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Attorney for Plaintiff, Jesse M. O'Brien

JESSE M. O'BRIEN  
Plaintiff,

vs.

CITY OF JERSEY CITY; JERSEY CITY  
POLICE DEPARTMENT; Captain Iris  
Cruz; and JOHN DOE CHIEF of  
Police and/or Police SUPERVISORS  
1-10, (such names being  
fictitious), municipal appointed  
or elected employees or officials  
of Jersey City and/or the Jersey  
City Police Department, 1-10

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
\_\_\_\_\_ COUNTY

Docket Number  
\_\_\_-L- \_\_\_\_\_

Civil Action

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**R.4:67 SUMMARY ACTION TO ENFORCE ADMINISTRATIVE ORDER  
AND CIVIL VERIFIED COMPLAINT**

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Jesse M. O'Brian, a Police Officer with the City of  
Jersey City Police Department, conducting business at 1 Journal  
Square Plaza, Jersey City, NJ 07306, hereby states as follows,  
by way of R. 4:67 Summary Action and Verified Complaint:

**I. Introduction**

1. Plaintiff Jesse M. O'Brien is a citizen of the United States and was, at all times relevant, employed as a Police Officer with the City of Jersey City Police Department, until his termination was issued and implemented on or about November 10, 2023.

2. Defendant City of Jersey City was and is, at all times relevant to this Complaint, a municipal corporation duly incorporated and authorized under the laws of the State of New Jersey to maintain a police department, the Jersey City Police Department (hereinafter sometimes "JCPD"), which acts as its agent in the area of law enforcement for which Jersey City is legally liable and responsible.

3. Defendant John Doe Chief of Police and/or Police Supervisors and/or other municipal appointed or elected employees or officials 1-10 are supervisors who at all times herein were acting under color of law.

**II. Facts**

4. During Plaintiff's Jersey City Police career through and including through and including July 8, 2021, Plaintiff O'Brien performed his duties perfectly satisfactorily and was known to be a team player, performance-wise. There was never an adjudication or determination that Plaintiff Officer O'Brien

used force excessively or unreasonably or committed other significant major administrative disciplinary violations. Plaintiff was known to be, and indeed was, a well performing police officer with no work related problems or issues.

5. On December 10, 2019, Plaintiff O'Brien was off duty, went in and was not far from the location of a critical incident, a shooting that took place at a kosher grocery in the Greenville section of Jersey City. Three people were killed at the grocery store by two assailants. The assailants wounded another customer and two police officers before being shot and killed by police during an ensuing shootout. Per the Attorney General, the attacks were acts of hate and domestic terrorism fueled by antisemitism and anti-police sentiment.

6. Forty-year-old JCPD Detective Joseph Seals, a police officer since 2006, was among those killed in the December 10, 2019 incident.

7. The December, 2019 incident had a psychological impact on Plaintiff O'Brien (and apparently numerous JCPD and other officers) based on his relationship with Detective Seals and Plaintiff was involved as an honor guard member at his service, performed casket watch and spent time with Detective Seals' family.

8. About two weeks later, on December 26, 2019, Plaintiff O'Brien was on duty and was himself involved in a critical

incident during which an arrestee (James Bolden) fired a gun at Plaintiff O'Brien in the course of O'Brien making a lawful arrest. This had additional psychological impact on Plaintiff O'Brien which aggravated/exacerbated his prior psychological condition.

9. Plaintiff O'Brien was told by his union members that he was placed on administrative leave effective that day, December 26, 2019 and told that he would be permitted to "take his time" on administrative leave before returning to duty, to address any psychological effect the shooting incident may have had on Plaintiff O'Brien.

10. Plaintiff O'Brien was only later advised that all of his time off after being shot at was deemed sick leave time.

11. The December 26, 2019 incident and the anticipated effect on Plaintiff O'Brien's psychological condition is the reason Plaintiff was given administrative leave time, later deemed sick leave time.

12. On December 27, 2019 and in January 2020, Plaintiff O'Brien was directed to complete paperwork relating to the investigation of that December 26, 2019 shooting incident. Plaintiff O'Brien was then ordered in to duty to complete a Use of Force report on January 6, 2020.

13. On or about January 24, 2020, Plaintiff O'Brien was contacted by JCPD Lieutenant Laraway. Defendants had notice

that Plaintiff had been unable to return to duty and in need of accommodation because of the combined psychological aftermath of the December, 2019 matters.

14. Lieutenant Laraway advised Plaintiff O'Brien that he could not continue on administrative leave but would need to utilize sick leave if he was not ready for a return to duty.

15. Per departmental policy, Plaintiff O'Brien was also advised that he would be subject to mandatory confinement in his home if he utilized sick leave.

16. Lieutenant Laraway further advised that while Plaintiff O'Brien was then presently on administrative leave, not sick leave, he also could not return to duty until first being cleared by Dr. Boylan, a medical doctor (non-mental health practitioner), the doctor who is contracted with the City for all employee work related injuries.

17. Plaintiff O'Brien expressed to Lt. Laraway that he was not physically injured and did not have any need to see a general practitioner, also pointing out that he was on administrative leave at the time, not sick leave.

18. At no time thereafter and including to date, was Plaintiff O'Brien notified, by the Defendants or any of them, of any potential entitlement to leave under the federal Family Medical Leave Act ("FMLA").

19. At no time was Plaintiff O'Brien given the accommodation of being able to remain on leave for the psychologically traumatic events he was dealing with, except for the option of sick leave which would require him to remain confined to his home. This despite Plaintiff having made clear to Lieutenant Laraway that he was in need of and desirous of accommodation of his psychological condition, at a minimum, by being able to remain on leave without being confined to his home.

20. Plaintiff's mandatory evaluation with Dr. Boylan occurred on January 30, 2020, scheduled by the department's Medical Unit. This was a mandatory evaluation, based on the fact that the department perceived Plaintiff O'Brien as potentially disabled and or potentially suffering from a serious medical/psychological condition.

21. Plaintiff was asked by Dr. Boylan why he was there, to which Plaintiff explained that he had only received a scratch on his hand and did not have any physical/medical impairment, resulting from the December 26, 2019 incident.

22. Dr. Boylan asked Plaintiff O'Brien when he wished to return to duty and wrote a note for Plaintiff O'Brien's return to work on that date, which was February 15, 2020.

23. For a period of approximately four (4) months during late 2020 through early 2021, Plaintiff O'Brien, on his own

(rather than by order or referral by anyone from the Jersey City Police department), began utilizing the Cop 2 Cop program and researching psychotherapy.

24. Plaintiff O'Brien was not referred by the Department for any psychological evaluation or treatment following the December, 2019 critical incidents, until he was later referred for fitness for duty evaluation to the Institute of Forensic Psychology in late September/ early October, 2022, at which time he was also served with administrative disciplinary charges which advised him that the JCPD sought to terminate his employment.

25. On or about April 13, 2021, Plaintiff was on duty and rushed to the hospital, believing that he was experiencing a stroke or a heart attack. Plaintiff O'Brien was rushed out of South District, to the medical center, the whole City essentially stopped and the roads were blocked, and the Chief of Police came as well.

26. Plaintiff O'Brien had not had a heart attack or stroke but a severe panic attack, related to a then recent number of shootings in the South District where Plaintiff O'Brien had been assigned. Plaintiff then began treating with a therapist and has continued to do so to date.

27. Upon return to duty thereafter, Plaintiff requested a transfer from the South District to the East District, where he

was assigned to work under Captain Iris Cruz and Lieutenant Chris Baregat.

28. Plaintiff returned to work and was assigned to the East District to work with and under Captain Iris Cruz.

29. On his first day in the East District, Plaintiff O'Brien was assigned to a fixed post in the South District for the purpose of addressing violence in that area, which was  $\frac{1}{2}$  of a city block from the location of Plaintiff O'Brien's December 26, 2019 critical incident.

30. On March 21, 2021, around 5:00 pm, Plaintiff was one of the first officers on scene for another shooting, this one in the area of Martin Luther King Blvd. and Woodlawn Avenue. The victim was seated in a minivan with multiple gunshot wounds to his torso and flank, bleeding heavily.

31. Plaintiff removed the victim from the van and began chest compressions while blood shot out from the hole in his flank. Plaintiff and Officer Joe Casey kept trying to save the victim until the arrival of EMS. Immediately after, calls for service began backing up with dispatch and Plaintiff O'Brien was placed back in service with no break.

32. Approximately a week later, Kaheem Taylor was shot in front of a building on Old Bergen Avenue. Plaintiff was again first on scene, finding Mr. Taylor, whom Plaintiff O'Brien was previously acquainted with, with a gunshot wound to his torso.



He was lying on the stairs of the vestibule. Plaintiff O'Brien dragged him down to level ground and rendered aid. Plaintiff rolled Mr. Taylor over and observed a bullet lodged near his navel. EMS came and transported Taylor to the hospital where Taylor was pronounced dead.

33. When Plaintiff O'Brien first came to the East District in 2021, Captain Cruz described his work favorably, explaining that generally, Plaintiff O'Brien was a good officer who was out there doing his job and when given assignments he would complete them without incident.

34. Plaintiff O'Brien was transferred to the East District on or about July 8, 2021, where he came to work under Captain Iris Cruz, Commander of the East District.

35. While working in the East District, Plaintiff O'Brien became East District union representative for the POBA, which later caused him to suffer retaliation, discrimination, disparate treatment and a hostile work environment at the hands of Captain Cruz and others in the JCPD administration thereafter.

36. Plaintiff was named JCPD "Employee of the Month" in October, 2021.

37. After becoming union delegate, in December, 2021 followed by a meeting with the Union President in January, 2022, following Plaintiff's assignment to the East District, Captain

Cruz embarked on a campaign of differential treatment, harassment and retaliation and created a hostile work environment for Plaintiff O'Brien, singling him out for scrutiny, criticism, and unwarranted discipline, because, among other reasons, because Plaintiff O'Brien took issue with illegal activities of mall security staff with whom Captain Cruz was friendly. Captain Cruz was also motivated by Plaintiff's psychological condition to take such actions, as well as her perception of his psychological condition.

38. Plaintiff O'Brien's CEPA-protected whistleblowing as to the mall security staff while assigned under Captain Cruz and the acts of differential treatment, harassment, hostile work environment and other retaliation are further outlined herein below.

39. As a result of Plaintiff O'Brien's whistleblowing concerning the Newport Mall security staff and Plaintiff O'Brien's exercise of his union rights to protect his rights from discrimination, retaliation and differential treatment, Captain Cruz determined that Plaintiff O'Brien "had to be dealt with."

40. On October 4, 2021, Plaintiff O'Brien arrested a civilian after consulting with Sgt. Santana concerning the charges for which the individual was arrested. The charges were then reviewed by Lt. Broderick who approved the charges,

referred to a municipal court judge for approval and reviewed by the Hudson County Prosecutor's office, which continued prosecution of the charges, albeit on downgraded charges. The prosecution remains ongoing, yet administrative disciplinary charges related to issuance of those charges were issued to Plaintiff O'Brien 555 to 680 days later, after the arrestee filed a complaint against Plaintiff O'Brien.

41. Without completion of the criminal prosecution and taking no steps to stop that prosecution if the charges were deemed unwarranted, the JCPD sought to terminate Plaintiff O'Brien's employment as a result of that arrest.

42. These charges/PNDA from IA Case 2021-114 sought Plaintiff O'Brien's removal and was one of the charges upon which the City followed through and terminated Plaintiff O'Brien's employment. The charges were based in large part upon the City's differing interpretation of what the arrestee meant when he stated to Officer O'Brien something along the lines of "I'll smoke you like a Newport cigarette, I'm gangster," which the arrestee stated while getting clear from the hospital and which Officer O'Brien determined to be a terroristic threat, as approved by Sgt. Santana, Lieutenant Broderick, a municipal court judge, and the Hudson County Prosecutor's office, however the Department determined that the charge was improper because Plaintiff O'Brien "was never threatened with a firearm."

43. The explanation/specification for the charge against Plaintiff O'Brien included the fact that the Department did not believe that there was any "immediacy" to the threat made by the arrestee, despite the fact that the terroristic threat statutory section with which the arrestee was charged does not require "immediacy" of the threat.

44. These charges were also brought in blatant violation of "the 45 day rule" of NJSA 40A:14-147 and the Attorney General IAPP, which have the force of law pursuant to NJSA 40A:14-181.

45. On January 8, 2022, Plaintiff O'Brien, was on duty and responded to a call for service involving two intoxicated, apparently homeless people arguing in the street, to include physical contact which appeared to Plaintiff no more violent or dangerous than two people hugging each other.

46. Plaintiff and another officer (Ross) pulled over and asked the two to get out of the road. The two officers separated the people involved, but the one that Officer O'Brien was engaging with began to run at Officer Ross, who had his back to the incoming person.

47. Plaintiff O'Brien, concerned that it looked like the person might potentially have had in mind to assault Officer Ross, ran to get between the person and Officer Ross. In the process, Officer O'Brien made incidental contact with the person who fell.

48. The subject who fell was not hurt and appeared to almost hit his head, but had not done so. Neither party to the confrontation between the two citizens wanted anything done and both were highly intoxicated.

49. Plaintiff's recollection is that an ambulance was called for, but both subjects got up and left.

50. This incident was later specified as a basis for charges issued against Plaintiff O'Brien on March 30, 2023, fourteen (14) months later, when the department sought to terminate Plaintiff O'Brien's employment, although Plaintiff O'Brien committed no violations relating to the incident.

51. On February 8, 2022, after roll call, Sgt. Valladeras advised Plaintiff O'Brien that Captain Cruz directed that Plaintiff O'Brien report in writing to explain the circumstances of Plaintiff neglecting to wear a COVID-protective face mask while at roll call on that date and the prior, February 7, 2022. Plaintiff O'Brien was also accused of not wearing a face mask on prior, unidentified occasions.

52. Others who neglected to wear masks, a widespread practice both before and after February 8, 2022 meeting were not similarly accused and required to report.

53. In fact, Sgt. Valladares had conducted the February 7, 2022, roll call while not wearing a mask and Police Director

Moody spoke at the roll call, removing her mask to speak. Deputy Chief Flora also removed his mask to speak at the roll call.

54. Captain Cruz brought to Plaintiff O'Brien's attention that he did not have a mask on and he had not had one in his possession. However, the roll call continued after Captain Cruz brought this to Plaintiff O'Brien's attention, with Deputy Chief Flora speaking about upcoming promotions and applications for the Emergency Services Unit, so that Plaintiff O'Brien did not wish to interrupt or disturb the roll call or the other officers to immediately get a mask on.

55. During the roll call, Deputy Chief Scerbo, Lt. Ugolini, Sgt. Goodman, Police Officer Melendez also did not have masks on in addition to Captain Cruz, Director Moody, and Chief Flora. Numerous officers from the roll call removed their masks immediately following the roll call and congregated in the common area and behind the desk. Plaintiff O'Brien immediately left the building after the roll call, as he did not have a mask.

56. The next day, from having observed the deviations of the mask wearing rules by others from the February 7<sup>th</sup> roll call, Plaintiff had presumed the requirement had been relaxed or lifted. Officer O'Brien nonetheless positioned himself by the front door, as advised by Tour Commander (then Lieutenant)

Captain Brian Gajewski, to keep himself approximately six (6) feet from other officers.

57. None of the other officers who had not worn or removed face masks during the two roll calls were asked to document their mask wearing or lack thereof, but it appears rather that Plaintiff O'Brien was singled out for scrutiny by Captain Cruz, as compared to everyone else who had removed or not worn mask coverings those two days.

58. Plaintiff O'Brien indeed noted and documented that Sgt. Valladeras was not wearing a mask right after the February 8 roll call, when he instructed plaintiff O'Brien to document the circumstances of not having worn a mask.

59. On February 12, 2022, Plaintiff O'Brien observed Sgt. Valladares in Captain Cruz's office with no mask and the clerical staff was not wearing masks. Sgt. Valladares made a statement that the mask wearing policy was "above his pay grade."

60. Plaintiff was transferred as retaliation, for reasons including but not limited to because of not wearing a mask, in violation of the collective bargaining agreement and union bylaws. Plaintiff was an elected union delegate at the time, and as such, could not be transferred, certainly not because of not wearing a mask.

61. Klaus C. Pfeiffer was the subject/suspect of a bias incident that occurred at Holy Rosary, a prominent local parish. Plaintiff O'Brien and several other officers, including the Chief, have a productive, community relationship with the parish.

62. Parish personnel submitted video of the incident to Officer O'Brien, who submitted the video to detective Mullahey who was handling the case. O'Brien was able to identify Mr. Pfeiffer one evening while off duty and in the area. O'Brien called units and dispatch to have uniformed officers come and stop him, for identification purposes. Det. Mullahey responded and continued the investigation. Warrants were issued after Plaintiff O'Brien identified Mr. Pfeiffer.

63. Klaus Pfeiffer was eventually arrested by Plaintiff O'Brien on March 4, 2022, and charged with criminal mischief, bias intimidation, and desecration of a venerated object. On that date, Mr. Pfeiffer was contacted by Detective Mullahey, who was investigating the matter. Pfeiffer advised that he was willing to speak with police and was currently at the "Just for Men Barber Shop" located at 772 Newark Avenue, with an apparent intent to surrender himself. That location was in the North District not the East District.



64. As such, O'Brien obtained the approval of Lt. Gajewski, the Tour Commander, to leave the East District and participate in the arrest.

65. Despite those approvals, Captain Cruz accused Plaintiff O'Brien of leaving his patrol area without approval. Lt. Thompson later advised Plaintiff O'Brien that it appeared that Captain Cruz was attempting to have Plaintiff charged with leaving his post without approval, and Lt. Thompson advised that from Lt. Thompson's view, it appeared Plaintiff O'Brien was being treated unfairly.

66. While assigned to the East District, Plaintiff O'Brien's duty assignments included Newport Mall security.

67. While working that duty assignment, Plaintiff O'Brien observed that the security personnel would use the police to remove people from the property for having violated the mall's conduct code, often for matters that did not meet the criteria for law enforcement officers to have become involved. This included but was not limited to the mall security staff requesting police to remove "homeless-looking" people from the property. .

68. Plaintiff O'Brien reasonably believed and believes that the people in question were being targeted by mall security, illegally, discriminatorily and in violation of their constitutional rights, based upon their economic status, attire

and hygiene. On numerous occasions, Plaintiff O'Brien and other Jersey City officers have advised mall security of the constitutional rights of the people in question and advised mall security that enforcement of their "conduct policies" was not a matter for police intervention.

69. Plaintiff O'Brien observed that security personnel would pepper spray people without good cause and carried oversized pepper spray dispensers and batons, which Plaintiff knew and /or believed in good faith to be illegal, in violation of state laws and the Mall Security Weapons Policy.

70. The security staff began making complaints concerning Plaintiff O'Brien when, at the encouragement of desk Lieutenant Broderick, Plaintiff began to bring such matters to the attention of a supervisor of the mall security staff. That supervisor is and/or was friendly Captain Cruz, who knew that the complaints of the mall security staff were made to retaliate against Plaintiff O'Brien.

71. Captain Cruz ordered Plaintiff O'Brien to speak with mall security, without going through the chain of command, after Plaintiff O'Brien emailed and had a telephone call with Charles Vitali, the national director of the security staff for the mall. That resulted in the Newport Mall local supervisor continuing to make even more unfounded complaints to Captain Cruz concerning Plaintiff O'Brien.

72. On April 5, 2022, Plaintiff O'Brien was accused of carrying a knife as an illegal weapon, and ordered to remove it from his person. Plaintiff had carried the knife for years without issue, based upon the Uniform and Appearance policy, section 11-21, which allows for a knife to be affixed to a class A duty belt, as was Plaintiff O'Brien's at the time. SGT Strothers advised Plaintiff that Capt Cruz had told him that Plaintiff was in possession of a "dagger". O'Brien advised him that he was in possession of a knife. Captain Cruz ordered Sgt. Strothers to have O'Brien surrender the knife to Sgt. Strothers, but Sgt. Stothers offered to allow Plaintiff O'Brien to instead remove the knife, which Plaintiff O'Brien did.

73. On May 16, 2022, Plaintiff O'Brien was advised by Sgt. Stise in the East District parking lot that he was being placed on "Early Warning System monitoring." No bargaining unit member was present and no union representative was notified prior, although another police officer was in the vehicle with Plaintiff O'Brien. Plaintiff was not presented with anything in the nature of a plan for remediation or corrective action associated with the EWS monitoring.

74. At that time, remediation actions mentioned were limited to a review of Plaintiff O'Brien's reports, observations of his demeanor and appearance. Plaintiff was given a document to sign listing offenses alleged by Internal Affairs, without

any prior notice that he was being investigated by Internal Affairs, contrary to the requirements of the Internal Affairs Policy and Procedures of the Attorney General, which have the force of law by statute, N.J.S.A. 40A:14-181.

75. The basis set forth for Plaintiff O'Brien being placed on EWS monitoring was listed as "1. Excessive force; 2. Differential Treatment; and 3. Failure to submit a use of force report within 24 hours, disobedience of Law Regs. and Orders." Plaintiff O'Brien requested clarification of the items for which he was told he was being monitored, which clarification was never provided to Plaintiff O'Brien.

76. Plaintiff's placement into the EWS monitoring category was improper and while placed on monitoring, he was hardly, in fact, monitored at all and after several requests to be advised of who his monitor was, Internal Affairs could not identify the monitor. Most of the monitoring which was conducted, by Sgt. Stise, resulted in positive evaluation of his performance as monitored.

77. In or around May, 2022, Plaintiff O'Brien made a large CDS arrest which included the recovery of a stolen motor vehicle. Plaintiff O'Brien applied for a search warrant seeking to search the vehicle.

78. Plaintiff O'Brien contends that Court appearances that are off duty are mandatory 4 HRS OT minimum approved and paid by

the Prosecutor. The prosecutor who assisted with this case was AP Max Busco. Lt. Gajewski and Plaintiff O'Brien were discussing the investigation. Lt. Gajewski then informed Plaintiff O'Brien that Capt Cruz told Gajewski not to sign any overtime for the investigation. Captain Cruz also questioned Lt. Broderick as to why he approved overtime for the case.

79. Lt. Broderick's response included unequivocally that the overtime had been approved, with good reason, and Lt. Broderick further explained that there had never been any issue with Plaintiff O'Brien's truthfulness, despite some implication from Captain Cruz to the contrary, with Lt. Broderick explaining that "with me, he is a very honest and straight forward officer." Moreover, Lt. Broderick noted that "in the entire time I have been under [Captain Cruz's] command, this is the only time I have been questioned several times about any overtime that I have signed and approved for any officer."

80. On May 23, 2022, Plaintiff was advised not to have visitors in the district without the approval of the Captain, despite Tour Commander Lt. Gajewski having approved Plaintiff O'Brien's visitor's visit prior to the visit. The East District union members and Plaintiff O'Brien had hosted Cathy McBride, mother of slain Jersey City Police Officer Melvin Santiago. As a group, the union members had made a donation to the foundation and the visit was to present Cathy with flowers. Her visit had

been approved by Lt. Gajewski. Plaintiff O'Brien was nonetheless accused of having an unapproved visitor as well as conducting union business.

81. On June 17, 2022, Plaintiff O'Brien was contacted by East Clerk (clerking for Captain Cruz) Vergara and advised that his scheduled overtime shift was cancelled by Captain Cruz because Plaintiff O'Brien had been on a tour swap.

82. On June 17, 2022, O'Brien was contacted and notified that he was not allowed to work overtime shifts. Plaintiff O'Brien filed a grievance over that issue, which was never resolved. He thereafter stopped receiving notification of overtime opportunities.

83. On June 18, 2022, Plaintiff O'Brien was scheduled off and worked day tour overtime. The evening tour was short and O'Brien offered to take the overtime. Plaintiff O'Brien was told that Capt Cruz said he could not work the overtime because O'Brien was on a tour swap. DC Hickey was the city commander for the tour and said it was something he did his entire career and that Plaintiff O'Brien could work.

84. While DC Hickey and Plaintiff O'Brien were talking in the east district parking lot, DC Dickey was contacted via cell phone by DC Flora and ordered to not let Plaintiff O'Brien work. When DC Hickey asked why, Plaintiff O'Brien heard DC Flora, over

the phone tell DC Hickey "it's above your pay grade". DC Hickey concluded the phone call and hung up.

85. DC Hickey apologized for the confusion but chose to not allow Plaintiff O'Brien to work, which resulted in a junior officer PO Hanfey being held (forced to stay). PO Hanafey's hold was in violation of the "hold list" procedures.

86. On June 21, 2022, after Plaintiff O'Brien was advised by Officer Verga on June 18, 2022 that he was to be first notified for overtime, since his prior overtime had been cancelled, eight overtime positions were given out for June 22 without Plaintiff O'Brien being notified and/or given the overtime opportunity.

87. On June 27, 2022, Plaintiff O'Brien was denied a routine tour swap request for range training. Plaintiff O'Brien offered to go to the range on multiple dates but his requests were not accommodated.

88. On July 3, 2022, Plaintiff O'Brien requested to review his personnel file, a right he has per the governing Collective Bargaining Agreement. The request was submitted through his chain of command via email, to Sgt. Stise. Sgt. Stise forwarded the request to Internal Affairs. To date, Plaintiff O'Brien has not reviewed his personnel file.

89. On July 12, 2022, Plaintiff O'Brien was behind the desk in the area near the evidence locker. Captain Cruz directed

Lt. Rivera to "keep an eye on the evidence locker," to which Lt. Rivera asked "why?," noting that nobody was back there, to which Captain Cruz advised that the request was because Plaintiff O'Brien was there, suggesting without basis that Plaintiff could not be trusted near the evidence locker.

90. On July 26, 2022, Plaintiff O'Brien was conversing with his partner Officer Kitchen, in which he expressed his frustration with how he was being targeted and otherwise treated by Captain Cruz and the administration. While Plaintiff O'Brien expressed himself in an admittedly somewhat disrespectful and potentially offensive terms, Plaintiff O'Brien did so in the course of conversation with his partner, Officer Kitchen, in response to Kitchen's assertion that the two officers were both "hot," meaning that they have administration targeting and scrutinizing them.

91. Without any harassing, discriminatory or offensive intent, Plaintiff O'Brien made such statements based on the knowledge and belief that the video should and would never be reviewed, certainly never by Captain Cruz, unless his BWC videos were being improperly reviewed to target him for adverse employment action.

92. Those comments were later used by the department as specifications in support of administrative disciplinary charges against Plaintiff O'Brien issued on October 6, 2022 and later



revised on March 30, 2023, by both of which the City sought to terminate Plaintiff O'Brien's employment.

93. Captain Iris Cruz filed an EEO complaint before the BWC was viewed. O'Brien met with the city's counsel on September 8, 2022, regarding the EEO complaint. This was filed in July of 2022, sometime around July 18, 2022, then O'Brien was transferred on July 20, 2022. Captain Cruz filed a complaint of discrimination and/or harassment against Plaintiff O'Brien, with the City HR/EEO department, which remained under investigation when Plaintiff was initially charged with administrative violations, seeking his termination. Nonetheless, the specification of Plaintiff's charges indicated that there had been a sustained finding of workplace discrimination and harassment when Plaintiff was charged on October 6, 2022, even though the investigation remained pending at that time and had not been completed.

94. Following that call for service on July 26, 2022, Plaintiff O'Brien not only assisted the caller, but left to stop a car jacker and recovered a firearm in the process. As a result, he received an "employee of the month" award and a \$25 gas card in the nature of a commendation.

95. On August 2, 2022, Sgt. Mitchell advised Plaintiff O'Brien that Sgt. Mitchell was assigned as Plaintiff O'Brien's new monitoring sergeant.

96. Sgt. Mitchell told Plaintiff O'Brien that Mitchell had not worked with Plaintiff O'Brien and had not been given any instructions as to the monitoring. Sgt. Mitchell advised that he was told that Plaintiff O'Brien's monitoring was to be for a minimum of two weeks.

97. Sgt. Mitchell did not receive any communications from IA until October 4, 2022, concerning the monitoring, when Sgt. Mitchell was asked by Sgt. Roldan if he was continuing to monitor Plaintiff O'Brien. Sgt. Mitchell expressed to Plaintiff O'Brien that he believed this was a joke and told Roldan that he does not share many workdays with Plaintiff O'Brien and was told that Captain Olzewski would be contacted to have a different supervisor assigned to monitor Plaintiff O'Brien.

98. Plaintiff was thus on some form of "monitoring" scrutiny since May 16, 2022, but with no meeting with his union representation, no documentation of the behavior which needed to be remediated through the monitoring, and has never been advised of progression or regression observed through such monitoring. The monitoring was nothing other than retaliation, harassment and contributed to a hostile work environment.

99. On August 12, 2022 Plaintiff O'Brien was left on a TWO officer post by himself, in violation of departmental policy, on a post on Ocean Ave & Van Nostrand Ave. This location is less than one city block from where O'Brien was involved in the

shooting on December 26, 2019. The incident from December 26, 2019 date was indeed the catalyst for creation of the policy eliminating solo patrols and posts.

100. Sgts Ramos & Ona responded to confirm Plaintiff O'Brien's presence on post. When told Plaintiff O'Brien was alone, they requested permission by the City commander DC Crecco to move him. DC Crecco denied this request twice over the radio at approximately 2030 HRS. DC Crecco documented the denial as did the Sgts. Plaintiff O'Brien's Union was contacted and Plaintiff O'Brien was nonetheless left on post.

101. On or about September 29, 2022, Lt. Freddy Rodriguez notified Lieutenant Eddie Nieves of the Internal Affairs Unit of unprofessional and offensive comments made by Plaintiff O'Brien and captured on his BWC video. IA then began a review of prior incidents. Lt. Nieves determined, raised, and reported a concern with Plaintiff O'Brien's psychological fitness for duty, advising that Plaintiff O'Brien needed to be psychologically evaluated for fitness for duty, as Lt. Nieves perceived Plaintiff O'Brien as psychologically disabled.

102. On October 2, 2022, Captain Gigante informed Plaintiff O'Brien that he had checked with Internal Affairs as to the monitoring status and seeking informal clarification, and had been advised that IA believed that Plaintiff O'Brien was believed to have been responding to other people's calls and

going hands on (using force) where not warranted. Plaintiff had only once used force on a subject in a situation where he was a backup unit.

103. On October 6, 2022, Jersey City issued a Preliminary Notice of Disciplinary Action (Civil Service form 31A) to Plaintiff O'Brien, purporting to immediately suspend him for violating departmental and administrative rules relating to a review of his body-worn-camera ("BWC") footage which revealed unprofessional and offensive language, after having previously been placed into the Department's Early warning system allegedly triggered "intensive monitoring." The Police Department also had received a notification from the City's Human Resources/Equal Employment Office that it had sustained that he had engaged in workplace discrimination and harassment from a previous incident.

104. The October 6, 2022 disciplinary action included a suspension without pay. The notice included an advisement that he was being suspended indefinitely pending criminal charges, although the department claims that was a mistake and there were no criminal charges. Lieutenant William Jackson of the Internal Affairs Unit prepared the charges.

105. The October 6, 2022 disciplinary notice proposed to impose an immediate suspension without pay, based upon two grounds, the first of which is Plaintiff having used

unprofessional behavior and offensive language. Unprofessional behavior and offensive language are not adequate grounds to impose a suspension without pay, according to the 2002 Appellate Division case of Herzog v. Township of Fairfield, 349 N.J. Super. 602 (App. Div. 2002) and governing Civil Service regulations.

106. The second listed ground for immediate suspension alleged that there had been, at the time, "a sustained finding by the EEOC against Officer O'Brien," which the department has since conceded was not factually correct at the time the disciplinary action was issued. In fact, an investigation remained pending at the time.

107. At all times in response to all notices of discipline issued to him, Plaintiff O'Brien requested to invoke and invoked all rights available to him, such as, most importantly, but not limited to, a departmental administrative hearing, by way of opposition to the charges issued against him.

108. Plaintiff requested a "Loudermill"/NJAC 4A:2-2.5-provided hearing regarding the suspension without pay, in accordance with statutory and regulatory Civil Service procedures.

109. At the time of the October 6, 2022 disciplinary action, Plaintiff O'Brien was also required/ordered to submit to

Fitness for Duty evaluation with the Institute for Forensic Psychology.

110. Since being suspended from work on October 6, 2022, Plaintiff O'Brien returned to treatment on a weekly basis.

111. In late October, 2022, Plaintiff O'Brien submitted to a psychological examination, as ordered departmentally, conducted by Dr. Han Zhang ("David") Liang, Ph.D., Licensed Psychologist (NJ #5471; NY #21110), with the Institute for Forensic Psychology.

112. Dr. Liang issued a Psychological Fitness for Duty Report dated November 7, 2022, directed to Lieutenant Frank Laraway of the Jersey City Police Department.

113. Dr. Liang administered psychological tests to include a "Personality Assessment Inventory," "Beck Depression Inventory - 2," "Beck Anxiety Inventory," "Why are you here? (subject written perception of reasons for referral) and "Biographical Summary form." Dr. Liang's clinical interview included a Social History, "Legal/Motor Vehicle" history, "Family/Relationships" history," "Education History" "Self-Assessment" "Physical and Mental Health" history and a "Financial and Activity" history. Dr. Liang also evaluated "collateral data" consisting of certain materials concerning administrative disciplinary actions issued against Plaintiff O'Brien by the Jersey City Police Department.

114. Dr. Liang also consulted with Plaintiff O'Brien's then treating mental health provider, Bridget Reilly, on November 4, 2022.

115. Dr. Liang noted in the report's conclusion that Plaintiff O'Brien's treating provider, Bridget Reilly, opined that Plaintiff O'Brien meets the criteria for Post Traumatic Stress Disorder and presents with mood and anxiety symptoms. Reilly advised Dr. Liang that this was attributable, in her opinion, to a December, 2019 on duty critical incident in which a suspect fired a gun at Plaintiff O'Brien in the course of O'Brien's duty.

116. In the course of the examination, Plaintiff O'Brien disclosed to Dr. Liang that his behavior with which the Department is and was taking issue was, in whole or in part, in his view, attributable to the December 26, 2019 critical incident among other things.

117. Dr. Liang's conclusion(s) included that the December 26, 2019 critical incident "appears to have left traumatic impact on the subject."

118. Dr. Liang further concluded that "the subject does evidence a psychological condition or impairment that would be likely to interfere with his ability to effectively function as a Police Officer (as per standards of the International

Association of Chiefs of Police FFDE Guidelines)" and "as a result, he is not psychologically fit for duty."

119. A "Loudermill"/NJAC 4A:2-2.5/2.7 hearing was held on November 2, 2022. The designated hearing officers were two superior officers and one Police Officer.

120. The hearing officers recommended that Plaintiff O'Brien be returned and placed on modified duty pending successful completion of counseling, to accommodate his psychological disability.

121. Jersey City rejected the decision and recommendation of the hearing officers to accommodate Plaintiff O'Brien's disability and instead continued Plaintiff O'Brien's suspension without pay, continuing to date for approximately 1 ½ years now.

122. Plaintiff O'Brien filed a proper application with the Civil Service Commission, seeking review of Jersey City's rejection of the Loudermill hearing officers' decision to restore him to pay status.

123. The Civil Service Commission denied that initial application.

124. Plaintiff O'Brien filed a second, supplemental request for review of his pay status, with the Civil Service Commission. Plaintiff O'Brien alleged in the second request for review of his pay status, that his due process rights were being violated by the City's disregard of Civil Service statutes and



regulations. Plaintiff O'Brien's second application to Civil Service indicated that he had, on four separate occasions, requested a departmental hearing, between December 15, 2022 and January 18, 2023, but the department advised on January 18, 2023 that its investigation was still ongoing and that the hearing would be scheduled at some date in the indefinite future, upon completion of the investigation.

125. In response to the second Civil Service interim relief application, the City argued that Plaintiff had not complied with the recommendations of the IFP evaluator Dr. Liang concerning a treatment plan which might have led to re-evaluation and/or reinstatement.

126. Allison Chris Myers, Acting Chairperson of the Civil Service Commission, issued a decision on May 24, 2023, a true and correct copy of which is attached hereto as "exhibit A."

127. By and through the May 24, 2023 Civil Service Commission decision, the City was "ordered," (see page 6 of exhibit A) that Plaintiff O'Brien's petition for interim relief was granted in part. The core of the May 24, 2023 order states that:

Within 20 days of the date of the issuance of this decision, Jersey City **shall** commence a departmental hearing on the merits of the [pending] charges [against Plaintiff O'Brien]. **Further, O'Brien shall be awarded back pay from February 3, 2023, until his reinstatement or issuance of a Final Notice of Disciplinary Action."**

(exhibit A, page 6, emphasis added).

128. The May 24, 2023, decision "warn[ed] Jersey City" concerning fines that could issue if the administrative code provisions and Civil Service Commission order were not followed.

129. Plaintiff has made demand several times, through counsel, to Jersey City, for compliance with the Civil Service Commission order requiring Jersey City to pay him back pay from February 3, 2023 and continuing his pay status until "reinstatement or issuance of a Final Notice of Disciplinary Action" as required by the May 24, 2023 order.

130. Despite numerous and several requests, and without any rational, logical, or legally non-frivolous explanation, the City of Jersey City has refused to comply with the Civil Service May 24, 2023 order concerning back pay and placing Plaintiff O'Brien in continued pay status moving forward.

131. Plaintiff O'Brien has not been reinstated, nor had any Final Notice of Disciplinary Action issued (until November 10, 2023) as would justify, per the May 24, 2023 Civil Service Order, Jersey City's non-compliance, per the terms of the order itself.

132. A Preliminary Notice of Disciplinary Actin issued on March 30, 2023, resulting from JCPD Internal Affairs Unit Case #2022-119, seeking Plaintiff O'Brien's removal from employment based upon Officer O'Brien's actions relating to a motor vehicle

accident he responded to on August 1, 2022. Plaintiff O'Brien was never interviewed as part of the IA investigation or otherwise as to IAU #2022-119, and never had an opportunity to tell his side of the story prior to the issuance of charges seeking his termination.

133. In describing the incident for which Plaintiff O'Brien was charged, seeking his termination, the JCPD alleged in the PNDA that Officer O'Brien "determined driver of Veh#2, who was unlicensed and attempted a left turn without yielding to uncoming [sic] traffic not at fault. Driver of Veh#2 was not issued any summons."

134. In fact the driver of Veh#2 was a licensed, not an unlicensed driver, which the testifying witness for the department, against Officer O'Brien, acknowledged in testimony at the non-completed departmental hearing on October 18, 2023, among other times.

135. Despite the admission that the specification of charges was not true, the hearing was terminated before Plaintiff O'Brien had an opportunity to present his defense, and the March 30, 2023 PNDA based on IAU Case #2022-119 was sustained, with a FNDA issued purporting to terminate/remove Plaintiff O'Brien from employment with the JCPD.

136. Final Notices of Disciplinary Action were then issued, with the hearing not having been completed, and with Plaintiff

O'Brien having no opportunity to testify or present evidence or witnesses in his defense, on November 10, 2023, not only based on the PNDA's which the hearing panel was in the midst of addressing, but based on other PNDA's for which there was no hearing whatsoever conducted.

137. Indeed, on November 8, 2023, Plaintiff O'Brien, through counsel, moved for dismissal at the conclusion of the JCPD case presented, as to the IAU 2022-119 charges involving the motor vehicle accident on August 1, 2020, based both on the 45 day rule of NJSA 40A:14-147 and based upon the JCPD not having presented sufficient evidence from which termination violations could be found, in the nature of a "Reyes" application. The members of the hearing panel expressed that Plaintiff O'Brien's (administrative charges) defense team appeared to have a strong, meritorious case under the forty-five (45) day rule of NJSA 40A:14-147, but that the panel believed it beyond the authority of the panel to rule on that issue.

138. Moreover, in addressing Plaintiff O'Brien's "Reyes" motion to dismiss at the close of the JCPD case, the panel was specifically instructed by counsel for the JCPD **not** to decide the merits of the charges, but only to decide whether the material, undisputed facts showed that Plaintiff O'Brien had not committed the violations asserted or whether the JCPD presented

insufficient evidence from which the charges could be proven by a preponderance of the evidence.

139. The hearing panel explicitly stated on the record that the panel did not feel it appropriate to decide the termination case against O'Brien without hearing the defense, i.e., noting that the panel "d[id not] want to take essentially take the decision out of our own hands."

140. The panel was indeed split on the denial of the motion, as one of the three members of the hearing panel explicitly stated that the City did not prove the charges in its case and chief.

141. The panel further noted as a whole that Plaintiff O'Brien had made some "very valid points" and that the panel did not necessarily agree or disagree with the panel member in favor of granting the dismissal motion, but rather the panel's collective decision was that there was enough evidence presented by the JCPD to require the panel to consider the preponderance of all of the evidence including that to be proffered by and on behalf of Plaintiff O'Brien.

142. As such, the hearing continued on November 8, 2023, after the panel ruled on the two dismissal motions, with the testimony of JCPD witness Jocelyn Roldan.

143. Despite the hearing panel's decision that the hearing needed to be conducted to completion, Defendants inexplicably

determined to terminate the hearing after the November 8, 2023 hearing date and issued the several Final Notices of Disciplinary Action, terminating Plaintiff's employment with the JCPD as the final decision at the City of Jersey City level, subject to Plaintiff O'Brien's Civil Service appeal rights. Plaintiff O'Brien has appealed the FNDA's timely and awaits further Civil Service and Office of Administrative Law proceedings, never having had any opportunity to present any witnesses or evidence in defense at the departmental level, as to any of the charges against him.

144. The hearing in question was terminated abruptly, while Plaintiff O'Brien's counsel was in the midst of cross examination of the City's second witness, Jocelyn Roldan. Plaintiff was never given an opportunity to present any evidence of his own, nor witnesses on his behalf, before the City determined to and the hearing and fire him.

145. At various times including but not limited to April 5, 2023, Plaintiff O'Brien requested discovery from the City as to the charges and specifications issued against him, which discovery he was entitled to, but which discovery was not fully provided to him.

146. During the departmental hearing, Plaintiff O'Brien repeatedly requested discovery that he was entitled to, noting that he had not received the discovery and the prejudice to him

in proceeding with the hearing without adequate discovery, yet, the hearing was concluded without adequate discovery having been provided.

147. Moreover, the IA cases that resulted in the administrative disciplinary charges were conducted in violation and with disregard for the requirements of the Attorney General Internal Affairs Policy and Procedures ("IAPP"), which were so severely disregarded as to result in a denial of due process for Officer O'Brien. In addition to non-compliance with those guidelines, the investigations were entirely unobjective, partial and incomplete/non-thorough.

148. In or around March, 2023, Plaintiff O'Brien discovered that someone had opened up a supplemental insurance policy and/or provided an insurance company, for the purpose of obtaining supplemental insurance, with his personal information and an unauthorized electronic signature.

149. Plaintiff O'Brien received documents in the mail from Trustmark Insurance Company dated February 1, 2023, regarding an application for "Accident 24 Hour Coverage" from Trumark Insurance Company, identifying his employer as the City of Jersey City, containing his Employee ID# and date of hire, his birthdate and social security number, a former home address where Plaintiff O'Brien was no longer living and had not lived since around 2016.

150. Plaintiff O'Brien had not made such application and had not provided, nor authorized any other person to provide, his personal information to Trumark Insurance, or any other insurance carrier for supplemental insurance coverage in the nature of "Accident 24 Hour Coverage." Nonetheless, the paperwork included, in the space for Plaintiff O'Brien's signature, an indication that his signature was "electronically acknowledged" on November 1, 2022, while in fact Plaintiff O'Brien had not electronically acknowledged his signature for this purpose on that date.

151. On information and belief, a Jersey City officer or officers, official or officials or employee or employees provided Plaintiff O'Brien's confidential, personal information to Trustmark Insurance and were responsible for the acknowledgement of Plaintiff O'Brien's signature on the insurance application without Plaintiff O'Brien's knowledge or acquiescence.

152. On November 1, 2023, the Civil Service Commission ruled on Plaintiff O'Brien's request for enforcement of the back pay/reinstatement order. The Civil Service Commission granted partial enforcement requiring Jersey City to make payment to O'Brien for back pay from February 3, 2023 through July 2, 2023, a period of approximately five (5) months worth of back pay, within thirty (30) days of the November 1, 2023 decision, thus



making Plaintiff's back pay from the City due on Friday, December 1, 2023.

153. To date, Defendants have not complied with the Civil Service November 1, 2023 Order and have not made any payment as required by that order. Plaintiff has asked and demanded compliance with that order numerous times.

154. There is no reason, justification, or excuse for the City of Jersey City's recalcitrant disregard of the May 24, 2023 or November 1, 2023 Civil Service Commission orders.

155. Instead of paying Plaintiff O'Brien salary and wages due him and reduced to a clear and unambiguous "order" of the Civil Service Commission, Jersey City still refuses to comply with the Civil Service Commission order of May 24, 2023 and the enforcement order of November 1, 2023, without justification, thumbing its nose at the Civil Service Commission's authority and the scheme of Civil Service and Administrative regulations generally.

156. Rather than comply with that order, on or about November 10, 2023, without the departmental hearing being completed, and nine days after Plaintiff O'Brien was successful in seeking enforcement of the Civil Service order, without the City having rested its case in the departmental hearing and without Plaintiff O'Brien having had any opportunity to present witnesses, testimony and/or evidence to the hearing tribunal,

Defendants issued several Final Notice of Disciplinary Action, Civil Service Form 31-C's, removing Plaintiff from employment with the JCPD effective November 10, 2023.

157. The November 10, 2023 termination notices were signed by "Acting Chief / Deputy Chief Robert Kearns." Chief Kearns was not a member of the hearing board which began the hearing and was not present at the hearing for any evidence or testimony.

158. To Plaintiff's knowledge and belief, the hearing panel did not issue any recommended findings in writing, nor did anyone issue any written decision resulting from the hearing, other than to issue the termination notices. There was no apparent weighing and sifting of the evidence presented at the hearing, neither in writing from the hearing board, nor on behalf of whomever made the final decision for the City.

159. On information and belief, the three members of the hearing panel for the departmental hearing, prepared written recommendations, upon discontinuation of the hearing and Plaintiff's termination on November 10, 2023. Defendants have refused to provide those recommendations to Plaintiff O'Brien.

**III. Count One - R. 4:67 Summary Action to Enforce Administrative Order**

160. Plaintiff repeats the allegations contained in the preceding Counts and incorporates all prior allegations above as if fully set forth herein.

161. This Count One asserts a summary action to enforce the administrative orders of the Civil Service Commission issued on May 24, 2023, and November 1, 2023, as outlined herein above.

162. Defendant City of Jersey City has violated the May 24, 2023, order, as clarified by the November 1, 2023 order, by the failure to pay back pay to Plaintiff O'Brien for the approximately five (5) month period from February 3, 2023 through July 2, 2023.

163. Moreover, the Defendant City of Jersey City violated the CSC order of May 24, 2023, insofar as that order specifically required that Plaintiff O'Brien's back pay should continue until he was reinstated or a Final Notice of Disciplinary Action issued. No Final Notice of Disciplinary Action issued until November 10, 2023.

164. As such, for proper enforcement of the CSC orders, the backpay Plaintiff O'Brien seeks, pursuant to this R. 4:67 summary action, should run from February 3, 2023, through November 10, 2023 when the FNDA was first signed, as per the CSC order. This is approximately nine (9) months of Plaintiff's backpay, withheld by the Defendant City of Jersey City, contrary to the CSC orders.

WHEREFORE, Plaintiff, Jesse O'Brien demands judgement against the defendants, The Jersey City Police Department and City of Jersey City, John Doe Police elected or appointed Administrators and Supervisors (such names being fictitious) of Departments 1-10 and ABC Companies 1-10, (such entities being fictitious) jointly, severally, and alternatively, for equitable relief, compensatory damages, punitive damages, counsel fees, interest, and costs of suit.

**IV. Count Two - Law Against Discrimination - Disability, Failure to Accommodate and Wrongful Termination**

165. Plaintiff repeats the allegations contained in the preceding Counts and incorporates all prior allegations above as if fully set forth herein.

166. As outlined above, Plaintiff began developing and suffering from a psychological disability in January 2020 and thereafter, from on duty work related critical incidents.

167. Defendants never engaged in the interactive process to determine how to accommodate Plaintiff O'Brien's psychological disability, even after having received their own evaluator's opinion that Plaintiff O'Brien was not psychologically fit for duty, when Dr. Liang so reported to Lieutenant Laraway, at the latest, on or about November 7, 2022.

168. Rather than accommodate that known psychological disability caused by traumatic critical incidents in the course

of duty, after the November 7, 2022 report of Dr. Liang, Defendants held a "Loudermill" hearing on charges which issued in October, 2022. The hearing officers recommended that Plaintiff O'Brien be returned to modified duty pending successful completion of counseling, to accommodate his psychological disability.

169. Bent on not accommodating Plaintiff O'Brien's disability, the City of Jersey City rejected the recommendation of the Loudermill hearing panel, declining to place O'Brien on light duty as an accommodation of his disability, and instead continued to suspend Plaintiff O'Brien without pay, terminating his health insurance benefits with knowledge that Plaintiff was in need of treatment for work related disability.

170. Plaintiff O'Brien, through counsel, requested adjournment of the hearings as Plaintiff O'Brien was psychologically unable to participate in his defense and his health benefits were suspended so that he could not receive treatment with no pay and no health insurance, yet the hearings continued.

171. Based on an interim relief application to the Civil Service Commission ("CSC") the City was ordered to immediately provide Plaintiff with backpay and reinstatement "until his reinstatement of issuance of a Final Notice of Disciplinary action," per May 24, 2023 CSC order.

172. The backpay period was later subject to reconsideration and, on or about November 1, 2023, the CSC ruled that Plaintiff's backpay should be limited to the period from February 3, 2023 through July 2, 2023 and would be due within 30 days of that decision, which deadline was December 1, 2023.

173. In disregard of the CSC order, Defendants never made this backpay payment to date nor have Defendants notified Plaintiff O'Brien, through counsel or directly, of any intention of complying with the November 1, 2023, CSC order.

174. Moreover, the May 24, 2023, Civil Service Commission order provided that Defendant City of Jersey City was required to reinstate Plaintiff O'Brien's pay from February, 2023, until a Final Notice of Disciplinary action issued. No Final Notice of Disciplinary Action issued until November 10, 2023.

175. Instead of reasonably accommodating Plaintiff O'Brien's work related psychological disability, as outlined above, Defendants collectively treated Plaintiff with discrimination and disparate treatment as well as harassing him and creating a hostile work environment because of his disability and/or perceived disability and finally, terminating Plaintiff wrongfully in violation of the New Jersey Law Against Discrimination and as reprisal by way of wrongful termination.

**WHEREFORE, Plaintiff, Jesse O'Brien demands judgement against the defendants, The Jersey City Police Department and**

City of Jersey City, John Doe Police elected or appointed Administrators and Supervisors (such names being fictitious) of Departments 1-10 and ABC Companies 1-10, (such entities being fictitious) jointly, severally, and alternatively, for equitable relief, compensatory damages, punitive damages, counsel fees, interest, and costs of suit.

V. Count Three - New Jersey Civil Rights Act

A. Free Speech and Association

176. Plaintiff repeats the allegations contained in the preceding Counts and incorporates all prior allegations above as if fully set forth herein.

177. As outlined above herein, Plaintiff O'Brien was disciplined, unfairly targeted for scrutiny and harassment, harassed, and subjected to a hostile work environment and retaliation because of having expressed himself as a private citizen relating to matters of public concern and or based on speech and or union association as otherwise Constitutionally Protected activity under the New Jersey Constitution of 1947.

178. Plaintiff also engaged in protected First Amendment and State Constitutionally protected activity when he opposed his suspension without pay, successfully, to the Civil Service Commission.

179. Plaintiff also engaged in protected First Amendment

and State Constitutionally protected activity when he exercised his hearing rights in opposition to the administrative charges which ultimately led to his termination.

180. The statements and union organization association upon which Plaintiff Officer O'Brien was harassed, subjected to a hostile work environment, retaliated against and/or disciplined are protected by the New Jersey Constitution of 1947, particularly:

a. Article I, paragraph 6 which provides:

Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

b. Article I paragraph 18, which provides:

The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

181. This Count of the Complaint is thus brought under and pursuant to the New Jersey Civil Rights Act, NJSA 10:6-1 *et. seq.*, and alternatively directly under the New Jersey Constitution for violation of Plaintiff Officer O'Brien's rights thereunder.



182. O'Brien's First Amendment and/or State Constitutional analog to the First Amendment protected activities, which caused such adverse employment action as outlined herein, includes but is not necessarily limited to:

a. Plaintiff had a First Amendment right to defend himself in the disciplinary proceedings and was retaliated against and ultimately terminated for exercising that right, including but not limited to through interim relief petitions to the CSC and by contesting the charges issued against him which ultimately triggered his termination before the hearing was completed;

b. Plaintiff exercised such a right when he questioned why he was singled out for not wearing a mask while others not wearing a mask on the same occasion(s) were not subjected to scrutiny;

c. Plaintiff exercised a First Amendment right of expression and was retaliated against for it when he objected to the Newport Mall policy of singling out people and illegally targeting them for appearing to be "homeless people" while on mall property and for the mall security staff using illegally oversized pepper spray dispensers and batons;

d. Plaintiff further exercised First Amendment rights and was disciplined because of it, insofar as he was disciplined based upon "WhatsApp" text threads in which he expressed himself

as is his right as a private citizen as to matters of public concern.

**WHEREFORE, Plaintiff, Jesse O'Brien demands judgement against the defendants, The Jersey City Police Department and City of Jersey City, John Doe Police elected or appointed Administrators and Supervisors (such names being fictitious) of Departments 1-10 and ABC Companies 1-10, (such entities being fictitious) jointly, severally, and alternatively, for equitable relief, compensatory damages, punitive damages, counsel fees, interest, and costs of suit**

**B. Due Process**

183. As outlined above herein, Plaintiff O'Brien was disciplined, unfairly targeted for scrutiny and harassment, harassed, and subjected to a hostile work environment, resulting in previously adjudicated and other past and continuing violations of Plaintiff O'Brien's due process rights under article 1, paragraph 1 of the New Jersey Constitution of 1947.

184. The New Jersey Civil Rights Act, and specifically N.J.S.A. 10:6-2(c), provides a right of recovery, specifically for due process violations, explicitly affording a cause of action under the NJ CRA for "[a]ny 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 States.”

185. As outlined in further detail above, Plaintiff O’Brien’s procedural due process rights were violated in several ways to include the following:

a. Plaintiff’s procedural due process rights under “Loudermill” and statutory and regulatory hearing rights prior to the imposition of a suspension without pay were violated by the Defendants’ rejection of the recommended Loudermill decision of the hearing panel and refusal to thereafter pay backpay pursuant to the CSC order when that decision was over-ruled by the CSC; the violation of Plaintiff O’Brien’s procedural due process rights in this regard includes the suspension of his pay without compliance with “Loudermill,” in addition to the CSC statute and regulations.

b. Plaintiff was terminated from employment with the JCPD during the midst of an un-completed hearing in which he had not had the opportunity to present any witnesses, evidence, or testimony, with the termination imposed by an official/representative of the Defendants other than those on the hearing panel

for the discontinued hearing; in violation of his procedural due process rights;

- c. Plaintiff requested but was never provided with discovery to which he is and was entitled in advance of the departmental administrative hearing procedure;
- d. Despite the lack of discovery, the Department argued for progressive discipline to be considered as to Officer O'Brien based upon some matter that allegedly occurred in 2019 involving a near altercation between O'Brien and another officer, despite no discovery having been provided to Officer O'Brien placing him and his counsel on notice of any prior cases to be invoked in support of seeking progressive discipline, alleging that Officer O'Brien had faced 5-10 days of discipline for the prior case, when in fact he had only had two vacation days taken for the matter in question.
- e. The Internal Affairs investigations underlying the charges were not conducted in compliance with the IAPP and were so violative of the IAPP as to amount to a denial of Plaintiff O'Brien's due process rights.

f. The administrative disciplinary proceedings against Plaintiff O'Brien continued despite his request, through counsel, for adjournment, which request was based upon the fact that Plaintiff O'Brien was psychologically unable to participate in the hearings and with no pay and no health insurance benefits, was having difficulty getting necessary treatment for his work related disabilities

C. Information Privacy - Due Process

186. The disclosure of Plaintiff O'Brien's private personal information by Defendant Jersey City and its elected or appointed officers or employees to Trumark Insurance, as outlined above herein and discovery by Plaintiff O'Brien in or around February, 2023; violated Plaintiff O'Brien's venerable Constitutional due process-based privacy interest in avoiding disclosure of private, personal matters.

**WHEREFORE, Plaintiff, Jesse O'Brien demands judgement against the defendants, The Jersey City Police Department and City of Jersey City, John Doe Police elected or appointed Administrators and Supervisors (such names being fictitious) of Departments 1-10 and ABC Companies 1-10, (such entities being fictitious) jointly, severally, and alternatively, for equitable relief, compensatory damages, punitive damages, counsel fees, interest, and costs of suit.**

**VI. CEPA**

187. Plaintiff repeats the allegations contained in the preceding Counts and incorporates all prior allegations above as if fully set forth herein.

188. Plaintiff O'Brien reasonably believed that certain employer conduct by Defendants was in violation of laws or rules and regulations promulgated pursuant to law; was fraudulent or criminal; and/or incompatible with a clear mandate of public policy concerning the public safety and welfare, to include but not limited to the following:

- (a) N.J.S.A. 40A:14-147 and case law thereunder, as well as the Civil Service Act and Civil Service regulations, provide that a full time municipal police officer cannot be subject to suspension or termination without first having the right to an administrative hearing on charges and specifications, and outlines the minimum procedural, statutory and constitutional requirements for such a hearing before suspension or discipline may be imposed; yet while initially given the right to such a hearing, the hearing was discontinued mid-hearing and without Plaintiff having had any opportunity to present witness testimony or evidence in his defense; Plaintiff opposed and continues to oppose the illegal procedures by the City

in its haste to fire him as retaliation, harassment and to cause a hostile work environment

- (b) NJSA 40A:14-181 requires all law enforcement agencies in New Jersey to conduct the Internal Affairs process in accordance with the Attorney General guidelines concerning Internal Affairs Investigations, commonly referred to as the "IAPP." The IAPP has certain requirements for implementation and administration of an "Early Warning System." The Defendants perverted and/or misused the Early Warning System contrary to the IAPP requirements in by placing and continuing Plaintiff O'Brien on "Early Warning System monitoring" and administering the "monitoring" program contrary to and in violation of the IAPP since May, 2022, with no meeting with his union representation, no identification or documentation of the behavior needing to be remediated, and never having been advised of the progression or regression observed during the monitoring, and as such, the monitoring was a sham designed as subterfuge to cover up the illegal retaliation, discrimination, harassment and hostile work environment to which Plaintiff O'Brien was subjected; Plaintiff O'Brien repeatedly objected to

participation in the monitoring program under such circumstances.

- (c) Plaintiff O'Brien further engaged in CEPA-protected activity when he opposed the illegal actions of the Newport Mall security personnel.
- (d) Plaintiff O'Brien reasonably believed and raised issue with the employee monitoring he was subject to, which was not in accordance with the regulations of the New Jersey Attorney General's IAPP which have the force of law pursuant to NJSA 40A:14-181;

189. As a result of the CEPA-protected activities including but not limited to those set forth in the preceding paragraph, Plaintiff O'Brien was subject to retaliation prohibited by CEPA, including but not limited to unwarranted accusations and investigations of misconduct and/or rule violations which he did not commit; selective enforcement/ disparate treatment by intense monitoring and scrutiny of his job performance in absence of legitimate complaints in an effort to manufacture bases for termination; denied overtime assignments; suspended without pay; not being paid despite the CSC orders; and ultimately termination of employment by way of wrongful termination under CEPA.

**WHEREFORE, Plaintiff, Jesse O'Brien demands judgement against the defendants, The Jersey City Police Department and**



City of Jersey City, John Doe Police elected or appointed Administrators and Supervisors (such names being fictitious) of Departments 1-10 and ABC Companies 1-10, (such entities being fictitious) jointly, severally, and alternatively, for equitable relief, compensatory damages, punitive damages, counsel fees, interest, and costs of suit.

**VII. Pierce v. Ortho**

190. Plaintiff repeats the allegations contained in the preceding Counts and incorporates all prior allegations above as if fully set forth herein.

191. As a matter of public policy in the State of New Jersey, it is a well-known matter of policy that all law enforcement officers recognize that the men and women of law enforcement put their lives on the line every day to protect the citizens of New Jersey. Often the first to respond to a scene, these officers regularly encounter some of the most traumatic events affecting their community. They also typically operate in a state of hypervigilance while on duty. The emotional and mental toll of this work can build over time and contribute to a range of health issues, including increased blood pressure, heart disease, diabetes, substance misuse, family and relationship stress, self-harm, and risk of suicide.

192. The State of New Jersey recognizes and has identified as public policy that all State, County, and municipal law enforcement organization's administration have a special responsibility to ensure that New Jersey's law enforcement officers are equipped with the tools they need to cope with the unique stressors of their work. The importance of the public policy at stake is the recognized genesis of New Jersey Attorney General Law Enforcement Directive No. 2019-01, August 6, 2019, "Directive Promoting Law Enforcement Resiliency." The issuance of that Directive for that purpose, along with other sources demonstrate that this is an important public policy.

193. As outlined above, Defendants engaged in a course of harassment, retaliation, created a hostile work environment and placed his mental health and physical health at risk in response to and following knowledge of the fact that Plaintiff was suffering from a mental health crisis largely attributable to the December 2019 critical incident, during which he was shot at while making a lawful arrest. Shortly thereafter, within less than two weeks, Plaintiff O'Brien had, on top of his diminished mental health condition, contend with a fellow officer being killed in a shootout, Detective Joseph Seals, at 39-year-old father of five. With full knowledge, and having been told specifically by Plaintiff himself, that Plaintiff was suffering a mental health crisis as a result of these events, Plaintiff

was not once referred to, directed to, or ordered to consult with a mental health professional or consult any EAP program until a later fitness for duty evaluation. The fitness for duty evaluation reached the same conclusion which Plaintiff himself previously told and/or made known to administration, i.e., that was experiencing a mental health crisis, which was exacerbated by Defendant's actions rather than anything being done by police administration anything like what would have been in line with the public policy in the nature of the above-described "Resiliency" directive and public policy.

**WHEREFORE, Plaintiff, Jesse O'Brien demands judgement against the defendants, The Jersey City Police Department and City of Jersey City, John Doe Police elected or appointed Administrators and Supervisors (such names being fictitious) of Departments 1-10 and ABC Companies 1-10, (such entities being fictitious) jointly, severally, and alternatively, for equitable relief, compensatory damages, punitive damages, counsel fees, interest, and costs of suit.**

**VIII. Family and Medical Leave Act**

194. Plaintiff repeats the allegations contained in the preceding Counts and incorporates all prior allegations above as if fully set forth herein.

195. Defendants' actions are in violation of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2611 et. seq. by way of interference and retaliation.

196. Defendants' actions are in violation of FMLA regulations codified at 29 C.F.R. 825.214 et. seq.

197. As of January 24, 2020 and continuing thereafter, Defendants were on actual and/or constructive notice that Plaintiff O'Brien had a "serious health condition" as defined by the FMLA and regulations, for example at 29 U.S.C. Section 2611(11) (A) to (B) and 29 C.F.R. Section 825.113(a).

198. As of January 24, 2020, and continuing thereafter, Defendants were on actual and/or constructive notice that Plaintiff O'Brien was potentially in need of FMLA leave.

199. The FMLA regulations are clear that if the Defendants did not have enough information to determine whether Plaintiff was in need of leave covered by the FMLA, the Defendants were required by the FMLA to inquire further of Plaintiff and provide him with appropriate notice to determine whether he was entitled to FMLA leave.

200. In violation of Plaintiff's FMLA rights, the information obtained by the Defendants as of January 24, 2020 was not reasonably interpreted or acted on by the Defendants, as the Defendants were reasonably apprised of information triggering Plaintiff O'Brien's FMLA rights.

201. Defendants failed to notify Plaintiff O'Brien at all times relevant, up to and including the present, of his FMLA rights, thus having interfered with said rights.

202. Because of Defendants' failure to comply with these notice requirements of the FMLA, Plaintiff did not exercise his FMLA rights which include the right to intermittent leave and/or extended leave.

203. Moreover, as a result of being required to work, while suffering from a serious health condition and entitled to FMLA leave, an entitlement of which he was never notified up to and including to date, Plaintiff was further prejudiced by being subject to administrative disciplinary charges which were prosecuted through and including his termination from service with the Jersey City PD, rather than being given an opportunity to exercise his FMLA rights to treat his serious health condition which caused and contributed to the underlying violations asserted in the termination charges.

**WHEREFORE, Plaintiff, Jesse O'Brien demands judgement against the defendants, The Jersey City Police Department and City of Jersey City, John Doe Police elected or appointed Administrators and Supervisors (such names being fictitious) of Departments 1-10 and ABC Companies 1-10, (such entities being fictitious) jointly, severally, and alternatively, for equitable**

relief, compensatory damages, punitive damages, counsel fees, interest, and costs of suit.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

This matter is not the subject of any other action pending in any court or of a pending or contemplated arbitration proceeding; although Plaintiff O'Brien has a pending appeal with the Civil Service Commission concerning his termination.

Plaintiff is unaware of any other party who should be joined in this action, except as may be revealed through discovery.

Plaintiff is aware of the continuing obligation during the course of this litigation to file and serve on all other parties, and with the Court, an amended Certification if there is a change in the facts stated in this Certification.

*I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Respectfully Submitted:

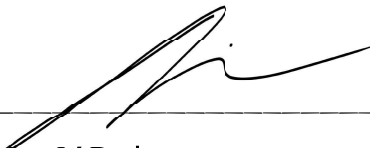
**BARKER, GELFAND, JAMES & SARVAS  
A PROFESSIONAL CORPORATION**

By: s/Todd Gelfand  
Todd J. Gelfand, Esquire

Dated: January 17, 2024

**CERTIFICATION OF VERIFICATION AND NON-COLLUSION**

I am the Plaintiff in the above entitled action. I have read the complaint and know its contents. The contents are true of my own knowledge ~~01/15/2024~~ except as to matters stated on information and belief, and, as to such matters, they are true to the best of my knowledge and belief.

  
\_\_\_\_\_  
**Jesse M. O'Brien**

01.17.2024  
Date