

SUMMONS

Attorney(s) C. Elston & Associates, LLC
Office Address 3350 Route 138
Bldg. 2, Suite 123
Town, State, Zip Code Wall, NJ 07719
Telephone Number (732) 280-6911
Attorney(s) for Plaintiff John Robbins

John Robbins

Superior Court of New Jersey

Bergen COUNTY
Law DIVISION

Docket No: BER-L-19846-14

Plaintiff(s)

Vs.

Borough of Rutherford, et als.

Defendant(s)

CIVIL ACTION SUMMONS

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

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

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

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

/s/ J. Hogue
Clerk of the Superior Court

DATED: 12/24/2014

Name of Defendant to Be Served: Borough-Rutherford, Birdsall, Sartori, Pannofiello, Porter, Boyle Fecanin,

Address of Defendant to Be Served: Borough Hall, 176 Park Avenue, Rutherford, NJ

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: DECEMBER 03, 2014
RE: ROBBINS VS BOROUGH OF RUTHERFORD
DOCKET: BER L -019846 14

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 ROBERT C. WILSON

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
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: CATHERINE M. ELSTON
ELSTON C & ASSOCIATES LLC
3350 RT 138
BLDG 2 STE 123
WALL NJ 07719

JUBCOS0

PARKING NOTICE
Through July 31, 2016
Visitors to the Justice Center are
directed to the Lot located at
150 River St., Hackensack.
Regular shuttles round trip
available from 7:30 am to 7:00 pm

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

SUPERIOR COURT BERGEN COUNTY
FILED

NOV 25 2014

Taina J. Simola
DEPUTY CLERK

CATHERINE M. ELSTON, ESQ.
C. ELSTON & ASSOCIATES, LLC
3350 ROUTE 138, BLDG. 2, SUITE 123
WALL, N.J. 07719
TEL: (732) 280-6911
N.J. ATT. ID #015051990

ATTORNEY FOR PLAINTIFF
JOHN ROBBINS

JOHN ROBBINS,

Plaintiff,

v.

BOROUGH OF RUTHERFORD, RUTHERFORD
MAYOR JOSEPH DESALVO, RUTHERFORD
COUNCIL MEMBER KIM BIRDSALL,
RUTHERFORD COUNCIL MEMBER MICHAEL
SARTORI, RUTHERFORD COUNCIL MEMBER
JOHN PARNOFIELLO, RUTHERFORD
COUNCIL MEMBER DAVID PORTER,
RUTHERFORD COUNCIL MEMBER JACK
BOYLE, RUTHERFORD COUNCIL MEMBER
GEORGE FECANIN. ACTING RUTHERFORD
POLICE CHIEF HAL CISER, (DEFENDANTS
NAMED IN THEIR INDIVIDUAL AND OFFICIAL
CAPACITIES)

Defendants.

CIVIL ACTION

DOCKET No.: L-19846-14

COMPLAINT AND DEMAND FOR
JURY TRIAL

Plaintiff John Robbins, residing in the Borough of Rutherford, County of
Bergen, State of New Jersey, by and through his undersigned attorney CATHERINE M.
ELSTON, ESQ., by way of Complaint against defendants, states as follows:

PARTIES

1. Plaintiff JOHN ROBBINS is a veteran of the United States military and classified as a disabled veteran by the Civil Service Commission of this State.

2. Defendant BOROUGH OF RUTHERFORD, ("Borough"), is a civil service municipal corporation of the State of New Jersey with principal offices located at 176 Park Avenue, Rutherford, New Jersey.

3. Defendant JOSEPH DESALVO, ("Mayor"), is currently, and was, at all times relevant to the Complaint, the Mayor of Defendant Borough. Defendant DeSalvo is being sued individually and in his official capacity.

4. Defendant KIM BIRDSALL, is currently, and was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Birdsall is being sued individually and in her official capacity.

5. Defendant MICHAEL SARTORI, is currently, and was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Sartori is being sued individually and in his official capacity.

6. Defendant JOHN PARNOFIELLO was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Parnofiello is being sued individually and in his official capacity.

7. Defendant DAVID PORTER was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Porter is being sued individually and in his official capacity.

8. Defendant JACK BOYLE was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Boyle is being sued individually and in his official capacity.

9. Defendant GEORGE FECANIN was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Fecanin is being sued individually and in his official capacity.

10. Defendant Captain HAL CISER, ("Acting Chief Ciser"), was, at all times relevant to the Complaint, the Acting Police Chief for Defendant Borough. Defendant Ciser is being sued individually and in his official capacity.

JURISDICTION

11. The court has subject-matter jurisdiction over the instant lawsuit, as this action arises under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, *et seq.*, New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 *et seq.*, and other applicable common-law torts.

12. The acts complained of that are attributable to the defendants and all occurred within the jurisdiction of this court.

FACTS RELEVANT TO ALL COUNTS

13. Plaintiff served in the United States Army in the United States military from June, 2002 to January, 2009. He is a decorated war veteran having served in Afghanistan and Iraq. As a result of such service, Plaintiff is designated by this State's Civil Service Commission as a disabled veteran.

14. Due to his classification as a disabled veteran, Plaintiff is entitled to those rights and protections afforded under Civil Service statutes and regulations, including N.J.S.A. 11A:5-6, "Appointment of Veterans".

15. N.J.S.A. 11A:5-6 states, "Whenever a disabled veteran or veteran shall be certified to an appointing authority from an open competitive employment list under

the provisions of N.J.S.A. 11A:4-8, the appointing authority shall appoint the disabled veteran or veteran in the order of ranking."

16. Defendant BOROUGH's ordinances require compliance N.J.S.A. 11A:5-6 via Borough Ordinance Article 1, "General Provisions," Chapter 76, Section 3, "Membership Requirements."

17. Borough Ordinance Article 1, "General Provisions," Chapter 76, Section 3, "Membership Requirements." sets forth the requirements for a position as a Borough police officer; section A(2) of this section states, "Duly qualified applicants who are veterans shall be accorded all such veterans' preference as are provided by law."

18. On or about October, 2010, Plaintiff took a Civil Service examination for the position of police officer.

19. Plaintiff successfully passed this competitive examination.

20. On or about August, 2012, Plaintiff received notification that he was on a certification list issued by the Commission to the BOROUGH OF RUTHERFORD for the position of police officer. Certification Number OL120620, dated May 1, 2012, designated the first four ranked individuals, numbers 1, 2, 3 and 4, as disabled veterans and veterans.

21. Plaintiff was ranked number 2. Plaintiff should have been classified as a "disabled veteran" instead of "veteran" on said list having been classified as such as per Civil Service statutes and regulations.

22. On or about early-mid October, 2012, Plaintiff was notified by the Rutherford Police Department that he was being selected for the position of police officer from the Civil Service List. Plaintiff provided Defendant BOROUGH notification of his interest in the position. Pursuant to N.J.S.A. 11A:4-8, as a disabled veteran, Plaintiff

enjoyed absolute preference in hiring to the position of police officer. Further, Defendant BOROUGH's ordinance, Article 1, "General Provisions," Chapter 76, Section 3, "Membership Requirements," mandated Plaintiff's hiring.

23. In reliance on the Statutes, Codes and Borough Ordinance noted above, Plaintiff withdrew his name for consideration by the Bergen County Sheriff's Office.

24. After confirming with Defendant BOROUGH his interest for the position, Plaintiff was contacted by the police department and told that he was the number one veteran and that he needed to respond to the police department to complete an employment application. Plaintiff responded, completed the application, and was fingerprinted. At the same time, a pre-screening interview was conducted with various department detectives and Captain HAL CISER where Plaintiff was asked general questions regarding his life plans, why he wanted to be in law enforcement, his military service, and other general questions.

25. Defendants next conducted a background investigation of Plaintiff. To validate that he resided in Rutherford, the department's detectives responded to Plaintiff's home, inspected his living arrangements, and interviewed members of his family with whom he was living at that time to determine how long Plaintiff had been living at the residence. Thereafter, Plaintiff was advised by Detective Mike Garner that his background investigation was complete.

26. Plaintiff was then contacted by the department to appear for a second interview. The interview was again before department detectives and Captain HAL CISER. Plaintiff was asked questions about two arrests that occurred while Plaintiff was in college: one was for violation of a Borough ordinance; the other involved an incident for which Plaintiff paid a fine for a petty disorderly offense.

27. In early November, Plaintiff was ordered for a third interview. This was to be conducted solely before the Mayor in the Mayor's office at City Hall. During this interview, the Mayor repeatedly challenged Plaintiff's residency, a requirement for appointment. Plaintiff had lived in the Borough for more than a year and had advised the Mayor as such. Plaintiff had also had a home visit that satisfied the department's detectives that he resided in the Borough. Nevertheless, the Mayor insinuated that Plaintiff was lying about living in town. The Mayor tried testing Plaintiff's knowledge of Rutherford by asking Plaintiff questions about the Borough, whether he knew particular people in the Borough, where he attended high school, where he grew up, asking why Plaintiff didn't have his own home, and whether he planned on staying in Rutherford after appointment.

28. Subsequent to his interview with the Mayor, Captain HAL CISER and Detective Michael Garner each advised Plaintiff, on separate occasions, that Defendant DeSalvo was challenging Plaintiff's residency stating that he did not believe that Plaintiff lived in town. Notably, no detective or any other member of the department involved in Plaintiff's background investigation advised Plaintiff that his residency was in issue.

29. After the Mayor's interview, on or about November, 2012, Defendant BOROUGH notified Plaintiff that he was going to be appointed to one of the open slots and further asked him to respond to the Mayor's office.

30. Plaintiff, along with candidates Frank Inglese, Joe Espinoza, Curtis Moore, Katherine Calienni, and Anthony Bachmann appeared before the Mayor and the council members in the conference room next to the Mayor's office at City Hall. Some of the parents of the candidates were also in attendance. At that time, one of the

council members nominated all six candidates for conditional offers of employment. All six were approved by vote of the council, subject to passing medical evaluations.

31. In mid-late November, 2012, Plaintiff was notified by the department that he was scheduled for the medical examination. Plaintiff appeared for the testing. Plaintiff was later informed that he passed.

32. The BOROUGH next provided Plaintiff with a uniform and the necessary equipment to attend the police academy.

33. Subsequent thereto, Plaintiff was scheduled by the BOROUGH for the psychological examination. Plaintiff also appeared for this examination.

34. On November 27, 2012, the Council voted to approve the candidates ranked fifth, tenth and eleventh. Plaintiff attended the council meeting where all three were appointed. Remaining to be appointed were Plaintiff, ranked second, as well as those individuals ranked thirteenth and fifteenth.

35. After the appointments on November 27, 2012, Plaintiff was contacted by Detective Tom Lewis of the Rutherford Police Department and asked to respond to the department. Upon arrival, Plaintiff was met by Detective Lewis, Detective Kevin Schennell, Captain HAL CISER, Lt. Patrick Feliciano, Defendant DESALVO, another Councilmember, and the Borough attorney.

36. At that time, Defendant Mayor told Plaintiff that although he had passed the psychological examination and was deemed qualified for the position, that he was personally uncomfortable with the fact that Plaintiff suffered from Post-Traumatic Stress, ("PTS"), and that it was his opinion that Plaintiff could not be relied upon to react in stressful situations.

37. The Mayor further advised Plaintiff that it was a "department decision" that Post-Traumatic Stress was too large a risk. Neither the Mayor, nor anyone else at the meeting, provided Plaintiff with a medical opinion or report, written or otherwise, stating either that Plaintiff could not perform the duties of a police officer and/or refuting the Borough's own psychological expert's findings that Plaintiff was fit for the position.

38. The Mayor then proceeded to falsely accuse Plaintiff of lying by failing to release medical information to those other than the designated psychological examiner.

39. Plaintiff, however, had not only released all such information to the examining psychologist, but, to his recollection, provided a release allowing the police department access to the same information. Plaintiff was not required or requested to provide his medical information to any other individual.

40. Further, the Mayor was neither entitled to obtain such information, nor was it proper for either the BOROUGH's examining physician or the department to release such information to the Mayor.

41. At the end of the meeting, the Mayor advised Plaintiff that the offer of employment extended to him was revoked and that he would not be appointed.

42. The official minutes from the BOROUGH's meetings for the months of October and November, 2012, obtained through Open Public Records requests, ("OPRA"), as well as the internet, reflect that no deliberations or discussions took place, at these meetings, among the council members regarding the revocation of Plaintiff's conditional offer of employment. The first four eligible individuals for appointment on Plaintiff's Civil Service Certification list were all veterans. The list was

issued in May, 2012. The number one ranked individual was a disabled veteran, as was Plaintiff.

43. Pursuant to State law, all four veterans enjoyed absolute preference in hiring; nevertheless, all four were not only not appointed by the BOROUGH, but were completely removed from the hiring list - an action tantamount to barring them from employment as a police officer not only in Rutherford, but throughout the County.

44. Plaintiff was removed even though deemed fully qualified for appointment by Defendant BOROUGH's own medical and psychological examiners.

45. In or about July, 2014, Defendant BOROUGH sought again to appoint police officers. Accordingly, defendants requested the Civil Service Commission to certify a list of those eligible for appointment.

46. The Commission provided to the Borough List No. OL140583, ("2014 List"), dated May 12, 2014.

47. The top three ranked individuals were all veterans. Documents obtained via OPRA to the Civil Service Commission establish that the BOROUGH removed all three veterans from the list. The veteran ranked number 1 was hired by the Bergen County Police Department at the same time Defendants removed his name from its own list.

48. Since at least 2012, all veterans that have appeared on Civil Service Certification Lists issued to the BOROUGH have been removed from the Civil Service Lists provided to the BOROUGH, and Defendant Civil Service has approved such removals.

49. Since at least 2012, Defendants have engaged in a pattern and practice of discrimination against veterans and disabled veterans who enjoy statutory preference in hirings.

COUNT ONE

VIOLATIONS OF THE NEW JERSEY CIVIL RIGHTS ACT AND THE CONSTITUTION OF NEW JERSEY

50. Plaintiff repeats and re-alleges each allegation as if fully set forth herein

51. The New Jersey Constitution prescribes that Civil Service appointments "shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive." N.J. Const. art. VII, § 1, ¶ 2.

52. As set forth above, defendants individually and jointly failed to make the appointment sought by Plaintiff "according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive" but, rather, have made hiring decisions, or allowed these decisions to be made, based upon improper considerations including an irrational, baseless and discriminatory reaction to Plaintiff's status as a veteran who has suffered from Post-Traumatic Stress disorder.

53. Accordingly, the conduct of the defendants individually and jointly has deprived Plaintiff of rights secured by article VII, section 1, paragraph 2 of the New Jersey Constitution and the New Jersey Civil Rights Act.

COUNT TWO

VIOLATION OF N.J.S.A. 11A:5-6, "APPOINTMENT OF VETERANS"

54. Plaintiff repeats and re-alleges each allegation as if fully set forth herein.

55. Civil Service statute, N.J.S.A. 11A:5-6, "Appointment of Veterans," mandates the hiring of all disabled and non-disabled veterans in order of ranking on a Civil Service list.

56. Plaintiff, a disabled veteran, ranked as a veteran in the number 2 spot on Civil Service Certification List No. OL120620, issued May 1, 2012.

57. Defendants failed to appoint Plaintiff in accordance with law, removing him although deemed qualified for appointment.

58. Defendants' violation of N.J.S.A. 11A:5-6 has caused and have caused Plaintiff to suffer economic and emotional damages in an amount to be determined by a jury.

59. Accordingly, the conduct of the defendants individually and jointly has deprived Plaintiff of rights secured by Title 11 of the Statutes of New Jersey and the New Jersey Civil Rights Act.

COUNT THREE

VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION, ("NJLAD")

60. Plaintiff repeats and re-alleges each allegation as if fully set forth herein.

61. Defendants have subjected Plaintiff to discriminatory conduct because of his status as a disabled veteran.

62. Defendants BOROUGH OF RUTHERFORD, Mayor DeSalvo, Council members Birdsall, Sartori, Parnoficello, Porter, Boyle and Fecanin and Defendant HAL CISER's discrimination has been carried out by the governing body of the BOROUGH OF RUTHERFORD who have selection and appointment power, and by Defendant Acting Chief HAL CISER who has supervisory authority to control the work environment at the Rutherford Police Department.

63. These Defendants have discriminated against Plaintiff on the basis of his status as veteran and/or due to their unlawful conclusion that Plaintiff should be disqualified from the position as Police Officer for the BOROUGH OF RUTHERFORD because he has been diagnosed as having Post-Traumatic Stress Disorder.

64. Defendants BOROUGH OF RUTHERFORD, Mayor DeSalvo, Council members Birdsall, Sartori, Parnofello, Porter, Boyle and Fecanin and Defendant Ciser's discrimination of Plaintiff, as a veteran, is part of an ongoing pattern.

65. Defendants BOROUGH OF RUTHERFORD, Mayor DeSalvo, Council members Birdsall, Sartori, Parnofello, Porter, Boyle and Fecanin and Defendant Ciser, each aided and abetted some or all the other Defendants in their violation of the NJLAD.

66. Defendants' discriminatory conduct is egregious, willful and wanton and in reckless disregard of Plaintiff's rights.

67. The actions of Defendants constitute a violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq., and have caused Plaintiff to suffer economic and emotional damages in an amount to be determined by a jury.

COUNT FOUR

DISPARATE TREATMENT - NJLAD

68. Plaintiff repeats and re-alleges each allegation as if fully set forth herein.

69. Because of his status as a military veteran, Defendants treated Plaintiff disparately and disfavorably in the terms and conditions of employment.

70. Similarly situated non-veterans were treated more favorably in the terms and conditions of employment including the hiring/appointment process.

71. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer loss of income, loss of benefits, loss of pension benefits, and other financial damages.

72. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer pain and suffering.

COUNT FIVE

PERCEIVED DISABILITY DISCRIMINATION - LAD

73. Plaintiff repeats and re-alleges each allegation as if fully set forth herein.

74. Defendants incorrectly perceived, without a sufficient basis in fact, Plaintiff to be psychologically disabled from performing the duties of a police officer.

75. As Defendant BOROUGH's physicians determined, Plaintiff was not psychologically disabled from performing the duties of a police officer.

76. Defendants discriminated against Plaintiff based on their perception that he was disabled, by actions including, but not limited to: accusing Plaintiff of lying about his medical background; concluding that Plaintiff was unqualified for the position of Police Officer notwithstanding the psychological evaluation of a psychologist hired by the BOROUGH who thoroughly evaluated Plaintiff and concluded he was psychologically fit to perform the functions of the job as Police Officer for the BOROUGH OF RUTHERFORD; removing Plaintiff from a Civil Service Certification List; and preventing Plaintiff from obtaining employment as a police officer throughout the County as a result of removing him from the Civil Service Certification List.

77. Defendants' actions constituted disability discrimination in violation of the

NJLAD.

78. Defendants' harassment of Plaintiff was part of an ongoing pattern and practice of discrimination against veterans.

79. Defendants BOROUGH OF RUTHERFORD, Mayor DeSalvo, Council members Birdsall, Sartori, Parnofello, Porter, Boyle and Fecanin and Defendant Ciser's each aided and abetted some or all of the other Defendants in their violation of the NJLAD.

80. Defendants' discriminatory actions were egregious, willful, wanton, and in reckless disregard of Plaintiff's rights.

81. Defendant BOROUGH OF RUTHERFORD's upper management, including but not limited to the governing body and Acting Police Chief participated in the relevant unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against all defendants, individually and jointly for:

- a. Compensatory damages;
- b. Consequential damages;
- c. Punitive damages (pecuniary and nonpecuniary), including but not limited to damages for extreme and intentional/negligent infliction of mental and emotional anguish, humiliation, anxiety, and distress;
- d. Equitable relief;
- e. Reasonable attorney's fees, costs and expenses incurred as a result of the defendants' wrongful acts, as provided for by the New Jersey Constitution, the New Jersey Civil Rights Act and the New Jersey Law Against Discrimination; and
- f. Such other general or specific relief, both at law and in equity, to which plaintiff may be justly entitled.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by Jury as to all claims.

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to Rule 4:5-1(b)(2), it is hereby stated that the matter in controversy involving Plaintiff is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated at present. A matter involving similar legal issues, however, is Kubs v. Borough of Rutherford, et als., Docket No. BER-L-007617-14. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action other than those identified as John Doe defendants. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original Certification.

DEMAND FOR PRODUCTION OF STATEMENTS

Plaintiffs demands true and complete copies of any statements made by them pursuant to Rule 4:10-2(c). This demand is deemed to be continuing.

DESIGNATION OF TRIAL ATTORNEY

Pursuant to Rule 4:25-4, CATHERINE M.ELSTON, ESQUIRE, is hereby designated as trial counsel in the above-captioned action on behalf of plaintiff.

Respectfully submitted,

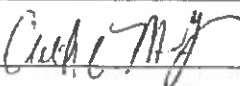
C. ELSTON & ASSOCIATES, LLC
Attorneys for Plaintiff John Robbins



Catherine M. Elston
NJ Attorney ID #015051990

Dated: November 24, 2014

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY		
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i> , if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: ☐ CK ☐ CG ☐ CA CHG/CK NO. _____ AMOUNT: _____ OVERPAYMENT: _____ BATCH NUMBER: _____		
	ATTORNEY / PRO SE NAME Catherine M. Elston		TELEPHONE NUMBER (732) 280-6911		
	FIRM NAME (if applicable) C. Elston & Associates, LLC		COUNTY OF VENUE Bergen		
	OFFICE ADDRESS 3350 Route 138, Bldg. 2, Suite 123, Wall, NJ 07719		DOCKET NUMBER (when available) L-19846-14		
		DOCUMENT TYPE Complaint		JURY DEMAND ☒ Yes ☐ No	
NAME OF PARTY (e.g., John Doe, Plaintiff) John Robbins, Plaintiff		CAPTION John Robbins, Plaintiff v. Borough of Rutherford, J. DeSalvo, K. Birdsall, M. Sartori, J. Parnofello, D. Porter, J. Boyle, G. Fecanin, H. Ciser, and John Does			
CASE TYPE NUMBER (See reverse side for listing) 005, 618	HURRICANE SANDY RELATED? ☐ YES ☒ NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ 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 ☒ No		IF YES, LIST DOCKET NUMBERS			
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☒ Yes ☐ No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☒ 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 ☒ 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? ☒ 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 ☒ No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION			
WILL AN INTERPRETER BE NEEDED? ☐ Yes ☒ No		IF YES, FOR WHAT LANGUAGE?			
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .					
ATTORNEY SIGNATURE: 					



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

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| 266 HORMONE REPLACEMENT THERAPY (HRT) | 288 PRUDENTIAL TORT LITIGATION |
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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

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Putative Class Action

☐

Title 59

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WAYNE KUBS,

Plaintiff,

vs.

Civil Action No.

BOROUGH OF RUTHERFORD, RUTHERFORD
MAYOR JOSEPH DESALVO, individually
and in his official capacity,
RUTHERFORD COUNCIL MEMBER KIM
BIRDSALL, individually and in her
official capacity, RUTHERFORD
COUNCIL MEMBER MICHAEL SARTORI,
individually and in his official
capacity, RUTHERFORD COUNCIL
MEMBER RAY TETRO, individually and
in his official capacity,
RUTHERFORD COUNCIL MEMBER FRANK
NUNZIATO, individually and in his
official capacity, RUTHERFORD
COUNCIL MEMBER JACK MANZO,
individually and in his official
capacity, RUTHERFORD COUNCIL
MEMBER MARK O'CONNOR, individually
and in his official capacity, and
RUTHERFORD POLICE CHIEF JOHN
RUSSO, individually and in his
official capacity,

Defendants.

COMPLAINT AND DEMAND FOR
JURY TRIAL

Plaintiff Wayne Kubs, by way of Complaint and Demand for Jury
Trial against Defendants, hereby says:

JURISDICTION AND VENUE

1. The jurisdiction of this court is invoked pursuant to 28
U.S.C. §§ 1331 and 1343(a)(3) and (4).

2. The supplemental jurisdiction of this Court over state claims is invoked pursuant to 28 U.S.C. § 1367(a).

3. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b) because the unlawful employment practices alleged below were committed within the State of New Jersey and within the District of New Jersey.

PARTIES

4. Plaintiff, Wayne Kubs, who resides at 34 Yahara Avenue, Rutherford, New Jersey 07070, is a veteran of the United States Navy and as such, is classified as a veteran by the Civil Service Commission of this State.

5. Defendant, Borough of Rutherford, ("Borough"), is a municipal corporation of the State of New Jersey with principal offices located at 176 Park Avenue, Rutherford, New Jersey.

6. Defendant, Joseph DeSalvo, ("Mayor" or "DeSalvo"), is currently, and was, at all times relevant to the Complaint, the Mayor of Defendant Borough. Prior to becoming Mayor, Defendant DeSalvo served as a Borough Councilman from January 1, 2009 through December 31, 2011. He became Mayor on January 1, 2012. Defendant DeSalvo is being sued individually and in his official capacity.

7. Defendant, Kim Birdsall was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Birdsall is being sued individually and in her official capacity.

8. Defendant, Michael Sartori was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Sartori is being sued individually and in his official capacity.

9. Defendant, Ray Tetro was, at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Tetro is being sued individually and in his official capacity.

10. Defendant, Frank Nunziato, is currently, and was at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Nunziato is being sued individually and in his official capacity.

11. Defendant, Jack Manzo, was at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant Manzo is being sued individually and in his official capacity.

12. Defendant, Mark O'Connor, was at all times relevant to the Complaint, a Council Member of Defendant Borough. Defendant O'Connor is being sued individually and in his official capacity.

13. Defendant, John Russo, ("Chief" or "Russo"), is currently, and was at all times relevant to the Complaint, the Police Chief for Defendant Borough. Defendant Russo is being sued individually and in his official capacity.

FACTS RELEVANT TO ALL COUNTS

14. Plaintiff is a veteran of the United States Navy having served from November, 1997 to September, 2004. During his service,

Plaintiff was a "field medical service technician" and hospital corpsman. Plaintiff was honorably discharged in September, 2004.

15. Defendant Borough is a civil service municipality and, therefore, subject to the State's civil service statutes and regulations.

16. New Jersey Civil Service statutes and regulations provide for hiring preferences for veterans and disabled veterans. N.J.S.A. 11A:5-6, "Appointment of Veterans," states, "Whenever a disabled veteran or veteran shall be certified to an appointing authority from an open competitive employment list under the provisions of N.J.S. 11A:4-8, the appointing authority shall appoint the disabled veteran or veteran in the order of ranking."

17. At all times relevant herein, Defendant Borough's ordinances pertaining to the hiring of police officers required compliance with State laws as to Veterans' "Preference" rights. Rutherford Borough Ordinance Article 1, "General Provisions," Chapter 76, Section 3, paragraph A(2), "Membership Requirements," states, "Duly qualified applicants who are veterans shall be accorded all such veterans' preference as are provided by law." Borough ordinance 76-4, "State statutes applicable", further states, in part, "No person shall be appointed.....by any means other than those prescribed by Subtitle 3 of Title 11 of the Revised Statutes of New Jersey (Civil Service) and the rules and regulations prescribed thereunder."

18. USERRA, "Uniformed Services Employment and Reemployment Rights Act of 1994," 38 U.S.C. Sec. 4301-4335, and corresponding regulations, 32 CFR Part 104, is a federal law that includes protection against discrimination in initial hiring decisions based on past military service.

19. In or about 2013, Plaintiff, who was designated a "veteran" by the State's Civil Service Commission, successfully passed an open competitive written Civil Service examination for the position of police officer. He was subsequently ranked #3 on Civil Service Commission Certification Number OL140583, ("Hiring List"), for the Borough of Rutherford. The #1 and #2 ranked individuals were "disabled veterans," as designated by the Civil Service Commission on said list. As such, all three veterans, placing #1, #2 and #3, were entitled to the hiring preference as conferred by State statute and regulations.

20. In or about 2014, Defendants voted to hire six (6) police officers from the Hiring List. The first 13 ranked individuals were to be considered for the six appointments. The last individual, ranked number 13, was James F. Fecanin, ("Fecanin"), Defendant Mayor's nephew. In order for the Mayor's nephew to be appointed, at least seven (7) other candidates had to be removed or by-passed for appointment.

21. When the hiring process began, the Mayor was made aware that his nephew was one of the individuals in contention for an

appointment. Defendant Chief, as well as his personal friend and councilman, Defendant Nunziato, knew early on in the hiring process that the Mayor's nephew was a candidate in contention for a position.

22. All 13 police candidates, including Plaintiff, were requested to complete employment applications which included disclosure of military records, drivers' license violations, criminal history, employment history, etc. Although not part of the Borough's hiring ordinance, the Borough requested that all candidates also attend an interview to be conducted by the Police Chief. Also participating in the interviews were police officers who were conducting the candidates' background investigations. The Police Chief later testified that he prepared a list of questions to be asked of each candidate and that all candidates were asked these same questions.

23. Despite knowing that the Mayor's nephew was in contention for the position, the Police Chief invited the Mayor and Defendant Nunziato, who was also the Borough's police liaison, to attend the interviews. The Mayor and Nunziato both attended several of the candidates' interviews, including that of Plaintiff's, prior to the interview of the Mayor's nephew. The Mayor later testified that at the interviews, he was provided the list of questions the candidates were to be asked, as well as the candidates' employment applications. The Mayor also testified

that when he attended the candidates' interviews, he heard the responses of the other candidates to the questions asked. By sitting in on the interviews, the Mayor was also able to observe the reactions and/or responses to the candidates' answers by the Chief and the others in attendance.

24. Plaintiff's interview took place on June 18, 2014. The Mayor, Defendant Nunziato and his brother Detective Sergeant Anthony Nunziato, who was one of the officers assigned to conduct background investigations of the candidates, were among those in attendance. Det. Sgt. Anthony Nunziato had conducted Plaintiff's background investigation, as well as that of the Mayor's nephew. In fact, the Mayor testified that Sgt. Nunziato had called him during the background investigation process to obtain an employment reference from him for his nephew.

25. During Plaintiff's interview, Plaintiff's response to one question included his statement that, because of his background in the military, he knew the importance of taking orders. He also spoke of his military service. In response, Defendant Russo stated that the department did not need people acting like military personnel. The Police Chief later testified that he did not believe that military experience was an advantage in a paramilitary organization such as a police department. Defendant Russo also testified that he did not have to consider Plaintiff's military background in making determinations for appointments because as a

veteran, the Civil Service Commission already gave Plaintiff a hiring preference.

26. While Plaintiff's employment application listed his service to this country as a member of the United States Navy, the Police Chief unabashedly admitted to making no effort to understand the various aspects of Plaintiff's military service. For instance, despite being provided Plaintiff's military records and his resume, Defendant Russo testified that he did not know what duties Plaintiff performed in the military, what positions he occupied, or the training Plaintiff received. While admitting that being a paramedic was advantageous to a position as a police officer, and while Plaintiff's resume indicated that he was a Navy hospital corpsman, the Chief admitted that he did not care enough to determine what training was necessary for that position. Plaintiff's application and military documents also listed his citations and medals, including, the Armed Forces Expeditionary Medal, Good Conduct Medal, Navy and Marine Corp Achievement Medal, Fleet Marine Force Ribbon, and the National Defense Service Medal. The Chief testified that he had no understanding of what these medals and citations represented, and further admitted that he had made no effort to find out.

27. While Plaintiff listed military superiors on his application as references, Defendants contacted not one to inquire of Plaintiff's qualifications for a position as police officer. In

a report he later submitted to the Civil Service Commission to support his removal of Plaintiff from the Hiring List, the Chief failed to include any of Plaintiff's military references or the positive references Plaintiff provided during the application process, including those from a SWAT team member, active Rutherford police officers, an active New Jersey Transit police officer, and others.

28. Plaintiff's application also listed his duties as a medic for the Bergen County SWAT team. Defendant Police Chief admitted to having no idea what qualifications were needed for this position.

29. Plaintiff's resume also listed a number of certifications that he trained for and received, such as "EMT-P," "Tactical Paramedic," "AHA ACLS Instructor," "Haz Mat/CBRNE Operational Instructor," and "New Jersey Firefighter," to name a few. The Chief testified that he did not know what these certifications meant or the training required to obtain them. The Chief further testified that he was unaware of most of the other certifications Plaintiff obtained or the training required for each and further admitted that he made no effort to find out.

30. Plaintiff's application also listed his service to Defendant Borough as a volunteer firefighter for over 20 years. In addition, Plaintiff volunteered his time to the Borough's ambulance corps for 15 years in total, (with a break in the middle

to serve in the military). At no time, however, did the Defendant Borough contact any fellow volunteer firefighters or ambulance personnel that Plaintiff worked alongside of during these years. Instead, Defendants interviewed a firefighter who ran against Plaintiff for the position of Fire Chief in a fire department election the year before, as well as those individuals who supported Plaintiff's rival. The background investigator's report indicated that it was a contentious election.

31. During his candidate interview, Plaintiff was not asked about his military service, his 20 years of volunteer firefighting for the Borough, or his work with the Bergen County SWAT team. Instead, he was asked about a juvenile incident over 20 years before when Plaintiff was 14 years old when Plaintiff was involved in a fight with another student. Both students were taken to the Rutherford Police station where their parents were called to retrieve them. No arrest was made and no charges were filed. When asked about the incident at his interview, Plaintiff stated that he did not remember the incident until they brought it up.

32. During his appeal to the Civil Service Commission, Plaintiff certified that during the application process, he was told he would be fingerprinted and that a criminal history check would be run and that for these reasons, he had no reason to intentionally omit a juvenile incident on file with the very department he was making application to. Further, given his

extensive military training and community service to the Borough, Plaintiff certified that he would have no reason to think that a juvenile matter, which involved no arrest, would preclude appointment given his history of volunteering in the Borough, his military service, and his training, and, therefore, he no reason to intentionally omit it.

33. On June 25, 2014, Defendant Borough voted to select the six candidates for the position recommended by Chief Russo. The minutes reflect that the Mayor participated in the voting process and appointed each candidate with the exception of his nephew, where the minutes reflect that the Mayor "recused" himself. The minutes further state, "Mayor DeSalvo thanked Chief Russo, his Detectives, as they did a phenomenal job during all aspects of the interview process for new Police Officers."

34. The Mayor's nephew, the lowest ranked candidate, was one of the six appointed. None of the three veterans on the Hiring List, including Plaintiff, were appointed. Instead, defendants recommended to Civil Service that all veterans, including Plaintiff, all of whom were entitled to statutory hiring preference, be removed from the Hiring List.

35. In or about June, 2014, and unbeknownst to Plaintiff, Defendant Russo provided the Civil Service Commission with the civil service disposition code of "good cause" as a basis for Plaintiff's removal from the Hiring List. In his report of June

18, 2014 to substantiate "good cause" for removal, Defendant Russo cited to: Plaintiff's "unfavorable education level," specifically, a GED. Defendant Russo stated, "...a serious concern for me was the fact that he had dropped out of high school after 2 years." Defendant Russo further cited to Plaintiff's alleged failure to follow the application's directions; Plaintiff's writing sample as too brief; Plaintiff's failure to remember the previously referenced juvenile offense; Plaintiff's employment with 21 different employers; and the reasons Plaintiff set forth for his termination from employment from Valley Hospital. In conclusion, Defendant Russo stated,

As a result of Mr. Kubs' extensive background investigation and his interview, I do not recommend that he advance to the next step of his hiring process. Mr. Kubs was not able to properly follow the directions of the application process, his education level and poor writing skills would prove to be detrimental to this department, and his widely agreed upon personality flaws are sure to be a problem going forward. I do believe that Mr. Kubs has poor people skills and poor communication skills which are two of the most important traits an effective police office can possess.

36. Upon learning that he was not selected for appointment, on August 7, 2014, Plaintiff filed an Order to Show Cause, seeking interim restraints via an action in lieu of prerogative writs in Superior Court, Law Division, entitled, "Kubs v. Borough of Rutherford, et als. and the State's Civil Service Commission," Docket number L-007617-14. At that time, Plaintiff had not yet received notification from the Civil Service Commission as to

whether Defendants removed or bypassed him for appointment or the basis for such removal. Accordingly, Plaintiff sought to restrain the Civil Service Commission from taking any further action with regard to removing/bypassing him from the Hiring List pending the outcome of his suit. Plaintiff alleged violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22, et. seq., as a result of, *inter alia*, the Mayor's participation in the hiring process while his nephew was in contention for the position. Plaintiff also asserted violation of civil service statute N.J.S.A. 11A:5-6, the veteran's preference statutes. Plaintiff's relief included a request to invalidate, as null and void, his removal from the Hiring List.

37. In support of his suit, Plaintiff also asserted violation of Borough ordinances including that requiring public officials to recuse themselves from acting in matters in which they had a conflict of interest. Rutherford Borough Ordinance Chapter 31, "Code of Ethics," Section 6, "Conflicts of Interests," stated, in part:

(B) Any public officer or employee who has a substantial interest in any decision of, or matter under review by any board, administrative official, commission or legislative or administrative body of which he is a member or to which he makes recommendations, ... shall refrain from participating in any manner as an officer or employee in such decision or matter under review.

(C) No public officer or employee shall knowingly ...have any financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or actions in the performance of his official duties.

38. Pursuant to Borough ordinance, the Mayor had the power to make all appointments to all positions in the Rutherford Police Department, including the Police Chief, police officers, and all ranks in between. Rutherford Borough Ordinance Article I, "General Provisions," Chapter 76-2, "Nominations and Appointments," states, "The Mayor shall nominate and, with the advice and consent of the Council, appoint the Chief of Police, the Captains of Police, the Lieutenants of Police, the Sergeants of Police, Detectives of the Police, and all patrolmen and other employees of the Police Department."

39. On the same day Plaintiff filed his suit in Superior Court, Plaintiff served Defendants with the Order to Show Cause, Verified Complaint, and supporting papers. Plaintiff's lawsuit also appeared on the website, "NJ.com" as early as August 10, 2014. The complaint was later amended to add discrimination claims based on Plaintiff's veteran status.

40. Also unbeknownst to Plaintiff at the time he filed his action in Superior Court, was that on or about July 31, 2014, the Civil Service Commission notified Defendants that the reasons

proffered by Defendants to remove Plaintiff from the Hiring List, including his failure to list the juvenile incident on his application, and his alleged failure to provide an accurate reason for his termination from Valley Hospital, were insufficient to remove Plaintiff who enjoyed mandatory hiring preference by statute.

41. On or about August 12, 2014, five days after Plaintiff's civil action was filed and served upon the Borough, Defendant Russo wrote a second report to the Civil Service Commission altering the bases for Plaintiff's removal. The Chief's second report omitted most of those reasons the Chief previously asserted for removal, such as Plaintiff's GED, personality flaws, etc., listing, instead, three alleged "omissions" on Plaintiff's application: 1) Plaintiff's failure to list the juvenile incident, which was included in the Chief's first report, 2) Plaintiff's failure to list two non-moving motor vehicle violations, which was not included in the Chief's first report, and, 3) the reasons provided by Plaintiff for his termination from employment with Valley Hospital, which was also included in the Chief's first report. The Chief further changed the civil service disposition code from "good cause" to "falsification" even though adding only one item - the two non-moving motor vehicle violations.

42. The non-moving violations were tickets issued in 2006 and 2010. Plaintiff later certified to the Civil Service Commission

that he did not remember these tickets, which was for failure to inspect and failure to have his registration in his possession, because they did not affect his license as they were no point, non-moving violations. Notably, Defendants' employment application did not request the applicant to list non-moving violations, and Plaintiff had, in fact, listed more serious moving violations, such as an administrative suspension and speeding tickets.

43. As to his allegation that Plaintiff failed to list the reasons for his termination from employment, Chief later testified that although Plaintiff's reason for termination as listed on the application was correct, the Chief thought he "minimized" the reason. Plaintiff later certified to the Civil Service Commission that he provided the basis for his termination as he understood it to be from his conversations with the Valley Hospital supervisor.

44. Upon notification that the Chief's lengthy report to the Civil Service Commission provided no lawful basis to remove Plaintiff from the Hiring List, the Chief contacted the Civil Service Commission to discuss the Civil Service Commission's notification that the bases as proffered by Defendant Russo could not remove a veteran from the Hiring List. After such conversations, the Chief altered the disposition code to "falsification" even though the Chief had obtained no additional information since his first report to substantiate the change and

even the Chief's first report, for which he designated "good cause" had the same bases for removal as the second.

45. In response to Plaintiff's civil action, Defendants did not dispute that Fecanin was the Mayor's nephew. While Defendants DeSalvo, Russo and Frank Nunziato later admitted, under oath, that a public official had a duty to recuse him/herself from any matter involving a relative due to the conflict of interest it created, Defendants did not Answer the Complaint, filing instead, a motion to dismiss Plaintiff's action on the basis of, *inter alia*, exhaustion of administrative remedies, specifically, Plaintiff's appeal rights to the Civil Service Commission.

46. In support of Defendants' motion, Defendant Russo and Defendant Mayor DeSalvo filed certifications to the Court opposing Plaintiff's claims of conflicts of interest. Their certifications were dated September 10, 2014 and September 11, 2014, respectively, approximately 2½ months after the six appointments were voted upon and less than three months after the hiring process commenced.

47. In his certification to the court, Defendant Mayor DeSalvo stated, in part:

"2. As part of the interview process, I was asked, along with the members of the Borough Council to "sit in" on the interviews of the candidates.

3. Pursuant to the request and, based upon my schedule, I was able to "it in" on three (3) of the twelve (12) total interviews conducted. The interviews I "sat in" on were the interviews of Christopher DeHass, Thomas Steinel, and the Plaintiff, Wayne Kubs.

4. As with normal practice in conducting these types of interviews for the appointment of police officer within the Borough of Rutherford, at the conclusion of each of the three (3) interviews I "sat in" on, I was personally escorted out of Police Headquarters prior to any discussion(s) taking place regarding the candidates. In fact, from my recollection, I did not even "sit on" on the entire interview of the Plaintiff, Wayne Kubs, as I had to leave that interview early based upon prior commitments.

5. At no time was I ever involved in any discussions concerning the appointments of each of the individuals who were interviewed. Any discussions which were had were minimal and were with the Chief of Police in regards to how the overall process was going and were not specific to the interview process. To the best of my knowledge, each discussion concerning an applicant/candidate was conducted solely with the Rutherford Police Department personnel involved in the background check and interview process.

6. In addition, I want to be clear that I did not participate in conversations with the candidates, nor did I ever ask the candidates any questions during the respective three (3) interviews that I "sat in" on. I was not involved in any manner whatsoever with the recommendation process. The recommendations were made by the Chief of Police, John Russo, who did not ask me for any input whatsoever as to said recommendations.

7. All I was ever informed was when the Chief of Police made his recommendations for appointment of the six (6) individuals.

11. In this matter, my only "participation" was literally "sitting in" and listening to interviews of three (3) candidates; No discussions were had, except as set forth in Paragraph five (5) above, with any members of the Police Department personnel involved in this process, including the Chief of Police, as to my thoughts regarding any of the appointments. Furthermore, as Mayor I simply made the nominations of five (5) of the six (6) officers (I recused myself from the candidate in which I have a familial relationship) based off of the

recommendation of Chief Russo. This is entirely consistent with how the Borough has conducted these type of police officer appointments in the past."

48. In his certification to the court, Defendant Russo certified to the Mayor's participation in the hiring process as follows:

"5. As part of that interview process, certain individuals, other than Police Department personnel involved in the appointment process, 'sat in' on the interview of the candidates, including Mayor DeSalvo who 'sat in' on three (3) of the twelve (12) total interviews conducted...I have personal knowledge of the Mayor's attendance at these interviews because I was a part of and present for all twelve (12) interviews (See also Certification of Mayor Joseph DeSalvo).

8. As with normal practice in conducting these types of interviews for the appointment of police officer within the Borough of Rutherford, at the conclusion of each interview, the Councilman and Mayor, if they had happened to 'sit in' on the respective interview(s), were personally escorted out of Police Headquarters so that the Police Department personnel could discuss each interview. At no time was the mayor and/or Councilman ever involved in any discussions concerning the appointments of each of the individuals who were interviewed. Each discussion was conducted solely with the Rutherford Police Department personnel involved in the background check and interview processes. (See also Certification of Mayor Joseph DeSalvo).

9. In addition, Mayor DeSalvo and Councilman Nunziato did not participate in any conversations with the candidates, nor did they ask the candidates any questions during the respective interviews each 'sat in' on. Both gentlemen were not involved in any way with the recommendation process. (See also Certification of Mayor Joseph DeSalvo).

10. It is also important to note for the Court that at no time were there any alleged 'relatives' of candidates, who were currently employed at the time of the interviews and

appointment process, who took part in the application, interview, and recommendation process with the appointment of the six (6) officers.

12. After the investigations/interviews were conducted and completed, it was concluded by the Township, specifically by myself in reviewing all the materials concerning the application, background check and interview, that certain individuals from the Civil Service list should not be considered and/or removed from the list for certain reasons which are permitted and authorized per the statutes and regulations promulgated by and/or the Civil Service Commission."

49. The trial court ultimately remanded the matter to the Civil Service Commission for disposition, dismissing, without prejudice, Plaintiff's claims of discrimination pending the Civil Service Commission's disposition as to the issue of conflicts of interest. Plaintiff unsuccessfully appealed the trial court's ruling to the appellate court. Plaintiff further appealed to the Supreme Court which resulted in a remand back to the appellate court for decision. The appellate court affirmed. Throughout all court proceedings, Defendants relied upon the misrepresentations they asserted before the trial court.

50. Although Plaintiff forwarded his complaint of conflicts of interest to the State's Ethics Board, as per the trial court's Order, the Ethics Board ultimately deferred to the Civil Service Commission.

51. On or about August 30, 2016, Plaintiff filed a separate action in the trial court alleging unlawful retaliation against

Plaintiff for Defendants' change of the civil service disposition code from "good cause" to "falsification" only days after Plaintiff filed suit. This action, heard before the same judge as the first, was also dismissed, without prejudice, for the same reasons the first action was dismissed, without prejudice.

52. Plaintiff's case was then forwarded to the Civil Service Commission where his claims of conflicts of interest were heard as a contested case in the State's Office of Administrative Law, ("OAL"). Depositions of the parties were conducted. The depositions and admissions of Defendants Russo and DeSalvo during the OAL proceeding established that both Defendants testified falsely in certifications filed with the trial court in Plaintiff's preceding civil matter. Where previously, the Mayor and Chief testified that the Mayor's participation in the hiring process was limited to the Mayor's "sitting in" on some of the candidate interviews, deposition testimony established the contrary. In fact, the Mayor's participation in the hiring process was substantial, and such participation was omitted from both Defendant Mayor and Defendant Russo's certifications to the court.

53. On October 30, 2017, over three years after the Defendant Mayor and Chief's certifications were filed in Bergen County Superior Court, Defendant Mayor testified of his extensive involvement in the hiring process, completely contradicting his certification three years before. Defendant DeSalvo, in fact,

omitted from his prior certification that he not only "sat in" on candidate interviews, but that he also: 1) discussed with the Police Chief why certain candidates were skipped; 2) discussed with the Police Chief various issues pertaining the candidates' background investigations including the reasons certain candidates were chosen and others were not; 3) reviewed the candidates' applications which he testified were given to him either at the candidate interviews or after the candidate was recommended for appointment; 4) questioned the Chief specifically as to why veterans and others were not recommended for appointment; 5) spoke to the Chief specifically as to why Plaintiff was not recommended for appointment as well as those reasons other veterans were recommended for removal; 6) was contacted by his nephew's background investigator for a reference for his nephew; 7) reviewed all of the candidates' applications, with the exception of his nephew; and, 8) was provided the interview questions that each candidate was to answer; and, 9) sat in on candidate interviews before his nephew's interview took place; and, 10) was provided the Chief's written recommendations. In support of Defendants' motion to dismiss Plaintiff's 2014 Superior Court action alleging of conflicts of interest on the part of the Mayor due to his involvement in the hiring process, Defendant DeSalvo submitted a patently false certification to the court that omitted all these facts.

54. Defendant Russo's deposition testimony similarly established that the Chief falsely certified to the trial court, three years before, the extent of the Mayor's participation in the hiring process. During the OAL proceedings, the Chief made the following admissions at depositions: 1) he invited the Mayor to attend the candidate interviews; 2) that the candidates were presented with the same interview questions that he had developed and written down himself; 3) that the Mayor had a preview of the questions that were being asked before the Mayor's nephew was interviewed; 4) the Mayor knew, in advance of his nephew's interview, all 14 questions that were to be asked of his nephew; 5) that the Mayor heard the responses of other candidates to the 14 questions that were to be asked of his nephew before his nephew's interview took place; 6) that the Mayor's nephew was the only candidate who had a relative who had access to the questions being asked at the interviews in advance of the interview, which the Chief further testified was an advantage to the Mayor's nephew; and, 7) that he, and other department members in attendance at the interviews, knew the Mayor's nephew was one of the candidates in contention for the position.

55. From these same depositions, admissions were also obtained invalidating the underlying bases proffered by Defendant Russo in his first and/or second report to the Civil Service

Commission to substantiate the removal of Plaintiff's name from the Hiring List:

a. During Plaintiff's candidate interview, the Police Chief asked Plaintiff questions asked of no other candidate and then reported to the Civil Service Commission that Plaintiff's response was problematic. For instance, the Chief asked Plaintiff if he would arrest his mother if she was driving intoxicated. No other candidate was asked this question.

b. While the Chief reported to the Civil Service Commission that Plaintiff's explanation of his termination from Valley Hospital "deflected any type of responsibility," Defendants' background investigator testified that, in fact, he never received a final disposition from Valley Hospital as to the basis for Plaintiff's termination from employment. The investigator testified that he never received any documents or files from the Hospital and further testified that the only individual with whom he spoke about Plaintiff's discharge had himself been terminated from Valley Hospital for engaging in illegal activity. While this information was contained in the investigator's report, Defendant Russo omitted this information in his report to the Civil Service Commission.

c. While Defendant Russo reported to the Civil Service Commission that Plaintiff's writing skills were inadequate, Russo based this on one writing sample Plaintiff submitted with his application. Although a second sample was submitted and deemed satisfactory by the background investigator, Defendant Russo testified that he did not read it. Nor did he reference the second writing sample in his reports to the Civil Service Commission.

d. While Defendant Russo complained of Plaintiff's "failure to follow directions" or "orders" with respect to the application, the background investigator testified that he had been referring to Plaintiff: initially failing to provide his monthly bills and DD-214 (military discharge document), failing to list a Florida license, failing to list what the investigator termed Plaintiff's juvenile "detention," failing to list his monthly bills, and failing to list the two non-moving motor vehicle tickets. The background investigator, however, testified that he did not conclude that there was any intentional conduct on Plaintiff's part with respect to these issues. In fact, the documents and information requested were later provided to the investigator, and while not listing a Florida license on one page of the application, Plaintiff had referenced a Florida driving violation on another page. While not listing

the two non-moving violations, (failure to display vehicle registration and failure to inspect his vehicle), Plaintiff listed more serious infractions such as a suspension and speeding violations.

e. While the Chief reported that the investigator received negative references for Plaintiff, the Chief failed to report that these were from Rutherford Firefighters, most of whom the background investigator later testified had "limited interaction" or "unknown" interaction with Plaintiff, and/or were personal friends with Defendant Russo; and/or "may or may not be" qualified to give an opinion about Plaintiff; and/or were individuals whose opinions were predicated upon hearsay; and/or individuals who opposed Plaintiff in a recent fire department election and could, therefore, be biased.

f. While Defendant Russo reported that Plaintiff suffered from poor "people" and "communication" skills, the background investigator could find no verbal or written demeanor complaints filed against Plaintiff in the 20 years Plaintiff served as a volunteer firefighter for the town or, prior thereto, while a volunteer for the town's ambulance corps.

g. While Borough officials admitted at depositions that paramedics that worked with Plaintiff, as well as Rutherford

police officers and one officer from New Jersey Transit, highly recommended Plaintiff for the position of police officer and that Plaintiff's references for the position included military personnel and fellow members of the Bergen County SWAT team of which Plaintiff was a member, no positive references were referenced in Defendant Russo's reports to the Civil Service Commission. Similarly, Defendants made no effort to contact Plaintiff's military references; instead, Defendants contacted the military police only to see if "there was anything disparaging on him." There was not, as Defendant conceded.

h. As to Plaintiff's employment history, Defendant Russo testified that he was unaware that some of the 21 jobs listed on Plaintiff's application were those held simultaneous with Plaintiff's service in the military and/or were per diem jobs held simultaneously, and/or included a job Plaintiff had when he was 17 years old. Defendant Russo further testified that he was unaware that some of Plaintiff's employment changes were due to being transferred while he was serving in the military.

56. After depositions were completed, Plaintiff moved before the Administrative Law Judge, ("ALJ"), for Summary Decision. Based on the testimony of Borough officials regarding the conflicts of interest issue, the admissions of Borough officials, and the facts

and circumstances surrounding the hiring process, the ALJ found that the Mayor had a conflict of interest which served to taint the entire hiring process. In its Initial Decision, issued March 23, 2018, the ALJ recommended, *inter alia*, reversal of the Borough's removal of Plaintiff's name from the hiring list.

57. On May 25, 2018, the Civil Service Commission issued its Final Administrative Decision, accepting the ALJ's findings and, *inter alia*, restoring Plaintiff to the list of eligibles. The Civil Service Commission affirmed the ALJ's ruling, *inter alia*, that "Mayor DeSalvo's presence at and during the police officer interviews/selection process and his exposure to the questioning of police officer candidates created a conflict of interest, which indeed tainted the police officer selection process." Defendants did not appeal from this Final Administrative Decision.

58. On or about June 25, 2018, Plaintiff filed a motion in Superior Court to reinstate his prior discrimination and retaliation claims as per the trial court's prior orders dismissing discrimination and retaliation claims, without prejudice.

59. On July 24, 2018, the trial court filed two Consent Orders providing for, *inter alia*, the re-filing/restoring of Plaintiff's claims of discrimination and retaliation.

60. Since 2012, Defendant Borough has removed every veteran on the Civil Service Commission's certifications for hiring. The number one ranked veteran on Plaintiff's Hiring List was also

removed by Defendants. Defendant Russo also changed this veteran's civil service disposition code to "falsification" so as to remove him. This same veteran was later hired by the Bergen County Police Department, another civil service jurisdiction. The remaining veteran on Plaintiff's hiring list was allegedly removed for residency issues.

61. In addition to the removal of the first three ranked veterans on Plaintiff's Hiring List, documentation received in response to requests pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 to -13, ("OPRA"), filed with the Civil Service Commission establishes that Defendants removed four veterans on a certification generated for Defendant Borough by the Civil Service Commission, No. OL120620, which was certified on May 1, 2012.

62. While removing all veterans from the Hiring Lists, Defendant Russo testified that he would not automatically remove someone with prior arrests for drugs, even if the arrest occurred six months prior to the hiring process.

63. Defendants' discriminatory actions against veterans preceded its removal of veterans from the Civil Service Commission Hiring Lists. In or about December, 2007, the Borough's then-Chief of Police and one of its captains retired. Lt. Joseph, ("Merle"), a military veteran, was promoted to fill the vacated captain's position. The only other captain at that time was George Egbert, a non-veteran. At the time Merle was promoted to captain,

Egbert was on extended medical leave. As the only active captain, Merle was appointed "Acting Chief" of the department. However, immediately upon Egbert's return from medical leave in January, 2008, and without the administration of a fitness for duty examination after a three-month medical leave of absence, Defendant Borough appointed Egbert as "Officer in Charge" and replaced Merle as Acting Chief.

64. As the department's only two captains, pursuant to N.J.A.C. 4A:4-2.7, Merle and Egbert were eligible for promotion to the then-vacant Police Chief position without the necessity of a written civil service examination. Egbert, however, made it known that he did not want the Chief's position, leaving Merle as the only Captain interested in the promotion. Defendants did not, however, promote Merle to the Chief's position. Instead, in or about March, 2008, Defendant Borough voted to abolish the position of Police Chief, retroactive to January 1, 2008 and create the civilian position of Police Director. In or about April, 2008, former Rutherford Captain John Thompson was appointed Police Director.

65. In or about August 2009, Defendant DeSalvo, a councilman at the time, voted to adopt an ordinance establishing a table of organization for the Rutherford Police Department reducing the number of captain positions from four to "a maximum of two (2) captains." At that time, it is believed Lt. Hal Ciser, ("Ciser"),

a military veteran, was number one on the captain promotional list and, therefore, by law, would be the next lieutenant promoted to captain, if such position existed. However, by reducing the number of captains on the table of organization, Defendant DeSalvo effectively blocked Ciser's promotion until a captain retired.

66. Shortly thereafter, in or about March 3, 2010, Defendant DeSalvo again moved before the Rutherford governing body to reduce the captains' positions from two to one. Of the two captains at that time, Merle and Egbert, Egbert had seniority in rank and, therefore, by civil service statute and regulation, if a captain's position was eliminated, Merle would be the captain adversely affected. While Defendant Mayor later testified that Defendant Borough was seeking abolition of one of two captain positions in anticipation of restoring the Police Chief position, the Police Director position was not abolished for another two years, in or about July, 2012.

67. In accordance with Defendant DeSalvo's motion to eliminate a captain's position, in or around March, 2010, Defendants served Merle with a "Rice Notice" wherein the governing body, in closed session, advised him that his position was targeted for elimination and that he would be reduced to the rank of lieutenant. Although Merle was told there were economic reasons for his demotion, no other positions in the Borough were targeted

for elimination, and no other police officers were threatened with demotion.

68. As a demotion would be accompanied by a corresponding salary reduction, Merle would suffer a reduction in his retirement pension allowance if he stayed in the demoted position. Accordingly, Merle retired effective May 1, 2010, effectively being forced out.

69. Egbert retired a few months later, in September, 2010, leaving the department with no captains. Ciser, a Vietnam veteran with over 35 years on the job, was the number 1 ranked lieutenant on the captain's list, and, as a veteran, could not be by-passed for promotion. He was, therefore, promoted to fill the captain vacancy. As the only Captain at that time, Ciser also became the department's "Officer in Charge."

70. In or about July, 2012, Defendant Borough abolished the Police Director position and reinstated the position of Police Chief. Although fulfilling the duties of chief of the department for almost two years up to this point in time, Defendant DeSalvo, who was now Mayor, would not formally appoint Ciser as "Acting Chief."

71. While civil service statutes and regulations provided for Ciser to be appointed Chief without the necessity of a written examination, as he and only one lieutenant were eligible for consideration for the position, Defendant DeSalvo, who had

appointing authority, refused to appoint Ciser to Chief. Instead, Defendants requested that Civil Service allow all lieutenants to become eligible thereby necessitating a civil service written examination which would result in a ranked list of eligibles.

72. The civil service test for Police Chief was given; Ciser ranked number 2. Despite his 38 years on the department, his military service, and his position as Captain, Officer-in-Charge, and Acting Chief, Defendant DeSalvo refused to appoint him to the position. Defendant DeSalvo appointed instead, Defendant Russo, a non-veteran who was not eligible to take the Chief's test without Defendants' request to have all lieutenants qualify for the position.

73. Since Defendant DeSalvo became Mayor, no veteran has been hired to the Rutherford Police Department.

74. Since at least 2007, Defendants have engaged in persistent and pervasive discrimination, and have engaged in a pattern and practice of discrimination against veterans and disabled veterans, who enjoy statutory preference in hirings, and have further exhibited hostility towards military veterans.

75. The bases for removing Plaintiff from the Hiring List were pretextual, specious, unlawful, and retaliatory.

76. As a result of Defendants' unlawful actions, Plaintiff has been deprived of employment.

COUNT ONE

**Violation of USERRA
Uniform Services Employment and Reemployment Rights Act**

77. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 76 as if fully set forth herein.

78. USERRA was enacted to, *inter alia*, eliminate or minimize the denial of initial employment by an employer on the basis of a person's membership in a uniformed service. Section 4311(a), Title 38, United States Code.

79. Defendants unlawfully denied Plaintiff his statutorily conferred "Veterans Preference" and, therefore, his right to employment, on the basis of his service in the United States Navy. Defendants engaged in fraud on the court and intentionally and knowingly falsely accused him of falsification solely to cause his removal from the Hiring List based on his military service.

80. Defendants have engaged in an unlawful pattern and practice of removing veterans from the hiring lists.

81. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo's discrimination, harassment and retaliation of Plaintiff is part of an ongoing pattern.

82. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor, and Chief

Russo each aided and abetted some or all the other Defendants in their violation of USERRA.

83. Defendants' discriminatory conduct is egregious, willful and wanton and in reckless disregard of Plaintiff's rights.

84. The actions of Defendants constitute a violation of USERRA and have caused Plaintiff to suffer economic and emotional damages in an amount to be determined by a jury.

COUNT TWO

**Violation of the New Jersey Law Against Discrimination,
N.J.S.A. 10:5-1, et seq. ("LAD")
Discrimination, Harassment, and Retaliation**

85. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 84 as if fully set forth herein.

86. By engaging in fraudulent and unlawful actions, including but not limited to, submission of false certifications in actions and appeals before the courts relating to Plaintiff's civil action seeking the reversal of the removal of his name from the Hiring List; removing Plaintiff, as well as all veterans from the Hiring Lists for police officer positions/appointments; submitting false submissions to the Civil Service Commission in support of Plaintiff's removal from the Hiring List; and, intentionally engaging in a process Defendants knew violated the Local Government Ethics Law and common conflicts law so as to remove Plaintiff from the Hiring List, Defendants have subjected

Plaintiff to unwelcome, harassing, retaliatory, and discriminatory conduct because of his status as a veteran.

87. Defendants' Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo and O'Connor's discrimination, harassment and retaliation have been carried out by the governing body of the Borough of Rutherford who have selection and appointment power, and by Defendant Chief Russo who has supervisory authority to control the work environment at the Rutherford Police Department. These Defendants have abused their authority by discriminating, harassing and retaliating against Plaintiff.

88. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo's discrimination, harassment and retaliation of Plaintiff is part of an ongoing pattern.

89. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor, and Chief Russo each aided and abetted some or all the other Defendants in their violation of the LAD.

90. Defendants' discriminatory conduct is egregious, willful and wanton and in reckless disregard of Plaintiff's rights.

91. The actions of Defendants constitute a violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.,

and have caused Plaintiff Kubs to suffer economic and emotional damages in an amount to be determined by a jury.

COUNT THREE

**New Jersey Law Against Discrimination,
N.J.S.A. 10:5-1, et seq. ("LAD")
Disparate Treatment
Equal Protection**

92. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 91 as if fully set forth herein.

93. Because of his status as a U.S. Armed Force member, Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo treated Plaintiff disparately and disfavorably in the terms and conditions of employment.

94. Similarly situated non-veterans were treated more favorably in the terms and conditions of employment including the hiring/appointment process.

95. Defendant Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo's actions have caused Plaintiff to suffer economic and emotional damages in an amount to be determined by a jury.

COUNT FOUR

Fraud Upon the Court

96. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 95 as if fully set forth herein.

97. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo interfered with the judicial system's ability to impartially adjudicate Plaintiff's Superior Court matters by intentionally misrepresenting and omitting relevant facts in certifications they submitted before the courts in order to rebut Plaintiff's claims of conflicts of interest on the part of Defendant DeSalvo during the hiring and appointment process for police officer for Defendant Borough.

98. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo's misrepresentations to the courts improperly influenced the trier and unfairly hampered the presentation of Plaintiff's claims of, *inter alia*, conflicts of interest.

99. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo intentionally failed to correct or remedy such misrepresentations and omissions while Plaintiff's Superior Court action proceeded through the appellate court, (twice), and the New Jersey Supreme Court.

100. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo's sworn testimony before the Civil Service Commission established that Defendants made misrepresentations and omissions

to the courts three years earlier and maintained such misrepresentations throughout the course of the litigation.

101. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo's sworn testimony before the Civil Service Commission resulted in a finding of, *inter alia*, conflicts of interest on the part of Defendant DeSalvo, which served to taint the entire hiring process and the restoration of Plaintiff's name to the Hiring List. See, Kubs v. Borough of Rutherford, OAL Docket No. CSV 05914-17, Final Administrative Action of the Civil Service Commission, Issued: May 25, 2018.

102. Defendants unlawful actions caused Plaintiff to suffer economic and emotional damages in an amount to be determined by a jury.

COUNT FIVE

Violation of The New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq. ("NJCRA")

103. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 102 as if fully set forth herein.

104. The New Jersey Civil Rights Act prohibits the deprivation of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and

Chief Russo's conduct, including but not limited to the actions described above, is protected by the New Jersey Constitution and/or the United States Constitution.

105. Defendants' unlawful and/or retaliatory actions deprived Plaintiff of his rights under the New Jersey Constitution and/or the United States Constitution.

106. Defendants' retaliatory actions were intended to punish Plaintiff for exercising his rights under the New Jersey and/or the United States Constitution.

107. Defendants' harassment of Plaintiff was part of an ongoing pattern.

108. Defendants' retaliatory harassment was severe and/or pervasive such that it changed the terms and conditions of Plaintiff's employment.

109. Defendants' conduct constitutes retaliatory harassment in violation of the NJCRA.

110. As a result of Defendants' retaliatory actions, Plaintiff has experienced, and will continue to experience injuries including, but not limited to, lost salary and benefits (back-pay), and emotional distress.

111. Defendants' retaliatory actions were egregious, willful, wanton, and in reckless disregard of Plaintiff's rights.

112. Defendant Rutherford's upper management, including but not limited to, Defendants DeSalvo and Russo, participated in the relevant unlawful conduct.

COUNT SIX

**Violation of First Amendment to the
United States Constitution
Retaliation**

113. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 112 as if fully set forth herein.

114. Plaintiff engaged in numerous actions that are protected by the First Amendment to the United States Constitution, including but not necessarily limited to activities described above.

115. Plaintiff engaged in activities protected by the First Amendment in his capacity as a citizen.

116. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo harassed and otherwise retaliated against Plaintiff in retaliation for his First Amendment protected activities.

117. Defendants retaliatory actions were intended to punish Plaintiff for exercising his rights under the First Amendment.

118. Defendants' harassment of Plaintiff is part of an ongoing pattern.

119. Defendants' retaliatory actions were severe and/or pervasive such that Defendants changed the terms and conditions of his employment.

120. Defendant Borough of Rutherford failed to adequately supervise, train and discipline the individuals who harassed, discriminated against, and retaliated against Plaintiff.

121. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo committed their unconstitutional retaliatory actions in their capacities as officials, agents and/or employees of Defendant Borough of Rutherford pursuant to governmental policy, practice and/or custom, and under color of State law.

122. Defendants' retaliatory actions violate the First Amendment to the United States Constitution and 42 U.S.C. Section 1983.

123. As a result of Defendants' retaliatory actions, Plaintiff has experienced, and will continue to experience, injuries including but not necessarily limited to lost salary and benefits, (back-pay), and emotional distress.

124. Defendants' retaliatory actions were egregious, willful, wanton, and in reckless disregard of Plaintiff's rights.

125. Defendant Borough of Rutherford's upper management, including but not limited to Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo, participated in the unlawful conduct.

COUNT SEVEN

**Violation of The New Jersey Constitution
Common Law Retaliation**

126. Plaintiff repeats and re-alleges the allegations of paragraphs 1 through 125 as if fully set forth herein.

127. Plaintiff engaged in numerous acts, including but not necessarily limited to activities described above, which are protected by the New Jersey Constitution, including but not necessarily limited to Article I, Section 6 thereof.

128. Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo harassed and otherwise retaliated against Plaintiff in retaliation for his acts protected by the New Jersey Constitution.

129. Defendants' retaliatory actions were intended to punish Plaintiff in retaliation for his acts protected by the New Jersey Constitution.

130. Defendants' retaliatory actions were intended to punish Plaintiff for exercising his rights under the New Jersey Constitution.

131. Defendants' harassment of Plaintiff was part of an ongoing pattern.

132. Defendants' retaliatory harassment was severe and/or pervasive such that it changed the terms and conditions of Plaintiff's employment.

133. Defendants' retaliatory harassment and other retaliatory actions against Plaintiff violate the New Jersey Constitution under New Jersey's common law.

134. As a result of Defendants' retaliatory actions, Plaintiff has experienced, and will continue to experience, injuries including but not necessarily limited to lost salary and benefits, (including back-pay), and emotional distress.

135. Defendants' retaliatory actions were egregious, willful, wanton, and in reckless disregard of Plaintiff's rights.

136. Defendant Borough of Rutherford's upper management, including but not limited to Defendants Borough of Rutherford, Mayor DeSalvo, Birdsall, Sartori, Tetro, Nunziato, Manzo, O'Connor and Chief Russo, participated in the relevant unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and prays for the following relief, jointly and severally, against each of the Defendants:

(a) Compensating Plaintiff for his compensatory damages, including but not necessarily limited to back-pay and all benefits, loss of medical benefits, past economic loss, and future economic loss;

(b) Compensating Plaintiff for his emotional distress damages;

(c) Awarding punitive damages against each of the Defendants;

(d) Awarding a civil penalty against each of the Defendants pursuant to N.J.S.A. 10:6-2(e);

(e) Equitable relief, including, but not limited to, a declaration that Defendants committed fraud upon the courts;

(f) Awarding Plaintiff his reasonable attorneys' fees, costs and expenses; and,

(f) Awarding such other and further relief the Court deems just and fair.

C. ELSTON & ASSOCIATES, LLC
Attorneys for Plaintiff

Dated: September 21, 2018

By: s/ Catherine M. Elston
Catherine M. Elston
NJ Attorney ID #015051990

3350 Route 138
Building 2, Suite 123
Wall, New Jersey 07719
Email: cmelston@elstonlaw.com
Telephone: (732) 280-6911
Facsimile: (732) 280-6955

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

C. ELSTON & ASSOCIATES, LLC
Attorneys for Plaintiff

Dated: September 21, 2018 By: s/ Catherine M. Elston
Catherine M. Elston
NJ Attorney ID #015051990

3350 Route 138
Building 2, Suite 123
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Email: cmelston@elstonlaw.com
Telephone: (732) 280-6911
Facsimile: (732) 280-6955

LOCAL RULE 11.2 CERTIFICATION

Pursuant to Local Rule 11.2, I certify that the matter in controversy alleged in the foregoing Complaint is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding. It is noted that although a Final Administrative Decision was rendered with respect to Plaintiff's appeal before the Civil Service Commission, and Defendants have not appealed that ruling, subsequent thereto, and in the course of a separate appeal Plaintiff's ultimately withdrew as moot, a Civil Service Personnel and Labor Analyst requested a response to an issue never before raised during the four year course of Plaintiff's litigation. Plaintiff provided a response on September 6, 2018; the Civil Service Commission has not responded.

I certify under penalty of perjury that the foregoing is true and correct. Executed on September 21, 2018.

By: s/ Catherine M. Elston
Catherine M. Elston
NJ Attorney ID #015051990

Attorneys for Plaintiff
C. ELSTON & ASSOCIATES, LLC
3350 Route 138
Building 2, Suite 123
Wall, New Jersey 07719
Email: cmelston@elstonlaw.com
Telephone: (732) 280-6911
Facsimile: (732) 280-6955

ATTACHMENT TO CIVIL COVER SHEET

1. (a) DEFENDANTS

Borough of Rutherford

DeSalvo, Joseph - Mayor, individually and in his official capacity

Birdsall, Kim - Council member, individually and in her official capacity

Sartori, Michael - Council member, individually and in his official capacity

Tetro, Ray - Council member, individually and in his official capacity

Nunziato, Frank - Council member, individually and in his official capacity

Manzo, Jack - Council member, individually and in his official capacity

O'Connor, Mark - Council member, individually and in his official capacity

Russo, John - Police Chief, individually and in his official capacity

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WAYNE KUBS,

Plaintiff,

vs.

Civil Action No.

BOROUGH OF RUTHERFORD, RUTHERFORD
MAYOR JOSEPH DESALVO, individually
and in his official capacity,
RUTHERFORD COUNCIL MEMBER KIM
BIRDSALL, individually and in her
official capacity, RUTHERFORD
COUNCIL MEMBER MICHAEL SARTORI,
individually and in his official
capacity, RUTHERFORD COUNCIL
MEMBER RAY TETRO, individually and
in his official capacity,
RUTHERFORD COUNCIL MEMBER FRANK
NUNZIATO, individually and in his
official capacity, RUTHERFORD
COUNCIL MEMBER JACK MANZO,
individually and in his official
capacity, RUTHERFORD COUNCIL
MEMBER MARK O'CONNOR, individually
and in his official capacity, and
RUTHERFORD POLICE CHIEF JOHN
RUSSO, individually and in his
official capacity,

Defendants.

CERTIFICATION OF SERVICE

I, CATHERINE M. ELSTON, an attorney at law of the State of
New Jersey with the law firm of C. Elston & Associates, LLC, being
of full age, certify that:

On September 21, 2018, I caused to be electronically filed the following documents with the United States District Court for the District of New Jersey via the CM/ECF system:

1. Complaint and Demand for Jury Trial;
2. Civil Cover Sheet;
3. Attachment to Civil Cover Sheet (list of Defendants);

and

4. Certification of Service.

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

Dated: September 21, 2018 By: s/ Catherine M. Elston
Catherine M. Elston
NJ Attorney ID #015051990

Attorneys for Plaintiff
C. ELSTON & ASSOCIATES, LLC
3350 Route 138
Building 2, Suite 123
Wall, New Jersey 07719
Email: cmelston@elstonlaw.com
Telephone: (732) 280-6911
Facsimile: (732) 280-6955

SUMMONS

Attorney(s) _____
Office Address _____
Town, State, Zip Code _____ 2019 SEP 16 P 1:46

Telephone Number _____
Attorney(s) for Plaintiff _____

Edward Jones
96 Linwood Fort Lee NJ 07024
Plaintiff(s)

vs.

Michael Merle (Badge 76)
184 Park Ave Rutherford NJ 07070
Defendant(s)

Superior Court of
New Jersey

County _____
Division _____

Docket No: BER-L-003888-19

CIVIL ACTION SUMMONS

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

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

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

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.

Clerk of the Superior Court

DATED: _____

Name of Defendant to Be Served: Michael Merle (Badge 76)

Address of Defendant to Be Served: 900 Park Ave Rutherford NJ
07070



OFFICE OF THE BERGEN COUNTY SHERIFF
BERGEN COUNTY JUSTICE CENTER
HACKENSACK, N.J. 07601
(201) 336-3500
www.bcsd.us

AMONG HIS DUTIES, THE SHERIFF OF BERGEN COUNTY IS RESPONSIBLE FOR THE LEGAL SERVICE OF CIVIL COMPLAINTS FILED IN A COURT OF LAW. THIS DEPARTMENT DOES NOT INSTITUTE THE PROCEEDINGS NOR ARE WE INVOLVED IN THE ULTIMATE OUTCOME OR LITIGATION THEREOF.

OUR OFFICERS ONLY ATTEST THAT THE DOCUMENTS WERE PROPERLY DELIVERED OR SERVED UPON YOU OR A MEMBER OF YOUR HOUSEHOLD. YOU MAY BE REQUIRED BY LAW TO RESPOND TO THESE DOCUMENTS WITHIN A SPECIFIC TIME PERIOD. I, THEREFORE, SUGGEST THAT YOU READ THEM CAREFULLY AND CONTACT THE ATTORNEY AT THE TOP OF THE PAPERS YOU WERE SERVED.

IF THIS AGENCY CAN BE OF FURTHER ASSISTANCE, PLEASE DO NOT HESITATE TO CONTACT THE CIVIL PROCESS UNIT AT (201) 336-3500 EXT. 4456 BETWEEN THE HOURS OF 8:30 AM AND 3:30 PM.

Form A

Plaintiff or Filing Attorney Information:

Name Edward Jules
 NJ Attorney ID Number _____
 Address 46 Linwood Plaza, Apt 197
Fort Lee, NJ 07024
 Telephone Number 201 954 6000

RECEIVED

MAY 14 2019

SUPERIOR COURT OF NEW JERSEY
 COUNTY OF BERGEN
 FINANCE DIVISION

Edward Jules
Michael Merle, R. Diaz, R. Byrn,
Major State Trooper, April Petersen,
Weekawken Port Authority Officer,
Kevin Roe Sr

Superior Court of New Jersey
Law Division Bergen County
Law Part

Docket No: _____
 (to be filled in by the court)

Civil Action

Complaint

RECEIVED

MAY 14 2019

SUPERIOR COURT OF NEW JERSEY
 COUNTY OF BERGEN
 FINANCE DIVISION

Plaintiff, Edward Jules, residing at
 (your name)
46 Linwood Plaza, Apt 197, City of Fort Lee
 (your address)
 County of Bergen
 (your county)

State Of New Jersey, complaining of defendant, states as follows:

1. On 8/8, 2014, Michael Merle, R. Diaz et al, Defendant
 (name of person being sued)

(Summarize what happened that resulted in your claim against the defendant. Use additional pages if necessary.)

tried to kidnap you, faked evidence and
they caused my arrest

The defendant in this action resides at they work in Rutherford Tealeck
 (defendant's address)
 In the County of Bergen, State of New Jersey. etc (see attached
 (name of county where defendant lives) list)

2. Plaintiff is entitled to relief from defendant under the above facts.

A court representative assisted with the physical writing/typing of this document as dictated by the filing party. The Judiciary makes no claims as to the validity of the statements made herein. The form was completed by Amber from division

Amber on 4/30/17
 Revised 11/17/2014, Plaintiff/Defendant: X
 Revised 11/01/2013, CN 11210

HUDSON COUNTY

8-8-2014

1. Michael Merle 184 park ave Rutherford nj 07070 (Rutherford nj officer Badge 76) answered 911 call as

Said he was (CLIFTON NJ POLICE) ~~XXXX~~ badge 76 of Rutherford pick up 911 call and said he was Clifton Police

2. R. DIAZ Teaneck NJ officer (Badge 321) 900 teaneck rd teaneck nj 07666
3. R Byrn Teaneck NJ officer (Badge 234) 900 teaneck rd teaneck nj 07666
4. Mayal Teaneck NJ officer (Badge 332) 900 teaneck rd teaneck nj 07666
5. State Trooper (Secaucus rest stop) port 14 newark nj 6838 GIEG WISZ
6. 3 officers at the stop that took my clothes off, hit my head on the pole

And mace me (after handcuffed searched and put in police car)

7. April Pettersen (Public Defender Hudson County) 438 Summit ave Jersey City nj 07306
8. Weekawken Port Authority officer (Badge 221) 500 Boulevard E Weehawken nj 07086
9. Kevin Roe Sr (Lawyer Hackensack NJ) 425 Summit ave Hackensack nj 07601

Form A

3. The harm that occurred as a result of defendant's acts include: (list each item of damage and injury)

1. see attached list
2. looking to receive 428,000,000.00
3. _____

Wherefore, plaintiff requests judgment against defendant for damages, together with attorney's fees, if applicable, costs of suit, and any other relief as the court may deem proper.

Dated: 4/30/19 Signature: [Signature]

CERTIFICATION OF NO OTHER ACTIONS

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: 4/30/19 Signature: [Signature]

OPTIONAL: If you would like to have a judge decide your case, do not include the following paragraph in your complaint. If you would prefer to have a jury to decide your case, please sign your name after the following paragraph.

JURY DEMAND

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

Dated: 4/30/19 Signature: [Signature]

Reside list

HUDSON COUNTY

8-8-2014

1. Michael Merle 184 park ave Rutherford nj 07070 (Rutherford nj officer Badge 76) answered 911 call as
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TEANECK POLICE

PD-14-032480

8/8/2014

- ☐ Administrative ☐ Gang Related ☐ Paperless
☐ Investigation ☐ Accident ☐ Arrests Made
☐ Suspects ☐ Ready for DA / Prosecutor

Officer: ROBERT DIAZ - RDIAZ

Incident Report Form

Log Number PD-14-032480	Incident Number	File Number CD-14-033429	Case Number	UCR				
Incident Type SUSPICIOUS PERSON	Dispatcher dkazm		Source PERSON	District PD291B	Status NEW			
Date Received 8/8/2014	Day Rec'd Friday	Rcvd 0500	Disp 0505	Arr 0506	Cld 0514			
INCIDENT OCCURRED AT OR BETWEEN		Earliest Date and Time		Disposition COMP CALL COMPLETED / NO REPORT				
Location 900 TEANECK ROAD TEANECK TWP NJ 07666		Cross Street		Intersection ☐				
GPS Coordinates X 0 Y 0		Gang		Arson Value				
Premise Code		Business Name TEANECK POLICE DEPARTMENT						
Modus Operandi Coding		ENTRY: EXIT: METHOD:		VICTIM: PROPERTY AREA: TIME OF DAY:				
Caller / Complainant Type		WEAPON USED:						
Normal ☒ Anonymous ☐ Hangup ☐ Refused ☐								
RESPONDING / INVOLVED UNITS, OFFICERS, TIMES								
	Unit	Vehicle	Officer 1	Officer 2	Officer 3	Officer 4	Division	Supervisor
	Unit 1	321	RDIAZ					
	Unit 2	332	MAYAL					
	Unit 3	234	RBYSN					
	Unit 4							
Agency Numbers		Units & Times						
COMMENTS / NARRATIVES								
Title Police Dispatch								
Created By / On DANIEL KAZMIERCZAK								
Approved By / On 08/08/2014								
Updated By / On 08/08/2014								
Locked Y								
Input: dkazm 08/08/2014 05:05:42 Edited: dkazm 08/08/2014 05:05:42 EDWARD JONES 4-28-1968								
Input: dkazm 08/08/2014 05:06:50 Edited: dkazm 08/08/2014 05:06:50 96 LINWOOD PLAZA APT 197.								
Input: tchal 08/08/2014 05:07:04 Edited: tchal 08/08/2014 05:07:04 WALKED INTO HQ STATED HE IS BEING FOLLOWED. WHEN OFFICERS ASKED HIM QUESTIONS HE GOT IN A SIL HONDA ODY AND HEADED RT 4 E								
Input: dkazm 08/08/2014 05:08:03 Edited: dkazm 08/08/2014 05:08:03 201-914-6000 / 212-470-7600								
PD-14-032480 8/8/2014 ☐ APPROVED BY: APPROVED ON:								
IRF 1.8								



Rutherford Police Department

184 Park Avenue, Rutherford, NJ 07070
Phone: 201-939-6000 Fax: 201-460-3055 Mun. Code: 0256
Case Report



Incident Details:

Case Number 14-16695	Time Reported 04:19	Date Reported 08/08/14	Time Occurred	Date Occurred	Occurrence Between Date / Time of	Time Occurred	Date Occurred	911 X	Completed X
--------------------------------	-------------------------------	----------------------------------	---------------	---------------	--------------------------------------	---------------	---------------	-----------------	-----------------------

Incident Type:

Suspicious Incident

Incident Location:

Street # Street Name Intersection / Cross Street of:
Route 3 West Mp 5.0
Business / Common Location Name

Contact Information: Victim Suspect Complainant Witness Driver Arrest Passenger Missing Business Other

Code C	Contact Name #1 Central Station	MI Suffix	Age	Sex	Race	DOB	SSN
------------------	---	-----------	-----	-----	------	-----	-----

Address	Primary Phone 800-633-2677	Secondary Phone
---------	--------------------------------------	-----------------

Code O	Contact Name #1 Jones, Edward	MI Suffix L	Age 46	Sex M	Race 2B	DOB 04/28/1968	SSN [REDACTED]
------------------	---	-----------------------	------------------	-----------------	-------------------	--------------------------	--------------------------

Address 96 Linwood Plaza Apt 197, Fort Lee, NJ 07024-3701	Primary Phone 201-954-6000	Secondary Phone 201-977-6767
---	--------------------------------------	--

Code O	Contact Name #1 Teaneck Police Department	MI Suffix	Age	Sex	Race	DOB	SSN
------------------	---	-----------	-----	-----	------	-----	-----

Address	Primary Phone 201-837-2600	Secondary Phone
---------	--------------------------------------	-----------------

Code	Contact Name #1	MI Suffix	Age	Sex	Race	DOB	SSN
------	-----------------	-----------	-----	-----	------	-----	-----

Address	Primary Phone	Secondary Phone
---------	---------------	-----------------

Property Information:

Value of Stolen Property	Currency	Jewelry	Furs	Clothing	Auto	Misc.	Total
Value of Stolen Property Recovered							

Automobile Information:

Vehicle Code	Year	Make	Body Type	Color	Registration	State	VIN
1							
2							
3							
4							

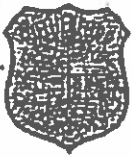
Narrative:

Narrative

Officer of Record: Date: Other Reports Filed: Reviewed By:

P.O. Michael Merli 76	08/08/14	MVA	Arrest	DV	DWI	DWIQ	Tow	SD	CI	TRO
		SHA	Prop.	Evid	UOF	Prst	Supp	Juv	Bias	Pris

S30



Rutherford Police Department
184 Park Avenue, Rutherford, NJ 07070
Phone: 201-939-6000 Fax: 201-460-3055 Mun. Code: 0256
Case Report



Narrative Continued (Page 2)

Case Number

14-16695

911 caller reports being followed on Route 3 West. The caller hung up on the Officer during the 911 dispatch. Officers were dispatched to check the highway with negative results. Multiple attempts were made to call back the complainant. The complainant answered and stated that he would stop at a gas station and call back as he would not go to Rutherford for an unknown reason. The complainant would not give a specific location to us. A notification was given out on SPEN to check the surrounding highways. A TLO Search of the phone number did not uncover further information. A message was left on the caller's voicemail to call us at the Police Department for assistance. Further investigation led us to believe it was a known unstable party. The information was given to Teaneck PD where the party was scene last in their lobby reporting the same thing. The last known residence in Rutherford was checked with negative results. Teaneck PD advised Fort Lee PD where the party may be presently residing.

Officer of Record: _____ Date: _____

P.O. Michael Merli 76

08/08/14

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS) Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i> , if information above the black bar is not completed or attorney's signature is not affixed		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: ☐ CK ☐ CG ☐ CA CHG/CK NO. _____ AMOUNT: _____ OVERPAYMENT: _____ BATCH NUMBER: _____	
	ATTORNEY / PRO SE NAME <i>Jones, Edward</i>		TELEPHONE NUMBER <i>201-954-6000</i>	
	COUNTY OF VENUE <i>Bergen</i>		DOCKET NUMBER (when available) _____	
	FIRM NAME (if applicable) _____		OFFICE ADDRESS <i>96 Linwood Plaza, Apt 197</i> <i>Fort Lee, NJ 07024</i>	
DOCUMENT TYPE <i>Complaint</i>		JURY DEMAND ☒ YES ☐ NO		
NAME OF PARTY (e.g., John Doe, Plaintiff) <i>Edward Jones</i>		CAPTION <i>Jones v Meile, Diaz, et al</i>		
CASE TYPE NUMBER (See reverse side for listing) <i>005, 607, 999</i>	HURRICANE SANDY RELATED? ☐ YES ☒ NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☐ 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 ☐ NO		IF YES, LIST DOCKET NUMBERS _____		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☐ NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☐ 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 ☐ 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? ☐ 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 ☐ NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION _____		
WILL AN INTERPRETER BE NEEDED? ☐ YES ☐ NO		IF YES, FOR WHAT LANGUAGE? _____		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: <i>[Signature]</i>				

- 1. N.J.S.A. 2C:13-1 –
Kidnapping Statute**
- 2. Obstruction of Justice
2C:29-1**
- 3. Manufacturing of
Evidence by an officer**
- 4. Theft of Evidence by an
officer**
- 5. A Planned Criminal Act by
an officer**
- 6. False Statements by an
officer**
- 7. 2C:5-2 – Conspiracy**
- 8. 2C:18-2 Burglary**
- 9. Theft**

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- 9. Theft**



Rutherford Police Department

184 Park Avenue, Rutherford, NJ 07070
Phone: 201-939-6000 Fax: 201-460-3055 Mun. Code: 0256



CAD Report

CAD #	Case #	Date	Time of Call	Dispatched	Arrived	Cleared	911
19-19446	19-19446	09/16/19	11:16	11:16	11:16	11:16	
Reg.	St.	Race Code	Citations	Warning			
	2B						
Incident Type				Business / School / Location Name			
Civil Complaint							
Location:							
Street #	Street Name	Apt. #	At Intersection of:				
184	Park Avenue						
Contact (Lastname, Firstname)		Contact Address			Primary Phone		
Jones, Edward		96 Linwood Plaza, Apt 197, Fort Lee NJ			212-470-7600		
Notes							
A Bergen County Sheriff's Department Officer served Officer Michael Merli with a Civil Complaint filed against him by an Edward Jones. Officer Merli is to respond within 35 days of service. Captain Patrick Feliciano made Chief John Russo and Borough Clerk Margaret Scanlon aware of the civil complaint.							
Officer(s)		Car(s)	Dispatched	Arrived	Cleared	Response Time	Time on Scene
P.O. Michael Merli 76		43	11:16	11:16	11:16	00:00	00:00
Average Response Time for this Call:				Dispatched By:			
00:00:17				mamatucci			

SUMMONS

Attorney(s) _____
Office Address _____
Town, State, Zip Code _____

RECEIVED
BOROUGH OF RUTHERFORD

2019 SEP 16 P 1:46

Telephone Number _____
Attorney(s) for Plaintiff _____

Edward Jones
96 Linwood Fort Ln NJ 07024
Plaintiff(s)

Superior Court of
New Jersey

_____ County
_____ Division

Docket No: BER-L-003888-19

CIVIL ACTION SUMMONS

vs.

Michael Merle (Badge 76)
184 Park Ave Rutherford NJ 07070
Defendant(s)

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

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

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

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.

Clerk of the Superior Court

DATED: _____

Name of Defendant to Be Served: Michael Merle (Badge 76)

Address of Defendant to Be Served: 900 Park Ave Rutherford NJ
07070



OFFICE OF THE BERGEN COUNTY SHERIFF
BERGEN COUNTY JUSTICE CENTER
HACKENSACK, N.J. 07601
(201) 336-3500
www.bcsd.us

AMONG HIS DUTIES, THE SHERIFF OF BERGEN COUNTY IS RESPONSIBLE FOR THE LEGAL SERVICE OF CIVIL COMPLAINTS FILED IN A COURT OF LAW. THIS DEPARTMENT DOES NOT INSTITUTE THE PROCEEDINGS NOR ARE WE INVOLVED IN THE ULTIMATE OUTCOME OR LITIGATION THEREOF.

OUR OFFICERS ONLY ATTEST THAT THE DOCUMENTS WERE PROPERLY DELIVERED OR SERVED UPON YOU OR A MEMBER OF YOUR HOUSEHOLD. YOU MAY BE REQUIRED BY LAW TO RESPOND TO THESE DOCUMENTS WITHIN A SPECIFIC TIME PERIOD. I, THEREFORE, SUGGEST THAT YOU READ THEM CAREFULLY AND CONTACT THE ATTORNEY AT THE TOP OF THE PAPERS YOU WERE SERVED.

IF THIS AGENCY CAN BE OF FURTHER ASSISTANCE, PLEASE DO NOT HESITATE TO CONTACT THE CIVIL PROCESS UNIT AT (201) 336-3500 EXT. 4456 BETWEEN THE HOURS OF 8:30 AM AND 3:30 PM.

Form A

Plaintiff or Filing Attorney Information:

Name Edward Jules
 NJ Attorney ID Number _____
 Address 46 Linwood Plaza, Apt 197
Fort Lee, NJ 07024
 Telephone Number 201 954 6000

RECEIVED

MAY 14 2019

SUPERIOR COURT OF NEW JERSEY
 COUNTY OF BERGEN
 FINANCE DIVISION

Edward Jules

Michael Merle, R. Diaz et al Plaintiff,
Mayor State Trooper Anni Pettersen,
Weekawken Port Authority officer,
Kevin Roe Sr Defendant(s).

Superior Court of New Jersey
Law Division Bergen County
Law Part

Docket No: _____
 (to be filled in by the court)

Civil Action

Complaint

RECEIVED
 MAY 14 2019

Plaintiff, Edward Jules, residing at
 (your name)
46 Linwood Plaza, Apt 197, City of Fort Lee
 (your address)
 County of Bergen
 (your county)

State Of New Jersey, complaining of defendant, states as follows:

1. On 8/8, 2014, Michael Merle, R. Diaz et al Defendant
 (name of person being sued)

(Summarize what happened that resulted in your claim against the defendant. Use additional pages if necessary.)

tried to kidnap me, faked evidence and
they caused my arrest

The defendant in this action resides at they work in Rutherford Teaneck
 (defendant's address)
 In the County of Bergen, State of New Jersey. etc (see attached
 (name of county where defendant lives) list)

2. Plaintiff is entitled to relief from defendant under the above facts.

A court representative assisted with the physical writing/typing of this document as dictated by the filing party. The Judiciary makes no claims as to the validity of the statements made herein. The form was completed by Amber from division

Revised 11/17/2014, Plaintiff/Defendant: Amber on 4/30/19
 Revised 11/01/2013, C.D. 11-210

HUDSON COUNTY

8-8-2014

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Said he was (CLIFTON NJ POLICE) badge 76 of Rutherford pick up 911 call and said he was Clifton Police

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6. 3 officers at the stop that took my clothes off, hit my head on the pole

6838 GIEG WISZ

And mace me (after handcuffed searched and put in police car!

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8. Weekawken Port Authority officer (Badge 221) 500 Boulevard E Weehawken nj 07086
9. Kevin Roe Sr (Lawyer Hackensack NJ) 425 Summit ave Hackensack nj 07601

Form A

3. The harm that occurred as a result of defendant's acts include: (list each item of damage and injury)

1. see attached list
2. looking to receive 428,000,000.00
3. _____

Wherefore, plaintiff requests judgment against defendant for damages, together with attorney's fees, if applicable, costs of suit, and any other relief as the court may deem proper.

Dated: 4/30/19 Signature: [Signature]

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I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: 4/30/19 Signature: [Signature]

OPTIONAL: If you would like to have a judge decide your case, do not include the following paragraph in your complaint. If you would prefer to have a jury to decide your case, please sign your name after the following paragraph.

JURY DEMAND

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

Dated: 4/30/19 Signature: [Signature]

Reside list

HUDSON COUNTY

8-8-2014

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6. 3 officers at the stop that took my clothes off, hit my head on the pole

And mace me
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9. Kevin Roe Sr (Lawyer Hackensack NJ) 425 Summit ave Hackensack nj 07601

TEANECK POLICE

PD-14-032480

8/8/2014

- ☐ Administrative ☐ Gang Related ☐ Paperless
☐ Investigation ☐ Accident ☐ Arrests Made
☐ Suspects ☐ Ready for DA / Prosecutor

Officer: ROBERT DIAZ - RDIAZ

Incident Report Form

Log Number PD-14-032480	Incident Number	File Number CD-14-033429	Case Number	UCR
Incident Type SUSPICIOUS PERSON	Dispatcher dkazm		Source PERSON	District PD291B
Date Received 8/8/2014	Day Rec'd Friday	Rcvd 0500	Disp 0505	Arr 0506
		Cld 0514	Disposition COMP	Status NEW
INCIDENT OCCURRED AT OR BETWEEN		Earliest Date and Time		Latest Date and Time

Location 900 TEANECK ROAD TEANECK TWP NJ 07668	Cross Street	Intersection ☐
GPS Coordinates X 0 Y 0	Gang	Arson Value
Premise Code	Business Name TEANECK POLICE DEPARTMENT	

Modus Operandi Coding	ENTRY:	VICTIM:
	EXIT:	PROPERTY
	METHOD:	AREA:
		TIME OF DAY:

Caller / Complainant Type	WEAPON USED:
Normal ☒ Anonymous ☐ Hangup ☐ Refused ☐	

RESPONDING / INVOLVED UNITS, OFFICERS, TIMES						
	Vehicle	Officer 1	Officer 2	Officer 3	Officer 4	
Unit 1	321	RDIAZ				Division
Unit 2	332	MAYAL				Supervisor
Unit 3	234	RBYFN				
Unit 4						

Agency Numbers	Units & Times
COMMENTS / NARRATIVES	
Title Police Dispatch	
Created By / On DANIEL KAZMIERCZAK	Updated By / On 08/08/2014
Approved By / On	Locked Y

Input: dkazm 08/08/2014 05:05:42 Edited: dkazm 08/08/2014 05:05:42
EDWARD JONES 4-28-1968

Input: dkazm 08/08/2014 05:06:50 Edited: dkazm 08/08/2014 05:06:50
96 LINWOOD PLAZA APT 197.

Input: tchal 08/08/2014 05:07:04 Edited: tchal 08/08/2014 05:07:04
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201-914-6000 / 212-470-7600

PD-14-032480 8/8/2014 ☐ APPROVED BY:
IRF 1.5 APPROVED ON:



Rutherford Police Department
184 Park Avenue, Rutherford, NJ 07070
Phone: 201-939-6000 Fax: 201-460-3055 Mun. Code: 0256
Case Report

**Incident Details:**

Case Number	Time Reported	Date Reported	Time Occurred	Date Occurred	Occurrence Between Date / Time of	Time Occurred	Date Occurred	911	Completed
14-16695	04:19	08/08/14						X	X

Incident Type: Suspicious Incident	Incident Location: Street # Street Name Intersection / Cross Street of: Route 3 West Mp 5.0 Business / Common Location Name
--	---

Contact Information: Victim Suspect Complainant Witness Driver Arrest Passenger Missing Business Other									
Code	Contact Name #1	MI	Suffix	Age	Sex	Race	DOB	SSN	
C	Central Station								
Address						Primary Phone		Secondary Phone	
						800-633-2677			
Code	Contact Name #2	MI	Suffix	Age	Sex	Race	DOB	SSN	
O	Jones, Edward	L		46	M	2B	04/28/1968		
Address						Primary Phone		Secondary Phone	
96 Linwood Plaza Apt 197, Fort Lee, NJ 07024-3701						201-954-6000		201-977-6767	
Code	Contact Name #3	MI	Suffix	Age	Sex	Race	DOB	SSN	
O	Teaneck Police Department								
Address						Primary Phone		Secondary Phone	
						201-837-2600			
Code	Contact Name #4	MI	Suffix	Age	Sex	Race	DOB	SSN	
Address						Primary Phone		Secondary Phone	

Property Information:

Value of Stolen Property	Currency	Jewelry	Furs	Clothing	Auto	Misc.	Total
Value of Stolen Property Recovered							

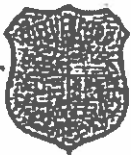
Automobile Information:

#	Vehicle Code	Year	Make	Body Type	Color	Registration	State	VIN
1								
2								
3								
4								

Narrative:

Narrative

Officer of Record:	Date:	Other Reports Filed:	Reviewed By:
P.O. Michael Merli 76	08/08/14	MVA Arrest DV DWI DWIQ Tow SD CI TRO SHA Prop. Evdn UOF Prst Supp Juv Bias Pris	S30



Rutherford Police Department
184 Park Avenue, Rutherford, NJ 07070
Phone: 201-939-6000 Fax: 201-460-3055 Mun. Code: 0256
Case Report



Narrative Continued (Page 2)

Case Number

14-16695

911 caller reports being followed on Route 3 West. The caller hung up on the Officer during the 911 dispatch. Officers were dispatched to check the highway with negative results. Multiple attempts were made to call back the complainant. The complainant answered and stated that he would stop at a gas station and call back as he would not go to Rutherford for an unknown reason. The complainant would not give a specific location to us. A notification was given out on SPEN to check the surrounding highways. A TLO Search of the phone number did not uncover further information. A message was left on the caller's voicemail to call us at the Police Department for assistance. Further investigation led us to believe it was a known unstable party. The information was given to Teaneck PD where the party was scene last in their lobby reporting the same thing. The last known residence in Rutherford was checked with negative results. Teaneck PD advised Fort Lee PD where the party may be presently residing.

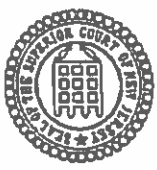
Officer of Record

Date

P.O. Michael Merli 76

08/08/14

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS) Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i> , if information above the black bar is not completed or attorney's signature is not affixed		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: ☐ CK ☐ CG ☐ CA CHG/CK NO.: _____ AMOUNT: _____ OVERPAYMENT: _____ BATCH NUMBER: _____		
	ATTORNEY / PRO SE NAME <u>Jones, Edward</u>		TELEPHONE NUMBER <u>201-954-6000</u>	COUNTY OF VENUE <u>Bergen</u>	
	FIRM NAME (if applicable) _____		DOCKET NUMBER (when available) _____		
	OFFICE ADDRESS <u>96 Linwood Plaza, Apt 197</u> <u>Fort Lee, NJ 07024</u>		DOCUMENT TYPE <u>Complaint</u> JURY DEMAND ☒ YES ☐ NO		
NAME OF PARTY (e.g., John Doe, Plaintiff) <u>Edward Jones</u>		CAPTION <u>Jones v Meile, Diaz, et al</u>			
CASE TYPE NUMBER (See reverse side for listing) <u>005, 607, 999</u>	HURRICANE SANDY RELATED? ☐ YES ☒ NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☐ 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 ☐ NO		IF YES, LIST DOCKET NUMBERS _____			
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☐ NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☐ 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 ☐ 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? ☐ 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 ☐ NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION _____			
WILL AN INTERPRETER BE NEEDED? ☐ YES ☐ NO		IF YES, FOR WHAT LANGUAGE? _____			
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .					
ATTORNEY SIGNATURE: <u>[Signature]</u>					

- 1. N.J.S.A. 2C:13-1 –
Kidnapping Statute**
- 2. Obstruction of Justice
2C:29-1**
- 3. Manufacturing of
Evidence by an officer**
- 4. Theft of Evidence by an
officer**
- 5. A Planned Criminal Act by
an officer**
- 6. False Statements by an
officer**
- 7. 2C:5-2 – Conspiracy**
- 8. 2C:18-2 Burglary**
- 9. Theft**

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- 9. Theft**



Rutherford Police Department

184 Park Avenue, Rutherford, NJ 07070
Phone: 201-939-6000 Fax: 201-460-3055 Mun. Code: 0256



CAD Report

CAD #	Case #	Date	Time of Call	Dispatched	Arrived	Cleared	911
19-19446	19-19446	09/16/19	11:16	11:16	11:16	11:16	

Reg.	St.	Race Code	Citations	Warning
		2B		

Incident Type	Business / School / Location Name
---------------	-----------------------------------

Civil Complaint	
-----------------	--

Location:	Street #	Street Name	Apt. #	At Intersection of:
-----------	----------	-------------	--------	---------------------

184	Park Avenue			
-----	-------------	--	--	--

Contact (Lastname, Firstname)	Contact Address	Primary Phone
-------------------------------	-----------------	---------------

Jones, Edward	96 Linwood Plaza, Apt 197, Fort Lee NJ	212-470-7600
---------------	--	--------------

Notes

A Bergen County Sheriff's Department Officer served Officer Michael Merli with a Civil Complaint filed against him by an: Edward Jones. Officer Merli is to respond within 35 days of service. Captain Patrick Feliciano made Chief John Russo and Borough Clerk Margaret Scanlon aware of the civil complaint.

Officer(s)	Car(s)	Dispatched	Arrived	Cleared	Response Time	Time on Scene
------------	--------	------------	---------	---------	---------------	---------------

P.O. Michael Merli 76	43	11:16	11:16	11:16	00:00	00:00
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Average Response Time for this Call:	Dispatched By:
00:00:17	mamatucci

BOTTA ANGELI, L.L.C.

Renee F. McCaskey, Esq.

Attorney ID #027041993

50 South Franklin Turnpike

Ramsey, New Jersey 07446

(201) 818-6400

Attorneys for Defendant,

Michael Merli i/p/a Michael Merle

FILED

OCT 11 2019

AVIS BISHOP-THOMPSON, J.S.C.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY**

EDWARD JONES,

Plaintiff,

vs.

**MICHAEL MERLI i/p/a MICHAEL MERLE,
R. DIAZ, R.BYRN,MAYAL,STATE
TROOPER, APRIL PETERSEN,
WEEKAWKEN PORT AUTHORITY
OFFICER, KEVIN ROE, SR.**

Defendants.

Docket No. BER-L-3888-19

CIVIL ACTION

ORDER

THIS MATTER having been brought before the Court on Motion of BOTTA ANGELI, L.L.C., Attorney for Defendant, Michael Merli i/p/a Michael Merle, upon the return of Defendant's Motion to Dismiss Plaintiff's Complaint in Lieu of Filing an Answer, and the Court having read the moving papers, and those submitted in opposition thereto, if any, and for good cause shown;

IT IS on this 11th day of October, 2019:

ORDERED that the Defendant's Motion to Dismiss Plaintiff's Complaint is hereby granted; and it is further

EDWARD JONES v. MICHAEL MERLE, et al.

Docket No.: BER-L-3888-19

RIDER TO ORDER DATED OCTOBER 7, 2019

R. 4:6-2(e) allows a party to move to dismiss a complaint if the complaint fails to plead a claim upon which relief can be granted. Such motions, however, should be granted in “only the rarest of instances.” Banco Popular N. Am. v. Gandi, 184 N.J. 161, 165 (2005). In reviewing a motion to dismiss, courts are constrained to an examination of the legal sufficiency of the facts alleged on the face of the complaint. R. 4:6-2(e). The New Jersey Supreme Court has mandated that courts must “search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim [.]” Printing Mart v. Sharp Electronics Corp., 116 N.J. 739 (1989) (citing Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). Under this analysis, all facts, reasonable inferences and implications must be considered in favor of the pleader. Spring Motors Distributors, Inc. v. Ford Motor Co., 191 N.J. Super. 22, 29-30 (App. Div. 1983). And, so long as the pleading fairly apprises the adverse party of all claims and issues, the motion to dismiss should be denied. Id. However, if the complaint states no basis for relief, and discovery would not provide such basis, dismissal is appropriate. Energy Rec. v. Dept. of Env. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999). Plaintiff has failed to clearly identify the causes of action against Defendant Michael Merli which would afford Defendant the opportunity to prepare and file a responsive pleading. Moreover, the nature of the complaint as stated provides no basis for relief.

A. Tort Claims Act and Statute of Limitations

N.J.S.A. 59:8-3 states that, “[n]o action shall be brought against a public entity or public employee under this act unless the claim upon which it is based shall have been presented in

accordance with the procedure set forth in this chapter.” Specifically, a plaintiff seeking to file a tort claim against a public entity must provide notice within ninety (90) days of the accrual of the cause of action. N.J.S.A. 59:8-8(a). The Tort Claims Act (“TCA”) defines “public entity” as including: “the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State.” N.J.S.A. 59:1-3. The notice provision is designed to create an “intentionally short period in which the claimant must conduct an investigation and give notice to the correct public entity.” McDade v. Siazon, 208 N.J. 463, 475 (2011).

A plaintiff who fails to comply with the ninety day notice requirement, or if two years have elapsed since the accident, a plaintiff is “forever barred from recovering against a public entity...” except as provided in N.J.S.A. 59:8-9. The two-year statute of limitations applies to all actions under the TCA. See Tower Marine, Inc. v. New Brunswick, 175 N.J. Super. 526 (Ch. Div. 1985). N.J.S.A. 59:8-9 permits a claimant to move for leave to file a Tort Claim Notice after the expiration of ninety (90) days, but indicates that such a motion must be brought within one (1) year after the accrual of the claim. Upon the timely filing of a motion, leave to file a late notice of claim is granted only if the claimant demonstrates “extraordinary circumstances” and there is no substantial prejudice to the public entity. N.J.S.A. 59:8-9; McDade at 476-77. Any notice of claim filed after ninety (90) days without leave of Court is a nullity. See, e.g., Priore v. State, 190 N.J. Super. 127, 130 (App. Div. 1983). After one (1) year has elapsed, the Court has no jurisdiction to entertain a motion for leave to file a late notice. See, Fuller v. Rutgers, 154 N.J. Super. 420, 423 (App. Div. 1977).

It is clear that Defendant Michael Merli is a police officer employed with the Borough of Rutherford, a public entity to which the TCA applies. Vancheri v. NJSEA, 104 N.J. 80, 85 (1986)

("NJSEA is a public entity within the meaning of the Tort Claims Act."). The TCA also extends to injuries arising from intentional torts. Velez v. City of Jersey City, 180 N.J. 284, 294 (2004) (finding that the TCA notice requirements include injuries arising from intentional conduct as well as negligent conduct). Plaintiff's failure to provide notice to Defendant Merli under the TCA's notice provisions bars Plaintiff's claims from being pursued. There is no indication in the Complaint, nor has Plaintiff's filed opposition to this motion, arguing otherwise. Recovery for Plaintiff's claims are barred.

Likewise, Plaintiff's claims accrued on August 6, 2014. Plaintiff filed the complaint on May 14, 2019, almost five (5) years after the alleged incident. Over three years beyond the statute of limitations under the TCA and N.J.S.A. 2A:14-2. See also, Tower Marine, Inc. v. New Brunswick, 175 N.J. Super. 526 (Ch. Div. 1985). Accordingly, Plaintiff's claims are time-barred.

Conclusion

For the aforementioned reasons, Defendant Michael Merli's Motion to Dismiss is GRANTED.

Aakash Dalal
160 South River Street
Hackensack, NJ 07601
Plaintiff, *pro se*

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

Aakash Dalal;	)	
	)	
Plaintiff,	)	Civil Action No.: 13-1257 (WJM)
	)	
Vs.	)	
	)	
North Jersey Media Group, Inc., Kibret Markos,	)	JURY TRIAL DEMANDED
Stephen A. Borg; County of Bergen, Bergen County)	)	
Prosecutor's Office, John Molinelli, Martin	)	
Delaney, Steven Cucciniello, Robert Anzilotti,	)	FIRST AMENDED COMPLAINT
James Costello, Michael Guzman, Kevin Dempsey,	)	
Andre Dimino, Gerald Almers, John Does 5-8,	)	
individually and in their official capacities,	)	
Defendants.	)	

Plaintiff, Aakash Dalal, amends his Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B)
and states as follows:

JURISDICTION AND VENUE

I. The United States District Court for the District of New Jersey has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3) as the matters in controversy arise under the Privacy Protection Act (42 U.S.C. § 2000aa), the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1964(c)), 42 U.S.C. § 1985(3), 42 U.S.C. § 1986, and The Civil Rights Act of 1871 (42 U.S.C. § 1983) to remedy the deprivation of rights guaranteed by the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. This court has jurisdiction over pendant New Jersey state law claims pursuant to 28 U.S.C § 1367(a).

2. Venue is proper pursuant to 28 U.S.C § 1391(b) as the events giving rise to the causes of action in this complaint arose in Bergen County, New Jersey which is located within the District of New Jersey.

PARTIES

3. Plaintiff Aakash Dalal is and was at all times mentioned herein an adult citizen of the United States and a resident of the State of New Jersey. Plaintiff is currently a pretrial detainee at the Bergen County Jail in Hackensack, New Jersey.

4. Defendant North Jersey Media Group, Inc. is a corporation of New Jersey having its principal place of business in Woodland Park, New Jersey, is a corporate citizen of New Jersey, and publishes several newspapers and websites distributed in New Jersey including The Record, Herald News, and NorthJersey.com.

5. Defendant Kibret Markos is a reporter employed by North Jersey Media Group, Inc. and was at all times mentioned herein a resident of New Jersey. Kibret Markos's news coverage consists primarily of criminal proceedings at the Bergen County Superior Court in Hackensack, New Jersey.

6. Defendant Stephen A. Borg is the president of North Jersey Media Group, Inc., the publisher of its publications including The Record, Herald News, and NorthJersey.com and was at all times mentioned herein a resident of New Jersey.

7. Defendant County of Bergen is a local government entity and a body corporate organized under the laws of the State of New Jersey.

8. Defendant Bergen County Prosecutor's Office is the principal prosecution and law enforcement agency in the County of Bergen with its primary location in Hackensack, New Jersey.

9. Defendant John Molinelli is the county prosecutor of the County of Bergen, the final policy maker with regard to law enforcement policies and law enforcement management in the County of Bergen, the chief of the Bergen County Prosecutor's Office, and was at all times mentioned herein an adult resident of New Jersey.

10. Defendant Martin Delaney is an assistant county prosecutor of the County of Bergen, an employee of the Bergen County Prosecutor's Office and was at all times mentioned herein an adult resident of New Jersey.

11. Defendant Robert Anzilotti is an employee of the Bergen County Prosecutor's Office in the position of detective and the rank of lieutenant and was at all times mentioned herein an adult resident of New Jersey.

12. Defendant James Costello is an employee of the Bergen County Prosecutor's Office in the position of detective and the rank of sergeant and was at all times mentioned herein an adult resident of New Jersey.

13. Defendant Steven Cucciniello is an employee of the Bergen County Prosecutor's Office in the position of chief of detectives and was at all times mentioned herein an adult resident of New Jersey.

14. Defendant Michael Guzman is an employee of the Bergen County Prosecutor's Office in the position of detective and was at all times mentioned herein an adult resident of New Jersey.

15. Defendant Kevin Dempsey is an employee of the Bergen County Sheriff's Office and was at all times mentioned herein an adult resident of New Jersey.

16. Defendant Gerald Almers is an employee of the Bergen County Prosecutor's Office in the position of detective and the rank of sergeant and was at all times mentioned herein an adult resident of New Jersey.

17. Defendant Andre Dimino is an employee of the Bergen County Prosecutor's Office in the position of computer forensics analyst and was at all times mentioned herein an adult resident of New Jersey.

18. Defendants John Doe Five, John Doe Six and John Doe Seven are employees of the Bergen County Prosecutor's Office, are each in the position of detective, and were at all times mentioned herein adult resident of New Jersey.

19. Defendant John Doe Eight is a state actor connected with the Bergen County Prosecutor's Office who acts in concert and in agreement with Defendants James Costello and Robert Anzilotti. John Doe Eight is not a United States citizen.

STATEMENT OF FACTS

20. On January 24th, 2012, an arrest was made by members of the Bergen County Prosecutor's Office in connection with several alleged arson attempts at synagogues in the southern Bergen County, New Jersey area that occurred between January 3rd, 2012 and January 11th, 2012. The arrestee was an individual named Anthony Graziano ("Graziano").

21. Aakash Dalal ("Plaintiff"), then a 19-year old Rutgers University student on leave of absence, was a resident of New Brunswick, New Jersey. Plaintiff was a computer security researcher and the owner and editor-in-chief of a government transparency website.

22. On February 9th, 2012 at approximately 12PM, at the direction of Bergen County Prosecutor's Office Chief of Detectives Steven Cucciniello ("Cucciniello") and Bergen County Prosecutor John Molinelli ("Molinelli"), Michael Guzman ("Guzman"), Robert Anzilotti ("Anzilotti"), Kevin Dempsey ("Dempsey"), Gerald Almers ("Almers"), Andre Dimino ("Dimino"), John Doe Five, John Doe Six, and John Doe Seven ("John Does 5-7")—all

detectives employed by the Bergen County Prosecutor's Office—entered, raided, and searched Plaintiff's New Brunswick, New Jersey apartment in connection with the investigation of the aforementioned arson attempts with the purpose of conducting an expansive, intrusive search while Plaintiff was not present.

23. The February 9th, 2012 entry and raid of Plaintiff's apartment was conducted without a search warrant, without the authorization of a judge, without probable cause, without voluntary consent and in the absence of exigent circumstances. Guzman, Anzilotti, Dempsey, Almers, Dimino and John Does 5-7 ransacked Plaintiff's apartment, searched all rooms, closets, containers, and enclosures and seized, without a warrant and without probable cause, several laptops, computers, hard drives, and other digital storage devices, which contained journalistic materials related to Plaintiff's website.

24. The invasion of Plaintiff's residence continued until approximately 6PM and resulted in substantial damage to Plaintiff's property and interference with Plaintiff's activities as a journalist.

25. Guzman, Anzilotti, Dempsey, Almers, Dimino and John Does 5-7 were well aware of the scope of Plaintiff's activities as a journalist and had printed and read articles written by Plaintiff with regard to government transparency prior to their February 9th intrusion. They were also well aware that Plaintiff had work products and drafts related to his government transparency website, information regarding confidential sources, and other such documentation in his possession and that Plaintiff was involved in communicating and disseminating journalistic material to the general public through his prominent website and other publications.

26. Plaintiff feared for his privacy and safety as the result of the state sponsored home invasion, burglary, and theft conducted by defendants Guzman, Anzilotti, Dempsey, Almers, Dimino and John Does 5-7.

27. On March 1st, 2012, defendant James Costello ("Costello"), a detective with the Bergen County Prosecutor's Office, was order by Molinelli, Cucciniello, and Martin Delaney ("Delaney"), a Bergen County assistant prosecutor, to draft affidavits for warrants for the arrest of Plaintiff and for another search of Plaintiff's residence in New Brunswick, New Jersey.

28. With the assistance of Anzilotti, Molinelli, and Delaney, material falsifications in the form of alleged "instant message" logs were added to the affidavit drafted by Costello with the purpose of securing warrants for Plaintiff's arrest and a search warrant. Material evidence that would have undoubtedly negated from a judicial finding of probable cause was also omitted from the affidavits by Costello both by his own volition and at the direction of Anzilotti, his direct superior, Molinelli, Cucciniello, and Delaney.

29. The affidavits were presented to Bergen County Superior Court Judge Liliana DeAvila-Silebi on March 1st, 2012 who issued arrest warrants for Plaintiff on charges of aggravated arson, conspiracy to commit aggravated arson, bias intimidation, and criminal mischief and a search warrant for Plaintiff's New Brunswick, New Jersey residence. A blanket bail was set at 2.5 million dollars without a 10% option on those charges.

30. In the early morning hours of March 2nd, 2012 Plaintiff's apartment was again raided and searched by numerous members of the Bergen County Prosecutor's Office, including but not limited to Guzman, Costello, Anzilotti, Dempsey, Almers, and John Does 5-7, the Middlesex County Prosecutor's Office, the Federal Bureau of Investigation, and other agencies—this time pursuant to the aforementioned illegally obtained search warrant—and Plaintiff was arrested.

31. After being handcuffed by Costello and another Bergen County Prosecutor's Office detective, Plaintiff was dragged out of his apartment and transported in an unmarked vehicle to Paramus, New Jersey via Interstate 80.

32. At 4PM on March 2nd, 2012, Molinelli held a major press conference at the Bergen County Prosecutor's Office in Hackensack, New Jersey with the subject being Plaintiff's arrest. The press conference, the timespan of which was approximately two hours, was interlaced with deliberate falsifications and outright lies made with the purpose of generating publicity which would serve to both inflame residents against Plaintiff and garner personal and political attention for Molinelli whose term in office was schedule to expire in less than ten months.

33. During the March 2nd, 2012 press conference, Molinelli insinuated with reckless disregard for the truth that Plaintiff physically committed the previously mentioned arson attempts. Molinelli did so with the purpose of sensationalizing the event, ruining Plaintiff's reputation, and poisoning the potential jury pool with prejudice. Molinelli made the statement even while possessing and knowing of concrete evidence that demonstrated that Plaintiff was never even present in the state of New Jersey at the time of the incidents.

34. Molinelli, during the press conference, falsely described Plaintiff as a "teacher" and planner in relation to Graziano and Graziano's alleged arson attempts with the purpose of inflaming public sentiment against Plaintiff, hurting Plaintiff's reputation, and securing personal recognition for himself. Molinelli possessed and knew of evidence that would directly negate those false characterizations of Plaintiff.

35. Molinelli presented, at the press conferenced, what he alleged to be evidence in the form of a log of internet instant messages between Plaintiff and Graziano.

36. The alleged messages cannot be independently located and are not in the possession of any remote service provider or cellular service provider.

37. Molinelli's March 2nd, 2012 press statements were published locally, nationally, and internationally.

38. Between March 2nd, 2012 and June 30th, 2012, Molinelli established a cozy relationship with media outlets and conducted several lengthy interviews with reporters—the subject being Plaintiff's arrest—which were later published in newspapers and websites.

39. On March 2nd, 2012, March 3rd, 2012, March 4th, 2012, March 5th, 2012, and March 6th, 2012, defendant North Jersey Media Group, Inc. ("NJMG") and its president and publisher, defendant Stephen A. Borg ("Borg"), published articles written by their employees, stemming from Molinelli's press conference, at which the NJMG employees were present, in The Record, Herald News, and NorthJersey.com.

40. NJMG's physical newspaper publications The Record and Herald News are distributed to subscribers and read by those subscribers in the Bergen County and Passiac County areas of New Jersey.

41. NJMG's internet based publication, NorthJersey.com, is globally accessible and its news articles are read throughout the state of New Jersey as well as other states including but not limited to New York and Pennsylvania.

42. NJMG generates revenue through subscription fees and advertisements with regard to its publications The Record and Herald News. NJMG generates advertisement revenue through its internet publication NorthJersey.com.

43. Articles published on March 2nd, 3rd, 4th, 5th, 6th, 21st, and 22nd of 2012, May 4th, and 5th of 2012, June 27th, 28th, 29th, and 30th of 2012 by NJMG's various newspapers and websites

including The Record, Herald News, and NorthJersey.com and written by NJMG's employees including defendants Kibret Markos ("Markos") and Monsy Alvarado ("Alvarado") baselessly and falsely stated that Plaintiff was the instigator and the "mastermind" of the January 2012 arson attempts and that authorities described Plaintiff as the "mastermind" or a "mastermind of sorts" in relation to the early January 2012 arson attempts. The term "masterminded" was also utilized by NJMG reporters in the aforesaid context.

44. At no point did any law enforcement official use the term "mastermind" to describe Plaintiff and no evidence or information exists or did exist to suggest that term's veracity in relation to Plaintiff.

45. An alleged victim of the January 2012 arson attempts, in a statement to NJMG reporters, falsely used the term "mastermind" to describe Plaintiff and the alleged victim's statement was subsequently published by The Record, Herald News, and NorthJersey.com without any regard as to its veracity.

46. Reporters including Markos and Alvarado, acting within the scope of their employment with NJMG, repeatedly used the outrageous and inflammatory term "mastermind" in relation to Plaintiff with the purpose of sensationalizing their articles, garnering additional readers and subscribers, and earning larger advertisement and subscription revenues for their employers NJMG and Borg.

47. Articles written by Markos and Alvarado with respect to Plaintiff were published on March 5th, 2012 and March 6th, 2012 by NJMG and Borg in The Record, The Herald, and NorthJersey.com.

48. The aforementioned March 5th, 2012 and March 6th, 2012 articles written by Markos and Alvarado were titled, "Synagogue firebomb suspect pleads not guilty". Attached to the articles was a photograph of Plaintiff taken on March 5th, 2012 by NJMG employee Amy Newman.

49. Markos and Alvarado, with reckless disregard for the privacy and safety of Plaintiff and Plaintiff's family, included the following statement in their March 5th, 2012 and March 6th, 2012 articles, "No one opened the door at the Dalal family residence on Trudy Drive on Monday after the court appearance. Two cars were parked in the side driveway, and a newspaper in green plastic could be seen near the steps to the front entrance."

50. Knowing of the contempt directed towards Plaintiff and knowing of threats directed to Plaintiff by their own readers, Markos, Alvarado, NJMG, and Borg decided to impede upon Plaintiff's privacy and risk violence against Plaintiff and his family by publishing the location of Plaintiff's family's residence and further describing the residence.

51. Markos and Alvarado wrote and NJMG and Borg published the following passage, which was meant to be read as if were the objective truth, in their aforementioned March 5th, 2012 and March 6th, 2012 articles,

"Lodi High School students who played on the tennis team with Dalal continued to repeat claims Monday that Dalal was anti-government and anti-religion and was known to be condescending to those who practiced their faith.

They said he was known to pick on some of the team members, especially a Jewish student. The student, who asked that his name not be used, said that during practice Dalal would aim the tennis ball at his face, which led him at times to hit back at Dalal with his racket."

52. In the above excerpt from March 5th, 2012 and March 6th, 2012 articles published by The Record, Herald News, and NorthJersey.com, Markos and Alvarado knowing of the falsity of their statement imputed that Plaintiff committed the crimes of assault and battery, simple assault, aggravated assault, and bias intimidation against a Jewish individual.

53. Markos and Alvarado, maliciously fabricated the above mentioned story of Plaintiff attacking a Jewish teammate on his high school tennis team with the purpose of directing ridicule and threats towards Plaintiff, with the purpose of damaging Plaintiff's reputation, and with the purpose of increasing internet traffic and readership, and in turn revenue for their employer's publications.

54. The abovementioned story maliciously concocted by Markos, Alvarado, Borg, and other NJMG employees was fictitious and untrue as no ethnically or religiously Jewish individuals were ever present on Plaintiff's high school tennis team during the two years that Plaintiff played tennis for Lodi High School.

55. Plaintiff additionally never attacked any non-existent Jewish individuals during his high school tennis team's practice sessions.

56. Markos and Alvarado contacted several members of Plaintiff's high school tennis team through the internet and through telephone calls prior to the publication of their March 5th, 2012 and March 6th, 2012 articles.

57. No members of Plaintiff's high school tennis team who were contacted by Markos and Alvarado ever referenced a Jewish teammate or the existence of a Jewish teammate or stated that Plaintiff attacked a Jewish teammate.

58. The willingness of Markos, Alvarado, Borg, and other NJMG employees to deliberately manufacture a false story indicates that they engaged in a malicious campaign to defame and

exploit Plaintiff and to destroy his reputation through the publication of statements and stories they knew were false.

59. Borg and other NJMG executives gave Markos and Alvarado free rein to damage and harm Plaintiff's reputation through the publication of lies.

60. Reader comments posted on and between March 2nd, 2012 and June 30th, 2012 on NorthJersey.com website pages of articles written by Markos and Alvarado included death threats against Plaintiff and incitements to cause serious bodily injury to Plaintiff. The threats were the direct result of the inflammatory and false imputations of criminality attributed to Plaintiff by Molinelli, Markos, Alvarado, Borg, NJMG's publications, and NJMG's employees.

61. Plaintiff's reputation was irreparably damaged as the direct result of the lies invented by Markos and Alvarado and published by NJMG and its various publications.

62. Plaintiff suffered from economic losses as the direct result of the damage caused to his reputation by Molinelli, NJMG, Borg, Markos, and Alvarado.

63. Plaintiff's first hearing for a reduction in bail was scheduled to be heard at the Bergen County Superior Court in Hackensack, New Jersey on March 21st, 2012. Markos and another NJMG employee, specifically a photographer, appeared to observe the hearing.

64. Prior to the hearing, on or about March 21st, 2012, Molinelli, Cucciniello, Anzilotti and Costello falsely and maliciously informed Delaney that Plaintiff possessed "attack plans" in the form of blueprints against an elementary in Berlin Township in Camden County, New Jersey and encouraged Delaney to seek to deny Plaintiff a reduction in his \$2.5 million bail by proffering that information to the trial court.

65. During the March 21st, 2012 bail hearing, Delaney deceitfully and outrageously claimed that attack plans against an elementary school, in the form of blueprints, were found at Plaintiff's

New Brunswick apartment during a search. Delaney further falsely stated that Plaintiff had planned to attack the elementary school located in Camden County, New Jersey and that the blueprints were "marked up with what could only be described as an attack plan." Judge Patrick J. Roma ("Roma"), the trial court judge who presided over the hearing, allowed Delaney's contemptible lies to stand without question.

66. Plaintiff was subsequently denied a reduction in bail by Roma for reasons which had no factual basis including Delaney's reckless statements of "attack plans" and blueprints. Roma insinuated that Plaintiff had personally carried out the arson attacks and ultimately echoed disinformation which could only be found in news articles that published Molinelli's brazenly false statements about Plaintiff.

67. Immediately after the hearing, Delaney approached Markos and falsely gave statements to Markos about the Plaintiff's purported "attack plans" as well as the full name of the aforementioned Camden County school.

68. On March 21st, 2012 and March 22nd, 2012 The Record and NorthJersey.com maliciously published articles written by Markos titled, "Bomb suspect had blueprint", falsely asserting that Plaintiff had plans to attack an elementary school. Delaney's statements were published in the article.

69. Widespread panic ensued as parents, teachers, and other learned of, through The Record and NorthJersey.com, Delaney's allegations of Plaintiff's purported "attack plans" against a school in their community.

70. On March 22nd, 2012, the Camden County Prosecutor's Office and other law enforcement agencies issued statements admitting that Plaintiff never had attack plans for any school. Law enforcement officials also admitted that they had known and that the Bergen County Prosecutor's

Office had known, prior to the bail hearing, that Plaintiff never had attack plans for a school. It was further admitted that the blueprints in question belonged to Plaintiff's neighbor, Tekton Construction—a construction company contracted by the Camden County school.

71. Joseph Jackson, the police chief of Berlin Township, New Jersey, admitted in a statement on March 22nd, 2012 that Bergen County authorities had informed him that the Tekton Construction blueprints had no markings and were not attack plans.

72. Delaney's blatant falsifications of attack plans against a school in southern New Jersey generated significant hatred and abhorrence towards Plaintiff and served to further inject undue prejudice against Plaintiff into the minds of New Jersey residents.

73. Basic fact checking or even a token attempt to corroborate the allegations against Plaintiff would have led Markos and other reporters employed by NJMG to the truth of the aforementioned matters.

74. Instead of attempting to remedy the harm caused by Delaney, Molinelli issued a deceitfully calculated statement claiming that while Plaintiff had no "imminent" attack plans, there was evidence to suggest otherwise. Molinelli purposefully used the qualifying adjective "imminent" to intimate that Plaintiff did have attack plans, but that the plans just weren't immediate.

75. Molinelli possesses no such evidence as no such evidence exists or ever has existed that Plaintiff had attack plans for the Camden County school in question and the assertion that he did was a fabrication concocted by the Bergen County Prosecutor's Office, Molinelli, Cucciniello, Anzilotti, and Costello.

76. Plaintiff appealed his March 21st, 2012 bail reduction denial, which was tainted by the aforementioned fabricated evidence, and the Appellate Division granted leave to appeal. The two

judge panel of Judges Ellen Koblitz and Jonathan Harris reversed Roma's denial of the motion to reduce bail and remanded with instructions that the trial court follow New Jersey Court Rule 3:26-1(a) when setting Plaintiff's bail.

77. A second bail reduction hearing was held on May 4th, 2012 in front of Roma as the result of the Appellate Division reversal.

78. Roma again denied Plaintiff a reduction in bail and articulated no legitimate legal rational for doing so. Predicting another appeal, Roma addressed the Appellate Division and advocated against Plaintiff by claiming that "nothing like this has ever before been seen in Bergen County,"—a claim without a shred of evidence and a claim that demonstrated, without a doubt, that Roma's judgment had been influenced and corrupted by prejudicial news publications.

79. Plaintiff again appealed his denial of a bail reduction by Roma. On May 21st, 2012, the Appellate Division again reversed and Judges Ellen Koblitz and Jonathan Harris issued an order excoriating Roma, stating that Roma had abused his authority, and that the \$2.5 million bail was excessive.

80. The May 21st, 2012 Appellate Division Order written by Judge Ellen Koblitz stated in part,

"We previously reversed and remanded to the trial court for a reconsideration of defendant's bail in light of the factors delineated in Rule 3:26-1(a). Upon remand, the court did not expressly analyze each factor in light of the facts presented by the defense in denying any reduction of bail. [...]

Based on the evidence presented, it is difficult to determine the likelihood of Dalal's conviction on the most serious charges, as Graziano is alleged to be the prime actor.
[...]

We determine, however, that the bail of \$2.5 million is excessive and represents an abuse of discretion.”

81. The Appellate Division lowered Plaintiff’s bail to \$1 million bond and invited Plaintiff to seek a further reduction in bail from the trial court.

82. Realizing that the case against Plaintiff had essentially fallen apart as the result of the findings of the Appellate Division and knowing that Plaintiff had prepared to post bail in order to secure his release, Molinelli, Delaney, Cucciniello, Anzilotti, Costello, and other Bergen County Prosecutor’s Office employees agreed on or about May 21st, 2012 that they would fabricate extremely serious charges against Plaintiff with the purpose of preventing Plaintiff from posting bail, preventing his release from jail, and exacting revenge against Plaintiff for filing appeals.

83. On June 27th, 2012, knowing that Plaintiff would post bail at a hearing at the Bergen County Superior Court in Hackensack, NJ at approximately 9AM, Molinelli, Cucciniello, Delaney, Anzilotti, Costello, and other Bergen County Prosecutor’s Office employees drafted affidavits with numerous false statements for arrest warrants and charges against Plaintiff. John Doe Eight aided in the drafting of the affidavit by intentionally providing false statements, which would be included in the affidavit, to the aforementioned actors.

84. The June 27th, 2012 affidavits, signed by Costello with help from the abovementioned actors, maliciously, falsely, and ludicrously stated that Plaintiff planned to commit the murder of Delaney and maliciously and falsely stated that Plaintiff conspired to obtain a “9mm handgun”.

85. Based on Costello’s affidavits, arrest warrants were signed by Judge Liliana DeAvila-Silebi for Plaintiff’s arrest on charges of conspiracy to commit murder, terroristic threats, and conspiracy to possess a weapon for unlawful purposes and a \$3 million cash bail was added to

Plaintiff's previous \$1 million bail effectively preventing Plaintiff from posting bail.

Arraignment had been set for June 29th, 2012 at 9AM on the new charges by the judge.

86. On June 27th, 2012 at approximately 9AM, Plaintiff was set to be released from pretrial imprisonment after a bail source hearing during which Plaintiff's parents were prepared to post his \$1 million bond and secure his release.

87. The hearing was repeatedly and inexplicably delayed throughout the day by prosecutors including Delaney and Molinelli and eventually postponed by Judge Liliana DeAvila-Silebi to June 29th, 2012 at 9AM.

88. At approximately 2PM on the same day, Plaintiff, who was being held in a cell beneath the Bergen County Courthouse in chains and shackles, was dragged and forced into a van by two Bergen County Sheriff's Office officers/employees, who were acting upon the direct orders of Molinelli, and transported to the Bergen County Prosecutor's Office in Paramus, New Jersey where Anzilotti and Costello had, on direct orders from Molinelli, Delaney, and Cucciniello, insidiously prepared to force Plaintiff into making an illegitimate confession to crimes Plaintiff did not commit.

89. Upon contact with the two detectives, Plaintiff immediately asked to speak with his attorney. Anzilotti and Costello then forced Plaintiff into an interrogation room and began to interrogate Plaintiff, who continued to ask for his attorney. Anzilotti and Costello then attempted to forcibly coerce Plaintiff into signing a waiver of his Miranda rights, which Plaintiff refused to sign.

90. Costello and Anzilotti continued to intimidate Plaintiff and continued to pressure Plaintiff to waive away his rights. Plaintiff's only response was, "I want to speak to my attorney." After approximately forty-five minutes to one hour of subjecting Plaintiff to harsh interrogation

techniques and tactics, Anzilotti and Costello moved Plaintiff to another smaller room, where Plaintiff was forced to sit on a stool and cornered by the two detectives. The detectives again began to interrogate Plaintiff, who refused to answer any questions without his attorney present.

91. Anzilotti and Costello attempted to physically intimidate Plaintiff by refusing to allow Plaintiff to leave the small room.

92. Costello then snickered and stated, "You think the Appellate Division is going to lower your bail again?" Anzilotti wildly and violently flailed his hands and exclaimed, "This guy is 20-years old and he has nothing to look forward to but prison!" Anzilotti's remarks were preceded and followed by maniacal laughs.

93. Both Anzilotti and Costello then made disparaging remarks about Judge Ellen Koblitz. They again relentlessly continued to interrogate Plaintiff, who persistently asked to speak to his attorney and refused to answer questions posed by Anzilotti and Costello.

94. Anzilotti additionally exclaimed to Plaintiff, "Your lawyer isn't coming here!", directed racial epithets towards Plaintiff, and threatened to injure Plaintiff. The interrogation lasted for approximately three hours.

95. Later that day, Molinelli maliciously and falsely issued statements to reporters with regard to the newly fabricated charges against Plaintiff. Molinelli falsely claimed that Plaintiff had conspired to obtain a 9mm handgun, conspired to murder Delaney, and that Plaintiff had conspired to commit arson attacks against local federal buildings—all after posting bail. Molinelli also falsely claimed to have a "reliable" and credible source—namely John Doe Eight—for his allegations.

96. Molinelli's flagrantly false statements again damaged Plaintiff's reputation and directed public contempt and ridicule towards Plaintiff and subjected Plaintiff to mental distress.

97. On June 30th, 2012, The Record, Herald News, and NorthJersey.com published statements made by Plaintiff's attorney, Chris DiLorenzo, indicating that Plaintiff had been illegally interrogated.

98. Plaintiff has since been held in solitary confinement for over twenty-one hours a day at the Bergen County Jail in Hackensack, New Jersey.

STATEMENT OF CLAIMS

COUNT I: WARRANTLESS SEARCH AND SEIZURE (42 U.S.C. § 1983)

99. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

100. Defendants Anzilotti, Guzman, Dempsey, Almers, Dimino, and John Does 5-7 on February 9th, 2012, acting under the direction of defendants Molinelli and Cucciniello, and acting under the color of state law, knowingly, intentionally, and maliciously deprived Plaintiff of his rights secured by the Fourth and 14th Amendments to the United States Constitution by unlawfully entering and searching Plaintiff's New Brunswick, NJ apartment without a warrant and without probable cause and by unlawfully seizing Plaintiff's property, specifically computers, laptops, and other electronic devices, without a warrant and without probable cause.

101. The illegal search of Plaintiff's residence and seizure of Plaintiff's property caused Plaintiff economic injuries and left Plaintiff in fear for his safety.

102. Defendants Molinelli, Cucciniello, Anzilotti, Guzman, Dempsey, Almers, Dimino, and John Does 5-7 are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also

liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

**COUNT II: WARRANTLESS SEIZURE OF FIRST AMENDMENT PROTECTED
PROPERTY (42 U.S.C. § 1983)**

103. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

104. Defendants Anzilotti, Guzman, Dempsey, Almers, Dimino, and John Does 5-7 on February 9th, 2012, acting under the direction of defendants Molinelli and Cucciniello, and acting under the color of state law, knowingly, intentionally, and maliciously deprived Plaintiff of his rights secured by the First and 14th Amendments to the United States Constitution by unlawfully seizing Plaintiff's property in the form of journalistic work products, documentary data, and other related property without a warrant and without probable cause.

105. The seizure of Plaintiff's property chilled Plaintiff's right to free speech secured by the First and 14th Amendments to the United States Constitution.

106. Defendants Molinelli, Cucciniello, Anzilotti, Guzman, Dempsey, Almers, Dimino, and John Does 5-7 are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT III: VIOLATION OF PRIVACY PROTECTION ACT (42 U.S.C. § 2000aa)

107. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

108. Defendants Anzilotti, Guzman, Dempsey, Almers, Dimino, and John Does 5-7 on February 9th, 2012, acting under the direction of defendants Molinelli and Cucciniello, and acting under the color of state law, knowingly, intentionally, and maliciously seized Plaintiff's journalistic work product materials, drafts of articles, documentary data, data obtained from confidential sources, and files which contained Plaintiff's mental impressions, conclusions, and theories even as they knew that Plaintiff was a person reasonably believed to have a purpose to disseminate to the public internet articles and data through mediums including his website, other websites, newspapers, and other publications and other similar forms of public communication.

109. Defendants Molinelli, Cucciniello, Anzilotti, Guzman, Dempsey, Almers, Dimino, and John Does 5-7 are therefore liable for damages under 42 U.S.C. § 2000aa-6 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT IV: ILLEGAL SEARCH AND SEIZURE (42 U.S.C. § 1983)

110. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

111. Defendants Anzilotti, Costello, Guzman, Almers, John Does 5-7 on March 2nd, 2012, acting under the direction of defendants Molinelli, Cucciniello, Delaney and acting under the color of state law, knowingly, intentionally, and maliciously deprived Plaintiff of his rights secured by the Fourth and 14th Amendments to the United States Constitution by entering and searching Plaintiff's New Brunswick, New Jersey apartment on the basis of a March 1st, 2012 issued search warrant premised on materially false statements made by Costello in the warrant's supporting affidavit.

112. The aforementioned defendants then proceeded to seizing, pursuant to the same defective warrant, Plaintiff's property—specifically electronic storage devices, laptop computers, and other tangible property thereby depriving Plaintiff of his rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

113. Defendants Anzilotti, Costello, Guzman, Almers, John Does 5-7, Molinelli, Cucciniello, and Delaney are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT V: ILLEGAL ARREST (42 U.S.C. § 1983)

114. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

115. Defendants Anzilotti, Costello, Guzman, Almers, John Does 5-7 on March 2nd, 2012, acting under the direction of defendants Molinelli, Cucciniello, Delaney and acting under the color of state law, knowingly, intentionally, and maliciously deprived Plaintiff of his rights secured by the Fourth and 14th Amendments to the United States Constitution by seizing and arresting Plaintiff at his New Brunswick, New Jersey apartment on the basis of several March 1st, 2012 issued arrest warrants premised on materially false statements made by Costello in the warrant's supporting affidavit.

116. Anzilotti, Molinelli, Cucciniello, and Delaney had knowledge of the materially false statements in the affidavit and aided in the inclusion of materially false statements in the affidavit.

117. Defendants Anzilotti, Costello, Guzman, Almers, John Does 5-7, Molinelli, Cucciniello, and Delaney are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT VI: EXCESSIVE BAIL (42 U.S.C. § 1983)

118. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

119. Defendants Molinelli, Cucciniello, Anzilotti, and Costello, while acting under the color of state law, directly, proximately, knowingly, intentionally, and maliciously deprived Plaintiff of his rights secured by the 8th and Fourteenth Amendments to the United States Constitution as they caused Plaintiff to be imprisoned in lieu of an excessively high bail of \$2.5 million, which was in fact determined by an appeals court to be excessive and which was maintained at that amount during and between the period of March 2nd, 2012 and May 21st, 2012.

120. Defendants Molinelli, Cucciniello, Anzilotti, and Costello are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT VII: ILLEGAL ARREST (42 U.S.C. § 1983)

121. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

122. Defendants Anzilotti and Costello on June 27th, 2012, acting under the direction of defendants Molinelli, Cucciniello, Delaney and acting under the color of state law, knowingly, intentionally, and maliciously deprived Plaintiff of his rights secured by the Fourth and 14th Amendments to the United States Constitution by seizing and arresting Plaintiff at the Paramus, New Jersey headquarters of the Bergen County Prosecutor's Office on the basis of several arrest warrants premised on materially false statements made by Costello and John Doe Eight in the warrant's supporting affidavit.

123. Anzilotti, Molinelli, Cucciniello, and Delaney had knowledge of the materially false statements in the affidavit and aided in the inclusion of materially false statements in the affidavit.

124. Defendants Anzilotti, Costello, Molinelli, Cucciniello, Delaney, and John Doe Eight are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT VIII: EXCESSIVE BAIL (42 U.S.C. § 1983)

125. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

126. Defendants Molinelli, Cucciniello, Delaney, Anzilotti, and Costello, while acting under the color of state law, deprived Plaintiff of his rights secured by the 8th and Fourteenth Amendments to the United States Constitution as they have directly, proximately, knowingly, intentionally, and maliciously caused, through their misrepresentations and lies to a judicial

officer, Plaintiff to be imprisoned in lieu of an excessively high bail of \$4 million since June 27th, 2012.

127. Defendants Molinelli, Cucciniello, Anzilotti, and Costello are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT IX: ILLEGAL INTERROGATION (42 U.S.C. § 1983)

128. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

129. During a harsh interrogation, on June 27th, 2012, at approximately 2PM in Paramus, New Jersey, defendants Anzilotti and Costello, acting under the color of state law and under the orders of Molinelli, Cucciniello, and Delaney, intentionally, knowingly, and maliciously deprived Plaintiff of his rights guaranteed by the 5th and Fourteenth Amendments to the United States Constitution as they endeavored to and attempted to coerce, threaten, and compel Plaintiff to become a witness against himself.

130. Defendants Anzilotti and Costello, during the same harsh interrogation, under the color of state law, and under orders from Molinelli, Cucciniello, and Delaney, intentionally, knowingly, and maliciously deprived Plaintiff of his right, guaranteed by the 6th and Fourteenth Amendments, to have the assistance of counsel for his defense by continuously refusing Plaintiff's multiple requests to speak with his attorney and by continuously interrogating Plaintiff even after Plaintiff requested counsel.

131. Defendants Molinelli, Cucciniello, Anzilotti, Costello, and Delaney are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT X: FIRST AMENDMENT RETALIATION (42 U.S.C. § 1983)

132. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

133. Defendants Molinelli, Cucciniello, Delaney, Anzilotti, and Costello, acting under the color of state law, intentionally, knowingly, and maliciously retaliated against Plaintiff on June 27th, 2012, for Plaintiff's successful appeals of judicial denials of bail reductions—exercises of a 1st and Fourteenth Amendment protected right—by fabricating serious charges against Plaintiff, arresting and interrogating Plaintiff, and raising Plaintiff's bail to an excessive amount, and intimidating and threatening Plaintiff thereby depriving Plaintiff of his rights secured by the 4th, 5th, 6th, and Fourteenth Amendments to the United States Constitution.

134. Defendants Molinelli, Cucciniello, Anzilotti, Costello, and Delaney are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1983 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT XI: CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS (42 U.S.C. § 1985(3))

135. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

136. Defendants Molinelli, Cucciniello, Delaney, Anzilotti, and Costello conspired to interfere with and deprive Plaintiff of his civil rights guaranteed by the 1st, 4th, 5th, 6th, 8th, and Fourteenth Amendments to the United States Constitution.

137. The aforementioned actors conspired to deprive Plaintiff of his civil rights through intimidation, threats, and direct force.

138. Defendants Molinelli, Cucciniello, Delaney, Anzilotti, and Costello are therefore liable for damages under 42 U.S.C. § 1985(3) and 42 U.S.C. § 1986. The Bergen County Prosecutor's Office and the County of Bergen are also liable for damages under 42 U.S.C. § 1985(3) and 42 U.S.C. § 1986 as the consequence of the unconstitutional and illegal actions of and policy set by Molinelli.

COUNT XII: DEPRIVATION OF DUE PROCESS (42 U.S.C. § 1983)

139. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

140. During and between a period of March 2nd, 2012 to May 21st, 2012, Plaintiff was imprisoned and deprived of his liberty in want of an excessively high bail, which was the direct and proximate result of prejudicial publicity intentionally and maliciously generated by defendants Molinelli and Delaney with the purpose of depriving Plaintiff of his 5th and Fourteenth Amendment protected right to due process as set forth in paragraphs 32 through 39 and 67 through 69.

141. Molinelli made false, extrajudicial statements to several local, national, and international media outlets during and between March 2nd, 2012 and March 22nd, 2012 which corrupted the judgment of Roma who refused to reduce Plaintiff's excessively high bail.

142. Delaney made false, extrajudicial statements to Markos on March 21st, 2012 which corrupted the judgment of Roma who refused to reduce Plaintiff's excessively high bail.

143. Molinelli and Delaney are therefore liable for damages under 42 U.S.C. § 1983 in their individual and official capacities.

**COUNT XIII: VIOLATION OF RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT (18 U.S.C. § 1964(c))**

144. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

145. Beginning on February 9th, 2012, Plaintiff was the target of a racketeering enterprise affecting interstate commerce composed of Molinelli, Cucciniello, Delaney, Anzilotti, Costello, Guzman, Dempsey, Almers, Dimino, John Does 5-7, and John Doe Eight that intentionally and maliciously engaged in a pattern of unlawful racketeering activity, as defined by 18 U.S.C. § 1961(1), which caused Plaintiff substantial economic and property related damages, emotional distress, and the deprivation of liberty as follows,

- a. On February 9th, 2012, Guzman, Dempsey, Almers, Dimino, and John Does 5-7, acting under the orders of Molinelli and Cucciniello travelled along Interstate 80 with the purpose of conducting a home invasion of Plaintiff's New Brunswick, New Jersey residence and committed the crimes of burglary and theft once there.
- b. On March 2nd, 2012, Anzilotti, Costello, Guzman, Almers, and John Does 5-7, acting under the direction of Molinelli, Cucciniello, and Delaney, travelled along

the interstate to conduct another unlawful home invasion and burglary of Plaintiff's New Brunswick, New Jersey residence. All aforementioned actors committed the crime of robbery as they unlawfully seized, with force, Plaintiff's property. All aforementioned enterprise actors committed the crime of kidnapping as they criminally restrained and transported Plaintiff to Paramus, New Jersey against his will.

- c. From a period of March 2nd, 2012 to May 21st, 2012, Molinelli, Cucciniello, Anzilotti, Costello, and Delaney directly and proximately caused Plaintiff to be held captive in want of a \$2.5 million cash ransom.
- d. On June 27th, 2012, enterprise actors Molinelli, Cucciniello, Delaney, Anzilotti, Costello, and John Doe Eight caused a second unlawful kidnapping of Plaintiff from Hackensack, New Jersey to Paramus, New Jersey and held Plaintiff captive in want of a \$4 million cash ransom from that point forward.
- e. Anzilotti made terroristic threats directed towards Plaintiff on June 27th, 2012 and Anzilotti and Costello both attempted to intimidate Plaintiff to prevent and obstruct Plaintiff from exercising his right to appeal trial court decisions.
- f. All of the aforementioned actors engaged in official misconduct, a crime punishable under New Jersey law, by using their official authority to deprive Plaintiff of his constitutional rights.

146. Defendants Molinelli, Cucciniello, Delaney, Anzilotti, Costello, Guzman, Dempsey, Almers, Dimino, John Does 5-7, and John Doe Eight are therefore liable for damages under 18 U.S.C. § 1964(c) in their official and individual capacities.

COUNT XIV: DEFAMATION

147. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

148. Defendants Markos, Borg, and NJMG knowingly, intentionally, and maliciously published false, defamatory statements between a period of March 2nd, 2012 and June 30th, 2012, insinuating that Plaintiff had mastermind or had been the underlying cause of a series of arson attempts against synagogues in Bergen County, New Jersey.

149. Their defamatory and libelous statements and publications were distributed and read throughout the state of New Jersey as if they were the objective truth, directly and proximately damaged Plaintiff's reputation and were made with the purpose of directing contempt towards Plaintiff, and constitute defamation/libel per se.

150. Defendants Markos, Borg, and NJMG are therefore liable to Plaintiff for damages arising from their defamatory statements and publications.

COUNT XV: FALSE LIGHT INVASION OF PRIVACY

151. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

152. Defendants Markos, Borg, and NJMG knowingly, intentionally, and maliciously published false, defamatory statements between a period of March 2nd, 2012 and June 30th, 2012, insinuating that Plaintiff had mastermind or had been the underlying cause of a series of arson attempts against synagogues in Bergen County, New Jersey.

153. Markos, Borg, and NJMG had knowledge that their statements were false and knew that their statements would result in Plaintiff being placed in a false light.

154. Markos, Borg, and NJMG published their false statements with reckless disregard for the truth.

155. Plaintiff was in fact placed in a false light that would be highly offensive to a reasonable person as the direct and proximate result of the aforementioned publications.

156. Defendants Markos, Borg, and NJMG are therefore liable to Plaintiff for damages arising from their intentional and malicious placement of Plaintiff in a false light.

COUNT XVI: DEFAMATION

157. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

158. Defendants Markos, Borg, and NJMG knowingly, intentionally, and maliciously published false, defamatory statements on March 5th, 2012 and March 6th, 2012 in their publications, The Record, Herald News, and NorthJersey.com, falsely stating, as set forth in paragraphs 48 to 57, that Plaintiff had criminally assaulted a Jewish person.

159. Their defamatory and libelous statements and publications were distributed and read throughout the state of New Jersey as if they were the objective truth, directly and proximately damaged Plaintiff's reputation and were made with the purpose of directing contempt towards Plaintiff, and constitute defamation/libel per se.

160. Defendants Markos, Borg, and NJMG are therefore liable to Plaintiff for damages arising from their defamatory statements and publications.

COUNT XVII: FALSE LIGHT INVASION OF PRIVACY

161. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

162. Defendants Markos, Borg, and NJMG knowingly, intentionally, and maliciously published false, defamatory statements on March 5th, 2012 and March 6th, 2012 in their

publications, The Record, Herald News, and NorthJersey.com, falsely stating, as set forth in paragraphs 48 to 57, that Plaintiff had criminally assaulted a Jewish person.

163. Markos, Borg, and NJMG had knowledge that their statements were false and knew that their statements would result in Plaintiff being placed in a false light.

164. Markos, Borg, and NJMG published their false statements with reckless disregard for the truth.

165. Plaintiff was in fact placed in a false light that would be highly offensive to a reasonable person as the direct and proximate result of the aforementioned publications.

166. Defendants Markos, Borg, and NJMG are therefore liable to Plaintiff for damages arising from their intentional and malicious placement of Plaintiff in a false light.

COUNT XVIII: DEFAMATION

167. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

168. Defendants Markos, Borg, and NJMG recklessly and maliciously published false, defamatory statements on March 21st, 2012 and March 22nd, 2012 in their publications, The Record and NorthJersey.com, falsely stating, as set forth in paragraphs 67 to 69, that Plaintiff had criminal plans to attack an elementary school.

169. Their defamatory and libelous statements and publications were distributed and read throughout the state of New Jersey as if they were the objective truth, directly and proximately damaged Plaintiff's reputation and were made with the purpose of directing contempt towards Plaintiff, and constitute defamation/libel per se.

170. Defendants Markos, Borg, and NJMG are therefore liable to Plaintiff for damages arising from their defamatory statements and publications.

COUNT XIX: FALSE LIGHT INVASION OF PRIVACY

171. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

172. Defendants Markos, Borg, and NJMG recklessly and maliciously published false, defamatory statements on March 21st, 2012 and March 22nd, 2012 in their publications, The Record and NorthJersey.com, falsely stating, as set forth in paragraphs 67 to 69, that Plaintiff had attack plans for an elementary school.

173. Markos, Borg, and NJMG published their false statements with reckless disregard for the truth and knew that their publications would result in Plaintiff being placed in a false light.

174. Plaintiff was in fact placed in a false light that would be highly offensive to a reasonable person as the direct and proximate result of the aforementioned publications.

175. Defendants Markos, Borg, and NJMG are therefore liable to Plaintiff for damages arising from their intentional and malicious placement of Plaintiff in a false light.

COUNT XX: INVASION OF PRIVACY

176. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

177. Defendants Markos, Borg, and NJMG, on March 5th, 2012 and March 6th, 2012, invaded Plaintiff's right to privacy by intentionally, knowingly, and maliciously disclosing to the public through their publications the location by street and city of Plaintiff's place of residence.

178. Defendants Markos, Borg, and NJMG are therefore liable for damages as the result of their invasion of Plaintiff's privacy.

COUNT XXI: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

179. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

180. Markos, Borg, and NJMG knowingly engaged in a pattern of outrageous and extreme conduct with the purpose of causing Plaintiff to suffer from emotional distress.

181. Plaintiff did in fact suffer from emotional distress as the direct and proximate result of the outrageous and extreme conduct of Markos, Borg, and NJMG as is referenced above.

182. Markos, Borg, and NJMG are therefore liable to Plaintiff for damages arising out of their intentional infliction of emotional distress upon him.

COUNT XXII: GROSS NEGLIGENCE

183. Plaintiff again alleges and incorporates by reference all previous paragraphs set forth above in this complaint.

184. Markos, Borg, and NJMG engaged in repeated acts of reckless and grossly negligent conduct as set forth above which directly and proximately caused Plaintiff economic losses and directly and proximately damaged Plaintiff's reputation.

185. Markos, Borg, and NJMG are therefore liable to Plaintiff for damages arising out of their grossly negligent actions.

REQUEST FOR RELIEF

On the basis of the aforementioned violations by the defendants of Plaintiff's rights guaranteed by the United States Constitution, federal statutory law, and New Jersey law, Plaintiff demands judgment as follows:

1. Injunctive relief and declaratory against all defendants in this matter in their individual and official capacities and their capacities as local government entities and corporate persons.
2. The award to Plaintiff of compensatory damages in an amount to be determined according to proof provided by Plaintiff against all defendants in their individual and official capacities and their capacities as local government entities and corporate persons.
3. The award to Plaintiff of punitive damages in an amount a jury may determine is sufficient to punish defendants against all defendants in their in their individual and official capacities and their capacities as local government entities and corporate persons.
4. The award to Plaintiff of costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other federal and state laws.
5. Grant such other and further relief as the Court may deem just and proper including damages under 18 U.S.C. § 1964(c).

Signed this 13th day of August 2013,



Aakash Dalal
160 South River Street
Hackensack, NJ 07601
Plaintiff, *pro se*

CLOSED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AAKASH DALAL,

Plaintiff,

v.

NORTH JERSEY MEDIA GROUP, INC., et
al.,

Defendants.

Civil Action No. 13-1257 (WJM)

Civil Action No. 14-1333 (WJM)

ORDER

For the reasons expressed in the Opinion filed herewith,

IT IS on this 13th day of June, 2014,

ORDERED that Plaintiff's motion (ECF No. 34 in Civil No. 13-1257 and ECF No. 3 in Civil No. 14-1333) to file the Complaint docketed in Civil Number 14-1333 (WJM) as a Second Amended Complaint in Civil Number 13-1257 (WJM) is GRANTED; and it is further

ORDERED that the Clerk shall close Civil Number 14-1333 (WJM) and shall refund to Plaintiff the filing fee of \$400; and it is further

ORDERED that this Court construes Defendants' motions to dismiss as being filed against the Complaint, as amended; and it is further

ORDERED that the motion (ECF No. 23) of Defendant Bergen County to dismiss the claims under 42 U.S.C. § 1983 asserted against Bergen County in the Complaint, as amended, is GRANTED to the extent that said claims are DISMISSED WITHOUT PREJUDICE as against BERGEN COUNTY; and it is further

ORDERED that the motion (ECF Nos. 20, 22) to dismiss the Complaint, as amended, as against certain Defendants on abstention grounds is DENIED; and it is further

ORDERED that Defendants' alternative motion (ECF Nos. 20, 22) to stay Civil Number 13-1257 is GRANTED, and this case is hereby stayed pending the final outcome, including direct appeal, if any, of the state criminal proceedings pending against Plaintiff; and it is further

ORDERED that the stay is conditioned upon all parties notifying this Court in writing within 30 days of the final outcome of the criminal proceedings against Plaintiff; and it is further

ORDERED that this Court declines to rule on Plaintiff's motions (ECF Nos. 21, 31) for the imposition of sanctions and to disqualify the Attorney General of the State of New Jersey as counsel for Defendants until the matter recommences, and said motions are hereby administratively terminated for statistical purposes; and it is finally

ORDERED that the Clerk shall serve this Order and the accompanying Opinion upon the parties, and shall administratively terminate Civil Number 13-1257 for statistical purposes during the term of the stay.

s/William J. Martini

WILLIAM J. MARTINI, U.S.D.J.

NOT FOR PUBLICATION

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

AAKASH DALAL,

Plaintiff,

v.

NORTH JERSEY MEDIA GROUP, INC., et
al.,

Defendants.

Civil Action No. 13-1257 (WJM)

Civil Action No. 14-1333 (WJM)

OPINION

APPEARANCES:

AAKASH DALAL
Bergen County Jail
160 S. River Street
Hackensack, NJ 07601
Plaintiff *Pro Se*

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Attorneys for Defendants Bergen County Prosecutor's Office, John Molinelli, Martin
Delaney, Robert Anzilotti, James Costello, Michael Guzman, Gerald Almers, Stephen
Cuccinieli, Andre Dimino

MARTINI, District Judge:

Aakash Dalal, a New Jersey pretrial detainee who is confined at the Bergen County Jail in New Jersey, filed two paid Complaints asserting various claims under 42 U.S.C. § 1983, arising from his arrest and state criminal prosecution. Presently before this Court are various motions filed by the parties, including certain Defendants' motions to dismiss, pursuant to Rule 12(b)(6), or to stay the case, Dalal's motion to either consolidate his cases, or to file the complaint filed in Civil Number 14-1333 (WJM) as Plaintiff's second amended complaint in Civil Number 13-1257 (WJM), Dalal's motion to disqualify the attorneys representing the government defendants, and Dalal's motion for the imposition of sanctions. For the reasons expressed in this Opinion, and pursuant to Federal Rule of Civil Procedure 78, this Court will grant Dalal's motion to file the Complaint docketed in Civil Number 14-1333 (WJM) as a Second Amended Complaint in Civil Number 13-1257 (WJM), dismiss all § 1983 claims in the Second Amended Complaint against Bergen County, grant Defendants' motions to stay Civil Number 13-1257 (WJM) pending the entry of a final judgment in the related state criminal prosecutions against Dalal, and decline to rule on Dalal's remaining motions (motion for sanctions and motion to disqualify the New Jersey Attorney General) until the case recommences.

I. BACKGROUND

On about February 26, 2013, Aakash Dalal handed to jail officials for mailing to the Clerk a paid Complaint asserting claims under 42 U.S.C. § 1983, as well as claims arising under New Jersey law, against various defendants, including John Molinelli, the Bergen County Prosecutor; Bergen County; the Bergen County Prosecutor's Office; Assistant Bergen County Prosecutor Martin Delaney; various detectives and police officers; North Jersey Media Group, Inc.; and

reporter Kibret Markos. On about August 13, 2013, Dalal filed a First Amended Complaint, which set forth additional facts. Dalal's claims arise from his alleged operation of a website concerning government transparency; the warrantless entry, search, and seizure of numerous items from Dalal's New Brunswick apartment on February 9, 2012, which Dalal contends was conducted on the directive of Bergen County Prosecutor Molinelli, without probable cause, without consent, and in the absence of exigent circumstances; Defendants' alleged fabrication of evidence to obtain a search warrant and an arrest warrant; the issuance of the search and seizure warrant on February 24, 2012; the issuance on March 1, 2012, of another search warrant, as well as a warrant for Dalal's arrest on charges of aggravated arson, conspiracy to commit aggravated arson, bias intimidation, and criminal mischief; Dalal's arrest on March 2, 2012, and another search of his apartment on that date; a press conference on March 2, 2012, at which Molinelli is alleged to have made "deliberate falsifications" and "outright lies made with the purpose of generating publicity which would serve to both inflame residents against Plaintiff and garner personal and political attention for Molinelli," (ECF No. 15 at 7-8);¹ the writing and publication in various newspapers and websites, operated by North Jersey Media, of articles that "baselessly and falsely stated that Plaintiff was the instigator and the 'mastermind' of the January 2012 arson attempts," even though law enforcement officials did not use the word "mastermind," (ECF No. 15

¹ For example, Dalal claims that Molinelli falsely stated that Dalal had attempted to commit arson at various synagogues in Bergen County, even though Molinelli knew that Dalal was not in New Jersey at the time of the alleged arson attempts; falsely accused Dalal of being the teacher, instigator, and planner of these alleged arson attempts; presented alleged copies of instant messages, which Molinelli claimed were written by Dalal, but which "cannot be independently located and are not in the possession of any remote service provider or cellular service provider." (ECF No. 15 at 8.)

at 9); the allegedly reckless publication of the location of the Dalal family residence, which resulted in threats to the members of Dalal's family and placed them in danger; the publication of false statements, reportedly made by former Lodi High School students who had played with Dalal on the tennis team, accusing him of assaulting a Jewish student, where the article's authors knew the statements were false and they reported the false allegations for the purpose of inciting threats toward Dalal and damaging his reputation.

Dalal further claimed in the First Amended Complaint that, in order to obtain a high bail, Molinelli and Assistant Prosecutor Delaney falsely told reporters that Dalal possessed attack plans in the form of blueprints of an elementary school in Camden County, New Jersey. Dalal asserts that North Jersey Media published these false allegations, even though Defendants knew that the "blueprints in question belonged to Plaintiff's neighbor, Tekton Construction – a construction company contracted by the Camden County school," *id.* at 14; that the Appellate Division twice reversed orders denying Dalal's application for a reduction in bail and twice determined that the bail was excessive; that Molinelli and other defendants allegedly generated the issuance of statements by an alleged jail informant falsely accusing Dalal of planning to murder Assistant Prosecutor Delaney and conspiring to obtain a gun for that purpose; that based on false affidavits signed by defendant Costello, on June 27, 2012, certain Defendants obtained another arrest warrant charging Dalal with conspiracy to commit murder, terroristic threats, and conspiracy to possess a weapon for unlawful purposes; that on June 29, 2012, on orders issued by Molinelli, Delaney and Cucciniello, defendants Anzilotti and Costello interrogated Dalal, despite his request for counsel, attempted to forcibly coerce him into waiving his *Miranda* rights and giving a statement, refused to cease the interrogation or to provide Dalal access to an attorney, even though

Dalal repeatedly requested an attorney; that on June 29, 2012, Molinelli “maliciously and falsely issued statements to reporters with regard to the newly fabricated charges against Plaintiff[, in which] Molinelli falsely claimed that Plaintiff had conspired to obtain a 9 mm handgun, conspired to murder Delaney, and that Plaintiff had conspired to commit arson attacks against local federal buildings – all after posting bail,” *id.* at 18.

On about February 25, 2014, Dalal filed a new paid Complaint, which the Clerk docketed on March 3, 2014, in Civil Number 14-1333 (WJM). In this new Complaint, Dalal repeats the allegations and claims set forth in the First Amended Complaint in Civil No. 13-1257 (WJM), and adds new defendants and related claims. Like the First Amended Complaint, the new Complaint asserts numerous federal claims, including claims for searches, seizures, and Dalal’s arrest, in violation of the Fourth Amendment; claims for illegal interrogation and intimidation of Dalal, contrary to the Fifth Amendment; a retaliation claim asserting that defendants took various adverse actions, such as a coercive interrogation, the fabrication of evidence and the filing of new false charges, in retaliation for Dalal’s prevailing twice before the Appellate Division on; a claim for conspiracy to violate Dalal’s civil rights; a claim for excessive bail; a claim for violation of privacy under 42 U.S.C. § 2000aa; a claim asserting the deprivation of due process through false prejudicial publicity and harm to reputation; civil RICO claims under 18 U.S.C. § 1964(c); claims for violation of privacy under 42 U.S.C. § 1983; a claim for violation of Stored Communications Act, 18 U.S.C. § 2701; and a claim asserting a conspiracy to intimidate and threaten grand jurors to obtain an indictment on false charges. Dalal also asserts claims arising under New Jersey law, for defamation, false light invasion of privacy, intentional infliction of emotional distress, gross negligence, invasion of privacy, and violation of New Jersey Wiretapping and Electronic

Surveillance Control Act. Dalal seeks the same relief in the First Amended Complaint and the new Complaint: unspecified injunctive and declaratory relief; compensatory and punitive damages; costs, expenses and attorney fees; and such other relief as the Court may deem just, including damages under 18 U.S.C. § 1964(c).

II. DISCUSSION

A. Dalal's Motion to File a Second Amended Complaint

Dalal filed a motion to consolidate his two civil rights cases and to allow him to file a consolidated amended complaint or, alternatively, for leave to file the new Complaint that was docketed in Civil No. 14-1333 as a second amended complaint in the first case, Civil No. 13-1257. (ECF No. 34 in Civil No. 13-1257, and ECF No. 3 in Civil No. 14-1333.) In his supporting memorandum, Dalal explains that in August 2013, he filed a First Amended Complaint as of right in the initial action, as permitted by Fed. R. Civ. P. 15(a)(1)(B), and in March 2014 he filed the Complaint in Civil Number 14-1333, in order to add numerous additional and supplemental facts that were unknown at the time of the filing of the First Amended Complaint, and to add new claims and new defendants. Dalal asks this Court to either consolidate the two actions as related for the purpose of administrative efficiency, or to grant Dalal leave to file the new Complaint as a second amended complaint in the first case and to administratively terminate the new case.

The Media Defendants filed a memorandum arguing that the Court should deny Dalal's motion because the claims against the Media Defendants raised in the new Complaint, which, like the claims in the First Amended Complaint, are based on news articles written by Kibret Markos and Monsy Alvarado from March 2, 2012, through June 30, 2012, are barred by the one-year statute of limitations under New Jersey law for defamation, false light invasion of privacy, and

disclosure of private facts invasion of privacy, which expired at the latest on June 30, 2013. Bergen County also filed a brief opposing Dalal's motion. (ECF No. 36.) Bergen County argues that this Court should not consolidate the cases or allow Dalal to file the new Complaint as a second amended complaint in Civil No. 13-1257 because the new Complaint, like the First Amended Complaint, does not assert a claim under 42 U.S.C. § 1983 against Bergen County and, even if a claim ^{were} properly asserted against the County, this Court should abstain or stay the action pending the outcome of the criminal proceeding. The individual government Defendants filed a letter opposing Dalal's motion because his new Complaint in Civil No. 14-1333 is subject to dismissal under *Younger* and, alternatively, "these matters should be stayed pending the outcome of Plaintiff's state criminal prosecutions." (ECF No. 37 at 3.)

Federal Rule of Civil Procedure 15(a)(1) provides that a party may amend his pleading once as a matter of course within 21 days after service of a responsive pleading. *See* Fed. R. Civ. P. 15(a)(1). As Dalal filed the First Amended Complaint on August 13, 2013, he may not amend his pleading again as of right. Rule 15(a)(2) provides that when amendment as a matter of course is not allowed, "a party may amend its pleading only with the opposing party's written consent or the court's leave," and that the court "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave to amend should be freely given in the absence of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment [or] futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Yoder v. Wells Fargo Bank, N.A.*, ___ F.App'x ___, 2014 WL 1856724 *3 (3d Cir. May 9, 2014); *Estate of Olivia ex rel. McHugh v. New Jersey*, 604 F.3d 788, 803 (3d Cir. 2010); *Arthur v. Maersk, Inc.*, 434 F.3d 196, 204 (3d Cir. 2006).

The Media Defendants correctly maintain that amendment is futile where the claims in the amended complaint are barred by the statute of limitations. *See Cowell v. Palmer Twp.*, 263 F.3d 286, 296 (3d Cir. 2001). However, the Media Defendants neglect to mention Rule 15(c), which provides that an amendment to a pleading relates back to the date of the original pleading when “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading.” Fed. R. Civ. P. 15(c)(1)(B). In this case, it appears as if Dalal handed his initial Complaint to jail officials for mailing to the Clerk on February 26, 2013. (ECF No. 1-1 at 1.) Under the prisoner mailbox rule, *see Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 84 n.2 (2013), Dalal filed the initial Complaint on that date. The initial Complaint, like the new Complaint, asserted several claims against the North Jersey Media Group, Inc., and reporter Kibret Markos, arising from articles published by the North Jersey Media Group from March 2, 2012, through June 30, 2012. (ECF No. 1 at 8-17.) The claims asserted in the initial Complaint against the Media Defendants were timely filed within one year of the date of the first challenged article on March 2, 2012. Because the new Complaint asserts claims that arose out of the conduct, transaction, or occurrences set out in Dalal’s initial Complaint, the claims in the new Complaint relate back to February 26, 2013, under Rule 15(c)(1)(B). Accordingly, the claims in the new Complaint against the Media Defendants are timely under Rule 15(c)(1)(B).

The Media Defendants also argue that the claims against reporter Monsy Alvarado, who is named for the first time as a defendant in the new Complaint, are time barred. Again, the Media Defendants neglect to mention Rule 15(c)(1)(C), which provides that, where the amendment changes the party against whom a claim is asserted, an amendment relates back to the date of the

original pleading “if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment: (i) received such notice of the action that it will not be prejudiced in defending on the merits; and (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.” Fed. R. Civ. P. 15(c)(1)(C). This Court has already found that Rule 15(c)(1)(B) is satisfied. Since Monsy Alvarado does not even argue that he was not aware of Dalal’s initial Complaint within 120 days of February 26, 2013, that he will be prejudiced in defending on the merits, or that he did not know that Dalal would have named him as defendant in the initial Complaint, but for a mistake concerning his proper identity, this Court cannot find at this juncture that the claims against Alvarado do not relate back under Rule 15(c)(1)(C) as a matter of law.

This Court sees no reason for Dalal to maintain two separate actions where the second action can be properly brought as a second amended complaint in the first action. Nothing suggests that the filing of Dalal’s motion to file a second amended complaint was unduly delayed, that it was motivated by bad faith, that it would result in prejudice to defendants, or that the action has no legal merit. This Court will grant Dalal’s motion to file the Complaint docketed as ECF No. 1 in Civil Number 14-1333 as a Second Amended Complaint in Civil Number 13-1257, and direct the Clerk to administratively terminate Civil Number 14-1333 and refund to Dalal the \$400 filing fee he paid in the new action.

B. Dismissal of Section 1983 Claims against Bergen County and Prosecutor’s Office

The Second Amended Complaint, like Dalal’s prior pleadings, sues the Bergen County Prosecutor’s Office, as well as Bergen County, for violation of Dalal’s constitutional rights under

42 U.S.C. § 1983. Bergen County filed a motion to dismiss the § 1983 claims against the County on the merits, arguing that Dalal does not state a claim against the County because he does not allege facts showing that a particular policy or custom of Bergen County caused the violation of Dalal's constitutional rights. (ECF No. 23.) Relying on *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), Dalal argues that he asserts § 1983 claims against Bergen County and the Bergen County Prosecutor's Office because John Molinelli was acting as a policymaker for Bergen County and the Bergen County Prosecutor's Office when Molinelli allegedly violated Dalal's constitutional rights and directed other Defendants to violate Dalal's rights. (ECF No. 28.)

Dalal is correct that "[t]he Supreme Court's decision in *Pembaur* makes clear that an official with policymaking authority can create official policy, even by rendering a single decision." *McGreevy v. Stroup*, 413 F.3d 359, 367-68 (3d Cir. 2005).² "In order to ascertain if an official has final policy-making authority, and can thus bind the municipality by his conduct, a court must determine (1) whether, as a matter of state law, the official is responsible for making policy in the particular area of municipal business in question, and (2) whether the official's authority to make policy in that area is *final and unreviewable*." *Hill v. Borough of Kutztown*, 455 F.3d 225, 245 (3d Cir. 2006) (emphasis in original) (citations omitted).

² See also *Connick v. Thompson*, 131 S.Ct. 1350, 1359 (2011) ("Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law."); *Pembaur*, 475 U.S. at 480 ("If the decision to adopt that particular course of action is properly made by that government's authorized decisionmakers, it surely represents an act of official government 'policy' as that term is commonly understood. More importantly, where action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly.") (plurality opinion) (footnote omitted).

Under New Jersey law, the Bergen County Prosecutor's Office does not have a legal existence separate from the Bergen County Prosecutor himself. *See, e.g.,* N.J. Const., art. VII, § 2, ¶ 1 (establishing county prosecutor); N.J. STAT. ANN. § 2A:158-1 *et seq.* (setting forth appointment process, term, powers and duties of the county prosecutor). Under New Jersey law, “[w]hen county prosecutors engage in classic law enforcement and investigative functions, they act as officers of the State,” not the county. *Coleman v. Kaye*, 87 F.3d 1491, 1505 (3d Cir. 1996); *accord Woodyard v. County of Essex*, 514 F.App’x 177, 182 (3d Cir. 2013). Moreover, the State of New Jersey, the entity on whose behalf a county prosecutor acts in his criminal law enforcement capacity, is entitled to absolute immunity from damages under the Eleventh Amendment. *See Woodyard, supra; Coley v. County of Essex*, 462 F.App’x 157, 161 (3d Cir. 2011); *Beightler v. Office of Essex County Prosecutor*, 342 F.App’x 829 832 (3d Cir. 2009); *see also Hafer v. Melo*, 502 U.S. 21, 26 (1991); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

This Court will dismiss the Bergen County Prosecutor's Office as defendant under § 1983 because a prosecutor's office is not an entity subject to suit under § 1983 separate from the Prosecutor himself. To the extent that it is subject to suit as an entity, a county prosecutor's office is entitled to Eleventh Amendment immunity. This Court will also dismiss Bergen County as defendant under § 1983. When John Molinelli engaged in the investigative and other activities which Dalal alleges violated his constitutional rights, Molinelli was acting as a policymaker for the State of New Jersey, which is entitled to Eleventh Amendment immunity. Because Dalal does not otherwise assert facts showing that a policymaker for Bergen County violated his constitutional rights, his pleadings do not state a cognizable claim under § 1983 against Bergen County.

C. Motions to Dismiss under *Younger* Abstention

On behalf of the government official Defendants, the Attorney General of New Jersey filed a motion to dismiss Dalal's First Amended Complaint pursuant to *Younger v. Harris*, 401 U.S. 37 (1971), or to stay the case pending a final outcome in the state criminal prosecution against Dalal.³ (ECF Nos. 20, 22.) The Media Defendants thereafter filed a letter arguing that, if this Court dismisses the federal claims against the government defendants on abstention grounds or grants a stay of those claims, then this Court should either decline to exercise supplemental jurisdiction over the state claims against the Media Defendants or allow those claims to proceed at this time because the "concerns regarding the on-going investigation in the criminal proceedings involving Plaintiff in state court do not apply to or affect the Newspaper Defendants and Plaintiff's claims against these Defendants in any way." (ECF No. 27 at 3.)

Dalal filed a brief opposing the motions to dismiss filed by Defendants, and a supplementary letter brief. (ECF Nos. 28, 29.) Dalal argues that *Younger* abstention is not proper in this case because his pleadings do not seek "relief that, if granted, would restrain or directly interfere with state criminal proceedings" or otherwise intrude upon state enforcement of criminal laws. (ECF No. 28-1 at 7.) Dalal also argues that this Court should deny a stay. First, he argues that a stay is premature because the individual government Defendants have not filed an answer and nothing prevents them from, at a later point, seeking a narrower stay or a protective order. Second, Dalal argues that a stay pending the outcome of the criminal case is inappropriate because, "[w]ere the Court to stay this matter simply because criminal proceedings are ongoing, law enforcement officials in New Jersey would be given a clear incentive to prolong and delay

³ The next day, the Attorney General filed what appears to be the same motion. (ECF No. 22.)

investigations and prosecutions, in which civil rights violations may have occurred, in order to gain an unfair advantage.” *Id.* at 12. Finally, Dalal argues that, if this Court grants a stay of the federal claims against the government Defendants, this Court should allow the claims against the Media Defendants to proceed at this time in this Court, since litigation of the claims against the Media Defendants would not interfere with the litigation of the underlying criminal proceeding, “however interconnected” the claims against the Media Defendants may be with the federal claims. (ECF No. 29 at 2.)

Defendants argue that this Court should dismiss Dalal’s case on abstention grounds pursuant to the holding of *Younger v. Harris*, 401 U.S. 37 (1971). In that case, after Harris was indicted for violation of the California Criminal Syndicalism Act, he filed a complaint under § 1983 in the District Court seeking to enjoin Younger, the District Attorney of Los Angeles County, from prosecuting him in the California courts, and alleging that the prosecution inhibited him in the exercise of his First Amendment rights of free speech and press. *Id.* at 38. A three-judge District Court determined that it had jurisdiction to restrain the District Attorney from prosecuting Harris, found the California Criminal Syndicalism Act void for vagueness and overbreadth in violation of the First and Fourteenth Amendments, and restrained further prosecution of the pending state criminal case against Harris. The Supreme Court “concluded that the judgment of the District Court, enjoining appellant Younger from prosecuting under these California statutes, must be reversed as a violation of the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances,” and that declaratory relief is “also improper when a prosecution involving the challenged statute is pending in state court at the time the federal suit is initiated.” *Id.* at 41 and n.2. The *Younger* Court explained that, “[s]ince

the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *Id.* at 43. The Court noted that the source of the longstanding public policy against federal court interference with state criminal proceedings is "the basic doctrine of equity jurisprudence that courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Id.* at 43-44. The Court explained that the policy was reinforced by the notion of comity, "that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Id.* at 44, 45.

Last year, in vacating a dismissal based on *Younger*, the Supreme Court emphasized that federal courts "have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" *Sprint Communications, Inc., v. Jacobs*, 134 S.Ct. 584, 590 (2013) (quoting *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821)). The *Sprint* Court applied the "general rule" that "[t]he pendency of an action in [a] state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction," *id.* at 588 (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) and *McClellan v. Carland*, 217 U.S. 268, 282 (1910)), and observed that *Younger* is an exception to the general rule. The Court outlined the *Younger* exception as follows: "When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution." *Sprint Communications, Inc.*, 134 S.Ct. at 588. The Court rejected the notion that *Younger* abstention

was warranted simply where there is an ongoing state judicial proceeding which implicates important state interests and provides an adequate opportunity to raise federal challenges. *See also ACRA Turf Club, LLC v. Zanzuccki*, ____ F.3d ____, 2014 WL 1272859 *6 (3d Cir. Mar. 31, 2014) (reversing order dismissing complaint on *Younger* abstention grounds, as “there is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts.”) (quoting *New Orleans Public Service, Inc. v. Council of the City of New Orleans (NOPSI)*, 491 U.S. 350, 373 (1989)).

The Supreme Court’s decision in *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706 (1996), confirms that the dismissal of Dalal’s damages claims on abstention principles is not permitted. In *Quackenbush*, the California Insurance Commissioner filed a state court action seeking contract and tort damages for Allstate’s alleged breach of certain reinsurance agreements, as well as a declaration of Allstate’s obligations under those agreements. Defendant Allstate Insurance Company removed the action to federal court on diversity grounds and filed a motion to compel arbitration under the Federal Arbitration Act. The District Court granted the Commissioner’s motion to remand to state court, finding that abstention was warranted under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), because resolution of the case might interfere with California’s regulation of the assets of the defunct Mission Insurance Company and its affiliates. The Ninth Circuit reversed on the ground that federal courts can abstain only when the relief sought is equitable in nature. The Supreme Court affirmed on a rationale that slightly differed from the *per se* rule adopted by the Ninth Circuit. Noting that “federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress.” *Quackenbush*, 517 U.S. at 716, the Court observed that, “[i]n those cases in which we have applied traditional abstention

principles to damages actions, we have only permitted a federal court to withhold action until the state proceedings have concluded, that is, we have permitted federal courts applying abstention principles in damages actions to enter a stay, but we have not permitted them to dismiss the action altogether.” *Id.* at 730 (citation and internal quotation marks omitted). The Court explained that, “[u]nlike the outright dismissal or remand of a federal suit . . . , an order merely staying the action does not constitute abnegation of judicial duty. On the contrary, it is a wise and productive discharge of it. There is only postponement of decision for its best fruition.” *Id.* at 721 (citation and internal quotation marks omitted). The Court determined that, while the *per se* rule described by the Ninth Circuit was “more rigid than our precedents require,” and a “stay order might have been appropriate,” the remand order entered by the District Court was inappropriate because this was an action for damages and “federal courts have the power to dismiss or remand cases based on abstention principles only where the relief being sought is equitable or otherwise discretionary.” *Id.* at 730-731.

In this case, the Defendants do not (and cannot) argue that Dalal is seeking to enjoin his state criminal prosecution because Dalal seeks only damages and general unspecified declaratory and injunctive relief. This Court agrees with Dalal that the general rule, rather than the *Younger* exception, applies in his case. This Court will, accordingly, deny the Defendants’ motions to dismiss the Complaint, as amended, on the basis of *Younger* abstention. See *Quackenbush*, 517 U.S. at 731; see also *Addiction Specialists, Inc., v. Township of Hampton*, 411 F.3d 399 (3d Cir. 2005) (where state proceeding brought by operator of methadone clinic challenging township’s zoning decision was pending at the time the operator filed its § 1983 action in federal court seeking damages and an injunction enjoining the Township’s alleged selective enforcement of the zoning

ordinance, the Third Circuit reversed order which had dismissed the federal action pursuant to *Younger* and remanded for consideration of a stay to avoid friction between the federal and state courts).

D. Motion for Stay Pending the Final Outcome of Criminal Proceedings

As an alternative to dismissal under *Younger*, the individual government Defendants ask for a stay pending the outcome of the state criminal prosecution against Dalal. Relying on *Walsh Securities, Inc. v. Cristo Property Management, Ltd.*, 7 F. Supp. 2d 523 (D.N.J. 1998), Defendants argue that a stay is warranted because the constitutional issues Dalal asserts in his federal case will be determined by the state courts in the criminal proceeding, discovery in this civil case may circumvent the limitations of criminal discovery, “denying a stay could burden the government’s investigation and prosecution in the ongoing criminal matter,” a stay has the potential of narrowing issues and streamlining the federal proceeding, and the “public interest in a criminal case is entitled to precedence over a civil litigant’s claims.” (Brief, ECF No. 22-1 at 13-14.) As explained above, the Media Defendants argue that, if this Court grants Defendants’ motion for a stay, then this Court should either decline supplemental jurisdiction or allow the state law claims against the Media Defendants to proceed at this time.

Dalal argues that this Court should deny the motion for a stay because it has a “virtually unflagging obligation to refuse to postpone the exercise of its jurisdiction,” and because granting a stay will give law enforcement officials a clear incentive to prolong and delay investigations and prosecutions, in which civil rights violations may have occurred, in order to gain an unfair advantage, and because the denial of a stay at this time does not preclude Defendants from seeking a narrower stay or a protective order, after the filing of an answer. (ECF No. 28-1 at 12.) Dalal

further argues that, if this Court determines that a stay is warranted, then “it should still allow the claims against the [Media] Defendants, however interconnected as they may be [with the federal claims], to move forward as no interference with state proceedings can be contemplated.” (ECF No. 29 at 2.)

This Court’s determination of the motion for a stay is governed primarily by *Deakins v. Monaghan*, 798 F.2d 632 (3d Cir. 1986), *aff’d in part, vacated in part, and remanded*, 484 U.S. 193 (1988). In that case, Monaghan filed a federal complaint alleging that on October 5, 1984, after threatening to focus a state criminal investigation on Monaghan and his business if he failed to cooperate, Deakins and other law enforcement officers searched Monaghan’s business for nearly eight hours, detained Monaghan, and seized cartons of documents pursuant to a search warrant. Monaghan maintained that the search violated the Fourth Amendment and was a pretext designed to coerce Monaghan into cooperating in an investigation. Monaghan sought return of the seized documents and damages pursuant to § 1983. The District Court granted the defendants’ motion to dismiss the damages claims, finding that abstention was warranted because of the ongoing state grand jury proceeding, even though no indictment had been issued against Monaghan. The Third Circuit reversed the dismissal of the claim for damages because “[i]t is settled in this circuit that a district court, when abstaining from adjudicating a claim for injunctive relief, should stay and not dismiss accompanying claims for damages and attorney fees when such relief is not available from the ongoing state proceedings.” 798 F.2d at 635. The Third Circuit also held that the district court had erred in abstaining on Monaghan’s request for the return of the seized property because, at the time of the filing of the federal complaint, “no state judicial proceeding in which they could have adjudicated their constitutional claim for return of the seized

property was pending.” *Id.* at 638. The Third Circuit affirmed the denial of a preliminary injunction on the ground that plaintiffs did not show a likelihood of success on the merits or irreparable harm. *Id.* at 639.

The Supreme Court vacated that portion of the Third Circuit’s judgment concerning the claims for injunctive relief seeking the return of the seized property because the claims were moot, and affirmed the portion of the Court of Appeals’ judgment reversing the District Court’s dismissal of the claims for monetary relief. The Supreme Court did “not decide the extent to which the *Younger* doctrine applies to a federal action seeking only monetary relief . . . because even if the *Younger* doctrine requires abstention here, the District Court has no discretion to dismiss rather than to stay claims for monetary relief that cannot be redressed in the state proceeding.” *Deakins*, 484 U.S. at 202 (footnote omitted). The Supreme Court explained its reasoning as follows:

In reversing the District Court’s dismissal of the claims for damages and attorney’s fees, the Court of Appeals applied the Third Circuit rule that requires a District Court to stay rather than dismiss claims that are not cognizable in the parallel state proceeding. The Third Circuit rule is sound. It allows a parallel state proceeding to go forward without interference from its federal sibling, while enforcing the duty of federal courts to assume jurisdiction where jurisdiction properly exists.

Deakins, 484 U.S. at 202-203 (citations, internal quotation marks, and footnotes omitted).

In *Wallace v. Kato*, 549 U.S. 384 (2007), the Supreme Court confirmed in dicta the soundness of the *Deakins* stay rule where a defendant in a pending state criminal prosecution files a claim under § 1983 for damages based on Fourth Amendment violations. In that case, plaintiff filed a § 1983 complaint on April 2, 2003, seeking damages arising from his arrest in 1994, allegedly without probable cause, for murder. The Seventh Circuit affirmed the order granting

summary judgment to defendants on the ground that the action was time barred because the Fourth Amendment cause of action accrued at the time of the arrest, not when the conviction was set aside in 2002. The Supreme Court affirmed, holding that the *Heck v. Humphrey*, 512 U.S. 477 (1994), rule of deferred accrual did not apply and “the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process,” *i.e.*, when he appeared before the examining magistrate and was bound over for trial. *Id.* at 397. In dicta, citing *Quackenbush*, the Court explained that, “[i]f a plaintiff files a false-arrest claim before he has been convicted (or files any other claim related to rulings that will likely be made in a pending or anticipated criminal trial), it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended.” *Id.* at 393-94.

Moreover, the Third Circuit and this Court have consistently held that a § 1983 damages claim for alleged Fourth Amendment violations should be stayed where the constitutional issues are likely to be litigated in a parallel pending state criminal prosecution. See *Linnen v. Armanis*, 991 F.2d 1102, 1103 (3d Cir. 1993) (holding that the District Court incorrectly decided that Linnen’s guilty plea to possession of drugs precluded his § 1983 action for violation of his Fourth and Fourteenth Amendment challenge to the constitutionality of the search producing evidence, and remanding for entry of a stay pending final resolution of Linnen’s post-conviction relief proceeding wherein he claimed that counsel was constitutionally ineffective in inducing him to plead guilty and failing to challenge the constitutionality of the search and seizure, and finding that entry of a stay will “avoid unnecessary conflict with a final decision of a state court that may affect

the constitutional question”); *Williams v. Hepting*, 844 F.2d 138, 143-44 (3d Cir. 1988) (reversing dismissal of state criminal defendant’s § 1983 damage claims asserting failure to properly investigate criminal case, falsification and concealment of evidence, and suggestive pretrial identification, and remanding, pursuant to *Deakins*, for entry of stay pending the outcome of direct criminal appeal); *Bailey v. Ness*, 733 F.2d 279, 283 (3d Cir. 1984) (reversing dismissal of § 1983 damage claims against prosecutor based on prosecutor’s pretrial statements to the media concerning plaintiff, prosecutor’s failure to carry out a plea bargain, and prosecutor’s participation in improper contact between a police officer and plaintiff, and holding that, where direct appeal of the state conviction was pending, the federal action should have been stayed pending the final resolution of criminal appeals because “[a] dismissal of a party’s suit, even without prejudice, simply does not protect the party from a statute of limitations problem”); *Scheffler v. New Jersey*, Civ. No. 13-3259 (ES), 2014 WL 562969 (D.N.J. Feb. 10, 2014) (staying § 1983 damages action alleging that defendants arrested plaintiff without probable cause based on false statements made in application for arrest warrant, pending the completion of state criminal proceeding); *Castro v. Perth Amboy Police Dept.*, Civ. No. 13-3376 (MAS), 2014 WL 229301 (D.N.J. Jan. 21, 2014) (staying § 1983 damages action challenging on Fourth Amendment grounds warrantless entry, search and seizure at plaintiff’s residence and seizure pending final resolution of criminal case against plaintiff); *Rodwell v. Weaver*, Civ. No. 12-0989 (KM), 2012 WL 4955249 (D.N.J. Oct. 10, 2012) (staying § 1983 claim pending the outcome of state criminal proceeding where plaintiff claimed that police illegally stopped plaintiff’s vehicle, detained him without probable cause, and performed illegal entry, search and seizure of plaintiff’s apartment, pending the outcome of

criminal proceeding charging plaintiff with violations stemming from contraband seized from plaintiff's apartment).⁴

A stay of this case pending the final outcome of the criminal proceedings against Dalal will allow the criminal proceeding to proceed "without interference from its federal sibling, while enforcing the duty of federal courts to assume jurisdiction where jurisdiction properly exists." *Deakins*, 484 U.S. at 202-203 (citations and internal quotation marks omitted). This Court will, therefore, stay Dalal's federal case pending the final outcome of the criminal proceedings. This Court rejects the option of a partial stay of only the claims against the individual government Defendants. The claims against the Media Defendants are based, to a large extent, on the allegedly false and defamatory statements made by various government Defendants, including the Bergen County Prosecutor. Thus, the truth or falsity of those statements will be factual issues in the § 1983 claims against the government defendants, as well as the state claims against the Media Defendants. Given this interconnectedness, it would entail a waste of judicial resources, and potentially result in unnecessary friction between this Court and the New Jersey courts, if this Court were to allow the claims against the Media Defendants to proceed separately. This Court will stay the entire federal case. *Cf. Deakins*, 484 U.S. at 204 (affirming stay of § 1983 damage claims, as well as claims arising under state law, and noting that, "[w]hen the federal proceeding

⁴ Other circuits have also approved stays in similar circumstances. *See Simpson v. Rowan*, 73 F.3d 134, 139 (7th Cir. 1996) (reversing dismissal of § 1983 suit against police and prosecutor's seeking damages for illegal arrest and search, and remanding for entry of stay); *Lewis v. Beddingfield*, 20 F.3d 123 (5th Cir. 1994) (holding that District Court properly stayed civil rights damages action alleging that blood and tissue samples were unlawfully taken for use in pending murder trial); *Traverso v. Penn*, 874 F.2d 209 (4th Cir. 1989) (reversing dismissal of § 1983 claims for interrogating plaintiff in violation of *Miranda* and unconstitutional search and seizure, and remanding for stay of claims for monetary, injunctive and declaratory relief pending the final outcome of state criminal prosecution).

recommences in the District Court, [defendants] will be free to argue that the state claims should be dismissed under *Pennhurst [State School and Hospital v. Halderman, 465 U.S. 89 (1984)]*”).

D. Motions to Impose Sanctions and to Disqualify Counsel

As the case is being stayed, this Court will not rule on Dalal’s motions for the imposition of sanctions and to disqualify the State Attorney General’s Office until the case recommences.

III. CONCLUSION

For the reasons set forth in this Opinion, this Court will grant Dalal’s motion to file the Complaint docketed in Civil Number 14-1333 (WJM) as a Second Amended Complaint in Civil Number 13-1257 (WJM), dismiss all § 1983 claims in the Second Amended Complaint against Bergen County, grant Defendants’ motions to stay this case pending the entry of a final judgment in the related state criminal prosecutions against Dalal, and decline to rule on Dalal’s remaining motions (motion for sanctions and motion to disqualify the New Jersey Attorney General) until the case recommences.

William J. Martini

WILLIAM J. MARTINI, U.S.D.J.

DATED: June 13, 2014

I. Background

Plaintiff, an inmate confined at the Morris County Correctional Facility, Morris Township, New Jersey, recently commenced the two above-captioned actions in this District. These two proceedings were not the first legal actions commenced by Plaintiff in this District nor in the federal and state court systems. In fact, Plaintiff has accrued a multitude of criminal convictions and a lengthy record of legal actions related to these convictions,² including, inter alia, Commonwealth v. Royal, 639 A.2d 26 (Pa. 1994) (denying Plaintiff's petition for certification as to his criminal proceeding predating 1994); Royal v. Commonwealth, 851 A.2d 263 (Pa. Ct. Com. Pl. 2004) (dismissing Plaintiff's undue forfeiture claim); Royal v. Durison, 319 F. Supp. 2d 534 (E.D. Pa. 2004) (dismissing Plaintiff's Section 1983 action challenging his incarceration), aff'd 254 Fed. App'x 163 (3d Cir. 2007), cert. denied 553 U.S. 1065 (2008) (hereinafter "Durison Chain of Actions"); Royal v. Phila. Adult Prob. & Parole, 2006 U.S. Dist. LEXIS 28938 (E.D. Pa. May 11, 2006) (dismissing Plaintiff's habeas challenges); Royal v. Pennsylvania, 2009 U.S. Dist. LEXIS 128754 (E.D. Pa. Jan. 21, 2009) (denying Plaintiff's coram nobis application), adopted in, 2009 U.S. Dist. LEXIS 10042 (E.D. Pa. Feb. 9, 2009); Royal v. Heckler, 2009 Pa. LEXIS 587 (Pa. 2009)

² These cases reflect Plaintiff's extensive criminal history, which includes fraud, theft, receipt of stolen goods, escape from custody, use of stolen credit cards, among others.

(denying certification as to Plaintiff's line of state appeals); Royal v. United States, 2009 U.S. Dist. LEXIS 58461 (D.N.J. July 6, 2009) (dismissing Plaintiff's Section 2241 habeas challenges to his state criminal conviction), aff'd 357 Fed. App'x 402 (3d Cir. 2009); Royal v. Pennsylvania, 2009 U.S. Dist. LEXIS 125986 (E.D. Pa. Aug. 5, 2009) (dismissing Plaintiff's Section 2254 habeas challenges); Commonwealth v. Royal, 986 A.2d 1264 (Pa. Super. Ct. 2009) (dismissing Plaintiff's challenge to criminal conviction), appeal denied, 639 A.2d 26 (Pa. 2010); Royal v. Pennsylvania, 2009 U.S. Dist. LEXIS 125986 (Pa. Super. Ct. 2009) (dismissing Plaintiff's petition and other challenges to his conviction); Royal v. Commonwealth Pleas Court of Phila., 2009 U.S. Dist. LEXIS 99962 (E.D. Pa. Oct. 23, 2009) (dismissing Plaintiff's Section 2254 habeas challenges); United States v. Royal, 322 Fed. App'x 226 (3d Cir. Pa. 2009) (affirming the district court decision that dismissed Plaintiff's challenges to his conviction); Royal v. United States, 2009 U.S. Dist. LEXIS 101748 (E.D. Pa. Oct. 29, 2009) (dismissing Plaintiff's Section 2254 habeas challenges), reconsid. denied, 2010 U.S. Dist. LEXIS 1048 (E.D. Pa. Jan. 5, 2010); Royal v. Pennsylvania, 2011 U.S. Dist. LEXIS 88046 (E.D. Pa. May 31, 2011) (dismissing another of Plaintiff's Section 2254 habeas challenges), etc.

In line with these actions, Plaintiff recently commenced one more action; that matter was initiated in this District and was

presided over by this Court. See Royal v. Rutherford Police Dept. et al., Civil Action No. 11-4862 (CCC) (D.N.J.) ("Rutherford Action").

In his Rutherford Action, Plaintiff asserted that

[o]n July 20, 2010, at approximately 3:00 p.m. - 3:30 p.m. in Rutherford, New Jersey, in the back of Lanni's Appliance store; Plaintiff was preparing to receive two (2) televisions. However, before Plaintiff received the televisions he was seized after he ran away, after which, he thought he was being attacked by unidentified Rutherford Police Officers. All of named Defendants in the caption of this case, with the exception of Lt. Feliciano, seized Plaintiff's person without probable cause; seized and searched his vehicle and its contents without a warrant, nor probable cause. Lt. Feliciano, being the ranking police officer on the scene overseen the unlawful actions of all named Defendants actions. Moreover, he announced to the subordinate Defendants to initiate the unconstitutional seizure of Plaintiff's person, and unconstitutional seizure and search of his vehicle and contents.

Rutherford Action, Docket Entry No. 1, at 5 (mistakes in original).

Plaintiff's complaint in the Rutherford Action concluded with a request for relief in the form of monetary damages of \$1,000,000.00 from each of the six defendants named in that matter. See id. at 6. This Court dismissed Plaintiff's complaint. See id., Docket Entries Nos. 6 and 7.

This Court examined Plaintiff's claims that he was arrested and that his car was searched without probable cause and explained the governing legal standard. See id., Docket Entry No. 6, at 7-10 (detailing the pertinent aspect of the Fourth Amendment test). Applying that test to Plaintiff's challenges, the Court observed as

follows:

Here, Plaintiff's Complaint paints a picture strongly suggesting that a reasonable officer would have believed that an offense had been or was being committed by Plaintiff: at no point did Plaintiff assert that the officers could have observed him legitimately purchasing the televisions at issue. In fact, no statement in the Complaint suggests, even vaguely, that he purchased the televisions at all or that he was picking up his own televisions after a repair, or that he was legitimately employed by the store and was picking the televisions up in order to make a delivery to a customer. Moreover, Plaintiff does not assert that the officers could have observed any interactions between him and the store owners indicative of [the] legitimacy of Plaintiff's actions; indeed, he does not claim that he ever entered the store or that he was in front of the store, where pedestrians, the store owners or the police could observe his legitimate actions. Rather, Plaintiff asserts that he situated himself at "the back" of the store and was merely "preparing to receive two (2) televisions." He had his vehicle nearby for the purposes of this unelaborated-upon "receivership." Furthermore, Plaintiff states that - when he was about to execute this mysterious "receivership" - he saw police officers approaching and, for the reasons unspecified in the Complaint, he elected to abandon his "receivership" efforts and tried to run away. Simply put, Plaintiff's Complaint paints a picture, which - being observed by a reasonable officer - would have led that officer to believe that Plaintiff was involved (or was about to get involved) in criminal activity. Therefore, the Complaint . . . does allege probable cause for Plaintiff's arrest and search of his vehicle.

Id. at 10-12 (footnotes and citations omitted).

The Court's discussion was accompanied by a number of footnotes providing relevant information. One of these footnotes read:

Plaintiff asserted that he was arrested in connection with the incident that took place on June 20, 2010. In connection with that, the Court takes notice of a news release dated August 12, 2010, which stated:

Rutherford police officers managed to catch a Philadelphia man who was allegedly using other people's credit cards to purchase electronic equipment in a sting on July 20 in which officers posed as employees at Lanni[] Appliances on Park Avenue. The investigation began when employees of Lanni[] Appliances called police on July 16 to report that a customer calling himself Tom Henson had twice placed orders using a credit card account that was declined. The first order came on July 12 for a 46-inch Samsung television. After the first card was rejected, "Henson" gave the store a second account that was accepted. A thin black male in his 50's picked up the television on July 14. Two days later he called back to order two more televisions. Once again, the first account he used to put down a deposit was declined so he gave a second that was accepted. At this point, employees at Lanni[] became suspicious and contacted the police that day. On July 19, police contacted the credit card company and found that several of the cards were being used fraudulently. On July 20, the man called back to pay the rest of the order. Once again the first card he gave the store was denied but officers told the employees to tell him it was approved. Rutherford police officers went to Lanni[] Appliances and posed as employees and waited for the man to arrive. According to police, at about 7:30 p.m. a van pulled up and the same black male exited and went into the store. When asked by undercover police the man said he was Tom Henson's nephew, according to police. He was directed to drive around the corner to Chestnut Street where more officers were waiting. Detective Tom Lewis approached the man, who was later identified as [Plaintiff]. Lewis identified himself as an officer and ordered [Plaintiff] to surrender. According to police, [Plaintiff] ran for it and Lewis and Detectives James Garner and Sean Farrell pursued on foot. The officers caught up with [Plaintiff] as he attempted to scale a fence in the alleyway between 33 and 25 Franklin Place. Farrell and Garner arrested [Plaintiff] and he was taken into custody. Police report [that] evidence linking [Plaintiff] to further fraud at other stores was found in the van and the investigation is still ongoing. [Plaintiff] was charged with three counts of fraudulent use of a

credit card, three counts of theft, one count of obstruction and one count of resisting arrest. Bail was set at \$100,000[,] with no[] 10 percent option[,] and he was transferred to the Bergen County Jail. Police say they also discovered that [Plaintiff] was wanted by U. S. Marshals.

While the Court has no reason to take this information as true for the purposes of screening Plaintiff's Complaint, the Court notes that, had the scenario depicted in the above-quoted news release been, hypothetically, established as true, police officers would have had [an] abundance of probable cause for both Plaintiff's arrest and search of his vehicle.

Id. at 12-13, n.6 (citation omitted).

The Court's analysis, however, closed with the following sentiment:

However, this Court - being mindful of Plaintiff's pro se status - cannot rule out that Plaintiff might be able to elaborate on the circumstances of his "receivership" by stating facts showing that a reasonable officer observing Plaintiff's actions could not have believed that an offense had been or was being committed. Therefore, the Court will dismiss Plaintiff's Complaint without prejudice to filing an amended pleading detailing such facts, that is, if such facts were in existence.

Id. at 14 (emphasis added).

Therefore, the Court granted Plaintiff leave to amend his pleading in the Rutherford Action, so that Plaintiff could state the facts of his "receivership," if such facts could plausibly show that he was arrested and his car was searched without probable cause.

II. Plaintiff's Current Challenges

On September 12, 2011, the Clerk received Plaintiff's complaint submitted in Royal v. Morris County Correctional

Facility, Civil Action No. 11-5248 (D.N.J.) ("Morris County Action"), which was unaccompanied by Plaintiff's filing fee or in forma pauperis application. See Morris County Action, Docket Entry No. 1. The complaint asserted that, in September 2011, Plaintiff was seeking certiorari from the United States Supreme Court with regard to his proceedings in the Durison Chain of Actions (i.e., with regard to Royal v. Durison, 319 F. Supp. 2d 534 (E.D. Pa. 2004), aff'd 254 Fed. App'x 163 (3d Cir. 2007), cert. denied 553 U.S. 1065 (2008), a chain of actions that closed on May 27, 2008, three and a half years prior to commencement of Plaintiff's Morris County Action).

The complaint also alleged that Plaintiff was seeking to file a motion for reconsideration with the United States District Court for the Eastern District of Pennsylvania ("EDPA") as to the EDPA's dismissal of his Section 2254 habeas petition.³ Alleging that the facility where Plaintiff was incarcerated allowed him "no more than three (3) hours a week" of law library usage, and that such amount of law library time was "not . . . adequate" to meet what Plaintiff perceived as his legal needs, Plaintiff maintained that his access rights were violated by these limited law library hours. See Morris County Action, Docket Entry No. 1.

Soon thereafter, Plaintiff submitted another civil complaint

³ The EDPA record indicates that Plaintiff did file this motion. See Royal v. Commonwealth, Civil Action 10-7219 (ER) (E.D. Pa.), Docket Entry No. 20.

in this District; that complaint: (a) arrived accompanied by a defective application to proceed in forma pauperis; and (b) gave rise to Royal v. Rochford ("Rochford Action"), Civil Action No. 11-7149 (CCC) (D.N.J.). The complaint asserted that, at the time of filing, Plaintiff was a pro se litigant in a flock of criminal proceedings pending before the Superior Court of New Jersey, Law and Appellate Divisions, as well as in a number of civil proceedings in the EDPA, the United States Supreme Court and in the Rutherford Action in this District. See id. at 1-2. Plaintiff again alleged that: (a) he could use the prison facility law library only three times a week, for one hour during each visit; and (b) such amount of time in the law library was insufficient to meet what Plaintiff perceived as his legal needs. Plaintiff restated his access claims and requested injunctive relief in the form of an order directing the facility to have the law library open five days a week (for many hours, daily) and mandating the facility to install personal computers, copy machines and printers in each "living quarter" of the facility.' Id. at 3-4.

Plaintiff's original complaint in the Rochford Action was soon

⁴ In addition, Plaintiff asserted that his access rights were violated because the telephone use allowed at the facility permitted only collect calls or prepaid calls, while Plaintiff desired to call various attorneys, probation officers, parole officers, judicial clerks, court personnel, state and federal judges, etc., without having the recipients of his calls to accept the charges and without him having to prepay these calls. See Rochford Action, Docket Entry No. 1, at 3-4.

superceded by his first amended complaint, submitted as of right. See id., Docket Entry No. 2. Plaintiff's amended complaint added a request for damages in the amount of \$100,000. See id. at 2. Plaintiff also clarified that he sought monetary and injunctive remedies because he was concerned that he might be unable to produce as lengthy or as detailed "briefs" as he desired for the number of legal matters he was maintaining or attempting to maintain in the state courts, the EDPA, this District, and the Supreme Court. See id. at 3.

One week later, Plaintiff submitted a "re-amended" complaint in the Rochford Action; that submission was also as of right. See id., Docket Entry No. 3. In that "re-amended" pleading, Plaintiff re-asserted that his access rights were violated because he was planning to "fil[e] a lengthy amended complaint, including a memorandum of law [in the Rutherford Action, and he believed that such endeavor] require[d] research and typing of the amended complaint." Id. at 2. Reiterating the statements made in his original and amended complaints filed in the Morris County Action and Rochford Action, Plaintiff: (a) reminded this Court, once again, that he was maintaining or attempting to maintain a multitude of legal actions in many courts at the same time; (b) re-alleged, once again, that his access rights were violated because he deemed the amount of time he could spend in the law library insufficient; and (c) repeated, once again, that his access rights

were violated because he could not call some unnamed attorneys, court staff, or judges, without prepaying his calls or having the recipients of his calls agree to accept the phone charges. See id. at 2-4.

III. Pertinent Legal Standards

For a complete explanation of the standard of review applicable to civil pleadings, Plaintiff should review the Court's opinion in Royal v. Rutherford Police Dep't, 2011 U.S. Dist. LEXIS 133153, at *4-8, which details the guidance provided by the Supreme Court in Ashcroft v. Iqbal, 556 U.S. 662 (2009), Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007); Erickson v. Pardus, 551 U.S. 89 (2007); Haines v. Kerner, 404 U.S. 519 (1972); Phillips v. County of Allegheny, 515 F.3d 224, 230-34 (3d Cir. 2008); and Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997). The Court notes, however, that a pleading is a statement of facts, not a discussion, recital, or paraphrasing of law. See Phillips, 515 F.3d at 230-34 ("[A] plaintiff's obligation [is] to provide the 'grounds' of his 'entitle[ment] to relief' [by stating] more than labels and conclusions, and a formulaic recitation of the elements of a cause of action The threshold requirement of Rule 8(a)(2) [is] that the plain statement [must] possess enough [factual] heft . . . [It is not] sufficient to allege mere elements of a cause of action; instead 'a complaint must allege facts suggestive of the proscribed conduct.'" (citations omitted);

accord Iqbal, 129 S. Ct. at 1949-54 ("A claim has facial plausibility [only] when the plaintiff pleads factual content. . . . [T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions [or to t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.").

In addition, the Court finds it warranted to remind Plaintiff that Rule 8(a)(2) requires a complaint to be "a short and plain statement of the claim showing that the pleader is entitled to relief,"⁵ and Rule 8(d)(1) mandates that "[e]ach allegation must be simple, concise, and direct [and clarifies that n]o technical form is required." Fed. R. Civ. P. 8(a)(2) and (d)(1).

A. Access to Law Library

The right of access to the courts is an aspect of the First Amendment right to petition. See McDonald v. Smith, 472 U.S. 479, 482 (1985); Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 741 (1983); Milhouse v. Carlson, 652 F.2d 371, 373 (3d Cir. 1981). The Supreme Court also found that "[t]he constitutional guarantee

⁵ See Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988) (affirming dismissal of pro se civil rights complaint naming numerous defendants, setting forth numerous causes of action, and numbering 15 pages and 88 paragraphs); see also McNeil v. United States, 508 U.S. 106, 113 (1993) (procedural rules in civil litigation should not be interpreted so as to excuse mistakes by those proceeding without counsel); Burks v. City of Phila., 904 F. Supp. 421, 424 (E.D. Pa. 1995) (striking pleading that was "gross departure from the letter and the spirit" of Rule 8 in failing to contain short and plain statement of claims).

of due process of law has as a corollary the requirement that prisoners be afforded access to the courts in order to challenge unlawful convictions and to seek redress for violations of their constitutional rights [associated with their conditions of confinement].” Procunier v. Martinez, 416 U.S. 396, 419 (1974), overruled on other grounds, Thornburgh v. Abbott, 490 U.S. 401, 413-14 (1989); see also Hudson v. Palmer, 468 U.S. 517, 523 (1984); Bounds v. Smith, 430 U.S. 817 (1977); Wolff v. McDonnell, 418 U.S. 539, 576 (1974).

In Bounds, the Supreme Court held that “the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” Bounds, 430 U.S. at 828. The right of access to the courts is not, however, unlimited. “The tools [that Bounds] requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.” Lewis v. Casey, 518 U.S. 343, 355 (1996) (emphasis removed).

Thus, to state a cognizable access to the courts claim, a complainant must demonstrate that: (1) (s)he suffered an “actual

injury" (i.e., that (s)he lost an opportunity to pursue a non-frivolous claim); and (2) (s)he has no other remedy, save the present civil rights suit, that can possibly compensate for the lost claim. See Monroe v. Beard, 536 F.3d 198, 205 (3d Cir. 2008). Correspondingly, "[t]he complaint must describe the underlying arguable claim well enough to show that it is 'more than mere hope,' and it must describe the 'lost remedy.'" Id. at 205-06 (citing Christopher v. Harbury, 536 U.S. 403, 416-17 (2002)); see also Lewis, 518 U.S. at 348-51, 354-55 (1996); Oliver v. Fauver, 118 F.3d 175, 177-78 (3d Cir. 1997); Hoffenberg v. Bumb, 2011 U.S. App. LEXIS 11741, at *9 (3d Cir. N.J. June 9, 2011).

B. Phone Calls

Inmates have a right protected under the First Amendment to communicate with their family and friends by reasonable means. See Owens-El v. Robinson, 442 F. Supp. 1368, 1386 (W.D. Pa. 1978). Inmates' ability to communicate with their lawyers is additionally protected by their constitutional right of access to the courts and may implicate the Sixth-Amendment right to assistance of counsel in criminal proceedings. See Aswegan v. Henry, 981 F.2d 313 (8th Cir. 1992) (analyzing telephone use as access-to-courts issue); Owens-El v. Robinson, 442 F. Supp. 1368, (applying Sixth Amendment standards to telephone use restrictions).

However, it is established that a prisoner "has no right to unlimited telephone use." Washington v. Reno, 35 F.3d 1093, 1100

(6th Cir. 1994) (quoting Benzel v. Grammer, 869 F.2d 1105, 1108 (8th Cir.), cert. denied, 493 U.S. 895, 110 S. Ct. 244, 107 L. Ed. 2d 194 (1989)). Rather, an inmate's telephone access is "subject to rational limitations in the face of legitimate security interests of the penal institution." Id. (quoting Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986)). Correspondingly, an inmate's right to communicate even with his/her legal counsel is not unlimited. See Ingalls v. Florio, 968 F. Supp. 193, 203-04 (D.N.J. 1997) ("[L]imited access to telephone calls . . . is not a constitutional violation so long as inmates can communicate with their counsel in writing or in person by visits."); Aswegen v. Henry, 981 F.2d at 314 (upholding a state penitentiary's policy of prohibiting prisoners from making toll-free telephone calls, even to their attorneys, because the prisoners had alternative methods of exercising the right to access the courts, and had not alleged any irreparable harm or prejudice from the policy). Hence, if an inmate has an alternative method to communicate freely and privately with his counsel, it is less likely that the restrictions on telephone use will rise to the level of a constitutional violation." See Ingalls, 968 F. Supp at

⁶ The constitutional protections applicable to inmates' rights to communicate with entities other than their counsel or their judge are weak, even if these other entities have certain connections with the court system or the inmate's proceedings. See McFarland v. Luttrell, 1995 U.S. App. LEXIS 7871, at *11 (6th Cir. Apr. 5, 1995) ("[The inmate's] claim that defendants . . . violated his right to access to the courts by not permitting him

203-04; Aswegan, 981 F.2d at 314; see also Bell v. Wolfish, 441 U.S. 520, 551-52 (1979) ("[T]here are alternative means of obtaining reading materials that have not been shown to be burdensome or insufficient . . . the available alternative means of communication . . . [is] a relevant factor in a case . . . where we are called upon to balance First Amendment rights against legitimate governmental interests.").

"In sum, three questions relevant to issue of telephone access to counsel and the courts are (1) whether [the prisoner] has alleged facts giving rise to an inference that no legitimate penological interest was served by the . . . Defendants' actions, (2) whether he has sufficiently alleged that the . . . Defendants' actions caused him an 'actual injury,' and (3) whether he had alternative avenues through which he could communicate with his attorneys and the courts." Aruanno v. Main, 2010 U.S. Dist. LEXIS 3268, at *29 (D.N.J. Jan. 15, 2010).

IV. Plaintiff's Allegations Fail to State a Cognizable Claim

A. Access to Law Library

Plaintiff's claims in both his Morris County Action and in the Rochford Action can be summarized in a single statement: that

to call his probation office is similarly baseless. [The inmate] cites to no authority for the proposition that he is entitled to access to his probation office, nor does he allege that he was unable to communicate with his probation office by other means, or that any ongoing litigation was adversely affected"). Thus, an inmate's ability to execute his/her communications by mail satisfy the constitutional safeguards. See id.

Plaintiff finds the amount of law library time allowed to him insufficient. However, this cannot serve as a valid basis for his claims. In order to support such a claim, Plaintiff must allege facts: (1) showing that he suffered an "actual injury" because he lost an opportunity to pursue a non-frivolous claim as a result of such limited law library hours (and he must detail both the factual predicate and the legal proposition supporting that lost non-frivolous claim); and (2) showing that he has no other remedy, save his instant action, that can possibly compensate him for the loss of that non-frivolous claim. See Christopher, 536 U.S. at 416-17; Lewis, 518 U.S. at 348-51; Monroe, 536 F.3d at 205; Oliver, 118 F.3d at 177-78. Plaintiff's pleadings in the Morris County Action and Rochford Action did not include any statements to that effect.

Plaintiff's assertion that his efforts to file a motion in Royal v. Commonwealth, Civil Action 10-7219 (ER) (E.D. Pa.), were obstructed by the limited law library hours is to no avail, since such motion was indeed filed. See id., Docket Entry No. 20. Plaintiff also failed to allege that he was unable to include a non-frivolous claim in that motion due to the lack of law library hours.⁷

⁷ In Royal v. Commonwealth, Civil Action 10-7219 (ER) (E.D. Pa.), Plaintiff's claims arose from the fact that he "was arrested for retail theft in Philadelphia on October 3, 1990 [but] failed to appear for a scheduled pre-trial conference in December, 1990, and was located again by the Philadelphia courts only in April, 1991, when he was detained in Delaware County Prison on a different matter. [That, however, did not stop

Similarly, Plaintiff's application for certiorari from the United States Supreme Court with regard to his Durison Chain of Actions was likely denied for reasons unrelated to the limited law library hours, as Plaintiff had been released from confinement during this period (*i.e.*, the period when Plaintiff performed, *inter alia*, the "receivership" of televisions underlying his claims in the Rutherford Action). Thus, he could have dedicated all the time he wished to his efforts in researching and drafting his legal claims at any law library.⁹

Plaintiff from] mov[ing] for dismissal of his [Philadelphia] case under Pennsylvania's speedy trial rule." Id., Docket Entry No. 13, at 1. After being found guilty in that Philadelphia case and incarcerated, Plaintiff filed direct appeal and sought post-conviction relief; being conclusively released from confinement, he instituted his Royal v. Commonwealth, Civil Action 10-7219 (ER) (E.D. Pa.), habeas proceedings, which were dismissed for failure to meet the "in custody" requirement. See id., Docket Entry No. 13 (explaining, in great detail, that the "in custody" requirement is jurisdictional and bars any habeas action filed after the inmate was released from confinement). Magistrate Judge Jacob P. Hart recommended dismissal of Plaintiff's habeas petition, and that recommendation was adopted by District Judge Eduardo C. Robreno. See id., Docket Entry No. 19. Plaintiff now filed a motion seeking Judge Robreno's reconsideration on the grounds that Plaintiff should have been granted equitable tolling as to his statute of limitations, see id., Docket Entry No. 20, even though the statute of limitations issue was, at any point, considered by Judges Robreno and Hart or served as a basis for their ruling. See id.

⁹ Read together with the facts of Royal v. Commonwealth, Civil Action 10-7219 (ER) (E.D. Pa.), the chain of events underlying Plaintiff's Durison Chain of Actions suggests a pattern in Plaintiff's criminal activities and a pattern in his mode of litigation. Specifically, in Durison Chain of Actions,

[o]n or about March 26, 1983, [P]laintiff was arrested and detained for retail theft. By posting bail,

Even more glaring are the deficiencies of Plaintiff's claims

[P]laintiff was released from detention on April 14, 1983 and a preliminary hearing was scheduled for April 28, 1983. Because [P]laintiff failed to appear for the scheduled preliminary hearing, a bench warrant was issued on April 28, 1983. On or about July 29, 1984, [P]laintiff was arrested for a separate retail theft charge, and rearrested pursuant to the bench warrant. On November 15, 1983, [P]laintiff entered a guilty plea to the two retail theft charges and a . . . charge of failing to appear for a court appearance. On or about January 25, 1984, [P]laintiff was sentenced Plaintiff served the maximum term of detention . . . and was released on or about January 25, 1987 [on] probation. During the probation period, [P]laintiff was arrested on new charges and detained on February 16, 1999. . . . [P]laintiff was sentenced on October 12, 1999 . . . for violating the terms of his probation.

Royal v. Durison, 319 F. Supp. 2d at 536.

Plaintiff then challenged, in a § 1983 action, denial of jail time credits as to his probation violation sentence, paraphrasing his claim in terms of the Eighth Amendment. See id. at 536-37. The Court of Appeals pointed out that Plaintiff's § 1983 challenges were barred by Heck v. Humphrey, 512 U.S. 477 (1994), and Williams v. Consovoy, 453 F.3d 173 (3d Cir. 2006), since Plaintiff was effectively trying to invalidate part of his sentence without first obtaining a state order or federal habeas ruling that such part of Plaintiff's sentence was invalid. See Royal v. Durison, 254 Fed. App'x 163. Maintaining that his claims were not barred by Heck and Williams, Plaintiff sought and was denied certiorari by the Supreme Court on May 27, 2008. See Royal v. Durison, 553 U.S. 1065. Three years later, Plaintiff filed a motion requesting the Court of Appeals to recall its mandate in Royal v. Durison, 254 Fed. App'x 163, as erroneous, and re-stated his position that his claims should not have been deemed barred by Heck and Williams. See Royal v. Durison, USCA Index No. 05-1036, Docket Entry dated 4/5/2011. Having his application for recall denied, Plaintiff filed his current round of petition for certiorari with the Supreme Court, asserting the same claims.

associated with his position that he is being denied access to the courts due to his inability to "research" and "type" his amended complaint in the Rutherford Action. In that matter, this Court allowed Plaintiff to file an amended complaint in order to assert facts, if any, which show that the circumstances of Plaintiff's "receivership" of televisions were such that a reasonable police officer would not have found probable cause for Plaintiff's arrest and search of his car.

The Court does not find persuasive Plaintiff's assertion that he needs access to the law library to conduct research in connection with his amended pleading in the Rutherford Action, as Plaintiff does not require access to a law library in order to locate additional facts related to his claims.⁹ Accord Rutherford Action, Docket Entry No. 6, at 14 (explaining the same). Moreover, the Court does not agree that Plaintiff requires law library access to type his amended complaint in the Rutherford Action, since no

⁹ Plaintiff's desire to produce a "lengthy" amended complaint: (a) has no basis in any order or opinion issued by this Court; and, moreover (b) would be an outright violation of Rule 8 requirement directing Plaintiff's amended complaint to be a "short and plain" statement. Analogously, the Court's leave to amend granted in the Rutherford Action did not include any permission to file a "memorandum of law." Moreover, the Court expressly pointed out to Plaintiff that all pro se submissions, including Plaintiff's submissions, are construed by the courts liberally and with a measure of tolerance, meaning that the courts read into the pro se litigant's pled facts all viable legal claims that might support the asserted factual predicate. See Royal v. Rutherford Police Dep't, 2011 U.S. Dist. LEXIS 133153, at *4-8 (explaining same to Plaintiff).

statement made by this Court with regard to the Rutherford Action or any other action commenced by any pro se litigant suggested that the litigant's submissions must be typed rather than hand-printed.¹⁰ Therefore, Plaintiff's assertion that his access rights were violated by the law library hours with regard to Plaintiff's execution of an amended complaint in the Rutherford Action is devoid from any factual predicate and, hence, frivolous.

Finally, Plaintiff's assertions that his access rights were violated, as a result of limited law library hours, with regard to Plaintiff's criminal proceedings pending before the Superior Court of New Jersey, Law and Appellate Divisions, fail to meet the requirements posed by the Christopher, Lewis, Monroe and Oliver cases. See Discussion, supra at 14.

However, giving Plaintiff the benefit of the doubt, this Court will dismiss that narrow line of Plaintiff's challenges without prejudice. Plaintiff is granted leave to submit an amended complaint, stating access to the court claims, solely with regard to his allegedly pending proceedings in the Superior Court of New Jersey, Law and Appellate Divisions. Plaintiff's amended complaint shall (a) expressly identify each proceeding, indicating the court, the index number, and the parties involved; (b) state each non-

" Indeed, Plaintiff's pleadings in the Morris County Action and Rochford Action were all hand-printed and this fact did not prevent this Court from examining Plaintiff's submissions in the instant Opinion and accompanying Order.

frivolous claim that Plaintiff lost in those actions due to the limited law library hours, specifying both the factual predicate and the legal position of each; and (c) state the exact remedy lost, with an explanation why Plaintiff's lost rights can be vindicated only by means of the proceedings at bar rather than by applications to state courts or by federal habeas filings.

B. Phone Calls

Plaintiff's claims asserting that his facility did not allow him phone calls (to unspecified attorneys, probation officers, pre-trial officers, clerk of the court staff, judicial clerks, etc.), unless Plaintiff prepaid those phone calls or the persons being called accepted collect charges, will be dismissed with prejudice.

The issue of "legal phone calls," in the sense of phone calls to attorneys representing Plaintiff, is factually inapposite to Plaintiff's claims since he expressly stated that he has been proceeding pro se in all his legal cases implicated in the complaints submitted in the Rochford Action and Morris County Action.

Furthermore, Plaintiff's claims that he was denied calls to unspecified probation officers, pretrial officers, judicial and court staff, etc., implicate no constitutional protection unless these calls were sought to be placed in connection with Plaintiff's legal matters. Even if this Court were to hypothesize that these calls were, in fact, sought to be placed in connection with

Plaintiff's legal matters, Plaintiff's allegations fail to state a cognizable claim because: (a) these allegations do not suggest that Plaintiff was prevented from contacting these unspecified probation officers, pretrial officers, judicial and court staff, etc. by alternative means, e.g. by mail; and (b) the record in the two above-captioned matters, as well as in the Rutherford Action, Royal v. Commonwealth, Civil Action 10-7219 (ER) (E.D. Pa.), proceeding, the Durison Chain of Actions, indicate that Plaintiff could and did mail and could and did receive numerous communications with regard to his pending actions from the judges and court staff.

Since Plaintiff has alternative means of communication, and the facility where Plaintiff is confined has a legitimate penological interest in preventing abuse of its telephonic services by inmates who desire to call, leisurely, every administrative or judicial employee they wish, Plaintiff's claims challenging the requirement to have his phone calls prepaid or accepted by persons being called collect is facially without merit. Therefore, it will be dismissed with prejudice.

V. Plaintiff's Duplicative Proceedings Will Be Terminated

Since Plaintiff's Morris County Action and Rochford Action asserted identical factual predicates and legal challenges, these actions are duplicative. One of these actions should be terminated.

The power of a federal court to prevent duplicative litigation is intended "to foster judicial economy and

the 'comprehensive disposition of litigation,' "Curtis v. Citibank, N.A., 226 F.3d 133, 138 (2d Cir. 2000) (quoting Kerotest Manufacturing Co. v. C-O-Two Fire Equipment Co., 342 U.S. 180, 183 (1952)), and "to protect parties from 'the vexation of concurrent litigation over the same subject matter.'" Id. (quoting Adam v. Jacobs, 950 F.2d 89, 93 (2d Cir. 1991)).

Porter v. NationsCredit Consumer Disc. Co., 2003 Bankr. LEXIS 933, at *33 (Bankr. E.D. Pa. 2003).

Since Plaintiff was already granted in forma pauperis status for the purposes of his Rochford Action, this Court finds it warranted to terminate Plaintiff's Morris County Action without directing the Clerk to file Plaintiff's complaint in that matter and without ordering assessment of a filing fee. The Court will supplement its order issued in the Rochford Action, Docket Entry No. 6, which granted Plaintiff in forma pauperis status, by a directive for collection of filing fee with regard to that matter and filing of Plaintiff's "re-amended" complaint.

VI. Conclusion

For the foregoing reasons, Plaintiff's Morris County Action, will be terminated as duplicative, without filing of Plaintiff's complaint and collection of filing fee. Plaintiff's "re-amended" complaint in the Rochford Action will be ordered filed, and a filing fee will be assessed with regard to that matter. Plaintiff's claims in that matter will be dismissed.

Specifically, Plaintiff's claims asserting undue denial of phone calls will be dismissed with prejudice. Plaintiff's claims

asserting denial of access to the courts with regard to Plaintiff's Rutherford Action, Royal v. Commonwealth, Civil Action 10-7219 (ER) (E.D. Pa.), proceeding and the Durison Chain of Actions will also be dismissed with prejudice. Limited leave to amend will issue as to Plaintiff's access claims raised with regard to Plaintiff's proceedings allegedly pending before the Superior Court of New Jersey, Law and Appellate Divisions.

The Clerk will be directed to docket this Opinion and accompanying Order in the Rutherford Action; such docketing will be for informational purposes only.

An appropriate Order accompanies this Opinion.

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Claire C. Cecchi,
United States District Judge

Dated: January 27, 2012

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HOZAY A. ROYAL,	:	Hon. Claire C. Cecchi
	:	Civil Action No. 11-4862 (CCC)
Plaintiff,	:	
	:	
v.	:	<u>O P I N I O N</u>
	:	
RUTHERFORD POLICE DEPT. et al.,	:	
	:	
Defendants.	:	

CECCHI, District Judge:

Plaintiff Hozay A. Royal ("Plaintiff"), an inmate confined at the Montgomery County Correctional Facility, Morris Township, New Jersey, seeks to bring this action in forma pauperis, alleging violations of his constitutional rights, pursuant to 42 U.S.C. § 1983.

Plaintiff's civil complaint ("Complaint") arrived unaccompanied by the applicable filing fee of \$350 or by Plaintiff's in forma pauperis ("IFP") application. See Docket Entry No. 1. However, it came together with his request for an IFP application, see id., which was duly forwarded to Plaintiff by the Clerk. See Docket Entry No. 2. On September 19, 2011, the Clerk received a letter from Plaintiff; the letter contained a duly executed affidavit of poverty ("Affidavit") and copies of the written exchanges between Plaintiff and his current prison officials; these exchanges

indicated that: (a) Plaintiff made inquiries as to the prison officials' compliance with his prior request to send to the New Jersey Treasury Department the sum of \$300; and (b) in response to Plaintiff's request for a certified copy of his six-month prison account statement, Plaintiff was directed to contact the officials of Plaintiff's prior place of confinement, which was located in Bergen County. See Docket Entry No. 3.

Although Plaintiff's request for the mailing of \$300 from his prison account causes this Court a certain concern, since such reference might be indicative of Plaintiff's ability to access an amount allowing prepayment of his \$350 filing fee, see Adkins v. E. I. DuPont De Nemours & Co., Inc., 335 U.S. 331, 339 (1948), the Court finds it warranted to accept the statement from Plaintiff's current prison officials (showing that Plaintiff's current prison account has no funds) in lieu of Plaintiff's certified prison account statement. Therefore, in light of Plaintiff's Affidavit and the absence of three qualifying dismissals within 28 U.S.C. § 1915(g), the Court will grant Plaintiff's application to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915(a), and will order the Clerk to file the Complaint.

At this time, the Court must review the Complaint to determine whether it should be dismissed as frivolous or malicious, for failure to state a claim upon which relief may be granted, or because it seeks monetary relief from a defendant who is immune from such relief.

I. BACKGROUND

Plaintiff's allegations in this matter read as follows:

On July 20, 2010, at approximately 3:00 p.m. - 3:30 p.m. in Rutherford, New Jersey, in the back of Lanni's Appliance store; Plaintiff was preparing to receive two (2) televisions. However, before Plaintiff received the televisions he was seized after he ran away, after which, he thought he was being attacked by unidentified Rutherford Police Officers. All of named Defendants in the caption of this case, with the exception of Lt. Feliciano, seized Plaintiff's person without probable cause; seized and searched his vehicle and its contents without a warrant, nor probable cause. Lt. Feliciano, being the ranking police officer on the scene overseen the unlawful actions of all named Defendants actions. Moreover, he announced to the subordinate Defendants to initiate the unconstitutional seizure of Plaintiff's person, and unconstitutional seizure and search of his vehicle and contents.

Docket Entry No. 1, at 5 (capitalization and punctuation, and lack thereof, in original).

The Complaint concludes with Plaintiff's request for relief in the form of \$1,000,000.00 in monetary damages from each Defendant, see id. at 6, and names the following entities and persons as Defendants in this matter: (a) Rutherford Police Department; (b) Lt. Patrick Feliciano; (c) Sgt. Anthony Nunziato; (d) Officer Sean Farrell; (e) Officer Michael Garner; and (f) Officer Thomas Lewis. See id. at 1.

II. STANDARD OF REVIEW

In determining the sufficiency of a complaint, the Court must be mindful to construe the facts stated in the complaint liberally in favor of the plaintiff. See Erickson v. Pardus, 551 U.S. 89

(2007); Haines v. Kerner, 404 U.S. 519 (1972); United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992). Indeed, it is long established that a court should "accept as true all of the [factual] allegations in the complaint and reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff." Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997). However, while a court will accept well-pled allegations as true, it will not accept bald assertions, unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations. See id.

Addressing the clarifications as to the litigant's pleading requirement stated in the United States Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007), the Court of Appeals for the Third Circuit provided the courts in this Circuit with detailed and careful guidance as to what kind of allegations qualify as pleadings sufficient to pass muster under the Rule 8 standard. See Phillips v. County of Allegheny, 515 F.3d 224, 230-34 (3d Cir. 2008). Specifically, the Court of Appeals observed as follows:

"While a complaint . . . does not need detailed factual allegations, a plaintiff's obligation [is] to provide the 'grounds' of his 'entitle[ment] to relief' [by stating] more than labels and conclusions, and a formulaic recitation of the elements of a cause of action" Twombly, 127 S. Ct. at 1964-65 . . . Rule 8 "requires a 'showing,' rather than a blanket assertion, of entitlement to relief." Id. at 1965 n.3. . . . "[T]he threshold requirement of Rule 8(a)(2) [is] that the 'plain statement [must] possess enough heft to 'sho[w] that the pleader is entitled to relief.'" Id. at 1966. [Hence] "factual allegations must be enough to raise a

right to relief above the speculative level." Id. at 1965 & n.3. . . . [Indeed, it is not] sufficient to allege mere elements of a cause of action; instead "a complaint must allege facts suggestive of the proscribed conduct." Id.

Id. at 230-34 (original brackets removed).

This pleading standard was further refined by the United States Supreme Court in its recent decision Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009):

[In any civil action, t]he pleading standard . . . demands more than an unadorned the-defendant-unlawfully-harmed-me accusation. [Twombly, 550 U.S.] at 555 A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." [Id.] at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." Id. at 557. . . . A claim has facial plausibility [only] when the plaintiff pleads factual content Id. at 556. [Moreover,] the plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully. Id. [Indeed, even w]here a complaint pleads facts that are "merely consistent with" a defendant's liability, [the so-alleging complaint still] "stops short of [showing] plausibility of 'entitlement to relief.'" Id. at 557 (brackets omitted). [A fortiori,] the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions [or to t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements [,i.e., by] legal conclusion[s] couched as a factual allegation [e.g.,] the plaintiffs' assertion of an unlawful agreement [or] that [defendants] adopted a policy "'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." [W]e do not reject these bald allegations on the ground that they are unrealistic or nonsensical. . . . It is the conclusory nature of [these] allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth. . . . [Finally,] the question [of sufficiency of] pleadings does not turn on the controls placed on the discovery process. Twombly, 550 U.S. at 559 [The plaintiff] is not entitled

to discovery [where the complaint alleges any of the elements] "generally," [i.e., as] a conclusory allegation [since] Rule 8 does not [allow] pleading the bare elements of [the] cause of action [and] affix[ing] the label "general allegation" [in hope to develop facts through discovery].

Iqbal, 129 S. Ct. at 1949-54.

III. CLAIMS AGAINST THE POLICE DEPARTMENT

Here, Plaintiff named, among Defendants in this action, the Rutherford Police Department. However, this entity is not cognizable as a "person" subject to suit under 42 U.S.C. § 1983. See Harper v. Franklin & Marshall College, 2011 U.S. Dist. LEXIS 34298, at *11-12 (E.D. Pa. Mar. 30, 2011) ("A police department is a sub-unit of the city government and is merely a vehicle through which the city fulfills its policing functions, and [is] therefore not [a] suable entit[y] in Section 1983 actions.") (citing Shilling v. Brush, 2005 U.S. Dist. LEXIS 33912 (M.D. Pa. Aug. 26, 2005), and Stokes v. The Chester County Sheriff's Dept, 1994 U.S. Dist. LEXIS 16895 (E.D. Pa. 1994), and relying on Golya v. Golya, 2007 U.S. Dist. LEXIS 58093 (M.D. Pa. Aug. 9, 2007)); Jones v. Vineland Police Dep't, 2011 U.S. Dist. LEXIS 19671, at *9 (D.N.J. Feb. 28, 2011) (same, relying on Monell v. Dept. of Social Services of City of New York, 436 U.S. 658, 688-90 (1978), and Petaway v. City of New Haven Police Dept., 541 F. Supp. 2d 504, 510 (D. Conn. 2008); PBA Local No. 38 v. Woodbridge Police Dept., 832 F. Supp. 808, 825-26 (D.N.J. 1993), and quoting Monell, 436 U.S. at 694, for the observation that "[e]ven if this Court were to construe this defendant to be the

municipal entity, the City of Vineland, the claim would fail. 'A local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or act may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983'" (footnote and original brackets removed); accord Grabow v. Southern State Correctional Facility, 726 F. Supp. 537, 538-39 (D.N.J. 1989) ("In Will v. Michigan Department of State Police, 491 U.S. 58 (1989), the Supreme Court made explicit what had been implicit in its earlier decisions, namely that a state is not a person within the meaning of § 1983"). Therefore, Plaintiff's claims against this Defendant will be dismissed with prejudice.

IV. CLAIMS AGAINST POLICE OFFICERS

Here, Plaintiff alleges that he was arrested (and his car was searched) without probable cause. In order to determine whether Plaintiff's claims under § 1983 are viable, the Court must "identify the exact contours of the underlying right said to have been violated." County of Sacramento v. Lewis, 523 U.S. 833, 841, n. 5 (1998). Here, Plaintiff's claims arise under the Fourth Amendment, which provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported

by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Amend. IV.

The provisions of the Fourth Amendment are applicable to the States by virtue of the Fourteenth Amendment's Due Process Clause. See Cady v. Dombrowski, 413 U.S. 433, 440 (1973). The Fourth Amendment permits an arrest to be made only on the basis of "probable cause." Papachristou v. City of Jacksonville, 405 U.S. 156, 169 (1972).

Probable cause "requires more than mere suspicion[.]" Orsatti v. New Jersey State Police, 71 F.3d [480,] 482 [(3d Cir. 1995)]. However, it does not "require the same type of specific evidence of each element of the offense as would be needed to support a conviction." Adams v. Williams, 407 U.S. 143, 149 (1972). Rather, "probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." Orsatti, 71 F.3d at 483; see also Wilson v. Russo, 212 F.3d 781, 789 (3d Cir.2000) ("Probable cause exists if there is a 'fair probability' that the person committed the crime at issue." (citation omitted).). "Probable cause need only exist as to [one of the] offense[s] that could be charged under the circumstances." Barna v. City of Perth Amboy, 42 F.3d 809, 819 (3d Cir.1994). In analyzing whether probable cause existed for an arrest, we must take a "totality-of-the-circumstances approach." Illinois v. Gates, 462 U.S. 213, 230 (1983).

Reedy v. Evanson, 615 F. 3d 197, 211 (3d Cir. 2010).

Thus, in determining whether probable cause existed for an arrest, the court applies an objective standard based on "'the facts available to the officers at the moment of arrest.'" Barna, 42 F.3d

at 819 (quoting Beck v. Ohio, 379 U.S. 89, 96 (1964)); see also Edwards v. City of Phila., 860 F.2d 568, 571 n. 2 (3d Cir. 1988)). Moreover, "[e]vidence that may prove insufficient to establish guilt at trial may still be sufficient to find the arrest occurred within the bounds of the law." Id. (citing Henry v. United States, 361 U.S. 98, 102 (1959)); see also Virginia v. Moore, 553 U.S. 164, 171 (2008) ("[w]hen an officer has probable cause to believe a person committed even a minor crime . . . the balancing of private and public interests is not in doubt [and t]he arrest is constitutionally reasonable"). "To find that there was an unlawful arrest in violation of the Fourth Amendment, [it needs to be shown] that, under the facts and circumstances within [the officer's] knowledge, a reasonable officer could not have believed that an offense had been or was being committed by the person to be arrested."¹ Mosley v. Wilson, 102 F.3d 85, 94-95 (3d Cir. 1996); accord Revell v. Port Authority of New York, New Jersey, 598 F. 3d 128, 137 n.16 (3d Cir. 2010). Moreover, "[p]robable cause [does not require] a showing that the officer's belief is more likely true than false." Hughes v. Meyer, 880 F. 2d 967, 969 (7th Cir. 1989). An arrest is deemed constitutional where a reasonable officer could have believed that a criminal offense had been or was being

¹ The Fourth Amendment does not require the issuance of an arrest warrant prior to arrest (or imprisonment pursuant to that arrest). Cf. Albright v. Oliver, 510 U.S. 266, 274-75 (1994).

committed.² See Mosley, 102 F.3d at 94-95.

Here, Plaintiff's Complaint paints a picture strongly suggesting that a reasonable officer would have believed that an offense had been or was being committed by Plaintiff: at no point did Plaintiff assert that the officers could have observed him legitimately purchasing the televisions at issue. In fact, no statement in the Complaint suggests, even vaguely, that he purchased the televisions at all or that he was picking up his own televisions after a repair, or that he was legitimately employed by the store³ and was picking the

² The Fourth Amendment protects against unreasonable searches as well as unreasonable seizures. An officer must have probable cause to perform a lawful warrantless search of a car. See California v. Acevedo, 500 U.S. 565, 569-70 (1991). Probable cause to conduct a search exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." Ornelas v. United States, 517 U.S. 690, 696 (1996) (citing Brinegar v. United States, 338 U.S. 160, 175-76 (1949), and Illinois v. Gates, 462 U.S. 213, 238 (1983)). The Supreme Court has held that several sets of circumstances in which police have probable cause that a vehicle contains evidence of a crime are lawful exceptions to the warrant requirement, including exigency that the vehicle will be moved, see California v. Carney, 471 U.S. 386, 390 (1985) (citations omitted), and search "incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." Arizona v. Gant, 129 S. Ct. 1710 (2009). Here, the circumstances asserted by Plaintiff: (a) indicate that his car, if not searched, was likely to be moved; and, in addition (b) suggests that the vehicle was searched in connection with Plaintiff's arrest and on the grounds of Plaintiff's activities observed by police.

³ Plaintiff's Affidavit indicates that, at the time of the incident at issue, Plaintiff was "unemployed" and recently released from his prior incarceration. See Docket Entry No. 3, at 4.

televisions up in order to make a delivery to a customer.' See Docket Entry No. 1. Moreover, Plaintiff does not assert that the officers could have observed any interactions between him and the store owners indicative of legitimacy of Plaintiff's actions; indeed, he does not claim that he ever entered the store or that he was in front of the store, where pedestrians, the store owners or the police could observe his legitimate actions. See id. Rather, Plaintiff asserts that he situated himself at "the back" of the store and was merely "preparing to receive two(2) televisions." He had his vehicle nearby for the purposes of this unelaborated-upon "receivership." Id. at 5. Furthermore, Plaintiff states that - when he was about to execute this mysterious "receivership" - he saw police officers approaching and, for the reasons unspecified in the Complaint, he elected to abandon his "receivership" efforts and tried to run away. See id. Simply put, Plaintiff's Complaint paints a picture, which - being observed by a reasonable officer - would have led that officer to believe that Plaintiff was involved (or was about to get involved) in criminal activity.⁵ Therefore, the Complaint, as drafted, does allege probable

⁴ The Court takes note of "Lanni Appliance Center" ("Lanni Appliance") located at 116 Park Avenue, Rutherford, New Jersey 07070. See <<<http://lanniappliances.com/>>>.

⁵ The fact patterns stated in the Complaint come dangerously close to resembling a scenario typically associated with obtaining stolen goods or acting in conspiracy with another with the goal of stealing goods, or analogous crimes. Accord <<http://www.northjersey.com/news/118261844_Mother_and_son_charged_with_theft_in_Rutherford.html>> (reporting that "[a] mother and son duo from East Rutherford was arrested on Wednesday, March 16,

cause for Plaintiff's arrest and search of his vehicle. While the Court could fancy a scenario where, under the circumstances pled by Plaintiff, a reasonable officer observing Plaintiff's activities might still not conclude Plaintiff was involved or about to get involved in a criminal offence, Plaintiff's challenges cannot pass the plausibility requirement set forth in Iqbal.⁶

after police caught the two of them allegedly attempting to steal a television from the back of a truck parked in the loading area at Lanni Appliance in Rutherford").

⁶ Plaintiff asserted that he was arrested in connection with the incident that took place on June 20, 2010. In connection with that, the Court takes notice of a news release dated August 12, 2010, which stated:

Rutherford police officers managed to catch a Philadelphia man who was allegedly using other people's credit cards to purchase electronic equipment in a sting on July 20 in which officers posed as employees at Lanni[] Appliances on Park Avenue. The investigation began when employees of Lanni[] Appliances called police on July 16 to report that a customer calling himself Tom Henson had twice placed orders using a credit card account that was declined. The first order came on July 12 for a 46-inch Samsung television. After the first card was rejected, "Henson" gave the store a second account that was accepted. A thin black male in his 50's picked up the television on July 14. Two days later he called back to order two more televisions. Once again, the first account he used to put down a deposit was declined so he gave a second that was accepted. At this point, employees at Lanni[] became suspicious and contacted the police that day. On July 19, police contacted the credit card company and found that several of the cards were being used fraudulently. On July 20, the man called back to pay the rest of the order. Once again the first card he gave the store was denied but officers told the employees to tell him it was approved. Rutherford police officers went to Lanni[] Appliances and posed as employees and waited for the man to arrive. According to police, at about 7:30 p.m. a van pulled up and the

[The required] plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully. [Indeed, even w]here a complaint pleads facts that are "merely consistent with" a defendant's liability, [the so-alleging complaint still] "stops short of [showing] plausibility of 'entitlement to relief.'"

Iqbal, 129 S. Ct. at 1949-50.

Here, Plaintiff's challenges, if construed with a very substantial dollop of imagination, might meet the possibility standard, but they fall short of meeting the plausibility one.

same black male exited and went into the store. When asked by undercover police the man said he was Tom Henson's nephew, according to police. He was directed to drive around the corner to Chestnut Street where more officers were waiting. Detective Tom Lewis approached the man, who was later identified as [Plaintiff]. Lewis identified himself as an officer and ordered [Plaintiff] to surrender. According to police, [Plaintiff] ran for it and Lewis and Detectives James Garner and Sean Farrell pursued on foot. The officers caught up with [Plaintiff] as he attempted to scale a fence in the alleyway between 33 and 25 Franklin Place. Farrell and Garner arrested [Plaintiff] and he was taken into custody. Police report evidence linking [Plaintiff] to further fraud at other stores was found in the van and the investigation is still ongoing. [Plaintiff] was charged with three counts of fraudulent use of a credit card, three counts of theft, one count of obstruction and one count of resisting arrest. Bail was set at \$100,000 with not 10 percent option and he was transferred to the Bergen County Jail. Police say they also discovered that [Plaintiff] was wanted by U. S. Marshals.

<<http://www.northjersey.com/news/100506574_Rutherford_police_use_a_sting_to_make_arrest_at_appliance_store_.html>>. While the Court has no reason to take this information as true for the purposes of screening Plaintiff's Complaint, the Court notes that, had the scenario depicted in the above-quoted news release been, hypothetically, established as true, police officers would have had abundance of probable cause for both Plaintiff's arrest and search of his vehicle.

Therefore, Plaintiff's instant Complaint should be dismissed for failure to state a claim upon which relief can be granted.

However, this Court - being mindful of Plaintiff's pro se status - cannot rule out that Plaintiff might be able to elaborate on the circumstances of his "receivership" by stating facts showing that a reasonable officer observing Plaintiff's actions could not have believed that an offense had been or was being committed. Therefore, the Court will dismiss Plaintiff's Complaint without prejudice to filing an amended pleading detailing such facts, that is, if such facts were in existence.⁷

V. CONCLUSION

For the foregoing reasons, Plaintiff's Complaint will be dismissed. Plaintiff's claims not amenable to cure by amendment will be dismissed with prejudice, while the remaining claims will be dismissed with leave to amend.

An appropriate Order accompanies this Opinion.

Date: November 17, 2011

s/Claire C. Cecchi
CLAIRE C. CECCHI,
United States District Judge

⁷ The Court takes this opportunity to remind Plaintiff that his amended complaint, as his original Complaint, are documents executed under penalty of perjury and, therefore, these allegations should state facts which Plaintiff believes, in good faith, to be true.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HOZAY A. ROYAL,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

RUTHERFORD POLICE DEPT., ET AL.,
Defendant

CASE
NUMBER: 2:11-CV-04862-CCC-JBC

TO: *(Name and address of Defendant):*

MICHAEL GARNER
Rutherford Police Department
184 Park Avenue
Rutherford NJ 07070

RECEIVED U.S. DISTRICT COURT
NEWARK, N.J. 07102
2018 JUN 13 PM 4:06

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default demanded in the complaint. You also must file

8/1/18 4:00 delivered by
Capt. Feliciano

WILLIAM T. WALSH
CLERK

Donato Marucci
(By) DEPUTY CLERK

attached received by
Dario @ RPD 7/31/18

Capt Feliciano & Det Lewis
& Dept have not been
served as of today

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
RECEIVED

2017 AUG 14 P 3:31

HOZAY ROYAL,	:	CIVIL ACTION NO. 11-4682 (CCC)
Plaintiff,	:	
	:	
v.	:	
	:	
RUTHERFORD POLICE DEPT.,	:	
et al.,	:	
Defendants.	:	

AMENDED COMPLAINT

Honorable JAMES B. CLARK, III, U.S. Magistrate Judge
United States District Court
District of New Jersey
2 Federal Square
Newark, N.J. 07101

I.

STATEMENT OF FACTS¹

¹As mentioned in the amended complaint, dated February 24, 2012, on pp. 3-4; defendants LEWIS, FARRELL, GARNER and NUNZIATO commenced to run after Plaintiff, however, prior to Plaintiff running, defendant FELICIANO ordered the arrest of Plaintiff while NUNZIATO and FARRELL were loading the televisions into Plaintiff's vehicle he was operating.

All the statement of facts averred in the initial complaint, dated August 19, 2011, amended complaint and supporting memorandum of law, dated February 24, 2012, motion to supplement the pleadings pursuant to Fed.R.Civ.P. 15(d), dated August 3, 2016, and motion to amend and/or supplement the complaint pursuant to Fed.R.Civ.P. 15(a), (d), dated November 23, 2016, are incorporated herein by this reference.

II.

VIOLATIONS BY THE DEFENDANTS

COUNT ONE - defendant Lt. PATRICK FELICIANO, ordered the unlawful arrest of Plaintiff, contrary to his right to be free from unreasonable seizures pursuant to the Fourteenth and Fourth Amendments.

COUNT TWO - defendants THOMAS LEWIS, MICHAEL GARNER, SEAN FARRELL and ANTHONY NUNZIATO, caused the unlawful arrest of Plaintiff by seizing his person and charging him with three counts of fraudulent use of credit cards and three counts of theft of movable property, based on information from an unlawful search, contrary to his right to be free from unreasonable seizures pursuant to the Fourteenth and Fourth Amendments.

COUNT THREE - defendants ANTHONY NUNZIATO and MICHAEL GARNER unlawfully searched and seized items contained within Plaintiff's

vehicle Plaintiff's vehicle he was operating, contrary to his right to be free from unreasonable searches and seizures pursuant to the Fourteenth and Fourth Amendments.

COUNT FOUR - defendant ANTHONY NUNZIATO caused the unlawful seizure and impoundment of Plaintiff's vehicle he was operating, contrary to his right to be free from unreasonable seizures pursuant to the Fourteenth and Fourth Amendments.

COUNT FIVE - defendant ANTHONY NUNZIATO fabricated evidence ("statements") in a "Flyer," which violated Plaintiff's right to Due Process pursuant to the Fourteenth Amendment.

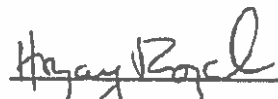
III.

CONCLUSION

It is humbly requested that the Honorable Court order the defendants to answer Plaintiff's amended complaint based on the foregoing violations.

Respectfully submitted,

Dated: August 9, 2017


HOZAI ROYAL, Pro Se

PROOF OF SERVICE

HOZAY ROYAL, Pro Se, Plaintiff, hereby affirms he has served the foregoing amended complaint upon the following person described below via First-Class U.S. Mail:

Clerk
U.S. District Court
Newark, N.J. 007101-0999

Dated: August 9, 2017


HOZAY ROYAL, Pro Se

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

HOZAY A. ROYAL,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

RUTHERFORD POLICE DEPT., ET AL.,
Defendant

CASE
NUMBER: 2:11-CV-04862-CCC-JBC

TO: *(Name and address of Defendant):*

ANTHONY NUNZIATO
Rutherford Police Department
184 Park Avenue
Rutherford NJ 07070

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

WILLIAM T. WALSH

CLERK

Donato Marucci

(By) DEPUTY CLERK



ISSUED ON 2018-06-13 10:04:42, Clerk
USDC NJD

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
RECEIVED

2017 AUG 14 P 3:31

HOZAY ROYAL,	:	CIVIL ACTION NO. 11-4682 (CCC)
Plaintiff,	:	
	:	
v.	:	
	:	
RUTHERFORD POLICE DEPT.,	:	
et al.,	:	
Defendants.	:	

AMENDED COMPLAINT

Honorable JAMES B. CLARK, III, U.S. Magistrate Judge
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District of New Jersey
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Dated: August 9, 2017


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Clerk

U.S. District Court

Newark, N.J. 007101-0999

Dated: August 9, 2017.


HOZAY ROYAL, Pro Se

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

HOZAY A. ROYAL,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

RUTHERFORD POLICE DEPT., ET AL.,
Defendant

**CASE
NUMBER: 2:11-CV-04862-CCC-JBC**

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Rutherford Police Department
184 Park Avenue
Rutherford NJ 07070**

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WILLIAM T. WALSH

CLERK

Donato Marucci

(By) DEPUTY CLERK



ISSUED ON 2018-06-13 10:04:42, Clerk
USDC NJD

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
RECEIVED

2017 AUG 14 P 3:31

HOZAY ROYAL,	:	CIVIL ACTION NO. 11-4682 (CCC)
Plaintiff,	:	
	:	
v.	:	
	:	
RUTHERFORD POLICE DEPT.,	:	
et al.,	:	
Defendants.	:	

AMENDED COMPLAINT

Honorable JAMES B. CLARK, III, U.S. Magistrate Judge
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District of New Jersey
2 Federal Square
Newark, N.J. 07101

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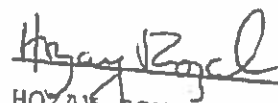
III.

CONCLUSION

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Respectfully submitted,

Dated: August 9, 2017


HOZAY ROYAL, Pro Se

PROOF OF SERVICE

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Clerk
U.S. District Court
Newark, N.J. 007101-0999

Dated: August 9, 2017


HOZAY ROYAL, Pro Se

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HOZAY A. ROYAL,

Plaintiff,

v.

RUTHERFORD POLICE et al.,

Defendants.

Civil Action No.
11-4862 (CCC)

HOZAY A. ROYAL,

Plaintiff,

v.

EDWARD V. ROCHFORD et al.,

Defendants.

Civil Action No.
11-7149 (CCC)

HOZAY A. ROYAL,

Plaintiff,

v.

ANTHONY ANNECCHIARICO,

Defendant.

Civil Action No.
12-1640 (CCC)

HOZAY A. ROYAL,

Petitioner,

v.

HADDON TOWNSHIP COURT,

Respondent.

Civil Action No.
12-4900 (CCC)

ORDER
APPLIES TO ALL ACTIONS

For the reasons expressed in the Opinion filed herewith,
IT IS on this 24th day of January, 2013

ORDERED that Royal's habeas challenges raised in Royal v. Haddon Twshp Ct., Civil Action No. 12-4900 (CCC), are dismissed; and it is further

ORDERED than no certificate of appealability will issue with regard to Royal v. Haddon Twshp Ct., Civil Action No. 12-4900 (CCC); and it is further

ORDERED that the Clerk shall close Royal v. Haddon Twshp Ct., Civil Action No. 12-4900 (CCC), by making a new and separate entry on the docket of that matter reading, "CIVIL CASE CLOSED"; and it is further

ORDERED that the Clerk shall reopen Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), Royal v. Rochford, Civil Action No. 11-7149 (CCC), and Royal v. Annecchiarico, Civil Action No. 12-1640 (CCC), by making a new and separate entry on the dockets of each of these three matters, with each entry reading, "CIVIL CASE REOPENED"; and it is further

ORDERED that Royal's submissions docketed in Royal v. Rochford, Civil Action No. 11-7149 (CCC), as Docket Entries Nos. 21 and 22, also docketed in Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), as Docket Entry No. 24, and also docketed in Royal v. Annecchiarico, Civil Action No. 12-1640 (CCC), as Docket Entries Nos. 6 and 7, are denied; and it is

further

ORDERED that this Court's prior order, revoking Royal's in forma pauperis status for the purposes of Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), and Royal v. Rochford, Civil Action No. 11-7149 (CCC), and denying Royal in forma pauperis status for the purposes of Royal v. Annecchiarico, Civil Action No. 12-1640 (CCC), shall remain in force; and it is further

ORDERED that this Court's final determination as to Royal's suitability to proceed in forma pauperis in Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), Royal v. Rochford, Civil Action No. 11-7149 (CCC), and Royal v. Annecchiarico, Civil Action No. 12-1640 (CCC), is reserved; and it is further

ORDERED that, within thirty days from receipt of Royal's affidavit, the Clerk shall order, from the federal archives in Kansas City, hard-copy files of all Royal's actions instituted in federal fora; and it is further

ORDERED that, in the event Royal elects to prepay his filing fee in Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), and/or Royal v. Rochford, Civil Action No. 11-7149 (CCC), and/or Royal v. Annecchiarico, Civil Action No. 12-1640 (CCC), Royal may do so within thirty days from the date of entry of this Order; and it is further

ORDERED that, in the event Royal prepays his filing fee with

regard to Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), and/or Royal v. Rochford, Civil Action No. 11-7149 (CCC), and/or Royal v. Anecchiarico, Civil Action No. 12-1640 (CCC), Royal must submit, together with his filing fee, his re-amended pleading in each such action stating his challenges, clearly and concisely, in accordance with the requirements posed by Rules 8, 18 and 20, and asserting only the factual predicate relevant to the substantive tests detailed to Royal by this Court; and it is further

ORDERED that, except for his re-amended pleadings submitted together with his filing fee, Royal shall not make any further submissions in Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), and/or Royal v. Rochford, Civil Action No. 11-7149 (CCC), and/or Royal v. Anecchiarico, Civil Action No. 12-1640 (CCC), until and unless this Court grants Royal in forma pauperis status and Royal's challenges proceed past the sua sponte dismissal stage, or until and unless Royal is expressly directed by this Court to make additional submissions in these matters; and it is further

ORDERED that the Clerk shall administratively terminate Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), and/or Royal v. Rochford, Civil Action No. 11-7149 (CCC), and/or Royal v. Anecchiarico, Civil Action No. 12-1640 (CCC), by making by making a new and separate entry on the dockets of each of

these three matters, with each entry reading, "CIVIL CASE TERMINATED"; and it is further

ORDERED that administrative termination is not a dismissal on merits, and this Court does not withdraw its jurisdiction over Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), and/or Royal v. Rochford, Civil Action No. 11-7149 (CCC), and/or Royal v. Annecchiarico, Civil Action No. 12-1640 (CCC). The Court will direct the Clerk to reopen Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), and/or Royal v. Rochford, Civil Action No. 11-7149 (CCC), and/or Royal v. Annecchiarico, Civil Action No. 12-1640 (CCC): (a) if Royal prepays his filing fee with regard to any of these actions and accompanies his submission by a re-amended pleading executed in accordance with the terms of this Order; or (b) the Clerk receives hard-copies of the archived files of Royal's prior proceedings commenced in federal fora and reaches a determination as to Royal's suitability to proceed in non-emergent civil matters in forma pauperis; and it is finally

ORDERED that the Clerk shall serve this Order and Opinion filed herewith upon Royal by regular U.S. mail, enclosing in said mailing three blank complaint forms which Royal may, if he so desires, utilize for the purposes of filing his amended pleadings in Royal v. Rutherford Police Dept., Civil Action No. 11-4862 (CCC), and/or Royal v. Rochford, Civil Action No. 11-7149 (CCC),

and/or Royal v. Anecchiarico, Civil Action No. 12-1640 (CCC), in the event Royal elects to prepay his filing fee in the matter(s).

A handwritten signature in dark ink, appearing to read 'Cecchi', is written above a horizontal line.

Claire C. Cecchi
United States District Judge