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DIANE RUBERTON, DONNA FETZER &  
HEATHER MCMANUS,

Plaintiffs,

v.

DAMON G. TYNER (Individually and in his  
Official Capacity as the Atlantic County  
Prosecutor), CARY SHILL (Individually and  
in his capacity as First Assistant Prosecutor),  
MARIO FORMICA (Individually and in his  
capacity as Deputy First Assistant Prosecutor),  
THE COUNTY OF ATLANTIC, THE  
ATLANTIC COUNTY PROSECUTOR, THE  
ATLANTIC COUNTY PROSECUTOR'S  
OFFICE, DENNIS LEVINSON, ATLANTIC  
COUNTY EXECUTIVE, FRANK D.  
FORMICA, ATLANTIC COUNTY  
FREEHOLDER, JOHN DOES 1-3, Jointly,  
severally and independently,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION

ATLANTIC COUNTY

Docket No.:  
Civil Action

**COMPLAINT**

**JURY DEMAND**

**AND**

**DEMAND FOR LITIGATION HOLD TO  
PREVENT DESTRUCTION OF EVIDENCE  
AND DOCUMENTS**

Plaintiffs, Diane Ruberton (residing in Atlantic County), Donna Fetzer (residing in Atlantic County), and Heather McManus (residing in Salem County), by way of their Complaint against the Defendants, say as follows:

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## **I. PRELIMINARY STATEMENT**

The last thing the women bringing this lawsuit wanted to do was to bring this lawsuit. They attempted many times, in vein to remedy, correct and finally hire legal counsel to meet with Defendant Tyner and Atlantic County Counsel, James Ferguson in an effort to make things right. Instead, Defendant Tyner fired one of the women, Diane Ruberton right in the middle of an investigation into her claims by a retired Judge that Atlantic County counsel had hired to review some of the matters. This lawsuit therefore was brought and alleges retaliation for whistleblower protection activity under the New Jersey Conscientious Employee Protection Act and the New Jersey Civil Rights Act and for gender-based employment practices violations under the New Jersey Law Against Discrimination.

As a legal officer for the State of New Jersey, Tyner—a political appointee who never practiced criminal law when he was in private practice at a politically-connected South Jersey law firm—is charged with upholding the criminal laws of the state. Yet, as alleged by Plaintiffs in this suit—three highly credentialed, highly accomplished, and well-respected women who served in various managerial positions in the ACPO—Defendant-Tyner and at least two male prosecutors who served under him created a toxic culture for plaintiffs, as women, at the ACPO. Among other things, this culture favored men over plaintiffs, turned a blind eye to instances and reports of sexual harassment and gender discrimination, and permitted retaliation against plaintiffs because they dared question and objected to this culture and/or the perceived unlawful activities of Defendant-Tyner (including terminating the employment of one of the Plaintiffs here).

The allegations in this complaint make clear that one of Atlantic County's most powerful legal officers has shown a clear disregard for the rule of law while he is employed by the taxpayers of Atlantic County. Plaintiffs do not take lightly the gravity and seriousness of the allegations in this complaint. They filed this lawsuit because they realize that they are in a unique position to put an end to unlawful conduct. The following includes the outline of the Plaintiffs' collective action against Defendants that more than sufficiently state a claim per R. 4:6-2 (e) and does not necessarily include all facts and matters on which these claims are founded.

## **II. VENUE AND JURISDICTION**

1. This matter is properly before the State Superior Court, Law Division pursuant to R. 4:3-1 (a) 4.
2. Venue is properly laid in Atlantic County pursuant to R. 4:3-2(a) 2.
3. Plaintiff reserves the right to move before this Court to transfer venue to the South Jersey sister Vicinage XV, Gloucester, Cumberland/Salem Counties where Plaintiff-Heather McManus resides and because of its close proximity and convenience for the parties and witnesses.
4. This Court has subject matter jurisdiction over Plaintiff's claims under N.J.S.A. 10:6-2, N.J.S.A. 10:5-13, N.J.S.A. 34:19-1 et seq. and other applicable law.
5. This Court has personal jurisdiction over Defendants pursuant to N.J. Ct. R. 4:4-4 and other applicable law.

### **III. THE PARTIES AND KEY WITNESSES**

6. Plaintiff, Diane Ruberton (“Ruberton” or “Plaintiff-Ruberton”), is a woman and attorney, licensed and in good standing in the state of New Jersey, who, at times relevant to the Complaint, was an employee of the Atlantic County Prosecutor’s Office.
7. Plaintiff, Donna Fetzer (“Fetzer” or “Plaintiff-Fetzer”), is a woman and attorney, licensed and in good standing in the state of New Jersey, who, at times relevant to the Complaint, is an employee of the Atlantic County Prosecutor’s Office.
8. Plaintiff, Heather McManus (“McManus” or “Plaintiff-McManus”), is a woman and a Lieutenant of County Investigators, who, at times relevant to the Complaint, was an employee of the Atlantic County Prosecutor’s Office.
9. At all times relevant to the Complaint, Plaintiff-Ruberton, Plaintiff-Fetzer, and Plaintiff-McManus (collectively referred to herein as “Plaintiffs”) were employees and individuals within the meaning of the New Jersey Law Against Discrimination (“LAD”) and public employees within the meaning of other relevant laws.
10. At all times relevant to the Complaint, Plaintiffs were long-term government employees and career criminal law professionals, collectively, with more than sixty (60) years experience, who have worked under various County Prosecutors and/or Law Enforcement Directors/ Agencies. They never had reason or cause to file a civil action against any other Prosecutor/Head of a Criminal Agency—until now.
11. At all times relevant, Plaintiffs have established and continued records of exemplary, effective and conscientious performance in the public positions they occupied within the ACPO.



12. Defendant the County of Atlantic (the “County”) is a County government operating under the County Executive form of government. The charter provides for a directly elected executive and a nine-member Board of Chosen Freeholders.
13. Defendant County employs the Atlantic County Prosecutor and all persons employed within the Atlantic County Prosecutor’s Office such as assistant prosecutors and investigators, including the Plaintiffs, at all times relevant to this Complaint.
14. Defendant Atlantic County Prosecutor and/or the Atlantic County Prosecutor’s Office (“ACP” and/or “Defendant-ACPO”) is a constitutionally created and established office and position/office whose functions and duties are established by statute, N.J.S.A. 2A:158-5.
15. At all times relevant to this Complaint, the Atlantic County Prosecutor is charged with “Special Responsibilities” and ethical obligations in accordance with the New Jersey Rules of Professional Conduct.
16. At all times relevant to this Complaint, the Atlantic County Prosecutor must adhere to the special standards as identified in the American Bar Association, New Jersey Attorney General Directives on Prosecutor Ethics, Criminal Justice Standards, Rule 3-1 et seq. which require that his conduct be beyond reproach, that he refrain from criminal activities and that he avoid even the appearance of impropriety.
17. The standards that apply to the County Prosecutors, including the Atlantic County Prosecutor, are heightened standards intended to guarantee integrity, accountability and public confidence in the position.

18. The overwhelming importance of having able, honest and honorable persons in all appointive posts, such as that of the Atlantic County Prosecutor is self-evident.
19. The ACP and ACPO are located in Atlantic County, New Jersey at 4997 Unami Blvd., Suite 2, Mays Landing, NJ 08330, and were, at times relevant to the Complaint, the employer of all Plaintiffs.
20. The County and/or the ACPO is, at all times relevant to the Complaint, a public body and employer subject to suit under the New Jersey Law Against Discrimination (“NJLAD”), and the Conscientious Employee Protection Act (“CEPA”).
21. Defendant, Damon Tyner (“Tyner” and/or “Defendant-Tyner”), is at all times relevant to the Complaint, a supervisor delegated with authority to act as a policy maker and decision maker on behalf of Atlantic County to make, enact, revise and implement policies, rules, decisions and/or directives on behalf of the ACPO.
22. Defendant-Tyner is a public servant appointed to serve a five (5) year term and his position is funded by taxpayer dollars.
23. Defendant-Tyner is responsible to operate the ACPO as a government agency to benefit the people of Atlantic County—not himself.
24. Defendant-Tyner is a resident of the State of New Jersey employed by the County and/or the ACPO and was, at all times relevant to the Complaint, a supervisor of Plaintiffs.
25. At all times relevant to the Complaint, Defendant-Tyner was acting as a policy maker of the Atlantic County Prosecutor’s Office and/or Atlantic County and under color of state law and in this capacity was aided and abetted in his ability to discriminate and/or engage in unlawful activities.

26. Defendant Cary Shill (“Shill” or “Defendant-Shill”) is an employee of Defendant-ACPO, and the First Assistant Prosecutor at the ACPO.
27. At all times relevant to the Complaint, Defendant-Shill is an employee and acting as an agent with delegated supervisory powers on behalf of the Atlantic County Prosecutor and/or the County of Atlantic.
28. Defendant-Shill is charged with acts which aided and/or abetted Tyner in unlawful activities.
29. At all times relevant to the Complaint, Defendant-Shill was acting as an assistant policy maker of the Atlantic County Prosecutor’s Officer and/or Atlantic County and under color of state law.
30. Defendant Mario Formica (“Mario Formica” and/or “Defendant-Mario Formica”) is an employee acting as an agent with delegated supervisory powers on behalf of the Atlantic County Prosecutor and/or the County of Atlantic, and a Deputy First Assistant Prosecutor at the ACPO.
31. Defendant-Mario Formica is charged with acts which aided and abetted Tyner in unlawful activities.
32. At all times relevant to the Complaint, Defendant-Mario Formica was acting as an assistant policy maker of the Atlantic County Prosecutor’s Officer and/or Atlantic County and under color of state law.
33. Defendant Dennis Levinson is the Atlantic County Executive, an elected public service position whose duties are prescribed under the Optional County Charter Law, N.J.S.A. 40:41A-1 et seq. and under the Atlantic County Charter and Code, Chapter 4.

34. At all times relevant to the Complaint, Defendant-Levinson was acting as the Executive Director and policy maker for Atlantic County and under color of state law.
35. Defendant Frank Formica (“Freeholder Formica”) is an Atlantic County Freeholder recently re-elected on November 16, 2018 to serve a term for three years on the Atlantic County Board of Freeholders but who announced on November 18, 2018 his candidacy to run for Assembly in 2019.
36. At all times relevant to the Complaint, Defendant-Formica was acting as the Chairman of the Freeholder Board and policy maker for Atlantic County and under color of state law.
37. Frank Formica is the brother of Mario Formica.
38. Defendant Mario Formica has flaunted and/or invoked his relationship to Freeholder Formica for personal and professional gain and benefit within the Atlantic County Prosecutor’s Office.
39. On at least one occasion Mario Formica pulled out a photograph of Freeholder Formica depicted with then- Governor Chris Christie and warned “doesn’t she [Ruberton] know who she is dealing with,” or words to that same effect-implying that she would be the subject of adverse employment action by and/or directed by Freeholder Formica because of his power and/or influence to negatively affect her job.
40. John Does 1-3 refer to those who did, or may have had a role in, the policy making, discriminatory, and/or retaliatory decisions alleged herein this Complaint.
41. Seth Levy (“Levy”) is an employee of Defendant-ACPO, and a Chief Assistant Prosecutor.

42. James F. Ferguson (“Ferguson” and/or “County Counsel”) is the chief legal officer of the County and/or the head of the Atlantic County Law Department which provides legal advice to all county departments including that of the ACPO as well as represents the county and its employees in matters of civil litigation.
43. “The Judge” is a retired State Superior Court judge retained by the County through Ferguson as an agent on behalf of the County to conduct an investigation relevant to this matter.
44. The investigation for which the Judge was retained by the County involved complaints and matters of public concern as expressed by the Plaintiffs but was never properly completed by thorough interview of the plaintiffs, relevant witnesses, review of all relevant records and was not free from bias and taint.
45. At all times relevant to the Complaint, Defendants and all other herein named employees and agents of Defendant-ACPO and/or the County were acting within the course and scope of their employment and with delegated and/or supervisory authority.

#### **IV. STATEMENT OF CLAIMS**

##### **A. *Generally***

46. This civil action, brought by Plaintiffs, alleges on behalf of all Plaintiffs, **unlawful retaliation** in the form of a pattern of harassment in violation of the Civil Rights Act, N.J.S.A. 10:6-2 et seq. (“CRA”) for violation of New Jersey State Constitutional rights found at Article I, ¶¶1, 2, 6, 18 and 19 for having objected to, spoken out against, expressed opposition to, and for having disclosed corruption, fraud, political patronage decisions, abuse of statutory prosecutorial authority and discretion and gross

mismanagement based on political motives and aspirations, dishonesty and deliberate misuse of political and legal authority by Defendant-Tyner and participated in by Defendants Shill and Formica and ratified, adopted and supported by Defendants-Atlantic County, Levinson and Freeholder Formica.

47. Plaintiff-Ruberton alleges **unlawful retaliation** in the form of wrongful termination in violation of the New Jersey Conscientious Protection Act, N.J.S.A. 34:19-1 et seq. (“CEPA”) for having reported gender discrimination, a “protected activity.”

48. Plaintiff-Ruberton alleges **post-termination retaliation** as an independently actionable event under the CEPA, *Roa v. Roa*, 200 N.J. 1225 (2010); *Green v. Jersey City Bd. of Educ.*, 177 N.J. 434 (2003) for denying her retired law enforcement/prosecutor credentials as is the long standing practice in Atlantic County; and because the Defendants- Policy Makers for having taken a very public stand following her termination from employment in support of Defendant Tyner and against her without having possessed sufficient facts and without having conducted an effective and thorough investigation into her allegations regarding Defendant-Tyner thereby damaging her good reputation and standing in her community.

49. Plaintiff-McManus alleges **unlawful retaliation** in the form of constructive discharge-forced retirement due to the actions of Defendant-Tyner in having created adverse working conditions making her employment intolerable for having reported gender discrimination, a “protected activity” in violation of the New Jersey Conscientious Protection Act, N.J.S.A. 34:19-1 et seq. (“CEPA”); *Sure Tan, Inc. v. NLRB*, 467 U.S. 883 (1984)(employer constructively discharged their undocumented alien employees through

reporting the employees to the INS in retaliation for participating in union activities); *Donelson v. DuPont*, (employee constructively discharged when employer causes employee's mental disability in retaliation for "protected activity" under CEPA); *Goss v. Exxon Office Systems co.*, 747 F.2d 885 (3d Cir. 1984) (employer constructively discharged employee when supervisor described her as "wacko," pregnant and likely to leave); *Colores v. Board of Trustees*, (2003) 105 Cal. App. 4th 1293 [130 Cal. Rptr. 2d 347] (plaintiff felt compelled to resign and constructively discharged in light of veiled threat of termination from employment in retaliation for reporting misappropriation of funds); *Bowman v. State Bank of Keysville*, 331 S.E. 2d 797 (Va. 1985) (holding that an employer may not threaten to discharge an employee to control their vote as a shareholder in a corporation).

50. Plaintiff-Fetzer alleges **unlawful retaliation** in the form of harassment through wrongful intimidation tactics and threats to her employment for having reported gender discrimination under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 (d).
51. Plaintiff Fetzer alleges **gender discrimination** under the New Jersey Equal Pay Act ("NJEPA" and/or "EPA"), N.J.S.A. 10:5-12 (t).
52. Plaintiffs all allege **gender discrimination** for disparate treatment in the form of disparate treatment in terms of job duties, assignments and overtime opportunities in violation of the New Jersey Law Against Discrimination. N.J.S.A. 10: 5-1 et seq.
53. Plaintiffs, Ruberton and Fetzer allege **gender discrimination** for disparate treatment in the form of unlawful demotion in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10: 5-1 et seq.

54. Plaintiff-McManus alleges **gender discrimination** for disparate treatment in the form of unlawful refusal to promote in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10: 5-1 et seq.
55. Plaintiffs all allege **gender harassment** in the form of a pattern of severe and/or pervasive actions by defendants that created a hostile and ostracizing environment in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10: 5-1 et seq.
56. Plaintiffs all allege **failure and/or refusal to investigate** by not taking adequate and appropriate steps to conduct a fair, objective, thorough and meaningful investigation into their complaints and concerns in violation of N.J.S.A. 10:5-1 et seq and N.J.S.A. 10:6-2 et seq.
57. Plaintiffs all allege **failure and/or refusal to promptly and effectively remediate** the complaints and concerns made by plaintiffs in violation of N.J.S.A. 10:5-1 et seq and N.J.S.A. 10:6-2 et seq.
58. Plaintiffs all allege that upper management acted to **conspire, aid and abet one another** to violate the rights of plaintiffs as a continuing course of conduct in violation of N.J.S.A. 10:5-1 et seq and N.J.S.A. 10:6-2 et seq.

## V. BACKGROUND

### A. *The Atlantic County Prosecutor's Office and the Historical Gender Wage Gap Amongst Women and Men in the Workforce*

59. The ACPO dates back to 1837 when the County seat was established in Mays Landing.
60. For more than one hundred fifty (150) years, the Atlantic County Prosecutor's Office has never had a female Prosecutor or First Assistant or Deputy First Assistant.
61. The Prosecutors for the County in recent history dating back to 1985 include:



- a. Jeffrey Blitz-1985-2007
- b. Theodore Housel- 2007-2012
- c. James McClain- 2012-2016<sup>1</sup>
- d. Damon Tyner-2017-present

62. For more than one hundred fifty (150) years, the Atlantic County Prosecutor's Office has never had a female Chief of Detectives or Deputy Chief of Detectives.

63. The number of women in lead, leadership and higher ranking roles within the ACPO has, historically, been scarce with little to no effort made by Defendants ACPO and the County to actively recruit qualified female candidates, hire qualified female candidates and/or promote qualified female candidates to such leadership roles, despite the indisputable fact that working women comprise a sizeable chunk, if not the majority, of the population.

64. According to the [U.S. Department of Labor](#), 70 million women age 16 and over were employed in 2016 in both full- and part-time jobs. That's nearly 60 percent of the female population.

65. In Atlantic County, more than 50% of the population are women; indeed, more than 50% of the population in New Jersey are women. See, [Report on the Status of Women in Atlantic County 2015](#) conducted by Stockton University and supported by the Atlantic

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<sup>1</sup> While holding her First Assistant Prosecutor position, Diane Ruberton served as the Acting Prosecutor to fill the vacancy by Prosecutor McClain from August 2016 through March 2017 when he left to become a State Superior Court Judge. Ruberton's appointment by McClain was the first time in Atlantic County history that a woman held the First Assistant Prosecutor position. Defendant-Tyner demoted Ruberton to Deputy First Assistant but this position too was first occupied by a woman when Diane Ruberton held the position until Tyner fired her after reporting gender discrimination in the ACPO.

County Executive Dennis Levinson, the Freeholders of Atlantic County, the Institute for Women's Policy Research and by the Atlantic County Advisory Commission on Women.

66. The Atlantic County Advisory Commission on Women consists of commissioners appointed by the County Executive and whose members include a female County Freeholder.<sup>2</sup>

67. The various divisions/departments within the ACPO consists of the Legal Division, Office Victim Witness Advocacy and Criminal Investigations Division.

68. The Legal Division is organized into various units including the Executive Staff, Grand Jury Unit, the Screening Unit, the Trial Unit, the Family Court Unit (including the Juvenile & Domestic Violence Units), the Special Litigation Unit, the Special Investigations Unit, Gang, Guns and Narcotics Unit, and the Major Crimes Unit.

69. The ACPO also consists of the Criminal Investigations Division which is organized into various units including the Major Crimes Unit, the Crash Investigations Unit, Gangs, Guns & Narcotics Unit, the High Technology Criminal Investigations Unit, the Special Investigations Unit, Official Corruption/Financial Crimes Unit, the Bias Crimes Unit, the Evidence Unit, the Forensics Unit and Intelligence and Homeland/School Security Unit.

70. The above fifteen-plus (15+) units/divisions/departments are all headed by men with the exception of three (3) units (Gangs, Guns & Narcotics, Screening and Family).

71. The ACPO has been plagued with internal gender bias through the stereotype of women and jobs that has disadvantaged women employed by the ACPO and the County. As a

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<sup>2</sup> In 2014, the Atlantic County Advisory Commission on Women (ACACW) requested the assistance of Stockton University faculty and students in developing a report on the status of women and girls in Atlantic County.

result, fewer women have held leadership roles institutionally and fewer women have received pay commensurate, overall, with that of the males employed within the ACPO.

72. The Executive staff of the ACPO is entirely male.

73. The Executive leadership of the County, including the County Executive and County Legal Counsel has been occupied by *only* males since these positions were created in the 1800's.

74. Indeed, within the Detective Division, there were a total of seventy five (75) detectives yet only two (2) women hold a supervisory position, and this number has reduced to one (1) woman with a supervisory position, with the forced retirement of Plaintiff-McManus.

75. There are no female Captains within the ACPO.

76. There are no female lieutenants within the ACPO since the departure of Plaintiff-McManus.

77. Since the departure of Plaintiff-McManus from the ACPO, there are now three female sergeants.

78. The budget allocated towards the ACPO for 2018 provides an approximate \$14,220,000.00 from which \$7,735,868 is distributed for salaries for pay to men and \$5,402,988 for salaries for pay to women.

79. Overall, the men within the ACPO earn salaries greater than that of the women for work that is substantially similar.

80. The Plaintiffs received pay that was/is lower than that received by male counterparts despite performing work that was/is substantially similar and/or more and/or better quantity and quality than that performed by male counterparts.

81. Indeed, when Defendant-Tyner became Prosecutor, he demoted Plaintiff-Ruberton and Plaintiff-Fetzer and another female lawyer within the ACPO. He did not demote any male lawyers.
82. When Defendant-Tyner became Prosecutor, he did not demote the only male member of the Executive staff - the Chief of Detectives.
83. When Defendant-Tyner became the Prosecutor, he permitted pay increases and raises to be given to male counterparts. He did not permit pay increases and raises for Plaintiffs and other similarly situated females.
84. The ACPO has also afforded opportunities to work with the FBI task force and other prestigious training programs to more men proportionately than women.
85. The mentoring, training and preparing of women for leadership roles is disproportionately low compared to that afforded to men by the ACPO.
86. For instance, the number of women from the ACPO who have attended the FBI National Academy is disproportionately less than the men that have been afforded the opportunity.
87. Additionally, overtime pay is disproportionately provided to men rather than women in terms of opportunity to work it and earn it.
88. Indeed, in or about March 2018, Defendant-Tyner transferred male detectives to the more prestigious units of Major Crime Unit ("MCU") and Guns, Gangs and Narcotics Unit ("GGNU"). Many female detectives who were more experienced than the transferred male detectives were left to work in the less-prestigious trial team and grand jury units.
89. The MCU and GGNU offer more overtime opportunities. In addition, more detectives get promoted out of those units than out of the Trial and Grand Jury Units.

***B. Prosecutor McClain Attempted to Remedy Gender Inequalities***

90. From 2010 through 2012, James McClain (“McClain”) served as First Assistant Prosecutor.
91. During his time as First Assistant Prosecutor and Prosecutor, McClain sought to appoint qualified women to positions of significant responsibility and authority within the ACPO.
92. Defendant-Shill and Defendant-Formica resented and harbored animosity towards McClain, and in turn, towards Ruberton for and/or because of McClain’s efforts to remedy historically notorious gender inequality within the ACPO.
93. In or about 2010, McClain advocated to then Prosecutor Theodore Housel (“Housel”) to promote Plaintiff-Ruberton and another female to the positions of Chief Assistant Prosecutor.
94. Plaintiff-Ruberton and the other female were promoted to the positions of Chief Assistant Prosecutor under the tenure of Housel through the effort of McClain.
95. Prior to their promotions there were seven (7) Chief Assistant Prosecutors. Only two of those prosecutors were women despite the fact that the entire legal staff was split fairly equally between men and women Assistant Prosecutors. (more than 50% of the legal staff was female).
96. In 2012, after McClain was appointed Acting Prosecutor, he continued to attempt to correct gender disparity at the ACPO.
97. Within the Legal Division, he appointed Plaintiff-Ruberton as the first female First Assistant Prosecutor, placing her second in line of the chain of command for authority within the ACPO.

98. McClain increased the percentage of female lawyers in supervisory positions from 42% (under Housel) to 57%. By 2018, under Defendant-Tyner, that number has dropped to 50%.
99. Together, McClain and Ruberton sought to ensure gender equality in both the Legal and Detective Divisions.
100. In or about 2012, Plaintiff-McManus was promoted to the position of Lieutenant under McClain.
101. From about 2012 through early 2017, McClain and Ruberton hired 18 detectives, 7 of them females.
102. During the above time period, the hiring process for detectives positions required an interview before a Review Board that consisted of Lieutenants and Captains from the ACPO.
103. The process also involved the selection of candidates by the Review Board for a second interview with the Chief of Detectives who then recommended which of those candidates should be interviewed by the County Prosecutor.
104. McClain and Ruberton always ensured there was a female superior officer as a member of the Review Board in an effort to recruit qualified female candidates who would then have the potential to take on leadership and supervisory roles within the agency.
105. Defendant-Tyner has eliminated the Review Board process for hiring detectives, thereby eliminating the active input and recruitment by any female superior officer in the selection of qualified candidates.

106. In or about 2010, the New Jersey State Chiefs of Police were retained to administer an oral interview and evaluation for the promotional process for the position of Sergeant. This process was implemented by previous Prosecutors for the purpose of attempting to make the selection and ultimate promotion process better in terms of fairness, merit and qualifications.
107. Defendant-Tyner eliminated the State Chiefs of Police interview and evaluation process for the promotion of sergeants.
108. In 2014, Plaintiff-Fetzer was promoted to the position of Chief Assistant Prosecutor under McClain.
109. From 2012 through 2016, McClain hired 26 new assistant prosecutors, 12 of whom were women, in an effort to ensure gender equality and the existence of a qualified population of female assistant prosecutors who would ultimately be experienced and qualified to be promoted to positions of prestige and authority.
110. From September 2017 through July 2018, Defendant-Tyner hired 5 assistant prosecutors, 4 of whom were female.
111. However, under Defendant-Tyner, the females were hired at the contractual starting salary of \$56,000 while the lone male was hired with a starting salary of \$59,427—a premium of approximately six percent above the contractual starting salary.
112. This is the first time since at least 2007 that an attorney has been hired above the contractual salary, regardless of experience.
113. While Defendant-Tyner has hired entry level female employees, he has failed to maintain or increase the percentage of women in supervisory roles.

114. The importance and benefits of employee promotions is not only a way to add more responsibilities to an employee, and hence, increase earning levels, but is a major form of boosting employee motivation and morale.
115. Moreover, as a result of studies showing that workplace discrimination negatively affects women's earnings and opportunities are the gender wage gap (e.g., [Peterson and Morgan](#), 1995), the dearth of women in leadership ([Eagly and Carli](#), 2007), and the longer time required for women (vs. men) to advance in their careers ([Blau and DeVaro](#), 2007), New Jersey [Governor Phil Murphy enacted as of July 2018, the Equal Pay Act](#), enacted a sweeping pay equity law, to help fight gender inequity and support equal pay for women in New Jersey.
116. Under McClain's tenure as Prosecutor, women made the most advancements to leadership roles in the history of the ACPO and a concerted effort was made to attempt to close the gender pay gap within the ACPO.

## **VI. QUALIFICATIONS AND EMPLOYMENT HISTORY OF PLAINTIFFS**

### ***A. Plaintiff-Diane Ruberton***

117. In or about May 1992, Plaintiff-Ruberton graduated from Villanova University with dual Bachelor degrees in Psychology and Sociology (with a concentration in Criminal Justice). She was inducted into the Order of Omega and Omicron Delta Kappa honor societies.
118. From 1992 through 1995, Plaintiff-Ruberton attended Widener University School of Law. While at Widener, Plaintiff-Ruberton was on the Dean's List every semester.



119. She graduated *cum laude* and ranked in the top 10% of her class. She was awarded the Chadwick Scholarship and was an Associate Editor of the Widener Law Symposium Journal.
120. Upon graduation, Plaintiff-Ruberton clerked for two Superior Court criminal judges, Judge Arthur Guerrero and Judge Robert Neustadter.
121. In or about November 1996, Plaintiff-Ruberton was hired as an Assistant District Attorney in the Delaware County District Attorney's Office, located in Media Pennsylvania. She was initially assigned to the Appellate Unit but was quickly promoted to the Pre-trial Unit.
122. In or about April 1997, Plaintiff-Ruberton voluntarily left the employ of Delaware County for a position as Assistant County Counsel in the Atlantic County Law Department.
123. As Assistant County Counsel she engaged in defense litigation for personal injury, workers' compensation and prisoner's rights litigation in state and federal courts.
124. She was also assigned to litigate bail forfeitures for the County.
125. In less than a year, she successfully collected over \$500,000 in revenue for the County that delinquent bail bondsmen owed the County.
126. She was also the first person in the State to secure a court order to shut down a bail bond company from doing business for failing to pay delinquent forfeiture obligations.
127. In or about October 1999, Plaintiff-Ruberton was hired by the ACPO as an Assistant Prosecutor assigned to the Grand Jury Unit.

128. In or about May 2001, she was transferred to the Trial Unit, a position of increasing responsibility.
129. In or about February 2004, she was transferred to the Special Investigations section, a position with significantly more responsibility that is considered a prestigious assignment.
130. In the Special Investigations section, Plaintiff-Ruberton was one of only four Assistant Prosecutors in the office who handled specialized prosecutions for child abuse, white collar crime, official corruption and vehicular homicide. During this time she was selected to attend specialized trainings such as Forensic Child Interviewing and Prosecuting DUI Homicides.
131. In or about January 2006, Plaintiff-Ruberton was promoted to Trial Team Leader. As Team Leader, she tried a number of high profile homicide cases assigned specifically to her by then First Assistant Prosecutor Murray Talasnik.
132. In or about October 2010, Plaintiff-Ruberton was transferred back to the Special Investigations section. She was assigned to supervise the Fatal Crash Investigations Unit.
133. Plaintiff-Ruberton was the only Assistant Prosecutor within the ACPO Fatal Crash Investigations Unit.
134. In that unit, she managed all aspects of the cases from investigation and charging through trial.

135. Plaintiff-Ruberton was also assigned as the only Assistant Prosecutor in the Official Corruption and Internal Affairs Unit and reported directly to then First Assistant Prosecutor James McClain.
136. On or about December 15, 2010, Plaintiff-Ruberton was promoted to Chief Assistant Prosecutor and assigned responsibility for the juvenile, bias crimes, financial crimes, insurance fraud, official corruption and internal affairs units.
137. In recognition of the quality of her work product and her managerial abilities, Plaintiff-Ruberton was given responsibility for more units than any other Chief Assistant Prosecutor in the ACPO.
138. On or about August 22, 2012, Plaintiff-Ruberton was appointed Acting First Assistant Prosecutor by then Acting Prosecutor James McClain.
139. At that time, she was the youngest person, and only woman, to have been appointed as Acting First Assistant Prosecutor in the history of Atlantic County.
140. Plaintiff thereafter assumed the duties of First Assistant which included, among other things, the supervision of the entire legal staff and the victim/witness staff; administrative duties relating to personnel, budget, and community engagement; handling civil litigation claims against the office; and writing and implementing law enforcement policies.
141. The position also included the direct supervision and sole responsibility for the Official Corruption and Internal Affairs Units.
142. In this capacity, Plaintiff-Ruberton supervised all official corruption investigations and prosecuted those cases through trial, oversaw and reviewed all internal affairs

complaints filed in every municipal police department in Atlantic County, and was the only person to oversee and supervise all police involved shootings investigations.

143. At the same time, Plaintiff-Ruberton retained responsibility for multiple vehicular homicide cases, including trials.
144. She also served as an executive board member for the Atlantic County Coalition for a Safe Community.
145. In or about 2012, Plaintiff-Ruberton was certified by the Supreme Court as a certified criminal trial attorney. This is a designation given to less than 3% of all attorneys licensed in the state of New Jersey.
146. At that time she was only the third attorney, and the only woman, in the ACPO to receive such a designation. She was re-certified in 2017.
147. At times relevant to this Complaint, Plaintiff-Ruberton was an instructor for Internal Affairs Investigations Training for police officers from Atlantic, Cape May and Ocean counties.
148. She was also certified as an instructor for the New Jersey Attorney General's Advocacy Institute to teach trial advocacy to new assistant prosecutors. She has been selected as an instructor and panelist for the New Jersey Institute of Justice.
149. On or about August 2, 2016, Plaintiff-Ruberton was appointed Acting Atlantic County Prosecutor. She was the youngest person ever appointed as Acting Prosecutor in Atlantic County and the only woman so appointed in the history of the ACPO.
150. As Acting Prosecutor, Plaintiff-Ruberton was the chief law enforcement officer in Atlantic County and oversaw 17 municipal police departments and the Atlantic County

Sheriff's Office. She created and implemented law enforcement policies and directives for Atlantic County and oversaw a staff of over 175 employees.

151. In October 2017, Plaintiff-Ruberton received the Hero Award from the Atlantic City Police Foundation for her leadership during the high profile shooting of an Atlantic City police officer in September 2016.
152. She also received Certificates of Recognition from Congressman Frank LoBiondo, Assemblyman Chris Brown and the Atlantic County Board of Freeholders.
153. At all times relevant, Plaintiff-Ruberton was qualified to hold the position of Prosecutor, First Assistant Prosecutor and any other legal position within the ACPO.

***B. Plaintiff-Heather McManus***

154. In or about 1992 Plaintiff-McManus graduated from Glassboro State College (Rowan University) with a Bachelor's Degree in Political Science.
155. In or about 1993 she became a police officer when she was hired as the first female assigned to the Delaware River and Bay Authority ("DRBA") Troop 1 Highway Patrol Unit (Delaware Memorial Bridge).
156. In or about 1999 Plaintiff-McManus earned a Masters of Science in Public Administration from Wilmington University.
157. During her time with the DRBA she received the lifesaving award, Professional Service Awards, Merit Award, the Mothers Against Drunk Driving Award (MADD) and was honorably recognized by the DRBA Board of Commissioners for her work at the DRBA.

158. Plaintiff-McManus has been assigned and worked the Highway Patrol function, Aviation Unit, Accreditation Unit, Recruitment Unit, and Training Unit.
159. She has experience as an assistant Accreditation Manager responsible for assisting in the writing of law enforcement policies.
160. Plaintiff-McManus was promoted to the rank of Sergeant at the DRBA in 1999.
161. In addition to her assignment in Troop 1, she was also assigned as the relief Troop Commander at the Cape May-Lewes Ferry during the summer.
162. Plaintiff- McManus has earned numerous accolades and accomplishments during her career with the DRBA, including but not limited to selection to attend the Administrative Officers Command (“AOC”) School, a part of the Southern Police Institute at the University of Louisville. SPI is recognized as one of the premier law enforcement programs in the United States. SPI has run continuously since 1951 and has trained thousands of police executives over that time. She graduated on the Dean’s List from the 101st AOC.
163. In or about 2002 Plaintiff-McManus was hired by the Cumberland County Prosecutor’s Office (“CCPO”).
164. Plaintiff-McManus earned an excellent reputation working for the CCPO where she ultimately was tasked with the responsibility of investigating government corruption and handled several sexual assault investigations involving law enforcement officers resulting in criminal charges.
165. Plaintiff-McManus was also placed on call and responded to homicides and unattended deaths for CCPO, working with local agencies with these investigations.

166. In or about 2003 Plaintiff-McManus received a phone call from a high-ranking officer of the Atlantic County Prosecutor asking her to come in for an interview because the office was looking to hire an “aggressive” female investigator.
167. In or about January 2004 Plaintiff-McManus was offered a position as a detective with the ACPO where she was assigned to the trial unit.
168. In or about 2005 she was transferred to the Financial Crimes Unit. During this time Plaintiff-McManus worked closely with other police agencies investigating financial crimes involving technological and bank fraud.
169. She received honorable recognition by the Police Benevolent Association (“PBA”) for her work.
170. During this time, Plaintiff-McManus received an Atlantic County Chief’s Lifesaving Award and additional recognition by the PBA for her exemplary work performance.
171. In or about November 2006 Plaintiff-McManus was transferred to the Official Corruption Unit.
172. During this time Plaintiff-McManus investigated numerous allegations of official and governmental misconduct, arresting and charging many governmental officials, including elected officials, police officers, and government employees.
173. In or about 2010 Plaintiff-McManus was promoted to the rank of Sergeant with ACPO.
174. Thereafter, in 2010 Plaintiff-McManus was chosen to investigate what became known as the “Atlantic City Firemen’s Case.” This case involved an Atlantic City Fireman who allegedly sexually assaulted four (4) young African American females at a fire

station. During the course of this investigation ACPO Chief of Detectives told Plaintiff-McManus that she was specifically selected for this assignment and that it would be one of the most important investigations she would ever handle at the ACPO.

175. In or about 2012 Plaintiff-McManus was promoted to the rank of Lieutenant.
176. Thereafter, she was assigned to and was responsible for various criminal investigative units such OCU, FCU, Insurance Fraud, Internal Affairs, Confidential Funds and at times Computer Crimes.
177. During this time Plaintiff-McManus also reviewed all Internal Affairs files that were sent to ACPO and regularly answered questions involving Internal Affairs.
178. Plaintiff-McManus was also in charge of administering and documenting the “confidential funds” budget. In fact she was entrusted with the responsibility of cashing checks, paying out and receiving monies, as well as keeping track of and documenting the expenditures.
179. During her time as both a Sergeant and Lieutenant she was responsible for investigators from the ACPO who were assigned to the FBI Government Corruption Task Force. She supervised investigators with security clearances who handled sensitive investigations.
180. Plaintiff-McManus has vast experience and expertise in training officers in Internal Affairs Investigations, crisis negotiation, holds a certification as a New Jersey Certified Emergency Medical Technician and has logged countless volunteer hours in leadership roles within volunteer fire departments and rescue squads.



181. Plaintiff-McManus held the position of Secretary for the Mid-Atlantic Association of Women in Law Enforcement for over ten (10) years. In 2013 she received a Lifetime Achievement Award for her service to law enforcement from the Mid-Atlantic Association of Law Enforcement.
182. Plaintiff McManus was informed by Prosecutor McClain that as a result of her exemplary work performance she was to be promoted to the rank of Captain upon the next opening for this position which was anticipated upon the retirement of the Captain of the Unit.
183. Also during his tenure and after an investigation involving a well-known and politically connected police officer, McClain told Plaintiff-McManus that she was someone he could assign to and trust in either an operational or administrative capacity.
184. At all times relevant to this Complaint, Plaintiff-McManus is qualified to perform the duties of Captain and is the highest ranking female detective in the ACPO.

***C. Plaintiff-Donna Fetzer***

185. In or about 1991, Plaintiff-Fetzer graduated from Rutgers University, New Brunswick.
186. In or about 1994, she graduated from Rutgers School of Law, Camden.
187. In or about 1994-1995, Plaintiff-Fetzer clerked for the late Presiding Judge, Honorable Robert Page in Camden, NJ.
188. In or about December 18, 1995, Plaintiff-Fetzer was hired by the Atlantic County Prosecutor's Office as an Assistant Prosecutor.

189. From about 1995-2000 Plaintiff-Fetzer was assigned to the Grand Jury Unit where she presented cases to the Grand Jury for Indictment but also tried cases and handled motions for the Trial Teams.
190. In 2000 Plaintiff-Fetzer was transferred to the Narcotics Unit and in 2002 she was additionally assigned to the Computer Crimes Unit under former Chief Assistant Prosecutor, Dean Wykes.
191. Plaintiff-Fetzer was the first Assistant Prosecutor assigned to the Computer Crimes unit and was instrumental in continuing its development, after the retirement of Dean Wykes.
192. For the approximate 7 years of her beginning tenure with the ACPO, Plaintiff-Fetzer tried cases, supervised investigations, made critical decisions regarding charging and handling confidential informants, she reviewed and prepared Search Warrants, Consensual Intercepts and Communication Data Warrants.
193. In 2009 Plaintiff-Fetzer requested to be transferred to a Trial Team as a supervising attorney in order to gain additional experience.
194. Plaintiff-Fetzer was granted the request and assigned as Team Leader for Team B, where she handled a variety of cases and enjoyed mentoring less-experienced assistant prosecutors.
195. In or about May 1, 2014 Plaintiff-Fetzer was promoted to Chief Assistant Prosecutor (“CAP”)
196. As a CAP, Plaintiff-Fetzer supervised the Grand Jury and Domestic Violence Units.

197. In or about 2016 Plaintiff-Fetzer was transferred as CAP of the newly established Screening Unit.
198. Plaintiff-Fetzer became instrumental in creating the new Screening Unit for the Office as a result of the Bail Reform Law.
199. The Screening unit was responsible for training not only the assistant prosecutors, but the entire police force in Atlantic County.
200. In addition, Plaintiff-Fetzer was instrumental in creating the Screening Bail Reform Directive for the County.
201. Plaintiff-Fetzer is the lead legal contact for Bail Reform in Atlantic County.
202. Plaintiff-Fetzer regularly attends meetings with the Municipal and Superior Court staff affording her valuable hands-on interaction, networking and experience with municipal and superior court judges and personnel.
203. Plaintiff-Fetzer is also asked at times to attend the Domestic Violence (“DV”) Working Group meetings, even though she no longer supervises DV.
204. Although Plaintiff-Fetzer no longer supervises the Grand Jury or Domestic Violence Units, she is frequently consulted on issues involving those units due to her vast knowledge and expertise.
205. Plaintiff-Fetzer’s duties in those units have included providing legal advice to state, county and local law enforcement agencies. As a result, she has developed a positive reputation among those agencies and continues to be sought out to provide legal advice.

206. During her tenure at the Office, Plaintiff-Fetzer has attended numerous advanced training courses, which include several by the National District Attorney's Association.
207. Over the course of 23 years Plaintiff-Fetzer has tried a multitude of complex cases including Homicides, Child Luring and Aggravated Assaults.
208. Plaintiff-Fetzer is qualified to hold any position within the Executive Staff.
209. Plaintiff-Fetzer is qualified to earn more money consistent with those of male counterparts who receive higher pay despite the fact that Plaintiff-Fetzer performs substantially similar work and at times, more and higher-qualified work than male counterparts.

***D. Damon Tyner- Lawyer, Politician, Judge, Prosecutor***

210. In or about 1993 Defendant-Tyner graduated from Howard University with a Bachelor of Science.
211. In or about 1997 Defendant-Tyner graduated from Widener University Law School.
212. Defendant-Tyner is born and raised in Atlantic City, NJ.
213. In or about 1999 Defendant-Tyner began practicing law employed by the Fox Rothschild law firm.
214. In or about 2003 Defendant-Tyner and his wife, Nicole Milan-Tyner bought a 2,200 square foot home for their primary residence located at 114 Rainbow Trail, Egg Harbor Township, NJ 08234 in a municipality within Atlantic County, NJ.
215. Defendant-Tyner and his wife bought the home for \$275,819.

216. In order to buy the home, Defendant-Tyner was required to get a loan from a bank and mortgaged the property.
217. The loan amount for home as described above was \$220,650. Defendant-Tyner and his wife were obligated to pay the loan as required by mortgage and lending documents.
218. At this time, Defendant-Tyner and his wife borrowed an additional \$27,500 as a line of credit secured by their home.
219. The value and/or fair market value for this home has remained below \$290,000 every year since the home was purchased by Defendant-Tyner and his wife including up to and through today.
220. In or about 2005, Defendant-Tyner ran as a Democratic candidate for the New Jersey General Assembly, District 2. He lost the election.
221. In 2005 Defendant-Tyner and his wife entered into a new mortgage with a new lender for \$308,000.
222. In or about 2006 through 2012 Defendant-Tyner was employed with the law firm of Parker McCay, P.A. law in Atlantic City, NJ.
223. Defendant-Tyner's practice at Parker McCay was noted as government, administrative law, arbitration and mediation, asset protection, banks and banking, civil rights, commercial litigation, commercial real estate, construction/development and education.
224. Defendant-Tyner did not practice criminal law while in private practice.
225. In or about March 2006 Defendant-Tyner and his wife sold the home they purchased (as mentioned above) to Tyner's father-in-law, Herbert Milan ("Milan") for \$425,000.

226. At this time, Defendant-Tyner had increased the mortgage on his home through additional loans against the house.
227. In March 2006 Defendant-Tyner owed \$308,000 on the home valued at \$270,000.
228. Milan was required to obtain a bank/lender loan to pay Tyner \$425,000.
229. The above transaction permitted Defendant-Tyner to pay off his mortgage of \$308,000 and net a profit of \$117,000 from this “sale.”
230. The paperwork completed by Milan shows that he misrepresented that the home was his primary residence.
231. At all times relevant, the home was the primary residence of Defendant-Tyner, his wife and children.
232. The property, however, then and now, has never been assessed for more than \$269,000.
233. The average sale price for homes in that area of comparable value in 2006 through today is \$270,000. The home is currently valued at \$278,000.
234. Defendant-Tyner and his wife did not move out of the property when it was sold to Milan and continued to reside in it with their children as their primary residence after the sale through to today.
235. Milan did not live in the house (described above).
236. Milan lived in a primary residence in Atlantic City at the time he bought Tyner’s home, and continued to live in his home in Atlantic City as his primary residence.
237. The purchase of the home valued at \$270,000-\$278,000 for \$425,000 was an intentional overvaluation of the house.

238. In September 2006, Milan sold the home back to Defendant-Tyner for \$1.
239. Milan certified that the total consideration paid for this sale was less than \$1,000 and that he, as the seller was not required to pay income taxes on the sale of property.
240. Clearly the transaction had more than a \$1 value.
241. This transaction was not an arms' length transaction.
242. The resale of the home by Milan to Defendant-Tyner for \$1 and the overvalue of the home at \$425,000 is a mortgage fraud.
243. In or about October 2006, after Defendant-Tyner paid Milan \$1 for the home, he also applied and received a mortgage for \$403,750.
244. Defendant-Tyner was required to pay Milan the amount of \$382,500 which was the amount that Milan borrowed to pay Tyner for the home.
245. In September 2007 Defendant-Tyner increased the loan from \$403, 750 to \$414, 627 by securing another mortgage.
246. In March 2009 Defendant-Tyner again increased the loan on his house to \$417,000 by securing yet another mortgage.
247. In March 2017 Defendant-Tyner defaulted on his mortgage caused the lender to file a lis pendens, or notice of foreclosure.
248. Misrepresentations and /or false statements made by Defendant-Tyner and Milan regarding the home's use as a primary residence by Milan to enable him to secure a loan for \$425,000 for the benefit of Tyner and his wife is considered mortgage fraud.
249. The overvaluation of the home by Defendant-Tyner and Milan resulted in Tyner paying off his original mortgage loan of \$225,000 and gaining/ obtaining the use of

new loan monies in the amount of \$200,000 (the difference between the \$425,000 sales price and the original loan/mortgage amount of \$225,000) based on a false value of the home as collateral.

250. Laws against mortgage fraud recognize transactions that constitute mortgage fraud which look much like the Tyner real estate transaction and which are commonly referred to as “Phantom Sales.”
251. A phantom sale typically involves an individual who transfers title to a property to fraudulently obtain funds via a mortgage loan.
252. Additionally, the laws recognize as a criminal transaction another scheme called “Property Flipping Fraud.” This scheme involves individuals buying a property amongst themselves to artificially inflate the value of the property.
253. The mortgage fraud by Defendant-Tyner, his wife and Milan, as described above, occurred at one of the most economically devastating times in the United States history resulting in what is widely known as the “2008 Housing Crisis.”
254. As described below, the above issues regarding mortgage fraud are relevant to this case in that Plaintiffs previously prosecuted a very similar case to that of Defendant-Tyner’s mortgage case and this was against an Atlantic County Investigator employed by the Atlantic County Prosecutor’s Office.
255. The Detective was convicted of conspiracy to commit bank fraud, see, [https://www.pressofatlanticcity.com/pac/former-atlantic-county-detective-sentenced-to-prison-for-mortgage-fraud/article\\_c84a524b-0a82-5826-a133-e5ea33f66c3e.html](https://www.pressofatlanticcity.com/pac/former-atlantic-county-detective-sentenced-to-prison-for-mortgage-fraud/article_c84a524b-0a82-5826-a133-e5ea33f66c3e.html)
256. Later, as a judge, Defendant-Tyner presided over the Borges mortgage fraud case.



257. Plaintiffs discovered the mortgage fraud issues about Defendant-Tyner after he became appointed as the Prosecutor for the ACPO and arranged for the information to be reported to the FBI.
258. It is well documented how mortgage fraud helped facilitate the 2008 Housing Crisis.
259. It is axiomatic that those charged with responsibility for upholding the law, as a lawyer and/or criminal law Prosecutor, are duty bound to not violate the laws.
260. In or about 2011 Defendant-Tyner was a 2011 Democratic candidate for District 2 of the New Jersey General Assembly. He lost that election.
261. Defendant-Tyner's running mate, James Whelan won re-election as New Jersey Senator in 2011.
262. Thereafter, Defendant-Tyner was recommended by Whelan for appointment to the Office of Administrative Law as a judge.
263. In or about 2012, Defendant-Tyner was appointed to the position of Administrative Law Judge.
264. In or about 2014 Defendant-Tyner was appointed to the New Jersey State Superior Court judiciary as a judge.
265. During his tenure as a State Superior Court Judge, Defendant-Tyner presided over the mortgage fraud case by the ACPO against ACPO Detective Betsy Borges.
266. The Betsy Borges criminal case contains facts regarding the mortgage fraud of which she was convicted that resemble facts which pertain to Defendant-Tyner's mortgage transactions.

267. On or about February 14, 2017, Defendant-Tyner was nominated to be the Atlantic County Prosecutor by Governor Christie.
268. The appointment was confirmed by the full Senate on March 14, 2017.
269. The appointment was sudden and wholly unexpected by employees of the ACPO.
270. On or about March 14, 2017 Defendant-Tyner was sworn in as the Atlantic County Prosecutor.
271. On this same date, a lis pendens action for foreclosure was filed by the lending company against Defendant-Tyner and his wife for default on the loan/mortgage on their home.
272. Top law enforcement officials such as the Prosecutor are to be free from financial compromise.
273. County prosecutors have large discretionary authority over public monies such as all of the public monies allocated for use by the ACPO by the County Freeholders, monies that are forfeited under the criminal laws and other funds.
274. The issues related to Defendant-Tyner's mortgage and financial affairs should have been revealed by Defendant-Tyner on the applications he was required to complete for his appointed positions to judge and prosecutor.
275. Upon information and belief, Defendant-Tyner failed to disclose the mortgage and financial discrepancies.

***E. Plaintiffs Attempted to Positively Address the Gender Disparity, Gender Pay Gap and Improprieties within the ACPO***

276. Governor Murphy has announced that it is the very important public policy of New Jersey to “close the wage gap because it is a critical issue for all women, future generations included, who aim to be the best they can be at their jobs.”
277. In or about February 2018, Plaintiffs sought to address gender inequality within the ACPO by requesting a meeting, initially, through Plaintiff-Ruberton, with Defendant -Tyner and County Counsel Ferguson.
278. Indeed, all Plaintiffs were prepared to address all the concerns they reasonable had with regard to the Defendants as set forth more specifically below when they were scheduled on July 3, 2018 to meet with a retired Judge acting as an agent and investigator for Atlantic County.
279. Unfortunately, less than four months later, in June 2018, Defendants reacted to the request to review the concerns regarding gender discrimination and public concern matters within the ACPO by firing Ruberton from employment.
280. Ruberton, prior to attempting to address gender discrimination and pay inequity, previously enjoyed a long, well-established, unblemished and reputable career in law enforcement for more than twenty (20) years.
281. Defendant-Tyner, as an appointed public servant, is required to receive, accept and constructively resolve matters of public concern, especially as it affects women in the workplace.

282. Instead, Defendant-Tyner has operated the position of Prosecutor in a manner inconsistent with the values of the public good in order to aggrandize himself, promote his political and personal gain and to reward friends and families who personally support him.

***F. Defendant Tyner Terminated the Employment of Ruberton, an Exemplary Employee with an Established, Lengthy Career as a Lawyer Within the ACPO Because She Expressed Concerns Consistent with the Strong Public Policy of New Jersey Announced by Governor Murphy to Close the Gender Wage Gap, Reported Gender Discrimination as to the Women in the Higher Positions within the Prosecutor's Office and Because Tyner, Shill and Formica Viewed Her As A Whistleblower and Someone Who Strictly Adhered to the Law, Policy and Prosecutorial Rules and Regulations***

283. On or about June 28, 2018, Defendant-Tyner, with the approval and/or ratification of Defendant ACPO and the County, terminated Plaintiff Ruberton's employment because she expressed matters of public concern.

284. Defendant-Tyner, as a public servant, must be open to complaint, criticism and/or concern which does not disrupt the operations of his office.

285. Defendant-Tyner cannot unlawfully terminate ACPO employees simply because he cannot handle perceived opposition to practices he engages in that are inimical to the advancement of women.

286. Defendant-Tyner unlawfully terminated Plaintiff-Ruberton because he could not handle perceived opposition to practices he engages in that are inimical to the advancement of women as expressed by Plaintiff.

287. Defendant-Tyner unlawfully terminated Plaintiff-Ruberton simply because he cannot handle perceived opposition to practices he engages in that are inimical to the law and order of the Office of the Prosecutor as expressed by Plaintiff.

288. Shortly after Plaintiff-Ruberton met with Defendant-Tyner and County counsel to report gender discrimination and unequal pay discrimination within the ACPO, Defendant-Tyner advised an Assistant Prosecutor that he wanted to fire Plaintiff-Ruberton.
289. Defendant-Tyner was warned against firing Plaintiff-Ruberton.
290. Defendant-Tyner was told by County officials that he was lucky he had not terminated Plaintiff-Ruberton's employment because it would have "cost the County a lot of money" shortly after he met with Plaintiff-Ruberton in March 2018 to discuss gender discrimination.
291. The County was aware that Defendant-Tyner intended to retaliate against Plaintiff-Ruberton because she had reported matters of public concern.
292. The Defendant, the County, Levinson and Chairman of the Board of Freeholders, Freeholder Formica took no steps to protect Plaintiff-Ruberton from retaliation following her meeting with Defendant-Tyner and County Counsel.
293. The Defendant, the County, failed to provide Defendant-Tyner with any training and/or effective guidance and/or counselling regarding discrimination and/or anti-retaliation policies and/or laws since he became the Atlantic County Prosecutor.
294. The Defendant, the County, did not provide notice to the State of New Jersey and/or the State of New Jersey Attorney General and/or the Division of Criminal Justice to report that its top law enforcement officer was the subject of a discrimination complaint.

295. The Defendant, the County, did not provide notice to the State of New Jersey and/or the State of New Jersey Attorney General and/or the Division of Criminal Justice to report that Tyner had fired Plaintiff-Ruberton in light of the prior discrimination complaints made by Plaintiff-Ruberton and in light of the fact that Plaintiff-Ruberton was fired in the middle of a discrimination investigation.
296. Since February 2018, Defendant-Tyner has been reported by others to have threatened to fire Plaintiff-McManus and Plaintiff-Fetzer because they brought forth issues consistent with the public policy of New Jersey regarding gender discrimination and abuse of power as more fully set forth below.
297. The named Defendants did not communicate with State of New Jersey and/or the State of New Jersey Attorney General and/or the Division of Criminal Justice to report that Defendant-Tyner had fired Plaintiff-Ruberton.
298. Defendant-Tyner did not seek approval from the State of New Jersey and/or the State of New Jersey Attorney General and/or the Division of Criminal Justice before he fired Plaintiff-Ruberton.
299. Defendant-Tyner did not seek approval from any of the named Defendants and/or persons identified in Section III. The Parties and Key Witnesses of this Complaint County before he fired Plaintiff-Ruberton.
300. The firing of Plaintiff-Ruberton reverberated throughout the ACPO sending a frightening and chilling message to all those who even considered speaking out to correct inequity in the workplace under Defendant-Tyner.

301. Each of the named Defendants knew that it would be likely that all, many and/or some employees within the ACPO would view the firing of Plaintiff-Ruberton as a retaliatory action.
302. The Defendants knew or should have known that Plaintiffs Ruberton, McManus and Fetzer were scheduled for a meeting on or about July 3, 2018 with the retired Judge retained to conduct an investigation into workplace complaints which had been initiated by Plaintiff-Ruberton.
303. As a result of the firing of Plaintiff-Ruberton, the Defendants took no steps to explain to and/or assure Plaintiffs McManus and Fetzer that their jobs were secure at any time following the firing of Plaintiff-Ruberton.
304. The Defendants took no steps to explain to and/or assure Plaintiffs McManus and Fetzer that no retaliation would be inflicted on them by any of the Defendants for McManus and Fetzer having joined Plaintiff-Ruberton in asserting workplace employment practices.
305. The Defendants took no steps to explain to and/or assure Plaintiffs McManus and Fetzer that no retaliation would be inflicted on them by any of the Defendants for Plaintiffs McManus and Fetzer having provided notice to the County of their independent claims of gender discrimination and other workplace violations.

***i. The County Conducted a Non-Bona Fide Investigation Into Ruberton's Reports of Gender Discrimination***

306. An ill-fated investigation was conducted by a retired criminal law judge, after Plaintiff-Ruberton met with Defendant-Tyner and Ferguson to address her concerns.
307. The Judge was unilaterally selected by County counsel.

308. As will be better explained below, while the Judge enjoyed a reputable career as a mostly criminal law judge, he is not trained to conduct gender-based discrimination investigations, especially one as complicated as a claim under the Equal Pay Act.<sup>3</sup>
309. This judge was not equipped nor did he have the resources to conduct a skilled, credentialed and/or complete investigation regardless of the number of interviews he may have conducted.
310. Indeed, the Judge never interviewed Plaintiffs McManus or Fetzer and never completed the investigation of Plaintiff-Ruberton's complaint.
311. The hallmark of a thorough, comprehensive and unbiased discrimination investigation and report begins with the employer selecting an objective, independent, credentialed, highly qualified expert.
312. In this case, the Judge selected by County counsel had a personal relationship with one of the named defendants and socialized with that defendant.
313. Had the meeting been permitted to move forward on July 3, 2018 as scheduled between the Judge, Ruberton, McManus and Fetzer, the Plaintiffs were prepared to

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<sup>3</sup> The recently enacted Diane B. Allen Equal Pay Act calls for equal pay for "substantially similar" work which is an entirely new legal standard. New Jersey has a strong law that protects employees against pay discrimination. For example, instead of requiring the employee to prove the reason she was paid less is discriminatory, New Jersey's Equal Pay Act places the burden of proof on the employer to show that the reason it paid the employee less than a male coworker was not discriminatory.

In addition, New Jersey's Equal Pay Act has a six year statute of limitations, making it possible to recover damages going back six years. It also provides for treble (triple) damages, meaning a plaintiff can recover three times their actual economic losses. Those remedies are on top of the right to recover damages for the emotional distress that a plaintiff experienced as a result of the discrimination, as well as the plaintiff's ability to recover attorney's fees.

This judge has no prior experience in examining, investigating and /or remediating Equal Pay Act claims. He did not consider the long arm reach of the Act as his inquiries were myopically constrained by direction from County counsel.



disclose to the Judge all matters of which they reasonably believed to be grossly problematic within the ACPO.

314. The Judge was not permitted to conduct a bona fide investigation by order of County counsel.
315. County counsel advised the Judge that the scope of the investigation was to be restricted to inquiry only about Plaintiff-Ruberton and her actions, interactions and communications in the workplace and with Defendants Tyner, Shill and Formica.
316. The investigation was limited in scope. It did not seek to inquire into how all other women employed in the ACPO were treated in the workplace with the exception of Plaintiff-Ruberton and a handful of women.
317. The investigation therefore was ineffectively non-comprehensive in scope and reach.
318. Gender discrimination is difficult to prove.
319. In determining whether gender based disparate discrimination has occurred, an investigation must explore in depth whether other similarly situated females in the workplace are discriminated against based on treatment and wages.
320. Indeed, gender discrimination of other women is relevant to both the character of the work environment and its effects on the complainant.
321. The investigation at hand was defeated in its purpose because it failed to consider relevant claims by Plaintiffs-Fetzer and McManus.
322. The investigation should have been deemed inconclusive.
323. The investigation did not explore unequal pay based on gender.
324. The investigation did not consider the "Totality of the Circumstances."

325. See, *Andrews v. City of Philadelphia*, 895 F. 2d 1469, 1484 (3d Cir. 1990). (“A play cannot be understood on the basis of some of its scenes but only on its entire performance, and similarly, a discrimination analysis must concentrate not on individual incidents, but on the overall scenario.”); *O’Rourke v. City of Providence*, 235 F. 3d 713, 730 (1st Cir. 2001)(by refusing to accept the totality of circumstances examination, a court “robs the incidents of their cumulative effect” and “ignores reality”).
326. Certainly all of the Plaintiffs and other women in the workplace should have been considered of a caliber akin to an expert in perceiving and articulating the meaning behind offensive workplace conduct and comments.
327. The retired judge, a male, did not assess the “real social impact of the workplace behavior within the ACPO” as it pertained to Plaintiffs Ruberton, McManus and/or Fetzer.

***ii. Tyner Unlawfully Fired Ruberton After She Turned Over a 21-Page Memorandum to the Investigating-Judge Which Detailed Ruberton’s Concerns Regarding Gender Discrimination***

328. In or about the week of June 28, 2018 the Judge turned over to Tyner a twenty one(21) page Memorandum (“Memo” or “the Memo”) authored by Plaintiff-Ruberton which detailed many of her concerns regarding gender discrimination by Defendant-Tyner.
329. The 21 page memo addressed “Salary for Attorneys.”
330. The 21 page memo set forth some events and examples of incidents that Plaintiff-Ruberton characterized as gender discrimination and hostility.

331. Upon receipt of the Memo by Defendant-Tyner, Defendant-Tyner called Plaintiff-Ruberton into an office and told her that her services were no longer needed.
332. The Judge had not yet even fully investigated the factual allegations contained within the Memo.
333. Plaintiffs McManus and Fetzer were thwarted in their effort to participate in an interview with the Judge which had been scheduled for July 3, 2018 when Defendant-Tyner fired Plaintiff-Ruberton on or about June 28, 2018.
334. The actions by Tyner were an intentional effort to intimidate Plaintiffs McManus and Fetzer and place them in fear for their positions.
335. It is hopeful that the notice and filing of this Complaint thwarts any intent by Defendant-Tyner to terminate the employment of Plaintiff-Fetzer.
336. Since the termination of Plaintiff-Ruberton's employment, Defendant-Tyner has, however, taken a series of actions designed to subtly, but inevitably exercise power and control for purposes of intimidating Plaintiff-Fetzer
337. Defendant-Tyner unlawfully retaliated against not only Plaintiff-Ruberton when he fired her, he retaliated against Plaintiffs McManus and Fetzer through fear and intimidation for having attempted to speak out on matters of public concern.
338. The actions of Defendant-Tyner in firing Plaintiff-Ruberton combined with the inactions of all Defendants in keeping silent and in failing to communicate to Plaintiffs McManus and Fetzer anything to signal to them that they should not be in fear as a result of Plaintiff-Ruberton's firing, effectively silenced them from speaking out any further on matters of public concern.

339. The investigating Judge was therefore forced to make conclusions based on insufficient and tainted evidence.
340. Yet, after Plaintiff-Ruberton was fired, a specious finding of no discrimination was rendered by the Judge.
341. In March 2018, when the New Jersey Equal Pay Act was passed by the Legislature, employers, including Atlantic County, as well as investigators who are charged with investigating complaints of unequal pay based on gender, were placed on notice that once a complaint is made involving salary and/or wage discrepancy, the employer must determine if there is any intended and even unintended disparity between similarly situated employees.
342. Under the Equal Pay Act, even unintentional wage disparity is unlawful.
343. To be compliant, an employer must conduct a pay audit.
344. A pay audit should collect job descriptions, employee qualifications, and performance information on all employees and be able to identify employees who have similar jobs, duties, responsibilities.
345. A pay audit should consider all forms of compensation, like commissions and bonuses. Similarly, it needs to account for what an employee actually does at work, not what their job description says.
346. None of this was done by or on behalf of the Defendants when faced with the complaint made by Plaintiff-Ruberton.
347. The Defendants never conducted an audit of similarly situated employees in the ACPO.

348. The investigation was wholly ineffective and is incapable of withstanding legal scrutiny.
349. The “investigation” reaped no meaningful results<sup>4</sup> because some witnesses who were interviewed by the Judge were fearful to admit to gender inequity as Plaintiff-Ruberton had because interviews were conducted with the knowledge and/or participation of Defendant-Tyner, and/or in close physical proximity to Defendant-Tyner.
350. For example, Defendant-Tyner interrupted the Judge’s meeting with one female employee.
351. Defendant-Tyner further tainted the investigation process when he contacted some witnesses personally before the Judge met with the witnesses.
352. Defendant-Tyner told some witnesses that the Judge was going to speak to them because “Diane must have put you on her list” in an effort to intimidate witnesses and prevent them from speaking freely.
353. The investigation of witnesses was conducted in the ACPO.
354. Defendant-Tyner should have had no involvement at all in interacting with any witness in the investigation regarding the investigation.
355. The “investigation” reaped no meaningful results for another reason. Some witnesses were limited by the Judge in providing statements because they had been instructed by the Judge that he was restricted by Atlantic County counsel from asking questions of

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<sup>4</sup> Upon information and belief, at least three witnesses, all women employees or prior employees were not permitted by the Judge to speak about their own issues involving gender discrimination.

witnesses that would have elicited information about their personal experiences in the workplace.

356. The Judge instructed various witnesses to discuss what they knew or observed about Plaintiff-Ruberton and only Ruberton.
357. Of course, witnesses could not personally attest to events that occurred outside their presence.
358. Most of the gender based acts of which Plaintiff-Ruberton reported occurred outside the presence of witnesses but involved she, Defendants Tyner, Shill and/or Formica.
359. Defendant-Shill harbored resentment and animosity towards Plaintiff-Ruberton because she had been promoted over him during the Prosecutor McClain administration, an administration which had attempted to remedy gender discrimination.
360. Defendant Formica and Shill are friends and share a common dislike for Plaintiff-Ruberton.
361. Defendant-Formica harbored resentment and animosity over Plaintiff-Ruberton because she had been promoted over him during the Prosecutor McClain administration which had attempted to remedy gender discrimination.
362. Defendants Shill and Formica belonged to a long and established informal system and friendship through which men used their positions of influence to help other men within the ACPO.

363. Defendants and Shill were Formica clung to the vestiges of the once male-dominated, male leadership and male dominated-appointed Prosecutors that permeated the history of the ACPO.
364. Defendants Shill and Formica resented McClain for having moved more women into positions of authority.
365. Indeed, Defendants Shill and Formica resented Ruberton for having been promoted by McClain to the position of First Assistant Prosecutor, and then Acting Prosecutor.
366. Investigators skilled and specially trained in gender bias are required, in keeping with their expertise, to seek out information not readily forthcoming.
367. A skilled investigator of gender inequity recognizes and takes proactive steps to account for the unique experiences other people besides the claimant may have in the workplace.
368. A skilled investigator of gender inequity recognizes, in many cases, that there may be a “think leader, think male” stereotype that can disrupt the ability to build inclusive workplaces and that gender bias can become embedded in work processes and systems and must adjust questioning for same.
369. A skilled investigator of claims under the gender discrimination disparate pay and treatment laws requires an investigation of other *similarly situated* women in the workplace to determine their experiences with the accused as well requiring the employer to produce payroll records, job descriptions, overtime records, promotions and promotional opportunity records and other objective data for an effective analysis of gender discrimination.

370. The Judge did not request and thus did not analyze pay records and other objective data to conduct an analysis of gender discrimination.
371. Additionally, an objective investigation was doomed from the start in light of certain facts that knowingly or unwittingly but necessarily skewed the investigation results in favor of defendants.
372. These facts include the Judge being financially tied to the County for other matters and the Judge's personal friendship with Defendant-Formica.
373. If any person or entity accused of gender discrimination has any control over the investigator, then the investigator is not a neutral, objective investigator.
374. Indeed, the day that Defendant-Tyner fired Plaintiff-Ruberton, Defendant-Tyner had already accepted an application for employment for an Assistant Prosecutor position from an applicant who listed the Judge as his/her primary reference for the job.
375. The Judge's son and the applicant attended law school together and maintained a friendship.
376. The job application was not notarized—as required—by an independent notary.
377. Instead, it was notarized by Defendant-Tyner's secretary.
378. Indeed, on the heels of the termination of Plaintiff-Ruberton's employment, the applicant was hired.
379. The hiring of this applicant creates an appearance of impropriety in that a job was made available for a family friend of the Judge through the termination of Plaintiff-Ruberton, whom the Judge was charged with interviewing as part of his investigation into Plaintiff-Ruberton's complaints.



380. In or about August 2018, the County, through Ferguson, reported to the County Freeholders that there was no gender discrimination and that all of Plaintiffs' claims were baseless.
381. However, Ferguson did then and continues now- at the time of the filing of this lawsuit- not to possess adequate knowledge and facts to make such declarations to government public representatives of the people.
382. Defendant-Tyner too, reported the outcome of the Judge's finding to employees in the ACPO. Yet the County has refused to provide a copy of the report to the Plaintiffs.
383. Defendant-Tyner is responsible for allowing a leak throughout the ACPO regarding the unreliable and questionable investigative "findings" of the Judge so as to permeate the entire organization with the message that those who speak out will reap the same terrifying emotional and economic disaster he caused Plaintiff-Ruberton.
384. Plaintiffs have requested to know the results of the investigation and the materials relied upon by the County that has enabled Defendants to falsely publicize that no gender inequity was found to exist within the ACPO.
385. The County to this day has failed to hire an auditor, economist or any other expert in the field of data science to conduct a gender pay audit.
386. One practical and increasingly popular way to react to concerns about gender pay gap, and indeed as is required under the New Jersey Equal Pay Act, is perform an internal gender pay audit.
387. Defendants failed to even consider requesting that a pay audit be conducted by the Atlantic County Human Resources Department, or tasking the retired judge who was

conducting the investigation to conduct an audit or hiring an outside consultant to review the matter.

388. To date, Plaintiffs have been denied full and transparent access to the investigation documents.

389. They have received the statement of finding but not the report or date on which the findings were made. [See OPRA request and response to same dated September 13, 2018.](#)

390. Defendant-Tyner provided Plaintiff-Ruberton with no advance notice or explanation regarding her termination from employment.

391. The termination from employment occurred within days of Tyner having received the 21 page Memo prepared by Plaintiff-Ruberton which set forth some of her claims regarding gender discrimination within the ACPO.

392. While Defendant-Tyner harbored some animus towards Plaintiff-Ruberton for her reporting and/or objecting to activities of Defendant-Tyner for which she reasonably believed to be unlawful, the initiation of a formal gender discrimination complaint targeting Defendant-Tyner exacerbated his animus towards Plaintiff-Ruberton and motivated his decision to terminate her employment.

393. Post-termination and as a pretext, Defendant-Tyner claimed the reason he fired Plaintiff-Ruberton was because she created factions within the ACPO.

394. If indeed any faction existed, it existed only amongst employees who had something to gain from many of the unethical and/or unlawful conduct of which Plaintiffs were attempting to eradicate. and/or was created by Defendants Tyner, Shill and Formica.

395. Defendant-Tyner's post-termination statements that he did Plaintiff-Ruberton a favor by retaining her after he became Prosecutor are equally as disingenuous.
396. Defendant-Tyner could have fired Plaintiff-Ruberton on day one of his becoming the Prosecutor or in June 2017 (when Ruberton achieved 20 years of service credit in the pension) but he did not because she was a valuable, skilled and highly knowledgeable trial lawyer and criminal prosecutor. who possessed needed experience and institutional knowledge necessary for the effective administration of the ACPO.
397. Any other purported post-termination reason proffered by Defendant-Tyner to hide his unlawful retaliatory animus is false and manufactured by Defendants as an afterthought excuse.
398. Defendants never once raised one of their post-termination reasons with any of the Plaintiffs during their employment and before the official complaint of gender discrimination was made by Plaintiffs.
399. Indeed, any alleged facts on which Defendant -Tyner points to now, post-termination occurred, according to his own account, during the previous administration.
400. Defendant-Tyner nor any other Defendant or any other employee within the ACPO ever expressed dissatisfaction with Plaintiffs for any of the alleged post-termination pretextual reasons now proffered.
401. Defendants have collectively created a culture of cronyism and sexism for which they continue to support and have publicly leapt to the defense of Defendant-Tyner, without proper knowledge of the facts, and collectively suggest that 3-well respected, highly

credentialed women with exemplary records of service have done something wrong by fighting back against the unlawful actions taken against them.

## VII.

### **NEW JERSEY CIVIL RIGHTS ACT CLAIMS** **PROTECTED ACTIVITIES ON MATTERS OF PUBLIC CONCERN** **UNLAWFUL ACTIVITIES**

#### ***A. Plaintiffs Noticed, Reported, Refused to Participate in, and Objected to Improprieties by Defendant-Tyner that include Mortgage Fraud, Abuse of Office for Political Reasons and Personal Gain, Kauffman Case Issues and Other Illegalities***

##### ***i. Liability of Defendants for Public Concern Retaliation***

402. Defendant-Tyner as the Prosecutor of Atlantic County whose actions represent the official policy of the County.
403. County prosecutors act as county officials when they make employment decisions.
404. See *Dunne v. Fireman's Fund American Insurance*, 353 A.2d 508 (N.J. 1976).
405. The discriminatory acts of the county prosecutor and his subordinates may be imputed to the County since he is the final policymaking authority acting on behalf of the County in the prosecutor's office.
406. See *Coleman v. Kaye, Monmouth County*, 87 F. 3d 1491 (3d Cir. 1996).
407. Retaliatory acts in violation of the Constitution by the county prosecutor and his subordinates may be imputed to the County since he is the final policymaking authority acting on behalf of the County in the prosecutor's office.
408. See *Black v. Stephens*, 662 F. 2d 181 (1981).

409. Indeed, Defendant-Tyner's employment and personnel decisions constitute "policy making" within the Prosecutor's Office which is delegated by statute and Constitution to the prosecutor and as such, represents county policy and may give rise to county liability.
410. See *Pembaur v. Cincinnati*, 475 U.S. 469 (1986); *Hill v. Borough of Kutztown*, 455 F.3d 225 (3d Cir. 2006).
411. Defendant-Tyner's employment decisions and authority to make policy are delegated final and unreviewable actions imputed to the Defendant-The County.
412. See *Brennan v. Norton*, 350 F.3d 399 (3d Cir. 2003).
413. Additionally, the Atlantic County Code, Charter, Article XV, Chapter 4-76 through -78 recognizes that the County Prosecutor as the official Department Head with final and unreviewable authority for employment decisions over personnel employed within the Atlantic County Prosecutor's Office.
414. Defendant-Tyner is also independently liable for his employment and personnel "policy-making" actions.
415. Defendant-Shill was delegated with authority by the County Prosecutor, Defendant-Tyner to make and implement policy.
416. Defendant Mario Formica was delegated with authority by the County Prosecutor, Defendant-Tyner to make and implement policy.
417. Defendants Shill and Formica carried out employment decisions on their own and independently, and in the course of their respective employment and, at the direction of Defendant -Tyner and/or on behalf of Defendant-Tyner.

418. Defendants Shill and Formica's employment actions and those actions taken on behalf of Defendant-Tyner are delegated and adopted by Defendant-Tyner and are therefore imputed to the County.
419. The Defendant Atlantic County is liable for its own independent acts in failing to conduct effective and unbiased investigations, and for failing to take prompt and remedial actions under the anti-discrimination and anti-retaliation laws found within N.J.S.A. 10:5-1 et seq., and, N.J.S.A. 10:6-2.
420. Despite the fact that various matters involving Defendant-Tyner are under investigation by the New Jersey Attorney General's Office, there is no prohibition from the County conducting its own investigation into any personnel matter.
421. The County has the authority and obligation to conduct an investigation into all of the allegations raised by Plaintiffs. N.J.S.A. 2A:158-5; Article VII, Public Officers and Employees.
422. The Defendants collectively failed and/or refused to conduct an independent investigation regarding any matter brought to the attention of the N.J. Attorney General.
423. The Defendants collectively banded together to reject, discredit and dismiss Plaintiffs' claims once placed on notice formally, and informally of same.
424. Defendant-Levinson made several public statements that he liked and trusted the Defendant-Tyner with regard to the Plaintiffs' claims.
425. By implication, Defendant-Levinson has made publicly known that he does not support the female employees in their claims, despite the fact that all Plaintiffs have

demonstrated a combined 60+ years of dedicated and exemplary public service for the County.

***ii. Mortgage Fraud Reported and Disclosed by Plaintiffs Ruberton and McManus***

***ii. (a) Protected Activity, Speech on Matters of Public Concern***

426. On the very day that Defendant-Tyner assumed office as the Prosecutor of the ACPO, Plaintiffs began to notice irregularities and problems with information and actions as it concerned Defendant-Tyner.
427. Unlike previous appointments to the position of Prosecutor, the appointment of Defendant-Tyner to that position was sudden.
428. Many of the employees within the ACPO were surprised by it.
429. It was soon discovered that on the same day that Defendant-Tyner assumed office as Prosecutor, a lis pendens action had been filed in court against Tyner and his wife asserting that Defendant-Tyner had defaulted on his mortgage of his primary residence.
430. A lis pendens is a formal notice that starts a foreclosure process.
431. Since the lis pendens had been filed in court on the same day that Defendant-Tyner was being sworn in as Prosecutor, a number of members of the ACPO's Detective division viewed this as highly unusual.
432. Lis pendens actions are typically filed when a homeowner is in default on their mortgage payments.

433. Questions within the ACPO arose about how Defendant-Tyner could become appointed to the position of Prosecutor in light of the foreclosure process filed against him.
434. It was discovered thereafter that Defendant-Tyner and Milan had overinflated the value of the residence in order to secure a jumbo mortgage (loan) on the property valued at nearly half the value of the jumbo mortgage.
435. This information was brought to the attention of Plaintiffs Ruberton and McManus because they had been involved in the criminal prosecution of a former detective for similar mortgage issues.
436. Plaintiffs Ruberton and McManus reasonably believed that Federal laws that govern mortgage fraud (*see* 18 U.S.C., Chapter 47) and specifically, the Fraud Enforcement and Recovery Act (“FERA”), are implicated by Defendant-Tyner’s actions and circumstances and they were involved in it being brought to the attention of the FBI.
437. Federal mortgage fraud laws recognize as mortgage fraud transactions that look similar to the Tyner real estate transaction.
438. In any event, mortgage fraud is a crime in which the intent is to materially misrepresent or omit information on a mortgage loan application in order to obtain a larger loan than could have been obtained had the lender known the truth.
439. Plaintiffs- Ruberton and McManus reported the suspected mortgage fraud to supervisors within the Detective Bureau. The supervisors within the detective bureau report to Tyner.



440. Defendant-Tyner became aware that Ruberton, McManus and members of the detective bureau had reported this to the FBI.
441. A local FBI investigation ensued but was later transferred to the FBI's Newark office to avoid any conflicts given the fact that local FBI agents were tasked with working with the Tyner administration as part of the high-profile Kauffman murder and drug-ring case.
442. McManus spoke to the FBI regarding their concern that Tyner had committed mortgage fraud and whether this was a fact disclosed by Tyner in his application for the position of Prosecutor.
443. Upon information and belief the Tyner mortgage matter is still under review by the FBI.
444. Shortly thereafter, Defendant-Tyner made arrangements to restructure his loan obligation with the lending institution on his primary residence.
445. Defendant-Tyner subsequently engaged in a course of conduct intended to harass, embarrass and humiliate Plaintiff-Ruberton and Plaintiff-McManus by refusing to include them in discussions and decisions concerning cases within the Official Corruption and Internal Affairs Units, units they both supervised, and directing those they supervised to bypass Ruberton and McManus in the chain of command.
446. Instead, Defendant-Tyner consulted only Defendant-Shill and Defendant-Formica on these matters, when neither had any prior experience in handling such specialized investigations, and Ruberton and McManus collectively had more than 25 years experience in these areas.

447. When Plaintiffs Ruberton or McManus attempted to correct inappropriate or incorrect counsel and decisions given by Defendants Shill and/or Formica in these cases, they were ignored and dismissed without cause or explanation.
448. Defendants Tyner, Shill and/or Formica instructed the detectives and lawyers who reported to Plaintiffs Ruberton and McManus in the Official Corruption and Internal Affairs Units to bypass Ruberton and McManus in the chain of command and thereby undermined their authority with lower ranking staff members.
449. Defendant-Tyner further directed law enforcement officers of other agencies that they were not to contact Plaintiff-Ruberton for legal advice or direction in Official Corruption or Internal Affairs matters, contrary to long-standing practice, despite her experience and expertise.
450. For example, one chief of police contacted Ruberton for legal advice stating, "I know I'm not allowed to call you but I need an answer and you're the only one who knows what they are doing so I don't care."
451. In another example Plaintiff-McManus attempted to discuss a criminal case involving a local police officer with either Defendant-Tyner and /or Defendant-Shill and was denied her request.
452. On another occasion Plaintiff-McManus requested to discuss with Defendant-Tyner an anonymous phone call she received about a local politician recorded on video paying for votes.
453. Defendant-Tyner denied her request to interview a witness in this case and when Plaintiff-McManus asked for the opportunity to discuss with Defendant-Tyner why the

interview was important based on her involvement over the years in multiple election fraud complaints, her request was denied.

454. News of the FBI investigation against Defendant-Tyner circulated amongst some of the office staff, including Defendant-Shill, who reports directly to Defendant-Tyner.
455. Supervisory and/or ACPO supervisory staff told Tyner that Ruberton and McManus were inquiring into mortgage fraud issues as it pertained to Tyner.
456. Defendant-Tyner knew that Plaintiff-McManus investigated the former Atlantic County Prosecutor detective, “Borges” mortgage fraud case with facts very similar to that of the suspected mortgage fraud by Tyner.
457. Borges was criminally convicted and is serving a prison sentence.
458. Defendant-Tyner presided as a judge over the Borges mortgage fraud matter.
459. After news spread throughout the ACPO that Ruberton and McManus were making inquiries of supervisors and FBI agents, Defendant Tyner directed his brother, Michael Graham (Graham”), to retrieve the file related to the Borges mortgage matter.
460. Graham was hired by Tyner as an “Agent” within the ACPO, after firing two seasoned agents in order to pay Graham a salary that consisted of the combined salaries of the two fired agents.
461. Defendant, the County has not even ventured to verify whether its top law enforcement officer has committed mortgage fraud.
462. Defendant, the County has not conducted any administrative investigation into the charge of mortgage fraud.

***ii. (b) Plaintiffs-McManus and Ruberton Requested an Internal Affairs Investigation Into Alleged Law Enforcement Officer Misconduct to Which Tyner Refused in Violation of the New Jersey Attorney General Guidelines; and, Plaintiffs Objected to Tyner and Shill About the Non-Disclosure of Information to Defense Counsel in the Kauffman Case Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Which is a Violation of Ethics Obligations.***

463. April Kauffman, a 47-year-old who earned a following on the radio and as a veterans activist, was found shot dead on May 10, 2012, in the bedroom of her Linwood, New Jersey, home. She shared the home with her husband Jim Kauffman, a prominent medical doctor.

464. This case had been under investigation since 2012, including by the FBI.

465. Dr. Kauffman was suspected in the murder.

466. It was not until 2017 that the FBI's investigation made any significant movement towards solving the homicide.

467. Defendant-Tyner has seized on the opportunity afforded by this high-profile murder case to aggrandize himself before the media, including a interview with ABC's 20/20 TV show.

468. Defendant-Tyner's publicity tour earned him an admonishment from a State Superior Court judge because Defendant-Tyner's tour occurred while charges against defendants in the Kauffman case were pending.

469. Defendant-Tyner gave multiple interviews to the 20/20 TV show during the course of an open and ongoing criminal investigation in violation of the Attorney General Directive on Prosecutor Ethics.

470. Defendant-Tyner has included all males only in the prosecution team in this high profile criminal case.<sup>5</sup>
471. Defendant-Tyner has been determined to distinguish his career through the high-profile prosecution of the defendants in the Kauffman case to the detriment of his office's legal obligations to disclose evidence and information to the defense in that case.
472. In or about May 2017, the ACPO—working with the FBI—learned that a confidential informant who was involved in a drug ring in which Dr. Kauffman was alleged to be involved would testify that certain members of the notorious motorcycle gang, the Pagans, were hired by Dr. Kaufman to kill his wife.
473. Dr. Kauffman was eventually charged with the murder of April Kauffman in January 2018.
474. It was around this time that Defendant-Tyner may have purposefully violated the New Jersey Attorney General Guidelines to circumvent his duty to disclose information and/or evidence regarding a high-profile homicide case.
475. On or about August 1, 2017, Plaintiff-Ruberton advised Defendant-Shill that there were prior internal affairs investigations involving the lead detective and former lead detective assigned to the Kauffman matter and that they should be reviewed for disclosure as *Brady* material.

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<sup>5</sup> Plaintiffs claim this too evidences a gender discriminatory intent to exclude qualified females from high profile cases.

476. Although not a part of her job duties, Plaintiff-Ruberton felt obliged as a concerned citizen to advise Defendant-Shill about the prior internal affairs investigations of which she was aware.
477. Defendants Tyner and Shill did not disclose the prior internal affairs investigations which called into question the veracity of these officers working on the Kauffman case.
478. In or about the Fall/Winter 2017-2018, Plaintiff-McManus received multiple inquiries from municipal police departments for advice and counsel as to whether certain findings in various internal affairs matters would warrant disclosure pursuant to *Brady v. Maryland*.
479. During these conversations, the municipal police officers discussed similar questions with regard to the ACPO internal investigations described above.
480. In order to get clarification and a legal decision on these questions raised regarding “*Brady* material,” Plaintiff-McManus sought meetings and/or discussions with Defendants Tyner, Shill and Formica, to discuss possible “*Brady* material” in the municipal matters and comparisons to the ACPO matters.
481. Plaintiff-McManus was never given any direction on these matters nor an opportunity to discuss the cases as she had requested.
482. As of September 2018, the questions regarding *Brady* material had been unanswered and the files remained with Defendant-Formica awaiting decisions.

483. In or about November 17, 2017, during the course of the investigation into the murder of April Kauffman, information was provided to the ACPO that a municipal police officer may have leaked confidential information regarding the investigation.
484. A source had reported that a police officer had been leaking confidential information about a cooperating witness by the name of Andy “Chef” Glick, ex-president and vice president of the Cape May County chapter of the Pagans Motorcycle Club and a resident of Egg Harbor Township.
485. Defendants Tyner and Shill directed that no internal affairs investigation be conducted concerning the police officer to determine the veracity of the information.
486. Plaintiffs, most notably, Plaintiff-Ruberton, was vocal within the ACPO, and directly to Shill, in objecting to the refusal to investigate the police officer.
487. Her reasoning was simple: the New Jersey Attorney General Guidelines required such an investigation.
488. Defendants Tyner and Shill did not disclose this information about the possible leaking of confidential information in disregard to Ruberton’s request to investigate the police officer in compliance with the New Jersey Attorney General Guidelines.
489. If there were internal affairs investigations, as required by law, the results of those investigations may be required to be turned over to the defense counsel in the April Kauffman murder case, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).
490. Thus, Defendant-Tyner directed ACPO employees not to conduct an internal investigation so as to avoid having to disclose the investigation’s results.

491. Also during this time frame, it was learned an ACPO detective may have misplaced a piece of evidence and/or failed to write reports in the case.
492. At the direction of Defendant-Tyner, Defendant-Shill directed that no investigation should be conducted.
493. Plaintiffs Ruberton and McManus objected to the refusal by Defendants Tyner, Shill and Formica to conduct any investigation in violation of the New Jersey Attorney General Guidelines.
494. Plaintiffs were dismayed by the lack of an internal affairs investigation into each of the above matters and expressed their objections to same.
495. Plaintiffs' objections are a reason why Plaintiffs were not assigned to assist in the Kauffman case.
496. Defendants Shill and Formica had worked on the Kauffman case with Plaintiff-Ruberton prior to Tyner becoming the Prosecutor yet these two men were permitted to continue working on the case with Tyner and were included in all the Tyner requested media publicity events on the case to the exclusion of Plaintiffs.
497. The ACPO did not conduct any internal affairs investigation despite clear and unambiguous legal directives that require internal affairs investigations under such circumstances.
498. The Atlantic County Prosecutor's Office is required by law to follow the New Jersey Attorney General Guidelines. *See* N.J.S.A. 40A:14-181.



499. The Guidelines require every law enforcement agency, including the ACPO, to receive, investigate and resolve complaints of officer misconduct. N.J.S.A. 52:17B-98; N.J. Internal Affairs Policy & Procedure, revised November 2017.
500. Plaintiffs reported to Defendant-Shill their concerns regarding the above.
501. Defendant-Shill advised Plaintiffs Ruberton and McManus that he and Defendant-Tyner would not be conducting any internal affairs investigations.
502. Plaintiffs Ruberton and McManus, just like any concerned citizen, have the right to express concern over law enforcement officer misconduct in the handling of confidential evidence and demand an internal affairs investigation and/or that the proper administration of justice takes place by full disclosure of facts in the prosecution of criminal cases.
503. Indeed, the ACPO's indifference to local law enforcements' internal affairs function is a major matter of public concern in that it has the potential for negative impact on the administration of criminal justice and the delivery of law enforcement services to New Jersey's citizens.
504. Agencies that fail to make the internal affairs function a priority can lose the respect and support of the community.
505. The integrity of individual law enforcement agencies, and the reputation of the New Jersey's criminal justice system, can also suffer if agencies fail to identify and correct officer misconduct.
506. In addition, law enforcement agencies that fail to implement a meaningful and objective internal affairs process may be found liable in civil lawsuits for their

failure to effectively address officer misconduct. Such liability would likely result in monetary settlements to plaintiffs (and attorneys' fees to their attorneys) funded by taxpayer dollars.

507. Plaintiffs Ruberton and McManus were speaking out and objecting to decisions and conduct by Defendants Tyner and Shill in their capacities as concerned "private" citizens to Defendants' refusal to obey the Internal Affairs regulations promulgated by the State Attorney General. N.J.S.A. 40A:14-181.
508. As a consequence, Defendants retaliated against Plaintiff Ruberton through a pattern of continuing harassment which included ostracizing Plaintiffs, removing them from participation on a high profile case in which they each had many prior hours invested, assigning more work with no additional compensation, bad mouthing the Plaintiffs amongst their peers and office staff and otherwise creating a hostile and uncomfortable work environment.

***iii. Tyner and First Assistant Prosecutor Cary Shill Directed that a Criminal Prosecution be Dismissed Against an Individual with Close Political Ties to the Atlantic City Democratic Party***

509. On or about September 15, 2017, an individual was charged with a second-degree aggravated assault and related weapons offenses.
510. Consistent with ACPO practice and policy, Plaintiff-Fetzer filed a motion to detain this individual pending trial.
511. At this time, Plaintiff-Fetzer advised Defendant-Shill that she believed Defendant-Tyner to have a conflict regarding any involvement with the individual

because of Tyner's known association with the defendant and members of the Atlantic City Democratic Party.

512. The practice within the ACPO, as required by the Attorney General's Office, Prosecutors Supervision Bureau, regarding actual and/or potential conflicts, required that Defendant-Tyner must be "walled off" from having any involvement with the case against this individual.

513. Yet, on the same day as the motion to detain this individual was made by Plaintiff-Fetzer and after having informed Defendant-Shill of the conflict with Defendant-Tyner, Defendant-Shill instructed Plaintiff-Fetzer to withdraw the motion to detain per Defendant-Tyner's instructions.

514. Plaintiff-Fetzer objected to the this instruction.

515. However, she complied with Defendant-Shill's instruction and had the motion to detain withdrawn.

516. Plaintiff-Fetzer documented the fact that she had been instructed to withdraw the motion.

517. Defendant-Shill responded to Defendant-Fetzer's objection by stating that he would be responsible for the directive to withdraw the motion.

518. No further action or investigation was undertaken in the case, causing the matter to be listed for dismissal in March 2018 for lack of prosecution.

519. On or about March 12, 2018, Plaintiff-Ruberton advised Defendant-Shill that the matter was listed for dismissal due to lack of prosecution and that significant investigation was needed in the case but never completed.

520. Plaintiff-Ruberton suggested she be permitted to request a postponement of the dismissal to allow time to complete the needed investigation and consult with the victim in the case.
521. Defendant-Shill denied the requests and directed Plaintiff-Ruberton that nothing further was to be done with the case and she should allow the court to dismiss it and no victim contact would be made.
522. Inexplicably, no action or further investigation was taken in the case and this individual was neither investigated nor prosecuted on the charges of second degree aggravated assault and weapons offenses.
523. On or about March 13, 2018, the matter was dismissed by Judge Julio Mendez for lack of prosecution.
524. Plaintiffs Fetzer and Ruberton made it known to Defendant-Shill, who reported directly to Defendant-Tyner, that they objected to Defendant-Tyner's dismissal of the this individual's case, especially in light of the seriousness of the charges and the political affiliation Defendant-Tyner and this individual had with one another.
525. Plaintiffs Ruberton and Fetzer acting as concerned citizens were alarmed by and objected to Defendant-Tyner's known political ties to the criminal defendant and his refusal to remove himself from the conflict.
526. In or about May, 2018, Plaintiff-Fetzer was advised by another employee that Michael Graham (an ACPO employee and brother of Defendant-Tyner) was observed doing something unorthodox in open court.
527. His actions could have potentially put a person's life in danger.

528. Graham was speaking with a defendant in a packed courtroom while the judge was on a break, making it known to all present in the courtroom, including other defendants, that this person may be a “confidential informant.”
529. Graham was attempting to assist the defendant with his/her charges in order to get the person who was a possible confidential informant to cooperate with police.
530. The conversation was overheard by many people present in the courtroom at the time.
531. This was very alarming, not only to the person who saw it, but Plaintiff-Fetzer, herself.
532. Plaintiff-Fetzer, just like any other concerned citizen who happened to be in court that day, had the right to speak out about Defendant-Tyner’s brother public assistance to a criminal defendant-confidential informant and by doing so, putting this person’s life at risk.
533. Plaintiff-Fetzer reported this information to Defendant-Shill. He expressed indifference to her concerns and refused to investigate the matter in violation of the New Jersey Attorney General Guidelines.
534. As a result of Plaintiff-Fetzer speaking out on matters of public concern by objection to Tyner’s conflict and political affiliation with a criminal defendant as well as her reporting information that required an internal affairs investigation, she became the subject of retaliatory harassment.

***iv. Tyner Hired and/or Promoted Family, Friends, Family Members of Political Contributors in Violation of Prosecutor's Ethics Code to Avoid Appearance of Impropriety, Nepotism, Favoritism and Conflict***

535. On or about March or April 2017, Defendant-Tyner fired two Agents of the Prosecutor.
536. He advised one of them that he had to let them go because he needed money to hire his (Defendant-Tyner's) brother.
537. Both agents were retired police officers who were working because they needed health benefits. One was so upset that he was physically shaken by what transpired.
538. Historically, unless the employee is considered a confidential aide, ACPO has hired Agents starting at approximately \$30,000.
539. Defendant-Tyner hired his brother starting at \$50,000.
540. On or about February 7, 2018 when Defendant-Tyner could not hire his friend to take a retiring captain's position (as will be discussed below), claiming that he had to cut the position due to budgetary reasons, Defendant-Tyner gave a \$20,000 raise to an agent who was a known friend and former task force partner of Defendant-Tyner's brother.
541. Upon the forced retirement of Plaintiff-McManus, Defendants promoted a male to the rank of Captain and hence did not eliminate a position of Captain for budgetary reasons as proclaimed by Tyner.
542. On or about June 20, 2018, just before Defendant-Tyner fired Plaintiff-Ruberton, he (Defendant-Tyner) created a paid position of legal intern.
543. ACPO often brings interns into the office to work with the legal and detective staff.

544. These internships have historically been non-paid positions.
545. Defendant-Tyner offered the son of a prominent attorney with well-known local law firm in Atlantic City, NJ, the position of legal intern with a starting salary of \$50,000.
546. Defendant-Tyner received political contributions from the father of this individual while running during both the primary and general elections.
547. Plaintiffs objected, reported and expressed grave concerns regarding the above to immediate supervisors, all of whom report directly to Defendant-Tyner and reported same to Defendant-Tyner.
548. In part, the matters of public concern speech by Plaintiff-Ruberton is a reason that motivated Defendant-Tyner to fire her.
549. Defendant-Tyner consulted with Defendants Shill and Formica and all of whom participated in the decision to fire Plaintiff-Ruberton.
550. On or about June 28, 2018, the day Defendant-Tyner unjustly fired Plaintiff-Ruberton, Defendant-Tyner contacted an assistant prosecutor and advised her that he was both promoting her and giving her a raise.
551. This particular assistant prosecutor is the daughter of Dr. Harvey Kesselman, the President of Stockton University.
552. Defendant-Tyner's wife, Nicole Milan-Tyner is employed by Stockton University and Kesselman is her boss.
553. In or about the week that followed the termination of Plaintiff-Ruberton, this assistant prosecutor moved into the office that had been assigned to Plaintiff-Ruberton.

554. The ACPO, which was prosecuting at least one person named in lawsuits alleging sexual assaults at Stockton University in and around this time frame, in a statement it released to the media, admitted that the office had two potential conflicts of interest regarding the sexual assault cases, but the conflict would not affect the investigation and it would be keeping the matter within the ACPO for prosecution.
555. The following day, the ACPO was advised by the New Jersey Attorney General's Office, Division of Criminal Justice that Tyner was required to recuse himself from the matter because the attorney representing the victims of the sexual assaults contacted the Attorney General's Office, Division of Criminal Justice which determined the conflict.
556. Defendant-Tyner has a habit and reputation for disregarding conflicts due to his overriding desire to exercise control and take credit for influencing positive outcomes for persons he views as being able to provide him with personal gain, fame and/or political clout.
557. Plaintiffs objected to Defendant-Tyner's nepotism, political favoritism and flagrant abuse of prosecutorial authority for political and/or personal gain as a matter of public concern for which Plaintiffs acted just like "private citizens" and is considered protected activity under the laws.

***v. Plaintiffs Objected to Tyner Having Protected a Lawyer Who Was Reported to Have Smuggled Marijuana Into the County Jail for a Client; the Lawyer is the Brother of Tyner's Close Friend Who is Also an Atlantic City Lawyer***



558. In or about February 2018, a detective with the Internal Affairs Unit at the Atlantic County Justice Facility (“ACJF”), contacted Plaintiff-McManus to advise that an attorney was caught bringing contraband into the jail.
559. The attorney brought highlighter pens into the jail and attempted to give them to his client, a criminal defendant.
560. When the ACJF corrections officer did not allow the attorney to pass the pens to his client, he attempted to discard them in a trashcan.
561. The ACJF officer retrieved the pens and determined they contained marijuana.
562. ACJF Supervisors had already discussed the incident with Atlantic County Counsel who banned the attorney from the jail and instructed ACJF should file criminal charges.
563. Plaintiff-McManus in turn advised Plaintiff-Ruberton and both determined that because it involved criminal charges against an attorney, Defendant-Tyner should be advised.
564. Historically bringing contraband into ACJF has been viewed as a very serious crime.
565. In fact in the past when ACJF has contacted Plaintiff-McManus or Plaintiff-Ruberton, the Official Corruption Unit has been assigned to assist the ACJF in such an investigation.
566. In this case no such assignment was made.
567. The attorney mentioned in this case is the brother and law partner of a close personal friend of Defendant-Tyner’s.

568. The attorney and Defendant-Tyner are known to have a long-standing friendship, previously worked together, and frequently socialize together.
569. Within a few days, the staff at ACJF again contacted Plaintiff-McManus and asked about the status of their inquiry.
570. Plaintiff-McManus contacted Plaintiff-Ruberton who advised she had forwarded the information to Defendant-Shill.
571. On or about March 22, 2018, Plaintiff-McManus was notified that Defendant-Shill had sent an email and memorandum to the ACJF that Defendant-Tyner instructed that no charges were to be filed against the attorney.
572. In fact, on or about April 14, 2018 Defendant-Tyner and his friend (brother of the attorney who was reported to have smuggled contraband into the ACJF) attended a concert together in Philadelphia and a photo of them together was posted on Instagram.
573. Plaintiffs objected to and expressed their alarm and dismay at the flagrant abuse of prosecutorial power by Defendant-Tyner and expressed objection to his actions.
574. While Defendant-Tyner may exercise prosecutorial discretion, he is not permitted by law to disregard potential and real conflicts.
575. Defendant-Tyner should not have exercised any control at all over the matter as described above due to the actual conflict posed by his long term and close relationship with the brother of the attorney who was alleged to have smuggled marijuana into the jail.

576. Plaintiffs were speaking on matters of public concern and in “private citizen” capacities when they objected to Defendant-Tyner’s refusal to prosecute the attorney alleged to have smuggled marijuana into the jail given his blatant conflict of interest in violation of laws of ethics that govern criminal prosecutors.
577. Consequently, Plaintiffs continued to be the recipients of retaliatory animus by Defendants Tyner and Shill who together consorted with Defendant Mario Formica and Assistant Prosecutor Seth Levy to bad mouth, disparage and collectively maneuvered to undermine Plaintiffs in the workplace.

***vi. Plaintiffs Ruberton and McManus Reported the Sexual Harassment Complaints to Defendants Tyner and Shill Who Covered it Up and Refused to Investigate and Advise County Counsel of Same***

578. On or about December 22, 2017, Defendant -Shill advised Plaintiff- Ruberton that a female ACPO employee made a complaint of gender discrimination by a coworker.
579. Defendant-Shill advised he was letting Plaintiff-Ruberton know because she supervised both employees.
580. Plaintiff-Ruberton advised Defendant-Shill that he should report the matter to Atlantic County Counsel so that an investigation could be completed by the County EEOC officer.
581. Defendant-Shill responded that he had discussed the matter with Defendant-Tyner and that Defendant-Tyner directed that County Counsel should not be advised of the gender discrimination complaint because Defendant-Tyner wanted to keep it from County Counsel.

582. Keeping County Counsel in the dark would have prevented the legal department from knowing that there were any gender discrimination problems within the ACPO.
583. Defendant-Shill stated, “Damon doesn’t want the County to know. He’s going to take care of it.”
584. No investigation was ever conducted regarding this complaint.
585. Again, in May 2018, a female attorney reported to her supervisor that she believed that she was being sexually harassed by Chief Assistant Prosecutor Seth Levy.
586. The supervisor discussed the complaint with Plaintiff-Ruberton and Plaintiff-McManus because she believed it needed to be reported but was fearful if she did so she would lose her job.
587. Both Plaintiffs Ruberton and McManus counseled the supervisor that it was her duty to report the complaint to Defendant-Shill.
588. The supervisor did report the complaint to Defendant-Shill.
589. Defendant-Shill was required to report this to Defendant-Tyner.
590. After the complaint was reported to Defendant-Shill, Levy was overheard on the phone with Defendant-Tyner discussing the allegation and Levy stated “thank you for having my back.”
591. Defendant-Tyner covered up the sexual harassment complaint and never reported it to the EEOC officer or County Counsel as required by law.
592. This was occurring at the same time the retired judge was hired by the County to investigate Plaintiff-Ruberton’s complaint of gender discrimination and pay inequity..

593. Plaintiff-Ruberton and another witness attempted to raise this matter with the investigating judge but were unable to do so because the Judge's investigation was limited in scope to only matters involving Ruberton.
594. Subsequently, Plaintiff-Ruberton was terminated from employment.
595. Within days after Plaintiff-Ruberton being terminated, the supervisor who initially reported the sexual harassment complaint to Plaintiff-Ruberton asked in a meeting with other assistant prosecutors if she would be the next one to be fired because she was the first person to report this sexual harassment complaint.
596. The reporting of gender discrimination was viewed by others within the ACPO as an act that would subject a person to retaliation and loss of job due to Tyner firing Plaintiff- Ruberton for her having reported gender discrimination.
597. Defendant-Tyner took no steps to dispel the perception by others within the ACPO that reporting gender discrimination leads to termination from employment.
598. Plaintiff-Ruberton was speaking on matters of public concern and was engaged in protected activity when she reported the sexual harassment of a subordinate employee.
599. This reporting activity together with subsequent protected activity engaged in by Plaintiff-Ruberton and Plaintiff-McManus resulted in Defendants taking actions to end Plaintiff-Ruberton's employment and threatening to end the employment of Plaintiff-McManus.
600. Defendants acted together in supporting, ratifying, condoning, aiding and abetting the unlawful termination of Plaintiff-Ruberton's employment and in threatening the employment of Plaintiffs McManus and Fetzer.

***vii. Tyner Protected an Assistant Prosecutor -In Violation of the Prosecutor's Code of Ethics and the New Jersey Rules of Professional Conduct-As He Viewed Her as An Ally In His Quest to Terminate Plaintiff-Ruberton's Employment Because of Ruberton's Whistleblowing Activities***

601. In or about November 16, 2017, a probation officer made a complaint about an Assistant Prosecutor, alleging this Assistant Prosecutor was in violation of the Prosecutor's Code of Ethics and the New Jersey Rules of Professional Conduct by having direct communications via text message with a drug court participant and defendant.
602. It was also alleged that the Assistant Prosecutor, interfered and gave advice to the same defendant for a domestic violence case that was also pending. Ultimately, that charge was dismissed.
603. It was also alleged that the Assistant Prosecutor met privately with the criminal defendant in the holding cell, without his defense counsel, then intervened with the judge, again without defense counsel, and had a drug court sanction changed on the defendant's behalf.
604. This information was passed up the chain of command by Plaintiff-Ruberton to Defendants Shill and Tyner.
605. On or about November 23, 2017, Defendant-Tyner advised Plaintiff-Ruberton that he received and reviewed the email she had sent regarding this complaint.
606. Plaintiff-Ruberton stated that an internal investigation should be conducted in accordance with the laws.

607. Defendant-Tyner stated that he would discuss the matter with Defendant-Shill and they would decide how to handle it.
608. No further action or investigation was ever taken regarding this complaint, despite a possible serious breach of the Prosecutor's Code of Ethics and the New Jersey Rules of Professional Conduct.
609. Defendant-Tyner took no action thereby disregarding Plaintiff-Ruberton's report and request for an internal affairs investigation as to the Assistant Prosecutor's actions as described above because Tyner viewed the Assistant Prosecutor as an ally he could use or capitalize on to retaliate against Plaintiff- Ruberton.
610. The Assistant Prosecutor had previously filed a lawsuit against the County naming Plaintiff-Ruberton and former Prosecutor McClain as defendants.
611. Defendant-Tyner unilaterally paid the same Assistant Prosecutor \$30,000 from County monies while the lawsuit by the Assistant Prosecutor was pending against the County.
612. Defendant-Tyner circumvented the legal process by by-passing County counsel to pay off a party of a lawsuit while the ACPO was being represented by County counsel by giving a salary increase of \$30,000 to the above described Assistant Prosecutor.
613. Defendant-Tyner also violated the contract governing collective bargaining which prohibits individual negotiation with parties under union contract.
614. Plaintiff-Ruberton objected and made known her opposition to the above activities by Defendant-Tyner.
615. Defendants Tyner and Shill engaged in a continued course of retaliatory animus against Plaintiff-Ruberton.

***viii. Tyner Threatened to Terminate Plaintiffs McManus and Fetzer Because of Their Association with Plaintiff-Ruberton and Because Defendant-Tyner Viewed Them as Persons Who Spoke Out Against Tyner (and “Team Tyner”) and Against Defendants’ Illegalities, Conflicts and Irregularities***

616. On or about August 20, 2018, Plaintiff-McManus reluctantly submitted her retirement letter to Defendant-Tyner citing that she was concerned about the termination of Plaintiff-Ruberton and the fact she had learned that he had threatened to terminate her.
617. On or about August 24, 2018, Plaintiff-McManus received an email that advised her that Defendant-Tyner wanted to know the source of these “false statements.”
618. On or about September 18, 2018, Plaintiff-McManus was again told that Defendant-Tyner had threatened to fire her, along with another female employee, and Plaintiff-Fetzer.
619. This information came from a confidant of Defendant-Tyner.
620. The confidant further advised that he/she talked him out of firing any one of the three because it would be unwise.
621. Plaintiff-McManus was advised that the reason for this retaliatory threat was an article published in NJ.com in reference to a conflict of interest case arising from Stockton University (as mentioned above).
622. Defendant-Tyner felt that the information in this article was from someone who worked in the office.
623. From conversation with the reliable source, Defendant-Tyner had Plaintiff-McManus investigated for reporting the conflict of interest he had with maintaining the prosecution the Stockton University sexual assault cases.



624. None of the Plaintiffs had reported Tyner to the Attorney General's Office, Division of Criminal Justice to report his conflict with maintaining the sexual assault cases involving Stockton University.
625. Even if Plaintiffs had reported the conflict to the Attorney General's Office, Division of Criminal Justice, this would be "protected activity" under the laws.
626. Defendant-Tyner had no regard for "protected activity" just like he disregarded apparent conflicts of interest.
627. Nonetheless, Tyner perceived that Plaintiffs had engaged in the protected activity for which he was angry and initiated an internal investigation which could have led to disciplinary action.
628. Plaintiff-McManus felt stressed, intimidated, and was sick over the fact that Tyner had initiated a potential disciplinary action against her and because Tyner had fired Ruberton for reporting matters of public concern.
629. Plaintiff-McManus who had twenty five years in the pension system knew full well that any disciplinary action that Tyner initiated against her had the potential to ruin her career and pension.
630. Plaintiff-McManus feared for her livelihood and pension because Tyner had reported to others within the ACPO that he wanted to fire her.
631. Plaintiff-McManus has stated on numerous occasions that she did not want to retire but felt she had no choice because of Defendant-Tyner's retaliatory action against Plaintiff-Ruberton.

632. The actions of Defendants contributed the wrongful constructive discharge of Plaintiff-McManus.

633. The actions of Defendants contribute to the wrongful and continuing intimidation towards Plaintiff-Fetzer, who also learned that Defendant-Tyner was going to fire her and as such, she lives in daily fear that her employment will be ended by Defendant-Tyner and/or Defendants.

### VIII.

<b><u>GENDER DISCRIMINATION UNDER THE NJLAD</u></b>	<b><u>PROTECTED ACTIVITY UNDER THE CEPA</u></b>
<p><b><i>DISPARATE TREATMENT:</i></b></p> <ul style="list-style-type: none"> <li>• <b><i>DEMOTION (Ruberton and Fetzer);</i></b></li> <li>• <b><i>FAILURE TO PROMOTE (McManus);</i></b></li> <li>• <b><i>UNEQUAL PAY (Ruberton, McManus and Fetzer)</i></b></li> <li>• <b><i>JOBS, ASSIGNMENTS, TITLES, OPPORTUNITIES (All)</i></b></li> <li>• <b><i>EPA-(NJSA 5:12(d)claim- (Fetzer)</i></b></li> <li>• <b><i>LAD RETALIATION (Fetzer)</i></b></li> </ul> <p><b><i>and</i></b></p> <p><b><i>SEXUAL HARASSMENT ( Ruberton, Fetzer and McManus)</i></b></p>	<p><b><i>REPORTING GENDER DISCRIMINATION</i></b></p> <p><b><i>(Ruberton, Fetzer and McManus)</i></b></p>

#### ***A. Plaintiff, Diane Ruberton***

634. On or about February 15, 2017, Plaintiff-Ruberton had a phone call with Defendant-Tyner during which she congratulated him for his nomination. Defendant-Tyner responded that she would play a critical role in his administration.

635. On or about March 9, 2017, Plaintiff-Ruberton and Defendant-Tyner met at the ACPO.
636. Defendant-Tyner informed her that she was going to be demoted to Chief Assistant Prosecutor in the trial unit, and that he was going to promote Defendant-Shill, a male, to the First Assistant Prosecutor position (despite his being less qualified for the position than Plaintiff-Ruberton).
637. Plaintiff-Ruberton had been running the office for the five years prior to her demotion. And yet a male, who had no such experience, was promoted over her to do the work she had been doing for years.
638. Along with her demotion, Plaintiff received a \$20,000 pay cut while Defendant-Shill received a pay increase of approximately \$8,000 along with his promotion.
639. The Executive staff had consisted of three women and one man.
640. All three women were demoted by Defendant Tyner. The man maintained his position.
641. At about 11 pm that same night, Defendant-Tyner text-messaged Plaintiff-Ruberton and asked her to meet him in his chambers the next day, which she did.
642. While in chambers, Defendant-Tyner showed Plaintiff-Ruberton a yellow legal pad with an organizational chart on it.
643. He said he had thought about it, made a few calls, and decided that he wanted to have two Deputy First Assistant Prosecutors, and that he would be appointing both Defendant Mario Formica and her into these positions, and both would report to Shill, the First Assistant Prosecutor. (Defendant-Formica had significantly less experience and seniority than Plaintiff-Ruberton).

644. Defendant-Formica received an approximate \$30,000 pay raise along with his promotion while at the same time, Plaintiff-Ruberton received a \$20,000 pay cut along with her demotion.
645. Plaintiff-Fetzer was demoted from Deputy First Assistant Prosecutor to Chief Assistant Prosecutor and she received a \$22,482.00 pay cut.
646. In 2008, under the administration of former Prosecutor Housel, the Chief of Detectives was demoted to Deputy Chief of Detectives but sustained no decrease in pay.
647. In fact, the Deputy Chief of Detectives continued to receive pay increases despite the demotion, however, Plaintiffs Ruberton and Fetzer received substantial pay cuts.
648. Defendant-Tyner was officially appointed as the Atlantic County Prosecutor in March 2017, and Plaintiff-Ruberton was demoted to the title of Deputy First Assistant Prosecutor and Plaintiff-Fetzer was demoted to the title of Chief Assistant Prosecutor.
649. While it is true that a County Prosecutor in New Jersey has great discretion to appoint and assign Assistant Prosecutors, he may not violate the laws governing anti-discrimination, anti-retaliation and the Constitution.
650. The laws governing and regulating workplace discrimination, retaliation and the Constitutional protections afforded public employees trump and outweigh any right a County Prosecutor has regarding employment and/or the terms and conditions of employment of those employed within that County Prosecutor's office.
651. Plaintiff-Ruberton was assigned to supervise the Special Investigations section and the Litigation section.
652. In May 2017, she was additionally assigned to directly supervise the Grand Jury Unit.

653. At the swearing in ceremony, in front of the entire office, Defendant-Shill, Defendant-Formica, and Plaintiff-Ruberton were all sworn in to their new positions.
654. After the swearing in, pictures/photographs were taken at the request of Tyner that just included the men, and they left Plaintiff-Ruberton, the only woman, out of the pictures.
655. In or about April 2017, one staff member commented to Plaintiff-Ruberton that “It’s like a bad divorce here- there’s team Cary [Shill] and team Diane [Ruberton]. Everyone is afraid to talk to you,” in reference to the hostile conditions of employment then-existing for Plaintiff-Ruberton.
656. It was widely known that Defendant-Shill had the ear of Defendant-Tyner and influenced many of the discriminatory and retaliatory actions, including the termination of Plaintiff-Ruberton’s employment.
657. On or about June 21, 2017, Defendant-Tyner called two personnel meetings to discuss his first few months in office.
658. In both meetings, Defendant-Tyner repeatedly berated Plaintiff-Ruberton’s work as part of the “prior administration.”
659. Defendants Shill and Formica were also part of the prior administration, headed by McClain.
660. After these meetings, multiple personnel came up to Plaintiff-Ruberton saying how sorry they were that she had to sit through such an embarrassing and humiliating situation.

661. On or about July 20, 2017 and for the following days, Defendants Tyner, Shill and Formica had discussed in the presence of Plaintiff-Ruberton that Plaintiff-Fetzer had asked the administration why she hadn't received confirmation about her legal advisor stipends for being in the Screening Unit.
662. Indeed, by this time, Shill refused to work with Ruberton regarding her assigned unit (GJ) needs and functions.
663. The issue was discussed, with Defendant-Tyner ultimately deciding to authorize the payment of a stipend, but not a second stipend to which she was also entitled. In doing so, he commented "[Plaintiff-Fetzer] wasn't getting another red cent. Fuck her."
664. Plaintiff-Ruberton thereafter began to notice that Defendant-Tyner engaged in retaliatory harassment against Plaintiff-Fetzer.
665. Defendant-Tyner also made derogatory comments about other females within the ACPO, including how one woman dressed.
666. This response made Plaintiff-Ruberton very concerned about bringing up sensitive topics to Defendant-Tyner, particularly topics pertaining to the female employee population, for fear he would retaliate against her as he did against Plaintiff-Fetzer.
667. On or about September 18, 2017, Defendant-Tyner, and two other men from the office, Seth Levy and Defendant-Shill, began discussing their weekends.
668. Defendant-Tyner stated that his wife was angry with him for partying with friends that weekend.

669. The three men then went on a rant bad-mouthing women at the office, saying such derogatory things as “women should just do as they’re told” and “if they don’t like it, show them the door.”
670. They went on to berate women as if the three of them were part of a “good old boys” club in the office.
671. In or about October 2017, Plaintiff-Ruberton’s work anniversary, she was expecting to receive a 2% increase in salary.
672. Every year for the prior 18 years, Plaintiff-Ruberton received either a percentage increase or merit increase on her work anniversary.
673. Since 2012, when she was appointed First Assistant Prosecutor, Ruberton received a 2% increase, except in the year she was promoted to Acting Prosecutor in which she received substantially more.
674. It is the standard practice for personnel in management positions at the ACPO to receive 2% annual increases.
675. Plaintiff-Ruberton did not receive a salary increase in 2017.
676. Although Defendants Shill and Formica did not receive the 2% increase, the two men had just received substantial pay increases along with their promotions, while Plaintiff-Ruberton received a demotion and pay decrease.
677. The only other person in a management position who did not receive a 2% increase on her work anniversary in 2017 was another woman, a former Victim/Witness Coordinator.

678. The only other person in a management position (besides Defendants Shill and Formica) was the Chief of Detectives, a male, who did receive a 2% increase in 2017.
679. Defendant-Tyner therefore refused to give the annual 2% increase to two people eligible to receive it, Plaintiff-Ruberton and one other woman; the male (Dooley) did receive the annual 2% increase for 2017.
680. Shortly after Plaintiff-Ruberton was given the disheartening news that she would not receive her pay increase, she had to attend a luncheon and sat down at a table near Defendant-Shill, who, after she sat down, picked up all of his things and moved far from her, across the table, next to Defendant-Formica.
681. On or about October 23, 2017, Plaintiff-Ruberton was informed that other members of the office were being told not to associate with her and were being deterred from doing so.
682. On or about October 30, 2017, early in the morning, Plaintiff-Ruberton arrived at the office, and Defendants Tyner, Shill, and Formica were sitting in Formica's office when she overheard them mocking her and laughing at her.
683. She heard Defendant-Tyner say "She thinks she can make Cary [Shill] look bad. Like does she think I care what she says over Cary."
684. This comment made Plaintiff-Ruberton incredibly upset, and she was feeling so bad, that she had to call in sick the next day.
685. She just couldn't bring herself to come to the office, especially because the comment was made in light of an email she sent which was meant to be professional regarding Shill's approval of a case disposition.



686. The email was twisted by Defendant-Tyner into a negative appraisal and spoken rudely behind her back.
687. During this time period, Plaintiff-Ruberton became more and more intimidated by Defendant-Tyner's words and actions. Because of this, she did not feel comfortable at work or approaching Defendant-Tyner about the way she was being treated by the men in the office, or even why she didn't receive her 2% increase.
688. She was afraid he would respond to her with vulgarity and profanity.
689. On or about December 6, 2017, Mike Graham (Defendant-Tyner's brother), Defendant-Tyner, and Seth Levy were sitting in Levy's office discussing a prominent case and talking about a local man who had killed his wife so he wouldn't have to pay her in the divorce.
690. Levy commented that "I should have killed my wife because I had to pay her more than \$30K in my divorce. She's lucky I didn't go after her pension because hers is more than mine."
691. The three men all laughed and then mocked Levy's ex-wife.
692. In that same conversation, on or about December 6, 2017, Defendant-Tyner then began discussing one of Defendant-Shill's cases, and Defendant-Tyner said that Shill had nothing to worry about because the attorney was no good and was "a woman and she's got no presence."
693. Levy responded that "I mean she's fine if you meet her at a cocktail party or to take care of your kids, but not to be a lawyer."

694. Defendant-Tyner then responded that “Poor Cary, he’s stuck with all women for this case” and that “Cary has it bad, he’s stuck with a woman judge too.”
695. On or about January 9, 2018, there was a press conference scheduled for a prominent case.
696. It was the custom that all of the ACPO’s executive section attend press conferences, but Plaintiff-Ruberton was again excluded because she is a women.
697. The only group to attend the press conference were men, including Defendants Tyner, Shill and Formica, as well as Levy, the Chief and Tyner’s brother, Michael Graham.
698. On or about January 11, 2018, in a meeting with an attorney from outside the ACPO the attorney commented that he saw the front page of the paper, and the picture from the aforementioned press conference, and that “This is a problem. There are no women in this picture.” He said, “Do only the men get to work on the big cases?”
699. On or about January 12, 2018, Defendants Shill, Formica and Levy summoned an attorney to Levy’s office to discuss this high profile homicide case. They asked the attorney to research conflicts stating they wanted to have the defense attorney removed from the case.
700. In questioning the facts of the matter to research the conflict, the attorney asked what was the perceived conflict. Levy responded, “Find a conflict because I don’t feel like dealing with a bitchy female.”
701. On or about January 14, 2018, Plaintiff-Ruberton received a legal advice call from Plaintiff-McManus.

702. Plaintiff-McManus explained that she had been instructed by her superiors not to call Ruberton for legal advice. Instead, she should go to a particular male chief assistant prosecutor first, then Defendant-Shill, if this chief assistant prosecutor was not available.
703. Plaintiff-McManus expressed opposition to this direction and shortly after, a memo was disseminated within the ACPO advising that the detectives could go to Plaintiff-Ruberton, in the chief assistant prosecutor's absence.
704. Defendants Shill and Formica have created an intolerable, hostile and stressful work environment and have seriously damaged Plaintiff-Ruberton's reputation in the legal industry, to a point that other employees of the ACPO have commented that "I can't be seen in your office" and "I'm not supposed to be seen with you" and have created an environment of fear and hostility.
705. Upon Defendant-Shill's promotion and Plaintiff-Ruberton's demotion, Shill began to fail to inform her about changes in her units and personnel assignments, which prevented Plaintiff-Ruberton from effectively doing her job and has denied her the necessary resources and information to effectively perform in her position.
706. Defendants have reorganized personnel to eliminate Plaintiff-Ruberton's ability to perform her function, intentionally excluded her from meetings, and created an ongoing environment of hostility and bias against her and some other women.
707. On or about March 16, 2018, Plaintiff-Ruberton was advised that a chief assistant prosecutor was taking an extended military leave and his responsibilities would be reassigned to her.

708. The above meeting followed the gender discrimination, unequal job assignments, unequal pay reports by Plaintiff-Ruberton to Defendant-Tyner and County Counsel Ferguson on March 2, 2018.
709. Plaintiff-Ruberton was given no notice or opportunity to discuss the assignment despite the fact that she had told Defendant-Tyner at the March 2, 2018, meeting that she already had significantly more assignments and responsibilities than either Defendants Shill or Formica.
710. This assignment of additional duties was retaliation for the complaints she raised at the March 2, 2018 meeting.
711. Indeed, the additional workload was associated with no additional pay.
712. On or about March 20, 2018, at Plaintiff-Ruberton's request, there was a meeting with Defendants Tyner and Shill.
713. At that time Plaintiff-Ruberton asked Defendant-Tyner to reconsider the reassignment of this chief assistant prosecutor's responsibilities and to include all of the Chief Assistant Prosecutors in a discussion for a fair and equitable distribution of the work assignments.
714. Defendant-Shill was openly hostile and disparaging to Plaintiff-Ruberton during this meeting.
715. On or about April 17, 2018, Plaintiff-Ruberton was summoned to a meeting with Defendants Tyner, Shill, Formica and the captain of administration/office manager.
716. Defendant-Tyner stated that the meeting was a continuation of the discussion of the reassignment of the chief assistant prosecutor's duties.

717. Plaintiff-Ruberton was told that she would be reassigned many of the chief assistant prosecutor's duties and some would be assigned to another assistant prosecutor.
718. The sole purpose of the captain's presence in this meeting was to intimidate and harass Plaintiff-Ruberton.
719. It was common knowledge and practice at the ACPO that the captain of administration/office manager was only present at this type of meeting if some negative employment action, ie. termination, was anticipated.
720. Plaintiff-Ruberton left the meeting and within minutes was summoned back to the conference room where she was confronted by Defendant-Shill and the captain/office manager.
721. Without any notice, she was told she was being disciplined for use of sick time and was now required to provide a doctor's note whenever using a sick day.
722. This discipline was in direct contravention of ACPO policy, custom and practice and was done solely for the purpose of harassing, intimidating and retaliating against Plaintiff-Ruberton for the complaints made on March 2, 2018.
723. On or about May 7, 2018, Plaintiff-Ruberton, with counsel, met with the Judge for the purpose of an investigation and provided information regarding the above.
724. On or about May 24, 2018, Plaintiff-Ruberton provided the Judge additional information, as he requested, via e-mail, regarding complaints and concerns at ACPO.
725. A second meeting with Plaintiff-Ruberton was being arranged whereby the Judge could meet with Plaintiff-Ruberton as well as Plaintiff-Fetzer and Plaintiff-McManus. That meeting was scheduled for July 3, 2018.

726. On or about June 28, 2018, Plaintiff-Ruberton was summoned to a meeting by Defendant-Tyner.
727. She was directed into a conference room with the captain/office manager.
728. Defendant-Tyner stated “your services are no longer needed” and left the room.
729. The captain/officer manager instructed Plaintiff-Ruberton she was required to turn over her credentials, her work vehicle, remove her personal belongings and vacate the building immediately.
730. This was done at 3:45 in the afternoon, a time when all employees were ending their work day, to purposely and intentionally humiliate Plaintiff-Ruberton by forcing her to pack her personal belongings and leave the building when all other employees were exiting the building for the day in addition to having to find a ride home.
731. A captain and a lieutenant were directed to stand guard at Plaintiff-Ruberton’s office door while she packed her belongings to purposely and intentionally humiliate Plaintiff-Ruberton so that other employees stood by and watched her being guarded like a criminal until she left the building.
732. On or about July 23, 2018, Plaintiff-Ruberton advised the captain/office manager that she had filed for retirement and requested she be provided with retirement credentials, as was the long standing policy, custom and practice of the ACPO.
733. On July 30, 2018, the captain/office manager advised Plaintiff-Ruberton via e-mail that “the Prosecutor has denied [her] requests” without any further explanation.
734. Plaintiff-Ruberton is the first person who has retired from the ACPO who has been denied retirement credentials.

735. This was done intentionally to further harass and humiliate Plaintiff-Ruberton, even after she had already been fired, and to send a message to all employees as to how they would be treated if they made a complaint as Plaintiff-Ruberton had done.
736. As a result of the conduct of Defendants Tyner, Shill and Formica, Plaintiff-Ruberton has suffered significant emotional and physical distress including stress, anxiety, loss of sleep, headaches, bruxism, in addition to financial losses.
737. Indeed, the Defendants, the County, Levinson and Chairman of the Board, Freeholder Formica treated Plaintiff-Ruberton much different than they treated Defendant-Tyner in their capacities as Prosecutor.
738. In terms of the budget and negotiations, Plaintiff-Ruberton was prohibited from implementing effective salary changes and was held to a 2% budget cap whereas Defendant-Tyner was not and exceeded the 2% budget cap with approval by Defendants, the County, Levison and Freeholder Formica.
739. The permission to exceed the 2% cap enabled Defendant-Tyner to effectuate the culture of cronyism in that Defendant-Tyner gave family and friends, such as his brother, large and unprecedented salary increases and benefits, such as the use of County owned vehicles.
740. Indeed, Defendant-Formica, brother of Freeholder Formica received a \$30,000 increase in salary by Defendant-Tyner, at the same time Plaintiffs Ruberton's and Fetzer's salaries were significantly decreased.
741. The son-in-law of Defendant Levinson also received a promotion and \$50,000 salary increase by Defendant-Tyner.

742. Demonstrating the utter ignorance and unwillingness to objectively view the Plaintiffs' claims of gender discrimination under the Tyner administration, Defendant Freeholder Formica publicly mocked and denounced the Plaintiffs' claims by falsely characterizing Ruberton's case to be about a "parking spot" as if this were the sum total of Ruberton's claims.
743. It is painfully evident that the all-white male leadership in the County (i.e., Levinson, Formica and Ferguson) refuse to look deeper at gender bias and systemically devalue Plaintiffs, as women, in the workplace.
744. Defendants fail and/or refuse to view the claims from the perspective of a reasonable woman.
745. Plaintiff-Ruberton's gender based claims run much deeper than Tyner refusing to provide her with a parking spot.
746. Plaintiff-Ruberton's gender-based disparate and harassment claims consist of a long list starting in March 2017 which include, but are not necessarily limited to, and may be summarized, from her perspective<sup>6</sup>, as follows:
- Demoted in March of 2017 (executive staff had consisted of 3 women & 1 man - all 3 women demoted & salaries reduced, man not demoted, kept position).
  - Reduced my salary.
  - Refusal to give 2% annual increase to salary (only 2 people eligible who did not receive it were 2 women - me and Jackie Simonson, Victim/Witness Coordinator) (male (Dooley) did receive 2017 2% annual increase) (March 2017)

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<sup>6</sup> The jury may decide whether Ruberton's perspective meets the "reasonable woman" standard as this is a question of fact. *Hurley v. Atlantic City Police Dept.*, 933 F.Supp. 396 (D.N.J. 1996)



- Shill's refusal to work with me regarding my unit's (GJ) needs and functions (March 2017 on)
- Reducing my staffing (GJ always had 6 APs assigned, they had me down to 4)  
Assigning work to with subordinates without telling me
- Excluding from high profile cases and/or investigations & going to my subordinate (male-John Flammer) for decisions in high profile cases (May 2017 on)
- Directing my subordinate (Flammer) not to consult with me or come to me for direction on cases & investigations for Official Corruption & Internal Affairs - he being much less experienced than me
- Directing outside agencies not to contact me for legal advice (chiefs of police) who had always previously routinely contacted me for direction & advice on corruption & IA cases
- Exclusion from Kauffman case - claim to be "protecting me" bc I didn't charge case - but same theory should have applied to SHill b/c he was the original Prosecutor assigned to case
- Exclusion from high profile case of juveniles escape from Harborfields (which fell under my unit & detectives I supervised were working the case), including press conference - all men at podium - even men who had nothing to do with the case
- Derogatory comments about women said and discussed openly in office with doors open for everyone to hear (june 2017 on)

- Mocking me behind my back when they weren't aware I could hear them (Oct 2017)
- Excluding me from lunches & parties in the Executive Unit
- Bosses' day lunch - Shill got up and moved so he wouldn't have to sit next to me (Oct 2017)
- Did not invite me to a planned pizza party to celebrate Tyner's one year anniversary as prosecutor (March 2018)
- Did not include me in any pictures on the day Tyner was sworn in - stood on the opposite side of the room, I was left by myself with a secretary & person from AG's office (March 2017)
- Refusal to provide answers and/or direction on issues or matters requiring authority from the prosecutor
- Acknowledged & publicly praised men for things they had done (such as tried a case or made an arrest - which were actually part of the job) but never publicly congratulated me when I was given an award by the Atlantic City Police Foundation (October 2017)
- Refusing to report to the county complaints of gender discrimination from other employees even when I told SHill he had to report it telling me Tyner wanted to handle it himself w/o the county knowing - proving to me Tyner would not address any gender related complaints as required by law (Dec. 2017, May 2018)

***B. Plaintiff, Donna Fetzner***

747. In or about March 2017, when Defendant-Tyner was appointed and sworn in, Plaintiff-Fetzer was part of a negotiated and promised salary decrease from \$135,000 to \$125,000 per year.
748. At that same time, two men in the office received substantial pay increases. Defendant-Shill received a pay raise of approximately \$8,000, and Defendant-Formica (who has significantly less experience and seniority) received an approximate \$30,000 pay raise.
749. Indeed, Defendant-Tyner promoted Formica and demoted Plaintiff-Fetzer.
750. A few weeks later, Defendant-Tyner came into Plaintiff-Fetzer's office and informed her that he would not give her the \$125,000 per year pay, but that her skills were valuable and worthy of monetary compensation.
751. Plaintiff-Fetzer did not receive the negotiated and promised salary.
752. Instead, her salary was decreased to \$112,518 that year which was the same pay as three male Chief Assistant Prosecutors who had approximately half as much experience and seniority as Plaintiff-Fetzer.
753. In or about May 2017, Plaintiff-Fetzer realized that Defendants were excluding her from important emails being sent by the New Jersey Attorney General's Office.
754. These emails were being sent to Defendant-Shill, but they were not being forwarded to her as was the standard practice.
755. This prevented Plaintiff-Fetzer from effectively performing her duties.

756. In or about June 16, 2017, Plaintiff-Fetzer then asked the Attorney General representative to copy her on anything bail reform-related. After that request, Plaintiff-Fetzer began receiving emails from the Attorney General's Office.
757. She notified Defendant-Shill of her request to the representative and noted her need for this information to effectively run her unit.
758. In or about July 2017, another Chief Assistant Prosecutor resigned from the ACPO.
759. This person had a salary of \$119,399.00 per year so due to the vacancy and available monies, Plaintiff-Fetzer requested a pay increase to \$119,399.00 in annual salary.
760. Defendant-Tyner denied the request.
761. All the while, Defendant-Tyner had hired several new employees at higher than usual salaries, including his brother (Michael Graham) who was given a new vehicle to drive.
762. In usual cases, only the detective staff are given vehicles, but Defendant-Tyner gave one to his brother.
763. During the summer of 2017, Defendant-Tyner allowed Chief Assistant Prosecutor Seth Levy, a male, the use of a county vehicle. In the history of ACPO, the only legal staff to be assigned county vehicles were the prosecutor, first assistant and deputy first assistants, which includes the use of county gas.
764. Plaintiff-Fetzer, also a Chief Assistant Prosecutor, questioned why Mr. Levy was receiving special treatment and wanted to know if all chief assistant prosecutors would receive vehicles now.

765. Defendant-Shill indicated that the prosecutor had authorized Mr. Levy's use of a county vehicle. No other chief assistant prosecutor received permission to use a county vehicle.
766. Defendant-Tyner's allowing Levy to use a county car despite not having the requisite position within the ACPO to do so is just another example of Defendant-Tyner's favoring men at the ACPO—often at the expense of women at the ACPO—by giving them privileges and compensation that they were not otherwise qualified for on their merits.
767. In January 2018, Plaintiff-Fetzer received her annual 2% pay increase, making her salary approximately \$114,768.
768. In or about February 2018, Plaintiff-Fetzer again began to notice that she was not being forwarded important information and emails.
769. This prevented Plaintiff-Fetzer from effectively performing her duties.
770. In or about February 2018, Defendant-Tyner gave a male agent a \$20,000 salary increase to entice him to stay at the office.
771. In or about April, 2018, Defendant-Shill and Seth Levy called upon an assistant prosecutor to discuss job duties relating to Plaintiff-Fetzer's unit, but excluded Plaintiff-Fetzer from this meeting.
772. In or about May 5, 2018, Plaintiff-Fetzer received an email from Defendant-Tyner that she was to make herself available the next day to be interviewed by the Judge in the ACPO regarding the issues of gender discrimination raised by Plaintiffs.

773. Plaintiff-Fetzer learned that the interview would take place in Defendant-Tyner's executive conference room.
774. This made her very uncomfortable because the location was not neutral, it was controlled by Defendant-Tyner, and anything she said could be overheard by Defendants Tyner and Shill.
775. On or about July 2, 2018, Defendant-Tyner held a meeting with the chief assistant prosecutors.
776. At the above meeting, Defendant-Tyner advised that Defendant-Shill was to supervise the Grand Jury Unit. This was three work days after he fired Plaintiff-Ruberton.
777. Defendant-Tyner stated that if Defendant-Shill was unavailable to assist the younger lawyers, they could consult with Seth Levy, Defendant-Formica or another male chief assistant prosecutor.
778. Defendant-Tyner excluded Plaintiff-Fetzer from this list even though she had more experience than all three (3) males and she had supervised the Grand Jury Unit in the past.
779. Other female employees have complained to Plaintiff-Fetzer about being mistreated by Defendant-Shill and Seth Levy.
780. On several occasions, and although Plaintiff-Fetzer supervises the Screening Unit, Defendant-Shill would bypass Plaintiff-Fetzer's office to speak with her subordinates about issues relating to her unit.
781. Defendant-Shill has ignored Plaintiff-Fetzer's attempts to consult with him on several matters.

782. Plaintiff-Fetzer's gender-based disparate and harassment claims consist of a long list starting in March 2017 which include, but are not necessarily limited to, and may be summarized, from her perspective<sup>7</sup>, as follows:

- I was demoted in March of 2017;
- My salary was reduced when no other males were demoted or reduced in salary under Tyner.
- The continued refusal to increase my salary after another Chief Assistant Prosecutor retired in July 2017;
- Shill refused to work with me regarding my unit's needs and functions;
- Defendants reduced my staffing from 6 lawyers to 4; this includes me as I am a working chief assistant prosecutor-in other words, I perform the same duties as my subordinates, in addition to my supervisory duties;
- Defendants blocked me from receiving important emails from AG in order to effectively run my unit;
- Defendants assigned work to my subordinates without advising me and thereby undermining my authority;
- On or about June 15, 2018, Shill disciplined an employee after he/she reported to me that Tyner's brother, Michael Graham behaved inappropriately in the courtroom, when the disciplinary action of my subordinate was without merit (Shill reprimanded him/her for not contacting a victim, even though his/her infoshare notes and an independent witness were able to show that he/she had in

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<sup>7</sup> The jury may decide whether Fetzer's perspective meets the "reasonable woman" standard as this is a question of fact for the jury. *Hurley v. Atlantic City Police Dept.*, 933 F.Supp. 396 (D.N.J. 1996).

fact contacted the victim); Shill purposefully attempted to intimidate employees from reporting to me any inappropriate actions; and, it was meant to intimidate me to show others that interaction with me would lead to unfair disciplinary action;

- Defendants refused to increase my salary even after another Chief Assistant Prosecutor retired in July 2017;
- Defendants refused to grant a stipend for my position and duties as a Legal Advisor;
- Defendant-Shill refusing to speak to me and/or address the unit needs for which I supervise, including but not limited to, staffing issues;
- Tyner has purposefully refusing to increase my unit's staff needs - as it is still 2 lawyers short;
- In or about May 2018, Defendant-Tyner personally sent me an email regarding me being interviewed by the retired judge assigned to conduct an investigation into Ruberton's gender discrimination complaint which had to do with me and thereby caused a chilling effect on me;
- In or about July, 2018, Defendant-Tyner advised all the chief assistant prosecutors that the "younger" lawyers were to go to Formica, Levy and Bergman for any advice regarding Grand Jury completely by-passing me even though I previously supervised that unit;



- In or about July 2018, the presence of a captain, in chiefs meeting-Tyner attempted to intimidate me-as captain is only present for negative employment action;
- I was told by other employees that Tyner publicly stated that he was going to fire me on or about Labor Day;
- I experience a daily hostile and ostracizing work environment in that it is evident that other employees stay away from me as they are obviously afraid to be seen talking to me;
- In or about October 2018, once my letter to the New Jersey Attorney General was released to the public, Tyner's media and public relations representative, Donna Weaver, treated me with disdain and hostility (refusing to speak with me, say hello, and is seen scowling at me);
- In and about October and November 2018 Tyner and Shill created a hostile work environment by ignoring me at times when they saw me in the office; or, by abruptly stopping a conversation as soon as I appeared on the scene creating awkward silence; or abruptly removing themselves from conversations upon my appearance in the area.
- After the firing of Ruberton, Defendant-Formica directed an employee to attend a function that Ruberton would normally have attended. This employee is not a chief assistant prosecutor. I was at all times a chief assistant prosecutor and was not asked to attend the function.

783. As a result of the wage disparity, continuing hostility arising from the men in the office, Plaintiff-Fetzer has suffered and continues to suffer from a lack of sleep, stress, and anxiety, in addition to financial losses.

***C. Plaintiff, Heather McManus***

784. Plaintiff-McManus was hired by the ACPO on January 5, 2004 whereby she was assigned to the trial team.

785. In June 2005 Plaintiff-McManus was selected for the Atlantic County Crisis Negotiator's Team.

786. On October 14, 2016 Plaintiff-McManus was called to Acting Prosecutor Plaintiff-Ruberton's office and was advised that she would be made the next Captain in the office once a vacancy permitted it. Previously Prosecutor McClain had also advised Plaintiff-McManus that she possessed the skills and knowledge to be promoted to Captain upon the retirement of the Captain of OCU/FCU/SVU.

787. Previous lieutenants of the OCU/FCU Internal Affairs Unit had become captains, and the work of Plaintiff-McManus merited the promotion.

788. On or about April 2017 Plaintiff-McManus was contacted in reference to a background investigation that a detective assigned to her was conducting.

789. The detective conducting the background investigation advised that he/she was concerned because he/she had been contacted and told to stop the background investigation. The detective was concerned that they had done something to upset Defendant-Tyner

790. During this background the applicant was being interviewed in reference to financial issues that arose. According to the detective the applicant became indignant and stated that she was contacting “Damon”.
791. During the interview the applicant called Defendant-Tyner who advised the applicant they did not have to answer the questions thus ending the interview.
792. The detective was contacted by a superior officer who advised to stop the background and finish the report.
793. The detective was concerned that there would be a further issue and contacted Plaintiff-McManus.
794. Plaintiff-McManus advised that she wanted to speak to Defendant-Tyner in reference to the background.
795. This meeting never took place. In fact a subsequent conversation about the background led Plaintiff-McManus to understand that Defendant-Tyner ordered that the applicant be hired without answering any questions reference the financial issues.
796. In or about July 2017, Plaintiff-McManus was sitting in her office when she heard Defendant-Shill and Levy outside her office discussing with the Sergeant of the unit the assignment of a detective from the Official Corruption Unit (who is detailed to the FBI) to assist with a medical fraud case.
797. Defendant-Shill and Levy had to bypass her office to get to the Sergeant’s office.
798. Plaintiff-McManus left her office and asked Defendant-Shill and Levy if she could help with something and was advised by the Sergeant that they were looking to reassign the detective.

799. Plaintiff-McManus asked a few questions to ascertain what exactly it was they needed.

It became apparent that both Defendant-Shill and Levy did not understand how the FBI Government Corruption Unit assignment was allocated and its impact on state prosecution of cases versus federal prosecution of cases.

800. Plaintiff-McManus explained that much of the information that the detective has is considered top secret and a special clearance is needed to gain any information from any investigations he may be doing. It became apparent that Defendant-Shill and Levy did not understand the complexity involved in a dual federal/state prosecution and in fact Levy became obviously frustrated with Plaintiff-McManus and would not look at her or respond to her when she was asking questions attempting to understand what they needed.

801. Defendant-Shill and Levy left the office without making a decision.

802. Defendant-Shill and Levy bypassed Plaintiff-McManus, a woman of rank and experience, to discuss the situation with a man of less rank.

803. Defendant-Shill also bypassed Plaintiff-McManus by contacting the detective assigned to the FBI task force on multiple occasions to discuss investigations involving both ACPO and the FBI.

804. Plaintiff-McManus requested consideration to the position of Captain as she was qualified and had previously been promised the position based on her rank, credentials and work performance.

805. In or about the Fall of 2017, Plaintiff-McManus was advised that Defendant-Tyner wanted a current captain to retire so that Defendant-Tyner could hire Defendant-Tyner's friend, Eric Hill as a Captain.
806. Ultimately Defendant-Tyner wanted to promote Hill to the position of Chief of Detectives.
807. A current captain made it known that he would not be retiring in the near future so Defendant-Tyner attempted to create the position of Deputy Chief for Hill but had to negotiate with the County for additional monies to create this position.
808. On or about January 9, 2018, however, a captain announced his retirement.
809. On or about January 31, 2018, the Chief of Detectives held a superior officers meeting in the main conference room and announced that Defendant-Tyner was hiring Eric Hill as a Captain to take the former captain's position.
810. On or about February 1, 2018 Hill submitted an application for a position with the ACPO.
811. On or about February 2, 2018 Defendant-Tyner signed training paperwork so that the New Jersey Police Training Commission ("PTC") would grant Hill a waiver from PTC training.
812. Thereafter, Defendant-Tyner hired Hill without a pre-employment background completed and while Hill was assigned out of the country.
813. In an email dated on or about February 5, 2018, Hill advised Defendant-Tyner that he was not able to take the position.

814. On or about February 7, 2018 Tyner had the Chief of Detectives announce at a meeting that he would be eliminating the Captain's position so as to exclude Plaintiff-McManus, the only female eligible for the position, from attaining a higher rank.
815. Also at this meeting, the Victim/Witness Coordinator position recently vacated by a female employee and which was budgeted for \$92,000.00 was discussed.
816. Defendant-Tyner stated, "We can promote [another female employee] and then fire her. That will save us some money."
817. He said he was going to fill that position by the summer and he would just give her a stipend until then.
818. He asked the captain, "What do we give her, 5 or 6 thousand?" It is believed the female employee never received the stipend.
819. He then asked if the raise of a male agent had been approved. The captain told him it had and that was a "done deal" and wouldn't be affected by the budget problem.
820. Defendant-Tyner agreed to pay the agent an additional \$20,000.00 raise, despite the position being covered by union contract.
821. On or about February 20, 2018 Plaintiff-McManus sent a letter to Defendant-Tyner stating her interest in the position of Captain due to the position being recently vacated by a retired captain.
822. Thereafter Defendant-Tyner responded by advising that there is "NO" position for Captain available for Plaintiff.

823. Traditionally, the ACPO has promoted the Lieutenant in charge of OCU, FCU, and confidential funds to the next available position and rank of Captain.
824. Plaintiff-McManus was at this time the lieutenant in charge of OCU, FCU, Internal Affairs, and confidential funds.
825. In fact, at least the last four (4) Lieutenants in charge of those sections have been promoted to Captain to command the sections.
826. Once the Captain left the office March 2018, the duties and responsibilities of Plaintiff-McManus increased. Her pay did not.
827. On or about August 16, 2018, Plaintiff McManus received information from a reliable source that Defendant-Tyner had threatened to fire another female employee, Plaintiff-Fetzer and she (McManus). Further it was stated that if the three women made it to Labor Day, they would be ok but until then it was precarious.
828. Plaintiff-McManus was in great fear that Defendant-Tyner would retaliate against her the same way he did against Plaintiff-Ruberton.
829. Plaintiff-McManus had over twenty five years on the job and she felt she had no choice but to retire before her career was unfairly terminated.
830. On or about the week of February 19, 2018, Plaintiff-McManus was assigned to an internal investigation involving an outside agency.
831. She was told by the Chief of Investigators it didn't matter who assisted with the investigation as long as Plaintiff-McManus was the detective primarily handling it. It was a lengthy investigation due to the complexities of same.

832. The last of the interviews were conducted during the end of July and into the beginning of August 2018.
833. Plaintiff-McManus began emailing Defendant-Shill so that he would review the internal investigation report and provide legal guidance on same as per standard practice.
834. On or about August 27, August 31, and on September 5, 2018, Plaintiff-McManus requested Defendant-Shill provide his availability to discuss the case with her. Defendant-Shill failed to respond to Plaintiff-McManus.
835. On or about Monday, September 10, 2018, Plaintiff-McManus sent the Chief of Investigators an email expressing her concerns about briefing in the case and her confidential funds responsibility.
836. Plaintiff-McManus was forced to track Defendant-Shill down and directly ask why he had not responded to her repeated requests for assistance to complete an important investigation.
837. In fact on or about September 2018 late in the day Plaintiff-McManus went to see if the Chief Assistant Prosecutor in charge of FCU was in her office to discuss issues that the Unit was having with case reviews.
838. Plaintiff-McManus had to bypass CAP Levy's office. She noticed Defendant-Shill in the office with Levy and door open to the office. The attorney Plaintiff-McManus was looking for was not available and when she stopped (the office was directly next door) to speak to Defendant-Shill about the investigation, the door had been pushed shut.



839. One of the Captains' was in his office a few doors down from the office of CAP Levy. Plaintiff-McManus stopped and told him what had happened and decided to go back and find Defendant-Shill to discuss the issue.
840. As she passed CAP Levy's office the door was now fully open, Levy was currently alone, and Defendant-Shill was now in his office. Plaintiff-McManus asked him about meeting. Defendant-Shill stated the Chief of Detectives hadn't made himself available.
841. When Plaintiff-McManus did not respond, Defendant-Shill stated he and Plaintiff-McManus had never had any issues and he didn't want any. He stated that he would try and contact the Chief and set up a meeting.
842. Plaintiff-McManus again told the same Captain about what had just transpired and ultimately the Chief of Detectives, who laughed nervously and said no, leading Plaintiff-McManus to believe that Defendant-Shill's statement that the Chief hadn't responded or made himself available untrue.
843. Also on September 10, 2018, Plaintiff-McManus was asked by a co-worker whether a lawsuit (by her) was "in the works" and that the administration announced that the Judge had conducted an investigation and found there to be nothing wrong within the office.
844. The results of the the Judge investigation were not reported to Plaintiff-McManus in confidence nor has it ever been communicated to her through the chain of command.

**IX. THE INITIAL FORMAL COMPLAINT, INVESTIGATION & CONTINUED  
GENDER DISCRIMINATION**

845. On or about March 2, 2018, Plaintiff-Ruberton, with counsel, arranged a meeting with Defendant-Tyner and County Counsel James Ferguson to address concerns by Ruberton that women in higher level positions within the ACPO were not being treated with parity in status and pay compared to the men employed within the ACPO for substantially similar work.
846. One of the issues raised at the meeting on March 2nd by Plaintiff-Ruberton was the disparity in work assignments between herself and Defendants Shill and Formica.
847. The meeting was requested on behalf of Plaintiff-Ruberton, and specifically expressed as being an attempt to try and resolve the matter in an amicable way and not as a prelude to litigation.
848. Plaintiff-Ruberton expressed several times that she did not want to litigate or sue the Defendants and indeed, she had no intention of doing so until Defendant-Tyner fired her several months after the meeting.
849. After the March 2nd meeting, Ferguson, however, treated the matter as though Plaintiff-Ruberton had threatened to file a lawsuit.
850. Ferguson retained the services of a retired judge who had been assigned to the criminal division for most of his tenure as a State Superior Court judge (2001 to 2015), to conduct an investigation regarding the problems raised by Plaintiff-Ruberton.
851. A critical mistake for any employer investigating a workplace discrimination claim is to select the wrong investigator.

852. By unanimous decision in the recent case of (July 17, 2013), the New Jersey Supreme Court extended greater protection to employees blowing the whistle on suspected violations of law in the workplace. *Battaglia v UPS*, 214 N.J. 518 (2013).
853. Siding with employees, the court ruled that in actions under the New Jersey Law Against Discrimination (LAD), an employee alleging unlawful retaliation for having complained of discriminatory behavior in the workplace need only show that he/she had a good faith belief that the alleged conduct violated the LAD.
854. The employee is not required to point to an actual victim of discrimination, and the fact that the employee was wrong and complained of conduct that was in fact entirely lawful will not bar a retaliation claim.
855. This holding could significantly expand the number of employees eligible to pursue unlawful retaliation claims in response to a termination or other adverse employment action.
856. Instead, County officials have publicly made statements that show blind support for Defendant-Tyner and in disregard to any complaint raised by Plaintiffs herein.
857. Indeed, Defendants Dennis Levinson and Freeholder Formica have publicly announced their support of the male defendants even before this lawsuit was filed and even before all the facts were and/or have been disclosed.
858. In so doing, Defendants Levinson and Formica have expressly supported the male defendants and have implicitly denounced and discredited the female Plaintiffs which is tantamount to gender discrimination.

859. Defendants Levinson, Formica and County counsel have unfairly attempted to influence the Board of Freeholders (a panel of nine members, including Freeholder Formica) in favor of Defendants Tyner, Shill and Formica and have maliciously attempted to discredit the credibility of the Plaintiffs regarding their claims.
860. Defendants were responsible for feeding to local conservative radio host, Harry Hurley, biased and incomplete information regarding the Plaintiffs in an effort to sway public opinion for Defendant-Tyner and against Plaintiffs.
861. Upon information and belief, Defendant-Tyner and all Defendants provided the internal, confidential report and investigation materials by the retired Judge regarding Plaintiffs' claims of gender discrimination and wage disparity to Harry Hurley, a radio host with no training as an investigator and with no legitimate reason to possess such information, for the purpose of exploiting the County's support for Defendant-Tyner, even in the absence of all the evidence regarding the Plaintiffs' cases.
862. In return for support from Defendants Levinson and Freeholder Formica, Defendant-Tyner has provided the financial gain to the family members of these Defendants, Levinson and Freeholder Formica.
863. Each of the Defendants have assisted one another, aided and abetted, adopted, condoned and/or ratified the conduct of one another in the violation of the laws as set forth below.

**X. LEGAL CLAIMS**

**COUNT I**

*New Jersey Conscientious Employee Protection Act (CEPA), N.J. S.A. § 34:19-1 et seq.*

864. All of the foregoing and subsequent paragraphs are incorporated herein by this reference as if stated here in their entirety.
865. CEPA protects whistleblowers from retaliation and other adverse employment actions if they report legal violations by their employers.
866. Plaintiffs Ruberton and McManus reasonably believed that an actions and/or policies of Defendants violated the law, i.e., N.J.S.A. 10:5-1 et seq. and interpretative case law regarding same as well as the public policy to eradicate gender discrimination in the workplace; and, to eliminate the gender pay gap in the workplace.
867. Those actions and/or policies pertained to gender discrimination in the workplace.
868. Reporting on and/or expressing complaints about gender discrimination is “protected activity” under CEPA.
869. Plaintiffs Ruberton and McManus reported allegations of gender discrimination to a supervisor or government official.
870. Plaintiffs Ruberton and McManus also cooperated in an investigation of alleged gender discrimination by the employer.
871. An investigation was initiated by Atlantic County counsel to look into the allegations of gender discrimination raised by Ruberton.
872. During the middle of the investigation that followed the complaints of gender discrimination made by Ruberton, Ruberton was terminated from employment.

873. McManus formally submitted notice of gender discrimination to County Legal Counsel.
874. Defendant Tyner reported to and/or told others employed by the ACPO that he wanted to fire McManus.
875. Executive staff members of the ACPO reported to members of the public that Tyner wanted to fire McManus.
876. Atlantic County counsel advised Tyner not to fire McManus in regards to her reports of alleged gender discrimination.
877. Defendant Tyner did not speak to McManus at any time after he fired Ruberton to assure her that she would not be the subject of retaliatory action.
878. No representative or agent on behalf of Defendant-Atlantic County spoke to McManas to assure her that she would be free from retaliatory termination and/or adverse employment action.
879. In fear and intimidated by the actions of defendant Tyner and the hostility within the workplace exhibited by the other Defendants towards Plaintiff- McManus, she was constructively discharged from employment and forced to resign.
880. Plaintiff Ruberton suffered an adverse employment action.
881. Plaintiff McManus suffered an adverse employment action.
882. There is a causal connection between the Plaintiffs protected activity and their respective adverse employment actions.
883. As a direct and proximate result of the Defendants unlawful actions the Plaintiffs have been caused to suffer damages.

884. Plaintiffs were caused to suffer personal hardships, and grievous harm by Defendants.

885. Defendants are liable for violations of CEPA under theories of vicarious liability, respondeat superior liability, delegated authority liability, individual liability, and supervisory liability. See *Higgins v. Pascack Valley Hospital*, 158 N.J. 404 (N.J. 1999); *Paladino v. VNA of Southern New Jersey, Inc.*, 68 F. Supp. 2d. 455 (D.N.J. 1999).

**WHEREFORE**, Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon her by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants' illegal acts, punitive damages and any other damages the Court deems fair and just.

## **COUNT II**

### ***New Jersey Law Against Discrimination -LAD Retaliation Claim***

886. All of the foregoing and subsequent paragraphs are incorporated herein by this reference as if stated here in their entirety.

887. The LAD makes it illegal “[f]or any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this act[.]” N.J.S.A. 10:5-12(d).

888. Plaintiff-Fetzer was retaliated against in violation of N.J.S.A. 10:5-12 (d)

889. Plaintiff-Fetzer reported allegations of gender discrimination.
890. Plaintiff-Fetzer participated in an investigation alleging gender discrimination.
891. Plaintiff-Fetzer was scheduled to meet with the investigator, together with Plaintiffs-Ruberton and McManus to speak about allegations of gender discrimination.
892. In this case, and as described in more detail above, the concerns raised by Plaintiff-Fetzer regarding gender discrimination were both reasonable and made in good faith
893. Plaintiff-Fetzer engaged in a protected activity known to the Defendants.
894. Defendant-Tyner directed that Fetzer was to meet with the retired judge investigator in the “executive” conference room near Tyner’s office and she was directed to meet with the retired judge with Captain Snyder in the absence of Captain Barnett.
895. Defendants Tyner, Shill and Formica prevented all of the email communications from the New Jersey Attorney General, Division of Criminal Justice from being forwarded to Plaintiff-Fetzer thereby icing her out of the important communications needed to fulfill her duties.
896. Following the termination of Ruberton days before Ruberton McManus and Fetzer were scheduled to meet with the investigator about their respective gender discrimination allegations, Fetzer was advised by a supervisory employee that Defendant Tyner was going to fire Fetzer.
897. On or about the time this formal complaint was to be filed, Defendant Tyner sent an email throughout the ACPO that was clearly directed at Fetzer (and plaintiffs) for purposes of intimidation and further retaliatory harassment.



898. Plaintiff-Fetzer was subjected to retaliation at the time and after protected activity took place.
899. There was at all times relevant a causal connection between the retaliatory actions as described above sufficient to show that Plaintiffs' protected activity played a role in the retaliatory actions and made an actual difference in the Defendants' decisions to retaliate.
900. Defendants Tyner, Shill and Formica are individually and personally liable for all unlawful actions in violation of the New Jersey Law Against Discrimination for aiding and abetting those unlawful acts.
901. Defendants the County of Atlantic and/or the Atlantic County Prosecutor's Office is liable for all actions committed by its supervisors, agents and/or employees because it delegated authority to act as supervisors, agents and/or policy makers and/or by ratification of any and all unlawful acts.
902. As a direct and proximate result of the Defendants unlawful actions Plaintiff-Fetzer has been caused to suffer damages.
903. The retaliatory conduct by Defendants caused Plaintiff-Fetzer to suffer serious and grave economic consequences such as loss of financial income, back pay, front pay, inability to secure future employment to date, despite job searches and other mitigating damages actions. The adverse employment actions by Defendants also caused Plaintiffs to suffer stress, unnecessarily so, which in turn caused, and continues to cause anxiety, sleeplessness, worry, high blood pressure, loss of every day enjoyment

in life due to interference from the worry and anxiety about the bad acts of Defendants as well as the stress and worry about their respective future.

**WHEREFORE**, Plaintiff seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon her by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants' illegal acts, punitive damages and any other damages the Court deems fair and just.

### **COUNT III**

***New Jersey Civil Rights Act, N.J.S.A. 10:6-2 et seq. (“CRA”) for violation of New Jersey State Constitutional rights found at Article I, §§1, 2, 6, 18 and 19***

904. All of the foregoing and subsequent paragraphs are incorporated herein by this reference as if stated here in their entirety.

905. Defendants are public employers and/or public officials with final policy making authority as it pertains to the governance of Atlantic County and/or the operations of the ACPO.

906. The Plaintiffs-Ruberton, Fetzer and McManus engaged in protected public concern activity and political affiliation under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

907. N.J.S.A.10:6-2(c) provides relief for either the deprivation of a statutory substantive right or the interference with such a right by threats, intimidation or coercion.  
*Tumpson. v. Farina.*

908. N.J.S.A. 10:6-2(c) provides: *Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection.*
909. The CRA is "modeled on the federal civil rights law which provides for a civil action for deprivation of civil rights (42 U.S.C.A. § 1983). *Ramos v. Flowers*, 429 N.J. Super. 13 (2012).
910. The New Jersey Constitution provides "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it." [N.J. Const. art. I, ¶ 2.]
911. 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. [N.J. Const. art. I, ¶ 6.]
912. 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. [N.J. Const. art. I, ¶ 18.]

913. Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing. [N.J. Const. art. I, ¶ 19.]
914. In *State v. Schmid*, 84 N.J. 535, 557, 423 A.2d 615 (1980), appeal dismissed sub nom., *Princeton Univ. v. Schmid*, 455 U.S. 100, 102 S.Ct. 867, 70 L.Ed.2d 855 (1982), the New Jersey Supreme Court characterized those provisions as "***more sweeping in scope than the language of the First Amendment.***" See also *N.J. Coal. Against War in the Middle E. v. J.M.B. Realty Corp.*, 138 N.J. 326, 353 (1994) (the New Jersey Constitution provides free speech guarantees "broader than the right against governmental abridgement of speech found in the First Amendment"), *cert. denied*, 516 U.S. 812, 116 S.Ct. 62, 133 L.Ed.2d 25 (1995).
915. "No monetary value we place upon constitutional rights can measure their importance in our society or compensate a citizen adequately for their deprivation." *Herrera v. Valentine*, 653 F.2d 1220, 1227 (8th Cir. 1981).
916. The acts as described in more detail above demonstrate violations by Defendants of Plaintiffs substantive rights under the New Jersey Constitution, Article I, ¶¶ 2, 6, 18 and 19.
917. Plaintiffs are intended beneficiaries of the New Jersey Constitution.
918. Plaintiffs spoke out and acted on matters of public concern as citizens and not as part of their official duties.

919. Plaintiffs also opposed and/or refused to participate in activities in violation of laws, rules and/or regulations but were viewed by Defendant-Tyner as antithetical to his political beliefs, allies and/or motives.
920. At all times relevant, Plaintiffs were engaged in a constitutionally protected activity.
921. Defendants took retaliatory employment actions against Plaintiffs.
922. The retaliatory employment actions by Defendants against Plaintiffs so as to have the effect to deter and/or chill persons of ordinary firmness from continuing to engage in that activity
923. The Plaintiff's speech and actions were substantial and/or motivating factors for the adverse employment actions.
924. As a direct and proximate result of Defendants' violation of Plaintiffs' rights, Plaintiffs have been caused to suffer damages.
925. The retaliatory conduct by Defendants caused Plaintiffs to suffer serious and grave economic consequences such as loss of financial income, back pay, front pay, inability to secure future employment to date, despite job searches and other mitigating damages actions. The adverse employment actions by Defendants also caused Plaintiffs to suffer stress, unnecessarily so, which in turn caused, and continues to cause anxiety, sleeplessness, worry, high blood pressure, loss of every day enjoyment in life due to interference from the worry and anxiety about the bad acts of Defendants as well as the stress and worry about their respective future.

**WHEREFORE,** Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon her by Defendants, including, but not

necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants' illegal acts, punitive damages and any other damages the Court deems fair and just.

#### **COUNT IV**

##### ***New Jersey Law Against Discrimination - N.J.S.A. 10:5-12 (t); Equal Pay Act (Fetzer)***

926. All of the foregoing and subsequent paragraphs are incorporated herein by this reference as if stated here in their entirety.
927. Plaintiff-Donna fetzer is considered an employee and protected under the provisions of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(t).
928. At all times relevant, all named Defendants are considered employers, supervisors and/or entities and/or persons subject to liability under the NJLAD.
929. The Equal Pay Act was created to prohibit wage discrimination against women.
930. No employer having employees subject to any provision of the New Jersey Law Against Discrimination shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages, benefits and other remuneration to employees in such establishment at a rate less than the rate at which he pays wages, benefits and other remuneration to employees of the opposite sex in such establishment for substantially similar work.

931. Defendants have violated the Equal Pay Act provisions of the New Jersey Law Against Discrimination by paying lower wages, benefits and other remuneration to Plaintiff-Fetzer to comparable men for substantially similar work.

932. In this regard, to prevail, the Plaintiff is not required to prove an intent to discriminate.

933. As a direct and proximate result of the Defendants unlawful actions the Plaintiff has been caused to suffer damages.

**WHEREFORE**, Plaintiff-Fetzer seeks damages under the Equal Pay Act to vindicate her rights under the laws and remedy the egregious loss and damages inflicted upon her by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants' illegal acts, punitive damages and any other damages the Court deems fair and just. Defendants may not reduce the wages of any employee to equalize the wages between women and men.

#### **COUNT V**

#### ***New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; Gender Disparate Treatment Claims (Ruberton, McManus and Fetzer)***

934. All of the foregoing and subsequent paragraphs are incorporated herein by this reference as if stated here in their entirety.

935. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 (a) prohibits discrimination based on gender.

936. The NJLAD, N.J.S.A. 10:5-12 (e) makes it illegal for any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.
937. Plaintiffs belong to a protected class, i.e., gender. N.J.S.A. 10:5-12.
938. N.J.S.A. 10:5-4 prohibits discrimination in the workplace and states: “All persons shall have the opportunity to obtain employment ... without discrimination because of ... sex ... subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.”
939. Plaintiffs- Ruberton, McManus and Fetzer bring this disparate treatment gender discrimination under the burden-shifting framework set forth in *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973); and *Matiello v. The Grand Union Co.*, 333 N.J. Super. 12 (App. Div.), certif. denied, 165 N.J. 677 (2000).
940. Plaintiff- Ruberton asserts that the defendants unlawfully discriminated against her by demoting her and not paying her commensurate with her job duties, qualifications and responsibilities.
941. Plaintiff-Ruberton was at all times relevant qualified for the position of First Assistant Prosecutor and indeed was holding this position at the time of her demotion to the position of Deputy First Assistant Prosecutor.
942. Plaintiff-Ruberton was replaced as the First Assistant Prosecutor by a male.
943. Plaintiff-Ruberton was more qualified, experienced , performed better and had a better performance record than the male who replaced her.



944. Any reason proffered by Defendants, including but not limited to, “prosecutorial discretion,” and/or the “Prosecutor has the right to surround himself with those he selects and trusts”, is not tantamount to a “legitimate, non-discriminatory reason.”
945. Qualifications, seniority, merit, job performance, trial experience and results, reputation, diligence, management skills and the like are factors that must be considered regarding any employment action as pronounced in Atlantic County policy.
946. There is no immunity for the Prosecutor to base job related decisions and actions on a pure discretionary basis.
947. The Prosecutor is bound by the law, policies and regulations of the State of New Jersey and Atlantic County to not discriminate on the basis of gender.
948. Defendant-Tyner chose to elevate men to his Executive staff above plaintiff, who was the most qualified out of all the men to hold the next highest post behind that of the Prosecutor.
949. The reason proffered by Defendants for the demotion of Ruberton is pretext.
950. Defendant-Tyner selected Defendant Shill to be promoted as the First Assistant when Defendant Shill was known by Tyner and others to have resisted the gender equity remedies and provisions instituted by former Prosecutor Jim McClain.
951. Defendant-Tyner in promoting Shill and demoting Ruberton to a rank lower than First Assistant, Defendant-Tyner was furthering the system of placing males in top leadership positions, furthering the “Glass Ceiling” barrier within the ACPO,

promoting cronyism, promoting favoritism and engaging in “good old boys network” practices that are counter to the advancement of women in the workplace.

952. Defendant-Tyner cannot establish that Defendant-Shill was more qualified than Ruberton to hold the position of First Assistant by any objective measure.

953. Plaintiff-McManus asserts that the defendants unlawfully discriminated against her by refusing to promote her and not paying her commensurate with her job duties, qualifications and responsibilities.

954. Defendant-Tyner sought the promotion of a candidate to the rank and position of Captain following the retirement of a Captain within the Detective Division of the ACPO as more fully described above.

955. Plaintiff-McManus was qualified, ready and next in line to fill the position.

956. Plaintiff-McManus made known to Defendants her desire and qualifications for the promotion to the rank of Captain.

957. Defendant-Tyner instead sought to fill that position with a person who was outside the ACPO, a friend of Tyner’s and a male.

958. The male whom Tyner sought to promote was not qualified to hold the position of Captain in the ACPO.

959. Upon learning that the male who Tyner wanted to promote was not qualified and was not legally permitted to hold the position, Tyner eliminated the position as an excuse so as not to permit the position to go to Plaintiff McManus.

960. Defendant-Tyner does not have a “legitimate, non-discriminatory reason” for failing and/or refusing to promote McManus.

961. Any such claim proffered by Defendant-Tyner that the position of Captain was eliminated for “budgetary” reasons is pretext.
962. Indeed, Defendant Tyner promoted Freeholder Formica’s brother and Director Executive Levison's son-in-law with salary increases which, combined, total nearly \$80,000.00.
963. The salary increase associated with the promotion from Lieutenant to Captain had it been provided to Plaintiff, McManus was far less than \$80,000.00.
964. Plaintiff-Fetzer asserts that the defendants unlawfully discriminated against her by demoting her and not paying her commensurate with her job duties, qualifications and responsibilities.
965. Plaintiff- Fetzer asserts that the defendants unlawfully discriminated against her by demoting her and not paying her commensurate with her job duties, qualifications and responsibilities.
966. Plaintiff-Fetzer was at all times relevant qualified for the position of Deputy First Assistant Prosecutor and indeed was performing duties commensurate with that of Deputy First Assistant at the time of her demotion to the position of Chief Assistant Prosecutor.
967. Plaintiff-Fetzer was replaced as the Deputy First Assistant Prosecutor by a male.
968. Plaintiff-Fetzer was more qualified, experienced, performed better and had a better performance record than the male who replaced her.
969. Defendant-Tyner does not have a “legitimate, non-discriminatory reason” for demoting Fetzer.

970. Defendant-Tyner sought to and indeed did, promote Freeholder Formica's brother to the position of Deputy First Assistant, a less qualified male.
971. Any such claim proffered by Defendant-Tyner that the position of Deputy First Assistant Prosecutor was offered to a male is pretext.
972. Defendant-Tyner discriminated against Plaintiffs based on gender.
973. Defendants also discriminated against the Plaintiffs with respect to the denial of equal job opportunities and privileges the workplace, compensation, overtime and /or ability and opportunity for increased earnings, job duties, responsibilities and tasks and other terms and conditions of employment.
974. Defendants Atlantic County, Levison and Freeholder Formica acquiesced, ratified, adopted, aided and supported the gender discrimination by its delegated supervisors, officers, employees and agents.
975. The discriminatory conduct by Defendants caused Plaintiffs to suffer serious and grave economic consequences such as loss of financial income, back pay, front pay, inability to secure future employment to date, despite job searches and other mitigating damages actions. The adverse employment actions by Defendants also caused Plaintiffs to suffer stress, unnecessarily so, which in turn caused, and continues to cause anxiety, sleeplessness, worry, high blood pressure, loss of every day enjoyment in life due to interference from the worry and anxiety about the bad acts of Defendants as well as the stress and worry about their respective future.

**WHEREFORE,** Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon her by Defendants, including, but not

necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and daily stress caused by Defendants' illegal acts, punitive damages and any other damages the Court deems fair and just.

### **COUNT VI**

#### ***New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; Harassment and Hostile Work Environment Based on Gender (Ruberton, McManus and Fetzer)***

976. All of the foregoing and subsequent paragraphs are incorporated herein by this reference as if stated here in their entirety.
977. Plaintiff-Ruberton, McManus and Fetzer, as more fully described above, were subjected to harassment on the basis of gender.
978. Such harassment is a form of discrimination based on gender and is prohibited by the New Jersey Law Against Discrimination.
979. The conduct of which Plaintiffs complained was severe and/or pervasive.
980. The Plaintiffs are reasonable persons.
981. Defendant-Tyner's assertion that Plaintiffs live in "alternate universes" is offensive and is highly indicative of his mindset in that he is incapable of recognizing behavior that is and/or would be offensive to a reasonable person.
982. Indeed, Defendant-Tyner has failed and/or refused to attend any of the mandatory training programs offered by the County of Atlantic for management, leadership, anti-discrimination and integrity in the workplace.

983. Defendant-Tyner , as well as Defendants Shill and Formica created, individually and collectively, a working environment which was intimidating, hostile and/or offensive for the Plaintiffs.
984. The Plaintiffs reasonably believed that the conditions of employment were altered and that their employment to be unsafe by and as a direct result of the actions of Defendants.
985. Defendants Atlantic County, Levison and Freeholder Formica acquiesced, ratified, adopted, aided and supported the gender discrimination by its delegated supervisors, officers, employees and agents.
986. The discriminatory conduct by Defendants caused Plaintiffs to suffer serious and grave economic consequences such as loss of financial income, back pay, front pay, inability to secure future employment to date, despite job searches and other mitigating damages actions. The adverse employment actions by Defendants also caused Plaintiffs to suffer stress, unnecessarily so, which in turn caused, and continues to cause anxiety, sleeplessness, worry, high blood pressure, loss of every day enjoyment in life due to interference from the worry and anxiety about the bad acts of Defendants as well as the stress and worry about their respective future.

**WHEREFORE**, Plaintiffs seeks damages to vindicate their rights under the laws and remedy the egregious loss and damages inflicted upon her by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, every day and

daily stress caused by Defendants' illegal acts, punitive damages and any other damages the Court deems fair and just.

## **XI. PRAYER FOR RELIEF**

**WHEREFORE**, these premises considered, Plaintiffs request this court enter judgment in their favor on all counts, against all Defendants, and specifically:

1. Award Plaintiffs compensatory damages for all monetary and financial losses, including (but not limited to): past and future loss of income and benefits of employment, lost career and business opportunities and advancement, and other past and future pecuniary losses in an amount to be determined by an enlightened jury;
2. Award Plaintiffs compensatory damages for non-pecuniary injuries including (but not limited to): emotional stress, anxiety, shame, embarrassment, humiliation, powerlessness, and indignity, in an amount to be determined by an enlightened jury;
3. Award Plaintiffs exemplary and punitive damages in an amount to be determined by an enlightened jury;
4. Award Plaintiffs reasonable attorneys' fees and costs of this action, including expert fees, and other fees and costs permitted by law;
5. Award Plaintiffs other monetary damages to which he may be entitled to under law;
6. Award Plaintiffs appropriate pre-judgment and post-judgment interest; and

7. Award Plaintiffs such other relief, including equitable relief and costs, as may be appropriate, fair, and just.

8. Award Plaintiff-Ruberton injunctive relief, requiring the ACPO to return her Deputy First Assistant Prosecutor gold badge and provide retirement credentials.

## **XII. DESIGNATION OF TRIAL COUNSEL**

Michelle J. Douglass, Esq., and Philip S. Burnham, II is hereby designated as trial counsel in the above-captioned matter.

## **XIII. CERTIFICATION OF NO OTHER ACTIONS PURSUANT TO RULE 4:5-2**

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. To the best of Plaintiffs' knowledge and belief, some aspects of this matter are currently pending before the State of New Jersey Attorney General's office. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.



**XIV. CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)**

I certify the Confidential Personal Identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

**XV. NOTICE OF LITIGATION HOLD**

The parties are hereby required to preserve all physical and electronic information that may be relevant to the issues to be raised, including but not limited to, Plaintiffs' employment, to Plaintiffs' causes of action, and/or prayers for relief, to any defenses to same, and pertaining to any party, including but not limited to, electronic data storage, close circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spreadsheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, Twitter, LinkedIn, etc.) and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

Failure to do so may result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

The obligation to preserve evidence begins when a party knows or should have known that the evidence is relevant to future or current litigation. You are on notice of litigation and therefore have an obligation to suspend your routine document retention/destruction policy and put in place a 'litigation hold' to ensure preservation of relevant documents." Failure to do so has been found to be 'grossly negligent' and may subject you to punishment.

**XVI. JURY DEMAND**

The plaintiffs hereby demand a trial by jury on all of the triable issues of this complaint, pursuant to New Jersey Court *Rules* 1:8-2(b) and 4:35-1(a).

**DOUGLASS LAW GROUP, LLC**

Attorneys for Plaintiffs

By: *Michelle J. Douglass*

Michelle J. Douglass, Esq.

**BURNHAM LAW GROUP, LLC.**

Attorneys for Plaintiffs,

By: *Philip S. Burnham*

Philip S. Burnham, II, Esq.

DATED: January 23, 2019