City-Englewood

ERIC V. KLEINER, ESQ.
385 SYLVAN AVENUE
SUITE #29, SECOND FLOOR
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NJ BAR NO. 003951988
ATTORNEY FOR THE PLAINTIFF
ROBERT BERGNER

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-6567-16

ROBERT BERGNER

Plaintiff,

v.

CITY OF ENGLEWOOD,
(ITS OFFICERS,SERVANTS,
AGENTS, ASSIGNEES, DELEGATES,
SERVANTS, AND/OR EMPLOYEES),
ENGLEWOOD POLICE DEPARTMENT
(ITS OFFICERS,SERVANTS,
AGENTS, ASSIGNEES, DELEGATES,
SERVANTS, AND/OR EMPLOYEES),
ENGLEWOOD POLICE CAPTAIN
TIMOTHY TORELL,
(Torell sued in his individual capacity and
representative capacity
ENGLEWOOD POLICE DEPARTMENT
JOHN/JANE DOE/S MANAGER/S,
SUPERVISORS, EMPLOYEE/S 1-7,
(Fictitious names intending to designate the
Englewood Police department employee/s
and/or officer/s responsible for causing
Plaintiff's cause of action and
damages/injuries),
BERGEN COUNTY PROSECUTOR'S
OFFICE [BCPO],
(ITS OFFICERS,SERVANTS,
AGENTS, ASSIGNEES, DELEGATES,
SERVANTS, AND/OR EMPLOYEES),
(BCPO JOHN/JANE DOE/S MANAGER/S,
SUPERVISORS, EMPLOYEE/S 1-7),
COUNTY OF BERGEN,
(ITS OFFICERS,SERVANTS,
AGENTS, ASSIGNEES, DELEGATES,
SERVANTS, AND/OR EMPLOYEES).

Defendants.

CIVIL ACTION

SUMMONS

RECEIVED IN
CITY CLERKS OFFICE
ENGLEWOOD, N.J.
2016 NOV -3 P 1:30

THE STATE OF NEW JERSEY, COUNTY OF BERGEN TO:
DEFENDANT CITY OF ENGLEWOOD
TO THE ABOVE NAMED DEFENDANT:

C/O
CITY OF ENGLEWOOD
ATTN: CITY MANAGER'S OR CLERK'S OFFICE
2-10 NORTH VAN BRUNT STREET
ENGLEWOOD, NEW JERSEY 07631

YOU ARE HEREBY SUMMONED in a Civil action in the Superior Court of New Jersey, Law Division, instituted by the above named Plaintiff, and are required to serve upon the attorney for the Plaintiff, whose name and office address appears above, an answer to the above complaint within thirty-five (35) days after service of the summons and complaint upon you, exclusive of the day of service. If you fail to answer, judgment by default may be rendered against you for the relief demanded in the complaint. You shall promptly file an answer and proof of service thereof in duplicate with the Clerk of the Superior Court, Bergen County, Law Division, Bergen County Justice Center, 10 Main Street, Hackensack, New Jersey 07601, in accordance with the Rules of civil practice and procedure.

If you cannot afford to pay an attorney, call Bergen County Legal Services. An individual not eligible for free legal assistance may obtain a referral to an attorney by calling Bergen County Legal Services. These numbers may be listed in the yellow pages of your phone book.

DATED: October 31, 2016

S/JOHN S. HOGAN
JOHN S. HOGAN, CLERK OF THE
NEW JERSEY SUPERIOR
COURT, BERGEN COUNTY

ERIC KLEINER, ESQ.
ATTORNEY FOR THE PLAINTIFF

BERGEN COUNTY COURTHOUSE
SUPERIOR COURT LAW DIV
BERGEN COUNTY JUSTICE CTR RM 415
HACKENSACK NJ 07601-7680

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (201) 527-2600
COURT HOURS 8:30 AM - 4:30 PM

DATE: SEPTEMBER 12, 2016
RE: BERGNER VS CITY OF ENGLEWOOD
DOCKET: BER L -006567 16

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 3.

DISCOVERY IS 450 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON JAMES J. DE LUCA

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003 AT: (201) 527-2600.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.

PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: ERIC V. KLEINER
ERIC V. KLEINER
385 SYLVAN AVENUE
SUITE #29, SECOND FLOOR
ENGLEWOOD CLIFFS NJ 07632

JUBLENG

COPY

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: [ ] CK [ ] CG [ ] CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under *Rule* 4:5-1
Pleading will be rejected for filing, under *Rule* 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed

ATTORNEY / PRO SE NAME ERIC V. KLEINER, ESQ.	TELEPHONE NUMBER (201) 503-0711	COUNTY OF VENUE Bergen
FIRM NAME (if applicable) ERIC V. KLEINER, ESQ.		DOCKET NUMBER (when available) L-6567-16
OFFICE ADDRESS 385 SYLVAN AVENUE, SUITE #29 ENGLEWOOD CLIFFS, NEW JERSEY 07632		DOCUMENT TYPE COMPLAINT
		JURY DEMAND [X] YES [ ] NO
NAME OF PARTY (e.g., John Doe, Plaintiff) ROBERT BERGNER	CAPTION ROBERT BERGNER V. ENGLEWOOD POLICE DEPARTMENT (EPD), EPD POLICE CAPTAIN TIMOTHY TORELL, BERGEN COUNTY PROSECUTOR'S OFFICE (BCPO), ET AL.	
CASE TYPE NUMBER (See reverse side for listing) 005	HURRICANE SANDY RELATED? [ ] YES [X] NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? [ ] YES [X] NO IF YOU HAVE CHECKED "YES," SEE *N.J.S.A.* 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.
RELATED CASES PENDING? [ ] YES [X] NO	IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? [X] YES [ ] NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) JIF/MEL?	[ ] NONE [X] UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

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

DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? [ ] YES [X] NO	IF YES, IS THAT RELATIONSHIP: [ ] EMPLOYER/EMPLOYEE [ ] FRIEND/NEIGHBOR [ ] OTHER (explain) [ ] FAMILIAL [ ] BUSINESS

DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? [X] YES [ ] NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? [ ] YES [X] NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION
WILL AN INTERPRETER BE NEEDED? [ ] YES [X] NO	IF YES, FOR WHAT LANGUAGE?

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

ATTORNEY SIGNATURE:

Side 2

CIVIL CASE INFORMATION STATEMENT
(CIS)

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

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

Track I - 150 days' discovery
151 NAME CHANGE
175 FORFEITURE
302 TENANCY
399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
502 BOOK ACCOUNT (debt collection matters only)
505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
506 PIP COVERAGE
510 UM or UIM CLAIM (coverage issues only)
511 ACTION ON NEGOTIABLE INSTRUMENT
512 LEMON LAW
801 SUMMARY ACTION
802 OPEN PUBLIC RECORDS ACT (summary action)
999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery
305 CONSTRUCTION
509 EMPLOYMENT (other than CEPA or LAD)
599 CONTRACT/COMMERCIAL TRANSACTION
603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
605 PERSONAL INJURY
610 AUTO NEGLIGENCE – PROPERTY DAMAGE
621 UM or UIM CLAIM (includes bodily injury)
699 TORT – OTHER

Track III - 450 days' discovery
005 CIVIL RIGHTS
301 CONDEMNATION
602 ASSAULT AND BATTERY
604 MEDICAL MALPRACTICE
606 PRODUCT LIABILITY
607 PROFESSIONAL MALPRACTICE
608 TOXIC TORT
609 DEFAMATION
616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
617 INVERSE CONDEMNATION
618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery
156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
303 MT. LAUREL
508 COMPLEX COMMERCIAL
513 COMPLEX CONSTRUCTION
514 INSURANCE FRAUD
620 FALSE CLAIMS ACT
701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)
266 HORMONE REPLACEMENT THERAPY (HRT)
271 ACCUTANE/ISOTRETINOIN
274 RISPERDAL/SEROQUEL/ZYPREXA
278 ZOMETA/AREDIA
279 GADOLINIUM
281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL
282 FOSAMAX
284 NUVARING
285 STRYKER TRIDENT HIP IMPLANTS
286 LEVAQUIN
287 YAZ/YASMIN/OCELLA
288 PRUDENTIAL TORT LITIGATION
289 REGLAN
290 POMPTON LAKES ENVIRONMENTAL LITIGATION
291 PELVIC MESH/GYNECARE
292 PELVIC MESH/BARD
293 DEPUY ASR HIP IMPLANT LITIGATION
295 ALLODERM REGENERATIVE TISSUE MATRIX
296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS
297 MIRENA CONTRACEPTIVE DEVICE
601 ASBESTOS
623 PROPECIA

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

Please check off each applicable category ☐ **Putative Class Action** ☐ **Title 59**

SUPERIOR COURT BERGEN COUNTY
FILED

SEP 0 8 2016

DEPUTY CLERK

ERIC V. KLEINER, ESQ.
385 SYLVAN AVENUE
SUITE #29, SECOND FLOOR
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(201) 503-0711
Fax (845)353-7828
NJ BAR NO. 003951988
ATTORNEY FOR THE PLAINTIFF
ROBERT BERGNER

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-6567-16

COPY

ROBERT BERGNER

Plaintiff,

v.

CITY OF ENGLEWOOD,
(ITS OFFICERS,SERVANTS,
AGENTS, ASSIGNEES, DELEGATES,
SERVANTS, AND/OR EMPLOYEES),
ENGLEWOOD POLICE DEPARTMENT
(ITS OFFICERS,SERVANTS,
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ENGLEWOOD POLICE CAPTAIN
TIMOTHY TORELL,
(Torell sued in his individual capacity and
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ENGLEWOOD POLICE DEPARTMENT
JOHN/JANE DOE/S MANAGER/S,
SUPERVISORS, EMPLOYEE/S 1-7,
(Fictitious names intending to designate the
Englewood Police department employee/s
and/or officer/s responsible for causing
Plaintiff's cause of action and
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BERGEN COUNTY PROSECUTOR'S
OFFICE [BCPO],
(ITS OFFICERS,SERVANTS,
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(BCPO JOHN/JANE DOE/S MANAGER/S,
SUPERVISORS, EMPLOYEE/S 1-7),
COUNTY OF BERGEN,
(ITS OFFICERS,SERVANTS,
AGENTS, ASSIGNEES, DELEGATES,
SERVANTS, AND/OR EMPLOYEES).

CIVIL ACTION

COMPLAINT
AND JURY DEMAND

PLAINTIFF, ROBERT BERGNER, whose address is P.O. Box 728, Buffalo, Wyoming 82834, swears as follows:

I. PARTIES TO THE CAUSE OF ACTION

1. The plaintiff, ROBERT BERGNER, of Buffalo, Wyoming, New Jersey, is hereinafter referred to as "plaintiff." Plaintiff is a retired airline pilot for United Airlines.
2. The defendants are City of Englewood (2-10 North Van Brunt Street, Englewood, New Jersey 07631), hereinafter referred to as defendant Englewood, the Englewood Police Department (75 South Van Brunt Street, Englewood, New Jersey, 07631), hereinafter referred to as "defendant EPD," Englewood Police Captain Timothy Torell, hereinafter referred to as "defendant Torell" (c/o 75 South Van Brunt Street, Englewood, New Jersey, 07631, the Bergen County Prosecutor's Office (BCPO) 10 Main Street, Bergen County Justice Center, Second Floor, Hackensack, New Jersey 07601), hereinafter referred to as "defendant BCPO," and the County of Bergen (One Bergen County Plaza, Hackensack, New Jersey 07601), hereinafter referred to as "defendant County of Bergen," unless otherwise noted.. Unless stated otherwise, the designation below in the body of Complaint as to all defendants named in Section I and in the caption on page one of the Complaint as Party Defendants shall be referred to collectively as the "defendants." .Defendant Torell is sued in his individual, official, administrative and representative capacities.

II. FACTS RELEVANT TO CAUSE OF ACTION

3. The Plaintiff, Robert Bergner, was arrested on 9/12/04 by defendants Englewood Police Department (EPD) including defendant EPD Captain Timothy Torell on second degree aggravated assault charges.
4. Defendants EPD, Torell under authority of defendant Englewood, and the defendant BCPO alleged that plaintiff, Robert Bergner, hereinafter referred to as "plaintiff," violated N.J.S.A. 2C:12-1B (1) in the jurisdiction and City of Englewood, New Jersey, based solely on a warrantless private citizen's complaint alleging that plaintiff had committed aggravated assault by attempting to cause serious bodily injury to Jeanine Hodges, specifically by pushing a person identified as Jeanine Hodges to the ground, grabbing her head and driving it into the pavement of a parking lot, causing visible signs of injury to her face and arms.
5. Plaintiff was innocent of the charges. Plaintiff never touched the alleged victim. The alleged victim fell or collapsed in a hotel parking lot of the Crowne Plaza Hotel, 401 South Van Brunt Street, Englewood, New Jersey 07631 in the evening of 9/12/14, because she was intoxicated, and plaintiff was at least 50-60 feet away from the alleged victim when she suffered her injuries.
6. Defendant EPD personnel was called to the scene of the hotel after hotel representative/s called the defendant EPD.
7. Hodges told defendant EPD police officers that plaintiff threw Hodges to the ground, grabbing her head and driving it into the pavement of the parking lot, causing visible signs of injury to her face, head, torso and arms.

8. Plaintiff immediately protested his innocence to defendant EPD police officers indicating that Hodges was intoxicated and fabricated the reason for her injuries.
9. Plaintiff at the scene told defendant EPD police officers that Hodges' inebriation caused her to collapse, pass out, and then as a result of her passing out, she fell to the pavement.
10. Plaintiff at the scene told defendant EPD police officers that he was at least 50-60 feet away from Hodges when she collapsed and injured herself.
11. Plaintiff at the scene told defendant EPD police officers that there must be hotel video footage that would verify his account, and that plaintiff offered to stay in his hotel room or in the lobby or under house arrest, etc., until police had reviewed the video footage on site at the hotel.
12. The hotel representatives provided information to the defendant EPD officers that should have caused the defendant EPD officials to learn or realize that the alleged victim Hodges was inebriated and unstable at the time defendant EPD initially arrived at the hotel to investigate.
13. Defendant EPD officials had assigned defendant Torell to oversee the investigation.
14. Defendant Torell acting with the authority of all named defendants ordered that the plaintiff be arrested, handcuffed, taken into custody, and taken to the defendant EPD.
15. Defendant Torell refused to investigate the video footage and did not take any steps to confirm that Hodges was being truthful in her account to the police.
16. Hodges went to the Englewood Hospital for medical treatment and was discharged the next day.
17. Defendant EPD and defendant Torell quickly confirmed at the hospital the plaintiff's account that Hodges was inebriated and was unstable.

18. At defendant EPD plaintiff immediately waived his Miranda rights and provided the police with a full statement exonerating himself. Plaintiff continued in his statement to tell defendant Torell about the aforementioned video camera being a piece of evidence which would exonerate him since he was 50-60 feet away from the victim when she collapsed in the parking lot of the hotel.
19. Plaintiff provided other details to the defendant EPD establishing information that Hodges and plaintiff had a young child together from a prior relationship, and that they had separated. Plaintiff further provided information that they had come from a wedding in Pearl River, New York (Pearl River Hilton) where Hodges became inebriated and they were forced to leave the wedding due to her prostrated condition.
20. plaintiff explained to defendants he had no blood or injuries on his body; further proving his innocence before he was placed under arrest.
21. Defendant EPD officials and defendant Torell balked at plaintiff's demand to take a polygraph and to have EPD review the video footage at the hotel.
22. Plaintiff was taken to jail after the plaintiff was processed and gave a full exculpatory statement to the police. Bail was set at $75,000.00 no 10% by the appropriate court of jurisdiction.
23. Plaintiff was taken to the Bergen County jail and incarcerated where he served at least one day in the jail until he paid the bondsman 10% of the bail and was released from custody.
24. This was a warrantless arrest occurring under the direction, control and supervision of all named entity defendants.

25. Defendant Torell became by action and supervision of all named entity defendants as the alter ego of all named entity defendants in this encaptioned matter.

26. Plaintiff hired criminal defense counsel. Plaintiff and his attorney immediately went to the hotel in question and investigated and retrieved the video footage from hotel security.

27. Hotel security immediately cooperated with the plaintiff, and at least one security employee at the hotel indicated words to the effect that he had viewed the video and that plaintiff would be exonerated as a result of what was seen on the video.

28. Defendants then continued to ignore the video footage exonerating plaintiff that was available at the hotel which was just a few minutes drive from EPD headquarters.

29. While defendants refused to investigate the case in any reasonable fashion, their willful indifference extended to taking a course of action to harm plaintiff's personal and family life.

30. As soon as plaintiff was released from jail he immediately began to handle child care issues as the young son he and Hodges were caring for.

31. The matter then quickly reconvened in Family Court, Bergen County (law division) on 9/15/14.

32. Hodges made clear in the family court proceedings that she was motivated to seek money from the plaintiff in return for plaintiff having custody or partial custody rights in caring for their son.

33. The videotape exoneration evidence and other exculpatory facts were presented in family court both in and out of the courtroom.

34. The defendants involved in the initial investigation at the hotel incident site were fully familiar with the location of the alleged crime (hotel parking lot) and knew actually or

constructively that the location where the alleged victim received her injuries was depicted on security video footage taken by hotel security. The aforementioned video footage was easily accessible to defendants and would have not required a warrant or subpoena process to occur to gain access to such footage. The defendants merely had to walk a few steps in the hotel they were already situated at and cued up the camera. If they had done so, the plaintiff would have never been arrested and Hodges would have probably been charged with making a false statement to the police.

35. By 9/16/14 the defendants were in actual custody of the exoneration videotape.

36. Defendant EPD and/or defendant Torell may have stonewalled the defendant BCPO in not providing the exoneration video evidence or other evidence of exoneration or innocence of the plaintiff to the defendant BCPO. However, defendant BCPO had control over all criminal indictable investigations in Bergen County and had the power and the authority to receive the innocence and/or exoneration evidence independently.

37. The chaotic proceedings that day led to criminal defense lawyer for plaintiff also doubling as the plaintiff's family court attorney.

38. After the plaintiff's family court attorney went into the court hallway he and Hodges spoke. That attorney showed Hodges the exoneration video security footage which clearly depicted, Hodges collapsing in the hotel pavement far away from the location plaintiff was depicted rendering her story to the police as completely fabricated. Hodges then spontaneously indicated her horror that she had erred in her account to the police.

39. The family court judge vitiated the municipal court bail order ordering no contact between plaintiff and his son. It was plaintiff's responsibility as per the family court to care for the child's medical needs in New York City due to the child having a serious

medical condition requiring the care of a medical specialist in New York City. It was clear from the family court proceedings that Hodges was unstable, and due to drug and alcohol and drug dependency could not care for the child safely.

40. Defendant EPD officials including defendant Torell then descended upon the New Jersey Superior Court, criminal part, Bergen County law division, and sought to re-incarcerate plaintiff regarding the bail condition set by the municipal court that plaintiff not have contact with his son.

41. The defendants County of Bergen and the BCPO refused to respect the rulings of the family court judge and along with the other named defendants knowingly and intentionally side stepped the family court rulings by motioning the criminal superior court to take action against plaintiff to stop him from caring for his child that required medical treatment in New York City. Defendant Torell knew or should have known constructively that the New Jersey family court judge had ordered the plaintiff to go to New York City and care his young son, and ensure his health and welfare, which included a need for plaintiff to bring his son to a medical specialist in New York City. Plaintiff's former criminal lawyer from the time period of 9/14 told defendant Torell that the plaintiff was acting in accordance with a family court judge's directives/order that occurred subsequently to the no contact bail condition from 9/12/14. As such, defendant Torell was aware that plaintiff was not in violation of a modified or vitiated municipal court bail condition of no contact with his son.

42. During the time that the defendants were attempting to revoke the plaintiff's bail and re-incarcerate him, the hotel video was in their possession and/or constructive possession

and all defendants knew and/or should have known that plaintiff was completely exonerated of any wrongdoing on the night in question.

43. Despite the defendants' actual or constructive knowledge of plaintiff's innocence in the matter, under the supervision of defendants EPD and Torell and with the participation of the other defendants, plaintiff was subjected to the defendants' abuse and harassment regarding his responsibilities to care for his young son at the time.

44. The plaintiff was acting under the authority given him by the family court in New Jersey to ensure that his ill young son received crucial medical attention. This occurred because Hodges was known to be mentally unstable and a drug addict incapable of taking care of their son.

45. Had defendants made even the slightest investigation of previous New Jersey court records and other police and family court files timely, the defendants would have learned that Hodges had a history of blackouts, drug overdoses, major psychiatric illnesses including a multiple personality disorder, psychosis and other mental illnesses combined with her being an alcoholic and massive drug abuser. Additionally, previous court records would have revealed that Hodges had fabricated false allegations in the past against the plaintiff, and that she had a criminal history.

46. The defendants knew or should have known immediately upon plaintiff's arrest by interviewing Hodges and doing minimal backround work that Hodges had a motive to lie based on her want to blackmail plaintiff for money and the defendants knew Hodges was inebriated when she was at the hotel at the time of the incident.

47. As of late September and early October of 2014 any reasonable person in law enforcement, based on all the evidence, would have dismissed all charges against

plaintiff. However, due to several reasons, including willful indifference, maliciousness, and/or attempting to cover up the fact that the police blundered in this case combined with a bias towards making any domestic violence case against a male where a female was injured regardless of guilt or innocence, the case moved forward.

48. Defendants then continued to invade plaintiff's personal family life without ceasing. Hodges was unfit by all accounts to care for her young son. Defendant Torell in a non law enforcement function acting to abuse process, and to act maliciously and/or with willful indifference aided Hodges' multiple attempts to have plaintiff's bail revoked, falsely claiming that plaintiff had no right to care for his/their young son.

49. On every occasion that the defendants ventured into court to attempt to stop plaintiff from caring for his ill young son, the defendants paraded around their claim that plaintiff had brutally assaulted Hodges, actually knowing and/or constructively knowing that hotel security video footage exonerated the plaintiff completely. Nevertheless, the defendants acting with willful indifference and/or maliciously provided the criminal courts with inculpatory information seeking to re-incarcerate plaintiff or to stop him from the New Jersey Family Court Order or directives which made plaintiff responsible for the care of the ill young boy.

50. Defendant EPD and defendant Torell with the authorization from or tacit authorization from defendant BCPO officials got involved with other law enforcement entities and with other family court staff from the states of New York and Wyoming. The defendants interfered with plaintiff's required responsibility to make sure his young boy saw a medical specialist in New York City to treat his illness, and aided Hodges, a New York

City resident, in her legal endeavors to extract by blackmail cash monies from plaintiff and a favorable custody resolution for herself.

51. When the defendants; under the lead of defendant Torell, were unable to get plaintiff rearrested in New York State and in New Jersey despite Totrell's best efforts, the defendants under the lead of defendant Torell descended upon local law enforcement in the state of Wyoming where the plaintiff resided full time.

52. During the post arrest period in 2014 Hodges had another relapse and suffered a near fatal drug overdose requiring emergency hospitalization.

53. The plaintiff sought refuge in his home state of Wyoming and successfully gained custody of his son and the son moved in with plaintiff in Wyoming full time. The Wyoming court did a full study on Hodges and quickly determined that she was unfit to have even any visitation with her and plaintiff's child unless it was supervised.

54. Once again the defendants interceded into the state of Wyoming wherein defendant Torell on or about 9/24/14, apparently acting with the authority of the other defendants, attempted to re-arrest the plaintiff and have the boy either put into foster care or into anyone else's care other than plaintiff. Defendant Torell made direct efforts to force the local police in Wyoming to honor his demands as to his false allegations that plaintiff violated his bail conditions, plaintiff was guilty of a violent assault, and that plaintiff was unfit to care for the boy.

55. Plaintiff expended great effort and expenses to thwart defendants' multiple attempts in three states to re-arrest him and remove his child from his custody, putting the child at risk of endangerment and abandonment and injury.

56. Given that defendant Torell knew or should have known that the plaintiff was exonerated by the hotel videotape of 9/12/14 it was illogical and irrational for defendant Torell to compound the errors made with regard to the false arrest of plaintiff by doubling down on getting plaintiff rearrested regarding the bail condition (no contact with son) provision. However, the abuse of process claim in this case also contemplates that defendant Torell acted in this manner concerning the post arrest period in order to gain a new charge or leverage against plaintiff. Namely, to use a new arrest or revocation of bail and a re-incarceration as ammunition to ultimately cure the initial false arrest. Such new developments if they were to occur would have hindered plaintiff in any subsequent civil lawsuit.

57. During the time gap between the date of the initial arrest and late in October of 2014 Hodges was refusing to cooperate with defendant EPD, defendant Torell and the defendant BCPO. Hodges told defendant Torell and defendant EPD officials that she wanted an attorney to be appointed to represent her interests as a victim. The defendants knew or should have known that Hodges' behavior was explainable for no other reason than to help her avoid being charged with filing false charges against the plaintiff.

58. Hodges refused to come to defendant EPD to give a statement to the police in more detail according to defendant Torell.

59. When Hodges finally did come to the defendant EPD headquarters defendant Torell did not confront Hodges in any way with the fact that the hotel security videotape inculpated her in a crime; namely making a knowingly false criminal charge against the plaintiff. Defendant Torell did look into Hodges' backround either wherein he learned that she was trying to blackmail plaintiff for money and for favorable custody rights or to terminate

plaintiff's custody rights over their child. Also, defendant Torell did not investigate or acted with willful indifference in either refusing to read or consider public and court files and other police files showing that Hodges had a long past history of falsely charging plaintiff of committing crimes he never committed, and that Hodges was mentally ill suffering from a major mental conditions along with the fact that Hodges was a drug abuser and an alcoholic.

60. Instead of the defendants criminally charging Hodges with filing a false criminal charge against the plaintiff and/or moving to quickly administratively dismiss with prejudice all criminal charges against plaintiff, defendants chose to double down and concoct more false criminal charges against plaintiff that they orchestrated to help avoid civil liability.

61. In early November of 2014, plaintiff's new criminal defense counsel [undersigned of this Complaint] took major steps to compel the defendants to administratively dismiss the entire criminal matter against plaintiff for the aforementioned reasons.

62. Plaintiff through his criminal defense counsel in 11/14 made extensive disclosures to the defendants highlighting for the defendants massive evidence including the video exoneration evidence with intricate instructions as to what to view and on what frequency, etc. as an aid to the defendants. the disclosures excluded extensive writings and backround information concerning the following: a) Hotel video exonerating the plaintiff; 2) exculpatory documentary evidence pointing to plaintiff's innocence, 3) evidence of Hodges' psychological disorders, her intoxication on the date of the incident, her prior false complaints against plaintiff for blackmail purposes, her exculpatory statements in this case, her drug addictive past, her alcoholism, her psychiatric

hospitalization/s, her drug overdose hospitalizations, and other evidence bearing on the reasons why the entire criminal case required an immediate dismissal with prejudice.

63. Unbeknownst to plaintiff in 11/14 was that defendants assisted Hodges actually or tacitly in fabricating a stale allegation against plaintiff that defendants knew or should have known was absolutely fabricated and baseless on its face.

64. After Hodges tried to a get a lawyer to protect her from criminal prosecution for filing a false charge against plaintiff as to the underlying matter, and after Hodges refused to meet with defendants after plaintiff's arrest, she did finally on 10/1/14 meet with defendant Torell at defendant EPD headquarters.

65. On 10/1/14 defendant Torell did not confront Hodges with the videotape or seek an explanation as to why she issued a false charge against plaintiff. Instead, defendant Torell actively or tacitly approved of or orchestrated or with willful indifference facilitated a new concocted false charge by Hodges against plaintiff.

66. Hodges on 10/1/14 indicated to defendants through defendant Torell and perhaps other representatives of defendants BCPO and the EPD that plaintiff slapped her in the face in a location that could never be caught on camera. Now, on 10/1/14 after Hodges had seen the video and had time to formulate a fabricated charge with he aid of the defendants, she conveniently abandon her previously made sworn statement that amounted to perjury or the equivalent under the law.

67. Instead of rejecting Hodges' out of date stale and self serving obviously false lying statement that plaintiff slapped her in the face in the car before she fell in the parking lot, the defendants embraced this new evidence and refused to dismiss the criminal charges against plaintiff. It is unlikely that Hodges ever swore under oath to the new allegation.

68. Despite plaintiff's best efforts to cause the defendants to administratively dismiss all criminal charges with prejudice, the defendants engineered and manipulated an exoneration case into one where the plaintiff had to face simple assault charges under N.J.S.A. 2C:12-1(a)(1). The new Hodges allegation of 10/1/14 that plaintiff hit her in the face with a slap in the car before she collapsed inebriated in the parking lot led to the old charge being downgraded and amended by defendants with willful indifference and reckless disregard for the law and the factual evidence in the case.

69. The defendants never did confront Hodges about her fabricated story and never challenged her as to why she did not make a fresh complaint that was truthful in the first place on the night in question. The defendants predictably never did challenge Hodges' fabricated new account of simple assault on 10/1/14 or any time thereafter either.

70. Defendants never considered the fact that plaintiff had no prior criminal history, had always led a law abiding life as a commercial aviator for many years, and had a stellar history in every community he resided in and worked in.

71. Plaintiff eventually was prosecuted by the defendants before the Central Municipal Court in Bergen County, New Jersey. This was after the matter removed from the Englewood municipal Court due to plaintiff filing a Tort Notice of Claim against defendants EPD and Torell.

72. Defendants were deficient in their refusals to provide discovery in the disorderly persons (DP) simple assault case despite plaintiff making timely and repeated requests for criminal discovery in the case through his criminal defense attorney.

73. Defendant Torell continued in a crusade to prosecute the plaintiff by not giving the municipal prosecutor the necessary discovery from defendant EPD, and defendant Torell

was not truthful or candid with the other defendants as to the fact that he knew plaintiff was exonerated in this case.

74. Defendant Torell's reluctance to accept that he had spearheaded with willful indifference a malicious prosecution against plaintiff was exemplified in his later testimony at the plaintiff's trial in 2015 where he refused to accept that plaintiff was exonerated on the videotape. Defendant Torell's bogus excuse for continuing in his crusade against plaintiff was that-maybe plaintiff hit or struck Hodges in the hotel off tape. This was a ridiculous statement since the hotel cameras in the hotel were provided to defendant Torell and there was no physical contact between the plaintiff and Hodges in the hotel. Hodges also never claimed that plaintiff struck her in the hotel, and hotel employees that were present indicated that Hodges and plaintiff had no real contact while in the hotel.

75. As the case moved forward the fact that defendants knew or should have known that the matter should have been administratively dismissed no later than mid September of 2014 permeated through the entire matter causing the defendants to commit unlawful acts in covering up their tortious and malicious and willfully indifferent acts to bring an exonerated man to trial on a DP case.

76. In 2/15 the plaintiff's criminal lawyer continued to press in writing and by other means for receipt and release of all criminal discovery materials. This included but was not limited to the release and disclosure to the plaintiff of all *Brady* evidence. The plaintiff was forced to file a motion to dismiss with the central municipal court or to compel the disclosure of all criminal discovery due to defendants' acts to withhold criminal discovery.

77. On 3/12/15 then central municipal court prosecutor Andrew Samson left a voice message with the plaintiff's criminal defense attorney. That retained and preserved message reveals a conspiracy occurred between the defendants BCPO designees and defendants Torell and EPD to suppress and/or destroy documentary evidence in the form of a report or "draft report" according to that prosecutor. Samson went on to explain that these defendants entered into an agreement to never let this 'draft report" ever be disclosed to him or to the plaintiff, ever.

78. Later in 2015 after 3/12/15, after Samson was replaced by another municipal prosecutor by the defendant County of Bergen, colloquy on the record before the municipal court judge revealed that the draft report was not in existence or had been suppressed, hidden, shredded, burned and destroyed and was probably not available any longer. The identified 'draft report" never was furnished to the municipal prosecutor/s and was never provided to the plaintiff or the municipal judge for an *in camera* review. For the purposes of this case until and unless proven otherwise the "draft report" is deemed destroyed.

79. On or about 7/24/15 after two days of staggered trial days, the trial judge acquitted the plaintiff of the DP charge after he made a finding that the alleged victim was not credible in any way.

80. A timely Notice of Claim was filed in 12/14 along with a supplemental and cumulative amended Notice of Claim after acquittal for the sake of completeness although the amended tort notice was not required.

81. The plaintiff as a result of the criminal arrest was forced to raise bail money of approximately $7,500.00.

82. The plaintiff as a result of the criminal prosecutions was forced to expend for travel and attorney fees in both the family courts in three states and in superior and municipal courts great sums of money.

83. The plaintiff suffered great emotional disturbance and emotional trauma as a result of being a victim of the malicious and false arrest, false imprisonment, and malicious prosecution for approximately ten months time.

84. The plaintiff as a result of defendants' unlawful conduct almost lost the right to visit his young son, and but for the integrity and correctness of the Wyoming Court, would have lost visitation and custody rights to care for his young son.

85. Plaintiff initially faced up to at least ten years in state prison with the almost un-rebuttable presumption that if convicted of a second degree he would face fines; go to state prison for at least 5 years and 85% of the time would have to be served in a state prison in the state of New Jersey. This would have effectively caused a termination of his parental rights, ruined his financial well being, and would have caused him to lose his pilot's license permanently.

86. The downgraded charge of simple assault would have caused plaintiff to face 180 days in the county jail if convicted, probation and fines along with the him facing a termination of his parental rights, ruined his financial well being, and would have probably caused him to lose his pilot's license permanently.

87. Defendants' tortious actions left the young son with Hodges for a period of time where she was abusing and overdosing on various drugs and alcohol on a daily basis putting the young son in an endangered situation.

88. Plaintiff has suffered physical, mental, emotional injuries and other damages as a result of defendants' intentional, malicious and willful misconduct, and plaintiff has suffered in the same regard with respect to defendants' willful indifference.

89. Plaintiff has suffered a lengthy and pervasive wave of great pain, embarrassment, mental and emotional distress, and mental and nervous anguish. Plaintiff has suffered from severe nervousness, fright, insult, and extreme humiliation and ruin.

90. Plaintiff has also suffered a grievous loss of dignity and character and reputation and has been defamed, disgraced, and harshly ridiculed without just cause. Plaintiff has had to live with his good name being tarnished beyond the ability to resurrect it, and he has watched his unblemished career dissipate to the point that it may never recover.

III. RESPECTIVE COUNTS TO THE CAUSE OF ACTION
COUNT ONE
(NJCRA)

91. Plaintiff repeats and makes a part hereof the allegations contained in Sections I-II entoto, as if stated in full and verbatim herein

92. At all relevant times herein, the named individual defendant and all named entity defendants and all individual John/Jane Doe/s defendant/s in this captioned matter acting in concert with and together, jointly or severally, deprived, interfered with, and/or attempted to interfere in the form of acting maliciously and/or in reckless disregard of the truth as to the false charges lodged, the initial investigation, the arrest, unlawful initial confinement, the criminal prosecution, and trial of the plaintiff as to the criminal charges that plaintiff was arrested for and ultimately prosecuted in central municipal court.

93. Such acts were done under color of law by all named defendants, deprived plaintiff of his right to enjoyment and/or free exercise of his substantive due process rights, equal protection under the law, fundamental fairness, a fair trial/process, the privileges and/or immunities secured by the laws and constitution of New Jersey, in violation of *N.J.S.A. 10:6-2 et seq.*

94. As a direct and proximate result/cause of all named defendants' actions/inactions, violations of the plaintiff's civil rights guaranteed to him by N.J.S.A. 10:6-2 the plaintiff suffered damages.

95. Such acts in violation of plaintiff's civil rights committed by defendants occurred with actual malice and/or were done with reckless disregard for the truth, and or were done with a wanton and willful disregard of persons or with willful indifference to plaintiff who forseeably might be harmed by defendants' actions.

96. It was the policy and/or custom of all named entity defendants to condone the actions of their agents, servants, and/or employees by virtue of their training, supervision, policies, procedures, and/or directives in place or the lack thereof

97. The entity defendants are vicariously liable for the conduct of all individually named defendant and their designees. The individually named defendant is being sued in their individual, administrative, representative and official capacities.

98. As a direct result of these aforesaid actions of the defendant/s, their agents, employees, and servants, and as a direct result of their malicious and intentional wrongful or willful indifference tortious conduct, plaintiff has suffered and seeks the following damages:

    i. Compensatory damages;

ii. Punitive damages;

iii. Plaintiff's unreimbursed costs and fees caused by criminal, family, administrative and civil litigation;

iv. Attorney costs and fees;

v. Pecuniary damages including, any loss of past, present and future wages;

vi. All other damages available under NJCRA's model jury charge.

vii. Pain and suffering as arrested, jailed and prosecuted innocent party, civil rights victim and for any other damages caused on account of other tortious conduct, emotional damages, physical damages, psychological damages, permanent injury damages, and loss of enjoyment and life and threat of jail time and loss of freedom committed by defendants.

99. Plaintiff has suffered physical, mental, and emotional injuries and damages as a result of defendants' intentional, malicious and willful misconduct, and Plaintiff has suffered in the same regard with respect to defendants' willful indifference with respect to the allegations lodged in this Complaint. Plaintiff has suffered a lengthy and pervasive wave of great pain, embarrassment, mental and emotional distress, and mental and nervous anguish. Plaintiff has suffered from severe nervousness, fright, insult, and extreme humiliation and ruin. Plaintiff has also suffered a grievous loss of dignity and character and reputation and has been defamed, disgraced, and harshly ridiculed without just cause. Plaintiff has had to live with his

good name being tarnished beyond the ability to resurrect it, and he has watched his reputation dissipate.

100. Plaintiff has suffered permanent injuries, severe emotional distress, humiliation, embarrassment, and the loss of his freedom and other benefits. Plaintiff has also incurred attorneys' fees and court costs for both the civil, family court and criminal matters. Any unreimbursed payment by plaintiff to his criminal, family, administrative and/or civil lawyers or to experts or investigators and attending interest are sought in this lawsuit as part of the damage claim.

101. This NJCRA claim is expressly derived as civil rights action where the reverse fee statute component is applicable.

102. Plaintiff had been subjected to a lengthy pre-trial set of court dates, initial processing and detainment, a drawn out trial, despite plaintiff being innocent of the charges, and despite being acquitted of all criminal charges lodged and charged.

103. Plaintiff was the victim of defendants' intentionally destroying evidence that would limit or hinder their own criminal and/or civil liability with regard to this matter.

104. But for defendant/s intentional, malicious or tortious conduct which was done in reckless or in willful and wanton disregard of the truth and the law and willful and deliberate indifference to the truth in this matter, plaintiff would not have been falsely charged, arrested, jailed, falsely detained, ordered to have no contact with his young son, falsely prosecuted in the pre-indictment phase, maliciously prosecuted and falsely tried and pursued as a viable criminal defendant facing jail time.

105. As a direct result of the willful misconduct, active participation, willful indifference, and negligence on the part of the defendants named in the cause of action, the plaintiff has suffered from emotional disturbance and emotional trauma and financial loss as a result of this horrific incident.

106. No defendant public entity named above in the en-captioned matter has taken any action to redress the harms done to plaintiff although all these defendants have knowledge of the events described in this Complaint, and they had/have the power authority, and legal responsibility to take remedial action. All defendant public entities through action and/or inaction have compounded the unlawful and tortious behavior that serves the basis of this cause of action.

107. WHEREFORE, Plaintiff, ROBERT BERGNER, demands judgment against all the defendants named in this Complaint, and any fictitiously named defendant/s, jointly severally and/or individually, for compensatory and punitive damages, together with interests, attorney fees, costs of suit and any other relief which the court/jury deems just and equitable.

108. Plaintiff seeks punitive damages also in accordance with *N.J.S.A.* 2A:15-5.10.

COUNT TWO
(MALICIOUS PROSECUTION)

109. The Plaintiff repeats and incorporates herein the allegations set forth in Sections I-II, and in Count One of Section III as if set forth in full in Count Two.

110. At all relevant times herein, the named individual defendant and all named entity defendants and all individual John/Jane Doe/s defendant/s in this captioned matter acting in concert with and together, jointly or severally, deprived, interfered

with, and/or attempted to interfere in the form of acting maliciously and/or in reckless disregard of the truth as to the false charges lodged, the initial investigation, the arrest, unlawful initial confinement, the criminal prosecution, and trial of the plaintiff as to the criminal charges that plaintiff was arrested for and ultimately prosecuted in central municipal court.

111. Plaintiff has been the victim of a **malicious prosecution** instituted by the defendants in that a criminal prosecution of a disorderly persons nature (DP) (case started as second degree aggravated assault case with additional lesser charges and was downgraded to a DP by defendants) occurred.

112. The matter was brought to trial and verdict in plaintiff's favor adverse to named defendants) occurred. A malicious prosecution claim is brought by plaintiff on the basis of defendants knowingly filing false charges, a lack of probable cause, a false downgrade charge, destruction of exoneration or exculpatory evidence, and a trial ridden with known false and fabricated statements by defendant Torell and the alleged victim (Hodges).

113. Defendants with willful indifference and knowing and/or wanton acts manufactured or contrived false evidence and false charges and false statements and intentionally hindered their apprehension by destroying evidence. Plaintiff was the victim of defendants being parties to intentionally destroying evidence that would limit or hinder their own criminal and/or civil liability with regard to this matter.

114. Said defendants named in this Complaint were responsible for or caused the criminal proceeding to be brought against plaintiff. The criminal proceedings were terminated in favor to the Plaintiff or not adversely to plaintiff in the form of a trial

verdict acquittal. The criminal arrest, the investigation, the charging and jailing of the plaintiff, arresting of the plaintiff, ordering plaintiff to have no contact with his young son, downgrading the charges to a DP offense, the prosecution of the plaintiff, and the trial of the plaintiff was/were brought with malice and/or without reasonable or probable cause even under an objective standard or was done recklessly in disregard to the truth or was done wantonly and willfully.

115. The conduct described in the aforementioned paragraphs of the Complaint constitute a malicious prosecution upon the plaintiff because the defendants intruded onto plaintiff's person, detained and arrested plaintiff without just cause and in violation of law and plaintiff was taken into custody, was criminally processed, and served time in jail awaiting to make a $75,000.00 no 10% bail.

116. Plaintiff felt pain during the process. Plaintiff suffered pain of significant duration and intensity. Plaintiff was imprisoned at the county jail (BCJ).

117. The conduct described in the aforementioned paragraphs of the Complaint constitute a malicious prosecution which was the direct cause of defendants charging plaintiff, intruding onto plaintiff's person, wrongfully arresting him, wrongfully detaining plaintiff wrongfully investigating plaintiff, wrongfully charging and downgrading charges against plaintiff and wrongfully prosecuting plaintiff until he was acquitted.

118. Defendants and their designees in key law enforcement positions maliciously prosecuted plaintiff with respect to their use of contrived, false and knowingly manufactured evidence in order to sustain a criminal case that was fabricated and manufactured by defendant Torell and by Hodges testifying against

plaintiff and by the very defendants prosecuting an innocent and exonerated man/plaintiff.

119. Said defendants also ignored, suppressed and destroyed exculpatory evidence. Defendants suppressed or destroyed evidence of innocence of plaintiff and/or evidence of their civil and criminal guilt.

120. Defendants either orchestrated and/or committed or tacitly approved or facilitated repeated acts of perjury, provided knowingly false evidence and false testimony and/or false statements and/or false reports or acted in reckless disregard of the truth, and said defendants failed to adhere to policies and customs and practices and guidelines from law enforcement entities, State, federal and local in their development of lying and manufactured witness evidence and testimony.

121. Such conduct as is described above along with the physical pain and emotional injuries suffered by plaintiff suffice for a malicious prosecution cause of action.

122. Plaintiff relies on all paragraphs from Sections I-III and in Count One which states that said conduct described therein and that which is contained in the body of this Count arises to a malicious prosecution cause of action.

123. Said conduct was sufficient in duration with all facts and circumstances taken in their totality to warrant constituting the above matter to be termed or pled as a malicious prosecution cause of action.

124. The conduct described in the aforementioned paragraphs of the Complaint further constitutes a malicious prosecution cause of action, because the defendants

intruded onto plaintiff's person; and detained and arrested plaintiff without just cause and in violation of law.

125. Plaintiff was booked, photographed, fingerprinted, processed, charged with a second degree crime and other crimes and held for a significant period of time forced to make a high bail. Plaintiff was detained, he was not free to go, and he was erroneously, wantonly/recklessly/willfully and/or was falsely accused by defendant/s of committing indictable offenses and ultimately a concocted DP charge in contravention of N.J.S.A. 2C Code. Plaintiff was innocent of these charges and was in fact exonerated by video evidence and other evidence.

126. Defendants acted intentionally or in reckless disregard of the truth and applicable law to destroy, suppress or manipulate facts as to plaintiff's actual innocence. The end result was the verdict of acquittal on the downgraded DP charge.

127. As a direct and proximate result/cause of all named defendants' actions/inactions, violations of the plaintiff's common law right to be free of intentional tortious conduct on the part of the defendant; the plaintiff suffered damages.

128. Such acts in violation of plaintiff's common law rights and were committed by defendants with actual malice and/or were done with reckless disregard for the truth, and or were done with a wanton and willful disregard or with deliberate indifference of persons (plaintiff) who forseeably might be harmed by defendants' actions.

129. It was the policy and/or custom of all named entity defendants to condone the actions of their agents, servants, and/or employees by virtue of their training, supervision, policies, procedures, and/or directives since the EPD and BCPO defendants and their designees were trained to seek convictions and not seek justice or the truth. The facts never drove the investigation or the case. The quest for a conviction at all costs was the only thing that drove the investigations by the entity defendants.

CAUSATION AND DAMAGES

130. The entity defendants are vicariously liable for the conduct of the individually named defendant and their acts of their alter egos, their designees. The individually named defendant is being sued in his individual, administrative, representative or official capacities.

131. As a direct result of these aforesaid actions of the defendant/s, their agents, employees, and servants, and as a direct result of their malicious and intentional wrongful or negligent tortious conduct, plaintiff has suffered and seeks the following damages:

i. Compensatory damages;

ii. Punitive damages;

iii. Plaintiff's unreimbursed costs and fees caused by criminal, family, administrative and civil litigation;

iv. Attorney costs and fees;

v. Pecuniary damages including, any loss of past, present and future wages;

vi. All other damages available under the appropriate model jury charge.

vii. Pain and suffering as arrested, jailed and prosecuted innocent party, and for any other damages caused on account of other tortious conduct, emotional damages, physical damages, psychological damages, permanent injury damages, and loss of enjoyment and life and threat of jail time and loss of freedom committed by defendants.

132. Plaintiff has suffered physical, mental, and emotional injuries and damages as a result of defendants' intentional, malicious and willful misconduct, and Plaintiff has suffered in the same regard with respect to defendants' willful indifference with respect to the allegations lodged in this Complaint. Plaintiff has suffered a lengthy and pervasive wave of great pain, embarrassment, mental and emotional distress, and mental and nervous anguish. Plaintiff has suffered from severe nervousness, fright, insult, and extreme humiliation and ruin. Plaintiff has also suffered a grievous loss of dignity and character and reputation and has been defamed, disgraced, and harshly ridiculed without just cause. Plaintiff has had to live with his good name being tarnished beyond the ability to resurrect it, and he has watched his reputation dissipate.

133. Plaintiff has suffered permanent injuries, severe emotional distress, humiliation, embarrassment, and the loss of his freedom and other benefits. Plaintiff has also incurred attorneys' fees and court costs for both the civil, family court and criminal matters. Any unreimbursed payment by plaintiff to his criminal, family,

administrative and/or civil lawyers or to experts or investigators and attending interest are sought in this lawsuit as part of the damage claim.

134. Plaintiff had been subjected to a lengthy pre-trial set of court dates, initial processing and detainment, a drawn out trial, despite plaintiff being innocent of the charges, and despite being acquitted of all criminal charges lodged and charged.

135. Plaintiff was the victim of defendants' intentionally destroying evidence that would limit or hinder their own criminal and/or civil liability with regard to this matter.

136. But for defendant/s intentional, malicious or tortious conduct which was done in reckless or in willful and wanton disregard of the truth and the law and willful and deliberate indifference to the truth in this matter, plaintiff would not have been falsely charged, arrested, jailed, falsely detained, ordered to have no contact with his young son, falsely prosecuted in the pre-indictment phase, maliciously prosecuted and falsely tried and pursued as a viable criminal defendant facing jail time.

137. As a direct result of the willful misconduct, active participation, willful indifference, and negligence on the part of the defendants named in the cause of action, the plaintiff has suffered from emotional disturbance and emotional trauma and financial loss as a result of this horrific incident.

138. No defendant public entity named above in the en-captioned matter has taken any action to redress the harms done to plaintiff although all these defendants have knowledge of the events described in this Complaint, and they had/have the power authority, and legal responsibility to take remedial action. All defendant

public entities through action and/or inaction have compounded the unlawful and tortious behavior that serves the basis of this cause of action.

139. WHEREFORE, Plaintiff, ROBERT BERGNER, demands judgment against all the defendants named in this Complaint, and any fictitiously named defendant/s, jointly severally and/or individually, for compensatory and punitive damages, together with interests, attorney fees, costs of suit and any other relief which the court/jury deems just and equitable.

COUNT THREE
(FALSE ARREST)

140. The Plaintiff repeats and incorporates herein the allegations set forth in Sections I-II, and in Counts One-Two of Section III as if set forth in full in Count Three.

141. At all relevant times herein, the named individual defendant and all named entity defendants and all individual John/Jane Doe/s defendant/s in this captioned matter acting in concert with and together, jointly or severally, deprived, interfered with, and/or attempted to interfere in the form of acting maliciously and/or in reckless disregard of the truth as to the false charges lodged, the initial investigation, the arrest, unlawful initial confinement, the criminal prosecution, and trial of the plaintiff as to the criminal charges that plaintiff was arrested for and ultimately prosecuted in central municipal court.

142. Plaintiff has been the victim of a ***false arrest*** instituted by the defendants in that a criminal prosecution of a disorderly persons nature (DP) (case started as second degree aggravated assault case with additional lesser charges and was downgraded to a DP by defendants) occurred.

143. The matter was brought to trial and verdict in plaintiff's favor adverse to named defendants) occurred. This claim is brought by plaintiff on the basis of defendants knowingly filing false charges, a lack of probable cause, a false downgrade charge, destruction of exoneration or exculpatory evidence, and a trial ridden with known false and fabricated statements by defendant Torell and the alleged victim (Hodges).

144. Defendants with willful indifference and knowing and/or wanton acts manufactured or contrived false evidence and false charges and false statements and intentionally hindered their apprehension by destroying evidence. Plaintiff was the victim of defendants being parties to intentionally destroying evidence that would limit or hinder their own criminal and/or civil liability with regard to this matter.

145. Said defendants named in this Complaint were responsible for or caused the criminal proceeding to be brought against plaintiff. The criminal proceedings were terminated in favor to the Plaintiff or not adversely to plaintiff in the form of a trial verdict acquittal. The criminal arrest, the investigation, the charging and jailing of the plaintiff, arresting of the plaintiff, ordering plaintiff to have no contact with his young son, downgrading the charges to a DP offense, the prosecution of the plaintiff, and the trial of the plaintiff was/were brought with malice and/or without reasonable or probable cause even under an objective standard or was done recklessly in disregard to the truth or was done wantonly and willfully.

146. The conduct described in the aforementioned paragraphs of the Complaint constitute a false arrest, false imprisonment and malicious prosecution upon the plaintiff because the defendants intruded onto plaintiff's person, detained and

arrested plaintiff without just cause and in violation of law and plaintiff was taken into custody, was criminally processed, and served time in jail awaiting to make a $75,000.00 no 10% bail.

147. Plaintiff felt pain during the process. Plaintiff suffered pain of significant duration and intensity. Plaintiff was imprisoned at the county jail (BCJ).

148. The conduct described in the aforementioned paragraphs of the Complaint constitute a false arrest, false imprisonment and malicious prosecution which was the direct cause of defendants charging plaintiff, intruding onto plaintiff's person, wrongfully arresting him, wrongfully detaining plaintiff wrongfully investigating plaintiff, wrongfully charging and downgrading charges against plaintiff and wrongfully prosecuting plaintiff until he was acquitted.

149. Defendants and their designees in key law enforcement positions maliciously prosecuted plaintiff with respect to their use of contrived, false and knowingly manufactured evidence in order to sustain a criminal case that was fabricated and manufactured by defendant Torell and by Hodges testifying against plaintiff and by the very defendants prosecuting an innocent and exonerated man/plaintiff.

150. Said defendants also ignored, suppressed and destroyed exculpatory evidence. *D*efendants suppressed or destroyed evidence of innocence of plaintiff and/or evidence of their civil and criminal guilt.

151. Defendants either orchestrated and/or committed or tacitly approved or facilitated repeated acts of perjury, provided knowingly false evidence and false testimony and/or false statements and/or false reports or acted in reckless disregard

of the truth, and said defendants failed to adhere to policies and customs and practices and guidelines from law enforcement entities, State, federal and local in their development of lying and manufactured witness evidence and testimony.

152. Such conduct as is described above along with the physical pain and emotional injuries suffered by plaintiff suffice for a malicious prosecution cause of action.

153. Plaintiff relies on all paragraphs from Sections I-III and in Counts One-Two which states that said conduct described therein and that which is contained in the body of this Count arises to a false arrest, false imprisonment and malicious prosecution cause of action.

154. Said conduct was sufficient in duration with all facts and circumstances taken in their totality to warrant constituting the above matter to be termed or pled as a false arrest, false imprisonment and malicious prosecution cause of action.

155. The conduct described in the aforementioned paragraphs of the Complaint further constitutes a false arrest, false imprisonment and malicious prosecution cause of action, because the defendants intruded onto plaintiff's person; and detained and arrested plaintiff falsely, without just cause and in violation of law.

156. Plaintiff was booked, photographed, fingerprinted, processed, charged with a second degree crime and other crimes and held for a significant period of time forced to make a high bail. Plaintiff was detained, he was not free to go, and he was erroneously, wantonly/recklessly/willfully and/or was falsely accused by defendant/s of committing indictable offenses and ultimately a concocted DP

charge in contravention of N.J.S.A. 2C Code. Plaintiff was innocent of these charges and was in fact exonerated by video evidence and other evidence.

157. Defendants acted intentionally or in reckless disregard of the truth and applicable law to destroy, suppress or manipulate facts as to plaintiff's actual innocence. The end result was the verdict of acquittal on the downgraded DP charge.

158. As a direct and proximate result/cause of all named defendants' actions/inactions, violations of the plaintiff's common law right to be free of intentional tortious conduct on the part of the defendant; the plaintiff suffered damages.

159. Such acts in violation of plaintiff's common law rights and were committed by defendants with actual malice and/or were done with reckless disregard for the truth, and or were done with a wanton and willful disregard or with deliberate indifference of persons (plaintiff) who forseeably might be harmed by defendants' actions.

160. It was the policy and/or custom of all named entity defendants to condone the actions of their agents, servants, and/or employees by virtue of their training, supervision, policies, procedures, and/or directives since the EPD and BCPO defendants and their designees were trained to seek convictions and not seek justice or the truth. The facts never drove the investigation or the case. The quest for a conviction at all costs was the only thing that drove the investigations by the entity defendants.

CAUSATION AND DAMAGES

161. The entity defendants are vicariously liable for the conduct of the individually named defendant and their acts of their alter egos, their designees. The individually named defendant is being sued in his individual, administrative, representative or official capacities.

162. As a direct result of these aforesaid actions of the defendant/s, their agents, employees, and servants, and as a direct result of their malicious and intentional wrongful or negligent tortious conduct, plaintiff has suffered and seeks the following damages:

i. Compensatory damages.

ii. Punitive damages

iii. Plaintiff's unreimbursed costs and fees caused by criminal, family, administrative and civil litigation;

iv. Attorney costs and fees;

v. Pecuniary damages including, any loss of past, present and future wages;

vi. All other damages available under the appropriate model jury charge.

vii. Pain and suffering as arrested, jailed and prosecuted innocent party, and for any other damages caused on account of other tortious conduct, emotional damages, physical damages, psychological damages, permanent injury damages, and loss of enjoyment and life and threat of jail time and loss of freedom committed by defendants.

163. Plaintiff has suffered physical, mental, and emotional injuries and damages as a result of defendants' intentional, malicious and willful misconduct, and

Plaintiff has suffered in the same regard with respect to defendants' willful indifference with respect to the allegations lodged in this Complaint. Plaintiff has suffered a lengthy and pervasive wave of great pain, embarrassment, mental and emotional distress, and mental and nervous anguish. Plaintiff has suffered from severe nervousness, fright, insult, and extreme humiliation and ruin. Plaintiff has also suffered a grievous loss of dignity and character and reputation and has been defamed, disgraced, and harshly ridiculed without just cause. Plaintiff has had to live with his good name being tarnished beyond the ability to resurrect it, and he has watched his reputation dissipate.

164. Plaintiff has suffered permanent injuries, severe emotional distress, humiliation, embarrassment, and the loss of his freedom and other benefits. Plaintiff has also incurred attorneys' fees and court costs for both the civil, family court and criminal matters. Any unreimbursed payment by plaintiff to his criminal, family, administrative and/or civil lawyers or to experts or investigators and attending interest are sought in this lawsuit as part of the damage claim.

165. Plaintiff had been subjected to a lengthy pre-trial set of court dates, initial processing and detainment, a drawn out trial, despite plaintiff being innocent of the charges, and despite being acquitted of all criminal charges lodged and charged.

166. Plaintiff was the victim of defendants' intentionally destroying evidence that would limit or hinder their own criminal and/or civil liability with regard to this matter.

167. But for defendant/s intentional, malicious or tortious conduct which was done in reckless or in willful and wanton disregard of the truth and the law and

willful and deliberate indifference to the truth in this matter, plaintiff would not have been falsely charged, arrested, jailed, falsely detained, ordered to have no contact with his young son, falsely prosecuted in the pre-indictment phase, maliciously prosecuted and falsely tried and pursued as a viable criminal defendant facing jail time.

168. As a direct result of the willful misconduct, active participation, willful indifference, and negligence on the part of the defendants named in the cause of action, the plaintiff has suffered from emotional disturbance and emotional trauma and financial loss as a result of this horrific incident.

169. No defendant public entity named above in the en-captioned matter has taken any action to redress the harms done to plaintiff although all these defendants have knowledge of the events described in this Complaint, and they had/have the power authority, and legal responsibility to take remedial action. All defendant public entities through action and/or inaction have compounded the unlawful and tortious behavior that serves the basis of this cause of action.

170. WHEREFORE, Plaintiff, ROBERT BERGNER, demands judgment against all the defendants named in this Complaint, and any fictitiously named defendant/s, jointly severally and/or individually, for compensatory and punitive damages, together with interests, attorney fees, costs of suit and any other relief which the court/jury deems just and equitable.

COUNT FOUR
(FALSE IMPRISONMENT)

171. The Plaintiff repeats and incorporates herein the allegations set forth in Sections I-II, and in Counts One-Three of Section III as if set forth in full in Count Four.

172. At all relevant times herein, the named individual defendant and all named entity defendants and all individual John/Jane Doe/s defendant/s in this captioned matter acting in concert with and together, jointly or severally, deprived, interfered with, and/or attempted to interfere in the form of acting maliciously and/or in reckless disregard of the truth as to the false charges lodged, the initial investigation, the arrest, unlawful initial confinement, the criminal prosecution, and trial of the plaintiff as to the criminal charges that plaintiff was arrested for and ultimately prosecuted in central municipal court.

173. Plaintiff has been the victim of a **false imprisonment** instituted by the defendants in that a criminal prosecution of a disorderly persons nature (DP) (case started as second degree aggravated assault case with additional lesser charges and was downgraded to a DP by defendants) occurred.

174. The matter was brought to trial and verdict in plaintiff's favor adverse to named defendants) occurred. This claim is brought by plaintiff on the basis of defendants knowingly filing false charges, a lack of probable cause, a false downgrade charge, destruction of exoneration or exculpatory evidence, and a trial ridden with known false and fabricated statements by defendant Torell and the alleged victim (Hodges).

175. Defendants with willful indifference and knowing and/or wanton acts manufactured or contrived false evidence and false charges and false statements and

intentionally hindered their apprehension by destroying evidence. Plaintiff was the victim of defendants being parties to intentionally destroying evidence that would limit or hinder their own criminal and/or civil liability with regard to this matter.

176. Said defendants named in this Complaint were responsible for or caused the criminal proceeding to be brought against plaintiff. The criminal proceedings were terminated in favor to the Plaintiff or not adversely to plaintiff in the form of a trial verdict acquittal. The criminal arrest, the investigation, the charging and jailing of the plaintiff, arresting of the plaintiff, ordering plaintiff to have no contact with his young son, downgrading the charges to a DP offense, the prosecution of the plaintiff, and the trial of the plaintiff was/were brought with malice and/or without reasonable or probable cause even under an objective standard or was done recklessly in disregard to the truth or was done wantonly and willfully.

177. The conduct described in the aforementioned paragraphs of the Complaint constitute a false arrest, false imprisonment and malicious prosecution upon the plaintiff because the defendants intruded onto plaintiff's person, detained and arrested plaintiff without just cause and in violation of law and plaintiff was taken into custody, was criminally processed, and served time in jail awaiting to make a $75,000.00 no 10% bail.

178. Plaintiff felt pain during the process. Plaintiff suffered pain of significant duration and intensity. Plaintiff was imprisoned at the county jail (BCJ).

179. The conduct described in the aforementioned paragraphs of the Complaint constitute a false arrest, false imprisonment and malicious prosecution which was the direct cause of defendants charging plaintiff, intruding onto plaintiff's person,

wrongfully arresting him, wrongfully detaining plaintiff wrongfully investigating plaintiff, wrongfully charging and downgrading charges against plaintiff and wrongfully prosecuting plaintiff until he was acquitted.

180. Defendants and their designees in key law enforcement positions maliciously prosecuted plaintiff with respect to their use of contrived, false and knowingly manufactured evidence in order to sustain a criminal case that was fabricated and manufactured by defendant Torell and by Hodges testifying against plaintiff and by the very defendants prosecuting an innocent and exonerated man/plaintiff.

181. Said defendants also ignored, suppressed and destroyed exculpatory evidence. *D*efendants suppressed or destroyed evidence of innocence of plaintiff and/or evidence of their civil and criminal guilt.

182. Defendants either orchestrated and/or committed or tacitly approved or facilitated repeated acts of perjury, provided knowingly false evidence and false testimony and/or false statements and/or false reports or acted in reckless disregard of the truth, and said defendants failed to adhere to policies and customs and practices and guidelines from law enforcement entities, State, federal and local in their development of lying and manufactured witness evidence and testimony.

183. Such conduct as is described above along with the physical pain and emotional injuries suffered by plaintiff suffice for a malicious prosecution cause of action.

184. Plaintiff relies on all paragraphs from Sections I-III and in Counts One-Two which states that said conduct described therein and that which is contained in the

body of this Count arises to a false arrest, false imprisonment and malicious prosecution cause of action.

185. Said conduct was sufficient in duration with all facts and circumstances taken in their totality to warrant constituting the above matter to be termed or pled as a false arrest, false imprisonment and malicious prosecution cause of action.

186. The conduct described in the aforementioned paragraphs of the Complaint further constitutes a false arrest, false imprisonment and malicious prosecution cause of action, because the defendants intruded onto plaintiff's person; and detained and arrested plaintiff falsely, without just cause and in violation of law.

187. Plaintiff was booked, photographed, fingerprinted, processed, charged with a second degree crime and other crimes and held for a significant period of time forced to make a high bail. Plaintiff was detained, he was not free to go, and he was erroneously, wantonly/recklessly/willfully and/or was falsely accused by defendant/s of committing indictable offenses and ultimately a concocted DP charge in contravention of N.J.S.A. 2C Code. Plaintiff was innocent of these charges and was in fact exonerated by video evidence and other evidence.

188. Defendants acted intentionally or in reckless disregard of the truth and applicable law to destroy, suppress or manipulate facts as to plaintiff's actual innocence. The end result was the verdict of acquittal on the downgraded DP charge.

189. As a direct and proximate result/cause of all named defendants' actions/inactions, violations of the plaintiff's common law right to be free of

intentional tortious conduct on the part of the defendant; the plaintiff suffered damages.

190. Such acts in violation of plaintiff's common law rights and were committed by defendants with actual malice and/or were done with reckless disregard for the truth, and or were done with a wanton and willful disregard or with deliberate indifference of persons (plaintiff) who forseeably might be harmed by defendants' actions.

191. It was the policy and/or custom of all named entity defendants to condone the actions of their agents, servants, and/or employees by virtue of their training, supervision, policies, procedures, and/or directives since the EPD and BCPO defendants and their designees were trained to seek convictions and not seek justice or the truth. The facts never drove the investigation or the case. The quest for a conviction at all costs was the only thing that drove the investigations by the entity defendants.

CAUSATION AND DAMAGES

192. The entity defendants are vicariously liable for the conduct of the individually named defendant and their acts of their alter egos, their designees. The individually named defendant is being sued in his individual, administrative, representative or official capacities.

193. As a direct result of these aforesaid actions of the defendant/s, their agents, employees, and servants, and as a direct result of their malicious and intentional wrongful or negligent tortious conduct, plaintiff has suffered and seeks the following damages:

i. Compensatory damages.

ii. Punitive damages

iii. Plaintiff's unreimbursed costs and fees caused by criminal, family, administrative and civil litigation;

iv. Attorney costs and fees;

v. Pecuniary damages including, any loss of past, present and future wages;

vi. All other damages available under the appropriate model jury charge.

vii. Pain and suffering as arrested, jailed and prosecuted innocent party, and for any other damages caused on account of other tortious conduct, emotional damages, physical damages, psychological damages, permanent injury damages, and loss of enjoyment and life and threat of jail time and loss of freedom committed by defendants.

194. Plaintiff has suffered physical, mental, and emotional injuries and damages as a result of defendants' intentional, malicious and willful misconduct, and Plaintiff has suffered in the same regard with respect to defendants' willful indifference with respect to the allegations lodged in this Complaint. Plaintiff has suffered a lengthy and pervasive wave of great pain, embarrassment, mental and emotional distress, and mental and nervous anguish. Plaintiff has suffered from severe nervousness, fright, insult, and extreme humiliation and ruin. Plaintiff has also suffered a grievous loss of dignity and character and reputation and has been defamed, disgraced, and harshly ridiculed without just cause. Plaintiff has had to

live with his good name being tarnished beyond the ability to resurrect it, and he has watched his reputation dissipate.

195. Plaintiff has suffered permanent injuries, severe emotional distress, humiliation, embarrassment, and the loss of his freedom and other benefits. Plaintiff has also incurred attorneys' fees and court costs for both the civil, family court and criminal matters. Any unreimbursed payment by plaintiff to his criminal, family, administrative and/or civil lawyers or to experts or investigators and attending interest are sought in this lawsuit as part of the damage claim.

196. Plaintiff had been subjected to a lengthy pre-trial set of court dates, initial processing and detainment, a drawn out trial, despite plaintiff being innocent of the charges, and despite being acquitted of all criminal charges lodged and charged.

197. Plaintiff was the victim of defendants' intentionally destroying evidence that would limit or hinder their own criminal and/or civil liability with regard to this matter.

198. But for defendant/s intentional, malicious or tortious conduct which was done in reckless or in willful and wanton disregard of the truth and the law and willful and deliberate indifference to the truth in this matter, plaintiff would not have been falsely charged, arrested, jailed, falsely detained, ordered to have no contact with his young son, falsely prosecuted in the pre-indictment phase, maliciously prosecuted and falsely tried and pursued as a viable criminal defendant facing jail time.

199. As a direct result of the willful misconduct, active participation, willful indifference, and negligence on the part of the defendants named in the cause of

action, the plaintiff has suffered from emotional disturbance and emotional trauma and financial loss as a result of this horrific incident.

200. No defendant public entity named above in the en-captioned matter has taken any action to redress the harms done to plaintiff although all these defendants have knowledge of the events described in this Complaint, and they had/have the power authority, and legal responsibility to take remedial action. All defendant public entities through action and/or inaction have compounded the unlawful and tortious behavior that serves the basis of this cause of action.

201. WHEREFORE, Plaintiff, ROBERT BERGNER, demands judgment against all the defendants named in this Complaint, and any fictitiously named defendant/s, jointly severally and/or individually, for compensatory and punitive damages, together with interests, attorney fees, costs of suit and any other relief which the court/jury deems just and equitable.

COUNT FIVE
(ABUSE OF PROCESS)

202. The Plaintiff repeats and incorporates herein the allegations set forth in Sections I-II, and in Counts One-Four of Section III as if set forth in full in Count Five.

203. At all relevant times herein, the named individual defendant and all named entity defendants and all individual John/Jane Doe/s defendant/s in this captioned matter acting in concert with and together, jointly or severally, deprived, interfered with, and/or attempted to interfere in the form of acting maliciously and/or in reckless disregard of the truth as to the false charges lodged, the initial investigation, the arrest, unlawful initial confinement, the criminal prosecution, and

trial of the plaintiff as to the criminal charges that plaintiff was arrested for and ultimately prosecuted in central municipal court.

204. Defendants committed an abuse of process with respect to the prosecution in this matter.

205. Defendants committed an abuse of process as is stated fully in Section II above with respect to their interference and actions taken in the family courts, court personnel, and with members of law enforcement of New York State, New Jersey and Wyoming with respect to the custody, contact, and visitation rights of plaintiff regarding his young minor child.

206. Plaintiff has been the victim of an abuse of process instituted by the defendants in that a criminal prosecution of a disorderly persons nature (DP) (case started as second degree aggravated assault case with additional lesser charges and was downgraded to a DP by defendants).

207. As to the abuse of process claim, see Model Jury Charge 3.30D which says in its pertinent part:

> "There are two basic elements necessary to sustain the cause of action of abuse of process. They are (1) that the defendant made an improper, illegal and perverted use of the legal procedure, that is to say, his/her resort to the legal process was neither warranted nor authorized by law,
> and (2) that the defendant had an ulterior motive in initiating the legal process. In other words, abuse of process is the misuse or misapplication of the legal procedure in a manner not contemplated by law.
> Specifically, the plaintiff contends that the defendant utilized the legal process to intimidate, harass and coerce the plaintiff in order to obtain a collateral advantage. In other words, the plaintiff contends that the defendant invoked the legal process to accomplish some unlawful end, namely, to compel the plaintiff to do some collateral thing which he/she could not legally be compelled to do."

208. In this case it has been asserted throughout the Complaint that no probable cause existed at the inception point of the charges being lodged against plaintiff.

This lack of probable cause continued through the time plaintiff was prosecuted and during plaintiff's criminal trial to the time plaintiff was acquitted by verdict.

209. In this case it is also asserted that defendants used the criminal process for a non classical law enforcement purpose; namely to facilitate or act with willful or deliberate indifference to seek a conviction against plaintiff, and to interfere with plaintiff's child custody court matters, and to attempt to revoke plaintiff's bail and re-arrest him.

210. The attempt to re-arrest plaintiff and interfere with plaintiff's child custody family court matters were orchestrated by defendant Torell with authority from all named defendants actually or constructively.

211. Such an abuse of process was designed to cause plaintiff to be jailed, have his bail revoked, and plaintiff would face new charges reasonably interpreted to include: kidnapping, unlawful restraint, unlawful confinement, violation of a court ordered bail condition, contempt of court, and second degree child endangerment.

212. As a direct and proximate result/cause of all named defendants' actions/inactions, violations of the plaintiff's common law right to be free of intentional tortious conduct on the part of the defendants; the plaintiff suffered damages.

213. Such acts were committed in violation of plaintiff's common law rights and were committed by defendants with actual malice and/or were done with reckless disregard for the truth, and or were done with a wanton and willful disregard of persons (plaintiff and his minor child) who forseeably might be harmed by defendants' actions.

214. The actions committed on the part of the defendants led to defendants knowing or defendants should have knowing that it would cause plaintiff to suffer from damages distress sufficient to trigger this cause of action.

215. The defendants conduct throughout the investigation to the time of a verdict of acquittal in plaintiff favor as to all charges over an almost ten month period was extreme and/or outrageous under the circumstances.

CAUSATION AND DAMAGES

216. See Counts One –Four above for details.

217. No defendant public entity named above in the en-captioned matter has taken any action to redress the harms done to plaintiff although all these defendants have knowledge of the events described in this Complaint, and they have the power authority, and legal responsibility to take remedial action. All defendant public entities through action and/or inaction have compounded the unlawful, and tortious behavior that serves the basis of this cause of action.

218. WHEREFORE, Plaintiff demands judgment against defendants jointly and severally, for compensatory damages, punitive damages, attorneys' fees, and all relief permitted under law for the tort act/s of abuse of process, together with the interest and costs of suit.

COUNT SIX
(DESTRUCTION/SPOLIATION WITH EVIDENCE)

219. The Plaintiff repeats and incorporates herein the allegations set forth in Sections I-II, and in Counts One-Five of Section III as if set forth in full in Count Six.

220. In this case the cause of action outlined in the body of the Complaint clearly establishes a prima facie case of evidence destruction, evidence suppression and potentially evidence tampering, and evidence manufacturing.

221. Such acts were committed by all defendants jointly and severally.

222. Such acts were accomplished in contravention of law, and were done willfully, recklessly, wantonly and intentionally for the purposes of gaining a conviction in a case where defendants knew no crime had occurred, and/or was accomplished with the knowledge that plaintiff was innocent in this case.

223. The motive to destroy and/or suppress evidence, manufacture evidence, and/or tamper with evidence was to frustrate plaintiff from having the ability to defend himself and exonerate himself.

224. The destroyed evidence relates to the aforementioned "draft report."

225. Defendants conspired and acted in a completed manner to destroy, suppress, and/or effectively destroy documentary evidence or electronic evidence that would have if disclosed established that the matter should have been administratively dismissed when the hotel videotape was viewed, and it probably related to other facts corroborative of the fact that no criminal charges should have been continued against the plaintiff as of mid September of 2014.

226. The claim is strengthened by the defendants' acts to also not disclose this "draft report" or "report" to any prosecutor assigned to the downgraded DP matter.

227. Although defendant Torell testified at plaintiff's criminal trial that he was unfamiliar with a 'draft report" or other like document, this a contested point at the time of the filing of the Complaint until civil discovery resolves the true facts

underlying the "draft report" or "report" referenced in Prosecutor Samson's voice message of 3/12/15.

228. This Count also relates to any facts contained in the body of the Complaint which addressed destruction, suppression, manufacturing, and tampering with evidence that is known to plaintiff at this time.

229. Such acts were committed in violation of plaintiff's common law rights and were committed by defendants with actual malice and/or were done with reckless disregard for the truth, and or were done with a wanton and willful disregard of persons (plaintiff) who forseeably might be harmed by defendants' actions.

230. The actions committed on the part of the defendants led to defendants knowing or defendants should have known that it would cause plaintiff to suffer from damages sufficient to trigger this cause of action.

231. The defendants conduct throughout the investigation to the time of a verdict of acquittal in plaintiff favor as to all charges over an almost ten month period was extreme and/or outrageous under the circumstances.

CAUSATION AND DAMAGES

232. See Counts One-Four for details.

233. No defendant public entity named above in the en-captioned matter has taken any action to redress the harms done to plaintiff although all these defendants have knowledge of the events described in this Complaint, and they have the power authority, and legal responsibility to take remedial action. All defendant public entities through action and/or inaction have compounded the unlawful, discriminatory, and tortious behavior that serves the basis of this cause of action.

234. WHEREFORE, Plaintiff demands judgment against defendants jointly and severally, for compensatory damages including but not limited to all attorney fees and costs associated with his criminal and family court matters in three states, pain and suffering and loss of enjoyment of life, punitive damages, attorneys' fees, and all relief permitted under law for the tort act/s of intentional infliction of emotional distress, together with the interest and costs of suit.

235. *Plaintiff notes that punitive damages are especially appropriate in this cause of action given the egregious nature of the acts described above concerning spoliation/destruction of evidence in a criminal case where jail time could occur.*

236. *Whether a Brady violation occurred or not in this matter with respect to this Count and an acquittal ultimately occurred, it is inconsequential to the bonafides of the claims in Count Six herein.*

COUNT SEVEN
(CIVIL CONSPIRACY)

237. Plaintiff repeats and makes a part hereof in Count Seven that which was contained in Sections I-IIII, entoto, as if stated in full and verbatim herein.

238. All named defendants at all relevant times committed civil rights violations and torts against plaintiff through the use of law means for unlawful purposes and/or by the commission of unlawful acts by unlawful means. Such acts were committed by a combination of two or more defendants or all named defendants (and their designees that have not yet been identified) acting in concert to commit the tort and civil rights violations against plaintiff identified in the Complaint.

239. There was an agreement or confederation by defendants and their designees at all relevant times to commit civil rights violations and torts against plaintiff

through the use of an agreement of a combination of two or more defendants and the defendants' designees or all named defendant in order to commit the tort and civil rights violations against plaintiff identified in the Complaint.

240. At all relevant times, all named defendants and their designees in combination of two or more defendants, made or committed overt act/acts in furtherance of a civil conspiracy against plaintiff.

241. At all relevant times, all named defendants in combination of two or more defendants, caused the plaintiff to suffer injuries as a result of the civil conspiracy.

242. Such conspiracy committed against the plaintiff was done so on the part of the named defendants with deliberate indifference, actual malice, and/or with a wanton and willful disregard of the persons (plaintiff) who forseeably might be harmed by defendants' actions.

243. The actions of the defendants towards plaintiff were done without cause, and such actions/inactions on the part of all named defendants deprived plaintiff of his freedom and liberty, put him in fear of criminal prosecution, and/or was intentionally done or done with deliberate indifference to interfere with plaintiff's child custody matters taking place in courts in three states, to re-arrest and add charges to plaintiff's criminal jacket after he made bail, and/or to cause emotional distress to plaintiff.

244. All named defendants failed to follow proper and lawful guidelines, policies, procedures and methods for conducting the criminal investigation and subsequent prosecution and the actions defendants and their designees took against plaintiff.

245. Defendants have taken no remedial acts to redress plaintiff's injuries and claims, and the named individual defendant and the other defendants' designees not yet identified in this Complaint by name until civil discovery occurs have not been punished or disciplined or retrained or further trained in any meaningful way.

246. The named entity defendants' appropriate representatives failed to exercise the authority vested in them as law enforcement officers and/or negligently trained, negligently managed, and/or negligently supervised the individual designees of defendants EPD and BCPO, and also the same is true as to defendant Torell.

247. As a direct and proximate result/cause of all named defendants' actions/inactions, violations against the plaintiff in terms of the commission of a civil conspiracy, the plaintiff suffered severe damages as are indicated in the Counts in Section III of this Complaint and are incorporated by reference as if stated expressly herein in this Count.

248. The fact that a conspiracy took place establishes liability for the individually named defendant, the entity defendants and other John/Jane Doe/s in the course of this litigation to later be named as individual defendants. All entity defendants named in the Complaint are responsible jointly and/or severally under the imputed or vicarious liability theory.

249. The fact that a civil conspiracy is alleged as a separate Count does not change the fact that defendants are also liable in under other Counts for their unlawful attempt and completed acts in the commission of civil rights violations and tort wrongs committed against plaintiff.

250. This Count pertains to all aspects of the criminal prosecution that took place, the interference and abuse of process claims, and the spoliation/destruction claims aforementioned in this Complaint.

CAUSATION AND DAMAGES

251. See Counts One-Four for details.

252. WHEREFORE, Plaintiff demands judgment against defendants jointly and severally, for compensatory damages including but not limited to all attorney fees and costs associated with his criminal and family court matters in three states, pain and suffering and loss of enjoyment of life, punitive damages, attorneys' fees, and all relief permitted under law for the tort act/s of intentional infliction of emotional distress, together with the interest and costs of suit.

253. *Plaintiff notes that punitive damages are especially appropriate in this cause of action given the egregious nature of the acts described above concerning police officials such as defendant Torell and other highly placed and designees of the entity defendants into a criminal matter regarding false allegations and false evidence use in a criminal case where jail time could occur.*

COUNT EIGHT
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

254. The Plaintiff repeats and incorporates herein the allegations set forth in Sections I-II, and in all Counts in Section III as if set forth in full in Count Eight.

255. Plaintiff has been the victim of an intentional infliction of emotional distress instituted by the defendants in that a criminal prosecution of an indictable nature and later tried as a downgraded criminal offense.

256. The conduct described in the aforementioned paragraphs Complaint constitute an intentional infliction of emotional distress against plaintiff in terms of a him being a victim long term of a malicious prosecution upon the plaintiff because the defendants intruded onto plaintiff's person, detained him, jailed him, interrogated him, criminally charged him, and committed other bad acts designed to re-incarcerate plaintiff, have him arrested on new charges related to the aforementioned no contact Order, and to effectively reduce, impeded or cause a termination of parental rights to occur against plaintiff in the family courts.

257. Plaintiff felt pain during the process. Plaintiff suffered pain of significant duration and intensity, and was horrified of what might happen to him in terms of his child custody issue, incarceration, loss of his pilot's license, loss of reputation in his private and business communities, and as to whether it would cause Hodges to gain monies from plaintiff in terms of blackmail or through the courts.

258. Plaintiff was also held in police custody; he was processed and was not free to leave for sufficient duration to constitute imprisonment, and was sent to the BCJ until he made bail.

259. .These events were solely caused by defendants' commission of a malicious false arrest, false imprisonment, malicious prosecution, an abuse of process, spoliation of evidence, and a civil conspiracy.

260. Defendants in key law enforcement positions maliciously prosecuted plaintiff with respect to their use of contrived, false and knowingly manufactured evidence in order to seek a conviction from the plaintiff knowing he was innocent.

261. Said defendants also ignored exoneration and exculpatory evidence, and defendants suppressed or destroyed evidence of innocence as to the plaintiff.

262. False statements were made to perpetrate the act of an intentional infliction of emotional distress upon the plaintiff. Defendants' witnesses committed acts of perjury, provided knowingly false evidence and false testimony or acted in reckless disregard of the truth, and said defendants failed to adhere to policies and customs and practices and guidelines from law enforcement entities, State, federal and local.

263. Defendants also suppressed, destroyed or manipulated evidence of plaintiff's innocence

264. Such conduct as is described above along with the physical pain and emotional injuries suffered by plaintiff suffice for an intentional infliction of emotional distress cause of action.

265. Any time a person is arrested under false pretenses and is prosecuted facing a prison term, this cause of action is viable with or without subsequent psychological or psychiatric counseling or psychological or psychiatric reports. An expert or treating doctor is not needed ultimately because the tort action speaks for itself.

266. Said conduct was sufficient in duration with all facts and circumstances taken in their totality to warrant constituting the above matter to be termed or pled as a cause of action for intentional infliction of emotional distress being perpetrated by all defendants against plaintiff.

267. Plaintiff was arrested, processed jailed, and charged and prosecuted to the fullest erroneously, wantonly/recklessly/willfully and/or was falsely accused by defendant/s of committing indictable crimes in contravention of N.J.S.A. 2C Code.

268. Plaintiff was innocent of these charges and defendants acted intentionally or in reckless disregard of the truth and applicable law to destroy, suppress or manipulate facts as to plaintiff's actual innocence.

269. As a direct and proximate result/cause of all named defendants' actions/inactions, violations of the plaintiff's common law right to be free of intentional tortious conduct on the part of the defendants; the plaintiff suffered damages.

270. Such acts were committed in violation of plaintiff's common law rights and were committed by defendants with actual malice and/or were done with reckless disregard for the truth, and or were done with a wanton and willful disregard of persons (plaintiff) who forseeably might be harmed by defendants' actions.

271. The actions committed on the part of the defendants led to defendants knowing or defendants should have known that it would cause plaintiff to suffer from emotional distress sufficient to trigger this cause of action.

272. The defendants conduct throughout the investigation to the time of a verdict of acquittal in plaintiff favor as to all charges over an almost a ten month period was extreme and/or outrageous under the circumstances.

CAUSATION AND DAMAGES

273. See Counts One-Four for details.

274. As a direct and proximate result of defendants' conduct, plaintiff suffered from emotional distress and damages.

275. The emotional distress suffered by plaintiff was so severe; no reasonable person could be expected to endure it.

276. Said intentional infliction of emotional distress committed by defendants, occurred with deliberate indifference, and with actual malice and/or were done with reckless disregard for the truth, and or were done with a wanton and willful disregard of persons who forseeably might be harmed by defendants' actions.

277. No defendant public entity named above in the en-captioned matter has taken any action to redress the harms done to plaintiff although all these defendants have knowledge of the events described in this Complaint, and they have the power authority, and legal responsibility to take remedial action. All defendant public entities through action and/or inaction have compounded the unlawful, discriminatory, and tortious behavior that serves the basis of this cause of action.

278. WHEREFORE, Plaintiff demands judgment against defendants jointly and severally, for compensatory damages including but not limited to all attorney fees and costs associated with his criminal and family court matters in three states, pain and suffering and loss of enjoyment of life, punitive damages, attorneys' fees, and all relief permitted under law for the tort act/s of intentional infliction of emotional distress, together with the interest and costs of suit.

JURY DEMAND

Plaintiff, ROBERT BERGNER, hereby demands a trial by jury as to all issues against ALL NAMED DEFENDANTS IN THE ENCAPTIONED MATTER AND ANY FICTITIOUSLY NAMED DEFENDANT/S IN THIS MATTER.

FROM THE Law Offices of ERIC V. KLEINER, ESQ.

Dated: September 6, 2016

(s) ERIC KLEINER

Eric V. Kleiner, Esq.
ATTORNEY FOR THE PLAINTIFF ROBERT BERGNER

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is advised that Eric V. Kleiner is hereby designated as trial counsel on behalf of the plaintiff, ROBERT BERGNER.

FROM THE Law Offices of ERIC V. KLEINER, ESQ.

Dated: September 6, 2016

(s) ERIC KLEINER

Eric V. Kleiner, Esq.
ATTORNEY FOR THE PLAINTIFF ROBERT BERGNER

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that the above matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, nor is any such action or arbitration proceeding presently contemplated.

FROM THE Law Offices of ERIC V. KLEINER, ESQ.

Dated: September 6, 2016

(s) ERIC KLEINER

Eric V. Kleiner, Esq.
ATTORNEY FOR THE PLAINTIFF ROBERT BERGNER