

**LAW OFFICES OF STEVEN A. VARANO, P.C.**

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JAMIE RIVERA, STEPHEN  
DELLAVALLE, RODNY SEVERE,  
CARLOS BERNARD, SEAN LAKE, and  
SUPERIOR OFFICERS'  
ASSOCIATION-NEWARK POLICE  
DEPARTMENT,

Plaintiffs,

vs.

CITY OF NEWARK, NEWARK  
POLICE DEPARTMENT, and PUBLIC  
SAFETY DIRECTOR FRITZ FRAGE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

CIVIL ACTION

DOCKET NO.: ESX-L-4773-23

**AMENDED COMPLAINT IN LIEU OF  
PREROGATIVE WRIT**

Plaintiffs Jamie Rivera, Stephen Dellavalle, Rodny Severe, Carlos Bernard, Sean Lake, and the Superior Officers' Association-Newark Police Department by way of Amended Complaint in Lieu of Prerogative Writ against Defendants, the City of Newark, the Newark Police Department, and Fritz Frage, hereby allege and say:

**THE PARTIES**

1. Plaintiff Stephen Dellavalle ("Plaintiff Dellavalle") currently holds the rank of Lieutenant and serves as a Commander of the Newark Violent Crime Initiative ("VCI") out of United States Attorney's Office.

2. Plaintiff Jamie Rivera ("Plaintiff Rivera") is currently a Detective in the Newark Police Department ("NPD" or "Department") and serves in the VCI as well as the United States

Attorney's Office Task Force. Plaintiff Rivera has also been deputized by the United States Marshal Service.

3. Plaintiff Rodney Severe ("Plaintiff Severe") is currently a Detective in the NPD and also serves in the VCI. Plaintiff Severe has also been deputized by the United States Marshal Service.

4. Plaintiff Carlos Bernard ("Plaintiff Bernard") is currently a Detective in the NPD and serves in the Criminal Intel Unit.

5. Plaintiff Sean Lake ("Plaintiff Lake") is currently a detective in the NPD and serves in the Criminal Intel Unit.

6. All aforementioned Plaintiffs are highly educated, well respected, and have received numerous prestigious awards, recognitions, and commendations during the course of their careers.

7. Plaintiff Superior Officers' Association-Newark Police Department ("Plaintiff SOA") is the bargaining unit for police supervisors and managers of the Newark, New Jersey Police Department, representing Sergeants, Lieutenants and Captains.

8. Defendant City of Newark [hereinafter, "Newark" or the "City"] is a municipal subdivision organized pursuant to the laws of the State of New Jersey and operates by funding, staffing, supervising and otherwise controlling the operations of the Department. Newark is a civil service jurisdiction regulated by the State's civil service laws, N.J.S.A. Title 11A and N.J.A.C. Title 4A, and the New Jersey Civil Service Commission.

9. Defendant Fritz Frage is the current Public Safety Director in Newark.

**FIRST COUNT**

10. This Complaint stems from Defendants' clear violation of Court Orders entered in the Superior Court of New Jersey and certain Preliminary Notices of Disciplinary Action ("PNDAs") served on Plaintiffs on February 22, 2023 in connection with the pursuit of a suspect on November 19, 2022.

11. Specifically, on said date, Plaintiffs were patrolling Newark near the border of East Orange in plain clothes and in unmarked vehicles at or around the intersection of Park Avenue and 6<sup>th</sup> Avenue.

12. During the patrol, a suspect carrying a suspicious bag was ordered by Plaintiffs to stop. The suspect refused and Plaintiffs engaged in a hot pursuit of the suspect, eventually following him into a home.

13. Upon entering the premises, Plaintiffs located the suspect in the home and observed the bag in the immediate vicinity (within a few feet) of the suspect, and confiscated same.

14. The bag that the suspect was carrying contained a handgun with illegal hollow point ammunition. The suspect did not have a concealed carry permit for the handgun.

15. Approximately four months later, Plaintiffs were served with the aforementioned PNDAs, which were executed by Defendant Public Safety Director Fritz Frage.

16. The Departmental Hearing on the charges against Plaintiffs was held on July 18, 2023 and discipline was imposed on Plaintiffs. Contrary to applicable law and the mandates of the below referenced October 7, 2008 Consent Order, the trial board at the hearing was comprised of Captain Jimmy Rios (from the Consent Decree Unit, which was the very unit that performed

the investigation into the November 19, 2022 pursuit), Deputy Director Sharonda Morris, and Hearing Officer John Huegel.

17. After attempting to resolve the matter amicably, the Final Notices of Disciplinary Action (“FNDA”) were served on Plaintiffs on July 27, 2023, suspending Plaintiffs for thirty (30) days.

18. The FNDAs staggered the discipline of Plaintiffs whereby Plaintiffs Rivera, Dellavalle, and Bernard are scheduled to be suspended on September 18, 2023 and Plaintiffs Lake and Severe are scheduled to be suspended on October 2, 2023.

19. At the disciplinary hearing, Plaintiffs requested that they permitted to utilize their vacation days in lieu of a suspension pursuant to a December 3, 2018 Memorandum issued by former Public Safety Director Anthony Ambrose. A true and accurate copy of the Memorandum is attached hereto as **Exhibit A**. The December 3, 2018 Memorandum also provides that such requests shall not be unreasonably withheld.

20. However, after the request, the trial board advised that Plaintiffs were only permitted to utilize five vacation days.

21. Plaintiffs requested that the trial board provide the basis for denial of the request to utilize thirty vacation days in lieu of suspension, and the board simply stated, in effect, “that is what we decided.”

#### **Authority to Issue PNDAs**

22. N.J.S.A. 40A:14-118 provides:

The governing body of any municipality, by ordinance, may create and establish...a police force...and provide for the maintenance, regulation and control thereof. Any such ordinance shall...provide for a line of authority relating to the police function and for the adoption and promulgation by the appropriate authority of rules and

regulations for the government of the force and for the discipline of its members. Any such ordinance, or rules and regulations, shall provide that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof.

23. Although N.J.S.A. 40A:14-118 does not specifically require the appointment of a Chief of Police, if one is established in a given municipality, he or she shall be required, and has the sole authority to:

a. Administer and enforce rules and regulations and special emergency directives for the disposition and **discipline of the force and its officers and personnel**;

b. Have, exercise, and discharge the functions, powers and duties of the force;

c. Prescribe the duties and assignments of all subordinates and other personnel;

d. Delegate such of his authority as he may deem necessary for the efficient operation of the force to be exercised under his direction and supervision; and

e. Report at least monthly to the appropriate authority in such form as shall be prescribed by such authority on the operation of the force during the preceding month, and make such other reports as may be requested by such authority.

24. Here, the City and the NPD maintain the position of Chief of Police. As such, pursuant to the express terms of N.J.S.A. 40A:14-118, only the Chief of Police possessed the authority to execute PNDAs and discipline officers in the Department.

#### **October 7, 2008 Consent Order**

25. On October 7, 2008, following a lawsuit filed by the Superior Officers' Association of the Newark Police Department, a Consent Order was entered in the Essex County Superior Court. A true and accurate copy of the Consent Order is attached hereto as **Exhibit B.**

26. In accordance with applicable law, the October 7, 2008 Order confirmed the Chief of Police has the sole power and authority to:

- Suspend officers, with or without pay;
- Administer and enforce rules and regulations;
- impose discipline on officers in the Department; and
- Issue PNDAs

27. The October 7, 2008 Order also prohibited the Director from supervising criminal and Internal Affairs Investigations, from giving orders, and from prescribing assignments to officers in the Department.

28. The October 7, 2008 Order provides that the Chief of Police shall be the head of the Police and has sole power to discipline Officers in the Department. Additionally, the October 7, 2008 Order provides that, in the event of a conflict with any other law, ordinance, rule, or regulation, the Order as well as N.J.S.A. 40A:14-118 prevails.

29. Finally, the October 7, 2008 Consent Order (in conjunction with General Order 18-26, superseding General Order 93-2) requires that the three member trial board at a departmental hearing consist of the Public Safety Director (or his designee) and two command rank officers designated by the Chief of Police.

30. After the entry of the October 7, 2008 Order, the City of Newark removed the position of Chief of Police. On June 3, 3009, the Department issued General Order 07-06 which attempted to grant the Police Director with the sole power and authority to suspend officers in the Department, in direct conflict with the October 7, 2008 Consent Order.

31. Given the direct conflict with the October 7, 2008 Consent Order, General Order 07-06 was invalid and the terms of the Consent Order prevailed. Thereafter, on March 24, 2010,

a Consent Order was entered in the Essex County Superior Court vacating the October 7, 2008 Consent Order. A true and accurate copy of the Consent Order is attached hereto as **Exhibit C.**

32. However, the March 24, 2010 Order provided that in the event the position of Chief of Police was re-established, the October 7, 2008 Order would be automatically reinstated.

33. In July, 2011, the position of Chief of Police was reestablished by the Department. As such, the October 7, 2008 Order was automatically reinstated which stripped the Police Director of the power and authority to issue PNDAs and to discipline and suspend officers in the Department.

34. Here, despite the reinstatement of the October 7, 2008 Consent Order, Police Director Fritz Frage, in a contumacious disregard of Court Orders and applicable law, improperly executed and issued the PNDAs against Plaintiffs.

35. In the event the discipline is imposed on Plaintiffs, Plaintiffs will be suspended without pay, disarmed during the period of suspension, and placed on the Attorney General Major Discipline Report for 2023. Given the aforementioned Units in which Plaintiffs serve and in which they investigate, arrest, and testify against some of the most dangerous and violent criminals in Newark, their lives and safety will be in very real jeopardy if they are disarmed for any period of time.

36. Given the Units in which Plaintiffs serve and the cases in which they are called to testify on a regular basis, their credibility and disciplinary records are of utmost importance.

37. Moreover, if the discipline is imposed, they would likely be prevented from having their federal deputization renewed, and the work of the various task forces in which they serve would be essentially crippled.

38. As a result of Defendants' violations of Court Orders, wrongful actions, improper issuance of the PNDAs and unlawful composition of the trial board, Plaintiffs have been and will further be damaged and seek relief by way of the within Complaint in Lieu of Prerogative Writ.

39. Defendants' acts were wrongful, without basis in law or in fact, arbitrary, capricious, unreasonable, unconscionable, improper, prejudicial, excessive, contrary to law and otherwise erroneous.

**WHEREFORE**, Plaintiffs demand judgment against Defendants as follows:

- a. A declaration that Defendants are in violation of the October 7, 2008 and March 23, 2010 Consent Orders entered in the Superior Court of New Jersey;
- b. Directing Defendants to dismiss the subject PNDAs and disciplinary charges against Plaintiffs;
- c. Prohibiting Defendant Frage from executing and issuing PNDAs;
- d. Compelling Defendants' compliance with the October 7, 2008 and March 23, 2010 Consent Orders;
- e. Prohibiting Defendants from further violations of the October 7, 2008 and March 23, 2010 Consent Orders and applicable law;
- f. Awarding Plaintiffs' attorneys fees and costs of suit; and
- g. Such other and further relief as the Court may deem just and equitable under the circumstances.

**SECOND COUNT**  
**(Breach of Contract)**

1. Plaintiffs repeat and reallege the allegations set forth in the above paragraphs as if set forth at length herein.
2. On October 7, 2008, the parties executed the above referenced Consent Order.



Pursuant to the agreement, the Chief of Police has the sole power and authority to:

- Suspend officers, with or without pay;
- Administer and enforce rules and regulations;
- impose discipline on officers in the Department;
- Issue PNDAs

3. The Consent Order also prevented the Director from supervising criminal and Internal Affairs Investigations, from giving orders, and from prescribing assignments to officers in the Department. Moreover, the Consent Order provides that the Chief of Police shall be the head of the Police and has **sole power to discipline** Officers in the Department.

4. Despite the agreement of the parties as memorialized in the Consent Orders, and in direct breach of same, Defendant Director Frage executed the PNDAs that were issued against Plaintiff.

5. In addition, the October 7, 2008 Consent Order (in conjunction with General Order 18-26, superseding General Order 93-2) requires that the three member trial board at a departmental hearing consist of the Public Safety Director (or his designee) and two command rank officers designated by the Chief of Police.

6. Here, the trial board at the hearing was comprised of Captain Jimmy Rios (from the Consent Decree Unit, which was the very unit that performed the investigation into the November 19, 2022 pursuit, constituting a clear conflict of interest), Deputy Director Sharonda Morris, and Hearing Officer John Huegel.

7. As a result of the above breaches of the contract between the parties, Plaintiffs have and will continue to suffer damages.

**WHEREFORE**, Plaintiffs demand judgment against Defendants as follows:

- a. A declaration that Defendants are in violation of the October 7, 2008 and March 23, 2010 Consent Orders entered in the Superior Court of New Jersey;
- b. Directing Defendants to dismiss the subject PNDAs and disciplinary charges against Plaintiffs;
- c. Prohibiting Defendant Frage from executing and issuing PNDAs;
- d. Compelling Defendants' compliance with the October 7, 2008 and March 23, 2010 Consent Orders;
- e. Prohibiting Defendants from further violations of the October 7, 2008 and March 23, 2010 Consent Orders and applicable law;
- f. Awarding Plaintiffs attorneys fees and costs of suit; and
- g. Such other and further relief as the Court may deem just and equitable under the circumstances.

**THIRD COUNT**  
**(Declaratory Judgment, N.J.S.A. 2A:16-52)**

1. Plaintiffs repeat and reallege the allegations set forth in the above paragraphs as if set forth at length herein.
2. A justiciable controversy exists between Plaintiffs and Defendants regarding whether Defendants are in compliance with the October 7, 2008 Consent Order.
3. The October 7, 2008 Consent Order provides that the Chief of Police has the sole power and authority to:
  - Suspend officers, with or without pay;
  - Administer and enforce rules and regulations;
  - impose discipline on officers in the Department;
  - Issue PNDAs

4. The Consent Order also prevented the Director from supervising criminal and Internal Affairs Investigations, from giving orders, and from prescribing assignments to officers in the Department. Moreover, the Consent Order provides that the Chief of Police shall be the head of the Police and has sole power to discipline Officers in the Department.

5. Despite same, Defendant Director Frage executed the subject PNDAs that were served on Plaintiffs.

6. In addition, the trial board at the disciplinary hearing was improperly constructed as set forth above.

7. In light of the above, Plaintiffs seek a declaration from the Court that Defendants breached and are in violation of the agreement of the parties as memorialized in the October 7, 2008 Consent Order.

8. The parties have an interest in resolving the above issues.

9. In the absence of the Court declaring the rights of the parties, Plaintiffs will continue to sustain damages and irreparable harm.

**WHEREFORE**, Plaintiffs demand judgment against Defendants as follows:

- a. A declaration that Defendants are in violation of the October 7, 2008 and March 23, 2010 Consent Orders entered in the Superior Court of New Jersey;
- b. Directing Defendants to dismiss the subject PNDAs and disciplinary charges against Plaintiffs;
- c. Prohibiting Defendant Frage from executing and issuing PNDAs;
- d. Compelling Defendants' compliance with the October 7, 2008 and March 23, 2010 Consent Orders;

- e. Prohibiting Defendants from further violations of the October 7, 2008 and March 23, 2010 Consent Orders and applicable law;
- f. Awarding Plaintiffs attorneys fees and costs of suit; and
- g. Such other and further relief as the Court may deem just and equitable under the circumstances.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, **STEVEN A. VARANO** is hereby designated as trial counsel.

**DEMAND FOR TRIAL BY JURY**


Please take notice that Plaintiffs demand a trial by jury.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

I hereby certify, pursuant to R. 4:5-1, that the present matter in controversy is not the subject of another, related action pending before this court against the same parties.

LAW OFFICES OF STEVEN A. VARANO,  
P.C.

By: \_\_\_\_\_

  
ALBERT J. SEIBERT, ESQ.  
Attorneys for Plaintiffs


Dated: September 12, 2023

**PROOF OF MAILING/CERTIFICATION**

I hereby certify that an original and copy of the within Amended Complaint in Lieu of Prerogative Writs, Designation of Trial Counsel and Jury Demand was filed with the Clerk of Essex County, as Deputy Clerk of the Superior Court of Essex County, New Jersey, via eCourts.

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

LAW OFFICES OF STEVEN A. VARANO,  
P.C.

By:   
ALBERT J. SEIBERT, ESQ.  
Attorneys for Plaintiffs

Dated: September 12, 2023