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Our File No.: 5814.0001

<p>MELISSA MATHEWS, Plaintiff, vs. CITY OF BAYONNE; JAMES M. DAVIS, individually and in his official capacity, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ESSEX COUNTY DOCKET NO.: ESX-L-8672-25 <i>CIVIL ACTION</i> PLAINTIFFS' PRE-TRIAL INFORMATION EXCHANGE, PURSUANT TO <u>R. 4:25-7(b) & APPENDIX XXIII</u> TRIAL: FEB. 9, 2026</p>
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In accordance with Rule 4:25-7(b), Appendix XXIII of the New Jersey Rules of Court, Plaintiff, Melissa Mathews (“Plaintiff”), submits the following as her Pre-Trial Information Exchange:

1. Plaintiff's Proposed Witnesses

Melissa Mathews
c/o Juan C. Cervantes, Esq.
3349 Highway 138, Bldg. C, Ste. D
Wall, NJ 07718

Friday Mathews
c/o Juan C. Cervantes, Esq.
3349 Highway 138, Bldg. C, Ste. D
Wall, NJ 07718

Sharon Nadrowski
124 Avenue A
Bayonne, NJ, 07002

Joseph DeMarco
59 Old Colony Road
Bernardsville, NJ 07924

Terrence Malloy
40 Galleria Drive
Mays Landing, NJ 08330

Richard Bielinski
11254 Duncan Dr.
Fisher, IN 46038

Jennifer Bielinski
11254 Duncan Dr.
Fisher, IN 46038

Edward Smith
12 Roosevelt Terrace
Bayonne NJ 07002

Deirdre Healey
17 Center Lane
Bayonne NJ 07002

Frank Detto
1 Mackenzie Ter
Morganville, NJ, 07751

Vincent Bonaccolta
Office of the Hudson County Prosecutor
595 County Avenue
Secaucus, NJ 07094

Kiersten Pentony
State of New Jersey Office of the Attorney General
Richard J. Hughes Justice Complex
25 Market St
Trenton, NJ 08611

Ross Portner
State of New Jersey Office of the Attorney General
Richard J. Hughes Justice Complex
25 Market St
Trenton, NJ 08611

Thomas Mahoney
Department of Justice District of New Jersey
970 Broad St #806
Newark, NJ 07102

Dr. David Port, M.D.
155 E. 91st Street (1-D)
New York, NY 10128

Dr. Paul Hriso, M.D.
354 Avenue C #2
Bayonne, NJ 07002

Kristen Szczech
354 Avenue C #2
Bayonne, NJ 07002

Royal A. Bunin
The Wynnewood House, Suite 109
300 East Lancaster Avenue
Wynnewood, PA 19096

Dr. Jarrett N. Tosk, M.D.
Medico-Legal Evaluations, PA
615 Hope Road
Building 3A, 2nd Floor
Eatontown, NJ 07724
c/o Juan C, Cervantes,

James M. Davis
630 Avenue C
Bayonne, NJ 07002

John Coffey
630 Avenue C
Bayonne, NJ 07002

Donna Russo
630 Avenue C
Bayonne, NJ 07002

Timothy Boyle
630 Avenue C
Bayonne, NJ 07002

Mark Bonamo
630 Avenue C
Bayonne, NJ 07002

Eduardo Ferrante
630 Avenue C
Bayonne, NJ 07002

Donna Mauer
630 Avenue C
Bayonne, NJ 07002

Joseph Bolowski
630 Avenue C
Bayonne, NJ 07002

John Armstrong
630 Avenue C
Bayonne, NJ 07002

Joseph Bankert
630 Avenue C
Bayonne, NJ 07002

Christopher Patella
630 Avenue C
Bayonne, NJ 07002

Susan Ferraro
630 Avenue C
Bayonne, NJ 07002

Trecia Henry
630 Avenue C
Bayonne, NJ 07002

Suzanne Cavanaugh
630 Avenue C
Bayonne, NJ 07002

Thomas Cotter
630 Avenue C
Bayonne, NJ 07002

Anthony Kufta
630 Avenue C
Bayonne, NJ 07002

Amy Gajewski
630 Avenue C
Bayonne, NJ 07002

Plaintiffs expressly reserve the right to name and call additional witnesses, either on direct or rebuttal, as the evidence and proofs may require, or not call any of the witnesses named above.

2. Plaintiffs' Proposed Exhibits

- P-1 Text messages between Melissa Mathews and Donna Russo dated May 30, 2020
- P-2 Email from Melissa Mathews to Donna Russo and John Coffey dated May 31, 2020
- P-3 Email from Melissa Mathews to Donna Russo and John Coffey dated July 6, 2020
- P-4 Email from Melissa Mathews to Donna Russo and John Coffey dated October 2, 2020
- P-5 Email from Melissa Mathews to Donna Russo, dated August 3, 2020
- P-6 Letter from James Davis to Melissa Mathews dated October 27, 2020
- P-7 Letter from James Davis to Timothy Boyle dated January 7, 2021
- P-8 Letter from James Davis to Melissa Mathews dated January 7, 2021
- P-9 Letter from James Davis to Melissa Mathews dated January 18, 2021
- P-10 Email from Melissa Mathews to James Davis and Donna Russo dated January 25, 2021
- P-11 Affidavit of Melissa Mathews dated August 11, 2020
- P-12 Email from Donna Russo to Jennifer Sebik dated August 13, 2020
- P-13 Emails between Melissa Mathews, Timothy Boyle, et al., dated August of 2020
- P-14 Emails between Melissa Mathews and Dennis Enright dated August 22, 2020
- P-15 Text messages between Melissa Mathews and Donna Russo dated September 19, 2020
- P-16 Emails between Sharon Nadrowski and Timothy Boyle dated September 28, 2020
- P-17 Email from Timothy Boyle to Melissa Mathews, et al., dated October 1, 2020

P-18 Email from Maria Kaniewski to Melissa Mathews dated October 1, 2020

P-19 Text messages between Melissa Mathews and Donna Russo dated October 24, 2020

P-20 Emails between Melissa Mathews, Donna Russo, and Sharon Nadrowski, January of 2021

P-21 Emails between Melissa Mathews and Donna Russo dated January 26, 2021

P-22 Emails between Melissa Mathews and Donna Russo dated March 12, 2021

P-23 Email between Donna Russo and Melissa Mathews dated February 10, 2021

P-24 Email from Melissa Mathews to Donna Russo dated May 5, 2021

P-25 Emails between Melissa Mathews and Donna Russo dated May 11, 2021

P-26 Email from Melissa Mathews to Donna Russo dated August 7, 2021

P-27 Memorandum from Melissa Mathews to James Davis dated February 17, 2021

P-28 Emails between Melissa Mathews and Donna Mauer dated March 3, 2021

P-29 Text messages between Melissa Mathews and Donna Russo dated May of 2021

P-30 Letter from Melissa Mathews to James Davis dated June 4, 2021

P-31 Letter from Timothy Boyle to James Davis dated September 24, 2021

P-32 Email from Melissa Mathews to Donna Russo and John Coffey dated September 24, 2021

P-33 Text messages between Melissa Mathews and Donna Russo dated August 31, 2020

P-34 NJ Unemployment Form for Michelle D'Angelo dated September 24, 2020

P-35 Final Notice of Disciplinary Action for Michelle D'Angelo dated February 9, 2021

P-36 Photograph of paystub for Michelle D'Angelo dated December 30, 2021

P-37 Memorandum from Melissa Mathews to James Davis dated February 18, 2022

P-38 Emails between Melissa Mathews, Donna Russo, and Donna Mauer, February of 2022

P-39 Email between Melissa Mathews and Susan Gonzalez dated September 18, 2020

P-40 Email from Melissa Mathews to Sean Kemp dated February 25, 2021

P-41 Email from Melissa Mathews to Sean Kemp dated April 14, 2021

P-42 Email from Melissa Mathews to Ann Nowak and Sharon Nadrowski dated March 24, 2021

P-43 Email from John Coffey to Melissa Mathews, et al., dated January 27, 2022

P-44 Emails between Melissa Mathews and Allan Roth dated January of 2022

P-45 Email from Melissa Mathews to John Coffey dated February 14, 2022

P-46 Emails between Melissa Mathews and Donna Russo dated June and July of 2021

P-47 Emails between Melissa Mathews and Donna Russo dated August 4, 2021

P-48 2021 Best Practices Form for Bayonne City

P-49 Email from Melissa Mathews to Donna Russo and Donna Mauer dated November 11, 2021

P-50 Email from Donna Mauer to Madeline Medina dated November 12, 2021

P-51 Emails between Melissa Mathews and Donna Mauer dated November 12, 2021

P-52 Letter from James Davis to Melissa Mathews dated June 27, 2022

P-53 Letter from Melissa Mathews to James Davis dated June 30, 2022

P-54 Letter from James Davis to Melissa Mathews dated June 30, 2022

P-55 Bayonne Employee Handbook

P-56 Medical Records of Dr. David Port

P-57 Medical Records of Dr. David Hriso

P-58 Medical Records of Kristen Szczech

P-59 Medical Records of Dr. Jo-Ann Shakarjian

P-60 Report of Dr. Jarrett N. Tosk, dated March 15, 2024

P-61 Report of Royal Bunin, dated March 25, 2024

P-62 Recording of James Davis, dated February 4, 2021

Plaintiffs reserve the right to amend, supplement and/or identify additional exhibits and expressly reserves the right to rely upon any exhibits marked and entered into evidence, by any

party, and to identify and rely upon any additional documents not otherwise set forth herein as the evidence and proofs may require.

3a. Deposition Excerpts

Deposition of Ann Nowak, 12/07/2023, Entire Transcript

To be supplied.

Plaintiffs reserve the right to amend, supplement and/or identify and read additional portions of deposition testimony, or foregoing reading in the above, as the matter is ongoing and as evidence and proofs may require.

3b. Interrogatory Excerpts

To be supplied.

Plaintiffs reserve the right to amend, supplement and/or identify and read additional portions of interrogatory responses, or foregoing reading in the above, as the matter is ongoing and as evidence and proofs may require.

4. In *Limine*/Trial Motions

- I. To permit plaintiff to employ leading questions pursuant to *N.J.R.E 611(c)* when calling witnesses affiliated with defendant in her case in chief. *See attached brief.*
- II. To permit plaintiff to read in the deposition testimony of deceased witness Ann Nowak. *See attached brief.*

Plaintiffs expressly reserve the right to amend this response, including upon review of Defendant's Pretrial Information Exchange and any *in limine*/evidentiary motions Defendants may submit and/or to make and pursue any appropriate applications, both evidentiary and substantive, as the matter is ongoing and as evidence and proofs may require.

5. Anticipated Evidentiary Issues

Please see Plaintiffs' Response to Section 4 immediately above.

Plaintiffs expressly reserves the right to amend this response, including upon review of Defendant's Pretrial Information Exchange and any *in limine*/evidentiary motions Defendant may submit and/or to make and pursue any appropriate applications, both evidentiary and substantive, as the matter is ongoing and as evidence and proofs may require.

6. Stipulations Reached on Contested Procedural, Evidentiary and Substantive Issues.

None at the present time.

7. Plaintiffs' Proposed *Voir Dire* Questions

In addition to the usual and customary *voir dire* questioning, Plaintiffs request that the Court please include the following proposed questions:

1. Have you ever lived in the City of Bayonne? If yes, have you ever voted in an election in the City of Bayonne? If yes, have you ever voted for or against any individuals involved in this lawsuit?
2. Have you ever been exposed to any media covering any named individuals involved in this lawsuit? If yes, what specifically?

8. Plaintiffs' Requested Model Civil Jury Charges

1.10A-I	–	Instructions to Jurors Before Voir Dire
I.11.A-F,H-I	–	Preliminary Charges (After Jury Sworn)
1.12A	–	Purpose of Charge
1.12B	–	Role of the Judge
1.12C	–	Role of the Attorneys
1.12D	–	Role of the Jury
1.12E	–	The Evidence
1.12G	–	Burden of Proof
1.12I	–	Preponderance of the Evidence
1.12J	–	Direct and Circumstantial Evidence or Inferences
1.12K	–	Credibility (Short Version)
1.12N	–	Liability
1.12P	–	No Passion, Prejudice, Bias or Sympathy
1.12Q	–	Deliberations
1.12S	–	Verdict
1.12T	–	Jury Verdict Sheet
1.12V	–	Communications with the Court
2.21	–	New Jersey Law Against Discrimination (LAD)
2.25	–	Hostile Work Environment (Sexual, Age and Other Harassment)
2.32	–	New Jersey Conscientious Employee Protection Act (CEPA)
2.11	–	Wrongful Discharge in Violation of Public Policy
2.33	–	Wrongful Discharge; Mitigation of Economic Damages
2.34	–	Mitigation of Damages – Front Pay
2.35	–	Past Emotional Distress in an Employment Law Case
2.36	–	Past and Future Emotional Distress in an Employment Law Case
8.10	–	Damages – Effect of Instructions

Plaintiffs expressly reserve the right to amend this response, as the evidence and proofs presented at the time of trial may require, and/or as may be discussed at the Charge Conference.

9. Plaintiffs' Special Requests to Charge

None at the present time.

Plaintiffs, however, expressly reserve the right to amend this response, as the evidence and proofs presented at the time of trial may require.

10. Plaintiffs' Proposed Jury Verdict Form

Plaintiff's proposed Verdict Form will be separately submitted.

Respectfully Submitted,
MAGGS McDERMOTT & DiCICCO, LLC
Attorneys for Plaintiff(s)

Juan C. Cervantes

JUAN C. CERVANTES, ESQ.

Dated: February 2, 2026

I. THE PLAINTIFF MAY EMPLOY LEADING QUESTIONS ON DIRECT EXAMINATION WHEN CALLING WITNESSES AFFILIATED WITH THE DEFENDANT.

Under New Jersey law, a litigant is entitled to call an adverse party or anyone identified with an adverse party as a witness. *N.J.S.A. 2A:81-6, see also, Lerman v. Lerman*, 245 N.J. Super. 312, 313 (Ch. Div. 1990); *Becker v. Eisenstodt*, 60 N.J. Super. 240, 248-249 (App. Div. 1960). The calling party is afforded broad latitude in its direct examination of the adverse party or witness. *State v. Rajnai*, 132 N.J. Super. 530, 541 (App. Div. 1975). Furthermore, the plain terms of *N.J.R.E. 611(c)* indicate that a plaintiff can ask leading questions of a defendant on direct examination:

when a party calls an adverse party or a witness identified with an adverse party, or when a witness demonstrates hostility or unresponsiveness, interrogation may be by leading questions, subject to the discretion of the court. (emphasis added).

This rule clearly does not require a showing of unresponsiveness or hostility before a witness identified with an adverse party may be asked leading questions on direct examination. Rather, the rule explicitly provides that leading questions may be utilized when a party calls either an adverse party “or” a witness identified with an adverse party “or” a when a witness demonstrates hostility “or” unresponsiveness. *N.J.R.E. 611(c)*.

The unambiguous terms of *N.J.R.E. 611(c)* establish four (4) classes of witnesses that can be asked leading questions on direct examination. They are (1) adverse parties; (2) witnesses identified with adverse parties; (3) a witness who demonstrates hostility; or (4) a witness who demonstrates unresponsiveness. These are separate and distinct categories of witnesses. If a litigant had to demonstrate that all witnesses were hostile before using leading questions then the

rule would be rendered meaningless. There would simply be one class of witnesses and the singling out of adverse parties or those identified with an adverse party would be rendered superfluous.

Secondary authority discussing *Rule 611(c)* makes it clear that a party does not have to establish that a witness identified with an adverse party is hostile before they can be examined by leading questions. This authority notes that “the rule expressly permits leading questions on direct when an adverse party or a witness identified with such adverse party is called to testify.” *Biunno, New Jersey Rules of Evidence*, comment 8 to *N.J.R.E. 611(c)*, page 676 (Gann, 2015). Therefore, it is not the label of “direct” or “cross” examination that controls the use of leading questions, rather, it is the relationship between the witnessed called and the party calling them that determines whether or not leading questions may be used on direct examination.

A look at how the federal courts have applied *Fed. R. Evid. 611(c)*, which the New Jersey rule is modeled after, *See*, 1991 Supreme Court Committee Comment, further establishes that leading questions are automatically permitted during direct examination of an adverse party. The federal courts have determined that *Fed. R. Evid. 611(c)* requires the court to “allow a plaintiff who calls an adverse party on direct to use leading questions in his examination because the witness is presumed hostile.” *Elgabri v. Lekas*, 964 F.2d 1255, 1260 (1st Cir. 1992). “The new rule was thus designed to enlarge the categories of witnesses automatically regarded as adverse, and therefore subject to interrogation by leading questions without further showing of actual hostility.” *Ellis v. City of Chicago*, 667 F.2d 606, 612-613 (7th Cir. 1981), *see also; Haney v. Mizell Mem'l Hosp.*, 744 F.2d 1467, 1478 (11th Cir. 1984) (holding that it was error for the district court to deny a party’s use of leading questions on direct examination of an adverse party until actual hostility was established).

Rule 611(c) expressly authorizes the examination of hostile witnesses by leading questions. The rule directs that two kinds of witnesses are presumed to be hostile, an adverse party and a witness identified with an adverse party. Therefore, when a party calls an individual identified with an adverse party, such as an employee or representative, direct examination may be conducted by leading questions. Accordingly, the plaintiff respectfully requests that she be allowed to examine the Defendants, employees of City of Bayonne and former employees of City of Bayonne by leading questions.

II. PLAINTIFF SHOULD BE PERMITTED TO READ IN DEPOSITION TESTIMONY OF ANN NOWAK.

Rule 4:16-1(c) provides that the deposition transcript of third-party witness may be admissible at trial if the witness has died. Unfortunately, Ann Nowak, whose deposition was taken by the parties on December 7, 2023, passed away during the pendency of this action. Therefore, Plaintiff respectfully requests that her testimony be read to the jury in accordance with the Rule. Plaintiff submits that any evidentiary issues within the deposition transcript itself can be conferred upon by the parties with any disagreements submitted for the Court's ruling prior to the reading of the transcript.