

HELMER, CONLEY & KASSELMAN, P.A.
111 White Horse Pike
Haddon Heights, NJ 08035
Brian E. Jacobs, Esquire
ID #025871996
Attorneys for Plaintiff Robert Smith

MAR 11 2016

REC'D & FILED
CIVIL CASE
MANAGEMENT OFFICE

ROBERT SMITH

Plaintiff,

V.

CITY OF BRIDGETON, BRIDGETON
POLICE DEPARTMENT, AND MARK
OTT, BRIDGETON CHIEF OF POLICE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION/CIVIL PART

CUMBERLAND COUNTY

DOCKET NO.: CUM L-000182-16

CIVIL ACTION

VERIFIED COMPLAINT
COMPLAINT IN LIEU OF
PREROGATIVE WRIT

(701)

Plaintiff, Robert Smith, residing at 54 Kerry Lynn Court, Williamstown, NJ 08094, by way of verified complaint, says:

1. Plaintiff, Robert Smith is, and for all relevant times hereto has been, employed by the Defendant, Bridgeton Police Department, as a Police Officer.
2. Brian E. Jacobs, Esquire, is an attorney at law, licensed to practice in the State of New Jersey, and is and has been of-counsel with the law firm of Helmer, Conley & Kasselmann, P.A. during the relevant times herein.
3. On January 18, 2012, Plaintiff Smith was criminally charged with distribution of a substance: purported to be an illegal steroid. This was later proven to be false.
4. On the same date he was served with a Civil Service Preliminary Notice of Disciplinary Action that lists civil service disciplinary charges related to the criminal charge: Incompetency, inefficiency or fail to perform duties [4A:2-2.3(a)1], Insubordination [4A:2-

- 2.3(a)2], Conduct unbecoming [4A:2-2.3(a)6], Neglect of Duty [4A:2-2.3(a)7], Other sufficient cause [4A:2-2.3(a)11]. Attached hereto as Exhibit A is a true copy of a Preliminary Notice of Disciplinary Action.
5. Chief of Police Mark Ott required an immediate suspension without pay. Attached hereto as Exhibit B is a true copy of January 18, 2012 letter from Chief Ott.
 6. On January 23, 2012, a letter was sent to Chief Ott and Dale Goodreau, Business Administrator that Officer Smith was entering a not guilty plea to the administrative charges. Attached hereto as Exhibit C is a true copy of a letter dated January 23, 2016 addressed to Chief Ott and Business Administrator, Mr. Goodreau.
 7. On January 28, 2016, the jury found Robert Smith not guilty of the criminal charge of distribution of steroids after an eight day trial. Attached hereto as Exhibit D is a true copy of a Judgement of Acquittal as filed in the Superior Court of New Jersey, Cumberland County.
 8. Trial testimony from witnesses revealed that the case against Officer Smith was, initiated and pursued, by malicious and retaliatory motivation. The main investigative witness, William Deininger, admitted to several criminal violations during his investigation of Officer Smith including: official misconduct, false swearing, falsifying records, tampering with public records.
 9. Mr. Deininger, also stated that these acts were directed and/or condoned by Chief Ott.
 10. Trial testimony revealed that Chief Ott did not like Officer Smith and was upset with him after he issued a ticket to a Bridgeton Councilman for having an unregistered vehicle parked on a street. This vehicle was lawfully towed.
 11. Chief Ott then assisted the City Councilman with obtaining the car from impound. Officer Smith was arrested and charged, criminally and administratively, one month later.
 12. No disciplinary hearing has ever been scheduled or was convened.

13. No different disciplinary charges have been brought.
14. As of March 13, 2016, 45 days have elapsed since the jury returned its not guilty verdict.
15. On March 4, 2016, the Plaintiff received notice that certified mail was received at his residence.
16. On March 7, 2016, Plaintiff picked up the certified mail, sent from the Bridgeton Police Department.
17. The mailed envelope contained a document (reference number I-010-2012), purporting that a complaint had been made against Officer Smith alleging violations for "rules violation, truthfullness (sic), conduct unbecoming, neglect of duty, assault, distribution and use of CDS." The complaint was not included. Attached hereto as Exhibit E is a true copy of Internal Affairs Complaint Notification I-010-2012.
18. On March 8, 2016, Brian Jacobs, Esquire, counsel for Plaintiff, sent a letter to William Blaney, Esq., counsel for the defendants, to confirm a date that Officer Smith would be available to be interviewed by the Bridgeton Police Department. Attached hereto as Exhibit F is a true copy of a March 8, 2016 addressed to Mr. Blaney.
19. The same letter advised that Officer Smith was ready for reinstatement.
20. The administrative charges against Officer Smith, should have been dismissed immediately after the jury acquittal of the criminal charges.
21. The Bridgeton Police Department has not reinstated Officer Smith but has decided to further "investigate" non-specific allegations arising from the initial case, that started over 4 years ago, and that has been revealed to be a sham.

WHEREFORE, Plaintiff Smith demands judgement against the Defendants for:

1. Ordering the defendants fully to reinstate the plaintiff to his job as a Bridgeton Police Officer, with full back compensation, together with interest and all benefits attendant to such employment.
2. Ordering that any record of disciplinary action against the Plaintiff be removed from the plaintiff's employee file.
3. Dismissing with prejudice any and all disciplinary actions currently pending and barring institution of any future, related disciplinary actions.
4. Awarding the Plaintiff attorney's fees and costs.
5. Granting such other and further relief as the Court deems appropriate.

HELMER, CONLEY & KASSELMAN, P.A.

Dated: March 11, 2016

By: _____


BRIAN E. JACOBS, ESQUIRE
Attorney for Plaintiff Robert Smith

R. 4:5-1 Certification

It is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also to the best of our belief, no other action or arbitration is contemplated. Besides the party set forth in this pleading, I know of no other parties that should be joined in this action. In addition we recognize continuing obligation a beach party to file and serve all parties and the court and amended certification if there's a change in the facts stated in the original certification.

I further certify that confidential personal agenda files have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7 (b)

HELMER, CONLEY & KASSELMAN, P.A.

Dated: March 11, 2016

By: 
BRIAN E. JACOBS, ESQUIRE
Attorney for Plaintiff Robert Smith

Designation of Trial Counsel

Pursuant to R. 4:25-4, Brian E. Jacobs, Esquire is hereby designated as trial counsel for Plaintiff, Robert Smith, in this action.

HELMER, CONLEY & KASSELMAN, P.A.

Dated: March 11, 2016

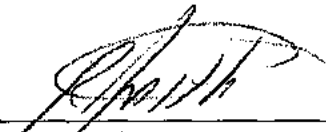
By: 
BRIAN E. JACOBS, ESQUIRE
Attorney for Plaintiff Robert Smith

Plaintiff's Certification

Robert Smith, does hereby certify as to the following:

1. I am the plaintiff in this matter and as such have competent knowledge as to the fact stated herein.
2. I have thoroughly reviewed all of the allegations contained in this complaint.
3. All of the allegations in this complaint are true and correct to the best of my knowledge and belief
4. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

March 11, 2016



Robert Smith

Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission - State of New Jersey

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated: (a) suspension or fine for more than five working days at any one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

Form with fields: Employing Agency Name (Bridgeton 0801), Address (330 Fayette St. Bridgeton, NJ 08302), Date (1-23-2012), Attorney representing your agency (Mr. Robert A. DeSanto, Esq.), Employee Name (Robert W. Smith), Permanent Civil Service Title (Police Officer), Employee Identification Number (xxx-xx-7731), Address (54 Kerry Lynn Ct, Williamstown, NJ 08094).

You are hereby notified that the following charge(s) have been made against you: (if necessary, use additional sheets and attach)

Table with 2 columns: Charges (See Attached), Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred: (See Attached)

Check boxes: If checked, charges are continued on attached page. If checked, incidents are continued on attached page.

You are hereby suspended effective immediately and without pay effective 1-18-2012 - appeal instructions previously provided 1-19-2012

If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within 10 days of receipt of this form. If you request a hearing it will be held on a date to be determined by the appointing authority at (place of hearing) to be set

*Must be a minimum of five days

- The following disciplinary action may be taken against you:
- Suspension for working days, beginning and ending
- Indefinite suspension pending criminal charges effective (date)
- Removal, effective (date) to be determined
- Demotion to position of effective (date)
- Resignation not in good standing, effective (date)
- Other Disciplinary Action
- Fine amount which is equal to number (number of working days)

Appointing authority or authorized agent's signature and title. Signature: [Handwritten Signature] TITLE: BUSINESS ADMINISTRATOR

This form must be personally served on the employee or sent by certified or registered mail.

- Check boxes: Certified or Registered Mail, Receipt Number, Signature of Server, Date of personal service

**Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission - State of New Jersey**

Continuation Page

CHARGE(S):

- | | |
|----------------|--|
| 4A:2-2.3(a)1. | Incompetency, inefficiency or fail to perform duties |
| 4A:2-2.3(a)2. | Insubordination |
| 4A:2-2.3(a)6. | Conduct unbecoming a public employee |
| 4A:2-2.3(a)7. | Neglect of Duty |
| 4A:2-2.3(a)11. | Other sufficient cause |

Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:

On 1-18-2012 at approx. 2231hrs P1m. Robert Smith was arrested for and charged with indictable crimes involving the sale of controlled dangerous substances or its analog.



Bridgeton Police Department

330 Fayette St.
Bridgeton, NJ 08302
Phone 856-451-0033
Extension 2001
Fax 856-459-9036
Chief Mark W. Ott

Date: 1-18-2012²⁵⁸⁶

To: Ptl. Robert Smith 1037

Re: TAKE NOTICE: You are suspended from duty effective immediately and without pay for the following reason(s): Under N.J.S.A. 40A:4-149.1 and N.J.A.C. 4A:2-2.5;

1. You are unfit for duty.
2. You are a hazard to other persons if permitted to remain on the job.
3. An immediate suspension is necessary to maintain the safety, health, order or effective direction of public services.
4. You have been formally charged with a first, second, third or fourth degree crime while on duty, or the criminal act is directly related to your employment.
5. Your current condition involves an act of moral turpitude.

The following facts in support of the above reasons are:

- a. You have been arrested and charged with possession of CDS, Possession of CDS with Intent to Distribute, and Distribution of CDS.
- b. You are considered a hazard to others in having made statements indicating that you feel that a fellow officer is responsible for your current circumstances and the reasonable belief by this department is that you may seek revenge.
- c. You have been charged with Possession of CDS, Possession of CDS with intent to Distribute, and Distribution of CDS which are serious indictable crimes.
- d. The previously described events and concerns shows that you have been involved in an act of Moral Turpitude.

You must take notice that this situation affects your employment status, your pay status and the status of your pension.

You have the right to appeal this decision and have five days to make that appeal, in writing, to the Business Administrator (Mr. D. Goodreau at 181 E. Commerce St. Bridgeton, NJ 08302) specifying why this immediate suspension is invalid.

Respectfully,

Chief Mark W. Ott

ATTORNEYS AT LAW

111 White Horse Pike
Haddon Heights, NJ 08035
Tel: 856-547-7888
Fax: 856-547-7797

519 White Horse Pike
Haddon Heights, NJ 08035
Tel: 856-547-7888
Fax: 856-547-2576

127 Livingston Avenue
New Brunswick, NJ 08901
Tel: 732-246-8100
Fax: 732-246-8120

77 Market Street
Salem, NJ 08079
Tel: 856-878-1400
Fax: 856-878-1489

805 New Road
Somers Point, NJ 08244
Tel: 609-601-6100
Fax: 609-601-6101

233 W. Landis Avenue
Vineland, NJ 08360
Tel: 856-690-0900
Fax: 856-690-0901

PLEASE REPLY TO:
111 White Horse Pike

January 23, 2012

Via fax and regular mail

Chief Mark W. Ott
Bridgeton Police Department
330 Fayette Street
Bridgeton, NJ 08302

Dale Goodreau
Business Administrator
City of Bridgeton
181 E. Commerce Street
Bridgeton, NJ 08302

Re: Ptl. Robert Smith

Dear Chief Ott and Mr. Goodreau:

Please be advised that our firm has been retained by Officer Robert Smith to represent him in connection with the suspension as noticed in your letter dated January 18, 2012. Kindly note our appearance and forward any future correspondence to my attention. Officer Smith is pleading not guilty to any administrative charges referenced in this correspondence and we are appealing the decision to suspend without pay.

Very truly yours,

HELMER, PAUL, CONLEY & KASSELMAN, P.A.



Brian E. Jacobs, Esquire

BEJ/las

c: Officer Robert Smith



Judgment of Acquittal

ORIGINAL

Superior Court of New Jersey, CUMBERLAND County

State of New Jersey

v.

Last Name
SMITH

First Name
ROBERT

Middle Name
W

Also Known As

Date of Birth
11/07/1980

SBI Number
772871B

Date(s) of Offense
01/18/2012

Date of Arrest

PROMIS Number
12 000183-001

Date Ind / Acc / Compl Filed
11/06/2013

Original Plea
 Not Guilty Guilty

Date of Original Plea
12/18/2013

Adjudication By

Guilty Plea

Jury Trial Verdict

Non-Jury Trial Verdict

Dismissed / Acquitted

Date: 01/28/2016

Original Charges

Ind / Acc / Compl	Count	Description	Statute	Degree
13-11-00891-1	1	MFG/D/D OTHER I II III IV-3RD	2C:35-5B(13)	3
W-2012-000143-0601	2	MFG/DIST/DIS HER/COKE<.50Z-3RD	2C:35-5B(3)	IND
W-2012-000143-0601	3	POSS SCHED I II III IV	2C:35-10A(1)	IND
W-2012-000143-0601	4	DIST, DISP, POSS CDS/SCHOOL ZONE	2C:35-7	IND

Final Charges

Ind / Acc / Compl	Count	Description	Statute	Degree
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Sentencing Statement

It is, therefore, on _____ ORDERED and ADJUDGED that the defendant is sentenced as follows:

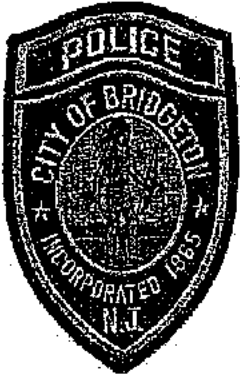
It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

Total Custodial Term
00 Years 00 Months 00 Days

Institution Name

Total Probation Term
00 Years 00 Months

DEDR (N.J.S.A. 2C:35-15 and 2C:35-5.11)		Additional Conditions																
A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.) <input type="checkbox"/> DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))		<input type="checkbox"/> The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20). <input type="checkbox"/> The defendant is hereby sentenced to community supervision for life. (if offense occurred before 1/14/04) (N.J.S.A. 2C:43-6.4) <input type="checkbox"/> The defendant is hereby sentenced to parole supervision for life. (if offense occurred on or after 1/14/04) (N.J.S.A. 2C:43-6.4). <input type="checkbox"/> The defendant is hereby ordered to serve a _____ year term of parole supervision, which term shall begin as soon as defendant completes the sentence of incarceration. (N.J.S.A. 2C:43-7.2). <input type="checkbox"/> The court imposes a restraining order pursuant to DORA. (N.J.S.A. 2C:35-5.7(h)). Restraining Order expires _____																
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align: center;">Standard</td> <td style="width:50%; text-align: center;">Doubled</td> </tr> <tr> <td>1st Degree _____ @ \$ _____</td> <td>_____ @ \$ _____</td> </tr> <tr> <td>2nd Degree _____ @ \$ _____</td> <td>_____ @ \$ _____</td> </tr> <tr> <td>3rd Degree _____ @ \$ _____</td> <td>_____ @ \$ _____</td> </tr> <tr> <td>4th Degree _____ @ \$ _____</td> <td>_____ @ \$ _____</td> </tr> <tr> <td>DP or _____ @ \$ _____</td> <td>_____ @ \$ _____</td> </tr> <tr> <td>Petty DP _____ @ \$ _____</td> <td>_____ @ \$ _____</td> </tr> </table> Total DEDR Penalty \$ _____ <input type="checkbox"/> The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)				Standard	Doubled	1st Degree _____ @ \$ _____	_____ @ \$ _____	2nd Degree _____ @ \$ _____	_____ @ \$ _____	3rd Degree _____ @ \$ _____	_____ @ \$ _____	4th Degree _____ @ \$ _____	_____ @ \$ _____	DP or _____ @ \$ _____	_____ @ \$ _____	Petty DP _____ @ \$ _____	_____ @ \$ _____	
Standard	Doubled																	
1st Degree _____ @ \$ _____	_____ @ \$ _____																	
2nd Degree _____ @ \$ _____	_____ @ \$ _____																	
3rd Degree _____ @ \$ _____	_____ @ \$ _____																	
4th Degree _____ @ \$ _____	_____ @ \$ _____																	
DP or _____ @ \$ _____	_____ @ \$ _____																	
Petty DP _____ @ \$ _____	_____ @ \$ _____																	
Forensic Laboratory Fee (N.J.S.A. 2C:35-20) Offenses @ \$ _____	Total Lab Fee \$ _____																	
VCCA Assessment (N.J.S.A. 2C:43-3.1)		Findings Per N.J.S.A. 2C:47-3																
<table style="width:100%; border-collapse: collapse;"> <tr> <th style="width:20%;">Counts</th> <th style="width:20%;">Number</th> <th style="width:20%;">Amount</th> </tr> <tr> <td>_____</td> <td style="text-align: center;">@</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td style="text-align: center;">@</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td style="text-align: center;">@</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td style="text-align: center;">@</td> <td>\$ _____</td> </tr> </table> Total VCCA Assessment \$ _____		Counts	Number	Amount	_____	@	\$ _____	_____	@	\$ _____	_____	@	\$ _____	_____	@	\$ _____	<input type="checkbox"/> The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior. <input type="checkbox"/> The court finds that the defendant is amenable to sex offender treatment. <input type="checkbox"/> The court finds that the defendant is willing to participate in sex offender treatment.	
Counts	Number	Amount																
_____	@	\$ _____																
_____	@	\$ _____																
_____	@	\$ _____																
_____	@	\$ _____																
Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)																		
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Offense</td> <td style="width:30%;">Mandatory Penalty \$ _____</td> </tr> </table>		Offense	Mandatory Penalty \$ _____	License Suspension														
Offense	Mandatory Penalty \$ _____																	
Offense Based Penalties		<input type="checkbox"/> CDS / Paraphernalia (N.J.S.A. 2C:35-16) <input type="checkbox"/> Waived <input type="checkbox"/> Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1) <input type="checkbox"/> Eluding (N.J.S.A. 2C:29-2) <input type="checkbox"/> Other _____																
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Penalty</td> <td style="width:30%;">Amount \$ _____</td> </tr> </table>				Penalty	Amount \$ _____													
Penalty	Amount \$ _____																	
Other Fees and Penalties		Number of Months _____ <input type="checkbox"/> Non-resident driving privileges revoked																
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3) <input type="checkbox"/> \$ _____ </td> <td style="width:50%;"> Safe Neighborhood Services Fund Assessment (N.J.S.A. 2C:43-3.2) <input type="checkbox"/> _____ Offenses @ \$ _____ Total: \$ _____ </td> </tr> </table>		Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3) <input type="checkbox"/> \$ _____	Safe Neighborhood Services Fund Assessment (N.J.S.A. 2C:43-3.2) <input type="checkbox"/> _____ Offenses @ \$ _____ Total: \$ _____	Start Date _____ End Date _____ Details _____														
Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3) <input type="checkbox"/> \$ _____	Safe Neighborhood Services Fund Assessment (N.J.S.A. 2C:43-3.2) <input type="checkbox"/> _____ Offenses @ \$ _____ Total: \$ _____																	
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> Probation Supervision Fee (N.J.S.A. 2C:45-1d) <input type="checkbox"/> \$ _____ </td> <td style="width:50%;"> Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6) <input type="checkbox"/> _____ Offenses @ \$ _____ Total \$ _____ </td> </tr> </table>		Probation Supervision Fee (N.J.S.A. 2C:45-1d) <input type="checkbox"/> \$ _____	Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6) <input type="checkbox"/> _____ Offenses @ \$ _____ Total \$ _____	Driver's License Number _____ Jurisdiction _____														
Probation Supervision Fee (N.J.S.A. 2C:45-1d) <input type="checkbox"/> \$ _____	Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6) <input type="checkbox"/> _____ Offenses @ \$ _____ Total \$ _____																	
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> Transaction Fee (N.J.S.A. 2C:46-1.1) <input type="checkbox"/> _____ </td> <td style="width:50%;"> Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7) <input type="checkbox"/> \$ _____ </td> </tr> </table>		Transaction Fee (N.J.S.A. 2C:46-1.1) <input type="checkbox"/> _____	Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7) <input type="checkbox"/> \$ _____	If the court is unable to collect the license, complete the following: Defendant's Address _____														
Transaction Fee (N.J.S.A. 2C:46-1.1) <input type="checkbox"/> _____	Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7) <input type="checkbox"/> \$ _____																	
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4) <input type="checkbox"/> \$ _____ </td> <td style="width:50%;"> Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10) <input type="checkbox"/> \$ _____ </td> </tr> </table>		Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4) <input type="checkbox"/> \$ _____	Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10) <input type="checkbox"/> \$ _____	City _____ State _____ Zip _____														
Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4) <input type="checkbox"/> \$ _____	Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10) <input type="checkbox"/> \$ _____																	
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> Fine \$ _____ </td> <td style="width:50%;"> Total Financial Obligation \$ _____ </td> </tr> </table>		Fine \$ _____	Total Financial Obligation \$ _____	Date of Birth _____ Sex <input type="checkbox"/> M <input type="checkbox"/> F Eye Color _____														
Fine \$ _____	Total Financial Obligation \$ _____																	
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> Restitution Joint & Several <input type="checkbox"/> \$ _____ </td> <td style="width:50%;"> Total Financial Obligation \$ _____ </td> </tr> </table>		Restitution Joint & Several <input type="checkbox"/> \$ _____	Total Financial Obligation \$ _____	Details _____														
Restitution Joint & Several <input type="checkbox"/> \$ _____	Total Financial Obligation \$ _____																	



Bridgeton Police Department
Professional Standards Bureau
Internal Affairs Division

Det/Sgt Richard Zanni #870
330 Fayette St., Bridgeton, NJ 08302
Office: (856)451-0033 Ext. 2007
Fax: (856)451-0371

Internal Affairs Complaint Notification
I-010-2012

To: Robert Smith
54 Kerry Lynn Ct.
Williamstown NJ, 08094

Badge Number: 1037

You are hereby notified that an internal affairs complaint has been made against you. This complaint involves an allegation of a **RULES VIOLATION, TRUTHFULNESS, CONDUCT UNBECOMING, NEGLIGENCE OF DUTY, ASSAULT, DISTRIBUTION AND USE OF CDS.**

This investigator will contact you when/if you will be needed for an interview.

Signature: Det Sgt RJ 870
Det/Sgt Richard Zanni #870
Date: 03/01/16

ATTORNEYS AT LAW

Please reply to:

607 White Horse Pike
Haddon Heights, NJ 08035
Phone (856) 547-7888

March 8, 2016

William G. Blaney, Jr., Esquire
Blaney & Donahue, PA
2123 Dune Drive, Suite 11
Avalon, NJ 08202

Re: Bridgeton Police Department v. Ptl. Robert Smith
Our File No. 8433

Dear Mr. Blaney:

You advised me on Friday that Internal Affairs Investigators from the Bridgeton Police Department would like to schedule an interview for Officer Smith. I spoke to my client who will arrange his schedule to accommodate this interview although he has not been notified of any specific complaint or allegation. He continues to remain completely cooperative with this process.

Administrative charges were filed against Officer Smith on January 18, 2012 as a direct result of a criminal charge of allegedly selling a controlled dangerous substance. On January 23, 2012 our firm notified Chief Mark Ott and Dale Goodreau, Business Administrator, that we represented Officer Smith and entered a plea of not guilty to those charges. On the following day we sent our discovery demand to Chief Ott. As of today this discovery request has gone unanswered by the Bridgeton Police Department.

On January 28, 2016, a jury found Officer Smith not guilty of the criminal charge after an 8-day trial. There have not been any new or different disciplinary charges brought against Officer Smith. However, there is apparently a disciplinary action being taken against the main and crucial witness in the state's case; William Denninger. I heard that Mr. Denninger, now suspended from duty, has been referred to the NJ Attorney General's Office for investigation. He is an Investigator from the Cumberland County Prosecutor's Office.

Mr. Denninger had been the Bridgeton Police Officer who investigated Officer Smith. During the trial, his testimony contradicted his former official statements and he admitted to having committed the crimes of misconduct and false swearing. According to his testimony, some of these acts were directed and/or condoned by Chief Ott. Assistant Prosecutor Saverio Carroccia, Cumberland County Prosecutor's Office, can confirm this discredited testimony during the trial.

Mr. Denninger admitted to having acted on his own without authorization and failed to notify anyone as to his "investigation" during the Bridgeton investigation of Officer Smith. By his own admission, he violated the established policy of the Bridgeton Police Department. Mr. Denninger utilized his own car and conducted his own investigation and was motivated by self-

interest. The entire investigation was ultimately proven to be flawed and misguided. After the Smith investigation, he testified that he accepted a position as an Investigator with the Cumberland County Prosecutor's Office. During his investigation of Officer Smith, it was noted that the police never performed a field test of the very substance that was purported to be the illegal substance in question. Because of this, the complaint signed against Officer Smith was shown to be erroneous.

It is also important to note that Chief Ott apparently had a personal vendetta against Officer Smith. During his testimony, Mr. Denninger acknowledged that Chief Ott did not like Officer Smith. This animosity can be proved through additional police witnesses as well. Officer Denninger went on to say that this personal dislike was apparently amplified when, in the performance of his official duty, Officer Smith had towed an unregistered car. This car was owned by a Bridgeton City Councilman. One month later, Officer Smith was arrested.

Astonishingly, the Chief personally transported the Councilman to recover the car from the tow yard. Testimony from the tow company representative confirmed that the Chief had never previously "assisted" anyone in this way. The link here, between the Chief's retaliatory motivation and Officer Smith, is obvious and unmistakable.

Therefore it would be retaliatory, preposterous and unfair to proceed administratively against Officer Smith now, even if legally permitted to do so. Any effort to prevent Officer Smith to be reinstated will be an injustice. Further, to continue with any administrative proceeding now would be rightfully perceived as malicious and retaliatory.


Simply put, the case made against Officer Smith was an injustice. The improprieties were many and were obviously fostered by personal, and perhaps political, motivations. Officer Smith has suffered a significant price, professionally and personally, for over 4 years as a result of this case. Accordingly, Officer Smith is available to report for duty and to be reinstated any time next week.

After coordinating my schedule with my client, I will be available to accompany Officer Smith to the IA Interview on March 21, 2016.

Please confirm this date and provide a specific interview time. I suggest that we permit our respective staff members to coordinate the details for the interview. Thank you.

Very truly yours,

Helmer, Conley & Kasselmann, P.A.

A handwritten signature in black ink, appearing to read "Brian E. Jacobs". The signature is fluid and cursive, with a large, stylized initial "B".

Brian E. Jacobs, Esquire

BEJ/enp

cc: Robert Smith

ATTORNEYS AT LAW

Please reply to:

111 White Horse Pike
Haddon Heights, NJ 08035
Tel: (856) 547-7888

March 11, 2016

Via Hand Delivery

Attention: Civil Processing
NJ Superior Court – Cumberland County
60 West Broad
Bridgeton, NJ 08302

Re: Robert Smith v. City of Bridgeton, Bridgeton Police Department, and Mark Ott,
Bridgeton Chief of Police
Our File No.: 8433

Dear Sir/Madam:

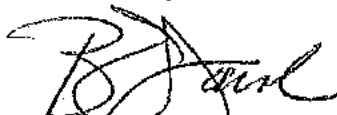
Enclosed please find an original and two copies of a Motion for Summary Judgment for the above-captioned matter. Kindly file and return a stamped "filed" copy to this office in the provided postage prepaid envelope.

Please charge the \$50 filing fee to this firm's collateral account number 142034.

Thank you for your assistance in this regard.

Very truly yours,

HELMER, CONLEY & KASSELMAN, P.A.


Brian E. Jacobs, Esquire

/enp

Enclosures

cc: William G. Blaney, Jr., Esquire (Via Certified Mail – R.R.R.)
Robert Smith

HELMER, CONLEY & KASSELMAN, P.A.
111 White Horse Pike
Haddon Heights, NJ 08035
Brian E. Jacobs, Esquire
ID #025871996
Attorneys for Plaintiff Robert Smith

ROBERT SMITH	SUPERIOR COURT OF NEW JERSEY LAW DIVISION/CIVIL PART
Plaintiff,	CUMBERLAND COUNTY
V.	DOCKET NO.: _____
CITY OF BRIDGETON, BRIDGETON POLICE DEPARTMENT, AND MARK OTT, BRIDGETON CHIEF OF POLICE,	CIVIL ACTION
Defendants.	MOTION FOR SUMMARY JUDGMENT

To: William J. Blaney, Jr., Esquire
Blaney & Donahue, PA
2123 Dune Drive, Suite 11
Avalon, NJ 08202

PLEASE TAKE NOTICE that, on the 15th day of April, 2016, at 8:45 in the forenoon, or as soon thereafter as counsel may be heard, the undersigned, Brian E. Jacobs, Esquire, of the law firm of Helmer, Conley & Kasselmann, P.A., attorneys for Plaintiff, Robert Smith, shall apply before the Honorable Georgia M. Curio, A.J.S.C., or such other judge of the Superior Court who shall be designated by the Court, in the Superior Court of New Jersey, Law Division, Civil Part, at the Cumberland County Courthouse, 60 West Broad Street, Bridgeton, New Jersey, 08302, for an order granting summary judgment in favor of the defendant, and against the defendants as follows:

1. Ordering the defendants fully to reinstate the plaintiff to his job as a Bridgeton Police Officer, with full back compensation, together with interest and all benefits attendant to such employment.
2. Ordering that any record of disciplinary action against the Plaintiff be removed from the plaintiff's employee file.
3. Dismissing with prejudice any and all disciplinary actions currently pending and barring institution of any future, related disciplinary actions.
4. Awarding the Plaintiff attorney's fees and costs.
5. Granting such other and further relief as the Court deems appropriate.

In support of this motion, the Plaintiff will rely upon the documents of record, including the verified complaint filed contemporaneously herewith, as well as the brief and certification filed in support of the instant motion for summary judgment.


A proposed form of order is attached.

No pre-trial conference, arbitration proceeding, calendar call or trial date has been set.

A discovery end date has not yet been assigned.

HELMER, CONLEY & KASSELMAN, P.A.

Dated: March 11, 2016

By: 
BRIAN E. JACOBS, ESQUIRE
Attorney for Plaintiff Robert Smith

CERTIFICATION OF SERVICE

I certify that on the 11 day of March, 2016, I sent, by certified United States Mail, a copy of the within motion, together with form of order and all supporting documents to

William J. Blaney, Jr., Esquire
Blaney & Donahue, PA
2123 Dune Drive, Suite 11
Avalon, NJ 08202

Dated: March 11, 2016



Brian E. Jacobs, Esquire

HELMER, CONLEY & KASSELMAN, P.A.
111 White Horse Pike
Haddon Heights, NJ 08035
Brian E. Jacobs, Esquire
ID #025871996
& Jack J. Lipari, Esquire
ID#022521982
Attorneys for Plaintiff Robert Smith

ROBERT SMITH

Plaintiff,

V.

**CITY OF BRIDGETON, BRIDGETON
POLICE DEPARTMENT, AND MARK
OTT, BRIDGETON CHIEF OF POLICE,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION/CIVIL PART

CUMBERLAND COUNTY

DOCKET NO.: _____

CIVIL ACTION

**LETTER BRIEF IN SUPPORT OF COMPLAINT IN LIEU OF PREROGATIVE WRIT,
MOTION FOR SUMMARY JUDGEMENT, AND INJUNCTIVE RELIEF**

Your Honor:

Please accept this letter, in lieu of formal brief, in support of the complaint in lieu of prerogative writ, motion for summary judgement, and injunctive relief, on behalf of the Plaintiff, Robert Smith. Plaintiff Smith is a Bridgeton Police Officer and has been suspended without pay and benefits since January 18, 2012.

STATEMENT OF PROCEDURAL HISTORY AND GENERAL FACTS

Plaintiff, Robert Smith, is a Bridgeton Police Officer who was charged in a one count indictment with distribution of CDS, to wit: stanozolol (an illegal steroid). Prior to the indictment, Smith had been charged on a police complaint dated January 18, 2012, with distribution of anavar (oxandrolone), an illegal steroid. On the same date that Smith was served, with the criminal complaint, he was served with a Civil Service Preliminary Notice of Disciplinary Action that lists civil service disciplinary charges: Incompetency, inefficiency or fail to perform duties [4A:2-2.3(a)1], Insubordination [4A:2-2.3(a)2], Conduct unbecoming [4A:2-2.3(a)6], Neglect of Duty [4A:2-2.3(a)7], Other sufficient cause [4A:2-2.3(a)11]. Additionally, the Chief of Police Mark Ott required an immediate suspension without pay. The disciplinary charges were based on the criminal charge. Four years later, on January 28, 2016, the jury found Robert Smith not guilty of the criminal charge. The jury trial transpired over eight days.

Now, after 4 years, and even after the acquittal from the trial, no disciplinary hearing has ever been scheduled or was convened. Nor were any new or different disciplinary charges brought. As of March 13, 2016, 45 days has elapsed since the jury returned its not guilty verdict.

With respect to the charges that were the subject of the jury trial, the State alleged that on January 18, 2012, Bridgeton Police Officer William Deininger informed his Internal Affairs Unit that a fellow officer, Robert Smith, was coming to work in a few hours and would be giving him anavar which he believed to be an illegal steroid. Deininger claimed that he had previously given Smith money to obtain the anavar. He admitted that he was acting on his own without authorization and had failed to notify anyone of this in violation of the established policy of the Bridgeton Police Department. As a result, Deininger was outfitted with a camera and recording device. When Officer Smith arrived at work, Deininger asked him if he brought "that thing" with him. Officer Smith said yes and the two of them went to Officer Smith's car in the parking lot of the Bridgeton Police

Department. Officer Smith opened the trunk of his vehicle but the video did not capture what occurred. Although Officer Deininger claimed that he obtained a bottle of pills from Officer Smith, at no point during the video is a bottle of pills displayed. Furthermore, at no point during the audio is the word steroid, anavar or stanozolol spoken by either party. After allegedly obtaining the pills from Officer Smith, Deininger went to his personal vehicle, then opened and closed the door. Because of the angle of the camera, you cannot see if Deininger threw anything into the car or obtained anything from the car. After doing this, Deininger handed a bottle of pills to Lt. Pierce inside the building of the Bridgeton Police Department.

Officer Smith was detained in an office inside the Bridgeton Police Department. When told that he was being charged, the police report indicates that he said that the pills were vitamins and obtained from Excel Pharmaceuticals. Since the Bridgeton Police were not able to field test the pills, they looked on the internet to see what "anavar" was. They learned that anavar was another name for oxandrolone, an illegal Schedule III drug (steroids). While being transported to the jail in a police car, Officer Smith allegedly said that he was only trying to help Deininger and that the "steroids are legit." Although Bridgeton police cars are equipped with mobile recording devices and Bridgeton Police Department policy requires that all prisoner transports be recorded, this conversation was not recorded. In addition, the other police officer in the car at the time did not hear this alleged admission by Officer Smith.

Two weeks later, the New Jersey State Police Laboratory issued their report stating that the pills in question were stanozolol, not oxandrolone or anavar. Stanozolol is a Schedule III drug (steroids). Consequently, the signed and sworn criminal complaint charging him with distribution of anavar (oxandrolone) was incorrect. When the case was indicted in November 2013, Officer Smith was charged with one count of distributing stanozolol. Officer Smith was suspended without pay on the date of his arrest.

Deininger testified at the trial. He said that in December 2012 he resigned from the Bridgeton Police Department and accepted a new position as an Investigator at the Cumberland County Prosecutor's Office. In his testimony, Deininger admitted that he lied on his application for employment with the Bridgeton Police Department, claiming that he lived in Bridgeton when in fact he lived in Hammonton. He testified that Chief Ott told him to do this so that he would comply with the residency requirement necessary for employment. He further testified that he changed the address on his New Jersey driver's license to this fraudulent Bridgeton address. He also admitted that he lied on his application for employment with the Cumberland County Prosecutor's Office by listing this same fraudulent Bridgeton address as a previous address where he had resided. Although he acknowledged that false swearing, falsifying records, tampering with public records and official misconduct are all criminal offenses (some of which require mandatory prison time), he stated that he has not been charged with any of these crimes and was not under investigation for these crimes even though he had disclosed this information to the Cumberland County Prosecutor's Office six months earlier. He acknowledged that Chief Ott did not like Officer Smith in general and especially since Officer Smith had a City Councilman's unregistered vehicle towed one month before his arrest. Deininger admitted that Internal Affairs had been speaking to him shortly before this incident but he claimed that he was a witness in that investigation, not a target. He admitted that he was trying to leave the Bridgeton Police Department and had submitted numerous applications for employment with other agencies. He also acknowledged that the transfer list had come out one week before and he failed to get the Detective position that he wanted. He admitted that he violated policy by starting this investigation on his own and not telling anyone in the department.

Deininger's testimony contradicted a previous sworn statement that he provided one day after the arrest. In that statement, he claimed that he gave Officer Smith the money for the drugs in front of a bank ATM machine right after making a withdrawal from same while they were both

working. However, the GPS records of Officer Smith's police car showed that he never stopped at the bank that evening. Once he was advised of what the GPS records disclosed, Deininger testified that the money exchange happened at the Bridgeton Police Department parking lot. In his prior statement, Deininger claimed that any discussion of the delivery of the drugs did not occur at the gym since Officer Smith had not been able to get to the gym. In his trial testimony, Deininger testified that the discussion of the delivery of the drugs occurred at the gym. Deininger admitted that although he owned a personal recording device, he did not record any of the previous alleged discussions that he had with Officer Smith. Deininger denied any previous steroid use or attempts to obtain steroids.

The defense called Dr. Richard Saferstein as an expert witness in the field of forensic science and drug analysis. He testified that there were two different substances which were called "anavar." One is oxandrolone which is a steroid. However, the manufacturer of the drug was discontinued in 1989 and the trademark lapsed. In 2003, the company known as Hi-Tech Pharmaceuticals registered the abandoned trademark and sold a product called anavar which was a legal supplement/vitamin. Both Dr. Saferstein and the State's chemist who analyzed the drugs in this case testified that another name for stanozolol was winstrol. The defense also called as a witness a Bridgeton Police Officer who testified that on two occasions prior to Officer Smith's arrest, Deininger asked him if he knew where Deininger could obtain winstrol. This police officer also testified that he saw Chief Ott red faced and yelling at Officer Smith shortly after Officer Smith had the Councilman's unregistered vehicle towed. Finally, the defense called a witness from the tow yard who testified that Chief Ott drove the Councilman to the tow lot so he could pick up his vehicle. The witness testified that in over 20 years in the towing business, this was the only time that he had ever seen a Chief of Police drive somebody to his lot so they could pick up their car.

Lt. Pierce of the Bridgeton Police Department was the only State's witness with significant experience in the field of drug investigations. He testified that this was the only case where he only had a few minutes to do the investigation. In fact, he testified that he wanted more time to do the investigation properly but Chief Ott denied his request. In addition, the testimony established that Chief Ott ordered that Officer Smith be charged that evening even though the police did not really know what the pills were (as it turned out, the complaint charged Officer Smith incorrectly). Finally, Lt. Pierce testified that he did not search Deininger prior to the transaction since it was police policy not to search fellow police officers. Lt. Pierce testified that it would've taken 15 minutes to check all of the places on Deininger's person where he may have hidden something since he had many layers of clothing on and was in full tactical gear. He also testified that nobody searched Deininger's car after the transaction even though Deininger is seen on the video opening and closing his car door.

Prior to the issuance of the criminal complaint, Smith, while working as a Bridgeton Police Office, issued a ticket to a Bridgeton Councilman. He also caused that councilman's unregistered vehicle to be towed.

On March 8, 2016, Brian Jacobs, Esquire, counsel for Plaintiff in the Administrative matter, wrote to William Blaney, Esq., counsel of the defendants, following up on a phone conversation wherein the latter informed the former that the defendants, including the Bridgeton Police Department, wished to schedule an internal affairs interview for the Plaintiff. The letter advised that the Plaintiff was ready for reinstatement and stated clearly that, in view of the circumstances, any effort to proceed administratively would be groundless and retaliatory.

On March 4, 2016, the Plaintiff received notice that certified mail was received at his residence. On March 7, 2016, Plaintiff picked up the certified mail and learned that the envelope contained what was purported to be a notice of an internal affairs complaint from the Bridgeton Police Department alleging the following: "rules violation, truthfullness (sic), conduct unbecoming,

neglect of duty, assault, distribution and use of CDS.” The complaint itself was not included. Service of the notice, let alone the actual complaint, did not occur within 30 days of the criminal jury verdict. Nor did the notice designate any hearing date. To the extent that any complaint attempts to allege different grounds, such alleged grounds are without valid legal or factual foundation. Plus, any such alleged different grounds may not be mixed with matters related to the criminal charges that were the subject of the jury acquittal. Additionally, as to any possible other grounds, somehow related to the criminal case or otherwise, as of March 13, 2016, 45 days has elapsed since the defendants or the person filing the charge obtained sufficient information to file the matter alleged to form a valid basis for discipline.

STATEMENT OF MATERIAL FACTS

See statement of material facts pursuant to R. 4:46-2(a) submitted contemporaneously herewith.

LEGAL ARGUMENT

POINT ONE

PLAINTIFF IS ENTITLED TO INJUNCTIVE RELIEF, INCLUDING REINSTATEMENT OF HIS JOB, WITH BACK PAY.

For the reasons advanced in his substantive arguments under Point Two, *infra.*, the plaintiff is entitled to reinstatement of his job, with back pay. This is the remedy provided for under N.J.S.40A:14-149.2, following acquittal. The jury verdict is preclusive, and, moreover, the governing body is out of time as far as holding a hearing on any charges already brought, or bringing any charges indirectly related to the criminal proceeding. See N.J.S. 40A:14-149; N.J.S.14A:14-147; Aristizibal v. City of Atlantic City, 380 N.J. Super. 405, 429 (Law Div. 2005). See also King v. Ryan, 262 N.J. Super. 401 (App. Div. 1993). Deprivation of employment, moreover, particularly at this stage, entails a clear violation of Due Process. See Hornsall v. Washington Twp., 405 N.J. Super.

304, 314 (App. Div. 2009). Sellers v. Bd. of Trustees of Police and Firemen's Retirement System, 399 N.J. Super. 51, 56-57 (App. Div. 2008). See also Bd. of Regents of State Colleges v. Roth, 408 U.S. 564 (576 (1972)). It is well settled that a loss of constitutional freedoms, even for a limited period, unquestionably constitutes irreparable injury. See Davis v. N.J. Dept. of Law and Public Safety, Div. of State Police, 327 N.J. Super. 59, 68-69 (Law Div. 1999).

Injunctive relief plainly is warranted in this case. First, plaintiff clearly and convincingly is entitled to the relief sought, as the law plainly compels that he be reinstated with back pay. See Dolan v. De Capua, 16 N.J. 599, 614 (1954) ("Injunctive judgments are not granted in absence of clear and convincing proof."). Pursuant to Crowe v. De Gioia, 90 N.J. 126, 447 A.2d 173 (1982), the applicant bears the burden of demonstrating: 1) irreparable harm is likely if the relief is denied; 2) the applicable underlying law is well settled; 3) the material facts are not substantially disputed, and there exists a reasonable probability of ultimate success on the merits; and 4) the balance of the hardship to the parties favors the issuance of the requested relief. Id. at 132-34. In the present case the plaintiff satisfies each of these elements of his burden.

First, if he is not reinstated, he will be deprived of work, and income and benefits to which he is entitled. To this extent, money damages cannot fairly compensate him. Crowe at 133. Plaintiff continues to suffer grievous interruption in his work, life and compensation. This interruption increases every day he is kept from working in his law enforcement position, contributing to his pension. Delay in his reinstatement will irreparably more harm to his overall financial well being

The law, as further set forth in Point Two, infra., is well settled. The charges here were based on a criminal charge that resulted in acquittal. Because the disciplinary matter was based on the fact of the charge itself, the jury acquittal is preclusive against discipline. Moreover, if there were

any intention to seek some independent administrative action, defendant plainly is out of time. More delay would simply harm the plaintiff and offend Due Process to no worthwhile end.

The material facts are not in dispute. The plaintiff was charged based on the fact of a criminal charge. That charge culminated in an acquittal. The defendants are out of time inasmuch as they might have contemplated some directly or indirectly related administrative actions. No material facts are in dispute; nor may the defendants at this stage fairly put facts into material dispute.

Finally, the balance of hardships plainly favors relief. Without immediate court intervention, injustice will be rewarded, and Due Process will continue to be offended. There is no justifiable end that is served in keeping the plaintiff off of the job, particularly considering the irregularities revealed during the criminal prosecution. In this vein, it is noteworthy that, as known to the defendants, the key witness in the government's case had issues which gravely compromised his credibility, as he ostensibly had submitted sworn documents that the defendants knew to be false. Continuing litigation, while the plaintiff is suspended from work, would greatly disserve the ends of justice. Unless an injunction is granted, plaintiff will continue to suffer substantial, immediate and irreparable harm. See Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 638, 691 A.2d 876 (App. Div. 1997) (citing Citizens Coach Co. v. Camden H. R. Co., 29 N.J. Eq. 299, 303-04 (E. & A. 1878)). It is manifest that this type of lost work and wages, and the concomitant economic duress, would warrant court intervention of an injunctive nature. See, e.g., Independent Dairy Workers Union v. Milk Drivers and Dairy Employees, 23 N.J. 85, 102 (1956).

Additionally, the public interests which are implicated in this case, favor injunctive relief being granted. In exercising their equitable powers, courts may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved. See Brown v. City of Paterson, 424 N.J. Super. 176, 183, 36 A.3d 1075 (App. Div. 2012) (quoting Waste Management of New Jersey, Inc. v. Union County

Utilities Authority, 399 N.J. Super. 508, 520-21, 945 A.2d 73 (App. Div. 2008)). In the present case, the very nature of the plaintiff's employment implicates the public interest, as do the laws which provide strict limitations upon public employers who invoke disciplinary measures in matters alleged also to violate the criminal law, let alone where a criminal prosecution, as here, has resulted in acquittal. Even more importantly, as each day goes by and the plaintiff is denied his right to employment, his constitutional right to due process is violated, and he suffers more harm that is irreparable. The present case is even more egregious as it is evident that the defendants were aware of laws that were violated by the state's key witness and still proceeded with the criminal prosecution.

POINT TWO

PLAINTIFF IS ENTITLED TO REINSTATEMENT OF HIS JOB, WITH ALL BENEFITS INCIDENT THERETO, WITH BACK PAY,

The law permits, but does not mandate, suspension of a police officer without pay until termination of a prosecution, where, as here, the officer is charged with an offense of the sort involved in this case. See N.J.S. 2A:14-149.1. However, the law requires that the officer be reinstated and paid all withheld pay where the suspended officer is found not guilty. See N.J.S. 40A:14-149.2. Here the disciplinary complaint was predicated upon the fact of the criminal charge. Accordingly, the jury acquittal is preclusive in the plaintiff's favor as to the issue of reinstatement and back pay.

While, under the statute, reinstatement is made subject to disciplinary proceedings or administrative action, there was no separate proceeding or action here. Again, the disciplinary complaint and suspension was based on the fact of the criminal complaint. However, even assuming some authority to pursue a disciplinary proceeding or administrative action, there would be strict time lines attendant to such authority as would preclude the exercise of disciplinary authority in this case.

A hearing must be held within thirty days after service of the charges. N.J.S.40A:14-149. Here no hearing ever was held. Even if it were assumed that the pendency of the criminal charges tolled the time, the prosecution ended in acquittal back on January 28, 2016. More than thirty days have elapsed since that time, and still no hearing has been convened. To the extent that there could have been intention by the defendants to hold a hearing on the charges that were the subject of the complaint, they would not have been authorized to delay the hearing beyond thirty days from the entry of the acquittal. However, in any case, to the extent that administrative disciplinary charges could be predicated upon the charges comprehended in the criminal prosecution, or upon other charges somehow indirectly related, the defendants would have had no more than forty-five days after disposition of the criminal case to bring a complaint. See N.J.S.14A:14-147; Aristizabal v. City of Atlantic City, 380 N.J. Super. 405, 429 (Law Div. 2005). See also King v. Ryan, 262 N.J. Super. 401 (App. Div. 1993). In short, at this stage, the governing authority lacks the authority to discipline the plaintiff, who is entitled by law to reinstatement and back pay.

Moreover, denial of employment, particularly at this stage, would entail a clear violation of the plaintiff right of due process. It is well settled that tenure in public employment is a vested right guaranteed under the constitution. See Hornsall v. Washington Twp., 405 N.J. Super. 304, 314 (App. Div. 2009). Sellers v. Bd. of Trustees of Police and Firemen's Retirement System, 399 N.J. Super. 51, 56-57 (App. Div. 2008). See also Bd. of Regents of State Colleges v. Roth, 408 U.S. 564 (576 (1972)).

Also, defendants must be barred from proceeding against the plaintiff to the extent that they, in their most recent complaint, have mixed with other disciplinary charges with charges that are related to that that were the subject of the jury acquittal. Lest the defendants circumvent the effect of that acquittal, and the thirty day time limit for convening a hearing following a jury acquittal, the defendants must be required to provide the factual details of any charges claimed by the defendants

to be unrelated. If there are any unrelated charges that there may be authority for the defendants to address at a separate disciplinary hearing, the defendant, if suspended, must receive his pay while the disciplinary proceedings on the alleged new grounds are pending. See Herzog v. Township of Fairfield, 349 N.J. Super. 602 (App. Div. 2002).

It is the plaintiff's primary contention, however, that the defendants, after knowingly proceeding with a fatally flawed prosecution, are retaliating and harassing the plaintiff for the exercise of his constitutional right to trial, and on account of the jury acquittal. The new charges are not advanced in good faith, are vindictive, and, in no case might fairly form the basis for continued suspension, let alone without pay. Rather, the defendant is entitled to immediate reinstatement with full pay and full back compensation.

CONCLUSION

For the foregoing reasons, the plaintiff urges that the relief sought in his complaint, including, but not limited to, reinstatement of job and back pay, together with all employee benefits pertaining thereto to, be granted.

HELMER, CONLEY & KASSELMAN, P.A.



Brian E Jacobs, Esquire

EXHIBIT A

Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission - State of New Jersey

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated: (a) suspension or fine for more than five working days at any one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

Form with fields: Employing Agency Name (Bridgeton 0801), Address/Phone Number (330 Fayette St. Bridgeton, NJ 08302, 856-451-0033), Date (1-23-2012), Attorney representing your agency (Mr. Robert A. DeSanto, Esq.), Employee Name (Robert W. Smith), Permanent Civil Service Title (Police Officer), Employee Identification Number (xxx-xx-7731), Address/Phone Number (64 Kerry Lynn Ct. Williamstown, NJ 08094).

You are hereby notified that the following charge(s) have been made against you: (if necessary, use additional sheets and attach)

Table with 2 columns: Charges, Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred. Content: See Attached.

[X] If checked, charges are continued on attached page.

[X] If checked, incidents are continued on attached page.

[X] You are hereby suspended effective immediately and without pay effective 1-16-2012 - appeal instructions previously provided 1-19-2012

If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within 10 days of receipt of this form. If you request a hearing it will be held on a date to be determined at (time) charges at (place of hearing) to be set. *Must be a minimum of five days

The following disciplinary action may be taken against you:

- [] Suspension for working days, beginning and ending
[] Indefinite suspension pending criminal charges effective (date)
[X] Removal, effective (date) to be determined
[] Demotion to position of effective (date)
[] Resignation not in good standing, effective (date) [] Other Disciplinary Action
[] Fine amount which is equal to number (number of working days)

Appointing authority or authorized agent's signature and title.

Signature Dale E. ... Title

BUSINESS ADMINISTRATOR

This form must be personally served on the employee or sent by certified or registered mail.

- [] Certified or Registered Mail [] Receipt Number
[] Signature of Server [] Date of personal service

**Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission – State of New Jersey**

Continuation Page

CHARGE(S):

4A:2-2.3(a)1.	Incompetency, inefficiency or fail to perform duties
4A:2-2.3(a)2.	Insubordination
4A:2-2.3(a)6.	Conduct unbecoming a public employee
4A:2-2.3(a)7.	Neglect of Duty
4A:2-2.3(a)11.	Other sufficient cause

Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:

On 1-18-2012 at approx. 2231hrs Ptm. Robert Smith was arrested for and charged with indictable crimes involving the sale of controlled dangerous substances or its analog.

EXHIBIT B



Bridgeton Police Department

330 Fayette St.
Bridgeton, NJ 08302
Phone 856-451-0033
Extension 2001
Fax 856-459-9036
Chief Mark W. Ott

Date:

1-18-2017⁰³³⁶

To:

Ptl. Robert Smith 1037

Re:

TAKE NOTICE: You are suspended from duty effective immediately and without pay for the following reason(s): Under N.J.S.A. 40A:4-149.1 and N.J.A.C. 4A:2-2.5;

1. You are unfit for duty.
2. You are a hazard to other persons if permitted to remain on the job.
3. An immediate suspension is necessary to maintain the safety, health, order or effective direction of public services.
4. You have been formally charged with a first, second, third or fourth degree crime while on duty, or the criminal act is directly related to your employment.
5. Your current condition involves an act of moral turpitude.

The following facts in support of the above reasons are:

- a. You have been arrested and charged with possession of CDS, Possession of CDS with Intent to Distribute, and Distribution of CDS.
- b. You are considered a hazard to others in having made statements indicating that you feel that a fellow officer is responsible for your current circumstances and the reasonable belief by this department is that you may seek revenge.
- c. You have been charged with Possession of CDS, Possession of CDS with intent to Distribute, and Distribution of CDS which are serious indictable crimes.
- d. The previously described events and concerns shows that you have been involved in an act of Moral Turpitude.

You must take notice that this situation affects your employment status, your pay status and the status of your pension.

You have the right to appeal this decision and have five days to make that appeal, in writing, to the Business Administrator (Mr. D. Goodreau at 181 E. Commerce St. Bridgeton, NJ 08302) specifying why this immediate suspension is invalid.

Respectfully,

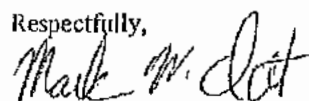

Chief Mark W. Ott

EXHIBIT C

ATTORNEYS AT LAW

111 White Horse Pike
Haddon Heights, NJ 08035
Tel: 856-547-7888
Fax: 856-547-7797

519 White Horse Pike
Haddon Heights, NJ 08035
Tel: 856-547-7888
Fax: 856-547-2576

127 Livingston Avenue
New Brunswick, NJ 08901
Tel: 732-246-8100
Fax: 732-246-8120

77 Market Street
Salem, NJ 08079
Tel: 856-878-1400
Fax: 856-878-1489

805 New Road
Somers Point, NJ 08244
Tel: 609-601-6100
Fax: 609-601-6101

233 W. Landis Avenue
Vineland, NJ 08360
Tel: 856-690-0900
Fax: 856-690-0901

PLEASE REPLY TO:

111 White Horse Pike

January 23, 2012

Via fax and regular mail

Chief Mark W. Ott
Bridgeton Police Department
330 Fayette Street
Bridgeton, NJ 08302

Dale Goodreau
Business Administrator
City of Bridgeton
181 E. Commerce Street
Bridgeton, NJ 08302

Re: Ptl. Robert Smith

Dear Chief Ott and Mr. Goodreau:

Please be advised that our firm has been retained by Officer Robert Smith to represent him in connection with the suspension as noticed in your letter dated January 18, 2012. Kindly note our appearance and forward any future correspondence to my attention. Officer Smith is pleading not guilty to any administrative charges referenced in this correspondence and we are appealing the decision to suspend without pay.

Very truly yours,

HELMER, PAUL, CONLEY & KASSELMAN, P.A.



Brian E. Jacobs, Esquire

BEJ/las

c: Officer Robert Smith

EXHIBIT D



Judgment of Acquittal

ORIGINAL

Superior Court of New Jersey, CUMBERLAND County

State of New Jersey v.

Last Name

SMITH

First Name

ROBERT

Middle Name

W

Also Known As

Date of Birth

11/07/1980

SBI Number

772871E

Date(s) of Offense

01/16/2013

Date of Arrest

PROMIS Number

12 000183-001

Date Ind / Acc / Compl Filed

11/06/2013

Original Plea

Not Guilty Guilty

Date of Original Plea

12/18/2013

Adjudication By

Guilty Plea

Jury Trial Verdict

Non-Jury Trial Verdict

Dismissed / Acquitted

Date: 01/28/2016

Original Charges

Ind / Acc / Compl	Count	Description	Statute	Degree
13-11-00891-I	1	MFG/D/D OTHER I II III IV-3RD	2C:35-5B(13)	3
N-2012-000143-0601	2	MFG/DIST/DIS HER/COKE<.50Z-3RD	2C:35-5B(3)	IND
N-2012-000143-0601	3	POSS SCHD I II III IV	2C:35-10A(1)	IND
N-2012-000143-0601	4	DIST, DISP, POSS CDS/SCHOOL ZONE	2C:35-7	IND

Final Charges

Ind / Acc / Compl	Count	Description	Statute	Degree

Sentencing Statement

It is, therefore, on _____ ORDERED and ADJUDGED that the defendant is sentenced as follows:

It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

Total Custodial Term

000 Years 00 Months 000 Days

Institution Name

Total Probation Term

00 Years 00 Months

DEDR (N.J.S.A. 2C:35-16 and 2C:35-5.11)

A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)

DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))

	Standard	Doubled
1st Degree	_____ @ \$	_____ @ \$
2nd Degree	_____ @ \$	_____ @ \$
3rd Degree	_____ @ \$	_____ @ \$
4th Degree	_____ @ \$	_____ @ \$
DP or Petty DP	_____ @ \$	_____ @ \$

Total DEDR Penalty \$ _____

The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)

Forensic Laboratory Fee (N.J.S.A. 2C:35-20)

Offenses @ \$ _____

Total Lab Fee

\$ _____

VCCA Assessment (N.J.S.A. 2C:43-3.1)

Counts	Number	Amount
_____	_____ @	\$ _____
_____	_____ @	\$ _____
_____	_____ @	\$ _____
_____	_____ @	\$ _____

Total VCCA Assessment \$ _____

Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)

Offense

Mandatory Penalty

\$ _____

Offense Based Penalties

Penalty

Amount

\$ _____

Other Fees and Penalties

Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3)

\$ _____

Safe Neighborhood Services Fund Assessment (N.J.S.A. 2C:43-3.2)

Offenses @ \$ _____

Total: \$ _____

Probation Supervision Fee (N.J.S.A. 2C:45-1d)

\$ _____

Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6)

Offenses @ \$ _____

Total \$ _____

Transaction Fee (N.J.S.A. 2C:46-1.1)

Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4)

\$ _____

Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7)

\$ _____

Fine

\$ _____

Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10)

\$ _____

Restitution

Joint & Several

Total Financial Obligation

\$ _____

\$ _____

Additional Conditions

The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20).

The defendant is hereby sentenced to community supervision for life. (If offense occurred before 1/14/04) (N.J.S.A. 2C:43-6.4)

The defendant is hereby sentenced to parole supervision for life. (If offense occurred on or after 1/14/04) (N.J.S.A. 2C:43-6.4).

The defendant is hereby ordered to serve a _____ year term of parole supervision, which term shall begin as soon as defendant completes the sentence of incarceration. (N.J.S.A. 2C:43-7.2).

The court imposes a restraining order pursuant to DORA. (N.J.S.A. 2C:35-6.7(h)). Restraining Order expires _____

Findings Per N.J.S.A. 2C:47-3

The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.

The court finds that the defendant is amenable to sex offender treatment.

The court finds that the defendant is willing to participate in sex offender treatment.

License Suspension

CDS / Paraphernalia (N.J.S.A. 2C:35-16) Waived

Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1)

Eluding (N.J.S.A. 2C:29-2)

Other _____

Number of Months

Non-resident driving privileges revoked

Start Date

End Date

Details

Driver's License Number

Jurisdiction

If the court is unable to collect the license, complete the following:
Defendant's Address

City

State

Zip

Date of Birth

Sex

M F

Eye Color

Details

Time Credits

Time Spent in Custody

R. 3:21-8

Date: From - To

-
-
-
-
-
-
-
-
-
-
-

Total Number of Days _____

Gap Time Spent in Custody

N.J.S.A. 2C:44-5b(2)

Date: From - To

-
-
-
-
-

Total Number of Days _____

Rosado Time

Date: From - To

-
-
-
-
-

Total Number of Days _____

Prior Service Credit

Date: From - To

-
-
-
-
-
-
-
-
-
-

Total Number of Days _____

Statement of Reasons - Include all applicable aggravating and mitigating factors

Form Prepared By

EMILY SPROUSE

Preparer Telephone Number

(856) 453-4307

Attorney for Defendant at Sentencing

ROBERT J LUTHER

Public Defender:

Yes No

Prosecutor at Sentencing

SVERIO CARROCCIA

Deputy Attorney General

Yes No

Judge at Sentencing

Robert G. Malestein J.S.C.

Judge (Signature)

Date

11/29/16

EXHIBIT E



Bridgeton Police Department

Professional Standards Bureau

Internal Affairs Division

Det/Sgt Richard Zanni #870
330 Fayette St., Bridgeton, NJ 08302
Office: (856)451-0033 Ext. 2007
Fax: (856)451-0371

Internal Affairs Complaint Notification I-010-2012

To: Robert Smith
54 Kerry Lynn Ct.
Williamstown NJ, 08094

Badge Number: 1037

You are hereby notified that an internal affairs complaint has been made against you. This complaint involves an allegation of a **RULES VIOLATION, TRUTHFULNESS, CONDUCT UNBECOMING, NEGLIGENCE OF DUTY, ASSAULT, DISTRIBUTION AND USE OF CDS.**

This investigator will contact you when/if you will be needed for an interview.

Signature: Det Sgt Richard Zanni #870
Det/Sgt Richard Zanni #870
Date: 03/01/16

EXHIBIT F

Please reply to:

607 White Horse Pike
Haddon Heights, NJ 08035
Phone (856) 547-7888

March 8, 2016

William G. Blaney, Jr., Esquire
Blaney & Donahue, PA
2123 Dune Drive, Suite 11
Avalon, NJ 08202

Re: Bridgeton Police Department v. Ptl. Robert Smith
Our File No. 8433

Dear Mr. Blaney:

You advised me on Friday that Internal Affairs Investigators from the Bridgeton Police Department would like to schedule an interview for Officer Smith. I spoke to my client who will arrange his schedule to accommodate this interview although he has not been notified of any specific complaint or allegation. He continues to remain completely cooperative with this process.

Administrative charges were filed against Officer Smith on January 18, 2012 as a direct result of a criminal charge of allegedly selling a controlled dangerous substance. On January 23, 2012 our firm notified Chief Mark Ott and Dale Goodreau, Business Administrator, that we represented Officer Smith and entered a plea of not guilty to those charges. On the following day we sent our discovery demand to Chief Ott. As of today this discovery request has gone unanswered by the Bridgeton Police Department.

On January 28, 2016, a jury found Officer Smith not guilty of the criminal charge after an 8-day trial. There have not been any new or different disciplinary charges brought against Officer Smith. However, there is apparently a disciplinary action being taken against the main and crucial witness in the state's case; William Denninger. I heard that Mr. Denninger, now suspended from duty, has been referred to the NJ Attorney General's Office for investigation. He is an Investigator from the Cumberland County Prosecutor's Office.

Mr. Denninger had been the Bridgeton Police Officer who investigated Officer Smith. During the trial, his testimony contradicted his former official statements and he admitted to having committed the crimes of misconduct and false swearing. According to his testimony, some of these acts were directed and/or condoned by Chief Ott. Assistant Prosecutor Saverio Carroccia, Cumberland County Prosecutor's Office, can confirm this discredited testimony during the trial.

Mr. Denninger admitted to having acted on his own without authorization and failed to notify anyone as to his "investigation" during the Bridgeton investigation of Officer Smith. By his own admission, he violated the established policy of the Bridgeton Police Department. Mr. Denninger utilized his own car and conducted his own investigation and was motivated by self-

interest. The entire investigation was ultimately proven to be flawed and misguided. After the Smith investigation, he testified that he accepted a position as an Investigator with the Cumberland County Prosecutor's Office. During his investigation of Officer Smith, it was noted that the police never performed a field test of the very substance that was purported to be the illegal substance in question. Because of this, the complaint signed against Officer Smith was shown to be erroneous.

It is also important to note that Chief Ott apparently had a personal vendetta against Officer Smith. During his testimony, Mr. Denninger acknowledged that Chief Ott did not like Officer Smith. This animosity can be proved through additional police witnesses as well. Officer Denninger went on to say that this personal dislike was apparently amplified when, in the performance of his official duty, Officer Smith had towed an unregistered car. This car was owned by a Bridgeton City Councilman. One month later, Officer Smith was arrested.

Astonishingly, the Chief personally transported the Councilman to recover the car from the tow yard. Testimony from the tow company representative confirmed that the Chief had never previously "assisted" anyone in this way. The link here, between the Chief's retaliatory motivation and Officer Smith, is obvious and unmistakable.

Therefore it would be retaliatory, preposterous and unfair to proceed administratively against Officer Smith now, even if legally permitted to do so. Any effort to prevent Officer Smith to be reinstated will be an injustice. Further, to continue with any administrative proceeding now would be rightfully perceived as malicious and retaliatory.

Simply put, the case made against Officer Smith was an injustice. The improprieties were many and were obviously fostered by personal, and perhaps political, motivations. Officer Smith has suffered a significant price, professionally and personally, for over 4 years as a result of this case. Accordingly, Officer Smith is available to report for duty and to be reinstated any time next week.

After coordinating my schedule with my client, I will be available to accompany Officer Smith to the IA Interview on March 21, 2016.

Please confirm this date and provide a specific interview time. I suggest that we permit our respective staff members to coordinate the details for the interview. Thank you.

Very truly yours,

Helmer, Conley & Kasselmann, P.A.



Brian E. Jacobs, Esquire

BEJ/enp

cc: Robert Smith

HELMER, CONLEY & KASSELMAN, P.A.
111 White Horse Pike
Haddon Heights, NJ 08035
Brian E. Jacobs, Esquire
ID #025871996
& Jack J. Lipari, Esquire
ID#022521982
Attorneys for Plaintiff Robert Smith

ROBERT SMITH	SUPERIOR COURT OF NEW JERSEY LAW DIVISION/CIVIL PART
Plaintiff,	CUMBERLAND COUNTY
V.	DOCKET NO.: _____
CITY OF BRIDGETON, BRIDGETON POLICE DEPARTMENT, AND MARK OTT, BRIDGETON CHIEF OF POLICE,	CIVIL ACTION STATEMENT OF MATERIAL FACTS PURSUANT TO R. 4:46-2(A), ON MOTION SUMMARY JUDGMENT
Defendants.	

STATEMENT OF MATERIAL FACTS

1. Plaintiff, Robert Smith, is a Bridgeton Police Officer who was charged in a one count indictment with distribution of CDS, to wit: stanozolol (an illegal steroid).
2. Prior to the indictment, Smith had been charged on a police complaint dated January 18, 2012, with distribution of anavar (oxandrolone), an illegal steroid.
3. On the same date that Smith was served with the criminal complaint, he was served with a Civil Service Preliminary Notice of Disciplinary Action that lists civil service disciplinary charges: Incompetency, inefficiency or failure to perform duties [4A:2-2.3(a)1], Insubordination [4A:2-2.3(a)2], Conduct unbecoming [4A:2-2.3(a)6], Neglect of Duty [4A:2-

2.3(a)7], Other sufficient cause [4A:2-2.3(a)11]. Attached hereto as Exhibit A is a true copy of a Preliminary Notice of Disciplinary Action.

4. The Chief of Police Mark Ott required an immediate suspension without pay. The disciplinary charges were based on the criminal charge. Exhibit B is a true copy of January 18, 2012 letter from Chief Ott.
5. On January 23, 2012, a letter was sent to Chief Ott and Dale Goodreau, Business Administrator that Officer Smith was entering a not guilty plea to the administrative charges. Attached hereto as Exhibit C is a true copy of a letter dated January 23, 2016 addressed to Chief Ott and Business Administrator, Mr. Goodreau.
6. On January 28, 2016, the jury found Robert Smith not guilty of the criminal charge of distribution of steroids, after an eight day trial. Attached hereto as Exhibit D is a true copy of a Judgement of Acquittal as filed in the Superior Court of New Jersey, Cumberland County.
7. William Deininger, the main witness in the case against Officer Smith, admitted to acts of misconduct including false swearing, falsifying records, tampering with public records and official misconduct, which are all criminal offenses.¹
8. Mr. Deininger admitted that he was acting on his own with his investigation of Officer Smith, without authorization, and had failed to notify anyone of this, in violation of the established policy of the Bridgeton Police Department.
9. According to testimony provided by Mr. Deininger, some of these acts were directed and/or condoned by Chief Ott.
10. Trial testimony revealed that Chief Ott did not like Officer Smith.

¹ Transcript of the criminal trial has been ordered but not received. Upon request, we will supply to the court.

11. Chief Ott was upset with Officer Smith after he issued a ticket to a Bridgeton Councilman for having an unregistered vehicle parked on a street. This vehicle was lawfully towed.
12. Chief Ott then assisted the City Councilman with obtaining the car from impound. Officer Smith was arrested and charged, criminally and administratively, one month later.
13. No disciplinary hearing has ever been scheduled or convened.
14. No different or unrelated disciplinary charges have been brought.
15. As of March 13, 2016, 45 days have elapsed since the jury returned its not guilty verdict.
16. On March 4, 2016, the Plaintiff received notice that certified mail was received at his residence.
17. On March 7, 2016, Plaintiff picked up the certified mail, sent from the Bridgeton Police Department.
18. The mailed envelope contained a document (reference number I-010-2012), purporting to advise that a complaint had been made against Officer Smith alleging violations for "rules violation, truthfullness (sic), conduct unbecoming, neglect of duty, assault, distribution and use of CDS." The complaint was not included. Attached hereto as Exhibit E is a true copy of Internal Affairs Complaint Notification I-010-2012.
19. On March 8, 2016, Brian Jacobs, Esquire, counsel for Plaintiff sent a letter to William Blaney, Esq., counsel for the defendants to confirm a date that Officer Smith would be available to be interviewed by the Bridgeton Police Department. Attached hereto as Exhibit F is a true copy of a March 8, 2016 addressed to Mr. Blaney.
20. The same letter advised that Officer Smith was ready for reinstatement.