

INITIAL DECISION

OAL DKT. NO. CSV 6456-07

AGENCY DKT. NO. 2007-3819-I

**IN THE MATTER OF ROBERT A.
ANDREWS, TOWNSHIP OF
BERKELEY.**

Charles J. Uliano, Esq. and **Andrew T. Walsh**, Esq., for appellant Robert Andrews, (Chamlin, Rosen, Uliano & Witherington, attorneys)

Eric M. Bernstein, Esq. and **Philip G. George**, Esq., for respondent Township of Berkeley (Eric M. Bernstein & Associates, LLC, attorneys)

Record Closed: January 20, 2009

Decided: August 21, 2009

BEFORE **PATRICIA M. KERINS**, ALJ:

STATEMENT OF THE CASE

In this civil service removal matter appellant Robert Andrews (Andrews) is charged with one incident of inappropriate sexual conduct with another employee in the Township of Berkeley (Berkeley) Police Department radio room.

PROCEDURAL HISTORY

On March 26, 2007, appellant Andrews filed his appeal from a Final Notice of Disciplinary Action (FNDA) removing him from his position as a Lieutenant with

Berkeley's police department. He was charged with statutory misconduct under N.J.S.A. 40A:147-14, various violations under N.J.A.C. 4A:2-2.3(a) and the Berkeley Police Department Rules and Regulations. The charges arose out of one alleged incident of sexual misconduct in the police department radio room on an unspecified date in the "late spring of 2002", with Denise Capizzi, a Berkeley police dispatcher. On August 13, 2007, his appeal was transmitted to the OAL for a hearing as a contested case. He was not suspended during the pendency of the disciplinary proceedings, nor upon the FNDA, and he remains working at his position with Berkeley. On February 19, 2008, the violation of the Berkeley Rules and Regulations was dismissed pursuant to the "45 day rule" embodied in N.J.S.A. 40A:14-147.

On November 27, 2007, Joseph Lavery, ALJ issued an Order consolidating this appeal with that of Denise Capizzi, bearing OAL Docket No. CSV 0785-07. Capizzi faced disciplinary action arising out of the same incident, and other matters unrelated to Andrews. Testimony was taken in the consolidated matter on March 24, 2008, March 26, 2008, April 14, 2008, April 15, 2008, May 22, 2008, May 27, 2008, May 29, 2008, June 18, 2008 and June 27, 2008. The parties were granted time to obtain the transcripts and submit post hearing submissions. The record closed on January 20, 2009, and extensions of time for filing of the initial decision were granted until September 3, 2009, in the then consolidated matter.

Given the complexity of the case presented against Capizzi, and the several remaining charges against her, an Order was entered on August 21, 2009, severing her appeal from that of Andrews.

FACTUAL DISCUSSION

Background

Robert Andrews is a Lieutenant with Berkeley's Police Department. In 2002, both he and Denise Capizzi, a police dispatcher were employed by the department. During the course of a disciplinary investigation of Capizzi, respondent obtained information alleging that in 2002, Capizzi and Andrews had engaged in a sexual act in the radio room of the Berkeley police department while on duty. As a result, disciplinary charges were filed against each regarding the alleged incident. The date of the incident was not specified in the charges, however, during the course of discovery respondent provided information that the incident in question occurred on June 30, 2002. In support of the charges, respondent presented the testimony of Sergeant James Britton, another Berkeley police officer and Debra Courtney, a Berkeley police dispatcher.

Testimony of James Britton

Britton testified that sometime in 2005, he was questioned by Berkeley Township Police Chief Weinlein regarding a rumor that he, Britton, had witnessed Andrews and Capizzi engage in a sexual act while on duty in the radio room sometime in 2002. Although he did not provide information to the Chief, he did provide a Certification (RA-6) to the Township's counsel in October 25, 2005. The Certification does not specify the date of the incident, only placing it "in or about the late spring of 2002." Nor did the Certification specify that the officer involved in the incident was Andrews, only that the other sergeant on duty engaged in the alleged act.

According to Britton, he and Andrews were on duty one evening for the 4:00 to 12:00 shift in the spring of 2002. On that evening, he was the road sergeant and Andrews remained at headquarters as the desk sergeant. Only one dispatcher, Capizzi, was on duty. When Britton had trouble reaching headquarters from his patrol car around 6:30 to 7:00 p.m., he returned to headquarters suspecting that a power

outage might have interfered with communications. Arriving at headquarters, he saw no one else around until he entered the radio room. Upon entering the room, he stated he saw Capizzi, with her head in Andrews' lap. Andrews was seated and Britton was standing during the encounter. Britton stated that he told them to knock it off. He then turned, left the room, and went to check on the power systems. He did not formally report the incident and did not recall having a conversation about the specifics of the incident with anyone, including Debra Courtney.

On cross-examination, he was confronted with documentation (RA-8) showing that on the evening of June 30, 2002, he was listed by his badge number as the desk sergeant and Andrews was the road sergeant. Documentation (PA-M) further showed that on the evening in question, logs from the police department phone system showed Britton, along with Capizzi, taking calls on an operational phone system at headquarters during the time period he had stated he was on the road. That same documentation showed other officers back at headquarters as well.

When questioned regarding the act allegedly taking place between Capizzi and Andrews, he stated he had a side view of Andrews and Capizzi from his standing position as he walked into the radio room. However, he was not certain that oral sex was taking place; just that Capizzi had her head in Andrews' lap.

Testimony of Debra Courtney

Petitioner also presented the testimony of Debra Courtney, another police dispatcher. Employed by Berkeley since 2000, she became friendly with Capizzi in 2002 when the appellant began work with Berkeley. Her testimony was that at some unspecified date in 2002, Capizzi told her that she was caught by an unspecified person doing an unspecified act. Respondent questioned her about Capizzi in 2005, and she provided a statement (RA-7). In it she repeated what she said were rumors that Britton had walked in on Capizzi performing a sexual act on someone in the radio room.

In reviewing the evidence presented by respondent, the eyewitness testimony of Britton in proving the alleged act took place is crucial. While he maintained throughout his testimony that he saw Capizzi with her head in Andrews' lap in the radio room while they were on duty, Britton was unable to place the act within a time frame other than "in or about the late spring of 2002". When confronted with respondent's own records from the date it had cited in discovery as the date the incident occurred, he was unable to explain the discrepancy between those records and his version of events. Nor did he provide detail on what he actually saw occurring between Capizzi and Andrews. Despite walking into the radio room and having a side view from a standing position of whatever was occurring, he could not state with certainty that a sexual act was taking place.

Britton was not a credible witness. He was not specific on when the act occurred, beyond recalling that it occurred in late spring 2002. He was confronted with evidence from respondent's own records from the date the incident was proffered to have occurred and he could not explain the significant discrepancies between his testimony and the records. Further, he was unable to tell what, if any, sexual act was taking place when he walked into the radio room and observed a seated Andrews, and a kneeling Capizzi from his own standing position.

Beyond Britton's testimony, the only other evidence presented on the incident was the supposedly corroborative testimony of Debra Courtney. However, she merely recited rumors about the alleged incident, and referenced a nonspecific conversation with Capizzi.

From the evidence presented, I **FIND** that Andrews did not engage in a sexual act with Capizzi while on duty in the radio room of the Berkeley Police Department as alleged in this matter.

LEGAL DISCUSSION

A public employee in New Jersey who commits a wrongful act related to his or her duties, may be subject to major discipline. N.J.S.A. 11A:2-6, -20; N.J.A.C. 4A:2-2.2, -2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

I **CONCLUDE** that Berkeley has not proven by a preponderance of the credible evidence that Andrews engaged in the act charged and the resulting charges must therefore be **DISMISSED**.

ORDER

It is **ORDERED** that the charges in this appeal are **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 21, 2009

DATE

PATRICIA M. KERINS, ALJ

Date Received at Agency:

August 21, 2009

Date Mailed to Parties:

August 21, 2009

/lam

LIST OF WITNESSES

For Appellant:

None

For Respondent:

James Britton
Debra Courtney

LIST OF EXHIBITS

For Appellant:

- PA-A Letter from Stephen B. Hunter, Esquire, dated September 15, 2006
- PA-B Eligible/Failure Roster for Lieutenant, dated February 13, 2002
- PA-C Memo from Captain Novellino to Robert Andrews, dated May 10, 2006
- PA-D CAD Call Information Printouts, dated April 8, 2002, April 24, 2002, July 22, 2002, September 7, 2002 and April 4, 2003
- PA-E Cell phone records of Robert Andrews from February 27, 2005, to March 26, 2005
- PA-F Photos of the Samuel R. Britton Law Enforcement Center, dated December 12, 2005
- PA-G Letter from Ret. Lieutenant Van Gorder to Chief Weinlein, dated August 1, 2002
- PA-H Letter from Ret. Lieutenant Van Gorder to Chief Weinlein, dated April 17, 2003

- PA-I Letter from Ret. Lieutenant Van Gorder to Chief Weinlein, dated April 27, 2003
- PA-J Ret. Lieutenant Van Gorder's notes
- PA-K Pictures by Sgt. James Britton
- PA-L Email from Denise to Debbie
- PA-M CAD Call Printout, dated June 30, 2002
- PA-N Walsh's letter
- PA-O Bernstein's office response letter

For Respondent:

- RA-1 Preliminary Notice of Disciplinary Action, dated December 1, 2005
- RA-2 Final Notice of Disciplinary Action, dated March 1, 2007
- RA-3 Chapter XIV of the Township's Ordinances (relating to the Police Department)
- RA-4 Berkeley Township Police Department Rules and Regulations
- RA-5 Berkeley Township Employee Handbook
- RA-6 Certification of Sergeant James Britton, dated October 25, 2005
- RA-7 Transcript of Statement of Debra Courtney taken June 17, 2005
- RA-8 Berkeley Township Police Department Assignment Sheet for June 30, 2002

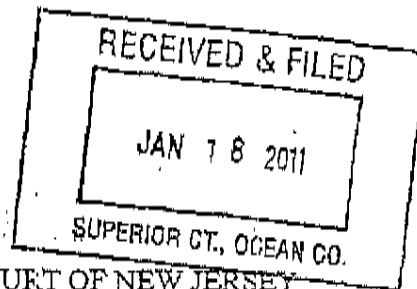
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CHAMLIN, ROSEN

NO. 4122

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(732) 229-3200
Attorneys for Plaintiff, Robert Andrews

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ROBERT ANDREWS,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY

Plaintiff,

v.

DOCKET NO. 206-11

TOWNSHIP OF BERKELEY;
LEONARD W. ROEBER, Individually
And in his capacity as Administrator
Of the Township of Berkeley;
JOHN C. WEINLEIN, Individually
and in his capacity as Chief of the
Township of Berkeley Police Department;
And JAMES BRITTON, Individually and
In his capacity as a Police Officer of the
Berkeley Township Police Department,

Civil Action

COMPLAINT, JURY DEMAND,
DESIGNATION OF TRIAL COUNSEL

Defendants.

Plaintiff, Robert A. Andrews, residing at 215 Harbor Inn Road, Bayville, County
of Ocean, and State of New Jersey, says:

STATEMENT OF FACTS

1. Plaintiff at all relevant times has been employed by the Township of
Berkeley Police Department as a police officer and currently holds the rank of
Lieutenant.

2. Plaintiff has been employed in the above-referenced capacity by
defendants Township of Berkeley (hereinafter "defendant Township") and the Township
of Berkeley Police Department since August 1, 1988.

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3. At all relevant times, the defendant, Leonard W. Roeber, also was employed by defendant Township and held the position of Administrator (hereinafter "defendant Roeber").

4. At all relevant times, the defendant, John C. Weinlein, also was employed by defendant Township and the Township Police Department, and held the position of Chief of Police (hereinafter "defendant Chief").

5. At all relevant times, the defendant, James Britton, also was employed by defendant Township and the Township Police Department, and held the rank of Sergeant (hereinafter "defendant Britton").

6. On December 7, 2005, Plaintiff was served with a Preliminary Notice of Disciplinary Action charging violations pursuant to N.J.S.A. 40A:14-147, N.J.A.C. 4A:2-2.3(a), and the Berkeley Township Police Department Rules and Regulations.

7. The Final Notice of Disciplinary Action was not served until March 1, 2007, and contained the same allegations as those in the Preliminary Notice.

8. The charges arose out of one alleged incident of sexual misconduct in the police department radio room on a unspecified date in the "late spring of 2002" with Denise Capizzi, a Berkeley police dispatcher.

9. The charges were based upon a certification of Defendant Britton dated October 25, 2005, wherein Defendant Britton alleges that in the late spring of 2002, there was one other sergeant on duty, and he observed this other sergeant in the dispatch room with Denise Capizzi kneeling in front of him performing oral sex.

10. With little or no investigation into the allegations made by Defendant

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Britton, Defendants decided that the "other sergeant on duty" was Plaintiff and charged him as noted hereinabove.

11. The disciplinary action initiated by Defendants against Plaintiff was commenced approximately three years after the alleged incident without a complete investigation or compliance with internal affairs guidelines as established by Defendant Township and/or the guidelines established by the New Jersey Attorney General's Office.

12. On March 26, 2007, Plaintiff filed an appeal of the disciplinary action seeking to remove him from his position as a Lieutenant with the Berkeley Township Police Department.

13. By letter dated July 14, 2008, Plaintiff disclosed to Defendant Roeber that the handling and investigation of the disciplinary charges filed against him were in violation of his due process rights as well as departmental rules and procedures.

14. Plaintiff's complaints raised in his letter of July 14, 2008 were never resolved and the course of conduct underlying his complaints continued.

15. The disciplinary action was transmitted to the Office of Administrative Law where it was consolidated with the appeal of the Denise Capizzi.

16. After nine days of Trial before the Honorable Patricia Kerins, A.L.J., the Court issued an Order on August 21, 2009 dismissing the charges against Plaintiff.

17. On December 18, 2009, the Civil Service Commission ordered, "[T]he action of the [defendant Township] was not justified. Therefore, the Commission dismisses the charges against the [Plaintiff], reverses the removal, and orders that the [Plaintiff] be granted counsel fees pursuant to N.J.A.C. 4A:2-2.12."

18. Throughout the course of his employment with Defendant Township and

under the supervision of Defendant Chief, Plaintiff was subjected to various instances of harassment and retaliation. Plaintiff has been and continues to be subjected to the following examples of harassment and retaliation, including but not limited to:

- a. Spreading of a sexual rumor among his co-workers;
- b. Allegations defamatory to Plaintiff's character;
- c. Defendant Chief using offensive language towards Plaintiff and belittling Plaintiff;
- d. Defendant Chief failing to keep Plaintiff's Internal Affairs file confidential;
- e. Defendant Chief discussing the nature of the disciplinary action against Plaintiff with others;
- f. Defendants have isolated and limited Plaintiff from his normal work interaction, training, development, and future advancement;
- g. Defendants have undermined Plaintiff's work performance by withholding work-related information; and
- h. Defendant Chief has fostered a lack of respect towards Plaintiff by others in the department.

19. Defendants' harassment and retaliation against Plaintiff has created a hostile work environment.

FIRST COUNT

Conscientious Employee Protection Act

1. Plaintiff repeats each and every allegation contained in the Statement of Facts and makes the same a part hereof as if set forth at length herein.

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2. On or about July 14, 2008, Plaintiff brought to the attention of Defendant Roeber that the disciplinary process against him was being conducted in violation of his due process rights and without compliance with established rules and procedures adopted and exercised by the Department.

3. Despite an investigation into the allegations by an "alternate or conflict counsel for Berkeley Township," Plaintiff's complaints went unanswered.

4. After Plaintiff's complaint, Defendants have engaged in continuous forms of harassment as set forth above, and their behavior has resulted in mental and emotional anguish, humiliation, anxiety and distress, and other damages.

5. Defendants harassing conduct amounts to a violation of Plaintiff's rights under the Conscientious Employee Protection Act.

WHEREFORE, Plaintiff demands judgment against all Defendants for: (1) compensatory and punitive damages allowable under the New Jersey Conscientious Employee Protection Act, including but not limited to damages for mental and emotional anguish, humiliation, anxiety and distress; (2) together with counsel fees and costs of suit and expenses incurred as a result of defendants' discriminatory acts as provided under the New Jersey Conscientious Employee Protection Act; and (3) all other general or specified relief, both at law and equity, to which Plaintiff may be justly entitled.

SECOND COUNT
New Jersey Law Against Discrimination
(Retaliation)

1. Plaintiff repeats each and every allegation contained in the Statement of Facts and First Count and makes the same a part hereof as if set forth at length herein.

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2. The actions of Defendants constitute an impermissible retaliation against Plaintiff for his role in successfully defending himself against the false allegations brought against Plaintiff by Defendants.

3. Moreover, Plaintiff was discriminated against based upon his gender in light of the nature of the sexual misconduct allegations brought against him.

4. As a result of Defendants retaliatory adverse employment actions against the Plaintiff, Plaintiff has been damaged.

WHEREFORE, Plaintiff, Robert A. Andrews, demands judgment against all defendants for: (1) compensatory and punitive damages allowable under the New Jersey Law Against Discrimination, including but not limited to damages for mental and emotional anguish, humiliation, anxiety and distress; (2) together with counsel fees and costs of suit and expenses incurred as a result of defendants' discriminatory acts as provided under the New Jersey Law Against Discrimination; and (3) all other general or specified relief, both at law and equity, to which Plaintiff may be justly entitled.

THIRD COUNT

New Jersey Law Against Discrimination (Harassment)

1. Plaintiff repeats each and every allegation contained in the Statement of Facts, First and Second Counts and makes same a part hereof as if set forth at length herein.

2. The actions of Defendants constitute harassment and discrimination against Plaintiff.

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3. As a result of Defendants harassment against the Plaintiff, Plaintiff has been damaged.

WHEREFORE, Plaintiff, Robert A. Andrews, demands judgment against all defendants for: (1) compensatory and punitive damages allowable under the New Jersey Law Against Discrimination, including but not limited to damages for mental and emotional anguish, humiliation, anxiety and distress; (2) together with counsel fees and costs of suit and expenses incurred as a result of defendants' discriminatory acts as provided under the New Jersey Law Against Discrimination; and (3) all other general or specified relief, both at law and equity, to which Plaintiff may be justly entitled.

FOURTH COUNT
Intentional Infliction of Emotional Distress

1. Plaintiff repeats each and every allegation contained in the Statement of Facts, First, Second and Third Counts and makes same a part hereof as if set forth at length herein.

2. The aforesaid actions by the Defendants are outrageous in nature.

3. Defendants intended to inflict emotional distress upon Plaintiff by and through their aforesaid actions.

4. As a result of the actions of defendants, Plaintiff has been caused to suffer from emotional distress which has exhibited itself in physical complaints and symptoms.

5. As a result of the emotional distress and physical complaints and symptoms suffered by Plaintiff, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands compensatory and punitive damages, counsel fees and costs of suit, and such other relief as the Court may deem equitable and just.

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FIFTH COUNT
Malicious Prosecution

1. Plaintiff repeats each and every allegation contained in the Statement of Facts, First, Second, Third, and Fourth Counts and makes the same a part hereof as if set forth at length herein.

2. All charges against Plaintiff contained in the Final Disciplinary Action of March 1, 2007 brought by Defendants against Plaintiff were dismissed.

3. There was no reasonable or probable cause for the charges or disciplinary action against Plaintiff, and Defendants knew or should have known this to be the case prior to the hearing.

4. Plaintiff earns his living as a police officer, and the false prosecution has injured his reputation both socially and professionally.

5. As a direct and proximate result of Defendants' malicious prosecution of Plaintiff and particularly their willful, intentional, false, malicious, reckless, or grossly negligent actions, Plaintiff suffered severe damage to his reputation and standing in the community, has suffered severe physical and emotional stress and harm, was forced to undergo the rigors and strain of preparation for his defense of the false charges and of appearing before the Office of Administrative Law with the resultant anxiety, loss of sleep and other damages, and has otherwise been damaged and injured in diverse other manners, to his great detriment.

WHEREFORE, the Plaintiff demands judgment for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as the Court deems equitable and just.

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SIXTH COUNTRespondent Superior Against Township of Berkeley

1. Plaintiff repeats each and every allegation contained in the Statement of Facts, First, Second, Third, Fourth, and Fifth Counts and makes the same a part hereof as if set forth at length herein.

2. At all points in time described in Plaintiff's Complaint, the aforesaid Defendants Roeber, Weinlein and Britton were employed by and acting on behalf of the Township of Berkeley.

3. Pursuant to the theory of *respondent superior*, Defendant Township of Berkeley is responsible to Plaintiff for any and all damages sustained as a result of the actions by Defendants Roeber, Weinlein and Britton.

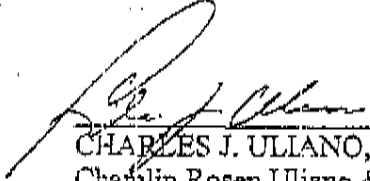
WHEREFORE, Plaintiff demands compensatory and punitive damages, counsel fees and costs of suit, and such other relief as the Court may deem equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff herein demands a trial by jury as to all issues.

TRIAL ATTORNEY DESIGNATION

Charles J. Uliano, Esq. is hereby designated as trial attorney.



CHARLES J. ULIANO, ESQ.
Chamlin Rosen Uliano & Witherington
Attorneys for Plaintiff

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ERIC BERNSTEIN

NO. 1032 P. 2

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 Livingston, New Jersey 07039-0460
 973-992-1100
 Attorneys for Plaintiff, Denise Capizzi

DENISE CAPIZZI,

Plaintiff,

vs.

BERKELEY TOWNSHIP; THE BERKELEY
 TOWNSHIP POLICE DEPARTMENT; JOHN
 WEINLEIN, INDIVIDUALLY AND AS
 CHIEF OF POLICE OF THE BERKELEY
 TOWNSHIP POLICE DEPARTMENT;
 TIMOTHY McNICHOLS, INDIVIDUALLY AND
 AS A MEMBER OF THE BERKELEY
 TOWNSHIP POLICE DEPARTMENT; THE
 COUNTY OF OCEAN; THE OCEAN COUNTY
 PROSECUTOR'S OFFICE; JOHN DOES
 1-100 (being fictitious names) INDIVIDUALLY
 AND AS AGENTS, SERVANTS AND/OR
 EMPLOYEES OF BERKELEY TOWNSHIP;
 ABC ENTITIES 1-10 (being fictitious names) which
 may or may not be public entities; JOHN ROE 1-10
 (being fictitious names) INDIVIDUALLY AND AS
 AGENTS, SERVANTS AND/OR EMPLOYEES
 OF THE ABC ENTITY

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: OCEAN COUNTY
 DOCKET NO.: L-2573-09

Civil Action

**AMENDED
 COMPLAINT & JURY DEMAND**

Plaintiff, Denise Capizzi, residing at 119 Serpentine Drive, Bayville, County of Ocean,
 State of New Jersey by way of Complaint against the defendants does here allege as follows:

1. Plaintiff, Denise Capizzi, is an individual and employed by Berkeley Township (the "Township") as a civilian police dispatcher.
2. Upon information and belief, the Township is a body politic organized pursuant to New Jersey law which employs, supervises and/or controls the employees of the Berkeley Police

Department ("Police Department"). Defendant Township is responsible for establishing the terms, conditions and other practices which bear upon the employment conditions of the employees of the Township.

3. Defendant, Police Department is an entity that is owned, operated, managed, directed and/or controlled by the Township. The Police Department is organized under the laws of the United States of America, the State of New Jersey and the Township to, among other things, enforce those laws and preserve and protect the public safety and welfare.

4. Upon information and belief and at all times relevant to this Complaint, defendant, John Weinlein ("Weinlein") was the Berkeley Township Police Chief and was employed by the Township. Defendant Weinlein is sued in his individual and official capacity.

5. Upon information and belief and at certain times relevant to this Complaint, defendant, Timothy McNichols ("McNichols") was an officer in the Police Department and was employed by the Township. Defendant McNichols is sued in his individual and official capacities.

6. The County of Ocean ("Ocean County") is a body politic of the State of New Jersey and is legally responsible and liable for the conduct and actions of the Ocean County Prosecutor's Office (the "Prosecutor's Office") and all representatives of the Prosecutor's Office.

7. All representatives of the Prosecutor's Office are agents, servants or employees of Ocean County and Ocean County is legally responsible and liable for their actions.

8. The Prosecutor's Office is on information and belief a department of Ocean County.

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9. Upon information and belief, the defendants, John Does 1-100, being fictitious names, are agents, servants or employees of the Township and/or of the Police Department and/or ABC Entities and are sued in their individual and official capacities.

10. Upon information and belief, the defendants, ABC Entities 1-10, being fictitious names, are entities whose agents, servants or employees have been involved in the improper actions taken against the plaintiff. These entities may or may not be public entities.

11. Upon information and belief, the defendants, John Does 1-10, being fictitious names, are agents, servants or employees of the ABC Entities and may or may not be public employees who are sued in their individual and to the extent it exists, their official capacity.

12. Upon information and belief, the defendants, Joseph Does 1-100, being fictitious names, are individuals who have been involved in the improper actions taken against plaintiff.

ALLEGATIONS RELEVANT TO ALL COUNTS

13. Plaintiff was hired to be civilian police dispatcher for the Police Department on or about February 14, 2002. Plaintiff's position is protected by New Jersey Civil Service.

14. In or about November 2003, plaintiff, who separated from her husband in or about April 2003, began a consensual relationship with defendant McNichols who was a member of the Police Department and married.

15. During the course of this relationship, defendant McNichols would visit plaintiff at her home or arrange to meet plaintiff at various locations at times when defendant McNichols was on duty with the Police Department. At no time did plaintiff engage in a relationship with defendant during the time that she was on duty as a police dispatcher.

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16. At all times relevant hereto from the commencement of her work for the Township through March 2004, plaintiff received no complaints concerning her work and her evaluations were always satisfactory.

17. In or about February 2004, as a result of her consensual relationship with defendant McNichols, plaintiff became pregnant.

18. Upon learning of plaintiff's pregnancy, defendant McNichols was insistent that plaintiff terminate the pregnancy. Based on her personal beliefs about abortion, plaintiff resisted his request.

19. Defendant McNichols continued to insist that plaintiff terminate the pregnancy and he made several appointments for her to have an abortion which she cancelled. Finally, on or about March 8, 2004, defendant McNichols took plaintiff to the Pleasant Woman's Pavilion at which time she received an injection of Methotrexate to terminate her pregnancy. Despite receiving the injection, plaintiff still did not want to terminate the pregnancy and based on research concerning the drug she had been given, she began taking large quantities of folic acid which her research indicated interrupted and hopefully counteracted the action of Methotrexate.

20. Subsequently, on or about March 11, 2004, plaintiff went to her personal obstetrician/gynecologist and she described what had happened. She was advised that Methotrexate usually worked within 24 hours and a sonogram was performed which demonstrated an active fetal heartbeat three (3) days after receiving the injection. Plaintiff, on the advice of her doctor, continued a course of conduct designed to continue her pregnancy.

21. On or about March 30, 2004, plaintiff suffered significant personal injuries in a fall at work. It was a rainy and cold night and she fell down 13 concrete steps landing at the bottom, injuring her entire left side, both knees and low back. The next day, plaintiff

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ERIC BERNSTEIN

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experienced vaginal bleeding, as well as headache, pain in the knee and abdominal cramping. She sought treatment at Community Medical Center Emergency Room on March 31, 2004.

22. Plaintiff initially left the emergency room at approximately 5:00 p.m. on March 31, 2004 but had to return to the emergency later that night because of excessive vaginal bleeding. Plaintiff subsequently had a miscarriage.

23. On or about April 1, 2004, plaintiff was instructed by her employer to seek medical attention from Ocean Bay Occupational Medical Center.

24. On or about May 1, 2004 plaintiff filed a Worker's Compensation Claim Petition for the injuries she sustained in the fall, including the miscarriage.

25. In or about early April 2004, the relationship between plaintiff and defendant McNichols stopped.

26. Prior to this, in or about February 2004, plaintiff had spoken to her immediate supervisor, Gail McCarthy that she wanted information on the Employee Assistance Program because she felt she needed to obtain counseling. Pursuant to the rules and regulations of the Employee Assistance Program, plaintiff's request for information and subsequent utilization of the program was to be kept absolutely confidential.

27. On or about April 23, 2004, plaintiff was advised that she was to report for a meeting with Police Department Lieutenant Roth. At the meeting, Lieutenant Roth counseled plaintiff regarding her personal relationship with defendant McNichols. Despite the purported confidential nature of her counseling, Lieutenant Roth knew of her counseling through the Employee Assistance Program and inquired if plaintiff was still going for counseling and when she responded that she was, he directed her to keep going. Lieutenant Roth also gave plaintiff an official employee warning notice regarding her relationship with defendant McNichols.

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28. Upon information and belief, defendant McNichols was never counseled concerning their relationship nor was he provided with an employee warning notification or directed to attend counseling.

29. In or about late April, plaintiff met with representatives of the Prosecutor's Office Special Investigation Unit concerning her relationship with defendant McNichols. Subsequent to her initial meeting with representatives of the Prosecutor's Office, plaintiff was called back to the Prosecutor's Office and advised by the investigator from the Prosecutor's Office that he had spoken with defendant Weinlein about the issues she had raised in her initial meeting.

30. Subsequent to her conversation with the investigator, plaintiff was contacted by defendant Weinlein and ordered to undergo a psychological evaluation. No reason was provided to plaintiff as why such an evaluation was necessary and to the best of plaintiff's knowledge, defendant McNichols was not required to have such an evaluation.

31. Unbeknownst to plaintiff, in or about April/May 2004, defendant McNichols had provided information to his superiors in the Berkeley Township Police Department which, on information and belief, included his statement that on or about March 8, 2004, plaintiff had undergone an abortion.

32. On information and belief, as a result of obtaining this information, defendant Weinlein decided to pursue criminal charges against plaintiff asserting that her claim that she was injured as a result of the fall and suffered a miscarriage was a fraud. To this end defendant contacted the Prosecutor's Office.

33. On information and belief, defendants Weinlein, McNichols, the Township, John Does, John Roes, The ABC Entities and Joseph Does provided advice and encouraged and/or requested that criminal charges be filed against plaintiff based on fraud.

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38. In or about early June 2004, plaintiff was advised that until further notice, she was not allowed to switch or to have overtime on the midnight shift.

39. By this point, plaintiff perceived that the conditions of her employment had changed and that she was being treated differently because she was a woman and her treatment was such that she believed her working conditions were hostile and/or abusive.

40. On or about June 7, 2004, plaintiff received a memo from the Chief that there was an issue that he needed to speak to her about and he scheduled a meeting for June 11, 2004 at 3:30 p.m.

41. On or about June 11, 2004 at 3:30 p.m., when plaintiff reported to work, she was requested by defendant Weinlein to follow him to the Detective Bureau. When she arrived there, there were two investigators from the Prosecutor's Office waiting and they arrested her, handcuffed her and led her out of the building in front of all of her fellow employees to her great embarrassment and humiliation. Plaintiff was subsequently photographed and fingerprinted.

42. On or about September 28, 2004, evidence was presented to an Ocean County Grand Jury seeking to charge plaintiff with insurance fraud. At no time was any evidence presented to the Grand Jury as to whether or not the procedure was successful, what steps plaintiff took following the procedure on March 8th or information that was readily obtainable from her concerning treatment that she had received.

43. As a result, on or about September 28, 2004, plaintiff was indicted on one count of Second Degree Insurance Fraud.

44. On or about February 14, 2005, said indictment was dismissed by the Prosecutor's Office after it confirmed information received from plaintiff's then counsel concerning the

medical treatment plaintiff had obtained to reverse the effects of the drug that she was given on or about March 8, 2004 and that there was no evidence of insurance fraud.

45. At or about the same time that defendant Weinlein was providing information to the Prosecutor's Office about allegations of insurance fraud, he or others acting on his behalf, provided Ocean County and the Prosecutor's Office with other information concerning an allegation that plaintiff deleted information from an official record without authorization.

46. This charge resulted from the fact that during the time plaintiff was pregnant, she had fainted at a convenience store shortly after leaving work. The police were called to respond to the scene and for reasons that are currently unknown, the individual who entered the information into the record, indicated that an intoxicated female had been given a ride home by the police to plaintiff's address. Subsequently, when plaintiff saw the entry, she requested permission from her immediate supervisor to correct the entry because she had fainted and was not intoxicated. Plaintiff was given permission to correct the record.

47. Despite having been given permission to change the record, defendants, Weinlein, the Township, John Does, John Roes the ABC Entities and Joseph Does commenced an investigation and on information and belief, provided advice and encouraged and/or requested that criminal charges be filed against plaintiff by the Prosecutor's Office. On or about September 28, 2004, plaintiff was indicted on charges of Second Degree Official Misconduct for changing the record.

48. In or about February 2005, the Prosecutor's Office made a determination that the indictment should be dismissed. However, on information and belief, defendants, Weinlein, the Township, John Does, John Roes the ABC Entities and Joseph Does and other individuals whose identity remains unknown, encouraged and advised and/or convinced the Prosecutor's Office to

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file a disorderly persons complaint against plaintiff prior to dismissing the indictment. Such a disorderly persons complaint was in fact filed against plaintiff.

49. As a result of the filing of the disorderly persons complaint against plaintiff, plaintiff was forced to stand trial on the disorderly persons complaint. Plaintiff did in fact proceed to trial and on or about June 22, 2005 she was found not guilty and the charges against her were dismissed.

50. Plaintiff incurred substantial attorney's fees and costs associated with defending herself against the criminal charges that were filed against her. Plaintiff has requested to be reimbursed for those fees and expenses but to date has not been reimbursed.

51. At or about the same time the plaintiff was arrested, disciplinary charges were also filed against her by the Township and she was suspended without pay. Despite the fact that all criminal charges against her were ultimately dismissed, the Township, despite demand, refused to reinstate plaintiff to her job or to the payroll. Instead defendants, the Township, Weinlein, John Does, John Roes, the ABC Entities and Joseph Does detourmized to and did in fact file additional disciplinary charges against plaintiff. Defendants utilized these additional disciplinary charges as a means to retaliate against plaintiff, to keep her suspended from her employment and to keep her from being returned to the Township payroll.

52. In or about September 2005 plaintiff was restored to paid status but advised that she could not return to work until the disciplinary charges against her were heard and decided.

53. In or about April 2006, despite the fact that the disciplinary charges had yet to be heard, plaintiff was directed to return to work effective on May 8, 2006.

54. Prior to her return to work plaintiff learned that at least one and possibly other employees of the Township were demanding that plaintiff not be allowed to return to work. As a result, on or about May 5, 2006 plaintiff was notified not to return to her job.

55. To the extent that notice was required of plaintiff's potential claims, notice has been provided pursuant to the New Jersey Tort Claims Act.

COUNT ONE

(Sexual Harassment-Defendants, Weinlein, Berkeley Township
the Berkeley Township Police Department, John Does, John Roes, ABC Entities and
Joseph Does)

56. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1 through 55 of the Complaint as if fully set forth at length herein.

57. The actions taken by the defendants Weinlein, the Township, the Police Department John Does, John Roes, the ABC Entities and Joseph Does would not have occurred but for plaintiff's gender.

58. The conduct of the defendants in this regard was severe and/or pervasive enough to make a reasonable woman believe that plaintiff's conditions of employment had been altered and that the working environment was hostile and/or abusive.

59. Said conduct by the defendants and each of them constituted sexual harassment in violation of the New Jersey Law Against Discrimination (NJLAD).

60. As a result of said sexual harassment, plaintiff has suffered emotional and economic damage. In addition, plaintiff has suffered physical problems including, but not limited to, migraine headaches, neck and back pain and other physical manifestations of the emotional trauma.

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61. The conduct of the defendants and each of them in this regard was especially egregious and participated in by both the Chief of Police and on information and belief other high ranking officials in the Township.

WHEREFORE, plaintiff demands judgment against the defendants, Weinlein, Berkeley Township, the Berkeley Township Police Department, John Does, John Roes, ABC Entities and Joseph Does jointly, severally and in the alternative for the following:

- A. Damages;
- B. Front pay;
- C. Back pay;
- D. Punitive damages;
- E. Interest, attorney's fees and costs;
- F. Such other relief as the Court may deem just and equitable under the circumstances.

COUNT TWO

(Discrimination - Defendants, Weinlein, Berkeley Township, the Berkeley Township Police Department, John Does, John Roes, ABC Entities and Joseph Does)

62. Plaintiff repeats and repleats each and every allegation contained in paragraphs 1 through 61 and Count One of the Complaint as if fully set forth at length herein.

63. At all times relevant hereto, plaintiff was performing her job at a level that met her employer's legitimate expectations.

64. Defendants Weinlein, the Township, the Police Department John Does, John Roes, The ABC Entities and Joseph Does by their conduct, treated plaintiff differently in whole

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or in part because she was female and took actions against her that were not taken against male employees.

65. As a result of the conduct of defendants and each of them, plaintiff was discriminated against based on her gender in violation of the NMLAD.

66. As a result of said discrimination, plaintiff has suffered emotional and economic damages. In addition, plaintiff has suffered physical problems including, but not limited to, migraine headaches, neck and back pain and other physical manifestations of the emotional trauma.

67. Said conduct by defendants was especially egregious and/or was participated in by the Chief of Police and on information and belief, other high ranking members of the Township administration.

WHEREFORE, plaintiff demands judgment against the defendants, Weinlein, Berkeley Township, the Berkeley Township Police Department, John Does, John Roes, ABC Entities and Joseph Does jointly, severally and in the alternative for the following:

- A. Damages;
- B. Front pay;
- C. Backpay;
- D. Punitive damages;
- E. Interest, attorney's fees and costs;
- F. Such other relief as the Court may deem just and equitable under the circumstances.

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COUNT THREE

(Violation of the NJLAD - Defendants, Weinlein, Berkeley Township the Berkeley Township Police Department, John Does, John Roes, ABC Entities and Joseph Does)

68. Plaintiff repeats and replays each and every allegation contained in paragraphs 1 through 67 and Counts One and Two of the Complaint as if fully set forth at length herein.

69. Upon being placed on notice that plaintiff was the subject of both gender based discrimination and harassment, defendants had an obligation to investigate plaintiff's complaints in good faith.

70. Defendants took no action to investigate nor did defendants cause any investigation to be made of plaintiff's complaints of gender based discrimination and harassment.

71. Defendants' failure to investigate or cause an investigation to be made of plaintiff's complaints of gender based discrimination and harassment constitutes a violation of the NJLAD.

72. As a result of said violation of the NJLAD, plaintiff has suffered emotional and economic damages. In addition, plaintiff has suffered physical problems including, but not limited to, migraine headaches, neck and back pain and other physical manifestations of the emotional trauma.

WHEREFORE, plaintiff demands judgment against the defendants, Weinlein, Berkeley Township, the Berkeley Township Police Department, John Does, John Roes, ABC Entities and Joseph Does jointly, severally and in the alternative for the following:

- A. Damages;
- B. Front pay;
- C. Back pay;

- D. Punitive damages;
- E. Interest, attorney's fees and costs;
- F. Such other relief as the Court may deem just and equitable under the circumstances.

COUNT FOUR

(Violation of the NJLAD -Defendants, Weinlein, Berkeley Township the Berkeley Township Police Department, John Does, John Roes, ABC Entities and Joseph Does)

73. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1 through 72 and Counts One through Three of the Complaint as if fully set forth at length herein.
74. Upon being placed on notice that plaintiff was the subject of both gender based discrimination and harassment, defendants had an obligation not to retaliate against plaintiff.
75. Despite defendants obligations under the NJLAD not to retaliate against plaintiff defendants and each of them did in fact retaliate against the plaintiff.
76. The retaliation by defendants and each of them against plaintiff because of her complaints of gender based discrimination and harassment constitutes a violation of the NJLAD.
77. As a result of said violation of the NJLAD, plaintiff has suffered emotional and economic damages. In addition, plaintiff has suffered physical problems including, but not limited to, migraine headaches, neck and back pain and other physical manifestations of the emotional trauma.

WHEREFORE, plaintiff demands judgment against the defendants, Weinlein, Berkeley Township, the Berkeley Township Police Department, John Does, John Roes, ABC Entities and Joseph Does jointly, severally and in the alternative for the following:

- A. Damages;
- B. Front pay;

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- C. Back pay;
- D. Punitive damages;
- E. Interest, attorney's fees and costs;
- F. Such other relief as the Court may deem just and equitable under the circumstances.

COUNT FIVE

(Violation of 42 U.S.C. §1983 - All Defendants)

78. Plaintiff repeats and replicates each and every allegation contained in paragraphs 1 through 77 and Counts One through Four of the Complaint as if fully set forth at length herein.

79. On information and belief, defendants, Weinlein, the Police Department, the Township, McNichols, John Does, John Roes, the ABC Entities and Joseph Does received information from Timothy McNichols concerning plaintiff. The aforementioned defendants took this information and although they were empowered and obligated to conduct a thorough and complete investigation, did not do so. Said defendants knew or should have known that the information was incomplete, inaccurate and/or misleading.

80. On information and belief, defendants, Weinlein, the Police Department, the Township, McNichols John Does, John Roes, the ABC Entities and Joseph Does provided said information to Ocean County through the Prosecutor's Office.

81. Defendants, Ocean County and the Prosecutor's Office are obligated by law to conduct a thorough and complete investigation of all allegations of criminal conduct. Defendants, Ocean County and the Prosecutor's Office by and through their agents, servants and employees presented information to a Grand Jury concerning allegations that plaintiff had committed insurance fraud without conducting a thorough and complete investigation. Said

defendants knew or should have known that the information was incomplete, inaccurate and/or misleading.

82. The acts of the defendants in failing to investigate and in presenting or allowing to be presented incomplete and inaccurate information to a Grand Jury, all of which actions or inactions were under the color of state law, resulted in the indictment of plaintiff for Second Degree Insurance Fraud depriving her of her liberty and property and denied plaintiff her rights to due process of law as secured by the provisions of the Fifth and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. §1983 and the statutes and the laws of the State of New Jersey.

83. The acts done by the defendants in this regard were without justification or excuse in law and were done knowingly, willfully and wantonly.

84. As a direct and proximate result of the foregoing acts committed by the defendants, plaintiff suffered both economic and personal injury, loss of income, loss of future income, injury to her career, injury to her reputation, humiliation and embarrassment.

WHEREFORE, plaintiff demands judgment against the defendants, Weinlein, the Police Department, the Township, McNichols, Ocean County, the Ocean County Prosecutor's Office, John Does, John Roes, the ABC Entities and Joseph Does jointly, severally and in the alternative for compensatory and punitive damages, together with interest, costs and reasonable attorney's fees.

COUNT SIX
(Violation of 42 U.S.C. §1983 - All Defendants)

85. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1 through 84 and Counts One through Five of the Complaint as if fully set forth at length herein.

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85. On information and belief, defendants, Weinlein, the Police Department, the Township, John Does, John Roes, the ABC Entities and Joseph Does determined that they wanted to terminate plaintiff's employment and sought information from co-workers concerning plaintiff. Based on the efforts of the aforementioned defendants, they obtained false, inaccurate and/or misleading information about plaintiff which they knew or should have known was false, inaccurate and/or misleading. The aforementioned defendants took this information and although they are empowered and obligated to conduct a thorough and complete investigation, did not do so.

86. On information and belief, defendants, Weinlein, the Police Department, the Township, John Does, John Roes, the ABC Entities and Joseph Does provided said false, inaccurate and/or misleading information to Ocean County through the Prosecutor's Office.

87. Defendants, Ocean County and the Prosecutor's Office are obligated by law to conduct a thorough and complete investigation of all allegations of criminal conduct. Defendants, Ocean County and the Prosecutor's Office by and through their agents, servants and employees presented information to a Grand Jury concerning allegations that plaintiff had committed insurance fraud and official misconduct without conducting a thorough and complete investigation. Said defendants knew or should have known that the information was false, incomplete, inaccurate and/or misleading.

88. The acts of the defendants in failing to investigate and in presenting or allowing to be presented false, incomplete, misleading and/or inaccurate information to a Grand Jury, all of which actions and inactions were under the color of state law, resulted in the indictment of plaintiff for Second Degree Insurance Fraud and Second Degree Official Misconduct depriving her of her liberty and property and denied plaintiff her rights to due process of law as secured by

filed additional disciplinary charges against her and took actions designed to emotionally and economically injure plaintiff, as well as embarrass and humiliate her.

95. The conduct of the defendants and each of them was willful and egregious.

96. As a result of defendants' conduct, plaintiff has suffered severe emotional distress. Said emotional distress has resulted in physical manifestations including, but not limited to, migraine headaches, neck and back pain and other physical ailments.

WHEREFORE, plaintiff demands judgment against defendants, Weinlein, the Township, the Police Department, McNichols, John Does, John Roes, The ABC Entities and Joseph Does jointly, severally and in the alternative for compensatory and punitive damages, interest, cost of suit and reasonable attorney's fees.

COUNT EIGHT

(Malicious Prosecution - Defendants, Weinlein, Berkeley Township
the Berkeley Township Police Department, John Does, John Roes, ABC Entities and
Joseph Does)

97. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1 through 96 and Counts One through Seven of the Complaint as if fully set forth at length herein.

98. The defendant Weinlein, along with agents, servants and employees of the Township and/or the Police Department and defendants McNichols, John Does, John Roes, The ABC Entities and Joseph Does made a decision to prosecute plaintiff for insurance fraud.

99. In an attempt to insulate themselves from any claims involving said prosecution, the aforementioned defendants provided the information to the Prosecutor's Office and enlisted representatives of that office to sign formal complaints and present the matter to the Grand Jury. However, defendants and each of them, encouraged, advised and/or participated in the filing of charges against the plaintiff.

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100. The aforementioned defendants knew or should have known that the information provided to the Prosecutor's Office was incomplete and that the investigation that had been done was not done in good faith and was done solely for the purposes of obtaining information to make it appear that plaintiff had committed insurance fraud and no effort was made to determine whether or not her claims were in fact legitimate.

101. In fact there was no probable cause for the criminal charges that were filed against the plaintiff.

102. All of the criminal charges were dismissed against the plaintiff.

103. As a result of the conduct of defendants, Weimlein, the Township, the Police Department, McNichols, John Does, John Roes, The ABC Entities and Joseph Does plaintiff was suspended without pay from her job and suffered not only lost wages, but other economic injuries as a result of being deprived of her livelihood.

104. As a result of the conduct of defendants and each of them, plaintiff suffered personal injuries including, but not limited to, severe emotional distress. Said emotional distress has resulted in physical manifestations including, but not limited to, migraine headaches, neck and back pain and other physical ailments.

105. In this regard, the conduct of the aforementioned defendants was done with malice and was especially egregious, willful and wanton and done with the intent to injure plaintiff.

WHEREFORE, plaintiff demands judgment against defendants, Weimlein, the Township, the Police Department, McNichols, John Does, John Roes, The ABC Entities and Joseph Does jointly, severally and in the alternative for compensatory and punitive damages, interest, cost of suit and reasonable attorney's fees.

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COUNT NINE

(Malicious Prosecution – Defendants, Weinlein, Berkeley Township
the Berkeley Township Police Department, John Does, John Roes, ABC Entities and
Joseph Does)

106. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1 through 105 and Counts One through Seven of the Complaint as if fully set forth at length herein.

107. The defendant Weinlein, along with agents, servants and employees of the Township and/or the Police Department and McNichols, John Does, John Roes, The ABC Entities and Joseph Does made a decision to prosecute plaintiff for official misconduct.

108. In an attempt to insulate themselves from any claims involving said prosecution, the aforementioned defendants provided the information to the Prosecutor's Office and enlisted representatives of that office to sign formal complaints and present the matter to the Grand Jury. However, defendants and each of them, encouraged, advised and/or participated in the filing of charges against the plaintiff.

109. The aforementioned defendants knew or should have known that the information provided to the Prosecutor's Office was incomplete and that the investigation that had been done was not done in good faith and was done solely for the purposes of obtaining information to make it appear that plaintiff had committed official misconduct and no effort was made to determine whether or not her claims were in fact legitimate.

110. In fact there was no probable cause for the criminal charges that were filed against the plaintiff.

111. All of the criminal charges were dismissed against the plaintiff.

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112. As a result of the conduct of defendants and each of them plaintiff was suspended without pay from her job and suffered not only lost wages, but other economic injuries as a result of being deprived of her livelihood.

113. As a result of the conduct of defendants, Weinlein, the Township, the Police Department, McNichols, John Does, John Roes, The ABC Entities and Joseph Does plaintiff suffered severe emotional distress. Said emotional distress has resulted in physical manifestations including, but not limited to, migraine headaches, neck and back pain and other physical ailments.

114. In this regard, the conduct of the aforementioned defendants was done with malice and was especially egregious, willful and wanton and done with the intent to injure plaintiff.

WHEREFORE, plaintiff demands judgment against defendants, Weinlein, the Township, the Police Department, McNichols, John Does, John Roes, The ABC Entities and Joseph Does jointly, severally and in the alternative for compensatory and punitive damages, interest, cost of suit and reasonable attorney's fees.

COUNT TEN

(Tort of Outrage – Defendants, Weinlein, the Township, the Police Department, John Does, John Roes, The ABC Entities and Joseph Does)

115. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1 through 114 and Counts One through Nine of the Complaint as if fully set forth at length herein

116. The conduct of defendant Weinlein and the agents, servants and employees of the Township, the Police Department, John Does, John Roes, The ABC Entities and Joseph Does in attempting to remove plaintiff from her employment by way of criminal and departmental

charges and by discriminating against her and creating a hostile work environment were done intentionally and/or recklessly.

117. The conduct of the aforesaid defendants in this regard was extreme and outrageous.

118. As a direct and proximate result of the misconduct in this regard, plaintiff suffered severe emotional distress.

119. The emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure.

120. In addition, as a direct and proximate result of defendants' conduct, plaintiff has suffered severe economic injury.

WHEREFORE, plaintiff demands judgment against the defendant Weintein and the agents, servants and employees of the Township, the Police Department, John Does, John Roes, The ABC Entities and Joseph Does jointly, severally and in the alternative for compensatory and punitive damages, interest, cost of suit and reasonable attorney's fees.

COUNT ELEVEN

(Attorneys' Fees - The Township)

121. Plaintiff repeats and repleads each and every allegation contained in paragraphs 1 through 120 and Counts One through Ten of the Complaint as if fully set forth at length herein.

122. In filing disciplinary charges against plaintiff, the Township has alleged that plaintiff is a member of the Police Department.

123. As a member of the Police Department plaintiff was charged both criminally and administratively with allegations arising out of her official duties.

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124. As a result of those criminal and administrative charges plaintiff retained an attorney and expended substantial sums to defend herself against the charges.

125. Plaintiff has been completely exonerated on all criminal charges.

126. Pursuant to statute, plaintiff is entitled to reimbursement of all legal fees and costs associated with defending herself on the charges initiated by the Township.

127. Plaintiff has demanded reimbursement but the Township has refused her request.

WHEREFORE, plaintiff demands judgment against the Township for reimbursement of all legal fees and expenses incurred by plaintiff together with interest, costs of suit, attorneys' fees for this action and such other relief as the Court may deem just and equitable.

JURY DEMAND

The plaintiff demands a trial by a jury of six persons of all the issues in this case in accordance with R. 1:8-2.

TRIAL ATTORNEY DESIGNATION

Pursuant to Rule 4:25-4, Robyn B. Gigl is hereby designated as trial counsel in the above captioned matter.

STEIN, McGUIRE, PANTAGES & GIGL
Attorneys for Plaintiff, Denise Capizzi

By: 

LAVINIA L. MEARS

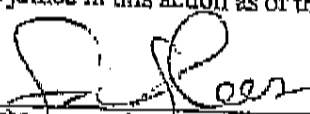
CERTIFICATION PURSUANT TO R. 4:5-1

Lavinia L. Mears upon her oath, deposes and says:

1. The above entitled litigation is not the subject of other litigation which is presently pending in the Superior Court of New Jersey.
2. An arbitration proceeding is not contemplated as of this date.
3. There are no other parties who should be joined in this action as of this time.

Dated:

8/19/09


LAVINIA L. MEARS