

Brian S. Schiller, Esq. – NJAID 024722009  
Law Office of Brian Schiller LLC  
1111 Route 22 East  
Mountainside, New Jersey 07092  
P: (908) 913-8100  
F: (908) 845-0312  
E: Brian@BSchillerLaw.com  
Attorneys for Plaintiff, David Sivella

DAVID SIVELLA,

Plaintiff,

v.

TOWNSHIP OF LYNDHURST,  
LYNDHURT POLICE DEPARTMENT,  
PAUL HAGGERTY, RICHARD PIZZUTI,  
MICHAEL CARRINO, VINCENT AUTERI,  
ABC PUBLIC ENTITIES 1-5, DEF  
COMPANIES 1-5, and JOHN DOES 1  
THROUGH 10,

Defendants.

SUPERIOR COURT OF NEW ERSEY  
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L

Civil Action

**COMPLAINT and JURY DEMAND**

Plaintiff, David Sivella, by and through his attorney, Brian S. Schiller, Esq., of the Law Office of Brian Schiller LLC, by way of Complaint against the noted defendants, alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action in a case of actual controversy and is brought pursuant to the *Rules Governing the Courts of the State of New Jersey*. Venue is proper in Bergen County pursuant to *Rule 4:2-3* of the *Rules Governing the Courts of the State of New Jersey* inasmuch as the claims arose in said County.

**THE PARTIES**

2. At all times relevant hereto, David Sivella (“Plaintiff”) was an individual residing in the state of New Jersey.

3. At all relevant times hereto, Defendant, Township of Lyndhurst (“Township”), was and is a body corporate of the State of New Jersey operating and existing under the laws of the State of New Jersey, with a principal place of business situate at 367 Valley Brook Avenue, Lyndhurst, New Jersey.

4. At all times relevant hereto, Defendant, Lyndhurst Police Department, (“LPD”), was and is a subdivision of the Township organized pursuant to the laws of the State of New Jersey, with a principal place of business at 367 Valley Brook Avenue, Lyndhurst, New Jersey.

5. At all times relevant hereto, Defendant Paul Haggerty (“Haggerty”) was employed by the Township as a police officer. He is sued in his individual and official capacity.

6. At all times relevant hereto, Defendant Richard Pizzuti (“Pizzuti”) was employed by the Township as a police officer. He is sued in his individual and official capacity.

7. At all times relevant hereto, Defendant Michael Carrino (“Carrino”) was employed by the Township as a police officer. He is sued in his individual and official capacity.

8. At all times relevant hereto, Defendant Vincent Auteri (“Auteri”) was employed by the Township as a police officer. He is sued in his individual and official capacity.

9. At all times relevant hereto, ABC public entities 1 through 5, are fictitious identities representing unnamed entities who violated Plaintiff’s rights and/or were a proximate cause or substantial factor of Plaintiff’s damages.

10. At all times relevant hereto, DEF companies 1 through 5, are fictitious identities representing unnamed entities who violated Plaintiff's rights and/or were a proximate cause or substantial factor of Plaintiff's damages.

11. At all times relevant hereto, Defendants John Does 1 through 10, are fictitious identities representing unnamed individuals who violated Plaintiff's rights and/or were a proximate cause or substantial factor of Plaintiff's damages.

### **FACTS COMMON TO ALL COUNTS**

1. Plaintiff was and is an openly gay man with a disability who was actively involved in the community affairs of Lyndhurst.

2. Upon information and belief, the unlawful conduct which will be described hereinafter was, at least in part, perpetrated by Defendants due to Plaintiff's sexual orientation, Plaintiff's disability, Plaintiff's involvement in community affairs in Lyndhurst and perhaps Defendants' personal vendettas.

3. On December 6, 2019, at approximately 7:25 pm, Lyndhurst police officers Brian Kapp ("Kapp"), Michael LeStrange ("LeStrange"), and Pizzuti responded to Plaintiff's residence concerning a medical issue that Plaintiff was experiencing.

4. Upon their arrival, Officers Kapp, LeStrange, and Pizzuti encountered Plaintiff in his living room.

5. When they encountered Plaintiff, the officers observed that Plaintiff appeared to be in an altered mental state.

6. While speaking with Plaintiff, the officers were advised that Plaintiff suffers from seizures and epilepsy, and it was believed that Plaintiff may have suffered a seizure while sleeping which necessitated the call for emergency services.

7. EMS arrived on scene and EMS personnel conducted an on-scene evaluation of Plaintiff; after which, Plaintiff refused further medical attention, and both police and EMS personnel left Plaintiff's residence.

8. Later that same night, at approximately 11:51 pm, Officers Kapp, LeStrange, and Pizzuti responded again to Plaintiff's residence on a report that Plaintiff was experiencing a seizure.

9. Upon their arrival, they encountered Plaintiff in his bedroom, where they observed that Plaintiff was "visibly experiencing an altered mental state due to coming out of the seizure."

10. EMS also arrived at Plaintiff's residence for the second medical call.

11. Due to Plaintiff's "mental status/actions, he was placed in medical reeves and transported downstairs to the ambulance" and ultimately transported to a medical facility for further care.

12. During both encounters with Plaintiff that night, Officers Kapp and LeStrange had their body worn cameras activated.

13. On both occasions, the video from their body worn cameras showed the responding officers and medical personnel interacting with and treating Plaintiff.

14. During both police encounters, Plaintiff was confused, incoherent, and at times, combative, while the first responders were treating him inside of his home.

15. On the second call that night, Plaintiff's pants had to be removed before he was transported out of his house, as he had urinated in his pants during a seizure, and thus he was only wearing his soiled underwear on the lower half of his body.

16. On December 7, 2019 and December 12, 2019, Defendant Pizzuti repeatedly accessed and viewed the video footage from the body worn camera of the responding officers who treated Plaintiff during the medical emergencies that Plaintiff experienced on December 6, 2019.

17. Pizzuti had no legitimate purpose related to his duties as a police officer when he accessed and viewed the body worn camera footage.

18. On December 7, 2019 and December 12, 2019, Defendant Haggerty repeatedly accessed and viewed the video footage from the body worn camera of the responding officers who treated Plaintiff during the medical emergencies that Plaintiff experienced on December 6, 2019.

19. Haggerty had no legitimate purpose related to his duties as a police officer when he accessed and viewed the body worn camera footage.

20. On December 9, 2019 and December 12, 2019, Defendant Carrino repeatedly accessed and viewed the video footage from the body worn camera of the responding officers who treated Plaintiff during the medical emergencies that Plaintiff experienced on December 6, 2019.

21. Carrino had no legitimate purpose related to his duties as a police officer when he accessed and viewed the body worn camera footage.

22. Upon information and belief, Pizzuti, Haggerty, and/or Carrino, and perhaps others, used their cell phones to record the footage captured on Officer Kapp's and Officer LeStrange's body worn camera, after which one, several, or all these police officers disseminated the recordings to other members of the police department, as well as citizens who were not police officers.

23. The Lyndhurst Police Department's Policy on Body Worn Cameras provides that body worn camera "is intended for official police department use only and are not to be used for frivolous or personal activities. Intentional misuse or abuse of the units will result in disciplinary action."

24. The Lyndhurst Police Department's Policy on Body Worn Cameras further provides that all recordings captured by body worn camera "will not be copied, released or disseminated in any form or manner" and "[U]nder no circumstances will any employee of the Lyndhurst Police Department make a personal copy of any recorded event without the permission of the Chief of Police or in accordance with section V of this directive."

25. Moreover, the Lyndhurst Police Department's Policy on Body Worn Cameras provides that "No law enforcement officer or civilian employee of this department shall access, view, copy, disseminate, or otherwise use a [body worn camera] recording except for an official purpose."

26. The Lyndhurst Police Department's Policy on Body Worn Cameras further provides that officers and civilian employees shall not reproduce or store any recordings to any device or storage medium, including cell phones.

27. Upon information and belief, at the time of this incident, the Lyndhurst Police Department's Policy on Body Worn Cameras did not sufficiently conform with New Jersey Attorney General Law Enforcement Directive No. 2015-1.

28. New Jersey Attorney General Law Enforcement Directive No. 2015-1 directed that all law enforcement agencies and officers were to implement and comply with said directive concerning the procedures, standards, and practices concerning the use of body worn cameras and recordings.

29. The Township and LPD's failure to implement and comply with New Jersey Attorney General Directive 2015-1 was a substantial factor in how the conduct which forms the basis of this complaint was allowed to occur and which caused Plaintiff's damages.

30. On or about February 17, 2020, Plaintiff served a Notice of Tort Claim, where he set forth the allegations contained hereinabove.

31. Subsequent to the Township and/or LPD receiving Plaintiff's Notice of Tort Claim, an Internal Affairs investigation was opened with respect to the claims and allegations set forth therein.

32. Defendant Auteri was assigned to conduct the Internal Affairs investigation.

33. Since being assigned this investigation, Auteri has violated Township and LPD Internal Affairs policies and procedures, as well as the Internal Affairs Policies and Procedures promulgated by the New Jersey Office of the Attorney General.

34. Upon information and belief, as of the date of the filing of this complaint, the Internal Affairs investigation is still open and has not yet been completed.

35. Upon information and belief, Auteri's acts and omissions were done/not done with the purpose and intent to harass and intimidate Plaintiff, and/or ultimately clear the officers from any departmental and/or criminal charges.

36. As such, Auteri conspired with Haggerty, Pizzuti, Carrino, and perhaps others, in the wrongful conduct described herein.

37. Auteri's conduct, in combination with the unlawful acts of the other named police officer defendants, and perhaps others, constitutes harassment, in violation of N.J.S.A. 2C:33-4(c), as said Defendants engaged in the foregoing alarming conduct with the purpose to alarm or seriously annoy Plaintiff.

38. The foregoing conduct constitutes bias intimidation, as the Defendants have committed, attempted to commit, and/or conspired with one another to harass Plaintiff, in violation of N.J.S.A. 2C:16-1, with a purpose to intimidate Plaintiff because of Plaintiff's sexual orientation and disability, and/or knowing that said conduct would cause Plaintiff to be intimidated because of his sexual orientation and disability, and/or Plaintiff reasonably believed that said offenses were committed with a purpose to intimate Plaintiff due to his sexual orientation and disability.

39. The conduct of the Defendants, as aforesaid, was committed outside the scope of their employment, or constituted a crime, actual malice, or willful misconduct.

40. Defendants' acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of Plaintiff's rights and privileges.

41. Defendants authorized, participated in, or ratified the wrongful acts identified herein.

42. As a result of the Defendants' acts/omissions, Plaintiff has sustained damages, inclusive of embarrassment, humiliation, indignity, and mental anguish.

**COUNT ONE**

**INVASION OF PRIVACY – INTRUSION ON SECLUSION**

**(As to Defendants Haggerty, Pizzuti, Carrino, and John Does)**

43. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

44. Defendants intentionally invaded Plaintiff's privacy by unreasonably intruding upon Plaintiff's seclusion without Plaintiff's permission.

45. The intrusions into Plaintiff's privacy were highly offensive to a reasonable person.

46. The matters on which the Defendants intruded were private.

47. As a proximate result of the Defendants' conduct, Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT TWO**

**INVASION OF PRIVACY – PUBLICITY GIVEN TO PRIVATE LIFE**

**(As to Defendants Haggerty, Pizzuti, Carrino, and John Does)**

48. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

49. Defendants publicized information concerning the private life of Plaintiff without Plaintiff's consent.

50. A reasonable person in Plaintiff's position would consider Defendants' conduct highly offensive.

51. Plaintiff's private information which was publicized by the Defendants was not of legitimate public concern.

52. As a proximate result of the Defendants' conduct, Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT THREE**

**CONSPIRACY TO COMMIT TORT OF INVASION OF  
PRIVACY – INTRUSION ON SECLUSION**

**(As to Defendants Haggerty, Pizzuti, Carrino, Auteri, and John Does)**

53. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

54. Defendants entered into an agreement or confederation with a common design to unlawfully, willfully, and/or maliciously wrong Plaintiff by perpetrating the tort of invasion of privacy – intrusion on seclusion against Plaintiff, as set forth in Count One of this Complaint.

55. As a proximate result of the conspiracy by the Defendants to commit said tort, Plaintiff suffered damages.

56. As such, every member of the conspiracy or conspiracies is equally and vicariously liable for their conduct and the conduct of each of their co-conspirators.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney’s fees.

#### **COUNT FOUR**

#### **CONSPIRACY TO COMMIT TORT OF INVASION OF PRIVACY – PUBLICITY GIVEN TO PRIVATE LIFE**

**(As to Defendants Haggerty, Pizzuti, Carrino, Auteri, and John Does)**

57. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

58. Defendants entered into an agreement or confederation with a common design to unlawfully, willfully, and/or maliciously wrong Plaintiff by perpetrating the tort of invasion of privacy – publicity given to private life against Plaintiff, as set forth in Count Two of this Complaint.

59. As a proximate result of the conspiracy by the Defendants to commit said tort, Plaintiff suffered damages.

60. As such, every member of the conspiracy or conspiracies is equally and vicariously liable for their conduct and the conduct of each of their co-conspirators.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT FIVE**

**VIOLATIONS OF THE NEW JERSEY CIVIL RIGHTS ACT**

**(As to Defendants Haggerty, Pizzuti, Carrino, Auteri, and John Does)**

61. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

62. At all times relevant hereto, Defendants Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, were acting under color of law.

63. The actions of Defendants as alleged herein have deprived Plaintiff of rights and privileges secured to him by the New Jersey Constitution and other laws.

64. Pursuant to Article I, Section 1 of the New Jersey Constitution, all persons have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, and of pursuing and obtaining safety and happiness.

65. Plaintiff has been deprived of these rights and privileges which have also been interfered with by Defendants' actions as set forth herein.

66. Defendants' actions in depriving and interfering with Plaintiff's rights and privileges were motivated, at least in part, by Plaintiff's sexual orientation and disability.

67. The deprivation of, and interference with, Plaintiff's rights and privileges are the result of the conduct of the Defendants.

68. Defendants' conduct as described herein violated the provisions of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et. seq.

69. As a proximate result of the Defendants' conduct, Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

### **COUNT SIX**

#### **CONSPIRACY TO COMMIT CIVIL RIGHTS VIOLATION**

**(As to Defendants Haggerty, Pizzuti, Carrino, Auteri, and John Does)**

70. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

71. Defendants entered into an agreement or confederation with a common design to unlawfully, willfully, and/or maliciously wrong Plaintiff by depriving Plaintiff of rights and privileges secured to him by the New Jersey Constitution and other laws, as set forth in Count Five of this Complaint.

72. As a proximate result of the conspiracy by the Defendants to deprive Plaintiff of the rights and privileges secured to him by the New Jersey Constitution and other laws, Plaintiff suffered damages.

73. As such, every member of the conspiracy or conspiracies is equally and vicariously liable for their conduct and the conduct of each of their co-conspirators.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT SEVEN**

**VIOLATION OF N.J.S.A. 2A:58D-1**

**(As to Defendants Haggerty, Pizzuti, Carrino, and John Does)**

74. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

75. Defendants disclosed, photographed, filmed, videotaped, recorded, or otherwise reproduced in some manner, the image of the undergarment-clad intimate parts of Plaintiff.

76. The foregoing conduct was done without Plaintiff's consent and under circumstances in which a reasonable person would not expect to have been observed.

77. As a proximate result of the Defendants' conduct, Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT EIGHT**

**CONSPIRACY TO VIOLATE N.J.S.A. 2A:58D-1**

**(As to Defendants Haggerty, Pizzuti, Carrino, Auteri, and John Does)**

78. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

79. Defendants entered into an agreement or confederation with a common design to unlawfully, willfully, and/or maliciously wrong Plaintiff by violating N.J.S.A. 2A:58D-1.

80. As a proximate result of the conspiracy by the Defendants to violate N.J.S.A. 2A:58D-1, Plaintiff suffered damages.

81. As such, every member of the conspiracy or conspiracies is equally and vicariously liable for their conduct and the conduct of each of their co-conspirators.

82. As a proximate result of the Defendants' conduct, Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT NINE**

**NEGLIGENCE**

**(As to Defendants Haggerty, Pizzuti, Carrino, Auteri, and John Does)**

83. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

84. At all times relevant hereto, Defendants owed a duty to the Plaintiff to provide the standard of care that an ordinary prudent person would provide in similar circumstances.

85. Through their actions, as aforesaid, the Defendants breached their duty of care.

86. As a direct and proximate cause of the Defendants' negligence as stated above, Plaintiff has sustained damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT TEN**

**NEGLIGENT HIRING**

**(As to Defendants Township, LPD, and John Does)**

87. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

88. Defendants had a duty to exercise reasonable care in the continual formation of a law enforcement officer, including the screening, selection, training, supervision, retention, assignment, transferring, promoting, appointment and/or employing of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, for the duties assigned to them, and for purposes of determining their fitness for access to the public, including Plaintiff; and were negligent or grossly negligent in that the Defendants failed to adopt and establish reasonable or adequate policies, guidelines, or other means whereby to learn to recognize an officer's propensity for rogue, deviant behavior; failed to adequately screen and or investigate Haggerty, Pizzuti, Carrino, Auteri, and perhaps others; and

also failed to adequately investigate these Defendants prior activities and/or behavior with regard to the public; and failed to adequately monitor and/or investigate the conduct of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, during training, and conduct prior to each change of assignment, promotion, and/or appointments as law enforcement officers.

89. Defendants had a continuous duty to keep and maintain Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, under reasonable supervision that provided these officers were fit to perform their duties without presenting a risk to the health, safety and welfare of the public, including Plaintiff, who has been wronged and sustained damages as a result of the Defendants' employment as law enforcement officers.

90. Defendants knew, or should have known, of the particular unfitness, incompetence and dangerous attributes of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others involved in the acts alleged herein, when they were hired and thereafter.

91. Defendants knew, or should have known, that such attributes created a serious risk of harm to others.

92. Defendants breached its duty of care in that it failed to take any action to ensure that the Plaintiff was not harmed by Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, despite Defendants' actual and/or constructive notice of these officers' rogue and unlawful conduct; Defendants negligently screened, selected, trained, retained, employed, assigned, transferred, promoted, and/or appointed Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, to positions of trust and authority as law enforcement officers, and further failed to provide adequate warning to the Plaintiff; negligently failed and refused to remove or suspend Haggerty, Pizzuti,

Carrino, Auteri, and perhaps others, from their duties and failed to prevent these officers from pursuing unlawful acts against the public, including the Plaintiff. In addition, the Defendants failed to adopt and establish guidelines and policies to protect the public and the Plaintiff from unlawful conduct from its law enforcement officers. These actions amount to willful, malicious, reckless, and gross negligence, in complete disregard for the rights and safety of the Plaintiff.

93. Such attributes were the cause of the wrongful acts perpetrated upon Plaintiff by Haggerty, Pizzuti, Carrino, Auteri, and perhaps others.

94. As a direct and proximate result of the Defendants' conduct, Plaintiff has sustained damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit, attorney's fees, and treble damages.

### **COUNT ELEVEN**

#### **NEGLIGENT SUPERVISION**

##### **(As to Defendants Township, LPD, and John Does)**

95. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

96. Defendants had a duty to exercise reasonable care in the continual formation of a law enforcement officer, including the screening, selection, training, supervision, retention, assignment, transferring, promoting, appointment and/or employing of Haggerty, Pizzuti, Carrino,

Auteri, and perhaps others, for the duties assigned to them, and for purposes of determining their fitness for access to the public, including Plaintiff; and were negligent or grossly negligent in that the Defendants failed to adopt and establish reasonable or adequate policies, guidelines, or other means whereby to learn to recognize an officer's propensity for rogue, deviant behavior; failed to adequately screen and or investigate Haggerty, Pizzuti, Carrino, Auteri, and perhaps others; and also failed to adequately investigate these Defendants prior activities and/or behavior with regard to the public; and failed to adequately monitor and/or investigate the conduct of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, during training, and conduct prior to each change of assignment, promotion, and/or appointments as law enforcement officers.

97. Defendants had a continuous duty to keep and maintain Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, under reasonable supervision that provided these officers were fit to perform their duties without presenting a risk to the health, safety and welfare of the public, including Plaintiff, who has been wronged and sustained damages as a result of the Defendants' employment as law enforcement officers.

98. Defendants knew, or should have known, of the particular unfitness, incompetence and dangerous attributes of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others involved in the acts alleged herein, when they were hired and thereafter.

99. Defendants knew, or should have known, that such attributes created a serious risk of harm to others.

100. Defendants breached its duty of care in that it failed to take any action to ensure that the Plaintiff was not harmed by Haggerty, Pizzuti, Carrino, Auteri, and perhaps others,

despite Defendants' actual and/or constructive notice of these officers' rogue and unlawful conduct; Defendants negligently screened, selected, trained, retained, employed, assigned, transferred, promoted, and/or appointed Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, to positions of trust and authority as law enforcement officers, and further failed to provide adequate warning to the Plaintiff; negligently failed and refused to remove or suspend Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, from their duties and failed to prevent these officers from pursuing unlawful acts against the public, including the Plaintiff. In addition, the Defendants failed to adopt and establish guidelines and policies to protect the public and the Plaintiff from unlawful conduct from its law enforcement officers. These actions amount to willful, malicious, reckless, and gross negligence, in complete disregard for the rights and safety of the Plaintiff.

101. Such attributes were the cause of the wrongful acts perpetrated upon Plaintiff by Haggerty, Pizzuti, Carrino, Auteri, and perhaps others.

102. As a direct and proximate result of the Defendants' conduct, Plaintiff has sustained damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit, attorney's fees, and treble damages.

**COUNT TWELVE**

**NEGLIGENT TRAINING**

**(As to Defendants Township, LPD, and John Does)**

103. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

104. Defendants had a duty to exercise reasonable care in the continual formation of a law enforcement officer, including the screening, selection, training, supervision, retention, assignment, transferring, promoting, appointment and/or employing of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, for the duties assigned to them, and for purposes of determining their fitness for access to the public, including Plaintiff; and were negligent or grossly negligent in that the Defendants failed to adopt and establish reasonable or adequate policies, guidelines, or other means whereby to learn to recognize an officer's propensity for rogue, deviant behavior; failed to adequately screen and or investigate Haggerty, Pizzuti, Carrino, Auteri, and perhaps others; and also failed to adequately investigate these Defendants prior activities and/or behavior with regard to the public; and failed to adequately monitor and/or investigate the conduct of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, during training, and conduct prior to each change of assignment, promotion, and/or appointments as law enforcement officers.

105. Defendants had a continuous duty to keep and maintain Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, under reasonable supervision that provided these officers were fit to perform their duties without presenting a risk to the health, safety and welfare of the public,

including Plaintiff, who has been wronged and sustained damages as a result of the Defendants' employment as law enforcement officers.

106. Defendants knew, or should have known, of the particular unfitness, incompetence and dangerous attributes of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others involved in the acts alleged herein, when they were hired and thereafter.

107. Defendants knew, or should have known, that such attributes created a serious risk of harm to others.

108. Defendants breached its duty of care in that it failed to take any action to ensure that the Plaintiff was not harmed by Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, despite Defendants' actual and/or constructive notice of these officers' rogue and unlawful conduct; Defendants negligently screened, selected, trained, retained, employed, assigned, transferred, promoted, and/or appointed Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, to positions of trust and authority as law enforcement officers, and further failed to provide adequate warning to the Plaintiff; negligently failed and refused to remove or suspend Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, from their duties and failed to prevent these officers from pursuing unlawful acts against the public, including the Plaintiff. In addition, the Defendants failed to adopt and establish guidelines and policies to protect the public and the Plaintiff from unlawful conduct from its law enforcement officers. These actions amount to willful, malicious, reckless, and gross negligence, in complete disregard for the rights and safety of the Plaintiff.

109. Such attributes were the cause of the wrongful acts perpetrated upon Plaintiff by Haggerty, Pizzuti, Carrino, Auteri, and perhaps others.

110. As a direct and proximate result of the Defendants' conduct, Plaintiff has sustained damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT THIRTEEN**

**NEGLIGENT RETENTION**

**(As to Defendants Township, LPD, and John Does)**

111. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

112. Defendants had a duty to exercise reasonable care in the continual formation of a law enforcement officer, including the screening, selection, training, supervision, retention, assignment, transferring, promoting, appointment and/or employing of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, for the duties assigned to them, and for purposes of determining their fitness for access to the public, including Plaintiff; and were negligent or grossly negligent in that the Defendants failed to adopt and establish reasonable or adequate policies, guidelines, or other means whereby to learn to recognize an officer's propensity for rogue, deviant behavior; failed to adequately screen and or investigate Haggerty, Pizzuti, Carrino, Auteri, and perhaps others; and also failed to adequately investigate these Defendants prior activities and/or behavior with regard to the public; and failed to adequately monitor and/or investigate the conduct of Haggerty,

Pizzuti, Carrino, Auteri, and perhaps others, during training, and conduct prior to each change of assignment, promotion, and/or appointments as law enforcement officers.

113. Defendants had a continuous duty to keep and maintain Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, under reasonable supervision that provided these officers were fit to perform their duties without presenting a risk to the health, safety and welfare of the public, including Plaintiff, who has been wronged and sustained damages as a result of the Defendants' employment as law enforcement officers.

114. Defendants knew, or should have known, of the particular unfitness, incompetence and dangerous attributes of Haggerty, Pizzuti, Carrino, Auteri, and perhaps others involved in the acts alleged herein, when they were hired and thereafter.

115. Defendants knew, or should have known, that such attributes created a serious risk of harm to others.

116. Defendants breached its duty of care in that it failed to take any action to ensure that the Plaintiff was not harmed by Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, despite Defendants' actual and/or constructive notice of these officers' rogue and unlawful conduct; Defendants negligently screened, selected, trained, retained, employed, assigned, transferred, promoted, and/or appointed Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, to positions of trust and authority as law enforcement officers, and further failed to provide adequate warning to the Plaintiff; negligently failed and refused to remove or suspend Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, from their duties and failed to prevent these officers from pursuing unlawful acts against the public, including the Plaintiff. In addition, the Defendants

failed to adopt and establish guidelines and policies to protect the public and the Plaintiff from unlawful conduct from its law enforcement officers. These actions amount to willful, malicious, reckless, and gross negligence, in complete disregard for the rights and safety of the Plaintiff.

117. Such attributes were the cause of the wrongful acts perpetrated upon Plaintiff by Haggerty, Pizzuti, Carrino, Auteri, and perhaps others.

118. As a direct and proximate result of the Defendants' conduct, Plaintiff has sustained damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

#### **COUNT FOURTEEN**

#### **VICARIOUS LIABILITY**

#### **(As to Defendants Township and LPD)**

119. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

120. Defendants Township and LPD are liable to Plaintiff by virtue of respondeat superior and/or vicarious liability for the negligent, grossly negligent, reckless, malicious and/or willful acts and/or omissions Haggerty, Pizzuti, Carrino, Auteri, and perhaps others.

121. Defendants Township and LPD are liable, as above, for the wrongful acts of the police officer defendants, and perhaps others, which were committed within the scope of their employment.

122. Even if the wrongful acts of police officer defendants, and perhaps others, were committed while acting outside the scope of their employment, the Township and LPD are liable, as the Township and LPD intended the consequences, the Township and LPD were negligent or reckless, the conduct violated a non-delegable duty of the Township and LPD, and/or the police officers defendants, and perhaps others, purported to act or to speak on behalf of the Township and LPD and there was reliance upon apparent authority, or the police officer defendants were aided in accomplishing the unlawful acts against Plaintiff by the existence of the agency relation with the Township and LPD.

123. The Township and LPD delegated authority to the police officer defendants.

124. The Township and LPD knew, or in the exercise of reasonable care, should have known that the police officer defendants posed a risk of harm to the public, including Plaintiff.

125. As a direct and proximate cause of the Defendants' negligence as stated above, Plaintiff has sustained damages.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**COUNT FIFTEEN**

**MONELL VIOLATION**

**(As to Defendants Township and LPD)**

126. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs above as if set forth at length herein.

127. The Township and/or LPD are the ultimate policymaking authority for all officially-adopted policies and procedures implemented by their employees, including the police officers defendants named herein, and perhaps others who are unnamed at this time.

128. The Township and/or LPD are the entities legally responsible for the hiring, retention, supervision and training of their employees, as well as administering discipline to said employees.

129. The Township and/or LPD have long-standing de-facto policies of hiring police officers who are unfit and allowing misconduct to go unpunished.

130. Internal affairs allegations into misconduct are almost always a virtual whitewash, as LPD police officers are rarely, if ever, punished for misconduct even when investigations reveal conduct that requires disciplinary and/or other remedial actions to be undertaken against the officer(s) involved in order to prevent misconduct in the future.

131. The Township and/or LPD have been on notice of misconduct by their police officers through various means, including but not limited to Tort Claims Notices, lawsuits, internal affairs complaints, and media reports.

132. Despite being on notice of the foregoing, the Township and/or LPD failed to take any disciplinary and/or remedial action.

133. The Township and/or LPD have been on notice of the fact that a systemic and pervasive pattern and practice of police misconduct exists within the Lyndhurst Police Department, and that the members of the citizenry are the victims of these acts committed by LPD police officers.

134. LPD police officers are allowed, and indeed encouraged, to commit wrongful acts and misconduct with impunity knowing that no discipline, much less meaningful discipline, will result therefrom. LPD police officers' misconduct is ratified and condoned by the Township and LPD.

135. Defendants Haggerty, Pizzuti, Carrino, Auteri, and perhaps others, are comfortable in the knowledge that any acts of misconduct which they commit will not result in discipline. Thus, the lack of discipline for acts of misconduct allowed the named police officer defendants, and perhaps others, to commit the wrongful acts described herein as these defendants knew that there would be no official reprisals for their actions.

136. Upon information and belief, the discovery phase of this litigation will further reveal many other instances where the Township and/or LPD, by and through their employees, agents, and/or officers, have allowed, condoned, and encouraged a systemic, ratified, and sanctioned policy(ies) of committing acts of misconduct only to fail to discipline personnel for such actions, much less properly supervise and train them to prevent further abuses.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, joint and severally, for compensatory and punitive damages, together with interest, costs of suit and attorney's fees.

**LAW OFFICE OF BRIAN SCHILLER LLC**  
Attorneys for Plaintiff, David Sivella

*/s/ Brian S. Schiller*

Dated: December 6, 2021

By: \_\_\_\_\_  
Brian S. Schiller

**DESIGNATION OF TRIAL COUNSEL**

The Court is advised that, pursuant to Rule 4:25-4, Brian S. Schiller, Esq. is designated as trial counsel for Plaintiff in this action.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues.

**RESERVATION OF RIGHTS**

Plaintiff reserves the right to file such specific amendments and/or additional claims as are applicable hereinafter to this action and/or as the same are subsequently discovered.

**DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS**

Pursuant to Rule 4:10-2(b), demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy all or part of a judgment, which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment. If so, attached a copy of each, or in the alternative state, under oath and certification, the (a) policy number; (b) name and address of the insurer; (c) inception and expiration date; (d) names and addresses of all persons insured thereunder; (e) personal injury limits; (f) property damage limits; and (g) medical payment limits.

**CERTIFICATION IN ACCORDANCE WITH RULE 4:5-1**

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding and no such action or proceeding is contemplated. I know of no other party who should be joined in this action.

**LAW OFFICE OF BRIAN SCHILLER LLC**  
Attorneys for Plaintiff, David Sivella

*/s/ Brian S. Schiller*

Dated: December 6, 2021

By: \_\_\_\_\_  
Brian S. Schiller

# Civil Case Information Statement

**Case Details: BERGEN | Civil Part Docket# L-007990-21**

**Case Caption:** SIVELLA DAVID VS TOWNSHIP OF LYNDHURS T

**Case Initiation Date:** 12/06/2021

**Attorney Name:** BRIAN S SCHILLER

**Firm Name:** BRIAN SCHILLER LLC

**Address:** 1111 ROUTE 22 EAST

MOUNTAINSIDE NJ 07092

**Phone:** 9089138100

**Name of Party:** PLAINTIFF : SIVELLA, DAVID

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** CIVIL RIGHTS

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 12 JURORS

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: DAVID SIVELLA?** NO

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** YES

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** YES **Consumer Fraud?** NO

I certify that 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 *Rule 1:38-7(b)*

12/06/2021

Dated

/s/ BRIAN S SCHILLER

Signed