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Attorneys for Plaintiff-Plaintiff

PAUL KAMIENSKI,

Plaintiff,

-against-

MARLENE LYNCH FORD, THOMAS
F. KELAHER, JAMES W. HOLZAPFEL,
RONALD DELIGNY, JOHN MERCUN,
SAMUEL J. MARZARELLA, E. DAVID
MILLARD, JAMES A. CHURCHILL,
DANIEL MAHONY, JEFFREY P.
THOMPSON and COUNTY OF OCEAN,

Defendants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.: 3:11-cv-03056-PGS-DEA

**FIRST AMENDED 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 Federal and State civil rights statutes against Defendants Marlene Lynch Ford (“Ford”),

Thomas F. Kelaher (“Kelaher”), James W. Holzapfel (“Holzapfel”), Ronald DeLigny (“DeLigny”), John Mercun (“Mercun”), Samuel J. Marzarella (“Marzarella”), E. David Millard (“Millard”), James A. Churchill (“Churchill”), Daniel Mahony (“Mahony”), Jeffrey P. Thompson (“Thompson”) and County of Ocean (collectively, “Defendants”), alleging, generally, that Kamienski 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. On May 28, 2009, the United States Court of Appeals for the Third Circuit reversed and vacated the Murder Convictions on grounds of insufficient evidence. In comments during oral argument and in its written opinion the federal appellate court was highly critical of the integrity of Ocean County Prosecutor’s Office in this matter. Kamienski was released from prison on June 16, 2009, after having been incarcerated on the Murder Convictions since November 18, 1988.

3. Kamienski never would have been indicted, arrested, tried, convicted of and sentenced for a September 1983 drug-deal-gone-bad-double-homicide in Toms River, New Jersey in the first place but for the belated and false testimony of his former girlfriend, Donna Duckworth. Even after four years of an active and public investigation and pressure the Ocean County Prosecutor’s Office had been unable to find any forensic evidence linking Kamienski to the murders. Nor had that office been able to obtain any eyewitness testimony, cooperating witness testimony, admissions or circumstantial evidence connecting Kamienski to the murders. Additionally, during the homicide investigation Kamienski had met with Defendants Churchill

and Mahony on multiple occasions. During these meetings, among other things, Kamienski voluntarily gave statements to Defendants Churchill and Mahony, passed a State administered polygraph examination concerning the murders and voluntarily provided physical evidence to them, which evidence turned out to be exculpatory.

4. Then, in or about August 1987, to finally bring an end to the Kamienski investigation, Defendants E. David Millard, James A. Churchill and Daniel Mahony wrongfully persuaded Duckworth to become the State's central witness against Kamienski. At the time, Duckworth, having previously pleaded guilty, was facing sentencing in an unrelated drug possession case being handled by Defendant Millard. While awaiting sentencing Duckworth was interested in renewing an application to New Jersey's Pre-trial Intervention ("PTI") program to avoid prison and to have the drug charge against her dismissed, having already been denied PTI admission once. Duckworth was also at that moment bitterly estranged from Kamienski and had vowed to seek revenge against him, as Defendants Millard, Churchill and Daniel Mahony well knew. Additionally, at the very time Defendants Millard, Churchill and Daniel Mahony approached Duckworth to become the State's star witness against Kamienski she had just been taken into custody by police officers from Seaside Heights, New Jersey after she had been found using drugs in a hotel room there with a group of people, including a robbery suspect. Under these highly coercive circumstances when she was particularly vulnerable and angry with Kamienski, Defendants Churchill and Daniel Mahony, and later Defendant Millard, were able to persuade Duckworth, albeit reluctantly at times, to falsely testify against Kamienski, initially in the grand jury in or about September 1987 and then at trial in or about October 1988.

5. Among other things, Duckworth falsely testified to the effect that: (a) two blankets and a towel found with the victims' bodies belonged to Kamienski; (b) a knot found on

a rope tying one of the victim's bodies to a cinder block before being thrown in the Barnegat Bay near Toms River was a "signature" Kamienski knot; (c) Kamienski had sequestered her on the day of the murders so he could join and assist his two codefendants (Joseph Marzeno and Anthony Alongi) in carrying them out; and (d) Kamienski had gone out in the Barnegat Bay in a small motor boat with codefendant resident Alongi on the night of the murders to dispose of the bodies under cover of darkness.

6. Upon information and belief, Defendants Millard, Churchill and Daniel Mahony knew or should have known from the very beginning that the foregoing aspects of Duckworth's testimony were false. Certainly these defendants knew it by the time of the trial. Yet, beginning around the time of her first interview with Defendants Churchill and Mahony, Defendants Millard, Churchill and Daniel Mahony actively planned and encouraged Duckworth to give what turned out to be false testimony.

7. Upon further information and belief, Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella and Jeffrey P. Thompson similarly learned, or should have learned, that Duckworth was going to give and/or had given materially false testimony against Kamienski as to, among other things, the two blankets, towel, knot and timeline for the day of the homicide. Yet, none of them took any steps to correct this injustice and in fact they helped perpetuate it.

8. Defendants Millard, Churchill and Daniel Mahony, as well as, Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, and Jeffrey P. Thompson knew or should have known of Duckworth's planned and actual false testimony from: (a) FBI administered forensic tests performed on the two blankets and towel during the Ocean County Prosecutor's Office's investigation

(establishing that these items had not been possessed or used by Kamienski, as Duckworth had said); (b) a Bamberger's credit card receipt (establishing that Duckworth's timeline for the day of the murders was off by one week); (c) a proper review of crime scene evidence and an eyewitness' testimony (establishing that the towel had been brought to the murder scene by the victims, and not Kamienski); (d) interviews of eyewitnesses to events surrounding the murders, including a neighbor of Alongi (establishing that Alongi was alone in his boat in a canal leading to the Barnegat Bay at night without any running lights around the time of the murders); and (e) a competent forensic knot expert analysis (establishing that the so-called signature Kamienski knot was in fact a common half-hitch).

9. Ironically, even with Duckworth's false testimony the Ocean County Prosecutor's Office was not able to sustain the Murder Convictions against Kamienski at the trial court phase of the criminal proceedings. Although the jury returned a guilty verdict as to charges underlying the Murder Convictions, the judge who had presided over the trial reversed these convictions and dismissed them J.N.O.V. because of insufficient evidence.

10. Upon information and belief, after the trial court's reversal of the Murder Conviction, Defendant Marzarella hatched a plan with others at the Ocean County Prosecutor's Office, including those assigned to work with him on the Kamienski appeal, to present a false record to the Appellate Division of the New Jersey Superior Court, and later to the federal courts in connection with Kamienski' habeas petition, to make up for the shortcomings in the actual record. Among other things, Defendant Marzarella concocted supposed record citations to support his contention that Kamienski had not only physically assisted in the commission of the murders but that he had done so with "premeditation." For example, Defendant Marzarella falsely represented that Kamienski had met with the victims and his codefendants the night

before the murders and knowingly and actively lured the victims to the place where they were to be killed the next day. In fact, there was no evidence of any such meeting adduced at trial.

11. Upon information and belief, since he was still in the Prosecutor's Office and had been the lead trial attorney against Kamienski, Defendant Millard must have, or should have, consulted with Defendant Marzarella during the direct appeals process and must have, or should have, read drafts of the Ocean County Prosecutor's Office's briefs. These briefs falsely stated that the trial record established Kamienski had committed the murders and he had done so with premeditation. Not only were these statements baseless, but they directly conflicted with the facts as Defendant Millard knew them, especially since he had told the jury during closing argument that there had been no evidence adduced at trial showing Kamienski had any foreknowledge of the murders. There is no way that Defendant Millard could have legitimately harmonized Defendant Marzarella's intended and actual representations about Kamienski acting with premeditation with the true record as Defendant Millard knew it to be.

12. Given the high profile nature of the Kamienski case and the unusual posture of the State having to appeal the reversal of a murder conviction J.N.O.V. because of insufficient evidence, Defendant Holzapfel must have, or should have, been involved in supervising and overseeing the Ocean County Prosecutor's Office personnel who were handling of the Kamienski appeal. Yet, Defendant Holzapfel permitted those under his watch, including Defendant Marzarella and others, to devise and implement a plan to deliberately mislead the reviewing courts.

13. Kamienski's release from his wrongful imprisonment in 2009 and his ultimate exoneration on the Murder Convictions were also unnecessarily and intentionally delayed because of the investigative and administrative misconduct of certain defendants, including

Defendants Marlene Lynch Ford, Thomas F. Kelaher, Ronald DeLigny, John Mercun and Samuel J. Marzarella. Among other things, Defendants Thomas F. Kelaher, John Mercun and Samuel J. Marzarella were advised by counsel for Kamienski, as well as the New Jersey Attorney General, as early as 2003 of the Ocean County Prosecutor's Office failure to turn over exculpatory forensic (hair and fiber) test results on the victim blankets to Kamienski before and during his criminal trial. Yet, Defendants Thomas F. Kelaher, John Mercun and Samuel J. Marzarella deliberately failed to take appropriate investigative, administrative and supervisory actions to remedy this clearly established due process (*Brady*) violation.

14. Similarly, Defendants Marlene Lynch Ford, Ronald DeLigny and Samuel J. Marzarella were advised by Kamienski's counsel well before the State's substantive briefs were filed in the Third Circuit Court of Appeals that: (a) irrefutable evidence established beyond any doubt that Duckworth, the key witness who had testified at trial on behalf of the State against Kamienski, had given materially false testimony; (b) specifically identified persons had exculpatory evidence and testimony; and (c) State appellate attorneys had repeatedly misrepresented the trial record and other evidence to various courts of review. Yet, Defendants Ford, DeLigny and Marzarella failed to take appropriate investigative, administrative and supervisory actions to rectify these due process violations and instead allowed false and misleading materials to be prepared and submitted to federal appellate court.

15. Despite the United States Court of Appeals for the Third Circuit's ruling in favor of Kamienski, despite subsequently being ordered by the United States District Court for the District of New Jersey to expunge the Murder Convictions from Kamienski's criminal history records, and despite the United State States Supreme Court's January 19, 2010 denial of the Ocean County Prosecutor's Office's certiorari petition to reverse the Third Circuit's ruling,

certain Defendants, including, Defendants Marlene Lynch Ford, Ronald DeLigny and Samuel J. Marzarella and the State of New Jersey willfully refused to expunge the Murder Convictions from Kamienski's criminal history records.

JURISDICTION AND VENUE

16. 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 New Jersey State statute N.J.S.A. 10:6-2 et seq., and Article I, Paragraph 1 and Article I, Paragraph 12 of the New Jersey Constitution.

17. Jurisdiction is founded upon 28 U.S.C. §§ 1331 (federal question) and 1343 (civil rights violations).

18. 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).

19. 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).

FACTUAL STATEMENT OF THE CASE

THE PARTIES, PERSONS AND ENTITIES

20. At all times relevant to the Action, Plaintiff was a citizen of the United States and resided in or maintained a residence in the State of New Jersey.

21. Defendant Marlene Lynch Ford is the current Ocean County Prosecutor, having been appointed by the Governor of the State of New Jersey in or about June 2007. She is sued in her personal capacity as to the Complaint's Federal civil rights violations (Counts 1-3, below)

and in her official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). 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 been coerced to give, and had given, materially false trial testimony; and (3) evidence and testimony existed that tended to exonerate Plaintiff.

22. At various times relevant to this Complaint, Defendant Thomas F. Kelaher was the Ocean County Prosecutor, having been appointed by the Governor of the State of New Jersey in or about 2002 and having stepped down in or about June 2007. He is sued in his personal capacity as to the Complaint's Federal civil rights violations (Counts 1-3, below) and in his official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). 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 (United States District Court for the District of New Jersey) phase of his federal habeas corpus petition. Among other things, Defendant Kelaher learned from Plaintiff's counsel (as well as in correspondence from 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.

23. At various times relevant to this Complaint, Defendant James W. Holzapfel was the Ocean County Prosecutor, having been appointed by the Governor of the State of New Jersey in or about 1987 and having stepped down in or about 1992. He is sued in his personal capacity as to the Complaint's Federal civil rights violations (Counts 1-3, below) and in his official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). 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 (1983 to 1988), criminal trial (1988) and direct appeals phases of his criminal case (1988-1992). Among other things, Defendant Holzapfel knew or should have known from overseeing the investigation of the evidence relating to Plaintiff that Plaintiff had no involvement in, or prior knowledge of, the homicides that led to the Murder Convictions. Defendant Holzapfel also knew or should have known that his office had intentionally or otherwise withheld favorable hair and fiber forensic evidence and testimony from Plaintiff prior to and at trial, and Holzapfel knew or should have known that the State's sole witness purporting to tie Plaintiff to the murders had been coerced to give, and in fact gave, materially false testimony at trial.

24. At various times relevant to this Complaint, Defendant Ronald DeLigny was the First Assistant Ocean County Prosecutor, having been hired as an Assistant County Prosecutor by Defendant James W. Holzapfel in or about September 1987 and after having served as the First Assistant Ocean County Prosecutor under Defendant Marlene Lynch Ford from in or about 2007 until he resigned from the Ocean County Prosecutor's Office in or about June 2012. Defendant Ronald DeLigny is sued in his personal capacity as to the Complaint's Federal civil rights violations (Counts 1-3, below) and in his official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). The position of First Assistant County

Prosecutor was the highest appointed position within the Prosecutor's Office. In that capacity, 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 been coerced to give, and had given, materially false trial testimony; and (3) evidence and testimony existed that tended to exonerate Plaintiff.

25. At various times relevant to this Complaint, Defendant John Mercun was the Executive Assistant Ocean County Prosecutor, having been hired as an Assistant County Prosecutor in or about 1975 and after having served as the Executive Assistant Ocean County Prosecutor under Defendants James W. Holzapfel and Thomas F. Kelaher from in or about May 1991 until he resigned from the Ocean County Prosecutor's Office in or about July 2005. Defendant John Mercun is sued in his personal capacity as to the Complaint's Federal civil rights violations (Counts 1-3, below) and in his official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). As the Executive Assistant Ocean County Prosecutor, Defendant Mercun had supervisory responsibilities overseeing all aspects of the investigation of, and litigation against, Plaintiff during the United States District Court phase of Plaintiff's federal habeas corpus petition. Among other things, Defendant Mercun learned from Plaintiff's counsel (as well as in correspondence from 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.

26. At various times relevant to this Complaint, Defendant Samuel J. Marzarella is or was a Supervising Assistant County Prosecutor and the head attorney in the Appeals Unit at the Ocean County Prosecutor's Office. He is sued in his personal capacity as to the Complaint's Federal civil rights violations (Counts 1-3, below) and in his official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). Defendant Marzarella was responsible for overseeing all aspects of the investigation of, and litigation against, Plaintiff during the direct appeal of his criminal conviction (from in or about 1988 to 1992) and all phases of Plaintiff's federal habeas corpus petition (from approximately 2002 to 2010). 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 commencing in or about 1988 and all aspects of the federal habeas petition from at least as early as in or about 2003 until at least as late as January 2010. Defendant Samuel J. Marzarella supervised at least one other attorney from the Ocean County Prosecutor's Office in connection with the direct appeal in the State Court and at least one other attorney in connection with the federal appeal in the Third Circuit and subsequent United States District Court and United States Supreme Court proceedings and he permitted his supervisees to prepare and assist in filing false and misleading documents with the state Appellate Division Court and federal Appellate Court. Among other things, Defendant Marzarella was also personally responsible for filing briefs with reviewing courts that the Third Circuit Court of Appeals found to be "misleading."

27. At various times relevant to this Complaint, Defendant E. David Millard was an Assistant Ocean County Prosecutor from in or about 1987 through in or about 1995. He also served as the Ocean County Prosecutor from in or about September 1997 to in or about 2002. Defendant E. David Millard is sued in his personal capacity as to the Complaint's Federal civil rights violations (Counts 1-3, below) and in his official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). 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 made similar representations of his belief in Kamienski's innocence on the Murder charges to Kamienski's criminal trial attorney and a friend of the Kamienski family. 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 was coerced to give, and if fact gave, materially false testimony. Defendant Millard also (unsuccessfully) attempted to persuade Plaintiff to give what would have been false testimony against Plaintiff's codefendants, namely, that Plaintiff had been an eyewitness to the murders, in exchange for favorable treatment from the Ocean County Prosecutor's Office.

28. 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. Defendant Churchill is sued in his personal capacity as to the Complaint's Federal civil rights violations (Counts 1-3, below) and in his official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). Defendant Churchill was the highest ranking investigator on the Kamienski case and 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. Defendant Churchill also knew that Kamienski had passed a State-administered polygraph test with respect to the murders and he helped coerce the State's key witness against Kamienski into giving false testimony against him to try to connect Plaintiff to the murders. Additionally, Churchill knew that there was no forensic evidence connecting Kamienski to the homicides and he knew, or should have known, that forensic hair and fiber analyses done by the FBI at the Ocean County Prosecutor's Office's tended to exonerate Kamienski and that such tests were not turned over to the Kamienski defense pre-trial.

29. At various times relevant to this Complaint, Defendant Daniel Mahony 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. Defendant Mahony is sued in his personal capacity as to the Complaint's Federal civil rights

violations (Counts 1-3, below) and in his official and personal capacities as to the New Jersey State civil rights violation (Count 4, below). Defendant Mahony was second to Defendant Churchill in supervising the Kamienski case investigation and as such 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 Mahony 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. Defendant Mahony also knew that Kamienski had passed a State administered polygraph test with respect to the murders and he helped coerce the State's key witness against Kamienski into giving false testimony against him to try to connect Plaintiff to the murders. Additionally, Defendant Mahony knew that there was no forensic evidence connecting Kamienski to the homicides and he knew, or should have known, that forensic hair and fiber analyses done by the FBI at the Ocean County Prosecutor's Office's tended to exonerate Kamienski and that such tests were not turned over to the Kamienski defense pre-trial.

30. 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 as to one of the Complaint's Federal civil rights violations (Count 1, below), as well as to the New Jersey State civil rights violation (Count 4, below). Defendant Thompson was the criminalist responsible for obtaining and analyzing forensic evidence during the 1983 to 1988 investigation

and 1988 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. Additionally, Defendant Thompson knew that there was no forensic evidence connecting Kamienski to the homicides and he knew, or should have known, that forensic hair and fiber analyses done by the FBI at the Ocean County Prosecutor's Office's tended to exonerate Kamienski and that such tests were not turned over to the Kamienski defense pre-trial.

31. 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. Defendant County of Ocean is named as a defendant in one of the Complaint's Federal civil rights violations (Count 1, below), as well as, in the New Jersey State civil rights violation (Count 4, below). Among other things, Defendant County of Ocean failed to adequately supervise the conduct of the Ocean County Sheriff's Office and train and discipline its personnel, including Defendant Thompson, to prevent or minimize the violation of Plaintiff's civil rights, as alleged herein, and those of other similarly situated persons.

32. The Ocean County Prosecutor's Office, through its employees, agents and representatives, was involved in investigating, prosecuting and litigating all aspects of the criminal case against Plaintiff. Among other things, the Ocean County Prosecutor's office was responsible for adequately supervising, and failed in its duty to adequately supervise, the conduct of the Ocean County Prosecutor's Office and train and discipline its personnel, agents and representatives to prevent or minimize the violation of Plaintiff's civil rights, as alleged herein, and those of other similarly situated persons during the approximate same time period, including,

but not limited to Robert Marshall (failure to produce potentially exculpatory evidence), Martin Taccetta (same) and Michael Sutton (same).

33. The actions, misconduct and failures to act properly by Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill, Daniel Mahony, Jeffrey P. Thompson and County of Ocean violated clearly established statutory or constitutional rights of Plaintiff, of which violations a reasonable person would have known.

34. Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill, Daniel Mahony, Jeffrey P. Thompson and County of Ocean 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).

35. Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill, and Daniel Mahony had supervisory responsibilities over the investigative and legal functions and personnel of the Ocean County Prosecutor's Office and 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 delay in rectifying the criminal history records of mistakenly or wrongfully convicted persons once they are exonerated by the courts.

THE MURDER CONVICTIONS

36. In late September 1983, investigators from the Ocean County Prosecutor's Office 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 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.

37. 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 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.

38. 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.

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

40. 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.

41. 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.

42. 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.

43. 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.

44. 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).

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

46. 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.

47. 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' testimony that blankets found wrapped around the murder victims' bodies had belonged to Plaintiff.

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

49. 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.

50. 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.

51. 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.

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

53. 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 reinstate the Murder Convictions against Plaintiff.

54. 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.

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

56. 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.

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

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

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

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

61. 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.

62. 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.

63. 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.

64. 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.

65. 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.

66. 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

67. 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 coercive 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.

68. 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).

69. The Ocean County Prosecutor's 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 persons 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 eyewitness 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.

70. 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.

71. 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.

PLAINTIFF'S INJURIES AND DAMAGES

72. 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 twenty-one years following his wrongful conviction.

73. 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, but are not limited to the following: violations of his clearly established rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and under Article I, Paragraph 1 (securing the rights to life and liberty and the pursuit of prosperity, safety and happiness) and Article I, Paragraph 12 (prohibiting cruel and unusual punishment) of the Constitution of the State of New Jersey; 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.

74. 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.

75. 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.

76. At all times relevant to the Complaint's Federal and New Jersey State civil rights violations, Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill, Daniel Mahony, Jeffrey P. Thompson and County of Ocean acted under color of New Jersey State law.

77. The conduct of Defendants Ford, Kelaher, Holzapfel, DeLigny, Mercun, Marzarella, Millard, Churchill, Mahony, Thompson and County of Ocean against Plaintiff reflected, and was an example of, a policy of within the Ocean County Prosecutor's Office and the Ocean County Sheriff's Office of deliberate indifference to the Federal and New Jersey State

constitutional rights of persons being investigated, prosecuted and imprisoned for crimes for which they were innocent, as well as the failure to train law enforcement personnel within those offices to be vigilant about protecting the rights of innocent persons.

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**

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

79. Section 1983 of Title 42 of the United States Code provides:

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

42 U.S.C. § 1983.

80. Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill, Daniel Mahony, Jeffrey P. Thompson and County of Ocean 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.

81. At all times relevant hereto, Defendants Ford, Kelaher, Holzapfel, DeLigny, Mercun, Marzarella, Millard, Churchill, Mahony, Thompson and County of Ocean were New Jersey State actors, and their acts and omissions were done under color of law.

82. At all times relevant hereto, Defendants Ford, Kelaher, Holzapfel, DeLigny, Mercun, Marzarella, Millard, Churchill, Mahony, Thompson and County of Ocean acted willfully, deliberately, intentionally and recklessly.

83. As a result of the foregoing, Plaintiff sustained the injuries and damages.

COUNT II

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

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

85. Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill and Daniel Mahony 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 and Ocean County Sheriff's Office who deprived Plaintiff of his constitutional rights.

86. Defendants Ford, Kelaher, Holzapfel, DeLigny, Mercun, Marzarella, Millard, Churchill and Mahony knew or should have known of their subordinates' misconduct, as alleged in this Complaint, and as can be reasonably inferred from the facts alleged herein, and these defendants willfully, deliberately, intentionally, recklessly and with gross negligence and

negligence failed to investigate such misconduct or take appropriate preventative, remedial or corrective steps.

87. As a result of the foregoing, Plaintiff sustained the injuries and damages.

COUNT III

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

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

89. Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill and Daniel Mahony 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 and Ocean County Sheriff's Office with respect to their constitutional duties and responsibilities regarding such violations.

90. As a result of the foregoing, Plaintiff sustained the injuries and damages.

STATE LAW CAUSE OF ACTION

COUNT IV

**N.J.S.A. 10:6-2 et seq.
NEW JERSEY CIVIL RIGHTS ACT**

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

92. New Jersey's Civil Rights Act provides, in relevant part, that:

Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

N.J.S.A. 10:6-2(c).

93. Defendants Marlene Lynch Ford, Thomas F. Kelaher, James W. Holzapfel, Ronald DeLigny, John Mercun, Samuel J. Marzarella, E. David Millard, James A. Churchill, Daniel Mahony, Jeffrey P. Thompson and County of Ocean are liable to Plaintiff under New Jersey's Civil Rights Act, N.J.S.A. 10:6-2 et seq., because they deprived Plaintiff of substantive due process or equal protection rights, privileges or immunities secured to him by the Constitution or laws of the United States as well as substantive rights, privileges or immunities secured by the Constitution or laws of the State of New Jersey, and because they interfered and attempted to interfere with Plaintiff's exercise or enjoyment of those substantive rights, privileges or immunities by threats, intimidation or coercion.

94. As a result of the foregoing, Plaintiff sustained the injuries and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. That the Court enter judgment in favor of Plaintiff and against Defendants on the respective Counts of the Complaint which name them;

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, N.J.S.A. 10-2(f) and any other applicable fee shifting law;

F. That the Court assess civil penalties against Defendants pursuant to N.J.S.A. 10-2(e); and

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

Dated: Trenton, New Jersey
October 12, 2012

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq. (JAB-0999)
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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
October 12, 2012

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq. (JAB-0999)
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
October 12, 2012

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq. (JAB-0999)

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
October 12, 2012

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq. (JAB-0999)

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates the undersigned as trial counsel.

Dated: Trenton, New Jersey
October 12, 2012

s/ Jerome A. Ballarotto
Jerome A. Ballarotto, Esq. (JAB-0999)