LISA RODRIGUEZ, Plaintiff-Respondent, v. CITY OF NEWARK, and JOSE PEREIRA, Defendants-Appellants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Appellate Division Docket No.: A-1457-24 Civil Action ON APPEAL FROM: On Appeal From A Final Judgment in the Superior Court of New Jersey, Law Division, Essex County Docket No.: ESX-L-3703-16 SAT BELOW: Hon. Robert H. Gardner, J.S.C.

AMENDED BRIEF ON BEHALF OF DEFENDANT-APPELLANT JOSE PEREIRA

***Of Counsel & On the Brief*:**
Patrick P. Toscano, Jr.
Attorney No.: 014461986
ptoscano@pptlawfirm.com

***On the Brief*:**
Matthew J. Toscano
Attorney No.: 305642019
mtoscano@pptlawfirm.com

THE TOSCANO LAW FIRM, LLC
155 Passaic Avenue, Suite 420
Fairfield, New Jersey 07004
(T): (973) 226-1691
(F): (973) 226-1693
Attorneys for Defendant-Appellant, Jose Pereira

Dated: June 16, 2025

TABLE OF CONTENTS

JUDGMENTS, RULINGS, AND ORDERS APPEALED

TABLE TO THE APPENDIX

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

TRANSCRIPTS

1T May 10, 2024, Motion Hearing;

2T October 22, 2024, Motion Hearing;

3T November 4, 2024, Trial;

4T November 6, 2024, Trial;

5T November 7, 2024, Trial;

6T November 12, 2024, Trial, Vol. 2 of 2;

7T November 12, 2024, Trial Vol 1 of 2;

8T November 13, 2024, Trial;

9T November 14, 2024, Trial;

10T November 15, 2024, Trial, Vol. 1 of 2;

11T November 15, 2024, Trial, Vol. 2 of 2;

12T November 18, 2024, Trial, Vol. 1 of 2;

13T November 18, 2024, Trial, Vol. 2 of 2;

14T November 19, 2024, Trial;

15T November 20. 2024, Trial;

16T November 21, 2024, Trial;

17T November 17, 2015.

PRELIMINARY STATEMENT

This appeal challenges a judgment entered against defendant-appellant Jose Pereira ("defendant-appellant", the "defendant", or "Pereira") following a jury verdict in favor of plaintiff-respondent Lisa Rodriguez ("plaintiff-respondent, the "plaintiff", or "Rodriguez") on claims of sexual harassment and assault and battery. Pereira respectfully submits that he was denied a fair trial due to a series of prejudicial errors by the Trial Court that, both individually and cumulatively, undermined his ability to present a complete defense and challenge the credibility of the plaintiff.

At trial, the defense, consisting of both Pereira and the City of Newark (the "co-defendant", the "City", or "Newark") (collectively, the "defense" or the "defendants"), sought to demonstrate that the plaintiff's allegations were not only uncorroborated and inconsistent, but were also motivated by longstanding personal animus toward Pereira stemming from prior disciplinary encounters and interpersonal conflicts. The Hon. Robert H. Gardner, J.S.C. (the "Trial Court"), however, severely restricted Pereira's ability to cross-examine the plaintiff on these issues and barred the introduction of relevant evidence despite its direct bearing on motive, credibility, and the plausibility of the claims. The Trial Court further failed to intervene or issue curative instructions after plaintiff's counsel made highly prejudicial and inflammatory remarks during

opening statements, including an improper reference to the Bill Cosby criminal trial.

The Trial Court also erred in denying Pereira's motion for judgment under Rule 4:40-1. The plaintiff's claims of inappropriate touching and retaliation were contradicted by her own witnesses, unsupported by independent evidence, and, in several instances, not sexual in nature. The verdict was not grounded in competent, credible evidence sufficient to meet the preponderance of the evidence standard.

Moreover, the compensatory damages awarded, totaling nearly $1.6 million, were grossly disproportionate to any harm allegedly sustained. The plaintiff presented no credible proof of lasting psychological or professional impairment and continued to perform her duties as a police officer without limitation. Her own expert testified that she remained capable, promotable, and emotionally functional.

In sum, the cumulative impact of the Trial Court's evidentiary errors, its failure to safeguard the integrity of the proceedings, and the excessive damage award rendered the trial fundamentally unfair. Consequently, Pereira respectfully requests that the judgment be vacated and the matter remanded for a new trial, or, in the alternative, that the damage award be vacated and remitted to an amount supported by the record.

STATEMENT OF PROCEDURAL HISTORY

On or about September 27, 2016, Rodriguez filed a Second Amended Complaint and Jury Demand with the Superior Court of New Jersey, Law Division – Essex County, under Docket No. ESX-L-3703-16, naming the City of Newark and Jose Pereira as defendants. The complaint alleged, *inter alia*, multiple counts of being subjected to a hostile work environment in violation of the New Jersey Law Against Discrimination, as well as sexual harassment (Da1–Da35).

On May 10, October 22, and November 4, 2024, the Trial Court heard oral argument and rendered decisions on several *in limine* motions (1T–3T).

On November 4, 6-7, 12-15, and 18-21, 2024, the matter was tried before the Trial Court and a jury (3T–16T).

On November 21, 2024, the jury returned a verdict finding that the plaintiff had proven, by a preponderance of the evidence, that she had been subjected to a hostile work environment in violation of the New Jersey Law Against Discrimination by co-defendant City of Newark, and that she had been subjected to assault and battery by defendant Pereira (Da36–Da43; Da44–Da45).

The jury determined that the plaintiff was entitled to $1,000,000 in damages as to assault and battery (Da36-Da43; Da44-Da45)

On December 4, 2024, the Trial Court entered an Order Entering Judgment (Da44-Da45). The Trial Court ordered a judgment in favor of the plaintiff providing that defendants pay $318,074.48, to be paid jointly and severally (Ibid.). The Trial Court further entered a judgment in the amount of $1,000,000.00, plus pre-judgment interest in the amount of $272,301.91, in favor of the plaintiff, totaling $1,272,301.91 against Pereira (Ibid.).

On January 17, 2025, the Trial Court filed an Order Granting Attorney' Fees and Costs. The Trial Court awarded plaintiff a total of $605,112.99 (Da46-Da47).

On January 21, 2025, defendant filed a Notice of Appeal (Da48-Da52).

STATEMENT OF FACTS

At trial, the plaintiff alleged eleven complaints against defendant Pereira (6T36-22 to 37-2). The plaintiff's specific allegations included:

(1) Pereira used vulgar language, e.g., "Who the fuck parked MPU-313 in the middle of the street?" (6T37-3 to 8);

(2) Pereira brushed up against the plaintiff's right buttock;

(3) Pereira used non-sexual vulgar language at a crime scene (6T38-24 to 39-9);

(4) Pereira grabbed the plaintiff's breast, waist, buttocks and kissed her (6T36-22 to 42-12);

(5) Pereira made public remarks against the plaintiff that were non-sexual in nature (6T44-15 to 45-8);

(6) Pereira squeezed against the plaintiff to get through a tight space (6T45-9 to 14). Pereira then allegedly kept his knee against the plaintiff and pressed against her butt while he laughed (6T45-21 to 24). The plaintiff testified that there were no witnesses to this incident (6T46-9 to 10);

(7) Pereira pulled the plaintiff's hat down on her face and messed up her hair (6T47-1 to 47-7). The plaintiff agreed that this action was not sexual in nature (6T49-2; 50-8 to 12);

(8) Pereira said to the plaintiff: "that's what you get Lisa, for tonguing every motherfucker in the precinct" (6T51-17 to 52-4);

(9) The plaintiff complained about another female officer named Desiree Glenn (6T52-19 to 53-3). Glenn had asked the plaintiff what was going on in the precinct (6T54-10 to 12);

(10) Pereira allegedly asked Navasha Rawa whether he had ever said to the plaintiff, "suck my dick," outside the presence of the plaintiff (6T56-2 to 57-2);

(11) Pereira told the plaintiff to look into his eyes (6T58-2 to 59-4; see also Da1-Da35).

Of the eleven counts alleged, the jury returned verdicts specifically on the following allegations against the defendant:

The defendant aided and abetted a hostile work environment;

> The defendant intentionally touched the plaintiff or struck her with unlawful force or violence.
>
> [Da36-Da42.]

To prove her case against the defendant, the plaintiff presented witness testimony and documentary evidence. Navasha Rawa testified that she had worked for the Newark Police Department for twenty-five years (4T21-17 to 22-25). Rawa worked in the Third Precinct from February to April 2015, under the supervision of the defendant (4T24-4 to 23-14), serving as a desk officer (4T23-15). Rawa recounted several statements made by the defendant about sex (4T27-2 to 14) and stated that the defendant never stopped other officers from publicly discussing sexual acts (4T29-10).

Over the defendant's objection, the Trial Court allowed Rawa to testify about remarks that the defendant allegedly made about a sexual assault victim (4T29-13 to 30-15). Rawa testified that the defendant made comments about a sexual assault victim who had been anally penetrated (4T34-8 to 15). She further testified that the plaintiff would leave the area when the defendant entered because he made her uncomfortable (4T34-16 to 35-2).

Rawa stated she never saw the defendant physically grab the plaintiff (4T35-5 to 7), though she did observe him once reach into the plaintiff's front shirt pocket (Ibid.). When the defendant approached Rawa about the plaintiff's allegations, Rawa told him that she "would tell the truth" and that "the stuff he

says is inappropriate," which the defendant did not appreciate (4T36-7 to 9). Rawa said that the defendant could be vindictive (4T36-14). He asked Rawa whether she had ever heard him tell the plaintiff "to put his dick in her mouth or anything like that" (4T36-17 to 20). Rawa responded that he had not, but he would say things like "Oh, I have something for you to suck" or "I have something better for you to put in your mouth," though he did not specify a body part (4T37-23 to 38-2). Rawa was interviewed by both Affirmative Action and Internal Affairs (4T38-22 to 39-2). She testified that the plaintiff would sometimes tell other officers to "kiss her fucking ass" (4T42-25).

On cross-examination, Rawa was asked about sexually related statements allegedly made by the defendant (4T43-15 to 44-3). Rawa said she was not sure if the plaintiff was present when those remarks were made (4T44-12). She admitted she did not document the pocket-touching incident (4T78-3 to 4) and that the incident did not appear in the Internal Affairs report (4T78-8 to 9). In her deposition, Rawa had stated she had never observed the defendant touch the plaintiff inappropriately (4T85-15) and that she had never witnessed anything of a sexual nature between the plaintiff and the defendant (4T85-21). Rawa herself never filed a complaint against the defendant (4T91-14)

David Muhammad testified that he was the manager of the City of Newark's Affirmative Action Office (AAO) (4T119-11 to 120-8). He explained

that the AAO accepts and investigates complaints of sexual harassment from Newark Police Department employees (4T121-16 to 18) and determines whether the allegations are substantiated (4T123-13 to 20). The AAO has no disciplinary power but does have the authority to make recommendations (4T123-13 to 24).

Muhammad investigated the plaintiff's complaint against the defendant (4T125-5 to 127-25). The plaintiff had alleged, *inter alia*, that the defendant had pinned her against a wall. Muhammad testified that if the allegations were true, they would have violated City policy against sexual harassment (4T128-18). He stated that the defendant denied the allegations (4T130-4). The plaintiff later amended her complaint to include a claim of retaliation (4T134-19). Muhammad substantiated the plaintiff's allegations but testified that he never informed her that the alleged facts had been proven (4T161-1 to 12). He sent the plaintiff a letter giving her two choices: report her allegations to the New Jersey Department of Law and Public Safety or to the EEOC (4T167-24 to 168-6). He also noted that Internal Affairs did not charge the defendant with violating City policy against sexual harassment (4T181-11). Nevertheless, the AAO panel substantiated the allegations against the defendant (4T185-12).

Kecia Daniels, employed by the City of Newark as a clerk (5T6-1 to 14), also served as secretary to the Municipal Council and helped run council meetings (5T6-6 to 17). From 2015 to 2019, Daniels was the City's Personnel

Director (5T6-18 to 25). She explained that in 2015, she was involved in investigating sexual harassment complaints and that the AAO had primary jurisdiction over such complaints within the Police Department (5T8-13 to 21; 5T9-1). Employees would file a complaint with the AAO, and an officer would be assigned to interview witnesses. A panel would then be formed to make findings and recommendations (5T9-11 to 18). In this case, David Muhammad was the investigator (5T9-21), and his role was to gather facts, interview witnesses, prepare a summary, and submit it to the committee (5T10-25 to 11-2). Daniels testified that the AAO panel assumed Muhammad would conduct a thorough and fair investigation (5T11-5).

Daniels stated that the Newark Police Department claimed jurisdiction over investigating sexual harassment complaints involving its officers (5T43-19 to 44-12). After the AAO panel reached its findings, the Newark Police Department conducted its own investigation (5T49-3 to 50-16).

The plaintiff testified that she was still employed by the Newark Police Department at the time of trial (5T81-8 to 82-16), where she had worked for twenty-two years (5T82-19). She stated that she had been sexually harassed on the job (5T82-17). The defense objected to testimony concerning prior incidents that occurred at the Police Academy in 2009 (5T86-12 to 87-1). The plaintiff argued those incidents were part of a continuing violation (5T87-3 to 5), and the

Trial Court overruled the objection (5T87-16). She then described incidents of sexual harassment at the Police Academy (5T88-1 to 90-3) and other incidents that occurred while she was at OPRA (5T92-21). She stated that she was transferred multiple times (5T94-8), and those transfers were intended to hurt her (5T94-18).

In early February 2015, the plaintiff returned from medical leave to the Third Precinct (5T99-15 to 21). She testified that she had parked her car as usual and heard someone yell, "Who the fuck parked the fucking car in the middle of the fucking street? Who's the dumb motherfucker?" (5T100-4 to 8). She stated that the defendant was the person yelling (5T100-25 to 101-5) and that he ordered her to move her car (5T101-3 to 7).

The plaintiff recalled an incident where the defendant yelled at her for being behind the front desk (5T103-12). She stated that the defendant never yelled at male officers in similar situations (5T103-20). She testified that Officer Paul Tehlikian had asked her to help with a computer spreadsheet in the back area (5T104-18 to 21). As she went to assist him, she felt something brush against her buttocks and identified the defendant as the person responsible (5T104-23 to 105-12). The defendant claimed that she had paint on her pants (Ibid.), but she testified there was no paint on her rear (5T105-25 to 106-1). She asserted that the defendant invaded her personal space without any justification

and continued to do so on different occasions (5T107-10 to 108-18), smirking and laughing when she objected (5T108-7 to 9).

On one occasion, the defendant grabbed her hat and ruffled her hair (5T113-6 to 10). She told him not to touch her (5T113-13) and ran out of the precinct (5T113-14 to 15). The plaintiff testified that the defendant kept "upping the ante every time" (5T113-24 to 25). She recounted another incident in which the defendant hovered over her, asked her to look at him, and then left abruptly when a supervisor entered (5T114-4 to 115-11).

The plaintiff alleged that in March 2015, as she was leaving, the defendant slammed the door, blocked her exit, and asked for a mint (5T116-13 to 118-25). She claimed he used his knee to pin her against the door, attempted to kiss her, and touched her breasts, waist, and buttocks. Although she resisted and screamed, she testified that no one heard because the precinct was loud. She said Officer Smee entered, at which point the defendant pretended the phone had rung and walked off smirking. The plaintiff also said Officer Cesar Soares was present but could not have seen the incident due to its location (5T118-25)[1]. She testified she was shocked that a superior officer would pin her to the wall, calling it "a joke," like "foreplay" (5T120-3 to 20).

[1] Officer Soares did not testify at trial.

The plaintiff also described an Ebola virus scare in which the defendant accused her of "tonguing every motherfucker in the precinct" (5T124-19 to 21). She had been concerned that an inmate was infected (5T126-2 to 3), and the defendant made the comment in front of other male officers, which she found disgusting (5T127-2 to 11)[2]. She said she was the only female officer present during the remark and subsequently decided to file a formal complaint (5T127-17).

Detective Desiree Glenn asked the plaintiff what was going on between her and Pereira (5T128-9 to 17) and informed her she would need to submit a request to leave the Third Precinct. When the plaintiff asked why the defendant wasn't being reassigned instead, Glenn told her that he was politically connected (5T128-19). The plaintiff submitted a transfer request and later filed a thirteen-page complaint (5T129-16 to 22). She was interviewed by the Affirmative Action Office (5T134-5 to 20) and by Sergeants Munez and Cruz of Internal Affairs (5T135-5 to 10). She was ordered to attend a Police Trial (5T135-16), and none of her witnesses testified at the trial (5T137-1 to 2).

On August 31, 2015, the plaintiff began receiving 30-day notices of shift changes to midnight (5T139-10 to 18) and received four such changes (5T140-

[2] Investigator Cruz said that the alleged "tonguing comment" made by the defendant had not been made within ear shot of the plaintiff who was not present at the time. (13T123-7 to 25).

10). The defendant also sued her for defamation (5T143-16 to 23). She stated that the City offered her no support (5T145-7). Following her transfer, she continued to encounter the defendant at the Second Precinct (5T147-25).

The plaintiff testified that she had been raped when she was younger (5T151-7 to 152-18). At some point, she began receiving medical care from Dr. Stefanelli (5T154-14). She stated that the defendant never wrote her up for any disciplinary infractions (5T156-3) but sent her on "bogus jobs" (5T157-13 to 17), followed her into the locker room, and leered at her (5T158-10). She reported this behavior to Internal Affairs (5T158-21). The plaintiff was suspended for 30 days for insubordination (5T166-3), and the suspension was upheld on appeal (5T166-18). She acknowledged that the Essex County Prosecutor's Office found insufficient evidence of sexual contact between her and the defendant to warrant criminal charges (5T167-15 to 19). She also admitted she had not filed complaints regarding previous incidents of alleged sexual harassment involving other individuals (5T187-1 to 189-25).

The plaintiff agreed that the defendant had a spotless disciplinary record prior to her allegations (6T9-4 to 8). She testified during her deposition that Lt. Chris Brown and Officer Paul Tehlikian were present when the defendant said, "That's what you get for tonguing every motherfucker in the precinct" (6T10-

15). She also made sexual harassment allegations against Sergeant Robert Frieda, Sam DiMaio, Gary McCarthy, and Jerome Ramsey (6T20-5 to 14).[3]

The plaintiff believed that the defendant's entire course of conduct was sexual in nature. She acknowledged that her husband and the defendant disliked each other (6T61-7). She saw Dr. Stefanelli on October 20, 2016 (6T71-1 to 3), and discussed problems related to the defendant (6T71-22), as well as prior incidents of sexual abuse unrelated to him. At the advice of her attorney, she also saw Dr. Barbara Ziv, a forensic psychiatrist (6T75-7 to 18), who evaluated her (6T76-21 to 25). The plaintiff told Ziv that 20 to 30 police officers had made sexual comments about her body (6T87-9 to 88-50), but testified at trial that about 50 officers had sexually harassed her (6T88-13). She admitted she had not stated that number during her deposition (6T90-19 to 25) and had not told Ziv about the claim involving 50 officers (6T93-2).

The plaintiff acknowledged that she had scored 333 (a low score) on her promotional examination (6T102-2 to 7). She testified that as a result of the alleged sexual harassment, she had stopped seeing her family, going to the gym, and spending time with her boyfriend (6T103-8 to 24).

She also testified that both her husband and the defendant were members of PAPA, a Portuguese-American organization (6T159-3). She recounted an

[3] None of these officers testified at trial.

argument between her husband and the defendant over a raincoat (6T115-20 to 25; 6T116-1 to 25).

The plaintiff stated that the incidents involving the defendant began in February 2015 and that a series of events occurring between February and April 2015 led her to file a complaint (6T119-1 to 10; 6T119-24 to 25). Director Venable had two officers meet with her to review the complaint (6T146-25 to 147-3) and offered her a transfer to avoid working with the defendant (6T148-9 to 23). The Essex County Prosecutor's Office declined to file criminal charges against the defendant (6T156-1 to 9), referring the matter instead to Internal Affairs (6T158-22 to 159-3).

The plaintiff stated that approximately twenty-five individuals were interviewed by Internal Affairs. Charges were ultimately filed against the defendant based on her complaint (6T161-9). She also admitted that she had prior disciplinary issues that required a police trial (6T162-18 to 24). Her charges against the defendant concluded with him receiving a 25-day suspension (6T163-8 to 16). She asserted that the police trial ended in a plea agreement (6T167-17 to 24). She later filed another complaint after seeing the defendant at the Second Precinct, where she had been transferred (6T169-1 to 3).

The plaintiff admitted that the defendant did not place his hands directly on her but instead brushed his body against her buttocks (7T2-12). The

defendant explained that he was pointing out a paint stain on her rear. The plaintiff testified: "His body brushed up against my buttocks, and he said, 'Oooh, there's an incident; oh, that was almost an incident'" (7T3-6 to 9). She continued, "No, I felt him pass me. I felt him rub up against me" (7T203-25).

The defendant testified that he currently resides in Arizona and had served with the Newark Police Department for 32 years, retiring on February 1, 2002 (8T8-1 to 7). He stated that prior to the plaintiff's allegations, he had no disciplinary sanctions and had never been found guilty of any misconduct (8T8-14 to 17). He testified that he had never sexually harassed anyone (8T12-3), had been married to the same person for over 34 years (8T12-8 to 15), and had never referred to his daughter using the word "cunt" (8T13-24). He also denied saying he would lube himself with motor oil (8T13-14).

The defendant testified that he had been assigned to the Third Precinct in September 2014 (8T15-12 to 16) and met the plaintiff when she graduated from the police academy (8T16-1 to 10). According to him, there had been no issues between them (8T16-11 to 20). He acknowledged that he had been "friends, not close friends" with former Police Chief Campos (8T10-9).

The defendant testified that he did not treat female officers differently from male officers (8T21-19 to 23). As the plaintiff's ranking officer, he had informed her that her partners were complaining about her conduct (8T22-23).

One female partner even requested a transfer (8T23-7 to 8). The defendant also advised the plaintiff not to be overly aggressive when dealing with the public (8T23-22 to 24-4). Due to complaints from fellow officers, she was made an "Alpha car" (a solo driver (8T25-19 to 20)) to minimize further conflicts (8T25-22). He testified that he began noticing more aggression in the plaintiff than he had seen during her earlier years in the Second Precinct (8T27-14 to 17), and he feared it might escalate into a physical altercation (8T27-19). The plaintiff had been in a physical fight with Officer Mark Ramos (8T27-24), and the defendant also reprimanded her for cursing at civilians (8T28-14). She often used phrases like "kiss my ass," he claimed (8T29-3 to 9).

He recalled seeing the plaintiff once speak to a male officer while cupping her own breast in the precinct, describing her breast augmentation (8T31-1 to 4). He testified that he never asked her out, never sought a date or sexual contact (8T31-24 to 32-7), and never threatened witnesses or requested that she be transferred (8T34-1 to 8). He emphasized that he had no authority to transfer officers (8T34-7 to 8). While he admitted to using curse words at work (8T34-25), he claimed the plaintiff was known in the precinct for having a "truck driver mouth" (8T35-9), often saying things like "fuck," "kiss my ass," and "go fuck yourself" (8T36-2 to 5).

The defendant testified that he may have once accidentally bumped into the plaintiff during roll call (8T38-14 to 24) and acknowledged he might have made a joking comment like, "that could be an incident." However, he denied ever intentionally touching her (8T39-7 to 10). He could not recall whether he took a cert or mint from her pocket (8T40-2 to 41-1) and denied ever blocking her with his knee or touching her breasts, buttocks, or waist (8T41-16 to 25). He also denied ever ruffling her hair (8T45-17), explaining instead that he once noticed her hat had fallen and simply handed it to her (8T45-1 to 14). He stated he never pulled it down over her face (8T46-2).

He further denied saying, "That's what you get for tonguing every motherfucker in the precinct" (8T47-14 to 24-1) and claimed the plaintiff herself had said she had kissed Officer Andy Hart during the Ebola scare (8T50-4 to 10).

The defendant recalled an incident involving the plaintiff's husband, also a police officer, concerning his tardy response to a road incident (8T52-8 to 54-13). The defendant testified that he did not respect the plaintiff's husband (8T54-24). Although he denied telling the plaintiff to "look into his eyes" as she described, he acknowledged that such a comment could have occurred during a regular conversation in an effort to get her attention (8T56-3 to 16).

On one occasion, a burglary-in-progress call was received, and the plaintiff was dispatched to the scene (8T57-10 to 58-1). The defendant explained that he did not assign jobs to officers; assignments were handled through dispatch, over which he had no control (8T64-11 to 15; 8T65-18 to 66-24).

The defendant testified that he appeared at a police trial (8T74-25 to 75-10), where he received a 25-day suspension for cursing (8T77-15 to 78-12). He appealed the suspension to the Office of Administrative Law. He also received a notice not to visit the Second Precinct, where the plaintiff had been transferred (8T93-3 to 5). He denied going to the Second Precinct to see the plaintiff and categorically denied following her into a restroom, as she had claimed (8T96-10 to 22). The defendant stated that he did not "cut a deal" in exchange for the 25-day suspension (8T98-3 to 11). He testified that the plaintiff had problems with five or six other officers in the Third Precinct (8T98-22 to 99-3).

The defendant claimed he had been bypassed for a promotion to captain due to the plaintiff's allegations (8T104-17 to 105-1), which resulted in a reduction of his pension (8T133-10).

Prior to trial, the plaintiff moved to preclude testimony about her prior relationships with other police officers (8T149-13 to 15), and the Trial Court granted the motion. The plaintiff's attorney believed that evidence of prior altercations between the plaintiff and other officers was also excluded (8T149-

18 to 150-23). The plaintiff sought to preclude Officer Paul Tehlikian from testifying to those prior incidents (Ibid.). In his deposition, Tehlikian had claimed the plaintiff had been in multiple physical altercations with other officers.

Co-defendant's counsel argued that the prior altercations were relevant and should be admissible (8T152-13 to 153-22). The defendant's attorney joined that argument (8T155-4 to 13). The Trial Court excluded Tehlikian's testimony that he, too, had used foul language, finding it inconsistent with his assertion that he always respected women and inadmissible under N.J.R.E. 403 (8T159-23 to 25). The defense also argued that testimony about a fight involving the plaintiff over a loan she had made to another officer was relevant (8T163-5 to 19), but the Trial Court barred it (8T165-13 to 19).

On cross-examination, the defendant testified that he lacked the authority to implement personnel transfers of other officers by himself (9T7-20) and that he did not transfer the plaintiff as a result of her complaints (9T8-9 to 12). Rather, he testified that the plaintiff herself had requested the transfer (Ibid.). He stated that then-Chief Campos offered no protection or support during the investigation (9T13-5).

The defendant explained that any visits he made to the Second Precinct were for valid police business (9T14-10 to 13). He filed a lawsuit against the

City after being bypassed for promotion to captain (9T23-14 to 23) and also filed a defamation suit against the plaintiff (9T24-9). He was ordered not to return to the Second Precinct (9T28-5 to 9). He also testified that he believed the City had treated him differently because of his Portuguese heritage (9T58-3 to 6). The defendant acknowledged that an Internal Affairs investigator had substantiated the plaintiff's allegations against him (9T70-6).

The defendant testified at the police trial related to the plaintiff's complaint (9T80-7 to 15). He had entered a waiver of trial but stated that there was no plea agreement concerning the plaintiff's allegations (9T86-5 to 87-17). He testified that he had spoken to the plaintiff in his supervisory capacity regarding her aggressive conduct and expressed concern that it was escalating (9T112-9 to 16). The defendant noted that Internal Affairs Investigator Cruz had only substantiated three specific claims: that he had pushed the plaintiff's hat down, made sexual comments about his wife, and made inappropriate comments in front of Rawa (9T118-21 to 119-4). He stated that the final charges brought to the Police Trial had nothing to do with the plaintiff's sexual harassment allegations (9T119-10). He testified that he had no contact with the plaintiff during his visit to the Second Precinct (9T133-11 to 17). The defendant also claimed that the plaintiff slandered him, calling him "a scumbag," "an asshole," and using other derogatory terms (9T134-4 to 7). He further alleged that the

plaintiff had tried to get Rawa to sign an affidavit containing false claims about him (9T134-21 to 11).

Dr. Barbara Ziv was qualified as a forensic psychiatrist (10T5-14 to 6-10). She testified that she met with the plaintiff twice and issued an expert report dated September 11, 2016 (10T20-12 to 16). The Trial Court qualified Ziv as an expert (10T22-20). She explained that there was no doctor–patient relationship between her and the plaintiff (10T28-1 to 10). Ziv had been asked to perform an independent psychiatric evaluation of the plaintiff (10T29-2 to 3) and to determine whether the plaintiff experienced any psychiatric harm resulting from the defendant's alleged conduct (10T29-17 to 20).

Ziv testified that she diagnosed the plaintiff with major depressive disorder in 2016 and, during a re-evaluation in 2020, with persistent depressive disorder (10T30-20 to 31-4). The Trial Court precluded her from testifying about sexual harassment in police departments generally (10T37-15 to 20). Ziv explained that some psychological harm can be permanent, such as loss of self-esteem, damaged self-image, and mistrust of the world (10T50-17 to 21), though conditions like major depression or dysthymia may resolve to varying degrees over time (10T50-23 to 24). She also testified that the plaintiff never stated she was unable to perform her duties as a police officer (10T73-16).

Ziv acknowledged that if it were shown the plaintiff had lied about being sexually harassed, her diagnosis would change (10T86-23 to 24). She explained that she looks for internal consistency and found the plaintiff's statements to be consistent (10T87-14 to 88-11). Ziv testified that the plaintiff had not told her she was sexually harassed by 50 to 60 Newark police officers but instead described persistent harassment over the past 20 years (10T91-3 to 8).

When the defense inquired about the plaintiff's relationship with her husband (10T91-9 to 12), the Trial Court sustained an objection and barred further inquiry into that area, stating it would introduce prohibited issues (10T92-5 to 20). Ziv testified that her diagnosis did not prevent the plaintiff from performing her duties as a police officer or from carrying a firearm (10T109-19 to 110-19). She further stated that the plaintiff could still be a "stellar police officer," be promoted, maintain friendships, be a loving mother, and live a full life (Ibid.).

The deposition testimony of Anthony Ambrose was read into the record (10T147-10). Ambrose served as Newark's Public Safety Director from January 16, 2016, through March 31, 2021 (10T147-20). He testified that a trial had been conducted on the plaintiff's charges against the defendant (10T156-4), and a tribunal had been convened to adjudicate the allegations (10T156-7). However, a settlement was ultimately reached, resulting in a 25-day suspension for the

defendant (10T157-17 to 25). The defendant accepted the suspension while reserving his right to appeal (10T159-4 to 11).

The video testimony of Officer Paul Tehlikian was played (10T165-3). Tehlikian testified that he had worked with the plaintiff at the Third Precinct (10T166-10), where the defendant was then serving as Acting Captain (10T166-18). Tehlikian stated that he once asked the plaintiff to help him with his computer, and during that time, the defendant came up behind her and said, "Oops, almost had an accident," while standing very close and appearing to look at her buttocks (10T167-22 to 25). The plaintiff cried and appeared very upset afterward (10T168-3 to 5). Tehlikian also testified that the defendant once publicly said his daughter acted like "a royal cunt like her mother" (10T169-21 to 23), a comment Tehlikian stated he had never heard anyone make in the precinct before (10T170-15 to 16). He further testified that the defendant once asked someone to "fuck his wife so she would be happy" (10T171-9 to 13), and that the defendant often made vulgar, sexually related remarks in front of his female secretary (10T173-18 to 25). According to Tehlikian, the secretary cried on multiple occasions due to the defendant's degrading behavior (10T174-7 to 10).

Tehlikian testified that the plaintiff was a "good performer" (10T176-6). He stated that, despite 25 years of service, he had never been promoted within

the Newark Police Department (10T176-21), and he acknowledged that he had once been the subject of an Internal Affairs investigation (10T185-8). He also testified that when the defendant brushed past the plaintiff in the precinct hallway, his hands were raised and he did not appear to touch her (10T196-25 to 197-2). Tehlikian recalled that the defendant frequently joked around with another male officer, Jova, by grabbing him. When the plaintiff asked Tehlikian about the defendant's intentions, he replied, "Maybe he thought you were Jova" (11T4-14 to 206-4). Tehlikian also observed the defendant once brushing chalk off the plaintiff's knee (11T7-9 to 23).

Antonio Domingues testified that he formerly worked for the Newark Police Department, where he attained the rank of captain (12T8-24 to 9-6). He described the Newark Police Department as a paramilitary organization (12T10-17) and explained that failure to comply with its sexual harassment policies could result in discipline (12T28-10). On April 15, 2015, Domingues submitted a report to Police Chief Campos (12T52-9 to 21), which included a 13-page complaint prepared by the plaintiff outlining her allegations against the defendant (12T55-20 to 55-20). Domingues testified that the plaintiff had expressed feeling more secure after being transferred to the Second Precinct (12T57-1 to 7).

In 2016, Domingues was transferred to the Office of Professional Standards (OPS), where he worked with both the plaintiff and the defendant during the investigation (12T58-10 to 15). He testified that Miguel Munez was also assigned to OPS (12T61-3). Domingues sent a summary of the plaintiff's allegations to the Essex County Prosecutor's Office (ECPO) (12T64-18 to 25), which declined to prosecute (12T73-6 to 9) due to insufficient evidence. The matter was then handled administratively by OPS (12T76-2 to 4). Domingues explained that a "sustained" finding means that it is more likely than not that the allegation occurred (12T77-9 to 10). He stated that Investigator Cruz had sustained the allegations (12T85-9 to 14). The defendant was ordered not to visit the Second Precinct unless accompanied (12T98-11 to 12). On January 18, 2017, the OPS concluded that the plaintiff's subsequent allegation involving the Second Precinct visit was not sustained (12T99-1 to 101-4).

The final disposition of the plaintiff's sexual harassment complaint resulted in a 25-day suspension for the defendant and the denial of a promotion to captain (12T104-23 to 104-7). The defendant waived his right to a police trial and a hearing before the Office of Administrative Law (12T104-14 to 17). Domingues noted that in 31 years of service, the defendant had no prior disciplinary history (12T115-23 to 116-2). He described the defendant as a tough but fair officer (12T115-8) and acknowledged that while the defendant did curse,

so did other officers (12T115-16). Domingues characterized the 25-day suspension as "heavy" (12T122-11 to 13) and considered the defendant to be "an honest, straightforward guy and a hard worker" (12T152-13 to 20). He also testified that the plaintiff had never told him the defendant sent her on "fake jobs" (12T128-13).

Antonio Cruz testified that he retired from the Newark Police Department three years prior to trial (12T157-5 to 8) and now worked part-time in security. His last role at the Newark Police Department was as an Internal Affairs investigator (12T158-12 to 17). Cruz investigated the plaintiff's sexual harassment complaint against the defendant (12T160-15 to 19) and concluded that "the investigation disclosed sufficient evidence to prove the allegation" (12T164-24 to 25). He believed that the defendant had made false statements about certain incidents (12T173-24) and had violated the Newark Police Department's sexual harassment policy (12T174-21).

Cruz agreed that the alleged incident in which the defendant pushed the plaintiff's hat down on her face was not, in itself, sexual harassment (13T221-23 to 25). He also testified that the "tonguing" comment attributed to the defendant had not been made in the plaintiff's presence (13T223-7 to 25).

The plaintiff rested her case (14T5-16). Co-defendant City of Newark moved for a directed verdict (14T7-25), and the defendant joined in the motion

(14T7-7 to 10), which was brought under Rule 4:37-2(b) (14T9-22). The Trial Court held the motion in abeyance (14T10-2). Both defendants later rested their respective cases (14T31-20 to 32-2).

Co-defendant City argued that several of the plaintiff's allegations were not sexual in nature (14T36-15 to 18). The defendant argued that his actions did not constitute sexual harassment and that the evidence was insufficient to establish that he had "aided and abetted" in the creation of a hostile work environment (14T48-3 to 49-22). The Trial Court agreed that any incidents occurring prior to 2015 were time-barred and should not be considered by the jury (14T62-24). The motion for judgment under Rule 4:40 was denied (14T63-10 to 62-8), but the Trial Court reserved decision under Rule 4:40-2(a) to await the jury's verdict (14T64-23 to 65-1). The Trial Court also ordered the redaction of the defendant's disciplinary record (14T115-1 to 6).

Because the Trial Court had dismissed all claims based on pre-2015 conduct (15T24-13 to 22), it instructed the jury not to consider those incidents (15T27-6 to 10), citing the statute of limitations (15T28-16 to 17). However, the Trial Court noted that while the pre-2015 acts could not be considered for purposes of damages, the plaintiff would be permitted to reference them in testimony (15T31-7 to 16).

In closing argument, defendant's counsel ("Trial Counsel") described the defendant as a "demanding" police officer (15T53-11). He stated that the jury must determine whether the defendant intentionally and purposefully sexually harassed the plaintiff, whether he aided and abetted such harassment, and whether he retaliated against her (15T54-16 to 20). He argued that there was no evidence of retaliation (15T55-1 to 3) and challenged the plaintiff's credibility, observing that despite her claim that "50 to 60 men" had sexually harassed her, she could not identify a single one (15T57-1 to 8). He also noted that Officer Rawa testified that many of the incidents allegedly did not occur in the plaintiff's presence (15T64-2 to 14). He accused the plaintiff of asking others to lie on her behalf (15T64-23 to 65-2) and stated that she had staged her tears during direct examination (15T65-16 to 25). He emphasized that the only witness to the alleged assault and battery testified that the defendant had never touched her (15T66-8 to 13). He also pointed out that the plaintiff had been transferred seventeen times before she ever met the defendant (15T86-17 to 18) and had been found insubordinate, resulting in a 30-day suspension (15T86-25). Trial Counsel reminded the jury that cursing is not the same as sexual harassment (15T87-13 to 14) and that the plaintiff had a documented history of workplace issues (15T88-9 to 25). He asserted that no credible evidence supported the plaintiff's allegation that the defendant had touched her (15T96-7

to 21). During closing arguments, the Trial Court admonished the plaintiff to stop mouthing words, warning that such conduct might taint the jury (15T100-20 to 101-8).

LEGAL ARGUMENT

POINT I
THE TRIAL COURT COMMITTED HARMFUL ERROR WHEN IT DENIED THE DEFENDANT'S RIGHT TO EFFECTIVELY CROSS-EXAMINE THE PLAINTIFF AND TO PRESENT A MEANINGFUL DEFENSE
(3T12-25 TO 13-8; 3T6-25 TO 7-1; 8T163-5 TO 19; 8T165-12 TO 19; 10T92-5 TO 20)

This trial was a "pitched credibility battle" between the plaintiff and the defendant. See State v. R.K., 220 N.J. 444, 461 (2015). The defendant denied the plaintiff's allegations and argued that the plaintiff had a motive to fabricate those allegations based on prior disciplinary actions he had taken against her in his role as her commanding officer. The defendant sought to cross-examine the plaintiff and introduce evidence on specific topics, but the Trial Court precluded him from doing so. These excluded topics included:

(1) an investigation by the defendant into a prior altercation involving the plaintiff at a federal prison where her husband was incarcerated (3T12-25 to 13-8);

(2) evidence that the plaintiff's prior consensual relationships with members of the Newark Police Department would have impeached her claim that she had been harassed by other officers and

subjected to a hostile work environment (3T6-25 to 7-1; 8T149-13 to 15; 8T149-18 to 150-23);

(3) the plaintiff's physical altercations with multiple Newark police officers (8T163-5 to 19; 8T165-12 to 19); and,

(4) the plaintiff's relationship with her husband, offered to show that her allegations against the defendant were, in part, motivated by loyalty to her husband, with whom the defendant had a long-running dispute (10T92-5 to 20).

By precluding these areas of inquiry and barring the introduction of corroborating evidence, the Trial Court effectively gutted the defense and shielded several of the plaintiff's allegations from meaningful credibility challenges.

As with "plain error," an error made during a jury trial will be found "harmless" unless there is a reasonable doubt that the error contributed to the verdict. That is, whether the "error [was] 'sufficient to raise a reasonable doubt as to whether [it] led the jury to a result it otherwise might not have reached.'" State v. Jackson, 243 N.J. 52, 73 (2020) (alteration in original) (quoting State v. Prall, 231 N.J. 567, 581 (2018)).

A trial is a search for the truth, and "'[c]ross-examination is the most effective device known to our trial procedure for seeking the truth.'" Peterson v. Peterson, 374 N.J. Super. 116, 124 (App. Div. 2005) (quoting Tancredi v. Tancredi, 101 N.J. Super. 259, 262 (App. Div. 1968)); accord State v. Silva, 131

N.J. 438, 444 (1993). New Jersey Court Rules provide that "counsel is permitted to attack the credibility of a witness on cross-examination." See Parker v. Poole, 440 N.J. Super. 7, 22 (App. Div. 2015), citing N.J.R.E. 611(b). (citation and quotation omitted). "Any witness 'may be cross-examined with a view to demonstrating the improbability or even fabrication of his testimony." Parker, 440 N.J. Super. at 22 (quoting Silva, 131 N.J. at 435). The right to cross-examine a witness extends to a "prior inconsistent statement to attack the credibility of a witness.," Ibid. (citing N.J.R.E. 607), as well as to "[d]eposition testimony which may be used 'for the purpose of contradicting or impeaching' a witness at trial." Ibid. (citing N.J.R.E. 4:16-1(a)).

"[E]vidence should be barred if its probative value 'is so significantly outweighed by its inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation of the basic issues.'" Id. at 21 (quoting Green v. N.J. Mfrs. Inc. Co, 160 N.J. 480, 491 (1999)). The Supreme Court has instructed that "the burden is clearly on the party urging the exclusion of evidence to convince the court that the N.J.R.E. 403 considerations should control." Rosenblit v. Zimmerman, 166 N.J. 391, 410 (2001) (citation and quotation omitted).

However even where "evidence is shrouded with unsavory implications is no reason for exclusion when it is a significant part of the proof." State v.

Stevens, 115 N.J. 289, 308 (1999) (quoting State v. West, 29 N.J. 327, 335 (1959)). As this Court has observed before, it "would ill-serve the cause of truth and justice if we were to exclude relevant and credible evidence only because it might help one side and adversely affect the other." Parker, 440 N.J. Super. at 22 (citation and quotation omitted).

To determine whether prejudicial testimony should be precluded "[t]he question . . . is not merely whether the witness' testimony [was] prejudicial . . . but whether it [was] unfairly so." Ibid. "A trial court's 'discretion is abused when relevant evidence offered by the defense and necessary for a fair trial is kept from the jury.'" State v. R.Y., 242 N.J. 48, 65 (2020) (quoting State v. Cope, 224 N.J. 530, 554-55 (2016)).

In Parker, this Court reversed a civil trial verdict and remanded for a new trial where the plaintiff had been precluded by the Trial Court from asking the defendant's treating physician about valid deposition questions for purposes of impeachment as the testimony bore directly on the issue of the defendant's negligence and thus could readily have been outcome determinative. Parker, 440 N.J. at 11. The same error occurred here. The Trial Court failed to adequately weigh the probative value of evidence implicating the plaintiff's credibility against its potential prejudice. That failure denied the defendant the opportunity to present a full and fair defense and resulted in an unjust outcome.

The defense sought to challenge the plaintiff's credibility. Several of her allegations were not only uncorroborated by independent witnesses but were also contradicted by the plaintiff's own witnesses. Many of the alleged incidents did not occur in her presence at all. The defense argued that the plaintiff bore personal hostility toward the defendant because of his prior role investigating and disciplining her conduct as a superior officer. Specifically, the defense sought to cross-examine the plaintiff about an incident at a federal prison involving her husband, which the defendant had investigated while assigned to Internal Affairs. Trial Counsel explained to the Trial Court:

> My client was in IA. This directly goes, this one issue, to her motivation because our position is she can't stand Jose Pereira for a host of reasons, one of which, Judge, is the following: she went to her husband at the federal penitentiary. Now, nobody –- we don't want that in, Judge. We don't want any mention of that.
>
> However, when she was there, my client then testified as to the following: she went to visit him. She saw a former girlfriend's name in the logbook where visitors were. She gets into an argument, almost a physical altercation with her husband there. The warden is advised of that.
>
> The warden calls IA [(Internal Affairs)] Newark to say one of your officers essentially went crazy over here. My client is in IA. He's investigating. He's going to testify, from what we're told, that when he was in IA when that call came in, he essentially knew everything about it. Lisa Rodriguez knew that the warden called IA, right, and that my client was either involved in the investigation or knew about it.

> Judge, that's very relevant, highly relevant. That's not 403 stuff at all.
>
> [3T7-2 to 24.]

This proffered testimony was clearly relevant and went directly to impeaching the plaintiff's credibility. The defense was entitled to demonstrate a motive to fabricate the allegations and falsely accuse the defendant of sexual harassment. The Trial Court's exclusion of this evidence denied the defendant a meaningful and complete defense.

The Trial Court also precluded cross-examination of the plaintiff regarding prior consensual relationships with members of the Newark Police Department. The defense did not offer this evidence to downplay the seriousness of sexual harassment. Rather, it was offered to impeach the plaintiff's credibility. Dr. Ziv testified that the plaintiff only reported being persistently harassed over a 20-year period (10T91-3 to 8). However, at trial, the plaintiff newly asserted that 50 to 60 Newark police officers had sexually harassed her – an allegation absent from her Second Amended Complaint, her deposition, and her reports to her own expert. (Da1–Da35; 5T90-10 to 25; 5T93-2). Dr. Ziv confirmed that the plaintiff had not disclosed such a figure (10T91-3 to 8). Considering that the Newark Police Department has approximately 1,419

officers, this would mean that approximately 5% of the force allegedly harassed her.

Credible evidence existed that the plaintiff had engaged in multiple consensual relationships with fellow officers, including some stationed at the Third Precinct. The jury was entitled to weigh this evidence in assessing the credibility of her allegations. Had the jury known of these consensual relationships, it may have doubted the veracity of her claims of widespread sexual harassment.

Had the defense been permitted to cross-examine plaintiff that she had admitted to prior consensual relations with police officers and demonstrate that was inconsistent with her fresh assertion at trial that she had been sexually harassed by 50 Newark police officers, the defense could have requested a "false-in one; false-in-all" jury charge. The courts have long recognized the principle of "false-in-one; false in all." See Model Jury Charge, 1.12M; State v. Ernst, 32 N.J. 567 (1960). That instruction provides:

> If you believe that any witness deliberately lied to you, on any
> fact significant to your decision in this case, you have the right
> to reject all of that witness's testimony. However, in your
> discretion you may believe some of the testimony and not
> believe other parts of the testimony.

> [Model Jury Charge, 1.12M.]

Alternatively:

> If you believe that any witness or party willfully or knowingly testified falsely to any material facts in the case, with intent to deceive you, you may give such weight to his or her testimony as you may deem it is entitled. You may believe some of it, or you may, in your discretion, disregard all of it.
>
> [Model Jury Charge, Revised 1/14/13.]

Proper jury charges are essential to a fair trial. Reynolds v. Gonzalez, 172 N.J. 266, 288 (2002), and the failure to provide clear and correct jury charges may constitute plain error, Das v. Thani, 171 N.J. 518, 527 (2002). The Trial Court's erroneous evidentiary rulings deprived the defendant of the right to cross-examine the plaintiff, impeach her credibility, and seek an appropriate jury charge.

The Trial Court further limited the defense by barring cross-examination and the introduction of evidence concerning the plaintiff's multiple physical altercations with other Newark police officers (8T163-5 to 19; 8T165-12 to 19). This evidence was highly relevant to demonstrate that the plaintiff's own aggressive and unprofessional conduct, rather than the defendant's alleged actions, was the primary contributor to any hostile work environment at the Third Precinct. The plaintiff's narrative painted her as a victim of systemic sexual harassment, but the defense was entitled to introduce evidence

contradicting that portrayal. Evidence that she had consensual relationships with multiple officers and had engaged in physical fights with others would have cast serious doubt on her version of events and her credibility as a witness.

The Trial Court also prohibited the defense from cross-examining the plaintiff about her relationship with her husband. The defense attempted to question Dr. Ziv about whether the plaintiff had discussed this relationship during her evaluation (10T91-9 to 12), but the Trial Court sustained the plaintiff's objection and barred further inquiry (10T92-5 to 20). However, testimony indicated that both the plaintiff and her husband harbored long-standing hostility toward the defendant (6T61-7). The defense contended that this relationship was central to understanding the plaintiff's motive for making false allegations. The defendant had the right to explore that motive through cross-examination and by introducing corroborating evidence.

Moreover, the plaintiff's damages claim opened the door to this line of inquiry. She testified that, as a result of the defendant's alleged harassment, she stopped going to the gym, seeing her family, and spending time with her boyfriend (6T103-8 to 24). The defense was entitled to explore whether she continued her marital relationship during this same period and whether the emotional harm she claimed was in fact attributable to issues unrelated to the defendant's conduct.

The case against the defendant was, at best, tenuous. Several of the plaintiff's allegations lacked any independent corroboration. In fact, many of the statements and vulgar comments attributed to the defendant did not occur in the plaintiff's presence or had no connection to her (4T44-12). Even the plaintiff's central allegation that the defendant touched her inappropriately was contradicted by her own witnesses. Navasha Rawa testified that she never observed the defendant grab or inappropriately touch the plaintiff (4T35-5 to 7; 4T85-15, 21). Paul Tehlikian testified that during the alleged contact, the defendant had his hands in the air and made no physical contact (10T196-25 to 197-2), and the only contact he observed was the defendant brushing chalk off the plaintiff's knee (11T7-9 to 23).

This was the full extent of the plaintiff's eyewitness case against the defendant. Beyond the plaintiff's self-serving testimony, there was no credible, independent evidence supporting her claims of assault, battery, retaliation, or sexual harassment. On cross-examination, the plaintiff admitted that many of her allegations were not sexual in nature (see, e.g., 6T37-3 to 8; 6T36-22 to 42-12; 6T44-15 to 45-8; 6T49-2; 6T50-8 to 12; 6T56-2 to 57-2).

It is within the relative strengths and weaknesses of the plaintiff's case against the defendant that the effect of the Trial Court's evidentiary rulings should be considered. As this Court has observed before: "A verdict or

conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming support." State v. Marshall, 148 N.J. 89, 157 (1991) (citation and quotation omitted), cert. denied, 507 U.S. 929 (1993). Here, the Trial Court's cumulative evidentiary errors severely limited the defendant's ability to challenge the plaintiff's credibility and deprived him of a fair trial. Under the circumstances, those errors were not harmless. A new trial is warranted. See R. 2:10-2.

POINT II
THE TRIAL COURT'S FAILURE TO PROVIDE REMEDIAL RELIEF AFTER PREJUDICIAL REMARKS MADE BY THE PLAINTIFF'S ATTORNEY DURING OPENING STATEMENTS CONSTITUTED HARMFUL ERROR (3T62-7 TO 8)

During opening statements, plaintiff's counsel remarked that Dr. Ziv, the plaintiff's expert witness, had previously testified against former actor Bill Cosby in his criminal trial. The defendant objected to this and other prejudicial comments made by plaintiff's counsel (3T58-20 to 59-18). The defendant argued that, when considered in the context of other prejudicial remarks, the Cosby reference warranted a mistrial (3T59-7 to 18). Co-defendant City joined in the motion, stating that the comments "taint[] the jury" (3T59-2). Trial Counsel asserted, "we're already tainted because of a Bill Cosby remark..." (3T61-7 to 8), and further noted that Cosby was viewed as a "pariah... among

everyone in the courtroom" (3T59-14 to 16). Co-defendant's counsel added that Juror 2 had a "big smile on his face after" the Cosby comment (3T61-12 to 15). Nevertheless, the Trial Court overruled the objection and denied the motion for a mistrial (3T62-7 to 8).

A trial court should grant a motion for a mistrial "to prevent an obvious failure of justice." State v. Smith, 224 N.J. 36, 47 (2016). While a timely "curative instruction" may in some cases suffice, Ibid., here the Trial Court provided no remedial instruction or intervention of any kind. Moreover, once co-defendant's counsel alerted the Trial Court that Juror 2 had visibly reacted to the Cosby reference, the Trial Court was obligated to conduct further inquiry. Where juror taint has been raised, "the trial court is obliged to interrogate the juror, in the presence of counsel, to determine if there is a taint; if so, the inquiry must expand to determine whether any other jurors have been tainted thereby." State v. R.D., 161 N.J. 551, 558 (2001); see also State v. Bisaccia, 319 N.J. Super. 1, 13 (App. Div. 1999) (stating that if actual juror taint is possible, court must *voir dire* affected juror and, in appropriate circumstances, remaining jurors).

Here, the Trial Court considered no remedial action. By invoking the name of Bill Cosby, plaintiff's counsel sought to achieve two improper and prejudicial objectives: first, to suggest an implicit association between the defendant and

the notorious criminal sexual conduct of Cosby; second, to improperly bolster the credibility of Dr. Ziv by associating her with a high-profile prosecution. Both implications were highly prejudicial and undermined the defendant's right to a fair and impartial jury.

The Trial Court compounded the error by failing to issue any curative instruction or to provide any explanation for the denial of a mistrial. Nor did the Trial Court explain its refusal to provide a limiting instruction regarding the Cosby reference (3T62-7 to 9). As a result, the jury was left to speculate on the relevance of Bill Cosby to the allegations against the defendant.

Under these circumstances, the only fair remedy is to vacate the judgment and remand the matter for a new trial.

POINT III
THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR JUDGMENT UNDER RULE 4:40-1 (DA43;14T63-10 TO 62-8)

Co-defendant City argued that several of the plaintiff's allegations were not sexual in nature (14T36-15 to 18). The defendant similarly argued that his actions did not constitute sexual harassment and that the evidence was insufficient to support a finding that he had "aided and abetted" any unlawful conduct (14T48-3 to 49-22). The Trial Court ruled that prior acts occurring before 2015 should not be considered by the jury (14T62-24), but ultimately denied the defendant's motion for judgment under Rule 4:40-1 (14T63-10 to 62-

8), reserving decision under Rule 4:40-2(a) pending the jury's verdict (14T64-23 to 65-1). On November 22, 2024, following the jury's verdict, the Trial Court denied the motion for a directed verdict without providing any explanation (Da43). See also Castro v. Helmsley, 150 N.J. Super. 160, 165 (App. Div. 1977) ("disapproving of a trial judge's reservation of a motion to dismiss at the close of plaintiff's proof and holding that such reservation shall hereinafter be regarded as denial").

Under Rule 4:40-1,

> A motion for judgment, stating specifically the grounds therefor, may be made by a party either at the close of all the evidence or at the close of the evidence offered by an opponent. If the motion is made prior to the close of all the evidence and is denied, the moving party may then offer evidence without having reserved the right to do so. A motion for judgment which is denied is not a waiver of trial by jury even if all parties to the action have so moved.

The reviewing court "must accept as true all evidence supporting the position of the party defending against the motion and must accord that party the benefit of all legitimate inferences which can be deduced [from the evidence]." Besler Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544, 572 (2010). Where the evidence is so one-side that one party must prevail as a matter of law, then a directed verdict is appropriate. Frugis v. Bracigliano, 177 N.J. 250, 269 (2003).

Here, the plaintiff's evidence in support of her claims for sexual harassment, assault, and battery was far from compelling. She admitted that many of her allegations were not sexual in nature and that much of the alleged conduct did not occur in her presence. More significantly, her claim that the defendant inappropriately touched her was directly contradicted by her only two eyewitnesses.

Navasha Rawa testified that she never saw the defendant grab or inappropriately touch the plaintiff (4T35-5 to 7; 4T85-15), and further stated she never saw anything of a sexual nature occur between the two (4T85-21). Similarly, Officer Paul Tehlikian testified that during the alleged touching incident, the defendant's hands were in the air as he tried to pass by the plaintiff and that he did not touch her (10T196-25 to 197-2). The only touching Tehlikian observed was the defendant brushing chalk off the plaintiff's knee (11T7-9 to 23).

There were no witnesses to support the plaintiff's allegation that the defendant kept his knee pressed against her buttocks (6T45-21 to 24; 6T46-9 to 10). Aside from the plaintiff's self-serving and often inconsistent testimony, there was no credible evidence of assault or battery. The absence of corroboration from her own witnesses was particularly telling.

In addition, there was no credible evidence that the defendant retaliated against the plaintiff following her complaint. The evidence was unrefuted at trial that the defendant had no authority to order or instigate the plaintiff's transfer (8T34-7 to 8). In fact, the plaintiff testified that she initiated the request to be transferred from the Third Precinct (5T129-16 to 22).

The defendant submits that the plaintiff failed to meet her burden of proving, by a preponderance of the evidence, that the defendant committed any act of retaliation, sexual harassment, or inappropriate touching. The Trial Court therefore erred in denying the defendant's motion for judgment and directed verdict.

POINT IV
THE TRIAL COURT'S CUMULATIVE ERRORS DENIED THE DEFENDANT A FAIR TRIAL (NOT RAISED BELOW)

The defendant submits that the Trial Court committed multiple errors which, when considered cumulatively, deprived him of a fair and reliable trial, as discussed in Points I through III, *supra*. These errors collectively undermined the defendant's ability to challenge the plaintiff's credibility and present a complete defense.

"[E]ven when an individual error or series of errors does not rise to reversible error, when considered in combination, their cumulative effect can cast sufficient doubt on a verdict to require reversal." State v. Jenewicz, 193 N.J.

440, 473 (2008); see also State v. Wakefield, 190 N.J. 397, 538 (2007) ("the predicate for relief for cumulative error must be that the probable effect of the cumulative error was to render the underlying trial unfair"), cert. denied, 552 U.S. 1146 (2008). An appellate court may reverse a trial court's judgment if "the cumulative effect of small errors is so great as to work prejudice." Pellicer v. St. Barnabas Hosp., 200 N.J. 22, 53 (2009). That matter goes to whether the Trial Court afforded the defendant a fair trial. Id. at 56-57.

Further, if an appellate court finds cumulative error, it need not consider whether each individual error was prejudicial. Jenewicz, 193 N.J. at 473. A reviewing court, therefore, considers the aggregate effect of the Trial Court's errors on the fairness of the trial. Pellicer, 200 N.J. at 56-57.

In this case, the cumulative effect of the Trial Court's errors was both manifest and prejudicial. Each evidentiary and procedural misstep compounded the others, ultimately depriving the defendant of his right to present a full and fair defense. Under these circumstances, the judgment must be reversed and the matter remanded for a new trial.

POINT V
THE COMPENSATORY DAMAGE AWARD WAS IRRATIONAL AND DISPROPORINATE TO THE PLAINTIFF'S ALLEGED DAMAGES (DA44-DA45)

The jury awarded plaintiff $1,000,000.00 in damages against the defendant for assault and battery (Da44-Da45). The Trial Court memorialized

the award in an Order Entering Judgment increasing the final award to $1,272,301.91. Ibid. Additionally, defendant was held jointly and severally liable with co-defendant for $318,075,48. Ibid. Thus, the total judgment against defendant amounted to $1,590,376.67. Ibid. Defendant submits that the compensatory damage award was disproportionate to any harm allegedly suffered by the plaintiff and, was, therefore, manifestly unjust.

"A jury's verdict, including an award of damages, is cloaked with a 'presumption of correctness.'" Cuevas v. Wentworth Grp., 226 N.J. 480, 501 (2016) (quoting Baxter v. Fairmont Food Co., 74 N.J. 588, 598 (1977)). "[T]he trial court may not disturb a damages award entered by a jury unless it is so grossly excessive or so grossly inadequate 'that it shocks the judicial conscience.'" Orientale v. Jennings, 239 N.J. 569, 595 (2019) (quoting Cuevas, 226 N.J. at 485). However, an appellate court may reverse a jury's damage award if it finds the award to be irrational and not supported by the evidence. The general rule is that damage awards, including pain and suffering, "must be reviewed to determine whether they are 'fair and reasonable.'" Caldwell v. Haynes, 136 N.J. 422, 442 (1994) (quoting Botta v. Brunner, 26 N.J. 82, 92 (1958)). As this Court has said before, "the law abhors damages based on mere speculation." Lewis v. Read, 80 N.J. Super. 148, 175 (App. Div. 1963), certif. denied, 41 N.J. 121 (1963). "Emotional-distress damages are not presumed; they

must be proved" by demonstrating "a causal connection between the constitutional violation and the emotional distress." Besler, 201 N.J. at 576.

The plaintiff testified that as a result of the alleged sexual harassment, she stopped seeing her family and boyfriend and ceased going to the gym (6T103-8 to 24). However, this claim was contradicted by her own expert, Dr. Barbara Ziv. While Dr. Ziv diagnosed the plaintiff with depression (9T30-20 to 31-4), she also testified that the plaintiff's condition did not prevent her from performing her police duties, carrying a firearm, receiving promotions, or functioning as a "stellar police officer," loving mother, or friend (9T109-19 to 110-19). Significantly, the plaintiff never informed Dr. Ziv that she was unable to perform her job (10T73-16).

The plaintiff introduced no credible evidence that she sought or required past or ongoing therapy as a result of the defendant's alleged conduct, nor did she testify that she pursued support services available through the City of Newark. Furthermore, the damage award was likely influenced by flawed evidentiary rulings. Specifically, the Trial Court improperly allowed the plaintiff to testify about sexual harassment allegations from her time at the police academy in 2008 – allegations clearly barred by the statute of limitations. The Trial Court later instructed the jury to disregard these claims (15T24-13 to 27-10). However, as the courts have recognized before, there are situations in

which, notwithstanding the most exemplary charge, "a juror will find it impossible to disregard such a prejudicial statement." State v. Boone, 66 N.J. 38, 48 (1974) (citing Krulewitch v. U.S., 336 U.S. 440, 453 (1940)). As Justice Jackson observed, "The naïve assumption that prejudicial effects can be overcome by instructions to the jury . . . all practicing lawyers know to me mitigated fictions." Krulewith, 338 U.S. at 453 (Jackson, J, concurring). It is reasonable to infer that as the jury assessed the plaintiff's damages that included these stricken prior incidents that should never have been testified to before the jury.

Moreover, the plaintiff testified to a decades-long history of sexual assault and harassment, unrelated to the defendant, including her claim that more than 50 Newark police officers had harassed her. There is a reasonable probability that the jury, in calculating damages, improperly conflated this broader narrative with the discrete allegations against the defendant, thereby punishing him for alleged conduct far beyond the scope of the specific claims at issue. This was manifestly unfair. A defendant may only be held responsible for harm caused by his own conduct, not the cumulative weight of allegations against others.

Even Dr. Ziv, the plaintiff's expert, testified that the plaintiff was capable of maintaining personal relationships and performing her job effectively (9T109-19 to 110-19).

In short, the plaintiff failed to demonstrate meaningful, lasting harm directly attributable to the defendant that would support an award of $1,590,376.67.

The matter should be remanded for the Trial Court to reassess the damages award and determine a reasonable amount consistent with both the facts and governing law. See Orientale, 239 N.J. 569 (recognizing a trial court's inherent ability to reduce a jury damage award that was grossly excessive).

CONCLUSION

For the foregoing reasons, defendant-appellant Jose Pereira respectfully requests that the judgment entered against him be vacated and that the matter be remanded for a new trial. In the alternative, the compensatory damage award should be vacated and remitted to an amount supported by the evidence and consistent with applicable law.

Dated: June 16, 2025

THE TOSCANO LAW FIRM, LLC

155 Passaic Avenue, Suite 420
Fairfield, New Jersey 07004
(T): (973) 226-1691
(F): (973) 226-1693
Attorneys for Defendant-Appellant, Jose Pereira

s/ Patrick P. Toscano, Jr.
Patrick P. Toscano, Jr.
Attorney No.: 014461986

ptoscano@pptlawfirm.com

s/ Matthew J. Toscano
Matthew J. Toscano
Attorney No.: 305642019
mtoscano@pptlawfirm.com

LISA RODRIGUEZ, ***Plaintiff-Respondent,*** v. CITY OF NEWARK; JOSE PEREIRA, ***Defendants-Appellants.***	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001457-24 *Civil Action* ON APPEAL FROM A FINAL JUDGMENT IN THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, ESSEX COUNTY Sat Below: Hon. Robert H. Gardner, J.S.C. Law Division Docket No.: ESX-L-3703-16

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT LISA RODRIGUEZ IN RESPONSE TO THE AMENDED BRIEF FILED ON BEHALF OF DEFENDANT-APPELLANT JOSE PEREIRA

O'CONNOR, PARSONS, LANE & NOBLE, LLC
Gregory B. Noble Esq. (#017601998)
R. Daniel Bause, Esq. (#019122011)
Andrew Karlbon, Esq. (#381842022)
959 South Springfield Avenue
Springfield, New Jersey 07081
Tel. No. (908) 928-9200
gnoble@lawnj.net
dbause@lawnj.net
akarlbon@lawnj.net
Attorneys for Plaintiff-Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Law

Rules

Statutes

PRELIMINARY STATEMENT

Defendant-Appellant Jose Pereira (hereinafter "Appellant") filed this appeal based on the jury verdict returned in favor of Plaintiff-Respondent Lisa Rodriguez (hereinafter "Plaintiff" or "Respondent") on claims of sexual harassment, hostile work environment, and assault and battery. In its preliminary statement, Appellant argues that Jose Pereira was deprived of a fair trial "due to a series of prejudicial errors by the Trial Court that, both individually and cumulatively," prevented the Appellant from presenting a fair defense.

Primarily, the Appellant argues that (1) several irrelevant pieces of evidence were improperly barred; (2) the Trial Court failed to provide a curative instruction following Respondent's opening statement; (3) the Trial Court improperly denied a Motion for Directed Verdict; (4) the prior three points cumulatively warrant a new trial; and (5) that the verdict was excessive.

As Respondent's legal argument will outline, none of these arguments withstand scrutiny. Appellant would have the Appellate Court believe that Judge Robert H. Gardner, J.S.C. (hereinafter "Trial Court") barred significant evidence from being introduced at trial. In reality, the Respondent filed a series of motions *in limine*, most of which went unopposed, and the Trial Court entertained oral argument and provided cogent reasonings as to decisions to bar certain pieces of evidence. The Trial Court concluded that the prejudicial nature of the

evidence, coupled by its irrelevancy, outweighed the near nonexistent probative value. Appellant now appeals the Trial Court's decision to bar several pieces of evidence – Respondent's Husband's conviction and Respondent's prior consensual relationships – that Appellant did not even oppose in motion practice prior to trial. The Appellate Division should not reward the Appellant, who failed to properly utilize the mechanisms at the lower court, to win on appeal.

Next, the Appellant argues that Respondent's opening statement "tainted" the jury, namely due to the inclusion of the reference to the Bill Cosby trial. Respondent did not equate the instant action to the Bill Cosby trial, nor did Respondent compare Jose Pereira to Bill Cosby; instead, Respondent merely informed the jury in the opening statement that they would be hearing from Respondent's expert, Barbara Ziv, who herself previously served as an expert witness in the Bill Cosby trial, in order to boost her credibility. While Appellant did voice concern for this inclusion following Respondent's opening statement, Appellant was silent when the exact same information was uncovered during the *voir dire* section of Dr. Ziv's testimony. Again, the Appellant should not be rewarded at the Appellate Division when they did not maintain their objection to the inclusion of a mere fact when same was brought out during testimony.

Moreover, the Trial Court properly denied Pereira's motion for directed verdict, pursuant to R. 4:40-1. Throughout the case, Respondent presented

significant evidence regarding the sexual harassment that Respondent endured. Following Pereira's testimony, the ultimate question regarding this issue for the jury was whether they viewed the Respondent or Appellant as more credible. Taking the jury verdict as evidence, it is clear that Plaintiff had presented sufficient evidence to withstand a motion for directed verdict.

Lastly, Appellant argues that the jury verdict of damages, totaling $1.25 million prior to interest being applied, was "grossly disproportionate to any harm allegedly sustained." Similar to the R. 4:40-1 motion, the jury viewed Respondent as more credible than Appellant. They sat through a multi-week trial which included testimony from not only Respondent herself but a nationwide renowned expert in the field of sexual assault and the psychiatric effects of same. The totality of the sexual assault and battery that Plaintiff sustained fits squarely within the figure awarded at trial. There is a presumption of correctness to a jury verdict, and the Appellate Division should not disrupt it on appeal.

In sum, Appellant appeals issues that are simply not errors. Considering same, there can be no cumulation of errors when no errors exist. Appellant fails to proffer any meaningful arguments on any of the points raised on appeal, and as such, the Appellate Court should dismiss the Appellant's appeal in its entirety as meritless.

STATEMENT OF PROCEDURAL HISTORY

Respondent incorporates Appellant's statement of procedural history. (Da1-Da57). Respondent would only supplement the procedural history with the inclusion of Respondent's filed motions *in limine* and Appellant's response to one. (Pa1-Pa31). Respondent filed these *in limine* motions on June 24, 2024, October 15, 2024, and November 4, 2024, and they are mainly proffered to establish that certain issues on appeal were raised prior to and during the trial and sometimes without objection or opposition from Appellant. (Id.). Moreover, On November 18, 2024, the City of Newark moved for a motion for a directed verdict (Pa32-77). At no point in this motion did the City of Newark move to have the counts against Jose Pereira, specifically Count Four (Aiding and Abetting Liability) and Count Five (Assault and Battery) (Da017-019). On November 19, 2024, Appellant filed a letter on eCourts, addressed to the Trial Court, which stated that "Defendant Pereira adopts all that is argued in Newark's submission and joins in the motion for directed verdict for the same legal reasons stated therein to the extent applicable to Pereira." (Pa78).

STATEMENT OF FACTS

Prior to the start of trial, parties filed a variety of motions *in limine*, including Respondent filing motions regarding the following:

1. Motion to bar evidence of plaintiff's previous consensual relationships with other Newark Police Officers (i.e. not defendant Jose Pereira) as irrelevant and prejudicial under N.J.R.E. 402 and 403.
2. Motion to bar evidence of plaintiff's husband's (Victor Patella) federal criminal conviction as irrelevant and prejudicial under N.J.R.E. 402 and 403.
3. Motion to bar evidence of defendant Jose Pereira's health status as irrelevant and prejudicial under N.J.R.E. 402 and 403.
4. Motion to bar evidence of an out of court statement made by witness Elvis Bernal to defendant Jose Pereira that plaintiff had allegedly made false claims of sexual harassment in a lawsuit against Bernal on a prior occasion and had admitted to lying about the allegations on the witness stand as impermissible hearsay and where there was no proof of any such lawsuit, proceedings or testimony.
5. Motion to bar evidence of allegations by defendant Jose Pereira that plaintiff had allegedly signed him up for magazine subscriptions as irrelevant and standing to cause confusion, prejudice and delay under N.J.R.E. 402 and 403.
6. Motion to bar evidence of certain arguments plaintiff got into with other Newark Police Officers (i.e. not defendant Jose Pereira) and with her husband in Federal Prison for several reasons, including under N.J.R.E. 402 and 403 and as impermissible hearsay.

(Pa1-Pa13; Pa25-Pa31). Notably, Appellant only filed formal opposition to one of these motions – motion number 5 relating to the alleged magazine

subscriptions. (Pa14-24; 2T 27:6-18; 37:6-17)[1]. Furthermore, Appellant additionally opposed motion numbers 3 and 6 on the record. (2T 28:4-17).

The trial in this matter began on November 4, 2024. (3T). Just prior to the start of opening statements, Respondent counsel moved to bar evidence as it relates to Motions 2 and 6, noted above. (3T 3:9-15:9). Respondent counsel argued:

> So the first thing was, apparently, there is believed to be certain altercations between Lisa and some other male officers - - I think there were at least two or three - - that were raised where Mr. Toscano said did you either witness or hear about at the time when Lisa was in an altercation with this person at the Academy or that person in the precinct. Only one of those alleged altercations appears in Ms. Rodriguez's Internal Affairs jacket which is Exhibit - - I believe it's 32 or 33
> But the incident that is documented took place in '08 or '09, and there was some sort of argument. The parties were, I think, both disciplined but it has - - our position is, Your honor, there's no relevance ot the case in terms of whether or not Lisa Rodriguez was sexually harassed in the precinct. It was a disciplinary matter. It's remote in time. It doesn't involve Jose Pereira. So we felt there was more prejudice than any probative value on that.
>
> And similarly, there were two other vague incidents raised that don't appear to be documented anywhere. And these all seem to also relate to individuals that Ms. Rodriguez had dated in the past, and that was subject to an in limine motion that was not opposed by anyone where we asked the Court to keep out any evidence of consensual relationships between Ms. Rodriguez and fellow officers. So it just - - it appeared to be - - with all respect to counsel, it appeared to be an attempt to backdoor some of those issues. And they're really - - they're inflammatory allegations of Lisa getting

[1] Transcript citations are in line with Appellant's identification.

> into some sort of altercation with male officers. And we think it has no bearing on the case.
>
> The other incident is probably more serious. It's - - we moved in limine to bar evidence that Ms. Rodriguez's now-husband, then-boyfriend was in a federal penitentiary because there's no relevance involved in those allegations. And the prejudicial effect is obvious.
>
> . . .
>
> So we're worried that, A, there's just no substance to this at all. B, even giving the defense the benefit of the doubt that they're trying to say that Lisa knew about this and was biased against Pereira because Pereira was going to investigate this thing, there's no evidence that Lisa knew about it because there was nothing to know about. It didn't happen.

(Id. at 3:20-5:24). The Trial Court granted both motions, at least in part, and provided the following rationale:

> Based on what counsel[s] filed, as well as the arguments of counsel, at this point, I think it's out. I think all this other stuff with regard to a conversation that the plaintiff didn't know about between the warden and somebody in the IA division of the City of Newark Police Department for which there's no basis, for which there's no documentation to show, at this juncture, it's out. Don't mention it on opening.
>
> If something comes up, depending on how the case develops during the trial, if something else happens, something else comes out, I'll revisit the issue. But I think for purposes of opening, I think it's out.

(Id. at 12:25-13:13). Moreover, Respondent's counsel also noted to the Trial Court, as it relates to Respondent's alleged conflicts with other officers, that (1) the only documented incident occurred in 2008-09, and thus well before the events relevant to the matter, (2) it did not involve Mr. Pereira, (3) it predated Mr. Pereira becoming involved in the Third Precinct where the harassment

occurred, (4) it did not involve sexual harassment, and (5) it would create a trial within a trial. (Id. at 14:24-15:5). The Trial Court agreed with Respondent and held that such evidence would be more prejudicial than probative, and that "at this point, given the lack of proximity in time or subject matter. No, I think it's out. So ordered." (Id. at 15:6-9).

On November 4, 2024, Respondent's counsel gave his opening statement, in which counsel stated, "[y]ou're going to hear from a psychiatrist named Barbara Ziv out of Philadelphia. She testified in the Bill Cosby case." (3T 56:20-57:2). Following the conclusion of Respondent's opening statement, Appellant's counsel urged the Trial Court to grant a mistrial, in large part due to the reference to Bill Cosby. (Id. at 59:4-18). Respondent's counsel responded, noting that it is merely a fact that Dr. Ziv testified in the Bill Cosby trial, that it is merely used to provide the jury with Dr. Ziv's qualifications, and that Dr. Ziv is not going to testify as to the facts of the Bill Cosby trial. (Id. at 60:14-25). Ultimately, the Trial Court overruled the Appellant's objection. (Id. at 62:7-9).

Respondent began her case by calling Navasha Rawa. (4T 21:13-14). Ms. Rawa testified that Jose Pereira used a variety of sexist slurs as well as making derogatory comments about having sexual acts with women. (Id. at 27:6-14; 28:3-12). Ms. Rawa testified that Mr. Pereira would say these comments out loud in the workplace. (Id. at 27:20-23). Ms. Rawa testified that, despite Mr.

Pereira being in a position to stop the language being uttered in the workplace, he never attempted to do same. (Id. at 29:8-10). Ms. Rawa testified that specific to Respondent, she heard Mr. Pereira state sexually implicit comments, such as "I have something for you to suck" or "I have something better for you to put in your mouth[.]" (Id. at 37:17-38:2).

Respondent next called David Muhammad. (Id. at 119:7-8). Mr. Muhammad testified regarding the Newark Police Department's investigatory capacity into complaints regarding sexual harassment in the workplace. (Id. at 122:18-123:24). Mr. Muhammad testified regarding his knowledge of sexual harassment Respondent endured at the hands of her superior, Mr. Pereira. (Id. at 124:11-14). Mr. Muhammad further testified regarding an incident in which Mr. Pereira forced Respondent against a wall, which was ultimately investigated by Mr. Muhammad's office and substantiated along with other allegations. (Id. at 126:14-128:2).

Respondent herself then took the stand. (5T 81:4-5). Respondent testified that she was exposed to sexual language, by her male coworkers, on a daily basis. (Id. at 96:22-24). Respondent further testified as to the workplace environment at the hands of Mr. Pereira, including Mr. Pereira singling out Respondent when she was working behind the Third Precinct desk. (Id. at 103:1-4). Respondent further stated that she never observed Mr. Pereira treat her male

colleagues in a similar fashion, and instead, this belittling behavior was singularly against Respondent. (Id. at 103:15-22).

Respondent testified as to Mr. Pereira brushing himself against Respondent's buttocks. (Id. at 104:23-105:15). Respondent testified that she viewed this conduct in violation of her space, and that there was no reason for Mr. Pereira to rub against Respondent. (Id. at 107:7-12). Respondent continued in her testimony, noting that Mr. Pereira would repeatedly invade her personal space, despite Respondent's statements that such conduct was "inappropriate and [that Mr. Pereira was] being unprofessional[.]" (Id. at 108:1-9).

On other occasions, Respondent testified that Mr. Pereira would forcibly remove her hat and "shuffle[]" her hair. (Id. at 113:1-17). In response, Respondent stated:

> He just kept touching me, like I - - I just don't understand. There is no communication with him as many times as I've said to him, you're being unprofessional, don't touch me, I'm not interested, it just kept upping, upping, upping. He just kept upping the ante every time.

(Id. at 113:20-25). Respondent then described an incident from March 2025, in which Mr. Pereira slammed a door, blocked the exit, pinned Respondent against the wall with his knee, attempted to kiss Respondent, and forcibly felt her breasts, waist, and rear end. (Id. at 115:13-118:17). In pertinent part, Respondent testified:

> And as I try to catch the door, (indiscernible) ran right to the door and slammed the door and leaned on it with his shoulder. And I'm like, what are you doing. And he was just like, he goes, (indiscernible), could you give me a mint? And I was just like, it's in my hat. So then he was like - - he's like - - he reaches in to grab the mint. He takes the mint, puts it in his mouth and leans towards me and says, mmm, like, I guess it was good, I guess. I don't know. So then I was like - - I was like, okay, I got to go. And he was just like kept leaning on me. And he kept leaning on me, he took his knee and took my knees, my left knee into my right knee and held it, like pinned me against the wall. So I'm like, what are you doing?
> . . .
> So then when he's doing that, he's leaning in to try to make out with me. I'm like, get off of me. So now I'm trying to like fight with him to get off of me. And I'm like screaming. But there was like so many people in the precinct and it was so loud. No one would have heard anything. So I'm telling him get off, get off, and as I'm trying to like push him or drop my clipboard, I king of look to the side because there's like a little cut, a very small cut between that panel of the door and a screen - - where the printers are for the - - for the - - behind the desk. And I'm trying to see who's pushing. At this time as I'm doing this trying to push, Captain Pereira goes and starts grabbing and touching my on the side of my breasts, my waist and on my ass.

(Id. at 116:22-118:6).

Respondent also stated that Mr. Pereira touched her waist, buttocks, and breasts. (Id.). When asked to describe her feelings in regard to Mr. Pereira's conduct, Respondent testified:

> I think more like (indiscernible) shocked, shocked that my superior officer is pinning me against, not letting me leave so that he could feel me up, make out with me, over countless times telling him I'm not interested, that you're being unprofessional. But it was a joke to him. It was like it seemed like it was like foreplay. I felt so dirty. I felt like I was supposed to be his possession. There's nothing this world that feels worse, that you feel like you're being violated in a

> precinct. You're supposed to protect other[s]. I wear a uniform to help other people, to not let stuff like that happen to other people, and it was happening to me. And with all the people in there, I felt extremely helpless. I felt disgusting, helpless, and I didn't know if anybody was going to say anything (indiscernible). I just wanted to get the hell out of there because I didn't want anything else to happen to me with this man.

(Id. at 120:3-20). Respondent subsequently was shown photographs of the Third Precinct and described to the jury the areas in which Mr. Pereira pinned her against the wall. (Id. at 123:7-10).

Respondent also testified to an incident in which she was exposed to the Ebola virus while at work. (Id. at 124:3-17). When Respondent stated she was informing Mr. Pereira of the situation, Respondent testified that Mr. Pereira stated, "well, that's what you get, Lisa, for tonguing every mother fucker in the precinct." (Id. at 124:19-21). Respondent testified that she was the only female in the room at the time of this statement, and moreover, that Mr. Pereira did not use this language to the male officers that were present. (Id. at 127:4-14).

Respondent next testified to situation involving her filing a formal complaint against Mr. Pereira. (Id. at 127:15-17). During this process, Respondent testified to the following conversation with Detective Desiree Glenn:

> When I went to the director's office to deliver their paperwork that needed to be sent up there, Desiree Glenn - - Detective Desiree Glenn came out from the director's office wanting to speak to me. That's when she said to me, what's going on? And I said, with what?

> And she said, what's going on with you and Pereira and the precinct? And I said, what are you talking about, how do you even know what's going on in the precinct? And that's when she said you're going to need to have to submit to leave the precinct. And I said, why do I have to leave, why can't he leave? And they said, you know that's not going to happen, he's politically connected, you're going to have to leave.

(Id. at 128:7-20). Following this conversation, Respondent filed a submission to be transferred out of the Third Precinct as well as began the process of filing her complaint regarding the workplace harassment. (Id. at 129:16-22). Following the filing of Respondent's thirteen-page complaint, she was interviewed by officials from the City of Newark. (Id. at 134:3-8). Following an interview and "police trial," Respondent received three transfers – first to the robbery unit on April 14, 2015; second to the fleet management unit on April 20, 2015; third to the Second Precinct on September 24, 2015. (Id. at 138:9-139:9). However, on August 31, 2015, Respondent "started receiving a thirty-day notice, change of my shift, my tour, to midnight[,]" which drastically differed from her typical work history of working a day-shift. (Id. at 139:10-18). Ultimately, due to a high degree of shifting officers throughout the department, Respondent never served a night shift, and instead, was assigned an afternoon shift. (Id. at 140:2-9). Following the filing of a complaint in April 2015, Respondent was transferred throughout the City of Newark Police Department a total of five times, which

Respondent documented as believing it was a retaliatory act in response to her complaint being filed. (Id. at 140:18-141:13).

Respondent next testified to having a lawsuit filed against her, by Mr. Pereira, alleging that Respondent defamed his character through her internal complaints. (Id. at 143:14-23). Respondent testified that she viewed the lawsuit as "ridiculous that the person who sexually harassed me (indiscernible) touched me is - - is giving me defamation after I put charges on him." (Id. at 144:4-6). Respondent never received any support, legal or otherwise, as to this lawsuit from the City. (Id. at 144:10-15). Respondent testified that she believed this lawsuit was ultimately "thrown out." (Id. at 145:8-9).

Respondent subsequently testified to the Department's sexual harassment policies and training; specifically, Respondent stated that the officers are trained every six months on sexual harassment, which coincided with their "qualifying" requirements on being trained to handle their respective firearms. (Id. at 145:10-146:22). During the course of redirect examination, Respondent testified to the following incident after she was transferred to the Second Precinct:

> Pereira showed up, stood in the foyer of the 3rd precinct, saw me, mimic smile and so it - - making expressions. I felt uncomfortable. I turned away, kind of blocked myself with the computer monitor and told my desk lieutenant that he's there, there's no reason for him to be - - like even making the perverted faces he's making, I - - I need to leave and go to the bathroom. When I left to go into the bathroom, proceed to realize that I called my husband. I was upset

> and my husband - - I hear someone entering to the bathroom. When I said someone's coming into the bathroom and I had my husband on speak and my husband's like - - I said, let me just call you right back and he was like, don't get off the phone with me, I'm just like, I'll just call you back, he's like don't get off the phone with me. So I'm like fine. So as I go - - he individual that walked in and walked right out, I walked right after they slammed the door and as I walked out, right on the couple of steps to the front was Pereira. Pereira was - - entered into the bathroom and then waited right there because he didn't have enough time to go anywhere else. So from that point, I went back to the precinct and I told the captain, I told the desk boss, I told everyone, I said, I need to leave, I don't want to be anywhere near this man, I want that investigated and the excuse was, he can go to the SOA, the SOA is (indiscernible) so that, he doesn't have to come into the precinct. If you didn't have a meeting with him, there's no reason for him to even come over there or even stand there and mock me and - - and do what he does. That's one incident of many and the reason why the investigation (indiscernible) was because I said it's he said/she said. It's what he says and it's what I say and of course, obviously that's going to work that he's a superior office and I'm just a patrolman.

(6T 208:8-210:12). Respondent stated this was not an insolated occurrence, but rather an example of Mr. Pereira repeatedly showing up to the Second Precinct, without a justification for being there, "all the time just to mess with me." (Id. at 211:6-10). Respondent then testified to the "deal" that Mr. Pereira received from the Department regarding a lightened disciplinary action. (Id. at 213:2-4). Respondent highlighted that she was never asked to testify at an Administrative Law Court regarding Mr. Pereira's possibly disciplinary action. (Id. at 216:13-16). During cross-examination, Respondent testified to being harassed or receiving unwelcomed advances from fifty (50) to sixty (60) people within the

department, and when asked for clarification on redirect examination, Respondent stated the following:

> People just constantly hitting on you. People constantly just making advances. People - - you know, it's a joke. If it doesn't work on this one, it works with the other person. So you know, they - - they just go along (indiscernible) like to see if you - - it's like a fish with the bait, let me see if she'll - - she'll take it, let me see if she'll - - you know, she'll go out with me. It - - it was a constant thing. So you have to brush it off. You have to constantly brush off people hitting on you and taking it as like, whatever and a lot of times you get frustrated cause you say no, you say no, you say no, and it's like, she'll say yes eventually. It just kept on.

(Id. at 225:15-226:3). Respondent was shown a medical note from her October 20, 2016 visit with Dr. Stefanelli, which noted the Respondent's complaints of hostile work environment and sexual harassment in the workplace. (Id. at 227:3-22). Moreover, this document also includes Mr. Pereira by name. (Id. at 227:23-24).

Mr. Pereira took the stand on November 13, 2024. (8T 6:20). Following direct examination and partial cross-examination of Mr. Pereira, the Trial Court entertained a continuation of arguments related to Respondent's time working for the Newark Police, including prior consensual romantic relationships as well as prior altercations with officers. (Id. at 148:7-149:9). Respondent's counsel highlighted to the Trial Court that the Court had previously granted an *in limine* motion to bar discussions regarding romantic relationships as irrelevant. (Id. at

149:13-15). During the course of direct examination, the following exchange occurred:

> Q. Did you ever speak to Lisa Rodriguez about physical altercations she was having with other officers on the job?
>
> A. There may have been a conversation about that.
>
> Q. Okay. Do you remember the specifics or not?
> And, again, if you don't just tell the ladies and gentlemen.
>
> A. I believe, she had an incident with one of her former - -
>
> MR. NOBLE: Your Honor, can we be seen at sidebar?
>
> THE COURT: Sure.
>
> (Sidebar Discussion)
>
> MR. NOBLE: Just briefly, Judge. For the record, I believe my recollection is this was excluded. I understand the ruling yesterday. I just wanted to place on the record that altercations between boyfriends, we had a brief, we had an argument, and this was all excluded. I understand Your Honor's ruling in recollection of yesterday, and I understand now, but I just wanted to place it on the record.
>
> THE COURT: So noted for the record. Overruled. Proceed.

(Id. at 26:1-24). Mr. Pereira subsequently testified to an alleged altercation between Respondent and an individual named Mark Ramos. (Id. at 27:1-28:24).

On November 14, 2024, Mr. Pereira continued with his testimony, now being cross-examined by Respondent's counsel. (9T 28:4). There, Mr. Pereira acknowledged that the Newark Police Department issued an order, to him, to not

go to the Second Precinct at any time; moreover, Mr. Pereira agreed that this was his "own department ordering [him] to not go where [Respondent] was[.]" (Id. at 28:5-12). Mr. Pereira testified that he had no recollection that anyone from the City of Newark informed him that he needed to stay away from the Second Precinct due to Respondent being present and having previously filed sexual harassment complaints against him. (Id. at 29:20-30:5). Mr. Pereira further stated that no one in Newark's Affirmative Action office interviewed him regarding Respondent's sexual harassment complaints, and instead, was simply asked why he presented to the Second Precinct. (Id. at 32:10-21). Mr. Pereira agreed that his position as a boss/supervisor required him to have an understanding of the department's sexual harassment policy as well as make efforts to implement the policies and procedures. (Id. at 33:17-25). Mr. Pereira was subsequently impeached extensively regarding inconsistent statements made as to the City's sexual harassment training – having testified at trial to being trained twice per year, whereas in his deposition testimony he claimed it was two times throughout his entire career. (Id. at 45:11-55:3).

Subsequently, Mr. Pereira testified as to the Internal Affairs investigation and the substantiated claims of sexual harassment made against him by the Respondent. (Id. at 55:4-13). Mr. Pereira was confronted with the document which was marked P-3 for identification, which read, in part:

> The Newark Police Division has fully investigated this complaint. I have interviewed all related witnesses, and the Newark Police Division personnel involved in this matter to obtain all the facts surrounding the complaint. The evidence in this investigation indicates that the facts obtained support the complaint.

(Id. at 60:1-12). Mr. Pereira acknowledged that the Department brought charges against him as it related to the investigation into Respondent's complaint. (Id. at 65:19-23). Mr. Pereira acknowledged that the Internal Affairs investigation concluded he committed the acts that Respondent had previously testified to. (Id. at 70:12-15). The following exchange occurred during cross-examination of Mr. Pereira:

> Q. Let's look at Charge Number 3. Charge Number 3 reads, "Violation of the Newark Police Department Rules and Regulations, disobedience of orders." Do you see that?
> A. Yes, sir.
>
> Q. And just we're clear, the order that they're referencing is the order on sexual harassment in the department, right?
>
> A. Correct.
>
> Q. And there's also a citation there. Charge 3(b). Failure to perform duties. Do you see that?
>
> A. Yes, sir.
>
> Q. All right. So I'm going to read these specifications. Okay?
>
> "Prior to April 10th, 2016, Acting Captain Jose Pereira did disobey a lawful, written order from police director. To wit: General Order Number 90-1. Subject: Sexual harassment. Specifically, Section 4(b)(1), derogatory sexual comments, and that in the presence of Lieutenant Cesar Suarez (phonetic), Police Officers Nabash Araz (phonetic), Paul Taleekian (phonetic), Lisa Rodriguez, and Andrew Hart (phonetic), Acting Captain Jose Pereira made comments in reference to sexual innuendo about his wife's involvement with

> other sexual partners, called his wife a Nazi wife, stated someone should fuck his wife in front of all personnel in the precincts."
>
> A. That's disgusting.
>
> Q. "He stood directly behind Officer Rodriguez with his hands up, staring directly at Officer Rodriguez' buttocks and stated 'Oops, an incident almost happened.' Acting Captain Jose Pereira also stated, 'Oh man, that was almost an incident,' as he brushed passed Police Officer Rodriguez."
>
> In reference to the Ebola [] incident, Acting Captain Pereira stated, "She is always tonguing somebody. She needs to stop tonguing people."
>
> Did I read that right?
>
> A. You read it correctly, sir.
>
> Q. So according to this, the investigator reviewed all allegations, all denials, interviewed all witnesses and made these findings, correct?
>
> A. He made these findings.

(Id. at 73:21-75:18). In his defense, Mr. Pereira claimed the report and findings were "all fabrications and lies[.]" (Id. at 76:2-5). Mr. Pereira testified that Anthony Ambrose, then police director, noted that the investigation was a "shit investigation." (Id. at 85:3-7). Ultimately, Mr. Pereira stated that he pled guilty to using the word "fuck" around his friend, which was an incident that was not included in the entire investigation. (Id. at 87:20-24). However, Mr. Pereira further noted that, as part of his plea agreement, the sexual harassment related charges were to be dismissed and that the City of Newark was not going to say after the meeting involving this plea deal that Mr. Pereira committed any sexually harassing conduct. (Id. at 88:3-17). Mr. Pereira noted he was issued a

twenty-five (25) day suspension but that as of the time he was testifying – November 2024 – he had never served that suspension; it should be noted, Mr. Pereira was retired at the time of his testimony and living in a different State. (Id. at 89:2-24). Mr. Pereira conceded that his defamation lawsuit against the Respondent was ultimately dismissed through a motion for summary judgment. (Id. at 99:7-20).

Respondent's counsel again impeached Mr. Pereira during further cross-examination; specifically, Mr. Pereira, in his 2019 deposition, stated he had no recollection of Respondent making any sexual remarks, however, in his November 2024 trial he testified to a comment regarding breast augmentation. (Id. at 109:3-24).

On November 15, 2024, Respondent called Dr. Barbara Ziv, an expert in the field of forensic psychiatry to testify. (10T 6:8). During the *voir dire* process to qualify Dr. Ziv, the following information was proffered to the jury:

> [A.] So sometimes I evaluate an individual and I testify about that individual. I'm also called to testify to educate juries about counterintuitive victim behavior. And in that, I act as a blind witness in that I don't - - haven't done an evaluation of the individual. I speak broadly about things that people believe about sexual assault that - - that are just not accurate, not supported by what the literature says, and what is founded in reality. So I do both of those things.
>
> Q. Can you give the jury an example of cases where you testified as a blind witness, as you say?
>
> A. Well, probably the ones that people would be most aware of is I testified as a blind expert, meaning teaching the jury about

> counterintuitive victim behaviors, in both Harvey Weinstein criminal trials in California and New York, and I testified in the second Bill Cosby trial.

(Id. at 9:22-10:14). It should be noted that Appellant counsel did not object to anything that Dr. Ziv testified to during her *voir dire*, specifically in regard to the reference to Bill Cosby's trial or any other notable trial she has provided testimony in. After being qualified by the Trial Court as an expert, Dr. Ziv testified that she had diagnosed the Respondent in 2016 with "major depressive disorder," and in 2020 during a reevaluation, Dr. Ziv stated that Respondent "met criteria for diagnosis of persistent depressive disorder." (Id. at 30:20-31:4). While Appellant's counsel attempted to question Dr. Ziv on the idea she would have no way of determining whether Respondent told the truth during their meetings, Dr. Ziv countered, stating that Respondent was "not only internally consistent[,]" but was "consistent with the types of behaviors that are almost universally described by victims of sexual harassment in the workplace." (Id. at 86:25-87:18). Appellant's counsel further questioned Dr. Ziv, asking if she was ever informed by Respondent that she was harassed by fifty (50) or sixty (60) individuals of the Newark Police Department, to which Dr. Ziv replied, "she never said 50 or 60, but she said that she had been persistently sexually harassed for over 20 years." (Id. at 90:25-91:5).

Next, Anthony Ambrose's deposition was read into the record. (Id. at 147:10). During this read it, Mr. Ambrose agreed that Mr. Pereira's investigation included a finding of "disobedience of orders[,]" and that this charge was "centered on the standing order concerning sexual harassment in the workplace[.]" (Id. at 154:4-14). In terms of a trial as it relates to Mr. Pereira's issues, the following exchange occurred:

> Q. So why wasn't there a trial?
>
> A. What happens is, is in every trial, they come in, just like in every type of trial there was. There was an agreement. We make an offer. We talk about it with the tribunal. And we said, okay, you know, X amount of days, blah-blah-blah. We'll merge charges, and they go back - - and in this situation, he was given - - we merged charges, and he was given 25 days, and they waived it through the OAL, Office of Administrative Law.

(Id. at 157:15-25). Mr. Ambrose continued that Mr. Pereira was not required to undergo any additional sexual harassment training. (Id. at 160:23-161:1). Additionally, Mr. Ambrose also could not recall as to Mr. Pereira's claim that Mr. Ambrose termed the investigation as a "shit investigation." (Id. at 161:2-15).

Next, the jury heard the video testimony of former Newark Police Officer Paul Tehlikian. (Id. at 165:3). In his video testimony, Mr. Tehlikian testified that one time he observed Mr. Pereira approach the Respondent from behind and state "Oops, almost had an accident" in which Mr. Pereira placed his hands very close to Respondent's back as well as looking directly at Respondent's buttocks.

(Id. at 167:17-168:2). Mr. Tehlikian stated that Mr. Pereira had called his own daughter a "royal [cunt,]" which was previously denied by Mr. Periera. (Id. at 169:17-23). Mr. Tehlikian stated that Mr. Pereira's language was something he "ain't ever heard nobody in 25 years talk like that in no precinct, male or female." (Id. at 170:15-16). Mr. Tehlikian also described an incident in which Mr. Pereira said to an individual named Michael Silva, "Mike, can you do me a favor and fuck my wife so she can be happy?" (Id. at 171:5-13). Mr. Tehlikian also noted an issue where Mr. Pereira had made a secretary cry "all the time[,]" and that Mr. Pereira "degraded her in front of them numerous times." (Id. at 174:1-10).

On November 18, 2024, Antonio Cruz testified. (12T 156:24). Mr. Cruz testified that he had multiple terms working in the Newark Police Department's Internal Affairs Division. (Id. at 158:1-3). Mr. Cruz confirmed that he was within the Internal Affairs Division during the relevant timeframe in which Respondent filed a complaint against Mr. Pereira. (Id. at 160:10-16). Mr. Cruz confirmed that he sustained "some part" of Respondent's complaint, including the disobedience of orders charge, which was previously discussed above as relating to the violation of the police department's sexual harassment policies. (Id. at 161:15-24; 164:3-6; 165:17-20). Mr. Cruz confirmed the report's statements, including the incident that was previously described by Mr.

Tehlikian. (Id. at 169:2-17). Mr. Cruz also testified that he concluded in his investigation that Mr. Pereira had made false statements to Mr. Cruz regarding the incidents in question. (Id. at 173:22-24). Moreover, Mr. Cruz also confirmed the investigation substantiated the incident in which Mr. Pereira stated Respondent was "tonguing" other individuals. (Id. at 174:14-17).

Respondent rested her case on November 19, 2024. (14T 5:16). Appellants moved for a motion for a directed verdict, but the Trial Court ultimately held the motion in abeyance to "finish with the jury." (Id. at 10:1-10). Moreover, the Appellants rested their cases (Id. at 33:20-34:2). The Court ultimately heard oral argument on a variety of issues, in which the Trial Court deemed pre-2015 incidents as being time-barred and not to be considered by the jury per his instructions. (Id. at 62:24). However, the Court also denied the Appellants' motion for judgment, pursuant to R. 4:40. (Id. at 63:10-65:3).

Ultimately, the jury returned a verdict in favor of the Respondent on two of her claims: (1) $250,000.00 on her claim of hostile work environment under the New Jersey Law Against Discrimination against her employer Defendant City of Newark, with Defendant Jose Pereira being jointly and severally liable as an aider and abettor; and (2) $1,000,000.00 on her claim of Assault and Battery against Defendant Jose Pereira. (Da36-Da42). These amounts were later

adjusted for interest to $318,075.48 and $1,272,301.91, respectively. (Da44-Da45).

LEGAL ARGUMENT

POINT I

The Trial Court Did Not Commit Harmful Error When It Barred Evidence of: (1) Plaintiff's Husband's Prior Conviction and the Questioning of Dr. Ziv Regarding Plaintiff's Husband; (2) Plaintiff's Prior Consensual Relationships; and (3) Prior Incidents Between Plaintiff and Other Members of the Newark Police Department (3T 12:25-13:8; 3T 6:25-7:1; 8T 149:13-15; 8T 149:18-150:23; 8T 163:5-19; 8T 165:12-19; 10T 92:5-20)

On appeal, Appellant makes several arguments regarding the Trial Court's decision to bar certain evidence. Specifically, the trial court barred evidence, after motion practice, regarding (1) Plaintiff's husband's prior conviction; (2) Plaintiff's prior consensual relationships; and (3) prior alleged altercations between Plaintiff and other members of the Newark Police Department. Appellant claims the trial court committed harmful error, however, this is simply not true. The trial court acted well within its discretion to bar certain evidence as highly prejudicial and for other good cause, and the Appellate Court should see that the trial court did not abuse its discretion; in fact, the trial court routinely kept "the door open," noting that trials can create scenarios not previously expected, and did allow the opportunity to revisit the issues during the course of the trial itself. Moreover, Appellant made the conscious decision not to oppose

the motions *in limine* on at least two of these issues – reference to the husband's prior conviction and Plaintiff's prior consensual relationships. Appellant actively chose not to utilize the mechanisms available at trial and cannot now complain of being deprived a fair trial on appeal. In short, there are a variety of reasons as to why the Appellate Court should affirm the trial court's decisions and the ultimate verdict, and as such, the Appellant's arguments must be dismissed as meritless.

In the course of reviewing a trial court's evidentiary rulings, Appellate Courts are to review under the standard of "abuse of discretion." Brenman v. Demello, 191 N.J. 18, 31 (2007). As such, the reviewing Appellate Court will not disturb the lower court's ruling unless the ruling is "so wide of the mark that a **manifest denial of justice resulted**." Green v. N.J. Mfrs. Ins. Co., 160 N.J. 482, 492 (1999) (emphasis added).

N.J.R.E. 402 states, "[a]ll relevant evidence is admissible, except as otherwise provided in these rules or by law." Id. N.J.R.E. 403 then states, "relevant evidence may be excluded if its probative value is substantially outweighed by the risk of[,]" undue prejudice, among other concepts. Id. Specific here, a motion *in limine* is a "pretrial request that certain inadmissible evidence not be referred to or offered at trial." Cho v. Trinitas Reg'l Med.

Center, 443 N.J. Super. 461, 470 (App. Div. 2015) (quoting Black's Law Dictionary 791 (9th ed. 2009))

In State v. Santamaria, 236 N.J. 390 (2019) the New Jersey Supreme Court opined:

> Defendant cannot be permitted to argue now on appeal that it was error on the part of the court to admit the photos. Although we find it was not error to admit the photos, even if it were error, a party cannot strategically withhold its objection to risky or unsavory evidence at trial only to raise the issue on appeal when the tactic does not pan out. See State v. Harper, 128 N.J. Super. 270, 277 (App. Div. 174) ("Trial errors which are induced, encouraged or acquiesce in or consented to by defense counsel ordinarily are not a basis for reversal on appeal."); cf. State v. Jenkins, 178 N.J. 347, 359 (2004) (discussing invited error doctrine). Plain error has intentionally been created as a high bar for parties to meet in order to encourage litigants to raise objections to evidence at the trial level where the court can best "forestall or correct a potential error, "in a timely manner. [State v. Bueso, 225 N.J. 193, 203 (2016)].

Santamaria, 236 N.J. at 409.

A. Federal prison incident involving Plaintiff's husband and questioning of Plaintiff's expert regarding Plaintiff's Relationship with her husband (3T 12:25-13:8; 10T 92:5-20)

In his brief[2], Appellant argues that the Trial Court committed a harmful error by not allowing defense counsel "to cross-examine the plaintiff about an

[2] Appellant raises issues relating to Respondent's husband separately; however, these arguments are concisely presented herein under the same heading given that they relate to each other.

incident at a federal prison involving her husband" and that the Trial Court prevented Appellant from questioning expert Dr. Barbara Ziv concerning Plaintiff's relationship with her husband. (Appellant Br. p. 34, 38). Here, the trial court did not commit harmful error, nor abuse its discretion as to whether evidence may or may not be admitted at trial. As such, the Appellate Court should reject Appellant's argument on this issue.

Prior to trial, Respondent filed several motions *in limine*, one of which was to exclude "any evidence or testimony regarding Ms. Rodriguez's husband's (Victor Patella) federal conviction" as any such evidence would be irrelevant to the issues of the case, provide no probative value, and be extremely prejudicial, pursuant to N.J.R.E. 402 and 403. Respondent's argument in motion practice was that – (1) Ms. Rodriguez had no involvement in any conduct her husband was involved in criminally; (2) the criminal conduct did not touch upon the issues of sexual harassment, hostile work environment, and gender discrimination, which were the basis of the lawsuit; and (3) the use of any such evidence was purely to attack Ms. Rodriguez's character by attempting to insinuate, without evidence, that she was involved in the criminal conduct. Appellant initially did not oppose this motion, but later the trial court ultimately ruled that evidence relating to an alleged altercation between Plaintiff and her husband in a correctional facility while he was incarcerated, and two alleged

conversation between that facility's Warden and a Newark officer that was allegedly subsequently relayed to Appellant, was not allowed in at trial, for the following reason:

> Based on what counsel's filed, as well as the arguments of counsel, at this point, I think it's out. **I think all this other stuff with regard to a conversation that plaintiff didn't know about between the warden and somebody in the IA division of the City of Newark Police Department for which there's no basis, for which there's no documentation to show, at this juncture, it's out**. Don't mention it on opening.
>
> **If something comes up, depending on how the case develops during the trial, if something else happens, something else comes out, I'll revisit the issue**. But I think for purposes of opening, I think it's out.

(3T 12:25-13:13) (emphasis added).[3] The trial court ruled in favor of the Respondent and even kept the door open to readdress the issue should it ever become a matter of concern. As the transcript demonstrates, the above information was never presented at trial – as it had no relevance to the issues at hand and it involved several layers of hearsay involving unidentified witnesses who were not called to testify. Nonetheless, and despite the evidence was never proffered while the "door remained open," the type of evidence that Appellant desired to come in squarely fits into the exact type of prejudicial and

[3] It should be noted that while the Court heard oral argument regarding this issue, the Appellant did not initially oppose Respondent's motion *in limine* seeking to bar evidence regarding the husband's conviction. (3T 27:6-14).

inflammatory evidence that N.J.R.E. 402 and 403 are designed to prohibit. The trial court correctly concluded that the evidence had no probative value, as it was an alleged isolated incident between a married couple that did not involve any aspect of the case and was only offered to smear Plaintiff through her husband's conviction and prison sentence.

Similarly, defense counsel attempted to elicit testimony from Respondent's expert Dr. Barbara Ziv regarding Respondent's relationship with her husband. Simply put, and similar to the evidence relating to her husband's prison sentence, Respondent's husband was not involved whatsoever in the facts of this matter and seemingly did not come up until the eve of trial when it became clear that Appellant sought to "muddy the waters" with irrelevant facts that only served to confuse the jury and prejudice Respondent. Nonetheless, and while defense counsel elicited testimony at other times in the trial regarding Respondent's husband in an effort to establish some form of bias, questioning Respondent's expert about something that was outside the scope of her report and unrelated to her testimony was an objectionable elicitation that was properly sustained by the Trial Court under N.J.R.E. 402 and 403. Same is especially true given the fact that it was not so subtle attempt to open the door and attempt to elicit evidence of the criminal history of Respondent's husband. In the end, given that defendant in fact elicited testimony regarding Respondent's husband,

it is frankly unclear what their argument is on the instant appeal given Dr. Ziv's complete lack of connection to issues relating to Respondent's husband.

As such, the Trial Court did not abuse its discretion to bar such evidence relating to Respondent's husband and his criminal background that had absolutely no probative value as to the facts at issue, and the Appellate Court should conclude that no harmful error has occurred.

B. Prior altercations with Plaintiff and members of the Defendant Newark Police Department (8T 163:5-19; 8T 165:12-19)

Next, Defendants argue that they should have been entitled to present evidence regarding alleged previous workplace altercations and arguments involving Plaintiff and other members of the Newark Police Department, which notably did not involve Appellant whatsoever. Appellant argues on appeal that evidence of prior physical altercations "was highly relevant to demonstrate that the plaintiff's own aggressive and unprofessional conduct . . . was the primary contributor to any hostile work environment[.]" (App. Br. p. 37). During oral argument regarding Respondent's motion *in limine* on this issue, Respondent proffered that, as to the only documented altercation occurred in 2008-09 (which was coincidentally a timeframe which the Trial Court later determined to be time-barred as to Plaintiff's own claims), Mr. Pereira was not involved in same whatsoever as a participant or witness; in fact, Mr. Pereira was not even

affiliated with the Third Precinct at that point in time, the incident did not involve sexual harassment, and that same would ultimately create a trial within a trial. (3T at 14:24-15:5). The Trial Court agreed, holding that the Court was "not convinced it's more probative than prejudicial certainly, at this point, given the lack of proximity in time or subject matter. No, I think it's out. So ordered." (Id. at 15:6-9).

Still, despite this ruling, the Court still allowed evidence of previous physical altercations in at trial, overruling the objection of Respondent's counsel. (6T at 26:1-24). Appellants would have the Appellate Court believe that they had zero opportunity to utilize this irrelevant and prejudicial evidence, but in reality they had such an opportunity. (Id. at 27:1-28:24). Simply put, while this evidence provided no probative value and was extremely prejudicial, the Court allowed same in anyway, rendering the instant appeal moot and exposing such evidence for what it was given the jury's verdict.

As the case law above highlights, the Appellate standard of review is abuse of discretion. Despite Appellant counsel not filing any formal opposition to the motion, the Trial Court entertained oral argument regarding the issue, based its ruling on N.J.R.E. 402 and 403, and ultimately nonetheless allowed some evidence in despite this ruling to bar evidence of this type. Given that the evidence had no apparent probative value to the facts at issue and was extremely

prejudicial and confusing, the Trial Court did nothing in this instance that can be determined as an abuse of discretion and, as such, the Appellate Court should dismiss this argument at meritless.

C. Plaintiff's prior consensual relationships with members of the Newark Police Department (3T 6:25-7:1; 8T 149:13-15; 8T 149:18-150:23)

Appellant also argues that the Trial Court should not have precluded evidence that Plaintiff was previously involved in consensual relationships with other Newark Police officers during her time employed. Again, at the Trial Court level, Respondent filed a motion *in limine* to bar any such evidence as irrelevant and prejudicial. Respondent highlighted that the consensual relationships did not involve the defendant Jose Pereira or implicate any of Plaintiff's claims and, as such, should be barred. Beyond the standard arguments under N.J.R.E. 402 and 403, Respondent also argued that the Trial Court should look at such evidence in a similar fashion to N.J.S.A. § 2C:14-7. Commonly referred to as New Jersey's Rape Shield Law, the statute prevented certain evidence, including previous sexual conduct, from being admitted in criminal sexual assault trials when the evidence is merely being used to essentially shift the blame onto the victim. Respondent noted that while the statute is primarily designed for criminal trials, the same idea should be applied in a civil matter, especially when the consensual relationships were not with the Appellant. Appellant did not

oppose Respondent's motion *in limine* on this issue, nor did they even engage in any oral argument on the matter. As such, the Trial Court barred the evidence.[4]

As the case law cited above plainly states, a defendant cannot ignore an issue at the Trial Court level in the hopes of having said issue become the basis of an appeal later. Here, Appellant seeks exactly that as it relates to this argument. Appellant did not object to the decision to bar such evidence, nor did they even submit any opposition to Respondent's motion. As such, Appellant cannot now argue on appeal that the Trial Court committed harmful error.

Moreover, the Appellate Court should also find that the Trial Court did not abuse its discretion on this issue. The evidence Appellant now complains was improperly barred was prejudicial and provided zero probative value to the

[4] Appellant attempts to argue that Respondent was inconsistent with her testimony, however, no such thing exists. First, there is no contradiction or inconsistency in that Respondent informed Dr. Ziv during her evaluations that she was harassed persistently during a 20-year period but did not provide an exact amount of harassers, and then gave an estimate at trial of 50-60 harassers during her 20+ year career. These are not mutually exclusive statements. Moreover, Appellant's counsel provides the Court with inaccurate statistics in an attempt to discredit Respondent's testimony. Respondent testified that she endured sexual harassment at the hands of 50-60 Newark police officers during her 20+ year career. The total figure of Newark police during this 20-year period is not 1,419, but obviously much more. Appellant presumably does not factor in retired, fired, quit, or transferred police officers during that same period. As such, the 50-60 officers should be not compared to the current Newark police force total, but rather the total number of men and women that have served as a police officer in Newark, New Jersey during the entirety of Respondent's 20+ year tenure, which obviously stands to amount to substantially more than 1,419.

case. Pursuant to N.J.R.E. 402 and 403, the Trial Court properly barred the evidence. This is not a harmless error, there is not a grave disruption of justice, and the Appellate Division should not disturb the lower court's outcome for the variety of reasons cited herein.

POINT II

The Trial Court Did Not Commit Harmful Error in Refusing to Grant a Mistrial or Provide a Curative Instruction Based on Plaintiff Counsel's Comments Regarding the Qualifications of Dr. Barbara Ziv During Opening Remarks (3T 62:7-9)

Appellant next argues that the Trial Court committed harmful error when it did not provide grant a mistrial or provide a curative instruction to the jury following Respondent's opening statement. The Trial Court did not commit harmful error, nor did it abuse its discretion, in the decision not to take action or administer a curative instruction. Respondent's opening statement did not "taint the jury" as claimed by the Appellant; instead, Respondent's counsel merely stated that the jury were going to hear from an expert that had previously testified as an expert in the trial of Bill Cosby, which was an obvious and proper effort to boost her credibility due to her involvement in high-profile matters. Respondent's counsel did not equate any of the involved parties, including Appellant, to Bill Cosby, nor make any comment beyond indicating expert Barbara Ziv's prior involvement in that matter, again purely highlighting Dr. Ziv's expertise and boosting her credibility. The Trial Court did not abuse its

discretion in rejecting Appellant's demand for a mistrial or a curative instruction as no such action was necessary given the blatant innocuousness of the comment. As such, the Appellate Court should dismiss this argument in its entirety.

Specifically, "[t]he determination of whether the appropriate response is a curative instruction, as well as the language and detail of the instruction, is within the discretion of the trial judge 'who has the feel of the case and is best equipped to gauge the effect of a prejudicial comment on the jury in the overall setting.'" State v. Loftin, 146 N.J. 295, 365-66 (1996) (quoting State v. Winter, 96 N.J. 640, 647 (1984)). An Appellate Court applying the abuse of discretion standard "should not substitute its own judgment for that of the Trial Court, unless 'the trial court's ruling was so wide of the mark that a manifest denial of justice resulted.'" State v. Perry, 225 N.J. 222, 233 (2016) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)).

During opening statements, Respondent provided the simple following remark:

> You're going to hear from a psychiatrist named Barbara Ziv out of Philadelphia. She testified in the Bill Cosby case. She testified for the government in the Harvey Weinstein cases. Okay? And she's going to tell you what the effects of sexual harassment are on people like Lisa. She understands sexual harassment. She's an expert in it. She's going to explain to you how it affected Lisa.

(3T 56:20-57:2). After the opening statement, defense counsel brought several objections to the Trial Court, including as to the reference to Bill Cosby. (Id. at 59:4-6). Respondent counsel responded, arguing that Dr. Ziv would not discuss details of the Cosby trial, but rather, this factual inclusion was merely to demonstrate Dr. Ziv's experience and credibility as an expert. (Id. at 60:14-25). Moreover, Respondent's counsel noted that the information would come up during the *voir dire* portion of direct examination on Dr. Ziv as a way to qualify her as an expert in the field of sexual harassment. (Id. at 61:17-22). As such, the Trial Court denied defense counsel's demand for a mistrial. (Id. at 62:7-9). Later in the trial, during the *voir dire* of Dr. Ziv, the following occurred:

> A: So sometimes I evaluate an individual and I testify about that individual. I'm also called to testify to educate juries about counterintuitive victim behavior. And in that, I act as a blind witness in that I don't - - haven't done an evaluation of the individual. I speak broadly about things that people believe about sexual assault that - - that are just not accurate, not supported by what the literature says, and what is founded in reality. So I do both of those things.
>
> Q: Can you give the jury an example of cases where you testified as a blind witness, as you say?
>
> A: well, probably the ones that people would be most aware of is I testified as a blind expert, meaning teaching the jury about counterintuitive victim behavior, in both Harvey Weinstein criminal trials in California and New York, and I testified in the second Bill Cosby trial.

(10T 9:22-10:14). Notably, at this time in the trial, Appellant did not object to the reference to Bill Cosby.

Here, the only two references to Bill Cosby throughout the entire trial were both used purely and plainly to show that Dr. Ziv was a credible and reputable expert in the field of sexual harassment. Respondent counsel did not go beyond that single factual statement. Respondent did not attempt to equate the Appellant or anyone else to Bill Cosby, nor make any implication as to such. Moreover, Appellant seemingly failed to maintain its objection to this supposedly "highly prejudicial" statement during the *voir dire* portion of Dr. Ziv's testimony despite the fact that this second reference was identical to the statement in counsel's opening. If the inclusion of Dr. Ziv's participation in Bill Cosby's trial was so improper as to render the jury partial towards the Respondent, then Appellant would have continued to object to the inclusion of Bill Cosby during Dr. Ziv's *voir dire*. In short, Respondent did not include a simple fact relating to Bill Cosby in a nefarious, improper or prejudicial way. Instead, the inclusion was purely to demonstrate Dr. Ziv's expertise and to boost her credibility, which is a perfectly acceptable purpose for an expert witness. Therefore, the Appellate Court should conclude that the Trial Court did not abuse its discretion in any way, and dismiss Appellant's argument on this issue as meritless.

POINT III

The Trial Court Properly Denied Defendant's Motion For Judgment Pursuant to R. 4:40-1 (Da43; 14T 63:10-65:3)

As to the applicable standard on appeal, "[i]n reviewing a judge's denial of a motion for a directed verdict, we apply the same standard that governs the trial judge." Carbajal v. Patel, 468 N.J. Super. 139, 157 (App. Div. 2021) (citing ADS Assocs. Grp. v. Oritani Sav. Bank, 219 N.J. 496, 511 (2014)). "As applied here, we must accept as true all evidence presented by plaintiff and the legitimate inferences drawn therefrom, to determine whether the proofs are sufficient to sustain a judgment in her favor." Prioleau v. Kentucky Fried Chicken, Inc., 434 N.J. Super. 558, 569 (App. Div. 2014) (citing Monaco v. Hartz Mountain Corp., 18 N.J. 401, 413 (2004)). "[T]he judicial function here is quite a mechanical one. The Trial Court is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the party opposing the motion." Id. (quoting Dolson v. Anastasia, 55 N.J. 2, 5-6 (1969)).

Here, Appellant argues that Plaintiff's evidence "was far from compelling." (App. Br. p. 44). However, there was a substantial amount of evidence, including not only plaintiff's testimony but corroboration of same on at least two levels of the City of Newark's investigatory apparatus, in this case as to the harassing and, most importantly given the verdict against Appellant, physical sexually assaultive conduct. As such, and given the jury had such substantial corroborating evidence to go well beyond apparently finding

plaintiff's testimony credible and Appellant lacking in same, there was not only enough evidence presented to have a jury return a verdict in Respondent's favor, but there was more than sufficient evidence to withstand a motion of directed verdict pursuant to R. 4:40-1. During oral argument on this matter, Respondent argued the following that witness Navasha Rawa testified that the training at the employer was insufficient (14T 52:8-9), and Plaintiff testified that individuals within the third precinct mocked the complaint reporting procedure (Id. at 53:1-3). Moreover, Respondent counsel provided the Trial Court with the following:

> Yes, Judge, 50 or 60 people over all these years. She mentioned constant comments, innuendo, the sexual propositions that she detailed. And then she heads into the third Precinct. The third Precinct situation was not a new situation. It was a continuation of everything that she's faced that she told Dr. Ziv about that Dr. Ziv reported on and testified about that happened on her on a regular basis while she was there.

(Id. at 57:6-17). Additionally, the jury heard ample evidence regarding two internal investigations within the City of Newark that corroborated Plaintiff's allegations and complaints against Appellant, heard from an internal affairs investigator who concluded that Mr. Pereira had used vulgar language in a derogatory manner directed at women, had heard testimony from a third-party which corroborated an incident involving Mr. Pereira being sexually inappropriate to the Respondent, and heard testimony from the internal affairs investigator that specifically handled this incident who testified that he viewed

Mr. Pereira as providing false statements during the investigation. Therefore, even setting aside the fact that the aforementioned motion requires the Court to take Plaintiff's testimony as true, which obviously implicated Appellant in allegations of both sexual harassment and sexual assault and battery, the Trial Court was completely correct in denying this motion.

During the course of trial, the City of Newark filed a motion for a directed verdict, which was ultimately denied. However, Appellant did not file his own motion for a directed verdict, but rather, filed a letter to the Trial Court adopting all of the "same legal reasons" as authored by the City of Newark. (Pa78) The City of Newark's motion did not reference the claims specific to Appellant, namely the claim of aiding and abetting and assault and battery, in this letter.[5] (Ibid). As a result of Appellant's failure to properly raise the argument in question at the Trial Court, namely filing a motion for a directed verdict as it relates to the claims of (1) aiding and abetting and (2) assault and battery, the standard that the Appellate Court should apply is the plain error standard, pursuant to R. 2:10-2. "Relief under the plain error rule, R. 2:10-2, at least in civil cases, is discretionary and 'should be sparingly employed.'" Baker v. Nat'l

[5] Appellant made passing reference to aiding and abetting in oral argument (14T 8:15-19). However, this claim was never formally briefed or a motion for directed verdict filed as it relates to aiding and abetting. Moreover, Appellant never made any argument – in brief or oral argument – as it relates to the assault and battery claim that the jury found him liable for and awarded $1,000,000.

State Bank, 161 N.J. 220, 226 (1999) (quoting Ford v. Reichert, 23 N.J. 429, 435 (1957)). Under R. 2:10-2 and the plain error rule, the reviewing court must "determine whether any error . . . was 'of such a nature as to have been clearly capable of producing an unjust result.'" Toto v. Ensuar, 196 N.J. 134, 144 (2008) (quoting Mogull v. CB Com. Real Est. Grp., Inc., 162 N.J. 449, 464 (2000)). Here, Appellant fails to demonstrate a plain error in the Trial Court denying the motion for a directed verdict. The jury heard ample evidence to support the verdict it ultimately returned, especially given the extreme instances of sexual assault and harassment described by Plaintiff of which the jury found credible and which this Court must accept as true at this time, and the Appellate Court should not disturb that result.

Ultimately, the question for the jury in this action was that of credibility and whether they viewed Respondent as more credible than the individual Appellant Jose Pereira. Given the jury returning a verdict in favor of the Plaintiff, it seems illogical to think that Respondent's evidence was "far from compelling" in both substance and theory and especially given the corroborating evidence. In short, Appellant does not present a meaningful argument on this issue and the Appellate Court should dismiss it in its entirety.

POINT IV

The Trial Court Did Not Commit Cumulative Errors (Not Raised Below)

As to the standard relating to the cumulative nature of alleged errors, "[t]he Appellate Division has likewise recognized the capacity of many otherwise small errors to create the likelihood of an unjust result and has acted to correct that injustice by affording aggrieved parties new trials based on an evaluation of cumulative error." Pellicer ex rel. Pellicer v. St. Barnabas Hosp., 200 N.J. 22, 54 (2009). The Pellicer Court went further to state:

> As our Appellate Division has aptly observed, a trial is a dynamic organism which can be desensitized by too much error or too much curative instruction. In the appropriate circumstances, therefore, a new trial may be warranted when there were too many errors and the errors relate to relevant matters and in the aggregate rendered the trial unfair.

Id. at 54-55 (quoting Diakamopoulos v. Monmouth Med. Ctr., 312 N.J. Super. 20, 37 (App. Div. 1998) (internal citations and quotations omitted). As outlined in the arguments above, the Trial Court did not commit any errors that the Appellant now complains, and moreover, nothing in the papers submitted demonstrate a degree of cumulative errors that warrant a new trial. First, the various claims in Appellant's Point I fly directly against the Pellicer Court's reasoning. Appellant's complaints were not on "relevant matters," but instead were irrelevant slivers of evidence that were highly prejudicial. Appellant has not properly demonstrated how the exclusion of such evidence would have either shifted the trial in the Appellant's favor in isolation, or alternatively, how the cumulation of these errors ultimately led to an unfair trial.

Similarly, the passing reference to the Bill Cosby trial and Dr. Ziv's involvement in same to merely demonstrate Dr. Ziv's expertise and renown in the field of sexual harassment is not an error, which the Appellant seemingly agreed with at trial due to the lack of an objection during the *voir dire* of Dr. Ziv which presented an identical fact. Again, this is not an error, and instead was properly handled by the Trial Court. Lastly, Appellant's motion pursuant to R. 4:40-1 was properly denied. Plaintiff had testified regarding the sexual harassment and physical assault and battery she endured, which was corroborated at least partially by various third parties. Dr. Ziv testified regarding her report and interview with Plaintiff. Jose Pereira testified regarding his involvement, and the jury was left to ultimately have the question of which version of events do they find more credible. Viewing the facts in light most favorable to the nonmoving party – in this case the Respondent – it was the right decision to deny the motion, which was further evidenced by the jury returning a verdict in favor of the Respondent. Again, there was no error.

Overall, Appellant takes properly adjudicated matters - the motions *in limine* to bar particular pieces of evidence, the motion for a directed verdict, and the proper decision to deny a mistrial – and attempts to argue these are errors. The Appellate Division should recognize here that Appellant's arguments are without merit and must be denied.

POINT V

Appellant Fails to Demonstrate How the Jury Verdict Was Manifestly Unjust (Da36-Da42; Da44-Da45)

As to Appellant's argument as to the amount of the jury verdict, R. 2:10-1 states:

> In both civil and criminal actions, the issue of whether a jury verdict was against the wight of the evidence shall not be cognizable on appeal unless a motion for a new trial on that ground was made in the trial court. The trial court's ruling on such a motion shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law.

"[A] jury verdict, from the weight of evidence standpoint, is impregnable unless so distorted and wrong, in the objective and articulated view of a judge, as to manifest with utmost certainty a plain miscarriage of justice." Jacobs v. Jersey Central Power & Light Company, 452 N.J. Super. 494, 503 (App. Div. 2017) (quoting Carrino v. Novotny, 78 N.J. 355, 360 (1979)). "A jury's verdict, including an award of damages, is cloaked with a 'presumption of correctness.'" Cuevas v. Wentworth Grp., 226 N.J. 480, 501 (2016) (quoting Baxter v. Fairmont Food Co., 74 N.J. 588, 598 (1977)). The authority of a reviewing court to set aside a jury verdict on the basis of excessiveness is "limited." Carey v.

Lovett, 132 N.J. 44, 66 (1993). As the Supreme Court of New Jersey succinctly stated,

> Accordingly, juries must be given wide latitude in which to operate. Only if it clearly and convincingly appears that a damages award is so excessive that it constitutes a miscarriage of justice is a court empowered to overthrow the jury's verdict and grant a new trial. Alternatively, in such circumstances, courts also are authorized to reduce or remit the damages.

Johnson v. Scaccetti, 192 N.J. 256, 280 (2007) (internal citations and quotations omitted).

Here, the Appellate Court should not entertain this argument, as Appellant failed to timely file a motion for a new trial, pursuant to R. 4:49-1, which is a requirement under R. 2:10-1. Similar to other Points in this brief, the Appellant seeks appellate review without first properly exhausting all available avenues for relief in the lower courts.

Still, Respondent testified extensively regarding her abuse at the hands of Jose Pereira, both physical and emotional. Respondent testified that she was sexually assaulted by Mr. Pereira, including having her body slammed against a wall while Mr. Pereira not only attempted to kiss Respondent, but subsequently felt her buttocks and breast regions. (5T 116:22-118:6). Moreover, the jury heard ample corroborating evidence from other members of the department, while also observing Jose Pereira be cross-examined and impeached on multiple occasions.

The jury heard the testimony of Dr. Ziv, a credible expert in the field of forensic psychology. Dr. Ziv testified that Respondent was diagnosed with major depressive disorder and persistent depressive disorder as a direct result of the conduct she endured at the hands of both Mr. Pereira and the Newark Police Department staff as a whole. (10T 30:20-31:4). The jury ultimately returned a verdict of $1,000,000 as a result of the "harm caused by Defendant, Jose Pereira's, assault and battery[.]" (Da042). The case law cited above highlights the rare instances in which a jury verdict should be returned. Here, given the sexual assault that occurred, the jury heard ample evidence to support the verdict and monetary award; as such, the Appellate Court should dismiss this argument as meritless. The same argument naturally applies to the award provided for the aiding and abetting claim under the LAD, which stemmed from the same severe and pervasive conduct creating a clear hostile work environment.

In the end, the jury did not award Respondent with an absurd monetary amount that would shock the conscience nor does the verdict demonstrate an incident of manifest injustice. In short, the jury correctly returned a verdict of an appropriate amount. As such, the Appellate Court should not disturb the verdict – not only due to the Appellant's failure to timely file a motion for a new trial, but also due to the lack of any sign of injustice or issue with the verdict amount.

CONCLUSION

Based on the aforementioned, Appellant fails to present any rationale as to why the reviewing Appellate Court should uproot the Trial Court's rulings and the jury verdict. As such, the Appellate Court should deny the Appellant's meritless appeal in its entirety.

Respectfully submitted,

Gregory Noble

Gregory B. Noble, Esq.
R. Daniel Bause, Esq.
Andrew S. Karlbon, Esq.

Dated: August 19, 2025

LISA RODRIGUEZ, Plaintiff-Respondent, v. CITY OF NEWARK, and JOSE PEREIRA, Defendants-Appellants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Appellate Division Docket No.: A-1457-24 Civil Action ON APPEAL FROM: On Appeal From A Final Judgment in the Superior Court of New Jersey, Law Division, Essex County Docket No.: ESX-L-3703-16 SAT BELOW: Hon. Robert H. Gardner, J.S.C.

REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT JOSE PEREIRA

***Of Counsel & On the Brief*:**
Patrick P. Toscano, Jr.
Attorney No.: 014461986
ptoscano@pptlawfirm.com

***On the Brief*:**
Matthew J. Toscano
Attorney No.: 305642019
mtoscano@pptlawfirm.com

THE TOSCANO LAW FIRM, LLC
155 Passaic Avenue, Suite 420
Fairfield, New Jersey 07004
(T): (973) 226-1691
(F): (973) 226-1693
Attorneys for Defendant-Appellant, Jose Pereira

Dated: August 27, 2025

TABLE OF CONTENTS

JUDGMENTS, RULINGS, AND ORDERS APPEALED

TABLE OF AUTHORITIES

Cases

Rules

PRELIMINARY STATEMENT

Defendant-Appellant Jose Pereira ("Appellant" or "Pereira") submits this Reply in response to Plaintiff-Respondent Lisa Rodriguez's ("Respondent" or "Rodriguez") Amended Brief and Amended Appendix in Opposition to Appellant's initial appellate submissions. Respondent's opposition essentially rests on two flawed premises: (1) that the Trial Court's evidentiary and procedural rulings were either innocuous or harmless; and (2) that the jury's verdict was so firmly supported by the evidence that no appellate intervention is warranted. Neither premise withstands scrutiny.

This was clearly not a case supported by overwhelming proof. The claims against Pereira turned almost entirely on Rodriguez's own testimony, which was inconsistent, uncorroborated, and at times contradicted by her own witnesses. In that context, the Trial Court's exclusion of impeachment evidence, its refusal to address prejudicial remarks invoking irrelevant widely known criminal sexual assault convictions against public figures, and its denial of a directed verdict were not minor missteps. Rather, they were both egregious and outcome-determinative.

Respondent also defends a damages award of $1.25 million despite the absence of any objective evidence of lasting harm. The award plainly reflects

the influence of inadmissible and time-barred allegations, as well as the jury's improper conflation of workplace culture with the specific claims at issue.

Respondent's brief does little more than recast serious trial errors as discretionary calls. When the rulings at issue are considered in context, it is clear that Appellant was denied the fair trial to which he is constitutionally entitled. The judgment must be reversed, or at minimum, the damages award remitted to a fair and reasonable amount.

STATEMENT OF PROCEDURAL HISTORY

Appellant generally relies on the Statement of Procedural History set forth in his initial brief. Respondent has adopted that history in large part, but supplements it in an effort to suggest that certain appellate issues were not preserved.

Respondent highlights that co-Defendant City of Newark (the "City" or "Newark"), and not Appellant, initially filed the motion for a directed verdict. That is true; however, the record makes clear that Appellant formally adopted Newark's motion "to the extent applicable" through a letter filed on November 19, 2024, and orally joined in argument before the Court. (Pa78; 14T7:7–10; 14T48:3–49:22). The Trial Court itself treated the motions as joined and considered them together. Accordingly, any suggestion that Pereira failed to

preserve his own motion for directed verdict or Rule 4:40 motion is certainly unfounded.

Similarly, Respondent references her own motions *in limine*. Appellant opposed several of those motions both in writing and on the record, preserving objections for purposes of appeal. (Pa14–24; 2T28:4–17).

STATEMENT OF FACTS

Appellant relies on his Statement of Facts as set forth in his initial brief. However, Respondent's version omits several material clarifications which are addressed hereinbelow.

First, while Respondent references findings by the Newark Police Department's Affirmative Action Office and Internal Affairs, those findings were merely administrative in nature, contested by Appellant, and never resulted in criminal charges. The Essex County Prosecutor's Office expressly declined to bring any criminal action. (6T156:1–9).

Second, Respondent portrays Navasha Rawa as corroborating her claims. However, Rawa testified in her deposition that she had never observed Appellant touch Respondent inappropriately and never witnessed any sexual conduct between them. (4T85:15–21). At trial, she also admitted uncertainty as to whether Respondent was even present for many of the comments attributed to Appellant. (4T44:12).

Third, Respondent omits that Officer Tehlikian testified that when Appellant brushed past Respondent, his hands were raised and he did not appear to touch her. (10T196:25–197:2).

Finally, Respondent's narrative omits the fact that the Trial Court expressly instructed the jury not to consider any alleged conduct occurring prior to 2015 as time-barred. (15T27:6–10; 15T28:16–17).

LEGAL ARGUMENT

POINT I
THE TRIAL COURT'S EVIDENTIARY RULINGS WERE NOT HARMLESS, AND RESPONDENT'S WAIVER ARGUMENTS MISSTATE THE RECORD (3T12-25 TO 13-8; 3T6-25 TO 7-1; 8T163-5 TO 19; 8T165-12 TO 19; 10T92-5 TO 20)

Respondent's opposition rests largely on two themes: (1) that Pereira "did not oppose" certain *in limine* motions, and thus waived objections; and (2) that the excluded evidence was prejudicial and therefore properly barred. Neither withstands scrutiny.

A. Pereira Preserved His Objections (2T28:4–17; 3T7:2–24; 3T12:25–13:8; 3T13:13; 8T27:1–28:24)

Respondent's suggestion that Appellant acquiesced in the exclusion of entire categories of impeachment evidence is contradicted by the record and Respondent's own brief. Counsel opposed motions 3 and 6 on the record (2T28:4–17) and argued in detail for admission of testimony concerning Rodriguez's prior altercations and her husband's federal prison incident (3T7:2–

24; 3T12:25–13:8). The Trial Court itself acknowledged that "if something else comes up [. . .] I'll revisit the issue" (3T13:13), confirming that these evidentiary issues remained contested, but would not be re-addressed unless some new information relating thereto came about. Moreover, the Court permitted some testimony about Rodriguez's prior altercations (8T27:1–28:24), which underscores that the dispute was preserved, not abandoned.

B. The Excluded Evidence Went to Motive and Credibility (3T12-25 TO 13-8; 3T6-25 TO 7-1; 8T163-5 TO 19; 8T165-12 TO 19; 10T92-5 TO 20)

Respondent attempts to reframe the proffer as an impermissible "smear" based on her husband's conviction or her private relationships. That ignores why the evidence was offered – to demonstrate bias, hostility toward Pereira, and inconsistencies in Rodriguez's own account. Courts have long recognized that where the case turns on credibility, excluding motive-to-fabricate evidence is reversible error. See Parker v. Poole, 440 N.J. Super. 7, 22 (App. Div. 2015); State v. R.Y., 242 N.J. 48, 65 (2020).

First, evidence relating to Respondent's husband and his Federal prison incident was offered to show Rodriguez's prejudice toward Pereira, who had been involved in the resulting IA investigation. That is a classic basis for cross-examination.

Second, Rodriguez's multiple conflicts with officers undermined her portrayal as a passive victim and supported the defense theory that the alleged hostile environment stemmed from her own conduct.

Finally, Appellant's attempt to present Respondent's consensual relationships was not to "blame the victim," but to highlight inconsistencies. Rodriguez told Dr. Ziv of persistent harassment over 20 years, yet at trial newly claimed harassment by "50 to 60" officers. (6T87-9 to 88-50; 6T88-13; 10T91-3 to 8). Excluding evidence of consensual relationships prevented the jury from assessing whether that trial claim was grossly/wrongfully inflated.

C. The Abuse of Discretion Standard Still Requires a Fair Trial (Not Raised Below)

Respondent leans heavily on the abuse-of-discretion standard. But discretion is abused where relevant evidence essential to credibility is withheld from the jury. See State v. Cope, 224 N.J. 530, 554–55 (2016) ("discretion is abused when relevant evidence offered by the defense and necessary for a fair trial is kept from the jury"). This was not cumulative or peripheral material, but rather impeachment evidence central to the only contested issue – whether Rodriguez was credible. In such circumstances, prejudice is presumed. See State v. Marshall, 148 N.J. 89, 157 (1991) (when discussing ineffective assistance of counsel claim/petition for post-conviction relief, Court noted that "a verdict or

conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.")

POINT II
THE COSBY AND WEINSTEIN REFERENCES WERE NOT "INNOCUOUS", AND THE TRIAL COURT'S FAILURE TO CONDUCT *VOIR DIRE* OR ISSUE A CURATIVE INSTRUCTION WAS REVERSIBLE ERROR
(3T56:20 TO 57:2; 3T62-7 TO 8)

Respondent minimizes the prejudice from counsel's decision to utilize the high-profile Bill Cosby and Harvey Weinstein criminal sexual assault cases in opening remarks by characterizing the reference as a benign attempt to bolster Dr. Ziv's credentials. But that characterization ignores three critical facts.

First, the jury was explicitly asked to resolve a credibility battle between Rodriguez and Pereira. In such a case, even the slightest improper suggestion that Appellant should be equated with notorious convicted sexual predators, or that Plaintiff's expert was validated by her role in such prosecutions, could tilt the scales. See State v. R.K., 220 N.J. 444, 461 (2015) (where credibility is central, errors are magnified). Bill Cosby and Harvey Weinstein are not neutral "high-profile" names; they are synonymous in public consciousness with sexual assault and the "Me Too" movement. Jurors are not expected to (and cannot realistically) divorce that association from the trial at hand.

Second, Respondent ignores the fact that the Trial Court did nothing to mitigate the prejudice. Once defense counsel observed a juror **reacting visibly**

to the Cosby comment (3T61-12 to 15), the Court was obligated to *voir dire* that juror and, if necessary, the rest of the panel to assess taint. See State v. R.D., 161 N.J. 551, 558 (2001); see also State v. Bisaccia, 319 N.J. Super. 1, 13 (App. Div. 1999) (stating that if actual juror taint is possible, court must voir dire affected juror and, in appropriate circumstances, remaining jurors). That inquiry never occurred. Nor was a curative instruction issued. The law is clear that when possible juror taint is raised, "the trial court is obliged to interrogate the juror" and cannot simply ignore the risk. R.D., 161 N.J. at 558.

Third, Respondent's reliance on the later *voir dire* of Dr. Ziv (10T9-22 to 10:14) is inadequate. That second reference compounded the prejudice, cementing the significant harm from opening statements. The fact that defense counsel did not object a second time does not waive the original prejudice, especially when the Trial Court had already overruled the mistrial motion and in bemusing fashion signaled that further objections would be futile.

Respondent's suggestion that these references were "innocuous" overlooks both the substance and the context. The jury was asked to assess whether Pereira engaged in sexual harassment and assault, while hearing that Rodriguez's expert had testified in the Cosby and Weinstein prosecutions. That link unfairly and impermissibly bolstered Respondent's case and undermined Appellant's right to an impartial jury.

At minimum, the Trial Court should have conducted a *voir dire* or issued a limiting instruction. Its failure to do either after defense counsel explicitly warned of juror taint was an abuse of discretion and "so wide of the mark that a manifest denial of justice resulted." See State v. Perry, 225 N.J. 222, 233 (2016).

Because credibility was the sole issue and the verdict turned on whether the jury believed Rodriguez over Pereira, this error cannot be dismissed as harmless. A new trial is most certainly required.

POINT III
THE TRIAL COURT ERRED IN DENYING JUDGMENT AS A MATTER OF LAW AND RESPONDENT OVERSTATES THE EVIDENCE AND MISSTATES PRESERVATION (DA43;14T63-10 TO 62-8)

Respondent attempts to recast this case as one supported by "substantial corroboration" through internal investigations and witness testimony. That framing and spin is wholly inaccurate.

The only direct evidence of assault or battery came from Plaintiff's own demonstrably inconsistent testimony. Her two supposed corroborating eyewitnesses (Rawa and Tehlikian) directly contradicted her central allegation. Rawa testified she never observed Pereira touch Plaintiff inappropriately or engage in sexual conduct (4T85:15–21), while Tehlikian stated Pereira's hands were raised when he passed Plaintiff and that no touching occurred (10T196:25–197:2). At most, Tehlikian observed Pereira brushing chalk off Plaintiff's knee

(11T7–23). That testimony soundly negates, rather than corroborates, Plaintiff's claim of sexual assault.

Respondent's reliance on internal investigations is likewise misplaced. Those were administrative findings, contested by Pereira, and never tested in court. The Essex County Prosecutor's Office declined to file a single criminal charge, underscoring their limited evidentiary weight. Administrative "substantiations" cannot substitute for trial evidence sufficient to support a million-dollar verdict.

Respondent also suggests that Pereira failed to preserve his Rule 4:40 arguments because he adopted Newark's motion. The record shows otherwise. Pereira expressly joined Newark's motion "to the extent applicable" (Pa78; 14T48:3–49:22), and the Trial Court ruled on it. That assuredly preserved the issue. Even assuming, *arguendo*, that plain error review applies, the denial of judgment here was "clearly capable of producing an unjust result." See R. 2:10-2. A case that rests solely on Plaintiff's testimony, contradicted by her own witnesses, and bolstered only by contested administrative findings, cannot sustain judgment as a matter of law.

To be sure, this was not a case where the jury was presented with competing versions supported by independent evidence. It was a case where the Plaintiff's own witnesses disproved her claims. Judgment should be entered

where the evidence is so one-sided that no reasonable jury could find for the non-moving party. Frugis v. Bracigliano, 177 N.J. 250, 269 (2003) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). That is precisely the situation here.

Accordingly, the Trial Court erred in denying Pereira's motion for judgment, and at minimum, the verdict on assault and battery cannot stand.

POINT IV
THE COMBINED EFFECT OF THE TRIAL COURT'S ERRONEOUS LEGAL RULINGS DENIED PEREIRA A FAIR TRIAL AND RESPONDENT MISCONSTRUES THE CUMULATIVE ERROR DOCTRINE (NOT RAISED BELOW)

Respondent argues there can be no cumulative error because each challenged ruling was, in her view, "not error." Respondent's argument sorely misses the point. The cumulative-error doctrine exists precisely for situations where a series of discretionary rulings, each arguably defensible in isolation, when aggregated, render the trial unfair. Pellicer v. St. Barnabas Hosp., 200 N.J. 22, 54–55 (2009) (citing many cases in support of same); see also State v. Jenewicz, 193 N.J. 440, 473 (2008) (same for criminal trials).

This case was a credibility contest hinging almost entirely on whether the jury believed Plaintiff's uncorroborated testimony. In that context, the errors identified in Points I–III, *supra*, were not "irrelevant slivers of evidence," as

Respondent suggests. They went directly to the only issue the jury had to decide: whether to believe Rodriguez over Pereira.

Respondent emphasizes that the jury found her credible. But cumulative-error review is not a referendum on the jury's verdict; it is an inquiry into whether the verdict was reached in a fair trial. Here, the combined effect of the rulings insulated Plaintiff from meaningful credibility challenges, unfairly bolstered her expert, and permitted a case lacking corroboration to reach verdict. That is precisely the type of prejudice that warrants reversal under Pellicer. See Pellicer, 200 N.J. at 54–55.

Because the aggregate effect of these errors deprived Pereira of a fair trial, the judgment must be vacated.

POINT V
THE DAMAGES AWARD WAS WILDLY DISPROPORTIONATE AND MANIFESTLY UNJUST (DA44-DA45)

Respondent argues this Court cannot reach the issue because Pereira did not move for a new trial under R. 4:49-1. That is incorrect. R. 2:10-1 allows appellate review where it "clearly appears that there was a miscarriage of justice under the law." The authority of this Court to vacate or remit a grossly excessive verdict is not eliminated by the absence of a post-trial motion, particularly where (as here) the size of the award itself is "so excessive" that it demonstrates a clear and convincing "miscarriage of justice". Johnson v. Scaccetti, 192 N.J. 256, 280

(2007); see also Orientale v. Jennings, 239 N.J. 569, 595 (2019) ("the trial court may not disturb a damages award entered by a jury unless it is so grossly excessive or so grossly inadequate 'that it shocks the judicial conscience.'") (quoting Cuevas v. Wentworth Grp., 226 N.J. 480, 485 (2016)).

On the merits, Respondent attempts to characterize the $1.25 million award as "appropriate" because the jury credited her testimony. But damages must be tied to competent proof of actual harm, not speculation. Caldwell v. Haynes, 136 N.J. 422, 442 (1994). The record contains no evidence whatsoever that Plaintiff sought treatment, underwent therapy, or sustained any lasting impairment. To the contrary, Dr. Ziv conceded that Rodriguez remained a "stellar police officer," carried a firearm, and performed her duties without limitation. (9T109-19 to 110-19). By Plaintiff's own account, she continued to maintain her family, career, and personal life.

The award was also tainted by prejudicial testimony the jury was instructed to disregard as discussed hereinabove. As the Supreme Court of New Jersey has long recognized, jurors cannot realistically un-hear inflammatory allegations, especially in a credibility case. State v. Boone, 66 N.J. 38, 48 (1974). In addition, Rodriguez's sweeping claim that "50 to 60" male officers harassed her risked conflating the broader workplace climate with the narrow

allegations against Pereira, thereby punishing him for conduct well beyond the scope of the claims. (15T57-1 to 8).

A damages award must be reduced where it is so disproportionate to the actual harm that it "shocks the judicial conscience." Orientale, 239 N.J. at 595-96; see also Johnson, 192 N.J. at 280. That is the case here. Even if the verdict on liability were sustained, the $1.25 million judgment against Pereira cannot stand. At minimum, the matter should be remanded for remittitur or a new trial limited to damages.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Jose Pereira respectfully requests that the judgment entered against him be vacated and that the matter be remanded for a new trial. In the alternative, the compensatory damage award should be vacated and remitted to an amount supported by the evidence and consistent with applicable law.

Dated: August 27, 2025

THE TOSCANO LAW FIRM, LLC
155 Passaic Avenue, Suite 420
Fairfield, New Jersey 07004
(T): (973) 226-1691
(F): (973) 226-1693
Attorneys for Defendant-Appellant, Jose Pereira

s/ Patrick P. Toscano, Jr.
Patrick P. Toscano, Jr.

Attorney No.: 014461986
ptoscano@pptlawfirm.com

s/ Matthew J. Toscano
Matthew J. Toscano
Attorney No.: 305642019
mtoscano@pptlawfirm.com