

WHITE AND WILLIAMS LLP

BY: Michael O. Kassak, Esquire
David M. Ragonese, Esquire

LibertyView
457 Haddonfield Road, Suite 400
Cherry Hill, NJ 08002
856-317-3600

ATTORNEY FOR DEFENDANTS, BOROUGH OF PINE HILL, PATRICIA
HENDRICKS, THOMAS CARDIS, AND FRED CONSTANTINO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

H.G., in her own right and H.G. as :	:
Guardian Ad Litem of C.G., P.J.G. :	CIVIL ACTION
and D.G., :	:
:	C.A. No. 12-2954
Plaintiffs, :	:
v. :	:
:	NOTICE OF MOTION TO AMEND
BOROUGH OF PINE HILL, PATRICIA :	AND/OR SUPPLEMENT THE
HENDRICKS, THOMAS CARDIS, FRED :	PLEADINGS
CONSTANTINO, PINE HILL FIRE :	:
DISTRICT NO. 1 and JOHN GREER, :	:
Defendants. :	:

TO: F. Michael Daily, Jr., Esquire
F. MICHAEL DAILY, JR., LLC
Sentry Office Plaza, Suite 106
216 Haddon Avenue
Westmont, NJ 08108

Eric L. Harrison, Esquire
METHFESSEL & WERBEL
3 Ethel Road, Suite 300
P.O. Box 3012
Edison, NJ 08818

PLEASE TAKE NOTICE that the undersigned counsel shall
move before the United States District Court for the
District of New Jersey, Camden Vicinage, Mitchell H. Cohen

Federal Building, 1 John F. Gerry Plaza, Fourth & Cooper Streets, Camden, New Jersey on November 5, 2012 at 9:00 a.m. for an Order granting Moving Defendants, Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, and Fred Constantino, leave to amend and/or supplement the pleadings by filing a third-party complaint pursuant to Fed. R. Civ. P. 15(a)(2).

PLEASE TAKE FURTHER NOTICE that the undersigned shall rely upon the enclosed Brief in support of said Motion.

Oral argument is respectfully requested.

WHITE AND WILLIAMS, LLP
Attorneys for Defendants,
Borough of Pine Hill,
Patricia Hendricks, Thomas
Cardis, and Fred
Constantino

By: s/Michael O. Kassak

Dated: October 1, 2012

WHITE AND WILLIAMS LLP

BY: Michael O. Kassak, Esquire
David M. Ragonese, Esquire
LibertyView
457 Haddonfield Road, Suite 400
Cherry Hill, NJ 08002
856-317-3600

ATTORNEY FOR DEFENDANTS, BOROUGH OF PINE HILL, PATRICIA
HENDRICKS, THOMAS CARDIS, AND FRED CONSTANTINO

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

H.G., in her own right and H.G. as :	:
Guardian Ad Litem of C.G., P.J.G. :	CIVIL ACTION
and D.G., :	:
Plaintiffs, :	C.A. No. 12-2954
v. :	:
BOROUGH OF PINE HILL, PATRICIA :	ATTORNEY DECLARATION IN
HENDRICKS, THOMAS CARDIS, FRED :	SUPPORT OF DEFENDANTS'
CONSTANTINO, PINE HILL FIRE :	MOTION FOR LEAVE TO AMEND
DISTRICT NO. 1 and JOHN GREER, :	AND/OR SUPPLEMENT THE
Defendants. :	PLEADINGS

I, Michael O. Kassak, Esquire, of full age, here by
declares as follows:

1. I am an attorney at law in the State of New Jersey and
an Partner with the law firm of White and Williams LLP on behalf
of Defendants, Borough of Pine Hill, Patricia Hendricks, Thomas
Cardis, and Fred Constantino. I am fully familiar with the
facts set forth herein.

2. Attached hereto as Exhibit A is a true and correct
copy of Plaintiffs' Complaint.

3. Attached hereto as Exhibit B is a true and correct copy of the Moving Defendants' Proposed Third-Party Complaint.

4. Attached hereto as Exhibit C is a true and correct copy of the Court's July 19, 2012 Scheduling Order.

Pursuant to 28 U.S.C. §1736, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 1st day of October, 2012

s/Michael O. Kassak

EXHIBIT A

F. MICHAEL DAILY, JR., LLC
ATTORNEY AT LAW
216 Haddon Avenue • Sentry Office Plaza
Suite 106
Westmont, New Jersey 08108
Telephone No. (856) 833-0006
Fax No. (856) 833-1083
Our File #F-2348-12

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

H.G, in her own right and H.G. : CIVIL ACTION NO.
as Guardian Ad Litem of C.G.,
P.J.G. and D.G.; :

Plaintiffs, :

v. :

BOROUGH OF PINE HILL, PATRICIA : COMPLAINT
HENDRICKS, THOMAS CARDIS, FRED
CONSTANTINO, PINE HILL FIRE
DISTRICT NO.1, and JOHN GREER;

Defendants

Plaintiffs, by way of complaint against defendant, hereby
aver:

PARTIES, JURISDICTION AND VENUE

1. The plaintiff, H.G. is individual who resides in
Lindenwold, New Jersey and is the parent of C.G., P.J.G. and D.G.

2. The plaintiffs, C.G., P.J.G. and D.G., are minors ages
10, 9 and 6 respectively and they reside with H.G.

3. The plaintiff, H.G., is the mother of the minor

plaintiffs, she consents to act as their guardian ad litem in these proceedings and she has no conflict interest in respect to them.

4. The defendant, Borough of Pine Hill, is a governmental entity created under the laws of the State of New Jersey and maintains a principal place of business at 45 West 7th Avenue, Pine Hill, Camden County, New Jersey.

5. The defendant, Patricia Hendricks, is an individual who at all time relevant to this complaint was employed by the defendant, Borough of Pine Hill, as a deputy municipal clerk. She is sued in this matter in both her individual and official capacities.

6. The defendant, Thomas Cardis, is an individual who at all time relevant to this complaint was employed by the defendant, Borough of Pine Hill, as the municipal clerk of Pine Hill. He is sued in this matter in both his individual and official capacities.

7. The defendant, Fred Constantino, is an individual who at all time relevant to this complaint was employed by the defendant, Borough of Pine Hill, as mayor. He is sued in this matter in both his individual and official capacities.

8. The defendant, Pine Hill Fire District No 1, is a governmental entity created under the laws of the State of New Jersey and maintains a principal place of business at 1109 Erial Road, Pine Hill, Camden County, New Jersey.

9. The defendant, John Greer, is an individual who at all

times relevant to this complaint was employed by the defendant, Borough of Pine Hill, as the code enforcement officer and the defendant, Pine Hill Fire District No 1, as fire chief. He is sued in this matter in both his individual and official capacities.

10. This suit arises under the First and Fourteenth Amendments of the United States Constitution and is brought pursuant to 42 U.S.C. §1983, together with pendent state constitutional and common law claims.

11. The Court has jurisdiction over plaintiff's federal claims pursuant to 38 U.S.C. §1331, as an action arising under the Constitution of the United States, and 28 U.S.C. §1343(A)(3), to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States; and over plaintiffs pendent state law claims pursuant to 28 U.S.C. §1367.

12. The Court has authority to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 et seq.

13. Venue is properly laid pursuant to 28 U.S.C. §1391(b) in the District of New Jersey, because defendant is located in this district, and the events giving rise to the claim occurred in this district.

FACTUAL ALLEGATIONS CONCERNING THE MINOR PLAINTIFFS

14. H.G.'s spouse is a former employee of Pine Hill who was discharged for alleged misconduct and mental fitness issues.

15. Subsequently H.G.'s spouse exercised his rights to obtain judicial review of his dismissal.

16. In the foregoing judicial proceeding, the New Jersey Superior Court entered a final judgment in favor of H.G.'s spouse reversing his dismissal.

17. Pine Hill thereafter appealed said judgment to the Superior Court of New Jersey, Appellate Division.

18. On November 17, 2011, while the aforesaid appeal was pending, H.G.'s spouse resolved the aforesaid proceedings by way of a settlement.

19. On December 15, 2011, in furtherance of such settlement H.G.'s spouse and H.G. executed a general release in favor of Pine Hill.

20. In said release, H.G. released "all claims, known or unknown, which ... H.G... has, or may have, or may have had, against the Borough of Pine Hill and any elected or appointed officer, official, or employee including counselor, special counsel, as of the date of this release."

21. The aforesaid release did not mention or cover any claims held by the minor plaintiffs.

22. On October 6, 2011, one John Schmidt a member of the public who is an advocate of transparency in government served upon Pine Hill through defendant, Hendricks a request for documents related to the litigation between H.G.'s spouse and Pine Hill.

23. Subsequently, the scope of the request was reviewed by defendants Hendricks, Cardis, and Constantino.

24. Thereafter Mr. Schmidt, after a conversation with defendant Constantino, agreed to limit the scope of his request to "the motions/briefs not any supporting documents filed with them."

25. Notwithstanding the foregoing the defendants, Hendricks, Cardis, and Constantino, as decision makers with final authority released on October 31, 2011, to John Schmidt numerous documents, some relevant to the litigation and some not, that contained confidential and private information regarding and impacting the minor plaintiffs.

26. The aforesaid information was intentionally released to embarrass and cast H.G.'s spouse and his family in a poor light.

27. The aforesaid documents were sent to Mr. Schmidt via email and stored on a server at Catholic University and the Borough's email server.

28. Included in the information released were the social security numbers of the minor plaintiffs.

29. Included in the information released were observations of a mental health provider regarding the mental health of minor plaintiff C.G.

30. Included in the information released was information suggesting that the minor plaintiffs' mother, H.G., abused prescription medication.

31. Included in the information released was information documenting that the household, in which minor plaintiffs resided, had been investigated for acts of domestic violence on the part of both of their parents.

32. As a result of the release of the aforesaid private information the privacy of the plaintiffs, C.G., P.J.G. and D.G. has been violated and their standing in the community diminished.

33. As a result of the release of the aforesaid private information concerning the minor plaintiffs, pecuniary expenses must be incurred to protect their identities from fraud.

34. As a result of the release of the aforesaid private information concerning the minor plaintiffs, they have sustained emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life.

FACTUAL ALLEGATIONS CONCERNING PLAINTIFF H.G.

35. Prior to May 4, 2012, H.G. along with other concerned citizens brought to the attention of the news media the fact that fire district members and equipment were involved in the replacement of the roof of the private residence of present Pine Hill Mayor, Christopher Green.

36. Thereafter a news reporter accompanied by a television crew questioned various public officials, including defendant Greer in regard to the propriety of the foregoing use of the Fire District's members and equipment.

37. On May 4, 2012, defendant, Greer, in an official vehicle of the defendant district, drove to a home located at 10 Woodrow Road, Pine Hill, which was the residence of another individual involved in the reporting of the "roof incident" to the news media.

38. At that time H.G. was visiting said residence.

39. At said time and place defendant, Greer, proceeded to verbally abuse and threaten both H.G. and the other individual on account of the matters that they had reported to the news media and then he assaulted H.G. when she refused to permit him entry into the home.

40. As a result of the foregoing incident H.G. sustained a physical invasion of her person along with emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life.

FIRST COUNT

41. The aforesaid actions of the defendants Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, and Fred Constantino, violated the minor plaintiffs' right to privacy as protected by the due process clause of the Fourteenth Amendment.

42. As a result of the foregoing conduct of these defendants, the minor plaintiffs sustained the damages set forth in the Factual Allegations ¶¶33 to 35.

43. The aforesaid actions of these defendants violated the minor plaintiffs clearly established right to due process and they

are therefore entitled to seek redress for said violations pursuant to 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs, C.G., P.J.G. and D.G., demand judgement for:

- a. Compensatory damages against the defendants, Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, and Fred Constantino;
- b. Nominal damages in the event that compensatory damages are not awarded;
- c. Punitive damages against the defendants Patricia Hendricks, Thomas Cardis, and Fred Constantino;
- d. Costs of this action;
- e. Reasonable attorney's fees and costs incurred pursuant to 42 U.S.C. §1988; and,
- f. Such other and further relief as this Court may deem appropriate and just.

SECOND COUNT

44. The aforesaid actions of the defendant, John Greer, on May 4, 2012, were taken in order to retaliate against plaintiff, H.G. for exercising her rights to free speech as protected by the First Amendment.

45. The aforesaid actions of the defendant, John Greer, on May 4, 2012, were taken while acting as the fire chief and therefore constituted an action by a decisionmaker with final

authority to make policy and thus the defendant Pine Hill Fire District No 1., is liable for same.

46. As a result of the foregoing conduct of the defendants, John Greer and Pine Hill Fire District No 1., the plaintiff, H.G., sustained the damages set forth in the Factual Allegations ¶41.

47. The aforesaid actions of these defendants violated H.G.'s clearly established right to free speech and she is therefore entitled to seek redress for said violations pursuant to 42 U.S.C. § 1983.

Wherefore plaintiff, H.G., demands judgement for:

- a. Compensatory damages against the defendants, John Greer and Pine Hill Fire District No 1.;
- b. Nominal damages in the event that compensatory damages are not awarded;
- c. Punitive damages against the defendant John Greer;
- d. Costs of this action;
- e. Reasonable attorney's fees and costs incurred pursuant to 42 U.S.C. §1988; and,
- f. Such other and further relief as this Court may deem appropriate and just.

THIRD COUNT

48. The aforesaid actions of the defendants Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, and Fred Constantino, violated the minor plaintiffs' right to privacy as protected by the

Constitution of the State of New Jersey.

49. As a result of the foregoing conduct of these defendants, the minor plaintiffs sustained the damages set forth in the Factual Allegations ¶¶33 to 35.

50. The aforesaid actions of these defendants violated the minor plaintiffs' clearly established right to privacy and they are therefore entitled to seek redress for said violations pursuant to N.J.S.A. 10:6-2.

WHEREFORE, Plaintiffs, C.G., P.J.G. and D.G., demand judgement for:

- a. Compensatory damages against the defendants, Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, and Fred Constantino;
- b. Nominal damages in the event that compensatory damages are not awarded;
- c. Punitive damages against the defendants Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, and Fred Constantino;
- d. Costs of this action;
- e. Reasonable attorney's fees; and,
- f. Such other and further relief as this Court may deem appropriate and just.

FOURTH COUNT

51. The aforesaid actions of the defendant, John Greer, on

May 4, 2012, were taken in order to retaliate against plaintiff, H.G., for exercising her rights to free speech as protected by Article 1, of the New Jersey Constitution.

52. The aforesaid actions of the defendant, John Greer, on May 4, 2012, were taken while acting as the fire chief and therefore constituted an action by a decisionmaker with final authority to make policy and thus the defendant Pine Hill Fire District No 1., is liable for same.

53. As a result of the foregoing conduct of the defendants, John Greer and Pine Hill Fire District No 1., the plaintiff, H.G., sustained the damages set forth in the Factual Allegations ¶41.

54. The aforesaid actions of these defendants violated H.G.'s clearly established right to free speech and she is therefore entitled to seek redress for said violations pursuant to N.J.S.A. 10:6-2.

Wherefore plaintiff, H.G., demands judgement for:

- a. Compensatory damages against the defendants, John Greer and Pine Hill Fire District No 1.;
- b. Nominal damages in the event that compensatory damages are not awarded;
- c. Punitive damages against the defendants John Greer and Pine Hill Fire District No 1.;
- d. Costs of this action;
- e. Reasonable attorney's fees; and,

- f. Such other and further relief as this Court may deem appropriate and just.

FIFTH COUNT

55. In the event it is determined that the defendant, John Greer, on May 4, 2012 was acting solely as a private citizen, then the plaintiff H.G. asserts his actions on said date constituted an intentional tort.

56. As a result of the foregoing conduct of the defendant, John Greer, the plaintiff, H.G., sustained the damages set forth in the Factual Allegations ¶41.

Wherefore plaintiff, H.G., demands judgement for:

- a. Compensatory damages against the defendant, John Greer;
- b. Punitive damages against the defendant, John Greer;
- c. Prejudgment interest; and,
- d. Costs of suit.

F. MICHAEL DAILY, JR., LLC
Participating Attorney for the Plaintiff
on behalf of The Rutherford Institute

BY: /s/ F. Michael Daily, Jr.
F. Michael Daily, Jr.

Jury Demand

Plaintiff herewith demands a jury trial as to all issues which are triable by jury.

**F. MICHAEL DAILY, JR., LLC
Participating Attorney for the Plaintiff
on behalf of The Rutherford Institute**

BY: */s/ F. Michael Daily, Jr.*
F. Michael Daily, Jr.

Dated: May 17, 2012.

EXHIBIT B

WHITE AND WILLIAMS LLP

BY: Michael O. Kassak, Esquire
David M. Ragonese, Esquire

LibertyView
457 Haddonfield Road, Suite 400
Cherry Hill, NJ 08002
856-317-3600

Attorney for Defendants/Third-Party Plaintiffs, Borough of Pine Hill, Patricia Hendricks,
Thomas Cardis, and Fred Constantino

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

H.G., in her own right and H.G. as Guardian Ad
Litem of C.G., P.J.G. and D.G.,

Plaintiffs,

v.

BOROUGH OF PINE HILL, PATRICIA
HENDRICKS, THOMAS CARDIS, FRED
CONSTANTINO, PINE HILL FIRE DISTRICT
NO. 1 and JOHN GREER,

Defendants.

AND

BOROUGH OF PINE HILL, PATRICIA
HENDRICKS, THOMAS CARDIS, and FRED
CONSTANTINO,

Third Party Plaintiffs,

v.

JOHN SCHMIDT,

Third Party Defendants.

:
: CIVIL ACTION

:
: C.A. No. 12-2954

:
: **THIRD-PARTY COMPLAINT AND**
: **JURY DEMAND**

Third-Party Plaintiffs, Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, and Fred Constantino (“third-party plaintiffs”), by and through their attorneys, White and Williams LLP, by way of Third-Party Complaint and under information and belief, aver as follows:

PARTIES

1. Third-party defendant, John Schmidt, is an individual residing 1 West Thompson Avenue, City of Gloucester, County of Camden, State of New Jersey.

JURISDICTION

2. This Court has jurisdiction over the third-party complaint pursuant to 28 U.S.C § 1367.

FACTS

3. On October 6, 2011, John Schmidt served upon Pine Hill through third-party plaintiff, Hendricks, a request for documents related to the litigation between a resident of Lindenwold and Pine Hill.

4. On October 31, 2011, the third-party plaintiffs inadvertently released to John Schmidt numerous documents that contained confidential and private information regarding and impacting the minor plaintiffs.

5. After receiving the confidential and private information, John Schmidt intentionally disclosed and transmitted that information to others, including a newspaper reporter.

6. The minor plaintiffs had a reasonable expectation of privacy in the confidential and private information.

7. The intentional dissemination of the confidential and private information is offensive to a reasonable person.

8. Mr. Schmidt's intentional dissemination of the confidential and private information served no legitimate interest of the public in being apprised of the facts publicized.

FIRST COUNT

9. Third-party plaintiffs incorporate by reference each of the above averments contained in paragraphs 1 through 8 as if fully set forth herein.

10. Schmidt's intentional dissemination the minor plaintiffs' confidential and private information constitutes a violation of the plaintiffs' right to privacy.

WHEREFORE, third-party plaintiffs demand an allocation of fault and apportionment of liability and damages between the parties and third-party defendant, John Schmidt, pursuant to the New Jersey Joint Tortfeasors Contribution Act, N.J.S.A. 2A:15-5.3, et seq., and every other applicable statute or common law principle setting forth the right of allocation or apportionment, and any other relief the Court deems equitable and just.

SECOND COUNT

11. Third-party plaintiffs incorporate by reference each of the above averments contained in paragraphs 1 through 10 as if fully set forth herein.

12. While denying any and all liability on its part, third-party plaintiffs demand common law, statutory, and contractual indemnification.

WHEREFORE, third-party plaintiffs demand judgment awarding compensatory and consequential damages, and any other relief the Court deems equitable and just.

THIRD COUNT

13. Third-party plaintiffs incorporate by reference each of the above averments contained in paragraphs 1 through 12 as if fully set forth herein.

14. Without admitting any liability herein, Third-Party Plaintiffs hereby demand contribution from John Schmidt pursuant to the provisions of the Joint Tortfeasor Act, N.J.S.A. 2A:53-1 and the Comparative Negligence Act, N.J.S.A. 2A:15-5.3.

WHEREFORE, third-party plaintiffs demand judgment awarding compensatory and consequential damages, and any other relief the Court deems equitable and just.

JURY DEMAND

Third-party plaintiffs demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Third-party plaintiffs hereby designate Michael O. Kassak, Esquire as trial counsel in this matter.

WHITE AND WILLIAMS LLP
Attorneys for Third-Party Plaintiffs

BY: s/Michael O. Kassak

Dated: August ____, 2012

EXHIBIT C

Ragonese, David

From: njdefiling@njd.uscourts.gov
Sent: Thursday, July 19, 2012 10:13 AM
To: njdefiling@njd.uscourts.gov
Subject: Activity in Case 1:12-cv-02954-JHR-JS H.G. v. BOROUGH OF PINE HILL et al Scheduling Order

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U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered on 7/19/2012 at 10:12 AM EDT and filed on 7/19/2012

Case Name: H.G. v. BOROUGH OF PINE HILL et al

Case Number: 1:12-cv-02954-JHR-JS

Filer:

Document Number: 15

Docket Text:

SCHEDULING ORDER: Telephone Status Conference set for 12/17/2012 @ 10:00 AM before Magistrate Judge Joel Schneider. Amended Pleadings due by 10/31/2012. Pretrial Factual Discovery extended to 1/31/2013. Dispositive Motions due by 4/1/2013. Signed by Magistrate Judge Joel Schneider on 7/18/2012. (drw)

1:12-cv-02954-JHR-JS Notice has been electronically mailed to:

DAVID M. RAGONESE ragonesed@whiteandwilliams.com

ERIC L. HARRISON harrison@methwerb.com, zisa-morrow@methwerb.com

F. MICHAEL DAILY, JR dailyfm@hotmail.com, fmdlaw.amy@verizon.net

MICHAEL O. KASSAK kassakm@whiteandwilliams.com, wamplerr@whiteandwilliams.com

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

H.G., in her own right and H.G. as :
Guardian Ad Litem of C.G., P.J.G. : CIVIL ACTION
and D.G., :
 : C.A. No. 12-2954
 :
 Plaintiffs, :
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 v. :
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 :
 BOROUGH OF PINE HILL, PATRICIA :
 HENDRICKS, THOMAS CARDIS, FRED :
 CONSTANTINO, PINE HILL FIRE :
 DISTRICT NO. 1 and JOHN GREER, :
 Defendants. :

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND AND/OR
SUPPLEMENT THE PLEADINGS PURSUANT TO FED. R. CIV. P. 15(a)(2)

WHITE AND WILLIAMS, LLP
LibertyView
457 Haddonfield Road, Suite 400
Cherry Hill, NJ 08002
Attorneys for Borough of Pine Hill,
Patricia Hendricks, Thomas Cardis,
and Fred Constantino

On the brief:
Michael O. Kassak, Esquire
David M. Ragonese, Esquire

DATED: October 1, 2012

Electronically filed
Return Date: November 5, 2012

PRELIMINARY STATEMENT

Defendants, Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, and Fred Constantino (hereinafter referred to as the "Pine Hill Defendants"), respectfully submit this memorandum of law in support of their motion for leave to amend and/or supplement the pleading pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure. The Pine Hill Defendants seek to file a Third-Party Complaint naming a Gloucester City resident, John Schmidt, as a Third-Party Defendant. The basis for the Third-Party Complaint is the Pine Hill Defendants' contention that Mr. Schmidt obtained and then intentionally and knowingly distributed personal and confidential information relating to the plaintiffs.

As a result, the Pine Hill Defendants seek an allocation of fault among all defendants and Mr. Schmidt for any damages that might be awarded to plaintiffs for the release of the information. In addition, the Pine Hill Defendants seek a defense and indemnification from Mr. Schmidt arising from the claims of plaintiffs. A copy of the proposed Third-Party Complaint is attached as Exhibit B to the Declaration of Michael O. Kassak dated October 1, 2012, and submitted in support of this motion.

PLAINTIFFS' CLAIMS

Plaintiffs, H.G., in her own right, and H.G. as Guardian Ad Litem of C.G., P.J.G., and D.G. (hereinafter collectively referred to as "Plaintiffs"), commenced this action on May 17, 2012 against the Borough of Pine Hill, Patricia Hendricks, Thomas Cardis, Fred Constantino, Pine Hill Fire District No. 1, and John Greer. Against the Pine Hill Defendants, Plaintiffs seek damages pursuant to 42 U.S.C. § 1983 and the New Jersey Constitution for an alleged violation of their constitutional right to privacy.

Specifically, Plaintiffs allege that C.G., P.J.G. and D.G., are minors ages 10, 9 and 6 respectively and they reside with their mother, H.G. See Declaration of Michael O. Kassak, dated October 1, 2012 (hereinafter "Kassak Decl.") at Exhibit A, Plaintiffs' Complaint at ¶¶ 2-3. According to the Complaint, on October 6, 2011, John Schmidt, a member of the public who is an advocate of transparency in government served upon Pine Hill through defendant, Hendricks a request for documents related to litigation between H.G.'s spouse and Pine Hill. Id. at ¶ 22.

It is alleged that the scope of the request was reviewed by defendants Hendricks, Cardis, and Constantino, and thereafter, Mr. Schmidt, agreed to limit the scope of his request to "the motions/briefs not any supporting documents filed with them." Id. at ¶ 23. The Plaintiffs claim that the Pine Hill Defendants

released on October 31, 2011, to John Schmidt numerous documents that contained confidential and private information regarding and impacting the minor plaintiffs. Id. at ¶¶ 24-25.

The information received by Mr. Schmidt allegedly contained the social security numbers of the minor children, observations of a mental health provider regarding the mental health of minor plaintiff C.G., information suggesting that the minor plaintiffs' mother, H.G., abused prescription medication, and information documenting that the household, in which minor plaintiffs resided, had been investigated for acts of domestic violence on the part of both of their parents. Id. at ¶¶ 28-31. According to Plaintiffs, the release of the information to Mr. Schmidt violated their privacy and diminished their standing in the community. Id. at ¶ 32. The Plaintiffs seek compensatory and punitive damages, as well as attorney's fees and costs, for what they claim was the intention dissemination of their private information. See Plaintiff's Complaint at First and Third Counts.

Based upon information and belief, Mr. Schmidt intentionally disclosed the minor plaintiffs' confidential information he received to others, including a newspaper reporter. He did so despite knowing the information he disclosed was confidential. See Kassak Decl. at Exhibit B. The Court by Order entered July 19, 2012 has given the parties until

October 31, 2012 to amend the pleadings. See Kassak Decl. at Exhibit C.

LEGAL ARGUMENT

I. LEAVE TO AMEND and/or SUPPLEMENT THE PLEADINGS SHOULD BE GRANTED

A. Standard For Granting Leave to Amend the Pleadings

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that the Court "should freely give leave [to amend the pleadings] when justice so requires." See Bechtel v. Robinson, 886 F.2d 644, 652 (3d Cir. 1989); Balthazar v. Atl. City Med. Ctr., 137 Fed. Appx. 482, 488 (3d Cir. 2005). The Third Circuit has applied a "strong liberality" in permitting leave to file an amended pleading. Balthazar, 137 Fed. Appx. at 488 (citations omitted). Absent any reason to deny leave, such as undue delay, prejudice to the opposing party or futility of the amendment, leave to amend should be granted. Foman v. Davis, 371 U.S. 178, 182 (1962).

The following four factors are commonly used to determine the propriety of a motion for leave to amend: (1) whether granting leave to amend would result in prejudice to the opposing party; (2) whether there exists bad faith; (3) whether granting leave to amend would result in undue delay; and (4) whether the amendment would be futile. Ibid.

B. Granting Leave to Amend the Answer Will Not Result in Prejudice Or Undue Delay

In applying Fed. R. Civ. P. 15(a), the Third Circuit has held that the possibility of "prejudice to the non-moving party is the touchstone for the denial of an amendment." Lorenz v. CSX Corp., 1 F.3d 1406, 1414 (3d Cir. 1993) (quoting Cornell & Co., Inc. v. Occupational Safety & Health Review Comm'n, 573 F.2d 820, 823 (3d Cir. 1978)). It is the opposing party's burden to prove that such prejudice will occur. Kiser v. General Electric Corp., 831 F.2d 423, 428 (3d Cir. 1987). Indeed, in the Third Circuit the nonmoving party has a heavier burden than merely claiming prejudice, it must show that an unfair disadvantage or deprivation will result by allowing the amendment. See Heyl & Patterson Int'l, Inc. v. F.D. Rich Housing of the Virgin Islands, Inc., 663 F.2d 419, 426 (3d Cir. 1981).

In this case, there is no prejudice to any party particularly in light of the fact that the Court's July 19, 2012 Scheduling Order sets the deadline for amendment to the pleadings at October 31, 2012. Also, there is no undue delay. The fact discovery period does not end until January 31, 2013, and there have been no depositions to date. Therefore, prejudice or undue delay are not grounds to deny the Pine Hill Defendants' motion.

C. Defendants' Motion to Amend is Made in Good Faith

The Pine Hill Defendants' good faith here is manifest. They are seeking to assert a meritorious third-party claim for allocation of fault and indemnification. Moreover, the Pine Hill Defendants are making this motion within the period established in the Scheduling Order, and prior to significant discovery having taken place in this action. Also, pursuant to the Scheduling Order, the parties will have an additional three months to obtain discovery on the third-party claim. Since the Pine Hill Defendants are not acting in bad faith, justice requires that leave to amend be granted.

D. The Proposed Amendment Is Not Futile

A motion for leave to amend is to be liberally granted where from the underlying facts or circumstances, the proposed amendment is legally cognizable. In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997). Here, the proposed Third-Party Complaint seeks to allocate fault to Mr. Schmidt and to compel him to provide a defense and indemnification to the defendants based upon the fact that he invaded the privacy of the plaintiffs and/or improperly publicized private facts by dissemination their private, confidential information.

The tort of invasion of privacy is defined as an intentional intrusion, "physically or otherwise, upon the

solitude or seclusion of another or his private affairs or concerns" that "would be highly offensive to a reasonable person." Bisbee v. John C. Conover Agency, Inc., 186 N.J.Super. 335, 339 (1982) (quoting Restatement (Second) of Torts, supra, § 652B). The tort of improper publication of private facts occurs "when it is shown that the matters revealed were actually private, that dissemination of such facts would be offensive to a reasonable person, and that there is no legitimate interest of the public in being apprised of the facts publicized." Bisbee, 186 N.J.Super. at 340. To succeed in proving that a person committed either of those torts, the plaintiffs must possess a reasonable expectation of privacy in matters and concerns that are contained in the material disseminated by Mr. Schmidt. See id. at 339-41.

Here, the elements of these torts are easily satisfied. For example, according to the Complaint, Mr. Schmidt received the minor children's social security numbers, sensitive mental health information of one of the minor children, criminal investigation information, and personal information relating to the minor children's mother. See Plaintiffs' Complaint at ¶¶ 28-31. This information is undeniably private and the minor children would have a reasonable expectation in the information remaining private. Moreover, based upon information and belief,

Mr. Schmidt knew of the content of the information he possessed and disseminated it anyway.

On its face, the proposed Third-Party Complaint sets forth a prima facie case of invasion of privacy and improper publication of private information. Consequently, there is nothing futile about the proposed pleading and under the liberal pleading standard in federal courts, the Pine Hill Defendants' motion should be granted.

CONCLUSION

For the foregoing reasons, the Pine Hill Defendants respectfully request that the Court grant their motion for leave to amend and/or supplement the pleadings in accordance with the Proposed Third-Party Complaint submitted with this motion and grant them such other and further relief as the Court deems just and proper.

Respectfully submitted,
White and Williams, LLP

By: s/Michael O. Kassak