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(973) 879-1610; Fax (973) 361-1241
Attorneys for Plaintiff

MICHAEL L. BARISONE,

Plaintiff,

v.

WASHINGTON TOWNSHIP in Morris
County, New Jersey; POLICE OFFICER
BRIAN SZYMANSKI; POLICE
OFFICER DEREK HEYMER; POLICE
OFFICER BRIAN BIGHAM; POLICE
OFFICER MICHAEL HADE; POLICE
OFFICER PHILIP SEABECK; POLICE
OFFICER THOMAS FALLENI;
POLICE OFFICER ANDREW TESORI;
POLICE OFFICER JASON HENSLEY;
POLICE OFFICER MICHAEL
THOMPSON; POLICE OFFICER
ANTHONY COSTANTINO; POLICE
OFFICER ROGER GARRISON; JOHN
& JANE DOE 1-20, & ABC COMPANY
1-20,

Defendants.

SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION – MORRIS
COUNTY

DOCKET NO.: MRS-L-1562-21

**NOTICE OF CROSS-MOTION TO FILE &
SERVE A SECOND AMENDED COMPLAINT PURSUANT TO R. 4:9-1**

TO: William G. Johnson, Esq.
Johnson & Johnson, Esq.
89 Headquarters Plaza, Suite 1425
Morristown, New Jersey 07960

COUNSELOR:

PLEASE TAKE NOTICE that November 5, 2021, at 9:00 a.m. or as soon thereafter as
counsel may be heard, plaintiff MICHAEL BARISONE (“BARISONE”) will cross-move before
this Court pursuant to R. 4:9-1, for an Order (a) granting BARISONE leave to file and serve his

proposed Second Amended Complaint presented herewith, and (b) granting BARISONE such other relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that in support of that cross-motion BARISONE will rely upon his attorney's certification (with exhibits), his letter brief, and any and all other papers filed herewith.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted herewith, and that oral argument is requested if there is opposition filed with respect to the cross-motion.

DEININGER & ASSOCIATES, LLP
Attorneys for Plaintiff



By : _____
CHRISTOPHER L. DEININGER, ESQ.

Dated: October 27, 2021

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Defendants.

SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION – MORRIS
COUNTY

DOCKET NO.: MRS-L-1562-21

**ORDER DENYING DEFENDANTS’ MOTION TO DISMISS & GRANTING
PLAINTIFF’S CROSS-MOTION FOR LEAVE TO FILE &
SERVE A SECOND AMENDED COMPLAINT PURSUANT TO R. 4:9-1**

THIS MATTER having been opened to this Court on motion of defendants (“Defendants”) for an Order of dismissal, with prejudice, against plaintiff MICHAEL BARISONE (“Barisone”); and Barisone having opposed Defendants’ motion and also cross-moved for an Order granting him leave to file and serve an amended complaint; and the Court having reviewed the parties’ papers in support and/or opposition to the Defendants’ motion and Barisone’s cross-motion; and having considered the parties’ oral arguments (if any); and for good cause shown,

IT IS ON THIS _____ DAY OF _____, 2021

ORDERED that the Defendants’ motion shall be and hereby is DENIED; and it is further

ORDERED that defendant Barisone’s cross-motion for leave to amend shall be and hereby is GRANTED; and it is further

ORDERED that within thirty (30) days from the date of this Order, Barisone shall file with the Court through eCourts, and shall serve upon the Defendants by email to their attorney of record, Barisone’s Second Amended Complaint in a form substantially similar to the proposed form of Second Amended Complaint Barisone presented to this Court in support of his cross-motion; and it is further

ORDERED that a true and accurate copy of this Order shall be served upon all parties, through their respective counsel of record, within)) days of the date hereof.

, J.S.C.

___ Opposed

___ Unopposed

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THOMPSON; POLICE OFFICER
ANTHONY COSTANTINO; POLICE
OFFICER ROGER GARRISON; JOHN
& JANE DOE 1-20, & ABC COMPANY
1-20,

Defendants.

SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION – MORRIS
COUNTY

DOCKET NO.: MRS-L-1562-21

**CERTIFICATION OF CHRISTOPHER L. DEININGER, ESQ.,
IN OPPOSITION TO THE DEFENDANTS’ MOTION FOR DISMISSAL WITH
PREJUDICE, & IN SUPPORT OF PLAINTIFF’S CROSS-MOTION FOR LEAVE TO
FILE AND SERVE HIS PROPOSED SECOND AMENDED COMPLAINT**

CHRISTOPHER L. DEININGER, ESQ., of full age, hereby certifies and says the following under penalty of perjury:

1. I am an attorney at law duly admitted in the State of New Jersey, and counsel in the above-captioned matter for plaintiff MICHAEL BARISONE (“BARISONE”).

2 I am making this CERTIFICATION for two purposes, namely: (a) as part of BARISONE's opposition to the defendants' pre-answer motion for dismissal, with prejudice; and (b) in support of BARISONE's cross-motion for leave to file and serve his proposed, Second Amended Complaint.

3 The statements I make herein are based upon my personal knowledge, unless noted otherwise.

Procedural Posture of the Case

4 This is a newly-commenced plenary action.

5 The defendants have not answered and/or joined issue substantively.

6 Rather, they made a pre-answer motion seeking dismissal with prejudice of any and all claims and causes of action BARISONE might assert here.

7 There has been no discovery in this matter, as of the date of this certification.

8 BARISONE commenced this action by filing his Complaint.

9 Shortly thereafter, BARISONE filed a first amended, corrected complaint in which he corrected typographical and editing errors, and the like. BARISONE made that amended as a matter of right because it was filed before any of the defendants answered or otherwise appeared in this matter.

Exhibits Presented

10 Annexed hereto as **Exhibit A** is a true, accurate, and correct copy of BARISONE's proposed "Second Amended Complaint."

11 The document is presented in a "redline version" showing where material has been

added to the pleading as well as any and all other changes made.

12. By cross-motion, BARISONE is seeking leave from the Court to file and serve that new pleading.

13. Annexed hereto as **Exhibit B** are true, accurate, and correct *redacted* copies of police reports the defendants caused to be issued in which they characterized BARISONE as the victim making reports of crime against others.

14. Annexed hereto as **Exhibit C** are true, accurate, and correct copies of any and all unpublished case law cited by me in my Letter Brief.

15. Annexed hereto as **Exhibit D** is what I understand to be a true, accurate, and complete copy of the tort claims notice filed on behalf of BARISONE, with defendant WASHINGTON TOWNSHIP, giving notice of BARISONE's intention to pursue tort claims.

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



CHRISTOPHER L. DEININGER, ESQ.

Dated: October 27, 2021

EXHIBIT A

M01014

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 Plaintiff, :
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 WASHINGTON TOWNSHIP in Morris :
 County, New Jersey; POLICE OFFICER :
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 POLICE OFFICER ANDREW TESORI; :
 POLICE OFFICER JASON HENSLEY; :
 POLICE OFFICER MICHAEL :
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 ANTHONY COSTANTINO; POLICE :
 OFFICER ROGER GARRISON; JOHN :
 & JANE DOE 1-20, & ABC COMPANY :
 1-20, :
 :
 Defendants. :

SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION – MORRIS
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DOCKET NO.: MRS-L-1562-21

~~FIRST~~SECOND AMENDED,
CORRECTED COMPLAINT WITH
JURY DEMAND

Plaintiff MICHAEL L. BARISONE (“Plaintiff” and/or “BARISONE”), by and through his attorneys DEININGER & ASSOCIATES, LLP, as and for his SECOND AMENDED Complaint against the defendants, makes the following allegations:

THE PARTIES & OTHER ACTORS

1. BARISONE is a 57-year-old Caucasian male who, at all times relevant hereto, had an established career as a top Olympic trainer of horses and riders in the equestrian sport of

dressage.

2. At all times relevant hereto, BARISONE co-owned a farm located at 411 West Mill Road, Long Valley, New Jersey (the “Farm”), where BARISONE built and operated an Olympic-level dressage horse farm and training facility and thriving business.

3. At all times relevant hereto, the Farm had various visitors and/or occupants including but not limited to: (a) BARISONE and his partner Mary Haskins Gray (“Gray”), together with Gray’s minor children (the “children”); (b) Lauren S. Kanarek (“Kanarek”) and her boyfriend Robert G. Goodwin (“Goodwin”); (c) Ruth Cox (“Cox”); (d) Justin Hardin (“Hardin”), a long-term employee of BARISONE working and living at the Farm; and (e) numerous other persons who worked at the Farm, trained at the Farm, boarded horses at the Farm, and/or otherwise visited or occupied the premises.

4. Defendant WASHINGTON TOWNSHIP (“WASHINGTON TOWNSHIP”) is a municipality located in Morris County, New Jersey, where it operates, oversees, and/or manages various municipal services provided to its residents, including but not limited to public safety services provided by the *Washington Township Police Department*, located at 1 East Springtown Road, Long Valley, New Jersey 07853 (the “POLICE DEPARTMENT”); ambulance and associated medical services provided by a volunteer ambulance/EMT squad; and other services.

5. At all times relevant hereto, the following defendant-persons were members of the POLICE DEPARTMENT of WASHINGTON TOWNSHIP: (a) DEFENDANT POLICE OFFICER BRIAN SZYMANSKI (“SZYMANSKI”); (b) DEFENDANT POLICE OFFICER DEREK HEYMER (“HEYMER”); (c) DEFENDANT POLICE OFFICER BRIAN BIGHAM (“BIGHAM”); (d) DEFENDANT POLICE OFFICER MICHAEL HADE (“HADE”); (e) DEFENDANT POLICE OFFICER PHILIP SEABECK (“SEABECK”); (f) DEFENDANT

POLICE OFFICER THOMAS FALLENI (“FALLENI”); (g) DEFENDANT POLICE OFFICER ANDREW TESORI (“TESORI”); (h) DEFENDANT POLICE OFFICER JASON HENSLEY (“HENSLEY”); (i) DEFENDANT POLICE OFFICER MICHAEL THOMPSON (“THOMPSON”); (j) DEFENDANT POLICE OFFICER ANTHONY COSTANTINO (“COSTANTINO”); and (k) DEFENDANT POLICE OFFICER ROGER GARRISON (“GARRISON”). For purposes of this pleading, BARISONE may reference those persons collectively as the “POLICE OFFICER DEFENDANTS.”

6. Upon information and belief, at all times relevant hereto, each and every one of the POLICE OFFICER DEFENDANTS lived, resided, and/or worked in Morris County, New Jersey.

7. Now and at all times relevant hereto, fictitiously named defendants JOHN DOE & JANE DOE 1 through 20 are persons presently unknown who, individually and/or in concert with the other defendants and/or other actors named here, and/or acting under the direction and control of one or more of the other defendants or actors named here, committed acts and omissions connected with injury and resulting damages caused to BARISONE.

8. Now and at all times relevant hereto, fictitiously named other defendants ABC COMPANY 1 through 20 corporations, partnerships, limited liability companies, and/or other types of entities, presently unknown which, individually and/or in concert with the other defendants and/or actors named here, and/or acting under the direction and control of one or more of the other defendants or actors named here, committed acts and omissions connected with injury and resulting damages caused to BARISONE.

ALLEGATIONS & CLAIMS

9. Pursuant to Article 1, Paragraph 22, of the New Jersey Constitution, “[a] victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system ... [and] shall be entitled to those rights and remedies as may be provided by the Legislature.”

10. The term “victim of a crime” is defined under the New Jersey Constitution, Article 1, Paragraph 22, to include: “(a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide.”

11. Known as the “Victim’s Rights Amendment,” for purposes of this pleading Article 1, Paragraph 22 of the New Jersey Constitution shall be referenced as the “VRA.”

12. Following enactment of the VRA, the New Jersey State Legislature enacted the *Crime Victim’s Bill of Rights*, N.J.S.A. 52:4B-34 through -38, hereinafter referenced in this pleading as the “CVBRO.”

13. Pursuant to the CVBOR, the New Jersey Legislation found expressly that “the participation and cooperation of crime victims” is so essential to the “criminal justice system” that “[the] rights of those individuals should be given full recognition and protection” “through the establishment of specific rights” to be protected and promoted throughout the criminal justice system, including law enforcement. N.J.S.A. § 52:4B-35.

14. Among the rights specified by the New Jersey Legislature under the CVBRO as those belonging to crime victims are, inter alia, the right to be: (a) treated with dignity and compassion by the criminal justice system; (b) informed about the criminal justice process; (c) free from intimidation, harassment or abuse by any person involved in the criminal justice process, including law enforcement personnel such as municipal police officers; and (d) other important rights specified by the New Jersey Legislature. N.J.S.A. § 52:4B-36.

15. Under the CVBRO, the New Jersey legislature defined “victim” to mean any person “who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed by an adult” N.J.S.A. § 52:4B-37.

16. Under the New Jersey Constitution and applicable federal law (including but not limited to the Equal Protection Clause of the Fourteenth Amendment), law enforcement actors are not permitted to commit acts or omissions in connection with their police work which acts or omissions constitute unlawful discrimination based upon the protected traits of the person(s) with whom law enforcement is interacting, including but not limited to such traits as the race, age, gender, disability, and/or ethnicity of the person, and/or the person’s status as someone with impaired mental health.

17. Under the New Jersey Constitution and applicable federal law (including but not limited to the Equal Protection Clause of the Fourteenth Amendment), a person claiming to be a victim of crime and, as such, seeking to report a crime to law enforcement, has a substantive due process right to have that report taken in a manner which treats the purported victim with dignity and respect, and without harassment and/or intimidation against the person by law enforcement.

18. The *New Jersey Civil Rights Act*, N.J.S.A. § 10:6-2 (hereinafter referenced as the

“CRA”), gives standing to persons claiming against municipalities and their employees (including local law enforcement actors) claims and causes of action seeking redress arising from the deprivation, interference, denial, and/or other harm to rights and interests protected by the New Jersey Constitution.

19. At all times relevant hereto, BARISONE was an individual with vested, protected rights and interests, including but not limited to constitutional rights and interests under the VRA, equal protection rights, and substantive due process rights.

20. At all relevant times, for example, BARISONE qualified as a “victim of crime” under the VRA due to the criminal acts being directed at him by Kanarek and/or Goodwin, which BARISONE attempted repeatedly to report to the defendants and seek protection as a victim of crime.

21. At all relevant times, for example, BARISONE qualified as a “victim” under the CVBRO due to the criminal acts being directed at him by Kanarek and/or Goodwin, which BARISONE attempted repeatedly to report to the defendants and seek protection as a victim of crime.

22. At all times relevant hereto, each one of the defendants was an actor who/which owed BARISONE a duty of care with respect to his/her/its acts, action, and omissions impacting BARISONE, including but not limited to acts, actions, and/or omissions impacting BARISONE’s constitutional rights and interests under the VRA, equal protection rights, and substantive due process rights.

9.23. Commencing in or about the late 1990s, BARISONE became co-owner of the Farm and started transforming the property into a world-class training facility for dressage.

10.24. Himself a onetime highly competitive dressage rider who had grown up in Upstate

New York where he started riding at an early age, BARISONE had gravitated towards training riders and horses in dressage, investing years of time, training and effort to become one of the sport's leading trainers.

~~11.25.~~ BARISONE's career reached a milestone when, at the 2016 Olympics held in Brazil, multiple competitors trained and/or coached by BARISONE won medals in the competitions. BARISONE operated a thriving business through which he trained riders and/or horses, raised horses, and/or boarded horse.

~~12.26.~~ People interested in excelling in the sport of dressage sought out BARISONE to become their trainer, boarding their horses at the Farm (including certain horses valued in excess of \$500,000) and coming there to train with BARISONE and his business in his world-class dressage barn with an adjoining club room, office, locker room, and other facilities.

~~13.27.~~ The Farm included as well a farm house, which was a single-family residence divided into at least two living spaces under one roof with shared spaces and facilities, such as hallways, entrances, porches, and the like.

~~14.28.~~ While the farm house could be characterized as having multiple two-living spaces, the fact was that the farm house constituted a single domicile, with its residents living like a single household.

~~15.29.~~ The physical layout of the Farm included frontage on West Mill Road, with the farm house about 400 feet back from the road, and the dressage barn and training facility another 1,600-1,700 feet up an unlit driveway behind the farm house.

~~16.30.~~ Commencing in or about March 2018, Kanarek sought to become a pupil of BARISONE for purposes of training in dressage.

~~17.31.~~ With her parents' financial support, Kanarek wanted to train with BARISONE and board her horses at the Farm during the summer season which covers (essentially) the months of April through November, following which (during the winter season) Kanarek would following BARISONE to Florida to continue her training.

~~18.32.~~ Kanarek's aspirational goal, upon information and belief, was to "train for the Olympics" and become a "world class" dressage rider, though the reality seemed more likely to be that Kanarek would remain an amateur who enjoyed the sport and the personal satisfaction one has when they take lessons and improve in a pursuit they love.

~~19.33.~~ At that time Kanarek presented as an attractive blonde woman in her mid- to late-30's, with acceptable horseback riding skills, an acceptable horse, and what appeared to be nearly limitless financial support and backing of her father, a wealthy attorney from Livingston, New Jersey.

~~20.34.~~ But there was an exceptionally dark and disturbing reality concerning Kanarek that was being hidden from view by Kanarek and her parents.

~~21.35.~~ Unbeknownst to BARISONE, Kanarek had a history of domestic conflict following which she was banished from residing with her family.

~~22.36.~~ Unbeknownst to BARISONE, Kanarek was a heroin addict with a lengthy criminal history, including criminal assault.

~~23.37.~~ Unbeknownst to BARISONE, Kanarek's background included criminal harassment and stalking, including harassment that involved extensive use of the Internet and/or social media to make veiled and direct threats of injury, mayhem, violence, and criminal acts against persons with whom she was having interpersonal conflict.

24.38. Unbeknownst to BARISONE, Kanarek's tactics in the past included making false reports and false statements against people she perceived to be her "enemy," to child-protective-services agencies and/or other governmental agencies, including the police.

25.39. Unbeknownst to BARISONE, Kanarek's past included owning firearms and at least two (2) incidents of discharging her firearm, out of anger and rage, at other people and/or their personal property; an incident of carrying a loaded weapon into a political campaign event where she was planning to confront people; and, another incident when Kanarek posted of photo of a gun to threaten someone on social media.

26.40. Unbeknownst the BARISONE, the United States Equestrian Federation and/or the U.S. Center for "*Safe Sport*" (which purports to protect people from abuse and harassment within the pursuit of sports) had multiple complaints about Kanarek from persons Kanarek had harassed, stalked, and/or otherwise endeavored to cause harm.

27.41. Unbeknownst the BARISONE, Kanarek's boyfriend Goodwin had an equally disturbing past, which included but was not limited to: drug addiction and heroin abuse; violence; criminal conduct; stalking; harassment; and the like.

28.42. But for BARISONE's lack of knowledge of Kanarek's hidden background, BARISONE would not have agreed to become her dressage trainer; would not have agreed to permit Kanarek's horse(s) to board at the Farm; and/or would not have engaged in any other form of relationship with Kanarek as coach, trainer, house guest, or otherwise.

29.43. Similarly, but for BARISONE's lack of knowledge of Goodwin's hidden background, BARISONE would not have agreed to permit Kanarek to bring Goodwin to the Farm as her boyfriend and/or in any other capacity Kanarek and Goodwin might have proffered.

30.44. BARISONE himself has a medical history which includes psychological trauma

from abuse as a child.

31.45. At all times relevant hereto, BARISONE had been in treatment and/or counseling for his past trauma and status as a victim of child abuse and resulting trauma.

32.46. In that regard, BARISONE was an “egg shell” victim of future trauma who was vulnerable and susceptible to sustaining injury from harassment, stalking, verbal assault, and threats of violence from persons like Kanarek and/or Goodwin.

33.47. At all times relevant hereto, BARISONE displayed the traits, characteristics and affect of a person having psychological vulnerability and potential victimization from abuse, in need of protection from the police under circumstances indicating a basis for being in fear of injury, harm, violence, and/or threats of same.

34.48. Commencing in or about May 2019, Kanarek and Goodwin became temporary house guests of BARISONE in the farm house at the Farm.

35.49. BARISONE had told Kanarek that she could not become a tenant at the Farm due to water damage to the farm house which made it unlivable.

36.50. Upon being informed of that circumstance, Kanarek’s father commenced threatening BARISONE with abusive legal process and litigation for purposes of forcing BARISONE to permit Kanarek to live at the Farm, even temporarily, as BARISONE’s house guest.

37.51. Upon information and belief, Kanarek’s father did everything in his power to ensure that Kanarek and Goodwin would reside at the Farm (even temporarily) because Kanarek was banned from residing with her father and/or other immediate family in New Jersey due to Kanarek’s past history of violence, abuse, assault, drug use, psychotic behavior, and the like.

38.52. Separate and apart from that temporary “house guest” arrangement, Kanarek was again boarding her horse in the barn at the Farm.

39.53. Soon after she started staying as a house guest at the Farm, Kanarek commenced displaying behavior towards BARISONE, Gray, and/or other Farm residents and visitors, which was increasingly threatening and/or otherwise unacceptable.

40.54. Kanarek’s behavior included an upward spiral of harassment and stalking of BARISONE, Gray, and/or Gray’s children, both on the Internet and throughout social media like Facebook, where Kanarek made veiled and direct threats against them of ever-increasing severity.

41.55. As the situation escalated, BARISONE commenced uncovering the highly problematic and threatening criminal and social backgrounds of Kanarek and Goodwin.

42.56. It was in or about June 2019, for example, that BARISONE learned of Kanarek’s status as a drug addict, criminal, and person with a history of harassment, stalking, threats of violence, and violent assault, against others.

43.57. BARISONE and Gray began to observe, find, and/or otherwise become aware of Internet postings by Kanarek, in which Kanarek threatened harm, injury and/or violence against BARISONE, Gray, Gray’s minor children living at the Farm, and/or horses boarding in the barn.

44.58. For example, on or about July 25, 2019, seeking to threaten and intimate BARISONE and Gray, Kanarek posted a ranting message on social media in which she bragged about her past stalking and harassment of people, which was reasonably understood by BARISONE to be Kanarek threatening him, in which Kanarek spoke of “DEATH” in the context of those who were in conflict with her.

45.59. Thereafter, on or about July 31, 2019, Kanarek expressly threatened violence and

harm against BARISONE and Gray including Kanarek's threat that she would "destroy" Gray and everything Gray possessed, including Gray's children, BARISONE, the Farm, and/or their horses.

46.60. It was based upon those threats, other threats and statements made by Kanarek, and/or other behaviors by Kanarek and Goodwin, that BARISONE, Gray, and others at the Farm, were reasonably placed in fear of physical harm and property destruction by Kanarek and Goodwin.

47.61. As of July 31, 2019, and at all relevant times thereafter, BARISONE's affect, statements and behaviors evidenced outwardly that BARISONE was being psychologically assaulted and victimized by Kanarek and Goodwin, such that the defendants knew of, and intentionally and/or recklessly disregarded, BARISONE's mounting psychological distress and potential psychiatric breakdown that could occur unless appropriate and sufficient action was taken by the defendants to intervene.

The July 31, 2019 Incident

48.62. The situation continued to escalate out of control, with Kanarek increasing her terroristic threats, harassment, stalking, and/or other criminal behaviors until the night of July 31, 2019, when BARISONE made his first "911" call to the WASHINGTON TOWNSHIP POLICE DEPARTMENT seeking emergency assistance.

63. On July 31, 2019, at approximately 20:00 hours, BARISONE called "911" and reported that he had been assaulted verbally by Kanarek and/or Goodwin; that he and others at the Farm were being subjected to other criminal behaviors by Kanarek and/or Goodwin, including but not limited to behaviors which constituted unlawful criminal threats, harassment, cyber stalking, and cyber harassment; their fear; and other relevant information.

64. BARISONE made that "911" call for the expressed purpose of reporting a crime being committed against him as a victim of criminal conduct by Kanarek and/or Goodwin.

49.65. In the "911" call BARISONE communicated facts and circumstances demonstrating that he was a person who was suffering physical or psychological injury or has incurred loss of or damage to personal or real property as a result of what BARISONE perceived to be criminal acts, actions, and/or omissions against him by Kanarek and/or Goodwin.

66. Thereafter, DEFENDANT TESORI and DEFENDANT SEABECK arrived at the Farm, whereupon BARISONE and/or others repeated their reports to WASHINGTON TOWNSHIP that there had been a verbal assault by Kanarek and/or Goodwin; that BARISONE and others at the Farm were being subjected to other criminal behaviors by Kanarek and/or Goodwin including but not limited to behaviors which constituted unlawful criminal threats, harassment, cyber stalking, and cyber harassment; and that BARISONE and others were in fear of immediate danger and injury to their physical health and/or wellbeing, and/or the wellbeing of their property.

50.67. The reports BARISONE made to DEFENDANT TESORI and DEFENDANT SEABECK in that face-to-face meeting included factual statement demonstrating that BARISONE was a person who was suffering from physical and/or psychological injury as a result of what BARISONE perceived to be criminal acts, actions, and/or omissions against him by Kanarek and/or Goodwin.

68. DEFENDANT TESORI and DEFENDANT SEABECK intentionally disregarded the facts and circumstances being reported to them and intentionally failed to act to protect BARISONE and/or the others making the report to WASHINGTON TOWNSHIP against Kanarek and Goodwin.

51.69. By and through their intentional disregard of the facts and circumstances being reported to them, and their intentional failure to protect BARISONE and the others at the Farm who were making complaints against Kanarek and/or Goodwin, DEFENDANT TESORI, DEFENDANT SEABECK, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

52.70. For example, during the July 31, 2019 incidents, BARISONE's affect, statements and behaviors evidenced outwardly that BARISONE was being psychologically assaulted and victimized by Kanarek and Goodwin, such that the police knew of, and intentionally and/or recklessly disregarded, BARISONE's mounting psychological distress and potential psychiatric breakdown that could occur unless appropriate and sufficient action was taken by the defendants to intervene in the developing criminal dispute.

53.71. Thereafter, DEFENDANT TESORI and DEFENDANT SEABECK intentionally authored and issued a *Washington Twp Police Department Investigation Report* that was materially false and misleading (the "August 1, 2019 Police Report"), knowing that the August 1, 2019 Police Report was materially false and misleading through the statements they made in that report and/or the information they omitted from it, and/or in actionable reckless disregard that the report was materially false and/or misleading because of that.

72. The August 1, 2019 Police Report truthfully admitted that the "Victim" reporting crime was "BARISONE, MICHAEL L.", but was materially false and misleading in that the report, inter alia: (a) failed to document the complaint by BARISONE and the others that some of

them were in fear of immediate danger and injury to their physical health and wellbeing, and/or the wellbeing of their property; (b) failed to document the report by BARISONE and/or Gray that Kanarek had made the terroristic threat to injury Gray, her children and/or her property; and/or (c) failed to document other facts and circumstances necessary to accurately and effectively convey the true circumstances and resulting material threat of injury, harm, and/or other mayhem occurring at the Farm that day.

54.73. By and through their acts of preparing and publishing a police report which was made intentionally false and misleading by the police officers involved, DEFENDANT TESORI, DEFENDANT SEABECK, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

74. The August 1, 2019 Police Report documented as well that the responding DEFENDANT POLICE OFFICERS violated police protocol by interviewing Kanarek and Goodwin (the alleged criminal perpetrators) before interviewing BARISONE, the "911" complainant, evidencing unlawful bias by the defendants against BARISONE and evidencing other wrongs.

75. By and through the responding officers' intentional failures to follow, abide by, and comply with those and other police protocols, DEFENDANT TESORI, DEFENDANT SEABECK, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating

BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

76. The DEFENDANT POLICE OFFICERs' acts, actions and omissions when they were interacting with BARISONE during the July 31, 2019 incidents referenced above, and/or in connection with their preparation of the August 1, 2019 Police Report, violated BARISONE's constitutional rights including but not limited to BARISONE's rights under the VRA, BARISONE's right to equal protection, BARISONE's right to substantive due process, and other important constitutional rights BARISONE had.

55.77. The behaviors of the defendants, for example: (a) denied BARISONE treatment with fairness, compassion, and/or respect, as a person being victimized criminally by Kanarek and/or Goodwin; (b) denied BARISONE equal protection by performing their acts, action and omission based upon unlawful discrimination against BARISONE based upon his gender, age, psychological disability, and/or status as a person impacted by mental illness; (c) violated BARISONE's right to substantive due process by intentionally subjecting BARISONE to emotional distress causing BARISONE physical and mental harm; and (d) other denials and/or interferences with BARISONE's protected, constitutional rights and interests.

The August 1, 2019 Incident

56.78. The situation continued to escalate out of control, with Kanarek and Goodwin increasing their terroristic threats, harassment, stalking, and/or other criminal behaviors, against BARISONE, Gray, and other people on the premises of the Farm.

57.79. For example, on or about the morning of August 1, 2019, Goodwin cornered two minors residing at the Farm (students of BARISONE) and attempted to force the minors to agree with Goodwin's assertion that BARISONE was wrong to have call the police against him and

Kanarek the prior day. The minors resisted Goodwin's bullying, whereupon Goodwin became aggressive toward one of the minors and threatened her physically.

58.80. The incident was extremely upsetting to the minor, whereupon she reported it to BARISONE and further argument and verbal assault was directed at BARISONE by Kanarek and/or Goodwin, following which BARISONE made his second "911" call to the WASHINGTON TOWNSHIP POLICE DEPARTMENT seeking emergency assistance.

81. On August 1, 2019, at approximately 18:00 hours, BARISONE called "911" and again reported that he had been assaulted verbally by Kanarek and/or Goodwin; that he and others at the Farm were being subjected to other criminal behaviors by Kanarek and/or Goodwin, including but not limited to behaviors which constituted unlawful criminal threats, harassment, cyber stalking, and cyber harassment; their fear; and other relevant information.

82. BARISONE made that "911" call for the expressed purpose of reporting a crime being committed against him as a victim of criminal conduct by Kanarek and/or Goodwin.

59.83. In the "911" call BARISONE communicated facts and circumstances demonstrating that he was a person who was suffering physical or psychological injury or has incurred loss of or damage to personal or real property as a result of what BARISONE perceived to be criminal acts, actions, and/or omissions against him by Kanarek and/or Goodwin.

84. Thereafter, DEFENDANT HENSLEY and DEFENDANT SEABECK arrived at the Farm and, upon information and belief, in abject violation of standard police protocol, policy and procedure, interviewed Kanarek and Goodwin before the DEFENDANT POLICE OFFICERS interviewed BARISONE, the criminal complainant who called "911."

60.85. By and through the responding officers' intentional failures to follow, abide by, and comply with those and other police protocols, DEFENDANT HENSLEY, DEFENDANT

SEABECK, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

86. When DEFENDANT HENSLEY and DEFENDANT SEABECK finally did interview BARISONE and/or the others being threatened by Kanarek and/or Goodwin, BARISONE and/or others reported to WASHINGTON TOWNSHIP that there had been a verbal assault by Kanarek and/or Goodwin; that BARISONE and others at the Farm were being subjected to other criminal behaviors by Kanarek and/or Goodwin including but not limited to behaviors which constituted unlawful criminal threats, harassment, cyber stalking, and cyber harassment; and that BARISONE and others were in fear for their lives and in fear of immediate danger and injury to their physical health and wellbeing, and/or to the wellbeing of their property.

61.87. The reports BARISONE made to DEFENDANT HENSLEY and DEFENDANT SEABECK in that face-to-face meeting included factual statement demonstrating that BARISONE was a person who was suffering from physical and/or psychological injury as a result of what BARISONE perceived to be criminal acts, actions, and/or omissions against him by Kanarek and/or Goodwin.

62.88. DEFENDANT HENSLEY and DEFENDANT SEABECK intentionally disregarded the facts and circumstances being reported to them and intentionally failed to take appropriate action, choosing instead to avoid their duty to act by falsely characterizing the situation as a "private dispute," a tactic those defendants and the other defendants (in particularly, defendant WASHINGTON TOWNSHIP) utilized unlawfully as a practice, custom, and/or policy.

63.89. For example, during the August 1, 2019 incident, BARISONE's affect, statements, and behaviors evidenced outwardly that BARISONE was being psychologically assaulted and victimized by Kanarek and Goodwin, such that the police knew of, and intentionally and/or recklessly disregarded, BARISONE's mounting psychological distress and likely psychiatric breakdown that was going to occur unless appropriate and sufficient action was taken by the defendants to intervene in what was obviously a police matter and not a "private dispute."

64.90. When the responding DEFENDANT POLICE OFFICER finally made it up to the barn where BARISONE, Gray, and the other peaceful visitors/residence had congregated, the DEFENDANT POLICE OFFICER were presented with the minor who Goodwin had assaulted.

65.91. Speaking through a torrent of tears, the minor told the responding DEFENDANT POLICE OFFICERS how Goodwin had threatened her physically and placed her in fear for "in fear for her life"; whereupon the DEFENDANT POLICE OFFICES asked the minor "Did he [Goodwin] threaten to kill you?"

66.92. Upon hearing the minor's response, which was "no," the DEFENDANT POLICE OFFICERS turned away from her, stopped listening to her legitimate report of fear and threats, and failed to give the minor or her complaint any further audience or meaningful consideration.

67.93. Upon information and belief, to the responding DEFENDANT POLICE OFFICERS and WASHINGTON TOWNSHIP, the defendants would not offer to consideration to any type of threat of assault or assault short of one in which Goodwin and/or Kanarek threatened expressly to "kill" someone, regardless of what other physical harm or mayhem Kanarek and/or Goodwin might threaten or cause short of killing someone.

68.94. BARISONE made further reports to the DEFENDANT POLICE OFFICES during their "911" visit to the Farm, including reports of stalking, trespass, and unauthorized attempts by

Kanarek and/or Goodwin to enter the locked club house in the barn.

69.95. BARISONE reported to the responding DEFENDANT POLICE OFFICERS that BARISONE had found discarded boxes of “Suboxone” in the garbage Kanarek and/or Goodwin from the farm house, a drug used to treat heroin addiction.

96. But based upon the position they took in response to the minor’s report, the defendants intentionally discounted, mischaracterized, and/or simply ignored, BARISONE’s reports, in abject violation of applicable laws, rules, statute, policies and procedures (including the New Jersey Attorney General guidelines governing police conduct).

70.97. By and through their intentional disregard of the facts and circumstances being reported to them, and their intentional failure to protect BARISONE and the others at the Farm who were making complaints against Kanarek and/or Goodwin, DEFENDANT HENSLEY, DEFENDANT SEABECK, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE’s other important constitutional rights including his right to equal protection and his right to substantive due process.

71.98. Thereafter, DEFENDANT HENSLEY and DEFENDANT SEABECK intentionally authored and issued a *Washington Twp Police Department Investigation Report* that was materially false and misleading (the “August 2, 2019 Police Report”), knowing that the August 2, 2019 Police Report was materially false and misleading through the statements they made in that report and/or the information they omitted from it, and/or in actionable reckless disregard that the report was materially false and/or misleading because of that.

99. The August 2, 2019 Police Report was materially false and misleading in that the

report, inter alia: (a) failed to document the complaints by BARISONE and the others that they were in fear for their lives and/or in fear of immediate danger and injury to their physical health and wellbeing, and/or to the wellbeing of their property; (b) failed to document in any manner the responding officers' interview of the minor who Goodwin had threatened physically, and/or the minor's report to the responding officers that she was in fear for her life and of physical harm from Kanarek and/or Goodwin; (c) falsely reported that the "Victim" was "KANAREK, LAUREN S." when the truth of the matter was that BARISONE was the "victim" and, in fact, was the person who called "911" reporting that he was the "victim"; and/or (ed) failed to document other facts and circumstances necessary to accurately and effectively convey the true circumstances and resulting material threat of injury, harm, and/or other mayhem occurring at the Farm that day.

72.100. By and through their acts of preparing and publishing a police report which was made intentionally false and misleading by the police officers involved, DEFENDANT HENSLEY, DEFENDANT SEABECK, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

73.101. In connection with their response to BARISONE's August 1, 2019 "911" call and their visit to the Farm, DEFENDANT SEABECK contacted a Morris County Assistant Prosecutor for purposes of discussing the August 1, 2019 incident with the Morris County Prosecutor's Office ("MCPO").

102. During that call with MCPO, DEFENDANT SEABECK failed intentionally to

make a full, complete, truthful and/or accurate report of the incidents and evolving situation at the Farm, instead choosing intentionally to fail to report to MCPO that BARISONE and others had expressed that they were in fear for their lives, and/or in fear of immediate danger and injury to their physical health and/or wellbeing, and/or to the wellbeing of their property, from physical harm threatened by Kanarek and/or Goodwin.

74.103. By and through his acts of providing a briefing to the MCPO which was materially false and misleading, DEFENDANT SEABECK, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

75.104. Upon information and belief, the intentional inaccurate reporting of the August 1, 2019 incident was part of a practice, custom and policy adopted by WASHINGTON TOWNSHIP to endeavor to limit police involvement by falsely characterizing as "civil matters" and/or "private disputes" incidents which, in fact, were criminal in nature.

76.105. There are other residents of WASHINGTON TOWNSHIP who have been subjected to the same illegal and unlawful treatment by WASHINGTON TOWNSHIP and its POLICE DEPARTMENT.

106. The August 2, 2019 Police Report documented as well that the responding DEFENDANT POLICE OFFICERS violated police protocol by interviewing Kanarek and Goodwin (the alleged criminal perpetrators) before interviewing BARISONE, the "911" complainant, evidencing unlawful bias by the defendants against BARISONE and evidencing other wrongs.

107. The DEFENDANT POLICE OFFICERS' acts, actions and omissions when they were interacting with BARISONE during the August 1, 2019 incidents referenced above (including but not limited to their interactions with the MCPO), and/or in connection with their preparation of the August 2, 2019 Police Report, violated BARISONE's constitutional rights including but not limited to BARISONE's rights under the VRA, BARISONE's right to equal protection, BARISONE's right to substantive due process, and other important constitutional rights BARISONE had.

108. The behaviors of the defendants, for example: (a) denied BARISONE treatment with fairness, compassion, and/or respect, as a person being victimized criminally by Kanarek and/or Goodwin; (b) denied BARISONE equal protection by performing their acts, action and omission based upon unlawful discrimination against BARISONE based upon his gender, age, psychological disability, and/or status as a person impacted by mental illness; (c) violated BARISONE's right to substantive due process by intentionally subjecting BARISONE to emotional distress causing BARISONE physical and mental harm; and (d) other denials and/or interferences with BARISONE's protected, constitutional rights and interests.

77.

The August 3, 2019 Incident

78.109. The situation continued to escalate out of control, with Kanarek and Goodwin increasing their terroristic threats, harassment, stalking, and/or other criminal behaviors.

79.110. The behaviors of Kanarek and Goodwin at the Farm, for example, evidenced what others on the premises took to be planning, stalking, and threats to injury Gray's horse and/or other horse boarded in the barn, including the possibility that the barn might be set on fire.

~~80.111.~~ But that was hardly the only mayhem Goodwin and Kanarek intentionally caused at the Farm now that the WASHINGTON TOWNSHIP and the responding DEFENDANT POLICE OFFICERS had empowered those perpetrators through the defendants' failures and refusals to take appropriate action following the first, two "911" calls BARISONE had made.

~~81.112.~~ For the purpose of threatening BARISONE and Gray and to cause them fear for their lives and the lives of Gray's children, Kanarek and Goodwin commenced cyber-stalking Gray's children by sending them social media "friend requests" and/or like contacts.

~~82.113.~~ The contacts initiated by Kanarek and/or Goodwin were particularly disturbing when taken in context, based upon Kanarek's prior expressed threat of violence and mayhem against Gray to "destroy" Gray and everything in Gray's life that was "important" to Gray, following Kanarek's Internet posting regarding "death" to her enemies.

~~83.114.~~ Making matters even more threatening, Kanarek and/or Goodwin continued their efforts to trespass into the club room at the barn, where BARISONE, Gray and the other peaceful residents at the Farm had taken refuge from Kanarek and Goodwin.

~~84.115.~~ An even more ominous phenomena was presented by Kanarek and/or Goodwin through text messages and statements they made to BARISONE and others, through which Kanarek and Goodwin revealed private information concerning BARISONE, Gray, and or others, information which could only have obtained through unlawful trespass, unlawful stalking, and/or the placement of illegal electronic listening devices in the private living area(s) at the barn.

~~85.116.~~ As a result, BARISONE made his third "911" call to the WASHINGTON TOWNSHIP POLICE DEPARTMENT seeking emergency assistance.

117. On August 3, 2019, at approximately 9:00 hours, BARISONE called "911" and again reported that he and others at the Farm were being assaulted verbally by Kanarek and/or

Goodwin; that he and others at the Farm were being subjected to other criminal behaviors by Kanarek and/or Goodwin, including but not limited to behaviors which constituted unlawful criminal threats, harassment, cyber stalking, and cyber harassment; their fear; and other relevant information.

118. BARISONE made that "911" call for the expressed purpose of reporting a crime being committed against him as a victim of criminal conduct by Kanarek and/or Goodwin.

86.119. In the "911" call BARISONE communicated facts and circumstances demonstrating that he was a person who was suffering physical or psychological injury or has incurred loss of or damage to personal or real property as a result of what BARISONE perceived to be criminal acts, actions, and/or omissions against him by Kanarek and/or Goodwin.

120. Thereafter, DEFENDANT THOMPSON and DEFENDANT FALLENI arrived at the Farm and, upon information and belief, in abject violation of standard police protocol, policy and procedure, interviewed Kanarek and Goodwin before the DEFENDANT POLICE OFFICERS interviewed BARISONE, the criminal complainant who called "911."

87.121. By and through the responding officers' intentional failures to follow, abide by, and comply with those and other police protocols, DEFENDANT THOMPSON, DEFENDANT FALLENI, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

88.122. When DEFENDANT THOMPSON and DEFENDANT FALLENI finally did interview BARISONE and/or the others being threatened by Kanarek and/or Goodwin,

BARISONE and/or others reported to WASHINGTON TOWNSHIP that there had been a verbal assault by Kanarek and/or Goodwin; that BARISONE and others at the Farm were being subjected to other criminal behaviors by Kanarek and/or Goodwin including but not limited to behaviors which constituted unlawful criminal threats, harassment, cyber stalking, and cyber harassment; and that BARISONE and others were in fear for their lives and in fear of immediate danger and injury to their physical health and wellbeing, and/or to the wellbeing of their property.

89.123. For example, BARISONE and/or the other victims reported expressly to the responding POLICE OFFICER DEFENDANTS a number of material, salient facts which they chose intentionally to disregard, including the following:

- (a) Kanarek was believed to have possession of, and/or current access to, a loaded firearm;
- (b) Kanarek had a history of threatening to discharge and/or actually discharging her loaded firearm at people and property for the purpose of causing harm, injury and/or damage;
- (c) Kanarek expressly threatened BARISONE and others to use firearms against them through Kanarek's posting and/or other statements indicating that she was coming to get them with "weapons hot," meaning that she was armed and ready to discharge a firearm at them;
- (d) Kanarek was making threats of harm, physical harm, violence, and/or mayhem against BARISONE, Gray, and/or others, in writing, on the Internet through social media posting which were and/or could be made available for the DEFENDANT POLICE OFFICERS to see;
- (e) Kanarek was claiming that she had uncontrollable "multiple personalities"

through which she would cause harm to BARISONE and others at the Farm;
and/or,

- (f) Kanarek had a criminal history, history as a drug addict, and other personal history demonstrating that Kanarek was a clear, immediate, and present danger to BARISONE, Gray, Gray's children, others at the Farm, and/or horses being boarded at the Farm.

90.124. BARISONE even provided the responding DEFENDANT POLICE OFFICERS printouts of examples of Kanarek's overtly threatening, ~~Internet~~ ~~Internet~~ postings, and told the DEFENDANT POLICE OFFICERS that BARISONE wanted – in fact, insisted – that he get to speak with a supervisor, a detective, and/or a mental health professional to deal with the developing, dangerous circumstances.

91.125. During the August 3, 2019 ~~incidents, Incident~~, Kanarek and/or Goodwin expressly told the responding DEFENDANT POLICE OFFICERS that Kanarek/Goodwin had place electronic devices on the premises, permitting Kanarek and Goodwin to intercept and thereafter disclose private oral communications BARISONE, Gray, and/or others were having at the Farm (hereinafter, the "Eavesdropping").

92.126. The placement of those devices without consent of the property owner, upon information and belief, is criminal trespassing under New Jersey law.

93.127. The Eavesdropping was unlawful under New Jersey law.

94.128. Moreover, the disclosure of unlawfully intercepted oral communications is a crime under New Jersey law.

129. Nevertheless, the responding DEFENDANT POLICE OFFICERS failed to

investigate the criminal acts Goodwin has reported to them he and/or Kanarek had committed, failed to take other appropriate non-discretionary action in response to notification that such criminal conduct was occurring, and intentionally failed to intervene.

95.130.

~~96.~~ DEFENDANT THOMPSON and DEFENDANT FALLENI intentionally disregarded all of those facts and circumstances being reported to them and intentionally failed to act to intervene in what obviously was a police matter and not just a “private dispute.”

131. Those POLICE OFFICER DEFENDANTS also disregarded, during the August 3, 2019 incidents, BARISONE’s affect, statements, and behaviors evidenced outwardly that BARISONE was being psychologically assaulted and victimized by Kanarek and Goodwin, such that the police of, knew and intentionally and/or recklessly disregarded, BARISONE’s mounting psychological distress and likely psychiatric breakdown about to occur unless appropriate and sufficient action was taken by the defendants to intervene.

97.132. By and through their intentional disregard of the facts and circumstances being reported to them, and their intentional failure to protect BARISONE and the others at the Farm who were making complaints against Kanarek and/or Goodwin, DEFENDANT THOMPSON, DEFENDANT FALLENI, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE’s other important constitutional rights including his right to equal protection and his right to substantive due process.

98.133. Thereafter, DEFENDANT THOMPSON and DEFENDANT FALLENI intentionally authored and issued a *Washington Twp Police Department Investigation Report* that

was materially false and misleading (the “August 8, 2019 Police Report”), knowing that the August 8, 2019 Police Report was materially false and misleading through the statements they made in that report and/or the information they omitted from it, and/or in actionable reckless disregard that the report was materially false and/or misleading because of that.

134. The August 8, 2019 Police Report truthfully admitted that the “Victim” reporting crime was “BARISONE, MICHAEL L.”, but was materially false and misleading in that the report, inter alia: (a) failed to document the complaint by BARISONE and the others that some of them were in fear for their lives and in fear of immediate danger and injury to their physical health and wellbeing, and/or the wellbeing of their property; (b) failed to document the facts and circumstances concerning Kanarek’s actual or potential possession of a loaded firearm, and her threats to use the firearm against BARISONE and others by coming for them with “weapons hot”; and/or (c) failed to document other facts and circumstances necessary to accurately and effectively convey the true circumstances and resulting material threat of injury, harm, and/or other mayhem occurring at the Farm that day.

135. The August 8, 2019 Police Report noted that the responding DEFENDANT POLICE OFFICERS were advised, expressly, by Goodwin (one of the criminal perpetrators identified to the officers by BARISONE) that Goodwin and Kanarek were actively engaging in Eavesdropping, which the defendants were obligated to investigate as a crime but intentionally failed to pursue.

136. As of August 3, 2019, DEFENDANT SEABECK (later identified as a “Supervisor” employee of defendant WASHINGTON TOWNSHIP’s Police Department) had a non-discretionary duty to investigate the Eavesdropping based upon BARISONE’s criminal complaint as a victim of that crime, and Goodwin’s admission to the responding DEFENDANT

POLICE OFFICERS that Goodwin and Kanarek were, in fact, engaging in such activities

99.137. By and through their acts of preparing and publishing a police report which was made intentionally false and misleading by the police officers involved, the responding DEFENDANT POLICE OFFICERS, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

138. In connection with their response to BARISONE's August 3, 2019 "911" call and their visit to the Farm, the responding DEFENDANT POLICE OFFICERS finally bothered to contact the MCPO but then proceeded to give the MCPO a materially misleading report by, among other things, failing to advised the MCPO of the Kanarek-Goodwin statement that they were using eavesdropping devices on the premises.

100.139. By and through their acts of providing a briefing to the MCPO which was materially false and misleading, the responding DEFENDANT POLICE OFFICERS, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

101.140. Upon information and belief, the intentional inaccurate reporting of the August 3, 2019 incident was another example of the practice, custom and policy adopted by WASHINGTON TOWNSHIP to endeavor to limit police involvement by falsely characterizing

as “civil matters” and/or “private disputes” incidents which, in fact, were criminal in nature.

141. Upon information and belief, had the defendants (especially the responding DEFENDANT POLICE OFFICERS) acted appropriately in response to BARISONE’s criminal complaint and “911” emergency call on August 3, 2019, the defendants would have discovered that in the early morning hours on or about August 4, 2019, Goodwin was conducting Internet searches in an effort to find address information for the location where Gray’s children were about to be attending a family reunion; that Goodwin and Kanarek were stalking Gray’s children for criminal, deviant, and illegal purposes (including the purpose of physically harming those children); and that there was probable cause to intervene in the situation which was not a private dispute but, rather, a criminal matter.

142. The DEFENDANT POLICE OFFICERS’ acts, actions and omissions when they were interacting with BARISONE during the August 3, 2019 incidents referenced above, and/or in connection with their preparation of the August 8, 2019 Police Report, violated BARISONE’s constitutional rights including but not limited to BARISONE’s rights under the VRA, BARISONE’s right to equal protection, BARISONE’s right to substantive due process, and other important constitutional rights BARISONE had.

143. The behaviors of the defendants, for example: (a) denied BARISONE treatment with fairness, compassion, and/or respect, as a person being victimized criminally by Kanarek and/or Goodwin; (b) denied BARISONE equal protection by performing their acts, action and omission based upon unlawful discrimination against BARISONE based upon his gender, age, psychological disability, and/or status as a person impacted by mental illness; (c) violated BARISONE’s right to substantive due process by intentionally subjecting BARISONE to emotional distress causing BARISONE physical and mental harm; and (d) other denials and/or

interferences with BARISONE's protected, constitutional rights and interests.

The August 4, 2019 Incident

~~103.~~144._____ The situation continued to escalate out of control, with Kanarek and/or Goodwin increasing their terroristic threats, harassment, stalking, and/or other criminal behaviors, causing BARISONE to make his fourth "911" call to the WASHINGTON TOWNSHIP POLICE DEPARTMENT seeking emergency assistance.

~~104.~~145._____ On August 4, 2019, at approximately 16:00 hours, BARISONE called "911" and again reported (now for the fourth time, at least) that he and others at the Farm were being assaulted verbally by Kanarek and/or Goodwin; that he and others at the Farm were being subjected to other criminal behaviors by Kanarek and/or Goodwin, including but not limited to behaviors which constituted unlawful criminal threats, harassment, cyber stalking, and cyber harassment; and other relevant information demonstrating that the dispute was escalating, and demonstrating that BARISONE and others were in fear of immediate danger and injury to their physical health and wellbeing, and/or the wellbeing of their property.

~~105.~~146._____ While BARISONE was on the phone with the "911" operator, Goodwin could be heard in the background of the phone call screaming terroristic threats against BARISONE and Cox, including words to the effect that Goodwin would harm BARISONE and would "take down" (i.e., physically harm) Cox should she attempt to intervene – words which reasonably placed BARISONE, Cox and others in fear for their lives from violence against them by Kanarek and/or Goodwin.

147._____ BARISONE expressly told the "911" operator that he, Gray, and the others were in fear, as the operator (had he/she been listening) could hear Goodwin screaming his threats violence and mayhem in the background.

148. BARISONE made that "911" call for the expressed purpose of reporting a crime being committed against him as a victim of criminal conduct by Kanarek and/or Goodwin.

149. In the "911" call BARISONE communicated facts and circumstances demonstrating that he was a person who was suffering physical or psychological injury or has incurred loss of or damage to personal or real property as a result of what BARISONE perceived to be criminal acts, actions, and/or omissions against him by Kanarek and/or Goodwin.

150. Thereafter, DEFENDANT BIGHAM arrived first at the Farm; DEFENDANT CONSTANTINO responded later based on his intentional choice to treat BARISONE's "911" emergency call as a "non emergency," in abject violation of proper police protocol.

151. In abject violation of standard police protocol, policy and procedure, DEFENDANT BIGMAN interviewed Kanarek and Goodwin before the DEFENDANT POLICE OFFICERS interviewed BARISONE, the criminal complainant who called "911."

152. By and through the responding officers' intentional failures to follow, abide by, and comply with those and other police protocols, the responding DEFENDANT POLICE OFFICERS, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

153. When DEFENDANT CONSTANTINO and DEFENDANT BIGHAM finally did interview BARISONE and/or the others being threatened by Kanarek and/or Goodwin, BARISONE and/or others reported to WASHINGTON TOWNSHIP that there had been a verbal

assault by Kanarek and/or Goodwin; that BARISONE and others at the Farm were being subjected to other criminal behaviors by Kanarek and/or Goodwin including but not limited to behaviors which constituted unlawful criminal threats, harassment, cyber stalking, and cyber harassment; and that BARISONE and others were in fear of immediate danger and injury to their physical health and wellbeing, and/or the wellbeing of their property.

~~110~~.154. For example, BARISONE, Cox and others recounted to the responding DEFENDANT POLICE OFFICERS that Goodwin and Kanarek made threats of violence against them, and they were in fear for their lives.

~~111~~.155. As he had done numerous times in the past during the prior incidents, BARISONE informed the responding DEFENDANT POLICE OFFICERS that if they were going to do nothing BARISONE wanted to speak to a supervisor, such as a Sergeant and/or Detective. BARISONE's request, once again, was rejected by the responding DEFENDANT POLICE OFFICERS, who said "no."

~~112~~.156. BARISONE again advised WASHINGTON TOWNSHIP (through the responding DEFENDANT POLICE OFFICERS) of many other material, salient facts which the defendants chose intentionally to disregard, including the fact that Kanarek was believed to have possession of, and/or current access to, a loaded firearm.

~~113~~.157. DEFENDANT COSTANTINO and DEFENDANT BIGHAM intentionally disregarded all of those the facts and circumstances being reported to them and intentionally failed to act to intervene on behalf of BARISONE and/or the others making the report to WASHINGTON TOWNSHIP against Kanarek and Goodwin.

158. Those POLICE OFFICER DEFENDANTS also disregarded, during the August 4, 2019 incident, BARISONE's affect, statements, and behaviors evidenced outwardly that

BARISONE was being psychologically assaulted and victimized by Kanarek and Goodwin, such that the police knew of, and intentionally and/or recklessly disregarded, BARISONE's mounting psychological distress that was about to cause a psychiatric breakdown because appropriate and sufficient action was not taken by the defendants to intervene in what obviously was a criminal matter, not a private dispute.

114.159. By and through their intentional disregard of the facts and circumstances being reported to them, and their intentional failure to protect BARISONE and the others at the Farm who were making complaints against Kanarek and/or Goodwin, the responding DEFENDANT POLICE OFFICERS, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

115.160. Thereafter, DEFENDANT CONTANTINO and DEFENDANT BIGHAM intentionally authored and issued a *Washington Twp Police Department Investigation Report* that was materially false and misleading (the "August 4, 2019 Police Report"), knowing that the August 4, 2019 Police Report was materially false and misleading through the statements they made in that report and/or the information they omitted from it, and/or in actionable reckless disregard that the report was materially false and/or misleading because of that.

161. The August 4, 2019 Police Report was materially false and misleading in that the report, *inter alia*: (a) failed to document the complaint by BARISONE and the others that some of them were in fear for their lives and in fear of immediate danger and injury to their physical health and wellbeing, and/or to the wellbeing of their property; (b) failed to document the facts and

circumstances concerning Kanarek's access to and threats to use a loaded firearm against BARISONE and others; (c) failed intentionally to identify BARISONE as the "Victim" and, instead, left "Victim" blank and relegated BARISONE's victim-of-crime complainant status to the report item "Modus Operandi"; and/or (ed) failed to document other facts and circumstances necessary to accurately and effectively convey the true circumstances and resulting material threat of injury, harm, and/or other mayhem occurring at the Farm that day.

116.162. By and through their acts of preparing and publishing a police report which was made intentionally false and misleading by the police officers involved, DEFENDANT BIGHAM, DEFENDANT CONSTANTINO, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

117.163. In connection with their response to BARISONE's August 4, 2019 "911" call and their visit to the Farm, the responding DEFENDANT POLICE OFFICERS failed to contact the MCPO and/or any of its assistant prosecutors for purposes of discussing the August 4, 2019 incident and/or reporting to the MCPO the escalating, increasingly dangerous situation at the Farm.

164. Upon information and belief, the intentional inaccurate reporting of the August 4, 2019 incident was another example of the practice, custom, and policy adopted by WASHINGTON TOWNSHIP to endeavor to limit police involvement by falsely characterizing as "civil matters" and/or "private disputes" incidents which, in fact, were criminal in nature.

165. The DEFENDANT POLICE OFFICERS' acts, actions and omissions when they

were interacting with BARISONE during the August 4, 2019 incidents referenced above, and/or in connection with their preparation of the August 4, 2019 Police Report, violated BARISONE's constitutional rights including but not limited to BARISONE's rights under the VRA, BARISONE's right to equal protection, BARISONE's right to substantive due process, and other important constitutional rights BARISONE had.

118.166. The behaviors of the defendants, for example: (a) denied BARISONE treatment with fairness, compassion, and/or respect, as a person being victimized criminally by Kanarek and/or Goodwin; (b) denied BARISONE equal protection by performing their acts, action and omission based upon unlawful discrimination against BARISONE based upon his gender, age, psychological disability, and/or status as a person impacted by mental illness; (c) violated BARISONE's right to substantive due process by intentionally subjecting BARISONE to emotional distress causing BARISONE physical and mental harm; and (d) other denials and/or interferences with BARISONE's protected, constitutional rights and interests.

The August 5, 2019 Incident

119.167. The situation continued to escalate out of control, with Kanarek and/or Goodwin increasing their terroristic threats, harassment, stalking, and/or other criminal behaviors, causing BARISONE to make his fourth "911" call to the WASHINGTON TOWNSHIP POLICE DEPARTMENT seeking emergency assistance.

120.168. Kanarek continued posting threats of death, harm and/or mayhem on social media, including expressed statements by Kanarek that she had "guns" and "hollow point bullets," placing BARISONE, Gray and the other peaceful people at the Farm in fear for their lives once again.

121.169. On August 5, 2019, at or about 16:00 hours, BARISONE drove to the

WASHINGTON TOWNSHIP POLICE DEPARTMENT building to speak directly to an officer of supervisory authority.

170. BARISONE's purpose was to speak to a detective, the Police Chief, and/or someone else above the level of the responding DEFENDANT POLICE OFFICERS to personally again advise WASHINGTON TOWNSHIP of the true state of facts, circumstances, and affairs at the Farm, including but not limited to Kanarek's firearms threats, and the fact that BARISONE and others at the Farm were in fear for their lives.

171. BARISONE made that August 5, 2019 visit to the WASHINGTON TOWNSHIP POLICE DEPARTMENT for the expressed purpose of reporting a crime being committed against him as a victim of criminal conduct by Kanarek and/or Goodwin.

~~122.~~172. During that August 5, 2019 visit to the WASHINGTON TOWNSHIP POLICE DEPARTMENT BARISONE communicated facts and circumstances demonstrating that he was a person who was suffering physical or psychological injury or has incurred loss of or damage to personal or real property as a result of what BARISONE perceived to be criminal acts, actions, and/or omissions against him by Kanarek and/or Goodwin.

~~123.~~173. Upon entering the building BARISONE approached the receptionist and expressly asked to see the Police Chief (answer, "no"), asked for the Police Chief's phone number (answer, "no"), and advised her of other material information about the dangerous situation at the Farm that WASHINGTON TOWNSHIP and its responding DEFENDANT POLICE OFFICERS were intentionally ignoring.

~~124.~~174. BARISONE said to the receptionist, in sum and substance, words to the effect that "I have a HUGE problem at the Farm ... I have called this place 15 times looking to speak to a human ... No one has EVER picked up ... I have left messages ... No one has EVER

called me back ... My family and I are in danger ... in fear for our lives ...I NEED to speak to an official NOW.”

~~125.175.~~ As he spoke those words, BARISONE displayed the affect of a person on the verge of having a mental/emotional/psychological breakdown; he was visibly shaking, visibly agitated, visibly upset, and visibly demonstrating the affect of a person in fear for his life and the lives of others.

~~126.176.~~ Minutes later three uniformed officers confronted BARISONE in the lobby where he stood. The officers appeared to be some of the DEFENDANT POLICE OFFICERS encountered by BARISONE when WASHINGTON TOWNSHIP came to the Farm on the prior “911” calls.

~~127.177.~~ The DEFENDANT POLICE OFFICERS, with hands on their belts (indicating that weapons could be drawn against BARISONE), stood stone-faced, staring at BARISONE, pushing out their chests and doing whatever they could to intimidate BARISONE, in abject violation of his constitutional rights under the VRA.

~~128.178.~~ Nevertheless, BARISONE mustered the courage to confront the officers, telling them, in words and/or in substance, the following:

I NEED a supervisor. A Detective. We are in danger. I have LUNATICS attacking me and my family at the Farm. They are drug addicts. They are violent criminals. They have guns. They are posting deadly threats against us on social media. We need protection. They have been served vacate orders today. There WILL be trouble. WE ARE IN FEAR FOR OUR LIVES. What they are posting is JUST LIKE Parkland School. They WILL harm us. I need a mental health professional to look at this stuff. **I have papers in my truck in the parking lot showing the threats and violent messages they are posting.** I need a ranking officer to deal with this situation. It is your job. WE ARE IN FEAR FOR OUR LIVES.

~~129.~~179. Throughout his speech to the police officers in the lobby during this incident BARISONE was visibly shaking, visibly agitated, visibly in fear, visibly distressed, and visibly evidencing multiple signs of emotional/psychological/psychiatric distress being caused by WASHINGTON TOWNSHIP's intentional mishandling of the circumstances.

~~130.~~180. Despite those compelling circumstances and statements, the responding DEFENDANT POLICE OFFICERS which BARISONE confronted in the lobby of the Police Department that afternoon intentionally ignored the facts and circumstances, intentionally blocked BARISONE from speaking with a supervisor above them in rank, intentionally mischaracterized the situation as a "private dispute," intentionally refused to aid or assist BARISONE, and forced him to leave the building without permitting him to speak to anyone having supervisory authority over them and/or the situation at the Farm.

~~131.~~181. Upon information and belief, on behalf of WASHINGTON TOWNSHIP, those responding DEFENDANT POLICE OFFICERS failed intentionally to write up any police report of this incident, choosing instead to intentionally hide it from the record of what was occurring up at the Farm. That was yet another intentional wrong perpetrated by the defendants.

182. Those POLICE OFFICER DEFENDANTS intentionally disregarded BARISONE's affect, statements, and behaviors evidenced outwardly that BARISONE was being psychologically assaulted and victimized by Kanarek and Goodwin, such that the police knew of, and intentionally and/or recklessly disregarded, BARISONE's mounting psychological distress and that BARISONE was on the verge of experiencing a psychiatric breakdown arising from the defendants' refusal to take appropriate and sufficient action to intervene in what obviously was a criminal matter and not a private dispute.

183. By and through their intentional disregard of the facts and circumstances being

reported to them, and their intentional failure to protect BARISONE and the others at the Farm who were making complaints against Kanarek and/or Goodwin, the DEFENDANT POLICE OFFICERS confronting BARISONE during the August 5 incidents, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

184. Each one of the DEFENDANT POLICE OFFICERS involved in the August 5, 2019 incidents had a non-discretionary duty to take BARISONE's complaint as a victim of crime, a non-discretionary duty to prepare a written WASHINGTON TOWNSHIP POLICE DEPARTMENT INVESTIGATION REPORT documenting the August 5 incidents and BARISONE's victim complaints, and a non-discretionary duty to treat BARISONE with fairness, compassion, and/or respect, as a person being victimized criminally by Kanarek and/or Goodwin.

185. Each one of the DEFENDANT POLICE OFFICERS involved in the August 5, 2019 incidents violated BARISONE's civil rights by and through his abject, intentional failure to perform those non-discretionary duties, resulting in material deprivations, denials, impairments, and infringements of BARISONE's constitutional rights under the VRA as well as his rights to equal protection, substantive due process, and other constitutionally protected rights and interests.

186. The DEFENDANT POLICE OFFICERS' acts, actions and omissions when they were interacting with BARISONE during the August 5, 2019 incidents referenced above violated BARISONE's constitutional rights including but not limited to BARISONE's rights under the VRA, BARISONE's right to equal protection, BARISONE's right to substantive due process, and other important constitutional rights BARISONE had.

132.187. The behaviors of the defendants, for example: (a) denied BARISONE treatment with fairness, compassion, and/or respect, as a person being victimized criminally by Kanarek and/or Goodwin; (b) denied BARISONE equal protection by performing their acts, action and omission based upon unlawful discrimination against BARISONE based upon his gender, age, psychological disability, and/or status as a person impacted by mental illness; (c) violated BARISONE's right to substantive due process by intentionally subjecting BARISONE to emotional distress causing BARISONE physical and mental harm; and (d) other denials and/or interferences with BARISONE's protected, constitutional rights and interests.

The August 6, 2019, Midday Incident

133.188. On August 6, 2019, at or about 13:00 hours, WASHINGTON TOWNSHIP descended upon the Farm with a line of official vehicles and township actors.

134.189. WASHINGTON TOWNSHIP proceeded to invade the premises in response to a complaint Kanarek and Goodwin made to WASHINGTON TOWNSHIP that the buildings on the Farm had unpermitted renovations, alterations, and/or construction work being performed and/or performed in the past.

135.190. Had the defendants truly believed that what was occurring at the Farm was a "private matter," "private dispute," and/or other non-police matter, defendants would not have undertaken such an extreme intervention in response to Kanarek's complaint.

136.191. The reports made by Kanarek and Goodwin were part of the stalking and harassment they were directing and BARISONE, Gray, and other peaceful residents/visitors at the Farm, only now Kanarek and Goodwin were committing those unlawful acts with the active participation and assistance of WASHINGTON TOWNSHIP.

137.192. Fearful, shaken, and in distress as a result of the totality of the

circumstances, BARISONE was visibly shaking while he repeatedly told the WASHINGTON TOWNSHIP officials present that BARISONE, Gray, and the others were in fear for their lives due to acts and threats of Kanarek and Goodwin, and the abject failure and refusal of WASHINGTON TOWNSHIP and/or the DEFENDANT POLICE OFFICERS to take appropriate action.

~~138.~~193. During the encounter, BARISONE spoke expressly to the WASHINGTON TOWNSHIP Chief Building Inspector who was present that day (the “Chief Building Inspector”), who confirmed verbally to other WASHINGTON TOWNSHIP officials that Kanarek and Goodwin would not qualify as “tenants” at the Farm.

~~139.~~194. While BARISONE was speaking to the WASHINGTON TOWNSHIP public officials in the barn, Goodwin (who was also present to listen in) glared at BARISONE and mouth the words that BARISONE should “get ready,” which BARISONE understood to mean “get ready for more mayhem, destruction, injury and harm.”

~~140.~~195. Therefore, at that point in time, the defendants had actual knowledge that the occurrence at the Farm occurring since July 31, 2019, was not a “private,” “landlord-tenant” dispute they could sidestep to avoid taking non-discretionary action to intervene.

~~141.~~196. Nevertheless, the defendants persisted intentionally in their disregard of the complaints being made against Kanarek and Goodwin by BARISONE, Gray and the other at the Farm.

~~142.~~197. WASHINGTON TOWNSHIP issued orders that various living spaces occupied on the Farm were ordered to be vacated immediately until further notice and that WASHINGTON TOWNSHIP would return later in the day to confirm whether BARISONE, Grey, Kanarek and Goodwin had, in fact, vacated the buildings.

143.198. Having issued such an order, it was the duty and obligation of WASHINGTON TOWNSHIP to force Kanarek and Goodwin to vacate the Farm house; but when BARISONE requested that WASHINGTON TOWNSHIP do just that, WASHINGTON TOWNSHIP refused and directed BARISONE that it was his obligation to physically eject them. BARISONE advised WASHINGTON TOWNSHIP at that time, once again, that he was in fear for his life from violence threatened against him by Kanarek and Goodwin, which WASHINGTON TOWNSHIP again ignored intentionally.

144.199. During and throughout ~~th~~these incidents, WASHINGTON TOWNSHIP and its officials in attendance intentionally disregarded BARISONE's affect, statements, and behaviors evidencing that BARISONE was being psychologically assaulted and victimized by Kanarek and Goodwin, such that the police knew of, and intentionally and/or recklessly disregarded, the fact that BARISONE was now experiencing profound psychological distress and was in the process of experiencing a psychiatric breakdown.

200. During ~~these~~ incidents, a WASHINGTON TOWNSHIP employee at the Farm on behalf of the township observed BARISONE's profound level of psychological and emotional distress, his uncontrollable shaking and shivering, and his repeated statements that he was "in fear" for his life.

201. The acts, actions and omissions of the defendants when they were interacting with BARISONE during the August 6, 2019 mid-day incidents referenced above violated BARISONE's constitutional rights including but not limited to BARISONE's rights under the VRA, BARISONE's right to equal protection, BARISONE's right to substantive due process, and other important constitutional rights BARISONE had.

145.202. The behaviors of the defendants, for example: (a) denied BARISONE

treatment with fairness, compassion, and/or respect, as a person being victimized criminally by Kanarek and/or Goodwin; (b) denied BARISONE equal protection by performing their acts, action and omission based upon unlawful discrimination against BARISONE based upon his gender, age, psychological disability, and/or status as a person impacted by mental illness; (c) violated BARISONE's right to substantive due process by intentionally subjecting BARISONE to emotional distress causing BARISONE physical and mental harm; and (d) other denials and/or interferences with BARISONE's protected, constitutional rights and interests.

The August 6, 2019 Evening Incident

146.203. On August 6, 2019, at or about 17:00 p.m., WASHINGTON TOWNSHIP again descended upon the Farm with a line of official vehicles and township actors.

147.204. Utilizing its building inspector, fire marshal, and police, WASHINGTON TOWNSHIP proceeded to invade the premises again to determine whether, in fact the living spaces had been vacated as ordered by WASHINGTON TOWNSHIP.

148.205. Fearful, shaken, and in distress as a result of the totality of the circumstances, BARISONE was visibly shaking while he repeatedly told the WASHINGTON TOWNSHIP officials present that BARISONE, Gray, and the others were in fear for their lives due to acts and threats of Kanarek and Goodwin, and the abject failure and refusal of WASHINGTON TOWNSHIP and/or the DEFENDANT POLICE OFFICERS to take appropriate action.

149.206. BARISONE advised WASHINGTON TOWNSHIP that the township needed to expel Kanarek and Goodwin from the living spaced in order to comply with the township's order to vacate the premises because, as BARISONE, he was in fear for his life.

150.207. It was following that discussion that WASHINGTON TOWNSHIP

officials sought access to the farm house to enter the area Kanarek and Goodwin were occupying.

~~151.208.~~ WASHINGTON TOWNSHIP took Cox to the Farm house to make that entry, whereupon Cox was viciously attacked and bitten by Kanarek's violent dog.

~~152.209.~~ A WASHINGTON TOWNSHIP ambulance was called to the scene, whereupon Cox was treated for the dog bite.

~~153.210.~~ The WASHINGTON TOWNSHIP police were in attendance as well; they refused to remove the dog from the premises or even to advise Kanarek that she could not lawfully occupy the premises.

~~154.211.~~ During their visit to the Farm, one or more of the WASHINGTON TOWNSHIP ambulance attendants observed BARISONE sufficiently to note that BARISONE's affect, statements, and behaviors evidenced outwardly psychological distress and psychiatric breakdown that was occurring due to the defendants' failure to take appropriate action.

212. The police officers in attendance during this incident, namely DEFENDANT OFFICER GARRISON and DEFENDANT OFFICER HADE, intentionally disregarded the situation and falsely reported about the material facts and circumstances following the incident, including false reporting in the August 11, 2019, written police report they authored/approved knowing that the August 11, 2019 police report was materially false and misleading through the statements they made in that report and/or the information they omitted from it, and/or in actionable reckless disregard that the report was materially false and/or misleading because of that.

213. The reports BARISONE made to the responding DEFENDANT POLICE OFFICERS in their face-to-face meetings included factual statement demonstrating that BARISONE was a person who was suffering from physical and/or psychological injury as a result

of what BARISONE perceived to be criminal acts, actions, and/or omissions against him by Kanarek and/or Goodwin.

214. By and through their intentional disregard of the facts and circumstances being reported to them, and their intentional failure to protect BARISONE and the others at the Farm who were making complaints against Kanarek and/or Goodwin, the responding DEFENDANT POLICE OFFICERS, the WASHINGTON TOWNSHIP POLICE DEPARTMENT and, ultimately, WASHINGTON TOWNSHIP, were failing to treat BARISONE with the requisite fairness, compassion, and respect he is guaranteed constitutionally violating the VRA, and/or violating BARISONE's other important constitutional rights including his right to equal protection and his right to substantive due process.

215. The DEFENDANT POLICE OFFICERS' acts, actions and omissions when they were interacting with BARISONE during the August 6, 2019 evening incidents referenced above, and/or in connection with their preparation of the August 11, 2019 Police Report, violated BARISONE's constitutional rights including but not limited to BARISONE's rights under the VRA, BARISONE's right to equal protection, BARISONE's right to substantive due process, and other important constitutional rights BARISONE had.

455.216. The behaviors of the defendants, for example: (a) denied BARISONE treatment with fairness, compassion, and/or respect, as a person being victimized criminally by Kanarek and/or Goodwin; (b) denied BARISONE equal protection by performing their acts, action and omission based upon unlawful discrimination against BARISONE based upon his gender, age, psychological disability, and/or status as a person impacted by mental illness; (c) violated BARISONE's right to substantive due process by intentionally subjecting BARISONE to emotional distress causing BARISONE physical and mental harm; and (d) other denials and/or

interferences with BARISONE's protected, constitutional rights and interests.

The August 7, 2019 Incident

~~156.217.~~ On August 7, 2019, following the aforementioned protracted, intentional, derelict interactions which WASHINGTON TOWNSHIP and the DEFENDANT POLICE OFFICERS had with BARISONE, Kanarek, Goodwin, and/or others at the Farm, there was an incident at the Farm in which Kanarek was shot twice in the chest (the "August 7, 2019 Incident").

~~157.218.~~ BARISONE was indicted for the August 7, 2019 Incident, was charged criminally, and is presently being held in jail awaiting trial.

~~158.219.~~ BARISONE has no recollection of the shooting and has entered a "not guilty" plea.

~~159.220.~~ A renowned, board-certified psychiatrist has determined that BARISONE was mentally incompetent at the time of the August 7, 2019 Incident, having suffered from mental disease, condition, and/or defect which, in sum and/or substance, rendered BARISONE to be insane.

~~160.221.~~ In the aftermath of the August 7, 2019 Incident, WASHINGTON TOWNSHIP Police assembled people at the Farm, at the time of the shooting (exclude BARISONE, Kanarek, and/or Goodwin) in the club of the barn and interviewed them as potential witnesses.

222. In the presence of the people being interviewed, a WASHINGTON TOWNSHIP Police Officer stated anecdotally, in words, sum and/or substance, that: (a) there are numerous reports to the Police in WASHINGTON TOWNSHIP of shots fired to which the police respond or investigate; (b) the high number of such calls was due to the fact that WASHINGTON

TOWNSHIP has people who fire guns while hunting; (c) when the report came over the radio of a shooting at the Farm, the officer concluded it was a real shooting, not an incident of shots fired for the purpose of hunting; and (d) “we had been worried that something like that might happen.”

~~161.~~

Other Allegations

~~162.223.~~ By the time that the August 7 Incident occurred, Kanarek and/or Goodwin had made express threats and/or undertaken act of assault, threatening behavior, and harm against no fewer than seven (7) people at the Farm, namely: BARISONE; Gray; Gray’s two minor children; the two students Goodwin intimidated; and, Cox.

~~163.224.~~ By the time that the August 7 Incident occurred, Kanarek and/or Goodwin had expressly, directly, and/or indirectly threatened “death”; destruction; using firearms; coming for people with “weapons hot” loaded firearms; “taking down” whoever might get in the way of their plan to harm BARISONE and/or Gray; possessing “guns” and “hollow point bullets”; and other material threats.

~~164.225.~~ WASHINGTON TOWNSHIP and the other defendants were advised repeatedly of that information but, nevertheless, unlawfully chose to disregard it unlawfully.

~~165.226.~~ The aforementioned acts, actions, and omissions of the defendant public employees (including but not limited to the DEFENDANT POLICE OFFICERS) constituted crimes, acts of commission and omission committed with actual malice against BARISONE, and/or acts of commission and omission constituting willful misconduct.

~~166.227.~~ The aforementioned acts, actions, and omissions of the defendant public employees (including but not limited to the DEFENDANT POLICE OFFICERS) constituted acts of commission and omission of “official misconduct” made criminal under N.J.S.A. § 59:3-14.

~~167.228.~~ The aforementioned acts, actions, and omissions of the defendant public employees (including but not limited to the DEFENDANT POLICE OFFICERS) included a conspiracy to violate BARISONE's protected rights and interests, including violations arising from the preparation and submission of false police reports to concealing the true state of affairs and occurrences at the Farm between July 31, 2019 and August 7, 2019.

Civil Rights Violations

~~168.229.~~ Under the New Jersey *Civil Rights Act* N.J.S.A. §10:6-2, and/or under 42 U.S.C. §1983, it is unlawful for WASHINGTON TOWNSHIP, the DEFENDANT POLICE OFFICERS, and/or the other defendants, to perpetrate acts, actions, and omissions, resulting in the unlawful deprivations of, unlawful interferences with, and/or unlawful attempted interferences with, BARISONE's rights, privileges, immunities, and interests (collectively, the "rights") under the U.S. Constitution and/or under the New Jersey Constitution.

~~169.230.~~ During and in connection with the aforementioned incidents, WASHINGTON TOWNSHIP, the DEFENDANT POLICE OFFICERS (acting under color of law), and/or the other defendants, committed intentional acts, actions, and omissions which were the direct and proximate cause of injury to BARISONE by and through the deprivation, interference with, denial of, and violation of BARISONE's rights under the New Jersey State Constitution and/or under the U.S. Constitution.

~~170.231.~~ The unlawful acts, actions, and omissions were perpetrated against BARISONE for the purpose of depriving him of his constitutionally protected rights, and/or for the purpose of interfering with and/or attempting to interfere with same, including but not limited to the following:

(a) The unlawful, intentional falsification of written reports and statements concerning, about and/or against BARISONE which were created, drafted, executed, and publicized for the unlawful purpose of depriving, interfering with, or attempting to interfere with, BARISONE's protected civil rights;

(b) The unlawful intentional retaliation against BARISONE for his exercise of his protected constitutional rights, including but not limited to BARISONE's right to operate his business and the Farm, and his right to make reports of wrongdoing to senior members of the WASHINGTON TOWNSHIP Police Department;

(c) The unlawful intentional failure to conduct to completion, appropriate investigations of complaints filed by BARISONE with WASHINGTON TOWNSHIP and/or with the DEFENDANT POLICE OFFICERS and/or matters referred to and reported to the Morris County Prosecutor's Office;

(d) The defendants' intentional, deliberate, persistent false characterization of the occurrences at the Farm being reported to the defendants as private disputes between a landlord and tenant when, in reality, the occurrences were police matters that required the intervention of law enforcement;

(e) WASHINGTON TOWNSHIP's failure to properly train, monitor, manage, supervise, and/or control its municipal officials, officers, employees, and/or agents (including people acting under color of law), which caused and resulted in the mistreatment of BARISONE and/or unlawful violations of his rights;

(f) The defendants' intentional, deliberate, persistent failure to treat BARISONE with fairness, compassion, and respect as a victim of crime and/or criminal conduct; and

(g) Other unlawful acts, actions, and omissions which violated the New Jersey *Civil Rights Act* and/or 42 U.S.C. § 1983.

~~171.232.~~ The specific constitutionally protected civil rights BARISONE is asserting to have been deprived, interfered with, and/or attempted to be interfered with, by WASHINGTON TOWNSHIP, by the DEFENDANT POLICE OFFICERS, and/or by the other defendants, include but are not limited to the following:

(a) BARISONE's civil right to freedom of speech, including his right to make reports to the police which, as a matter of law, were to be conveyed accurately and completely to others as a non-discretionary duty the defendants owed BARISONE;

(b) BARISONE's civil right to file and pursue appropriate petitions with the government (including reports of crime and/or emergency calls) and to have those petitions addressed fully, completely, expeditiously, lawfully, and appropriately;

(c) BARISONE's civil right to equal protection under the law;

(d) BARISONE's civil right to exist free from unlawful retaliation directed at him for exercising his constitutionally protected rights and interests, including freedom from retaliation in the form of intentional dereliction of duty in the performance of responding to "911" calls and reports of emergencies that require police intervention;

(e) BARISONE's New Jersey constitutional right to protect his reputation and good name;

(f) BARISONE's right under Article 1, Section 22 of the New Jersey Constitution and/or under N.J.S.A. § 52:4B-36, as a victim of crime, to be treated with fairness, compassion, respect, and the like, arising from and in connection with the criminal

acts being perpetrated against BARISONE by Kanarek, Goodwin, and/or the DEFENDANT POLICE OFFICERS;

(g) BARISONE's substantive due process rights, equal protection rights (including freedom from rights violations motivated by unlawful discrimination), procedural due process rights, and/or other statutory and constitutional rights, under N.J.S.A. §§ 2C:25-19 et. seq., as a victim of domestic violence perpetrated against him by Kanarek and/or Goodwin; BARISONE's rights as a victim of unlawful, criminal interception of wire, electronic, and/or oral communications and the contents thereof perpetrated by Kanarek and/or Goodwin at the Farm, and BARISONE's rights as a victim of the crime of "official deprivation of civil rights" as defined under N.J.S.A. §§ 2C:30-6; and/or

(h) Other civil rights and interests with which BARISONE is vested by and/or through the U.S. Constitution and/or the New Jersey Constitution.

~~172.233.~~As a direct and proximate result of the unlawful acts, actions, and omissions committed against BARISONE under color of law, which deprived him of his constitutional rights and interest, interfered with his exercise of those rights and interests, and/or were unlawful attempts to interfere with those rights and interests, WASHINGTON TOWNSHIP, the DEFENDANT POLICE OFFICERS, and/or the other defendants, individually and jointly caused BARISONE to suffer injury-in-fact of a concrete, particularized, and actual nature.

~~173.234.~~In addition to any and all direct liability it has based upon the claims and allegations set forth above, defendant WASHINGTON TOWNSHIP also has derivative municipal liability for the unlawful acts and omissions of the other defendants, based upon defendant

WASHINGTON TOWNSHIP's failure to properly monitor, supervise, control and/or train the DEFENDANT POLICE OFFICERS and/or other defendants.

~~174.235.~~ But for the defendants' unlawful violations of BARISONE's civil rights, the August 7, 2019 Incident and other incidents would not have occurred, and/or would have occurred differently and without injury or harm caused to BARISONE, his business, the Farm, and/or the other people at the Farm.

~~175.236.~~ As a direct and proximate result of the acts, actions, and omissions of the defendants which violated BARISONE's civil rights, BARISONE suffered: (a) economic loss (including lost income from his business); (b) damage to his reputation in the community and his professional reputation; (c) emotional distress; (d) harm to his family and personal relationships; (e) consequential damages; (f) injury to his future earnings capacity; (g) loss of his freedom; and (h) other injury, damages, and loss including mental anguish, physical discomfort, physical injury and harm, pain and suffering, shame and embarrassment and other emotional distress injuries.

LAD Violations

~~176.237.~~ Alternatively, during and throughout the aforementioned protracted, intentional, derelict interactions which WASHINGTON TOWNSHIP and the DEFENDANT POLICE OFFICERS had with BARISONE and Kanarek, WASHINGTON TOWNSHIP, the DEFENDANT POLICE OFFICERS, and/or the other defendants, ignored, dismissed, hid, failed to report, failed to acknowledge, failed to take seriously, and/or otherwise rejected, BARISONE and/or his reports to them due to BARISONE's advanced age (he was in his fifties), BARISONE's gender (he was a male reporting stalking and harassment by a female), BARISONE's status as a person who suffered from mental illness, and/or based upon other traits and characteristics

protected against unlawful discrimination in violation of the CRA and/or unlawful under the New Jersey *Law Against Discrimination* (the “LAD”).

~~177.238.~~ At the time of the incidents, BARISONE was a Caucasian male in his 50’s, whereas Kanarek was an attractive, blonde, Caucasian female in her 30’s.

~~178.239.~~ At the time of the incidents, BARISONE was a person suffering from various emotional, psychological and/or psychiatric maladies, the presence of which was readily apparent to and known by the defendants, individually and collectively, and to others who interacted with BARISONE during the incidents.

~~179.240.~~ At the time of the incidents, WASHINGTON TOWNSHIP, the DEFENDANT POLICE OFFICERS, and/or the other defendants individually, jointly, and/or severally, committed the wrongful acts, actions and omissions, motivated by unlawful discrimination against BARISONE based upon his protected traits, including but not limited to his age, his gender, and/or his status as a person suffering from mental disease, maladies, and/or defects (the “unlawful discrimination”).

~~180.241.~~ As a direct and proximate result of the unlawful discrimination against BARISONE, WASHINGTON TOWNSHIP, the DEFENDANT POLICE OFFICERS and the other defendants intentionally ignored, dismissed, and/or otherwise rejected BARISONE’s complaints, urgings, requests for assistance, requests to speak with police supervisors, and “911” reports of crime and criminal behaviors.

~~181.242.~~ But for the defendants’ unlawful discrimination, the August 7, 2019 Incident and other incidents would not have occurred, and/or would have occurred differently and without injury or harm caused to BARISONE, his business, the Farm, and/or the other people at the Farm.

Intentional Torts

~~182.243.~~ Alternatively, at the time of the incidents, WASHINGTON TOWNSHIP, the DEFENDANT POLICE OFFICERS, and/or the other defendants individually, jointly, and/or severally, committed the wrongful acts, actions and omissions, which constituted intentional torts against BARISONE, including acts of official misconduct, criminal civil right deprivations, and/or other wrongful conduct not subject to tort immunity.

~~183.244.~~ In addition to any and all direct liability it has based upon the claims and allegations set forth above, defendant WASHINGTON TOWNSHIP also has derivative municipal liability for the unlawful acts and omissions of the other defendant, based upon defendant WASHINGTON TOWNSHIP's failure to properly monitor, supervise, control and/or train the DEFENDANT POLICE OFFICERS and/or other defendants.

~~184.245.~~ As a direct and proximate result of the acts and omissions of the defendants intentional torts, statutory violations, and/or civil rights violations, ~~which constituted violations of the LAD,~~ BARISONE suffered: (a) economic loss (including lost income from his business); (b) damage to his reputation in the community and his professional reputation; (c) emotional distress; (d) harm to his family and personal relationships; (e) consequential damages; (f) injury to his future earnings capacity; (g) loss of freedom; and (h) other injury, damages, and loss including mental anguish, physical discomfort, physical injury and harm, pain and suffering, shame and embarrassment and other emotional distress injuries.

WHEREFORE, Plaintiff demands judgment in his favor, and against each and every one of the defendants, jointly and severally, awarding plaintiff the following:

- A. Permanent restraints barring the defendants from committing civil rights violations;
- B. Permanent restraints barring the defendants from perpetrating violations of the New

Jersey Law Against Discrimination;

C. Compensatory damages (including loss of business income);

D. Damages for psychological distress, psychiatric injury, humiliation, and mental and emotional distress;

D.E. Punitive damages;

E.F. Attorneys' fees and costs of suit;

F.G. Lawful interest; and

G.H. Such other, further, and different relief as the Court deems just and proper.

DEININGER & ASSOCIATES, LLP
Attorneys for Plaintiff

By : _____
CHRISTOPHER L. DEININGER, ESQ.

Dated:

JURY DEMAND

Plaintiff demands a trial by jury as to all issues.

DEININGER & ASSOCIATES, LLP
Attorneys for Plaintiff

By : _____
CHRISTOPHER L. DEININGER, ESQ.

Dated:

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned, Christopher L. Deininger, Esq., certifies on behalf of the Plaintiff as follows:

1. I am an attorney admitted to practice law in the State of New Jersey, counsel for the above-named Plaintiff in the subject action.

2. The matter in controversy in this case is not, to my knowledge, the subject of any other action pending in any Court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated, although there are other criminal and civil matters arising from the ~~August 7, 2019 incidents.~~ ~~incident.~~

3. There are no other parties who should be joined in this action that we are aware of at the present time, although plaintiff has named fictitious parties which could result on the subsequent addition of other parties.

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

DEININGER & ASSOCIATES, LLP
Attorneys for Plaintiff

By : _____
CHRISTOPHER L. DEININGER, ESQ.

Dated:

CERTIFICATION UNDER R. 4:5-1(b)(3)


I certify that confidential personal identifying information has been removed from the documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

DEININGER & ASSOCIATES, LLP
Attorneys for Plaintiff

By: _____
Christopher L. Deininger, Esq.

Dated:

EXHIBIT B

 WASHINGTON TWP POLICE DEPARTMENT INVESTIGATION REPORT												
1. Department WASHINGTON TWP POLICE DEPARTMENT			2. Man. Code 1438		3. Phone Number 908-876-3232		4. CAD Incident# P192121184		5. Other Agency Case #		6. Department Case Number 2019-40594	
7. Crime / Incident CIVIL DISPUTE					8. NJS			9. Victim's BARISONE, MICHAEL L			10. SSN [REDACTED]	
DATE	16. Between	17. Hour 21:02	18. Day WED	19. Mo. 07	20. Date 31	21. Yr. 2019	11. Age		12. DOB [REDACTED]	13. Sex MALE	14. Race WHITE	15. Eth NON HISPANIC
AND	TIME						22. Victim(s) Home Address 411 W. MILL RD., LONG VALLEY, NJ 07853-3627			23. Home Phone / Cellular [REDACTED]		
24. Crime/Incident Location 411 W MILL RD, LONG VALLEY, NJ 07853							25. Victim's Employer			26. Phone #		
27. Municipality WASHINGTON TWP			28. County MORRIS		29. Code 1438		30. Person Reporting Crime/Incident BARISONE, MICHAEL L			31. Date and Time 07/31/2019 21:02		
32. Type of Premises RESIDENCE / HOUSE			33. Weapons / Tools Other Action			34. Address 411 W. MILL RD., LONG VALLEY, NJ 07853-3627			35. Home Phone / Cellular [REDACTED]			
36. Modus Operandi Michael Barison reported a civil dispute with Lauren Kanarek and Robert Goodwin.												
37. Vehicle			38. Year		39. Make		40. Model		41. Body Type			
42. Color			43. Registered Number & State			44. Social Number or Identification			45. Towing Company			
Value of Stolen/Recovered Property		46. Currency		47. Jewellery		48. Furs		49. Clothing		50. Auto		51. Misc.
52. Total Value Stolen		53. Total Value Recovered		54. Teletype Alarm		55. Technical Services		56. Technician-Agency				

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED


REDACTED

REDACTED

REDACTED

REDACTED

Print Rank/OFC Name OFF. ANDREW TESORI		Badge No. 81	Page No. 1 of 1	Report Date 08/01/2019	Reviewed By: CPL PHILIP SEABECK	
Signature <i>P.O. Andrew Tesori</i>					Supervisor Signature <i>Cpl. Philip Seabek</i>	

 WASHINGTON TWP POLICE DEPARTMENT INVESTIGATION REPORT													
1. Department WASHINGTON TWP POLICE DEPARTMENT			2. Mun. Code 1438		3. Phone Number 908-876-3232		4. CAD Incident# P192150486		5. Other Agency Case #		6. Department Case Number 2019-41036		
7. Crime / Incident HARASSMENT			8. NJS 2C:33-4			9. Victim's BARISONE, MICHAEL L			10. SSN [REDACTED]				
11. Age [REDACTED]			12. DOB [REDACTED]			13. Sex MALE			14. Race WHITE		15. Eth NON HISPANIC		
DATE		16. Between <input type="checkbox"/>		17. Hour 09:41		18. Day SAT		19. Mo. 08		20. Date 03		21. Yr. 2019	
AND												22. Victim(s) Home Address 411 W. MILL RD., LONG VALLEY, NJ 07853-3627	
TIME												23. Home Phone / Cellular [REDACTED]	
24. Crime/Incident Location 411 W MILL RD, LONG VALLEY, NJ 07853						25. Victim's Employer			26. Phone #				
27. Municipality WASHINGTON TWP			28. County MORRIS		29. Code 1438		30. Person Reporting Crime/Incident BARISONE, MICHAEL L			31. Date and Time 08/03/2019 09:41			
32. Type of Premises RESIDENCE / HOUSE			33. Weapons / Tools Other Action			34. Address 411 W. MILL RD., LONG VALLEY, NJ 07853-3627			35. Home Phone / Cellular [REDACTED]				
38. Modus Operandi Subject reported harassment via Facebook by a tenant of the property.													
37. Vehicle			38. Year		39. Make		40. Model		41. Body Type				
42. Color			43. Registered Number & State			44. Serial Number or Identification			45. Towing Company				
Value of Stolen/Recovered Property		46. Currency		47. Jewellery		48. Furs		49. Clothing		50. Auto		51. Misc.	
52. Total Value Stolen		53. Total Value Recovered		54. Teletype Alarm		55. Technical Services		56. Technician-Agency					
57. Weather			58. NBC			59. Arresting Agencies							
60. No. of Accused 0		61. Adult 0		62. Juvenile 0		63. Status Crime Exceptionally Cleared		64. Status Case Closed		65. UCR Status Month Yr.		66. Date Cleared	
67. Code		68. Name		69. Address		70. Age		71. Sex		72. Race		73. Eth	
[VICTIM]		BARISONE, MICHAEL L		- 411 W. MILL RD., LONG VALLEY, NJ 07853-3627		[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]	
WASHINGTON TWP POLICE DEPARTMENT - 1 EAST SPRINGTOWN ROAD, LONG VALLEY, NJ 07853 - [REDACTED]													
OFFICER - MICHAEL THOMPSON - WASHINGTON TWP POLICE DEPARTMENT - 1 EAST SPRINGTOWN ROAD, LONG VALLEY, NJ 07853 - [REDACTED]													

Case No. 2019-41036

REDACTED

REDACTED

REDACTED

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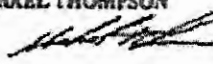

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Print Name/OPG Name OFF. MICHAEL THOMPSON 		Badge No. 66	Page No. 1 of 2	Report Date 08/03/2019	Reviewed By: CPL THOMAS FALLEN 
Signature					Supervisor Signature

Department: WASHINGTON TWP POLICE DEPARTMENT	ORI NO. 1438	Dept. Case No. 2019-41039	Incident No. P192159486
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REDACTED

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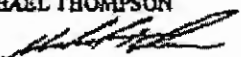

Print Rank/OFC Name OFF. MICHAEL THOMPSON 	Badge No.	Page No.	Report Date	Reviewed By: CPL THOMAS FALLEN 
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EXHIBIT C

Doe v. Burke, Not Reported in Atl. Rptr. (2021)

2021 WL 3625397

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

Jane DOE (a fictitious name),
Plaintiff-Appellant,

v.

Richard BURKE, the Warren County
Prosecutor's Office, the County of
Warren, Christopher Porrino, Gurbir
Grewal, and The State of New Jersey,
Defendants-Respondents.

DOCKET NO. A-4920-18

Argued November 2, 2020

Decided August 17, 2021

On appeal from the Superior Court of New Jersey, Law
Division, Sussex County, Docket No. L-0389-18.

Attorneys and Law Firms

[Robert E. Lytle](#) argued the cause for appellant
(Szaferman, Lakind, Blumstein & Blader, PC, attorneys;
[Robert E. Lytle](#), on the briefs).

[Michael R. Sarno](#), Deputy Attorney General, argued the
cause for respondents [Richard Burke](#), Warren County
Prosecutor's Office, [Christopher Porrino](#), [Gurbir S.
Grewal](#), and the State of New Jersey ([Gurbir S. Grewal](#),
Attorney General, attorney; [Sookie Bae](#), Assistant
Attorney General, of counsel; [Michael R. Sarno](#), on the
brief).

[Robert E. Levy](#) argued the cause for respondent County of
Warren ([Scarinci & Hollenbeck](#), LLC, attorneys; [Robert
E. Levy](#), of counsel and on the brief; [Jasmine B.
Simmons](#), on the brief).

Before Judges [Messano](#), [Hoffman](#), and [Suter](#).

Opinion

PER CURIAM

*1 We address whether the Warren County Prosecutor (the prosecutor), the Warren County Prosecutor's Office (WCPO), the Attorney General, and County of Warren (County) have qualified immunity from suit by plaintiff under the New Jersey Civil Rights Act (CRA), [N.J.S.A. 10:6-2](#). Plaintiff alleges she is a victim of sexual assault and domestic violence, and that the prosecutor disclosed in a press release, for his personal and political reasons, her name and the nature of the assault. We address whether plaintiff has an independent cause of action against the State of New Jersey (State) and the aforesaid public entities and officials for the claimed violation of the Crime Victim's Bill of Rights (CVBOR), [N.J.S.A. 52:4B-34](#) to -38. We also address the legal viability of tort claims filed against defendant public entities and officials. The issues arise from the trial court's orders dismissing plaintiff's complaint against all defendants under [Rule 4:6-2\(e\)](#) for failing to state causes of action.

We are required in this procedural context to give plaintiff "every reasonable inference of fact[.]" liberally searching the complaint for "the fundament of a cause of action" [Printing Mart-Morristown v. Sharp Elecs. Corp.](#), 116 N.J. 739, 746 (1989). Applying that standard and limited to the factual circumstances presented in this case, we find a cause of action under the CRA based on the CVBOR against the prosecutor in his individual capacity and reverse the dismissal of that claim. Because of the state of this record, we are not able to reach a conclusion about whether the prosecutor's actions were prosecutorial or administrative. We reverse the dismissal of the tort claims in Counts Four through Seven against the prosecutor in his official and individual capacities. We also reverse the dismissal of Counts Four through Eight against all the remaining defendants.

We emphasize the narrow scope of our decision. We express no opinion about the applicability of the CVBOR in other factual contexts involving other types of crime victims or witnesses. Our opinion does not preclude subsequent motion practice in this case, following discovery.

I.

We glean the facts from plaintiff's amended complaint. Plaintiff Jane Doe broke off her brief engagement to her ex-fiancé in March 2016. On March 17, 2016, he drove from Florida to Virginia, and called plaintiff. When she was not willing to resume their relationship, he purchased

Doe v. Burke, Not Reported in Atl. Rptr. (2021)

duct tape and zip ties. Later, he tried again to convince her to see him, but without success. At 10:30 p.m. that night, after driving to New Jersey, he arrived at plaintiff's residence armed with a nine-millimeter handgun, an extra magazine, two knives, the zip ties and duct tape. When plaintiff answered the door, he forced his way in, and although she was able to lock herself in the bedroom, he broke through the door and sexually assaulted her. Plaintiff tried to escape but could not.

With a knife to her neck, plaintiff's ex-fiancé threatened to kill her, and tied her to a chair. He spoke for hours about death and suicide, expressing there was no way out for him but death. Plaintiff begged for her life and entreated him to leave. "Unwilling to do so, her ex-fiancé emptied his handgun, demonstrated to [p]laintiff how to use the firearm, reloaded it, handed it to [p]laintiff, and then directed [p]laintiff to shoot him in the head." She refused, but once he "issued an ultimatum" that it was this or he would shoot her, plaintiff shot him in the rear shoulder blade "because she did not want to kill him." He yelled and turned toward her, whereupon she shot him again — this time in the shoulder — and she ran from the house and called 911. Her ex-fiancé died at the scene.

*2 Plaintiff alleges her identity was kept confidential during the State Police investigation. She claims she did not discuss what occurred except with her "closest family members and medical providers." The Warren County Grand Jury did not issue an indictment against plaintiff for the shooting, instead returning a "no-bill."

Plaintiff alleges that on August 25, 2016, after the no-bill was returned, the prosecutor either held a press conference or issued a press release that "disclosed to the public the results of the investigation, details from the grand jury presentation, as well as [p]laintiff's identity" She claims the disclosures by the prosecutor or WCPO were made "willfully, knowingly and for the purpose of political and/or personal gain." Plaintiff claims she was not consulted ahead of time about these disclosures and would have refused permission if asked. She claims she was contacted by members of the public including "professors, teachers, neighbors, friends, family, strangers and reporters" after the disclosures. She now lives "in constant fear," continues to be "stigmatized" by the disclosures, experienced "physical and mental anguish" as well as "emotional distress, anxiety ... and embarrassment."

On August 23, 2018, plaintiff filed an amended complaint¹ against the prosecutor, WCPO, County, the State, former Attorney General Christopher Porrino (the Attorney General) and then Attorney General Gurbir

Grewal, seeking compensatory and punitive damages for the prosecutor's comments.² Count One alleges that defendants acted under color of law to deprive plaintiff of rights guaranteed by the New Jersey Constitution,³ including but not limited to: "[t]he right [of] crime victims ... to be treated with fairness, compassion and respect by the judicial system" and alleges this violated the CRA. The State is not a defendant in Count One.

Count Two alleges the disclosure was a violation by all defendants of the CVBOR that proximately caused plaintiff "anguish, emotional distress, anxiety, fear and embarrassment" for which she seeks monetary and other relief. Count Three alleges that defendants "purposely disclosed information" from the Grand Jury with "the intent to harm" her, an alleged violation of grand jury secrecy under N.J.S.A. 2B:21-10.

Counts Four, Five, Six, and Seven allege common law torts. Count Four alleges an invasion of privacy by intrusion on seclusion. Count Five alleges an invasion of privacy by publicity given to private life. Count Six is a negligence cause of action. Plaintiff alleges defendants owed her a duty as a crime victim to exercise proper care to comply with the Victim's Rights Amendment (VRA) of the Constitution, Art. I, ¶22, and the CVBOR, and to train and supervise qualified law enforcement officers. She claims defendants breached these duties to her, proximately causing damages. Count Seven alleges defendants intentionally inflicted emotional distress by the disclosures. Count Eight alleges all defendants except the prosecutor were vicariously liable under respondeat superior for "tortious actions" by the prosecutor and members of the WCPO.

*3 On December 17, 2018, the County filed a motion to dismiss the amended complaint under Rule 4:6-2(e) for failure to state a claim upon which relief can be granted. On January 30, 2019, the other defendants filed to dismiss under the same rule. The parties agreed to dismiss certain claims during oral argument of the motions on May 31, 2019.⁴

On June 4, 2019, the trial court granted both motions, dismissing all claims against the County and all State defendants under Rule 4:6-2(e) for reasons it expressed on the record and in its comprehensive written statement of reasons issued the same day. We address the trial court's decision in our analysis of the issues.

Plaintiff appealed the June 4, 2019 orders. She raises the following issues on appeal:

POINT I

Doe v. Burke, Not Reported in Atl. Rptr. (2021)

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST BURKE UNDER THE TORT CLAIMS ACT, WHICH ARE NOT SUBJECT TO ANY IMMUNITY SET FORTH IN THAT ACT.

POINT II

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST BURKE UNDER THE NEW JERSEY CIVIL RIGHTS ACT, WHICH ARE NOT SUBJECT TO THE DEFENSE OF QUALIFIED IMMUNITY.

POINT III

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST FORMER ATTORNEY GENERAL PORRINO UNDER BOTH THE TORT CLAIMS ACT AND NEW JERSEY CIVIL RIGHTS ACT.

POINT IV

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST WARREN COUNTY, AS THE EMPLOYER OF PROSECUTOR BURKE AND THE INVESTIGATORS IN THE WARREN COUNTY PROSECUTOR'S OFFICE, BECAUSE THE DISCLOSURE OF PLAINTIFF'S IDENTITY AND DETAILS OF THE CRIMES COMMITTED AGAINST HER, AFTER THE INVESTIGATION OF THE CRIME AND GRAND JURY PROCEEDING HAD BEEN COMPLETED, DID NOT CONSTITUTE AN EXERCISE OF THE PROSECUTOR'S LAW ENFORCEMENT RESPONSIBILITIES.

POINT V

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST THE WARREN COUNTY PROSECUTOR'S OFFICE UNDER THE NEW JERSEY CIVIL RIGHTS ACT, THE TORT CLAIM ACT AND VICTIMS RIGHTS ACT.

POINT VI

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST THE STATE OF NEW JERSEY UNDER THE TORT CLAIMS ACT AND VICTIM'S RIGHTS ACT.

II.

We review an order dismissing a complaint under Rule 4:6-2(e) by using the same standard as the trial court.

Smerling v. Harrah's Entm't Inc., 389 N.J. Super. 181, 186 (App. Div. 2006). The court examines whether "the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor." R. 4:37-2(b). The reviewing court "searches 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, opportunity being given to amend if necessary." Printing Mart-Morristown, 116 N.J. at 746 (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). At the motion to dismiss stage in the litigation, "the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Ibid. At this stage, the plaintiff is "entitled to every reasonable inference of fact." Ibid. We are not bound by the trial court judge's "construction of the legal principles." Smerling, 389 N.J. Super. at 186 (quoting Lombardo v. Hoag, 269 N.J. Super. 36, 47 (App. Div. 1993)). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

A.

*4 Count One of the amended complaint alleges a violation of the CRA. The CRA provides "any person" who has been

deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with ... by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

[N.J.S.A. 10:6-2(c).]

"[O]ur State Civil Rights Act is modeled off of the analogous Federal Civil Rights Act, 42 U.S.C.A. § 1983, and is intended to provide what Section 1983 does not: a remedy for the violation of substantive rights found in our State Constitution and laws." Tumpson v. Farina, 218 N.J. 450, 474 (2014). Our Supreme Court has said the interpretation of Section 1983's parallel provisions may provide guidance under our CRA. Ibid.

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The CRA protects “against the deprivation of and interference with ‘substantive’ rights, privileges or immunities secured by the Constitution or laws of this State,” in contrast to [Section 1983](#) that concerns procedural and substantive right deprivations. [Id.](#) at 477 (quoting [N.J.S.A. 10:6-2\(c\)](#)). “ ‘Substantive’ addresses those rights and duties that may give rise to a cause of action, whereas ‘procedural’ addresses ‘the manner and the means’ by which those rights and duties are enforced.” [Id.](#) at 478 (citations omitted).

Under [Section 1983](#), the State and “officials acting in their official capacities” are not “persons.” [Will v. Mich. Dep’t of State Police](#), 491 U.S. 59, 71 (1988). We define “person” in the same manner under the CRA, meaning that the State and State officials are not amenable to suit under the CRA. [Endl v. State](#), 5 F. Supp. 3d 689, 697 (D.N.J. 2014).

The parties agree that the Attorney General acting in his official capacity is not a person under the CRA and was properly dismissed from Count One. However, plaintiff argues the trial court erred by dismissing the WCPO and County of Warren from Count One for the same reason.

County prosecutors have been described “as having a dual or hybrid status.” [Coleman v. Kaye](#), 87 F.3d 1491, 1499 (3d Cir. 1996). “When [New Jersey] county prosecutors engage in classic law enforcement and investigative functions, they act as officers of the State.” [Id.](#) at 1505. When they perform “administrative function[s] ... unrelated to the duties involved in criminal prosecution,” they act as county officials. [Id.](#) at 1506. Local governments, such as a county and their officials, are “persons” under [Section 1983](#), who are amenable to suit. [Monell v. Dep’t of Social Servs.](#), 436 U.S. 658, 690 (1978).

The trial court observed that as the county’s chief law enforcement officer, the prosecutor was responsible for “inform[ing] the citizens of a county as to the outcome of a criminal investigation, especially where a homicide has occurred.” In communicating with the press, the trial court noted the prosecutor’s actions “were more closely aligned with its prosecutorial, investigative function.”

*5 A prosecutor’s remarks about the conclusion of an investigation may not be “functionally tied to the judicial process,” but can be viewed “an integral part of a prosecutor’s job ... and serve a vital public function.” [Buckley v. Fitzsimmons](#), 509 U.S. 259, 277-78 (1993). This final bookend to the investigation and prosecution provides clarity for the parties and public that the matter is concluded and affords the prosecutor the opportunity to

explain what occurred and why. [Buckley’s](#) comments about the nature of a prosecutor’s role in communications with the press were made in the context of analyzing whether a prosecutor should have absolute or qualified immunity, and not in determining whether a prosecutor is a person for purposes of [Section 1983](#) or the CRA. [Ibid.](#) The same issue was presented in [Kulwicki v. Dawson](#), 969 F. 2d 1454, 1466 (3d Cir. 1992) (providing that because communication with the press was not a “core prosecutorial activity,” qualified immunity applies rather than absolute immunity). Neither case addressed the issue of the prosecutor’s status under our caselaw.

Whether the prosecutor’s alleged actions in this case were prosecutorial or administrative functions is critical in determining whether the prosecutor was acting under the supervision of the Attorney General or acting as a county employee at the time. See, e.g., [Lavezzi v. State](#), 219 N.J. 163, 175-77 (2014) (explaining these principals given the county prosecutor’s hybrid status). However, we cannot definitively determine the issue on the record before us. The complaint does not include the contents of the alleged “press conference” or “press release,” except that plaintiff’s name was disclosed, nor does it explain any of the circumstances or context surrounding the allegations in plaintiff’s complaint. We simply cannot reach a conclusion in this case.

However, the judge correctly dismissed Count One as to Warren County and the WCPO. Although both may be subject to suit under [Section 1983](#) and the CRA, they are only liable if “the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers,” or it part the governmental agencies “custom.” [Monell](#), 436 U.S. at 690. Simply put, the complaint makes no such allegation.

What remains of the CRA claim under Count One are the claims against the Attorney General and the prosecutor in their individual capacities. The trial court concluded that both were entitled to the defense of qualified immunity because it found the communication to the press did not violate clearly established rights.

“The affirmative defense of qualified immunity protects government officials from personal liability for discretionary actions taken in the course of their public responsibilities, ‘insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’ ” [Brown v. State](#), 230 N.J. 84, 97-98 (2017) (quoting [Morillo v. Torres](#), 222 N.J. 104, 116 (2015)). This applies to actions

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brought against public officials under the CRA. *Id.* at 98.

To determine whether qualified immunity applies, a court must determine “whether: (1) the facts, ‘[t]aken in the light most favorable to the party asserting the injury[] ... show the [official’s] conduct violated a constitutional right’; and (2) that constitutional ‘right was clearly established’ at the time that defendant acted.” *Ibid.* (alterations in original) (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). Whether a right was clearly established must be ascertained “based on the state of the law and facts that existed at the time of the alleged statutory or constitutional violation.” *Schneider v. Simonini*, 163 N.J. 336, 354-55 (2000).

“A government official’s conduct violates clearly established law when, at the time of the challenged conduct, ‘[t]he contours of [a] right [are] sufficiently clear that a reasonable official understands that what he is doing violates that right.’ ” *Radiation Data, Inc. v. N.J. Dep’t of Env’t. Prot.*, 456 N.J. Super. 550, 559 (App. Div. 2018) (alterations in original) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). There does not need to be a published opinion directly on point defining the right in order for the right to be clearly established. What is required is that “existing precedent must have placed the statutory or constitutional question beyond debate.” *Ibid.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)). Thus, a government official can be considered “on notice that their conduct violates established law even in novel factual circumstances.” *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). The “salient question” is whether the state of the law at the time of the conduct in question gave the government official “fair warning” that their conduct was unlawful. *Ibid.*

*6 Although the defense of qualified immunity is generally a legal issue to be resolved by the court prior to trial, the New Jersey Supreme Court has noted an exception “when the case involves disputed issues of fact.” *Brown*, 230 N.J. at 99. “In such a circumstance, the case may be submitted to the jury to determine ‘the who-what-when-where-why type of historical fact issues,’ after which the trial judge may incorporate those findings in determining whether qualified immunity applies.” *Ibid.* (quoting *Schneider*, 163 N.J. at 359).

In this case, the motions to dismiss were made early in the litigation, prior to discovery. We do not know whether there will be disputed facts about this defense as discovery is pursued.

To determine if qualified immunity applies, we must determine whether in 2016 the law was “sufficiently clear

that a reasonable official” in the prosecutor’s position would have known that disclosure of plaintiff’s name, as a sexual assault and domestic violence victim, along with details about the assault, violated her rights under the CVBOR or the VRA. *Id.* at 106 (quoting *Anderson*, 483 U.S. at 640). The trial court determined these rights were not sufficiently clear because plaintiff could not cite any authority that a prosecutor’s office had been liable in a similar situation. The trial court noted the VRA and the CVBOR have not been construed in prior cases.

We disagree based on the facts that we are required to accept — that the prosecutor allegedly disclosed to the press the name of a sexual assault and domestic violence victim and details of the assault for his personal or political purposes. In this context and without more facts, we are hard-pressed to say that by 2016, the law was not clearly established that such conduct was unlawful under the CVBOR.

We limit our analysis to the CVBOR.⁵ It is not necessary for us to analyze the VRA when we find the rights under the CVBOR. *Randolph Town Ctr., L.P. v. Cnty. of Morris*, 186 N.J. 78, 80 (2006) (providing no need to “reach a constitutional question unless its resolution is imperative to the disposition of litigation”).

In enacting the CVBOR in 1985, the Legislature found and declared that crime victims and witnesses were important to the criminal justice system and that their rights “should be given full recognition and protection.” N.J.S.A. 52:4B-35. To “enhance and protect” their role, the Legislature declared “the improved treatment of these persons should be assured through the establishment of specific rights.” *Ibid.* The Legislature found “[t]hese rights are among the most fundamental and important in assuring public confidence in the criminal justice system.” *Ibid.* It defined a “victim” as “a person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed by an adult ... against that person.” N.J.S.A. 52:4B-37.

*7 In N.J.S.A. 52:4B-36, the Legislature found and declared that crime victims and witnesses “are entitled to the following rights,” listing eighteen paragraphs, which included, “(a) To be treated with dignity and compassion by the criminal justice system.” By 1991, the New Jersey Constitution was amended to include similar language, providing, “[a] victim of crime shall be treated with fairness, compassion and respect by the criminal justice system.” N.J. Const. art. I, ¶22. Although there is no case that directly makes this point, we believe that at the very core of the CVBOR’s right to be treated with dignity and

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compassion is the right by the victim of a sexual assault with domestic violence not to be identified by name to the press. It bores further into the core of this right when the details of the assault are disclosed, and the disclosure allegedly was for personal or political purposes. Sadly, we do not know if any of these facts are true. As already noted, we have not been provided by the parties with what facts were released or even in what format. The motions to dismiss were made early in the litigation before the facts were developed. We simply must accept the pleadings at this juncture.

There are many protections against disclosure for victims of sexual assault or domestic violence. The Court Rules maintain as confidential court records that provide the name and address of sexual assault victims. Since 2010, Rule 1:38-3(c)(12) has provided that the “[n]ames and addresses of victims or alleged victims of domestic violence or sexual offenses,” shall be excluded from public access. Prosecutors and courts employ fictitious names for sexual assault victims and for their family members in court filings. See, e.g., State v. Mauti, 448 N.J. Super. 275, 280 n.1 (App. Div. 2017).

The Legislature has exempted from public access and deemed to be confidential both criminal investigatory records and victims’ records, N.J.S.A. 47:1A-3, and has, through the Rape Shield Law, N.J.S.A. 2C:14-7, limited admissibility of prior sexual conduct of sexual offense victims “to protect the privacy and dignity of the victims of sexual crimes.” State v. Cuni, 159 N.J. 584, 606 (1999). The Legislature also has privileged victim counselors from being “examined as a witness in any civil or criminal proceeding with regard to any confidential communication.” N.J.S.A. 2A:84A-22.15.

As revised in 1993, the Attorney General Standards to Ensure the Rights of Crime Victims (Standards) provide that the name and address of a juvenile victim of sexual assault is not to be identified. See N.J.S.A. 2A:82-46 (providing that in prosecutions involving sexual assault, “the name, address, and identity of a victim who was under the age of 18 at the time of the alleged commission of an offense shall not appear on the indictment, complaint, or any other public record”). Part Three of the Standards include a section on protecting crime victims and classify as a “special victim population” a victim of sexual assault.⁶

Our court has found the right to privacy and fair treatment. In State v. Gilchrist, 381 N.J. Super. 138, 147 (App. Div. 2005), we found that the crime victim’s “right to privacy” and “her right to be treated with fairness, compassion, and respect” in the VRA were among the

factors to be considered in deciding whether a photograph of the crime victim should be provided to the defense under the Sixth Amendment. We determined these rights, as well as other factors, outweighed the benefits of providing the photograph of the victim. Ibid.

This right to dignity and compassion under the CVBOR starts with the obvious: the sexual assault victim’s name and details of the assault. This was not changed by the fact that at some point, plaintiff was subject of the prosecutor’s investigation. It has long been established that “records relating to a person who was not arrested or charged with an offense” are entitled to “a high degree of confidentiality.” N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 447 N.J. Super. 182, 211 (App. Div. 2016).

*8 We believe the prosecutor would have had fair warning that his conduct in disclosing to the press the name of a sexual assault and domestic violence victim with the details of the assault for his own personal or political purposes violated established law even if the facts are novel. Thus, we reverse the order dismissing Count One against the prosecutor in his individual capacity.

We do not reach the same result for the Attorney General based on the allegations in the amended complaint. Plaintiff alleges the Attorney General was obligated “to protect and enforce the rights of crime victims” Plaintiff alleges she is a “crime victim” under the CVBOR. The amended complaint alleges the prosecutor and WCPO made unlawful disclosures about plaintiff to the press. There is no allegation that the Attorney General made disclosures. Count One alleges that defendants, including the Attorney General “unlawfully deprived, interfered with or attempted to interfere with” plaintiff’s rights, but there is nothing specific here about the Attorney General. Although the tort claims portions of the amended complaint make claims about lack of training and supervision, those are not made in Count One nor does plaintiff explain what rights to training and supervision by the Attorney General were clearly established under the CRA for plaintiff. Given the absence of allegations against the Attorney General, we affirm the trial court’s dismissal of Count One against the Attorney General in his individual capacity.

B.

Count Two of the amended complaint alleges that as a proximate result of a violation of the CVBOR, plaintiff

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sustained injuries in the form of “physical and mental anguish, emotional distress, anxiety, fear and embarrassment” for which she seeks damages. Count Two appears to allege a direct cause of action for damages, injunctive relief, and attorney’s fees against defendants under the CVBOR statute and is not a claim under the CRA. There is nothing in the CVBOR, however, that authorizes a free-standing civil cause of action for damages. See e.g., Jurzwiaik v. Doe, 415 N.J. Super. 442, 454-55 (App. Div. 2010); Aly v. Garcia, 333 N.J. Super. 195 (App. Div. 2000). Therefore, we affirm the order dismissing Count Two of the amended complaint against defendants on this basis rather than based on qualified immunity.

III.

Counts Four through Seven allege common-law torts for invasion of privacy by intrusion upon seclusion, invasion of privacy by giving publicity to private life, negligence, and intentional infliction of emotional distress. These tort claims are made against all the public entity and public employee defendants. Count Eight alleges the State and State defendants are vicariously liable for the prosecutor’s disclosures.

A.

The Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, “re-established” sovereign immunity. D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 134 (2013) (citation and alteration omitted). Under the TCA, a public entity is generally not liable for an injury “whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” N.J.S.A. 59:2-1(a). Where the TCA establishes liability against a public entity, it is entitled to immunities and defenses. N.J.S.A. 59:2-1(b). Under N.J.S.A. 59:2-2(a), “[a] public entity is liable for an injury proximately caused by an act or omission of a public employee within the scope of his employment” “If the public employee is not liable for an act or omission, the public entity is not liable.” Nieves v. Office of the Pub. Defender, 241 N.J. 567, 575 (2020) (citing N.J.S.A. 59:2-2(b)).

*9 Chapter Three of the TCA concerns liability and immunity of public employees. Generally, “a public employee is liable for injury caused by this act or omission to the same extent as a private person.” N.J.S.A.

59:3-1(a). However, under N.J.S.A. 59:3-1(c), “[a] public employee is not liable for an injury where a public entity is immune from liability for that injury.” A public employee also is not liable “for an injury resulting from the exercise of judgment or discretion vested in him.” N.J.S.A. 59:3-2(a). “Public employees and public entities, however, ‘ha[ve] the burden to plead and prove [an] immunity under the TCA.’ ” Maison v. N.J. Transit Corp., 245 N.J. 270, 298 (2021) (alterations in original) (quoting Leang v. Jersey City Bd. of Educ., 198 N.J. 557, 582 (2009)).

“The TCA provides that neither a public entity nor a public employee is ‘liable for any injury caused by adopting or failing to adopt a law or by failing to enforce any law.’ ” Id. at 301 (citing N.J.S.A. 59:2-4 (public entity)); see N.J.S.A. 59:3-5 (public employee). “The failure-to-enforce-any-law immunity may be invoked whenever the ‘critical causative conduct by government employees consists of non-action or the failure to act with respect to the enforcement of the law.’ ” Ibid. (quoting Lee v. Brown, 232 N.J. 114, 127 (2018)).

The TCA also includes a qualified immunity provision for employees. N.J.S.A. 59:3-3 provides “[a] public employee is not liable if he acts in good faith in the execution or enforcement of any law.” “[A defendant qualifies] for this immunity only if [he] engaged in some act or acts to enforce a law.” Maison, 245 N.J. at 305. However, a public employee is not “exonerate[d]” from liability if “his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.” N.J.S.A. 59:3-14(a).

B.

Count Four alleges that defendants are liable for the common-law tort of “intentionally intrud[ing] on [p]laintiff’s privacy by unlawfully and unnecessarily disclosing information regarding the attack, sexual assault and killing without her consent.” The tort of intrusion on seclusion imposes liability for “intentionally intrud[ing], physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns ... if the intrusion would be highly offensive to a reasonable person.” Hennessey v. Coastal Eagle Point Oil Co., 129 N.J. 81, 94-95 (1992) (quoting Restatement (Second) of Torts § 652B (Am. Law. Inst. 1977)); accord Leang, 198 N.J. at 588. “The thrust of this ... tort is ... a person’s private, personal affairs should not be pried into.” Bisbee v. John C. Conover Agency, Inc., 186 N.J. Super. 335, 340 (App. Div. 1982).

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Plaintiff alleged that the prosecutor disclosed her name and the nature of the assault for political or personal reasons and with knowledge that release of this personal information would cause her harm. Reading the amended complaint liberally, as we must at this juncture, plaintiff has alleged sufficient facts to proceed on an intrusion on seclusion claim against the prosecutor. As currently alleged, a jury could find the disclosure “intrude[d] ... upon [her] private affairs or concerns” in a manner that was “highly offensive to a reasonable person.” [Leang, 198 N.J. at 588-90](#). Perhaps the prosecutor had good faith reasons for this in executing the law, [N.J.S.A. 59:3-3](#), but that will need to await discovery.

It also is premature to dismiss the other defendants. The amended complaint alleges the other defendants were involved in the disclosure. We are required to accept that allegation, because of the timing of defendants’ motions, which precludes dismissal at this time.

*10 Count Five alleges the prosecutor was liable to plaintiff under the common-law tort of “unlawfully, unnecessarily and without [p]laintiff’s consent[,] publiciz[ing] information concerning her private life, including her identity and information relating to the attack, the sexual assault, and the killing.” The elements of this common-law cause of action are set forth in the Restatement:

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his [or her] privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.

[[Castro v. NYT Television](#), 384 N.J. Super. 601, 610-11 (App. Div. 2006) (alteration in original) (quoting [Restatement \(Second\) of Torts](#), § 652D).]

It would be highly offensive to a reasonable person to have disclosed the details of their sexual assault. See [Romaine v. Kallinger](#), 109 N.J. 282, 297-98 (1988) (providing that where the plaintiffs were subject to “criminal victimization, personal degradation, and physical abuse” at the hands of a convicted criminal and sued the publisher of a book about the ordeal, publicization of “the suffering and degradation [plaintiffs] were forced to endure” would be offensive to a reasonable person).

As to the legitimate concern prong, we assume the facts as alleged by plaintiff, that her identity and the details of her assault were not public but were made public by the

prosecutor for personal and political reasons. There may be legitimate, good faith reasons for the disclosures, but we are foreclosed from dismissing the prosecutor from Count Five of the amended complaint at this time.

It is premature to dismiss the other defendants. Count Five of the amended complaint alleges the other defendants “unlawfully, unnecessarily and without [p]laintiff’s consent publicized information concerning her private life” We again are required to accept these allegations because of the timing of defendants’ motions.

Count Six alleges a negligence claim against defendants for failing to ensure that plaintiff’s “identity and information relating to the attack, the sexual assault and the killing were not disclosed to the public.” She alleges defendants owed her a duty of ensuring compliance under the VRA and CVBOR, a duty as a crime victim, and a duty to exercise proper care in hiring qualified law enforcement officers, and training and supervising them with respect to the rights of crime victims.

“The fundamental elements of a negligence claim are a duty of care owed by the defendant to the plaintiff, a breach of that duty by the defendant, injury to the plaintiff proximately caused by the breach, and damages.” [Robinson v. Vivirito](#), 217 N.J. 199, 208 (2014). “The determination of the existence of a duty of care to avoid harm to another is ultimately governed by fairness and public policy.” [Ibid.](#) “Foreseeability is a critical but not dispositive factor in the analysis of whether a duty of care to avoid harm to a third party is recognized.” [Ibid.](#)

Under the TCA, a public employee can be liable for negligence. The allegation here is that disclosure was made for political and personal reasons. This cause of action must await further factual development before we declare whether there is a duty, the nature of the duty or the defenses that may or may not apply. We reverse the dismissal of this count against defendants.

*11 Count Seven alleges the intentional infliction of emotional harm.⁷ “In order for [a] plaintiff to prevail on an intentional infliction of emotional distress claim, [s]he must show: (1) intentional conduct; (2) the conduct was extreme and outrageous; (3) the conduct proximately caused plaintiff’s emotional distress; and (4) the emotional distress was severe.” [DeAngelis v. Hill](#), 180 N.J. 1, 20 (2004) (citing [Buckley v. Trenton Sav. Fund Soc’y](#), 111 N.J. 355, 366 (1988)).

To satisfy the second element of intentional infliction of emotional distress, the defendant’s “conduct must be ‘so outrageous in character, and so extreme in degree, as to

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go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’ ” Buckley, 111 N.J. at 366 (quoting Restatement (Second) of Torts § 46 cmt. d, (Am. Law Inst. 1965)).

Plaintiff has alleged that the prosecutor acted intentionally and willfully in making the disclosures for political reasons, and that this was “outrageous and extreme” conduct, which caused her severe emotional distress. On the face of the pleadings, these are sufficient to withstand a motion to dismiss under Rule 4:6-2(e). However, there is no allegation of disclosure against the Attorney General. Because this Count is premised on an intentional disclosure, we affirm the trial court’s dismissal of Count Seven against the Attorney General in his individual capacity.

Count Eight alleges a cause of action for respondeat superior and vicarious liability against the State, County, WCPO and Attorney General. It alleges the prosecutor was acting within the scope of his employment and that these defendants are responsible for his actions. As we already noted, whether the prosecutor was acting in his law enforcement capacity under the supervision of the Attorney General, or in an administrative function when he made the alleged disclosures, cannot be determined at this time. Lavezzi, 219 N.J. at 178. At this stage of the litigation, there is enough to proceed on this theory of liability under the TCA. See N.J.S.A. 59:2-2(a) (providing “[a] public entity is liable for an injury proximately caused by an act or omission of a public employee within the scope of his employment”). We reverse the orders dismissing these claims, although we note that Count

Eight is not pleaded against defendants in their individual capacities.

We summarize our decision. Count One is dismissed against all defendants except the prosecutor in his individual capacity. Count Two is dismissed against all defendants. Count Three was abandoned by plaintiff. Counts Four through Eight remain with exceptions. The State, WCPO, County and Attorney General are dismissed from Counts Four and Seven because the claims allege intentional acts. See N.J.S.A. 59:2-10 (providing “[a] public entity is not liable for the acts or omissions of a public employee constituting ... willful misconduct”). The Attorney General also is dismissed from Count Seven in his individual capacity. We add that the punitive damage claims in Counts Four through Seven must be dismissed against all defendants except for the prosecutor and Attorney General in their individual capacities. See N.J.S.A. 59:9-2(c) (providing no punitive damages “shall be awarded against a public entity”). Count Eight does not plead a cause of action against the prosecutor or Attorney General in their individual capacities, and any punitive damage claims must be dismissed against them in their official capacities.

***12** Affirmed in part and reversed and remanded in part. We do not retain jurisdiction.

All Citations

Not Reported in Atl. Rptr., 2021 WL 3625397

Footnotes

- 1 The original complaint was filed on August 20, 2018.
- 2 The record does not clarify if the comments were made orally or in a press release. We rely entirely on the amended complaint plaintiff filed for the content of the alleged communications.
- 3 Count One of the amended complaint is captioned as a violation of the CRA. The text of Count One does not allege that plaintiff was deprived of statutory rights under the CVBOR; it alleges constitutional violations. Plaintiff’s appellate brief argues that her CRA claim is supported by rights under the Constitution and under the CVBOR, both of which were violated. We treat Count One as alleging both a constitutional and statutory violation despite this pleading deficiency.
- 4 Attorneys General Porrino and Grewal were dismissed from Count One in their official capacities because they are not “persons” under the CRA. The parties agreed the State and WCPO were not liable under Counts Three, Four and Seven because these alleged intentional torts. The punitive damages claims under Counts Six, Seven and Eight were dismissed for all defendants except for Attorney General Porrino, Attorney General Grewal and prosecutor Richard Burke in their individual capacities. In her appellate brief, plaintiff dismissed any claims under the amended complaint against Attorney General Grewal because he was not in office until after the events alleged in her complaint. Plaintiff has not pursued the dismissal of Count Three on appeal. We treat the issue about Grand Jury secrecy as abandoned. Muto v. Kemper Reinsurance Co., 189 N.J. Super. 417, 420-21 (App. Div. 1983).

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- 5 Plaintiff's amended complaint alleges the unauthorized disclosure violated the CRA by depriving her of her constitutional rights to privacy, liberty, due process, equal protection, reputational security, and her rights as a crime victim "to be treated with fairness, compassion and respect by the criminal justice system." In her appellate brief, she declined to assert any of these grounds other than the right to privacy and rights as a crime victim; thus, we limit our analysis to those alleged harms. See [Midland Funding LLC v. Thiel](#), 446 N.J. Super. 537, 542 n.1 (App. Div. 2016) ("[A]n issue that is not briefed on appeal is deemed waived.").
- 6 Enacted in 2019, after the events at issue in this case, there is now a Sexual Assault Victim's Bill of Rights, N.J.S.A. 52:4B-60.1 to -60.3, where the Legislature declared the public policy of the State "that the criminal justice system accord victims of sexual violence" with rights that include the right "(1) ... to be treated with dignity and compassion" N.J.S.A. 52:4B-60.2(c)(1).
- 7 Plaintiff acknowledges the State and the WCPO should be dismissed because this claim alleges intentional conduct. See N.J.S.A. 59:2-10 (providing a public entity is not liable for "acts or omissions of a public employee constituting ... willful misconduct"). We see no reason why this result should not extend to the County and to the Attorney General in his official capacity under this Count and Count Four.

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EXHIBIT D

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November 6, 2019

* DIVORCE MEDIATOR
• DIVORCE ARBITRATOR
◊ FELLOW AMERICAN ACADEMY
OF MATRIMONIAL LAWYERS
✧ COLLABORATIVE LAW
◻ ALSO MEMBER OF PA BAR
ALSO MEMBER OF FL BAR
■ ALSO MEMBER OF NY BAR
▲ ALSO MEMBER OF DC BAR
∞ ALSO MEMBER OF MD BAR
LL.M. IN LABOR

(VIA ELECTRONIC, CERTIFIED & REGULAR MAIL)

Municipal Offices of Washington Township
43 Schooley's Mountain Road
Long Valley, New Jersey 07853
ATTN: Andrew Coppola, Township Administrator

(VIA CERTIFIED & REGULAR MAIL)

Washington Township Police Department
1 East Springtown Road
Long Valley, New Jersey 07853

Re: My Client: Michael Barisone
Date of Accident: August 7, 2019

Dear Sir/Madam:

Please be advised that this office has been retained to represent Michael Barisone for injuries sustained as a result of an accident occurring on August 7, 2019. Pursuant to N.J.S.A. 59:8-4, please be advised as follows:

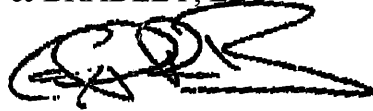
- (A) Name & Address of Client: Michael Barisone
3386 Grande Road
Loxahatchee, Florida 33470
- (B) Name & Address of Attorney: Gregory D. R. Behringer, Esq.
Laufer, Dalena, Jensen & Bradley, LLC
23 Cattano Avenue
Morristown, New Jersey 07960
- (C) Date of Accident & Location: 08/07/2019, 411 West Mill Road, Long Valley

Andrew Coppola, Township Administrator
Washington Township Police Department
Page Two
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- (D) Description of Injuries: Deprivation of civil rights, invasion of privacy, arm injury, emotional distress
- (E) Responsible Parties: Agent, servants and/or employees of the Washington Township Police Department
- (F) Amount of Damages Claimed: The full extent of the claimant's injuries cannot be determined at the present time.

If you have any questions regarding this matter, please feel free to call upon me.

Yours Very Truly,
LAUFER, DALENA, JENSEN
& BRADLEY, LLC



Gregory D. R. Behringer, Esq.

GDRB/jp

Cc: Michael Barisone (via regular mail)

Deininger & Associates LLP

Attorneys at Law

Christopher L. Deininger

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October 28, 2021

VIA ECOURTS FILING

Hon. Louis S. Sceusi, J.S.C.
Superior Court of New Jersey, Morris County
Court & Washington Streets
P.O. Box 910
Morristown, New Jersey 07960-0910

**RE: MICHAEL BARISONE v. WASHINGTON TOWNSHIP, et al.,
Superior Court MRS-L-001562-21**

**BRIEF IN OPPOSITION TO DISMISSAL MOTION &
IN SUPPORT OF MOTION FOR LEAVE TO AMEND**

Return Date: November 5, 2021

Dear Judge Sceusi:

Plaintiff Michael Barisone (Barisone) is submitting this letter brief in opposition to the defendants' motion to dismiss this action, with prejudice, and in support of his cross-motion for leave to serve and file his proposed amended complaint.

PRELIMINARY STATEMENT

This is a newly-commenced action in which the defendants have made a pre-answer motion to dismiss, with prejudice. The defendants have not joined issue with any substantive denials of the allegations made by Mr. Barisone. Nor has any discovery been conducted in this action. The defendants' motion, then, is an attempt to obtain a final judgment of dismissal with prejudice,

forever blocking Barisone regardless of his ability to demonstrate viable claims based upon factual allegations which, at least at this stage, must be taken as true.

This is a civil rights case in which Barisone is seeking damages arising from the defendants' flagrant, intentional violation and deprivation of Barisone's constitutional rights and interests. Specifically, through his well-pleaded factual allegations, Barisone is alleging that the defendants committed unlawful acts, actions, and omissions against Barisone in violation of his rights under Article 1, Paragraph 22 of the New Jersey Constitution (commonly known as the "Victim's Rights Amendment"), his equal protection rights under state and federal law, his right to substantive due process under state and federal law, and his other constitutional rights and interests.

An acknowledged "victim" of crime (the defendants admitted that previously, in writing, see Redacted Police Reports presented as **Exhibit B** to the Deininger Certification), Barisone was abused repeatedly by Washington Township, its police department, and the named-defendant police officers, during and throughout a series of crimes and criminal reporting events which occurred between July 31, 2019 and August 6, 2019.

The abuse and resulting violations are not limited to the issuance of police reports which were intentionally flawed and/or intentionally false. Rather, Barisone's factual allegations demonstrate the defendants violated repeatedly Barisone's constitutional rights by abusing him throughout the processes of his "911" calls reporting crimes, his interviews with the police in response to those "911" calls, his disregarded reports of criminal mayhem which included unlawful eavesdropping and repeated threats against him of physical injury and death, the unlawful discrimination the police defendants used against Barisone as the basis for the defendants' acts

which deprived Barisone of his protected rights, and the serious mental anguish and physical injury Barisone suffered as a direct and proximate result of the defendants' acts and omissions.

There is a recognized cause of action in New Jersey for civil rights injury and damages arising from the intentional mistreatment of a victim of crime in violation of the Victim's Rights Amendment. There also are recognized causes of action for civil rights deprivations arising from policework based in unlawful discrimination; a recognized cause of action for intentional tort against rogue police officers and their unlawful acts and omissions; and other recognized causes of action implicated by Barisone's pleadings (including his proposed second amended complaint). Barisone has made out such claims and causes of action here and, as a matter of law, is entitled to proceed rather than to have his case dismissed with prejudice. There is no immunity from statutory claims under the Tort Claims Act; nor is there immunity from intentional torts.

Accordingly, Barisone is requesting respectfully that the defendants' motion be denied in all respects and that his motion for leave to amend be granted.

FACTS

The relevant substantive facts are stated in Barisone's proposed second amended complaint, which is incorporated herein by reference. See **Exhibit A** to the Deininger Certification. The following is a brief overview of those facts.

Barisone was an Olympic-level athletic trainer in the equestrian sport of dressage. See Proposed 2nd Amended Complaint at paragraphs 23-25, **Exhibit A** to the Deininger Certification. He had a multi-million dollar horse farm and training facility in Long Valley, where Barisone operated a thriving business. Barisone was in his fifties at the time and was an "egg shell" actor in that he had a documented history of psychiatric issues caused by his having been abused physically as a child. Id. at paragraphs 44-47 of the Proposed 2nd Amended Complaint. Barisone

lived at the farm with his long-term girl friend and her minor children. Id. at paragraphs 1-3 of the Proposed 2nd Amended Complaint. And Barisone had other people at the farm including students (some of them minor children), a farm hand, and upwards of dozens of expensive dressage horses – including at least one rumored to be valued at \$500,000 or more. Id.

The farm operated peacefully until the early summer of 2019, when a student/squatter named Kanarek – along with her boyfriend, named Goodwin – force their way in to temporary residency at the farm and started committing acts of criminal harassment, stalking, cyber stalking, and other crimes, against Barisone and his peaceful students, family, employees, guests, and their respective horses. See Proposed 2nd Amended Complaint at paragraphs 48-61, **Exhibit A** to the Deininger Certification. As the events escalated further and further out of control, Barisone learned that Kanarek and Goodwin had rap sheets with numerous instances where they were charged criminally; they were drug users; they had firearms and/or past instances of using them violently; and, at least as to Kanarek, a long history of threatening to and committing harassment against her perceived “enemies” while threatening physical harm and violence against them. Id. at paragraphs 33-43, and 54-60 of the Proposed 2nd Amended Complaint.

The situation reached its first boiling point on July 31, 2019, when there was an altercation with Kanarek and/or Goodwin causing Barisone to make a “911” call to the police. See Proposed 2nd Amended Complaint at paragraphs 62-65, **Exhibit A** to the Deininger Certification. Acknowledged by the defendants as being the “victim” in that incident,¹ Barisone attempted through the “911 call, the ensuing police visit, his interview by the police, and other occurrences that day, to report being a victim of crime; to report being in fear for his life and in fear for the lives of the other peaceful people at the farm (obviously excluding Kanarek and Goodwin); and to

¹ See Redacted Police Reports presented as **Exhibit B** to the Deininger Certification.

get the defendants to see that Barisone was being victimized criminally by Kanarek and Goodwin. Id. at paragraphs 63-68 of the Proposed 2nd Amended Complaint.

Barisone's status at that point in time as the acknowledged "victim" was one fact which triggered Barisone's rights and interests under the Victim's Rights Amendment to the New Jersey constitution. See Redacted Police Reports presented as **Exhibit B** to the Deininger Certification. Nevertheless, the defendants adopted a manner and means of treatment of Barisone which violated his constitutional right to be treated with compassion, respect, and fairness. See e.g. Proposed 2nd Amended Complaint at paragraphs 64-65, 67-69 & 72-77, **Exhibit A** to the Deininger Certification.

The defendants intentionally violated police protocols; intentionally disregarded and dismissed outright Barisone's complaints; intentionally discriminated against Barisone as a mentally-fragile man in his 50s, in favor of a criminal female in her 30s; issued intentionally false police reports in violation of Barisone's constitutional victim's rights; and intentionally placed Barisone in immediate, material danger of physical, mental and emotional harm. Id.

Those situations occurred repeatedly over and throughout a series of at least six other similar encounters between Barisone and the defendants that took place on August 1, August 3, August 4, August 5 and August 6, 2019. See e.g. Proposed 2nd Amended Complaint allegations regarding the August 3, 2019 incidents at paragraphs 123-131, **Exhibit A** to the Deininger Certification. Concerning the August 3, 2019 incidents, the following is alleged at paragraph "123" of the Proposed Second Amended Complaint:

"123. For example, BARISONE and/or the other victims reported expressly to the responding POLICE OFFICER DEFENDANTS a number of material, salient facts which they chose intentionally to disregard, including the following:

- (a) Kanarek was believed to have possession of, and/or current access to, a loaded firearm;
- (b) Kanarek had a history of threatening to discharge and/or actually discharging her loaded firearm at people and property for the purpose of causing harm, injury and/or damage;
- (c) Kanarek expressly threatened BARISONE and others to use firearms against them through Kanarek's posting and/or other statements indicating that she was coming to get them with "weapons hot," meaning that she was armed and ready to discharge a firearm at them;
- (d) Kanarek was making threats of harm, physical harm, violence, and/or mayhem against BARISONE, Gray, and/or others, in writing, on the Internet through social media postings which were and/or could be made available for the DEFENDANT POLICE OFFICERS to see;
- (e) Kanarek was claiming that she had uncontrollable "multiple personalities" through which she would cause harm to BARISONE and others at the Farm; and/or,
- (f) Kanarek had a criminal history, history as a drug addict, and other personal history demonstrating that Kanarek was a clear, immediate, and present danger to BARISONE, Gray, Gray's children, others at the Farm, and/or horses being boarded at the Farm.

See Proposed 2nd Amended Complaint at paragraph 123, **Exhibit A** to the Deininger Certification.

Concerning the August 5, 2019 incidents in the Proposed Second Amended Complaint, Barisone alleged that the defendant police officers ignored him and essentially shewed him out of the police department building after Barisone told them the following:

I NEED a supervisor. A Detective. We are in danger. I have LUNATICS attacking me and my family at the Farm. They are drug addicts. They are violent criminals. They have guns. They are posting deadly threats against us on social media. We need protection. They have been served vacate orders today. There WILL be trouble. WE ARE IN FEAR FOR OUR LIVES. What they are posting is JUST LIKE Parkland School. They WILL harm us. I need a mental health professional to look at this stuff. **I have papers in my truck in the parking lot showing the threats and violent messages they are posting.** I need a ranking officer to deal with this situation. It is your job. WE ARE IN FEAR

FOR OUR LIVES.

See Proposed 2nd Amended Complaint at paragraph 178, **Exhibit A** to the Deininger Certification.

It is not as though Barisone was saying those sorts of things to the defendant police officers without evidence supporting his criminal complaints he was making as a victim. Barisone had computer printouts of Kanarek's ranting threats and, at one point, her boyfriend even boasted to the defendant police officers that he and Kanarek had hidden electronic eavesdropping equipment through which they were invading privacy and recording private conversations of Barisone and the others. See e.g. Proposed 2nd Amended Complaint at paragraphs 124, 125-129, & 178, **Exhibit A** to the Deininger Certification.

That course of abusive conduct by the defendants led to a mental breakdown by Barisone, and a shooting at the farm which, when reported to the police, at least one officer admitted in sum and substance that "we [the defendant police officers] had been worried something like that was going to happen." See Proposed 2nd Amended Complaint at paragraph 222, **Exhibit A** to the Deininger Certification. Barisone (the victim) is the accused shooter of Kanarek (the suspect Barisone was reporting as committing criminal acts against him and others at the farm).

ARGUMENT

Under the court rules, an application for leave to amend a pleading is required to be granted liberally, without consideration of the ultimate merits of the amendments. Notte v. Merchants Mutual Insurance Co., 185 N.J. 490, 500-501 (2006); and R. 4:9-1. Indeed, absent abject futility or undue prejudice, the discretion to grant leave to amend is appropriate even after a matter is remanded on appeal. Bustamante v. Borough of Paramus, 413 N.J. Super. 276, 298 (App. Div. 2010); and Town of Harrison Bd. V. Netchert, 439 N.J. Super. 164, 178-179 (Law. Div. 2015). The standard a defendant must meet to succeed on an argument of "futility" is the same high

standard for dismissal of a complaint for failure to state a claim upon which relief can be granted, made under R. 4:6-2 (e).

“[The] test to be applied in such instances requires a ‘painstaking’ examination of ‘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, opportunity being given to amend if necessary.’ *Printing Mart v. Sharp Elecs. Corp.*, 116 N.J. 739, 746, 563 A.2d 31 (1989) (quoting *Di Cristofaro v. Laurel Grove Mem’l Park*, 43 N.J. Super. 244, 252, 128 A.2d 281 (App.Div.1957)). [The court is] ‘not concerned with the ability of plaintiffs to prove the allegation[s] contained in the complaint’ and are required to afford plaintiffs ‘every reasonable inference of fact.’ *Ibid.* ‘The examination of a complaint’s allegations of fact required by the aforestated principles should be one that is ... undertaken with a generous and hospitable approach.’ *Id.*

C.f. Communications Workers of America, AFL-CIO v. Whitman, 335 N.J. Super. 283, 288-289 (App. Div. 2000).

The Victim’s Rights Amendment (“VRA”) appears at Article 1, Paragraph 22, of the New Jersey Constitution, and provides that “[a] victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system ... [and] shall be entitled to those rights and remedies as may be provided by the Legislature.” The term “victim of a crime” is defined under the New Jersey Constitution, Article 1, Paragraph 22, to include: “(a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide.”

Following enactment of the VRA, the New Jersey State Legislature enacted the *Crime Victim’s Bill of Rights*, N.J.S.A. 52:4B-34 through -38, hereinafter referenced as the “CVBOR.” Pursuant to the CVBOR, the New Jersey Legislature found expressly that “the participation and

cooperation of crime victims” is so essential to the “criminal justice system” that “[the] rights of those individuals should be given full recognition and protection” “through the establishment of specific rights” to be protected and promoted throughout the criminal justice system, including law enforcement. N.J.S.A. § 52:4B-35. Among the rights specified by the New Jersey Legislature under the CVBRO as those belonging to crime victims are, *inter alia*, the right to be: (a) treated with dignity and compassion by the criminal justice system; (b) informed about the criminal justice process; (c) free from intimidation, harassment or abuse by any person involved in the criminal justice process, including law enforcement personnel such as municipal police officers; and (d) other important rights specified by the New Jersey Legislature. N.J.S.A. § 52:4B-36. Under the CVBRO, the New Jersey legislature defined “victim” to mean any person “who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed by an adult” N.J.S.A. § 52:4B-37.

The *New Jersey Civil Rights Act*, N.J.S.A. § 10:6-2 (hereinafter referenced as the “CRA”), gives standing to persons claiming against municipalities and their employees (including local law enforcement actors) a cause of action seeking redress arising from the deprivation, interference, denial, and/or other harm to rights and interests protected by the New Jersey Constitution.

Under the New Jersey Constitution and applicable federal law (including but not limited to the Equal Protection Clause of the Fourteenth Amendment), law enforcement actors are not permitted to commit acts or omissions in connection with their police work which acts or omissions constitute unlawful discrimination based upon the protected traits of the person(s) with whom law enforcement is interacting, including but not limited to such traits as the race, age, gender, disability, and/or ethnicity of the person, and/or the person’s status as someone with

impaired mental health. Cf. State v. Maryland, 771 A.2d 1220, 1228-1229, 167 N.J. 471 (2001) (holding that race-based, racially-motivated police stop was a violation of the defendant’s constitutional rights under the “Equal Protection Clause of the Fourteenth Amendment”).

Under the New Jersey Constitution and applicable federal law (including but not limited to the Equal Protection Clause of the Fourteenth Amendment), a person claiming to be a victim of crime and, as such, seeking to report a crime to law enforcement, has a substantive due process right to have that report taken in a manner which treats the purported victim with dignity and respect, and without harassment and/or intimidation against the person by law enforcement. See Jane Doe v. Burke, et al., New Jersey Appellate Division, Docket No. A-4920-18, decided August 17, 2021, available at 2021 WL 3625397 at page *7 through *8 (copy attached as part of **Exhibit C** to the Deininger Certification submitted herewith).

The facts of the Burke case are worthy of review and analysis here. Plaintiff was a female being stalked and harassed by an ex-boyfriend. Id. at page *2. He cornered her in her apartment, threatened her, injured her through sexual assault, and restrained her. Id. She eventually bargained with her attacker to the point where he gave her his gun, and allegedly instructed her to shoot him to death or he would kill her. Id. She ended up shooting him and he died from his wound, leaving her as a criminal suspect in the incident. Id. Due to the unique circumstances, plaintiff Doe qualified (at least for a time) as both a victim of crime and potential perpetrator of it. Id. Seeking to advance himself politically, the local prosecutor released publicly her identity and her status as a sexual assault victim, and a lawsuit ensued. Id.

Plaintiff Doe articulated a variety of causes of action, including a civil rights deprivation claim arising from the prosecutor’s violation of her rights as a criminal victim under the VRA. The prosecutor asserted a number of defenses, including, it appeared, the defense that she was a

suspect for part of the time, and the defense of immunity. Id. The trial court dismissed the plaintiff's claims on a pre-answer motion. Id. at *1. In a detailed analysis of the questions presented, the Appellate Division granted plaintiff Doe a partial reversal and reinstated her civil rights claim based upon violation of her VRA constitutional rights as a crime victim. Id. at *7-*8. Rejecting the prosecutor's immunity challenge, the Appellate Division held that plaintiff Doe was entitled to proceed with her VRA civil rights claim because such rights were sufficiently well-established as of 2016 prior to the prosecutor's unlawful disclosure, such that the prosecutor could/should have known of those rights before he outed plaintiff Doe to the public. Id.

Barisone's pleadings set forth allegations sufficient to present facially-viable civil rights claims against the defendants, based upon Barisone's status as an acknowledged victim of crime. See Barisone Proposed Second Amended Complaint, **Exhibit A** to the Deininger Certification; and Redacted Police Reports, **Exhibit B** to the Deininger Certification. Barisone's civil rights allegations have never been limited to a claim of inaccurate police reports not connected to the violation of a constitutional right. Rather, in all of his pleadings (including his first amended complaint and his proposed second amended complaint) Barisone is claiming that the intentionally false, inaccurate and misleading police reports authored by the defendants were violations of Barisone's constitutional rights under the VRA. See e.g. Proposed 2nd Amended Complaint at paragraphs 62-77 concerning the "July 31, 2019 incidents," **Exhibit A** to the Deininger Certification.

For that reason, the defendants' citation to and reliance upon federal case law from Pennsylvania and the like is off point. Unlike those cases where the only complaint was an inaccuracy of some sort without any tie to an accompanying constitutional rights violation, Barisone has specifically tied his allegations about the police reports to his VRA constitutional

right to fairness, respect and compassion – things which the defendant abjectly denied Barisone.

Barisone is also making claims sounding in intentional tort. He timely filed a notice of tort claim as to those claims (see Barisone Tort Claims Notice Letter, **Exhibit D** to the Deininger Certification), and has articulated his claims as intentional torts including acts of “official misconduct” by the officers involved. Indeed, the word/word root “intentional” appears more than 85 times in Barisone’s Proposed Second Amended Complaint. And, of course, Barisone’s statutory claims are not subject to the tort claims notice requirement.

CONCLUSION

For the foregoing reasons, plaintiff Barisone is respectfully requesting that his motion for leave to file and serve his proposed second amended complaint be granted, and that the defendants’ motion for dismissal with prejudice be denied.

Respectfully,
DEININGER & ASSOCIATES, LLP



Christopher L. Deininger, Esq.

cc: Opposing Counsel through eCourts filing

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MICHAEL L. BARISONE,

Plaintiff,

v.

WASHINGTON TOWNSHIP in Morris
County, New Jersey; POLICE OFFICER
BRIAN SZYMANSKI; POLICE
OFFICER DEREK HEYMER; POLICE
OFFICER BRIAN BIGHAM; POLICE
OFFICER MICHAEL HADE; POLICE
OFFICER PHILIP SEABECK; POLICE
OFFICER THOMAS FALLENI;
POLICE OFFICER ANDREW TESORI;
POLICE OFFICER JASON HENSLEY;
POLICE OFFICER MICHAEL
THOMPSON; POLICE OFFICER
ANTHONY COSTANTINO; POLICE
OFFICER ROGER GARRISON; JOHN
& JANE DOE 1-20, & ABC COMPANY
1-20,

Defendants.

SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION – MORRIS
COUNTY

DOCKET NO.: MRS-L-1562-21

CERTIFICATION OF SERVICE

I, CHRISTOPHER L. DEININGER, ESQ., certify under penalty of perjury, that on OCTOBER 28, 2021, I caused true and accurate copies of plaintiff’s **NOTICE OF CROSS-MOTION FOR LEAVE TO AMEND**, together with any and all supporting papers and exhibits (including this Certification of Service), to be filed with the Court through E-Courts, and to be served electronically, through eCourts, upon all counsel of record in this action, including the following:

William G. Johnson, Esq.
Johnson & Johnson, Esq.
89 Headquarters Plaza, Suite 1425
Morristown, New Jersey 07960

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

A handwritten signature in black ink, appearing to read 'C. L. Deininger', written over a horizontal line.

Dated: October 28, 2021

Christopher L. Deininger, Esq.