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Attorney for Plaintiff, Tracey Miller, Sr.

	:	UNITED STATES DISTRICT COURT
TRACEY MILLER, SR.,	:	FOR THE DISTRICT OF NEW JERSEY
576 Pestletown Road	:	CAMDEN VICINAGE
Waterford, NJ 08087	:	
Plaintiff,	:	
	:	
vs.	:	Case No.: 1:11-cv-03405-JEI-JS
	:	
	:	Civil Action
WATERFORD TOWNSHIP	:	
SERGEANT JOSEPH MCNALLY,	:	
OFFICER TIMOTHY LYONS,	:	
OFFICER BRENT J. STAIGER,	:	
SERGEANT RICHARD J. PASSARELLA,	:	
Defendants.	:	SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

Plaintiff, Tracey Miller, Sr. (hereinafter "Plaintiff"), by and through his attorney, Charles A. Fiore, Esquire, hereby brings this Second Amended and Supplemental Complaint against Defendants, Waterford Township, Sergeant Joseph McNally, Officer Timothy Lyons, Officer Brent J. Staiger, Sergeant Richard J. Passarella (hereinafter "Defendants"), and avers as follows:

I. INTRODUCTION

1. This action for declaratory, injunctive, monetary and other appropriate relief is brought by Plaintiff to redress the violations by Defendants of the rights secured to him by the laws of the United States of America and the State of New Jersey.

II. JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and the First, Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded on 28 U.S.C. § 1331

and 1343(3) and the aforementioned statutory and constitutional provisions.

3. Jurisdiction lies over state law claims based on the principles of supplemental jurisdiction, as codified at 28 U.S.C. § 1367.
4. The amount in controversy exclusive of interest and costs exceeds the sum of One Hundred Thousand (\$100,000.00) Dollars.

III. VENUE

5. All the claims herein arose within the jurisdiction of the United States District Court for the District of New Jersey and involve Defendants who reside within the jurisdictional limits. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. § 1391 (b) and (c).

IV. PARTIES

6. Plaintiff, Tracey Miller, Sr., is an adult individual citizen of the State of New Jersey, residing therein at 576 Pestletown Road, Waterford, New Jersey 08089.
7. Defendant, Waterford Township, is a municipal corporation within the State of New Jersey located at 2131 Auburn Avenue, Atco, New Jersey 08004.
8. Defendant, Sergeant Joseph McNally (hereinafter “Sergeant McNally”) is, and was at all times material hereto, a police officer with the Waterford Township Police Department located at 2131 Auburn Avenue, Atco, New Jersey 08004.
9. Defendant, Timothy Lyons (hereinafter “Officer Lyons”) is, and was at all times material hereto, a police officer with the Waterford Township Police Department located at 2131 Auburn Avenue, Atco, New Jersey 08004.
10. Defendant, Brent Staiger (hereinafter “Officer Staiger”) is, and was at all times material hereto, a police officer with the Waterford Township Police Department located at 2131 Auburn Avenue, Atco, New Jersey 08004.
11. Defendant, Sergeant Richard J. Passarella (hereinafter “Sergeant Pasarella”) is, and was

at all times material hereto, a police officer with the Waterford Township Police Department located at 2131 Auburn Avenue, Atco, New Jersey 08004.

V. FACTS

12. Plaintiff is a forty-five (45) year old Caucasian male.
13. Plaintiff was involved in a highly contested divorce matter, which involved equitable distribution and custody of his minor child in Camden County with Jennifer Miller under docket number: FM-04-1005-10. Every time that an issue arose with respect to this matter including the filing of a domestic violence complaint, Defendant, Sergeant McNally, a Waterford Township Police Officer, was involved in the investigation.
14. The Defendants would systematically and continuously harass the Plaintiff while he would frequent the local Wawa and other local establishments throughout Waterford Twp.
15. On or about September 23, 2010, contact between the Plaintiff and the Waterford Township Police Department, commenced. On this particular date and time, Plaintiff was stopped for a violation of 3 9:4-97 by Detective Thackston, from the Waterford Twp. Police Department. Detective Thackston, is not part of the traffic bureau of the Waterford Township Police Department and instead is involved in the investigation of criminal matters. Detective Thackston advised Plaintiff that he pulled him over for “speeding”. Instead of providing the Plaintiff with a summons for speeding, Detective Thackston provided Plaintiff with a ticket for careless driving. After issuing the summons to the Plaintiff and upon departing, Detective Thackston, gestured to the Plaintiff by signaling to him the middle finger.
16. On or about October 14, 2010, approximately one quarter mile from his home, Plaintiff

was stopped by Defendant, Officer Lyons, of the Waterford Twp. Police Department. The Defendant, Officer Lyons, did not advise the Plaintiff as to why he was pulled over, although the Defendant's report indicates that it was for failure to come to a complete stop at an intersection.

17. The Plaintiff was placed under arrest by Defendant, Officer Lyons, and was issued various Summonses which included 39:4-50, 39:4-50.A, 39:4-50.G, 39:4-144, 39:4-97. In addition, the Plaintiff was attempted to be administered the Alcotest by Defendant, Sergeant McNally. This matter was heard in the Waterford Township Municipal Court on April 25, 2011 and the Plaintiff was convicted. The case is currently under Appeal.
18. As a result of the lack of probable cause on behalf of the Defendants, the Plaintiff was falsely imprisoned and falsely charged. This is currently the subject matter of the above referenced Trial and Motion to Suppress and the Appeal. The psycho-physical tests given at the scene were somewhat suspect and they are the subject matter of the Motion to Suppress and present Appeal.
19. Further, Defendant, Waterford Township and Defendant, Officer Lyons, utilized an Intoxilyzer SD5 as a basis for issuing the Summons to the Plaintiff on the street. The Intoxilyzer SD5 was only calibrated at the time of its initial inception and was not in utilization by the Defendant, Waterford Township, at the time the Plaintiff was arrested and has also not been utilized since.
20. On or about October 18, 2010, Plaintiff, was charged with various motor vehicle and criminal offenses. These include the following: 2C:12-10B, 2C:29-2a.(3), 2C:29-1a. On this date, the Plaintiff left his home on Pestletown Road and passed the house of his ex-wife, Jennifer Miller, who resides on the same street, or Pestletown Road. As Plaintiff

passed said home, he took a photograph of Defendant, Sergeant McNally's Waterford Township Police cruiser in the driveway. Present in the car with Plaintiff was his minor child, to wit: SM, date of birth: 9/23/97.

21. Soon after passing the home of Jennifer Miller, Plaintiff realized that he had forgotten something at his home. He turned around and returned to his home. As he passed the house of his estranged wife, Defendant, Sergeant McNally, was seen pulling out of the driveway and preceding ahead of him. All of a sudden, Sergeant McNally, pulled over to the side of the road and let the Plaintiff pass him. Thereafter, Defendant, Sergeant McNally, was now following Plaintiff. Due to the Plaintiff's previous encounters with the Defendant, he became nervous and decided to pull his vehicle off of the roadway. Therefore, the Plaintiff, Tracey Miller, turned and parked his vehicle in an abandoned parking lot located on the Old White Horse Pike in Waterford Township. The Plaintiff, Tracey Miller, saw the Defendant, Sergeant McNally, pass by the empty lot.
22. All of a sudden and without warning, the Defendant, Sergeant McNally, admitted that he made a u-turn after passing the Plaintiff and pulled his vehicle into the abandoned parking lot behind the Plaintiff's vehicle in an attempt to apparently have some sort of confrontation with Plaintiff. In fact, the Defendant, Sergeant McNally's police report from October 18, 2010 indicates that he was at a "homeowner's house" on "Pestletown Road", coincidentally, that homeowner was the Plaintiff's ex-wife and father-in-law's house, namely Jennifer Miller and Tom Watson's home.
23. The Defendant, Sergeant McNally, indicated that he noticed that Plaintiff drove by slowly and that "it appeared he was taking pictures of me". Thereinafter, when Plaintiff pulled into the abandoned lot at Castaways and Defendant, Sergeant Joseph McNally, then drove past

Plaintiff's parked vehicle, he again believed that Plaintiff was "standing on the running board of his truck with a cell phone camera attempting to take a picture of me". Based upon same, Defendant, Sergeant Joseph McNally, made an illegal u-turn and confronted the Plaintiff, violating his First Amendment Rights and made an illegal stop, search and seizure of the Plaintiff in an attempt to intimidate and harass him.

24. When the Defendant, Sergeant McNally exited his vehicle after making the illegal u-turn and pulling in front of Plaintiff's already parked vehicle, he ran up to the vehicle being operated by Plaintiff with his gun drawn. Plaintiff had his window down with the exception of approximately 3 inches. He was instructed by Defendant, Sergeant McNally, to place his hands on the wheel and also to exit the vehicle. The young S.M. telephoned her grandmother and indicated that she believed that Defendant, Sergeant McNally was going to kill the Plaintiff based upon the fact that he had a gun drawn and was yelling "I should have shot you when I had the fucking chance". Plaintiff was in fear of his life and was also concerned that he was going to be shot and killed by the Defendant, Sergeant McNally, right in front of his minor daughter. Therefore, he jumped out of the vehicle and ran to the rear of the vehicle and ran approximately 50 feet and fell to the ground.

25. At that point in time, as Plaintiff was on the ground, he was placed under arrest, handcuffed and then pummeled by Defendant, Sergeant McNally and Defendant, Officer Davis, an off duty Evesham Township Police Officer, as well as other police officers of the Defendant, Waterford Township. As a result of this incident, Plaintiff was charged with eluding police, obstructing justice, resisting arrest, assault on a police officer and a whole host of assorted other charges. It is important to note that although the Plaintiff was charged with serious offenses as a result of this incident, including eluding police,

obstructing justice, resisting arrest, assault on a police officer and a whole host of assorted charges, he has yet to be prosecuted for same, over 2 years later.

26. Further, at the same time, the Defendant, Sergeant McNally, illegally searched the Plaintiff's truck and improperly seized his cellular phone as well as according to his police report from October 18, 2010, "a few recording devices and a cell phone" that was in the "console of" Plaintiff's "truck". The Defendant lacked probable cause to seize these items as well as violated the Plaintiff's rights in accordance with the constitution of the United States, including his first amendment rights.

27. The next incident occurred on Saturday evening, April 9, 2011 at approximately 9:15 p.m. It was purported that Plaintiff was traveling in his truck on the way back to his home on Pestletown Road. Plaintiff's mother, Lavina Miller, had traveled the same road prior to the Plaintiff, or at approximately 8:45 p.m. At that time, Lavina Miller, noticed that there was a police vehicle parked near their home. Plaintiff's mother, Lavina Miller, was traveling with Plaintiff's daughter, a minor, when she noticed the police vehicle. Therefore, Plaintiff's mother had Plaintiff's daughter, contact Plaintiff, via telephone to advise him that there was a Waterford Township police vehicle parked approximately 1/2 mile from their home. Plaintiff's daughter and mother, Lavina Miller, were worried that they were there waiting for Plaintiff and therefore she told him to be careful.

28. Sure enough as the Plaintiff's mother had predicted, the police vehicle that was waiting near their home, upon seeing the Plaintiff, pulled out behind him. The Plaintiff continued to his home, which was only a little distance away. Upon pulling into his driveway and parking his vehicle, the Plaintiff exited same. At the same time, his mother, came out of the residence and inquired as to the Defendant, Officer Lyons, "What did my son

Tracey do now?” Defendant, Officer Lyons, advised the Plaintiff’s mother at that time that the Plaintiff was being stopped for “tinted windows”.

29. In fact, Defendant, Officer Lyon’s Police Investigation Report from the April 9, 2011 confirms Plaintiff’s mother’s statement that Defendant, Officer Lyon’s advised that Plaintiff was being stopped for “tinted windows”. Defendant, Officer Lyon’s incident report from that date in pertinent part states that “on 4/09/11 at approximately 2110 hours I was sitting stationary at the Rosedale Gun Club facing Pestletown Road, perpendicular to the roadway. I observed a large blue pick up truck traveling east on Pestletown Road pass my location. As it passed my vehicle my headlights illuminated the driver’s side window and I could see that the windows were tinted so that I could not see the driver of the vehicle. At that time I entered the roadway behind the vehicle and activated my overhead emergency lights” in an attempt to stop the vehicle for the motor vehicle violation of “tinted windows”.
30. Once the Plaintiff exited his vehicle, at his home on Pestletown Road, that in accordance with the testimony of Defendant, Officer Brent Staiger, at the time of his deposition on April 30, 2012, was less than “a hundred yards maybe; give or take” from the Rosedale Gun Club where Defendant, Officer Timothy Lyons, indicated that he first spotted Plaintiff and noticed his “tinted windows” (see deposition transcript of Officer Staiger, page 71, lines 11-21) **and attempted to pull Plaintiff over and Plaintiff in that “100 yards” or so, failed to stop or yield until such time as he reached his home which was only 100 yards away**, the Plaintiff followed the Defendant, Officer Lyons’ commands and proceeded towards him.
31. Even though the Plaintiff followed Defendant’s commands an altercation occurred whereby Defendant, Officer Lyons violently slammed Plaintiff to the ground, jumped

on his back and pounced his face into the ground, seriously injuring the Plaintiff.

32. By this time, more police officers had arrived at the scene. Defendant, Sergeant McNally, took the place of Defendant, Officer Lyons. He held the Plaintiff down and had his knee in Plaintiff's back and Plaintiff's face was smashed into a large pile of wood chips in that Plaintiff's father had just had a large tree in his yard cut down. The Defendant had one hand behind the Plaintiff's head while holding his face in the wood chips and at the same time began punching him in the left side of his face and head almost knocking him unconscious.

33. At this time, seeing her child in severe danger, the Plaintiff's mother, Lavina Miller, attempted to call 911 for help from the New Jersey State Police. She was advised by the 911 operator that the Waterford Twp. Police Department was already at the scene and that they would not dispatch any other departments for help.

34. At that same time, the elder Mr. Ronald Miller, Sr., the Plaintiff's father, exited his home to inquire what was going on. Mr. Miller was advised by Defendant, Officer Lyons to "shut the fuck up" and that he had things "under control". Feeling desperate and knowing that his wife had just contacted 911 and was advised that they were not sending help, the Plaintiff's father also contacted 911 and just held the phone so that the operators could hear what was occurring.

35. At some point in time, after Plaintiff was handcuffed by Defendant, Sergeant McNally, and leaving him semi-conscious on the ground, Defendant, Officer Lyons, then approached the Plaintiff's father from behind and proceeded to slam the elder Mr. Ronald Miller, Sr., who was on his front porch at the time and was not near his son, violently to the concrete ground causing his phone to fly out of his hand. As a result of violently slamming him on the

concrete, he sustained a serious right shoulder fracture and other injuries. It is important to note that the elder Mr. Miller is 69 years of age and is in frail health. He suffers from many chronic disabilities.

36. In addition to that, while Plaintiff was on the ground with Defendant, Officer Lyons on top of him, his daughter who is a minor, was in the immediate proximity thereof. Even though the Defendant, Officer Lyons, clearly had control over the Plaintiff, he had his nightstick removed from his holster and proceeded to swing the same at both the elder Mrs. Miller and the minor child. Various criminal charges have been filed and the Officers involved herein, are also currently under criminal investigation by the Camden County Prosecutor's Office as a result of the incidents outlined herein.

37. Further, it has been discovered by Plaintiff through the course of discovery and Depositions that the Defendants, Sergeant Joseph Passarella, Sergeant Joseph McNally, Officer Timothy Lyons and Officer Brent Staiger, allegedly had a meeting prior to their shift beginning on April 9, 2011 specifically regarding Plaintiff Tracey Miller wherein it was specifically authorized by the two commanding shift Sergeants, with the highest ranking shift Sergeant, being Sergeant Joseph Passarella, that the Defendants would purposefully and knowingly sit at the Rosedale Gun Club to conspire to harass, intimidate and otherwise unlawfully arrest Plaintiff and violate his constitutional provided rights in that there is only one way in and out of Pestletown Road, and that is past the Rosedale Gun Club and thus they knew by sitting at same the Plaintiff would have to pass and therefore they could unlawfully attempt a motor vehicle stop. Again, even though the Plaintiff was charged on April 9, 2011 with very serious offenses, including eluding police, resisting arrest, DUI, assaulting a police officer, almost 2 years later, he has yet to be prosecuted for these charges.

38. Specifically, on September 7, 2012, the Defendant, Sergeant Passarella, testified, via Deposition (it should be noted that at the time Sergeant Passarella's deposition was taken on 9/7/12 he was testifying only in the capacity of a witness in that the Counts of Plaintiff's Federal Complaint against Sergeant Passarella were previously dismissed by Judge Schneider without prejudice) in the instant case.

39. Unbeknownst to Plaintiff, at the time of his Deposition on September 7th, Sergeant Passarella, indicated that Sergeant Joseph McNally, Officer Timothy Lyons, Officer Brent Staiger and himself had a meeting and/or briefing prior to the beginning of their Saturday, April 9, 2011 shift. At that meeting, Sergeant Passarella testified that Officer Brent Staiger, indicated that he had received a telephone call, on his own private cellular phone, prior to the beginning of his shift of duty at 7pm, from his "friend" Eric Madara. During this personal cellular phone conversation with his friend Eric Madera, Mr. Madera had allegedly advised Officer Staiger that a third-party, namely, Plaintiff's ex-wife, Jennifer Miller, had contacted him, via telephone to advise Mr. Madera, that her ex-husband was drinking all day at a bar and that she was apparently "worried" that he was driving with her minor child in the car.

40. The senior Sergeant, Defendant, Sergeant Joseph Passarella, based upon this hearsay third-party alleged conversation wherein a third-party, Eric Madera, had allegedly contacted Defendant, Officer Staiger, via his cellular phone and not the police headquarters, and who had not personally observed the Plaintiff whatsoever, made a decision to place officers at the Rosedale Gun Club, for the sole purpose of violating the Plaintiff's protected constitutionally guaranteed rights and attempting to conspire to take down the Plaintiff.

41. It is also important to state that during this same Deposition, Sergeant Joseph Passarella, indicated that he had in fact had an altercation with Plaintiff, earlier in the same day, or on April 9, 2011, at the baseball field in that both Plaintiff and Defendant, Sergeant Passarella, were at the opening day of baseball, which included baseball games and a parade, to watch their respective children play. In fact, in his Deposition testimony, Defendant, Sergeant Joseph Passarella, indicated that Plaintiff's 5 foot 100 lb's mere "presence" at the baseball field that day intimidated him.

42. Therefore, the Defendant, Sergeant Joseph Passarella, had first hand knowledge, that the Plaintiff could not have been at any bar "all day" despite what was reported from a third-party do to his encounter with him earlier in the day. Despite same, Defendant, Sergeant Joseph Passarella, violated Plaintiff's constitutional rights, failed to investigate himself by contacting Jennifer Miller, the person who allegedly had first hand knowledge of the Plaintiff's whereabouts and instead authorized officers of the Waterford Twp. Police Department to sit at the Rosedale Gun Club in an attempt to harass, falsely arrest and intimidate the Plaintiff.

43. Further, the Defendant, the senior officer in charge on April 9, 2011, Sergeant Joseph Passarella, violated Waterford Township's Standard Operating Procedure #38, "Investigations/Follow Up Procedures". Specifically, since Defendant, Officer Brent Staiger, had received a telephone call from a third-party indicating that Plaintiff was possibly at a bar all day and maybe driving around intoxicated, it was Defendant Sergeant Joseph Passarella's obligation, as the Chief Sergeant in Charge to advise Officer Staiger, that he needed to personally follow up on this assignment and investigate himself by contacting the party who had first hand knowledge of the alleged possible intoxication and driving of the Plaintiff, namely Jennifer Miller. Instead, Sergeant

Joseph Passarella, decided not to investigate whatsoever and to merely attempt to trap the Plaintiff by setting up a police trap at the Rosedale Gun Club.

44. The Defendant, Officer Brent Staiger, was deposed on April 30, 2012. At his Deposition, Officer Brent Staiger, never acknowledged whatsoever, that he received any telephone calls from anyone prior to his shift on April 9, 2011. He further testified that the first call he received regarding the Plaintiff and the incident on April 9, 2011 involving Plaintiff was the radio call from Defendant, Officer Lyons, indicating that he was in pursuit of a vehicle that was not stopping. He further verified, via his Deposition testimony, that anything that occurred on that date, regarding the Plaintiff and his interactions with him and/or any party relating to him would be included within his investigative report from April 9, 2011. It is important to note, that nowhere on Defendant, Officer Staiger's report does it indicate that he received any telephone calls from Eric Madera, or any other party, on his personal and/or work cellular phones and/or any telephone regarding Plaintiff and him possibly driving around intoxicated.

45. However, the Defendant, Officer Brent Staiger, did testify to the fact that witness, Eric Madera, had absolutely nothing nice to say about the Plaintiff and that in fact he had called the Plaintiff horrible names. Defendant, Officer Staiger, also testified to the fact that he knew Eric Madera, but did not testify to the fact that they were friends and that they had each other's cellular telephone numbers and in fact when questioned, the Defendant, Officer Staiger, merely indicated that he knew Eric Madera, and that he vaguely knew that he resided somewhere on "Chew Road" but that he did not know his exact address.

46. On November 5, 2011, when witness Eric Scott Madara was deposed, he did in fact

confirm that he had contacted Defendant, Officer Brent Staiger, via his cellular phone, on April 9, 2011 and indicated that he had spoke with Plaintiff's ex-wife, Jennifer Miller, and that she had indicated that she was worried that the Plaintiff was intoxicated in that he had been at the bar all day long.

47. Eric Madera also testified to the fact that he was good friends with Jennifer Miller and that he did not like Plaintiff in that he believed based upon what Jennifer Miller had told him that Plaintiff was going to utilize him as a scapegoat in a legal matter unrelated to this case. He further indicated that he was good friends with Defendant, Officer Brent Staiger, and that he was supposed to go to his house for a deer dinner on the night of April 9th. He further indicated that although he called Officer Staiger at home, on his cellular phone, that he did not want his name mentioned and he did not want to get involved in the Miller matters.

48. Although the Defendants, Officer Brent Staiger and Sergeant Richard Passarella's deposition testimonies are seriously conflicting, it is evident that both of these officers did not personally like the Plaintiff and in fact despised him. Based upon same, the Defendants engaged in behavior that was unbecoming of a police officer and violated the Plaintiff's rights under the laws of the Constitution of the United States.

49. As further proof of same, Defendant, Sergeant Joseph Passarella, did not write any reports concerning the April 9, 2011 incident involving the Plaintiff, Tracey Miller, even though he was at the scene of the investigation and more importantly due to the fact that he was the Chief Sergeant on duty on April 9, 2011 (in that he is above Sergeant Joseph McNally in rank based upon his own deposition testimony) and therefore he authorized the initial placing of police units at the Rosedale Gun Club to wait for Plaintiff to pass

by based upon the meeting that the Sergeants and Officers had concerning the private phone call from Eric Madara to Officer Staiger on his cellular phone at home. This is in violation of Waterford Township's Standard Operating Procedures concerning daily reports as well as investigations.

50. Defendant, Officer Brent Staiger, also failed to document any of the alleged telephone calls from Eric Madara and/or the alleged briefing he had with his superior officers concerning Plaintiff on April 9, 2011.

51. Defendant, Officer Timothy Lyons, further failed to document the fact that he was on routine patrol stationary at the Rosedale Gun Club due to the fact that he was ordered by his superiors Defendant, Sergeant Richard Passarella and/or Sergeant Joseph McNally, to do the same based upon their briefing on April 9, 2011 regarding Plaintiff and/or based upon any allegations that the Plaintiff was driving intoxicated and possibly endangering the welfare of his child as reported by a third-party. In fact, Defendant, Officer Lyons, merely indicates in his report that he was on stationary radar at the Rosedale Gun Club when Plaintiff passed by him in his truck and he noticed that he had tinted windows and therefore he attempted to pull him over for this violation as it is illegal in New Jersey to possess same.

52. Defendant, Officer Joseph McNally, further failed to document anywhere in his reports from April 9, 2011 that he had a briefing with the other Defendants based upon a third-party phone call and that based upon same they decided to place patrol units at Rosedale Gun Club.

53. Further, Defendant, Officer Joseph McNally, failed to follow Standard Operating Procedures concerning the logging in of evidence. The Defendant, apparently assisted

Officer Lyons with the audio and video recording of Plaintiff on April 9th. However, Sergeant McNally, did not log any of same into evidence until April 13th and there is no indication in his report where the evidence was from April 9th to April 13th.

54. The Defendants Sergeant McNally and Officer Timothy Lyons use of force was in excess of any force required to take Plaintiff into custody, not employed in good faith, and was the cause of severe injuries to Plaintiff.

55. As a direct and proximate result of Defendants' actions and omissions, Plaintiff suffers from sever, constant neck pain, lower back pain, headaches, arm pain, leg pain, plus other injuries.

COUNT I
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
VIOLATIONS OF 42 U.S.C. § 1983

56. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

57. Defendant Sergeant McNally used excessive force thereby violating Plaintiff's rights under the laws of the Constitution of the United States, in particular, the Fourth Amendment, and his rights under the Constitution and laws of the State of New Jersey.

58. Without any justification or provocation, Defendant willfully and maliciously caused Plaintiff to suffer injuries.

59. As a direct and proximate result of the aforesaid acts of Defendant Sergeant McNally committed under color of their authority as a Waterford Township Police Officer, Plaintiff suffered grievous bodily harm which is a violation by said Defendant Sergeant McNally of the laws and Constitution of the United States, in

particular, the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983, and was further in violation of the Statutes of the State of New Jersey and the Constitution of the United States all of which makes said Defendant liable to Plaintiff.

60. The acts committed by Defendant constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiff which caused the previously described bodily injuries to the Plaintiff, monies for legal fees, and other economic losses in violation of his constitutional rights as previously set forth in the aforementioned paragraphs. The acts constitute an excessive use of force all in violation of the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983.

61. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT II
PLAINTIFF V. DEFENDANT OFFICER LYONS
VIOLATIONS OF 42 U.S.C. § 1983

62. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

63. Defendant Officer Lyons used excessive force thereby violating Plaintiff's rights under the laws of the Constitution of the United States, in particular, the Fourth Amendment, and his rights under the Constitution and laws of the State of New Jersey.

64. Without any justification or provocation, Defendant willfully and maliciously caused Plaintiff to suffer injuries.

65. As a direct and proximate result of the aforesaid acts of Defendant Officer Lyons committed under color of their authority as a Waterford Township Police Officer, Plaintiff suffered grievous bodily harm which is a violation by said Defendant Officer Lyons of the laws and Constitution of the United States, in particular, the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983, and was further in violation of the Statutes of the State of New Jersey and the Constitution of the United States all of which makes said Defendant liable to Plaintiff.

66. The acts committed by Defendant constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiff which caused the previously described bodily injuries to the Plaintiff, monies for legal fees, and other economic losses in violation of his constitutional rights as previously set forth in the aforementioned paragraphs. The acts constitute an excessive use of force all in violation of the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983.

67. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount

in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees.

COUNT III
PLAINTIFF V. DEFENDANT WATERFORD TOWNSHIP
VIOLATIONS OF 42 U.S.C. § 1983

68. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

69. Defendant Waterford Township developed and maintained a number of deficient policies and/or customs, which caused the deprivation of Plaintiff's constitutional rights.

70. Defendant Waterford Township's policies and customs encouraged the Defendant Officers to believe that they could violate the constitutional rights of Plaintiff with impunity and with the explicit or tacit approval of the Defendant Waterford Township.

71. As a direct and proximate result of the aforementioned acts and omissions of Defendant, Waterford Township, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost wage earning capacity, past and future medical, surgical, hospitalization, nursing and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT IV
PLAINTIFF V. DEFENDANT SERGEANT RICHARD PASSARELLA
VIOLATIONS OF 42 U.S.C. § 1983

72. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

73. Defendant senior Sergeant Richard Passarella violated the Plaintiff's constitutional rights and as the senior Sergeant on duty encouraged other subordinate Officers to violate the

constitutional rights of Plaintiff with impunity and with the explicit or tacit approval of the Defendant.

74. As a direct and proximate result of the aforementioned acts and omissions of Defendant, Richard Passarella, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost wage earning capacity, past and future medical, surgical, hospitalization, nursing and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT V
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
ASSAULT & BATTERY

75. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

76. Defendant, willfully, intentionally, and maliciously inflicted assaults and batters upon Plaintiff, causing him the bodily injury and damages aforesaid.

77. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees

and punitive damages.

COUNT VI
PLAINTIFF V. DEFENDANT OFFICER LYONS
ASSAULT & BATTERY

78. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

79. Defendant, willfully, intentionally, and maliciously inflicted assaults and batters upon Plaintiff, causing him the bodily injury and damages aforesaid.

80. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT VII
PLAINTIFF V. DEFENDANT WATERFORD TOWNSHIP
VIOLATIONS OF 42. U.S.C. § 1983
FAILURE TO TRAIN

81. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

82. Defendant, Waterford Township failed to properly train and supervise the Defendant Police Officers.

83. As such, Defendant Waterford Township was grossly negligent, deliberately indifferent and

reckless with respect to the potential violation of constitutional rights.

84. Defendant Waterford Township's failures were the moving force behind the actions of the Defendant officers resulting in the injuries to Plaintiff aforesaid.

85. As a direct and proximate result of the acts and omissions of Defendant Waterford Township, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT VIII
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
FALSE ARREST

86. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

87. Defendant falsely arrested Plaintiff.

88. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of please and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT IX

PLAINTIFF V. DEFENDANT OFFICER LYONS
FALE ARREST

89. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

90. Defendant falsely arrested Plaintiff.

91. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of please and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT X
PLAINTIFF V. DEFENDANT OFFICER STAIGER
FALSE ARREST

92. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

93. As the result of Defendant's actions on April 9, 2011, Plaintiff was falsely arrested.

94. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of please and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XI
PLAINTIFF V. DEFENDANT SERGEANT PASSARELLA
FALSE ARREST

95. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

96. As the result of Defendant's actions on April 9, 2011, Plaintiff was falsely arrested.

97. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of please and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XII
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
FALSE IMPRISONMENT

98. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

99. Plaintiff was falsely imprisoned as a result of the intentional acts of Defendant.

100. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation,

embarrassment, inconvenience, loss of please and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XIII
PLAINTIFF V. DEFENDANT OFFICER LYONS
FALSE IMPRISONMENT

102. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

103. Plaintiff was falsely imprisoned as a result of the intentional acts of Defendant.

104. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of please and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XIV
PLAINTIFF V. DEFENDANT OFFICER STAIGER
FALSE IMPRISONMENT

105. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

106. Plaintiff was falsely imprisoned as a result of the intentional acts of Defendant.

107. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XV
PLAINTIFF V. DEFENDANT SERGEANT PASSARELLA
FALSE IMPRISONMENT

108. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

109. Plaintiff was falsely imprisoned as a result of the intentional acts of Defendant.

110. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XVI
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY

VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT-N.J.S.A. 10:6-2

111. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

112. Defendant Sergeant used excessive force and improperly arrested Plaintiff for him taking a photograph of Defendant while engaged in his employment on public property thereby violating Plaintiff's rights under the laws of the Constitution of the United States, in particular, the First and Fourth Amendments, and his rights under the laws and Constitution of the State of New Jersey. Without any justification or provocation, Defendants willfully and maliciously caused Plaintiff suffer injuries.

113. As a direct and proximate result of the aforesaid acts of Defendant, Sergeant McNally, committed under color of his authority as a Waterford Township Police Officer, Plaintiff suffered grievous bodily harm which is a violation by said Defendant officer of the laws and Constitution of the United States, in particular, the First and Fourth Amendments to the United States Constitution and N.J.S.A. 10:6-3, and was further in violation of the Statutes of the State of New Jersey and the Constitution of the State of New Jersey all of which makes said Defendant liable to Plaintiff.

114. The acts committed by Defendants constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiff, which caused the previously described bodily injuries to the Plaintiff, monies for legal fees, and other economic losses in violation of his constitutional rights as previously set forth in the aforementioned paragraphs. The acts constitute an excessive use of force all in violation of the First and Fourth Amendments to the United States Constitution, the State of New Jersey Constitution and N.J.S.A. 10:6-2.

115. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XVII
PLAINTIFF V. DEFENDANT OFFICER LYONS
VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT-N.J.S.A. 10:6-2

116. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

117. Defendant Officer used excessive force thereby violating Plaintiff's rights under the laws of the Constitution of the United States, in particular, the First and Fourth Amendments, and his rights under the laws and Constitution of the State of New Jersey.

118. Without any justification or provocation, Defendants willfully and maliciously caused Plaintiff to suffer injuries. As a direct and proximate result of the aforesaid acts of Defendant, Officer Lyons, committed under color of his authority as a Waterford Township Police Officer, Plaintiff suffered grievous bodily harm which is a violation by said Defendant Officer of the laws and Constitution of the United States, in particular, the First and Fourth Amendments to the United States Constitution and N.J.S.A. 10:6-3, and was in violation of the Statutes of the State of New Jersey and the Constitution of the State of New Jersey all of which makes said Defendant liable to Plaintiff.

119. The acts committed by Defendants constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiff which caused the previously described bodily injuries to the Plaintiff, monies for legal fees, and other economic losses in violation of the First and Fourth Amendments to the United States Constitution, the State of New Jersey Constitution and N.J.S.A. 10:6-2.

120. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XVIII
PLAINTIFF V. DEFENDANT OFFICER STAIGER
VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT-N.J.S.A. 10:6-2

121. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

122. Defendant Officer violated the Plaintiff's rights under the laws of the Constitution of the United States, in particular, the First and Fourth Amendments, and his rights under the laws and Constitution of the State of New Jersey.

123. Without any justification or provocation, Defendants willfully and maliciously caused Plaintiff to suffer injuries.

124. As a direct and proximate result of the aforesaid acts of Defendant, Officer Staiger,

committed under color of his authority as a Waterford Township Police Officer, Plaintiff suffered grievous bodily harm which is a violation by said Defendant Officer of the laws and Constitution of the United States, in particular, the First and Fourth Amendments to the United States Constitution and N.J.S.A. 10:6-3, and was in violation of the Statutes of the State of New Jersey and the Constitution of the State of New Jersey all of which makes said Defendant liable to Plaintiff.

125 The acts committed by Defendants constitute intentional misconduct and deliberate indifference to Plaintiff which caused the previously described bodily injuries to the Plaintiff, monies for legal fees, and other economic losses in violation of the First and Fourth Amendments to the United States Constitution, the State of New Jersey Constitution and N.J.S.A. 10:6-2.

126. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XIX
PLAINTIFF V. DEFENDANT SERGEANT PASSARELLA
VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT-N.J.S.A. 10:6-2

127. Plaintiff incorporates by reference the preceding allegations of this Complaint as

though each were individually set forth herein at length.

128. Defendant Officer used excessive force thereby violating Plaintiff's rights under the laws of the Constitution of the United States, in particular, the First and Fourth Amendments, and his rights under the laws and Constitution of the State of New Jersey.
129. Without any justification or provocation, Defendants willfully and maliciously caused Plaintiff to suffer injuries.
130. As a direct and proximate result of the aforesaid acts of Defendant, Officer Passarella, committed under color of his authority as a Waterford Township Police Officer, Plaintiff suffered grievous bodily harm which is a violation by said Defendant Officer of the laws and Constitution of the United States, in particular, the First and Fourth Amendments to the United States Constitution and N.J.S.A. 10:6-3, and was in violation of the Statutes of the State of New Jersey and the Constitution of the State of New Jersey all of which makes said Defendant liable to Plaintiff.
131. The acts committed by Defendants constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiff which caused the previously described bodily injuries to the Plaintiff, monies for legal fees, and other economic losses in violation of the First and Fourth Amendments to the United States Constitution, the State of New Jersey Constitution and N.J.S.A. 10:6-2.
132. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiff has, and will in the future, suffer severe bodily

injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XX
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
NEGLIGENCE

133. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

134. Defendant Officer McNally was negligent in his treatment of Plaintiff. Defendant negligently followed the Plaintiff on several occasions without cause. The Defendant also stalked the Plaintiff and often would be seen driving by the Plaintiff's home and riding slowly by for no reason other than to intimidate the Plaintiff and his family. The Defendant Officer McNally also was negligent in that he violated the Plaintiff's first amendment rights and arrested him for merely his taking of a picture of him during the course of his regular duties as a police officer.

135. Defendant was negligent in that he violated standard operating procedures for police officers and utilized excessive force on Plaintiff, Tracey Miller, causing him serious injuries.

136. As a direct and proximate result of the acts and omissions of Defendant Sergeant McNally, Plaintiff has, and will in the future, suffer severe bodily injury, pain,

emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XXI
PLAINTIFF V. DEFENDANT OFFICER LYONS
NEGLIGENCE

137. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

138. Defendant Officer Lyons was negligent in his treatment and arrest of Plaintiff.

139. Defendant deviated from standard operating procedures on April 9, 2011 and utilized excessive force against the Plaintiff, including, punching him several times in the face while he was already on the ground with his hands behind his back, throwing him to the ground and dragging him across the lawn, causing Plaintiff serious injuries.

140. As a direct and proximate result of the acts and omissions of Defendant Officer Lyons, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's

fees and punitive damages.

COUNT XXII
PLAINTIFF V. DEFENDANT OFFICER STAIGER
NEGLIGENCE

141.Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

142.Defendant Officer Staiger was negligent in his treatment of Plaintiff.

143.Defendant failed to provide any information concerning his alleged telephone call from a third-party which allegedly prompted the Waterford Twp. Police Department and its officers to attempt to trap Plaintiff on April 9, 2011 and set up operations at the Rosedale Gun Club. The Defendant to date has failed to provide details regarding same even though other officers and the third-party have confirmed that they did in fact speak with him on April 9th.

144.As a direct and proximate result of the acts and omissions of Defendant Officer Staiger, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XXIII
PLAINTIFF V. DEFENDANT WATERFORD TOWNSHIP
NEGLIGENCE

145. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

146. Defendant Waterford Township was negligent in its training, supervision and retention of Defendant, Sergeant McNally, Sergeant Passarella, Officer Lyons, Officer Staiger.

147. As a direct and proximate result of the acts and omissions of Defendant, Waterford Township, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XXIV
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
MALICIOUS PROSECUTION

148. Plaintiff incorporates by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

149. Defendant wrongly deprived Plaintiff of the Fourteenth Amendment right to liberty on October 18, 2010 when he without probable cause, initiated a police investigation and admittedly made an illegal u-turn and maliciously went up to Plaintiff whose vehicle was parked in an empty lot merely because he believed that Plaintiff had taken a photograph of the Defendant during his course of duty and thereafter falsely charged him with numerous offenses.

150. As a result of the aforementioned occurrence, and due to the intentional and willful

acts of Defendant, Plaintiff has, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of please and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr. demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

SUPPLEMENTAL COMPLAINT

Plaintiff, Tracey Miller, Sr. (hereinafter "Plaintiff"), by and through his attorney, Charles A. Fiore, Esquire, hereby brings this Supplemental Complaint against Defendant, Sergeant Joseph McNally, in his official capacity as a Waterford Township Police Officer and Individually, and avers as follows:

I. INTRODUCTION

1. This action for declaratory, injunctive, monetary and other appropriate relief is brought by Plaintiff to redress the violations by Defendants of the rights secured to him by the laws of the United States of America and the State of New Jersey.

II. JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and the First, Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded on 28 U.S.C. § 1331 and 1343(3) and the aforementioned statutory and constitutional provisions.

6. Jurisdiction lies over state law claims based on the principles of supplemental jurisdiction, as codified at 28 U.S.C. § 1367.

7. The amount in controversy exclusive of interest and costs exceeds the sum of One Hundred Thousand (\$100,000.00) Dollars.

IV. VENUE

8. All the claims herein arose within the jurisdiction of the United States District Court for the District of New Jersey and involve Defendants who reside within the jurisdictional limits. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. § 1391 (b) and (c).

V. PARTIES

10. Plaintiff, Tracey Miller, Sr., is an adult individual citizen of the State of New Jersey, residing therein at 576 Pestletown Road, Waterford, New Jersey 08089.
11. Defendant, Waterford Township, is a municipal corporation within the State of New Jersey located at 2131 Auburn Avenue, Atco, New Jersey 08004.
12. Defendant, Sergeant Joseph McNally (hereinafter “Sergeant McNally”) is, and was at all times material hereto, a police officer with the Waterford Township Police Department located at 2131 Auburn Avenue, Atco, New Jersey 08004.

V. FACTS

13. Plaintiff is a forty-five (45) year old Caucasian male.
10. As the Court is aware, the Plaintiff was involved in a highly contested divorce matter, which involved equitable distribution and custody of his minor child in Camden County with Jennifer Miller under docket number: FM-04-1005-10. Every time that an issue arose with respect to this matter including the filing of a domestic violence complaint, Defendant, Sergeant McNally, a Waterford Township Police Officer, was involved in the investigation.
11. As the Court is aware, due to the constant harassment and various false charges filed against Plaintiff, by Defendants, the Plaintiff filed a Federal Law Suit against, Waterford Township, Sergeant Joseph McNally, Officer Timothy Lyons, Officer Brent Staiger, Sergeant Richard Passarella under the Docket Number above for incidents that

occurred on September 23, 2010, October 14, 2010, October 18, 2010 and April 9, 2011.

However, even after the Plaintiff filed the instant lawsuit, the Defendant, Sergeant Joseph McNally, continued to harass and violate the Plaintiff's constitutional rights by driving by his home in his police vehicle and giving him the "finger".

12. He would also continuously harass and intimidate the Plaintiff in public places, including, the local Wawa. He would threaten him and call him names.
13. On March 12, 2012, the Plaintiff, was at Starkey's Pourhouse waiting for the arrival of a friend in that he had anticipated watching a game with him.
14. The Plaintiff was sitting at the bar minding his own business, when the Defendant, Sergeant Joseph McNally arrived with a male friend. Immediately upon his arrival, the Defendant, Joseph McNally began yelling intimidating things at Plaintiff. He also had his male friend, who was unknown to the Plaintiff, yell obscene things at Plaintiff.
15. Unbeknownst to the Defendant, Sergeant Joseph McNally, the Plaintiff, had a tape recorder on his person in that due to the prior actions of all of the Defendants, the Plaintiff was afraid to leave his home. However, being that this bar was not located within Waterford Township, the Plaintiff believed that the Defendants would not be there and thus he would be able to have a nice evening out with his friend.
16. Therefore, when the Defendant began yelling things at the Plaintiff, he was recording both the Defendant, Sergeant Joseph McNally and his friend, who was again unknown to the Plaintiff.
17. All of a sudden and without warning, the Defendant began screaming at the Plaintiff that he was going to ensure that he was dead and that he would take him outside and beat him to death and that no one would ever find the body. The Defendant, Joseph McNally, also was calling the Plaintiff a child molester and other disturbing names all while advising that he was going to ensure that he was dead.

18. Several patrons also overheard the Defendant as well as the bartender on duty. The Defendants were told that their actions were unacceptable; however, that did not deter them. Finally, being afraid for his life, the Plaintiff was taken to his home by the owner of the bar.
19. After the incident, the Plaintiff immediately reported same to the Prosecutor's Office. The Plaintiff also provided his audio recording from that night to the Prosecutor's Office and the owner of the bar also provided the Prosecutor's Office with the video recording of the bar from that night. The Plaintiff also filed charges against the Defendant, which charges are still pending.
20. Immediately following the incident, the Defendant, Sergeant Joseph McNally, was finally subject to some sort of discipline from the Waterford Twp. Police Department in that Plaintiff has been advised that he has been suspended without pay. To date, the Plaintiff is unaware as to the present status of the Defendant with the Waterford Township Police Department.
21. However, even though the Defendant was apparently suspended, he still rides by the Plaintiff's home and gives him the finger and/or shouts obscenities at him. He also has had friends of his terrorize and in fact it is believed beat up the Plaintiff in another public location.

COUNT I
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT-N.J.S.A. 10:6-2

22. Plaintiff incorporates by reference the preceding allegations of this Supplemental Complaint as though each were individually set forth herein at length.
23. Defendant Sergeant hid behind his badge and threatened to kill the Plaintiff on March 12, 2012 even after being fully aware of the previous allegations made against him by Plaintiff and therefore violated Plaintiff's rights under the laws of the Constitution of the United States, in

particular, the First and Fourth Amendments, and his rights under the laws and Constitution of the State of New Jersey. Without any justification or provocation, Defendant willfully and maliciously caused Plaintiff suffer injuries.

24. As a direct and proximate result of the aforesaid acts of Defendant, Sergeant McNally, committed under color of his authority as a Waterford Township Police Officer and individually, Plaintiff suffered grievous bodily harm which is a violation by said Defendant officer of the laws and Constitution of the United States, in particular, the First and Fourth Amendments to the United States Constitution and N.J.S.A. 10:6-3, and was further in violation of the Statutes of the State of New Jersey and the Constitution of the State of New Jersey all of which makes said Defendant liable to Plaintiff.

25. The acts committed by Defendants constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiff, which caused the previously described bodily injuries to the Plaintiff, monies for legal fees, and other economic losses in violation of his constitutional rights as previously set forth in the aforementioned paragraphs. The acts constitute an excessive use of force all in violation of the First and Fourth Amendments to the United States Constitution, the State of New Jersey Constitution and N.J.S.A. 10:6-2.

COUNT II
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
NEGLIGENCE

26. Plaintiff incorporates by reference the preceding allegations of this Supplemental Complaint as though each were individually set forth herein at length.

27. Defendant Officer McNally was negligent in his treatment of Plaintiff. Defendant in a public place, specifically advised Plaintiff that he was going to wind up dead and that he would ensure that he was beat up and killed and that no one would find his body. This was after the instant lawsuit was filed and occurred on March 12, 2012. If it were not for Plaintiff having

been so frightened that he was carrying audio recording devices on his person as well as the video tape of the incident from the bar itself, the Defendant may have in fact by now followed through on his threats to kill the Plaintiff in that nothing was previously done to Defendant to stop him. The Defendant Officer McNally also was negligent in that he violated the Plaintiff's first, fourth and fourteenth amendment rights.

28. Defendant was negligent in that he violated standard operating procedures for police officers and threatened to kill the Plaintiff and to hide the body in a public bar. This caused the Plaintiff, Tracey Miller, serious emotional injuries.

29. As a direct and proximate result of the acts and omissions of Defendant Sergeant McNally, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiff, Tracey Miller, Sr., demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

JURY TRIAL DEMAND

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

Respectfully submitted,

/s/ Charles A. Fiore

Charles A. Fiore, Esquire

Date: February 28, 2013

CHARLES A. FIORE, ESQUIRE
34 South Main Street, P.O. Box 525
Williamstown, New Jersey 08094
(856) 875-1166
Attorney for Plaintiffs, Ronald Miller, Sr. and Lavina Miller

	:	
RONALD MILLER, SR., AND LAVINA	:	UNITED STATES DISTRICT COURT
MILLER, husband and wife,	:	FOR THE DISTRICT OF NEW JERSEY
576 Pestletown Road	:	CAMDEN VICINAGE
Waterford, NJ 08089	:	
Plaintiffs,	:	
	:	
vs.	:	Case No.: 1:11-cv-03578-JBS-KMW
	:	Civil Action
WATERFORD TOWNSHIP	:	
2131 Auburn Avenue	:	
Atco, NJ 08004	:	FIRST AMENDED COMPLAINT
and	:	
	:	
SERGEANT JOSEPH MCNALLY,	:	
Individually and in his Official Capacity,	:	
2131 Auburn Avenue	:	
Atco, NJ 08004	:	
and	:	
	:	
OFFICER TIMOTHY LYONS	:	
Individually and in his Official Capacity,	:	
2131 Auburn Avenue	:	
Atco, NJ 08004	:	
Defendants.	:	

Plaintiffs, Ronald Miller, Sr. and Lavina Miller, (hereinafter “Plaintiffs”), by and through their attorney, Charles A. Fiore, Esquire, hereby brings this Complaint against Defendants, Waterford Township, Sergeant Joseph McNally, and Officer Timothy Lyons, (hereinafter “Defendants”), and avers as follows:

I. INTRODUCTION

1. This action for declaratory, injunctive, monetary and other appropriate relief is brought by Plaintiffs to redress the violations by Defendants of the rights secured to them by the laws of the United States of America and the State of New Jersey.

II. JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded on 28 U.S.C. § 1331 and 1343(3) and the aforementioned statutory and constitutional provisions.
3. Jurisdiction lies over state law claims based on the principles of supplemental jurisdiction, as codified at 28 U.S.C. § 1367.
4. The amount in controversy exclusive of interest and costs exceeds the sum of One Hundred Thousand (\$100,000.00) Dollars.

III. VENUE

5. All the claims herein arose within the jurisdiction of the United States District Court for the District of New Jersey and involve Defendants who reside within the jurisdictional limits. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. § 1391 (b) and (c).

IV. PARTIES

6. Plaintiffs, Ronald Miller, Sr. and Lavina Miller, are individual citizens of the State of New Jersey, residing therein at 576 Pestletown Road, Waterford, New Jersey 08089.
7. Defendant, Waterford Township, is a municipal corporation within the State of New Jersey located at 2131 Auburn Avenue, Atco, New Jersey 08004.

8. Defendant, Sergeant Joseph McNally (hereinafter “Sergeant McNally”) is, and was at all times material hereto, a police officer with the Waterford Township Police Department located at 2131 Auburn Avenue, Atco, New Jersey 08004.
9. Defendant, Timothy Lyons (hereinafter “Officer Lyons”) is, and was at all times material hereto, a police officer with the Waterford Township Police Department located at 2131 Auburn Avenue, Atco, New Jersey 08004.

V. FACTS

10. Plaintiffs Ronald Miller, Sr. and Lavina Miller are husband and wife.
11. Plaintiffs are the parents of Tracey Miller, Sr. Tracey Miller, Sr. resides with Plaintiffs and was involved in a highly contested divorce matter which involved equitable distribution and custody of his minor child, a male in Camden County with Jennifer Miller under docket number: FM-04-1005-10. Every time that an issue arose with respect to this matter including the filing of a domestic violence complaint, Defendant, Sergeant McNally, a Waterford Township Police Officer, was involved in the investigation.
12. The Defendant, Sergeant McNally, is very close friends with Thomas Watson, the father of Mr. Miller’s ex-wife, Jennifer Miller. As a result of the animosity between the parties, liberties were taken by various police officers in the Waterford Twp. Police Department against Mr. Miller. He was constantly under surveillance as observed by both Mr. Miller and Plaintiffs. Members of the Defendant, Waterford Township Police Department, would frequently pass by Plaintiffs’ house, slow down as they approached their house and would stay there for several minutes in an attempt to harass and/or intimidate Mr. Miller and his family members, including the Plaintiffs.

13. The Defendants would systematically and continuously harass Mr. Miller while he would frequent the local Wawa and other local establishments throughout Waterford Twp.
14. Unfortunately, for Plaintiffs, the harassment became worse to the point of physical violence. On Saturday evening, April 9, 2011 at approximately 8:00 p.m, the Plaintiff, Lavina Miller, was traveling in her vehicle with her granddaughter on Pestletown Road. At that time, both the Plaintiff, Lavina Miller, and her granddaughter, S.M., a minor, noticed that there was a police vehicle parked near their home. Therefore, both the Plaintiff and her granddaughter became worried that the police officers were waiting for Mr. Miller. Therefore, the Plaintiff, Lavina Miller, advised her granddaughter, S.M., to contact her dad, via her cellular phone to advise him that there was a Waterford Township police vehicle parked approximately ½ mile from their home. The Plaintiff's granddaughter spoke with her father and told him to be extremely careful.
15. Sure enough as the Plaintiff, Lavina Miller, and her granddaughter had predicted, the police vehicle that was waiting near their home, upon seeing Mr. Miller's vehicle, pulled out behind him. In that Mr. Miller was in fear for his life, he continued to his home, which was only a little distance away. Upon pulling into his driveway, Mr. Miller parked his vehicle and thereafter exited same. At the same time, Plaintiff, Lavina Miller, came out of the residence and inquired as to the Defendant, Officer Lyons, "What did my son Tracey do now?" Defendant, Officer Lyons, advised that Mr. Miller was being stopped for "tinted windows".
16. At that time, Mr. Miller followed the Defendant, Officer Lyons' commands and proceeded towards him. Even though Mr. Miller followed Defendant's commands an

altercation occurred whereby Defendant, Officer Lyons violently slammed Mr. Tracey Miller to the ground, jumped on his back and pounced his face into the ground.

17. At this time, the Plaintiff, Lavina Miller, believed that Defendant, Officer Lyons, was going to kill and/or severely injure her son. At the same time, her young granddaughter, Mr. Miller's daughter, ran near both her father and Officer Lyons crying and screaming hysterically for Officer Lyons to stop beating her father. Due to same, Plaintiff, Lavina Miller, ran near both Mr. Miller and Officer Lyons, attempting to console her granddaughter. Even though the Defendant, Officer Lyons, clearly had control over Mr. Miller, he had his night stick removed from his holster and when the Plaintiff, Lavina Miller, approached to help her granddaughter to beg the Defendant to stop beating Mr. Miller, he proceeded to swing the same at the Plaintiff, Lavina Miller and her granddaughter.

18. By this time, more police officers had arrived at the scene. Defendant, Sergeant McNally, took the place of Defendant, Officer Lyons. He held Mr. Miller down and had his knee in Mr. Miller's back while his face was smashed into a large pile of wood chips in that his father, Plaintiff, Ronald Miller, Sr., had just had a large tree in his yard cut down. The Defendant had one hand behind Mr. Miller's head while holding his face in the wood chips and at the same time began punching him in the left side of his face and head almost knocking him unconscious.

19. Seeing her child in severe danger and seeing her granddaughter, hysterical, Plaintiff, Lavina Miller, left and went inside of her home and called 911 in an attempt for help from the New Jersey State Police. She was advised by the 911 operator that the Waterford Twp. Police Department was already at the scene and therefore that they

would not dispatch any other departments for help. Feeling helpless the Plaintiff, Lavina Miller, did not know what to do.

20. At that same time, the Plaintiff, the elder Mr. Ronald Miller, Sr., exited his home to inquire what was going on. Mr. Miller was advised by Defendant, Officer Lyons to “shut the fuck up” and that he had things “under control”. Feeling desperate and knowing that his wife had just contacted 911 and was advised that they were not sending help, the Plaintiff, Ronald Miller, Sr., also contacted 911 and just held the phone so that the operators could hear what was occurring.
21. At some point in time, after Tracey Miller was handcuffed by Defendant, Sergeant McNally, and leaving him semi-conscious on the ground, Defendant, Officer Lyons, then approached the Plaintiff, Ronald Miller, Sr., who was on his porch and was not near his son at the time, from behind and proceeded to slam him violently to the concrete ground causing his phone to fly out of his hand. As a result of violently slamming him on the concrete, he sustained a serious right shoulder fracture which may in fact require surgical intervention in the near future. It is important to note that the Plaintiff, Ronald Miller, Sr., is 69 years of age and is in frail health. He suffers from many chronic disabilities.
22. Thereinafter, an ambulance was called to the scene and Plaintiff, Ronald Miller, Sr. was transported from his home to Virtua Hospital in Berlin, New Jersey where he was diagnosed as having a severe bruising on his right shoulder, chest and arm as well as a right shoulder fracture.
23. Even though there were several police officers at the scene on April 9, 2011, including an officer from Chesilhurst Township, the Plaintiff, Lavina Miller, was not charged at

the scene with any crimes nor was she advised that she was under arrest. However, two days after the incident, the Plaintiff, Lavina Miller, was contacted by the Waterford Township Police Department who advised her that she needed to come to the police station to be processed as she was being charged with aggravated assault on a police officer as well as obstruction of justice. The charges are currently still pending in the Waterford Township Municipal Court.

24. Even though there were several police officers at the scene on April 9, 2011, including an officer from Chesilhurst Township and even though the Plaintiff, Ronald Miller, Sr., was transported from the scene via an ambulance, he was not arrested at the scene. He also was not advised by any of the officers at the scene that he was going to be charged with any offenses nor did any police officers proceed with him to the hospital and/or arrive at the hospital to advise him that he was under arrest. Thereafter, approximately two days later, the Plaintiff, Lavina Miller, received a telephone call from the Waterford Township Police Department, indicating that Plaintiff, Ronald Miller, Sr., needed to go to the police station for processing. She was advised that the Plaintiff, Ronald Miller, Sr., was being charged with resisting arrest, aggravated assault on a police officer, resisting arrest and obstruction. These charges are all currently pending in the Waterford Township Municipal Court.
25. Various criminal charges have been filed and the Officers involved herein, are also currently under criminal investigation by the Camden County Prosecutor's Office as a result of the incidents outlined herein.
26. The Defendants, Sergeant McNally, and Officer Lyons, use of force was unnecessary and excessive and in excess of any force required to take Plaintiff, Ronald Miller, Sr.,

into custody, not employed in good faith, and was the cause of severe stress and anxiety plus other injuries to Plaintiffs. Further, as outlined above, after the incident, even though Plaintiff, Ronald Miller, Sr., was charged with resisting arrest several days later, he was not arrested on April 9, 2011 by any of the officers named above.

27. The Defendant, Waterford Township, was aware that the Defendants had previously been charged for harassing and assaulting other individuals and failed to take corrective actions, punish and/or remove the Defendants from the official police duties.
28. As a direct and proximate result of Defendants' actions and omissions, Plaintiff, Lavina Miller, suffers from severe anxiety, post-traumatic stress syndrome and a lack of trust of law enforcement, plus other injuries.
29. As a direct and proximate result of Defendants' actions and omissions, Plaintiff, Ronald Miller, Sr., suffered substantial injuries, including a fractured right shoulder, severe bruising of his right shoulder, right arm and chest wall, pain in his chest, pain in his neck, severe anxiety, post-traumatic stress syndrome and a lack of trust of law enforcement, plus other injuries.

COUNT I
PLAINTIFFS V. DEFENDANT SERGEANT MCNALLY
VIOLATIONS OF 42 U.S.C. § 1983

30. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.
31. Defendant Sergeant McNally failed to act and/or used excessive force on Plaintiffs, thereby violating Plaintiffs' rights under the laws of the Constitution of the United States, in particular, the Fourth Amendment, and their rights under the Constitution and laws of the State of New Jersey.

32. Without any justification or provocation, Defendant willfully and maliciously caused Plaintiffs to suffer injuries.
33. As a direct and proximate result of the aforesaid acts of Defendant Sergeant McNally committed under color of his authority as a Waterford Township Police Officer, Plaintiffs suffered grievous bodily harm which is a violation by said Defendant Sergeant McNally of the laws and Constitution of the United States, in particular, the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983, and was further in violation of the Statutes of the State of New Jersey and the Constitution of the United States all of which makes said Defendant liable to Plaintiffs.
34. The acts committed by Defendant constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiffs which caused the previously described bodily injuries to the Plaintiffs, monies for legal fees, and other economic losses in violation of their constitutional rights as previously set forth in the aforementioned paragraphs. The acts constitute an excessive use of force all in violation of the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983.
35. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost earning capacities, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical and mental restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against

Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest,

costs, attorney's fees and punitive damages.

COUNT II
PLAINTIFFS V. DEFENDANT OFFICER LYONS
VIOLATIONS OF 42 U.S.C. § 1983

36. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.
37. Defendant Officer Lyons used excessive force on Plaintiffs thereby violating Plaintiffs' rights under the laws of the Constitution of the United States, in particular, the Fourth Amendment, and their rights under the Constitution and laws of the State of New Jersey.
38. Without any justification or provocation, Defendant willfully and maliciously caused Plaintiffs to suffer injuries.
39. As a direct and proximate result of the aforesaid acts of Defendant Officer Lyons committed under color of his authority as a Waterford Township Police Officer, Plaintiff suffered grievous bodily harm which is a violation by said Defendant Officer Lyons of the laws and Constitution of the United States, in particular, the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983, and was further in violation of the Statutes of the State of New Jersey and the Constitution of the United States all of which makes said Defendant liable to Plaintiff.
40. The acts committed by Defendant constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiffs which caused the previously described bodily injuries to the Plaintiffs, monies for legal fees, and other economic losses in violation of their constitutional rights as previously set forth in the aforementioned paragraphs. The acts constitute an excessive use of force all in violation of the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983.

41. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and mental and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees.

COUNT III
PLAINTIFFS V. DEFENDANT WATERFORD TOWNSHIP
VIOLATIONS OF 42 U.S.C. § 1983

42. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.
43. Defendant Waterford Township developed and maintained a number of deficient policies and/or customs which caused the deprivation of Plaintiff's constitutional rights.
44. Defendant Waterford Township's policies and customs encouraged the Defendant Officers to believe that they could violate the constitutional rights of Plaintiff with impunity and with the explicit or tacit approval of the Defendant Waterford Township.
45. As a direct and proximate result of the aforementioned acts and omissions of Defendant, Waterford Township, Plaintiff has, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wage earning capacity, past and future medical, surgical,

hospitalization, nursing and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller Sr. and Lavina Miller, demands judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT VI
PLAINTIFFS V. DEFENDANT WATERFORD TOWNSHIP
VIOLATIONS OF 42. U.S.C. § 1983
FAILURE TO TRAIN

46. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

47. Defendant, Waterford Township failed to properly train and supervise the Defendant Police Officers.

48. As such, Defendant Waterford Township was grossly negligent, deliberately indifferent and reckless with respect to the potential violation of constitutional rights.

49. Defendant Waterford Township's failures were the moving force behind the actions of the Defendant officers resulting in the injuries to Plaintiffs aforesaid.

50. As a direct and proximate result of the acts and omissions of Defendant Waterford Township, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and mental and mental and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against

Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT V
PLAINTIFFS V. DEFENDANT SERGEANT MCNALLY
VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT-N.J.S.A. 10:6-2

51. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.
52. Defendant Sergeant McNally failed to act and/or used excessive force on Plaintiffs thereby violating Plaintiffs' rights under the laws of the Constitution of the United States, in particular, the Fourth Amendment, and their rights under the laws and Constitution of the State of New Jersey.
53. Without any justification or provocation, Defendants willfully and maliciously caused Plaintiffs to suffer injuries.
54. As a direct and proximate result of the aforesaid acts of Defendant, Sergeant McNally, committed under color of his authority as a Waterford Township Police Officer, Plaintiffs suffered grievous bodily harm which is a violation by said Defendant officer of the laws and Constitution of the United States, in particular, the Fourth Amendment to the United States Constitution and N.J.S.A. 10:6-3, and was further in violation of the Statutes of the State of New Jersey and the Constitution of the State of New Jersey all of which makes said Defendant liable to Plaintiffs.
55. The acts committed by Defendants constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiffs which caused the previously described bodily injuries to the Plaintiffs, monies for legal fees, and other economic losses in violation of their constitutional rights as previously set forth in the aforementioned

paragraphs. The acts constitute an excessive use of force all in violation of the Fourth Amendment to the United States Constitution, the State of New Jersey Constitution and N.J.S.A. 10:6-2.

56. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and mental and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT VI
PLAINTIFFS V. DEFENDANT OFFICER LYONS
VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT-N.J.S.A. 10:6-2

57. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

58. Defendant Officer Lyons used excessive force on Plaintiffs thereby violating Plaintiffs' rights under the laws of the Constitution of the United States, in particular, the Fourth Amendment, and their rights under the laws and Constitution of the State of New Jersey.

59. Without any justification or provocation, Defendants willfully and maliciously caused Plaintiffs to suffer injuries.

60. As a direct and proximate result of the aforesaid acts of Defendant, Officer Lyons, committed under color of his authority as a Waterford Township Police Officer, Plaintiffs suffered grievous bodily harm which is a violation by said Defendant Officer of the laws and Constitution of the United States, in particular, the Fourth Amendment to the United States Constitution and N.J.S.A. 10:6-3, and was in violation of the Statutes of the State of New Jersey and the Constitution of the State of New Jersey all of which makes said Defendant liable to Plaintiffs.

61. The acts committed by Defendants constitute intentional misconduct, excessive use of force and deliberate indifference to Plaintiffs which caused the previously described bodily injuries to the Plaintiffs, monies for legal fees, and other economic losses in violation of the Fourth Amendment to the United States Constitution, the State of New Jersey Constitution and N.J.S.A. 10:6-2.

62. As a result of the aforementioned occurrence, and due to the intentional and willful acts of the Defendant, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and mental and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT VII
PLAINTIFFS V. DEFENDANT OFFICER LYONS
ASSAULT AND BATTERY

63. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

64. Defendant, willfully, intentionally, and maliciously inflicted assaults and batters upon Plaintiffs, causing them the bodily injury and damages aforesaid.

65. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT VIII
COUNT VIII
PLAINTIFFS V. DEFENDANT SERGEANT MCNALLY
FALSE ARREST

66. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

67. Defendant falsely arrested Plaintiffs.

68. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiffs have, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of please and enjoyment of life, lost

wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT IX
PLAINTIFFS V. DEFENDANT OFFICER LYONS
FALSE ARREST

69. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

70. Defendant falsely arrested Plaintiffs.

71. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiffs have, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of peace and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT X
PLAINTIFFS V. DEFENDANT SERGEANT MCNALLY
FALSE IMPRISONMENT

72. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.
73. Plaintiffs were falsely imprisoned as a result of the intentional acts of Defendant.
74. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiffs have, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XI
PLAINTIFFS V. DEFENDANT OFFICER LYONS
FALSE IMPRISONMENT

75. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.
76. Plaintiffs were falsely imprisoned as a result of the intentional acts of Defendant.
77. As a result of the aforementioned occurrence, and due to the intentional and willful acts of Defendant, Plaintiffs have, and will in the future, suffer pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost wages, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XII
PLAINTIFF V. DEFENDANT SERGEANT MCNALLY
NEGLIGENCE

78. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

79. Defendant Officer McNally was negligent in his treatment of Plaintiffs. Defendant negligently followed the Plaintiffs' son on several occasions without cause while the Plaintiffs were in his vehicle. The Defendant also stalked the Plaintiffs and would often drive by their home, slowing down and/or stopping completely in front of same looking for the Plaintiffs' son. The Plaintiffs became fearful of driving and/or leaving their home due to the Defendant's actions.

80. Defendant was negligent in that he violated standard operating procedures for police officers and stalked and harassed the Plaintiffs and their family.

81. As a direct and proximate result of the acts and omissions of Defendant Officer McNally, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical and mental restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XIII
PLAINTIFFS V. DEFENDANT OFFICER LYONS
NEGLIGENCE

82. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.
83. Defendant Officer Lyons was negligent in his treatment of Plaintiffs.
84. Defendant deviated from standard operating procedures on April 9, 2011 and utilized excessive force against the Plaintiffs, including, swinging a nightstick at Plaintiff, Lavina Miller and hitting her with same. He further utilized excessive and unnecessary force against, Plaintiff, Ronald Miller, Sr. causing him to sustain a severe fracture to his right shoulder plus other injuries.
85. As a direct and proximate result of the acts and omissions of Defendant Officer Lyons, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical and mental restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

COUNT XIV
PLAINTIFF V. DEFENDANT WATERFORD TOWNSHIP
NEGLIGENCE

86. Plaintiffs incorporate by reference the preceding allegations of this Complaint as though each were individually set forth herein at length.

87. Defendant Waterford Township was negligent in its training, supervision and retention of Defendant, Sergeant McNally, Sergeant Passarella, Officer Lyons and Officer Staiger.

88. As a direct and proximate result of the acts and omissions of Defendant, Waterford Township, Plaintiffs have, and will in the future, suffer severe bodily injury, pain, emotional distress, humiliation, embarrassment, inconvenience, loss of pleasure and enjoyment of life, lost earning capacity, past and future medical, surgical, hospitalization, nursing, and rehabilitation expenses, and physical and mental restrictions and impairments.

WHEREFORE, Plaintiffs, Ronald Miller, Sr. and Lavina Miller, demand judgment against Defendant in an amount in excess of One Hundred Thousand Dollars (\$100,000.00) plus interest, costs, attorney's fees and punitive damages.

JURY TRIAL DEMAND

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

Respectfully submitted,

/s/ Charles A. Fiore

Date: May 8, 2012

Charles A. Fiore, Esquire

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TRACEY MILLER, SR., RONALD
MILLER, SR., LAVINA MILLER,
S.M. (a minor), and TRACEY
MILLER, SR., GUARDIAN AD LITEM
for S.M.,

Plaintiffs,

v.

WATERFORD TOWNSHIP, et al.,

Defendants.

HONORABLE JOSEPH E. IRENAS

CIVIL ACTION NO. 11-3405

CIVIL ACTION NO. 11-3578

CIVIL ACTION NO. 11-3579

(JEI/JS)

OPINION

APPEARANCES:

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Counsel for Defendants Joseph McNally and Richard
Passarella

IRENAS, Senior District Judge:

Plaintiff Tracey Miller ("Tracey") initiated this action pursuant to 42 U.S.C. § 1983 against Waterford Township, the Borough of Chesilhurst, Evesham Township, and several of their police officers. Following the initiation of Tracey's suit, additional Plaintiffs Ronald and Lavina Miller (Tracey's parents, "Ronald" and "Lavina") and S.M. (Tracey's minor child) filed suit alleging similar violations of their federal and state constitutional rights stemming from incidents of alleged harassment, unlawful arrest, and excessive force.¹ Pending before the Court are three Motions for Summary Judgment pursuant to Federal Rule of Procedure 56(a) in each of the three cases, filed by (1) Defendant Waterford Township, (2) Defendants Timothy Lyons ("Lyons") and Brent Staiger ("Staiger"), and (3) Defendants Joseph McNally ("McNally") and Richard Passarella ("Passarella"). For the reasons that follow, these motions are granted in part and denied in part. A summary of each claim and its disposition appears at the end of this Opinion.

¹ The Court exercises subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. The three cases have not been consolidated at this time.

I.

Though some facts remain in dispute, the Court briefly reviews the circumstances giving rise to the claims at issue. The claims in these three lawsuits arise from three incidents in late 2010 and early 2011. A fourth incident in early 2012 is key to the supplemental counts alleged by Tracey against McNally. The Court begins by providing relevant background information and then describes each of the incidents giving rise to the instant suits.

Tracey Miller is a forty-five year-old male, previously married to Jennifer Miller. (Pls.' S.S.O.M.F. at ¶ 2)² The divorce between Tracey and Jennifer was not amicable, as it included cross-complaints for domestic violence, restraining orders, and police involvement at various points in 2009 and 2010. (See, e.g. Defs. Waterford Twp. S.O.M.F. ¶ 7) Following their divorce, at some point in March 2010, Jennifer and her father, Tom Watson, brought information to police concerning allegations that Tracey sent sexually explicit photographs to Tracey's step-daughter, V.W. (a minor). (Defs. Waterford Twp. S.O.M.F. ¶ 9) The substance and disposition of these criminal charges are not otherwise relevant to the instant suits.

² References to "Pls.' S.S.O.M.F." are to the Plaintiffs' Supplemental Statement of Undisputed Material Facts.

The specific facts giving rise to the instant suits begin with a traffic stop of Tracey on October 14, 2010. (Defs. Waterford Twp. S.O.M.F. ¶ 16) Lyons initiated this stop when Tracey failed to reach a full stop at a stop sign. (*Id.*; Oct. 14 Police Rep. at 2) The police report detailing Tracey's arrest contains a number of allegations concerning Tracey's behavior while in custody, including that he was disruptive and uncooperative. (Oct. 14 Police Rep. at 3) In particular, Tracey and McNally engaged in a verbal confrontation while McNally administered the DWI tests following Tracey's arrest. (Defs. Waterford Twp. S.O.M.F. ¶¶ 19-23) As a result of the stop and subsequent criminal proceedings in the New Jersey court system, Tracey was convicted of a DWI charge.

Four days later, Tracey was the subject of a second police stop in Waterford Township. (Defs. Waterford Twp. S.O.M.F. ¶ 24) On October 18, 2010, Tracey was driving S.M., his minor daughter, in his pickup truck to a friend's house when he drove past Tom Watson's home. (Tracey Miller Dep. at 114, Aug. 27, 2012) As they went by, Tracey observed McNally and Watson having a conversation, which Tracey elected to record with a handheld camera while he was driving. (T. Miller Dep. at 113:18, Aug. 27, 2012) Shortly after driving past, Tracey realized he had left something behind at home and therefore

turned back, again passing McNally and Watson.³ (T. Miller Dep. at 114-116, Aug. 27, 2012) As Tracey went back to his home, Tracey ended up following McNally, who was now in his police vehicle and driving. (Defs. Waterford Twp. S.O.M.F. ¶ 26) After a short distance, McNally pulled to the side of the road and let Tracey pass, with the result that McNally now began traveling behind Tracey.

A few moments later, Tracey pulled his vehicle into a vacant parking lot, where the parties dispute what happened next. (Defs. Waterford Twp. S.O.M.F. ¶ 29) Tracey maintains that he pulled over to check on a bucket that was in the back of his vehicle, and then quickly got back into his vehicle and prepared to drive away before McNally turned into the parking lot and initiated a confrontation. (T. Miller Dep. 133-34, Aug. 27, 2012) In Tracey's retelling, after checking on his cargo in the back of his pickup truck, he observed McNally's vehicle entering the parking lot and then without any interaction, McNally came up to Tracey's driver-side window with his gun drawn. (T. Miller Dep. at 140:15, Aug. 27, 2012)

On the other hand, McNally's version of events conflicts with Tracey's recollection. In McNally's retelling of the

³ It is unclear whether Tracey left behind his license, cigarettes, phone, or money for his daughter, but resolution of this issue is not necessary for the resolution of the instant motions. (See T. Miller Dep. at 115:9-11, Aug. 27, 2012)

incident, McNally drove past the lot, observed Tracey again taking a photograph of him, and then as McNally entered the parking lot to approach Tracey and investigate the nature of the photographs, Tracey put his own vehicle in drive in an attempt to leave. (Defs. Waterford Twp. ¶¶ 29-34)

Though the parties dispute the initiation of this confrontation, they agree that ultimately Tracey exited the vehicle (leaving S.M. behind in her seat) and fled on foot with McNally giving chase. (Defs. Waterford Twp. S.O.M.F. ¶¶ 36-38) At this time, Bernard Davis, an off-duty Evesham Township police officer, happened by and gave assistance to McNally in apprehending Tracey. (Defs. Waterford Twp. S.O.M.F. ¶ 38) As a result of these disputed circumstances, Tracey was charged with stalking, resisting arrest, and obstructing, charges that apparently remain pending. (Defs. Waterford Twp. S.O.M.F. ¶ 40)

The third and final incident relevant to all three lawsuits was an encounter between Tracey, S.M., and Ronald and Lavina on April 9, 2011. Sometime between 6:50 pm and 7:15 pm on that evening, just as Officer Staiger's shift was beginning, Staiger received a phone call from Eric Madera, a private citizen, indicating that Tracey might later be driving while under the influence of alcohol with his children in his car. (Defs. Waterford Twp. S.O.M.F. ¶ 42; Brent Staiger Dep. at 20:8-11) Staiger reported this tip to Sergeant Passarella when he came on

duty, and the information was then shared with Lyons and other officers on duty that evening in Waterford Township. (Def's. Waterford Twp. S.O.M.F. ¶ 42)

Many of the other facts regarding the April 9 incident remain in dispute. As Tracey, with S.M. in his car, drove past the Rosedale Gun Club on Pestletown Road around 9:10 pm, Lyons reported that he observed Tracey's vehicle to have illegally tinted windows, precipitating a traffic stop. (Lyons Apr. 9, 2011 Police Rep. at 1) Lyons activated his sirens and pulled into the roadway behind Tracey to pull him over, but Tracey failed to immediately stop and instead proceeded some distance down Pestletown Road to Ronald and Lavina's home before pulling off the roadway. (Lyons Apr. 9, 2011 Police Rep. at 1) Once there, Lyons reported that Tracey jumped out of his vehicle and started walking towards the residence, apparently fleeing from Lyons's commands to stop. (Lyons Apr. 9, 2011 Police Rep. at 2) A physical confrontation ensued, where Lyons grabbed Tracey and pulled him to the ground during the course of arresting Tracey. (Lyons Apr. 9, 2011 Police Rep. at 2) According to Lyons, Ronald and Lavina verbally and physically tried to prevent Tracey's arrest, and a physical confrontation with Ronald ensued. (Lyons Apr. 9, 2011 Police Rep. at 2) With McNally finally arriving at the scene, Lyons completed his arrest of

Tracey and turned his attention back to Ronald, who was injured as Lyons arrested him. (Lyons Apr. 9, 2011 Police Rep. at 2)

On the other hand, Tracey, Ronald, and Lavina testified that the April 9 incident occurred far differently. For example, Tracey indicated at his deposition that his vehicle's windows were rolled down when Lyons pulled him over, making it impossible for Lyons to have seen Tracey's illegally tinted windows. (T. Miller Dep. at 186:19-21, Sept. 4, 2012) Next, Tracey indicated that he never attempted to flee, an account confirmed by Ronald's observations as well. (T. Miller Dep. at 244, Sept. 4, 2012; Ronald Miller Dep. at 16) In short, Tracey, Ronald, and Lavina indicated that the physical altercation that resulted in Tracey and Ronald's injuries occurred as a result of unprovoked aggression on Lyons's part. Moreover, Lyons and Lavina disagree about whether Lyons hit Lavina with his flashlight - Lyons indicates that he never made contact with her, while Lavina claims she was hit in the arm. (*Compare* Timothy Lyons Dep. at 155:1 with Lavina Miller Dep. at 62:3)

Finally, a fourth incident on March 12, 2012, gave rise to two supplemental claims brought by Tracey against McNally. On that evening, Tracey was drinking at Starky's Pour House, a bar in Winslow Township, when McNally and Bill Monroe arrived at the bar. (T. Miller Dep. at 60:5-7, Sept. 4, 2012) Upon McNally and Monroe's arrival, a bartender warned Tracey that McNally had

just entered the bar, and shortly after that, McNally and Monroe sat down at the bar across from Tracey. (T. Miller Dep. at 61:15-62:1, Sept. 4, 2012; *id.* at 63:18) As soon as they were settled, Tracey explained that a verbal confrontation broke out, with McNally "yelling across the bar," threatening to "kick [Tracey's] ass." (T. Miller Dep. at 64:12-19, Sept. 4, 2012) As the yelling escalated, the bar owner ultimately defused the altercation by telling McNally and Monroe to "knock it off," and gave Tracey a ride home. (T. Miller Dep. at 65:5-10, Sept. 4, 2012)

As a result of the first three incidents, Tracey Miller filed the instant suit (docket 11-cv-3405) on June 13, 2011.⁴ On June 22, 2011, Ronald and Lavina filed their suit resulting from the April 9, 2011 altercation at their home (docket 11-cv-3578). On the same date, S.M. filed suit as well (docket 11-cv-3579), alleging similar claims as Tracey, Ronald, and Lavina from the events described herein. Following the filing of the three suits, a number of Defendants filed motions to dismiss and motions for judgment on the pleadings, which were granted in part and denied in part. Following discovery, the Defendants

⁴ Claims regarding the fourth incident, the March 12, 2012 altercation between Tracey and McNally, were added as part of a supplement to the Amended Complaint, filed in May, 2012. (Dkt. no. 112, 11-cv-3405)

filed the instant motions for summary judgment, which the Court now considers.

II.

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In deciding a motion for summary judgment, the court must construe all facts and inferences in the light most favorable to the nonmoving party. See *Boyle v. Allegheny Pennsylvania*, 139 F.3d 386, 393 (3d Cir. 1998). The moving party bears the burden of establishing that no genuine issue of material fact remains. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A fact is material only if it will affect the outcome of a lawsuit under the applicable law, and a dispute of a material fact is genuine if the evidence is such that a reasonable fact finder could return a verdict for the nonmoving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 249, 252 (1986). The non-moving party must present "more than a scintilla of evidence showing that there is a genuine issue for trial." *Woloszyn v. Cnty. of Lawrence*, 396 F.3d 314, 319 (3d Cir. 2005). The court's role in deciding the merits of a summary judgment motion is to determine whether there is a

genuine issue for trial, not to determine the credibility of the evidence or the truth of the matter. *Anderson*, 477 U.S. at 249.

III.

The Court begins with the Motion for Summary Judgment filed by the municipal Defendant, Waterford Township, which may be granted in full as to each claim asserted by Tracey, Ronald, Lavina, and S.M. The Court then considers the motions filed by the individual Defendants.

A.

Waterford Township seeks summary judgment on each of the Plaintiffs' claims that it is liable for civil rights violations, as well as claims of state law negligence. Each is addressed in turn.

1.

Waterford Township argues that the Plaintiffs have failed to put forward any facts that suggest Waterford Township is liable for the acts of any of its police officers, therefore it is entitled to relief from the Plaintiffs' respective *Monell*

claims.⁵ Because of the common features of each Plaintiff's *Monell* claim, the Court considers all of these claims together.

Section 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

42 U.S.C. § 1983.

In cases arising under § 1983, municipalities cannot be held liable on a *respondeat superior* theory. *Monell*, 436 U.S. at 691. Rather, municipalities are only liable "for their own illegal acts." *Connick v. Thompson*, 131 S.Ct. 1350, 1359 (2011) (quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 479 (1986)). As explained by the Third Circuit, courts have created a "two-path track to municipal liability under § 1983, depending on whether the allegation is based on municipal policy or custom." *Mulholland v. Gov't Cnty. of Berks*, 706 F.3d 227, 237 (3d Cir. 2013) (quoting *Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996)).

These two types of liability are as follows:

Policy is made when a "decisionmaker possess[ing] final authority to establish a municipal policy with respect to the action" issues an official proclamation, policy, or

⁵ *Monell v. Dep't of Soc. Serv.*, 436 U.S. 658, 691 (1978)

edict. A course of conduct is considered to be a "custom" when, though not authorized by law, "such practices of state officials [are] so permanent and well-settled" as to virtually constitute law.

Mulholland, 706 F.3d at 237 (quoting *Andrews v. City of Phila.*, 895 F.2d 1469, 1480 (3d Cir. 1990)). Evidence of knowledge and acquiescence may also establish that a custom exists sufficient for finding liability. *Mulholland*, 706 F.3d at 237.

Municipalities are not liable for acts of police officers unless a municipal policy or custom amounts to a "deliberate indifference to the rights of people with whom the police come into contact." *Carswell v. Borough of Homestead*, 381 F.3d 235, 244 (3d Cir. 2004) (citing *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)). Deliberate indifference is defined as "'a deliberate choice to follow a course of action is made from among various alternatives' by city policymakers." *Harris*, 489 U.S. at 389 (quoting *Pembaur*, 475 U.S. at 483-84 (plurality) (Brennan, J.)).

In light of this definition of deliberate indifference, a municipality's inadequate training or supervision gives rise to liability where municipal policymakers are "on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights . . . [and they] choose to retain that program." *Connick*, 131 S.Ct. at 1360. Similar to the

inadequate training standard, a widespread behavior by police officers is considered a municipal custom where there is "knowledge and acquiescence by the decisionmaker." *McTernan v. City of York*, 564 F.3d 636, 658 (3d Cir. 2009) (citing *Watson v. Abington Twp.*, 478 F.3d 144, 156 (3d Cir. 2007)). Finally, the plaintiff must also show that the alleged policy or custom was the proximate cause of the injuries suffered. *Watson*, 478 F.3d at 156 (citing *Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir. 1990)). To demonstrate causation from a municipal custom, the plaintiff must show that the "occurrence of the specific violation was made reasonably probable by permitted continuation of the custom." *Watson*, 478 F.3d at 156 (quoting *Bielevicz*, 915 F.2d at 851)).

In their opposition to Waterford Township's Motion for Summary Judgment, the Plaintiffs argue that Waterford Township failed to properly train or supervise the sergeants in the police force, which constitutes a custom or policy that reflects deliberate indifference to their rights, permitting them to recover. (Pls. Br. in Opp. to Defs. Waterford Twp. at 37-38.) However, Waterford Township has demonstrated that the record lacks any evidence that the Plaintiffs are the victims of either inadequate training or a custom sufficient to impose § 1983 liability on Waterford Township.

First, the record fails to establish that the Plaintiffs were the victims of inadequate training. The Plaintiffs point to Defendant Passarella's testimony that, as the longest tenured Sergeant on the Waterford Township police force, he would "take charge" of any incident upon his arrival at the scene.

(Passarella Dep. 87:2-7.) Similarly, Defendant McNally, in his role as a Sergeant, would have supervisory responsibility for the officers that reported to him. (Joseph McNally Dep. 110:7-8.) The Plaintiffs argue that Passarella's seniority (and by extension, McNally's supervisory role as a Sergeant), granted him responsibility for training all officers that fell under their supervision and authority. (Pls. Opp. Br. to Defs. Waterford Twp. at 40.) However, this supervisory responsibility does not demonstrate deficient training leading to a constitutional violation. By failing to identify or demonstrate the substance of some missing training, the Plaintiffs cannot show, via actual or constructive notice, that municipal policymakers were aware of any such deficient training. Because the Plaintiffs must demonstrate that municipal policymakers had such actual or constructive notice of the deficient training, Waterford Township is not liable for deficient or inadequate training that would give rise to liability under § 1983.

Second, the Plaintiffs have failed to establish that Waterford Township's "municipal custom" existed that would

establish § 1983 liability for Waterford Township. The Plaintiffs highlight Waterford Township Standard Operating Procedure #41, a General Order that mandates that “[s]upervisors are to review all reports submitted for content and completion and to make sure all reports are accounted for.” (Waterford Twp. Police Dept. Standard Operating Procedure # 41 at 1.) The Plaintiffs argue that “had [Lieutenant Daniel Cormaney] reviewed [McNally’s] police report, it would have been clear that the basis for the [October 18, 2010] stop was unlawful and thus violated [Tracey Miller’s] First Amendment and Fourteenth Amendment rights.” (Pls. Opp. Br. to Defs. Waterford Twp. at 41) This argument is based on Lieutenant Cormaney’s admission that his review of reports filed by subordinate officers (including Sergeant McNally) were undertaken randomly, rather than in compliance with SOP #41, which requires the review of “all reports.” (Daniel Cormaney Dep. at 29:24-30:2)

While this evidence suggests that Cormaney failed to follow SOP #41, it neither establishes a municipal custom, nor the requisite causation to impose liability. As to causation, it does not follow that because Cormaney failed to faithfully follow SOP #41 and review McNally’s report of the October 18 arrest of Tracey Miller, that the April 9, 2011 incident at Ronald and Lavina Miller’s home would have been avoided. The failure to review every single report filed by McNally does not

lead to the conclusion that any Waterford Township police officers would use excessive force against Tracey, Ronald, and Lavina nearly six months after McNally's October 18, 2010 traffic stop.

Moreover, Cormaney's failure to follow SOP #41 does not demonstrate that a municipal decisionmaker knowingly acquiesced to Cormaney's actions - the requisite standard for imposing liability. There is no indication in the record that any municipal decisionmaker was aware or unaware of the relevant police department policies and the execution of those policies. Given the absence of evidence in the record regarding both causation and acquiescence, the Plaintiffs cannot demonstrate a municipal custom existed sufficient to impose § 1983 liability.

Finally, permitting Waterford Township police officers to use their personal cell phones fails to constitute a municipal policy sufficient for imposing § 1983 liability on Waterford Township. The record contains no reference to any municipal policymaker who formally permitted the use of cell phones for police business.⁶ Though the record indicates that McNally and

⁶ For example, there is no mention of a policy regarding the usage of cell phones in the Waterford Township Code of Conduct. (See Code of Conduct, Rules and Regulations, Adopted by Waterford Township Police Department) The Code of Conduct is based on a "Model Police Manual," with modifications to account for the local law and needs, which were determined as a "result of a great deal of research and meetings between the Appropriate authority, the Township Solicitor, and the Chief of Police, and all in coordination with State and Federal law." (*Id.* at 1.)

Lyons spoke by cell phone on the evening of April 9, 2011, such evidence does not demonstrate that this was sanctioned by a municipal policymaker. (See McNally Dep. 262:19-21.) Nor does the fact that McNally testified that Waterford Township police officers "talk on the cell phone all the time." (McNally Dep. 261:16-17.) The Plaintiffs therefore cannot demonstrate that Waterford Township had a policy in place to violate the Plaintiffs' constitutional rights.

In sum, the undisputed record fails to demonstrate that Waterford Township is liable for the Plaintiffs alleged § 1983 claims. Waterford Township is therefore entitled to summary judgment in its favor on each of the § 1983 claims.⁷

2.

The Court next turns to the negligence claims brought by each Plaintiff against Waterford Township.

The New Jersey Tort Claims Act imposes liability on a public entity "for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances." N.J.S.A. 59:2-2(a). New Jersey recognizes a cause of action for negligent hiring or

⁷ Counts III and VII in Tracey's suit, Counts III and IV in Ronald and Lavina's suit, and Counts IV and VI in S.M.'s suit.

retention of employees in the private sector under a theory of *respondeat superior*. *Di Cosala v. Kay*, 450 A.2d 508, 516 (N.J. 1982). Municipalities, like private sector entities, may be held liable for the negligent hiring or retention of a police officer under this theory. *Denis v. City of Newark*, 704 A.2d 1003, 1007 (N.J. Super. Ct. App. Div. 1998). "In order to prevail under this theory, a plaintiff must show that the municipality knew or should have known of the police officer's dangerous propensities and the risk of injury he or she presents to the public." *Love v. Monroe Twp.*, No. 09-cv-1665 (JAP), 2011 WL 765981, at *4 (D.N.J. Feb. 25, 2011) (citing *Denis*, 704 A.2d at 1007).

In *Denis*, the New Jersey Superior Court found that the Newark Police Department knew or should have known of an individual police officer's dangerous propensities as a result of that officer's personnel file, which contained records of two incidents in a two-week span following two separate motor vehicle collisions where the officer physically assaulted two other drivers without cause. *Denis*, 704 A.2d at 1007-08, 1008 n.6. Furthermore, the officer's record included nine suspensions for violating police regulations in a ten-year span. *Id.* at 1008. In short, such "assaultive behavior on defenseless citizens" stated a *prima facie* claim for negligent retention

because of the officer's "dangerous propensities and the risk of injury he presented to the public." *Id.*

Here, the undisputed record fails to demonstrate that Waterford Township could be found liable for negligent hiring or retention. The Plaintiffs argue that McNally and Passarella were "known throughout town as the 'Booze Brothers,'" (Pls. Opp. Br. to Defs. Waterford Twp. at 47; Cormaney Dep. 129:6-7), and that Lieutenant Cormaney and Chief Knoll were aware of a bar fight that involved McNally and Passarella, (See Cormaney Dep. at 139-146; John Knoll Dep. 78-82). Even in light of their superiors' knowledge of the nickname and bar fight, a single argument in a bar, even one that resulted in an investigation by the Camden County Prosecutor's office,⁸ is insufficient to suggest that McNally and Passarella constituted a risk of injury to the public akin to *Denis*. Moreover, the nickname "Booze Brothers" does not indicate a propensity for violence; as Lieutenant Cormaney testified, he was not sure what the "Booze Brothers" term even really meant, but instead had just heard the name in passing.⁹ (Cormaney Dep. at 129:6-7.) In other words,

⁸ Further distinguishing McNally and Passarella's altercation in Rack's Bar (that gave rise to the Camden County Prosecutor's Office investigation) from the tortious behavior in other police negligent retention cases is the fact that McNally had the charges against him dismissed, while Passarella's were vacated on appeal. (Cormaney Dep. 145:11, 146:8.)

⁹ The Court notes that even if evidence of the nickname were not deemed to be hearsay and therefore admissible, the Federal Rules of Evidence prohibit the

there is no way that a jury could conclude that these events would have likely led to future physical violence. While perhaps irresponsible, such reputation evidence combined with one physical incident of violence is distinguishable from the tortious behavior described in *Denis*.

The Court takes a similar view of the factual record regarding Lyons. Waterford Township concedes that Lyons "has the highest number of internal complaints within the past 3 years," but the record indicates that this is a reflection of doing a "disproportionate amount of work for a patrol officer." (Cormaney Dep. at 153:23-154:5.) In the absence of any other indication in the record that Lyons demonstrated some dangerous propensity, no charge for negligent hiring can be sustained.

In light of the undisputed record, the Plaintiffs cannot demonstrate that Waterford Township is liable for negligent hiring or retention. Waterford Township is therefore entitled to summary judgment on each of the Plaintiffs' negligence claims.¹⁰

admission of character evidence "to prove that on a particular occasion the person acted in accordance with the character or trait." Fed.R.Evid. 404.

¹⁰ Specifically, Count XXIII in Tracey's suit, Count XIV in Ronald and Lavina's suit, and Count XIV in S.M.'s suit.

B.

The Court turns next to the Motions for Summary Judgment filed by Lyons and Staiger, and by McNally and Passarella. In considering these Motions, the Court first focuses on Staiger and Passarella, and finally turns to the claims asserted against each of the other individual Defendants.

1.

In viewing the factual record in the light most favorable to the non-moving Plaintiffs, the Court is able to grant summary judgment to Staiger on each claim asserted against him. The Court may also grant summary judgment in favor of Passarella.

a.

As a preliminary matter, there is no dispute that Staiger was not present or involved in any of the events in October, 2010 regarding Tracey and the police, as the police reports from each incident do not indicate that Staiger was present or involved on either occasion. (See, e.g., Oct. 14, 2010 Police Rep.; McNally Oct. 18, 2010 Police Rep.) Thus, each of Tracey's claims against Staiger arise from the events of April 9, 2011.

Counts X and XIV of Tracey's Amended Complaint allege that Staiger falsely arrested and imprisoned Tracey. To prove a claim for false arrest, a plaintiff must prove two elements:

(1) that there was an arrest; and (2) that the arrest was made without probable cause. *Islam v. City of Bridgeton*, 804 F.Supp.2d 190, 197 (D.N.J. 2011) (citing *Dowling v. City of Philadelphia*, 855 F.2d 136, 141 (3d Cir. 1988)). To prove a claim for false imprisonment, a plaintiff must similarly prove two elements: (1) that the plaintiff was detained; and (2) that the detention was unlawful. *James v. City of Wilkes-Barre*, 700 F.3d 675, 682-83 (3d Cir. 2012) (citing *Wallace v. Kato*, 549 U.S. 384, 389 (2007)). When a false imprisonment claim is based on an arrest without probable cause, as Tracey's complaint alleges here, the claim is grounded in the protections guaranteed by the Fourth Amendment and its protection against unreasonable seizures. *James*, 700 F.3d at 683 (citing *Groman v. Twp. of Manalapan*, 47 F.3d 628, 636 (3d Cir. 1995)).

"Probable cause exists when, based on the factual circumstances, a prudent person could believe that a particular suspect has committed or is committing an offense." *Islam*, 804 F.Supp.2d at 197 (citing *Sharrar v. Felsing*, 128 F.3d 810, 817-18 (3d Cir. 1997)). Such an inquiry is fact-specific. *Islam*, 804 F.Supp.2d at 197 (citing *Illinois v. Gates*, 462 U.S. 213, 232 (1983)).

Though a great deal of the factual circumstances on April 9, 2011 remain in dispute, those facts relevant to determining Staiger's liability permit the Court to grant summary judgment

in Staiger's favor. As recorded in Staiger's report from the April 9 incident, he arrived at Ronald and Lavina's home at McNally's direction, after Lyons made a radio call that he was attempting to stop a vehicle that would not pull over. (Staiger Apr. 9, 2011 Police Rep. at 1) As Staiger recounted in his deposition, he arrived at the scene while Ronald and Lavina were irate and yelling while Lyons placed Tracey under arrest. (E.g. Staiger Dep. 109:8-18) There is no indication in the record that Staiger interacted with Tracey at the scene of his arrest. Instead, the record shows that Staiger simply reported back to headquarters to aid Lyons with processing Tracey's arrest. (Staiger Apr. 9, 2011 Police Rep. at 1) Tracey conceded that he did not recall seeing Staiger on the scene of his traffic stop. (T. Miller Dep. 250-251, Aug. 27, 2012) Staiger's remaining interactions with Tracey consisted of summoning medical assistance for Tracey, and after Tracey's medical clearance, transporting Tracey to Camden County Jail. (Staiger Apr. 9, 2011 Police Rep. at 1-2) In short, Staiger's interaction with Tracey only began after Tracey was taken into custody, and Staiger was entirely ancillary to any decision to take Tracey into custody in the first place, or keep Tracey in custody during processing. Ultimately, these actions do not constitute false arrest or imprisonment as Staiger had probable cause to aid in Tracey's post-arrest processing, based on the

circumstances at the scene and the instructions from his superior officers. Staiger is therefore entitled to summary judgment in his favor on Counts X and XIV.¹¹

Tracey's Amended Complaint also includes a charge of negligence against Staiger. The thrust of this claim is that Staiger negligently relayed information regarding the phone call that indicated Tracey was out drinking and would later be driving home with children in his car. (Am. Compl. ¶ 143) The New Jersey Tort Claims Act provides that "[a] public employee is not liable if he acts in good faith in the execution or enforcement of any law." N.J.S.A. 59:3-3. To obtain this good faith immunity, a public employee must either act in an objectively reasonable fashion, or demonstrate subjective good faith. *Alston v. City of Camden*, 773 A.2d 693, 703 (N.J. 2001).

Even taking the facts in the light most favorable to Tracey, Staiger's acts of passing along a tip to fellow police officers is objectively reasonable. There is no indication that Staiger did anything besides inform his colleagues that he received word that Tracey was at a bar, and later would be driving home with his kids in the car. (Staiger Dep. at 26:21-

¹¹ The Court will also grant summary judgment in Staiger's favor for the New Jersey Civil Rights Act ("NJCRRA") claim (Count XVIII). The New Jersey CRA is interpreted analogously to § 1983, which serves as the basis of Tracey's false arrest and false imprisonment claims. *Pettit v. New Jersey*, 09-cv-3735 (NLH), 2011 WL 1325614, at *3 (D.N.J. March 30, 2011). The Court therefore grants summary judgment in Staiger's favor on the NJCRRA count as well.

25) Tracey had no recollection that Staiger was involved in any other way, and there is no indication that Staiger interacted with Tracey other than to accompany Tracey through the processing of his arrest. (T. Miller Dep. at 251:5-7, Aug. 27, 2012; Staiger Apr. 9, 2011 Police Rep. at 1-2) Staiger is therefore entitled to good faith immunity, which requires summary judgment in his favor on Count XXII.

b.

The Court may also grant summary judgment in favor of Passarella on Tracey's claims of conspiracy. Tracey's civil rights claims against Passarella are limited to these conspiracy claims per the Court's order of February 15, 2013.¹² (Case: 11-cv-3405, dkt. no. 110, at 2)

To bring a claim for conspiracy to interfere with civil rights, a plaintiff must show the following:

¹² As described at oral argument, Passarella was initially dismissed from this action, but Tracey was permitted to amend his Complaint and add Passarella to the action following a showing of evidence during the fact discovery process. While Tracey's Amended Complaint brings now brings a claim pursuant to 42 U.S.C. § 1983, a conspiracy to deprive a citizen of their civil rights would normally fall under § 1985. Recognizing that Tracey's claim was limited to the conspiracy allegation (pursuant to the Court's Order of February 15, 2013) the Court treats the conspiracy claim as one falling under § 1985. Even if Tracey sought to amend or reinstate his claim under §1983 claim, such an amendment would not be timely, and moreover, Passarella did not come into physical contact with Tracey in a fashion that could give rise to a § 1983 claim (nor is there any indication in the record that Passarella was at the scene of Tracey's arrest during the struggle which might give rise to some sort of supervisory liability for excessive force). Thus, the Court would grant summary judgment in Passarella's favor regardless.

(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is injured in his person or property or deprived of any right or privilege of a citizen of the United States.

Farneski v. Cnty. of Hunterdon, 916 F.Supp.2d 573, 587 (D.N.J. 2013) (quoting *Farber v. City of Paterson*, 440 F.3d 131, 134 (3d Cir. 2006)).

At the close of fact discovery, Tracey has failed to demonstrate that Passarella was part of a conspiracy to deprive Tracey of his civil rights. At base, Tracey argues that Passarella disseminated information about Madera's phone call to other Waterford Township police officers, (Pls. Opp. Br. to McNally and Passarella Mot. at 65-66), and at oral argument, Tracey's counsel suggested that such dissemination was reflective of a pattern of involvement that ran the course of many months. However, the record demonstrates that Passarella's involvement was simply to pass along the fact that Staiger had received such a tip (*E.g.* McNally Dep. at 234-35). The direction provided to Waterford Township police officers was to investigate the tip, if presented with the opportunity to do so. (McNally Dep. at 234:22-24) Such instructions to investigate Tracey's behavior in the event that an officer sees Tracey during their patrol simply does not reach the requisite

threshold to demonstrate either some intention to violate Tracey's civil rights. Nor does it indicate that Passarella somehow detained or imprisoned Tracey in furtherance of a conspiracy; in fact, as with Staiger's involvement, there is no indication in the record that Passarella ever arrested Tracey or interacted with Tracey after he was taken into custody.

Passarella is therefore entitled to summary judgment in his favor on the conspiracy claims, as well as the false arrest and imprisonment claims pled against him in Counts IV, XI, and XV.¹³

2.

The Plaintiffs bring a variety of civil rights and state common law claims. Each is considered in turn, with the exception of S.M.'s claims, which are considered separately in section 3, *infra*.

a.

Counts I and II of Tracey's Amended Complaint allege that McNally (Count I) and Lyons (Count II) are liable for violations of Tracey's § 1983 rights. Counts XVI (against McNally) and XVII (against Lyons) allege parallel claims under the New Jersey

¹³ Again, the NJCRA is interpreted analogously with § 1983. *Pettit*, 2011 WL 1325614, at *3. The Court therefore grants summary judgment on Tracey's NJCRA claim (Count XIX) in Passarella's favor as well.

Constitution.¹⁴ Ronald and Lavina allege similar claims against Lyons and McNally.¹⁵

In considering each these claims, the Court must determine whether the relevant Defendants' actions were "objectively reasonable in light of the facts and circumstances confronting [him], without regard to the officer[']s underlying intent or motivation." *Norcross v. Town of Hammonton*, No. 04-cv-2536 (RBK), 2008 WL 9027248, at *4 (D.N.J. Feb. 5, 2008) (citing *Graham v. Connor*, 490 U.S. 386, 397 (1989)). To determine whether any given Defendant's actions were objectively reasonable, the Court must consider "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. The Third Circuit also instructs that courts should consider factors like the duration of the action, whether an arrest is in progress, whether the suspect is possibly armed, and the number of persons that the police must contend with at the scene. *Bou v. New Jersey*, No. 11-cv-6356

¹⁴ Again, these NJCRA claims are considered together with the § 1983 claims. See *Pettit*, 2011 WL 1325614, at *3. In section e, *infra*, the Court separately considers Tracey's supplemental claims of negligence and violation of the NJCRA alleged in the Supplemental Complaint.

¹⁵ Specifically, Counts I and II allege McNally and Lyons violated § 1983, and Counts V and VI allege parallel violations of the NJCRA.

(JEI/AMD), 2013 WL 4517940, at * 7 (D.N.J. Aug. 26, 2013) (citing *Couden v. Duffy*, 446 F.3d 483, 497 (3d Cir. 2006)). The “‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396.

Here, the Court finds that there are genuine issues of material fact precluding the grant of summary judgment on Tracey’s excessive force claims arising from the April 9 incident. At the close of discovery, there are at least two narratives on the circumstances of the April 9, 2011 traffic stop. In Tracey’s retelling, Lyons followed Tracey for between a quarter and half mile with Lyons’s lights and sirens on before Tracey pulled into his parents’ driveway. (T. Miller Dep. 242:15-16, Aug. 27, 2012) According to Tracey, he stepped out of the vehicle and Lyons immediately approached him, informing him he was under arrest for illegally tinted windows, and without any further conversation “slammed” Tracey on the ground. (*Id.* at 244:2-10) Tracey maintained that he did not attempt to flee, nor was there any subsequent conversation before Lyons “slammed” Tracey to the ground. (*Id.* at 244:8-10; *Id.* at 244:23-24) On the other hand, Lyons’s report following the incident details how Tracey, once he exited his vehicle, walked away from his car and towards the front door of his parents’

house, ultimately ending up behind Ronald and Lavina Miller before Lyons came over to arrest him. (Lyons, Apr. 9, 2011 Police Rep. at 2) Ronald Miller testified that Lyons was "screaming . . . like a crazy man. He was snorting. He looked like a crazy man, you know." (R. Miller Dep. at 16:13-14) On the other hand, Lyons described a scene where Tracey was punching Lyons with a closed fist in the chest while Lyons attempted to take him into custody. (Lyons Dep. at 150) Moreover, while other officers eventually responded to the scene, Lyons could not recall how long he waited before other officers finally responded to help him address the situation. (*Id.* at 146:10-11)

Absent resolution of the factual disputes regarding the circumstances and physical contact between Tracey and Lyons, the Court cannot analyze the factors to determine whether Lyons's actions towards Tracey were objectively reasonable. For example, it is unclear whether Tracey was attempting to evade arrest by hiding behind his parents, or whether Lyons walked right up to Tracey and tackled him without provocation. Furthermore, without knowing when other officers actually arrived, the Court cannot determine whether Lyons had to deal with three uncooperative adults on his own, or if the numbers were in fact different. Given these disputes, the Court cannot conclude that Lyons did not use excessive force and therefore

cannot grant summary judgment in Lyons's favor on Tracey's claims of excessive force.

Similarly, the Court cannot grant summary judgment in McNally's favor regarding Tracey's allegations of excessive force. As recounted in his deposition, Tracey was certain that McNally hit him, either with his closed fist or knee, during the course of a struggle between the two of them on April 9. (T. Miller Dep. 247:24, Aug. 27, 2012) Similarly, Ronald indicated that in his recollection, McNally was "punching Tracey in the head with his knee in [Tracey's] back." (R. Miller Dep. 26:1) In contrast, McNally testified that once he arrived on the scene, Tracey "kind of stopped resisting when [he] got there." (McNally Dep. at 223:14-15) In McNally's recollection, he was able to simply handcuff Tracey and walk him over to Lyons's police vehicle, as Lyons was then able to address Ronald and Lavina. (McNally Dep. at 224-25) These factual disputes preclude the Court from determining whether McNally is responsible for any force, let alone excessive force, against Tracey. The Court therefore cannot analyze the requisite factors and in turn cannot grant McNally summary judgment on Tracey's claims of excessive force.

In addition, the Court cannot grant summary judgment to Lyons regarding Ronald and Lavina's claims for excessive force. Both Ronald and Lavina's claims arise solely from the incident

on April 9, 2011, which is the subject of numerous factual disputes regarding the events surrounding all of the arrests. In light of these disputes, the Court cannot analyze the factors to determine whether Lyons's actions were objectively reasonable regarding Ronald, who was tackled either (1) without warning, or (2) after failing to cooperate with Lyons's instructions. (*Compare* Lyons Dep. at 156:20-22 with R. Miller Dep. at 17:1-14) Similarly, there is a dispute regarding whether Lavina was even struck with Lyons's flashlight, which is the physical contact giving rise to Lavina's excessive force claim. (*Compare* Lyons Dep. at 155:1 with L. Miller Dep. at 62:3) These factual disputes preclude summary judgment on Ronald and Lavina's claims for excessive force against Lyons in Counts II and VI.

The Court may, however, grant summary judgment in favor of McNally as to the civil rights violations alleged by Ronald and Lavina Miller. McNally arrived at the scene on April 9, 2011, after an altercation between Tracey, Ronald, Lavina, and Lyons had already begun. (Lyons April 9, 2011 Police Rep. at 2; McNally April 9, 2011 Police Rep. at 1) There is no indication in the record that McNally made any physical contact with either Ronald or Lavina on April 9. Neither Ronald nor Lavina describe any physical altercation with McNally in their depositions, and Ronald conceded at his deposition that "I had no confrontation with McNally at all." (R. Miller Dep. at 30:20) Given the

parties' agreement that there was no physical contact between McNally and both Ronald and Lavina, the Court can conclude that McNally in fact used no force on Ronald or Lavina, and therefore McNally is entitled to summary judgment in his favor on their excessive force claims in Counts I and V.

b.

Tracey, Ronald, and Lavina also bring common law claims for assault and battery against Lyons, as well as negligence against Lyons and McNally.¹⁶ Lyons and McNally argue, *inter alia*, that summary judgment should be granted in their favor as to these claims because if the force used against Tracey was not excessive, then they cannot be liable for assault and battery, nor for negligence.

Lyons properly points out that a police officer will generally not be liable for assault or battery unless the force used was excessive. *Hill v. Algor*, 85 F.Supp.2d 391, 411 (D.N.J. 2000); *State v. Williams*, 148 A.2d 22, 28-29 (N.J. 1959). The Court has already explained that genuine issues of material fact preclude a determination of whether the force that Lyons and McNally used against Tracey was excessive. In light

¹⁶ Specifically, Tracey's Counts V (McNally) and VI (Lyons) allege assault and battery, and Counts XX (McNally) and XXI (Lyons) allege negligence. Ronald and Lavina's Count VII (Lyons) alleges assault and battery, and XII (McNally) and XIII (Lyons) allege negligence.

of this conclusion, the Court cannot grant summary judgment dismissing Tracey's assault and battery claims against Lyons and McNally.¹⁷

The same analysis applies equally to Ronald and Lavina regarding their claims for assault and battery against Lyons. As the factual circumstances surrounding their contact with Lyons on April 9, 2011 remains in dispute, the Court cannot determine whether the force that Lyons used against them was excessive. The Court therefore cannot grant summary judgment dismissing Ronald and Lavina's assault and battery claims against Lyons.

In considering Tracey, Ronald, and Lavina's negligence claims against Lyons and McNally, the Court cannot grant summary judgment. "In New Jersey, as elsewhere, it is widely accepted that a negligence cause of action requires the establishment of four elements: (1) a duty of care, (2) a breach of that duty, (3) actual and proximate causation, and (4) damages." *Jersey Cent. Power & Light Co. v. Melcar Utility Co.*, 59 A.3d 561 (N.J.

¹⁷ The Defendants also argue that they are entitled to the protections of good faith immunity under N.J.S.A. 59:3-3, which (as described *supra*) provides that "[a] public employee is not liable if he acts in good faith in the execution or enforcement of any law." The New Jersey Supreme Court construes this good faith immunity under the "same standard of objective reasonableness that applies in Section 1983 actions." *Wildoner v. Borough of Ramsey*, 744 A.2d 1146, 1153 (N.J. 2000). As genuine issues of material fact remain regarding the force used on April 9, 2011 and whether Lyons and McNally were objectively reasonable in their contact with Tracey, the Court cannot determine whether Lyons or McNally acted in good faith according to N.J.S.A. 59:3-3.

2013). Given the dispute regarding the actual circumstances of Tracey and Ronald's arrests by Lyons and McNally (and the citation issued to Lavina), the Court cannot determine whether Lyons or McNally undertook any negligent behaviors during the course of events on April 9, 2011. As such, the Court cannot grant summary judgment in Lyons or McNally's favor on Tracey, Ronald, and Lavina's negligence claims.

c.

The Court next turns to Tracey, Ronald, and Lavina's claims for false arrest and imprisonment against McNally and Lyons. The Court first addresses Tracey's claims against Lyons,¹⁸ then turns to Ronald and Lavina's claims against both Lyons and McNally.¹⁹ The Court separately addresses Tracey's false arrest and imprisonment claims against McNally in section d, *infra*.

As previously discussed, when a false imprisonment claim is based on an arrest without probable cause, as the Plaintiffs' Amended Complaints allege, the claim is grounded in the rights guaranteed by the Fourth Amendment and its protection against unreasonable seizures. *James*, 700 F.3d at 683 (citing *Groman*, 47 F.3d at 636). "Probable cause exists when, based on the

¹⁸ Counts IX and XIII of Tracey's suit.

¹⁹ Counts VIII (false arrest) and X (false imprisonment) are alleged against McNally, while Counts IX (false arrest) and XI (false imprisonment) are alleged against Lyons.

factual circumstances, a prudent person could believe that a particular suspect has committed or is committing an offense." *Islam*, 804 F.Supp.2d at 197 (citing *Sharrar* 128 F.3d at 817-18). Such an inquiry is fact-specific. *Islam*, 804 F.Supp.2d at 197 (citing *Gates*, 462 U.S. at 232).

Turning first to Tracey's claims, the Court cannot grant summary judgment as to the claims of false arrest and false imprisonment as there is a genuine factual dispute regarding the probable cause for the April 9 traffic stop. The probable cause for the traffic stop, according to Lyons, was the fact that Tracey's side windows were illegally tinted.²⁰ (Lyons Apr. 9, 2011 Police Rep. at 1; Lyons Dep. 133:24) While Tracey conceded that the windows on his vehicle on April 9 were tinted, his recollection of the traffic stop at 9:10 pm that evening was that the tinted windows were rolled down. (T. Miller Dep. at 186:19-21, Sept. 4, 2012) As Lyons explained, the tinted windows were the sole cause for the stop, as Tracey was not speeding at the time nor did Tracey's driving indicate that he was intoxicated. (Lyons Dep. at 132:19-133:3) If the windows were visible to Lyons, probable cause could be established, as

²⁰ Lyons testified in his deposition that his traffic stop of Tracey was solely based on his observation that Tracey's windows were tinted. (Lyons Dep. at 133:24) In his deposition testimony, Lyons specifically ruled out any other basis of probable cause for the stop, noting that Tracey's vehicle did not exceed the speed limit, did not cross the center line, did not make any "erratic" moves, nor were other cars somehow obstructed by Tracey's driving. (Lyons Dep. at 134-38)

Lyons would have seen the tinted windows. However, given the conflicting recollections and absence of any evidence resolving the dispute, the Court cannot determine whether Lyons's probable cause existed at the time of the stop. Therefore, Lyons is not entitled to summary judgment in his favor on the false arrest and imprisonment claims.

The Court can, however, grant summary judgment as to Ronald and Lavina's claims of false arrest and false imprisonment. There is no dispute that Ronald and Lavina, upon observing Tracey and Lyons's arrival and the ensuing confrontation, came out of their house during the course of Tracey's arrest. (See, e.g., L. Miller Dep. at 52:24-53:2) During this time, Lavina described herself as "hysterical," (L. Miller Dep. at 55:5), while Ronald was talking with Tracey during the course of Lyons's physical confrontation with Tracey, (R. Miller Dep. at 15:24-16:2). As Ronald explained, both he and Lavina failed to follow both Lyons and McNally's instructions to go back inside the house during the course of Tracey's arrest, during which time Ronald and Lavina were alternately speaking on the phone to try to summon help, and also speaking to both Tracey and Lyons. (E.g. R. Miller Dep. at 19-20) In short, even with facts in dispute regarding the circumstances of Tracey's arrest, the undisputed facts demonstrate that Ronald and Lavina were not following either Lyons or McNally's instructions while Lyons

attempted to arrest Tracey. Such facts provide valid probable cause for Ronald's arrest on the charges of Aggravated Assault, Obstruction and Resisting Arrest. Moreover, the undisputed factual record demonstrates that Lavina was not arrested, but was simply issued a summons. (Lyons Apr. 9, 2011 Police Rep. at 2) Therefore Lyons and McNally are entitled to summary judgment in their favor on Ronald and Lavina's claims of false arrest and imprisonment.

d.

The Court separately addresses McNally's Motion for Summary Judgment in his favor on Tracey's claims of false arrest (Count VIII) and imprisonment (Count XII), as well as malicious prosecution (Count XXIV).

As a preliminary matter, the undisputed record demonstrates that McNally acted with probable cause when he assisted Lyons in arresting Tracey on April 9. This conclusion rests on similar grounds as those described *supra* regarding Lyons's arrest of Ronald. The undisputed record explains that McNally's initial involvement in the April 9 incident began as a result of McNally's response to Lyons's radio call that a vehicle refused to stop as Lyons tried to pull it over. (McNally Apr. 9, 2011 Police Rep. at 1) When McNally reached the scene, though there is some confusion about the physical altercation between Lyons

and Tracey, Ronald, and Lavina, there is no dispute that Lyons was in the process of attempting to take Tracey into custody while Ronald and Lavina yelled at Lyons. (*E.g.* L. Miller Dep. at 55:5 (describing herself as "hysterical").) While the parties dispute exactly how the altercation between Ronald, Lavina, Tracey, Lyons, and McNally took shape, there is no dispute that when McNally arrived, he was responding to a call from a fellow officer that a car stop had turned into a car chase. Coming upon a scene of confusion, the facts indicate that McNally had a valid reason, and therefore probable cause, to assist in arresting Tracey.

However, the disputed events of October 18, 2010 prevent the Court from granting summary judgment in McNally's favor and fully dismissing Tracey's claims. These disputed circumstances preclude a grant of summary judgment in McNally's favor on Tracey's claims of malicious prosecution, false arrest, and false imprisonment.

As with claims for false arrest and imprisonment, the tort of malicious prosecution also contains a probable cause requirement. The tort of malicious prosecution requires the plaintiff to demonstrate that (1) the previous action was initiated by the defendant, (2) the action was motivated by malice, (3) there was an absence of probable cause, and (4) the

action was terminated favorably by the plaintiff. *Land v. Helmer*, 843 F.Supp.2d 547, 550 (D.N.J. 2012).

In evaluating whether McNally acted with probable cause when he initiated a traffic stop on October 18, the Court is presented with conflicts in the evidentiary record that prohibit summary judgment in McNally's favor. As described McNally's police report, Tracey's arrest on October 18 began with McNally's observation of Tracey driving by 658 Pestletown Road in Waterford Township, taking photographs of McNally speaking with Tom Watson. (McNally Oct. 18, 2010 Police Rep. at 1; McNally Dep. at 170:25-171:16) A short while later, McNally observed Tracey pull into an abandoned parking lot, where Tracey apparently stepped out onto the running board of his vehicle and attempted to take pictures of McNally driving past. (McNally Oct. 18, 2010 Police Rep. at 1-2) Such unauthorized pictures might provide the requisite grounds for the charge of stalking, which Tracey was eventually charged with. (McNally Oct. 18, 2010 Police Rep. at 1)

However, the record reflects a conflicting version of events as told by S.M., who was in Tracey's vehicle during the traffic stop. In S.M.'s retelling, after driving past Tom

Watson's house,²¹ Tracey pulled off the road because he heard a rattling in the back of his truck. (S.M. Dep. at 18:4-5) In S.M.'s testimony, following her father's stop in the parking lot, McNally simply approached Tracey's truck without warning and with his gun drawn as he sought to arrest Tracey. (S.M. Dep. at 18:14-19:17) This view of Tracey's arrest directly contrasts with McNally's report, creating a dispute that is material to determining whether McNally's arrest, imprisonment, and initiation of Tracey's prosecution was done with probable cause. Because of these disputed facts, the Court cannot grant summary judgment in McNally's favor on Tracey's false arrest, false imprisonment, and malicious prosecution claims.

e.

Tracey brings two additional claims against McNally, alleging in a supplemental complaint that McNally is liable for a violation of the NJCRA for use of excessive force and common law negligence. (Tracey Miller Second Am. & Suppl. Compl. at ¶¶ 13-29) As alleged and described in deposition testimony, these two claims arise from a verbal confrontation on March 12, 2012

²¹ Tracey does not dispute that he took video of McNally and Watson speaking when he drove past 658 Pestletown Road on October 18, 2010. (T. Miller Dep. at 108:9, Aug. 27, 2012)

between Tracey and McNally at Starky's Pour House in Winslow Township. (T. Miller Dep. at 59-60, Sept. 4, 2012)

Claims under the NJCRA alleging excessive force are evaluated in the same fashion as those claims under the United States Constitution brought under § 1983. See, e.g., *Norcross*, 2008 WL 9027248, at *4. As McNally points out, a suit under § 1983, "requires the wrongdoers to have violated federal rights of the plaintiff, and that they did so while acting under color of state law." *Groman*, 47 F.3d at 638. The "under color of state law" requirement is a threshold issue, and the plaintiff bears the burden of demonstrating that the defendant satisfies this requirement, as there is no liability under § 1983 for those not acting under color of law. *Id.* (citing *West v. Atkins*, 487 U.S. 42, 48 (1988); *Versarge v. Twp. of Clinton*, 984 F.2d 1359, 1363 (3d Cir. 1993)).

To act under color of state law, the defendant in a § 1983 action must "exercise[] power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West*, 487 U.S. at 49 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). Off-duty police officers may act under color of state law, particularly in circumstances where the off-duty officer is in a police uniform, orders a citizen repeatedly to halt, and seeks to arrest

citizens. *Abraham v. Raso*, 183 F.3d 279, 287 (3d Cir. 1999) (citing *Griffin v. Maryland*, 378 U.S. 130, 135 (1964)).

Even viewing the facts in the light most favorable to Tracey, McNally is entitled to summary judgment in his favor on Tracey's NJCRA claim. As Tracey conceded in his deposition, McNally was off duty during the course of the events in question on March 12, 2012. (T. Miller Dep. at 168:15-16, Sept. 4, 2012) McNally was not in uniform that evening, and as Tracey described in his deposition, McNally was clearly off duty, consuming alcohol, and not working as a police officer while at Starky's Pour House. (T. Miller Dep. at 62:24-63:1, Sept. 4, 2012) Instead, McNally was at Starky's with Bill Morrow and two women, where (in Tracey's retelling) he was sitting at the bar and yelling to Tracey, "come over here and I'll kick your ass," among other things. (T. Miller Dep. at 64:13-14, Sept. 4, 2012) Because the undisputed record demonstrates that McNally's yelling, behavior, and attire would not qualify McNally as acting under state authority, the Court cannot conclude that any of his actions could be construed as falling under the color of state law. Because McNally was not acting under color of state law, he cannot be held liable for violating Tracey's civil rights while acting under color of state law, and McNally is therefore entitled to summary judgment on the NJCRA claim.

Similarly, McNally is entitled to summary judgment in his favor on Tracey's negligence claim arising from the March 12 confrontation. To establish liability for negligence, a plaintiff must demonstrate a duty of care, breach of that duty, actual and proximate causation, and damages. *Jersey Cent. Power & Light Co.*, 59 A.3d at 571.

The standard of care ordinarily imposed by negligence law is well established. To act non-negligently is to take reasonable precautions to prevent the occurrence of foreseeable harm to others. . . .

It is not, however, enough to ground liability in negligence to show that a defendant did not act with reasonable care, and that this carelessness caused injury. Plaintiff must also show that defendant owes him a duty of care.

Id. at 571-72 (quoting *Weinberg v. Dinger*, 524 A.2d 366, 374 (N.J. 1987)). Whether a duty exists between two parties "is ultimately a question of fairness. The inquiry involves a weighing of the relationship of the parties, the nature of the risk, and the public interest in the proposed solution." *Weinberg*, 524 A.2d at 374 (quoting *Kelly v. Gwinnett*, 476 A.2d 1219, 1222 (N.J. 1984)).

Even when viewing the facts in the light most favorable to Tracey, the Court may grant summary judgment in McNally's favor. First, the record does not demonstrate that Tracey suffered any harm as a result of McNally's verbal taunts. Second, the record

does not support an assertion that McNally had any cognizable duty that he would have owed to Tracey during the incident in question on March 12, 2012. Though various regulations of the Waterford Township police department govern the interactions of sworn officers and citizens, (see, e.g., Code of Conduct, Rules and Regulations, Adopted by Waterford Township Police Department at ¶¶ 11:1-11:163), off-duty officers are not held to all of these regulations, (*id.* at ¶ 10:14). As there is no dispute that McNally was off duty at the time of the verbal confrontation, such regulations do not provide a basis for imposing a heightened duty of care on McNally. (T. Miller Dep. at 168:15-16, Sept. 4, 2012) As Tracey cannot demonstrate that McNally owed him a duty of care during their confrontation on March 12, 2012, McNally is therefore entitled to summary judgment in his favor on this separate negligence claim.

3.

Finally, the Court returns to Lyons and McNally's Motions for Summary Judgment as to each of the civil rights and common law claims alleged by S.M.²² The Court considers each of these

²² Specifically, Counts I and II allege McNally and Lyons violated § 1983, and Counts VIII and IX allege parallel violations of the NJCRA. Additionally, Counts XI and XII allege that McNally and Lyons were negligent. As discussed *supra*, Waterford Township is entitled to summary judgment in its favor on S.M.'s § 1983 and negligence claims.

claims and concludes that the Defendants are entitled to summary judgment in their favor on each.

Similar to Tracey, S.M. brings claims against Lyons and McNally under § 1983, the New Jersey Civil Rights Act ("NJCRA"), and state law negligence. These claims are rooted in S.M.'s presence at traffic stops on October 18, 2010, and April 9, 2011. As with Tracey's claim, S.M.'s claims for excessive force under the New Jersey Constitution are construed under the same standards as under the United States Constitution. *Norcross*, 2008 WL 9027248, at *4.

To state a claim under § 1983, a plaintiff must assert that a defendant acted under color of state law to deprive the plaintiff of a personal constitutional right. *Voytko v. Ramada Inn of Atlantic City*, 445 F.Supp. 315, 325 (D.N.J. 1978). A litigant "may only assert his own constitutional rights or immunities" and cannot recover for the deprivation of another's civil rights. *Id.* (quoting *O'Malley v. Brierly*, 477 F.2d 785, 789 (3d Cir. 1973)).

In the instant case, the Court finds that the undisputed record lacks evidence of any constitutional violations against S.M. The thrust of S.M.'s claim is that Lyons and McNally used excessive force in her presence, and that Lyons swung a nightstick in her direction on April 9, 2011. (See, e.g. Am. Comp. ¶ 41) There is no indication, however, that Lyons or

McNally ever made physical contact with S.M. during any traffic stop, or directly infringed upon S.M.'s constitutional rights on another occasion. In her deposition when describing the consequences of the two traffic stops, S.M. expressed concern that her father's vehicle would be pulled over more frequently than when S.M. traveled with Tracey's parents, but S.M. could not articulate any other harm she had personally suffered, even conceding that she did not directly witness any physical and violent contact between Tracey and police. (S.M. Dep. at 75:6-77:21)

In other words, the record is devoid of evidence that S.M. suffered from a deprivation of her own constitutional rights, as S.M. did not directly interact with police. Though S.M. may have observed the potential constitutional violations that may or may not have befallen Tracey, such observation is not enough to assess liability under § 1983. The Court therefore will grant summary judgment in favor of Lyons and McNally on each of S.M.'s constitutional claims.

The Court also finds that McNally and Lyons are entitled to summary judgment in their favor on S.M.'s claims for state law negligence. The basis of S.M.'s state law negligence claims is that Lyons and McNally breached some duty of care to S.M. while they were in her presence during the course of interacting with Tracey. Under New Jersey law, such a breach is not enough to

assess liability, as S.M. is required to demonstrate that she has suffered some damages to recover for a negligence cause of action. *Jersey Cent. Power & Light Co.*, 59 A.3d at 571 ("In New Jersey, as elsewhere, it is widely accepted that a negligence cause of action requires the establishment of four elements: (1) a duty of care, (2) a breach of that duty, (3) actual and proximate causation, and (4) damages.").

The Court need not address principles of good faith immunity in considering these claims of negligence, as the undisputed facts demonstrate that S.M. has not suffered any harm as a result of Lyons or McNally's actions. As S.M. described in her deposition, she has not had any "fears or issues from what happened on that motor vehicle stop when you were in the car with [her] dad," nor has she seen a doctor, psychologist, or counselor. (S.M. Dep. at 15-16) In short, there is no evidence that S.M. suffered any harm, nor did she indicate that she felt any lasting effects from any of Lyons or McNally's actions. The Court will therefore grant summary judgment in the Defendants' favor on S.M.'s claims of negligence.

IV.

In light of the foregoing, the Defendants' Motions for Summary Judgment will be granted in part and denied in part. Specifically, Defendants Waterford Township, Passarella, and

Staiger's Motions will be granted in full. Defendants Lyons and McNally's Motions will be granted in part and denied in part. Below, the Court provides a summary of the claims at issue in each case and their disposition following the motions for summary judgment. Appropriate Orders accompany this Opinion.

Tracey Miller v. Waterford Township, et al. (11-3405)

- Count I (McNally): § 1983 violations - SJ denied
- Count II (Lyons): § 1983 violations - SJ denied
- Count III (Waterford Township): § 1983 violations - SJ granted
- Count IV (Passarella): § 1983 violations - SJ granted
- Count V (McNally): Assault & battery - SJ denied
- Count VI (Lyons): Assault & battery - SJ denied
- Count VII (Waterford Township): § 1983 failure to train - SJ granted
- Count VIII (McNally): False arrest - SJ denied
- Count IX (Lyons): False arrest - SJ denied
- Count X (Staiger): False arrest - SJ granted
- Count XI (Passarella): False arrest - SJ granted
- Count XII (McNally): False imprisonment - SJ denied
- Count XIII (Lyons): False imprisonment - SJ denied
- Count XIV (Staiger): False imprisonment - SJ granted
- Count XV (Passarella): False imprisonment - SJ granted
- Count XVI (McNally): NJCRA violation - SJ denied
- Count XVII (Lyons): NJCRA violation - SJ denied
- Count XVIII (Staiger): NJCRA violation - SJ granted
- Count XIX (Passarella): NJCRA violation - SJ granted
- Count XX (McNally): Negligence - SJ denied
- Count XXI (Lyons): Negligence - SJ denied
- Count XXII (Staiger): Negligence - SJ granted
- Count XXIII (Waterford Township): Negligence - SJ granted
- Count XXIV (McNally): Malicious prosecution - SJ denied
- Supplemental Count I (McNally): NJCRA violation - SJ granted
- Supplemental Count II (McNally): Negligence - SJ granted

Ronald and Lavina Miller v. Waterford Township, et al. (11-3578)

- Count I (McNally): § 1983 violation - SJ granted
- Count II (Lyons): § 1983 violation - SJ denied
- Count III (Waterford Township): § 1983 violation - SJ granted
- Count IV (Waterford Township): § 1983 failure to train - SJ granted
- Count V (McNally): NJCRA violation - SJ granted
- Count VI (Lyons): NJCRA violation - SJ denied
- Count VII (Lyons): Assault & battery - SJ denied
- Count VIII (McNally): False arrest - SJ granted
- Count IX (Lyons): False arrest - SJ granted
- Count X (McNally): False imprisonment - SJ granted
- Count XI (Lyons): False imprisonment - SJ granted
- Count XII (McNally): Negligence - SJ denied
- Count XIII (Lyons): Negligence - SJ denied
- Count XIV (Waterford Township): Negligence - SJ granted

S.M. v. Waterford Township, et al. (11-3579)

- Count I (McNally): § 1983 violation - SJ granted
- Count II (Lyons): § 1983 violation - SJ granted
- Count IV (Waterford Township): § 1983 violation - SJ granted
- Count VI (Waterford Township): § 1983 failure to train - SJ granted
- Count VIII (McNally): NJCRA violation - SJ granted
- Count IX (Lyons): NJCRA violation - SJ granted
- Count XI (McNally): Negligence - SJ granted
- Count XII (Lyons): Negligence - SJ granted
- Count XIV (Waterford Township): Negligence - SJ granted

Date: 1-30-2014

s/ Joseph E. Irenas
JOSEPH E. IRENAS, S.U.S.D.J.

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE, [consisting of 5 pages] dated July 21, 2014, is given by **TRACEY MILLER, SR., RONALD MILLER AND LAVINA MILLER**, collectively referred to in this Release as "I", "me" and Releasor");

TO: **SGT. JOSEPH McNALLY, TIMOTHY LYONS AND THE ATLANTIC COUNTY MUNICIPAL JOINT INSURANCE FUND**, (collectively referred to in this Release as "you" and "Releasee"). If more than one person signs this Release, "I", "me", and "Releasor" shall mean each person who signs this Release. "You" and "Releasee" include any and all agents and employees of each Releasee, and it is specifically intended that all such agents and employees are covered by this Release.

1. **RELEASE:** I release and give up any and all claims and rights which I may have against you, except those things which may remain to be done according to the terms of this document. This releases all claims and rights which I may have had against you at any time, including any and all claims which are not specifically mentioned in this Release, and any claims and rights which I may hereafter have against you. This Release applies to claims resulting from anything which has happened up to now. More specifically, but not in limitation, I release the following claims:

ANY AND ALL CLAIMS AND RIGHTS WHICH EXIST NOW OR HEREAFTER MAY BE ASSERTED, including but not limited to claims for compensatory and punitive damages, including but not limited to any and all claims made pursuant to or under the Constitution of the State of New Jersey; the Constitution of the United States; claims based upon any theory of negligence; claims made pursuant to or under any State or Federal common law; claims made pursuant to or under any local, municipal, county, state or federal statutes, ordinances and regulations; all claims for loss of income, all claims for attorneys fees and costs and all claims for all other losses, including claims of pecuniary loss, injury or damage as those terms are defined in the Wrongful Death Act (N.J.S.A. 2A:31-1 et. seq.), sustained by Releasor, Releasor's estate, Releasor's heirs, and those claiming under the Releasor. It is expressly understood and agreed by me that a substantial reason and consideration for you in settling this matter and agreeing to pay the monies set forth in this Release, is that his settlement, releases and eliminates any and all claims which I or others may have now or in the future, absent this Release, for the death of the Plaintiff in this matter. I further understand and agree that under the present law in New Jersey, absent this Release, my heirs and others may have claims against you for my death. I further understand and agree that by executing this Release and accepting the money set forth below, I acknowledge that I have received fair, just and adequate consideration for all claims, both inter vivo and for the death of Plaintiff.

This Release arises out incidents which are the subject of actions filed in the United States District Court, District of New Jersey, entitled **Tracey Miller, Sr. v. Waterford Township; Sgt. Joseph McNally; Sgt. Richard Passarella; Officer Timothy Lyons; et als, under Civil Action No. 11-cv-03405 and Ronald**

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Miller, Sr. and Lavina Miller v. Waterford Township, Sgt. Joseph McNally; Sgt. Richard Passarella; Officer Timothy Lyons; et als, under Civil Action No. 11-cv-3578.

I further understand and agree that if any claims are made against you at any time in the future by the Releasor directly, or by others claiming to be beneficiaries, representatives, or heirs of the Releasor, for pecuniary losses or damages and as defined in the Wrongful Death Act, that you shall be entitled to be indemnified by the Releasor, the Releasor's Estate and/or the Releasor's heirs, executors, administrators, and personal representatives for any sums expended in paying any such claims and/or defending against said claims, including but not limited to attorney's fees, all costs of suit, and interest.

In the event I shall receive any monies from any person who thereafter seeks subrogation, contribution, and/or indemnification from you, I shall indemnify and hold you harmless for any money spent in paying and/or defending against these claims, including but not limited to attorneys' fees, costs of suit, and interest.

It is further understood and agreed that the acceptance of said money is in full accord and satisfaction, and in compromise of, all disputed claims, and that the payment thereof is not an admission of liability but is made by the Atlantic County Municipal Joint Insurance Fund with the authorization of the Defendant, for the sole purpose of terminating the litigation between the parties.

2. CONFIDENTIALITY AND NON-DISCLOSURE: It is further understood and agreed that neither I nor my attorneys and agents will disclose any facts, terms, conditions, amount, or any other aspect of the settlement of this action to anyone for any reason except as may be necessary to defend or prosecute this and any related litigation.

3. LIENS: I hereby certify that no liens exist against the proceeds of this settlement that are being paid to me or that if any liens do exist, they will be paid in full, or compromised and released by me from the amount stated in paragraph 5 of this Release. If a lien exists which is not satisfied as required by this Agreement, and a claim is made by anyone to enforce that lien, I agree that I will pay that lien in full. This Release is intended to include all liens, including but not limited to attorney's liens, child support liens, medical provider liens, Medicare and Medicaid liens, worker's compensation liens, all statutory or common law liens, and judgment liens. Releasor's attorney has investigated the existence of such liens and I am making this statement based upon information known to me and/or supplied to me by my attorney. Therefore, my attorney and I agree to indemnify and hold you harmless in connection with any claims made against you by reason of liens against the proceeds of this settlement. In the event a claim is hereafter made against you

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by anyone seeking payment of liens, the Releasor and Releasor's attorney will indemnify and hold you harmless for any money spent in paying any such liens and/or defending against such a claim, including but not limited to attorney's fees, costs of suit, and interest.

4. **PAYMENT:** I have been paid a total of **\$260,000.00 (Two Hundred Sixty Thousand Dollars)** in full payment for making this Release. I agree that I will not seek anything further, including any other payment from you.

5. **WHO IS BOUND:** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, and all heirs, executors, and administrators are also bound. I specifically understand that all of the terms and conditions of the Release are for the benefit of, and are binding upon, me, my heirs, and anyone else who succeeds to our rights and responsibilities. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

6. **WARRANTY OF CAPACITY TO EXECUTE AGREEMENT:** I represent and warrant that no other person or entity has any interest in the claims, demands, obligations or causes of action referred to in this Release except as otherwise set forth herein, and that I have the sole right and exclusive authority to execute this Settlement Agreement and receive the sum specified in it; and that I have not sold, assigned transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release.

7. **REPRESENTATION OF COMPREHENSION OF DOCUMENT:** In entering into this Release, I represent that I have relied upon the legal advice of my attorney, who is the attorney of my choice, and that the terms of this Release have been completely read and explained to me by my attorney, and that those terms are fully understood and voluntarily accepted by me.

8. **GOVERNING LAW:** This Release shall be governed by, and construed and interpreted according to, the laws of the State of New Jersey.

9. **ADDITIONAL DOCUMENTS:** All parties agree to cooperate fully and execute any and all supplementary documents and to take all actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release.

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Witnessed or Attested:

Charles A. Fiano

Lavina Miller
LAVINA MILLER

STATE OF NEW JERSEY :
COUNTY OF Gloucester :SS
:

I CERTIFY that on July 29, 2014, **Lavina Miller**, came before me and acknowledged under oath, to my satisfaction, that this person is named in and personally signed this document and signed, sealed and delivered this document as his/her act or deed.

Charles A. Fiano
Charles A. Fiano Notary Public
ATTORNEY AT LAW
STATE OF NJ