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Attorneys for Plaintiff-Plaintiff

PAUL KAMIENSKI,

Plaintiff,

-against-

ATTORNEY GENERAL FOR THE
STATE OF NEW JERSEY, MARLENE
LYNCH FORD, THOMAS F.
KELAHER, JAMES W. HOLZAPFEL,
RONALD DELIGNY, JOHN MERCUN,
SAMUEL J. MARZARELLA, E. DAVID
MILLARD, JAMES A. CHURCHILL,
DANIEL MAHONEY, JEFFREY P.
THOMPSON, JOHN DOES 1-10,
OCEAN COUNTY PROCSECUTOR'S
OFFICE and COUNTY OF OCEAN,

Defendants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.:

**COMPLAINT AND
JURY DEMAND**

PAUL KAMIENSKI, through his attorneys, the Law Office of Jerome A. Ballarotto and
McInnis Law, states as follows:

OVERVIEW

1. Paul Kamienski (“Plaintiff” or “Kamienski”) brings this action (the “Action”) under various Federal and State laws against Attorney General for the State of New Jersey, Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill, Daniel Mahoney, Jeffrey P. Thompson, John Does 1-10, Ocean County Prosecutor’s Office and County of Ocean (collectively, “Defendants”), alleging, generally, that he was wrongfully and maliciously targeted, charged, arrested, prosecuted, convicted and subsequently imprisoned by the State of New Jersey for almost 21 years for crimes which he did not commit, namely: two counts of first degree murder, in violation of N.J.S.A. 2C:11-3a(1); and (2) one count of felony murder, in violation of N.J.S.A. 2C:11-3a(3), (referred to herein collectively as the “Murder Convictions”).

2. The Murder Convictions were reversed and vacated by the United States Court of Appeals for the Third Circuit on grounds of insufficient evidence in an opinion issued May 28, 2009. Plaintiff was released from imprisonment on June 16, 2009, after having been incarcerated on the Murder Convictions since November 18, 1988.

3. The Murder Convictions were secured at a jury trial in 1988 (though reversed and dismissed J.N.O.V.) and subsequently reinstated on direct appeal by the New Jersey State courts and upheld by the United States District Court in a federal habeas corpus action brought under 28 U.S.C. § 2254, as a direct result of certain Defendants’ false and misleading representations to the respective courts and other forms of misconduct, including the withholding of exculpatory evidence, the knowing use of false testimony and the willful failure to duly investigate evidence favorable to Plaintiff.

4. Kamienski's release from his wrongful imprisonment in 2009 and his ultimate exoneration on the Murder Convictions was unnecessarily and intentionally delayed because of the misconduct of certain Defendants. Among other things, certain Defendants were advised by counsel for Plaintiff as early as 2003 of the Ocean County Prosecutor's Office failure to turn over exculpatory evidence to Plaintiff before and during his criminal trial, and certain Defendants were similarly advised by Plaintiff's counsel well before Plaintiff's exoneration that irrefutable evidence established beyond any doubt that the key witness who had testified at trial on behalf of the State against Plaintiff had given materially false testimony and that State appellate attorneys had repeatedly misrepresented the trial record and other evidence to various courts of review.

5. Despite being exonerated on the Murder Convictions by the United States Court of Appeals for the Third Circuit, despite subsequently being ordered by the United States District Court for the District of New Jersey to expunge the Murder Convictions from his criminal history records, and despite the United States Supreme Court's January 19, 2010 denial of certain Defendants' certiorari petition to reverse the Third Circuit's ruling, certain Defendants have willfully refused to expunge the Murder Convictions from Plaintiff's criminal history records.

JURISDICTION AND VENUE

6. Plaintiff brings this Action pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and the laws and Constitution of the State of New Jersey, including Article I, Paragraph 1.

7. Jurisdiction is founded upon 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights violations), and 2202 (declaratory judgment relief).

8. Plaintiff further invokes the supplemental jurisdiction of this Court to adjudicate the New Jersey state law claims alleged herein pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in the District of New Jersey under 28 U.S.C. §§ 1391(b)(1) (all the Defendants reside in the State of Jersey); (b)(2) (a substantial part of the events or omissions giving rise to the Action occurred in this District); or (b)(3) (at least one Defendant may be found in this District and there is no district in which the Action may otherwise be brought).

10. On or about August 24, 2009, Plaintiff served an Initial Notice of Claim for Damages upon the State of New Jersey State with respect to his wrongful investigation, indictment, arrest, prosecution, conviction and imprisonment by registered mail. More than one hundred eighty (180) days have passed since the filing of the Initial Notice of Claim and the Defendants have not approved the claim in whole or in part.

11. On June 16, 2009, Plaintiff was released from the custody of the New Jersey State Department of Corrections as a result of his successful federal habeas corpus petition to reverse and vacate the Murder Convictions.

FACTUAL STATEMENT OF THE CASE

THE PARTIES

12. At all times relevant to the Action, Plaintiff resided, or maintained a residence, in Garfield (Bergen County), New Jersey.

13. Defendant Attorney General for the State of New Jersey is sued solely in her official capacity and only for injunctive relief, as permitted by *Ex Parte Young*, 209 U.S. 123 (1908).

14. Defendant Marlene Lynch Ford is the current Ocean County Prosecutor. She is sued in her personal and official capacities. Defendant Ford was the Ocean County Prosecutor

with supervisory responsibilities overseeing and supervising all aspects of the investigation of, and litigation against, Plaintiff during the appeal of his federal habeas corpus petition. Among other things, Defendant Ford learned from Plaintiff's counsel at least as early as 2008 of her Office's failure to produce favorable evidence at Plaintiff's trial and took no steps to rectify this *Brady* violation. Defendant Ford likewise learned, and willfully failed to act on, information that: (1) her Office had filed false and misleading briefs with the New Jersey state appellate courts, United States District Court, Third Circuit Court of Appeals and United States Supreme Court; (2) the State's key witness against Plaintiff had given materially false trial testimony; and (3) the existence of evidence and testimony that tended to exonerate Plaintiff.

15. At various times relevant to this Complaint, Defendant Thomas F. Kelaher was the Ocean County Prosecutor. He is sued in his personal and official capacities. Defendant Kelaher was the Ocean County Prosecutor with supervisory responsibilities overseeing all aspects of the investigation of, and litigation against, Plaintiff during the trial court phase of his federal habeas corpus petition. Among other things, Defendant Kelaher learned from Plaintiff's counsel (as well as the New Jersey Attorney General) in 2003 of his Office's failure to produce favorable evidence at Plaintiff's trial and took no steps to rectify this *Brady* violation or to investigate evidence that would have exonerated Plaintiff.

16. At various times relevant to this Complaint, Defendant James W. Holzapfel was the Ocean County Prosecutor. He is sued in his personal and official capacities. Defendant Holzapfel was the Ocean County Prosecutor with supervisory responsibilities overseeing all aspects of the investigation of, and litigation against, Plaintiff during the initial investigation, criminal trial and direct appeals phases of his criminal case. Among other things, Defendant Holzapfel knew from overseeing the investigation of the evidence relating to Plaintiff that he had

no involvement in, or prior knowledge of, the homicides that led to the Murder Convictions. Defendant also intentionally or otherwise withheld favorable hair and fiber forensic evidence and testimony from the defense prior to and at trial, and he knew or should have known that the State's sole witness purporting to tie Plaintiff to the murders gave materially false testimony.

17. At various times relevant to this Complaint, Defendant Ronald DeLigny is or was the First Assistant Ocean County Prosecutor. He is sued in his personal and official capacities. Defendant DeLigny had supervisory responsibilities overseeing all aspects of the investigation of, and litigation against, Plaintiff during the appeal of his federal habeas corpus petition. Among other things, Defendant DeLigny learned from Plaintiff's counsel at least as early as 2008 of his Office's failure to produce favorable evidence at Plaintiff's trial and took no steps to rectify this *Brady* violation. Defendant DeLigny likewise learned, and willfully failed to act on, information that: (1) his Office had filed false and misleading briefs with the New Jersey state appellate courts, United States District Court, Third Circuit Court of Appeals and United States Supreme Court; (2) the State's key witness against Plaintiff had given materially false trial testimony; and (3) the existence of evidence and testimony that tended to exonerate Plaintiff.

18. At various times relevant to this Complaint, Defendant John Mercun was the Executive Assistant Ocean County Prosecutor. He is sued in his personal and official capacities. Defendant DeLigny had supervisory responsibilities overseeing all aspects of the investigation of, and litigation against, Plaintiff during the trial court phase of his federal habeas corpus petition. Among other things, Defendant Mercun learned from Plaintiff's counsel (as well as the New Jersey Attorney General) in 2003 of his Office's failure to produce favorable evidence at Plaintiff's trial and took no steps to rectify this *Brady* violation or to investigate evidence that would have exonerated Plaintiff.

19. At various times relevant to this Complaint, Defendant Samuel J. Marzarella is or was the head attorney in the Appeals Unit at the Ocean County Prosecutor's Office. He is sued in his personal and official capacities. Defendant Marzarella was responsible for overseeing all aspects of the investigation of, and litigation against, Plaintiff during the direct appeal of his criminal conviction and all phases of Plaintiff's federal habeas corpus petition. Defendant Marzarella had supervisory responsibilities over other attorneys investigating Plaintiff and participating in the appellate and federal habeas phases of litigation against Plaintiff. He also was the principal appellate attorney for the Ocean County Prosecutor's Office during the direct appeal in the New Jersey state courts and all aspects of the federal habeas petition. Among other things, Defendant Marzarella was personally responsible for filing briefs with reviewing courts that the Third Circuit Court of Appeals found to be "misleading."

20. At various times relevant to this Complaint, Defendant E. David Millard was an Assistant Ocean County Prosecutor. He is sued in his personal and official capacities. Defendant Millard was responsible for overseeing and conducting the initial investigation of Plaintiff and his subsequent criminal trial. Among other things, Defendant Millard knew from overseeing the investigation of the evidence relating to Plaintiff that he had no involvement in, or prior knowledge of, the homicides that led to the Murder Convictions. In fact, during closing argument Defendant Millard revealed to the jury his own belief in Plaintiff's innocence on the Murder Convictions charges. Defendant Millard also intentionally or otherwise withheld favorable hair and fiber forensic evidence and testimony from the defense prior to and at trial, and he knew or should have known that the State's sole witness purporting to tie Plaintiff to the murders gave materially false testimony.

21. At various times relevant to this Complaint, Defendant James A. Churchill was a duly appointed and acting police officer of the Ocean County Prosecutor's Office, with the rank of Lieutenant of the Major Crimes Section and Captain of Investigations, acting under color of law pursuant to the statutes, ordinances, regulations, policies, customs and usage of the County of Ocean and the State of New Jersey. He is sued in his personal and official capacities. Defendant Churchill was responsible for overseeing and conducting all facets of the criminal investigation of Plaintiff and assisting the Ocean County Prosecutor's office during Plaintiff's subsequent criminal trial, direct appeal and federal habeas corpus petition. Among other things, Defendant Churchill knew from his investigation that Plaintiff was not involved in the charged murders, ignored evidence favoring Plaintiff and refused to duly investigate evidentiary leads that would have led conclusively to Plaintiff's exoneration before, during and after his conviction.

22. At various times relevant to this Complaint, Defendant Daniel Mahoney was a duly appointed and acting police officer of the Union County Prosecutor's Office, with the rank of Sergeant of Investigations, acting under color of law pursuant to the statutes, ordinances, regulations, policies, customs and usage of the County of Ocean and the State of New Jersey. He is sued in his personal and official capacities. Defendant Mahoney was responsible for overseeing and conducting all facets of the criminal investigation of Plaintiff and assisting the Ocean County Prosecutor's office during Plaintiff's subsequent criminal trial, direct appeal and federal habeas corpus petition. Among other things, Defendant Mahoney knew from his investigation that Plaintiff was not involved in the charged murders, ignored evidence favoring Plaintiff and refused to duly investigate evidentiary leads that would have led conclusively to Plaintiff's exoneration before, during and after his conviction.

23. At various times relevant to this Complaint, Defendant Jeffrey P. Thompson was a detective and science officer in the Ocean County Sherriff's Office acting under color of law pursuant to the statutes, ordinances, regulations, policies, customs and usage of the County of Ocean and the State of New Jersey. He is sued in his personal and official capacities. Defendant Thompson was the criminalist responsible for obtaining and analyzing forensic evidence during the investigation and trial of Plaintiff. Among other things, Defendant Thompson knew from his investigation that Plaintiff was not involved in the charged murders, ignored evidence favoring Plaintiff and refused to duly investigate evidentiary leads that would have led conclusively to Plaintiff's exoneration before, during and after his conviction.

24. Defendants John Does 1-10, whose identities are currently unknown, were employees of the Ocean County Prosecutor's Office who participated in the investigation of evidence that lead to Plaintiff's wrongful conviction, imprisonment and protracted unlawful confinement. They are sued in their personal and official capacities. Among other things, Defendants John Does 1-10 knew from their investigations that Plaintiff was not involved in the charged murders, ignored evidence favoring Plaintiff and willfully refused to duly investigate evidentiary leads that would have led conclusively to Plaintiff's exoneration before, during and after his conviction.

25. Defendant Ocean County Prosecutor's Office was responsible for investigating, prosecuting and litigating all aspects of the criminal case against Plaintiff. Among other things, Defendant Ocean County Prosecutor's office was responsible for, and failed in its duty to, adequately supervise the conduct of the Ocean County Prosecutor's Office and train and discipline its personnel to prevent or minimize the violation of Plaintiff's civil rights, as alleged herein, and those of other similarly situated persons, including, but not limited to Robert

Marshall (failure to produce potentially exculpatory evidence), Martin Taccetta (same), Michael Sutton (same) and (same).

26. Defendant County of Ocean is a body politic and corporate empowered to exercise home rule and governed by The Board of Chosen Freeholders, a duly designated policymaking entity for the County. Among other things, Defendant County of Ocean failed to adequately supervise the conduct of the Ocean County Prosecutor's Office and train and discipline its personnel to prevent or minimize the violation of Plaintiff's civil rights, as alleged herein, and those of other similarly situated persons.

27. Defendants' acts and omissions violated clearly established statutory or constitutional rights of which a reasonable person would have known.

28. Defendants had ample time to avoid or cure their violations of Plaintiff's civil rights: the active pretrial homicide investigation lasted five years (1983 to 1988), the direct appeals process went on for nearly four years (1988 to 1992), the State post-conviction relief phase ensued for almost 10 years (1992 to 2002) and the federal habeas proceedings took approximately eight years (2002 to 2010).

29. All Defendants with supervisory responsibilities over the investigative and legal functions and personnel of the Ocean County Prosecutor's Office failed with deliberate and willful indifference to properly train, supervise and discipline those involved in criminal investigations, prosecutions and litigation with respect to their obligations to ensure that the constitutional and statutory civil rights of the targets of their activities are not violated by, among other things, the failure to produce favorable evidence to defendants, the fabrication of evidence, the use of false testimony, the initiation of malicious prosecutions, the failure to pursue evidence leads tending to exonerate targets, the filing false and misleading court briefs, the prolonging of

the incarceration of innocent persons and the delaying in rectifying the criminal history records of mistakenly or wrongfully convicted persons once they are exonerated by the courts.

THE MURDER CONVICTIONS

30. In late September 1983, investigators from the Ocean County Prosecutor's were summoned to Toms River New Jersey after two murder victims' bodies were recovered from the Barnegat Bay, where they had been bound in blankets, tethered to cinderblocks and apparently been thrown overboard from a boat. Both victims had died from multiple gunshot wounds. It was later discovered the victims were the sellers of a large quantify of cocaine in a "drug deal gone bad" in Toms River, New Jersey on or about September 19, 1983.

31. On or about October 7, 1987, Plaintiff was named in five counts of a seven count indictment handed up by a grand jury sitting in the New Jersey Superior Court, Ocean County ("Indictment No. 692-10-87").

a. Count One charged Plaintiff and his two co-defendants with the knowing or purposeful murder of Victim 1, contrary to N.J.S.A. 2C:11-3a(1) and (2).

b. Count Two charged Plaintiff and the two co-defendants with the with the knowing or purposeful murder of Victim 2, contrary to N.J.S.A. 2C:11-3a(1) and (2).

c. Counts Three and Four charged only one of the co-defendants with capital murder in connection with the deaths of Victims 1 and 2. Counts Three and Four were dismissed by the State pre-trial.

d. Count Five charged Plaintiff and his two co-defendants with the felony murders of Victims 1 and 2 (based on the killing and theft of cocaine from the victim-sellers during a putative drug deal), contrary to N.J.S.A. 2C:15-1 and N.J.S.A. 2C:11-3a(3);

e. Count Six charged a conspiracy among Plaintiff and the two co-defendants to commit the crimes of possession of cocaine (after it had been stolen from the murder victims) with intent to distribute, in violation of N.J.S.A. 24:21-19a, and/or robbery in the first-degree, in violation of N.J.S.A. 2C:15-1, and/or murder, in violation of N.J.S.A. 2C:11-3 and N.J.S.A. 2C:5-2, and;

f. Count 7 charged a conspiracy among Plaintiff, the two co-defendants, the two murder victims and a courier/unindicted co-conspirator to possess cocaine with intent to distribute (prior to the murders and robbery), contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 24:21-19a(1).

g. The State prosecuted Plaintiff for murder on the accomplice liability theory. Its theory was that, while he did not know of or plan in the killings, Plaintiff helped cover them up afterwards. The State further prosecuted Plaintiff on the cocaine distribution charges on the theory that, while he did not have a financial interest in the aborted drug deal –or even know any of the details concerning it, such as the quantity of drugs or amount of money involved– he had in a general sense introduced the sellers (the two murder victims) and buyers (the two co-defendants) knowing that they were contemplating a cocaine sale.

32. On or about November 18, 1988, following trial, a jury empanelled in the Superior Court of New Jersey, Ocean County – Criminal Division, returned a verdict against Plaintiff as follows:

a. “Not guilty” as to the two sub-parts of Count Six charging a conspiracy to commit robbery in the first degree and/or murder. And,

b. “Guilty” as to the remaining counts (namely, One, Two, Five and Seven) and that part of Count Six charging a conspiracy to distribute cocaine.

33. Following the jury's verdict on November 18, 1988, Plaintiff, who had been out on bail since shortly after his arrest, was immediately remanded him to the custody of the New Jersey State Department of Corrections.

34. On or about December 21, 1988, following post-trial motions, the trial judge who had overseen Plaintiff's trial, affirmed his convictions as to Count Seven and the conspiracy to distribute cocaine aspect of Count Six, but set aside Plaintiff's convictions as to Counts One, Two and Five, i.e., the Murder Convictions, entered a judgment of acquittal as to those counts and dismissed them on grounds of insufficient evidence.

35. After making the above-mentioned rulings, the trial court then sentenced Plaintiff to a term of incarceration as follows: 12 years with six years' of parole ineligibility as to Count 6, and 12 years with four years' of parole ineligibility as to Count 7; with the sentences to be served consecutively.

36. In or about 1989, the State filed a notice of appeal seeking to reinstate the Murder Convictions against Plaintiff, and subsequently pursued the appeal through to its conclusion.

37. On or about February 19, 1992, the Superior Court of New Jersey, Appellate Division reversed the trial court's order dismissing the murder charges against Plaintiff, reinstated the Murder Convictions and ordered the matter remanded for resentencing.

38. On or about April 10, 1992, Plaintiff was resentenced as follows: two life sentences with 30 years' parole ineligibility for the Murder Convictions (the felony murder conviction being merged into the first degree murder convictions) and a consecutive term of 12 years' imprisonment for the drug conspiracy convictions (which drug convictions were merged together).

39. On or about June 26, 1992, the New Jersey Supreme Court denied Plaintiff's application for certification.

40. Following various unsuccessful petitions for post-conviction relief in the New Jersey State courts and in the federal courts, on or about June 26, 2002, Plaintiff filed an initial federal habeas corpus petition in the United States District Court under 28 U.S.C. § 2254, which petition alleged, among other things, that there was insufficient evidence adduced at trial to legally sustain the Murder Convictions.

41. Plaintiff later filed an amendment and supplement to his habeas petition that was subscribed to on or about September 3, 2003. The amended petition included allegations that the State committed a *Brady* violation by failing to produce notes made by an FBI forensic hair and fiber analyst which undercut the State's key witness' that blankets found wrapped around the murder victims' bodies had belonged to Plaintiff.

42. The District Court denied Plaintiff's habeas petition in its entirety on or about July 26, 2006.

43. Plaintiff filed a notice of appeal in the United States Court of Appeals for the Third Circuit seeking to reverse the District Court's denial of his petition for habeas corpus relief, which notice was deemed effective as of on or about July 26, 2006.

44. On or about November 2, 2006, the District Court issued a Certificate of Appealability as to the sufficiency of evidence with respect to the Murder Convictions.

45. Following briefing and oral argument, on or about May 28, 2009, the Court of Appeals issued a unanimous opinion and order that reversed the District Court's denial of Plaintiff's habeas corpus petition and remanded the matter to the District Court with instructions to grant the petition and order Plaintiff's immediate release from State custody.

46. In its written opinion the Court of Appeals concluded that there was insufficient evidence adduced at trial to support the Murder Convictions.

47. Both during oral argument and in its written opinion the Court of Appeals explicitly and implicitly faulted the Ocean County Prosecutor's Office appellate lawyers for filing briefs which sought to "mislead" the New Jersey State Appellate Division, District Court and Court of Appeals as to the evidence which had been adduced at trial and which, in fact, caused the State appellate court to improperly reinstated the Murder Convictions against Plaintiff.

48. On or about June 15, 2009, following a contested hearing, the District Court ordered Plaintiff's release from custody with certain bail conditions (such as travel restrictions and regular periodic reporting requirements) while the State sought review of the Court of Appeals' decision in favor of Plaintiff.

49. On or about June 16, 2009, the New Jersey State Department of Corrections released Plaintiff from incarceration.

50. Plaintiff had been incarcerated continuously by the State of New Jersey Department of Corrections from on or about November 18, 1988 through June 16, 2009.

51. Plaintiff's incarceration from November 18, 1988 through June 16, 2009, was due solely to his convictions on the charges contained in the Indictment.

52. On or about July 2, 2009, the Court of Appeals denied the State's motions for reconsideration and *en banc* review.

53. On or about July 10, 2009, the Court of Appeals issued its mandate on Plaintiff's appeal.

54. On or about July 24, 2009, the Court of Appeals denied the State's motion to stay and/or withdraw the mandate.

55. On or about July 30, 2009, the District Court issued an order granting Plaintiff's petition for habeas corpus relief, which, among other things, vacated the Murder Convictions and ordered the State to expunge the Murder Convictions from Plaintiff's criminal history records.

56. On or about September 29, 2009, the State filed a petition of certiorari in the United States Supreme Court, seeking to reverse the Court of Appeals' ruling in favor of Plaintiff.

57. On or about January 19, 2010, the United States Supreme Court denied the State's petition for certiorari. In seeking certiorari, the State replicated in its Supreme Court submissions many of the false and misleading representations it had included in its earlier briefs filed in the State appellate courts, United States District Court and United States Court of Appeals.

58. On or about January 20, 2010, the United States District Court vacated all conditions of bail that it had imposed on Plaintiff since his release on June 16, 2009.

59. Following the U. S. Court of Appeals' ruling and the United States Supreme Court's order denying certiorari, the State of New Jersey was barred from retrying Plaintiff on the charges underlying the Murder Convictions because of, among other things, the United States Constitution's prohibition against double jeopardy.

60. On or about August 19, 2010, Plaintiff commenced an action against the State of New Jersey Department of the Treasury under New Jersey's mistaken imprisonment statute, N.J.S.A. 52:4C-1 et seq. (*Paul Kamienski v. State of New Jersey Department of the Treasury*,

Mercer County Superior Court, docket number MER-L-2106-10). That matter is pending as of the date of this Complaint.

SPECIFIC ALLEGATIONS OF MISCONDUCT

61. The Ocean County Prosecutors Office and its administrators, supervisors, attorneys and investigators always knew, and should have known, that Plaintiff had nothing to do with the two homicides underlying the Murder Convictions. Their collective goal was to somehow put enough pressure on Plaintiff by manufacturing some connection between him and the murders to cause Plaintiff to “flip” and provide inculpatory evidence against his co-defendants. Even after his release from prison in 2010, the Ocean County Prosecutor’s Office sought to enlist Plaintiff’s cooperation in the prosecution of co-defendant Anthony Alongi, whose conviction was reversed that year on grounds that he had been improperly denied the opportunity to represent himself at trial.

62. The principal means by which the Ocean County Prosecutor’s Office tried to effectuate its unlawful plan to force Plaintiff to assist it was to cause Plaintiff’s former girlfriend, Donna Duckworth, to provide materially false evidence and testimony against him. Among other things, its investigators and attorneys coerced Duckworth to falsely say (or imply) prior to, and during trial, that:

- a. The blankets found wrapped around each of the victims belonged to Plaintiff (and had been used by him for many years prior to the murders).
- b. A blood soaked towel found with one of the victims belonged to Plaintiff (and had been used by him prior to the murders to “polish” his boat).
- c. A knot on the rope tethering one of the victims to a cinderblock was tied by Plaintiff (because the manner in which it was tied was “peculiar” to Plaintiff).

- d. She and Plaintiff had *never* been separated from each other during their multi-year relationship except on the day of the homicides (and this single aberration in the unvarying pattern of how they spent their time was done with premeditation to allow Plaintiff to participate in the murders without her present). And,
- e. Plaintiff participated in the disposal of the bodies in the Barnegat Bay the evening of the murders (after he directed her to go shopping at the Bamberger mall in Toms River).

63. The Ocean County Prosecutors Office and its supervisors, attorneys and investigators always knew, and should have known, that Duckworth's statements were false for the following reasons, among others:

- a. The blankets had been sent to an FBI lab for testing pre-trial, where a hair and fiber analyst later concluded that Plaintiff's hair was not found on them. This information was never turned over to Plaintiff, but was obtained in 2002 via a Freedom of Information ("FOIA") request on the FBI. Upon receiving the FOIA information, Plaintiff's counsel subsequently alerted the Ocean County Prosecutor's Office of that office's *Brady* violation and also provided it with an expert's affidavit (sworn to by the very supervisor of the FBI forensic analyst referred to above), which concluded that the blankets most likely had come from the victims' own car and not from Plaintiff's boat—as Duckworth had stated. Additionally, the Ocean County Prosecutor's Office had listed the FBI hair and fiber analyst as a trial witness and told the trial judge during a courtroom colloquy that it would be calling him to testify, but trial prosecutor Defendant Millard never did—presumably, because the Ocean County Prosecutor's Office supervisors, attorneys and investigators had realized at the last minute that the analyst would end up providing testimony and forensic evidence favorable to Plaintiff. Defendant Marzarella

falsely represented to the United States District Court during the federal habeas proceedings that the hair and fiber analyst had in fact been called to testify at trial, but the person he deliberately mis-referred the court to was an FBI ballistics expert, not the hair and fiber analyst.

b. The towel was sent to an FBI lab for testing pre-trial to determine if there was any evidence of “polish” (i.e., petroleum distillates) on it which would corroborate Duckworth’s testimony. The test came back negative. Additionally, the Ocean County Prosecutor’s Office either knew, or should have known, from interviewing the wife of a drug courier (and one of the last person to see one of the victims alive), as well as from a simple review of the crime scene evidence, that the towel had come from a green nylon bag that the victims had used to secrete the cocaine as it was being transported from their hotel to the drug exchange scene, and not from a wooden box kept on a pier in Lavallette, New Jersey (many miles away from the murder scene in Toms River) where Plaintiff kept the polishing rags for his boat.

c. The knot on the rope was a simple half-hitch. As a forensic knot analyst concluded in a sworn report that Plaintiff’s counsel provided to the Ocean County Prosecutor’s Office during the federal habeas phase of the case, there was nothing distinctive about the knot: it could have been tied by anyone, even monkeys and birds fashion a similar half-hitch when manipulating string and rope, according to the knot expert.

d. There were at least two eye witnesses who could testify that Duckworth and Plaintiff had been separated from each other for many hours the week before the murders took place. Plaintiff’s counsel provided supporting affidavits from these witnesses to the Ocean County Prosecutor’s Office during the federal habeas phase of the case.

e. A credit card receipt from Bamberger showed that the transaction Duckworth said took place on the night of the murders (after Plaintiff supposedly dispatched her so he could

assist in transporting the bodies out into the Barnegat Bay) had actually taken place, as with the time Duckworth and Plaintiff spent time apart, one week earlier. Plaintiff's counsel provided copies of the Bamberger records and a supporting affidavit to the Ocean County Prosecutor's Office during the federal habeas phase of the case. Additionally, Plaintiff's counsel provided a report of an interview with an eye-witness who saw one of Plaintiff's co-defendants in an open boat in the Barnegat Bay at night around the time of the murders. The co-defendant was operating the boat without any running lights. He was alone. Plaintiff was not on the boat.

64. Not only did the Ocean County Prosecutor's Office have to elicit the above-described false testimony from Duckworth (and deliberately ignore the evidence exculpating him) in order to secure Plaintiff's Murder Convictions at trial, it also had to repeatedly submit false statements to all courts that sought to review the evidence which had been adduced against Plaintiff at trial in order to reinstate the Murder Convictions and uphold them after the J.N.O.V. ruling. Plaintiff's counsel demonstrated to the Ocean County Prosecutor's Office during the federal habeas phase that there were more than 100 false and misleading representations per brief in submissions to the State appellate courts, United States District Court and United States Court of Appeals. One of the most flagrant misrepresentations was that the evidence showed Plaintiff had met with the victims and his co-defendants the night before the murders and had actively participated at that meeting in luring them to a secluded place to be killed the next day. Defendant Marzarella repeated this falsehood during oral argument before the Third Circuit Court of Appeals. In fact, as a simple reading of the trial transcript shows, Plaintiff never was at a meeting with the victims the night before the murders—let alone that he did or said anything to cause them to be lured to the murder scene. The Third Circuit Court of Appeals agreed that such

misrepresentations to it, and to the State appellate courts, were “misleading” and caused the improper reinstatement of the Murder Convictions against Plaintiff.

65. Notwithstanding the Third Circuit Court of Appeals’ admonition to the Ocean County Prosecutor’s Office that its brief had made the court “apoplectic,” the Ocean County Prosecutor’s Office went ahead and filed a petition for certiorari with the United States Supreme Court containing similar misrepresentations.

DAMAGES

66. This Action seeks damages for the period from in or about September 1983 through the present. The Defendants’ unlawful, intentional, willful, purposeful, deliberately indifferent, reckless, bad- faith and/or malicious acts, misdeeds and omissions caused Plaintiff to be falsely arrested, maliciously prosecuted, unfairly tried, wrongfully convicted, and to be incarcerated following his arrest and prior to his release on bail and to be imprisoned for over and twenty one years following his wrongful conviction.

67. As a direct and proximate result of the acts, misdeeds and omissions of the Defendants, the injuries and damages sustained by Plaintiff, arising from the deprivation of his civil rights include: violation of his clearly established rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution; personal injuries; pain and suffering; severe mental anguish; emotional distress; extreme fear; economic damages including loss and diminution of income and the inability to obtain or maintain certain professional licenses; infliction of physical illness and injury resulting from his confinement; inadequate medical care; humiliation, indignities, and embarrassment; degradation; injury to reputation; permanent loss of natural psychological development; and restrictions on all forms of personal freedom and physical liberty including but not limited to medical treatment, diet, sleep, personal contact,

educational opportunity, vocational opportunity, athletic opportunity, personal fulfillment, sexual activity, romantic family relations, reading, television, movies, travel, enjoyment, and expression. Furthermore, as a direct result of his unjust conviction and imprisonment and the continued presence of the Murder Convictions on his criminal record, many of the effects of these disabilities continue to plague Plaintiff to this day. Perhaps, the greatest emotional cost to Plaintiff was the loss of his mother, fiancée and other friends, family and loved ones who passed away during Plaintiff's wrongful incarceration.

68. All the alleged acts, misdeeds and omissions committed by the Defendants described herein for which liability is claimed were done intentionally, willfully, purposefully, knowingly, unlawfully, maliciously, wantonly, recklessly, and/or with bad faith, and said proscribed conduct of Defendants meets all of the standards for imposition of punitive damages.

69. Plaintiff has incurred reasonable attorneys' fees and litigation costs in connection with this Action, as well as his underlying criminal defense, direct appeal and ancillary proceedings, in amounts to be determined at trial or by the court.

CLAIMS FOR RELIEF

FEDERAL CAUSES OF ACTION

COUNT I

42 U.S.C. § 1983 VIOLATIONS: SUPPRESSION OF MATERIAL EXCULPATORY EVIDENCE IN VIOLATION OF *BRADY V. MARYLAND*, FABRICATION OF INCULPATORY EVIDENCE, MALICIOUS PROSECUTION, DELIBERATE FAILURE TO INVESTIGATE EXCULPATORY EVIDENC AND WITNESS COERCION

70. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

71. Defendants are all state actors, and their acts and omissions, which were done willfully, deliberately, intentionally, recklessly and under color of law, violated Plaintiff's right to obtain exculpatory evidence in a criminal proceeding as required by *Brady v. Maryland*, 373 U.S. 83 (1963), to due process and to a fair trial, as well as, to be free from false arrest, malicious prosecution, the use of false or perjured testimony, an unlawful conviction and incarceration and cruel and unusual punishment, all in contravention of the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States and in violation of 42 U.S.C. § 1983.

72. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT II

42 U.S.C. § 1983: SUPERVISORY LIABILITY

73. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

74. Defendants were supervisory personnel or bodies with oversight responsibilities for screening, hiring, training, instructing, supervising and disciplining other legal and investigative personnel within the Ocean County Prosecutor's Office who deprived Plaintiff of his constitutional rights.

75. Defendants knew or should have known of their subordinates' misconduct, as alleged in this Complaint, and willfully, deliberately, intentionally, recklessly and with gross negligence and negligence failed to investigate it or take appropriate preventative, remedial or corrective steps.

76. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT III

**42 U.S.C. § 1983: *MONELL* CLAIM
UNCONSTITUTIONAL OFFICIAL POLICY, PRACTICE AND FAILURE TO
SUPERVISE AND TRAIN**

77. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

78. Defendants caused the constitutional violations alleged in this Action against Plaintiff by their official policy, custom and prevalent practices, and their willful failure to properly train, supervise and discipline prosecuting attorneys and investigating personnel at the Ocean County Prosecutor's Office with respect to their constitutional duties and responsibilities regarding such violations.

79. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

STATE LAW CAUSES OF ACTION

COUNT IV

MALICIOUS PROSECUTION

80. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

81. The individually-named Defendants initiated the Murder Conviction proceedings against Plaintiff without probable cause.

82. They acted with actual malice or specific intent to injury.

83. The Murder Conviction proceedings ultimately terminated in Plaintiff's favor.

84. Defendants Ocean County Prosecutor's Office and the County of Ocean are liable under the principle of respondeat superior.

85. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT V

NEW JERSEY CIVIL RIGHTS ACT

86. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

87. Defendants are liable under New Jersey's Civil Rights Act, N.J.S.A. 10:6-2 et seq., for damages caused by their deprivation of Plaintiff's right to substantive due process and other privileges secured by the United States Constitution and the Constitution of the State of New Jersey.

88. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT VI

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

89. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

90. Defendants owed Plaintiff a duty of care to act ethically and within the rules of law and to ensure a fair investigation, trial, direct appeal and post-conviction relief proceedings.

91. Defendants engaged in a continuous pattern of extreme and outrageous conduct directed at Plaintiff from at least as early as September 1983 through the date of this Complaint, as alleged herein.

92. Defendants, individually and in concert with others, engaged in this pattern of while acting in an investigative or administrative capacity with an intention to cause, or in

reckless disregard of the substantial probability that it would cause, Plaintiff severe emotional distress.

93. Plaintiff suffered severe emotional distress as a result of, and that was proximately caused by, the Defendants' aforementioned actions.

94. Through their acts and omissions, Defendants breached their duty of care and subjected Plaintiff to many years of wrongful conviction and imprisonment on the Murder Convictions despite his innocence, and caused him to endure substantial emotional, physical and pecuniary injuries.

95. Each of the individually-named Defendants is liable personally and in his or her official capacity for these acts and omissions.

96. Defendants Ocean County Prosecutor's Office and the County of Ocean are liable for the wrongful acts of their servants, agents and/or representatives under the doctrine of *respondeat superior*.

97. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNTY VII

ABUSE OF PROCESS

98. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

99. Defendants, individually, in concert with others regularly issued or used criminal legal process against Plaintiff in connection with the Murder Convictions.

100. Defendants used such process in a manner to pervert the administration of justice.

101. Defendants did so with intent to do harm to Plaintiff, with actual malice, and without excuse or justification.

102. Each of the individually-named Defendants is liable personally and in his or her official capacity for these acts and omissions.

103. Defendants Ocean County Prosecutor's Office and the County of Ocean are liable for the wrongful acts of their servants, agents and/or representatives under the doctrine of *respondeat superior*.

104. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT VIII

LOSS OF REPUTATION

105. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

106. Defendants engaged in the misconduct alleged in this Complaint with intent to do harm to Plaintiff's reputation, with actual malice, and without excuse or justification.

107. Each of the individually-named Defendants is liable personally and in his or her official capacity for these acts and omissions.

108. Defendants Ocean County Prosecutor's Office and the County of Ocean are liable for the wrongful acts of their servants, agents and/or representatives under the doctrine of *respondeat superior*.

109. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT IX

INTENTIONAL INTERFERENCE WITH ECONOMIC ADVANTAGE.

110. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

111. Defendants engaged in the misconduct alleged in this Complaint with intent to do cause pecuniary harm to Plaintiff's, with actual malice, and without excuse or justification.

112. Each of the individually-named Defendants is liable personally and in his or her official capacity for these acts and omissions.

113. Defendants Ocean County Prosecutor's Office and the County of Ocean are liable for the wrongful acts of their servants, agents and/or representatives under the doctrine of *respondeat superior*.

114. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT X

ACTUAL AND CONSTRUCTIVE FRAUD

115. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

116. Defendants made material representations which were false, and known to be false by Defendants at the time they were made, for the purpose of inducing other parties, including Plaintiff, to rely upon such false representations, and the other parties did so rely, in ignorance of the falsity of such representations, thereby causing Plaintiffs injuries alleged in this Complaint.

117. Each of the individually-named Defendants is liable personally and in his or her official capacity for these acts and omissions.

118. Defendants Ocean County Prosecutor's Office and the County of Ocean are liable for the wrongful acts of their servants, agents and/or representatives under the doctrine of *respondeat superior*.

119. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT XI

NEGLIGENT MISREPRESENTATION

120. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

121. Defendants had a duty to provide Plaintiff and others with correct and truthful information concerning results of their investigation of the murder charges against Plaintiff.

122. Defendants made false representations to Plaintiff and others that Defendants knew or should have known were incorrect.

123. Defendants' false representations were made for the purpose of inducing other parties, including Plaintiff, other investigators and prosecutors, and various State and Federal courts, to rely upon them.

124. Defendants knew that the information supplied in their representations was desired by Plaintiff, and others, for a serious purpose, specifically, to challenge Plaintiffs murder charges and later to exonerate himself after his wrongful conviction and imprisonment.

125. Plaintiff and others, including other prosecutors, and various State and Federal courts, intended to rely and act upon Defendants' representations, and did in fact reasonably rely on those representations, in ignorance of the falsity of such representations.

126. Each of the individually-named Defendants is liable personally and in his or her official capacity for these acts and omissions.

127. Defendants Ocean County Prosecutor's Office and the County of Ocean are liable for the wrongful acts of their servants, agents and/or representatives under the doctrine of *respondeat superior*.

128. Defendants' aforementioned conduct caused or perpetuated Plaintiffs injuries as set forth above.

COUNT XII

NEGLIGENCE

129. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

130. Defendants were individually and jointly negligent in failing to insure that his civil rights were protected.

131. As a result of the foregoing, Plaintiff sustained the injuries and damages set forth above.

COUNT XIII

INJUNCTIVE RELIEF AS TO PLAINTIFF

132. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

133. Pursuant to the prior order of the United States District Court in the federal habeas proceedings, Plaintiff seeks an order directing Defendants to expunge the Murder Convictions from his criminal history records.

COUNT XIV

INJUNCTIVE RELIEF GENERALLY

134. Plaintiff hereby incorporates by reference all of the foregoing allegations in this Complaint and further alleges the following.

135. Pursuant to 42 U.S.C. § 1983 and the Constitution of the State of New Jersey, Plaintiff seeks an injunction requiring the Ocean County Prosecutor's Office to establish policies, customs and practices designed to prevent, minimize and correct the civil rights violations alleged in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Court enter judgment in favor of Plaintiff and against Defendants on all Counts of the Complaint;
- B. That the Court award compensatory damages to Plaintiff and against the Defendants, jointly and severally, in an amount to be determined at trial;
- C. That the Court award punitive damages to Plaintiff and against Defendants, jointly and severally, in an amount to be determined at trial, in order that such award will deter similar proscribed conduct by Defendants in the future;
- D. That the Court award to Plaintiff and against Defendants pre-judgment and post judgment interest on all sums awarded him in this Action;
- E. That the Court award to Plaintiff and against Defendants the costs of pursuing this Action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable fee shifting law;

F. That the Court order Defendants to expunge the Murder Convictions from Plaintiff's criminal record;

G. That the Court enjoin Defendants from committing similar violations of civil rights in the future; and

H. That the Court grant Plaintiff any such other relief as to which he may be entitled.

Dated: Trenton, New Jersey

May 26, 2011

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq.
Law Office of Jerome A. Ballarotto
143 Whitehorse Avenue
Trenton, New Jersey 08610
(609) 581-8555
jabesquire@aol.com

Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by a jury on all triable issues arising from this Complaint, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: Trenton, New Jersey

May 26, 2011

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq.
Law Office of Jerome A. Ballarotto
143 Whitehorse Avenue
Trenton, New Jersey 08610
(609) 581-8555
jabesquire@aol.com

Attorney for Plaintiff

VERIFICATION AND CERTIFICATION PURSUANT TO L. Civ. R. 11.2

I hereby certify that, to the best of my knowledge, information and belief formed after a reasonable inquiry, this action is not being presented for any improper purpose; the claims defenses and other legal contentions are warranted by existing law; and the allegations and factual contentions have evidentiary support.

Dated: Trenton, New Jersey
May 26, 2011

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq.

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding, except that there is currently pending an action Plaintiff commenced in Mercer County Superior Court. on or about August 19, 2010, against the State of New Jersey under its mistaken imprisonment statute, N.J.S.A. 52:4C-1 et seq. (*Paul Kamienski v. State of New Jersey Department of the Treasury*, Mercer County Superior Court, docket number MER-L-2106-10).

Dated: Trenton, New Jersey
May 26, 2011

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq.

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates the undersigned as trial counsel.

Dated: Trenton, New Jersey
May 26, 2011

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq.