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KATHERINE BRENNAN, : SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION: MERCER COUNTY  
:  
Plaintiff, : DOCKET NO.: MER-L-000034-19  
:  
v. : Civil Action  
:  
ALBERT J. ALVAREZ, STATE OF NEW JERSEY, :  
MURPHY FOR GOVERNOR, INC., :  
ABC COMPANIES (1-10) (fictitious names of :  
unknown entities) and JOHN DOES (1-10) :  
(fictitious names of unknown persons), :  
Defendants. :  
:  
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**PLAINTIFF’S BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE FOR TEMPORARY  
AND PRELIMINARY RESTRAINTS**

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On the Brief

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### PRELIMINARY STATEMENT

This brief is respectfully submitted in support of Katherine Brennan’s (“Plaintiff”) Order to Show Cause For Temporary and Preliminary Restraints against Defendant State of New Jersey (hereinafter, the “State”), from (1) enforcing the “strict confidentiality directive” found in N.J.A.C. 4A:7-3.1(j) against Plaintiff and any witnesses in the EEO/AA investigation being launched in response to her December 4, 2018, testimony before the Legislative Select Oversight Committee (“LSOC”) (hereinafter, the “EEO/AA Investigation”); (2) requiring Plaintiff to participate in any EEO/AA investigation until after this litigation and any criminal proceedings resulting from Plaintiff’s allegation of sexual assault are completed; (3) requiring Plaintiff and other witnesses in the EEO/AA Investigation to sign the “strict confidentiality directive” form; (4) requiring the EEO/AA to investigate the numerous violations of the State’s Policy Prohibiting Discrimination in the Workplace (“State Policy”) as set forth in the Complaint; and (5) declaring the “strict confidentiality directive” of N.J.A.C. 4A:7-3.1(j) as null and void.

For the past year, the State has refused to conduct **any** investigation into any of Plaintiff’s reporting that she had been raped by Defendant Alvarez. Plaintiff exhausted all possible internal avenues of recourse and received no aid or support. Having no other option, Plaintiff was compelled, as a last resort, to bring her allegations into public light. On October 14, 2018, her story was published in The Wall Street Journal. The article laid out in detail not only the rape Plaintiff had endured, but also her extensive efforts to prompt the State, through complaints to numerous high level State officials, to take action.

Plaintiff’s act of publicly telling her story accomplished what her numerous internal complaints and reports could not: it triggered investigations. As a result of the October 14 Wall

Street Journal article, in or about October 2018, numerous investigations and/or reviews were launched in various departments of State and county government, including: (1) an ongoing review by the Middlesex County Prosecutor's Office of the criminal investigation conducted by the Hudson County Prosecutor's Office ("HCPO") into Plaintiff's criminal complaint; (2) a review by Attorney General Gurbir Grewal and the Office of Public Integrity and Accountability ("OPIA") into Hudson County Prosecutor Esther Suarez's involvement in the investigation of Plaintiff's allegations of sexual assault;<sup>1</sup> (3) the ongoing investigation by the LSOC into how sexual misconduct complaints are handled by the state, as well as hiring practices; (4) Governor Murphy's directive to the Division of EEO/AA to review policies and procedures for addressing allegations of sexual misconduct; and (5) an investigation on behalf of the Office of the Governor by former Supreme Court Justice Peter Verniero into the hiring of Defendant Alvarez.

On December 4, 2018, Plaintiff participated in the LSOC investigation, publicly testifying about the rape and her frustrating experience attempting to get the State to respond to her complaints that her rapist was employed in State government alongside her. It was only after this testimony that the State contacted Plaintiff to inform her that the Division of EEO/AA was conducting an investigation. The State is not investigating her complaints of having to work alongside her rapist or of the numerous violations of the State Policy committed by members of the administration and their outside legal counsel, however, they are conducting a "limited" investigation relating to her testimony that she has felt "ostracized" since going public in October 2018.

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<sup>1</sup> This investigation, concluded on November 27, 2018, exonerated Hudson County Prosecutor Esther Suarez and the HCPO in their handling of Plaintiff's complaint.

Plaintiff did not file an EEO/AA complaint regarding her feeling of being ostracized since going public. By October 2018, the State had made clear its inability, unwillingness and intention to not effectively respond to allegations of sexual misconduct and discrimination. Nevertheless, the EEO/AA launched this investigation -- on their own accord -- in order to apply its illegal "strict confidentiality directive" to Plaintiff, to attempt to silence her once again. The State Policy requires that Plaintiff participate in the EEO/AA investigation and keep her participation in the EEO/AA investigation "confidential." If she breaches this confidentiality, the penalties including discipline, up to and including termination. This Motion is brought against the State on an emergent basis to barstop the State from forcing Plaintiff into silence and on behalf of all other State employees who are subjected to the same unlawful conduct.

The issue before the Court is of a significant public concern because it involves an unlawful policy and practice of the State and the EEO/AA to systematically interfere with the rights of victims and witnesses in connection with investigations of harassment and to silence them and their complaints. N.J.A.C. 4A:7-3.1(j) reads:

**...[a]ll persons who are interviewed or otherwise advised of a complaint are directed not to discuss any aspect of the investigation with others. Failure to comply with this confidentiality directive may result in disciplinary action, up to and including removal.**

(hereinafter, the "Strict Confidentiality Directive")(emphasis added).

The Strict Confidentiality Directive is unlawful on its face. It infringes upon First Amendment rights conferred on public employees to freely and openly speak about any matters of public concern and interferes with the State's ability to conduct a thorough, complete and prompt investigation into complaints of sexual assault, harassment and/or

discrimination. The Strict Confidentiality Directive further violates the anti-retaliation provision of the Law Against Discrimination by silencing victims and interfering with public employees' right to engage in protected activity and denying them the right to disclose issues of harassment and retaliation to the public and the courts. Employers cannot threaten victims and witnesses with disciplinary action to silence and coerce them to waive their constitutional and statutory rights provided by participating in a harassment investigation. This Strict Confidentiality Directive is unlawful and the practice of administering it during investigations must stop immediately.

The illegality of the Strict Confidentiality Directive is further illustrated by the way the State used "confidentiality" as an excuse for refusing to investigate Plaintiff's repeated reporting of the rape prior to going public. In this matter, after the State refused to conduct any investigation into Plaintiff's reporting of the rape, Plaintiff sent Governor Murphy and his wife an email to request a meeting to discuss a sensitive matter. While claiming that the Strict Confidentiality Directive prevented disclosure to Governor Murphy, several persons in the administration breached the same purported confidentiality obligations, including by directly informing Defendant Alvarez of Plaintiff's report of the rape. In fact, on at least two occasions, Defendant Alvarez was informed that he should voluntarily leave the administration because of Plaintiff's allegations which could become public and things could "get ugly" and "embarrassing" for him and the Governor. Defendant Alvarez refused to leave and no investigation ever took place.

As a result, Plaintiff believed she had no choice but to use her voice and go public with her allegations. After refusing to conduct any investigation prior to the Wall Street Journal



article, the State sent Plaintiff a letter dated December 12, 2018, informing her that it was opening an EEO/AA investigation into Plaintiff's claims of being ostracized following publication of the Wall Street Journal article on October 14, 2018. The EEO/AA investigation requires that Plaintiff participate in the investigation and agree to and abide by the Strict Confidentiality Directive to not disclose anything about the investigation to anyone. Plaintiff, who was denied an EEO/AA or any other investigation into her repeated reporting of the rape, should not now be required to participate in an investigation and have to keep her complaints confidential or face discipline and possible termination.

Plaintiff brings this lawsuit so not only her voice could be heard, but so that all survivors' voices are heard. Plaintiff and other state employees are and will continue to suffer irreparable harm if Defendants are not immediately restrained from enforcing the Strict Confidentiality Directive. There is no legitimate business reason for the State to require a Strict Confidentiality Directive of all victims and witnesses to every investigation, no matter the circumstance. While confidentiality is certainly an important consideration for a victim and to protect the integrity of an investigation, the State's Strict Confidentiality Directive goes well beyond necessity as it violates employees' rights to engage in protected activity. Plaintiff is being irreparably harmed by the State's Strict Confidentiality Directive as it impedes and obstructs her ability to litigate her claims of sexual harassment in a court of law and it will continue to irreparably harm the public if the policy and practice is not immediately stopped.

Accordingly, Plaintiff respectfully requests that the Court grant her request for relief to temporarily and preliminarily enjoin and restrain the State in its entirety.

## STATEMENT OF FACTS

### A. The State of New Jersey Policy Prohibiting Discrimination in the Workplace

According to its website:

The Division of Equal Employment Opportunity/Affirmative Action (“EEO/AA”) was created by law to ensure equal employment opportunities for all New Jersey state employees and prospective employees. The Division also serves to prevent State employees, prospective State employees, and persons doing business with the State, from being subjected to discrimination and/or harassment.

The Division of EEO/AA is charged with ensuring that all employees and applicants for employment with the State of New Jersey work in an environment free from all forms of employment discrimination in accordance with the State of New Jersey’s Policy Prohibiting Discrimination in the Workplace. The Division of EEO/AA is also charged with insuring that all State Departments and Agencies comply with the applicable law, policies and procedures.

Certification of Kathryn K. McClure, Esq. dated January 7, 2019 (“McClure Cert.”) at ¶13; Exh. A.

The State of New Jersey maintains a “Policy Prohibiting Discrimination in the Workplace” (hereafter the “State Policy”). *Id.* at ¶14; Exh. B. The stated purpose of the State Policy is to provide “every *State employee and prospective State employee* with a work environment free from prohibited discrimination or harassment.” (emphasis added). *Id.* at ¶15. Under the State Policy, “forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic

information, liability for service in the Armed Forces of the United States, or disability.” Id. at ¶16.

The State Policy further reads that in order “[t]o achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the state and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.” Id. at ¶17.

The “Applicability” provision of the State’s Policy reads:

Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as “State agencies” or “State agency”). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed).

This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual’s ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy. Id. at ¶18.

The “Prohibited Conduct” provision of the State’s Policy states:

It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected

categories referred to in I (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions and career development. Id. at ¶9.

The “Sexual Harassment” provision of the State’s Policy states:

It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. ... Id. at ¶10.

The “Employee Responsibilities” provision of the State’s Policy states:

Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency’s Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints.

**All employees are expected to cooperate with investigations undertaken pursuant to VI below. Failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including termination of employment.** (emphasis added). Id. at ¶11.

The “Supervisor Responsibilities” provision of the State’s Policy states:

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency’s Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor’s failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and in the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace (Model Procedures), a supervisor is defined broadly to include any manager or other individual who has authority to

control the work environment of any other staff member (for example, a project leader).

Id. at ¶12.

The “Complaint Process” provision of the State’s Policy reads:

Each State agency shall follow the Model Procedures with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough and impartial manner. The results of the investigation shall be forwarded to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

Where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

Id. at ¶13.

The “Confidentiality” provision relating to the State’s obligations under the State’s Policy under N.J.A.C. 4A:7-3.1(j) reads:

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. Id. at ¶14.

The “Confidentiality” provision relating to any witnesses or persons with knowledge of any harassment or discrimination claim directs strict confidentiality upon all persons interviewed, including witnesses, as follows:

All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment. (emphasis added). Id. at ¶15.

(hereinafter referred to the “Strict Confidentiality Directive”)

N.J.A.C. 4A:7-3.2 sets forth the “Model procedures for internal complaints alleged discrimination in the workplace” as follows:

Each State department, commission, State college or university, agency, and authority (hereafter referred to in this section as “State agency”) is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the [Civil Service Commission,] Division of EEO/AA.

(a) All employees and applicants for employment have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination in the Workplace, N.J.A.C 4A:7-3.1.

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State agency. Complaints may also be reported to (Authorized Designee).

(c) Every effort should be made to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct.

(d) Supervisory employees shall immediately report all alleged violations of the State of New Jersey Policy Prohibiting Discrimination in the Workplace to (Name of Officer), EEO/AA Officer. Such a report shall include both alleged violations reported to a supervisor, and those alleged violations directly observed by the supervisor.

(e) If reporting a complaint to any of the persons set forth in subsections (a) through (d) above presents a conflict of interest, the complaint may be filed directly with the [Civil Service Commission,] Division of EEO/AA, PO Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.

(f) In order to facilitate a prompt, thorough, and impartial investigation, all complainants are encouraged to submit a Discrimination Complaint Processing Form (DPF-481). An investigation may be conducted whether or not the form is completed.

(g) Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate. A copy of all complaints (regardless of the format in which submitted) must be submitted to the [Civil Service Commission,] Division of EEO/AA, by the State agency's EEO/AA Officer, along with a copy of the acknowledgement letter(s) sent to the person(s) who filed the complaint and, if applicable, the complaint notification letter sent to the person(s) against whom the complaint has been filed. If a written complaint has not been filed, the EEO/AA Officer must submit to the Division of EEO/AA a brief summary of the allegations that have been made. Copies of complaints filed with the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission, or in court also must be submitted to the Division of EEO/AA.

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

(j) An [investigatory] investigative report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include, at a minimum:

1. A summary of the complaint;
2. A summary of the parties' positions;
3. A summary of the facts developed through the investigation; and
4. An analysis of the allegations and the facts. The [investigatory] investigative report will be submitted to (State agency head) who will issue a final letter of determination to the parties.

(k) The (State agency head or designee) will review the [investigatory] investigative report issued by the EEO/AA Officer or authorized designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination in the Workplace has been substantiated. If a violation has occurred, the (State agency head or designee) will determine the appropriate corrective measures necessary to immediately remedy the violation.

(l) The (State agency head or designee) will issue a final letter of determination to both the complainant(s) and the person(s) against whom the complaint was filed, setting forth the results of the investigation and the right of appeal to the [Merit System Board] Civil Service Commission as set forth in subsections (m) and (n) below. To the extent possible, the privacy of all parties involved in the process shall be maintained in the final letter of determination. The Division of EEO/AA[, Civil Service Commission,] shall be furnished with a copy of the final letter of determination.

1. The letter shall include, at a minimum:

- i. A brief summary of the parties' positions;
- ii. A brief summary of the facts developed during the investigation; and
- iii. An explanation of the determination, which shall include whether:

- (1) The allegations were either substantiated or not substantiated; and
- (2) A violation of the Policy Prohibiting Discrimination in the Workplace did or did not occur.

2. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (h) above is completed.

3. The time for completion of the investigation and issuance of the final letter of determination may be extended by the State



agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension. (m) A complainant who is in the career, unclassified, or senior executive service, or who is an applicant for employment, who disagrees with the determination of the (State agency head or designee), may submit a written appeal, within [twenty] 20 days of the receipt of the final letter of determination from the (State agency head or designee), to the Civil Service Commission, PO Box 312, Trenton, NJ 08625. The appeal shall be in writing and include all materials presented by the complainant at the State agency level, the final letter of determination, the reason for the appeal, and the specific relief requested.

1. Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The Commission may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in this section or a combination of procedures as the Commission deems appropriate. See N.J.A.C. 4A:2-1.7.

2. If an appeal under this chapter raises issues concerning the employee not receiving an advancement appointment, the Commission shall decide those issues in the course of its determination.

3. The Civil Service Commission shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

4. The appellant shall have the burden of proof in all discrimination appeals brought before the Civil Service Commission.

(n) In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the Civil Service Commission at the address indicated in (m) above within 20 days of receipt of the final letter of determination by the State agency head or designee. 1. The burden of proof shall be on the appellant. 2. The appeal shall be in writing and include the final

letter of determination, the reason for the appeal, and the specific relief requested. 3. If disciplinary action has been recommended in the final letter of determination, the party(ies) charged may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

(o) The Director of the Division of EEO/AA shall be placed on notice of, and given the opportunity to submit comment on, appeals filed with the Civil Service Commission of decisions on discrimination complaints, regardless of whether or not the complaint was initially filed directly with the Director of EEO/AA.

(p) Any employee or applicant for employment can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. An individual should contact the specific agency to obtain exact time frames for filing a complaint. The deadlines run from the date of the last incident of alleged discrimination/harassment, not from the date that the final letter of determination is issued by the State agency head or designee.

1. Complaints may be filed with the following external agencies:

i. Division on Civil Rights N.J. Department of Law & Public Safety (Within 180 days of the discriminatory act)

ii. US Equal Employment Opportunity Commission (EEOC) (Within 300 days of the discriminatory act).

Id. at ¶16.

On the EEO/AA website is a web page entitled “Complaints”, the EEO/AA again makes clear in connection with the Strict Confidential Directive that “[t]he provisions of the New Jersey State Policy Prohibiting Discrimination, Harassment or Hostile Work Environment in the Workplace require that all complaints and related investigations be confidential. *Each individual involved in the investigation is obligated to maintain confidentiality.* (emphasis added). Id. at Exh. C. The “confidentiality form” that complainants, accused and all other witnesses are

required to sign in connection with their obligation to participate in State harassment investigations reads, in relevant part that “all persons who are interviewed or otherwise advised of a complaint are directed not to discuss any aspect of the investigation with others. Failure to comply with this confidentiality directive may result in disciplinary action, up to and including removal.” Id. at Exh. D.

**B. The State’s Enforcement of the State Policy**

In January 2018, the trial of the matter Jennifer L. Schiavone v. the New Jersey Department of Corrections was held in the Superior Court of New Jersey, Law Division, Mercer County, Docket No. MER-L-00657-15. Certification of Andrew Dwyer, Esq. dated January 6, 2019 (“Dwyer Cert.”) at ¶3. During the trial, EED Director provided sworn testimony concerning the State of New Jersey Policy Prohibiting Discrimination in the Workplace (hereinafter, the “State Policy”), including more specifically, the Strict Confidentiality Directive imposed on all witnesses of State harassment investigations. Id. at ¶4.

According to EED Director, her job duties included overseeing investigations of harassment and discrimination complaints under the State Policy. Id. at Exh. A: 9:16-18. The EED Director testified:

[t]he EED Department is responsible for reviewing any allegations of discrimination or harassment. If the allegations implicate or touch the policy, we – we’re the department that handles any allegations under the policy prohibiting discrimination in the workplace. If the allegations implicate or touch the policy, we open it up for investigation. At the conclusion of the investigation we make a finding and we determine whether or not discipline should be issued or not. We also handle training for staff under the policy. We’re responsible for disseminating the policy. We also handle any position statements or other matters that need to be addressed or answered with regard to claims filed with the United States Equal Employment Opportunity Commission, as well as the New Jersey Division of Civil Rights. And we also handle any appeals after the conclusion of our internal investigation. Complainants if they are not satisfied

with the outcome have the ability to claim to the New Jersey Civil Service Commission, and we handle those; we respond on behalf of the department to those appeals as well.

Id. at 11:6-12:3.

During her testimony, the EED Director was questioned concerning the confidentiality obligations of complainants and other witnesses in connection with discrimination complaint investigation under the State Policy. Id. at 83:21-94:1. In response to this questioning, EED Director testified that, “The complaints are confidential in that the only people who are aware of them are my office and the – whoever the complaint was reported to.” Id. at 84:1-3.

The EED Director further testified:

It should not be discussed. When witnesses are interviewed as part of an investigation, they have to sign a statement that they’re aware that the – everything discussed in the investigation is confidential, and if they are found to have violated that policy that they – you know, that they signed, they could be subject to discipline for discussing the EED investigation.

Id. at 84:5-84:12.

The EED Director was then asked whether this confidentiality directive was also true for the person who makes the complaint, that person also would be subject to discipline if they discussed the complaint with somebody else. Id. at 84:13-16. The EED Director responded, “Other – outside of the realm of the reporting process, yes.” Id. at 84:17-18. The EED Director then confirmed that the complainant is also required “to sign a confidentiality form.” Id.

The EED Director was then questioned as follows: “Okay. So just bear with me because I want to make sure we get it all clear. So, if I’m the complainant and I go complain, say, to the assistant superintendent, who then passes it on to the EED, I’m not to tell anybody else about

the fact that I made that complaint. Is that correct?" Id. at 84:19-24. The EED Director responded to this question as follows:

When I – at that point they haven't signed the form, but I wouldn't – when you say tell anyone else, do you mean just running around, just going around the facility talking about it? If that's the case, they're not expected – it would depend on – it would really depend on the context. If you're saying that this is someone who's a confidant who they're talking to, that's different, but if you're saying the person is around the facility saying, I filed an EED complaint, I filed an EED complaint, no, they should not be doing that. Even if – and, hopefully, they're aware, but even if they aren't aware, once they speak with the investigator and sign that confidentiality form, then they are definitely aware that they should not be discussing the investigation.

Id. at 84:25-85:14.

The questioning and The EED Director's continued as follows:

Q. Okay, so let's go ahead to that point in the process. So, if EED starts investigating, part of the investigation would be interviewing people.

A. Yes.

Q. Okay. And so, obviously, you'd interview the person who made the complaint.

A. Correct.

Q. And you'd interview the person who was accused of doing something wrong.

A. Correct.

Q. And if there were names of other witnesses who came up, you'd interview those folks, too.

A. Yes.

Q. Okay. And you're saying for all those people who get interviewed there's some form they have to sign.

A. Yes.

- Q. Which says what as far as confidentiality goes?
- A. That they are not to discuss the allegations and what was discussed during their interview, and that if the EED finds that they did and substantiates that they did, they could be subject to punishment.
- Q. Like even being suspended or fired?
- A. Would not fire someone for discussing an EED complaint, but depending on the circumstances, yes, suspension, possibly.
- Q. Okay. So, they could get some real punishment if they breach confidentiality.
- A. Yes.

Id. at 85:15-86:19.

The EED Director was also questioned concerning the ramifications if a State employee who was a witness of an investigation pursuant to the State Policy refused to sign the Strict Confidentiality Directive Form. Id. at 86:20-89:21. In response to this line of questioning, the EED Director testified that she has never had that happen yet, that “[e]veryone thus far has signed it” and that she “[didn’t] know what would happen, because it has not happened.” Id. at 88:4-89:21.

The EED Director was further questioned on the State’s Policy concerning confidentiality of investigation records. Id. at 89:23-94:1. In response to this line of questioning, the EED Director testified that all investigation records, including witness statements and investigation reports, are kept in her EED office and are “completely confidential from the general public.” Id. at 93:14-19. The EED Director further admitted that all investigation records of all internal complaints of harassment, whether “they are found to be valid or not found to be valid, how

many they are, what type they are, what punishments were imposed or not imposed, all of that would be kept confidential from the public.” Id. at 93:20-94:1.

**C. The State’s EEO/AA Investigation and Imposition of the Strict Confidentiality Directive upon Plaintiff**

As reported in the Wall Street Journal, Plaintiff was raped by Albert J. Alvarez on April 8, 2017. Certification of Katherine Brennan dated January 6, 2019 (“Brennan Cert.”) at ¶12. The following day, Plaintiff disclosed to her friend Justin Braz that she had been raped by Mr. Alvarez. Id. at ¶13. At this time, Mr. Braz was becoming involved with, volunteering and/or working for the Murphy Campaign. Id. at ¶14. Plaintiff told Mr. Braz that she would inevitably cross paths with Defendant Alvarez again working with the Murphy Campaign and in the administration, should Murphy win the gubernatorial election, and, therefore, she needed to inform someone involved in the Murphy Campaign that he raped her. Id. at ¶15.

In late November 2017, the Hudson County Prosecutor's Office (“HCPO”) informed Plaintiff that a decision would soon be made regarding whether they would criminally prosecute Mr. Alvarez. Id. at ¶16. Believing that Mr. Alvarez’s arrest was imminent, Plaintiff asked Mr. Braz what action he thought should be taken in view of the negative public impact Mr. Alvarez’s arrest could have on the then-Governor-Elect Murphy’s administration. Id. Mr. Braz suggested to Plaintiff that she authorize him to notify counsel for the Transition Office, Rajiv D. Parikh, Esq., to which she agreed. Id. at ¶17

Plaintiff was advised later that same day by the HCPO that it was declining to take her criminal case against Mr. Alvarez. Id. at ¶18. On March 20, 2018, Plaintiff met with Governor Murphy’s Chief Counsel, Matt Platkin, Esq., in Jersey City and informed him that Defendant

Alvarez had raped her. Id. at ¶9. No EEO/AA investigation was conducted into the disclosures Plaintiff made to Mr. Platkin concerning the rape. Id. at ¶10.

On March 22, 2018, at a meeting in Princeton, Plaintiff informed Governor Murphy's Deputy Chief Counsel, Parimal Garg, Esq., that Defendant Alvarez had raped her. Id. at ¶11. No EEO/AA investigation was conducted into the disclosures Plaintiff made to Mr. Platkin concerning the rape. Id. at ¶12.

After not hearing back from anyone concerning the complaints Plaintiff made to Platkin or Garg of her being raped, Plaintiff sent Mr. Platkin a text message on April 24, 2018 at 8:31 a.m., which reads: "Good morning! FYI, in regard to our previous conversation in JC no one has reached out to me as of yet." Id. at ¶13. Later that day on April 24, 2018, Plaintiff received a phone call from Defendant Heather Taylor, Esq., Chief Ethics Officer, who informed her that the State would not take any action because Defendant Alvarez and Plaintiff were not employees of the State at the time of the alleged sexual assault. Id. at ¶14. As such, no EEO/AA investigation was conducted into the disclosures made to Ms. Taylor concerning the rape. Id. at ¶15.

On the evening of Friday, June 1, 2018, Plaintiff emailed the Governor and First Lady Tammy Murphy and asked to have a meeting with one or both of them about a "sensitive matter" that occurred during the Campaign. Id. at ¶16. Plaintiff did not indicate that her "sensitive matter" involved Defendant Alvarez. Id. at ¶17. Within the hour, Defendant Murphy responded, in relevant part, "We know you well....Hang in. We are on it." Id. at ¶18.

The meeting with Plaintiff and Governor Murphy and/or First Lady Murphy was never scheduled. Id. at ¶19. Instead, Jonathan Berkon, Esq. an attorney from Perkins Coie, LLP, who served as counsel to the Murphy Campaign, contacted Plaintiff and advised that Mr. Alvarez



would be leaving the Administration and State employment. Id. at ¶20. No EEO/AA investigation was conducted into the disclosures Plaintiff made to Governor Murphy or Mr. Berkon concerning the rape. Id. at ¶21.

In early September 2018, Plaintiff learned that Defendant Alvarez was still employed with the State. Id. at ¶22. After realizing that the State was not going to take any action into Plaintiff's reporting of being raped by Defendant Alvarez and believing that she had exhausted all other avenues, Plaintiff made the determination that all she had left was her voice and it would require her going public with her story in order to obtain justice. Id. at ¶23.

On October 14, 2018, the Wall Street Journal published Plaintiff's complaints of rape and the State's failure to investigate. Id. at ¶24. In late October 2018, shortly after Kate King's article was published in the Wall Street Journal, the New Jersey Legislature announced the formation of the New Jersey Legislative Select Oversight Committee. Id. at ¶25.

During the public hearing of the New Jersey Legislative Select Oversight Committee on December 4, 2018, Plaintiff testified for approximately five (5) hours concerning the disclosures and complaints she made to the State concerning the rape and the State's failure to conduct any investigation. Id. at ¶26. Plaintiff did not testify concerning any aspect of the criminal case because the Middlesex County Prosecutor's Office's review of the Hudson County Prosecutor's actions with regard to her complaint against Defendant Alvarez is ongoing. Id. at ¶27.

By letter dated December 12, 2018, the State informed Plaintiff that the State had determined via her testimony that she has "felt ostracized and things have not been the same since October, 2018," after going public with a complaint of sexual assault against a former State employee" may implicate the State Policy. Id. at ¶28. As a result, the State has instructed

the State's Division of Equal Employment Opportunity and Affirmative Action ("EEO/AA") to review Plaintiff's allegation of feeling "ostracized" since October 2018. Id. at ¶29.

Plaintiff has been made aware that the State Policy requires her and all other witnesses of the EEO/AA investigation to keep all aspects of the investigation, including her complaints, confidential. Id. at ¶30. Plaintiff has also been made aware that if she fails to do so, she can be subjected to discipline, up to and including, termination of her employment with the State. Id. at ¶31.

## **ARGUMENT**

### **POINT I**

#### **PLAINTIFF IS ENTITLED TO THE EXTRAORDINARY RELIEF OF A PRELIMINARY INJUNCTION ENJOINING AND RESTRAINING DEFENDANT STATE FROM ENFORCING ITS STRICT CONFIDENTIALITY DIRECTIVE AS TO PLAINTIFF AND FOR OTHER EQUITABLE RELIEF NECESSARY AS TO PLAINTIFF AND OTHER VICTIMS OF SEXUAL ASSAULT, DISCRIMINATION AND HARASSMENT**

The State's Strict Confidentiality Directive, applied to all victims and witnesses in EEO/AA investigations, violates the First Amendment rights of public employees and the anti-retaliation provision of Law Against Discrimination ("LAD") set forth in N.J.S.A. 10:5-12(d). By preventing Plaintiff, the witnesses in this lawsuit, as well all other state employees, from disclosing the underlying facts of sexual assault, harassment and retaliation, which undisputedly constitutes "protected activity" under the law, the State is irreparably harming Plaintiff, witnesses in this lawsuit, all state employees and the entire state of New Jersey. Plaintiff brings this motion for an injunction to stop this unlawful practice and for additional relief to attempt to remedy the State's retaliatory and illegal actions.

An applicant can demonstrate her entitlement to a preliminary or temporary injunction if she establishes: (1) the movant has demonstrated a reasonable probability of success on the

merits; (2) balancing of equities and hardships favors injunctive relief; (3) the plaintiff has no adequate remedy at law and that the irreparable injury to be suffered in the absence of injunctive relief is substantial and imminent; and (4) that the public interest will not be harmed. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982); Waste Management of New Jersey, Inc. v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008). A preliminary injunction “should not issue where all material facts are controverted.” Crowe, 90 N.J. at 133. Each of the “Crowe Factors” must be clearly and convincingly demonstrated. McKenzie v. Corzine, 396 N.J. Super. 405, 413 (App. Div. 2007).

The State’s policy and practice of threatening state employees with disciplinary action, up to and including termination, unless they agree to confidentiality and waive rights protected under the First Amendment and the LAD is sufficient to grant injunctive relief to restrain and enjoin the State from continued enforcement of its Strict Confidentiality Directive to Plaintiff, any witness in this matter and all other State employees or other participants in harassment investigations.

**A. The State’s “Strict Confidentiality Directive” Is a Flagrant Violation of Law Contrary to the Strong Public Policy To Eradicate the Cancer of Discrimination**

Preliminary injunctive relief should only be issued if the moving party makes “a preliminary showing of a reasonable probability of ultimate success of the merits.” Crowe v. De Gioia, 90 N.J. at 133. In deciding a preliminary injunction application, the court essentially makes a “prediction of the probable outcome of the case” based upon the proofs submitted, which is usually limited to documents. Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006).

The law is well-settled that the government infringes upon the constitutional rights of a public employee if it restricts them from discussing matters of public concern. It is likewise well-settled that victim complainants of sexual assault, harassment and/or discrimination and any participating witnesses are engaging in “protected activity” by participating in an investigation of the unlawful conduct. N.J.S.A. 10:5-12(d). The State’s practice and policy of issuing the Strict Confidentiality Directive to all complainants and participating witnesses during discrimination investigations, instructing them that they must keep all aspects of the investigation confidential, is in flagrant violation of their constitutional and statutory rights.

The First Amendment provides for strong protections for public employees’ rights to speak on issues and matters of public concern, including protection against retaliation for speaking on such issues. Pickering v. Bd. of Education, 391 U.S. 563, 574 (1968). This is because public employees often have knowledge about governmental operations that the public has an interest in knowing. Id. at 572. An employee does not relinquish his or her First Amendment rights simply by accepting employment with the government. Id. at 568. As with any citizen, state employees’ interest in commenting on matters of public concern goes to the core of the freedoms protected by the First Amendment. Roth v. United States, 354 U.S. 476, 484 (1957); Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964).

The Supreme Court has made clear that any “[r]estrictions on speech based on its content are ‘presumptively invalid’ and subject to strict scrutiny.” Ysursa v. Pocatello Educ. Ass’n, 555 U.S. 353, 358 (2009)(quoting Davenport v. Wash. Educ. Ass’n, 551 U.S. 177, 188 (2007); R.A.V. v. St. Paul, 505 U.S. 377, 382 (1992)). Strict scrutiny review is satisfied only if a challenged law or regulation is “narrowly tailored to serve a compelling governmental interest.”

Pleasant Grove City v. Sumnum, 555 U.S. 460, 469 (2009)(citing Cornelius v. NAACP Legal Defense and Educ. Fund, 473 U.S. 788, 800 (1985)). “A system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.” Carroll v. President & Comm’rs of Princess Anne, 393 U.S. 175, 180-181 (1968)(quoting Bantam Books v. Sullivan, 372 U.S. 58, 70 (1963); Freedman v. Maryland, 380 U.S. 51, 57 (1965)). The State bears a particularly heavy burden where, as here, the issue is not a single disciplinary action taken against an individual employee, but rather a regulation which prospectively burdens a broad category of speech by a large number of potential speakers, i.e., a ban that “chills potential speech before it happens.” US v. NTEU, 513, U.S. 454, 468 (1995).

In Pickering, the Supreme Court upheld an employee’s First Amendment right to speak about school funding without retaliation in order to protect the “public interest in having free and unhindered debate on matters of public importance.” Pickering, 391 U.S. at 574. Following the Pickering decision, the Supreme Court made clear that public employee speech must be regarding a “matter of public concern” to receive First Amendment protection. Connick v. Myers, 461 U.S. 138 (1983). Courts remain concerned about retaliation against employees for speaking on matters of public concern because a fear of retaliation could “chill” employee participation in public affairs and damage larger societal interest. Id. at 144-45 (“In all of these cases, the precedents in which Pickering is rooted, the invalidated statutes and actions sought to suppress the rights of public employees to participate in public affairs.”); see also, Garcetti v. Ceballos, 547 U.S. 410, 419 (2006)(“The First Amendment limits the ability of a public employer to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens”); Bd. of County Comm’rs v. Umbehr,

518 U.S. 668, 674 (1996)(noting that an independent contractor relationship with the government “provides a valuable financial benefit, the threat of the loss of which in retaliation for speech may chill speech on matters of public concern by those who, because of their dealings with the government, are often in the best position to know what ails the agencies for which they work)(quoting Waters v. Churchill, 511 U.S. 661, 674, (1994)).

In reaffirming the importance of the Pickering holding, the Supreme Court stated in San Diego v. Roe, 543 U.S. 77, 82 (2004):

[u]nderlying the decision in Pickering is the recognition that public employees are often the members of the community who are likely to have informed opinions as to the operations of their public employers, operations which are of substantial concern to the public. Were they not able to speak on these matters, the community would be deprived of informed opinions on important public issues. The interest at stake is as much the public’s interest in receiving informed opinion as it is the employee’s own right to disseminate it.

The Supreme Court has afforded First Amendment protection to witnesses who are required to testify in cases of public concern. Lane v. Franks, 573 U.S. 228 (2014). In Franks, the plaintiff was a public employee who claimed he was unlawfully fired out of retaliation for testifying in a federal fraud case. Ibid. The Supreme Court agreed in holding that government employees enjoy First Amendment protection against retaliatory termination even when the testimony was based on an audit the employee conducted as part of his job duties. Ibid. The Supreme Court emphasized that the content of the employee’s testimony involved corruption in a public program and misuse of state funds, which “obviously involves a matter of significant public concern.” Ibid.

The issues presented in this matter were thoroughly and correctly analyzed by the court in Davis v. New Jersey Dept. of Law and Public Safety, Div. of State Police, 327 N.J. Super. 59 (Law Div. 1999). In Davis, the court held that African-American state police troopers were entitled to a preliminary injunction enjoining the State from enforcing a policy that prevents its police officers from discussing issues of race discrimination with the public without first securing permission from appropriate State Police authority. Id. at 66. In so finding, the court determined that prior restraint on speech concerning issues of discrimination constituted irreparable harm warranting preliminary injunctive relief.

The facts of Davis are strikingly similar to those here: the State, Plaintiff's employer, seeks to restrain her speech concerning matters that constitute discrimination under the law. As such, it is respectfully submitted that the Court analyze the issues within the same framework the Davis court utilized in granting the relief of a preliminary injunction.

There is perhaps no matter of greater public concern than affording individuals the right to pursue claims of sexual assault, discrimination, harassment and retaliation. Indeed, the overarching goal of the LAD is "nothing less than the eradication 'of the cancer of discrimination.'" Lehman v. Toys-R-Us, 132 N.J. 587, 600 (1993) (quoting Fuchilla v. Layman, 109 N.J. 319, 334 (1988)). The LAD was enacted as "an exercise of the police power of the State for the protection of the public safety, health and morals and to promote the general welfare and in fulfillment of the provisions of the Constitution of this State guaranteeing civil rights." N.J.S.A. 10:5-2. "[F]reedom from discrimination is one of the fundamental principles of our society." Lehman, 132 N.J. at 603-04.

The court in Abbamont v. Piscataway Tp. Bd. of Educ. succinctly expressed the goals of the LAD:

[It] seeks to overcome the victimization of employees and to protect those who are especially vulnerable in the workplace from the improper exercise of authority of employers... [E]mployers are best situated to avoid or eliminate impermissible vindictive employment practices, to implement corrective measures, and to adopt and enforce employment policies that will serve to achieve the salutary purposes of the respective legislative mandates.

Abbamont v. Piscataway Tp. Bd. Of Educ., 138 N.J. at 418 (1994). In furtherance of the strong public policy to eradicate discrimination, the Legislature specifically declared that the LAD “be liberally construed in combination with other protections available under the laws of this State.” Id.

Because workplace discrimination “menaces the institutions and functions of a free democratic State”, the New Jersey Supreme Court has specifically recognized that “[w]e would ill serve those important purposes were we to demand that one who voices complaints . . . and suffers retaliation as a consequence, also prove that there is a separate, identifiable victim of actual discrimination.” Battaglia v. United State Parcel Service, Inc., 214 N.J. 518, 549 (2013). Indeed, “[o]ne searches in vain to find another New Jersey enactment having an equivalently powerful legislative statement of purpose, along with operative provisions that arm individuals and entities with formidable tools to combat discrimination not only through their use but also by the threat of their use.” Rodriguez v. Raymours Furniture Co., Inc., 225 N.J. 343, 347 (2016).

Both the LAD and the counterpart Conscientious Employee Protection Act (CEPA) “effectuate important public policies” to protect whistleblowers from unlawful retaliation. Abbamont, 138 N.J. 405, 418. The LAD and CEPA both seek “to overcome the victimization of



employees and to protect those who are especially vulnerable in the workplace from the improper or unlawful exercise of authority by employers.” Ibid. When signing the whistleblower law in 1986, then Governor Thomas Kean explained the important purpose of CEPA and the LAD’s anti-retaliation provision as follows:

It is most unfortunate—but, nonetheless, true—that conscientious employees have been subjected to firing, demotion or suspension for calling attention to illegal activity on the part of his or her employer. It is just as unfortunate that illegal activities have not been brought to light because of the deep-seated fear on the part of an employee that his or her livelihood will be taken away without recourse. Both CEPA and LAD effectuate important policies. Each seek to overcome the victimization of employees and to protect those who are especially vulnerable in the workplace from the improper or unlawful exercise of authority by employers.

Higgins v. Pascack Valley Hospital, 158 N.J. 404, 420 (1999) (quoting Office of the Governor, News Release at 1 (Sept. 8, 1986)).

The LAD prohibits employers from retaliating against employees for engaging in protected activity. N.J.S.A. 10:5-12(d). In order to prove a claim of retaliation under the LAD, the plaintiff must show that she: (1) engaged in protected activity; (2) was subjected to retaliation at the time, or after, the protected conduct took place; and (3) there is a causal connection between the adverse employment action and the protected activity. See New Jersey Model Jury Charge 2.22; see also, Battaglia v. United Parcel Services, Inc., 214 N.J. 518, 547 (1995).

N.J.S.A. 10:5-12(d) sets forth the following activities as being expressly protected under the LAD:

- Opposing any practices or acts forbidden under the LAD;
- Seeking legal advice regarding rights under the LAD;

- Sharing relevant information with legal counsel;
- Filing a complaint, testifying or assisting in any proceeding under the LAD; and,
- Aiding or encouraging any other person in the exercise or enjoyment of any right granted or protected under the LAD.

The Strict Confidentiality Directive infringes on State employees' freedom to engage in these enumerated and statutorily protected activities under the LAD. A state employee who opposes a LAD violation during an investigation, a protected activity under the LAD, is specifically directed that they may not discuss this violation or their opposition to it, without risking discipline. The Strict Confidentiality Directive further silences state employees from speaking to anyone, even their legal counsel, regarding any potential LAD violations that they witness or are subjected to during the course of a harassment investigation. According to the Strict Confidentiality Directive, filing a complaint of harassment with the EEO/AA on this basis would itself be a violation of the directive and could result in disciplinary action. Similarly, the Strict Confidentiality Directive silences witnesses in harassment investigations from attempting to further aid or encourage the complainant in any subsequent legal actions the victim of harassment undertakes.

While the LAD's statutory definition of protected activity is broader and more encompassing than that of Title VII, its federal law counterpart, the Strict Confidentiality Directive policy and practice also violates Title VII's anti-retaliation provision. In the context of Title VII, the EEOC has stated that strict "confidentiality" policies, such as here, are "flagrant and not trivial" violations of the federal law's anti-retaliation provision. In a letter dated August 3, 2012, the EEOC notified an employer that maintained a policy similar to the State's in this matter, that its policy violated Title VII. The EEOC stated that prohibiting employee participants

in an internal investigation from discussing the investigation or be subject to discharge, is a violation of Title VII. The relevant excerpt from the letter reads:

You have admitted to having a written policy which warns all employees who participate in one of your internal investigations of harassment that they could be subject to discipline or discharge for discussing “the matter,” apparently with anyone.

EEOC guidance states that complaining to anyone, including high management, union officials, other employees, newspapers, etc. about discrimination is protected opposition. It also states that the most flagrant infringement of the rights that are conferred on an individual by Title VII’s retaliation provisions is the denial of the right to oppose discrimination. So, discussing one’s complaints of sexual harassment with others is protected opposition. An employer who tries to stop an employee from talking with others about alleged discrimination is violating Title VII rights, and the violation is “flagrant” not trivial. In this case telling the ... women who complained of harassment that they were not to tell others about the alleged harassment is enough to constitute a harm under Title VII. There does not have to be a separate adverse action. In addition, your written policy is so broad that a reasonable employee could conclude from reading it that she could face discipline or charge for making inquiries to the EEOC about harassment if that harassment is being or has been investigated internally by your organization.

The State’s Strict Confidentiality Directive imposed on all state employees who complain or participate in harassment investigations is unlawful. Both victims and witnesses participating in investigations into those complaints are engaging in “protected activity” under the law and cannot be retaliated against by their employers in any way for doing so. The undisputed record shows that the State has a policy and practice in place of threatening complaining victims and witnesses that if they disclose any aspect of the State’s investigation they can be terminated. The chilling impact that this Strict Confidentiality Directive has on the speech of victims and

witnesses of harassment is irreparably harming Plaintiff, state employees and the entire state of New Jersey.

While the State will undoubtedly argue that its Strict Confidentiality Policy promotes workplace harmony and encourages employees to report complaints, it is simply not true. This position is demonstrably false as evidenced by Plaintiff's repeated efforts for justice. Plaintiff made repeated attempts to report, to numerous persons within the State and ultimately directly to the Governor, complaints of rape and the State's failure to investigate her complaints. No investigations occurred. Instead, the State hid behind the Strict Confidentiality Policy, using it as a shield and excuse for not investigating, otherwise addressing or even acknowledging Plaintiff's complaints. In an unabashed act of hypocrisy, the State is requiring Plaintiff to participate in a "limited" EEO/AA investigation into her comment that she has felt ostracized since going public with her story in October 2018 and that she not disclose anything about the investigation to anyone. The State's unlawful use of its "Strict Confidentiality Directive" to cover up unlawful conduct must end and end now.

The National Labor Relations Board ("NLRB") has also condemned employer policies that ask employees not to discuss ongoing internal investigations of workplace misconduct and alleged harassment. In Banner Estrella Medical Center, 362 NLRB No. 137 (June 26, 2015), the NLRB held that a blanket policy requiring confidentiality from employees who participate in a workplace investigation to be unlawful. The Board reaffirmed prior cases finding that directing employees not to discuss matters under internal investigation interferes with their right under Section 7 of the NLRB to discuss discipline or disciplinary investigations involving fellow employees (a form of protected concerted activity under the NLRA). The NLRB held that such

interference is permissible only on a case-by-case basis, upon a demonstration that the employer's interest in confidentiality outweighs the employees' Section 7 rights. While the NLRB does not apply to State employees, the principles underlying the NLRB's protection of concerted activity and the LAD's protection of aiding and encouraging the enjoyment of rights under the LAD are one and the same. In both cases, the law recognizes that workplace protections can only be realized where coworkers are able to work together to ensure their enforcement.

Secrecy is a powerful weapon used to perpetuate discrimination and sexual assault. Secrecy prevents victims of sexual assault from obtaining information necessary to combat sexual assault and discrimination, shields and protects wrongdoers, hides shoddy investigations of unlawful conduct and covers up employer failures to appropriately remediate instances of assault and discrimination. Secrecy emboldens perpetrators of unlawful conduct because they can act with impunity, without fear of being exposed. The State Policy imposing the "Strict Confidentiality Directive" on victims of discrimination and witnesses required to participate in harassment investigations does not promote workplace harmony nor does it encourage victims of sexual assault or discrimination to speak out -- it only silences them.

Plaintiff has received notice that she now must participate in a limited EEO/AA investigation. As an employee of the State, she has an obligation to participate in the EEO/AA investigation. As set forth in the EEO/AA's December 12, 2018 letter, Plaintiff is subjected to the Strict Confidentiality Directive pursuant to N.J.A.C. 4A:7-3.1(j). Consistent with State policy and practice, Plaintiff will be required to sign the "Strict Confidential Directive" form upon her interview with the EEO/AA. If Plaintiff breaches the "Strict Confidentiality Directive", she could

be subjected to disciplinary action, up to and including termination. Plaintiff has been through enough. As she has said publicly, her voice was the only thing she had left and now the State is trying to take it away from her through its unilateral decision to launch an EEO/AA investigation and practice of imposition of its “Strict Confidentiality Directive.”

Plaintiff brings this action, and her lawsuit, on behalf of herself as well as all other victims of sexual assault and unlawful discrimination. Ensuring survivors of sexual assault are never silenced and eradicating the cancer of discrimination is of the most significant public concern. The State’s Strict Confidentiality Directive indisputably silences survivors and tramples upon the LAD and Constitutional rights of victims and participating witnesses in EEO/AA investigation. Threatening survivors, victims and witnesses with termination if they speak out and engage in protected activity is a clear unlawful practice and must be stopped immediately.

**B. The Balancing of Equities and Hardships Favors the Issuance of Injunctive Relief**

Courts must consider the relative hardships to the parties when considering whether to grant a preliminary injunction. Crowe, 90 N.J. at 134. In cases involving the First Amendment, courts will balance a public employee’s right to speak on matters of public concern against the government’s legitimate interest in the effective and efficient fulfillment of their responsibilities to the public, “including maintaining proper discipline in public service.” Lane, 134 S. Ct. at 2381 (quoting Connick, 461 U.S. at 150-51). The Supreme Court has “cautioned, however, that a ‘stronger showing of government interests may be necessary if the employee’s speech more substantially involve[s] matter of public concern.’” Ibid.

The State cannot establish any legitimate interest in maintaining a policy and practice of strict confidentiality for all complainants and witnesses in all harassment investigations

conducted by the EEO/AA. In this case, to the contrary, Plaintiff has a strong interest in having the ability to speak freely about her complaints of rape and the State's subsequent failures to investigate her complaints.

Plaintiff is not contending that no aspects of a workplace investigation should ever be confidential. Clearly, an employer has legitimate business justifications for keeping certain aspects of a harassment investigation confidential, including an interest to protect the integrity of the process. However, the State's Strict Confidentiality Directive policy and practice goes well beyond necessity as it requires victims and witnesses to keep *all* aspects of *every* investigation confidential, including their participation as witnesses. By threatening discipline up to and including termination for any breach of this policy, the State ensures that employee speech is chilled to the greatest extent possible. There is absolutely no legitimate business justification for a Strict Confidentiality Directive policy and practice that extends as far as the State's strict confidentiality directive. For this reason, the balancing of the equities tip only in Plaintiff's favor.

**C. Plaintiff Has Demonstrated that She Will Suffer Substantial, Immediate and Irreparable Harm**

Plaintiff has been irreparably harmed by this policy, and will continue to be irreparably harmed, if the State is not restrained and enjoined from imposing and enforcing its Strict Confidentiality Directive in this lawsuit and the pending EEO/AA investigation concerning Plaintiff.

The equitable relief of a preliminary or temporary injunction should not be entered except when necessary to prevent substantial, immediate, and irreparable harm. Citizens' Coach Co. v. Camden Horse R. Co., 29 N.J. Eq. 299, 303-04 (E. & A. 1878). Harm is irreparable

only if it cannot be redressed by monetary damages. Crowe, 90 N.J. at 132-33. Further, the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Elrod v. Burns, 427 U.S. 347, 373-74 (1976).

Absent an injunction, the State will continue to require Plaintiff and all other victims and witnesses to maintain strict confidentiality and not disclose relevant and discoverable information concerning the underlying unlawful conduct being investigated by the EEO/AA. Any witnesses who participate in the EEO/AA investigation and those interviewed in connection with the lawsuit are threatened with termination if they disclose any aspect of their knowledge of this matter. The State has no legitimate basis to strip victims and other witnesses of their constitutional rights under the guise of confidentiality.

The terms of the State's Strict Confidentiality Directive policy are clear – the witnesses cannot disclose any aspect of the investigation to anyone or they will be subject to discipline, up to and including termination. While N.J.A.C. 4A:7-3.1(j) reserves the right for the State's EEO/AA investigators to disclose confidential information to the extent necessary to conduct an appropriate investigation, the regulation clearly withholds this right from complainants and witnesses who participate in those investigations. Unequivocally, the regulation states:

All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.

N.J.A.C. 4A:703.1(j).

In a recent trial against the State of New Jersey, the EEO/AA officer for the New Jersey Department of Corrections, EED Director confirmed that "complaints are confidential in that



the only people who are aware of them are my office and the – whoever the complaint was reported to.” Dwyer Cert. ¶10. The EED Director further confirmed that “[w]hen witnesses are interviewed as part of an investigation, they have to sign a statement that they’re aware that the – everything discussed in the investigation is confidential, and if they are found to have violated that policy that they – you know, that they signed, they could be subject to discipline for discussing the EED investigation.” Id. at ¶11.

Not only are Plaintiff and all other state employees who are victims of discrimination suffering irreparable harm from the State’s Strict Confidentiality Directive policy and practice, so are the witnesses required to participate in EEO/AA investigations. Witnesses are engaging in protected activity by the sheer act of participating in EEO/AA investigations. There is nothing confidential and certainly nothing that is not discoverable about witnesses’ knowledge of the facts of this case. Should any witness be subjected to retaliatory action because of their participation in a mandated interview in connection with this investigation, they would be strictly prohibited from disclosing any facts concerning their participation. Such a practice is causing irreparable harm to all state employees who are victims of harassment and those who participate as witnesses in a related lawsuit.

**D. The Public Interest Will Not Be Harmed By Restraining the State From Enforcing its Strict Confidentiality Directive**

In some cases, when the public interest is greatly affected, a court will withhold relief despite a substantial showing of irreparable injury to the moving party. Waste Management of New Jersey, Inc., 399 N.J. Super. at 520. As a result, in the exercise of their equitable powers, courts “may and frequently do, go much further both to give and withhold relief in furtherance

of the public interest than they are accustomed to do when only private interests are involved.”

Id.

As shown herein, the Strict Confidentiality Directive policy and practice is an undisputed violation of the rights of victims of harassment and participating witnesses to engage in protected activity in connection with harassment investigations. In response to Plaintiff going public with her complaints, New Jersey Governor Philip D. Murphy announced that his administration will be looking into updating state laws and policies relating to how allegations of sexual assault are handled. In connection therewith Governor Murphy stated, “We want this state to be the gold standard when someone is the victim that they know what to do, that they are encouraged, that they are supported.” McClure Cert. at ¶19; Exh. E. The Governor added, “The voices must be heard.” Id.

These voices, the voices of survivors, sexual harassment and assault victims and witnesses, are not being heard because the Strict Confidentiality Directive. They are being chilled or completely silenced through threats of discipline or termination for disclosing any aspect of harassment investigations they initiate or participate in. As such, there are simply no facts in the record to support that the public interest would be harmed by putting a stop to this practice and prohibiting the State from enforcing its unlawful Strict Confidentiality Directive policy and practice. To the contrary, the public interest can only be advanced by eliminating this unlawful policy and practice.

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted that Plaintiff's Order to Show Cause For Temporary and Preliminary Restraints be entered against Defendant State restricting and enjoining it from imposing its Strict Confidentiality Directive upon witnesses in this action and in other current and future harassment investigations and providing other equitable relief.

Respectfully submitted,

SMITH EIBELER, LLC

By: /s/Christopher J. Eibeler  
CHRISTOPHER J. EIBELER

Dated: January 7, 2019

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-----X	
KATHERINE BRENNAN,	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION: MERCER COUNTY
	:
Plaintiff,	: DOCKET NO.: MER-L-000034-19
	:
v.	: Civil Action
	:
ALBERT J. ALVAREZ, STATE OF NEW JERSEY,	:
MURPHY FOR GOVERNOR, INC.,	:
ABC COMPANIES (1-10) (fictitious names of	:
unknown entities) and JOHN DOES (1-10)	:
(fictitious names of unknown persons),	: CERTIFICATION OF
	: KATHRYN K. McCLURE, ESQ.
Defendants.	:
	:
-----X	

I, KATHRYN K. McCLURE, ESQ., of full age, do hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and a member of the firm of Smith Eibeler, LLC, attorneys for Plaintiff, Katherine Brennan.

2. I make this Certification in support of Plaintiff's Order to Show Cause seeking preliminary and temporary restraints.

3. According to its website:

The Division of Equal Employment Opportunity/Affirmative Action ("EEO/AA") was created by law to ensure equal employment opportunities for all New Jersey state employees and prospective employees. The Division also serves to prevent State employees, prospective State employees, and persons doing business with the State, from being subjected to discrimination and/or harassment.

The Division of EEO/AA is charged with ensuring that all employees and applicants for employment with the State of New Jersey work in an environment free from all forms of employment discrimination in accordance with the State of New Jersey's Policy Prohibiting Discrimination in the Workplace. The Division of EEO/AA is also charged with insuring that all State Departments and Agencies comply with the applicable law, policies and procedures.

A copy of the home page for the EEO/AA is annexed hereto as **Exhibit A**.

4. The State of New Jersey maintains a "Policy Prohibiting Discrimination in the Workplace" (hereafter the "State Policy"). A copy of the State Policy that is also publicly available by the State on the Division of Civil Service Commission's – EEO/AA Division website at <https://www.state.nj.us/csc/about/divisions/eoo/pdf/PolicyProhibitingDiscrim.pdf> is attached hereto as **Exhibit B**.

5. The stated purpose of the State Policy is to provide "every ***State employee and prospective State employee*** with a work environment free from prohibited discrimination or harassment." (emphasis added). Id.

6. Under the State Policy, "forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability." Id.

7. The State Policy further reads that in order "[t]o achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the state and its agencies reserve the right to take either disciplinary action, if appropriate,

or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.” Id.

8. The “Applicability” provision of the State’s Policy reads:

Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as “State agencies” or “State agency”). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed).

This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual’s ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy. Id.

9. The “Prohibited Conduct” provision of the State’s Policy states:

It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in I (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions and career development. Id.

10. The “Sexual Harassment” provision of the State’s Policy states:

It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission

Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. ... Id.

11. The "Employee Responsibilities" provision of the State's Policy states:

Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints.

**All employees are expected to cooperate with investigations undertaken pursuant to VI below. Failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including termination of employment.** (emphasis added). Id.

12. The "Supervisor Responsibilities" provision of the State's Policy states:

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and in the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace (Model Procedures), a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader). Id.

13. The "Complaint Process" provision of the State's Policy reads:

Each State agency shall follow the Model Procedures with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough and impartial manner. The results of the investigation shall be forwarded to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

Where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate. Id.

14. The “Confidentiality” provision relating to the State’s obligations under the State’s Policy under N.J.A.C. 4A:7-3.1(j) reads:

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. Id.

15. The “Confidentiality” provision relating to any witnesses or persons with knowledge of any harassment or discrimination claim directs strict confidentiality upon all persons interviewed, including witnesses, as follows:

**All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment. (emphasis added). Id.**



(hereinafter referred to the "Strict Confidentiality Directive")

16. N.J.A.C. 4A:7-3.2 sets forth the "Model procedures for internal complaints alleged discrimination in the workplace" as follows:

Each State department, commission, State college or university, agency, and authority (hereafter referred to in this section as "State agency") is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the [Civil Service Commission,] Division of EEO/AA.

(a) All employees and applicants for employment have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination in the Workplace, N.J.A.C 4A:7-3.1.

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State agency. Complaints may also be reported to (Authorized Designee).

(c) Every effort should be made to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct.

(d) Supervisory employees shall immediately report all alleged violations of the State of New Jersey Policy Prohibiting Discrimination in the Workplace to (Name of Officer), EEO/AA Officer. Such a report shall include both alleged violations reported to a supervisor, and those alleged violations directly observed by the supervisor.

(e) If reporting a complaint to any of the persons set forth in subsections (a) through (d) above presents a conflict of interest, the complaint may be filed directly with the [Civil Service Commission,] Division of EEO/AA, PO Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.

(f) In order to facilitate a prompt, thorough, and impartial investigation, all complainants are encouraged to submit a Discrimination Complaint Processing Form (DPF-481). An investigation may be conducted whether or not the form is completed.

(g) Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate. A

copy of all complaints (regardless of the format in which submitted) must be submitted to the [Civil Service Commission,] Division of EEO/AA, by the State agency's EEO/AA Officer, along with a copy of the acknowledgement letter(s) sent to the person(s) who filed the complaint and, if applicable, the complaint notification letter sent to the person(s) against whom the complaint has been filed. If a written complaint has not been filed, the EEO/AA Officer must submit to the Division of EEO/AA a brief summary of the allegations that have been made. Copies of complaints filed with the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission, or in court also must be submitted to the Division of EEO/AA.

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

(j) An [investigatory] investigative report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include, at a minimum:

1. A summary of the complaint;
2. A summary of the parties' positions;
3. A summary of the facts developed through the investigation; and
4. An analysis of the allegations and the facts. The [investigatory]

investigative report will be submitted to (State agency head) who will issue a final letter of determination to the parties.

(k) The (State agency head or designee) will review the [investigatory] investigative report issued by the EEO/AA Officer or authorized designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination in the Workplace has been substantiated. If a violation has occurred, the (State agency head or designee) will determine the appropriate corrective measures necessary to immediately remedy the violation.

(l) The (State agency head or designee) will issue a final letter of determination to both the complainant(s) and the person(s) against whom the complaint was filed, setting forth the results of the investigation and the right of appeal to the [Merit System Board] Civil Service Commission as set forth in subsections (m) and (n) below. To the extent possible, the privacy of all parties involved in the process shall be maintained in the final letter of determination. The Division of EEO/AA[, Civil Service Commission,] shall be furnished with a copy of the final letter of determination.

1. The letter shall include, at a minimum:

- i. A brief summary of the parties' positions;
- ii. A brief summary of the facts developed during the investigation; and
- iii. An explanation of the determination, which shall include whether:

- (1) The allegations were either substantiated or not substantiated; and

- (2) A violation of the Policy Prohibiting Discrimination in the Workplace did or did not occur.

2. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (h) above is completed.

3. The time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension. (m) A complainant who is in the career, unclassified, or senior executive service, or who is an applicant for employment, who disagrees with the determination of the (State agency head or designee), may submit a written appeal, within [twenty] 20 days of the receipt of the final letter of determination from the (State agency head or designee), to the Civil Service Commission, PO Box 312, Trenton, NJ 08625. The appeal shall be in writing and include all materials presented by the complainant at the State agency level, the final letter of determination, the reason for the appeal, and the specific relief requested.

1. Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The Commission may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in this section or a combination of procedures as the Commission deems appropriate. See N.J.A.C. 4A:2-1.7.

2. If an appeal under this chapter raises issues concerning the employee not receiving an advancement appointment, the Commission shall decide those issues in the course of its determination.

3. The Civil Service Commission shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

4. The appellant shall have the burden of proof in all discrimination appeals brought before the Civil Service Commission.

(n) In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the Civil Service Commission at the address indicated in (m) above within 20 days of receipt of the final letter of determination by the State agency head or designee. 1. The burden of proof shall be on the appellant. 2. The appeal shall be in writing and include the final letter of determination, the reason for the appeal, and the specific relief requested. 3. If disciplinary action has been recommended in the final letter of determination, the party(ies) charged may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

(o) The Director of the Division of EEO/AA shall be placed on notice of, and given the opportunity to submit comment on, appeals filed with the Civil Service Commission of decisions on discrimination complaints, regardless of whether or not the complaint was initially filed directly with the Director of EEO/AA.

(p) Any employee or applicant for employment can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. An individual should contact the specific agency to obtain exact time frames for filing a complaint. The deadlines run from the date of the last incident of alleged discrimination/harassment, not from the date that the final letter of determination is issued by the State agency head or designee.

1. Complaints may be filed with the following external agencies:

i. Division on Civil Rights N.J. Department of Law & Public Safety (Within 180 days of the discriminatory act)

ii. US Equal Employment Opportunity Commission (EEOC) (Within 300 days of the discriminatory act).

Id.

17. Also on the EEO/AA website is a web page entitled "Complaints." On this webpage, the EEO/AA again makes clear in connection with the Strict Confidential Directive that "[t]he provisions of the New Jersey State Policy Prohibiting Discrimination, Harassment or Hostile Work Environment in the Workplace require that all complaints and related investigations be confidential. *Each individual involved in the investigation is obligated to maintain confidential.* (emphasis added). A copy of the "Complaints" web page on the EEO/AA website is annexed hereto as **Exhibit C.**

18. A copy of the "confidentiality form" that complainants, accused and all other witnesses are required to sign in connection with their obligation to participate in State harassment investigations is attached hereto as **Exhibit D.**

19. A copy of an article entitled "Murphy launches investigation into why alleged rapist was hired for top state job" from NJ Advance Media and NJ.com is attached hereto as **Exhibit E.**

19. I hereby 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.



Dated: January 7, 2019

\_\_\_\_\_  
KATHRYN K. McCLURE, ESQ.

# **EXHIBIT A**



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- [Division of Equal Employment Opportunity / Affirmative Action](#)
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Division of Equal Employment Opportunity / Affirmative Action

**Location:**  
44 South Clinton Avenue  
Trenton, New Jersey 08609

**Mailing Address:**  
Division of Equal Employment Opportunity/Affirmative Action (EEO/AA)  
PO Box 315  
Trenton, NJ 08625-0315

**Mamta Patel, Esq.**  
Director, EEO/AA

Phone: 609-984-1096  
FAX: 609-292-7067

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- ▶ [Complaints](#)
- ▶ [Resource Links](#)
- ▶ [Policies and procedures](#)

The Division of Equal Employment Opportunity/Affirmative Action was created by law to ensure equal employment opportunities for all New Jersey State employees and prospective employees. The Division also serves to prevent State employees, prospective State employees, and persons doing business with the State, from being subjected to discrimination and/or harassment.

The Division of EEO/AA is charged with ensuring that all employees and applicants for employment with the State of New Jersey work in an environment free from all forms of employment discrimination in accordance with the State of New Jersey's Policy Prohibiting Discrimination in the Workplace. The Division of EEO/AA is also charged with insuring that all State Departments and Agencies comply with the applicable law, policies and procedures.

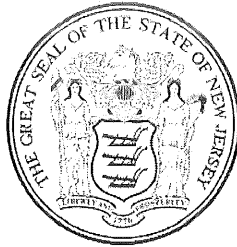


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# **EXHIBIT B**





***NEW JERSEY STATE  
POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE***

**I. POLICY**

**a. Protected Categories**

The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.

To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the state and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

**b. Applicability**

Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as "State agencies" or "State agency"). The State of New Jersey will not tolerate harassment or

discrimination by anyone in the workplace including supervisors, co-workers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed).

This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

## II. PROHIBITED CONDUCT

### a. Defined

It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in I (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions and career development.

It is also a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in I(a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

Examples of behaviors that may constitute a violation of this policy include, but are not limited to:

- Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected categories referred to in I(a) above;
- Treating an individual differently because of the individual's race, color, national origin or other protected category, or because an individual has the physical, cultural or linguistic characteristics of a racial, religious, or other protected category;

- Treating an individual differently because of marriage to, civil union to, domestic partnership with, or association with persons of a racial, religious or other protected category; or due to the individual's membership in or association with an organization identified with the interests of a certain racial, religious or other protected category; or because an individual's name, domestic partner's name, or spouse's name is associated with a certain racial, religious or other protected category;
- Calling an individual by an unwanted nickname that refers to one or more of the above protected categories, or telling jokes pertaining to one or more protected categories;
- Using derogatory references with regard to any of the protected categories in any communication;
- Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because that individual belongs to, or is associated with, any of the protected categories; or
- Displaying or distributing material (including electronic communications) in the workplace that contains derogatory or demeaning language or images pertaining to any of the protected categories.

b. Sexual Harassment

It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

- Generalized gender-based remarks and comments;
- Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body or impeding or blocking movement;
- Verbal, written or electronic sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, text messages, invitations, gestures or inappropriate comments about a person's clothing;
- Visual contact, such as leering or staring at another's body; gesturing; displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily-clad individuals; or displaying sexually suggestive material on a bulletin board, on a locker room wall, or on a screen saver;
- Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, or retention;
- Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluation or promotional opportunity; or
- Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

### **III. EMPLOYEE RESPONSIBILITIES**

Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints.

All employees are expected to cooperate with investigations undertaken pursuant to VI below. Failure to cooperate in an investigation may result in

administrative and/or disciplinary action, up to and including termination of employment.

#### **IV. SUPERVISOR RESPONSIBILITIES**

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and in the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace (Model Procedures), a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

#### **V. DISSEMINATION**

Each State agency shall annually distribute the policy described in this section, or a summarized notice of it, to all of its employees, including part-time and seasonal employees. The policy, or summarized notice of it, shall also be posted in conspicuous locations throughout the buildings and grounds of each State agency (that is, on bulletin boards or on the State agency's intranet site). The Department of the Treasury shall distribute the policy to State-wide vendors/contractors, whereas each State agency shall distribute the policy to vendors/contractors with whom the State agency has a direct relationship.

#### **VI. COMPLAINT PROCESS**

Each State agency shall follow the Model Procedures with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough and

impartial manner. The results of the investigation shall be forwarded to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

Where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

## **VII. PROHIBITION AGAINST RETALIATION**

Retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation.

Following are examples of prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection:

- Termination of an employee;
- Failing to promote an employee;
- Altering an employee's work assignment for reasons other than legitimate business reasons;
- Imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or
- Ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

### **VIII. FALSE ACCUSATIONS AND INFORMATION**

An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, may be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

### **IX. CONFIDENTIALITY**

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.

### **X. ADMINISTRATIVE AND/OR DISCIPLINARY ACTION**

Any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

### **XI. TRAINING**

All State agencies shall provide all new employees with training on the policy and procedures set forth in this section within a reasonable period of time after each new employee's appointment date. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time. All State agencies shall also provide supervisors with training on a regular basis regarding their obligations and duties under the policy and regarding procedures set forth in this section.

Issued: December 16, 1999  
Revised: June 3, 2005  
Revised: August 20, 2007  
See N.J.A.C. 4A:7-3.1

# **EXHIBIT C**



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## Complaints

### The New Jersey State Policy

The *New Jersey State Policy Prohibiting Discrimination in the Workplace* (Policy) prohibits discrimination and harassment against State employees, prospective State employees, and persons doing business with the State of New Jersey on the basis of race, creed, color, national origin, ancestry, age, sex (including pregnancy), marital/civil union status, familial status, religion, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability (including mental disability, and perceived disability). To view policy, please [click here](#).

- › [Overview](#)
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- Complaints**
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### Confidentiality and Retaliation

The provisions of the New Jersey State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace require that all complaints and related investigations be confidential. Every individual involved in the investigation process is obligated to maintain confidentiality. This Policy also prohibits retaliation against anyone who files a complaint or participates in a complaint investigation.

### Who can file

Any employee, job applicant, or other individual doing business with a New Jersey State department, agency, commission or college may file a complaint of discrimination or harassment with the EEO/AA Officer of the state entity in which the alleged discrimination/harassment occurred.

If there is a conflict of interest, the complaint may be filed with the Division of EEO/AA. In addition to filing an internal complaint, individuals have the right to file complaints simultaneously with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the New Jersey Division on Civil Rights (DCR). Please be advised that both agencies have time limits for filing complaints. For more information, please visit their websites: [www.eeoc.gov](http://www.eeoc.gov) and [www.state.nj.us/ps/dcr/index.html](http://www.state.nj.us/ps/dcr/index.html).

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# **EXHIBIT D**



## New Jersey State Policy Prohibiting Discrimination in the Workplace

The provisions of the *New Jersey State Policy Prohibiting Discrimination in the Workplace* require all related complaints and investigations to be handled on a confidential basis. In addition, there is a prohibition of retaliation against anyone who files a complaint, participates in a complaint investigation, or opposes a discriminatory practice.

### Confidentiality

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality will be maintained throughout the investigatory process. During the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom a complaint has been made and other persons who may have relevant knowledge. It may also be necessary to disclose information to persons with a legitimate need to know about the matter. All persons who are interviewed or otherwise advised of a complaint are directed not to discuss any aspect of the investigation with others. Failure to comply with this confidentiality directive may result in disciplinary action, up to and including removal.

### Prohibition Against Retaliation

Retaliation against any person who either alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by the Policy. Any employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under the Policy will not be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation.

- 
1. I have been advised of and/or read the provisions of Confidentiality and Prohibition Against Retaliation; and
  2. I understand this complaint investigation must be confidential and I may not take retaliation against anyone who has filed a complaint, participated in a complaint investigation or opposes a discriminatory practice.

Name and Title: \_\_\_\_\_  
(Print)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# **EXHIBIT E**

NEW JERSEY POLITICS

# Phil Murphy launches investigation into why alleged rapist was hired for top state job

Updated Oct 17, 2018;

Posted Oct 15, 2018

Gov. Phil Murphy holds press conference to address all...



Gov. Phil Murphy holds press conference to address alleged rape of woman by former campaign staffer

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**By Brent Johnson and Susan K. Livio**

NJ Advance Media for NJ.com



Expressing sympathy for the alleged victim and frustration with how her case was handled, Gov. Phil Murphy ordered an investigation Monday into how his team responded to allegations a senior staffer raped a woman while he worked for the governor's campaign last year.

An independent investigation will look into why former campaign staffer Albert J. Alvarez was hired to a top state job despite the sexual assault allegation, the governor said.

"I wish we hadn't made the hire in transition, period," Murphy said during a 33-minute press conference in Newark. "I'm sick to my stomach once I heard what happened."

The investigation will be led by Peter Verniero, a former state attorney general and state Supreme Court justice.

Murphy, a Democrat, said it will be an in-depth probe, unlike the investigation of sexual assault allegations against U.S. Supreme Court Justice Brett Kavanaugh, a Republican, made during his U.S. Senate confirmation hearings.

"We will not follow the lead of Washington," Murphy said.

"This will be a real investigation."



Gov. Phil Murphy speaks at a press conference in Newark on Monday about rape allegations made against a former staffer. (Patti Sapone | NJ Advance Media for NJ.com)

Verniero said in a statement Monday that he would oversee a "systemic review of the hiring and vetting practices of the governor-elect's transition office, including the hiring and vetting of" Alvarez.

He said he spoke with the governor Monday and has been "assured" he will have "complete independence independence to request interviews with whomever I deem appropriate as fact witnesses as well as access to relevant documents."

Verniero said he expects the review to be completed by the end of the year.

Murphy addressed the brewing controversy as he prepared to depart for a nine-day trade mission to Germany and Israel.

Katie Brennan, chief of staff at the New Jersey Housing and Mortgage Finance Agency, said Alvarez sexually assaulted her after a campaign gathering in Jersey City in April 2017 while he served as director of Latino and Muslim community outreach for Murphy's campaign.

Brennan, 31, of Jersey City, said she went to the hospital and reported the alleged assault to law enforcement officials the next day, but the Hudson County Prosecutor's Office declined to prosecute.

She also said she told Murphy's transition team about the allegations, but Alvarez was still given a state job.

Alvarez, 44, of Wood-Ridge, and his attorney, John Hogan, have not returned messages from NJ Advance Media seeking comment.





But Hogan told the Wall Street Journal his client "absolutely, positively denies these allegations of sexual assault" and declined further comment.

Murphy said he and his wife, First Lady Tammy Murphy, planned to speak to Brennan at 3 p.m. Monday by phone and will meet with her in person at a later date.

"I feel awful for Katie," the governor said. "Nobody deserves this. She's been screaming out for help, and she didn't get it. We have to get to a better place."



Shortly before Murphy's remarks Monday, the state Attorney General's Office announced the case, which was originally investigated and closed by the Hudson County Prosecutor's Office last year, might be re-opened.

Because it was discovered during a review that Hudson County Prosecutor Esther Suarez personally knew both Alvarez and the alleged victim, the case was sent last week to the Middlesex County Prosecutor's Office, state officials said.

Middlesex County Prosecutor's Office "detectives are reviewing the case file and will take any additional investigative steps they deem appropriate," said Sharon Lauchaire, a spokeswoman for the Attorney General's Office.

Neither Suarez nor members of her executive leadership team were involved in the case when it was investigated in Hudson County, Lauchaire said. But Suarez asked state officials to take over "out of an abundance of caution" after she learned the case involved people she knew.



**Matt Arco**  
@MatthewArco

"Katie Brennan spent more than a year trying to get authorities to take action against the man she accuses of sexually assaulting her. Finally, she emailed New Jersey @GovMurphy." @KCarliniKing reports: [wsj.com/articles/a-sex...](https://www.wsj.com/articles/a-sex...)

23 1:54 PM - Oct 14, 2018

**A Sexual-Assault Accusation in New Jersey Spotlights a Natio...**

A woman says she was sexually assaulted by a former campaign staffer for New Jersey Gov. Phil Murphy. Her alleged attacker, who [wsj.com](https://www.wsj.com)



20 people are talking about this

Brennan -- who was a supporter of Murphy's at the time of the alleged attack and later volunteered for his campaign -- detailed her account for the first time in a story published by the Wall Street Journal on Sunday.

Brennan said she alerted Murphy's camp three times of the accusations over the last year.

Ad



Mount Holly oncologist Stephen Wallace, MD, outlines latest advances against lung cancer  
Regional Cancer Care Associates, LLC

Alvarez, who was never charged with a crime, remained in his \$140,000-a-year job as chief of staff of the New Jersey Schools Development Authority until Oct. 2, the same day the Journal reached out to him for comment on Brennan's allegations.

Murphy claims he did not know of the accusations until that day.

Brennan said in a statement Sunday that she "pursued every form of justice available," but "it has become clear that this system is not built for survivors."

"I decided to come forward because I know that Al Alvarez, and all perpetrators, must be held accountable, must never rape again, and the justice system needs a complete change with regard to sexual violence," Brennan said.





**S.P. Sullivan** @spsullivan · Oct 15, 2018

The @NewJerseyOAG has moved a sex assault case involving a former @GovMurphy administration official to another county amid questions over handling of the case by gov's staff and county prosecutors.

Earlier this month, the Hudson County Prosecutor's Office (HCPO) received a media inquiry about a criminal investigation involving Mr. Albert J. Alvarez. HCPO obtained and reviewed the case file, which showed that the investigation of Mr. Alvarez was opened and closed in 2017. The file further indicated that the matter was investigated by career detectives and reviewed by veteran special victims prosecutors. Like most cases of this nature, it was opened and closed without involvement by Hudson County Prosecutor Esther Suarez or members of her executive leadership team.

During that review of the file earlier this month, however, Prosecutor Suarez realized that she personally knew both the complainant and the subject of the investigation. Although these personal relationships in no way affected the investigation that was conducted in 2017, Prosecutor Suarez decided – out of an abundance of caution – to request that DCJ supersede the case. DCJ agreed to that request and re-assigned the matter to the Middlesex County Prosecutor's Office (MCPO) last week. MCPO detectives are reviewing the case file and will take any additional investigative steps they deem appropriate.



**S.P. Sullivan**  
@spsullivan

"We must stand with the Katies of the world and that did not happen," @GovMurphy says at presser in response to woman who came forward after rape investigation involving an administration official went nowhere. [nj.com/politics/index...](http://nj.com/politics/index...)

5 11:53 AM - Oct 15, 2018

**Woman accusing Murphy staffer of rape says she 'received n...**

"The justice system needs a complete change with regard to sexual violence," Katie Brennan said. Meanwhile, Gov. Phil Murphy [nj.com](http://nj.com)

See S.P. Sullivan's other Tweets



Murphy stressed Monday that while he's confident his administration handled the allegations properly, his transition team never should have hired him for a state job.

"Let me be absolutely and unequivocally clear: This never should have happened," the governor said. "In this instance, the hiring process of the transition did not reflect our values or the seriousness with which we believe allegations of assault should be taken, period."



"Sexual misconduct in any form is and will be continued to be treated by this administration with the utmost gravity," Murphy added. "Now we must lead and prove that commitment. Words are not enough."

Brennan said she first alerted Murphy's camp to the allegations after Murphy, a Democrat, won the election in November.



Mahen Gunaratna, a spokesman for Murphy, said Sunday that transition officials learned law enforcement "actively investigated" the allegations and closed the case. He also said Alvarez passed a background check and was cleared for his job at the schools authority.

Brennan said she then contacted Murphy's office about the matter after the governor took office in January.

That time, Matt Platkin, the governor's chief counsel, recused himself and referred the matter to an ethics official in the governor's office, and that official referred it to the state Attorney General's Office that day, according to Gunaratna.

Then, on June 1, Brennan emailed Murphy and his wife saying she wanted to discuss a "sensitive matter," though she did not mention sexual assault.

"Hang in," Murphy wrote back, according to the Journal. "We are on it."

A meeting with Murphy never happened, but Brennan said a campaign attorney told her Alvarez would no longer have a state government job. Alvarez didn't resign until four months later.

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Asked why he didn't personally follow up on the "sensitive matter" that Brennan mentioned in the email, Murphy said he gets similar emails "literally all the time" from people who ask to meet with him.

"Tammy and I have been reminded time and again that to do one-off meetings with folks, good, bad or otherwise creates an unevenness in the organization," Murphy said. "And we have been reminded many times that we have professionals to do this for a living. You have processes that are in place. Stick to them."

Murphy said his administration will also look into updating state laws and policies related to how allegations of sexual assault are handled.

"We want this state to be the gold standard when someone is the victim of a crime that they know what to do, that they are encouraged, that they are supported," he said.

"The voices must be heard," the governor added. "We must stand with the Katies of the world. And that did not happen."

Republican state lawmakers have spent days calling for a legislative investigation into how Murphy's team handled the matter.

On Monday, all five Republican women serving in the state Assembly introduced legislation calling for a joint state Senate and Assembly investigation into the Murphy administration's hiring practices.



"If the victim had the courage to speak up as often as she did, the Legislature should have the courage to find justice in the matter," said Assemblywoman Holly Schepisi, R-Bergen, a sponsor of the resolution.

State Sen. Kristin Corrado, D-Passaic, said the investigation Murphy has ordered appears to be "limited to the hiring practices of his transition team."

"It seems unlikely that an investigation of such limited scope will be sufficient to answer the serious questions that have been raised about the employment practices of this administration, both before and since Governor Murphy assumed office," Corrado said.





One Democratic leader, state Senate Majority Leader Loretta Weinberg, said she is seeking a joint legislative committee to investigate the state's laws and policies for how law enforcement and officials respond to allegations of sexual misconduct.

"Clearly, reforms are needed so that no more survivors are forced to endure what Ms. Brennan has experienced," said Weinberg, D-Bergen, New Jersey's highest ranking woman state lawmaker.

Senate Democratic leadership said in a statement Monday they demand a "full and straightforward accounting" of how the allegations were handled.

Democratic leaders in the Assembly said in another statement that "as the situation continues to unfold and new facts are presented, we will swiftly determine the appropriate next steps with every option on the table."

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Murphy wouldn't say Monday whether he supported

legislative hearings on top of the investigation he ordered.

"I think these are very meaningful steps we are taking right now," the governor said. "This is a moment where folks can either grandstand or call balls and strikes to make New Jersey better for victims of sexual assault."

Murphy would also not say whether he will discipline -- or fire -- any staff members over the matter, though he said he was open to that.

"I absolutely have to be open," he said.

*NJ Advance Media staff writers Kelly Heyboer, Samantha Marcus, and S.P. Sullivan contributed to this report.*

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-----X	
KATHERINE BRENNAN,	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION: MERCER COUNTY
	:
Plaintiff,	: DOCKET NO.: MER-L-000034-19
	:
v.	: Civil Action
	:
ALBERT J. ALVAREZ, STATE OF NEW JERSEY,	:
MURPHY FOR GOVERNOR, INC.,	:
ABC COMPANIES (1-10) (fictitious names of	:
unknown entities) and JOHN DOES (1-10)	: CERTIFICATION OF KATHERINE BRENNAN
(fictitious names of unknown persons),	:
	:
Defendants.	:
	:
-----X	

I, KATHERINE BRENNAN, of full age, do hereby certify as follows:

1. I am the Plaintiff in the above-captioned action. I submit this Certification in support of Plaintiff's Order to Show Cause seeking preliminary and temporary restraints.
2. As reported in the Wall Street Journal, I was raped by Albert J. Alvarez on April 8, 2017.
3. The following day, I disclosed to my friend Justin Braz that I had been raped by Mr. Alvarez.
4. At this time, Mr. Braz was becoming involved with, volunteering and/or working for the Murphy Campaign.

5. I told Mr. Braz that I would inevitably cross paths with Defendant Alvarez again working with the Murphy Campaign and in the administration, should Murphy win the gubernatorial election, and, therefore, I needed to inform someone involved in the Murphy Campaign that he raped me.

6. In late November 2017, the Hudson County Prosecutors Office ("HCPO") informed me that a decision would soon be made regarding whether they would criminally prosecuting Mr. Alvarez. Believing that Mr. Alvarez's arrest was imminent, I asked Mr. Braz what action he thought should be taken in view of the negative public impact Mr. Alvarez's arrest could have on the then-Governor-Elect Murphy's administration.

7. Mr. Braz suggested to me that I authorize him to notify counsel for the Transition Office, Rajiv D. Parikh, Esq., to which I agreed.

8. I was advised later that same day by the HCPO that it was declining to take my criminal case against Mr. Alvarez.

9. On March 20, 2018, I met with Governor Murphy's Chief Counsel, Matt Platkin, Esq., in Jersey City and informed him that Defendant Alvarez had raped me.

10. Upon my information and belief, no EEO/AA investigation was conducted into the disclosures I made to Mr. Platkin concerning the rape.

11. On March 22, 2018, at a meeting in Princeton, I informed Governor Murphy's Deputy Chief Counsel, Parimal Garg, Esq., that Defendant Alvarez had raped me.

12. Upon my information and belief, no EEO/AA investigation was conducted into the disclosures I made to Mr. Platkin concerning the rape.

13. After not hearing back from anyone concerning the complaints I made to Platkin or Garg being raped, I sent Mr. Platkin a text message on April 24, 2018 at 8:31 a.m., which

reads: "Good morning! FYI, in regard to our previous conversation in JC no one has reached out to me as of yet."

14. Later that day on April 24, 2018, I received a phone call from Defendant Heather Taylor, Esq., Chief Ethics Officer, who informed me that the State would not take any action because Defendant Alvarez and I were not employees of the State employees at the time of the alleged sexual assault.

15. Upon my information and belief, no EEO/AA investigation was conducted into the disclosures made to Ms. Taylor concerning the rape.

16. On the evening of Friday, June 1, 2018, I emailed the Governor and First Lady Tammy Murphy and asked to have a meeting with one or both of them about a "sensitive matter" that occurred during the Campaign.

17. I did not indicate that my "sensitive matter" involved Defendant Alvarez.

18. Within the hour, Defendant Murphy responded, in relevant part, "We know you well....Hang in. We are on it."

19. The meeting with me and Governor Murphy and/or First Lady Murphy was never scheduled.

20. Instead, Jonathan Berkon, an attorney from Perkins Coie, LLP, who served as counsel to the Murphy Campaign, contacted me and advised that Mr. Alvarez would be leaving the Administration and State employment.

21. Upon my information and belief, no EEO/AA investigation was conducted into the disclosures I made to Governor Murphy or Mr. Berkon concerning the rape.

22. In early September 2018, I learned that Defendant Alvarez was still employed with the State.

23. After realizing that the State was not going to take any action into my reporting of being raped by Mr. Alvarez and believing that I had exhausted all other avenues, I made the determination that all I had left was my voice and it would require me going public with my story in order to obtain justice.

24. On October 14, 2018, the Wall Street Journal published my complaints of rape and the State's failure to investigate.

25. In late October 2018, shortly after Kate King' article was published in the Wall Street Journal, the New Jersey Legislature announced the formation of the New Jersey Legislative Select Oversight Committee.

26. During the public hearing of the New Jersey Legislative Select Oversight Committee on December 4, 2018, I testified for approximately five (5) hours concerning the disclosures and complaints I made to the State concerning the rape and the State's failure to conduct any investigation into them.

27. I did not testify concerning any aspect of the criminal case because the Middlesex County Prosecutor's' Office's review of the Hudson County Prosecutor's actions with regard to my complaint against Defendant Alvarez is ongoing.

28. By letter dated December 12, 2018, the State informed me that the State had determined via my testimony that I have "'felt ostracized and things have not been the same since October, 2018,' after going public with a complaint of sexual assault against a former State employee" may implicate the State Policy.

29. As a result, the State has instructed the State's Division of Equal Employment Opportunity and Affirmative Action ("EEO/AA") to review my allegation of feeling "ostracized" since October, 2018.



30. I have been made aware that the State Policy requires me and all other witnesses of the EEO/AA investigation to keep all aspects of the investigation, including my complaints, confidential. I have also been made aware that if I fail to do so, I can be subjected to discipline, up to and including, termination of my employment with the State.

31. I hereby 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.

Dated: January 6, 2019

  
KATHERINE BRENNAN

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Attorneys for Plaintiff Katherine Brennan

-----X	
KATHERINE BRENNAN,	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION: MERCER COUNTY
	:
Plaintiff,	: DOCKET NO.: MER-L-000034-19
	:
v.	: Civil Action
	:
ALBERT J. ALVAREZ, STATE OF NEW JERSEY,	:
MURPHY FOR GOVERNOR, INC.,	:
ABC COMPANIES (1-10) (fictitious names of	:
unknown entities) and JOHN DOES (1-10)	: CERTIFICATION OF
(fictitious names of unknown persons),	: ANDREW DWYER, ESQ.
	:
Defendants.	:
	:
-----X	

I, ANDREW DWYER, ESQ., of full age, do hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and a member of the firm of Dwyer & Barrett, LLC.
2. I make this Certification in support of Plaintiff's Order to Show Cause seeking preliminary and temporary restraints.
3. In January 2018, the trial of the matter Jennifer L. Schiavone v. the New Jersey Department of Corrections was held in the Superior Court of New Jersey, Law Division, Mercer County, Docket No. MER-L-00657-15.

4. I was an attorney for the plaintiff in that matter and conducted the cross-examination of Leila Lawrence, Esq., who was at the time of trial the Director of the Equal Employment Division (“EED”) of the New Jersey Department of Corrections.

5. A copy of the relevant portions of the EED Director’s testimony is annexed hereto as **Exhibit A**.

6. During the trial, EED Director provided sworn testimony concerning the State of New Jersey Policy Prohibiting Discrimination in the Workplace (hereinafter, the “State Policy”), including more specifically, the Strict Confidentiality Directive imposed on all witnesses of State harassment investigations.

7. According to EED Director, her job duties included overseeing investigations of harassment and discrimination complaints under the State Policy. Id. at 9:16-18.

8. According to the EED Director, “[t]he EED Department is responsible for reviewing any allegations of discrimination or harassment. If the allegations implicate or touch the policy, we – we’re the department that handles any allegations under the policy prohibiting discrimination in the workplace. If the allegations implicate or touch the policy, we open it up for investigation. At the conclusion of the investigation we make a finding and we determine whether or not discipline should be issued or not. We also handle training for staff under the policy. We’re responsible for disseminating the policy. We also handle any position statements or other matters that need to be addressed or answered with regard to claims filed with the United States Equal Employment Opportunity Commission, as well as the New Jersey Division of Civil Rights. And we also handle any appeals after the conclusion of our internal investigation. Complainants if they are not satisfied with the outcome have the ability to claim to the New

Jersey Civil Service Commission, and we handle those; we respond on behalf of the department to those appeals as well.” Id. at 11:6-12:3.

9. During her testimony, the EED Director was questioned concerning the confidentiality obligations of complainants and other witnesses in connection with discrimination complaint investigation under the State Policy. Id. at 83:21-94:1.

10. In response to this questioning, EED Director testified that, “The complaints are confidential in that the only people who are aware of them are my office and the – whoever the complaint was reported to.” Id. at 84:1-3.

11. The EED Director further testified:

It should not be discussed. When witnesses are interviewed as part of an investigation, they have to sign a statement that they’re aware that the – everything discussed in the investigation is confidential, and if they are found to have violated that policy that they – you know, that they signed, they could be subject to discipline for discussing the EED investigation.

Id. at 84:5-84:12.

12. The EED Director was then asked whether this confidentiality directive was also true for the complainant such that the complainant would also be subject to discipline if they discussed the complaint with somebody else. Id. at 84:13-16.

13. The EED Director responded, “Other – outside of the realm of the reporting process, yes.” Id. at 84:17-18.

14. The EED Director then confirmed that the complainant is also required “to sign a confidentiality form.” Id.

15. The EED Director was then questioned as follows: “Okay. So just bear with me because I want to make sure we get it all clear. So, if I’m the complainant and I go complain,

say, to the assistant superintendent, who then passes it on to the EED, I'm not to tell anybody else about the fact that I made that complaint. Is that correct?" Id. at 84:19-24.

16. The EED Director responded to this question as follows:

When I – at that point they haven't signed the form, but I wouldn't – when you say tell anyone else, do you mean just running around, just going around the facility talking about it? If that's the case, they're not expected – it would depend on – it would really depend on the context. If you're saying that this is someone who's a confidant who they're talking to, that's different, but if you're saying the person is around the facility saying, I filed an EED complaint, I filed an EED complaint, no, they should not be doing that. Even if – and, hopefully, they're aware, but even if they aren't aware, once they speak with the investigator and sign that confidentiality form, then they are definitely aware that they should not be discussing the investigation.

Id. at 84:25-85:14.

17. The questioning and The EED Director's continued as follows:

Q. Okay, so let's go ahead to that point in the process. So, if EED starts investigating, part of the investigation would be interviewing people.

A. Yes.

Q. Okay. And so, obviously, you'd interview the person who made the complaint.

A. Correct.

Q. And you'd interview the person who was accused of doing something wrong.

A. Correct.

Q. And if there were names of other witnesses who came up, you'd interview those folks, too.

A. Yes.

Q. Okay. And you're saying for all those people who get interviewed there's some form they have to sign.

A. Yes.

Q. Which says what as far as confidentiality goes?

A. That they are not to discuss the allegations and what was discussed during their interview, and that if the EED finds that they did and substantiates that they did, they could be subject to punishment.

Q. Like even being suspended or fired?

A. Would not fire someone for discussing an EED complaint, but depending on the circumstances, yes, suspension, possibly.

Q. Okay. So, they could get some real punishment if they breach confidentiality.

A. Yes.

Id. at 85:15-86:19.

18. The EED Director was also questioned concerning the ramifications if a State employee who was a witness of an investigation pursuant to the State Policy refused to sign the Strict Confidentiality Directive Form. Id. at 86:20-89:21.

19. In response to this line of questioning, the EED Director testified that it has never had that happen yet, that “[e]veryone thus far has signed it” and that she “don’t know hat would happen, because it has not happened.” Id. at 88:4-89:21.

20. The EED Director was further questioned on the State’s Policy concerning confidentiality of investigation records. Id. at 89:23-94:1.

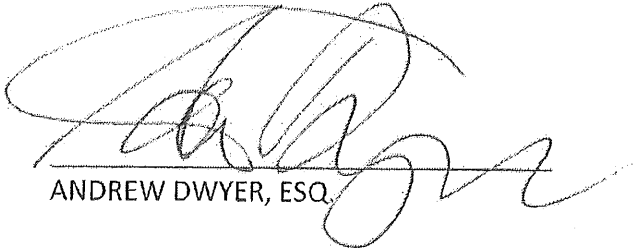
21. In response to this line of questioning, the EED Director testified that all investigation records, including witness statements and investigation reports, are kept in her EED office and are “completely confidential from the general public.” Id. at 93:14-19

22. The EED Director further admitted that all investigation records of all internal complaints of harassment, whether “they are found to be valid or not to be found valid, how

many they are, what types they are, what punishments were imposed or not imposed, are all kept confidential from the public." Id. at 93:20-94:1.

I hereby 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.

Dated: January 6, 2019



ANDREW DWYER, ESQ.

# **EXHIBIT A**



SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
MERCER COUNTY, NEW JERSEY  
DOCKET NO. MER-L-000657-15  
A.D. # \_\_\_\_\_

JENNIFER L. SCHIAVONE, )  
)  
Plaintiff, ) TRANSCRIPT  
)  
v. ) OF  
) TRIAL  
)  
NEW JERSEY DEPARTMENT )  
OF CORRECTIONS, )  
)  
Defendant. )

Place: Mercer County Courthouse  
175 South Broad Street  
Trenton, NJ 08650

Date: January 22, 2018

BEFORE:

THE HON. BRIAN McLAUGHLIN, J.S.C. AND JURY

TRANSCRIPT ORDERED BY:

ANDREW DWYER, ESQ. (Dwyer Barrett, L.L.C.)

APPEARANCES:

ANDREW DWYER, ESQ. (Dwyer Barrett, L.L.C.)  
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1                   THE COURT: We are continuing the trial in  
2 Schiavone v. State Department of Corrections matter,  
3 Docket No. MER-L-657-15. Are we ready for the jury?  
4                   MR. DUTTERA: Yes, Your Honor. We're going  
5 to call Leila Lawrence first. I just want to note, as  
6 I did before Campos, that she's a member of the  
7 Litigation Control Group. So as I said before Campos,  
8 asking about our communications in front of the jury --  
9                   THE COURT: And that was, indeed --  
10                  MR. DUTTERA: -- could be prejudicial.  
11                  THE COURT: I believe that was discussed on  
12 Thursday, right?  
13                  MR. DUTTERA: Okay.  
14                  THE COURT: Yeah.  
15                  MR. DUTTERA: Yeah, I think --  
16                  THE COURT: Yeah.  
17                  MR. DUTTERA: Well, I think we were talking  
18 about her being a lawyer, but --  
19                  THE COURT: Okay, I --  
20                  MR. DUTTERA: Might be different, but --  
21                  THE COURT: I thought we were talking about  
22 one witness, the upcoming witness who's going to be  
23 part of the Litigation Control Group and --  
24                  MR. DUTTERA: If we did, it would have been  
25 her, yeah. She's --

1 THE COURT: Yeah.

2 MR. DUTTERA: -- the only witness that's part  
3 of that group.

4 MR. DWYER: So the problem, Your Honor, is  
5 that Ms. Lawrence signed interrogatory answers and the  
6 document responses on behalf of defendant and certified  
7 under oath that they were true, and so I think that is  
8 a waiver of privilege as to what she based those  
9 interrogatory answers on. I don't see how she can do  
10 that in this case and then have us be barred from  
11 asking her questions about what was the basis for sworn  
12 statements she made under oath.

13 THE COURT: Uh-huh.

14 MR. DWYER: I do believe that that's a  
15 problem that defendants create for themselves when they  
16 have lawyers sign interrogatory answers.

17 THE COURT: Right. Yeah. I believe I even  
18 mentioned that in the colloquy, about how --

19 MR. DWYER: You did.

20 THE COURT: -- once when I was in private  
21 practice the corporate counsel signed them, and he was  
22 called -- flown in for a deposition.

23 MR. DWYER: Yeah.

24 MR. DUTTERA: Well, Your Honor, I don't  
25 believe that signing interrogatories waives any kind of

1 privilege. I mean, by that token plaintiff signed her  
2 interrogatories. I mean, it's not waiving any  
3 privilege --

4 THE COURT: Well --

5 MR. DUTTERA: -- she has with her attorneys.

6 THE COURT: But this is the person that's  
7 certifying the truth of the responses. Again, it's  
8 not -- I mean, one should avoid, whenever possible,  
9 having an attorney sign interrogatories, for that very  
10 reason.

11 MR. DUTTERA: But the privilege -- that's a  
12 different circumstance if it's an attorney who signed,  
13 general counsel, and is involved in providing legal  
14 counsel to the employer, if he's signing or at least  
15 signing a certification that touches on that. This --  
16 she's the EED director and simply signing a  
17 certification, and her certification says that the  
18 information is collected by a number of individuals on  
19 her behalf and that to the best of her knowledge and  
20 belief it's true. It doesn't waive the privilege as to  
21 communications she's had with other outside attorneys  
22 such as the Attorney General's Office.

23 THE COURT: Well, I mean, vis-a-vis the four  
24 corners of the interrogatories, I mean, it's --  
25 plaintiff should have some latitude to indicate what

1 sources were consulted in -- with respect to Question  
2 No. 4 or Question No. 6 or whatever it may be.

3 MR. DUTTERA: Well, you know, we're -- also,  
4 there's an --

5 THE COURT: I mean, I don't know what the  
6 scope of questioning's going to be.

7 MR. DUTTERA: I was going to say, I'm not  
8 sure that --

9 THE COURT: Yeah.

10 MR. DUTTERA: -- I'm going to get into  
11 anything that even touches on the interrogatories,  
12 so -- and I don't think her certification is quite as  
13 broad as Mr. Dwyer makes it out to be.

14 MR. DWYER: Well, I mean, the certification  
15 to the interrogatories, which I'm holding in my hands  
16 and which was signed last February, says, "I, Leila  
17 Lawrence, hereby certify that the foregoing defendant's  
18 revised answers and objections to plaintiff's first set  
19 of interrogatories are true to the best of my  
20 knowledge, information and belief. I further certify  
21 that if any of the foregoing answers are willfully  
22 false, I'm subject to punishment. I also acknowledge  
23 the continuing obligation to provide the information  
24 and documentation requested by these interrogatories  
25 and provide the same even after the original of these

1 interrogatories has been submitted." So I don't know  
2 why I'm not allowed to ask her what was the basis for  
3 this certification. I mean, I don't understand that.

4 THE COURT: I don't, either, quite frankly.

5 MR. DUTTERA: I mean, it really depends on  
6 what's being asked, I think, and about which questions  
7 and what answers, and what information was provided and  
8 where it came from.

9 THE COURT: We'll just have to take it as it  
10 goes, but I do -- I mean, I will just tell you right  
11 now before we have -- you know, and we've had so many  
12 sidebars in this matter and I've spoken about that  
13 before, but I'm going to give plaintiff some latitude  
14 in exploring that, simply because she's the person  
15 who's providing the answers -- I mean, certifying the  
16 answers to interrogatories. So there's something  
17 attendant to that responsibility that requires her to  
18 be forthcoming about, you know, the sources of various  
19 information that's contained in the rogs.

20 So, okay, with that in mind, are we ready for  
21 the jury? Okay.

22 MR. DUTTERA: Do you have extra copies of  
23 those if you're going to use that?

24 MR. DWYER: Beg your pardon?

25 MR. DUTTERA: Do you have extra copies of

1 those if you're going to use it, so I don't --  
2 MR. DWYER: I just have the --  
3 MR. DUTTERA: -- have to dig through the box?  
4 MR. DWYER: I just have the copy that you  
5 guys gave us. I mean, I assumed you had your own  
6 answers --  
7 MR. DUTTERA: Well, usually if you show --  
8 MR. DWYER: -- to interrogatories.  
9 MR. DUTTERA: -- a witness any document you  
10 have copies for the other side.  
11 (Pause)  
12 COURT OFFICER: All rise. Jury's entering  
13 the court.  
14 (Jury in)  
15 THE COURT: Good morning. You may be seated.  
16 Hope everyone had a nice weekend. I would ask the  
17 defense to call its next witness.  
18 MR. DUTTERA: Thank you. Defense calls Leila  
19 Lawrence.  
20 THE COURT: Good morning. Witness stand is  
21 there.  
22 MS. LAWRENCE: Good morning.  
23 THE COURT: If you'd just please remain  
24 standing and raise your right hand to take the oath?  
25 L E I L A L A W R E N C E, DEFENDANT'S WITNESS, SWORN

1 THE CLERK: Please state your full name for  
2 the record.  
3 THE WITNESS: Leila, L-E-I-L-A, Lawrence, L-  
4 A-W-R-E-N-C-E.  
5 THE CLERK: Thank you.  
6 THE COURT: Thank you. You may be seated.  
7 Please proceed.  
8 MR. DUTTERA: May I approach over there?  
9 THE COURT: Certainly.  
10 MR. DUTTERA: Thank you.  
11 DIRECT EXAMINATION BY MR. DUTTERA:  
12 Q Good morning, Ms. Lawrence.  
13 A Good morning.  
14 Q If you could please just briefly introduce  
15 yourself to the jury?  
16 A My name is, again, Leila Lawrence, and I'm the  
17 director for the Equal Employment Division with the New  
18 Jersey Department of Corrections.  
19 Q Before we get into the substance, can you  
20 give us a little bit about your educational or work  
21 background?  
22 A I attended undergraduate school at Livingstone  
23 College in North Carolina, and I attended -- graduated  
24 from law school at Seton Hall University School of Law  
25 in Newark, New Jersey.

1 Q And how did you come to the Department of  
2 Corrections?

3 A I worked -- do you want me to just start from --

4 Q Just --

5 A -- in terms of --

6 Q Very briefly, just sort of walk us through  
7 your work history --

8 A Okay.

9 Q -- that led to where you are today.

10 A Okay. After law school I clerked with family  
11 court judge in Jersey City, New Jersey, in Hudson  
12 County Superior Court. I then worked for a law firm  
13 for about a year. Then I went to New Jersey Legal  
14 Services, Hudson County Legal Services it was called at  
15 that time, in Jersey City. I was there -- between  
16 Hudson County Legal Services, and then I moved to  
17 Arizona briefly, I was with Legal Services for six  
18 years.

19 From there I went to the Attorney General's Office  
20 here in Trenton. I was a deputy attorney general  
21 there, and after three years secured a position as a  
22 policy advisor under then-Governor Corzine. And I did  
23 that for one -- approximately one year, and that's how  
24 corrections came to my attention, when I was looking to  
25 leave. I then joined corrections as the assistant

1 director for the Equal Employment Division.

2 Q Is Equal Employment Division, is that EED?

3 A Yes. Yes.

4 Q What is it that the EED department does with  
5 respect to discrimination allegations by DOC employees?

6 A The EED is responsible for reviewing -- accepting,  
7 reviewing any allegations of discrimination or  
8 harassment. If the allegations implicate or touch the  
9 policy, we -- we're the department that handles any  
10 allegations under the policy prohibiting discrimination  
11 in the workplace. If the allegations implicate or  
12 touch the policy, we open it up for an investigation.  
13 At the conclusion of the investigation we make a  
14 finding and we determine whether or not discipline  
15 should be issued or not. We also handle training for  
16 staff under the policy. We're responsible for  
17 disseminating the policy.

18 We also handle any position statements or other  
19 matters that need to be addressed or answered with  
20 regard to claims filed with the United States Equal  
21 Employment Opportunity Commission, as well as the New  
22 Jersey Division of Civil Rights. And we also handle  
23 any appeals after the conclusion of our internal  
24 investigation. Complainants if they're not satisfied  
25 with the outcome have the ability to claim to the New

1 Jersey Civil Service Commission, and we handle those;  
2 we respond on behalf of the department to those appeals  
3 as well.

4 Q The phrase that you used, allegations that  
5 touch on the policy, and -- pardon me -- what policy  
6 are you referring to?

7 A The policy prohibiting discrimination in the  
8 workplace.

9 Q And what types of discrimination does that  
10 policy prohibit?

11 A It's any prohibited conduct, and prohibited  
12 conduct is considered discrimination, harassment or  
13 retaliation that's based on one's membership in a  
14 protected category. And protected categories mean --  
15 meaning your race, your national origin, your gender,  
16 your sexual orientation, disability. Things of that  
17 nature are protected categories.

18 Q Does the policy apply at all to workplace  
19 disagreements or conflicts that don't implicate one of  
20 those protected characteristics?

21 A No.

22 Q So when you say allegations that touch on  
23 that policy prohibiting discrimination, what do you  
24 mean allegations that touch on it?

25 A When I get a complaint, I review every complaint

1 that's sent to the office and I look to determine  
2 whether or not the person has alleged prohibited  
3 conduct based on a protected category, so that the  
4 person is saying that whatever this incident that  
5 occurred, took place because of their membership in the  
6 protected category. You know, if I got a late slip for  
7 reporting to work late, in order to implicate the  
8 policy I would have to allege I'm a woman. I would  
9 have to allege that I noticed that my supervisor only  
10 issues late slips to females or I was one of several  
11 employees and the only female who reported late to work  
12 that day and all the men were not issued late slips,  
13 but I was issued a late slip. So that would be the  
14 allegation that this action happened, being issued the  
15 late slip, because of my protected category, I'm a  
16 female.

17 Q So I want to go back to how you handle those  
18 allegations, but you did mention training. How do  
19 employees learn about the policy?

20 A They receive training at the academy. The -- each  
21 facility has a training department. They offer  
22 training as well and supervisors when they're getting  
23 ready to be promoted are -- receive in-person training,  
24 also. Additionally, we pass out the policy, and the  
25 policy is available on the DOC website.

1 enforcement has a continuum. It's a vague term. If  
2 you consider reporting it enforcing it, then, sure,  
3 every single employee is enforcing it because they're  
4 encouraged to report it. If you consider not  
5 discriminating or taking down if you see discrimination  
6 or stopping it enforcement, then every single employee  
7 should --

8 THE COURT: You called a witness whose  
9 testimony was that it's her office's prime  
10 responsibility for enforcement of the DOC EEO policy.  
11 This is cross-examination. I will allow it.

12 (Sidebar ends at 11:17:37 a.m.)

13 THE COURT: Ladies and gentlemen, we're going  
14 to take a 10-minute morning break.

15 (Recess at 11:18 a.m. to 11:40 a.m.)

16 (Jury in)

17 THE COURT: Thank you. You may be seated.  
18 Mr. Dwyer, can you --

19 MR. DWYER: Thank you, Your Honor.

20 THE COURT: -- please continue with your  
21 cross-examination.

22 BY MR. DWYER:

23 Q Ms. Lawrence, you still doing okay?

24 A Yes.

25 Q Okay, good. I think where we were before we

1 took the break was I just wanted to understand if a  
2 supervisor saw such harassment occurring right in front  
3 of him, one employee harass another, would the  
4 supervisor be expected to tell the harasser to stop?

5 A Yes.

6 Q Okay. So that's part of enforcement, right?

7 MR. DUTTERA: Object to the form of the  
8 question.

9 THE COURT: So noted. Overruled.

10 THE WITNESS: Yes. Again, I view enforcement  
11 as a continuum. With regard to their one piece, yes.

12 BY MR. DWYER:

13 Q One piece. Isn't it a fact that supervisors  
14 are required to make every effort to maintain a work  
15 environment that is free of any form of discrimination  
16 and harassment? Not limited. They must make every.

17 A Yes, but when I say one piece, they're not  
18 recommending discipline. They're not conducting  
19 investigations. To me that's all part-and-parcel of  
20 enforcement.

21 Q Okay. Let's talk about this issue that you  
22 discussed with Mr. Dutterra about confidentiality. So  
23 just explain that to us again, exactly how does  
24 confidentiality work in the case of discrimination  
25 complaints.



1 A The complaints are confidential in that the only  
2 people who are aware of them are my office and the --  
3 whoever the complaint was reported to.

4 Q Uh-huh.

5 A It should not be discussed. When witnesses are  
6 interviewed as part of an investigation they have to  
7 sign a statement that they're aware that the --  
8 everything discussed in the investigation is  
9 confidential, and if they are found to have violated  
10 that policy that they -- you know, that they signed,  
11 they could be subject to discipline for discussing the  
12 EED investigation.

13 Q Uh-huh. And is that also true for the person  
14 who makes the complaint, that person also would be  
15 subject to discipline if they discussed the complaint  
16 with somebody else?

17 A Other -- outside of the realm of the reporting  
18 process, yes. They sign a confidentiality form, also.

19 Q Okay. So just bear with me because I want to  
20 make sure we get it all clear. So if I'm the  
21 complainant and I go complain, say, to the assistant  
22 superintendent, who then passes it on to EED, I'm not  
23 to tell anybody else about the fact that I made that  
24 complaint. Is that correct?

25 A When I -- at that point they haven't signed the

1 form, but I wouldn't -- when you say tell anyone else,  
2 do you mean just running around, just going around the  
3 facility talking about it? If that's the case, they're  
4 not expected -- it would depend on -- it would really  
5 depend on the context. If you're saying that this is  
6 someone who's a confidant who they're talking to,  
7 that's different, but if you're saying the person is  
8 around the facility saying, I filed an EED complaint, I  
9 filed an EED complaint, no, they should not be doing  
10 that. Even if -- and, hopefully, they're aware, but  
11 even if they aren't aware, once they speak with the  
12 investigator and sign that confidentiality form, then  
13 they are definitely aware that they should not be  
14 discussing the investigation.

15 Q Okay. So let's go ahead to that point in the  
16 process. So if EED starts investigating, part of the  
17 investigation would be interviewing people.

18 A Yes.

19 Q Okay. And so, obviously, you'd interview the  
20 person who made the complaint.

21 A Correct.

22 Q And you'd interview the person who was  
23 accused of doing something wrong.

24 A Correct.

25 Q And if there were names of other witnesses

1 who came up, you'd interview those folks, too.  
2 A Yes.  
3 Q Okay. And you're saying for all those people  
4 who get interviewed there's some form they have to  
5 sign.  
6 A Yes.  
7 Q Which says what as far as confidentiality  
8 goes?  
9 A That they are not to discuss the allegations and  
10 what was discussed during their interview, and that if  
11 the EED finds that they did and substantiates that they  
12 did, they could be subject to punishment.  
13 Q Like even being suspended or fired?  
14 A Would not fire someone for discussing an EED  
15 complaint, but depending on the circumstances, yes,  
16 suspension, possibly.  
17 Q Okay. So they could get some real punishment  
18 if they breach confidentiality.  
19 A Yes.  
20 Q All right. And would it be a breach of  
21 confidentiality for them to talk to somebody outside  
22 the prison about their complaint?  
23 A Are you meaning one of the other agencies? What  
24 do you mean when you say --  
25 Q Anybody. Their friends. Their family

1 members. Anybody.  
2 A Again, it depends on the context. If you're  
3 saying someone is going home, having a conversation  
4 with her -- his or her spouse, that's -- I don't  
5 consider that a violation of the policy, of the  
6 confidentiality provision. But if they're discussing  
7 it with someone -- well, you said outside of the  
8 facility.  
9 Q Yeah, outside --  
10 A So --  
11 Q -- the prison.  
12 A I mean, it would just -- it would depend on who it  
13 is. It could -- if it's another employee, because we  
14 have employees all -- I mean, it could --  
15 Q Sure.  
16 A -- potentially -- yes. It just -- it would really  
17 depend on what -- the facts --  
18 Q Okay.  
19 A -- of the disclosure.  
20 Q So the disclosure to somebody outside the  
21 prison could under some circumstances result in the  
22 person being punished.  
23 A It could. It could.  
24 Q Now, what if a witness, a person who's not  
25 the complainant, not the person who's being accused,

1 what if a witness says, I don't want to sign that form,  
2 I don't want to sign that confidentiality form; then  
3 what happens?  
4 A I've not had that happen yet.  
5 Q Will they be disciplined?  
6 A I've not had that happen yet.  
7 Q Is there a policy --  
8 A So --  
9 Q -- on it?  
10 A I have no, right here today, opinion on that  
11 because it's not an issue that has come up. Everyone  
12 thus far has signed it.  
13 Q Okay. What if it's the actual complainant,  
14 the person who says I'm being harassed, and they say,  
15 I'm not signing this form. I'll be interviewed by you,  
16 but I'm refusing to sign a confidentiality form. Why  
17 should I keep my complaints confidential? Would you  
18 punish the complainant for refusing to sign the form?  
19 A Again, I've never had that happen. I don't know.  
20 I can't answer that question. I've --  
21 Q So --  
22 A -- never had that happen.  
23 Q So you're saying as the director of the EED  
24 for the entire correctional system for the State of New  
25 Jersey you have no idea whether there's any policy or

1 practice of what to do when somebody refuses to sign a  
2 confidentiality form.  
3 MR. DUTTERA: Objection; relevance. This is  
4 so far from any of the facts in this case, Your Honor.  
5 MR. DWYER: Well, it relates to  
6 confidentiality, which is a big part of this case.  
7 THE COURT: I will allow the question.  
8 THE WITNESS: You're asking me, I have no  
9 idea. I'm not saying I have no idea. I'm just saying  
10 that that's not an issue that's come up.  
11 BY MR. DWYER:  
12 Q Well, okay, but since you do know, what is  
13 the policy and practice?  
14 MR. DUTTERA: Objection; asked and answered.  
15 MR. DWYER: No, it's not answered. She  
16 hasn't said what would happen.  
17 THE COURT: Overruled.  
18 THE WITNESS: I don't know -- honestly, I  
19 don't know what would happen, because it has not  
20 happened. I mean, a complainant wants -- it has not  
21 happened.  
22 BY MR. DWYER:  
23 Q Okay. Now, when the whole investigation is  
24 done and the person is found -- the accused is found to  
25 have not violated the policy, right, so you're not able

1 to sustain the allegation, did I hear you correctly in  
2 response to Mr. Duttera's question that the records of  
3 the investigation, everything would be kept  
4 confidential?

5 A Yes, they're only maintained in my office.

6 Q Okay. So that's what happens if there's no  
7 violation. What if they find that there is a  
8 violation? Are the records still kept confidential?

9 A Yes. All there is is a notation on the accused's  
10 work history.

11 Q A notation of what?

12 A That they violated the policy, and whatever the  
13 remedial -- you know, whether it was a letter of  
14 counseling, official written reprimand or a suspension.

15 Q Okay. So it would only say they violated  
16 policy. It wouldn't say in greater detail about it on  
17 the person's personnel records.

18 A Let me think. It would have a blurb. For  
19 example, it might say January 22nd, 2018, and then it  
20 would say, you know, violate C-31, which is our code,  
21 you know, our disciplinary code --

22 Q Uh-huh.

23 A -- and say violation of policy prohibiting  
24 discrimination in the workplace. And then there would  
25 be -- you don't always see the full blurb when you

1 print it out. I guess if you're looking on the actual  
2 computer screen you could probably scroll down, and it  
3 might just say you were found to have violated the  
4 policy when you used the gender slur, and then whatever  
5 the slur is.

6 Q Okay. And then it would say what the  
7 person's punishment was, right?

8 A Yes. Yes, yes.

9 Q Okay. So that would be in the accused's  
10 records.

11 A In the -- on the work history, yes.

12 Q Right. Every other record about that  
13 investigation would also be kept in your office?

14 A You mean witness statements, investigation  
15 reports?

16 Q Well, let's just back up. I thought I heard  
17 you say that if there's an investigation and it  
18 resulted in a finding that the policy was not violated,  
19 the records of that investigation would be kept in your  
20 office.

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q Okay. Now, with -- going on to a situation  
25 where we find the policy is violated, is it still true

1 the records from the investigation would be kept in  
2 your office?  
3 A Yes.  
4 Q Okay. And are they kept for, you know,  
5 forever or for six months; how long are they kept?  
6 A We haven't had a purge --  
7 Q Since you've been there.  
8 A Yes.  
9 Q Okay. So they could go back 10 years or  
10 more.  
11 A They could. I mean, it just -- I know we've --  
12 we've had flooding issues and things of that nature. I  
13 think we're -- if -- what -- if I recall, I think we  
14 were told we were only supposed to hold on -- we only  
15 have to hold -- it was like something, five to seven  
16 years.  
17 Q Whatever is there is in your office.  
18 A Or if not -- whatever's there within the last few  
19 years is in my office.  
20 Q Okay.  
21 A Anything seven, eight years, we do have like --  
22 well, there was another building we were storing some  
23 records under there, and then there was some flooding  
24 and mold issues and they got -- they were -- but  
25 anything recent, in recent years, would be in my

1 office.  
2 Q You, obviously, have access to it.  
3 A Yes. Yes.  
4 Q Would anybody else have access to it without  
5 your permission?  
6 A Other than my staff, no.  
7 Q And they would have to ask you?  
8 A No, my staff doesn't have to ask.  
9 Q Okay. So people in the EED would have  
10 access.  
11 A Yes.  
12 Q Nobody else.  
13 A No. No.  
14 Q The general public would not have access to  
15 it, right?  
16 A No.  
17 Q This is -- these are records that would be  
18 completely confidential from the general public, right?  
19 A Yes. I mean --  
20 Q Okay. So if there are internal complaints of  
21 harassment at the prisons, if they are found to be  
22 valid or not found to be valid, how many they are, what  
23 type they are, what punishments were imposed or not  
24 imposed, all of that would be kept confidential from  
25 the public, correct?

1 A Yes.  
2 Q And if there were any payments of any  
3 settlements, would that be confidential from --  
4 MR. DUTTERA: Objection, Your Honor.  
5 MR. DWYER: -- the public, too?  
6 MR. DUTTERA: This is irrelevant; outside the  
7 bounds of discovery.  
8 THE COURT: Sidebar.  
9 MR. DWYER: Your Honor, in the interest of  
10 saving time I'll withdraw.  
11 THE COURT: Very well.  
12 MR. DWYER: I have no further questions of  
13 this witness.  
14 THE COURT: Any redirect, Mr. Duttera?  
15 REDIRECT EXAMINATION BY MR. DUTTERA:  
16 Q How many years have you been with EED?  
17 A Ten.  
18 Q And how many facilities are there in the  
19 Department of Corrections?  
20 A Fourteen. Well, wait. Thirteen facilities and  
21 Central Office, so 14 locations.  
22 Q Each with a liaison?  
23 A Yes.  
24 Q And so at any given time at least 14  
25 liaisons. In over 10 years, do you have any idea how

1 many liaisons you've interacted with?  
2 A All of them.  
3 Q Do you know how many that is? I mean, let me  
4 ask it another way. Today it's not the same 14  
5 liaisons that it was 10 years ago, right?  
6 A No.  
7 Q Okay. So dozens of liaisons?  
8 A Yes. Usually, yes.  
9 Q And I think you said roughly maybe 200 or so  
10 complaints a year, I know you were estimating, that  
11 would come to you?  
12 A Yes.  
13 Q Not all those would touch on the policy; is  
14 that right?  
15 A Correct.  
16 Q And certainly not all of those would be  
17 substantiated, right?  
18 A Correct.  
19 Q But just ones that come to your attention.  
20 A Correct.  
21 Q You were asked about specific -- Antonio  
22 Campos, who he left -- he retired from the DOC like two  
23 years ago; is that right?  
24 MR. DWYER: I'd just ask --  
25 THE WITNESS: It depends --

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<b>KATHERINE BRENNAN,</b>	<b>: SUPERIOR COURT OF NEW JERSEY</b>
	<b>: LAW DIVISION: MERCER COUNTY</b>
	<b>:</b>
<b>Plaintiff,</b>	<b>: DOCKET NO.: MER-L-000034-19</b>
	<b>:</b>
<b>v.</b>	<b>: Civil Action</b>
	<b>:</b>
<b>ALBERT J. ALVAREZ, STATE OF NEW JERSEY,</b>	<b>:</b>
<b>MURPHY FOR GOVERNOR, INC.,</b>	<b>: ORDER TO SHOW CAUSE WITH</b>
<b>ABC COMPANIES (1-10) (fictitious names of</b>	<b>: TEMPORARY AND PRELIMINARY</b>
<b>unknown entities) and JOHN DOES (1-10)</b>	<b>: RESTRAINTS</b>
<b>(fictitious names of unknown persons),</b>	<b>:</b>
	<b>:</b>
<b>Defendants.</b>	<b>:</b>
	<b>:</b>
-----X	

THIS MATTER having been brought before the court upon an application by Kathryn K. McClure, Esq., attorney for Plaintiff, Katherine Brennan, for entry of an Order to Show Cause seeking temporary and preliminary restraints pursuant to R. 4:52, and upon notice to the State of New Jersey, the Court having considered the Complaint, Order to Show Cause, Legal Brief, Certification of Katherine Brennan, Certification of Kathryn K. McClure, Esq., Certification of Andrew Dwyer, Esq., all supporting exhibits and the Court having considered opposition thereto, if any, and oral argument thereon, if any, and the Court having found that immediate, irreparable and substantial harm may occur before the return date of this Order to Show Cause with Preliminary and Temporary Restraints, and for good cause having been shown;

It is on this \_\_\_ day of \_\_\_\_\_, 2019,

ORDERED THAT Defendant State of New Jersey (the "State") appear and show cause before the Superior Court of Mercer County Courthouse, 175 S. Broad Street, Trenton, New Jersey, 08608, at \_\_\_\_\_ o'clock in the a.m./p.m. or as soon thereafter as counsel can be heard, on the \_\_\_\_\_ day of \_\_\_\_\_ 2019, before the Honorable \_\_\_\_\_ why an Order should not be issued and entered preliminarily:

1. Enjoining and restraining the State from imposing, enforcing or using the confidentiality directive specifically defined as the portion of N.J.A.C. 4A:7-3.1(j) that reads "[a]ll persons who are interviewed or otherwise advised of a complaint are directed not to discuss any aspect of the investigation with others. Failure to comply with this confidentiality directive may result in disciplinary action, up to and including removal" (hereinafter referred to as the "Strict Confidentiality Directive") in connection with any EEO/AA investigation concerning Plaintiff and/or this litigation, including Plaintiff and any witnesses in any EEO/AA investigation being launched in response to Plaintiff's December 4, 2018, testimony before the Legislative Select Oversight Committee ("LSOC") (hereinafter, the "EEO/AA Investigation");

2. Enjoining and restraining the State from requiring Plaintiff and any other witnesses to sign the "Strict Confidentiality Directive" form in connection with the EEO/AA Investigation;

3. Enjoining and restraining the State from requiring Plaintiff to participate in any EEO/AA investigation until after this litigation and any criminal proceedings resulting from Plaintiff's allegation of sexual assault are completed;

4. Requiring the State should it continue to require Plaintiff to participate in an EEO/AA investigation as a condition of her employment, to also conduct an EEO/AA



investigation into the State's numerous violations of the State's Policy Prohibiting Discrimination in the Workplace ("State Policy") in connection with this matter as more fully alleged in the Complaint;

5. Declaring the "Strict Confidentiality Directive" as null and void.
6. Granting of such other and further relief as the Court deems just and equitable;

and

IT IS FURTHER ORDERED that immediately, and pending the return date herein, the Defendant State is temporarily:

7. Enjoined and restrained from imposing the "Strict Confidentiality Directive" against Plaintiff and any witnesses in the EEO/AA Investigation;

8. Enjoined and restrained from requiring Plaintiff and any other witnesses in the EEO/AA Investigation to sign any document which includes any "Strict Confidentiality Directive";

9. Enjoined and restrained from requiring Plaintiff to participate in the EEO/AA Investigation; and

AND IT IS FURTHER ORDERED that:

10. Plaintiff and the Defendant State shall engage in the following expedited discovery with respect to the claims in the Order to Show Cause, which shall not prejudice the right of any party to seek additional discovery:

- a. Plaintiff and the Defendant State shall serve requests for production of documents, electronically stored information and things, if any, concerning the issues of this Order to Show Cause no later than \_\_\_\_\_;

- b. Each party shall serve complete responses, and produce all responsive and non-privileged documents, electronically stored information and things, in response to said requests within thirty (30) days of receipt of same;
- c. Ten (10) days following completion of production of responsive documents, electronically stored information and things, the Parties shall make themselves available for depositions, to be mutually scheduled, within a thirty (30) day period;

11. Pending further Order of this Court, the Defendant State shall maintain, and shall not take any action to destroy, discard, tamper with, or delete any electronic or written communications, documents, materials, and any and all information in Defendant State or their agents', officers', employees' or representatives' possession, custody or control which in any way relate to the allegations in the Complaint, whether in hard form (i.e. including but not limited to paper) or electronic form (i.e. including but not limited to e-mail, hard drive, tablet, cellular or smart telephone, thumb drives, memory sticks, cloud-based storage devices, data storage devices, instant messages, web pages, text messages, spreadsheets, back-up disks, etc.);

12. Defendant State may move to dissolve or modify the temporary restraints herein on two (2) days' notice to Plaintiff's counsel;

13. Plaintiff shall serve the Defendant State via counsel appearing for the State by electronic and regular mail with a copy of this Order within \_\_\_\_\_ days of the entry hereof, along with the Complaint, Order to Show Cause, Legal Brief, Certification of Katherine Brennan, Certification of Kathryn K. McClure, Esq., Certification of Andrew Dwyer, Esq., all supporting

exhibits submitted in support thereof, which shall serve as the Summonses in this matter and shall constitute original process;

14. Plaintiff must file with the Court an acknowledgement of service or proof of service of the Complaint, Order to Show Cause, Legal Brief, Certification of Katherine Brennan, Certification of Kathryn K. McClure, Esq., Certification of Andrew Dwyer, Esq., and all supporting exhibits in support thereof no later than three (3) days before the return date listed above;

15. The Defendant State shall file with the Court and serve upon Plaintiff's counsel a written response or opposition to Plaintiff's Order to Show Cause by \_\_\_\_\_, 2019;

16. Plaintiff must file and serve any written reply by \_\_\_\_\_, 2019;

17. If the Defendant State does not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default;

18. To the extent Plaintiff has not already done so, a proposed form of Order addressing the relief sought on the return date must be submitted to the Court no later than three (3) days before the return date; and,

19. The Court will entertain oral argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than \_\_\_\_\_ days before the return date.

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J.S.C.