within the Operations Division; Formulation, recommendation and implementation of strategies, tactics, procedures and methods of operation as needed to improve Operations Division services or

respond to changing conditions; Evaluation of all sergeants and patrol officers in the Operations Division and reviews the evaluations of all police officers and other personnel assigned to the Operations Division; Conducting inspections within the Operations Division to maintain discipline and morale; Serving as a member of the DEPARTMENT's administration; Conferring with the Chief of Police and other members of the administration in developing the mission, philosophy, policies and procedures of the DEPARTMENT; Providing expert advice and assistance to the Chief of Police; Conferring with Operations Division supervisors and others with regard to divisional functions, services and operations; Participating in DEPARTMENT personnel activities, including recruitment, selection, assignment, promotion, discipline, grievances, complaints and commendations within the requirements of the law and DEPARTMENT rules, regulations, policies and procedures; Responding to complaints or inquiries from the public about DEPARTMENT operations or employee conduct; Conducting administrative investigations into allegations of employee misconduct and reports findings and recommendations to the Internal Affairs Officer; Directing the Field Training Program for new police officers and recommends appropriate

in-service training and continuing education for all Operations Division personnel to meet DEPARTMENT and professional requirements; Assuring that all Operations Division personnel are informed of changes in laws, policies or procedures that may affect the operation of the division; Keeping the Chief of Police informed of significant events, activities or circumstances that may affect DEPARTMENT operations, public safety or community relations; Preparing and submitting annual and special reports on Operations Division activities and accomplishments; Representing the Chief of Police in relationships with other governmental agencies when needed; Preparing correspondence and other documents for the signature of the Chief of Police; Overseeing the maintenance of the Operations Division fleet of vehicles and areas of the police facilities, including the booking area; Directing the planning, deployment and operations for special events, such as parades, festivals and concerts; Conducting special assignments at the direction of the Chief of Police; Training of DEPARTMENT personnel; **final approval of all CI Relationships;** and other assigned duties. **See Emphasis Supplied.**

54. Defendant POLICE CHIEF MICHAEL GOLDFARB (hereinafter "GOLDFARB"), at all times relevant herein, on information and belief, is a resident of Monmouth County, New Jersey.

55. GOLDFARB, at all times relevant herein, was the commanding officer of the DEPARTMENT.

56. GOLDFARB, **see DEPARTMENT General Order 06-CH12-03 (Exhibit H), General Order 08-CH12-04 (Exhibit I), and General Order 05-CH12-01 (EXHIBIT AA); Eatontown Borough Code § 55-8 [Amended 5-22-2002 by Ord. No. 07-2002] (Exhibit J); and DEPARTMENT Rule and Regulation §§1:1.4 (Exhibit K) and Rule and Regulation 2:3.1 (Exhibit L),** at all times relevant herein, was the **final authority in the day-to-day operations** of the DEPARTMENT in accordance with state statutes, **responsible for administering and enforcing the Rules and Regulations of the DEPARTMENT** and any special emergency directive for the disposition and discipline of the DEPARTMENT and its members and officers; Administering procedures consistent with state law, for the hearing and determination of charges of violations of DEPARTMENT rules and regulations by any member of the police DEPARTMENT; Exercising and **discharging the functions, powers and duties of the**

DEPARTMENT; Delegating his powers, as he may deem necessary for the efficient administration of the DEPARTMENT to be exercised under his direction and supervision by division heads; Prescribing the internal organization of the DEPARTMENT and the duties of his subordinates and assistants prescribing the duties and assignments of all members and officers; Delegating such authority as may be deemed necessary for the efficient operation of the DEPARTMENT to be exercised under the Chief's direction and control; Administering the work of the DEPARTMENT through the divisions established and such other units of administration as he may find necessary or desirable; Assigning functions, powers, and duties to members and employees of the DEPARTMENT; Reporting at least monthly to the Borough Administrator who shall in turn consult with the Police Committee or its Chairperson in such form as shall be prescribed on the operation of the DEPARTMENT during the preceding month and make such other reports as may be requested by the Borough Administrator; Overall administration, **management and the day to day operations of the DEPARTMENT**; and Specific administrative functions, such as planning, budgeting, personnel, training,

accreditation, discipline, labor relations and media relations. **See Emphasis Supplied.**

57. GOLDFARB also held the sole, final and exclusive policy making authority to issue and/or amend Department General Orders. See DEPARTMENT General Order 05-CH12-01(V)(A)(**EXHIBIT AA**).

58. GOLDFARB also has the final municipal authority for enforcement and compliance with Department policy and custom for the protection of individuals in the custody and/or control of Department officers.

59. Defendants, JOHN DOE NUMBERS ONE through TEN, represent individuals and/or entities which deprived Plaintiff of her civil rights, or otherwise caused injury to the Plaintiff, either intentionally, recklessly, with Deliberate Indifference, and/or negligently, as alleged in this Complaint.

60. If discovery in this case discloses the true names of JOHN DOE defendants, an appropriate motion will be made, or a stipulation entered, to Amend the Caption and Complaint, to reflect the identity and conduct of these currently unknown individuals.

VII. FACTUAL BACKGROUND.

A. Arrest

61. On December 21, 2011 Plaintiff was a twenty-four (24) year old female working at a cosmetics/fragrance counter at Macy's department Store ("Macy's") in the Eatontown Mall (the "Mall") located at 231 Route 35, Eatontown, New Jersey.

62. Sometime during that day, Ms. Plaintiff was accused of taking money from a Macy's cash register.

63. The Plaintiff was approached by Macy's personnel and brought to a security office in the store.

64. A loss prevention worker at Macy's directly contacted defendant EMANUELE, a male detective with the DEPARTMENT.

65. This worker told the Plaintiff that he was directly calling a "friend of his" (EMANUELE) who will be "helping" the Plaintiff.

66. EMANUELE responded to Macy's in plain clothes on behalf of the DEPARTMENT in an unmarked DEPARTMENT police car.

67. Plaintiff answered all of EMANUELE's questions truthfully including her admission of drug addiction and that she had unlawful prescription drugs and Heroin in her car parked outside Macy's.

68. EMANUELE asked the Plaintiff for her car keys so he could unlock the vehicle and recover these drugs.

69. EMANUELE found and seized three (3) tablets of alleged Roxicet, an opiate based prescription pain reliever, and a small quantity of alleged heroin, a narcotic drug and Controlled Dangerous Substance under New Jersey law.

B. Failure to Voucher Drugs.

70. EMANUELE failed to properly document the existence of the drug evidence.⁴

71. EMANUELE failed to place the evidence in a secure container.⁵

72. EMANUELE placed the Plaintiff into custody but not in handcuffs.⁶

73. EMANUELE guided Plaintiff into the front seat of his patrol car.⁷

⁴ This is a violation of DEPARTMENT General Order 08-CH83-01(G)(2)(a) (Collection and Preservation of Evidence) which states, "Document the collection of evidence by recording its location at the scene, date of collection, and who collected it." (**Exhibit M**)

⁵ This is a violation of DEPARTMENT General Order 08-CH83-01(G)(2)(h) which states, "Identify and secure evidence in the appropriate containers at the crime scene. Package items to avoid cross contamination." (**Exhibit M**)

⁶ This is a violation of DEPARTMENT General Order 06-CH1-08(G)(2)(Custody and Transportation) which states, "At a minimum, they are to be handcuffed behind their back." (**Exhibit U**)

⁷ This is a violation of DEPARTMENT General Order 06-CH1-08(G)(4)(a)(Custody and Transportation) which states, "Arrested persons shall be secured in seat belts and transported in the back seat behind the partition." (**Exhibit U**)

74. Prior to transporting Plaintiff, EMANUELE failed to notify the dispatcher that he had a female arrestee in his custody, his location and odometer reading.⁸

75. EMANUELE drove Plaintiff to the DEPARTMENT located at 47 Broad Street, Eatontown, New Jersey 07724

76. On the way to the DEPARTMENT, EMANUELE questioned Plaintiff about her personal circumstances and background, including her drug use.

77. Plaintiff described the extent of her drug habit including the types of drugs involved and how she obtained them.

78. Upon arrival at the DEPARTMENT, EMANUELE obtained a video-taped statement from the Plaintiff concerning the alleged theft from Macy's.

79. EMANUELE failed to inquire of Plaintiff as to origin of the alleged drugs and Plaintiff's alleged possession of them.

80. EMANUELE failed to prepare a police report as to the existence of drugs in Plaintiff's car.⁹

⁸ This is a violation of DEPARTMENT General Order 06-CH1-08(G)(8)(c) which states, "In all cases, the transporting officer shall ... [a]dvise the dispatcher by radio of the beginning and ending locations and mileage whenever transporting ... arrested persons of the opposite sex." (Exhibit U)

81. EMANUELE did not voucher the alleged drugs.¹⁰

82. EMANUELE failed to follow proper police procedure because he intended to destroy the drugs and thereby demonstrate to the Plaintiff that he was a corrupt official.

83. This was a part of EMANUELE's plan to dissimulate control over Plaintiff's legal fate, and later coerce her to acquiesce to his sexual demands.

84. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY, and JOHN DOE at this point are charged with knowing of Plaintiff's existence and the extent of her criminal charges.

C. Intentional Destruction of Evidence.

85. During Plaintiff's arrest processing, EMANUELE took her near the bathroom where he discarded the alleged drugs in a toilet and flushed them in full view of Plaintiff.¹¹

⁹ This is a violation of DEPARTMENT General Order 07-CH82-02(C)(7)(Investigation Report) which states, "Investigation reports should contain the basics of any good investigation, minimally including; who, what, when, where, why, and how." (Exhibit N).

¹⁰ This is a violation of DEPARTMENT General Order 07-CH82-02(C)(5)(Evidence Report) which states, "When any recovered items, which will be held as evidence by the police DEPARTMENT, are brought in, an Evidence Report must be completed." (Exhibit N).

¹¹ This is a violation of DEPARTMENT General Order 07-CH82-02(G)(m) which states, "Transport and submit evidence items for secure storage." (Exhibit N). It is further a violation of the New Jersey Criminal Code. Specifically N.J.S.A. 2C:28-6 (Tampering with or Fabricating Physical Evidence) is committed when a person, "... believing that an official proceeding or investigation is pending destroys ... any ... object ... with purpose to impair its verity or availability in such proceeding or investigation."

86. EMANULE committed this crime in continuation of his plan to appear to be in control of her legal destiny, and later coerce her to submit to his sexual advances.

D. Emanuele Recruits Plaintiff as a Pseudo "CI".

87. Plaintiff was also taken to a small room in the lower level of the DEPARTMENT headquarters.

88. At this time EMANUELE explained that he wanted to recruit her as a Confidential Informant (a "CI") for purposes of having her pose as a buyer of drugs in the Mall.

89. EMANUELE informed Plaintiff he intended to recruit her as a CI in return for immunity and/or leniency in her criminal case.¹²

90. This initial meeting occurred between Plaintiff and EMANUELE alone.¹³

91. EMANUELE described how a CI works with the DEPARTMENT for purposes of gaining evidence against drug dealers in the area and the immunity and/or leniency she can thereby gain.

¹² DEPARTMENT General Order 08-CH42-02(III)(A)(1), limits the definition of Informant exclusively to "a person who provides information and/or services to the DEPARTMENT concerning criminal activity and who expects something in return; or an individual who, on multiple occasions, provides information out of a sense of obligation or personal need to help law enforcement and the community." (Exhibit O).

¹³ This is a violation of DEPARTMENT General Order 08-CH42-02(IV)(D)(3)(a) which states, "Officers shall not meet with informants alone unless extenuating circumstances make it impractical to have a second officer in attendance." (Exhibit O).

92. EMANUELE promised Plaintiff that her "safety was his utmost concern."

E. Emanuele's Coercive Acts.

93. He also explained what a "break" he was giving her by his disposing of the drugs including saving her from a possible mandatory prison sentence under the New Jersey Controlled Dangerous Substances ("CDS") Act (the "Act").

94. This promise of immunity was also a lie since, unbeknownst to Plaintiff, the destruction of the evidence made it impossible to prosecute Plaintiff for the drug offenses.

95. Plaintiff however believed that she was still in legal jeopardy for drug possession.

96. EMANUELE's promise of immunity for this offense was also designed to simulate legal leverage over Plaintiff for his plan to abduct her and obtain sexual favors by coercion.

97. Due to the disposal of the drugs recovered from Plaintiff's car, EMANUELE had no jurisdictional predicate to seek to have Plaintiff prosecuted for any drug offense under the New Jersey Criminal Code.

98. EMANUELE however pretended to have such jurisdiction over Plaintiff.

99. By doing so EMANUELE evaded guidelines for law enforcement as to CI's with drug offences.

100. EMANUELE further asserted that Plaintiff was in serious criminal jeopardy for the theft from Macy's.

101. During this meeting EMANUELE also stated to Plaintiff, "It would be a shame if you were in prison for Christmas."

102. EMANUELE was thus threatening Plaintiff with prison.

103. EMANUELE was further misrepresenting the true state of affairs since the original charges carried a presumption of no incarceration under N.J.S.A. 2C:44-1(e).

104. EMANUELE then showed Plaintiff an agreement setting forth the terms and conditions of the CI relationship (the "CI Agreement") between the DEPARTMENT and Plaintiff, which she signed.

105. In discussing the CI Agreement, EMANUELE indicated that, if she successfully performed her CI obligations, she would be spared from going to prison.

106. Working as a CI, as proposed by EMANUELE, was dangerous in that she would be identifying drug dealers and/or buying drugs from them.

107. The ensuing prosecution of these drug dealers could result in lengthy prison terms for which these individuals may seek retaliation or reprisal against Plaintiff and/or her family.

108. Thus, dangerous cooperation of this nature is exclusively reserved for those facing prison terms themselves.

109. This is how the CI Agreement was presented to the Plaintiff by EMANUELE, to wit: that she was facing a prison term and some significant cooperation on her part was required in order to obtain a sentence involving no time in prison.

110. The CI Agreement created a legal relationship between EATONTOWN, the DEPARTMENT, and the Plaintiff, whereby she was to provide information and/or cooperation concerning persons dealing drugs in EATONTOWN, in exchange for immunity and/or lenient treatment as to any offenses which Plaintiff may have committed.

111. On information and belief, the CI Agreement created express obligations, and a Special Relationship, between Plaintiff, EATONTOWN and the DEPARTMENT, and its agents, servants and employees.

112. This Special Relationship required EATONTOWN and the DEPARTMENT to take reasonable precautions for Plaintiff's safety.

113. The CI Agreement also created implied obligations, on the part of EATONTOWN and the DEPARTMENT, and its agents, servants and employees, to take reasonable precautions for Plaintiff's safety.

114. EMANUELE and the CI Agreement made express and implied promises that Plaintiff's cooperation can lead to more lenient treatment that would not otherwise be available in the absence of the CI Agreement.

115. EMANUELE then transported Plaintiff from the DEPARTMENT back to her car located at the Mall.

116. Again Plaintiff was seated in the passenger seat not in handcuffs, in further violation of DEPARTMENT General Order 06-CH1-08 (Custody and Transportation)(**Exhibit U**).

117. This is also a further violation of DEPARTMENT General Order 08-CH42-02(D)(3)(a)(**Exhibit O**)(prohibiting meetings alone with CIs).

118. EMANUELE also failed to report that he was transporting a female, including his starting and ending location and odometer readings, a further violation of DEPARTMENT General Orders. (**Exhibit U**).

F. Emanuele's First Demand for Sex.

119. Upon arrival back at the Mall and Plaintiff's car, EMANUELE again informed Plaintiff what a "break" he was giving her, and expressed that she is somehow indebted to him, directly, and should do something for him personally.

120. Plaintiff responded that she was willing to serve as a CI and did not know what else he was referring to, to which EMANUELE responded, "How about a blow job."

121. This violates DEPARTMENT General Order 08-CH42-02(IV)(D)(4)(a) which states, "Officers shall not engage in personal, social or sexual relationships with confidential informants." (**Exhibit O**).

122. Plaintiff refused EMANUELE's demand for oral sex and was released.

G. Emanuele's Second Meeting with Plaintiff.

123. Plaintiff went home in her own car after Emmanuelle informed her that she was to report back to the DEPARTMENT on or about Saturday, December 17, 2011 for purposes of further instruction as to her role as a CI for the DEPARTMENT.

124. On or about December 17, 2011, Plaintiff appeared at the DEPARTMENT, accompanied by her mother Carla Braswell-Cefalo (Cefalo) for the meeting with EMANUELE.

125. EMANUELE made a brief explanation to Cefalo about Plaintiff's proposed role as a CI, and repeated the promise that Plaintiff's "safety was uppermost in his mind."

126. EMANUELE then met alone with Plaintiff for purposes of providing additional details about the CI work.

127. This is another violation of DEPARTMENT General Order 08-CH42-02(IV)(D)(3)(a) which states, "Officers shall not meet with informants alone unless extenuating circumstances make it impractical to have a second officer in attendance." (**Exhibit O**).

128. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE knew or should have known of this unlawful meeting pursuant to their supervisory obligations, DEPARTMENT General Orders, and the close proximity under which these individuals work.

129. EMANUELE informed Plaintiff that she would be searched prior to going out to buy drugs (to insure she had no drugs or unaccounted for money on her person), she would be under constant police

protection while buying drugs, and that she would benefit tremendously by cooperating with police.

130. EMANUELE engaged in this conversation to continue the pretense that he was acting under his authority pursuant to a legitimate law enforcement purpose.

131. EMANUELE was also intending to further influence Plaintiff to acquiesce to his sexual demands or actions at a later time.

H. All the Defendants Were on Notice that Plaintiff is a "CI."

132. By this time GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE knew or should have known that EMANUELE, an inexperienced detective, was well outside of mandatory protocols to be followed with to CI.

133. This is due to the extensive supervisory obligations imposed by the DEPARTMENT and more than a week had passed from the time of Plaintiff's arrest until his next meeting with Plaintiff.

134. At that time of this second meeting, Plaintiff was well established as a CI, her arrest processing was completed, supervisory personnel had reviewed documentation about her case, she had pending criminal charges, had no other reason to be reporting to the DEPARTMENT, there were numerous written protocols requiring

knowledge and approval of the upper echelons of the DEPARTMENT as to her CI status, and meetings alone with CIs were prohibited, for their protection and the protection of the DEPARTMENT, and its personnel.

I. Unlawful Physical Contact.

135. EMANUELE then touched Plaintiff's waist (at this second meeting on or about December 17, 2011) with his hands and just under her breasts for the purported purpose of demonstrating how she was to be searched **in the future** (i.e.: prior to any future CI role of actually buying drugs).

136. This violates DEPARTMENT General Order 08-CH42-02(IV)(E)(2) which authorizes a search of CI **only immediately before and after** a controlled purchase of drugs. **(Exhibit O)**.

137. EMANUELE was thus beginning his process of initiating unlawful contact with the Plaintiff, under the guise of legitimate law enforcement.

138. EMANUELE was also attempting to inure and/or accustom Plaintiff to unlawful physical contact he intended to engage in a later time.

J. Emanuele "Calls in Favors."

139. EMANULE expressed to Plaintiff that he would have to “call in some favors” in order to get her Theft charges dismissed.

140. He also repeated his claim that he had already saved her from a jail sentence by not charging her with possession of drugs from her car.

141. By doing this, EMANUELE was creating fear in Plaintiff of prosecution for drug possession.

142. He also indicated how the prosecutor’s office was “breathing down his neck” to prosecute Plaintiff for the theft from Macy’s.

143. In this way EMANEULE was creating the impression he alone controlled her legal fate and could influence the Prosecutor.

144. In reality Macy’s was not interested in prosecuting the case due to the immediate contrition expressed by Plaintiff and her offer of payment of full restitution.¹⁴

145. There was also no prosecutor “breathing down” EMANUELE’s “neck.”

146. The Prosecutor neither was aware of the CI Agreement with Plaintiff, nor had any more interest in Plaintiff’s case than normal.

147. EMANUELE was thus assuming prosecutorial functions and exercising unlawful coercion.

148. In reality the Prosecutor was in the process of **downgrading** the charges from Theft (as a crime) to a Disorderly Person's Offense.

149. The Prosecutor was simply doing this as a result of their normal process of reducing many such cases to lower grade offenses, not as a result Plaintiff's alleged CI status.

150. After the December, 2011 meeting with EMANUELE, Plaintiff informed Cefalo of EMANUELE's earlier inappropriate request for oral sex which occurred on December 21, 2011.

K. Plaintiff's "Charges" Downgraded.

151. On December 29, 2011, the Prosecutor downgraded Plaintiff's charges to a Disorderly Person's Offense.

152. This action resulted in Plaintiff's Theft case being transferred to the Eatontown Municipal Court in which Plaintiff could only be sentenced to a maximum of six (6) months imprisonment (N.J.S.A 2C:43-8) and/or a fine of up to \$1,000.00. See N.J.S.A. 2C:43-3(c).

¹⁴ On May 9, 2013, Plaintiff's Theft case was finally called for trial. No one from Macy's came to court that day, and as such, the matter was dismissed. This confirms that no one was "breathing down" EMANUELE's "neck" and he was openly and notoriously abusing his authority to abduct and rape the Plaintiff.

153. The vast majority of defendants facing such charges are not sentenced to prison.

154. In these instances the local Prosecutor often **further reduces** such charges to violations of municipal ordinances with a fine and/or restitution.

155. Under the above circumstances, Plaintiff was in little or no jeopardy of serving a prison sentence.

156. EMANUELE however continued to pretend that Plaintiff was facing a prison sentence by virtue of her Theft related charges and his dissimulation of an ability still to charge her with a drug offense.

157. EMANUELE's supervisors, including but not limited to, GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, knew or should have known that his work with Plaintiff was at this point highly unusual.

158. First, in CI relationships, charges are not reduced unless and until the CI performs the required work or role set forth in the CI Agreement.

159. Thus, the very reduction by the Prosecutor should have alerted GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE that EMANUELE was acting outside of permissible law enforcement

objectives and EMANUELE had no legitimate reason to be meeting with a civilian with minor pending criminal charges.

160. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE also should have known that Plaintiff's charges were reduced to a point to which CI work was no longer appropriate.

161. For example, upon review of Plaintiff's file, GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, knew, or should have known, that EMANUELE was asking a female civilian to perform dangerous CI work with local narcotics dealers to ostensibly gain lenient treatment on a case in which **such lenient treatment was already a near certainty.**

162. It was thus obvious at that point that EMANUELE was engaging in a subterfuge and/or misconduct with respect to Plaintiff.

163. Further, GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE knew, or should have known, by virtue of their mandated supervisory roles, that EMANUELE was falsely casting Plaintiff as a CI without any authorization whatsoever from the Prosecutor and/or the following of any mandatory DEPARTMENT protocols to establish her as a CI.

164. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE thus, by December 29, 2011, knew, or should have known, that EMANUELE was engaging in a “pseudo-CI relationship,” as described by the Prosecutor at EMANUELE’s sentencing, unrelated to any appropriate law enforcement objective, i.e.: EMANUELE was working with Plaintiff for his own personal gratification, by usurping Prosecutorial functions and applying unlawful coercion and compulsion over a vulnerable female.

165. Had GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE intervened at this point, EMANUELE’s entire deception would have been stopped and Plaintiff spared from EMANUELE’s Abduction and Sexual Assault.

166. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE did nothing, and thus exhibited Deliberate Indifference to Plaintiff’s fate.

167. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE thus failed to properly supervise EMANUELE, and were also negligent in the execution of their duties.

L. Emanuele Maintains Contact with Plaintiff.

168. During the period of December, 2011 to February, 2012, EMANUELE maintained phone contact with Plaintiff by calling her at home for the purpose of maintaining the illusion that there was a valid CI relationship between her, the DEPARTMENT and the Prosecutor.

169. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE had a duty to supervise this relationship between EMANUELE and the Plaintiff.

170. On or about a date in February 2012 EMANUELE called Plaintiff and ordered her to report to the DEPARTMENT on Friday, February 16, 2012 for purposes of performing CI work.

171. Plaintiff believed this was pursuant to a legitimate CI relationship she had with EATONTOWN and the DEPARTMENT.

172. EMANUELE however was simply intending to coerce the Plaintiff to submit to his sexual advances.

173. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, knew, or should have known, that EMANUELE's work with Plaintiff was well beyond investigation of a simple Theft case, and that he was improperly using Plaintiff, a civilian, as a CI for the alleged purpose of investigation and enforcement as to drug related offenses.

174. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, knew, or should have known, that Plaintiff, in working with EMANUELE, was doing so to avoid the potential for criminal sanctions.

175. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, knew, or should have known, that the Prosecutor had exclusive jurisdiction to make decisions and/or offers of immunity and/or lenient treatment.

176. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, also knew, or should have known, that EMANUELE was working without the authority of the Prosecutor in terms of potential leniency or immunity ("consideration") that Plaintiff may receive in exchange for her CI service.

177. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, also knew, or should have known, that EMANUELE had not initiated any attempt to follow DEPARTMENT protocols to establish Plaintiff as a CI.

178. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, thus knew, or should have known, that EMANUELE was

exercising the Prosecutorial function of making his own express and/or implied promises of leniency and/or immunity.

179. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, thus knew, or should have known, that EMANUELE was employing *ultra vires* coercion against Plaintiff.

180. Had GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE stepped in and engaged in minimal oversight, EMANUELE's subterfuge would have been stopped and Plaintiff spared from Sexual Assault.

M. Deliberate Indifference.

181. EMANUELE was required by DEPARTMENT General Order 08-CH42-02(D)(1) to obtain approval of the CI Agreement from his immediate supervisor, defendant COFFEY. **(Exhibit O).**

182. On Information and Belief, was required to occur on or shortly after December 21, 2011.

183. DEPARTMENT General Order 08-CH42-02(III)(A)(1), limits the definition of Informant to "a person who provides information and/or services to the DEPARTMENT concerning criminal activity and who expects something in return; or an individual who, on multiple occasions, provides information out of a sense of obligation or

personal need to help law enforcement and the community.” **(Exhibit O).**

184. COFFEY thus knew, or should have known, that Plaintiff, having pending criminal charges, was an individual providing information with an expectation of something in return, in this case immunity and/or leniency.

185. Thus COFFEY was on notice of the CI Agreement, its terms and conditions, the only charges against Plaintiff (Theft), the fact that Plaintiff was a female, and that EMANUELE was intending to utilize her in dangerous drug related investigations.

186. COFFEY was also directly responsible for case management of Plaintiff's file including full follow up on any case assigned to EMANUELE.

187. COFFEY's responsibilities included assuring compliance with all DEPARTMENT rules.

188. COFFEY failed in this regard in that he did not closely and adequately review and supervise EMANUELE and the purported CI relationship.

189. The supervisor of the DEPARTMENT Detective Bureau, TYLER, was charged with organizing all materials to be generated with respect

to the use of Plaintiff as a CI pursuant to DEPARTMENT General Order: 08-CH42-02(IV)(B)(4)(**Exhibit O**).

190. TYLER was also directly responsible for scheduling of all Detective Bureau personnel, all the DEPARTMENT's follow-up investigations of reported crimes and specialized investigations of drug and street crimes, and enforcement of Rules and General Orders which pertain to the Detective Bureau.

191. TYLER was further required to authorize the CI Agreement after reviewing a Confidential Informant Data Sheet along with a Special Report.

192. The Special Report provides the background of the CI relationship with the proposed confidential informant, a synopsis of the information provided by the proposed confidential informant and any other relevant information, positive or negative, that should be considered in reaching a decision on the suitability and veracity of the proposed informant.

193. The purpose of these reports, according to DEPARTMENT General Order 08-CH42-02(IV)(C)(4)(d), is to “**minimize incidents that could be used to question the integrity of investigators**” including sexual predation against females. (**Exhibit O**).

194. Upon receipt of the Confidential Informant Data Sheet and Special Report, TYLER was required to generate a case number, personally perform a criminal history inquiry, and search of local records to determine the suitability of the proposed CI.

195. Thus TYLER, on or shortly after December 11, 2011, is charged with knowledge of EMANUELE's intent to utilize Plaintiff as a CI, her full background, including the relatively minor nature of her charges and the lack of any drug related charges.

196. Thus TYLER's was obligated, according to the express terms of DEPARTMENT General Orders, to exercise supervisory oversight in **order to minimize incidents involving improprieties by EMANUELE. (Exhibit O).**

197. TYLER failed in this regard in that he did not exercise any such oversight of the CI relationship.

198. The final decision as to suitability of a CI is entrusted to the DEPARTMENT Operations Division Commander GUTHRIE, pursuant to DEPARTMENT General Order 08-CH42-02(IV)(A)(1)(d)(**Exhibit O**).

199. Under this Order, GUTHRIE was required to review all the CI reports and issue a decision classifying Plaintiff as "reliable" for CI work or "unreliable."

200. GUTHRIE thus knew, or should have known, of EMANUELE's intent to use Plaintiff as a CI.

201. GUTHRIE also failed to take any steps to regulate EMANUELE's conduct, and thus failed to supervise, and prevent, the Sexual Assault by EMANUELE.

N. Goldfarb, Guthrie, Tyler, Coffey, Healy, and John Doe, Knew, or Should Have Known, Emanuele Violated Department Procedure and Plaintiff's Civil Rights.

202. At no time did any EATONTOWN and/or DEPARTMENT officer, including GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY JOHN DOE and EMANUELE, consult with the Prosecutor for purposes of obtaining formal approval from that office for any consideration to be provided to Plaintiff, in the form of immunity, dismissal, reduced charges, or leniency.

203. This requirement is expressed in DEPARTMENT General Order 08-CH42-02(B)(2)(a) which provides, "Immunity can only be granted by the prosecuting agency/individual and therefore no officer shall offer immunity or leniency in connection with any legal proceeding or promise **or infer such a possibility** without first obtaining the approval of the prosecuting agency/individual." **(Exhibit O). Emphasis supplied.**

204. All Defendants also knew, or should have known, of a Monmouth County Uniform Policy with respect to Use of Informants ("County Policy"). **(Exhibit P).**

205. Specifically County Policy states, "No law enforcement agency or law enforcement personnel shall make any promise, **express or implied** of any prosecutorial consideration to an informant without the express approval of the Monmouth County Prosecutor's Office." **Emphasis supplied.**

206. The New Jersey Prosecutor's Manual also states, "No law enforcement agency or law enforcement personnel shall make any promise, **express or implied**, of any prosecutive consideration to an informant without the express approval of the Prosecutor...." See Jan. 2, 2001, Section 21.8, Policy on the Use of Informants. **(Exhibit Q). Emphasis supplied.**

207. No such approval was obtained from the Prosecutor.

208. Such approval was needed since Plaintiff was being asked to perform dangerous work in exchange for immunity and/or leniency.

209. As to this, on October 3, 2012 **(Exhibit R)**, EMANUELE's attorney, Patrick Toscano, Esq., made the following statement for his client in the Superior Court of New Jersey before Judge Thomas

Scully in response to an inquiry by Assistant Monmouth County

Prosecutor Gregory Schweers:

MR. SCHWEERS: Now during the time by the way, [Plaintiff], you never had [Plaintiff] properly documented as a Confidential Informant, is that correct?

MR. TOSCANO: Judge, if I could make, if the Prosecutor doesn't mind this, in terms of properly documenting, I just want to speak to my client. But I thought there was an agreement here in that the AG guidelines, he was not totally familiar with. And as a result of that, there was some negligence in doing so. So as long as the Prosecutor is okay with that, I, you know.

THE COURT: So he hadn't gone through the protocol that would formally establish him as a, her as an informant, is that sufficient for your purposes Mr. Schweers?

MR. SCHWEERS: Well I'm not going to ask any further questions on that.

210. Toscano was speaking on behalf of his client pursuant to Fed.

R. Evid. 801(d)(2) and asserting that EMANUELE had **inadvertently** (i.e.: negligently) failed to formalize the CI relationship between Plaintiff, the DEPARTMENT and the Prosecutor.

211. This assertion is incorrect.

212. EMANUELE **purposely** evaded these requirements in order to exercise sole control over the relationship without the Prosecutor's

and the DEPARTMENT's oversight and thereby usurp such functions, and coerce the Plaintiff into acquiescing to his sexual advances.

213. The individuals who were negligent and Deliberately Indifferent to this formal CI process, were GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE.

214. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE had a supervisory obligation to require EMANUELE to adhere to all DEPARTMENT, County, Prosecutor, and AG related CI Rules and Guidelines, and they failed to do so.

215. These rules are designed to "minimize incidents that could be used to question the integrity of investigators" (**Exhibit O**).

216. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE thus knew, or should have known, that EMANUELE was exercising this unlawful legal leverage and coercion over Plaintiff, and his deviation from CI protocols, by the express terms of their own DEPARTMENT General Orders, placed her in danger of being victimized.

O. Goldfarb, Guthrie, Tyler, Coffey, Healy, and John Doe Knew That Emanuele was Utilizing the Plaintiff as a "Pseudo Confidential Informant."

217. The Plaintiff was a CI in name only, and EMANUELE was **falsely casting** her in that role.

218. The entire CI Agreement was a fraud perpetrated upon the Plaintiff with the full knowledge of the entire command structure of EATONTOWN and the DEPARTMENT, including GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY, and JOHN DOE.

219. All Defendants in this case were thus aware, or should have been aware, of this fraud being perpetrated by EMANUELE.

220. With respect to this, on November 30, 2012, before Judge Thomas F. Scully of the Superior Court of New Jersey, Assistant Monmouth County Prosecutor Gregory Schweers stated that EMANUELE was fraudulently working with Plaintiff under a "pseudo Confidential Informant arrangement." **(Exhibit R)(Plea/Sentence).**

221. All Defendants were aware of this "pseudo" arrangement between the Plaintiff, EATONTOWN, the DEPARTMENT and EMANUELE, by virtue of their supervisory roles, their obligations under the DEPARTMENTs Rules and General Orders, their direct and indirect contact with the Plaintiff, the fact that she had an open criminal case, EMANUELE's multiple evasions of the DEPARTMENT's express, written and published CI Rules, the length

of time which transpired, their direct knowledge of EMANUELE's work with Plaintiff, the lack of approval from the Prosecutor and the DEPARTMENT, and the close quarters in which all Defendants worked.

P. Goldfarb, Guthrie, Tyler, Coffey, Healy GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE Knew Strict Compliance With CI Rules Served to Prevent Misconduct

222. All Defendants were on notice of DEPARTMENT General Order 08-CH42-02(II) which states, "The use of confidential informants is an invaluable investigative tool that must be **carefully managed to prevent misconduct on the part** of the confidential informant or **any officer utilizing such informant**. Strict controls have been established in this written directive and **must be adhered to without exception.**" (Exhibit O). **Emphasis supplied.**

223. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY, JOHN DOE and EMANUELE were thus on notice of the risk of misconduct by DEPARTMENT personnel created by the **failure to follow the strict requirements of the rules** as to utilization of Plaintiff as a CI.

224. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY, JOHN DOE and EMANUELE knew that meticulous compliance with CI protocols served to protect CI's from harm.

Q. Goldfarb, Guthrie, Tyler, Coffey, Healy, and John Doe Knew That Special Precautions Were Required to Protect Women Serving as Confidential Informants From Sexual Assault by Officers.

225. In addition to strict compliance with CI protocols, all the Defendants in this case were further operating under the following admonition and instruction pursuant to their own DEPARTMENT General Order 08-CH42-02(IV)(D)(4):

“Officers must exercise care in their relationships with confidential informants, **especially confidential informants of the opposite sex.**” (Exhibit O).
Emphasis supplied.

226. The first admonition mentioned directly after this Rule is DEPARTMENT General Order (08-CH42-02(IV)(D)(4)(a)) which specifically prohibited sexual relationships. **(Exhibit O).**

227. These Orders, as unqualifiedly expressed by EATONTOWN and the DEPARTMENT, and known to all officers of the DEPARTMENT, placed all the Defendants on notice of the dangers of interactions between female CI's and male officers, **specifically sexual misconduct and abuse**, the precise conduct engaged in by EMANUELE.

228. Further unequivocal notice of this endangerment of female CI's is also expressed in DEPARTMENT General Order 08-CH42-02

(**Exhibit O**) prohibiting meetings alone with CI's, 06-CH1-08 (**Exhibit U**) requiring strict radio reporting when male officers are transporting females, and 06-CH41-03 (**Exhibit T**)(Mobile Video Recording) authorizing male officers to utilize video monitoring of females in police vehicles

229. EMANUELE was not complying with any of these Orders, and GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE knew, or should have known of this.

230. Thus, all defendants in this matter were on notice of the need to protect Plaintiff from sexual assault or misconduct initiated by EMANUELE.

231. No precautions were put in place by EMANUELE's superior officers, including GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, despite their knowledge that he was meeting with Plaintiff **alone** in a van, not employing any measures to provide for monitoring of his conduct, was not conforming to DEPARTMENT protocols for use of CI's, had not obtained the Prosecutor's approval for the CI relationship, had usurped Prosecutorial functions, that EMANUELE was exercising and applying unlawful legal leverage against the Plaintiff, that the charges were relatively minor (i.e.: prison

was unlikely or and a reduction to a disorderly person's offense was likely), and that EMANULE was one of the least experienced detectives in the DEPARTMENT.

R. Goldfarb, Guthrie, Tyler, Coffey, Healy, and John Doe Knew That Detective Bureau Expertise was in Decline.

232. All Defendants, according to their own 2011 DEPARTMENT Annual Report, were aware that the Detective Division, near the close of 2011 was feeling the effects of a "50 percent turnover rate of its personnel" such that "there was a sharp decline in bureau expertise." (Exhibit B at 20-21).

233. All Defendants, according to the 2011 DEPARTMENT Annual Report, were aware that the decline in "bureau expertise" required additional reliance on "the expertise of the remaining senior detectives." Id. at 20-21 (Exhibit B).

234. Thus Defendants GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY, and JOHN DOE consisting of the upper echelons of the DEPARTMENT, were aware of the need for **additional oversight** of the interactions between Plaintiff and EMANUELE.

235. No such additional oversight was undertaken and EMANUELE was allowed to proceed with his fraud for an extended period of time against a vulnerable woman.

S. Goldfarb, Guthrie, Tyler, Coffey, Healy, and John Doe Knew That Emanuele's Actions Placed Plaintiff at Risk of Deprivation of her Rights.

236. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE also knew, or should have known, that Plaintiff was in great danger since EMANUELE was working with Plaintiff outside of mandated and accepted procedure, that he had improper motives, was usurping Prosecutorial functions, and acting in an *ultra vires* manner.

T. Goldfarb and Tyler Publicly Assert the DEPARTMENT was Compliant with the High Standards of the Commission on Accreditation for Law Enforcement Agencies ("CALEA").

237. On November 10, 2011, GOLDFARB and TYLER appeared before the New Jersey State Law Enforcement Accreditation Commission to receive an award for the DEPARTMENT's becoming accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc., ("CALEA"). See **Exhibit B, at 14-15,28.**

238. CALEA provides a program by which law enforcement agencies can adopt a set of standards and training which purport to reduce the

chance of improper conduct by its officers, the very misconduct which is alleged to have occurred in this case, i.e.: an abduction and rape of a civilian.

239. According to GOLDFARB, the accreditation took the DEPARTMENT over two (2) years to obtain through a rigorous process of training and extensive adoption of CALEA mandated law enforcement standards.

240. On October 6, 2011, during an interview on with the Atlanticville newspaper, GOLDFARB stated that "Accreditation is important for the police DEPARTMENT because it gives them a set of guidelines to follow for everything they do that has been recognized nationally and by the state chiefs of police as being the best practices, being the best way to handle various situations."

241. According to GOLDFARB, "It's (the Accreditation) also going to save the town money because accredited agencies get lower premium cost for their liability and false arrest insurance." Id.

242. The CALEA standards are referenced in the DEPARTMENT's General Orders for purposes of evincing compliance with CALEA accreditation requirements.

243. At other times the DEPARTMENT's General Orders are nearly identical to CALEA's published guidelines.

244. Although, the DEPARTMENT has adopted the CALEA standards, and obtained the accolades, esteem, and insurance discounts attendant to accreditation from CALEA, the Defendants failed to follow their own CALEA mandated standards, including but not limited to, special precautions when dealing with CI's of the opposite sex; prohibition of meetings alone with any CI's; strict radio reporting of times, locations and odometer readings when transporting females; use of video monitoring, formal establishment of a CI relationship in the DEPARTMENT and with the Prosecutor; and close management by supervisors of officers working with CIs.

245. Thus GOLDFARB, GUTHRIE, TYLER, COFFEY, and JOHN DOE had some policies in place to protect female CI's, but failed to follow them in actual practice.

U. CALEA Accreditation Mandates the Video Monitoring of its Officers.

246. On October 6, 2011, four (4) months before EMANUELE abducted and raped the Plaintiff, GOLDFARB told the Atlanticville Newspaper, that "We are accountable. **Everything these guys**

(Eatontown Police) do is on video. If we are ever inspected or a complaint comes up, we can prove that our officers do things the right way and they follow the rules and the guidelines.” **Emphasis supplied.**

247. Goldfarb was referring to video cameras in all police vehicles which face forward, to monitor police activities outside the vehicle, but which can be turned around as well, to record police conduct with respect to transportees, detainees, arrestees and/or civilian CIs.

248. These monitoring systems also record audio.

249. According to GOLDFARB, the DEPARTMENT has worked over the past few years to upgrade communications and software so that every police car is fitted with a mobile computer and digital video recording device.

250. According to DEPARTMENT Captain John Cleary (“Cleary”), in the DEPARTMENT’s 2011 Annual Report, video monitoring is a necessity for any law enforcement agency. **(Exhibit B).**

251. According to Cleary, in the DEPARTMENT’s 2011 Annual Report, video monitoring serves to heighten a police officers’ **“increased awareness of their conduct.”** Id. at Page 3-4. **Emphasis supplied. (Exhibit B.)**

252. According to DEPARTMENT General Order 06-CH41-03(III) (Mobile Video Recording), implementing CALEA Standard 41.3.8, video cameras are required in its patrol cars. **(Exhibit T).**

253. Such cameras **must** be activated in all traffic stops, DWI cases, traffic pursuits, and any time lights and sirens are activated. See DEPARTMENT General Order 06-CH41-03(IV)(E)(Required Uses)**(Exhibit T).**

254. However, the camera use is **optional** when transporting civilians of the opposite sex (transport of females by a male officer) and during law enforcement activity in which citizen contact becomes adversarial (as with a CI). See DEPARTMENT General Order 06-CH41-03(IV)(F) (Optional Uses)**(Exhibit T).**

255. During transportation of females, according to this same General Order, the video camera may be rotated to record these females as they are seated in the rear of the vehicle. Id.

256. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE allow their officers **not** to activate video monitoring of their activities with females and all CI's, giving the male officer in the field discretion to **not** engage a resource which can prevent sexual predation by that same officer.

257. EMANUELE was thus permitted to disengage the very monitoring which would have prevented his own misconduct.

258. Further, despite having the discretion to do so, GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE failed to order that EMANUELE's work with Plaintiff be recorded on video despite their full knowledge of his *ultra vires* involvement with Plaintiff, a female, his meeting and transporting her alone in a van, the availability of the video technology, its effectiveness in preventing misconduct, and the existence of multiple DEPARTMENT vehicles having such equipment.

259. Thus, GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, knowing of the express risks associated in CI/Police encounters with females, and EMANUELE's open and notorious deviation from protocols, did not provide for Plaintiff's protection with a resource (video monitoring) that they all knew about, fully believed in, were ordered to use, and for which the DEPARTMENT received state wide accreditation and recognition.

V. Emanuele Transports Plaintiff in a Van Alone, in Violation of DEPARTMENT Orders, With the Full Knowledge of Goldfarb, Guthrie, Tyler, Coffey, Healy, and John Doe.

260. Plaintiff reported to the DEPARTMENT on Friday, February 16, 2012 at approximately 7:00 p.m. accompanied by her step-father Kenneth Braswell ("Braswell").

261. Upon arrival at the DEPARTMENT, EMANUELE informed Plaintiff that she was to go with him to the Mall in an unmarked police van.

262. COFFEY, EMANUELE's direct supervisor, and the Shift Supervisor, HEALY, on duty at that time, are charged with knowing of EMANUELE's use of the van under Rule and Regulation 2:3.4 (Supervision)(**Exhibit D**) and 3:4.4 (DEPARTMENT Vehicles Use)(**Exhibit E**); and DEPARTMENT General Order 06-CH11-01 (**Exhibit A**), and by virtue of their extensive supervisory obligations.

263. TYLER by virtue of his supervisory and scheduling functions knew, or should have known, that EMANUELE was to take Plaintiff out alone in a van under all the circumstances referenced above.

264. Plaintiff was instructed that she was to enter the Mall alone, walk up to a pretzel store and report back about any known drug sellers.

265. At the DEPARTMENT, EMANUELE had a strong odor of cologne on his person obvious to anyone near him including, but not

limited to, the Plaintiff, Braswell and all other DEPARTMENT personnel.

266. Plaintiff was searched by a female police officer, who on information and belief, was a dispatcher, for purposes of establishing that Plaintiff had no drugs or money in her possession.

267. EMANUELE specifically ordered Braswell not to follow him and Plaintiff to the Mall, and to wait in his vehicle in the DEPARTMENT parking lot.

268. Braswell complied with EMANUELE's order.

269. EMANUELE ordered Braswell to remain in the parking lot since EMANEULE intended to coerce sexual behavior from Plaintiff.

270. EMANUELE placed Plaintiff in the passenger seat of the van and drove her alone to the Mall a violation of Department General Order 08-CH42-02(IV)(D)(3)(a) (**Exhibit O**).

271. This rule is designed to protect the CI from inappropriate behaviors including sexual predation exercised by an officer dissimulating his authority to control the CI relationship.

272. The van had two (2) bucket style seats in the front, no middle seat, and a bench seat at the rear, a configuration in which a female in

the front seat can easily be pushed to the rear and raped by a stronger male.

273. On information and belief, this vehicle configuration was well known to GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE.

274. Neither the female officer (who searched Plaintiff) nor any other police officer accompanied EMANUELE and Plaintiff to the mall.

275. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, also by virtue of General Order 08-CH43-01(IV)(b), were responsible for "reviewing all reports submitted by DEPARTMENT members pertaining to criminal intelligence as well as investigative and enforcement activities, evaluating the ability of this DEPARTMENT to meet the investigative demands that the case will likely generate," and determining "if the resources needed to conduct the investigation exceed" DEPARTMENT resources. **(Exhibit S).**

276. General Order: 08-CH42-02(IV)(D)(1) also required the direct approval of GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE for any use of Plaintiff as a CI. **(Exhibit O).**

277. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE, thus knew, or should have known, that EMANUELE was

transporting Plaintiff, an individual with very minor non-criminal charges, alone in a van for the purported purpose of performing dangerous narcotics related CI investigative and enforcement activities.

278. GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE also knew, or should have known, that EMANUELE was deceiving Plaintiff into entering the van, since he lacked any authority to ask her to act as a CI.

279. The lack of accompaniment by any other officer, also in direct violation of a DEPARTMENT General Order, as well as all the above circumstances, should have alerted GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY and JOHN DOE to EMANUELE's improper motives.

280. Neither GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY nor JOHN DOE ordered that EMANUELE comply with DEPARTMENT General Order 06-CH1-08(G)(8)(c) requiring him to report the beginning and end legs of any vehicle transportation, and odometer readings, when transporting members of the opposite sex. **(Exhibit U).**

281. Neither GOLDFARB, GUTHRIE, TYLER, COFFEY, HEALY nor JOHN DOE ordered EMANUELE to utilize a vehicle equipped with video recording equipment.

282. The above minimal protections, **including simply asking EMANUELE what he was doing**, would have made EMANUELE conscious of being detected if he attempted inappropriate contact with Plaintiff, thereby preventing his entire criminal plan from being undertaken.

W. Emanuele Commits the Crime of Kidnapping (N.J.S.A. 2C:13-1) and Other Crimes.

283. EMANUELE lacked a jurisdictionally valid CI Agreement, and any valid law enforcement purpose, to be transporting Plaintiff alone to the Mall, inside a van, for purposes of performing CI work.

284. For example, EMANUELE had no authority to be working with Plaintiff, since the Prosecutor, the only official with the power to grant the immunity or leniency in exchange for Plaintiff's CI related activity, did not approve of any CI agreement.

285. EMANUELE also had not completed any steps or protocols that would formally establish Plaintiff as a CI in the DEPARTMENT.