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<p>COUNTY OF ESSEX AND RONALD L. CHARLES</p> <p>v.</p> <p>VERA CORNELIUS LANGLEY, CURTIS LANGLEY, JOHN DOES 1- 10,</p>	<p>SUPERIOR COURT NEW JERSEY APPELLATE DIVISION</p> <p>DOCKET NUMBER: A-000459- 24T2</p> <p>Civil Action</p> <p>AMENDED APPELLANT BRIEF</p> <p>SAT BELOW: HON. ANNETTE COCA, J.S.C. SUPERIOR COURT OF NEW JERSEY -ESSEX COUNTY DOCKET NO. : ESX-L-3911-23</p>
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LURETHA M. STRIBLING, ESQ.

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STATEMENT OF FACTS

Vera Langley and Curtis Langley previously worked for the County of Essex and specifically at the Essex County Correctional Facility in Newark, New Jersey. **(1st Transcript, T5:11-14)** At the time of retirement, Vera Langley had attained the position of Captain. **(1st Transcript, T 5:13-14)**. At the time of retirement, Curtis Langley had attained via promotion the position of Sergeant. **(1st Transcript, T5:14-17)**. In the years after retirement, Vera Langley created an email account wherein employees submitted information anonymously regarding working conditions and issues of concern at the Essex County Correctional Facility. **(1st Transcript, T5:18-20)**. The information that was published at Vera Langley's email address `essexabusepowers@gmail.com` was truthful, based on facts and was opinion. **(1st Transcript, T5:25, T6:1-2)**. When Vera Langley received the anonymous emails, the information was vetted before she placed it in her email address and disseminated it to personnel at the Essex County Correctional Facility. **(1st Transcript, T6:1-4)**. Vera Langley reviewed, vetted and published the emails of employees on the email account and exercised her right to freedom of speech conveyed to citizens of New Jersey per the New Jersey Constitution. **(1st Transcript, T8:15-25)**. When Ronald Charles, Director of the Essex County Correctional Facility and a public official learned of the email postings, he and the County of Essex management engaged in

acts to interfere with Vera Langley's right to freedom of speech. (1st Transcript, T6:15-25, T7:1-4).

The Plaintiffs by way of Counsel obtained a subpoena for Google to obtain information on who owned the email account essexabusepowers@gmail.com and learned that the account was owned by Vera Langley. (1st Transcript, T6:8-10). Plaintiffs then filed the First Amended Verified Complaint naming Vera Langley and Curtis Langley as Defendants. (1st Transcript, T6:14-21). The information obtained from Google did not show that Curtis Langley had any ownership of the noted email account, however, he was named in this litigation as well. (1st Transcript, T6-10). In the Verified Complaint, the Plaintiffs pled the causes of action of Defamation, Defamation Per Se, Invasion of Privacy/False Light., Civil Conspiracy, Intentional Infliction of Emotional Distress, and Unlawful Use of Equipment. (Da20, First Amended Verified Complaint) Ronald Charles is a public official and the County of Essex is a public entity. (1st Transcript, 6:22-25, T7:1-4). The causes of action of Defamation, Defamation Per Se and Invasion of Privacy/False Light fail as there is no showing of facts which support actual malice. (1st Transcript, T9:1, 5-13). The causes of action pled of Civil Conspiracy, Intentional Infliction of Emotional Distress, Unlawful Use of Equipment and the causes of action sounding in Defamation fail. (1st Transcript, T9:11-13). The Plaintiffs filed the First Amended Verified Complaint to silence Vera Langley and

to send a message to custody staff to silence them which is in violation of the freedom of speech and expression rights of the staff at the Essex County Correctional Facility. **(1st Transcript, T4:20-25, T5:1-10, T8:1-7).**

Of major significance in this matter is the fact that the Plaintiffs are in violation of the Uniform Public Expression Protection Act. **(Da1, Uniform Public Expression Protection Act).** This law was signed by Governor Murphy on September 7, 2023. **(Da17, Article from Governor's Official Site).** The purpose of this law is to prevent persons in power and entities of power from filing meritless lawsuits where the goal is to intimidate and stifle persons that speak out on issues that are of public concern and that the powerful would rather keep hidden. **(Da17 Article from Governor's Official Site).** The filing of the First Amended Verified Complaint by the County of Essex and Ronald Charles served to improperly impact Vera Langley's right of freedom of speech. **(1st Transcript, T4:20-25, T5:1-10, T8:1-7).** The First Amended Verified Complaint was lacking in merit and a Motion to Dismiss the First Amended Verified Complaint was filed and was denied and thereafter, an Order to Show Cause was filed and heard on October 10, 2024. **(Da36, Motion to Dismiss, Da56, Order to Show Cause).** The Court denied the Order to Show Cause and issued a Stay of further proceedings at the trial court consistent with the statute, the Uniform Public Expression Protection Act. **(Da103, Court Order of October 10, 2024).**

PROCEDURAL HISTORY

Plaintiffs filed a First Amended Verified Complaint at the Essex County Superior Court on December 6, 2023. **(Da20, First Amended Verified Complaint).**

Defendant and Plaintiff entered into a Stipulation to Extend Time to Answer or Otherwise Plead on January 4, 2024. **(Da35, Stipulation Extending Time).** Defendant filed a Notice of Motion to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can Be Granted Per Court Rule 4:6-2(e) on the date of February 20, 2024. **(Da36, Motion to Dismiss).** Plaintiff filed Opposition to the Notice of Motion to Dismiss the Complaint For Failure to State a Claim Upon Which Relief Can Be Granted Per Court Rule 4:6-2(e). Plaintiff filed an Opposition Brief and Defendant filed a Reply Brief and the Court entered an Order on July 29, 2024. **(Da54 , Court Order from Judge Petrillo).** On July 30, 2024, Defendants filed an Order to Show Cause Pursuant to N.J.S.A. 2A:53A-49 et seq. **(Da56, Order to Show Cause).** Plaintiffs filed Opposition to the Order to Show Cause per a Brief and the Court issued the endorsed Order to Show Cause to Counsel on August 16, 2024. **(Da90, Order to Show Cause from Judge Scoca).** The Court entered an Order Per N.J.S.A. 2A:53A-49 et seq, the Uniform Public Expression Protection Act on October 10, 2024 wherein the Court granted a stay of the proceedings at the trial court on October 10, 2024. **(Da103, Court Order with Stay).**

LEGAL ARGUMENT

POINT I

THE TRIAL COURT FAILED TO UNDERSTAND AND APPLY THE TENETS OF THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT WHICH IS CODIFIED AT N.J.S.A. 2A:53A-49 ET SEQ TO THE FACTS AND EVIDENCE IN THE CASE WHICH RESULTED IN AN ERROR IN THE RULING Da1, Da79, Da81

The Uniform Public Expression Protection act is codified at N.J.S.A. 2A:53A-49 et seq and was enacted by Governor Murphy on the date of September 7, 2023. Governor Murphy signed the Uniform Public Expression Protection Act to protect people from lawsuits lacking merit which are filed to prevent people from exercising their right to freedom of speech. Governor Murphy Signs Bipartisan Bill Protecting Against Lawsuits Designed to Suppress Free Speech, Office of the Governor, September 7, 2023. **(Da17, Notice from Governor’s Official Site)** Governor Murphy in signing this bill recognized that powerful entities and powerful persons use litigation and threats of litigation to punish and silence people who speak out unfavorably of them. Id. p. 1. The lawsuits that are filed to silence people are known as Strategic Lawsuits Against Public Participation or SLAPP lawsuits. Id. at p.1. Governor Murphy noted that a SLAPP lawsuit is often used to silence individuals

and organizations from publicly criticizing and at times bringing legitimate issues to light about persons and entities of power. Id. at 1.

In analysis of the construction of N.J.S.A. 2A:53A-59, it is noted that this act shall be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right of assembly and petition, and the right of association, guaranteed by the United States Constitution or the New Jersey Constitution. The New Jersey Constitution at Article I, Rights and Privileges provides at Section 6: “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. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. New Jersey Constitution, Article I, Section 6.

The response to a Complaint that seeks to limit or stop freedom of speech and expression is to file an Order to Show Cause as noted at N.J.S.A. 2A:53A-51. The statute reads, Not later than 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim or other pleading that asserts a cause of action to which this act applies or at a later time on a showing of good

cause, the party may file an application for an order to show cause with the court to dismiss the cause of action or part of the cause of action. Per the statute as noted at N.J.S.A. 2A:53A-56, the court shall rule on an order to show cause under section 3 of P.L. 2023, c.155(C.2A-53A-51) as soon as practicable after a hearing under section 5 of P.L. 2023, c.155 (C.2A:53A-53) As noted at N.J.S.A. 2A:53A-57, a moving party may appeal as a matter of right from an order denying, in whole or in part, an order to show cause under section 3 of P.L. 2023,c.155 (C.2A:53A-51). The appeal must be filed not later than 20 days after the entry of the order. After the order to show cause is filed, the court is required to conduct a hearing pursuant to N.J.S.A. 2A:53A-53 as expeditiously as possible as noted in N.J.S.A. 2A:53A-53. The court is required to assess the proof in the case and as noted, in ruling on an order to show cause under section 3 of P.L. 2023, c.155 (C.2A:53A-51), the court may consider the pleadings, the order to show cause application and supporting certifications, briefs, any reply or response to the order to show cause, and any evidence that could be considered in ruling on a motion for summary judgement. N.J.S.A. 2A:53A-54. Pursuant to N.J.S.A. 2A:53A-52-4(a)(1), the court can stay all other proceedings between the moving party and responding party, including discovery and a pending hearing or motion. In determining whether to stay any proceedings, there shall be a presumption that such a stay will be granted. N.J.S.A. 2A:53A-5-4(a)(3).

In this case, the Court failed to examine the evidence, the causes of action pled in the Verified Complaint and whether a prima facie case was made. In addition, the Court was required to determine whether the action taken in filling the Verified Complaint in this case was an attempt to silence the Defendant, Vera Langley who owned the email account. In this case, the basis for the First Amended Verified Complaint was a claim that the Defendants had engaged in Defamation including Slander and Slander Per Se, Invasion of Privacy/False Light, Intentional Infliction of Emotional Distress, Civil Conspiracy and Unlawful Use of Equipment. The causes of action were pled based on four email postings by Vera Langley. In this case, there was a powerful public entity and a powerful public official who sought to interfere with the freedom of speech rights of Vera Langley. There were four email postings on essexabusepowers@gmail.com which the court was obligated to examine the emails to determine whether the causes of action were supported by this evidence so that the court could determine whether the Verified Complaint should be continued or dismissed based on the email content and on the evidence. The Court failed to examine the evidence and instead referred to the Motion to Dismiss analysis by Judge Petrillo. The issue is that per the Motion to Dismiss, reliance is placed on Printing Mart-Morristown v. Sharp Electronics Corp. where the standard requires continuation of the litigation if the fundamentals of a cause of action can be gleaned from the Complaint. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J.

739 (1989). The standard to be followed on an Order to Show Cause where dismissal of the cause of action was being sought is to be based on the standard for summary judgment motions where the Court is required to determine whether a prima facie case has been made. Per the Order to Show Cause, there must be an examination of the evidence to determine if a prima facie case has been met as to each cause of action. If a prima facie case is not made with satisfaction of the elements for each cause of action, then, the Complaint must be dismissed with prejudice. In this case, there was a failure to satisfy the elements for each cause of action pled and therefore, the Court was to dismiss the First Amended Verified Complaint with prejudice. In analysis of the causes of action pled which is based on four email postings, the First Amended Verified Complaint and other evidence, the Plaintiffs were not able to satisfy the prima facie standard. In review of the four email postings, the evidence supported the grant of the Order to Show cause and dismissal of the First Amended Verified Complaint. The causes of action pled were conclusory and simply mentioned the factors for each cause of action, however, there was a failure to satisfy the elements of each cause of action based on facts and evidence. The requirement that had to be satisfied was to show in the pleading detailed facts to establish each cause of action plead and the First Amended Verified Complaint is absent sufficient facts to support each cause of action. The Plaintiffs fared no better in analysis of the

emails which were posted by Vera Langley as the content of the emails did not support the noted causes of action.

In review of the email dated August 25, 2022, the details set forth are opinion and the email does not show actual malice against Director Charles or the County of Essex. In fact, this email notes that there is a new Director, Ronald Charles. The email is not critical of Director Charles but is critical of Dominic Scaglione who is the Inspector General at the County of Essex and is supposed to be fair and impartial in investigations. There are examples of the lack of fairness in how employees are treated with regard to investigations and discipline. In this email which is based on information emailed to Vera Langley, it notes that Director Charles started on August 25, 2022 and has walked into a nightmare of a department. This email exhibits hope that Director Charles will be able to clean up the department and handle matters fairly. The contents of this email are not actionable as to any of the causes of action pled. **(Da95, essexabusepowers@gmail.com dated 8/25/22).**

In review of the email dated February 17, 2023, there are no accusations made that Director Charles is a racist or that he is engaging in nepotism. The writing with regard to racism and nepotism states “Why can’t we just come to work in an environment free from racism, nepotism and all other isms?” The information that follows is about specific employees and not the County of Essex and not Director Charles. The emails received and contents of which are posted include legitimate

concerns of employees regarding what appears to be special treatment of certain employees who are named in the email. The email is based on facts of concern to the employees regarding what is taking place at the ECCF and is based on opinion. There is an absence of information here regarding Director Charles engaging in sexual misconduct or predatory behavior. The contents of this email are not actionable as to any of the causes of action pled. **(Da95, essexabusepowers@gmail.com dated February 17, 2023).**

In review of the email dated March 5, 2023, a short writing appeared about an inmate with political connections getting a meeting with Phil Alagia where he made certain demands which were met. In that post, there was an email which was sent by an employee where that writer called Director Charles an egotistical, narcissistic, insecure baby. Vera Langley did not write that email but posted it. The email writer is someone working at the Essex County Correctional Facility that has given his/her opinion about working conditions. That email is absent any writing that Plaintiff Charles is engaging in sexual misconduct and predatory behavior as was suggested by the Plaintiffs. The writer does discuss the details which support a belief that a particular female officer is getting special treatment from Director Charles. Per our case law, espousing an opinion is protected speech. Engaging in name calling, the use of epithets, insults and profanity might be hurtful to the listener, but, it is not actionable. DeAngelis v. Hill, 180 N.J. 1, 14 ((May 11, 2004). The

contents of this email are not actionable as to any of the causes of action pled. (Da99
essexabusepowers@gmail.com **Email dated March 5, 2023**)

In review of the email dated April 2, 2023, the claim that Defendants wrote that Plaintiff Charles was engaging in criminal and unethical conduct and that he is engaged in criminal activity is absent from the email. The actual writing is about Workers Compensation. The writing notes, “the atrocities that are going on in our jail are more than criminal and unethical at the very least.” This statement is not referring to Director Charles. It is also written “WE HAVE HAD ENOUGH with the director now doing the exact same thing as before...”showing favoritism, covering up, and running what is now a VERY UNSAFE FACILITY!!!”. Language about money missing from the business office is absent from this email and the reference to sexual harassment charges is reference to another employee and the lawsuit alleging sexual harassment is filed in Essex County and is against a supervisor and not Director Charles. There appears to be opinion about Director Charles showing favoritism. Vera Langley has posted the concerns of employees in her emails where what is discussed are matters of public concern. The employees are allowed to have an opinion as well as send emails regarding concerns at the Essex County Correctional Facility. Vera Langley is the publisher of the emails received from employees at Essex County Correctional Facility and she also has an opinion about the events being notified of at the Essex County Correctional Facility. The

contents of this email are not actionable as to any of the causes of action pled.

(Da101, essexabusepowers@gmail.com Email dated April 2, 2023)

In this matter, the court failed to review the contents of the emails posted and disseminated by Vera Langley. Had the court undertaken an examination of the contents, the conclusion that the court should have reached was that there was nothing in the emails to support the causes of action pled. There was no showing of content that was defamatory and therefore the causes of action pled of Defamation, Slander, Slander Per Se and Invasion of Privacy/False Light could not be supported. In addition, there was no support for the causes of action of Intentional Infliction of Emotional Distress, Civil Conspiracy or Unlawful Use of Equipment. Further, there was an absence of facts pled in the First Amended Verified Complaint and as a result of this, there was a failure of the pleading requirements.

In analysis of each cause of action pled and juxtaposed with the email postings, it becomes clear that there was no support for the litigation filed and the causes of action pled. Under the law in New Jersey, in order to successfully plead defamation, what must be shown is that a false and defamatory statement about the Appellant has been made, this false and defamatory statement has been published to a third party, the act of making the statement represents negligence on the part of the publisher and there are damages. New Jersey Elements of Action 2008-2009, James H. Walzer p. 327 (2008). The act of stating the falsehood to three or more persons

is slander. When the false statement is placed in writing and issued to three or more persons, this is libel.

The cause of action of defamation has the following elements: (1) the assertion of a false and defamatory statement concerning another;(2) the unprivileged publication of that statement to a third party; and (3) fault amounting at least to negligence by the publisher. Leang v. Jersey City Bd. of Educ., 198 N.J. 557, 585 (2009). When a Court has to engage in determining whether a statement is defamatory, the Court must consider and apply the factors of (1) the content, (2) the verifiability, and (3) the context of the challenged statement. DeAngelis v. Hill, supra at 13. Statements of opinion per the constitution are protected and there is an absolute immunity for those persons expressing opinion. Id. at 13-15. There is a heightened standard which must be shown by a public official who brings a lawsuit against others claiming defamation. The actual malice standard requires that the public official suing for defamation must show that the publication was made with knowledge of the falsity or a reckless disregard for the truth. Id. at 13. The heightened actual malice standard is in place with regard to public officials because potential critics of public officials would be afraid to voice their criticisms. Costello v. Ocean County Observer, 136 N.J. 594, 605-606 (1994) A clear defense to a claim of defamation is that the statements made are the truth. With regard to publication of information, “to sustain a claim of defamation or libel, the First Amendment

requires that the plaintiff plead facts to show that the defendant knew that a statement was false and was reckless in deciding to publish the information without investigating whether it was accurate.” New York Times Co. v. Sullivan, 376 U.S. 254 (1964). The holding noted in New York Times was that a state can’t per the First and Fourteenth Amendment award damages to a public official for defamation which relates to his official conduct unless he can prove actual malice which means that the statement was made with knowledge of the falsity of the statement or with reckless disregard of whether or not it was true. Id. at 265-292. Even in cases of factual error or content which is defamatory of the official reputation, without a showing of actual malice there can be no recovery of damages. Id. at 279-283. In Sullivan, the state of Alabama awarded Sullivan damages for defamation and it was affirmed by the Supreme Court of Alabama and then the case was petitioned to the United States Supreme Court. Id. at 263-264. In reversing the award of damages, the United States Supreme Court ruled that “the evidence was constitutionally insufficient to support the judgment for respondent, since it failed to support a finding that the statements were made with actual malice or that they related to respondent. Id. at 285-292.

In this instance, the emails identified and discussed at essexabusepowers@gmail.com are under the category of facts, the truth and opinion. The content of these emails can be easily verified and are factual. In addition, the

information in the emails must be taken in the context presented and are not defamatory. In review of the cause of action of Defamation, absent from the pleading is any factual support for the claim that Vera Langley and Curtis Langley specifically engaged in defamation. Absent from the noted emails attributed to Vera Langley is any information that supports the claim that Director Charles was called a racist, a dictator, that he engaged in adulterous activities or that he has predatory behavior. There is no showing that Vera Langley published false statements to three or more persons about Director Charles. Furthermore, there is a failure to show actual malice, the heightened standard. The use of epithets, name-calling, profanity and hyperbole might hurt the Plaintiffs' feelings but are not actionable. Ward v. Zelikovsky, 136 N.J. 516, 529-530 (1994) Courts have to make a differentiation between defamatory statements and obscenities, vulgarities, insults, epithets, name calling and other verbal abuse. Id. at 530. The cause of action of defamation must be dismissed as the factual record does not support this cause of action. There is an absence of specific facts that support this cause of action. The content of the emails posted by Vera Langley where information is submitted by employees is opinion, truth and the exercise of freedom of speech. In addition, given that the Plaintiffs are public figures, there must be a showing of actual malice which is absent in the facts pled for defamation. There is failure to provide facts that support this cause of action and implicate Vera Langley and Curtis Langley. It is requested that the Appellate Court

find that there is no support in the record for Intentional Infliction of Emotional Distress and that this cause of action be dismissed with prejudice.

The cause of action of Defamation Per Se is consistent with the cause of action of Slander Per Se and includes the following elements: (1) accusing another person of having committed a criminal offense, (2) of having a loathsome disease, (3) of engaging in conduct or having a trait or condition incompatible with his or her business, or (4) of having engaged in serious sexual misconduct. Too Much Media, LLC v. Hale, 413 N.J. Super 135, 167 (App. Div. 2010) quoting McLaughlin v. Rosanio, Bailets & Talamo, Inc. 331 N.J. Super. 303,313-314(App. Div. 2000).

When the facts pled in the second count alleging Defamation Per Se are reviewed, there is a failure to set forth what specifically per facts was done by Vera Langley and Curtis Langley that resulted in this claim of Defamation Per Se. The facts pled fail to identify support for this cause of action. There are no factual details about the specifics of the emails relied upon to make this claim. Further, disparaging statements which are not specified in this cause of action are not defamatory. There is an absence of details of how Director Charles' reputation was damaged. In addition, Director Charles is a public figure and there is a failure to meet the required heightened standard of actual malice. There is an absence of facts to meet this heightened standard of actual malice and in fact actual malice was not pled. The emails published by Vera Langley did not include any information that would be

viewed or construed as Defamation Per Se. As noted previously, Curtis Langley did not create the email account and he never had any involvement with this email account, he did not write on this email site and has nothing to do with the claims made as to this cause of action. It is requested that the Appellate Court find that there is no support in the record for Defamation Per Se and that this cause of action be dismissed with prejudice.

Invasion of Privacy is a series of four torts, essentially four distinct types of invasion of four different interests which have in common the interference with the rights of the plaintiff to be left alone. Canessa v. J.I. Kislak, Inc., 97 N.J. Super. 327 (Law Div. 1967). The four classifications of Invasion of Privacy are (1) intrusion on plaintiff's physical solitude or seclusion by invading his or her home, illegally searching, eavesdropping or prying into personal affairs; (2) public disclosure of private facts for example making public private information about plaintiff; (3) placing plaintiff in a false light in the public eye which is not necessarily defamatory, however it must be something that would be objectionable to the ordinary reasonable person; and (4) appropriation for the defendant's benefit of the plaintiff's likeness or name. W. Page Keeton et al, Prosser and Keeton on the Law of Torts, Section 117 (5th edition, 1984); see also Rumbauskas v. Cantor, 138 N.J. 173 (1994) With regard to invasion of privacy/false light, a determination must be made about whether placing one in a false light in the public eye should be viewed

as defamatory. Id. at 180. To sustain a cause of action of invasion of privacy/false light, a basic requirement is that the disputed publicity be false or have the ability to give rise to a false public impression of the Plaintiff. G.D. v. Kenney, 205 N.J. 275, 308 (2011).

In the instant matter, there is a failure in the third count to plead sufficient facts to support this cause of action. There is insufficiency of the pleadings. There is an absence of any showing that Vera Langley and Curtis Langley made false statements or gave a false impression about Director Charles. As noted, Vera Langley created an email account on which emails received from employees at ECCF were vetted and posted. The emails consisted of truth, facts that the employees were aware of and their opinions. Furthermore, Director Charles is a public figure who has plead this additional defamation claim. There is a requirement as a public figure to show actual malice as well. Because there is a failure to plead facts and to support the heightened standard, and there will be an inability to plead sufficient facts because the emails attributed to Vera Langley and appended as exhibits do not satisfy invasion of privacy/false light or defamation in any form. It is requested that the cause of action of Invasion of Privacy/False Light be dismissed with prejudice as to Vera Langley and Curtis Langley. It is requested that the Appellate Court find that there is no support in the record for Invasion of Privacy/False Light and that this cause of action be dismissed with prejudice.

A Civil Conspiracy occurs when two or more people agree to do something unlawful that harms a third party, and then one of those people takes action to carry out the plan. The unlawful act can deprive another of a lawful right, deceive them or accomplish a legal end. When that occurs, a civil conspiracy claim generally allows an injured party to recover jointly and severally from a tortfeasor's co-conspirators, regardless of which one directly perpetrated the harm. Once an agreement is established and a wrong committed, any co-conspirator may be liable for all torts done to further that agreement.” Restatement (3d) of Torts, Liability for Economic Harm, Section 27, Comment C.

In this matter, the First Amended Verified Complaint sets forth no facts that satisfy this cause of action, fails to identify the parties in this conspiracy and the email postings by Vera Langley do not support this cause of action. Plaintiffs fail to identify who the owners are of the other listed email accounts Plaintiffs take a leap to make a claim of conspiracy with no facts to support this claim and no evidence to support this cause of action. There is no identification of the co-conspirators, so, it is incredulous that there could be a legitimate claim made of Civil Conspiracy. The absence of facts in the First Amended Verified Complaint as to this cause of action pled against Vera Langley and Curtis Langley requires that this cause of action be dismissed with prejudice. As noted, Curtis Langley had nothing to do with the email

account, did not create and has never written an email on this account nor had any involvement in emails received on this noted email account.

In making a claim for Intentional Infliction of Emotional Distress the following factors must be shown:

1. Anyone directing extreme and outrageous conduct toward another
2. Intentionally in a fashion intended to produce emotional distress or recklessly deliberate disregard of a high degree of probability that emotional distress will follow
3. Is liable in damages to the injured person
4. Where the misconduct proximately caused him or her emotional distress. The emotional distress must be so severe that no reasonable person could be expected to endure it.
5. But where the extreme and outrageous conduct is directed toward a third party, the injured person must suffer bodily harm. Buckley v. Trenton Savings Fund Society, 111 N.J. 355, 366-367 (1988) See also Delvalle v. Trino, 374 N.J. Super. 124, 142-143 (App. Div. 2022)

To establish a claim of Intentional Infliction of Emotional Distress there must be a showing of intentional and outrageous conduct by Defendant and a distress that is severe. The distress must be so severe that no reasonable person could expect to endure it. Aly v. Garcia, 333 N.J. Super. 195 (App. Div. 2000) The severe emotional

distress required to assert intentional infliction of emotional distress refers to any type of severe and disabling emotional or mental condition that may be generally recognized and diagnosed by professionals trained to do so; the intentional infliction of emotional distress must be so severe that it results in physical illness or severe psychological sequelae. Id. at 195. When a party is upset about certain issues, that does not suffice to make a claim of intentional infliction of emotional distress. Id. at 195.

Intentional Infliction of Emotional Distress has been found where a County Sheriff used an atrocious racial slur in referring to an African-American employee. Taylor v. Metzger, 152 N.J. 490, 508 (1998). Intentional Infliction of Emotional Distress has been found in the following circumstances: a landlord's intentional turning off the heat and hot water to get the tenants to move from the apartment building in 49 Prospect St. Tenant Ass'n. v. Sheva Gardens, Inc., 227 N.J. Super. 449, 455-457 (App. Div. 1988) and in Hume v. Bayer, 178 N.J. Super. 310, 319 (Law Div. 1981), where the physician told the parents that their child was suffering from a rare disease which might be cancerous when in fact the physician knew that the child had nothing more than an infected appendix.

In this instant matter, there is an absence of facts and evidence that support the cause of action of Intentional Infliction of Emotional Distress. The information pled is vague and fails to set forth factual details of the events that resulted in Ronald

Charles experiencing Intentional Infliction of Emotional Distress. It is requested that the Appellate Court find that there is no support in the record for Intentional Infliction of Emotional Distress and that this cause of action be dismissed with prejudice.

The claim made here that there has been Unlawful Use of Equipment, however this is not a cause of action, but, instead is a speculative assertion made by the Plaintiffs with no support in the record and zero evidence for what is being claimed. Again, the persons that allegedly engaged in obtaining email addresses which is claimed is not identified. There is an absence of details as to how the claimed unlawful use of equipment happened. There is an absence of any facts in this claim which is against Vera Langley and Curtis Langley. This claim of Unlawful Use of Equipment made against Vera Langley and Curtis Langley must be dismissed in its entirety with prejudice.

The trial court at the Order to Show Cause hearing was to apply the Summary Judgment standard as that is what was argued by the Defendants' Counsel. Per the narration of the standard, the Court stated, "In ruling on an order to show cause, under the Uniform Public Expression Protection Act, the court shall dismiss with prejudice a cause of action, if either the responding party fails to establish a prima facie case as to each essential element of any cause of action in the complaint, or the moving party establishes that the responding party failed to state a cause of

action upon which relief can be granted, or there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.” (1st Transcript, T38:12-23). In this case, the court failed to undertake an examination of the causes of action pled and evidence to determine whether a prima facie case was made. In fact, argument was made by the moving party that the causes of action were not satisfied when the facts and the evidence which were the noted emails were examined. An examination of the evidentiary record supports the position that was taken by the moving party, Defendants’ Counsel failed to satisfy essential elements for each cause of action and failed to show per the position taken that a prima facie case was made as to each cause of action. The Court erred in undertaking the analysis of this matter using the standard to be applied to cases being heard on a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted. (1st Transcript, T40:9-16). The court failed to make a determination of whether the speech engaged in by the Defendant, Vera Langley was a matter of public concern. The trial court also failed to address the standard to be met by the Plaintiffs which was to show actual malice as the Plaintiffs are a public official and a public entity. The Court ruled, the instant matter warrants a denial of defendant’s order to show cause application as allowed under the Uniform Public Expression Protection Act because there are enough facts at this pleading stage to allow them to proceed, to glean a cause of action, which

relief could be granted.” (1st Transcript, T40:10-16) The Court used the standard to be satisfied for a Motion to Dismiss which was in error. The Court had the obligation to dismiss the First Amended Verified Complaint with prejudice because the Defendants established that UPEPA applied and Plaintiffs did not establish that UPEPA did not apply and that there was failure to establish a prima facie case satisfying the elements for each cause of action. N.J.S.A. 2A:53-55(a).

It is requested that the Appellate Court find that the Order to Show Cause should have been granted based on the lack of evidence in this matter to support a prima facie case. It is requested that the Appellate Court reverse the determination of the trial court and enter a decision dismissing the Verified Complaint with prejudice. It is further requested that the Court award Counsel Fees and Costs at the lodestar rate.

POINT II

THE COURT ERRED IN FAILING TO FOLLOW THE GOOD CAUSE STANDARD WHEN STATING THAT THE ORDER TO SHOW CAUSE HAD NOT BEEN FILED WITHIN SIXTY DAYS OF THE FILING OF THE VERIFIED COMPLAINT AND FAILED TO FIND GOOD CAUSE Da5

The Uniform Public Expression and Protection Act addresses filing the Order to Show Cause beyond the sixty day time period at N.J.S.A. 2A:53A-51 where it is noted, Order to Show Cause. Not later than 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim or other pleading that asserts a cause of action to which this act applies or at a later time on a showing of good cause, the party may file an application for an order to show cause with the court to dismiss the cause of action or part of the cause of action. N.J.S.A. 2A:53A-51.

Good Cause is a flexible term and it is not fixed and definite. Tholander v. Tholander, 34 N.J. Super. 48, 51 (Ch. Div. 1955). In Leitner v. Toms River Regional Schools, good cause was discussed and the position taken by the Court was that good cause is to be liberally construed where there is no prejudice to the other party. Leitner v. Toms River Regional Schools, 392 N.J. Super. 80, 92-94 (App. Div. 2007).

In this case, the Defendants were served with the First Amended Verified Complaint on December 6, 2023. Thereafter, this Counsel was retained and communicated with Plaintiffs' Counsel and consent was given by Plaintiffs' Counsel for an extension to file by way of a Stipulation Extending Time to Answer or Otherwise Move. **(D35a, Stipulation Extending Time to Answer)**. The extension of time granted required that the response be filed by February 18, 2024. This Counsel filed the Notice of Motion to Dismiss the Complaint on February 17, 2024. By virtue of the grant of the extension, there was no prejudice to the Plaintiffs. The Motion to Dismiss was not scheduled for oral argument until July 29, 2024. At the time of oral argument on the Motion to Dismiss the Verified Complaint, the Court discussed the Uniform Public Expression Protection Act and asked if either Counsel was familiar with this new law. Both Counsel indicated that they were not familiar with this new law. Per this law, the filing required was an Order to Show Cause. The oral argument was heard on the date of July 29, 2024 and on July 30, 2024, this Counsel prepared and filed the Order to Show Cause pursuant to the Uniform Public Expression Protection Act. There was no claim of prejudice or finding of prejudice to the Plaintiffs as a result of filing of the Order to Show Cause.

At oral argument on the Order to Show Cause, this Counsel argued that good cause is to be construed liberally. The Court questioned why a Motion for Reconsideration was not filed, however, UPEPA requires that an Order to Show

Cause be filed. Under the circumstances and the fact that good cause is not a fixed standard, that there must be flexibility in the application of good cause and that the Plaintiffs were not prejudiced, the Court erred in failing to find good cause. The Court stated that the Order to Show Cause was not filed until six months later, but, failed to note that the initial filing of the Motion to Dismiss was filed timely, however, due to the court calendar, the Motion to Dismiss could not be heard until July 29, 2024. As noted, it was on July 29, 2024 that both Counsel learned about the new law, the Uniform Public Expression Protection Act. The following day, this Counsel filed the Order to Show Cause consistent with the Uniform Public Expression Protection Act. The Court should have found good cause with regard to the filing time of the Order to Show Cause because there was no prejudice to the Plaintiffs and there was no objection to the grant of a stay. Per the facts of this case, good cause was warranted.

It is requested that the Appellate Court find that the trial court erred in the application of the good cause standard and that the Appellate Court find that there was good cause. It is further requested that the Appellate Court find that this matter fits squarely under the Uniform Public Expression Protection Act and that the Verified Complaint be dismissed with prejudice and that Counsel fees and costs be awarded to the Defendants.

POINT III

THE TRIAL COURT FAILED TO UNDERSTAND THE INTENTION OF THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT WHICH WAS TO ADDRESS THE ENTRY INTO LITIGATION BY PERSONS IN POWERFUL POSITIONS TO INHIBIT THE FREEDOM OF SPEECH OF PERSONS IN LESS POWERFUL POSITIONS Da1, Da17

Strategic Lawsuits Against Public Participation, known as SLAPP suits are filed for the purpose of silencing lawful speech and participation in the democratic process. LoBiondo v. Schwartz, 199 N.J. 62, (May 14, 2009). On the date of September 7, 2023, the issue of SLAPP lawsuits was addressed by Governor Murphy by signing into law the Uniform Public Expression Protection Act. As a result of this being new law, there has been one case to date per the Uniform Public Expression Protection Act in New Jersey. The seminal case is Lento Law Group, P.C. v. Carly Hendrickson, Docket Number ESX-L-003911-23.

In Lento Law Group, P.C. v. Carly Hendrickson, Carly Hendrickson retained the Lento Law Firm and had to pay a non-refundable retainer fee. **(Da81, Lento Complaint, par. 7, 9, 11)** Shortly after retaining the Lento Law Firm, the case was settled and Ms. Hendrickson requested a return of some of the retainer fee. **(Da81, Lento Complaint, Par. 12)** When there was no return of her fee, Ms. Hendrickson posted on the Better Business Bureau website about the failure of the Lento Law Firm to return some of her retainer fee. She gave the law firm an unfavorable rating.

(Da81, Lento Complaint, par. 13) The Lento Law Firm then filed a lawsuit claiming defamation. The Court dismissed the lawsuit against Carly Hendrickson and ordered the law firm to pay legal fees and found that the case fell squarely under the Uniform Public Expression Protection Act. **(Da79, Lento Court Order)** The Court found that retaining an attorney is a matter of public concern and that the posting by Ms. Hendrickson was not defamation. **(Da79, Lento Court Order, Superior Court of New Jersey, Mercer County, Docket No. MER-L-000668-24).**

In the instant matter, the Plaintiffs, County of Essex and Ronald Charles did not like the fact that Vera Langley had established an email account and site and that employees were anonymously emailing Vera Langley regarding their concerns about the working conditions at the Essex County Correctional Facility. Vera Langley vetted information that she received and then published the information if it was found that there was truthfulness of the information. The publication was to put the readers including management on notice of employee concerns regarding the working conditions so that there could be improvement for the Correctional Police Officers as well as other staff. Thereafter, the County of Essex and Ronald Charles conducted searches to discover the owners of the various email accounts and having identified Vera Langley's account, then engaged in litigation against her and Curtis Langley her ex-husband claiming defamation. The reality is that the litigation appears to have been undertaken to silence Vera Langley and those other persons

holding email accounts so that the working conditions at the Essex County Correctional Facility would not become known by the community. The issues identified by employees at the Essex County Correctional Facility are matters of public concern. The conditions of the Essex County Correctional Facility where loved ones of members of the community work and where relatives of members of the community may be incarcerated are matters of public concern. In addition, the conditions at the Essex County Correctional Facility are of public concern to the many community groups that work to improve the conditions at various facilities in the community.

In this case, the Court failed to consider the fact that Ronald Charles is a public official nominated for the position of Director of the Essex County Correctional Facility and that the County of Essex is a public entity. In this regard, the public official, Charles and public entity, the County of Essex work at the behest of the community. What transpires at the Essex County Correctional Facility are matters of public concern. Furthermore, the engagement in litigation to tamp down discussion of the conditions at the Essex County Correctional Facility is representative of the actions which the Uniform Public Expression Protection Act is in place to eradicate. In other words, the right of freedom of speech which is conferred upon residents of this state which includes the employees at the Essex County Correctional Facility are being interfered with by the action of the Plaintiffs

in filing litigation against Vera Langley and Curtis Langley. Vera Langley has exercised her freedom of speech and publication rights as a result of posting the concerns of employees working at the Essex County Correctional Facility. The inability of the Plaintiffs to provide and plead sufficient facts to support the causes of action pled support the position that the sole purpose of the litigation was to interfere with the freedom of speech rights of the employees and the Defendants. The Court referred to and relied on the decision of Judge Petrillo who made a decision on a Motion to Dismiss the Verified Complaint. The Motion before Judge Scoca was an Order to Show Cause which had a different standard which needed to be followed.

The standard that should have been relied on by Judge Scoca was the summary judgment standard. In rendering the decision on the Order to Show Cause the court stated “there are enough facts at this pleading stage to allow them to proceed-to glean a cause of action, which relief could be granted.” (1st Transcript, T40:9-16) The application of the standard on a Motion to Dismiss should not have been applied to this Order to Show Cause where the Court was required to apply the summary judgment standard. The Court was required to examine the First Amended Verified Complaint for sufficient facts to support the causes of action and was required to examine the evidence to determine if a prima facie case was established. This ruling failed to consider the basis of the Uniform Public Expression Protection

Act which if properly applied required the court to review the filing by the Plaintiffs, the Verified Complaint and Exhibits to determine if there was a prima facie case made. Had that been done, the conclusion reached would have been in the negative as there was no prima facie case established as to each cause of action. The elements of each cause of action required satisfaction at the summary judgment stage and there was a failure to satisfy the elements by the Plaintiffs. As a result of this reality, the Court should have concluded that this litigation was nothing more than a Strategic Lawsuit Against Public Participation. This Strategic Lawsuit Against Public Participation should have then been dismissed with prejudice by the Court.

The court in issuing the ruling on the Order to Show Cause wrote: Based upon the reasons read into the record on date after hearing. Defendants OTSC is denied. The Court has granted a stay pending appeal of this Order .

It is requested that the Appellate Court find that this matter falls squarely under the Uniform Public Expression Protection Act and that the Appellate Court reverse the trial court decision and dismiss the First Amended Verified Complaint with Prejudice. It is requested that the Court grant costs and attorney fees at the lodestar rate.

CONCLUSION

For all of the reasons set forth in the Appellant Brief and Appendix, it is requested that the Court find that the litigation filed by the County of Essex and Ronald Charles falls squarely under the Uniform Public Expression Protection Act. It is further requested that the Appellate Court reverse the decision reached by the trial court and then dismiss the First Amended Verified Complaint with prejudice. It is requested that the Court award attorney fees and costs as set forth in the Uniform Public Expression Protection Act.

Luretha M. Stribling

Luretha M. Stribling

Attorney for the Defendants

DATED: March 20, 2025

COUNTY OF ESSEX AND RONALD L.
CHARLES

Plaintiffs/Respondents,

v.

VERA CORNELIUS LANGLEY,
CURTIS LANGLEY, JOHN DOES
1-10,

Defendant/Appellant,

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-000459-24T2

SAT BELOW:
HON. ANNETTE SCOCA, J.S.C.
DOCKET NO.: ESX-L-3911-23

BRIEF OF PLAINTIFFS/RESPONDENTS
COUNTY OF ESSEX AND RONALD L. CHARLES

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Dated: June 19, 2025

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PRELIMINARY STATEMENT

Defendants' Order to Show Cause ("OTSC") application under the Uniform Public Expression Protection Act ("UPEPA") was properly denied by the trial court.

Defendants' defamatory statements do not fall under the protection of UPEPA because private employment disputes do not constitute "matters of public concern." Moreover, Defendants' OTSC application was made nearly **six months after the filing deadline** without any explanation. Rather, the reality is that Defendants want this Court to allow them a pass for not knowing of the existence of UPEPA and call it "good cause." Defendants should not be permitted to capitalize on their unjustifiable mistake. Lastly, Defendants made no new arguments in its OTSC application from its Motion to Dismiss, which was denied prior to the filing of the OTSC, about why Plaintiffs' Complaint should be dismissed. It was held, and the record confirms, that Plaintiffs have presented a prima facie case as to the elements of each cause of action. Contrary to Defendant's arguments, the trial court committed no error in denying the OTSC. Therefore, this Court should find that Plaintiffs have sufficiently pled the necessary elements for each of their claims and affirm the denial of Defendant's OTSC.

PROCEDURAL HISTORY

On June 19, 2023, Plaintiffs filed a Verified Complaint and Order to Show Cause seeking temporary restraints against various email address users in the

Superior Court of New Jersey, Essex County Law Division. **(Pa1, Verified Complaint and Order to Show Cause).**

On August 3, 2023, Plaintiff's Order to Show Cause was granted by the Honorable Thomas M. Moore, Civil P.J. **(Pa51, Order to Show Cause).**

On August 15, 2023, Plaintiff's Order granting Temporary Restraints was granted by the Honorable Stephen L. Petrillo, J.S.C. **(Pa55, Order Entering Temporary Restraints).**

Following the receipt of information concerning the identities owners of the email addresses obtained from Google by way of subpoena, Plaintiffs filed a First Amended Complaint on December 6, 2023, naming Vera Langley and Curtis Langley. **(Da20, First Amended Verified Complaint).**

The parties executed a Stipulation to Extend Time to Answer or Otherwise Plead on January 4, 2024. **(Da35, Stipulation Extending Time).** Defendant filed a Notice of Motion to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can Be Granted Per Court Rule 4:6-2(e) on February 20, 2024. **(Da36, Motion to Dismiss).** Plaintiff filed Opposition to the Motion on April 18, 2024. Defendant filed a Reply Brief on April 23, 2024.

Following oral argument, the Court entered an Order on July 29, 2024 denying Defendant's Motion to Dismiss. **(Da54, Court Order from Judge Petrillo).**

On July 30, 2024, Defendants filed an Order to Show Cause Pursuant to N.J.S.A. 2A:53A-49 et seq. **(Da56, Order to Show Cause)**. Court issued the endorsed Order to Show Cause to Counsel on August 16, 2024. **(Da90, Order to Show Cause from Judge Scoca)**. Plaintiffs filed Opposition to the Order to Show Cause on October 3, 2024. Defendants filed a Reply on October 7, 2024.

Following oral argument on October 10, 2024, the Honorable Annette Scoca, J.S.C. entered an Order denying Defendant's Order to Show Cause, but granting a stay of the matter pending appeal. **(Da103, Court Order Denying Order to Show Cause and granting Stay)**.

STATEMENT OF FACTS

Plaintiffs-Respondents, the County of Essex and Ronald L. Charles, the Director of the Department of Corrections (hereinafter, "Plaintiffs"), filed a Verified Complaint on June 19, 2023, against fictitious entities. **(Pa1.)** Plaintiffs were granted expedited discovery to issue subpoenas on Google, Hotmail, and other internet service providers as may be necessary to identify and serve the anonymous defendants in this matter. **(Pa55.)** In response to their subpoena, Plaintiffs received account information from Google which revealed Defendants-Appellants Vera Cornelius Langley ("VC."), and her husband Curtis Langley (collectively the "Defendants") were the owners of one of the accounts in question, essexabusepowers@gmail.com. **(Da35.)** Both Defendants were prior employees of

Plaintiffs at the Essex County Correctional Facility. **(Da41.)** Upon receipt of this information, Plaintiffs subsequently filed their First Amended Verified Complaint to individually name the Langley Defendants. **(Da20.)** Specifically, during the relevant time period, the Langley Defendants were the publishers of various emails from and account titled essexabusepowers@gmail.com. **(Da41.)**

Prior to Plaintiff Charles's hire as the Director of the Correctional Facility, anonymous individual(s) began a campaign of issuing harassing and defamatory emails from "EssexAbuse Powers" where were directed at Associate Warden Antonio Pires and Chief of Staff Phil B. Alagia. **(Pa3.)** Shortly after Plaintiff Charles was hired, an email was published on August 25, 2022 by "EssexAbuse Powers" essexabusepowers@gmail.com which criticized Plaintiff Charles' performance in connection with a sexual harassment claim filed by a corrections officer against the Associate Warden. **(Da46.)** The email acknowledged that "in his defense, he walked into a nightmare of a department" and expressed an expectation that Plaintiff Charles as the new Director would "clean up the department and handle all affairs fairly." (Id.)

On February 17, 2023, Defendants, from the anonymous account "EssexAbuse Powers" essexabusepowers@gmail.com, published to approximately 80 individuals an email accusing Plaintiff Charles of being a racist and engaging in nepotism. **(Da48.)** Specifically, the email states, "[w]hy can't we just come to work

in an environment free from racism, nepotism, and all the other ‘ism’s? Why Director Charles do you keep doing the following...” (Id.) The February 17, 2023, email is signed by “Patiently Waiting For A CHANGE.”

On March 5, 2023, Defendants, from the anonymous account “EssexAbuse Powers” essexabusepowers@gmail.com, published to approximately 80 individuals an email accusing Plaintiff Charles of being “an egotistical, narcissistic, insecure baby.” (Da50.) In this email, Defendants further accuse Plaintiff Charles of engaging in sexual misconduct and predatory behavior. (Id.) Specifically, the email states, “[w]e just have to hang in and know this director is passing through. It’ll only be time that one of these female officers that he recruits to work for him will smarten up and go downtown on him for being a creep.” (Id.)

On April 2, 2023 Defendants, from the anonymous account “EssexAbuse Powers” essexabusepowers@gmail.com, published to approximately 20 individuals an email accusing Plaintiff Charles of engaging in criminal and unethical conduct. (Da52.) Specifically, the email states, “[t]he atrocities that are going on in our jail are more than criminal and unethical at the very least. WE HAVE HAD ENOUGH with this Director now doing the exact same thing as before “showing favoritism”, “covering up” and running what is now a VERY UNSAFE FACILITY!!!” (Id.) In the April 2, 2023 email, Defendants “EssexAbuse Powers” further accuse Plaintiff Charles of engaging in criminal activity and engaging in

sexual misconduct. (Id.) Specifically, the email references, “missing money from business office, sexual harassment charges, nepotism by our Director...” (Id.) The April 2, 2023 email is signed “Disgusted and Looking for New Employment.” (Id.)

On May 14, 2023 an email was published from the anonymous account “We Care” wecare4050@outlook.com, to approximately ten individuals accusing Plaintiff of engaging in sexual misconduct. (**Pa57.**) Specifically, the email refers to Plaintiff Charles as “Director Perv” and “Creepy.” (Id.) In this email, Plaintiff Charles is accused of being a “creep that lures young female officers that don’t know any better to work for him” in order to “fulfil [his] creepy tendencies.” (Id.) The email further accuses Plaintiff Charles of being a “Perverted Maniac,” and describes the women as Plaintiff’s “prey” who do not “want to be harassed anymore.” (Id.) These statements constitute allegations of criminal activity and/or conduct that is incompatible with Plaintiff’s occupation as a public servant.

Defendants further allege that Plaintiff Charles has engaged in criminal activity, including misappropriation of funds, and other activities incompatible with Plaintiff’s occupation as a public servant. (Id.) Specifically, Defendants allege that Plaintiff Charles is a “scam artist” and a “fraudulent pervert” who “would scam people into thinking they were giving money for sick people, but in reality you were keeping the proceeds to line [his] pockets.” (Id.)

On May 28, 2023 an email was published from the anonymous account “Let’s go Francis” letsгоfrancis@outlook.com, to approximately ten individuals an email accusing Plaintiff of engaging in adulterous activities. (Pa59.) Specifically, the email refers to Plaintiff Charles as “Director Perv” and states, “Director perv who takes your pictures for you? You know, the little pp ones. Does your wife and kids know about these nasty activities you are involved with? Does the community of West Orange know you’re a walking Perverted Maniac?” (Id.) Plaintiff Charles is further described as being a “toxic low life,” a “garbage can,” a “selfish egotistical narcissist,” a “dictator,” and alleged that Plaintiff Charles is “just as dangerous as the inmates.” (Id.)

LEGAL ARGUMENT
STANDARD OF REVIEW

Review of Motions to Dismiss pursuant to R. 4:6-2(e) and Motions for Summary Judgment R. 4:46-2 are reviewed de novo. Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021); Samolyk v. Berthe, 251 N.J. 73 (2022).

An order denying summary judgment is not appealable as of right, because the denial of summary judgment "decides nothing and merely reserves issues for future disposition." Gonzalez v. Ideal Tile Importing Co., 371 N.J. Super. 349, 356 (App. Div. 2004). However, where an Order is appealable as of right, the standard

of review has been held to remain the same. See Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 23 (App. Div. 2021).

Here, though the trial court's Order denying the Order to Show Cause under the UPEPA is not a final Order, it is appealable as of right under the UPEPA. N.J.S.A. 2A:53-57. Like other pretrial motions seeking the dismissal of a complaint are reviewed de novo by this Court, this Court will likely impose a de novo review of the denial of the Order to Show Cause filed pursuant to the UPEPA.

For the reasons set forth herein, the trial court's denial of Defendants' Order to Show Cause should be affirmed and this appeal dismissed.

POINT I

**THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT IS
INAPPLICABLE TO THIS CASE.**

Defendant's OTSC was properly denied because the UPEPA is both procedurally barred and substantively inapplicable to this case.

A. Defendant's OTSC Application is Statutorily Barred Under the UPEPA.

Defendant's OTSC application fails as untimely on two separate procedural bases. First, N.J.S.A. 2A:53-49 states that the act, approved on September 7, 2023, "shall take effect on the 30th day after enactment and shall apply to a civil action filed or cause of action asserted in a civil action on or after the effective date." A Complaint in this matter was initially filed on June 19, 2023. Accompanying the

Complaint was an Order to Show Cause filed by Plaintiffs seeking temporary restraints against the email users, later identified as Defendants. An Order granting temporary restraints was entered August 15, 2023. Thus, notice of the Complaint and allegations therein cannot be disputed by Defendants. Both the Complaint and Order granting temporary restraints preceded the effective date of the UPEPA.

Indeed, a First Amended Complaint followed. However, no new allegations were made. Rather, the Complaint was amended to name the Defendant users previously only identified by email usernames and as “John Does.” The filing of the First Amended Complaint or the fact that counsel was only retained following the Amended Complaint both fail to render the UPEPA retroactively applicable. Simply put, because the Complaint in this matter precedes the effective date of the statute, it is inapplicable to this action.

Furthermore, even if the Act were found to apply to the First Amended Complaint, no application was made by Defendant until nearly six months after the filing deadline. Therefore, the OTSC was properly dismissed.

Pursuant to N.J.S.A. 2A:53A-51, a party may file an application for an order to show cause with the court to dismiss the cause of action not later than 60 days after a party is served with a complaint that asserts a cause of action to which this act applies. As set forth, the Amended Complaint was served on December 6, 2023. Thus, an OTSC should have been filed by February 4, 2024.

On January 4, 2024, a Stipulation to Extend Time to Answer was filed by Defendants' counsel. Assuming only for the sake of argument that the UPEPA is applicable to this case, and the time to make an application thereunder tolled from January 4, 2024 or even to February 18, 2024 as provided in the Stipulation extending time to answer, any such OTSC application was required to be filed on or about March 4, 2024 or April 18, 2024, respectively. Yet, there is no dispute that no application was made for an OTSC under the UPEPA by even the most generous of deadlines.

Rather, Defendants filed a Motion to Dismiss for Failure to State a Claim pursuant to R. 4:6-2(e) on or about February 20, 2024. Absent from the Motion to Dismiss is any mention of the UPEPA. In fact, the record clearly demonstrates that Defendants were unaware of the existence of the UPEPA until advised of its existence by the trial court during the oral argument of the Motion to Dismiss. Only after the trial court denied Defendants' Motion to Dismiss did Defendants file an OTSC application under the UPEPA. That application was filed on July 30, 2024, far exceeding the statutorily mandated sixty (60) day deadline.

Furthermore, as set forth in greater detail below, Defense counsel's ignorance of the UPEPA does not constitute good cause to extend the deadline. Thus, there can be no dispute as unequivocally demonstrated by the record that the OTSC application was untimely and therefore, procedurally barred.

B. The UPEPA is Further Not Applicable Because Defendant Vera Langley's Email Publications Are Not Matters of Public Concern Under N.J.S.A. 2A:53A-51.

In addition to the procedural bases upholding the trial court's dismissal of Defendants' OTSC, the UPEPA is also substantively inapplicable to this case. The UPEPA specifically provides:

Except as otherwise provided in subsection c., this act applies to a cause of action asserted in a civil action against a person based on the person's:

- (1) Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
- (2) Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
- (3) Exercise the right of freedom of speech or of the press, the right to assembly or petition, or the right of associate, guaranteed by the United States Constitution or the New Jersey Constitution, **on a matter of public concern.**

[N.J.S.A. 2A:53A-50(b) (emphasis added).]

After a thorough search, Plaintiffs have not found any New Jersey case law which defines what is "a matter of public concern" under the UPEPA statute¹.

¹ Defendants' brief cites to a recent Mercer County Law Division court order finding that a client's online post about her attorney's failure to return part of the retainer fee

Although New Jersey is one of 34 states to provide “anti-SLAPP²” protections, New Jersey’s law is specifically adopted from the Uniform Public Protection Act (“UPEPA”), a 2020 Uniform Law Commission model statute that is designed to be construed broadly to protect First Amendment rights under the U.S. Constitution and under similar free expression rights of state constitutions. With that in mind, Plaintiffs apply New Jersey and U.S. Supreme Court caselaw to determine what is “a matter of public concern” in defamation suits.

In defining speech involving a matter of public concern, the New Jersey Supreme Court has relied on the common law, informed by the freedom of speech guarantees in Article, Paragraph 6 of the New Jersey Constitution. Senna v. Florimont, 196 N.J. 469, 490 (2008). However, the right of a person to be secure in their reputation—rooted in Article I, Paragraph 1 of our State Constitution—is just as important, since “reputation is still valued as essential to human dignity and worth.” Id. at 490-91.

In Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 105 S. Ct. 2939, 86 L. Ed. 2d 593 (1985), the U.S. Supreme Court held that whether speech

is protected speech under UPEPA. The Law Division’s decision is irrelevant to the case at bar.

² “SLAPP” is short for Strategic Lawsuits Against Public Participation. It refers to a meritless lawsuit filed against a person for exercising their First Amendment rights. Anti-SLAPP laws are intended to provide a remedy to SLAPP lawsuits.

addresses a matter of public concern requires an assessment of the “content, form, and context of the speech.” The New Jersey Supreme Court adopted this formula and expanded upon it to include an assessment of the nature and importance of the speech, the identity of the speaker, her ability to exercise due care, and the identity of the targeted audience. Senna, 196 N.J. at 496-97.

Here, the primary content of Defendant V.C.’s emails is a vicious series of private disputes between employees of the Correctional Facility and Plaintiff Charles, their current boss. The primary intent of the speech is not some lofty public good or concern, but merely to establish that Plaintiff Charles and other high-ranking staff should be fired. As to the identity of the speaker(s), they are highly likely to derive direct employment benefits, potentially economic, from harming the reputation of Plaintiff Charles and other high-ranking staff. If the speaker(s) can get rid of Plaintiff Charles and others, they could potentially gain promotions, pay raises and other benefits. Therefore, this is not a case of disinterested and unbiased reporting, but a group of spiteful employees, intent on putting Plaintiff Charles and others out of a job.

Next, the speech in question consists of a series of emails using contrived email addresses, sent to specific people, mostly various Correctional Facility employees, to convey their private concerns and demands. As to the third factor the Supreme Court considers, the context of the speech arising out of private

employment disputes, specifically Defendant V.C. and other employees primarily complain about internal matters within the Correctional Facility, including employment practices and administrative decisions. These are not issues that have been debated publicly or have become a battleground for public opinion in the way contemplated by law. The internal workings of a county correctional facility, while of interest to those directly affected, do not constitute a matter of public concern. The mere fact that these dominant themes are occasionally interspersed with collateral blanket accusations that the jail is “unsafe” is not enough to transform a private dispute into a matter of public concern. Therefore, Defendant V.C.’s emails do not constitute a matter of public concern under UPEPA and the OTSC application was properly denied.

POINT II

DEFENDANTS’ IGNORANCE OF THE LAW DOES NOT CONSTITUTE GOOD CAUSE TO EXTEND THE OTSC FILING DEADLINE UNDER N.J.S.A. 2A:53A-51.

Even if this Court finds the UPEPA applicable, Defendants’ OTSC application still must be denied because Defendants’ ignorance of the existence of the UPEPA until July 2024 does not constitute good cause to extend the filing deadline by nearly **six months**.

Again, pursuant to N.J.S.A. 2A:53A-51, a party may file an application for an order to show cause with the court to dismiss the cause of action not later than **60**

days after a party is served with a complaint that asserts a cause of action to which this act applies. (Emphasis Added). However, a party may be permitted to file past the 60-day mark on a showing of **good cause**. Id. (Emphasis Added).

Plaintiffs served Defendants with the Amended Complaint on December 6, 2023. As such, Defendants should have filed its OTSC by February 4, 2024. The fact that Defendants and/or Defendants' counsel was unaware of the new UPEPA law until 327 days³ after its enactment and 178 days after the filing deadline is not good cause. Although good cause "is difficult of precise delineation," its "application requires the exercise of sound discretion in light of the facts and circumstances of the particular case considered in the context of the purposes of the rule being applied." Ghandi v. Cespedes, 390 N.J. Super. 193, 196 (App. Div. 2007); Baskett v. Kwokleung Cheung, 422 N.J. Super. 377, 384 (App. Div. 2011).

Here, Defendants' attorney's ignorance of a law that is fundamental to her case combined with her failure to perform basic research on that law, leading to the absurdly late filing of Defendants' OTSC, completely fails to establish good cause to extend the filing deadline of Defendants' OTSC. Moreover, Defendants are certainly aware of this fatality, as they avoid the issue completely in their brief.

³ On July 29, 2024, during oral argument before Judge Stephen Petrillo, J.S.C., Defendants' counsel admitted that she was unaware of UPEPA's existence.

Therefore, given that Defendants failed to show good cause to extend the OTSC filing deadline, the application was properly denied.

POINT III

THE TRIAL COURT APPLIED THE CORRECT STANDARD TO FIND THAT PLAINTIFFS HAVE ADEQUATELY PLED THEIR CAUSES OF ACTION FOR DEFAMATION AND ALL OTHER CLAIMS AGAINST DEFENDANTS.

Notwithstanding the fact that the UPEPA is substantively inapplicable and the OTSC is procedurally time-barred and any request to extend devoid of even an iota of good cause, the trial court still evaluated the causes of action, under the correct standard, and concluded that Plaintiffs' adequately pled all causes of action. For all of these reasons, the Defendant's OTSC was properly dismissed.

Defendants argue as they did below that Plaintiff's First Verified Complaint fails to set forth facts to support the cause of action for defamation, and therefore should be dismissed with prejudice along with the other causes of action because those causes of action flow from the same set of facts pled for defamation. Defendants further assert that the UPEPA required the trial court to apply the summary judgment standard in addressing the claims after the OTSC, and that the trial court erred in failing to do so. Defendants' arguments are wholly without merit.

Without any supporting legal authority, Defendants claim that the UPEPA requires a summary judgment standard in assessing whether a prima facie case has

been made. Defendants' claim is negated by the clear language of the UPEPA. The statute provides:

a. In ruling on an order to show cause under section 3 of P.L. 2023, c.155 (C.2A:53A-51), the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

(1) the moving party established under subsection b. of section 2 of P.L.2023, c.155 (C.2A:53A-50) that this act applies;

(2) the responding party fails to establish under subsection c. of section 2 of P.L.2023, c.155 (C.2A:53A-50) that this act does not apply;
and

(3) either:

(a) the responding party fails to establish a prima facie case as to each essential element of any cause of action in the complaint; or

(b) the moving party establishes that:

(i) the responding party failed to state a cause of action upon which relief can be granted; or

(ii) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

[N.J.S.A. 2A:53A-55 (Emphasis Added)].

Therefore, to survive dismissal, the UPEPA requires Plaintiffs to have sufficiently alleged the elements of their cause of action in their Complaint, like the

standard for Rule 4:6-2(e). When evaluating a motion to dismiss under R. 4:6-2(e), the facts need not be specific. The facts must “merely suggest a cause of action,” and the claims will withstand a motion to dismiss. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189 (1988). The Supreme Court requires that this Court search “the complaint in depth and with liberality to ascertain whether the fundamentals of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.” Printing Mart- Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989) (quoting Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). Plaintiffs are entitled to every reasonable inference of fact that the allegations may support. Valentzas, supra at 192. The approach is one that does not lean toward the dismissal of claims, but rather, is designed to be “generous and hospitable.” Printing Mart-Morristown, 116 N.J. at 746. See also F.G v. MacDonnell, 150 N.J. at 556 (“If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion”). In the case of a complaint charging defamation, plaintiff must plead facts sufficient to identify the defamatory words, their utterer and the fact of their publication. A vague conclusory allegation is not enough. Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101 (App. Div. 1986).

Here, there is no doubt that Plaintiffs’ Complaint complies with the standard associated with a R. 4:6-2(e) motion to dismiss because Judge Petrillo previously

denied Defendant's Motion to Dismiss and Judge Scoca denied the OTSC, both concluding Plaintiffs allegations sufficiently meet the standard.

At the conclusion of the hearing of Defendants' OTSC on October 10, 2024, the trial court set forth the standard under the UPEPA. Judge Scoca stated:

In ruling on an order to show cause, under the Uniform Public Expression Protection Act, the Court shall dismiss with prejudice a cause of action, or a part of a cause of action, if either the responding party fails to establish a prima facie case as to each essential element of any cause of action in the complaint, or the moving party establishes that the responding party failed to state a cause of action upon which relief can be granted, or there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

[Transcript of Oral Argument, October 10, 2024, T38:11-23].

The standard articulated by the trial court mirrors the language of the statute. Therefore, there is no merit to Defendants' claim that the trial court failed to apply the proper standard.

The trial court further provided sound reasoning for its decision in accordance with the UPEPA. The trial court first determined that the OTSC was untimely and no good cause was established by the fact that "defendants were unaware of the new UPEPA law until 178 days after the filing deadline. That is not the cause to extend the deadline." (T39:13-25). The trial court noted that because Judge Petrillo denied

plaintiffs' motion to dismiss on July 29, 2024, a motion to reconsider would have been more appropriate under these circumstances rather than an order to show cause. (T40:2-6).

Notwithstanding, the trial court found that defendants made no new arguments in this instant order to show cause application than what was argued in support of the Motion to Dismiss, and therefore comparable to what "Judge Petrillo found on July 29, 2024, the instant matter warrants a denial of defendants' order to show cause application, as allowed under the Uniform Public Expression Protection Act because there are enough facts at this pleading stage to allow them to proceed -- to glean a cause of action, which relief could be granted." (T40:9-16). Specifically, the Court found that

defendants per se includes accusing another person of having committed a criminal offense or having engaged in serious sexual misconduct, citing Ricciardi v. Weber, 350 N.J. Super. 453, 477(App. Div. 2002). In here, plaintiffs' complaint alleges that behavior like nepotism, racism, theft, and sexual harassment. I'm sorry. Alleges that defendant Langley's emails contained specific accusations of professional misconduct and unethical behavior like nepotism, racism, theft, and sexual harassment.

And because there is enough in the emails with regard to defamation, the Court finds that denying the present order to show cause is appropriate at this stage of the pleadings. Accordingly, defendants have not established plaintiffs' failure to state a cause of action upon which relief can be granted. And the Court is denying the order to show cause.

[T40:1-41:19].

Even though the trial had court already determined the OTSC should be denied as untimely, the foregoing demonstrates that contrary to Defendants arguments on appeal, the Court did consider and assess whether the emails set forth in Plaintiffs' Complaint provided adequate support for the Plaintiffs' causes of action. Moreover, as set forth below, there is no question that Plaintiffs' can satisfy the elements of each cause of action sufficient to defeat a Motion to Dismiss and OTSC application.

A. Plaintiffs Have Adequately Plead All Defamation Claims Because They Have Identified Specific Statements Subject To Defamatory Interpretation.

Plaintiffs have adequately met the liberal pleading standard for both defamation and defamation per se. In any defamation action, the plaintiff must establish the following:

- (1) That [defendant] made a defamatory statement of fact;
- (2) Concerning [plaintiff];
- (3) Which was false;
- (4) Which was communicated to at least one person other than [plaintiff];
and
- (5) With actual knowledge by [defendant] that the statement was false, or with reckless disregard by [defendant] of the statement's truth or falsity, or with negligence [by] [defendant] in failing to determine the falsity of the statement.

[Model Civil Jury Charge 3.11B (citing Restatement (Second) of Torts, Section 680B; Bainhauer v. Manoukian, 215 N.J. Super. 9, 31-34 (App. Div. 1987).]

“Certain kinds of statements denote such defamatory meaning that they are considered defamatory as a matter of law.” Romaine v. Kallinger, 109 N.J. 282, 291 (1988). Four kinds of statements that qualify as defamation per se include accusing another person of:

- (1) Having committed a criminal offense;
- (2) Having a loathsome disease;
- (3) Engaging in conduct or having a condition or trait incompatible with his or her business, trade, profession, or office or tends to harm him in it; or
- (4) Having engaged in serious sexual misconduct.

[Ricciardi v. Weber, 350 N.J. Super. 453, 477 (App. Div. 2002)⁴; see also Biondi v. Nassimos, 300 N.J. Super. 148 154 (App. Div. 1997)].

Here, Defendants admit in their papers that Defendant V.C. published the statements contained in the email to third parties, thereby conclusively establishing the publication element. Defendants’ have likewise plead the defenses of truth, which similarly conclusively establish the factual element of the claim.

⁴ In Ricciardi, the Appellate Division found that a former employee’s sexual harassment allegations against his former supervisor constituted slander *per se* against the Company. The statements affected the Company’s conduct of their trade because “it went to the essence of their character as employers.” Id. at 147. In other words, because the former supervisor was accused of such conduct with one of his subordinates, the statements were slander *per se* because they affected the Company’s trade. Id.

The statements in the emails constitute defamatory statements of fact. “Whether a statement is defamatory depends on its content, verifiability, and context A statement’s verifiability refers to whether it can be proved true or false.” Lynch v. N.J. Educ. Ass’n, 161 N.J. 152, 166-67 (1999). A statement which explicitly or implicitly rests on false facts that damage the reputation of another, is an actionable defamatory statement. Ward v. Zelikovsky, 136 N.J. 516, 531 (1994). Determining whether a statement amounts to a statement of fact or opinion is a question of law for the court. Kotlikoff v. Community News, 89 N.J. 62, 67 (1982).

Similarly, determining whether a statement is susceptible of a defamatory meaning is a question of law for the court. DeAngelis v. Hill, 180 N.J. 1, 14 (2004). Defamation is “that which tends to injure ‘reputation’ in the popular sense; to diminish the esteem, respect, good-will, or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him.” Ward, 136 N.J. at 529. A defamatory statement is one that “tends to harm the reputation of another as to lower him in the estimation of the community or deters third parties from dealing with that person.” Salzano v. N. Jersey Media Group Inc., 201 N.J. 500, 512 (2010). Opinions are generally considered non-defamatory, but “[h]arm from a defamatory opinion statement is redressable when the statement implies underlying objective facts that are false Only if a reasonable factfinder

would conclude that the statements imply reasonably specific assertions of fact will the harm be redressable.” Id. at 531.

Even if it were determined that Plaintiff Charles was a public official or figure as defined by the caselaw herein Section C:

Tempering open comment on public issues, officials, and figures is society’s pervasive and strong interest in preventing and redressing attacks upon reputation. Underlying that interest is the essential dignity and worth of every human being – a concept at the root of any decent system of ordered liberty. Thus, the purpose of the law of defamation is to strike the right balance between protecting reputation and preserving free speech.

[Lynch 161 N.J. at 166 (internal citations and quotation marks omitted)].

Between February 17, 2023 and May 14, 2023, Defendants sent various emails containing defamatory statements and actionable defamatory opinion statements. Those statements are as follows:

i. **Defendants’ February 17, 2023 Email (Da48)**

- The email’s subject is “Director Ronald Charles.... NEW REGIME OR PIRES PART 2?”

Immediately below are the following statements:

- In fairness, we kept quiet to see exactly if you were actually going to be “fair”, but clearly it’s the same Essex County “Switch & Bait”! While admitting you are regarded as a more favorable choice vs. the former, you are doing the exact same thing but more “undercover”!!! Why?

Immediately below are the following statements:

- [W]hy can't we just come to work in an environment free from racism, nepotism, and all other 'ism's? Why Director Charles do you keep doing the following:
- 1. Lonnie Williams is Lt. Taylor's "nephew." He was allegedly fired because he admitted to getting high and popping pills and then reported to duty. How is he in the police academy with the other Essex county recruits who will return back to work once they complete the academy yet you are disciplining others for far less?
- 2. Why are you continuously angering the Union County Officer's who knew you "allegedly" had a relationship with that Officer Edilian Ramirez and you are protecting this "specific" Officer from any and/or all forms of reprimand up to and including late slips when SHE'S LATE? So, can every other Officer and Supervisor ALSO GET A PASS on coming in late? What's going on with you and this Officer? Isn't this how Captain Pires (former Ass. Warden) got jammed up with Officer Agudelo? Do you have to continue doing "favors" so a complaint won't be filed against you? Be careful Sir, we would hate to see your career jeopardized because you are "taking care" or "certain" people. Why?
- 3. Why are Officer's Brian Hanlon and Vito Irene walking on Doremus in the middle of the afternoon like they don't have actual "jobs"? Why again are these two specific two Officer's always seem to have "EXTRA" time on their hands while everyone else is held to a "different" and higher standard and/or mandated to stay in the building at their post? Do they know something about you that we don't?
- 4. THE REAL BIG QUESTION: Why is the County still paying Officer Agudelo (a new officer with ZERO SENORITY) a salary to sit at home because YOU REFUSED TO SUSPEND HIM WITHOUT PAY like everyone else

currently and/or in the past? How is that pay being categorized in your budget? Is it PERMANENT LIGHT DUTY like Sgt. Costa? We sympathize with this Officer and understand her trauma so WHY IS HE STILL IN OUR BUILDING?

Several paragraphs below are the statements:

- Lastly, we would like to congratulate NEWLY HIRED OFFICER VARGAS for the position you created for her because her parents use to work there.

Defendants' statements are rife with specific allegations of professional misconduct, unethical behavior and strong negative connotations that are damaging to Plaintiff Charles' character and reputation as Director of the Essex County Correctional Facility. Furthermore, when looking at the context of the email, including the subject line, Defendants' accuse Plaintiff Charles of personally maintaining a racist work environment which is a career-ending accusation to level at a Director in charge of supervising employees on a daily basis. Defendants' falsely accusing Plaintiff Charles' of nepotism, racism, sexual harassment of a subordinate, and mistreatment of employees are defamatory per se because not only do they cast doubt on his fitness for his occupation, but conduct that, if true, would result in the termination of his employment. Defendants' false allegations against Plaintiff Charles' also constitute defamation per se against Plaintiff County since it goes to the "essence of its character as an employer." Riccardi, supra at 477. Being accused of employing a supervisor who sexually harasses and mistreats subordinates

jeopardizes the County's ability to conduct its business- which is to safely run its Correctional Facility.

ii. **Defendants' March 5, 2023 Email (Da50)**

- We just have to hang in and know this director is passing through. It'll only be time that one of these female officers that he recruits to work for him will smarten up and go downtown on him for being a creep.

This statement is subject to defamatory meaning because it implies that Plaintiff Charles engages in behavior that is unprofessional, unethical, and potentially illegal. The use of the word "creep" implies that Plaintiff's behavior is also predatory in nature. The phrase "go downtown on him" in this context implies that Plaintiff Charles' behavior would be taken to the authorities and potentially warrant a criminal investigation. It goes without saying that such a statement is severely damaging Plaintiff Charles' personal and professional reputation and standing within the community. Moreover, such a statement destroys public perception and confidence in Plaintiff County's treatment of its female employees.

Lastly, these statements constitute defamation per se because they carry accusations of both sexual harassment of subordinate female employees and a criminal offense.

iii. **Defendants' April 2, 2023 Email (Da52)**

- The atrocities that are going on in our jail are more than criminal and unethical at the very least. WE HAVE HAD ENOUGH with this Director now doing the exact same thing as before..... “showing favoritism”, “covering up” and running what is now a VERY UNSAFE FACILITY!!!

The paragraph below makes the following statements:

- It’s bad enough no one in the county has addressed the “mysterious” comp hours (OVER 700) that Antonio Pires has seemingly gotten away with, missing money from business office, sexual harassment charges, nepotism by our Director and a slew of other issues that is destroying our confidence in this county!

For the same reasons as the April 2, 2023 email, Defendants’ allegations are defamatory per se against Plaintiffs’. Defendants plainly accuse Plaintiffs of multiple criminal offenses, in addition to being part of a conspiracy to cover-up said criminal and unethical behavior.

iv. Defendants’ May 14, 2023 Email (Pa57)

- Director Perv, how fitting of a name for a creep that lures young female officers that don’t know any better to work for him. These chicks really think it’s a better job opportunity but instead it’s to fulfill your creepy tendencies. The Union princess just happened to be your latest prey. People, does her leaving the department not tell you something? She had it made from no time on the job, weekends off, dress down Fridays, parking spot, any time off she wanted, job fair duty, etc. etc. etc. But she left? Really? Who would want to start all over again, go to another academy outside of Essex and Union, and have no seniority. A woman who has

had enough and doesn't want to be harassed anymore. A woman who feels like she has been forced into a relationship with CHESTER.

A few sentences later Defendants make the following statements:

- You're a scam artist just like the We care foundation you created years ago to fill your pockets. Don't think we don't know. To think you would scam people into thinking they were giving money for sick people, but in reality you were keeping the proceeds to line your pockets.

For the same reasons as all the emails above, Defendants allegations that Plaintiff Charles sexually harassed female subordinates are defamatory per se against the Plaintiffs. Moreover, it goes without saying that Defendants' accusation that Plaintiff Charles' was stealing money from a charitable foundation for his own gain is defamatory per se.

B. Plaintiffs' Complaint is Not Subject to Dismissal in Light of Defendants' Defenses of Truth And Opinion

Although truth and opinion are defenses integral to defamation law, their applicability does not necessitate dismissal at the pleadings stage. Here, whether Plaintiff Charles actually engaged in sexual harassment, fraud, or otherwise criminal or unethical behavior is capable of truth or falsity as defined above herein Section A.

Moreover, the New Jersey Supreme Court explained that the strict test for viability of a defamation claim based on "fact" or "opinion" has "generally proven

unsatisfactory and unreliable.” See Ward, *supra* 136 N.J. 516. Indeed, the U.S. Supreme Court confirmed that it had not “intended to create a wholesale defamation exemption for anything that might be labeled ‘opinion.’” Milkovich v. Lorain Journal Co., 497 U.S. 1, 18, (1990). The implication of underlying facts that are false is sufficient to form the basis of a viable defamation action “if a reasonable factfinder would conclude that the statements imply reasonably specific assertions of fact.” See id. at 18-20.

In Kotlikoff v. The Community News, 89 N.J. 62 (1982), also a case resolved on summary judgment after discovery, a local newspaper published a “letter to editor” that accused the Mayor and Tax Collector of Pennsauken, New Jersey of being “engaged in a huge coverup” and a “conspiracy.” Id. at 65. The Kotlikoff Court elucidated a standard that, even if the Court sees the statements in the Letter about Defendants take on the results of the “investigation” as a form of opinion, they are still actionable because they imply defamatory facts: “A defamatory communication may consist of a statement in the form of an opinion ... if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.” Id. 69 (citing Restatement of Torts (Second) (1977), Section 566).

Accordingly, the trial court properly dismissed Defendant’s OTSC at this state of the litigation as the determination of whether a statement is true or constitutes a protected opinion often requires a factual inquiry that is inappropriate for resolution

on a motion to dismiss. See e.g. Hill v. Evening News Co., 314 N.J. Super. 545; Bajardi v. Pincus 2019 N.J. Super. Unpub. LEXIS 1728 (the defenses of truth and opinion should be evaluated in light of the evidence presented, which is beyond the scope of a motion to dismiss for failure to state a claim).

C. Plaintiffs Are Private Persons And Are Not Required to Plead Actual Malice.

Finally, as to the last factor of defamation- Plaintiffs do not have to plead or otherwise establish that Defendants acted with actual malice because Plaintiff Charles is not an elected public official, is not a public figure, and the matter does not involve a question of public concern. See Rocci v. Ecole Secondaire Macdonald-Cartier, 165 N.J. 149, 156 (2000).

Plaintiff Charles, as the Director of the Essex County Correctional Facility, is not an elected public official. A “public official” designation applies to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.” Rosenblatt v. Baer, 383 U.S. 75, 83-84 (1966). This generally exists “where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees.” Id. Generally, public officials refer to a government employee who is either elected or appointed. See Eadie v. Pole, 91 N.J. Super. 504,

508 (App. Div. 1966). Plaintiff Charles was neither elected nor appointed, and his role is supervisory in nature. Accordingly, the general public interest in his qualifications does not extend beyond that of all government employees.

Likewise, Plaintiff Charles is neither a public figure nor a limited-purpose public figure within the meaning contemplated by law. The law of defamation distinguishes between public figures and private persons. Public figures are persons who have 1) "assumed roles of especial prominence in the affairs of society" or 2) "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974). Although there is no ready formula for the application of the public figure test to a specific set of facts, see Marcone v. Penthouse Intern. Magazine for Men, 754 F.2d 1072, 1082 (3rd Cir.1985), cert. den. 474 U.S. 864 (1985); a broad definition of "public figure" appears in Gertz. Specifically, the case provides:

For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event they invite attention and comment.

[Id. at 345].

Here, although Plaintiff Charles may now be well known in the Essex County Correctional Facility community, the record clearly does not support a conclusion that he is a person in a position of "persuasive power and influence" that would make his name a "household word." There is, thus, no basis to conclude that he is a general purpose public figure. See Vassallo v. Bell, 221 N.J. Super. 347 (App. Div. 1987).

Plaintiff is likewise not a limited purpose public figure. In considering that status the examination focuses on whether plaintiff's employment is a "public controversy" or a "topic of legitimate public concern," and then the "nature and extent" of plaintiff's participation in the controversy. Sisler v. Gannett Co., Inc., 104 N.J. 256, 267 (1986). All disputes which may be of public interest are not public controversies, Time, Inc. v. Firestone, 424 U.S. 448, 458 (1976), and mere newsworthiness is insufficient to create a public controversy. Wolston v. Reader's Digest, Assn., Inc., 443 U.S. 157, 167-168 (1979). A public dispute is one which affects the general public or some segment of it, and not just its immediate participants. See Vassallo, supra at 367. There must also be an assessment of whether an individual "voluntarily and knowingly engaged in conduct that one in his position should reasonably know would implicate a legitimate public interest, engendering the real possibility of public attention and scrutiny." Sisler v. Gannett Co., Inc., supra, 104 N.J. at 274. Indeed, the Court stated "[a] private individual is

not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." Hill v. Evening News Co., 314 N.J. Super. 545, 556 (App. Div. 1998).

Here, Plaintiff's role is administrative and operational, and focuses on the management of the correctional facility, rather than on engaging in public discourse or influencing public policy. Plaintiff has not attempted to influence public opinion on matters beyond the scope of these professional duties. Moreover, the information disseminated by the Defendants, which is the subject matter of Plaintiffs' complaint, pertains to internal matters within the Correctional Facility, including employment practices and administrative decisions. These are not issues that have been debated publicly or have become a battleground for public opinion in the way contemplated by law. The internal workings of a county correctional facility, while of interest to those directly affected, do not constitute a public controversy and does not transform Plaintiff Charles into a public figure for any purpose.

Accordingly, Plaintiff is not subject to the actual malice standard, as not all individuals in positions of authority within public institutions are to be deemed public figures. Moreover, Plaintiff Charles has done nothing to voluntarily inject himself into any public controversy. Rather, he has simply fulfilled his job responsibilities relating to the internal management of the correctional facility.

Moreover, the instant matter, while may arguably be of public interest, is not a matter of public controversy.

Moreover, whether Plaintiffs are public figures or private persons is a factual inquiry subject to discovery. See e.g. Hill v. Evening News Co., *supra*, where the court reversed the summary judgment because the record was insufficient to determine whether the plaintiff was a limited-purpose public figure or a private person, which would affect the standard of fault applied. However, in the event that this Court determines that they are public figures, it should grant Plaintiffs' leave to amend the complaint to include allegations pertaining to actual malice in light of the well-established principle of civil procedure that generally plaintiffs should be given an opportunity to amend their pleadings if they fail to recite an element, and such amendment would not be futile. See Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 116, 963 A.2d 849 (App. Div. 2009).

D. Plaintiffs Have Adequately Plead a Cause of Action for Invasion of Privacy: False Light.

For the same reasons set forth above, Plaintiffs' Invasion of Privacy claim is not subject to dismissal at this stage. It is accepted in New Jersey that a cause of action exists for invasions of privacy involving publicity that unreasonably places the other in a false light before the public. Romaine v. Kallinger, 109 N.J. 282, 293 (1988). As with the requirement in defamation actions that the matter publicized be untrue, a fundamental requirement of the false light tort is that the disputed publicity

be in fact false, or else "at least have the capacity to give rise to a false public impression as to the plaintiff." Id. (citations omitted). The publicized material in a false-light claim must constitute a "major misrepresentation of [plaintiff's] character, history, activities or beliefs." Jonap v. Silver, 1 Conn.App. 550, 559 (1984). Thus, there can be no recovery for false-light invasion of privacy unless it is shown that the publicity at issue was of a character "highly offensive to a reasonable person." Romaine, supra at 295 (citing Restatement (Second) of Torts § 652E). As with defamation claims, the Court must conduct a factual analysis, evaluating the context of the statements, to determine whether they could be subject to same. See id. Here, the statements accusing Plaintiff Charles of being a racist, engaging in sexual misconduct and other illegal and unethical behavior, are false and undoubtedly would be highly offensive to a reasonable person.

E. Plaintiffs Have Stated a Cause of Action For Intentional Infliction of Emotional Distress.

To support an action for the tort of intentional infliction of emotional distress, a plaintiff must show that (1) defendant acted intentionally or recklessly, (2) defendant's conduct was extreme and outrageous, (3) defendant's actions were the proximate cause of the plaintiff's emotional distress, and (4) plaintiff's distress was so severe that no reasonable person could be expected to endure it. Buckley v. Trenton Savings Fund Society, 111 N.J. 355, 366 (1988).

Here, Plaintiffs have sufficiently plead a cause of action, and demonstrated that Defendants were well aware of the conduct in which they were engaging. Defendant V.C. admits she acted in concert with other employees, who likewise acted with not only negligence but with malice, as they specifically acknowledged in their May 14, 2023, email that “we have been very mean.” (Pa57). Defendants' intentional and concerted efforts to defame the Plaintiffs through a campaign of anonymous emails are so egregious that they surpass the bounds of decency and can be considered extreme and outrageous. Moreover, Plaintiff Charles has adequately alleged that such extreme and outrageous actions have caused him emotional distress. As such, Plaintiffs have more than adequately suggested a cause of action based on the facts alleged.

F. Plaintiffs Have Adequately Plead a Cause of Action For Civil Conspiracy.

In order to state a cause of action against Defendants, the Complaint must set forth facts which, if proven, would satisfy the elements of a cause of action for conspiracy to defame Plaintiff Charles, case him in a false light, and/or intentionally inflict emotional distress upon him. The elements of a cause of action for civil conspiracy are (1) a combination of two or more persons; (2) an agreement with a common design; (3) the existence of an unlawful purpose; and (4) damages. E.g., Banco Popular N. Am. V. Gandi, 184 N.J. 161, 177 (2003). A person

is liable for civil conspiracy if she understands the general objectives of the scheme, accept them, and agrees to do her part to further them. Id. 177-78.

Here, the allegations made in Plaintiffs' Complaint do not merely suggest a cause of action, but positively establish each of the aforementioned elements. Moreover, Defendants concede in their motion that Defendant Vera Cornelius worked in concert with other employees. Accordingly, dismissal of this claim at this stage is inappropriate, as "the question whether an agreement exists should not be taken from the jury in a civil conspiracy case so long as there is a possibility that the jury can 'infer from the circumstances [that the alleged conspirators] had a meeting of the minds and thus reached an understanding' to achieve the conspiracy's objectives." Morgan v. Union County Board of Chosen Freeholders, 268 N.J. Super. 337, 365 (1993). Although Defendants contend that Curtis Langley, another former employee of Plaintiff Essex County, did not "have anything to do with" the associated email address, whether Defendant Langley acted in concert with Defendant Vera Cornelius Langley is an issue to which Plaintiffs must be afforded discovery.

G. Plaintiffs Have Sufficiently Plead a Cause of Action For Unlawful Use of Equipment.

Plaintiffs have adequately plead a cause of action for unlawful use of equipment which is cognizable under New Jersey's Computer Related Offenses Act ("CROA") provide for civil remedies in cases where a person is found to have

committed computer-related offenses. See N.J.S.A. 2A:38A-1 to -6. Specifically, the Act provides in part:

A person or enterprise damaged in business or property as a result of any of the following actions may sue the actor therefor in the Superior Court and may recover compensatory and punitive damages and the cost of the suit including a reasonable attorney's fee, costs of investigation and litigation:

- a. The purposeful or knowing, and unauthorized altering, damaging, taking or destruction of any data, data base, computer program, computer software or computer equipment existing internally or externally to a computer, computer system or computer network;

[N.J.S.A. 2A:38A-3].

Here, Plaintiffs have sufficiently alleged that Defendants accessed Plaintiffs' data, specifically non-public email addresses, via Plaintiff Essex County's internal computer network. Plaintiffs have further alleged that they suffered damages as a result of the reputational harm intentionally inflicted by Defendants. Plaintiffs have adequately alleged that the Defendants' conduct was part of a deliberate scheme to defame Plaintiffs and therefore undermine the Plaintiffs' business, which demonstrates the purposeful nature of the Defendants' actions as required by the CROA. Plaintiffs have also sufficiently alleged, as set forth supra, that the Defendants acted with full knowledge that their conduct was unauthorized and

would result in damage to the Plaintiffs' business. Accordingly, Plaintiffs have adequately plead this cause of action.

The foregoing unequivocally shows that sufficient evidence to support each cause of action exists and dismissal of the OTSC was proper. Nonetheless, even if the Court were to apply a summary judgment standard, the foregoing further shows that genuine issues of material fact exist at this stage that require discovery and therefore, Defendants are not entitled to the entry of judgment as a matter of law nor dismissal of Plaintiffs' Complaint.

CONCLUSION

For the reasons set forth herein, the trial court's denial of Defendants' OTSC must be affirmed and Defendants' Appeal must be dismissed.

Respectfully submitted,

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