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WALTER USZENSKI, JACQUELINE
HALSEY and J.H., a minor,

Plaintiffs,

v.

BRICK TOWNSHIP BOARD OF
EDUCATION

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

DOCKET NO. OCN-L-2406-18

Civil Action

**THIRD AMENDED COMPLAINT,
JURY DEMAND and DESIGNATION
OF TRIAL COUNSEL**

Plaintiffs, Dr. Walter Uszenski ("Plaintiff" or "Dr. Uszenski"), residing at 3555 Ocean Drive, City of Vero Beach, County of Indian River, State of Florida, Jacqueline Halsey ("Plaintiff" or "Ms. Halsey") and J.H. ("Plaintiff" or "J.H."), residing at 1000 General Stevens Drive, Borough of West Chester, County of Chester, State of Pennsylvania, by way of Complaint, say:

NATURE OF THIS ACTION

1. This is an action brought to remedy violations of the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, *et seq.* ("CEPA").

PARTIES

2. Plaintiff Dr. Walter Uszenski ("Plaintiff" or "Dr. Uszenski") resides at 3555 Ocean Drive, Vero Beach, Florida. During the events described herein, Dr. Uszenski resided at

34 Beams Terrace, Manasquan, New Jersey. At all times relevant hereto, Plaintiff Dr. Uszenski was an employee of the Brick Township Board of Education. From July 1, 2012 until June 30, 2013, Dr. Uszenski was employed by the Board as the Superintendent of Schools. On or about June 30, 2013, the Board asked to re-open Dr. Uszenski's contract and, at that time, the Board and Dr. Uszenski entered into a new contract, pursuant to which Dr. Uszenski was employed as the Superintendent of Schools from July 1, 2013 to June 30, 2018.

3. Plaintiff Jacqueline Halsey ("Plaintiff" or "Ms. Halsey") is the mother of Plaintiff J.H., and both currently reside at 1000 General Stevens Drive, West Chester, Pennsylvania. Prior to the events described herein, Ms. Halsey and J.H. resided at 237 Alameda Drive, Brick, New Jersey.

4. Plaintiff J.H. is a special needs student who previously attended the Brick Township Schools. J.H. currently resides with his family at 1000 General Stevens Drive, West Chester, Pennsylvania.

5. At all times relevant hereto, the Brick Township Board of Education (hereinafter "the BBOE") is a body of elected officials who are responsible for overseeing the operations of the Brick Township Schools. The BBOE maintains offices at 101 Hendrickson Avenue, Brick, New Jersey.

6. At all times relevant hereto, Dr. Uszenski was an "employee" of the Brick Township Board of Education.

7. At all times relevant hereto, the BBOE was Dr. Uszenski's "employer."

8. In violation of CEPA, the BBOE retaliated against Plaintiffs through the actions of certain of their agents, employees (including supervisory employees) and Board Members who, in retaliating against Plaintiffs, acted within the scope of their employment by the BBOE.

9. At all times relevant hereto, the following individuals were members of the Defendant Brick Township Board of Education: John Barton, Sue Suter, Michael Conti, Dr. Vito Gagliardi, Sr., Karyn Cusanelli, Frank Pannucci, Sharon Cantillo, and Lawrence Reid. At all times relevant hereto, all of the aforementioned Board members were decision-makers regarding Dr. Uszenski.

10. At all times relevant hereto, all of the aforementioned Board members acted within the scope of their employment with the Brick Township Board of Education and, as a result, the Brick Township Board of Education has *respondeat superior* liability.

11. At all times relevant hereto, all of the aforementioned Board members acted in their official capacities.

VENUE

12. Pursuant to Rule 4:3-2, venue is proper in Ocean County because Ocean County is where the cause of action arose. Plaintiffs reserve the right to move to change venue pursuant to Rule 4:3-3 in the event that it becomes clear that there is substantial doubt that the Plaintiffs could receive a fair and impartial trial in Ocean County.

FACTS

13. In or about June, 2012, Dr. Walter Uszenski was hired as the Superintendent of Schools for the Brick Township School District. In July 2013, Plaintiff Uszenski entered into a

written agreement with the Brick Board of Education pursuant to which he was hired as the Superintendent of Schools from July 1, 2013 through June 30, 2018. But for the events described herein, Plaintiff Uszenski would have remained employed as the Superintendent of Schools until his retirement.

14. During his tenure with the School District, Dr. Uszenski met or exceeded his performance expectations.

15. Prior to Dr. Uszenski's employment with the School District, Donna Stump was the Director of Special Services for the School District.

16. Dr. Uszenski uncovered and objected to what he reasonably believed to be a fraudulent and/or corrupt transaction involving the School District's finances, i.e., a \$750,000 deficit in the Board's budget. In or about December, 2012, the Finance Committee for the Board of Education asked Plaintiff Uszenski to call Donna Stump, the Director of Special Services, to a meeting with the Finance Committee to explain an unexplained and illegal deficit, which compelled James Edwards, the Board Administrator, to transfer \$750,000.00 into the Special Education budget to cover the aforementioned \$750,000.00 shortfall.

17. In the December, 2012 meeting, Donna Stump admitted that she caused the \$750,000.00 deficit in the Special Education budget, by allegedly failing to submit invoices for out-of-district expenses which had been placed under the desk blotter of her secretary.

18. As a result of this incident, Plaintiff Uszenski, along with BBOE Finance Committee members Lawrence Reid, Sharon Cantillo, and John Talty, held a meeting wherein they decided to conduct an audit of the Department of Special Services ("DSS") to determine if there were any other financial irregularities in the DSS's budget.

19. On or around January 7, 2012, Plaintiff Halsey attended J.H.'s initial annual Individualized Education Plan "IEP" meeting with Brick Township for her son, J.H., who had been identified as a special needs child as early as 2011 by the State of New Jersey, more than two years before the date of the events at issue in this case and determined to be eligible for classification. J.H. had been receiving state intervention since he was 18 months old. An IEP (Individual Education Plan) is a plan or program developed to ensure that a child, like J.H., who has a disability identified under the law and is attending an elementary or secondary educational institution receives specialized instruction and related services.

20. When J.H. was 18 months old, he was diagnosed with Sensory Integration Disorder and early stages of Attention Deficit/Hyperactivity Disorder "ADHD".

21. J.H., who resided in the Brick School District, had received Special Education services from the Defendant Brick School District before the events at issue in this case and before Plaintiff Uszenski was hired as the Superintendent of Schools.

22. On February 10, 2013, at the direction of and under the supervision of Plaintiff Uszenski, Andrew Morgan, a consultant, submitted a partial strategic plan for auditing the DSS for approval by the Defendant Board of Education. Plaintiff Uszenski wanted the DSS audited because he was alarmed at what he reasonably believed was fraudulent and illegal conduct by Donna Stump with regard to the aforesaid \$750,000.00 deficit.

23. On February 11, 2013, at Plaintiff Uszenski's urging, the Brick School District's Human Resource Committee recommended to the Defendant BBOE that they hire Mr. Morgan as a Special Education consultant to work with Ms. Stump, Plaintiff Uszenski, and District staff

to audit the procedures, rules and regulations governing Special Education programs in the Brick schools.

24. On March 4, 2013, Mr. Morgan submitted a proposal statement setting forth the scope of the work he would perform, pursuant to a Request for Proposal "RSP". On March 21, 2013, the Defendant School Board approved a resolution hiring Mr. Morgan.

25. The audit of the DSS, initiated by and led by Plaintiff Uszenski, uncovered further corruption, malfeasance, and misfeasance by Donna Stump and the DSS. Plaintiff Uszenski discovered that under Stump's direct supervision and with her knowledge, Darlene Ciesla, sister to former New Jersey Senator Andrew Ciesla, was receiving a salary of \$140,000 per year, or \$970,000 total, for a period of seven (7) years for a no-show job in the DSS. Stump knew Ms. Ciesla did not perform in any capacity.

26. Plaintiff Uszenski further discovered that in violation of law and regulations, Director Stump permitted her staff to "cut and paste" Individualized Educational Programs ("IEPs") from one student's education plan to another. This resulted in many students receiving special services which were not individualized to meet their specific needs, they were simply copy and pasted from one student to another. This was an illegal practice under state and federal laws governing individualized education programs.

27. On March 7, 2013, J.H.'s IEP was amended due to behavioral regression and it was determined that J.H. required Mainstreaming and accordingly, required exposure to proper peer and socialization modeling currently being offered by Brick Township School District's mixed 2 hour program vs. his previous 3 hour all-inclusive (Special Education only) program.

28. On May 1, 2013, Plaintiff Halsey (at her own expense) had a Biopsychosocial Assessment conducted on J.H. by Meridian Behavioral Health noting peer socialization and aggressive outbursts concerns. At the conclusion of this assessment, J.H. was referred into the behavioral support program and deemed eligible for support services thru Meridian Behavioral Health.

29. On May 14, 2013, as a result of the fraud and corruption uncovered by Plaintiff Uszenski via the audit of the DSS, Plaintiff Uszenski informed Donna Stump that she would no longer be the Director of DSS. She continued in that position until June 30, 2013, before resuming her prior position of Supervisor in the DSS.

30. On June 18, 2013, Mr. Morgan, the contractor who had been auditing the DSS under Plaintiff Uszenski's leadership and direction, applied for the position of Interim Director of the DSS.

31. On June 27, 2013, Mr. Morgan's employment was ratified by the Defendant BBOE. Thereafter, Mr. Morgan became the Interim Director of Special Services effective July 1, 2013.

32. Later, long after Mr. Morgan had been hired by the BBOE, all parties learned that Mr. Morgan had incorrectly answered questions on his application regarding his prior employment and criminal history. In fact, this information was provided to the President of the Board of Education, Sharon Cantillo, by Donna Stump's husband James Stump, who held himself out as a former FBI agent, in a "dark parking lot" after an Ocean County Republican Club meeting attended by several Board members.

33. Before this clandestine meeting occurred, in or about June 2013, Mr. Morgan assembled a meeting of the Child Study Team to address J.H.'s IEP.

34. On July 11, 2013, the Child Study Team properly referred J.H. to Dr. Pietrucha, Neurological Pediatrician at Children Specialized Hospital, for an evaluation. On July 16, 2013, Dr. Pietrucha evaluated J.H. and found that, "[J.H.] is exhibiting behaviors that are indicative of Attention Deficit-Hyperactivity Disorder... with some co-morbid oppositional behavior." At that time, Dr. Pietrucha diagnosed J.H. as suffering from Oppositional Defiance Disorder ("ODD"), Sensory Integration Disorder, and ADHD.

35. On or about July 11, 2013, J.H.'s IEP was amended and he became legally entitled to out-of-District placement and eligible for an extended school year. From July 1, 2013 to June 2014, J.H. attended Ocean Early Childhood Center.

36. On July 14, 2013, a six (6) page "anonymous" dossier was mailed to each member of the Defendant Board of Education which referenced Mr. Morgan's 1989 arrest and falsely claimed that Plaintiff Uszenski knew about Morgan's 1989 arrest when he recommended Morgan to perform the audit of the DSS. The letter/dossier was also mailed to the Asbury Park Press and the new Director of Special Services. In addition, a New York Times article referring to Mr. Morgan's arrest was placed on the windshields of cars around town. The letter was authored by and distributed by Donna Stump with the assistance of her husband, James Stump.

37. On November 23, 2013, Mr. Morgan tendered his resignation effective as of December 31, 2013, and Susan Russell became the new Director of Special Services for the Brick Township School District.

38. Lawrence Reid, a Board of Education member from May 2011 to December 2015, later testified that Donna Stump's husband, an "ex-FBI person", discovered Morgan's criminal past and circulated the "anonymous" dossier. Mr. Stump also admitted to circulating the dossier to the Ocean County Prosecutor and that it was authored by his wife, Donna Stump.

39. Detective Llauget read the "press release" to the third grand jury as follows, in pertinent part: "Press release. Did the Brick Board of Education hire a convicted felon to manage special education?...Is this the same Mr. Morgan who is a convicted felon and who was incarcerated for eight months for the selling of illegal substances? ... **"Superintendent of Schools, Dr. Walter Uszenski, has publicly stated that he mentored Mr. Morgan and had a longstanding relationship. Clearly he [Walter] was well aware of his [Morgan's] background and lack of valid credentials before recommending his services to the Board of Education."** The letter included a newspaper article showing that Andrew Morgan had been arrested in 1989.

40. In truth, Plaintiff Uszenski and Morgan had crossed paths in the workplace for about three days in 2007 shortly before Plaintiff Uszenski left Liberty Charter School in Jersey City. They have never socialized. In 2013, twenty-four years after 1989 when Mr. Morgan had been arrested in New York City for a drug crime, Plaintiff Uszenski knew nothing of that arrest. Indeed, Investigator Laurie Llauget testified that she found no evidence that Plaintiff Uszenski and Mr. Morgan ever socialized.

41. Donna Stump fabricated the connection and lied about Plaintiff Uszenski's knowledge of Morgan's past because Plaintiff Uszenski had had exposed her malfeasance and demoted her. Stump's actions led directly to Plaintiffs Uszenski and Haley's arrests and

indictments, Plaintiff Uszenski's termination from employment and Plaintiff Halsey's ineligibility to seek a public education job. Stump's actions, endorsed and condoned by the Defendant BBEO that terminated Plaintiff Uszenski and de-classified Plaintiff J.H., set in motion a chain of events that gravely harmed Plaintiff Uszenski, his daughter, his grandson, and their families.

42. In June 2014, J.H. was declassified following a year of attendance at Ocean Early Childhood Center. This de-classification was derivative retaliation for J.H.'s grandfather, Plaintiff Uszenski, engaging in protected activities, including blowing the whistle on Donna Stump's and Darlene Ciesla's corruption and malfeasance. The de-classification had a detrimental impact on J.H. and, as a result, he regressed. This occurred under the supervision of Donna Stump, who, acting within the scope of her employment, enlisted the assistance of her subordinates to make false claims about Plaintiff J.H.'s legal IEP. Stump's actions constituted derivative retaliation against Plaintiff J.H. for his association with Plaintiff Uszenski, by whom she had recently been demoted.

43. J.H. completed the 2014-2015 school year in the Brick School District without any special needs help based on the bogus June 2014 declassification, and by July 2015, J.H. had regressed and was then diagnosed as suffering from ADHA, ODD and depressive symptoms requiring a 504 Plan from the Brick School District. However, no 504 Plan was developed for J.H. He remained in an un-classified status and without any special needs assistance when he returned to school in September, 2015.

44. In or about August 2014, Mr. Morgan, who no longer worked for the School District, contacted Susan Russell, the Director of Special Services, about providing home

counseling services for J.H. to transition into general kindergarten. Susan Russell then contacted Rachel Goff, a social worker, to conduct the counseling sessions.

45. On September 16, 2014, Plaintiff Halsey met with Ms. Goff, who visited the Halsey home on September 24, 2014 and September 30, 2014, to interact with J.H.

46. On October 1, 2014, Rachel Goff submitted her time sheet for the counseling sessions in the amount of \$149.00. Lorraine Morgan, as Academic Officer, approved the services rendered by Ms. Goff.

47. On October 15, 2014, Ms. Goff met with Plaintiff Halsey to discuss Plaintiff J.H. At that time they agreed that J.H. was doing well at home and did not require any additional in-home counseling sessions. However, J.H. still required a classified status and an IEP.

48. In February 2014, Plaintiff Uszenski recommended the termination of a dangerously incompetent provisional school bus driver, Marcell Butterly, because she had abandoned a child on her bus instead of delivering the child to an Education Enrichment Center.

49. In or about December, 2014, the Defendant BBOE acting by and through their supervisory employee Donna Stump and other agents, employees and Board members, conspired to and did retaliate against Plaintiff Uszenski in retaliation for his CEPA-protected activity with respect to blowing the whistle on Ms. Stump's fraudulent concealment of \$750,000 under an ink blotter and her corruption and malfeasance with regard to her supervision of Darlene Ciesla's no-show job by seeking to falsely charge him criminally for issues relating to J.H.'s education and his lawful receipt of Special Education services from the Brick School District.

50. On December 10, 2014, Ms. Butterly, the disgruntled former employee, had a conversation with Brick Township Mayor John Ducey and Brick Township Administrator

Joanne Bergen to discuss her termination. She falsely told Mayor Ducey and Ms. Bergen that the reason she abandoned the child on her bus was because while in the middle of checking for students on the bus she was interrupted by a request from an assistant transportation director to do a “favor” for Plaintiff Uszenski by using her bus to transport his grandson, Plaintiff J.H., to a nursery school, Ocean Early. She said she learned that Plaintiff J.H. was transported throughout the 2013/14 school year.

51. At this same time, the Defendants conspired to and did retaliate against Plaintiff Halsey because of her familial relationship to Plaintiff Uszenski and because of her advocacy for her son, J.H., by seeking to criminally charge her for issues relating to J.H.’s education and receipt of Special Education services from the Brick School District.

52. In December, 2014, Brick Township Mayor John Ducey contacted Prosecutor Joseph Coronato to report Ms. Butterly’s allegation that Plaintiff Uszenski’s grandson, J.H., was being driven to a private daycare on a public-school bus.

53. The Prosecutor’s Office aggressively investigated, tracking down the nursery’s business administrator, Ms. Bliss, who reported that Plaintiff Halsey had indeed provided her with a copy of the Brick School’s IEP for J.H., the Individualized Educational Program. The IEP, dated March 7, 2013, amended an earlier January 7, 2013 IEP and permitted Justin to have a full day program at Ocean Early through January 7, 2014.

54. The investigation should have ended once investigators were presented with this legal IEP for Plaintiff J.H., but unfortunately, this was not the case. Instead, the Prosecutor’s investigation was spurred on for retaliatory purposes by Donna Stump and members of the BBOE who condoned and ratified her actions.

55. On February 23, 2015, the Prosecutor's investigator contacted Donna Stump, whom Plaintiff Uszenski had demoted in July 2013 because, among other things, she had concealed \$750,000 in unpaid invoices, and had concealed the fact that the Brick School District was paying Darlene Ciesla \$140,000 per year for seven (7) years for a position that Stump knew was a no-show job and which was simply a corrupt political favor. Ms. Stump's husband James Stump, who held himself out as a former FBI agent, got on the phone and told the investigator about his wife's demotion. He concealed her malfeasance and stated that Ms. Stump was demoted "when Andrew Morgan was hired to be the new Director of Special Services." Donna Stump then told the investigator that Morgan "has a criminal past."

56. Although Plaintiff Uszenski had no knowledge of Mr. Morgan's 1989 arrest when he recommended the hiring of Mr. Morgan, and despite the fact that it was the responsibility of the School Board's Human Resources Committee to vet job candidates, Plaintiff Uszenski became the victim of guilt by association with Morgan. The only "evidence" investigators ever found or presented regarding Uszenski's knowledge of Morgan's arrest was the six-page document authored by Donna Stump which falsely claimed that Plaintiff Uszenski knew about Mr. Morgan's arrest and that they had a "longstanding relationship".

57. Acting within the scope of her employment, the demoted Donna Stump enlisted the help of her subordinates to make false statements to the investigators, claiming that the placement of Justin in Ocean Early "was not educationally necessary and could not be supported by a legitimate IEP." To protect herself, she stated that the IEP her team signed off on "is fraudulent and was only done because Andrew Morgan initiated the alteration [of the prior IEP]

and exerted pressure on the CST [Child Study Team] to get it done or suffer the consequences of failing to do it.”

58. The Defendant BBOE, by and through its employees and/or agents, actively participated and assisted the Prosecutor’s Office in fomenting and advancing the baseless criminal charges by, among other things, skewing the information they provided to the Prosecutor’s Office while, at the same time, failing to disclose the truth to the Prosecutor’s Office regarding J.H.’s special needs classification and receipt of special needs services.

59. For example, on September 29, 2015, the following BBOE employees were identified as witnesses who had provided information to the Prosecutor’s Office in connection with the baseless criminal charges: Business Administrator James Edwards, Susan Russell, Donna Stump, Dana Gonzalez, Jennifer Fabo, Rachel Gauth and Sharon Cantillo. Likewise, on May 24, 2016, the following BOE employees were identified as witnesses who had provided information to the Prosecutors’ Office in connection with the baseless criminal charges: Susan Russell, Donna Stump, Dana Gonzalez, Jennifer Fabo and Rachel Gauth.

60. Had the Defendant BBOE and its employees and/or agents told the truth to the Prosecutor’s Office regarding J.H.’s special education needs and his legitimate receipt of services, no criminal prosecution could have been possible. Instead, the Board of Education, by and through its employees and agents, retaliated against the Plaintiffs by acting in concert with the Prosecutor’s Office in fomenting and pursuing the baseless criminal charges.

61. In May, 2015, both Plaintiffs Uszenski and Halsey were arrested and charged. Plaintiff Uszenski was handcuffed, transported to the Prosecutor’s Office under police custody in a patrol car, and finger-printed and processed. Then, Plaintiff Uszenski was transported to the

Sheriff's Office under police custody, then to the County Jail where he was again finger-printed and processed involuntarily and against his will. There was no factual and legal basis for the criminal charges.

62. When Plaintiff Halsey was arrested at her home, her then three-year-old son personally witnessed her arrest, and when Plaintiff's Halsey's spouse arrived at their home he found their then 3-year-old son hanging onto his mother's leg. Plaintiff Halsey, who was recovering from abdominal surgery, was later that day taken to the Brick Police station where she was finger printed and processed.

63. In retaliation against Plaintiff Uszenski, on May 7, 2015, the Defendant BBOE voted to suspend Plaintiff Uszenski because of his baseless arrest which they themselves helped to instigate. This suspension was with pay.

64. Prior to these events, Plaintiff Halsey was employed as an elementary school teacher. After her arrest and criminal prosecution, Plaintiff Halsey's career was utterly destroyed and she is no longer able to work as a school teacher.

65. Moreover, Plaintiff Halsey's reputation was destroyed within the community. As an example, Plaintiff Halsey's neighbor told her then 7 year old daughter that her mother was "going to jail and that she is going to lose weight because she is only going to be able to eat bread and water!"

66. In July, 2015, Plaintiff Halsey retained counsel to represent her and J.H. in pursuing J.H.'s IEP.

67. In August, 2015, Plaintiff Halsey met with the Brick Township's Child Study Team to discuss the re-instatement of J.H.'s IEP. At the conclusion of which the Child Study Team agreed to re-instate J.H.'s IEP.

68. However, Plaintiffs Halsey and J.H. continued to pursue J.H.'s IEP and, as a result, in September, 2015, filed an action in the Office of Administrative Law to pursue J.H.'s IEP.

69. On September 29, 2015, the Defendants presented their "evidence" to a panel of grand jurors, who returned an Indictment against Plaintiffs Uszenski and Halsey.

70. On or about September 29, 2015, the Defendant BBOE voted to suspend Plaintiff Uszenski without pay based on his baseless criminal prosecution which the Defendant Board initiated and ratified in retaliation for Plaintiff Uszenski's protected activities of exposing corruption, misfeasance, and malfeasance in the DSS and the School District at large.

71. By January 2016, J.H. (then in first grade) had continued to regress. In January, 2016, J.H. was re-evaluated and properly reclassified by the Brick Township Child Study Team as a child with disability who was legally entitled to Special Education services. In truth, J.H. should have remained classified during his entire tenure with the Brick Schools and his illegal declassification in 2014 was a part of the malicious plan orchestrated, conspired, and executed by the Defendants.

72. In January, 2016, Plaintiff Halsey and her counsel met with the Child Study Team to discuss J.H.'s IEP. The meeting lasted approximately 5 hours, at the conclusion of which the Child Study Team produced a hand-written IEP for J.H.

73. In February, 2016, the Child Study Team produced a formal IEP for J.H. – however, this IEP was woefully inadequate and Plaintiff Halsey and J.H. continued to pursue J.H.'s IEP through the OAL.

74. By August, 2016, Plaintiff Halsey's reputation had been permanently damaged in the Brick area, and she continued to fight with the Brick Board of Education over J.H.'s IEP. As a result, the family decided to re-locate from Brick, New Jersey to Pennsylvania, where J.H. was properly classified and given an appropriate IEP.

75. More than one year after they moved to Pennsylvania and, as a result of J.H. having been given a proper IEP, in November, 2017, Plaintiff Halsey withdrew without prejudice, her OAL filing seeking a proper IEP.

76. During 2015 and continuing until November, 2017, J.H.'s parents, through the Court system, aggressively attempted to get J.H. the much-needed support and services after they surprisingly learned that a 504 Plan, which was promised to them during J.H.'s illegal June 2014 declassification meeting, was never put in place. As a result, Plaintiffs Halsey and J.H. exhausted their administrative remedies prior to filing this action. Upon information and belief, the Brick Township Board of Education did not properly reclassify J.H. during the 2015 to 2017 time period because of intimidation and threats made by Executive Assistant Prosecutor Michel A. Paulhus towards the evaluating members of the Brick Township School District Child Study Team.

77. As a result of the Brick Board of Education Defendants' failure to provide Plaintiff J.H. with the Special Services necessary and legally required to provide him with a proper educational environment, J.H. regressed further and by April 2, 2018, he was diagnosed

as suffering from ODD, Disruptive Mood Dysregulation Disorder, Emotional Depression and ADHD. Plaintiff J.H. has and is being prescribed daily medications to manage and treat these conditions.

78. Presently, J.H. remains classified and receives Pennsylvania State Special Education Behavioral and Socialization Services. This support is active in both the school and home environment.

79. On May 24, 2016, the Defendants again presented their “evidence” to a panel of grand jurors, who returned a Superseding Indictment (hereinafter referred to as “the Superseding Indictment”) was obtained under Indictment No. 16-05-1033. The Superseding Indictment contained 19 counts against Plaintiff Uszenski, Plaintiff Halsey and Mr. Morgan. The first two counts related only to Mr. Morgan and his application for employment. Mr. Morgan was charged with False Swearing, N.J.S.A. 2C:28-2a and Theft by Deception, N.J.S.A. 2C:20-4, for allegedly answering questions about his prior employments and his criminal record falsely.

80. Counts 3 through 7 of the Superseding Indictment relate to allegations that Mr. Morgan and Plaintiff Uszenski conspired to fraudulently solicit an audit of the Brick Special Services division and to subsequently remove Ms. Stump, the then existing Director of Special Services, supplant Mr. Morgan in her place, allegedly for the purpose of ultimately creating and approving a fraudulent IEP for J.H., to include private daycare and transportation at the public expense. Count 3 charged Plaintiff Uszenski and Mr. Morgan with conspiracy to commit official misconduct, in violation of N.J.S.A. 2C:5-2, N.J.S.A. 2C:30-2 and theft by deception, in violation of N.J.S.A. 2C:20-4. Counts 4 and 5 charged Plaintiff Uszenski with official misconduct and theft by deception in violation of N.J.S.A. 2C:30-2, N.J.S.A. 2C:2-6 and

N.J.S.A. 2C:20-4, respectively. Counts 6 and 7 charged Mr. Morgan with official misconduct and theft by deception, in violation of N.J.S.A. 2C:30-2, N.J.S.A. 2C:2-6 and N.J.S.A. 2C:20-4, respectively.

81. Counts 8 through 15 of the Superseding Indictment related to allegations that Mr. Morgan, Plaintiff Uszenski and Plaintiff Halsey conspired to create a fraudulent IEP to enable J.H. to receive inappropriate and unnecessary services at public expense. Count 8 charged Plaintiff Uszenski, Mr. Morgan and Plaintiff Halsey with official misconduct pursuant to N.J.S.A. 2C:5-2, N.J.S.A. 2C:30-2 and N.J.S.A. 2C:30-2, Counts 9 and 10 alleged that Plaintiff Uszenski committed official misconduct, N.J.S.A. 2C:20-4, Count 11 charged Mr. Morgan with official misconduct, in violation of N.J.S.A. 2C:30-2. Count 12, the only new count in the Superseding Indictment, alleged that Mr. Morgan and Plaintiff Uszenski engaged in official misconduct to remove programs from IEP's contrary to the provision of N.J.S.A. 2C:30-2 and N.J.S.A. 2C:2-6. Count 13 was against Mr. Morgan for theft by deception, in violation of N.J.S.A. 2C:20-4. Counts 14 and 15 alleged that Plaintiff Halsey committed official misconduct of N.J.S.A. 2C:30-2 and theft by deception, N.J.S.A. 2C:20-4, respectively.

82. Counts 16 through 19 of the Superseding Indictment related to allegations that Plaintiff Uszenski, Mr. Morgan, Plaintiff Halsey and Lorraine Morgan, each played a part in the payment of \$149.00 for counseling services for J.H. to Rachel Goff.

83. Counts 16, 17, 18 and 19 charged Plaintiff Uszenski, Mr. Morgan, Plaintiff Halsey and Lorraine Morgan with official misconduct, in violation of N.J.S.A. 2C:30-2, respectively.

84. As stated above, there was no factual and legal basis for the criminal charges against Plaintiffs Uszenski and Halsey. The criminal prosecution was pursued by a Republican prosecutor and orchestrated by well-connected disgruntled employees in retaliation for Plaintiff Uszenski's protected activity of blowing the whistle on corruption, malfeasance, and misfeasance which caused Donna Stump to be demoted, Darlene Ciesla to "retire" and Ms. Butterly to be terminated.

85. In presenting the case to both grand juries, Michel Paulhus knowingly and deliberately failed to present exculpatory evidence to the grand jury which was in his possession as required by State v. Hogan, 144 N.J. 216 (1996) and State v. Evans, 352 N.J. Super. 178 (2001). The Ocean County Prosecutor's Office, and specifically the Ocean County Prosecutor Joseph Coronato and Michel Paulhus, presented these bogus claims to the grand jury despite knowing that there was no factual or legal basis to assert that Plaintiff Uszenski and Plaintiff Halsey had committed any illegal act whatsoever.

86. On February 28, 2017, Judge Patricia B. Roe of the Superior Court of New Jersey, Ocean County, granted Plaintiff Uszenski and Plaintiff Halsey's motion to dismiss the Superseding Indictment. As Judge Roe stated in her opinion dismissing the Superseding Indictment:

On September 22, 2015, Joseph Benedict, Esq., attorney for defendant, Walter Uszenski, met with the State to discuss the evidence before it was presented to the first grand jury. Defendant submitted correspondence and documentation on that date to Michel Paulhus, Executive Assistant Ocean County Prosecutor. Defendant contended the documentation supported his assertion that the services provided to J.H. were both necessary and proper and that this evidence should be provided to the grand jury along with the State's evidence from their own investigation. By letter dated September 23, 2015, the State indicated that none of

the evidence provided by defendant would be presented to the grand jury.
(Emphasis Supplied.)

87. Examples of the exculpatory evidence that Judge Roe found that the prosecutor knowingly and deliberately withheld from the grand jury are as follows:

- (a) Evidence provided [by Mr. Benedict] which documented that J.H., the child of Jacqueline Halsey and grandson of Dr. Walter Uszenski, was having behavioral difficulties requiring special services as early as 2011, more than two years prior to the incidents charged in the indictment.
- (b) Evidence that in 2011, Dr. Pietrucha, a pediatric neurologist from Children Specialized Hospital at Jersey Shore, evaluated J.H. and also recommended three daycares - Ocean Early, Old Riverside and Goddard "as possibilities to be able to handle J.H.'s aggressive behaviors."
- (c) Evidence documenting J.H.'s history of behavioral issues and the experts' recommendations for daycare placement as early as 2011.
- (d) Evidence documenting that in or about December, 2012, the Finance Committee for the Board of Education asked Dr. Uszenski to call Donna Stump to a meeting with the committee to explain a deficit, which compelled the Board Administrator to transfer \$750,000 into the Special Education budget to cover that shortfall. In the December, 2012 meeting, Donna Stump admitted that she caused the \$750,000 deficit in the Special Education budget for the Brick Township school district, by failing to submit invoices for out-of-district expenses when she allegedly placed them under the blotter of her secretary. Judge Roe held that this "... incident was the deciding factor which caused the Committee to direct an audit be performed to see if any other problems existed in the Special Services Department. Though some of the board members wanted to immediately terminate Donna Stump from employment for causing the deficit, Dr. Uszenski explained the rules for tenure and that she could only be demoted to her prior position, having been with the district more than 30 years. The State discovered this reason for the Board of Education seeking an audit of the Brick Special Services department through its own investigation and interview of Board President, Sharon Cantillo. Yet, this information was not presented to the grand jury." (Emphasis Supplied.)
- (e) Evidence regarding the true scope of Mr. Morgan's work for the Board of Education and proofs showing the actual time he spent conducting his audit and preparing his audit report:

Andrew Morgan submitted his time sheets in five vouchers for the services he rendered, between March 22, 2013 and May 31, 2013. Each voucher was signed by Donna Stump, Dr. Uszenski and Andrew Morgan. Each voucher had a list of dates and a number of hours for each date with the total of hours at the bottom as follows: 1) 44 hours; 2) 59 hours; 3) 56.5 hours; 4) 29 hours and 5) 33.5 hours, for a grand total of 222 hours. The last voucher has the notation at the bottom "(to be paid remaining hours only)." This referred to the cap of 210 hours for the entire audit. These vouchers were never presented to the grand jury.

88. Prior to the presentation of the evidence to the grand jury, the prosecutor and Brick Township Mayor conspired to fabricate these criminal charges against Plaintiffs Uszenski and Halsey. As Judge Roe stated in her opinion dismissing the Superseding Indictment:

An investigation in this matter was initiated in December of 2014 when Brick Township Mayor John Ducey contacted Prosecutor Joseph Coronato to discuss an allegation that Superintendent Walter Uszenski's grandson, J.H., was being driven to a private daycare on a public school bus.

89. Initially Mayor Ducey lied to the press and falsely claimed that he had not contacted the Ocean County Prosecutor regarding Plaintiff Uszenski, Plaintiff Halsey and/or J.H. as reported in the Asbury Park Press on March 2, 2017:

Mayor John Ducey on Tuesday denied a report that a criminal misconduct investigation into suspended Schools Superintendent Walter Uszenski started with a conversation he had with the Ocean County Prosecutor about the school chief's grandson being driven to private day care on a public school bus.

In fact, he [Mayor Ducey] contacted the Asbury Park Press Tuesday night and said the information was "completely and entirely inaccurate." and wanted a retraction. On Wednesday, the mayor walked back at least part of his denial.

When he was told that information was contained in the opinion of a Superior Court judge who dismissed the criminal charges against Uszenski, Ducey responded in an email early Wednesday, "It makes no sense to me that a Judge would write something in an opinion that has no basis in fact and is totally untrue."

And later on Wednesday, when Ducey was presented with information in the criminal file that documented a meeting he and Brick Township Administrator Joanne Bergen had with Ocean County Prosecutor Joseph Coronato in December of 2014 to discuss the allegation concerning Uszenski's grandson, Ducey acknowledge that the meeting occurred and said what was discussed was a "relative" of the superintendent.

90. Thus, Mayor Ducey deliberately lied to the press and falsely accused Judge Roe of lying in her opinion about his involvement in setting these events in motion. Mayor Ducey only admitted the truth when he was confronted with the evidence upon which Judge Roe based her opinion. Absent such proof, Mayor Ducey would have continued to lie about his personal involvement in bringing the bogus criminal charges against Plaintiffs Uszenski and Halsey.

91. The Prosecutor's Office knowing and deliberate failure to present the exculpatory evidence in their possession to the grand jury was malicious and designed to knowingly and deliberately harm Plaintiffs Uszenski and Halsey. The Prosecutor's Office conduct in this regard resulted in the dismissal of the Superseding Indictment. As Judge Roe held:

This legitimate and crucial need for the audit of special services, caused by someone other than defendants [Mr. Uszenski and Mrs. Halsey], was never presented to the grand jury, notwithstanding this evidence came from a reliable, unbiased source through the State's own investigation. Clearly, this was exculpatory evidence that negates the State's theory that the audit was merely a ruse by Dr. Uszenski to bring in Andrew Morgan in an effort to supplant Donna Stump. The audit was not a fraud perpetuated on the Board of Education. The fact that there was a legitimate need to audit special services in Brick, created by Donna Stump and requested by the Board of Education, undermines the State's entire theory of the case and request for indictment. Had the grand jury been given the evidence of the reason there was a legitimate need for the audit as determined by the Board of Education, it is unlikely it would have returned indictments against Dr. Uszenski or Andrew Morgan for conspiracy, official misconduct or theft by deception in Counts 3 through 9.

92. During their presentations to the grand jury, Michel Paulhus and Detective Ryan Mahoney lied to and deliberately misled the grand jury in order to obtain the Superseding Indictment against Plaintiffs Uszenski and Halsey. Some examples of this outrageous misconduct as identified by Judge Roe stated in her opinion dismissing the Superseding Indictment are as follows:

- (a) Here, the State's witness, Detective Mahoney, interviewed Sharon Cantillo about the reason for the audit and the demotion of the previous director of special services. Despite the source and reliability of the evidence, that interview was omitted from both grand jury presentations. Unlike recantation evidence or an accused's self-serving statement denying guilt, this prosecutor had knowledge that this interview was clearly exculpatory evidence that directly negated guilt, though it was inconsistent with the State's theory that it was Dr. Uszenski who engineered the hiring of Andrew Morgan to conduct a fraudulent audit in an effort to supplant Donna Stump. There was also evidence that Andrew Morgan was not the only individual considered for the audit, though the grand jury was told otherwise. T37:11-16.
- (b) Integral to the State's theory of the case is the allegations that no legitimate audit was ever performed; that Andrew Morgan performed services outside of the scope of his employment for the audit; that Andrew Morgan spent only four hours to prepare a superficial and bogus audit report that was subsequently used to justify the demotion of Donna Stump as director of special services. There was substantial evidence in the State's possession that contradicted the inferences as presented to the grand jury.
- (c) More significant, the State told the grand jury that Andrew Morgan was hired "solely to conduct an audit between March 22, 2013 and June 30, 2013." T40-12 to T40-13. Further, that Andrew Morgan's audit report, "reflect[s] no more than four-plus hours that was found on Mr. Morgan's computer to write this seven-page-or-so document." T57-18 to T57-21. Detective Mahoney then offered his own opinion that the audit report submitted "did not appear to represent 209 or 210 hours of work at the rate of \$83.33 an hour which justified \$17,499 paid by the Board to Morgan," T58-2 to T58-7, and that "the Audit Report...represents...everything Mr. Morgan did on behalf of the District from March 22nd to June 30th 2013." T50-1-T50-6. Not only were the opinions of the witness as elicited by the

prosecutor speculative, but they were wholly unsupported by the facts and the evidence within the possession of the prosecutor. "Statements of fact or opinion that are not even remotely supported by personal knowledge or experience are not evidence and may not be the basis for an indictment." State v. Vasky, 218 N.J. Super. 487, 492 (App. Div. 1987). (Emphasis Supplied)

- (d) Moreover, the State was in possession of five vouchers, dated March 22, 2013 to May 31, 2013, documenting 222 hours in total, spent by Andrew Morgan in his consultant work with Donna Stump, Dr. Uszenski and district staff. Each voucher is signed by Donna Stump, Dr. Uszenski and Andrew Morgan. The last voucher has the notation "(to be paid remaining hours only)", referring to the cap of 210 hours as per Andrew Morgan's contract for the audit. Detective Mahoney also interviewed Donna Stump on June 29, 2015. She confirmed that she and Andrew Morgan worked closely during the time of the audit, going to various schools in the district as a consultant. Board members confirmed Andrew Morgan regularly attended their meetings to advise of the status of the audit. Accordingly, the inference by Detective Mahoney that Andrew Morgan spent only four hours to conduct a seven page audit report is not just a "half-truth," it is an untruth. (Emphasis Supplied)
- (e) The failure to disclose these facts and the time sheets and instead eliciting testimony from Detective Mahoney about alleged double billing resulted in a distorted version of the facts as proscribed by State v. Evans, "[I]t is clear that the failure to disclose the evidence much be tantamount to a resulting 'distorted version of the facts'." or '(interference) with the grand jury's decision making function',... or "deprive the grand jury of their opportunity to screen out unwarranted prosecutions." Evans, supra, 352 N.J. Super. at 196; citing to Hogan, supra, 144 N.J. at 236. Here, it clearly deprived the grand jury of being able to make an independent assessment of whether the State had met its burden.
- (f) The remaining counts of the indictment deal with allegations that the IEP for J.H. was fraudulent and the placement of J.H. at Ocean Early and the counseling or in home services were inappropriate. Here, the State possessed evidence prior to the grand jury presentation that neither the IEP nor the "in-home instruction" was fraudulent or inappropriate.
- (g) During his investigation, Detective Mahoney spoke with witnesses who told him that in their opinions, the Ocean Early placement was inappropriate. T78-21 to T78-23. Detective Mahoney then concludes, based on the opinions from these witnesses, that Ocean Early was not an

appropriate placement for J.H. through an IEP. “A grand jury may return an indictment based largely or wholly on hearsay testimony.” Vasky, 218 N.J. Super. at 491, citing to State v. Thrunk, 157 N.J. Super. 299, 304-306 (App. Div. 1970). Yet, here it was the State’s duty, pursuant to Hogan, supra, 144 N.J. 216 at 236, to present credible and reliable evidence that was contrary to the incomplete and subjective opinions regarding whether the IEP was appropriate.

- (h) From the outset, the State clearly had evidence that the child, J.H. was involved as early as 2011 in the N.J. Early Intervention System because of his aggressive behaviors and that Dr. Pietrucha, a Pediatric Neurologist from Children Specialized Hospital had recommended enrollment in three daycares including Ocean Early, to address J.H.’s negative behaviors. This documentation demonstrated that Jacqueline Halsey was attempting to work within the system for specialized services for children with disabilities and that J.H. was found eligible for State intervention approximately two years prior to the issues giving rise to the instant indictment.
- (i) The State did present to the grand jury that J.H. had been properly classified as in need of special education. T77:11-14; T78:11-14. However, that information was woefully incomplete and tantamount to telling the grand jury a half-truth “as condemned in the Hogan decision.” Ibid. The State neglected to inform the grand jury of how early or the reasons why J.H. was classified as a special needs child. This is critical, as J.H.’s special needs explain why a general daycare was appropriate given the circumstances. This factual background would have provided the grand juror an alternate set of facts and evidence to make their own determination whether the State had established that the IEP or in-home family services were appropriate. Had the grand jury been given an accurate history of J.H.’s behavior issues and context of parents who were struggling for years to advocate for their special needs child, they may have drawn a different conclusion about this out-of-district placement and its necessity.
- (j) The State was in possession of documentation that the Child Study Team from Brick referred J.H. back to Dr. Pietrucha on July 11, 2013, because as one member, Donna Gonzalez, noted: “[J.H.] is very oppositional.” Dr. Pietrucha evaluated J.H. again on July 13, 2013 and confirmed “[J.H.] is exhibiting behaviors that are indicative of Attention Deficit-Hyperactivity Disorder...with some co-morbid oppositional behavior.” As a result of this evaluation, the IEP of J.H. was amended and J.H. became entitled to out of district placement and “eligible for an extended school year,” effective

July 1, 2013. Despite these documented events, the State led the grand jury to believe “There’s [sic] wasn’t anything leading up to this July 11, 2013 IEP meeting that got the child into Ocean Early Daycare that was precipitated directly between Jacqueline Halsey and the Child Study Team, correct? T82:24-25 to T83:1-3.

- (k) During the State’s investigation, Detective Mahoney also spoke with John Worthington of the Department of Education, who told him, “There is nothing improper about place a student in a private pre-k program as long as it is certified and it is the recommendation of the child study team... The child study team has broad discretion to place a child - it could be for something as simple as socialization.” This complete explanation from Mr. Worthington, coupled with the basis for J.H.’s classification clearly rebuts the State’s theory that the purpose for the placement was inappropriate. Had the grand jury been given evidence that Ocean Early was in fact an appropriate placement, then there would have been no indictment because there would have been no crime. Thus, this evidence should have been provided to the grand jury because it directly refutes an element of the crimes in question and it is clearly exculpatory given the unsubstantiated hearsay opinions that the placement at Early Ocean was “inappropriate.”

93. Judge Roe was highly critical of the Prosecutor’s Office’s actions in criminalizing the events at issue in this case:

Parents and child study teams often disagree about what programs need to be placed in the IEP of their special needs children. This is a “hot button” particularly when the is out-of-district placement or the child qualifies for extended year programs which are costly. Costlier yet is litigation when the dispute between the parents, the child study team and the Board of Education is unresolved. If even our highest Court has not yet resolved the standard to be used to determine whether an IEP has provided an “inappropriate” education, then it is misguided and wrong-minded to criminally prosecute parents or educators for advocating for special needs children, particularly when there is a civil process in place for those disputes. (Emphasis Supplied)

94. Thus, with the dismissal of the Superseding Indictment, Plaintiff’s Uszenski and Halsey obtained a favorable result in that proceeding.

95. Despite the dismissal of the Superseding Indictment, the Defendants did not cease their misconduct. Instead, on June 20, 2017, subsequent to a Tort Claims Act Notice being filed by the Plaintiffs, the Prosecutor's Office re-indicted Plaintiffs Uszenski and Halsey under the substantially same factual and legal premise as had already been rejected by Judge Roe. However, the Prosecutor's Office abandoned their baseless claim that the hiring of Mr. Morgan to conduct an audit was a fraud perpetrated for the purpose of replacing Donna Stump with Mr. Morgan.

96. In re-indicting Plaintiff Uszenski, the Prosecutor's Office acted vindictively against Plaintiff Uszenski by falsely asserting that he engaged in criminal misconduct in office by allegedly failing to properly conduct a background search on Mr. Morgan before he was hired by the BBOE.

97. Republican affiliations of the Defendant Board of Education played a powerful accelerant role in the advancement of criminal proceedings against Plaintiff Uszenski and Plaintiff Halsey. Several testifying Board members openly admitted the political connections that empowered and accelerated the retaliatory attack on Plaintiff Uszenski, and by association, Plaintiff's Halsey and J.H. at the Ocean County Republican Club after Plaintiff Uszenski and Mr. Morgan had revealed "huge problems" in Donna Stump's department.

98. Sharon Cantillo testified that she was President of the Board in 2013 and served on the HR Committee. She confirmed Donna Stump's concealing hundreds of thousands of dollars in invoices under an ink blotter.

99. Ms. Cantillo described Donna Stump's husband approaching her in a dark parking lot after a Republican Club meeting and giving her documents about Morgan's prior record.

Later, a New York Times article about Morgan's 1989 arrest was placed on windshields and put into mailboxes in the town. Ms. Cantillo then called the State Department of Education and an investigator told her that Mr. Morgan passed the state background check despite a conviction because under the law a waiver was granted, provided he did not commit any new offenses.

100. BBOE Board Member Lawrence Reid testified on May 30, 2017 and decried the no-show job held by Senator Ciesla's sister and pointed out that when Plaintiff Uszenski and Mr. Morgan objected to that conduct they became targets of "political partisan retaliation". The relevant pages of the grand jury are as follows with Mr. Reid answering questions by Prosecutor

Michael A. Paulhus:

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1 you were cc'd?

2 A Well, they spelled my name wrong, so whoever
3 sent it didn't -- no, I don't remember receiving this.

4 Q You don't remember receiving that?

5 A No. For the record, I wasn't aware that Mr.
6 Morgan has this criminal background until it came up in
7 the fall. Okay? And my knowledge of how it came up
8 was Donna Stump's husband and the Grand Jury should be
9 aware of this, Donna Stump's husband was an ex-FBI
10 person. Okay? And he was a member of the Brick
11 Republican Club. And he made it known that this had
12 occurred.

13 And when he brought the Republican Club, this
14 came out into the public. We knew nothing about this
15 prior to that time. Sometime in the fall. We had
16 already hired Mr. Morgan. He did a great job on the
17 special audit. He was very knowledgeable and
18 identified some huge problems in our department. Okay?
19 Meaning the Special Ed Department.

20 And the fact that this was brought out later,
21 in my opinion and through things that I've learned, is
22 a direct result of political partisanship retaliation.

23 And one of the things that -- can I explain
24 this to the Grand Jury, because I --

25 Q Sure.

1 A -- because I think this is very important
2 that they know this. Okay. One of the things that had
3 never come out in the prior Grand Jury testimony and
4 the subsequent documents was that there were two people
5 under Donna Stump, they were called assistants. And
6 their job was to do evaluations of the students,
7 especially the ones that were placed out of district
8 for special ed. Go to school outside the district. We
9 could be spending \$90,000 on those students.

10 So we had a high level administrator that was
11 supposed to go out and do evaluations on these special
12 ed students to see if the 90,000 was improving their
13 situation.

14 Well, it so happened that one of the two
15 people that were assistants to Donna Stump was the
16 sibling of a very high elected Bergen County -- I mean
17 Ocean County Republican.

18 So the fact that came out through Dr.
19 Morgan's interviewing with Donna Stump to find out what
20 was going on, that this person had not done any outside
21 evaluations for seven years. This is one of the
22 highest paid people in the District. Okay?

23 So the fact that the person was not doing
24 their evaluations, that person, and again I was not at
25 the meeting, but she had meeting with the

1 Superintendent and Dr. Morgan had brought in her
2 attorney from her association, the Administrators
3 Association that provides attorneys.

4 So at that meeting basically the conversation
5 was your job is to evaluations, you're not doing it.
6 And she says I wouldn't have had to do them. I haven't
7 been doing them for seven years.

8 So her attorney said if you don't do your
9 job, they're going to fire you. So the Superintendent
10 offered to retrain her, going to courses to learn how
11 to do these evaluations again. And subsequent to that
12 she decided to retire. Okay?

13 And all of a sudden, in my opinion, Mr.
14 Morgan and Mr. Uszenski became the bad guys.

15 Q And who's the employee you're referring to,
16 sir?

17 A Huh?

18 Q Who's the employee that you're referring to?

19 A I don't know that I should mention that here.

20 Q I'd like to know what the name is of the
21 person that you're talking about?

22 A Well, I think the concept is the most
23 important thing.

24 Q Well, you're making an allegation that this
25 investigation --

1 A Okay. It was Darlene Seizler (phonetic).
2 Okay?

101. John Talty, BBOE Board member, testified before the third grand jury that he had been Chair of the Human Resources Committee. He detailed Donna Stump's concealment of \$750,000 in invoices and said she admitted hiding them under her desk. Mr. Talty thought Mr. Morgan did a good job on the audit and discovered many improprieties including "cut and paste" IEPs, an illegal practice. Mr. Talty also pointed out that Mr. Morgan discovered that under Donna Stump, the Special Services Department had unnecessarily sent many students for out of district care at great expense.

102. Mr. Talty testified that he saw a conspiracy against Plaintiff Uszenski afoot. He stated that "Andy brought forward to the HR committee many issues [in Stump's Special Services Department] that violated the law." The prosecutor attempted to cut him off, but Mr. Talty managed to say, "I think he [Andrew Morgan] did a good job for Brick...I think it's shameful that politics became a part of this process." Mr. Talty told the grand jury that Donna Stump's husband claimed to be an ex-FBI agent and that he was very upset that his wife was demoted for causing a \$750,000 loss.

103. On September 14, 2017, despite all of the evidence of retaliation and corruption, and the testimony of certain Board members, the Brick School Board Defendants voted to terminate Plaintiff Uszenski's employment with the Board of Education. Plaintiff Uszenski's contract expired on June 30, 2018, at which time he ceased being an employee of the Brick

School Board. Plaintiff Uszenski's termination was in retaliation for his having engaged in protected conduct under CEPA.

104. The Defendant BBOE, acting through its Board members and employee such as Donna Stump, falsely conveyed by their statements and through the false statements made in Donna Stump's aforementioned "dossier" to the Prosecutor, his investigators, and the grand jury, that Plaintiff Uszenski hired Morgan though he knew he had lied on his application about his criminal history and that he hired Morgan and worked with Morgan for the purpose of stealing transportation and educational services from the BBOE for the benefit of his grandson, Plaintiff J.H. and his daughter, Plaintiff Halsey. The BBOE conveyed these lies and distortions of fact for the purpose of retaliating against Uszenski by destroying his reputation in order to "justify" his termination as BBOE Superintendent.

105. Plaintiffs Uszenski and Halsey moved to dismiss the Third Indictment. On July 13, 2018, the Superior Court heard oral argument on the Plaintiffs' motion to dismiss the third Indictment and on December 6, 2018, Judge Michael T. Collins, J.S.C., denied the motion to dismiss the third Indictment.

106. On June 10, 2019, the new Ocean County Prosecutor, Bradley D. Billhimer, moved to dismiss all charges against Plaintiff Halsey and Judge Michael T. Collins granted the motion to dismiss. Thus, Plaintiff Halsey obtained a favorable termination of the criminal proceeding.

107. On June 10, 2019, Plaintiff Walter Uszenski was granted entry into Pre-Trial Intervention by Judge Michael T. Collins. After a period of 3 months, Plaintiff Uszenski's record of indictment and arrest was completely expunged. But for the retaliation carried out by agents

and operatives of the BBOE, the Plaintiffs would not have been arrested indicted or otherwise injured.

108. By and through their conduct, the Defendants have interfered with J.H.'s education and, as a result, Judge Roe found that he has regressed:

Sadly, without these reasonable efforts and special services, J.H. regressed in the general population in kindergarten. By first grade, J.H. was reevaluated and reclassified again by the Brick Child Study Team, as a child with disability who is entitled to special education services. This fact is not lost on the court in this analysis.

109. Plaintiffs Uszenski, Halsey and J.H. have complied with the New Jersey Tort Claims Act, N.J.S.A. 59:8-1, *et seq.*, by timely filing Notices of Tort Claims on the following dates: April 25, 2017; May 12, 2017; August 8, 2017; and October 12, 2017.

COUNT ONE

(Violation of CEPA- Plaintiff Uszenski)

110. Plaintiffs repeat, reallege and incorporate by reference each and every allegation stated above as if fully set forth herein.

111. In December, 2012, Plaintiff Uszenski uncovered what he reasonably believed to be fraudulent, corrupt and or criminal misconduct by Donna Stump. Specifically, in or about December, 2012, Plaintiff Uszenski uncovered an unexplained deficit in the amount of \$750,000.00 in the Special Education budget.

112. Plaintiff Uszenski objected to and/or refused to participate in this fraud and questioned Donna Stump about the deficit. Donna Stump admitted fault for the deficit and, as a

result, Plaintiff Uszenski recommended to the Board that Donna Stump be demoted and caused an audit to be conducted of the Special Services Department.

113. This audit, set in motion by Plaintiff Uszenski, uncovered the corrupt payment of nearly one million dollars in salary over seven (7) years to republican Senator Ciesla's sister, Darlene Ciesla, for a job which she did not do. The audit exposed several other instances of malfeasance and misfeasance including but not limited to illegal "cut and paste" IEP's.

114. Donna Stump, subordinates under her control, and members of the Brick Township BBOE — retaliated against Plaintiff Uszenski because he discovered and objected to fraud, malfeasance and misfeasance in the school system's Special Services Department.

115. Defendant knew that Plaintiff Uszenski had taken this protected action under CEPA and thereafter, retaliated against Plaintiff Uszenski in violation of CEPA. Defendant did this by, among other things: conspiring to bring criminal charges against him and his daughter, Plaintiff Halsey; suspending and terminating his employment; defaming him and his daughter; and denying his grandson much-needed special services

116. In so doing, the members of the Defendant BBOE and its employees acted in concert and conspiracy to destroy the lives of Plaintiffs Uszenski and Halsey, and to deliberately sabotage J.H.'s education.

117. The Defendant's actions were in direct violation of CEPA.

118. Based on the foregoing, Defendant negligently, recklessly and/or intentionally failed to take prompt, appropriate and reasonable remedial action to prevent, stop and remedy the retaliation aimed at Plaintiff Uszenski. By and through their agents, Defendant fostered a retaliatory atmosphere and allowed actions which constitute retaliation in violation of CEPA.

119. Defendant's upper management has actually participated in and/or been willfully indifferent to the retaliatory conduct described herein.

120. Defendant's foregoing conduct was willful, intentional and especially egregious.

121. As a direct and proximate result of Defendant's unlawful retaliation, Plaintiff Uszenski has suffered and continues to suffer career damage, financial loss, damage to his reputation and emotional distress, as well as personal physical injury and sickness.

WHEREFORE, cause having been shown, Plaintiff Uszenski demands judgment against Defendant Brick BBOE, and seeks the following relief:

- (a) Economic damages for career path losses;
- (b) Compensatory damages, including damages for emotional distress and personal physical injury and sickness;
- (c) Compensation for reputational damage;
- (d) Attorneys' fees and costs of suit;
- (e) Punitive damages; and
- (f) Such other relief as the Court may deem equitable and just.

COUNT TWO

(Violation of CEPA-Derivative Retaliation-Plaintiff Halsey)

122. Plaintiffs repeat, reallege and incorporate by reference each and every allegation stated above as if fully set forth herein.

123. CEPA prohibits retaliation against individuals who are closely associated with whistle-blowers, like Plaintiff Uszenski.

124. Plaintiff Halsey is Plaintiff Uszenski's daughter and, as such, is closely associated with Plaintiff Uszenski.

125. At all times relevant hereto, Defendants knew that Plaintiff Halsey was Plaintiff Uszenski's daughter and J.H.'s mother.

126. Defendant retaliated against Plaintiff Uszenski for his having engaged in protected conduct under CEPA.

127. Likewise, Defendant retaliated against Plaintiff Halsey by, among other things: conspiring to bring criminal charges against her, defaming her, and destroying her career.

128. In so doing, the Defendants BBOE and its employee's acted in concert and conspiracy to destroy the lives of Plaintiffs Uszenski and Halsey, and to deliberately sabotage J.H.'s education.

129. The Defendant's actions were in direct violation of CEPA.

130. Based on the foregoing, Defendant negligently, recklessly and/or intentionally failed to take prompt, appropriate and reasonable remedial action to prevent, stop and remedy the retaliation aimed at Plaintiff Halsey. By and through their agents, Defendant fostered a retaliatory atmosphere and allowed actions which constitute retaliation in violation of CEPA.

131. Defendant's upper management has actually participated in and/or been willfully indifferent to the retaliatory conduct described herein.

132. Defendant's foregoing conduct was willful, intentional and especially egregious.

133. As a direct and proximate result of Defendant's unlawful retaliation, Plaintiff Halsey has suffered and continues to suffer career damage, financial loss, damage to her reputation and emotional distress, as well as personal physical injury and sickness.

WHEREFORE, cause having been shown, Plaintiff Halsey demands judgment against Defendant and seeks the following relief:

- (a) Economic damages for career path losses;
- (b) Compensatory damages, including damages for emotional distress and personal physical injury and sickness;
- (c) Compensation for reputational damage;
- (d) Attorneys' fees and costs of suit;
- (e) Punitive damages; and
- (f) Such other relief as the Court may deem equitable and just.

COUNT THREE

(Violation of CEPA-Derivative Retaliation-Plaintiff J.H.)

134. Plaintiffs repeat, reallege and incorporate by reference each and every allegation stated above as if fully set forth herein.

135. CEPA prohibits retaliation against individuals who are closely associated with whistle-blowers, like Plaintiff Uszenski.

136. Plaintiff J.H. is Plaintiff Uszenski's grandson and, as such, is closely associated with Plaintiff Uszenski.

137. At all times relevant hereto, Defendant knew that Plaintiff J.H. was Plaintiff Uszenski's grandson and Plaintiff Halsey's son.

138. Defendant retaliated against Plaintiff Uszenski for his having engaged in protected conduct under CEPA.

139. Likewise, Defendant by and through its employees retaliated against Plaintiff J.H. by acting in concert and conspiracy to deliberately sabotage Plaintiff J.H.'s education and development by making false statements about Plaintiff J.H.'s legitimate special needs, taking away his necessary special services and causing him to regress.

140. The Defendant's actions were in direct violation of CEPA.

141. Based on the foregoing, Defendant negligently, recklessly and/or intentionally failed to take prompt, appropriate and reasonable remedial action to prevent, stop and remedy the retaliation aimed at Plaintiff J.H.. By and through their agents, Defendant fostered a retaliatory atmosphere and allowed actions which constitute retaliation in violation of CEPA.

142. Defendant's upper management has actually participated in and/or been willfully indifferent to the retaliatory conduct described herein.

143. Defendant's foregoing conduct was willful, intentional and especially egregious.

144. Defendant's acted within the scope of their authority when they wrongfully declassified Plaintiff J.H. as non-disabled, thereby causing him to suffer a regression of his condition.

145. As a direct and proximate result of Defendant's unlawful retaliation, Plaintiff J.H. has regressed in his behavior and in the general school population in relation to his peers.

WHEREFORE, cause having been shown, Plaintiff J.H. demands judgment against Defendants and seeks the following relief:

- (a) Economic damages;
- (b) Compensatory damages, including damages for emotional distress and personal physical injury and sickness;
- (d) Attorneys' fees and costs of suit;
- (e) Punitive damages; and
- (f) Such other relief as the Court may deem equitable and just.

SMITH MULLIN, P.C.
Attorneys for Plaintiffs

By: _____
NEIL MULLIN (Atty. I.D.#011891980)

Dated:

JURY DEMAND

Plaintiffs demand trial by jury with respect to all issues that are so triable.

SMITH MULLIN, P.C.
Attorneys for Plaintiffs

By: _____
NEIL MULLIN (Atty. I.D.#011891980)

Dated:

TRIAL COUNSEL DESIGNATION

Neil Mullin, Esq. is hereby designated as trial counsel in this matter.

SMITH MULLIN, P.C.
Attorneys for Plaintiffs

By: _____
NEIL MULLIN (Atty. I.D.#011891980)

Dated:

CERTIFICATION

Pursuant to New Jersey Court *Rule* 4:5-1, counsel for Plaintiff hereby certifies that to his knowledge, no matter related to this one is currently pending in either arbitration or litigation.

SMITH MULLIN, P.C.
Attorneys for Plaintiffs

By: _____
NEIL MULLIN (Atty. I.D.#011891980)

Dated: