

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM MURPHY, individually and as :
guardian ad litem on behalf of A.T. and K.M.; :
and TANISHA MURPHY, :

Plaintiffs, :

v. :

C.A.No. 21-_____

STATE OF DELAWARE, JUSTICES OF THE :
PEACE; THE HONORABLE ALAN DAVIS, in :
his official capacity only as Chief Magistrate of :
the Justices of the Peace; CONSTABLE JAMAN :
BRISON, individually and in his official capacity :
as a Constable of the Justices of the Peace; :
CONSTABLE HUGH CRAIG, individually and :
in his official capacity as a Constable of the :
Justices of the Peace; CONSTABLE GERARDO :
HERNANDEZ, individually and in his official :
capacity as a Constable of the Justices of the :
Peace; and KENNETH STANFORD, :

Jury Trial Demanded

Defendants. :

COMPLAINT

1. Few things have a more ancient pedigree or rarified and protected constitutional status than the right of a person to be secure in his or her home against government intrusion. In the words of Lord Edward Coke,¹ “For a man[’]s house is his castle, *et domus sua cuique est tutissimum refugium*; for where shall a man be safe, if it be not in his house?” 3 Edward Coke,

¹ Lord Coke was “widely recognized by the American colonists as the greatest authority of his time on the laws of England.” *Payton v. N.Y.*, 445 U.S. 573, 593-94 (1980) (internal punctuation omitted); *id.* at 596 (noting “the prominence of Lord Coke” in the eyes of the Constitutional Framers).

Institutes of the Laws of England 162 (1644).² In his own seminal work, Sir William Blackstone similarly explained that “every man’s house is looked upon by the law to be his castle.”³ William Blackstone, Commentaries on the Law of England 288 (1768). And in words attributed by the U.S. Supreme Court to the Great Commoner, William Pitt the Elder, “[t]he poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter.” Miller v. U.S., 357 U.S. 301, 307 (1958).

2. As the Supreme Court has explained –

The common-law sources display a sensitivity to privacy interests that could not have been lost on the Framers. The zealous and frequent repetition of the adage that a ‘man’s house is his castle,’ made it abundantly clear that both in England and in the Colonies ‘the freedom of one’s house’ was one of the most vital elements of English liberty.

Payton, 445 U.S. at 596-97 (internal footnotes omitted)(emphasis added). The words of the Framers themselves bear this out. For example, John Adams wrote that “A man’s house is his castle; and while he is quiet, he is as well guarded as a prince in his castle.” Id. at 597 n.45 (quoting 2 Legal Papers of John Adams 142 (L. Wroth & H. Zobel eds. 1965)). And in the words of the Penman of the American Revolution, former President of Delaware, also past President of Pennsylvania, the well-traveled John Dickinson, who signed the Constitution as a Delaware delegate –

I know also, that the greatest asserters of the rights of Englishmen

² See also Semayne's Case, 5 Coke's Rep. 91a, 91b, 77 Eng.Rep. 194, 195 (K.B. 1603) (“the house of every one is to him as his castle and fortress, as well for his defense against injury and violence, as for his repose”)(quoted in both Payton, 445 U.S. at 596 n.44 and Mason v. State, 534 A.2d 242, 246 n.6 (Del. 1987)).

have always strenuously contended, that [the government's power to invade one's home] was dangerous to freedom, and expressly contrary to the common law, which ever regarded a man's house as his castle, or a place of perfect security.

John Dickinson, Letters from a Farmer in Pennsylvania, Letter IX (1767), in Empire and Nation, p. 54 (Forrest McDonald, ed.) (2d Ed. 1999). As the Delaware Supreme Court has explained, “[t]he Framers of the United States Constitution were concerned with the problem of searches and seizures by public officials. The concept of the home as a privileged place, the privacy of which may not be disturbed by unreasonable governmental intrusion, is basic in a free society.” Mason, 534 A.2d at 246.

3. This common law tradition lives on in the plain text of the Fourth Amendment, “[t]he right of the people to be secure in their ... houses ... against unreasonable searches and seizures shall not be infringed.”³ This “language unequivocally establishes the proposition that at the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.” Payton, 445 U.S. at 589-90.

4. This “ancient concept that ‘a man's home is his castle’ into which ‘not even the king may enter’ has lost none of its vitality” today. Rowan v. U.S. Post Office Dep't, 397 U.S. 728, 737 (1970).

A man can still control a small part of his environment, his house; he can retreat thence from outsiders, secure in the knowledge that they cannot get at him without disobeying the Constitution. That is still a sizable hunk of liberty — worth protecting from encroachment. A sane, decent, civilized society must provide some

³ The result is the same under the similarly worded but even broader protections against unreasonable seizures found in its elder cousin, Article 1, § 6 of the Delaware Constitution of 1897, whose historical antecedents date back to Section 17 of the Delaware Declaration of Rights and Fundamental Rules of 1776.

such oasis, some shelter from public scrutiny, some insulated enclosure, some enclave, some inviolate place which is a man's castle.

Silverman v. U.S., 365 U.S. 505, 511 n.4 (1961). For more than 135 years, the Supreme Court has –

stated in resounding terms that the principles reflected in the [Fourth] Amendment ... ‘apply to all invasions on the part of the government and its employe[e]s of the sanctity of a man’s home and privacies of life.’

Payton, 445 U.S. at 585 (quoting Boyd v. U.S., 116 U.S. 616, 630 (1886)).

5. At its core, this is a simple case. Without any notice or opportunity to be heard, state actors knocked on the door of Plaintiff’s home and threw a blind man with no financial resources, and his two young daughters, out of their home in the midst of a winter snowstorm and weather advisory, in the middle of a once in a lifetime pandemic and all despite well known eviction moratoriums under both federal and state law. The man had a signed, enforceable lease, and other written, state issued documentation demonstrating that this house was, in fact, his home. He provided the three State Constables with these documents but they were of no moment to them as they enforced an ongoing, unconstitutional State Court practice or policy of “evict first, ask questions later.”

6. The U.S. Supreme Court has held that an eviction of a person from their home is a seizure which triggers Fourth Amendment analysis. See Soldal v. Cook County, Ill., 506 U.S. 56 (1992). “We fail to see how being unceremoniously dispossessed of one’s home ... can be viewed as anything but a seizure invoking the protection of the Fourth Amendment.” Id. at 61.

7. Under the Fourteenth Amendment, it also is axiomatic that the “core of due process is the right to notice and a meaningful opportunity to be heard.” LaChance v. Erickson, 522 U.S.

262, 266 (1998). Plaintiff and his family received neither of these core due process protections.

8. The “root requirement” of procedural due process is “that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.” Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985) (emphasis added). For the reasons set forth above, there is no more significant property interest than that which one has in the possession and sanctity of their own home. Nevertheless, Plaintiffs were given no such opportunity for a hearing before being wrongfully evicted and literally thrown out on the street to fend for themselves in the midst of a winter snowstorm and weather advisory, a pandemic and widely known eviction moratoriums ordered by the Governor and the federal government.

9. Finally, a trio of U.S. Supreme Court and Third Circuit decisions also establish that a Plaintiff may invoke the Civil Rights Act of 1871, the Ku Klux Klan Act, 42 U.S.C. § 1983, against an otherwise private actor if that person invokes state procedures and uses the power of the state to deprive a Plaintiff of his or her constitutional rights.⁴ These include an individual’s right to be secure in his home from unreasonable seizure under the Fourth Amendment and his right not to be deprived of his property without the notice and opportunity to be heard, as required by the Due Process Clause of the Fourteenth Amendment.

10. As explained in greater detail below, this is a civil action seeking retrospective nominal, compensatory and punitive damages, and other declaratory and injunctive relief, against two sets of defendants: (1) the three Justices of the Peace Constables who unlawfully seized and threw Plaintiff out of his home; and (2) the landlord who invoked a state process to wrongfully

⁴ See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250 (3d Cir. 1994); Angelico v. Lehigh Valley Hosp., Inc., 184 F.3d 268 (3d Cir. 1999); Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982).

evict Plaintiff from his home and deprive him of his constitutional rights.

11. Consistent with the Eleventh Amendment, it also seeks prospective declaratory and injunctive relief against an arm of the State of Delaware to declare illegal and immediately terminate the ongoing, unconstitutional practice or policy of the Justices of the Peace which in its primary effect, and also as applied, deprives financially poor, predominantly African-American citizens, and others, of the above described protections of the Fourth and Fourteenth Amendments.

12. This action also seeks the full panoply of damages and other remedies against the Justices of the Peace and other State defendants for their actions against the blind Plaintiff in violation of both Title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act, for which Congress has explicitly abrogated the State's Eleventh Amendment immunity.

I. JURISDICTION

13. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3) and (4), 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 12202, 42 U.S.C. § 2000d-7, 42 U.S.C. § 12133, and 29 U.S.C. § 794a. The cause of action arises under 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments, Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973 (“Rehab Act”), 29 U.S.C. § 794. The claims arose in this judicial district.

14. This Court also has jurisdiction pursuant to 28 U.S.C. § 1367 which provides for supplemental jurisdiction over state law claims that are so related to the federal ones that they form part of the same case or controversy.

II. THE PARTIES

A. Plaintiffs.

15. Plaintiff William Murphy (hereinafter “William Murphy,” “Murphy” or sometimes “Plaintiff”) is a legally blind, 52 year old, African-American male, widower, citizen of the United States and resident of New Castle County (“NCC”), Delaware. Since he was unlawfully evicted from his home at 329 Townsend Street, Wilmington, Delaware, 19801, on February 11, 2021, he has resided at the NCC run homeless shelter known as the Hope Center. He brings this lawsuit in his individual capacity and also as sole surviving parent and guardian ad litem of his two minor daughters A.T. and K.M. In addition to his two minor daughters, he also has two adult children, another daughter and a son.

16. Plaintiff A.T. (hereinafter “A.T.”) is William Murphy’s middle daughter. She is 17 years old and in the 10th grade. She currently resides with Plaintiff Murphy at the Hope Center. Plaintiff A.T. attends high school completely by Zoom due to the COVID-19 pandemic where she is an honor roll student. Her extracurricular activities include singing in the chorus and playing volleyball. A.T. desires to go to college and become a writer.

17. Plaintiff K.M. (hereinafter “K.M.”) is William Murphy’s youngest daughter. She is 11 years old and in the 5th grade. She currently resides with Plaintiff Murphy at the Hope Center. Plaintiff K.M. is a special needs student and attends elementary school completely by Zoom due to the COVID-19 pandemic. She enjoys spending time with her family.

18. Plaintiff Tanisha Murphy (hereinafter “Tanisha Murphy,” “Tanisha” or collectively with the three other plaintiffs as “Plaintiffs”) is a 30 year old, African-American female, citizen of the United States and resident of NCC, Delaware. She is the eldest daughter of William

Murphy and older sister of A.T. and K.M.

B. Defendants.

19. Defendant “State of Delaware, Justices of the Peace” is an arm of the State of Delaware. “Justices of the Peace” is a specific term used in Article 4, § 1 of the Delaware Constitution of 1897, and subsequently also referenced in Article 4, §§ 29-30, to identify a specific system of courts in Delaware. Rather than its formal state constitutional name of “Justices of the Peace,” it is usually referred to – including by Delaware statute and on the Delaware Courts’ own website – as the Justice of the Peace Court and is the lower-most rung of the six primary courts in the Delaware court system. It is a court of limited jurisdiction that has statutory jurisdiction over, *inter alia*: residential landlord-tenant matters, including actions for eviction and summary possession; certain cases where the amount in controversy does not exceed \$25,000; as well as other matters.

20. Under Counts I-III, the Justices of the Peace defendant is joined in this action for the purposes of: (1) prospective declaratory and injunctive relief to remedy an ongoing violation of federal law; and (2) collecting attorneys’ fees and costs. No compensatory or punitive damages are sought against it under these specific Counts.

21. Under Count IV (Title II of the ADA and Section 504 of the Rehab Act), it is joined for all purposes because Congress has explicitly abrogated the State’s Eleventh Amendment immunity.⁵ The full panoply of damages and remedies available under both the ADA and Rehab Act are sought against it.

⁵ See, e.g. 42 U.S.C. § 12202; Tennessee v. Lane, 541 U.S. 509 (2004); U.S. v. Georgia, 546 U.S. 151 (2006); 42 U.S.C. § 2000d-7; Haybarger v. Lawrence Cty. Adult Prob. & Parole, 551 F.3d 193 (3d Cir. 2008).

22. Defendant the Honorable Alan Davis is currently the Chief Magistrate of the Justices of the Peace Court system. The Chief Magistrate is appointed by the Governor, Del.Const. Art. 4, §§ 30 and 3, serves as the administrative head of the Court, 10 Del.C. § 9202, and, *inter alia*, appoints Justice of the Peace Constables, 10 Del.C. § 2801, and is responsible for their training. 10 Del.C. § 2806. He is sued solely in his official capacity for purposes of prospective injunctive and other relief. He is not sued in his individual capacity.

23. Defendant Jaman Brison is a Justices of the Peace Constable, appointed by the Chief Magistrate pursuant to the statutory authority found at Title 10, Chapter 28, entitled “Justice of the Peace Constables,” of the Delaware Code. At all times during his interactions with Plaintiffs, discussed below, he was dressed in a blue law enforcement uniform, wore a badge and carried both a gun and a taser. He is sued individually and in his official capacity.

24. Defendant Hugh Craig is a Justices of the Peace Constable, also appointed pursuant to this same statutory authority found at Chapter 28 of Title 10 of the Delaware Code. At all times during his interactions with Plaintiffs, discussed below, he was dressed in a blue law enforcement uniform, wore a badge and carried both a gun and a taser. He is sued individually and in his official capacity.

25. Defendant Gerardo Hernandez is a Justices of the Peace Constable, also appointed pursuant to this same statutory authority found at Chapter 28 of Title 10 of the Delaware Code. At all times during his interactions with Plaintiffs, discussed below, he was dressed in a blue law enforcement uniform, wore a badge and carried both a gun and a taser. He is sued individually and in his official capacity.

26. Defendant Kenneth Stanford is a resident of Middletown, Delaware who owns

numerous rental and other properties in the cities of Wilmington, New Castle and Middletown, including Plaintiffs' former home at 329 Townsend Street in Wilmington. He is a sophisticated real estate investor and landlord who has filed at least 153 landlord-tenant lawsuits in the Delaware Justices of the Peace courts over the last twenty years. In addition to his real estate business which he calls his "bread and butter," as an inducement Stanford also told Plaintiffs that he is a minister at the Bethel AME Church located at 604 North Walnut Street in Wilmington, where he transacted business with Plaintiffs outside the church building, and where he also advertises his business on the church website. He is sued in his individual capacity. Finally, as noted above and addressed in detail below, his actions at issue in this case trigger and satisfy both the color of law requirement of 42 U.S.C. § 1983 and the state action requirement of the Fourteenth Amendment.

III. FACTS GIVING RISE TO THE ACTION

A. Plaintiff William Murphy's Background.

27. Plaintiff William Murphy was born in Brooklyn, New York and was raised in Camden, New Jersey.

28. In 1988, Plaintiff earned an Associate's degree in criminal justice from Drew University in Madison, New Jersey.

29. He lost vision in his left eye at the age of 9 after being struck with an ice ball (with a rock as the core) in a racially-motivated attack in Blackwood, New Jersey. His left eye was so badly damaged it was removed and replaced with a prosthetic eye. At the age of 18, Plaintiff's right eye was diagnosed with glaucoma, a slow-progressing eye disease that damages the optic nerve and eventually causes permanent loss of vision. By the age of 35, the vision in Plaintiff's

right eye had deteriorated to a point such that he began taking measures such as using a cane, learning braille, and utilizing his other senses so that he could function independently, maintain employment and take care of his family. In July 2019, Plaintiff's right eye finally succumbed to glaucoma, rendering him completely and permanently blind.

30. Notwithstanding his lifetime of at least partial blindness, Plaintiff held various jobs in waste management and construction for most of his career.

31. Plaintiff's most recent employment was with Blind Industries & Services of Maryland ("Blind Industries"), a nonprofit organization in Salisbury, Maryland, dedicated to providing career and training resources to blind residents of Maryland. There, he sewed clothing for the military.

32. Plaintiff's beloved wife and life partner, Lokia Murphy, passed away on October 30, 2018, from congestive heart failure. Lokia Murphy was cremated so that Plaintiff could keep her ashes in an urn and, even though unable to see, continue to cherish her memory through his sense of touch. His late wife's urn is one of his most cherished possessions.

B. Plaintiff Moves to Delaware But Loses His Job.

33. In late September 2020, Plaintiff left his job at Blind Industries, as well as his residence in Salisbury, Maryland, and moved his family to Delaware. This was done for several reasons.

34. First, in the aftermath of his beloved wife's passing, Plaintiff and his two youngest daughters wanted to be closer to their many family members and support system who resided in Delaware. For example, in addition to his eldest daughter, co-plaintiff Tanisha Murphy, and his 28 year old son, Josh Murphy, who both separately reside Wilmington, his elderly mother lives in

Newark, Delaware.

35. Second, Plaintiff had received a job offer from Amazon, in New Castle, Delaware, for a job with higher pay and more growth potential to better enable him to support his family in these trying times.

36. Unfortunately, after arriving for his first day of work and sitting through training and orientation, Amazon declined to accommodate his disability and placed him on unpaid leave without benefits.

37. Plaintiff is presently still on unpaid leave from Amazon.

C. Defendant Stanford's Rental Home at 329 Townsend Street.

38. Faced with no immediate prospects of employment, Plaintiff sought the assistance of the Delaware Health and Social Services, Division of Social Services ("Social Services"), which placed he and his two minor daughters at the Best Knights Inn in New Castle. The motel was a temporary accommodation so that Plaintiff would have time to search for a rental property and preserve his savings towards a security deposit and first month's rent.

39. While at the motel and through a neighbor there, Plaintiff heard about defendant Stanford and that he might have an available rental home.

40. Soon thereafter, on or about October 30, 2020, Plaintiff called defendant Stanford about whether he had a property available to rent. Stanford replied and explained he had two properties available for rent, one for \$1,300/month and the other for \$700/month.

41. Because the first was out of Plaintiff's price range, he requested to learn more about the second property, located at 329 Townsend Street, Wilmington, DE 19801 (hereinafter, the "Home").

42. During the phone call, Plaintiff informed defendant Stanford that he was blind but was fully capable of residing on his own with his minor daughters and paying the \$700 monthly rent.

43. Plaintiff also informed defendant Stanford that he would be seeking emergency rent assistance from Social Services in the amount of \$450.

44. Defendant Stanford expressed support of Plaintiff's plan to seek assistance from Social Services.

45. On November 1, 2020, Plaintiff William Murphy and his oldest daughter Plaintiff Tanisha Murphy, along with several other family members, met defendant Stanford at the Home.

46. Defendant Stanford showed the family the Home, a 775 square foot, semi-detached row house, consisting of a living room and kitchen on the ground floor, and 2 bedrooms and 1 full bathroom on the upper floor.

47. Defendant Stanford explained that if Plaintiff William Murphy was interested in renting the Home, that he would have to complete a rental application and pay a \$25 application fee.

48. Plaintiff determined that the Home would be suitable for he and his two minor daughters given the circumstances.

49. So the next day, November 2, 2020, Plaintiff Tanisha Murphy called defendant Stanford on her father's behalf and informed him that Plaintiff William Murphy was interested in renting the Home at the terms discussed just a day earlier.

50. Defendant Stanford replied he was at the Lowe's on Rt. 13 in New Castle, just south of Wilmington, and told her to meet him there to drop off the rental application and fee.

51. But when Tanisha Murphy arrived, Stanford abruptly told her that he was raising the rent to \$750/month, not the \$700/month he had said only the day before.

52. Tanisha Murphy called her father who reluctantly acquiesced to the increased rent as he was desperate to leave the motel and get his two young daughters back to a sense of normalcy and stability for their family.

53. One day later, on November 3, 2020, defendant Stanford called Plaintiff Tanisha Murphy and, this time, expressed his hesitancy to rent to a blind man and two minor daughters.

54. Plaintiff Tanisha Murphy explained that her father was fully capable of taking care of himself and his daughters.

55. But defendant Stanford rejected this and stated that, now, he would only agree to lease the Home to William Murphy if Tanisha Murphy would co-sign and accept legal liability on the lease with her father.

56. With no other options to help her father, Tanisha Murphy reluctantly agreed to be a party to the lease.

57. As a further inducement, defendant Stanford then asked her to meet him at the Bethel AME Church in Wilmington, where he explained he worked as a trustworthy minister and man of God. He said he wanted another \$25 application fee from her and also needed her to complete a rental application and also submit other supporting documentation.

58. Tanisha Murphy completed the application, gathered the necessary paperwork, and met defendant Stanford at what he described as “my church,” in the Bethel AME Church parking lot to drop off the application, supporting documentation and \$25 fee.

59. Defendant Stanford subsequently approved the application and the parties moved

forward with a lease agreement for the Home with a start date of November 15, 2020.

60. On November 10, 2020, Plaintiffs William Murphy and Tanisha Murphy met defendant Stanford at the Home to obtain a letter from Stanford stating that Plaintiff William Murphy was approved to lease the Home. This letter was to be submitted to Delaware Social Services as a condition to obtain the \$450 in rental assistance from the State. A copy of the letter is attached hereto as Exhibit A.

61. On November 14, 2020, Plaintiffs William Murphy and Tanisha Murphy again met defendant Stanford at the Home. William Murphy paid Stanford \$1,050 in cash towards security deposit and first full month's rent (i.e., December 2020). Receipts for this payment were required for the rental assistance from the State and William Murphy requested these receipts.

62. On November 15, 2020, William Murphy and Tanisha Murphy yet again met Stanford at the Home to execute a one-year residential lease agreement (the "Lease Agreement"). A copy of the Lease Agreement is attached hereto as Exhibit B.

63. William Murphy also paid Stanford \$350 in cash as the pro-rated rent for the rest of November and asked for a receipt.

64. Defendant Stanford replied that he would either mail or drop off a receipt at a later time.

65. However, despite the plain terms of the Lease Agreement requiring a November 15th move in date, defendant Stanford would not provide Plaintiff William Murphy the keys until he got a commitment from Social Services that the \$450 would be paid directly to Stanford.

66. Thereafter, on November 16, 2020, Plaintiff submitted receipts to Social Services for the \$1,050 that he had paid towards security deposit and first full month's rent. As noted above,

these receipts were required by Social Services for the additional \$450 in rent assistance. A copy of the receipts totaling \$1,050 is attached hereto as Exhibit C.

67. Upon submission of the receipts, defendant Stanford received a verbal commitment from Social Services that the \$450 rent assistance would be paid.

68. Defendant Stanford then gave the keys to the Home to Murphy late in the day on November 16, 2020.

69. Defendant Stanford did not pro-rate and refund any portion of the November rent to account for this delay in turning over possession of the Home.

70. Plaintiffs William Murphy, A.T. and K.M. moved into the Home the next day, November 17, 2020.

71. On November 17, 2020, Social Services issued a notice that William Murphy was approved for \$450 in rent assistance under the Emergency Assistance Services Program (the "Approval Notice"). The Approval Notice stated that \$450 in rent assistance would be paid directly to defendant Stanford. A copy of the Approval Notice is attached hereto as Exhibit D.

D. Stanford's Abusive and Unlawful Conduct.

72. Soon after Plaintiffs took possession of the Home, defendant Stanford began harassing them for \$450, notwithstanding Stanford's earlier support of Plaintiff's application to the Emergency Assistance Services Program and the verbal and written guarantees of payment from Social Services.

73. Defendant Stanford also called and harassed Plaintiff's case worker from Social Services numerous times regarding the \$450 payment.

74. At one point, defendant Stanford threatened Plaintiff that he would issue a 5-day

Notice if he did not receive the \$450.⁶ Defendant Stanford further threatened that should the \$450 not be paid immediately, he would terminate the lease and proceed with eviction and force Plaintiff to return to the “raggedy motel.”

75. Although Plaintiff was inclined to pay defendant Stanford the \$450 to avoid further problems, he was advised by his State of Delaware case worker not to give defendant Stanford any more money as the check from Social Services was forthcoming.

76. Plaintiff’s case worker expressed serious concerns about defendant Stanford’s conduct and was skeptical that Plaintiff would be able to stay in the Home for the duration of the Lease Agreement due to Stanford’s ongoing abusive actions.

77. In light of Stanford’s conduct and the advice of his social worker, Plaintiff was persistent about obtaining a receipt for the \$350 he had paid in cash as pro-rated rent for November 2020.

78. In response, defendant Stanford lied and claimed to have provided it to him along with earlier paperwork and asked, “how would you know the difference between a receipt and any other piece of paper?”

79. Exasperated, Plaintiff sought the aid of his sister, Marian, a former property manager who currently resides in Virginia.

80. In good faith, Marian called defendant Stanford in an attempt to smooth things over regarding the \$450 payment from the State which Stanford had already been guaranteed.

81. Stanford responded to Marian with threats, vulgarity and disparaging remarks about her brother’s blindness.

⁶ See 25 Del.C. § 5502 (Landlord remedies for failure to pay rent).

82. Marian found such threats, vulgarity and disparaging remarks to be particularly outrageous given that Stanford had previously explained he was a pastor at a prominent Wilmington church.

83. As his case worker had already done, Marian warned Plaintiff about defendant Stanford and advised him to be persistent about obtaining receipts and not giving any more money than was required by the Lease Agreement.

84. On January 2, 2021, defendant Stanford came to the Home to pick up the \$750 rent for January. Both Plaintiff and his minor daughter A.T. were home.

85. Plaintiff told defendant Stanford that mail was being received at the Home for someone named Viola Wilson.

86. Defendant Stanford instructed Plaintiff to ignore and just throw away anything received at the Home addressed to that name.

87. Then, after paying the January rent in cash, Plaintiff requested a receipt for January and yet again inquired about the long overdue receipt for \$350 paid as pro-rated rent for November 2020.

88. Defendant Stanford was dismissive of Plaintiff's concerns and stated that he would drop off or mail the receipts at a later time.

89. Plaintiff Murphy was adamant that he would not pay February rent until and unless he obtained receipts for the cash payments he made for November 2020 and January 2021 rent.

90. Defendant Stanford then replied that he would provide the receipts in early February when he would come to the Home to pick up the February rent.

91. Plaintiff understood defendant Stanford's reply to mean that Stanford would come to

the Home in early February to pick up the February rent.

92. But defendant Stanford ceased all contact and communication with Plaintiff after January 2, 2021.

93. Stanford did not drop off the requested receipts.

94. Nor did Stanford come to the Home to pick up the February rent.

1. Stanford Shuts Off the Water to the Home.

95. On February 5, 2021, Plaintiff spent the day with his daughters celebrating A.T.'s 17th birthday.

96. Thereafter, the Murphy family went to bed early.

97. At approximately 9:30 p.m., A.T. discovered that the water was not working when she went to use the bathroom.

98. A.T. woke Plaintiff, who checked the faucets in the bathroom and kitchen and confirmed that there was no water service.

99. Confused and astonished, Plaintiff called his eldest daughter Tanisha, who in turn called defendant Stanford.

100. In response to Tanisha's questioning, defendant Stanford did not deny that he was responsible for shutting off the water.

101. Stanford stated "the matter was between me [Stanford] and your father," and that "he [William Murphy] better learn to start respecting me [Stanford]."

102. Turning the water off to a rental property is illegal under 25 Del.C. §§ 5308, 5305 and 5516.

103. Upset, Plaintiff Tanisha Murphy called the police department to report that Stanford

had somehow shut off the water.

104. As described in detail further below, the Sixth Modification to Delaware Governor John Carney's Emergency Declaration prohibited utility providers from discontinuing service.

105. The next day, February 6, 2020, at approximately 2:00 p.m., representatives from the City of Wilmington Public Works Department came and turned the water back on from the shutoff valve at the street.

106. The City Public Works Department made clear that it had not turned off the water to the Home.

107. It was clear that defendant Stanford had come sometime Friday evening and turned the water off from the main shutoff valve for the Home at the street.

2. Stanford Shuts Off the Electric to the Home.

108. On February 10, 2021, Plaintiff's son Josh had come over to spend time with the family given the ongoing severe winter weather.

109. At approximately 5:00 p.m., the lights went off in the Home.

110. Josh went around the house and checked to see if any lights would turn on but they did not.

111. Josh then woke Plaintiff William Murphy, who was taking a nap. Plaintiff Murphy also went around the house with Josh, checked the circuit breaker and confirmed that electric service had been shut off.

112. Upset for many reasons, including that the temperature was well below freezing and the house was losing its electric heat quickly, Plaintiff Murphy called his daughter Tanisha who reported the shutoff to the police department.

113. Plaintiff William Murphy also called Delmarva Power to inquire why service had been shut down.

114. Delmarva customer service responded that a ‘William Murphy’ had called and scheduled a disconnection of service because he reported he was moving out of the Home.

115. Plaintiff William Murphy then explained that he had done no such thing. He explained that he had not called to talk about or schedule a disconnection of service and also that he had only recently moved in and had many months left under the Lease Agreement.

116. In speaking with Delmarva customer service, it was determined that someone had contacted Delmarva earlier in the week, impersonated Plaintiff Murphy and utilized his private information in order to schedule a disconnection of service.

117. The types of information utilized were in Plaintiff’s rental application previously submitted to defendant Stanford.

118. Turning the electricity off to a rental property is illegal under 25 Del.C. §§ 5308, 5305 and 5516.

119. Plaintiff Murphy also expressed his concern to Delmarva Power that defendant Stanford could and would do this again.

120. Approximately two hours later, around 8:00 p.m., Delmarva restored power to the Home.

E. The Unlawful Eviction of the Murphy Family Pursuant to the “Evict First, Ask Questions Later” Policy or Practice of the Defendant Justices of the Peace.

121. The very next morning, Thursday, February 11, 2021 was bitter cold and sleeting intermittently. The night before, several inches of snow had fallen in the area. The National Weather Service had issued a Winter Weather Advisory for all of Delaware through noon on

Thursday, February 11th. Many schools were closed or delayed because of the poor weather conditions.

122. That morning, Plaintiff William Murphy was making pancakes for his two young daughters, who were upstairs attending school by Zoom, and for his son Josh, who had spent the night to ensure that his family would be safe with the latest storm in the series of harsh winter weather to hit the area.

123. At approximately 10:30 a.m., Josh walked outside to go to a nearby convenience store. When he stepped out the door, he observed two Ford Taurus vehicles, one on the same side of the street of the Home, and one on the other side. He observed what appeared to be a police officer standing outside the vehicle that was parked on the same side of the street, talking to another apparent police officer who was inside his vehicle. Josh presumed that they were there for a matter unrelated to his family, as the area is known to be unsafe and has regular police activity.

124. When Josh returned from the store a few minutes later, he observed an additional Ford Taurus on the other side of the street. The officer who was previously inside his vehicle had gotten out and was talking to the other officer.

125. As Josh was walking up the steps to enter the front door, one of the officers, later identified as defendant Constable Brison, said, “hey, are you the only one in there?”

126. Constable Brison was wearing what appeared to be a police uniform, a badge and was armed with a gun and a taser.

127. Josh responded that his father and two young sisters were inside.

128. Constable Brison replied, “No one is supposed to be in there. I have an Order stating that this place has to be boarded up. Everyone inside has 30 minutes to leave.”

129. Josh again responded and asked Constable Brison who he was supposed to be evicting.

130. Constable Brison replied, “Viola Wilson.”

131. Not wanting to engage further with Constable Brison, who was armed, Josh went inside to inform Plaintiff William Murphy, who was still in the kitchen making pancakes for his kids, of these happenings.

132. Upon learning from Josh that police were outside with an eviction Order, Plaintiff William Murphy made his way to the front door, cane in hand, to speak with them.

133. He assumed there was some kind of mix-up, perhaps that the police were at the wrong house, and he wanted to help them sort it out.

134. Plaintiff Murphy opened the door.

135. His son Josh was standing behind him as he did so.

136. At the bottom of the two small concrete steps, about three feet away stood Constable Brison and another armed officer, later identified as Constable Hernandez.

137. Constables Brison and Hernandez knew immediately from looking at Plaintiff – including from his use of his cane, to the look of his eyes, to the way he steadied himself with his hands, to the way his son Josh stood behind him steadying him, among many other reasons – that Plaintiff was blind.

138. Constable Brison then stated to Plaintiff Murphy, “You don’t look like a Viola Wilson to me.”

139. In stating this, Constable Brison acknowledged that William Murphy was not Viola Wilson, the person named in the eviction Order.

140. Plaintiff replied, “I’m sure not.”

141. In so stating, Plaintiff meant that he was not Viola Wilson.

142. Constable Brison then asked Plaintiff Murphy how long he had been living at his Home.

143. Plaintiff responded that he been living at his Home for about two to three months, with his two young daughters, who were upstairs attending school class by Zoom.

144. Constable Brison then replied that he had an eviction Order, that no one was supposed to be inside and that all the occupants had 30 minutes to leave before the front door gets boarded up.

145. Plaintiff was in shock to hear this and quickly replied that, again, he had been living in the Home for several months with his two daughters and that he had a legal right to be there.

146. Plaintiff explained to Constable Brison that this was his Home.

147. Constable Brison disparagingly replied, “you haven’t even produced a lease.”

148. At no time prior to this point had Constable Brison asked Plaintiff to produce a lease.

149. Nevertheless, in response to the Constable’s statement, Plaintiff turned around, went back inside and with help from his son Josh retrieved a copy of the signed and fully executed Lease Agreement (Exhibit B) between he and defendant Stanford and handed it to Constable Brison.

150. Constable Brison accepted the Lease Agreement from Plaintiff.

151. Constable Brison read the Lease Agreement.

152. Constable Brison observed the signatures on the Lease Agreement.

153. Constable Brison noted that the name of the owner on the eviction Order, defendant Stanford, was the same name as the Lessor on the Lease Agreement, also defendant Stanford.

154. Constable Brison then went to his car, parked directly in front of the Home, and reread the Lease Agreement.

155. Constable Brison returned to the doorway of Plaintiff's Home a few minutes later and stated "anyone could have made up this lease."

156. Constable Brison criticized Plaintiff and said that the Lease Agreement was neither notarized nor "watersealed."

157. But there is no requirement under Delaware law that a residential lease agreement be notarized, sealed or watermarked.

158. In doing so, he accused Plaintiff of being a liar, a thief and a fraud.

159. Constable Brison then repeated his command that everyone had to leave immediately and that they had only a few minutes left to collect their things.

160. This command was pursuant to a policy or practice of the defendant Justices of the Peace, during the pandemic and state of emergency in the State of Delaware, to always "evict first, and ask questions later" whenever there is a challenge to an eviction Order on the day of the eviction, despite whatever proof and evidence a tenant has that the eviction command is improper and illegal.

161. As Constable Brison said all of this, Constable Hernandez was standing behind him, nodding his head in agreement.

162. Plaintiff William Murphy pleaded with Constables Brison and Hernandez and begged them not to throw him out of his Home in the middle of a snowstorm.

163. He again explained that his two young daughters were upstairs in Zoom school, still wearing their nightclothes. He explained that all of his Earthly possessions were inside, including the urn with his beloved wife's ashes, and that it was cold and he needed to get

transportation.

164. Plaintiff explained to Constables Brison and Hernandez that he had additional written documentation establishing he was the current tenant, including recent electric and internet bills, and documentation from State of Delaware Social Services regarding rent assistance that was paid directly to his landlord, defendant Stanford.

165. Plaintiff asked the Constables to look at these documents.

166. But Constables Brison and Hernandez rejected Plaintiff's offer and refused to even look at the additional documentation and evidence establishing that Plaintiff had a legal right to be in his Home.

167. This was because the "evict first, ask questions later" policy or practice provides no exception or reasonable accommodation for legal, logical, humanitarian, emergency or other reasons.

168. The Constables repeated their command that Plaintiff and his family were required to leave immediately.

169. The Constables told Plaintiff that his only legal option was to go to JP Court #11 and file a lawsuit challenging the Constables' actions.

170. In their blue police uniforms, wearing badges, and carrying guns and tasers, the Constable defendants stated Plaintiff had no other options.

171. Plaintiff William Murphy then submitted to the Constables' display of legal authority and their commands.

172. Having no other choice, Plaintiff and his son Josh went upstairs and asked Plaintiff's two young daughters, who were preparing for their next class, to quickly get dressed and pack some warm clothes because the police were downstairs and were throwing them out of

their Home.

173. The girls became hysterical, were highly distressed, but Plaintiff Murphy eventually calmed them down, assuring them everything was fine and that they would be back in their Home soon.

174. Plaintiff William Murphy then called his eldest daughter and co-signer on the Lease Agreement, Tanisha Murphy, who was at work, and informed her that he and the girls were being abruptly evicted and asked for help.

175. Tanisha then called her boyfriend, Devoughn, who was nearby and immediately rushed to the Home to help.

176. After about 15 minutes, Plaintiff Murphy and his children were forced out of their Home and thrown out onto the street.

177. All they had time to gather were a few warm clothes.

178. They still had faith that a mistake of some kind had been made, that the situation would be sorted out quickly and they would be back in their Home shortly.

179. The Murphy family left behind the bulk of their worldly possessions, including the girls' laptop computers for school, clothing, the urn with Lakia's ashes, Lakia's picture with a necklace with the wedding ring as a pendant, their bedroom sets, televisions, the dining room table, and their microwave.

180. At this point, the third Constable, later identified as defendant Craig, was standing outside the home with defendant Constables Brison and Hernandez.

181. As he was exiting, Plaintiff William Murphy asked for further explanation of how he could get the mix-up sorted out because this was his legal Home as the Lease Agreement and other proffered evidence demonstrated.

182. Defendant Brison replied to this blind man, walking with a cane, at the end of a snowstorm, that he should go to JP Court # 11 in New Castle, almost seven miles away, and file a complaint for wrongful eviction.

183. Fortunately for Plaintiff, his daughter Tanisha's boyfriend Devoughn had arrived at the scene and quickly helped Plaintiff Murphy into Devoughn's car.

184. As this was occurring, Constable Brison said to Constables Hernandez and Craig, "[i]f anything goes wrong, I will take the fall for it."

185. By this, Constable Brison meant that he knew it was illegal and improper of him to throw someone out of their home under these circumstances but he was going to do it anyway.

186. Devoughn then went over to Constables Brison, Hernandez and Craig and asked who they were and why the Murphy family was being evicted.

187. Devoughn explained that the Murphy family had been living at the Home for months, that Plaintiff Murphy was blind, his two young daughters were in school, and it was freezing, sleeting and snowing outside.

188. Defendant Hernandez responded that they were Constables, they are the law and that they needed everyone out of the Home immediately and that the Murphy family's only legal option was to go to JP Court #11 to get the matter resolved.

189. Devoughn requested the address for JP Court #11, and defendant Hernandez responded, "2 Penns Way, New Castle."

**F. The Absence of Due Process Given the Murphy Family Before
Being Evicted From Their Home.**

190. No notice was ever given to Plaintiffs before being evicted from their Home.

191. No hearing and opportunity to be heard were ever given to Plaintiffs before being

evicted from their Home.

192. No disinterested decisionmaker ever heard the facts and made a decision that Plaintiffs were not entitled to be in their Home before evicting them from their Home.

G. Plaintiff Murphy Goes to JP Court and Files a Wrongful Eviction Action.

193. That same day, February 11, 2021, after dropping off Plaintiff K.M. with a babysitter, Devoughn and Plaintiffs Murphy and A.T. drove immediately to JP Court #11. Josh stayed behind and observed that the front door to the Home had been boarded up shortly after the family left by either defendant Stanford or one of the Constables.

194. While en route to JP Court #11, Plaintiff Murphy called his mother, Ruth Patten, 82 years old, who lives in Newark. Plaintiff Murphy explained to his mother that he needed her assistance in sorting out the situation at the JP Court. Ruth rushed to the Court, in dangerous driving conditions, and arrived shortly after Plaintiff Murphy.

195. Upon arriving at the Court, Plaintiff Murphy explained to the Court Clerk what had just transpired, that he had been evicted from his Home even though he had a valid lease and that he needed to return immediately as he had school-age children and had been forced to leave the bulk of his personal belongings inside the home.

196. The Court Clerk provided Plaintiff Murphy with forms and provided guidance on how to complete the forms.

197. Plaintiff Murphy then dictated to his minor daughter and elderly mother what was to be written on the forms.

198. Plaintiff filled out two forms: (1) what is, in essence, a Complaint for unlawful eviction; and (2) a Request for a Forthwith Summons under 25 Del.C. § 5115, swearing that the situation was an emergency and that he and his family were suffering “irreparable harm” by

being thrown out of their Home in a snowstorm, despite having a valid lease and other proper documentation of occupancy and tenancy.

199. After the forms were completed, Plaintiff submitted the forms to the Court Clerk, along with a copy of his Lease Agreement (Exhibit B) as well as a copy of the Delaware Social Services Approval Notice (Exhibit D) and, despite being an impoverished poor, blind person without financial resources, he was required to pay a \$45 Justice of the Peace Court fee in an attempt to get back his Home that the same Court had just illegally taken away from him.

200. Even though they were at JP Court #11, the case was assigned to JP Court #13 and assigned Case Number: JP13-21-000708.

201. The Murphy family then was forced to wait for days, despite the emergency they endured.

202. Four long days passed as Plaintiff and his two young daughters had to wait without any of their possessions because they had been unlawfully evicted from their Home.

203. Finally, on Monday, February 15, 2021, the JP Court approved an expedited hearing and set a trial date for Thursday, February 18, 2021, seven long days after the Murphy family were wrongfully thrown out of their Home.

H. Plaintiff Murphy Contacts the News Media.

204. During these four days, Plaintiff William Murphy contacted intrepid reporter Jeff Neiburg of the *Wilmington News Journal*, who boldly began to call the Justice of the Peace Court and pointedly question the Court and the Court Administrator why a blind man and his family had been abruptly evicted from their home in the middle of a snowstorm without ever having been granted a simple hearing in the midst of a once in a lifetime pandemic, a statewide declaration of emergency and an eviction moratorium under both state and federal law.

205. At 5:00 a.m. on February 18, 2021, reporter Neiburg published a prominent online newspaper story at delawareonline.com entitled, “Were Blind Widower and His 2 Daughters Wrongfully Evicted from their Wilmington Home?”

I. The Emergency Hearing is Held.

206. The emergency hearing in JP13-21-000708 challenging his eviction was held later that same day, February 18, 2021.

207. The hearing was recorded but undersigned counsel has not yet been able to obtain it.

208. The emergency hearing was ably and fairly conducted by Deputy Chief Magistrate Judge Sean P. McCormick.

209. Judge McCormick was not the judge assigned to Plaintiff’s case in JP13-21-000708.

210. Nor was Judge McCormick the judge assigned to the previous JP13-20-003694 matter in which defendant Stanford wrongfully had obtained the eviction Order which had been issued for the long gone Viola Wilson.

211. Nevertheless, Judge McCormick reviewed the documentary evidence, including: the Lease Agreement; the written documentation and approval from Delaware Social Services; and other documents on the Court docket, and from elsewhere, containing defendant Stanford’s signature.

212. Judge McCormick read defendant Stanford his rights under Miranda v. Arizona, 384 U.S. 436 (1966), and then asked Stanford numerous questions.

213. But in Judge McCormick’s words, defendant “Stanford elected to stand mute – other than to say ‘I wish to seek counsel’ – to any other question asked of him” after being Mirandized.

214. Judge McCormick made certain oral rulings that day, and also later issued a five

page written Opinion on February 26, 2021. He concluded that:

- “the signature of Kenneth Stanford” on four separate documents on the JP Court docket “is identical to the one on the lease offered by Murphy as proof of his leasehold;”
- the Murphy family “were Stanford’s tenants and had a valid lease to that end;” and
- “clearly the Murphy’s were unlawfully ousted” from their Home.

215. In his later written ruling, the Judge also investigated further the circumstances leading up to the unlawful eviction and concluded that:

- defendant Stanford had “abus[ed] the resources of the Court” and “‘weaponized’ a writ meant for a previous tenant” by filing an eviction action (JP13-20-003694) against a prior tenant named Viola Wilson, who no longer lived at 329 Townsend Street;
- After Viola Wilson moved out, defendant Stanford had subsequently rented the same home at 329 Townsend Street to the Murphy family and took their money;
- But Stanford used the eventual writ of eviction issued in the case against Viola Wilson (JP13-20-003694), to wrongfully evict the Murphy family, despite the Murphy family: having a valid lease with Stanford; not being party to the Viola Wilson case; having no notice of the Viola Wilson case; having no notice that they were in danger of being evicted; and having no opportunity to be heard at a hearing challenging their eviction.
- defendant Stanford had likely perjured himself on several occasions in his sworn submissions to the JP Court across a series of at least three separate lawsuits he filed centering on the property at 329 Townsend Street; and
- referred the matter to the Delaware Department of Justice to conduct a criminal investigation.

216. Following his oral ruling at the hearing, Judge McCormick gave Plaintiff William Murphy the option of returning back to his Home at 329 Townsend Street or terminating the Lease Agreement.

217. Given the deep distrust that had developed arising from his unlawful eviction, the

turning off of his water, electricity and other things noted above – Plaintiff chose to terminate the Lease Agreement rather than put his family through additional trauma inflicted by defendant Stanford.

218. However, because of the harsh winter weather, a date was not able to be scheduled when Plaintiff and his family could retrieve their personal possessions from the Home until six days later, February 24, 2021.

219. On February 24, 2021, Plaintiff and his family were finally able to retrieve their personal possessions from their now former Home at 329 Townsend Street.

220. Notwithstanding the termination of the Lease Agreement, defendant Stanford subsequently failed to return Plaintiff's \$750 security deposit or provide an itemized list of damages within the 20-day period required by 25 Del.C. § 5514.

**J. The Larger Eviction Moratorium Context In Which Plaintiffs
Were Thrown Out of Their Home.**

221. On March 12, 2020, Delaware Governor John Carney issued a *Declaration of a State of Emergency for the State of Delaware* (the “Emergency Declaration”) in response to the serious public health threat created by the novel coronavirus (“COVID-19”). The public health emergency remains in effect to this day. Governor Carney has modified the Emergency Declaration 27 times in order to mitigate the evolving and life-threatening public health conditions presented by COVID-19.

222. At all times, defendants were aware of the Governor's Emergency Declaration and its requirements.

223. On March 24, 2020, Governor Carney issued the Sixth Modification to the Emergency Declaration, which explained that, “[t]he enforcement of eviction orders for

residential premises is contrary to the interest of preserving public health and ensuring that individuals remain in their homes during the public health emergency.” (Emphasis added).

224. The Sixth Modification then went on to modify the Delaware Residential Landlord-Tenant Code by:

- (a) prohibiting actions for summary possession (i.e., eviction actions) with respect to any residential rental unit located within the State;
- (b) prohibiting the charging of late fees and/or interest with respect to any past due balance for a residential rental unit;
- (c) prohibiting the accrual of late fees and/or interest on the account of any residential rental unit during the state of emergency;
- (d) extending all deadlines in eviction actions commenced prior to the Emergency Declaration until a date no sooner than the 31st day following the termination of the state of emergency and rescission of the public health emergency; and
- (e) prohibiting the execution of any writ of possession for any residential rental unit what was the subject of an eviction action, where the final judgment was issued prior to the Emergency Declaration, until the 7th day following the termination of the state of emergency and rescission of the public health emergency.

(See Emergency Declaration, Sixth Modification, pp. 6-7).

225. At all times, defendants were aware of the Sixth Modification and its requirements.

226. A limited exception to the modifications set forth above was for eviction actions based upon a claim that continued tenancy will cause or is threatened to cause irreparable harm to person or property. (See id. at 7).

227. In our present case, defendants neither made nor attempted to make any showing of irreparable harm.

228. The Sixth Modification also prohibited utility providers, including providers of electric and water, from terminating service to residential dwellings and from charging fees for

late payments. (See id. at 8-9).

229. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

230. The provisions of the Sixth Modification had the full force and effect of law. Failure to comply with the provisions of the Emergency Declaration or any modification thereto constitutes a criminal offense under several statutory provisions. (See id. at 8-9).

231. Governor Carney's attorneys have represented, on the record, to Judge Colm Connolly of this Court that violation of the Governor's Emergency Declaration carries significant legal penalties.

232. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

233. On March 27, 2020, former President Donald J. Trump signed into law the *Coronavirus Aid, Relief and Economic Security Act* (the "CARES Act"). The CARES Act included a 120-day moratorium on eviction proceedings for "covered properties," defined as those participating in certain federal programs or having certain specified federally guaranteed loans. The CARES Act moratorium lapsed on July 27, 2020. However, certain restrictions on landlords of covered properties remained in place, including requiring those landlords seeking to evict to provide 30-days' notice to vacate.

234. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

235. No such required notice as required under the CARES Act was provided to Plaintiffs.

236. On June 30, 2020, Governor Carney issued the Twenty-Third Modification to the

Emergency Declaration, which deleted and replaced the eviction provisions set forth in the Sixth Modification (as further modified by the Fourteenth Modification which related to holdover tenants) with the following 2 provisions:

Actions for summary possession may be filed with respect to any residential unit located within the State, and shall be stayed to permit the Justice of the Peace Court to determine whether the parties would benefit from participating in court supervised mediation or alternative dispute resolution, which process may include appropriate housing support services, as determined by the Delaware State Housing Authority, if requested by either party or the Court. Sheriffs, constables, court officers, and their agents shall refrain from acting to remove individuals from residential properties through the eviction process during the time this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice. With respect to any past due balance for a residential rental unit, no late fee or interest may be charged or accrue on the account for the residential unit during the COVID-19 State of Emergency. Actions filed should include supporting documents, as directed by the court and supplied by the landlord, that demonstrate that the subject property is not covered by a federal moratorium on evictions.

Any action for summary possession with respect to any residential unit located within the State that was filed before the State of Emergency for which no final judgment had been entered shall be further stayed to permit the Justice of the Peace Court to determine whether the parties would benefit from participating in court supervised mediation or alternative dispute resolution, which process may include appropriate housing support services, as determined by the Delaware State Housing Authority, if requested by either party or the Court. Sheriffs, constables, and their agents shall refrain from acting to remove individuals from residential properties through the eviction process during the time this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice. With respect to any past due balance for a residential rental unit, no late fee or interest may be charged or accrue on the account for the residential unit during the COVID State of Emergency.

(See Emergency Declaration, Twenty-Third Modification, pp. 9-11) (emphasis added).

237. In short, although the Twenty-Third Modification lifted the prohibition on the filing of new eviction actions, effective July 1, 2020, any such eviction actions were automatically stayed so that it could be determined whether there were alternatives to court-sanctioned

evictions. Specifically, new eviction actions were to be automatically referred to mediation or alternative dispute resolution (ADR), wherein it would be highly encouraged for the parties to apply for rental relief (as explained below) as a means resolve landlord-tenant disputes, the bulk of which involve delinquent rent. Should the out-of-court alternatives not work, the Twenty-Third Modification nonetheless placed limitations on the eviction actions by requiring, by motion, that enforcement of any such action is “necessary in the interest of justice.” Notwithstanding the lift on the eviction moratorium, the eviction process was only to be invoked as a last resort, and only after all other available options had been exhausted.

238. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

239. No Delaware judge in JP13-20-003694 ever made a determination that the eviction of Plaintiffs from their Home was necessary and in the interest of justice.

240. Nevertheless, defendants evicted Plaintiffs anyway.

241. Indeed, on July 2, 2020, Governor Carney, Delaware Attorney General Kathy Jennings, Delaware State Housing Authority (“DSHA”) Director Anas Ben Addi, and Justice of the Peace Court Chief Magistrate Judge Alan Davis announced a joint effort on foreclosure and eviction prevention. The joint effort on eviction prevention included the following:

- (a) Launching a multifaceted education campaign targeting Delaware renters at risk of eviction due to financial difficulty due to COVID-19;
- (b) Providing funding to the state’s legal aid organizations who offer legal services for unrepresented tenants facing eviction;
- (c) Encouraging the use of a JP Court-supervised ADR program designed to facilitate landlords and tenants working together to find solutions to avoid eviction; and
- (d) Reopening applications for the Delaware Housing Assistance Program

(“DE HAP”) to provide rental assistance for struggling Delawareans.⁷

242. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

243. On September 4, 2020, the Centers for Disease Control and Prevention (“CDC”) issued an agency order (the “CDC Order”) entitled *Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19*. 85 Fed. Reg. 55,292. The CDC Order was initially set to expire on December 31, 2020 but was recently extended to March 31, 2021.

244. In a January 20, 2021 press release, CDC Director Rochelle P. Walensky, M.D., M.P.H., stated, “As a protective public health measure, I will extend the current order temporarily halting residential evictions until at least March 31, 2021. The COVID-19 pandemic has presented a historic threat to our nation’s health. It also triggered a housing affordability crisis that disproportionately affects some communities.”

245. The order prohibited any action to remove or cause the removal of a “covered person” from a residential property. A “covered person” under the CDC Order is defined as any resident who provides the landlord with a declaration that makes the following certifications:

- (a) the resident has used best efforts to obtain all available government assistance for rent or housing;
- (b) the resident earns or expects to earn less than \$99,000 annually or \$198,000 if filing a joint tax return;
- (c) The resident is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;

⁷ DE HAP, administered by the DSHA, was relaunched in August 2020 and provided emergency housing assistance (up to \$8,000) to renters affected by shutdowns, closures, layoffs, reduced work hours or unpaid leave due to the COVID-19 health crisis. The State of Delaware and NCC contributed a combined \$40 million of CARES Act monies to fund DE HAP.

- (d) the resident is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit; and
- (e) Eviction would likely render the individual homeless or force the resident to move into a congregate or shared-living setting.

86 Fed. Reg. at 8,020-8,021.

246. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

247. Plaintiffs were prevented from submitting such a declaration as a result of not being given either notice or an opportunity to be heard before they were deprived of their Home.

248. The CDC Order, however, authorized evictions if the covered person was:

- (a) engaging in criminal activity while on the premises;
- (b) threatening the health or safety of other residents;
- (c) damaging or posing an immediate and significant risk of damage to property;
- (d) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- (e) violating any other contractual obligation of the lease, other than the timely payment of rent or similar housing-related payment (including nonpayment or late payment of any fees, penalties, or interest).

Id. at 8,022.

249. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

250. Plaintiffs never violated any of these provisions.

251. On September 11, 2020, Chief Magistrate Davis of the Justice of the Peace Court issued Administrative Order 2021-1, which also referenced the recent CDC order.

Administrative Order 2021-1 provided guidance on procedures for landlord-tenant cases filed before and after the Emergency Declaration and how the Court would process the backlog of cases due to COVID-19. In addition, Administrative Order 2021-1 generally discussed the eviction process following the lifting of the moratorium by the Twenty-Third Modification to the Emergency Declaration:

The Governor's 23rd modification of the declaration of a state of emergency due to a public health threat, though opening the availability of filing of landlord-tenant cases, imposed an additional limitation on actual evictions proceeding. In order for an eviction to go forward, the Court must be satisfied that allowing an eviction is "in the interest of justice." While the Court cannot provide specific legal guidance on what constitutes the need for an eviction "in the interest of justice," the Court will require the moving party to show that something more than the normal legal right to possession granted under the Residential Landlord-Tenant Code is required.

(Administrative Order 2021-1) (emphasis added).

252. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

253. The "normal legal right," *id.*, is set forth at 25 Del.C. §§ 5502(b) and 5702(2), which provides that a landlord may bring an action for summary possession for rent alone.

254. No such showing that Plaintiffs owed any rent was ever made.

255. Additionally, no Delaware judge ever made a determination that the eviction of Plaintiffs from their Home was necessary and in the interest of justice.

256. Nevertheless, defendants evicted Plaintiffs.

257. On December 14, 2020, Chief Magistrate Davis issued Standing Order No. 6 (Concerning COVID-19 Precautionary Measures and Scheduling of Cases). Standing Order No. 6, in recognition of the continued COVID-19 public health and safety emergency, addresses the additional measures the JP Court would implement to reduce the risk that COVID-19 poses to

the multitude of parties who enter judicial facilities. With respect to landlord-tenant matters, Standing Order No. 6 provides that, in compliance with the Governor's Twenty-Third Modification to the Emergency Declaration, the Justice of the Peace Court shall:

- (a) Require parties filing actions to provide any available contact information for the defendant(s) to facilitate the scheduling of alternatives to in-person proceedings;
- (b) Determine whether each summary possession action is suitable for a court-supervised ADR process;
- (c) Schedule appropriate cases for ADR. The Court may also direct parties to engage in attempted resolution through an Online Dispute Resolution (ODR) platform, as appropriate. The ADR or ODR process may include appropriate housing support services, if requested by either party or by the Court;
- (d) Stay any execution of eviction orders while the Governor's Order remains in effect, except in the instance of a forthwith summons properly sought and adjudicated, or otherwise in the interests of justice in accordance with the Governor's Order;
- (e) Conduct any properly ordered evictions in a manner that preserves the health and safety of Court Constables, the parties subject to eviction, and the public;
- (f) Award no late fees or interest with respect to any past due balance for a residential rental unit that would otherwise have accrued during the COVID-19 State of Emergency.

(Standing Order No. 6, p.3) (emphasis added).

258. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

259. These requirements were not met in Plaintiffs' case. For example, no eviction Order was ever properly sought or obtained consistent with the Fourteenth Amendment. Similarly, no forthwith summons was ever "properly sought and adjudicated." Nor was the "health and safety of ... the parties subject to eviction, [or] the public" ever considered.

260. On October 22, 2020, Chief Magistrate Davis sent a letter to members of the Delaware Bar seeking volunteers to serve as mediators for the JP Court’s online dispute resolution system, “MeDEation,” which was created to assist landlords and tenants financially impacted by COVID-19 to reach an amicable resolution, with an emphasis on utilizing relief monies available from DE HAP. Litigants would be given some time to resolve their disputes independently but could request the assistance of a volunteer mediator at any time. Delaware Volunteer Legal Services would be coordinating mediators for the “MeDEation” program. Delaware lawyers volunteering their time to serve as mediators received free training on mediation and the basics of landlord-tenant law. In sum, an “all hands-on-deck” societal approach was taken for the purpose of avoiding eviction at all costs due to the ongoing public health and financial crisis caused by COVID-19.

261. At all times relevant hereto, defendants were aware of this when they took their actions challenged by this lawsuit.

262. Contrary to the requirements of the Fourteenth Amendment, Plaintiffs were not aware of the existence of any dispute nor were they ever notified of the existence of any dispute.

263. Nor were Plaintiffs ever “given some time to resolve their disputes independently,” even had they known of these disputes, which they did not.

264. For all of the above mentioned reasons, Plaintiffs’ eviction was illegal under both federal law as well as State of Delaware law.

K. How Defendant Stanford Invoked State Procedures, Processes and Rules and Used Them to Seize Plaintiffs’ Home and Property.

265. What follows is the result of Plaintiffs’ subsequent investigation into the circumstances which led to their Home being seized. It is incomplete and it is expected that the

discovery process will reveal additional details.

266. Defendant Stanford purchased the Home at 329 Townsend Street, Wilmington, in 2013 and immediately began to use it as a rental property.

267. Contrary to legal requirements, Stanford never registered this property as a rental property with the City of Wilmington.

268. Contrary to legal requirements, Stanford also never supplemented his earlier, initial application for a business rental license, as required by the City Code, see Wilm.C. § 5-92, to add 329 Townsend Street as one of his rental properties.

269. Nevertheless, Stanford rented this property to various tenants.

270. As noted above, before renting to Plaintiffs, Stanford rented it to a Viola Wilson.

271. The start date of that tenancy is unknown.

272. However, during the COVID-19 pandemic, it appears that on July 6, 2020, defendant Stanford filed a complaint in JP Court #13 against Wilson, claiming \$2,100 in unpaid rent for April, May and June 2020. The case number assigned was JP13-20-003694.

273. In filing this lawsuit, Stanford invoked and used certain state procedures related to the Residential Landlord-Tenant Code found at Chapter 57 of Title 25 of the Delaware Code

274. In filing this lawsuit, Stanford also invoked and used certain state procedures otherwise known as the Rules of the Court of the Justices of the Peace.

275. Pursuant to these same state procedures and rules, on November 5, 2020, the JP Court issued a notice and summons of a landlord-trial to be held on December 16, 2020.

276. On December 28, 2020, the JP Court entered a default judgment against Wilson in the principal amount of \$6,773.51.

277. On January 11, 2021, Stanford filed papers to proceed with an action for summary

possession and eviction and requested that the JP Court issue a Writ of Possession. He also submitted a certificate of service stating that Wilson had been served on January 11, 2021 at 329 Townsend Street.

278. In doing so, Stanford sought to enlist the compulsive power of the state to seize the property at 329 Townsend Street.

279. It was his intent that the JP Court would issue a Writ and enter an Order which would cause Constables to seize the Home at 329 Townsend Street and evict Plaintiffs from it, but not Wilson who he knew did not reside there or possess any legal interest in the premises.

280. On February 3, 2021, the JP Court issued the Writ and entered an Order approving and authorizing the eviction of Wilson from 329 Townsend Street.

281. It was this JP Court Order and Writ that the Constable defendants were executing on February 11, 2021 when they evicted Plaintiffs and seized their Home.

282. Viola Wilson is a person unknown to Plaintiffs.

283. The whereabouts of Viola Wilson are unknown to Plaintiffs.

284. Since defendant Stanford belatedly delivered possession of the Home to Plaintiffs on November 16, 2020, Plaintiffs were the only persons to reside in the Home.

285. The only other persons to be in the home were Plaintiffs' guests.

286. The unknown Viola Wilson was never one of those guests.

287. By invoking the eviction process, filing a lawsuit and successfully seeking a Writ of Possession and JP Court Order, Stanford jointly participated and engaged in joint activity with the State.

288. Stanford invoked and used state procedures and rules to seize Plaintiffs' Home and private property.

289. Stanford used uniformed and armed state actors, the Constable defendants, to deprive Plaintiffs of their Home.

290. Stanford received significant aid from state actors in unlawfully seizing Plaintiffs' Home.

291. In Judge McCormick's words, defendant Stanford had "'weaponized' a writ."

292. The state significantly contributed to the constitutional deprivations Plaintiffs suffered in this case.

293. Absent the state's significant contribution, no constitutional deprivation would have occurred.

294. By its nature, the totality of Stanford's actions are fairly chargeable to the state.

295. Under the circumstances set forth above, defendant Stanford is a state actor and was acting under color of law.

L. Damages.

296. As a direct and proximate result of the actions of the defendants, as detailed herein, Plaintiffs have suffered or will suffer damages including, but not limited to, the full panoply of damages available under federal common law and statutory rules for damages, as well as those damages available under state law for the common law tort and statutory claims asserted in this case. These include physical and emotional pain and suffering, mental anguish, emotional distress, severe emotional distress, loss of enjoyment of life, humiliation, embarrassment, injury to reputation, disappointment, anger, inconvenience and other non-pecuniary losses and injuries. Psychological, emotional or mental injuries include, but are not limited to: depression; anxiety; trouble sleeping; recurring nightmares; decreased energy and motivation; as well as other psychological, emotional and mental injuries. Economic and other pecuniary losses damages

include, but are not limited to: moving expenses; losses suffered during the move; the lost security deposit; as well as other economic and pecuniary injuries.

IV. ALLEGATIONS REGARDING THE DEFENDANTS' CONDUCT

297. All the actions of the defendants described both above and below were taken pursuant to policies and practices of the Justices of the Peace and were authorized, sanctioned, implemented, permitted and/or ratified by officials functioning at a policymaking level.

298. By the policies, practices and/or customs of officials functioning at a policymaking level, defendants have denied Plaintiffs their constitutional rights under the Fourth and Fourteenth Amendment to the U.S. Constitution, as well as their statutory rights under both the ADA and the Rehab Act.

299. The individual defendants' actions violated clearly established federal constitutional rights of which any official would have known.

300. At all times material hereto the individual defendants participated in, implemented, authorized and/or sanctioned the federal constitutional deprivations described above.

301. At all times material hereto the individual defendants and their agents were acting under color of law. The federal constitutional deprivations described herein are fairly attributable to the state.

302. The individual defendants either knew or showed a negligent or reckless disregard for the matter of whether their conduct violated federal constitutional rights.

303. The actions of the individual defendants and their agents or employees were deliberately, intentionally, willfully, purposefully, and knowingly done in violation of federal constitutional rights and because of the exercise of those rights.

304. Their actions were malicious, outrageous, wanton, and taken with evil motive, in

bad faith, out of personal animus and without any reasonable grounds to support them.

305. The exercise of rights under the U.S. Constitution made a difference in all actions adverse to Plaintiffs.

306. The exercise of these rights was a motivating, substantial or determinative factor in all actions adverse to Plaintiffs.

307. The defendants did not reasonably believe that the actions they took were necessary to accomplish any legitimate governmental purpose.

308. The defendants' actions were motivated by bias, bad faith, and improper motive.

309. The defendants' actions constitute an abuse of governmental power.

310. The defendants' actions do not further any narrowly drawn important, substantial or compelling governmental interest.

311. The defendants' actions are not so reasonable as to further any governmental interest asserted and do not closely fit the goal of serving those governmental interests.

312. The defendants' actions were capricious, irrational, arbitrary, egregious and outrageous.

313. The defendants' actions shock the conscience.

COUNT I (Fourth Amendment - Seizure)

314. Plaintiffs repeat and reallege paragraphs 1-313 set out above.

315. All defendants are charged under this count.

316. Defendants evicted Plaintiffs from their home.

317. The U.S. Supreme Court has held that an eviction of a person from their home is a seizure under the Fourth Amendment. See Soldal, 506 U.S. 56.

318. The eviction was objectively unreasonable under the circumstances.

319. As to the Constable defendants, the objective unreasonableness is demonstrated by, among other things:

- the Constables were told that Plaintiffs had a valid, fully executed residential lease agreement, signed by the landlord and owner, establishing their legal right to be there.
- the Constables were shown the actual, valid, fully executed lease agreement.
- the Constables read the lease agreement.
- the first and last names of the Lessees on the lease agreement were different from the name of the person named in the eviction Order.
- the Constables were offered but refused to view official government issued documentation from State of Delaware Social Services that demonstrated Plaintiffs were lawfully in their Home and that their landlord, defendant Stanford, had accepted rent assistance on Plaintiffs' behalf from the State of Delaware.
- the Constables were offered but refused to view other documents, including recent electric and internet bills that demonstrated Plaintiffs were lawfully in their Home.
- the eviction Order named an adult female.
- the door was opened by a blind male.
- there was no adult female on the premises.
- the only females on the premise were two school aged minor children.
- the Constables were told that the adult female person named in the eviction Order did not live there.
- the Constables were told the persons answering the door had no idea who the adult female person named in the eviction Order was.
- the Constables learned and confirmed there was no adult female on the premises when they evicted the blind man and two minor females.
- the first and last names of the persons living in the Home were different from the name of the person named in the eviction Order.

- the Constables were told that the wife and mother of the three persons died more than two years earlier.
- the urn was visible and the Constables were told about the urn.
- the name of the wife and mother of the three persons present was not the name of the female on the eviction Order.
- the Constables were told by several additional persons who did not live in the Home that the persons in the Home were legally there.
- the Constables made no reasonable accommodation for the disability of this blind man.
- the Constables evicted a blind man and his two minor daughters in the midst of a snowstorm and winter weather advisory for NCC.
- the eviction occurred in the midst of an eviction moratorium ordered by the State Governor.
- the eviction occurred in the midst of an eviction moratorium imposed by the federal government.
- the eviction occurred in the midst of an eviction moratorium ordered by the Chief Magistrate of the Justices of the Peace Court itself.
- the eviction occurred in the midst of a once in a lifetime pandemic.

320. As to defendant Stanford, the objective unreasonableness is demonstrated by, among other things:

- all of the factors listed for the other defendants above.
- his own criminal misconduct.
- his own perjury.
- the existence of the lease between he and Plaintiffs.

321. All of the above also demonstrates the unconstitutionality of the ongoing, “evict first, ask questions later” policy or practice of the Justices of the Peace defendant.

322. There is a direct causal relationship between defendants' actions and the harm Plaintiffs suffered.

323. Defendants' actions were the "but for" cause of Plaintiffs' injuries.

324. As a direct and proximate result of defendants' actions, Plaintiffs have been injured.

325. Plaintiffs' constitutional right to be free from unreasonable seizures has been denied under the Fourth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

COUNT II (Fourteenth Amendment - Procedural Due Process)

326. Plaintiffs repeat and reallege paragraphs 1-325 set out above.

327. All defendants are charged under this count.

A. Protected Interests.

328. Plaintiffs have Fourteenth Amendment protected liberty and property interests in the sanctity of their home and not being illegally ousted from it and thrown out on the street.

1. Liberty Interest.

329. Building on the extensive common law sources outlined above, the long established liberty interest in the sanctity of one's home cannot be contested as a matter of both common and constitutional law.⁸

2. Property Interest.

⁸ See, e.g. Meyer v. Nebraska, 262 U.S. 390, 399 (1923) ("[w]ithout doubt" the Fourteenth Amendment liberty interest includes "the right of the individual to ... establish a home ... and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."); accord Baraka v. McGreevey, 481 F.3d 187, 209 (3d Cir. 2007); Dowd v. New Castle Cnty., Del., 739 F.Supp. 2d 674, 683 (D. Del. 2010); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (noting "the private realm of family life which the state cannot enter"); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 65 (1973) (noting the "right to privacy guaranteed by the Fourteenth Amendment ... encompasses and protects the personal intimacies of the home"); accord Mitchell v. Commissioners of Comm'n of Adult Ent. Establishments of State of Del., 802 F.Supp. 1112, 1125 (D. Del. 1992).

330. As the Supreme Court has long held, “Property interests are not created by the [U.S.] Constitution, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.” Loudermill, 470 U.S. at 538 (internal punctuation omitted).

331. Plaintiffs had protected property interests in their home based on, among other things, the following:

- English common law, see Bridgeville Rifle & Pistol Club, Ltd. v. Small, 176 A.3d 632, 646 n.62 (Del. 2017) (“This Court has repeatedly held that Delaware law includes the English common law as it existed in 1776”);
- the Delaware Constitution, see, e.g. Del.Const., Art. 1, § 6 (“[t]he people shall be secure in their ... houses ... and possessions, from unreasonable searches and seizures”); id. at Preamble (“all people have by nature the rights ... of ... protecting ... property”); id. at Art. 1, § 9 (“every person for an injury done him or her in his or her person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land”); see also id. at Art. 1, §§ 7, 18, 20;
- the Delaware Residential Landlord-Tenant Code, 25 Del.C. § 5101, et seq.; and
- Delaware common law. See generally VLIW Tech., LLC v. Hewlett-Packard Co., 840 A.2d 606, 612 (Del. 2003) (recognizing the elements of a breach of contract claim).

B. The Process Due Included Notice and a Pre-Deprivation Hearing

332. The process due to a plaintiff with such protected interests is determined as a matter of federal law. Loudermill, 470 U.S. at 541.

333. Plaintiffs were denied the right to “notice” of the claim against them before being thrown out of their home. Id. at 542.

334. Plaintiffs were denied the root requirement of the opportunity for a hearing before being deprived of their home. Id. at 542.

335. Plaintiffs also were denied some opportunity to present their “side of the case.” Factual disputes were involved too. The need for an eviction of a person with a valid lease with the owner and other state issued confirmatory documents was not clear and “the only meaningful opportunity” to invoke the discretion of the decisionmaker was before being thrown out of their home. Id.

336. Allowing Plaintiffs to present their full version of the events would have provided “a meaningful hedge against erroneous action.” Id. at 543 n.8.

337. “When protected interests are implicated, the right to some kind of prior hearing is paramount.” Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 469-70 (1972) (emphasis added).

338. As exhaustively addressed above, the significance of the private interest a person has in their home is paramount and has been undisputed for centuries.

339. The governmental interest in an immediate eviction of Plaintiffs was non-existent, the state presented no administrative burden nor intolerable delays. No significant hazard was presented by keeping Plaintiffs in their home. Loudermill, 470 U.S. at 544-45.

340. No “extraordinary situation,” “emergency situation” or “rare exception” to the requirements of a pre-deprivation hearing exist. Roth, 408 U.S. at 570 n.7. Nor is any “extremely narrow” exception justified. Stana v. Sch. Dist of City of Pittsburgh, 775 F.2d 122, 127 (3d Cir. 1985).

341. Even though the post-deprivation hearing ably and fairly conducted by Deputy Chief Magistrate Judge McCormick quickly and efficiently concluded that Plaintiffs had been indisputably, erroneously and illegally thrown out of their home, the ease with which the Judge McCormick so quickly determined this underscores the need for there to have been the

constitutionally mandated pre-deprivation hearing before throwing Plaintiffs out of their home in the first place.

342. All of the above also demonstrates the unconstitutionality of the ongoing, “evict first, ask questions later” policy or practice of the Justices of the Peace defendant.

343. There is a direct causal relationship between defendants’ actions and the harm Plaintiffs suffered.

344. Defendants’ actions were the “but for” cause of Plaintiffs’ injuries.

345. As a direct and proximate result of defendants' actions, Plaintiffs have been injured.

346. Plaintiffs’ constitutional right to procedural due process has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

COUNT III (COVID-19 - CARES Act & CDC Eviction Moratorium)

347. Plaintiffs repeat and reallege paragraphs 1-346 set out above.

348. All defendants are charged under this count.

349. As explained above, both the CARES Act and the CDC Eviction Moratorium require certain protections from eviction.

350. All of these are rights, privileges, or immunities secured by federal law.

351. Plaintiffs were deprived of all of these federal law protections.

352. All of the above also demonstrates the illegality of the ongoing, “evict first, ask questions later” policy or practice of the Justices of the Peace defendant.

353. There is a direct causal relationship between defendants’ actions and the harm Plaintiffs suffered.

354. Defendants’ actions were the “but for” cause of Plaintiffs’ injuries.

355. As a direct and proximate result of defendants' actions, Plaintiffs have been injured.

356. Plaintiffs' constitutional right to the protections of both the CARES Act and the CDC Eviction Moratorium have been denied under 42 U.S.C. § 1983.

**COUNT IV (Title II of the ADA and Section 504 of the Rehab Act -
Discrimination and Failure to Accommodate)**

357. Plaintiffs repeat and reallege paragraphs 1-356 set out above.

358. All defendants are charged under this count.

359. By information and belief, the State of Delaware, Justices of the Peace defendant receives federal funds.

360. By information and belief, the State of Delaware court system receives federal funds.

361. By information and belief, the State of Delaware receives federal funds, including CARES Act funding, specifically including funding designed to prevent evictions during this once in a lifetime COVID-19 pandemic.

362. Review of the JP Court docket in the JP13-20-003694 matter, to which no Plaintiff or any other member of the Murphy family was a party, appears to suggest that notice of the eviction was somehow served on Viola Wilson. The means of the service is not stated and will have to be explored in discovery – perhaps it was on her personally, perhaps by U.S. Mail or perhaps by nailing it to the front door of the Home where a blind man could not find, see or read it.

363. Other items on the JP13-20-003694 docket similarly indicate service on Viola Wilson at other prior stages of the separate lawsuit filed against her by defendant Stanford.

364. To the extent that any defendant asserts that such service and notice on Viola Wilson in the separate lawsuit against her involving defendant Stanford is somehow sufficient

service on and notice to Plaintiff William Murphy or his family despite no service upon, notice to or pending lawsuit against him, in addition to failing under the basic Fourteenth Amendment due process notice requirement and similarly fundamental state law service and agency principles, it also fails under Title II of the ADA and Section 504 of the Rehab Act.

365. Plaintiff William Murphy is blind.

366. Despite not being required under either the ADA or the Rehab Act, defendants knew Plaintiff was blind.

367. As noted above, the Constable defendants observed Plaintiff was blind.

368. The Constable defendants concluded based upon their observations that Plaintiff was blind.

369. The Constable defendants had actual knowledge that Plaintiff was blind.

370. Plaintiff's blindness substantially limits the major life activities of seeing, reading, communicating, walking, among other major life activities.

371. Plaintiff is a qualified person with a disability.

372. Such a manner of notice to a person unknown to Plaintiffs and who is not a party to the Lease Agreement of the Home (Exhibit B), discriminates against him and fails to reasonably accommodate his disability.

373. All actions taken against this blind Plaintiff discriminated against him and failed to reasonably accommodate his disability.

374. Plaintiff has been excluded from participation in and denied the benefit of the state court system, including the Justices of the Peace, including participation in the court case that ultimately wrongfully evicted Plaintiff from his home.

375. This denied Plaintiff meaningful access to the state court system.

376. This denied Plaintiff the benefit of his constitutional rights.

377. This denied Plaintiff the benefit of Fourth Amendment protection against unreasonable seizures.

378. This denied Plaintiff the benefit of Fourteenth Amendment procedural due process.

379. This denied Plaintiff the benefit of asserting his rights under both the CARES Act and the CDC eviction moratorium described above.

380. This denied Plaintiff the benefit of the Delaware Residential Landlord-Tenant Code.

381. This denied Plaintiff other legal benefits as well.

382. Separate and apart from the manner of notice, defendants' other actions also excluded Plaintiff from meaningfully participating in, denied him the benefits of the services, programs, or activities of a public entity, and discriminated against him as part of the eviction process itself.

383. Quite simply, if Plaintiff Murphy, the only adult living on the premises, was able to see, and a notice was posted on his front door referring to an eviction action, despite not being legally required, a sighted person may have been able to learn of and/or participate in the wrongfully initiated eviction action and thereby prevent it. But since he is blind he was discriminated against in the services, programs or activities of the Justices of the Peace which favor those who are not blind and grant them the opportunity to participate in the court process even when formal notice is absent.

384. Moreover, once the three Constable defendants on the scene realized Murphy was blind and totally unaware of any legal proceedings directed to his constitutionally fortified Home, their training in dealing with those governed by the ADA and the Rehab Act required them to stand down since they knew they were dealing with a disabled person protected by several major

federal disability laws, two of the strikingly few to which Congress has attached such importance as to explicitly waive the Eleventh Amendment immunity otherwise enjoyed by the States. But by refusing to act in accord with the ADA and the Rehab Act they discriminated against Plaintiff and denied him the benefits of the services, programs or activities of their court system.

385. A Writ of Possession and eviction Order naming Viola Wilson being given to a blind man, Plaintiff, as a means of legally justifying the official government act of throwing him out of his home is functionally and legally meaningless to a person without sight and is void *ab initio*.

386. Fourteenth Amendment due process requires notice. Since 1990, a written notice that cannot be read is not legal notice upon a blind man unless it is in braille, as the ADA and Rehab Act require under these circumstances.

387. Neither the Writ of Possession nor the eviction Order were in braille.

388. Plaintiff has been discriminated against.

389. Plaintiff's disability has not been reasonably accommodated.

390. Plaintiff's rights under both Title II of the ADA and section 504 of the Rehab Act have otherwise been violated.

391. All of the above also demonstrates the illegality of the ongoing, "evict first, ask questions later" policy or practice of the Justices of the Peace defendant.

392. There is a direct causal relationship between defendants' actions and the harm Plaintiffs suffered.

393. Defendants' actions were the "but for" cause of Plaintiffs' injuries.

394. As a direct and proximate result of defendants' actions, Plaintiffs have been injured.

395. Plaintiffs' statutory rights to be free from disability discrimination have been denied

under the ADA and the Rehab Act.

COUNT V (State Law - Art. 1, § 6 of the Delaware Constitution - Seizure)

396. Plaintiffs repeat and reallege paragraphs 1-395 set out above.

397. All defendants are charged under this count.

398. The protections of the Delaware Constitution against unlawful seizures have been repeatedly held by the Delaware Supreme Court to be broader than those contained within the Fourth Amendment to the U.S. Constitution.

399. All of the above also demonstrates the unconstitutionality of the ongoing, “evict first, ask questions later” policy or practice of the Justices of the Peace defendant.

400. There is a direct causal relationship between defendants’ actions and the harm Plaintiffs suffered.

401. Defendants’ actions were the “but for” cause of Plaintiffs’ injuries.

402. As a direct and proximate result of defendants' actions, Plaintiffs have been injured.

403. Plaintiffs’ constitutional right to be free from unreasonable seizures has been denied under Article 1, § 6 of the Delaware Constitution of 1897.

COUNT VI (State Law - Wrongful Eviction - Tort)

404. Plaintiffs repeat and reallege paragraphs 1-403 set out above.

405. The defendant for this count is defendant Stanford only.

406. The Delaware Supreme Court has twice recognized that a wrongfully evicted tenant may sue his landlord in tort for the full panoply of tort damages above and beyond whatever statutory remedies otherwise exist. See Malcolm v. Little, 295 A.2d 711, 714 (Del. 1972) (“The right violated may be defined as the right not to have peaceable possession interfered with except by lawful process, and violation of such right gives rise to the cause of action in tort.”); Jardel

Co., Inc. v. Hughes, 523 A.2d 518, 529 (Del. 1987) (recognizing that “the imposition of punitive damages is sustainable ... for intentional torts such as wrongful eviction.”).

407. Deputy Chief Magistrate Judge McCormick has already taken evidence and conclusively and factually determined that “the Murphy’s were Stanford’s tenants and had a valid lease to that end” and that “clearly the Murphy’s were unlawfully ousted” from their home by defendant Stanford.

408. Defendant Stanford is collaterally estopped from challenging this contested factual finding.

409. There is a direct causal relationship between this defendant’s actions and the harm Plaintiffs suffered.

410. Defendant’s actions were the “but for” cause of Plaintiffs’ injuries.

411. As a direct and proximate result of defendant’s actions, Plaintiffs have been injured.

412. Plaintiffs’ right to be free from wrongful eviction has been denied under the common law of the State of Delaware.

COUNT VII (State Law - Intentional Infliction of Emotional Distress - Tort)

413. Plaintiffs repeat and reallege paragraphs 1-412 set out above.

414. The defendant for this count is defendant Stanford only.

415. Defendant Stanford’s actions were intentional.

416. Under the facts and circumstances detailed at length above, defendant Stanford’s conduct was so outrageous in character, and so extreme in degree, that it goes beyond all possible bounds of human decency, and is atrocious, and utterly intolerable in a civilized community.

417. Any average, reasonable person in the community who hears the facts of his misconduct would become angry and exclaim, “Outrageous!”

418. Plaintiffs have suffered severe emotional distress as a result of defendant Stanford's actions.

419. There is a direct causal relationship between this defendant's actions and the harm Plaintiffs suffered.

420. Defendant's actions were the "but for" cause of Plaintiffs' injuries.

421. As a direct and proximate result of this defendant's actions, Plaintiffs have been injured.

422. Plaintiffs' right to be free from the intentional infliction of emotional distress has been denied under the common law of the State of Delaware.

COUNT VIII (State Law - Unlawful Ouster - 25 Del.C. § 5313)

423. Plaintiffs repeat and reallege paragraphs 1-422 set out above.

424. The defendant for this count is defendant Stanford only.

425. Under 25 Del.C. § 5313, a wrongfully removed tenant is entitled to treble damages and costs of the lawsuit.

426. Deputy Chief Magistrate Judge McCormick has already taken evidence and conclusively and factually determined that "the Murphy's were Stanford's tenants and had a valid lease to that end" and that "clearly the Murphy's were unlawfully ousted" from their home by defendant Stanford.

427. Defendant Stanford is collaterally estopped from challenging this contested factual finding.

428. For this reason, and those already set forth above, plaintiffs are entitled to treble damages and costs.

429. There is a direct causal relationship between this defendant's actions and the harm

Plaintiffs suffered.

430. Defendant's actions were the "but for" cause of Plaintiffs' injuries.

431. As a direct and proximate result of defendant's actions, Plaintiffs have been injured.

432. Plaintiffs' right to be free from unlawful ouster or wrongful eviction have been denied under the statutes of the State of Delaware.

Wherefore, Plaintiffs pray that the Court:

- A. Enter a prospective declaratory judgment declaring the ongoing actions of the official capacity and State of Delaware defendants, including its ongoing "evict first, ask questions later" policy or practice, to be a violation of the Fourth and Fourteenth Amendments to the U.S. Constitution.⁹
- B. Issue a prospective mandatory injunction enjoining the ongoing actions of the official capacity and State of Delaware defendants and prohibiting them from enforcing their ongoing "evict first, ask questions later" policy or practice because it violates both the Fourth and Fourteenth Amendments to the U.S. Constitution.
- C. Issue a prospective mandatory injunction requiring that during any future state of emergency declared by any present or future Delaware Governor, where a moratorium of any type is imposed on the freedom of any landlord to evict any tenant of that landlord, including the financially poor, the blind, disabled or handicapped, or any African-American or other citizens, permanently enjoining sheriffs, constables, court officers and their agents from:
 1. enforcing any "evict first, ask questions later" policy or practice;
 2. evicting anyone from their home without ever giving them pre-eviction notice and an opportunity to be heard;

⁹ See generally Morrison v. Ayoob, 627 F.2d 669, 672-73 (3d Cir. 1980) (following a determination that, in response to a federal lawsuit, the President Judge of the Pennsylvania Court of Common Pleas had changed a state court policy that violated the Sixth Amendment rights of litigants, holding there is no Eleventh Amendment or judicial immunity bar to an award of attorneys fees under 42 U.S.C. § 1988 in a lawsuit against the Pennsylvania District Judges of that Court in their official capacities).

3. evicting any tenant during the moratorium unless they are engaging in criminal activity or threatening the health or safety of neighbors; and
 4. allowing evictions claimed to be “in the interest of justice” or due to “irreparable harm” if the landlord claims mere injury to his finances.
- D. Enter separate judgments against each of the individual capacity defendants.
 - E. Enter a declaratory judgment declaring the acts of each of the defendants to be a violation of Plaintiffs’ constitutional, statutory and common law rights.
 - F. Enter a judgment against the individual capacity defendants, jointly and severally, for nominal damages.
 - G. Enter a judgment against the individual capacity defendants, jointly and severally, for compensatory damages, including but not limited to loss of earning capacity, physical and emotional injuries, pain and suffering, emotional distress, humiliation, embarrassment, injury to reputation and other damages.
 - H. Enter a judgment against the individual capacity defendants, jointly and severally, for punitive damages.
 - I. Enter judgment against defendant Stanford for statutory treble damages.
 - J. Issue a reparative injunction directing that each of the individual capacity defendants write a letter of apology to Plaintiffs, apologizing for their illegal violations of Plaintiffs’ constitutional, statutory and common law rights.
 - K. Enter separate judgments against the Justices of the Peace and other State defendants under Title II of the ADA and Section 504 of the Rehab Act.
 - L. Enter a judgment against the Justices of the Peace and other State defendants under Title II of the ADA and Section 504 of the Rehab Act, jointly and severally, for nominal damages.
 - M. Enter a judgment against the Justices of the Peace and other State defendants under Title II of the ADA and Section 504 of the Rehab Act, jointly and severally, for all compensatory damages permitted by these statutes, including but not limited to loss of earning capacity, physical and

emotional injuries, pain and suffering, emotional distress, humiliation, embarrassment, injury to reputation and other damages.

- N. Award Plaintiffs attorney's fees, costs and pre and post judgment interest for this action.
- O. Require such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

THE NEUBERGER FIRM, P.A.

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