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D'AMATO LAW FIRM

2900 Fire Road, Suite 200

Egg Harbor Township, New Jersey 08234

609-926-3300

Attorney for Plaintiff

**STEPHANIE YOUNG,
ADMINISTRATRIX AD
PROSEQUENDUM OF THE
ESTATE OF KELLY ANN
McDOWELL,**

Plaintiff,

-vs-

**CITY OF VENTNOR, VENTNOR
CITY POLICE DEPARTMENT,
CITY OF VENTNOR DEPARTMENT
OF PUBLIC SAFETY, VENTNOR
POLICE DEPARTMENT,
SERGEANT FRANK O'NEILL,
JOHN DOE, MARY DOE, ABC
PARTNERSHIPS and XYZ
CORPORATIONS,**

Defendants

**SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY - LAW DIVISION**

DOCKET NUMBER: ATL-L-793-18

CIVIL ACTION

FIRST AMENDED COMPLAINT

INTRODUCTION

Plaintiff Stephanie Young, Administratrix Ad Prosequendum of the Estate of her late sister, Kelly Ann McDowell, a clinically-depressed single working parent residing in Atlantic County, New Jersey, brings this action against Defendants Sergeant Frank O'Neill and Ventnor City for personal injuries and damages suffered as a result of her sister's untimely death: ruled a suicide using the unlocked, unsecured loaded service weapon of her police office boyfriend in the residence they shared with their five children, four of which were under the age of 18.



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FIRST COUNT

NEGLIGENCE ON THE PART OF DEFENDANTS O'NEILL AND VENTNOR CITY

1. Stephanie Young resides in Galloway Township, Atlantic County, New Jersey.
2. Kelly Ann McDowell (hereinafter "Kelly") died on April 17, 2017.
3. Attached hereto as Exhibit "A" is a copy of the death certificate for Kelly Ann McDowell.
4. Attached hereto and made a part hereof as Exhibit "B" is a photograph of Kelly.
5. Stephanie Young (McDowell), sister of Kelly Ann McDowell, was granted Letters of Administration Ad Prosequendum for the Estate of Kelly Ann McDowell on February 20, 2020.
6. Attached hereto and made a part hereof as Exhibit "C" is a photograph of Kelly and Defendant O'Neill.
7. John Doe (1-10) fictitious names are heretofore unascertained individuals who were negligent, reckless, or otherwise responsible for the harms delineated herein.
8. John Doe, Inc. (1-10) fictitious names are heretofore unascertained corporate or municipal entities who were negligent, reckless, or otherwise responsible for harms delineated herein.
9. Kelly took her own life by using her boyfriend Defendant Sergeant Frank O'Neill's (hereinafter "Defendant Frank O'Neill") service-issued Glock handgun.



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10. Defendant O'Neill was at all times herein an employee of Defendant Ventnor City, namely the Ventnor City Police Department.

11. Defendant O'Neill on March 26 and October 22, 2015 completed an employment-related, law enforcement education course entitled "Dealing with Mentally Ill and Emotionally Disturbed Persons."

12. Contrary to State laws, as well as the regulations of the Ventnor City Police Department, Defendant O'Neill left a service issued firearm unsecured and loaded with 13 bullets including one in the chamber in the home that Defendant O'Neill and the late Kelly were residing in on April 17, 2017.

13. The aforesaid home was located at 461 Exeter Court in Galloway Township, Atlantic County, New Jersey.

14. Kelly and Defendant O'Neill had been residing at the aforesaid residence as a couple, with their five children, for approximately six months before Kelly's death on April 17, 2017.

15. On March 19, 2017, Kelly was admitted to the AtlantiCare Regional Medical Center located in Pomona, New Jersey.

16. The admitting diagnosis on the records relative to the aforesaid hospitalization was depression.

17. During that admission Kelly's blood was drawn to determine if she had used any illicit drugs. Said tests were negative.

18. The records relative to this admission at the AtlantiCare Regional Medical Center on March 19, 2017 indicate that Kelly was suffering from severe depression for two months and had, pursuant to a physician's prescription, started Lexapro three days before the admission.

19. The aforesaid records further indicate that Kelly denied any suicidal ideation.

20. Under the category of Presenting Problem Symptoms, the medical records relative to the aforesaid admission state in part:

40 year old female brought in by mother concerning depression and anxiety. Mother reports daughter has serious emotional problems which need to be addressed. Depression started after moving in with her boyfriend and his two children. Patient moved in with her three children. Regrets making change. Struggling with new life. Trouble balancing life, work, home. Primary stressors are relationship issues and increased responsibilities. Overwhelmed with more responsibilities. Juggling everything is hard for her. Working mother non-stop chores. Miserable and unhappy....presents anxious, depressed, tearful affect. Poor self care, stopped exercising, not eating, not sleeping. Patient and mother are concerned for her safety and well-being.

21. Kelly was born on March 21, 1976 and was 41-years-old at the time of her death.

22. Kelly became the patient of AtlantiCare Behavioral Health, an out-patient treatment facility for patients with mental health issues on March 27, 2017.

23. On March 27, 2017, the records of AtlantiCare Behavioral Health indicate that Kelly was:

depressed/low mood, withdrawn, isolating, fatigue, difficulty concentrating, excessive worrying, sleep disturbances, weight loss (reports lost 14 pounds), easily overwhelmed, little to no motivation to do things. She reports trouble barely getting herself up, as well as her children. Client reports onset of symptoms was approximately six months ago and symptoms

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are getting worse with time. Client explains that she moved in with her boyfriend six months ago, client has three children and boyfriend has two children, feeling stressed caring for five children, maintaining household responsibilities, while maintaining performance at work. Client states she feels overwhelmed both at work and at home and feels like she has no breaks. "I'm not functioning, it's like I get up and I don't even know how to move." Client explains she wants to stay in bed all day, sometimes has no desire to shower. Client reports she often wakes up sweating because she is persistently anxious. Client explains she is overwhelmed by small occurrences, experiences challenges preparing food for the kids, doing laundry, doing the dishes, etc. Client's children are 18, 12, 7 years old; boyfriend's children are 17 and 13 years old. Client works full time as receptionist...reports bookkeeper left the office and client had to take over some of the work and did not feel confident about it. Client reports boyfriend is a police officer. Client states she went to PCP one month ago, was prescribed Lexapro. Client states she started taking medication four days ago, was taking it in the evening and developed increased insomnia..."I feel so far gone that I don't know if I can get back."

24. According to a Brady Center to Prevent Gun Control report entitled, "Americans in Crisis: Access to Guns Increases Deaths by Suicide," "Every day in America, 93 people die from gun violence. Fifty-eight of those deaths, or nearly two-thirds, are suicides with guns." (December 29, 2017), https://www.bradycampaign.org/sites/default/files/AmericansInCrisis-GunsAndSuicide_09-2017.pdf.

25. Additionally, the article notes that "Centers for Disease Control and Prevention data shows suicide with a gun is the most common and by far the most deadly suicide method." Id.



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26. Furthermore, the article notes, "Nearly half (49.6 percent of all suicides in the United States are gun deaths, making guns the most common means of suicide." Id.

27. According to the National Institute for Mental Health's website, "In 2015, firearm was the most common method of suicide among both males (55.6%) and females (33.4%)." Percent of Suicide Deaths by Method, National Institute for Mental Health, Suicide Health and Education Statistics, (December 29, 2017), <https://www.nimh.nih.gov/health/statistics/suicide/index.shtml>.

28. In a National Center for Injury Prevention and Control article entitled, "Preventing Suicide: A Technical Package of Policy, Programs, and Practices," it states that in preventing suicides it is important to "create protective environments: reduce access to lethal means among persons at risk of suicide...." National Center for Injury Prevention and Control, Division of Violence Prevention, Stone D.M., Holland, K.M, Bartholow, B. Crosby, A.E., Davis, S., and Wilkins, N., (2017), p. 12.

29. A study entitled "Guns in the Home and Risk of a Violent Death in the Home: Findings from a National Study" was published in the American Journal of Epidemiology. American Journal of Epidemiology, Dahlberg, L, Ikeda, R., and Kresnow, M., (June 7, 2004).

30. The study found that "Persons with guns in the home were also more likely to have died from suicide committed with a firearm than from one committed by using a different method...." Id. at 929.

31. The study also noted "Approximately 60 percent of all homicides and suicides in the United States are committed with a firearm." Ibid.

32. Additionally the study noted that other studies have found "... the presence of a gun in the home was associated with nearly fivefold risk of suicide...." Id. at 930.

33. The results of the study showed that "Nearly three quarters of suicide victims lived in a home where one or more firearms were present, compared with 42 percent of homicide victims and one third of those who died of other causes." Id. at 932.

34. Furthermore, "Females with firearms in the home were also at an elevated risk of suicide compared with females without guns in the home..." Id. at 933.

35. Lastly, the study discussed that "Our findings also suggest that the presence of a gun in the home increases the chance that a homicide or suicide in the home will be committed with a firearm rather than by using other means." Id. at 935.

36. Defendant O'Neill knew that prior to her death his girlfriend Kelly was depressed.

37. Defendant O'Neill as a member of the Ventnor City Police Department received ongoing training before April 17, 2017 as to how to recognize and deal with depression and mental illness.

38. Defendant O'Neill was required by the Ventnor City Police Department to take a course entitled "Mental Illness, What It Is, What it Isn't, How to Deal With People Who Have It."

39. Defendant O'Neill, as a result of the aforesaid course, was taught the following about mental illness and depression:

- (A) Major depression can be treated effectively with medication that targets the correct neuro-transmitters.
- (B) Most people with mental illnesses are fully functioning community members.
- (C) People with mental illnesses may be more vulnerable...to injury.
- (D) More than five million Americans suffer annually from an acute episode of mental illness.
- (E) That the signs of major depression are persistent sadness, anxious or empty mood, decreased energy, fatigue, loss of interest in usual activities, sleep disturbances, appetite and weight changes, difficulty concentrating and making decisions.
- (F) That when you are interacting with a person with mental illness, that an officer should continually assess the situation.

40. Before April 17, 2017, while Defendant O'Neill and Kelly were residing in their home in Galloway Township there were other occasions that Defendant O'Neill left his service issued firearm unsecured and loaded in the home.

41. The Atlantic County Prosecutor's office by an order issued on October 21, 2014 provided as follows:

(D) Firearms shall never be left unsecured. This includes while at your usual place of abode or at work. Unattended firearms must be at a minimum secured with a trigger lock, barrel lock, or similar device, or stored within a locked safe or similar receptacle.

42. On June 26, 2014, the Ventnor City Police Department through its Department of Public Safety issued a General Order relative to authorized weapons and ammunition.

43. The purpose of the June 26, 2014 General Order was to establish and codify the Ventnor City Police Department's guidelines regarding its ammunition and weapons training program.

44. The June 26, 2014 General Order recognized that it was the policy of the Ventnor City Police Department to provide ample training to its sworn personnel in the safe handling and use of authorized weapons and ammunition.

45. This June 26, 2014 General Order stated:

Minimally this agency will adhere to the tenets set in the New Jersey Attorney General's Guidelines regarding firearm qualifications.

46. Page 12 of the aforesaid General Order entitled "General Firearm Safety" states in part:

(D) Firearms shall never be left unsecured. This includes while at your usual place of abode or at work. If the firearm is out of your control, it should be stored within a locked safe or similar receptacle inaccessible to others.

47. General Order Number 2014-13 contains a category entitled "Weapons Storage and Maintenance".

This section of the aforesaid General Order states in part as follows:

(A) Weapons shall be secured to restrict unauthorized use. When not being used for work weapons should be:

- (1) Secured in a lockable gun case, safe or Box; or
- (2) Secured by the officer utilizing a trigger lock. Trigger locks shall not be installed on a loaded weapon. The officer shall verify the weapon is not loaded and the magazine is removed.



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(B) Officers shall exercise the utmost care and caution in handling firearms. Officers shall be responsible for the security and safe storage of firearms at all times.

48. Defendant O'Neill underwent another training course entitled the "Ethic Training Module" that was required by the Ventnor City Police Department.

49. This training module addressed the Ventnor City Police Department Code of Ethics. The Ventnor City Police Department Code of Ethics states in part:

Our off-duty behavior is just as important as our on-duty behavior. What we do in our personal lives reflects upon what each of us does when we are working, therefore reflecting upon the reputation of the Ventnor City Police Department... **We should all be cognizant of the fact that we are public servants at all times and our actions outside of work can either taint the reputation of our department or cause citizens within our community to have misconceptions about how we do our jobs when we are on duty. [Emphasis Added.]**

50. The Ventnor City Police Department Code of Ethics stated in part:

I will be exemplary in obeying the law and the regulations of my department. Exemplary behavior implies being a role model...Role Models obey laws and regulations, not out of the desire to conform, but out of the desire to lead others in ethically performing their duties and responsibilities within the department, as well as being a model citizen within their department.

51. The Ventnor City Police Department Code of Ethics also stated:

Becoming an accredited law enforcement agency means the policies and procedures of our department have been written in accordance with the recognized standards of police accreditation, it is my individual responsibility to ensure I perform my assigned duties with the same level of excellence.

52. Defendant Ventnor City by virtue of its Code of Ethics for Police Officers and its rules and regulations dictated the behavior of its police officers when said police officers including Defendant Sergeant Frank O'Neill were not working "on the clock" for Defendant Ventnor City.

53. Defendant Sergeant Frank O'Neill was "24/7" a Ventnor Police Officer even when not working "on the clock."

54. Even when Defendant Sergeant Frank O'Neill was not working "on the clock" he was an employee and representative of Defendant Ventnor City.

55. Defendant O'Neill was required by the Ventnor City Police Department to take a course entitled "Use of Force: General Firearm Safety." This seminar taught Defendant O'Neill that "FIREARMS SHALL NEVER BE LEFT UNSECURED."

56. There were many courses and seminars that Defendant O'Neill was required to take as a result of being a member of the Ventnor City Police Department.

57. One of the courses Defendant O'Neill was required to take addressed the special needs in securing custody and transporting arrestees.

58. These required seminars and courses trained police officers, including Defendant O'Neill, to be able to recognize when arrestees exhibit the signs of mental illness or appeared to be emotionally disturbed.

59. Defendant O'Neill was required by the Ventnor City Police Department to take several courses entitled "Firearms Safety."

60. The aforementioned Firearms Safety Courses addressed the Cardinal Rules of Firearm Safety.

61. Those Cardinal Rules stated in part:

You must assume all firearms are loaded until you have personally conducted an inspection. **That one of the activities frequently resulting in police firearms accidents is improper weapons storage. If a firearm is not under your direct control, the firearm should be inoperable or inaccessible to an unauthorized person. The one approach which will reliably secure your weapon from unauthorized persons is to lock the firearm up. [Emphasis Added.]**

62. Defendant O'Neill was required by the Ventnor City Police Department to take a course entitled "Cell Block Management". As part of that course he was taught to recognize certain medical conditions in prisoners being detained, including but not limited to mental stability.

63. Part of the Cell Block Management course was entitled, "Security and Control."

64. Defendant O'Neill was instructed that weapons shall be prohibited within the security perimeter of the cell block area and booking room.

65. Another aspect of the "Cell Block Management" course was training in recognizing suicidal risk, the recognition of unusual or bizarre behavior, and the signs of mental illness.

66. Defendant O'Neill also took several courses required by the Ventnor City Police Department which addressed domestic violence.

67. These domestic violence courses addressed recognizing the signs of mental illness and depression when reporting to a location where there had been a report of domestic violence.

68. Defendant O'Neill was required to undergo semi-annual firearms re-qualifications by virtue of being a Ventnor City Police Officer.

69. The New Jersey Firearms Qualification and Requalification Standards for New Jersey Law Enforcement which were revised in June 2003 stated that part of the requalification process and training objectives was the safe handling of a gun.

70. During the requalification training that Defendant O'Neill underwent he was required to demonstrate the safe handling of handguns and shotguns.

71. Defendant O'Neill had to demonstrate his knowledge of securing all agency authorized shotguns, service handguns, and off-duty handguns at all times.

72. The Cape May County Police Academy issued Defendant O'Neill a certificate acknowledging that he had successfully completed a specialized course of instruction entitled Firearms Instructor on October 24, 2014.

73. The Ventnor City Police Department issued a General Order dated August 21, 2013 which stated:

Purpose: the purpose of this General Order is to provide all employees of the Ventnor City Police Department with the Mission Statement, Core Values, and the Code of Ethics that collectively are the foundation of professionalism. They establish a philosophy of trust between the police and the community.

...

A. In addition to the Defendant Ventnor City's Ethic's Code, law enforcement officers of the Ventnor City Police



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Department shall be guided by the following Code of Ethics:

As a Law Enforcement Officer, my fundamental duty is to serve the community; to safeguard lives and property ...I will... be constantly mindful of the welfare of others... I will be exemplary in obeying the law and the regulations of my department....I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...LAW ENFORCEMENT.

74. On April 17, 2017, Defendant O'Neill departed the home he shared with Kelly and their children for a trip to Florida, leaving his unsecured service weapon on the floor of their bedroom closet, fully loaded and in plain view.

75. When Kelly took her own life, there was one juvenile child present in the home as well as Kelly's 18-year-old son.

76. Defendant O'Neill was negligent in leaving his service-issued firearm unsecured in the home that he was sharing with his girlfriend Kelly and their respective children.

77. Defendant O'Neill knew for months before April 17, 2017 that Kelly was severely depressed and despite this knowledge he took no constructive and/or affirmative action for Kelly to get appropriate medical attention.

78. Unlike the average layperson Defendant O'Neill had received extensive training as a requirement of his employment as a police officer in recognizing mental illness and dealing with it appropriately.

79. Because of the extensive training that he received as a Ventnor City Police Officer Defendant O'Neill had superior knowledge of the dangers associated with mental illness as compared to the average lay person.



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80. Considering the special relationship between Defendant O'Neill and Kelly, the link between firearms, mental health issues, and suicide delineated herein, it was foreseeable that so leaving a loaded handgun with Kelly in her poor mental state would lead to her death such that defendant's negligence was the proximate and actual cause of the death of Kelly.

81. As the safe storage of his service weapon was within the scope of his employment as a police officer, defendant Ventnor City is vicariously liable for Defendant O'Neill's negligence.

82. Additionally and in the alternative, Ventnor City is directly liable for the failure to take appropriate steps to adequately train regarding or enforce policies for safe firearm storage or otherwise negligent as discovery may reveal.

83. Kelly left behind three children: two sons (ages 18 and 7) and a 12-year-old daughter.

84. Kelly's children were financially dependent on her and pursuant to the Wrongful Death Statute of the State of New Jersey, the Estate of Kelly, which includes her three children, demands judgment for the pecuniary loss of the income that their mother would have generated for them.

85. Pursuant to the New Jersey Wrongful Death Act, the Estate of Kelly, which includes her three children, demands fair and reasonable compensation for the loss of advice, counsel and companionship that Kelly would have provided to her children as they matured in life.

86. Plaintiff also demands reimbursement for all associated funeral expenses in the approximate amount of \$26,000.00.

WHEREFORE, Plaintiff Stephanie Young, the sister of Kelly, in her capacity as Administratrix of the Estate of her late sister, Kelly, hereby demands judgment against Defendants Sergeant Frank O'Neill, Ventnor City, John Doe (1-10), and John Doe, Inc. (1-10) for compensatory damages, interest and costs of suit, as well as any and all legal and equitable relief as this Court may deem appropriate and just.

SECOND COUNT

VIOLATION OF RIGHT TO DUE PROCESS-STATE CREATED DANGER AS TO ALL DEFENDANTS

1. Stephanie Young as Administratrix Ad Prosequendum of the Estate of her late sister, Kelly, hereby incorporates the paragraphs of the preceding Count as if same were set forth at length herein.
2. This count is pled pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 and, additionally and in the alternative, directly under the New Jersey Constitution for a violation of the right to substantive due process guaranteed by Article I, Paragraph I of the New Jersey Constitution.
3. At all times stated herein, Defendant Frank O'Neill was an employee of Defendant Ventnor City.
4. Defendant O'Neill's actions were in violation of Kelly's New Jersey Civil Rights, a violation of which the Estate of Kelly is entitled to recover for pursuant to N.J.S.A. 10:6-2 and the New Jersey Constitution.
5. The premature death of Kelly was a foreseeable and a direct result of the actions of Defendant O'Neill.
6. Defendant O'Neill had a special relationship with Kelly by virtue of living together, being romantically involved, and being a contributing factor and/or

catalyst of her mental health issues.

7. Kelly had been undergoing treatment for depression and anxiety since March 19, 2017.

8. Prior to receiving treatment, Kelly spoke with friends and family members, including Defendant O'Neill, about her ongoing state of anxiety and depression.

9. Kelly shared her ongoing struggles with Defendant O'Neill and Defendant O'Neill was aware of Kelly's ongoing medical treatment for depression.

10. As stated in detail in the First Count, Defendant O'Neill received extensive training in dealing with individuals suffering from mental illness as a requirement of his job as a Sergeant with the Ventnor City Police Department.

11. Despite Defendant O'Neill's training and knowledge of Kelly's mental state he continued to leave his service firearm loaded and unsecured in front of their children in the home the two shared.

12. On April 17, 2017, Defendant O'Neill informed Kelly that he would be taking a hastily-arranged trip to Florida.

13. Defendant O'Neill departed the house leaving his service weapon unsecured and loaded on the floor of the bedroom closet that the couple shared.

14. Defendant O'Neill's act of leaving his service weapon loaded and unsecured in the bedroom closet that he and Kelly shared while he went out of town constitutes deliberate indifference for the life and well-being of Kelly, and for their five children.

15. Kelly in her severely depressed state and as a member of Defendant O'Neill's household was a foreseeable victim of Defendant O'Neill's acts.



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16. Defendant O'Neill leaving the residence, and indeed the state itself, while leaving an unsecured and loaded service firearm in plain site with a severely depressed individual was a misuse of his authority as a police officer that created a new foreseeable danger that Kelly would utilize said weapon to harm herself.

17. Defendant O'Neill was in possession of this service weapon as a result of his position as a Sergeant with the Ventnor City Police Department.

18. Defendant O'Neill's act of leaving his service weapon loaded and unsecured in the bedroom closet which he shared with Kelly, a severely depressed individual, made Kelly more vulnerable to danger than she would have been had Defendant O'Neill not left his service weapon loaded and unsecured in their bedroom closet while he went to Florida.

19. Defendant O'Neill's actions shock the conscience.

20. Defendant O'Neill's actions were a proximate cause of Kelly's untimely death.

21. Ventnor City is vicariously liable for the conduct within the scope of his employment and under color of state law of its employee Defendant O'Neill.

WHEREFORE, Stephanie Young as Administratrix Ad Prosequendum of the Estate of her late sister, Kelly, hereby demand judgment against Defendants Sergeant Frank O'Neill, Ventnor City, John Doe (1-10), and John Doe, Inc. (1-10), for compensatory damages, interest, costs of suit, and attorney's fees, as well as any and all legal and equitable relief this Court may deem appropriate and just.

THIRD COUNT

*VIOLATION OF THE RIGHT TO DUE PROCESS-STATE CREATED DANGER
POLICY/CUSTOM/PRACTICE DIRECT LIABILITY*



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1. Stephanie Young as Administratrix Ad Prosequendum of the Estate of her late sister, Kelly, hereby incorporates the paragraphs of the preceding Counts as if same were set forth at length herein.

2. This count is pled pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 and, additionally and in the alternative, directly under the New Jersey Constitution for a violation of the right to substantive due process guaranteed by Article I, Paragraph I of the New Jersey Constitution.

3. At all relevant times herein, Defendant O'Neill was a law enforcement officer employed by the Ventnor City Police Department, a political subdivision of the State of New Jersey, and acted under color of state law.

4. While, as delineated herein, Ventnor City had in place training and guidelines regarding safe and proper firearm storage by its law enforcement officers, it failed to effectively enforce said guidelines and had an unofficial policy, practice, or custom of failing to enforce said training and guidelines either affirmatively or by appropriate disciplinary action upon discovered violations of said training and guidelines.

5. This unofficial policy, custom, and practice was a causal or driving factor in Defendant O'Neill's leaving his service weapon out and unsecured in plain sight when he had left the house.

6. As a result of this unofficial policy, custom, or practice, Defendant Ventnor City is directly liable for the violation of Plaintiff's rights to due process of law as guaranteed by the New Jersey Constitution.

WHEREFORE, Stephanie Young as Administratrix Ad Prosequendum of the Estate of her late sister, Kelly, hereby demands judgment against Defendants



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Sergeant Frank O'Neill, Ventnor City, John Doe (1-10), and John Doe, Inc. (1-10), for compensatory damages, interest, costs of suit, and attorney's fees, as well as any and all legal and equitable relief this Court may deem appropriate and just.

FOURTH COUNT

GROSS NEGLIGENCE ON THE PART OF ALL DEFENDANTS

1. Stephanie Young as Administratrix Ad Prosequendum of the Estate of her late sister, Kelly, hereby incorporates the paragraphs of the preceding Counts as if same were set forth at length herein.
2. Every handgun sold in the State of New Jersey is statutorily required to be sold with a trigger lock or other safe storage device.
3. Indeed, police stations will provide free trigger lock or other storage devices to gun owners upon request free of charge.
4. Despite his extensive knowledge of Kelly's mental condition and the fact that minor children were present in the house, Defendant O'Neill left his loaded service handgun out in plain sight at a time when he left his home.
5. The herein describe conduct was so beyond the bounds of acceptable behavior, in consideration of Defendant O'Neill's status as a police officer, the special training he received, and his romantic relationship with Kelly, as to constitute gross negligence.
6. Ventnor City is vicariously liable for the conduct within the scope of his employment and under color of state law of its employee Defendant O'Neill.

WHEREFORE, Stephanie Young as Administratrix Ad Prosequendum of the Estate of her late sister, Kelly, hereby demands judgment against Defendants



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Sergeant Frank O'Neill, John Doe (1-10), and John Doe, Inc. (1-10) for compensatory damages, interest and costs of suit, as well as any and all legal and equitable relief this Court may deem appropriate and just.

FIFTH COUNT
PUNITIVE DAMAGES AS TO ALL DEFENDANTS

1. Stephanie Young as Administratrix Ad Prosequendum of the Estate of her late sister, Kelly, hereby incorporates the paragraphs of the preceding Counts as if same were set forth at length herein.
2. Defendant O'Neill's conduct of leaving an un-secured and loaded firearm in plain sight with Kelly, who Defendant knew to be suffering from severe depression due to their deteriorating relationship, in violation of department policy and his extensive training was of such egregious character to be unacceptable in a civilized society and constituted willful and wanton disregard to the risk of harm and the rights of Kelly.
3. Ventnor City is vicariously liable for the conduct within the scope of his employment and under color of state law of its employee Defendant O'Neill.

WHEREFORE, Stephanie Young as Administratrix Ad Prosequendum of the Estate of her late sister, Kelly, hereby demands judgment against Defendants Sergeant Frank O'Neill, John Doe (1-10), and John Doe, Inc. (1-10) for compensatory damages, punitive damages, attorneys' fees, interest and costs of suit, as well as any and all legal and equitable relief this Court may deem appropriate and just.



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JURY DEMAND

Plaintiff demand a jury trial.

CERTIFICATION

PAUL R. D'AMATO, ESQUIRE of full age, certifies:

1. I am a member of the D'Amato Law Firm, P.C. and am entrusted with the preparation and trial of this case.
2. This case is not the subject of any other court action or arbitration proceeding.

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

DEMAND FOR INSURANCE INFORMATION

PLEASE TAKE NOTICE that pursuant to R. 4:10-2(b), plaintiff hereby demands production of a copy of any and all insurance agreements under which defendant(s) may be covered to satisfy part of all of any judgement which may be entered in this matter and/or to defend, indemnify, or reimburse defendant.

DEMAND FOR ANSWERS TO FORM INTERROGATORIES

PLEASE TAKE NOTE that pursuant to R. 4:17-1(b)(ii) demand is hereby made for answers to Plaintiff's First Interrogatories within sixty (60) days of the date of the Answer.

CONFIDENTIAL PERSONAL IDENTIFIERS

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).



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By: 

Paul R. D'Amato, Esquire
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Dated: March 31, 2020



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EXHIBIT “A”

D
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STATE OF NEW JERSEY

A0013024546

STATE FILE NUMBER
20170023174

CERTIFICATE OF DEATH

DECEASED NAME

KELLY ANN MCDOWELL

DATE OF BIRTH

03/21/1976

SEX

FEMALE

DATE OF DEATH

04/17/2017

PLACE OF DEATH

GALLOWAY TOWNSHIP

COUNTY OF DEATH

ATLANTIC

RESIDENCE ADDRESS

461 EXETER COURT

SOCIAL SECURITY NUMBER

154-74-7873

MUNICIPALITY OF RESIDENCE

GALLOWAY TOWNSHIP

COUNTY OF RESIDENCE

ATLANTIC

DOMESTIC STATUS

DIVORCED

MANNER OF DEATH: **SUICIDE**

CAUSE OF DEATH:

GUNSHOT WOUND OF HEAD, PERFORATING

DATE ISSUED: **APRIL 20, 2017**

DATE FILED WITH REGISTRAR: **04/20/2017**

AMENDED DATE:

ISSUED BY:

Egg Harbor City

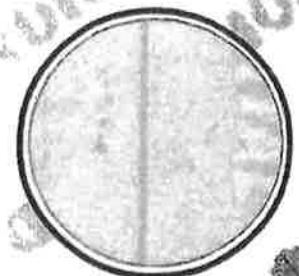
Meg Steeb, Local Registrar

This is to certify that the above is correctly copied from a record on file in my office.

Certified copy not valid unless the raised Great Seal of the State of New Jersey or the seal of the issuing municipality or county, is affixed hereon.

Vincent T. Arrisi

Vincent T. Arrisi
State Registrar
Office of Vital Statistics and Registry



REG-42A
JUN 14



THIS DOCUMENT CONTAINS A UNIQUE STATE OF NJ WATERMARK HOLD AT LIGHT TO VERIFY

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EXHIBIT “B”

D
D'AMATO
LAW FIRM^{PC}

COUNSELORS AT LAW
A PROFESSIONAL CORPORATION

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Egg Harbor Township, NJ 08234



EXHIBIT "C"

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