

**FILED**

SEP 03 2013

CAPE MAY COUNTY  
LAW DIVISION

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<p>STEVEN PASCAL,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITY OF CAPE MAY, CAPTAIN ROBERT SHEEHAN, AND JOHN DOES 1 THROUGH 25 FICTICISOULY NAMED DEFENDANTS JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION – CAPE MAY COUNTY <i>CPM L- 444-13</i> Docket No.:</p> <p>Civil Action</p> <p><b>COMPLAINT, DEMAND FOR JURY TRIAL, DESIGNATION OF TRIAL COUNSEL AND DEMAND PURSUANT TO RULE 1:4-8</b></p>
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Plaintiff Steven Pascal, residing in Cape May County, New Jersey, by way of  
Complaint against Defendants, says:

**FIRST COUNT**

1. At all relevant times herein Defendant City of Cape May (hereinafter "City") was an entity created and existing pursuant to the laws of the State of New Jersey, which, through its Police Department, was the employer of the Plaintiff.
2. At all relevant times herein Defendant City was the employer of Defendant Robert Sheehan (hereinafter "Sheehan"), who is liable to the Plaintiff by reason of his direct participation in the acts of harassment, discrimination, and or retaliation referred to herein and who aided and abetted the harassment, discrimination, and retaliation and

conspired with the John Doe Defendants to commit the acts of discrimination, harassment, and retaliation.

3. At all relevant times herein, John Does 1 through 25 are inclusive and fictitious names for individuals, partnerships, joint ventures, corporations, or other forms of legal entity the identity of which are unknown at the present but are liable to the Plaintiff by reason of their direct participation in, aiding and abetting of, or participation in a conspiracy with the Defendants to commit the acts of discrimination, harassment, or retaliation referred to herein in direct violation their statutory duties .

4. At all relevant times herein, Plaintiff was a member of a protected class under the LAD as a result of his sexual orientation; Plaintiff is an openly gay male.

5. Plaintiff was employed as a Police Officer for the West Cape May Police Department from 1998 until 2001 when the West Cape May Police Department was disbanded.

6. Plaintiff was hired as a Police Officer by Defendant City in or about 2002.

7. As an openly gay Officer, Plaintiff has been subjected to anti-gay slurs such as “fag”, “homo”, and “queer”, and other comments and conduct relevant to his sexual orientation from members of the public in the City of Cape May.

8. The directing of homophobic slurs and other misconduct toward Plaintiff by the public at large in the City of Cape May began in 2002 when Plaintiff joined Defendant City’s Police Department (hereinafter “the Department”) and continued through to 2012 when Plaintiff was suspended without pay.

9. While members of the public are not employees of Defendant City for purposes of the LAD, once members of upper management of Defendant City are put on

notice that one of its employees was being subjected to discrimination by certain individuals who are members of the public, Defendant City is liable to Plaintiff for all damages under the LAD if it does not take the appropriate remedial action pursuant to the Appellate Division's decision in Woods-Pirozzi v. Nabisco Foods, 290 N.J. Super 252, 258 (App. Div. 1996).

10. On multiple occasions throughout Plaintiff's career with Defendant City, he put members of upper management on express notice that he was being subjected the most vile anti-gay slurs and other discriminatory conduct by members of the public.

11. On one occasion, Plaintiff advised Chief of Police Diane Sorentino about an incident where a minor by the initials J.C. called two of Plaintiff's friends on multiple occasions, pretending to be Plaintiff and telling Plaintiff's friends he wanted to "fuck [them] in the ass."

12. One night while on duty, Plaintiff encountered J.C. and asked him about making the harassing phone calls described in paragraph 11.

13. J.C. initially denied making the calls, but then did admit to having done so, claiming it was just a joke.

14. Plaintiff was then disciplined by the Department for asking J.C. if he had been making the calls because J.C.'s parents alleged Plaintiff had harassed their son by asking him if he had made obscene telephone calls to Plaintiff's friends while pretending to be Plaintiff.

15. The Department suspended Plaintiff for two (2) days and required him to attend therapy for one (1) month.

16. As a result of this discriminatory and retaliatory discipline, Plaintiff went to the Chief of Police Diane Sorentino who made it clear to Plaintiff that nothing would be done to remediate or repudiate the hostile and discriminatory work environment when she said, "What do you want me to do, announce to the City that you are gay and to leave you alone?"

17. Once Defendant City was put on express notice that one of its employees was being harassed, which is itself a violation of New Jersey's criminal code, it had an absolute obligation to investigate and determine whether Plaintiff was the victim of a crime and it also had an absolute obligation under the LAD to remediate and repudiate this discriminatory conduct against the Plaintiff, even though it was done by a citizen rather than a co-worker or co-employee of the Plaintiff.

18. Defendant City's failure to take any action on his complaints of anti-gay discrimination and harassment throughout the Plaintiffs' career, despite being placed on notice multiple times, makes it directly liable to the Plaintiff for all damages under the LAD for its failure to remediate and repudiate the discriminatory and hostile work environment Plaintiff was forced to endure.

19. During the summer of 2009, Plaintiff was the Summer Sergeant in charge of the Class II Officers for that season.

20. Throughout the entire Summer, 2009 Season, Plaintiff was stalked and harassed by Kyle Burton and Jesse Walker, African-American male residents of the City of Cape May; in fact about three months after this incident Burton and Walker verbally assaulted Steve Ennis and physically assaulted him causing him to be hospitalized.

21. The harassment included calling Plaintiff, “fag”, “queer”, “boy pussy lover”, “homo”, and other offensive and homophobic slurs, which escalated to criminal bias intimidation when Burton and Walker threatened to “snap [Plaintiff’s] neck in a dark alley.”

22. Much of Burton and Walker’s anti-gay harassment was witnessed by six (6) Class II Officers.

23. Burton and Walker’s discriminatory conduct was witnessed by plaintiff’s superiors as well, but no action was ever taken to investigate or remediate the harassment or the bias intimidation.

24. On one occasion Burton and Walker called Plaintiff their “nigga”, to which he replied that he was not their “nigga”.

25. Rather than investigating or otherwise taking appropriate action against Burton and Walker’s continuous anti-gay harassment of Plaintiff or their threat to kill Plaintiff by snapping his neck in a dark alley, Defendants City and Sheehan opened an Internal Affairs (hereinafter “IA”) investigation into Plaintiff’s response to Burton and Walker’s harassment and bias intimidation; in response to plaintiff’s complaints about the threatening behavior and comments by Burton and Walker Defendant Sheehan refused to take any action and advised the plaintiff he could file a citizen complaint which was in direct violation of the law and Defendant Sheehan’s duties and responsibilities as a sworn police officer.

26. Part of the rationale offered by the Defendants for the IA investigation into Plaintiff was that Chief Sorentino and Defendant Sheehan had previously ordered Plaintiff

not to engage in what they considered to be confrontational and antagonistic behavior when addressing "gossip" about his sexual orientation.

27. Defendants complete lack of action on Plaintiff's complaints and reports of anti-gay harassment and related crimes and their order prohibiting Plaintiff from taking any action in his own defense empowered members of the community to harass Plaintiff with impunity because they knew they could harass him with offensive, anti-gay slurs and threaten his life with no consequences.

28. Defendants not only failed to take the appropriate remedial action and to bring criminal charges against the individuals who were tormenting and harassing Plaintiff, but Defendants inaction actually emboldened these members of the community to continue and intensify their anti-gay harassment and threats.

29. Defendants' complete failure to protect Plaintiff from the harassment and threats not only creates liability for Plaintiff's damages under the LAD, but also constitutes an additional act of discrimination and retaliation under the LAD in and of itself, as it is clear that if Plaintiff was not gay Defendants would have taken action against members of the public who harassed or threatened him rather than seeking to terminate Plaintiff.

30. Defendant City of Cape May's failure to take any action on Plaintiff's complaints of harassment and intimidation from the public after Plaintiff reported and objected to said harassment and intimidation was itself an act of discrimination that was compounded by City's discriminatory and retaliatory charge that Plaintiff was unfit for duty.

31. As a result of the disciplinary charges brought against Plaintiff by Defendant City in 2010, Plaintiff was suspended without pay for an extended period of time, which caused him great financial hardship.

32. Defendants also forced Plaintiff to be examined by Dr. Gary Glass, a doctor selected by Defendants, who determined the Plaintiff was allegedly unfit for duty.

33. Plaintiff was also evaluated by two (2) truly independent doctors who determined that the Plaintiff was absolutely fit for duty and completely disagreed with the report issued by Dr. Glass.

34. Dr. Glass's report was essentially a rubber stamp for what the Defendants were seeking which is not the first time a local Police Department has retained Dr. Glass to do same.

35. The IA investigation was initiated by Defendant Sheehan, who has discriminated against Plaintiff throughout his career based on Plaintiff's sexual orientation and retaliated against Plaintiff when Plaintiff reported and objected to being discriminated against and harassed based on the fact that he is a gay man.

36. On multiple occasions Defendant Sheehan used IA to open disciplinary investigations against Plaintiff.

37. Many times Defendant Sheehan opened the IA investigations in direct violation of the Attorney General guidelines as no complaints were ever received to trigger an IA investigation

38. Defendant Sheehan also violated other Attorney General Guidelines in an egregious manner to make sure that his bogus investigation would lead to the outcome he had predetermined, which was that Plaintiff should be disciplined with the purpose of

discriminating against Plaintiff based on his sexual orientation and retaliating against Plaintiff for objecting to discrimination.

39. Plaintiff was advised by Sergeant Anthony Marino on at least three (3) different occasions that Defendant Sheehan was conducting Internal Affairs investigations, which involved Plaintiff as a target, in direct violation of the New Jersey Attorney General's Guidelines.

40. Prior to the completion of the Departmental Hearing on Defendants' charge that Plaintiff was allegedly unfit for duty, Plaintiff and Defendant City reached a resolution based on the recommendation of the Hearing Officer that provided for an agreement that Plaintiff was fit for duty, but would undergo additional treatment with Dr. McNerney and the charges against Plaintiff would be dismissed without prejudice in exchange for Plaintiff's agreement to waive any and all claims he had against City of Cape May as of the date of the agreement, including any claim for back pay. (A true and accurate copy of the agreement that has been referred to as the "last chance agreement" is annexed hereto as Exhibit "1".)

41. The bogus disciplinary charges and claim that Plaintiff was unfit for duty with the related lengthy suspension without pay caused Plaintiff extreme financial hardship.

42. In or about July, 2010, as a result of the above referenced agreement, Plaintiff returned to work.

43. During the next two (2) years the Plaintiff worked on "pins and needles" as he knew Defendants were watching his every step and would use any excuse to initiate additional false disciplinary charges against him in their continuing effort to remove

Plaintiff from the Department because of his sexual orientation and in retaliation for his objections to the discrimination.

44. After Plaintiff returned to work, Defendant Sheehan purposely placed Plaintiff with Sgt. Thomas Connelly who had advised Defendant Sheehan he did not want to work with Plaintiff.

45. For the ensuing two (2) years Sergeant Connelly failed to do his duty as a police officer by failing to provide Plaintiff with back-up or assistance on calls.

46. Defendant Sheehan purposely placed Plaintiff on Sergeant Connelly's squad because he knew that Sergeant Connelly shared his desire to discriminate against Plaintiff based on his sexual orientation and, on information and belief, was hopeful that Sergeant Connelly would find a way to bring disciplinary charges against the Plaintiff to further Defendants' goal of driving Plaintiff, the sole homosexual police officer in the Department, out.

47. The tension and hostility that Sergeant Connelly directed toward Plaintiff was so obvious that members of Plaintiff's squad noticed it and mentioned it to Plaintiff.

48. With the exception of a three (3) month period when Sergeant Connelly was on sick leave, during the entire time Plaintiff was on Sergeant Connelly's squad Plaintiff was subjected to a hostile work environment.

49. Plaintiff knew it would be futile to request a transfer to another squad because Defendant Sheehan denied Sergeant Connelly's request that Plaintiff be transferred off of his squad.

50. Despite the constant hostility of Plaintiff's work environment, Plaintiff performed his duties as a police officer properly, obeying all the applicable laws, rules, and regulations in an effort to keep a low profile and avoid any bogus discipline.

51. In Plaintiffs' career as a Police Officer he was never involved in any physical altercation in part because he was very good at de-escalating a situation by utilizing the verbal judo techniques in which he was especially proficient given his very deep voice that helped him command respect.

52. In or about September 7, 2012, the Plaintiff was dispatched to a motor vehicle accident between a passenger vehicle and a sanitation truck.

53. No individual involved in the accident was issued a summons and no individual present at the scene filed a complaint against Plaintiff.

54. Defendant Sheehan became aware of the September 7, 2012, vehicle stop and, despite the fact that there was no formal complaint made against Plaintiff regarding his conduct during the stop, Defendant Sheehan initiated an IA investigation into Plaintiff's handling of the September 7, 2012, vehicle stop.

55. As a result of the IA investigation initiated by Defendant Sheehan into Plaintiff's conduct during the September 7, 2012, vehicle stop, Defendant Sheehan initially charged Plaintiff with fourteen (14) separate sets of disciplinary charges, which he followed with another false charge that Plaintiff was unfit for duty.

56. Essentially the disciplinary charges alleged that Plaintiff raised his voice during his discussion with the driver of the vehicle during the September 7, 2012, stop, asked the passenger of the sanitation truck an inappropriate question, left the passenger off of his report, and failed to turn on the video equipment in his patrol vehicle during the stop.

57. Defendants sought to combine this incident with other incidents that had not resulted in any IA investigation to require Plaintiff to undergo another fitness for duty evaluation with Dr. Louis Schlosser, whose office was located in New York State approximately five (5) hours from Plaintiffs' home.

58. To ensure that Chief Sorentino would accept his plan to discriminate and retaliate against Plaintiff through another fitness for duty evaluation, Defendant Sheehan prepared a memo to the Chief laying out Sheehan's reasons for subjecting Plaintiff to the evaluation.

59. In that memo, Defendant Sheehan sought to bolster his case and conceal his discriminatory and retaliatory motives for recommending that Plaintiff undergo a second fitness for duty evaluation by including incidents and allegations for which Plaintiff had already been exonerated and which had no bearing on Plaintiff's psychological fitness for duty, such as the fact that Plaintiff had previously been out for approximately one (1) year due to an on duty injury the legitimacy of which had never been contested or refuted in any way.

60. Not surprisingly, as he was apparently hand-picked by Defendants to reach the conclusion they wanted, Dr. Schlosser opined that Plaintiff was not fit for duty, despite the fact that Plaintiff's treating physician, who knows Plaintiff and has met with and evaluated him based on more than a solitary meeting, found him to be fit for duty.

61. Further proof that the internal investigation that Defendant Sheehan initiated following the September 7, 2012, vehicle stop was merely a mechanism for furthering Defendants' scheme to discriminate and retaliate against Plaintiff is the fact that the IA

investigation was conducted in violation of the New Jersey Attorney General Guidelines controlling IA investigations.

62. It is also clear that Defendant Sheehan's goal in in initiating the IA investigation was not to conduct a fair and impartial investigation to determine whether or not disciplinary charges were warranted against Plaintiff, but to find a way to bring disciplinary charges against Plaintiff to allow the Defendants to seek Plaintiff's termination because Defendant Sheehan did not want a homosexual man on the City's police force.

63. The departmental hearing on the sham disciplinary charges occurred over many days during Winter, 2012, and Spring, 2013.

64. During the departmental hearing Defendant City, included in its evidence against Plaintiff allegations against Plaintiff that had never been properly investigated by IA and which had never been made part of any departmental charges against Plaintiff and which violated the forty-five (45) day rule Contained in N.J.S.A. 40A:14-147 and should not have been alleged or considered at the hearing evaluating Plaintiff's fitness for duty for those reasons.

65. The old allegations used by Defendants to justify their discrimination and retaliation were the product of Defendant Sheehan conducting an investigation with the affirmative purpose of finding any potential claim of misconduct he could raise against Plaintiff to attempt to justify terminating Plaintiff.

66. As with his prior investigations, Defendant Sheehan initiated this investigation in direct violation of the New Jersey Attorney Generals guidelines and as an act of discrimination and retaliation against Plaintiff.

67. Further proof that Defendants' actions were undertaken with the express purpose of terminating Plaintiff because he is a homosexual male and in retaliation for his complaints and objections to discrimination based on his sexual orientation is the fact that Defendants represented to Dr. Schlosser prior to his "independent medical examination" of Plaintiff that all fourteen (14) of the then pending disciplinary charges had been sustained, which was an outright lie designed to further taint Plaintiff in Dr. Schlosser's eyes and make it more likely that he would find Plaintiff unfit for duty.

68. Despite the fact that the process was rigged to find against Plaintiff, as Dr. Schlosser's report was based on false information and Defendants presented the Hearing Officer with old, uninvestigated and unproven allegations of misconduct, and the fact that Defendants had conducted investigations into Plaintiff in violation of the AG Guidelines, the Hearing Officer Judge Williams sustained some of the charges against Plaintiff and, based on Dr. Schlosser's recommendation and some of the untimely and unproven allegations leveled by Defendants, found that Plaintiff was unfit for duty and should be terminated from his position with the Department.

69. Defendant City adopted the Hearing Officer's recommendation and terminated Plaintiff's employment on or about August 16, 2013, in a further act of discrimination and retaliation against Plaintiff.

70. The Department had a culture of tolerating anti-gay jokes and comments throughout Plaintiffs' employment.

71. By way of example officer Tom Tolan would routinely call individuals "fag" or "gay" in front of the Plaintiff and also in front of superior officers.

72. Over the course of his time with the Department, Plaintiff was offended and distressed by the anti-gay jokes, but would attempt to put on a good face and laugh to fit in with the other officers and stop the discrimination and retaliation that had been directed at him.

73. At one point the anti-gay jokes and comments became too overwhelming and pervasive for Plaintiff to tolerate.

74. In fact, Officer Tolan would frequently pull-up gay cartoons such as clips from the Family Guy TV show, photos of gay people, or other anti-gay material on his computer in the workplace.

75. Officer Tolan would also place rainbow flags and stickers on Officer Murphy's car.

76. On one occasion, Officer Tolan made a false license plate from cardboard that read "I Love Cock" and placed it over the license plate on Officer Murphy's personal vehicle without Officer Murphy's knowledge and allowed Officer Murphy to drive the vehicle with the false license plate concealing his actual license plate onto a public roadway which unfortunately was not an isolated incident.

77. Because operating a vehicle on a public roadway without a proper license plate or with a concealed license plate is a crime, Officer Murphy was stopped by a New Jersey State Police Officer.

78. On another occasion, Officer Tolan placed a piece of paper in Officer Murphy's gas tank that read: "I like to suck cock" so that the attendant would see it when filling Officer Murphy's tank.

79. These juvenile anti-gay cartoons, jokes, and pranks were done in the presence and with the knowledge of upper management and not one of the officers engaging in the jokes and pranks were ever disciplined for their misconduct, not even Officer Tolan whose license plate prank was a crime.

80. Nor did the Department ever take any action whatsoever to repudiate or stop the anti-gay discrimination that was pervasive in the work environment.

81. Incredibly, the only time Defendants took any action related to the anti-gay discrimination and hostile work environment was when it discriminated and retaliated against Plaintiff for objecting and attempting to stop the offensive conduct.

82. Defendants also discriminated and retaliated against Plaintiff by using events that occurred prior to and were resolved by the "Last Chance Agreement" at the last disciplinary hearing to justify terminating Plaintiff's employment, which was a violation of that agreement.

83. Due to Defendants' violation and breach of the Last Chance Agreement, Plaintiff asks the Court to determine that the agreement is null and void.

84. In the alternative the Plaintiff seeks to have the Court exercise its equitable powers to invalidate the "Last Chance Agreement" because Defendants violated the covenant of good faith and fair dealing that is implied in every contract under New Jersey law when it used events that occurred prior to and were resolved by the "Last Chance Agreement" at the last disciplinary hearing to justify terminating Plaintiff's employment and should not be entitled to benefit from the terms of that Agreement to more easily terminate Plaintiff's employment while at the same time violating the other terms of the Agreement.

85. Defendants' actions in violating the Last Chance Agreement were also violations of Plaintiffs' rights under the LAD.

86. As a result of the foregoing the Plaintiffs' right under the LAD to be free from discrimination, retaliation and a hostile work environment has been violated in a most egregious manner.

87. The conduct of the Defendants in this matter was willful, wanton, and intentional and occurred with actual malice, was especially egregious and occurred in a reckless disregard for Plaintiffs' civil rights, and the conduct of the individual defendants occurred within and outside the scope and course of their employment.

88. As a result of the foregoing Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against the defendants, jointly, severally, and in the alternative for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

### **SECOND COUNT**

89. Plaintiff incorporates paragraphs 1 through 50 as though set forth in full herein.

90. As a result of the foregoing, the Plaintiffs' rights under the New Jersey Constitution and the New Jersey Civil Rights Act of 2004 have been violated in a most egregious manner, which conduct was knowing and intentional.

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

### **THIRD COUNT**

91. Plaintiff incorporates paragraphs 1 through 90 as though set forth in full

herein.

92. Plaintiff's rights under the New Jersey Conscientious Employees Protection Act, N.J.S.A. 34:19-2 et seq. to be free of reprisals have been violated in a most egregious manner, which conduct was knowing and intentional.

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

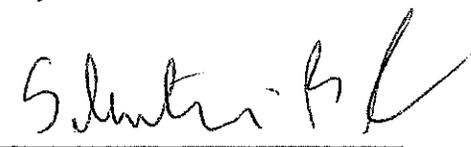
#### FOURTH COUNT

93. Plaintiff hereby incorporates paragraphs 1 through 106 as though set forth in full herein.

94. Defendant City of Cape May also failed to meet certain obligations pursuant to N.J.S.A. 34:19-7.

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

IONNO & HIGBEE, LLC  
Attorneys for Plaintiff

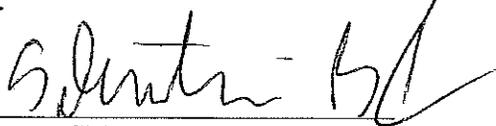
BY: 

SEBASTIAN B. IONNO

Dated: 8-29-13

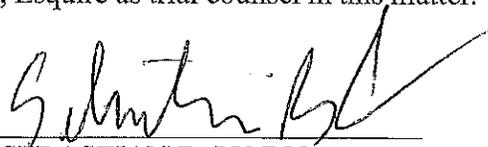
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

BY:   
SEBASTIAN B. IONNO

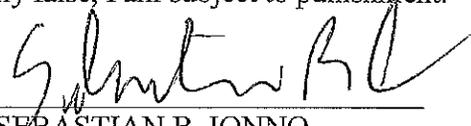
**DESIGNATION OF TRIAL COUNSEL**

Plaintiff hereby designates Sebastian B. Ionno, Esquire as trial counsel in this matter.

BY:   
SEBASTIAN B. IONNO

**CERTIFICATION**

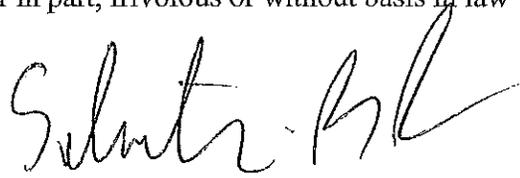
The undersigned counsel certifies that there are no other actions or arbitrations pending or contemplated involving the subject matter of this controversy at this time, and there are no additional known parties who should be joined to the present action at this time. I certify the foregoing to be true. I am aware if the above is willfully false, I am subject to punishment.

BY:   
SEBASTIAN B. IONNO

DATED: 8-29-13

**RULE 1:4-8 DEMAND**

Plaintiff and his counsel hereby demand, pursuant to Rule 1:4-8, that the defendants or their agents, servants, or employees, or attorneys provide any and all facts and documents upon which they base any contention that this Complaint was instituted or continued in whole or in part for improper reasons, or that the claims are, in whole or in part, frivolous or without basis in law or fact.

BY:   
SEBASTIAN B. IONNO