

Docketed 5/1/23

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT

**DARLENE SMITH as the PERSONAL
REPRESENTATIVE OF
THE ESTATE OF SANDRA BIRCHMORE
Plaintiff,**

v.

**MATTHEW FARWELL, WILLIAM FARWELL,
ROBERT DEVINE, And JOSHUA HEAL,
Individually, THE TOWN OF STOUGHTON, and
THE STOUGHTON POLICE DEPARTMENT
Defendants.**

C.A. No.: 2282CV1197

**ANSWER, AFFIRMATIVE DEFENSES, CROSS CLAIMS AND JURY DEMAND OF
DEFENDANT, JOSHUA HEAL**

NOW COMES, The Defendant and Plaintiff-in-Crossclaim, Joshua Heal (hereinafter
“Mr. Heal”), in the above-captioned matter and hereby responds to the Plaintiff’s Second
Complaint and asserts Crossclaims against the Co-Defendants as follows:

I. NATURE OF ACTION

No responsive pleading is required.

II. JURISDICTION AND VENUE

A. Denied

B. Denied

III. PARTIES

1. Admitted

2. Defendant has insufficient information to form a belief as to the truth of the allegations
contained in Paragraph 2 and therefore denies the allegations set forth therein.

3. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies the allegations set forth therein.
4. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies the allegations set forth therein.
5. Admitted
6. Admitted.
7. Admitted.

IV. FACTS

8. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph 8 and therefore denies the allegations set forth therein.
9. Denied
10. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph 10 and therefore denies the allegations set forth therein..
11. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph 11 and therefore denies the allegations set forth therein..
12. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph 12 and therefore denies the allegations set forth therein..
13. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph 13 and therefore denies the allegations set forth therein..
14. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph 14 and therefore denies the allegations set forth therein..
15. Denied.
16. Denied.

COUNT I

(Wrongful Death v. Defendants M. Farwell, W. Farwell, Devine, and Heal)

17. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 16 of the Second Amended Complaint and, by this reference, incorporate them herein.

18. Admitted.

19. Defendant has insufficient information to form a belief as to the truth of the allegations contained in Paragraph.

20. Denied.

21. Denied.

COUNT II

(Negligence v. Defendants M. Farwell, W. Farwell, Devine, and Heal)

22. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 21 of the Verified Complaint and, by this reference, incorporate them herein.

23. Denied.

24. Denied.

25. Denied..

26. Denied.

27. Denied.

COUNT III

(Negligence c. Defendant Devine)

28. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 27 of the Verified Complaint and, by this reference, incorporate them herein.

29. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

30. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

31. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

32. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

COUNT IV

(Negligent Hiring v. Stoughton, PD)

33. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 32 of the Verified Complaint and, by this reference, incorporate them herein.

34. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

35. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

36. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

37. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

38. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

39. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

40. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response.

COUNT V

(Negligent Supervision v. Stoughton, PD)

41. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 40 of the Second Amended Complaint and, by this reference, incorporate them herein.

42. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response

43. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response

44. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response

45. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response

46. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response

COUNT VI

(Assault and Battery v Defendants M. Farwell, W. Farwell, Devine, and Heal)

47. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 46 of the Verified Complaint and, by this reference, incorporate them herein.

48. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response to the extent that this paragraph may be construed to assert any allegations of fact as to the Defendant, Joshua Heal, those allegations are denied.

49. Denied.

50. This paragraph sets forth no allegations of fact as to the defendant, Joshua Heal, and therefore does not call for or require a response to the extent that this paragraph may be construed to assert any allegations of fact as to the Defendant, Joshua Heal, those allegations are denied.

51. Denied.

52. Denied.

COUNT VII

(Negligent Infliction of Emotional Distress v. Defendants M. Farwell, W. Farwell, Devine, Heal, Stoughton, and PD)

53. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 52 of the Second Amended Complaint and, by this reference, incorporate them herein.

54. Denied.

55. Denied.

56. Denied.

57. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 56 of the Second Amended Complaint and, by this reference, incorporate them herein.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

COUNT VIII

(42 USC §1983 Violation v. Defendants M. Farwell, W. Farwell, Devine, Heal,
Stoughton, and PD)

63. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 62 of the Second Amended Complaint and, by this reference, incorporate them herein.

64. Admitted.

65. Admitted.

66. Paragraph 64 consists of a conclusion of law that requires no answer. To the extent that Paragraph 66 alleges facts, no allegations are made against the Defendant Joshua Heal and thus this paragraph does not require an answer.

67. Denied.

68. Denied.

69. Paragraph 69 consists of legal arguments and conclusions of law that requires no answer.

70. The Defendant, Joshua Heal, is without sufficient knowledge to admit or deny the allegation of this paragraph and therefore denies the allegations set forth therein.

71. Denied.

72. Denied.

73. Denied.

COUNT IX

(Civil Conspiracy v. Defendants M. Farwell, W. Farwell, Devine, Heal)

74. Defendant repeats their responses to the allegations contained in Paragraphs 1 through 73 of the Verified Complaint and, by this reference, incorporate them herein.

75. Admitted.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

FIRST AFFIRMATIVE DEFENSE

The plaintiff's negligence claims are barred because the defendant, Joshua Heal, owed her no legal duty of care in relation to the facts of this case.

SECOND AFFIRMATIVE DEFENSE

The plaintiff's negligence claims against the individual defendant, Joshua Heal, are barred because she cannot show that any such defendant personally participated in any act or omission that directly or proximately caused her alleged harm.

THIRD AFFIRMATIVE DEFENSE

The plaintiff's negligence claims are barred or limited by her comparative fault.

FOURTH AFFIRMATIVE DEFENSE

The plaintiff's negligence claims are barred because she cannot show the defendant, Joshua Heal, breached any duty of care.

FIFTH AFFIRMATIVE DEFENSE

The plaintiff's negligence claims are barred because she cannot show that any act or omission of the defendant, Joshua Heal, was the proximate cause of any alleged harm to her.

SIXTH AFFIRMATIVE DEFENSE

The plaintiff's claims against the defendant, Joshua Heal, are barred, because the plaintiff was of the age of consent, not a minor and engaged in consensual conduct and behavior.

SEVENTH AFFIRMATIVE DEFENSE

The defendant, Joshua Heal, owed no duty to the Plaintiff, as he did not have a "special relationship" in relation to the plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

The defendant, Joshua Heal, was not a substantial contributing factor to the plaintiff's alleged injuries and damages.

NINTH AFFIRMATIVE DEFENSE

The plaintiff's claims are based upon the conduct of the other defendants for whom the defendant, Joshua Heal, is not legally responsible.

TENTH AFFIRMATIVE DEFENSE

The plaintiff's assault and battery claim must fail as the defendant, Joshua Heal, did not intend a harmful or offensive contact because the plaintiff engaged in consensual conduct and behavior.

ELEVENTH AFFIRMATIVE DEFENSE

The plaintiff's 42 USC § 1983 claim is barred because the defendant, Joshua Heal, did not act, or operate under color of law with respect to the allegations set forth in the Second Amended Complaint.

TWELFTH AFFIRMATIVE DEFENSE

To the extent the Plaintiff's 42 USC §1983 claim is based upon "rape" or "sexual assault" those claims are barred because the Second Amended Complaint sets forth no allegations of rape or sexual assault against the defendant, Joshua Heal.

THIRTEENTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by their falsity whereas an "inappropriate relationship" is not rape or sexual assault giving rise to a 42 USC §1983 claim.

FOURTEENTH AFFIRMATIVE DEFENSE

The plaintiff's claims alleging civil conspiracy are barred whereas the Second Amended Complaint fails to allege any specific concerted action or that the defendant, Joshua Heal, provided substantial assistance or otherwise engaged in deliberate concerted contact which caused another to engage in tortious activity.

FIFTEENTH AFFIRMATIVE DEFENSE

The plaintiff fails to state a claim upon which relief can be granted and therefore the claims must be dismissed.

SIXTEENTH AFFIRMATIVE DEFENSE

The plaintiff's claims are barred by the applicable statute of limitations.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Court lacks subject matter as to Count VII of the Plaintiff's Second Amended Complaint whereas Ms. Birchmore's family is not a party to this suit. Accordingly, Mr. Heal moves to dismiss said count pursuant to Rule 12(b)(1) and 12(b)(6) Mass.R.Civ.P.

EIGHTEENTH AFFIRMATIVE DEFENSE

The defendant, Joshua Heal, hereby gives notice that he intends to insert any and all other affirmative defenses that may become apparent as discovery proceeds and that he reserves the right to assert such affirmative defenses by filing an appropriate motion to amend this Answer and Affirmative Defenses.

CROSS CLAIMS

FACTS COMMON TO ALL COUNTS

1. At all times relevant, Mr. Joshua Heal was not and is not a target of any criminal investigations by the Stoughton Police Department (“SPD”) into the death of Sandra Birchmore or any other claims arising out of the SPD Internal Affairs (“IA”) investigation.
2. At all times relevant, Mr. Joshua Heal was not and is not a target of any criminal investigations by the Massachusetts State Police (“MSP”) into the death of Sandra Birchmore or any other claims arising out of the SPD IA investigation.
3. At the conclusion of the SPD IA Investigation conducted by Deputy Chief Brian Holmes, SPD turned over the IA Investigation Report to the Norfolk County District Attorney’s Office.
4. The attached Exhibit 1 is a true and accurate copy of the unredacted SPD IA Report.¹
5. At all times relevant, Mr. Joshua Heal was not and is not a target of any criminal investigation by the Norfolk District Attorney’s office.
6. At all times relevant and continuing, the Town of Stoughton (“Stoughton” or the “Town”) and SPD were and are aware that Mr. Joshua Heal was not and is not the target of any criminal investigation into the death of Sandra Birchmore or any other criminal allegations or claims arising out of the SPD investigation.
7. When the IA investigation was completed, Stoughton and SPD knew that Mr. Heal did not groom, engage in underage sexual activity, sexual abuse, assault and battery, sexual assault, rape, or any other act or conduct that could be construed to be anything other than consensual activity between two consenting adults.

¹ This is one of the bases, *inter alia*, by which Mr. Heal has sought the relief of this Court to seal and impound this matter.

8. When the IA investigation was completed, Stoughton and SPD made no recommendations regarding punishment, decertification, or any other action adverse to Mr. Heal or that would have or should have impacted his chosen career as a police officer.
9. At all times relevant and continuing, Mr. Heal was not charged with a crime involving any criminal act with respect to Sandra Birchmore.
10. At all times relevant and continuing, Mr. Heal was not convicted of a crime involving any criminal act with respect to Sandra Birchmore.
11. On December 7, 2021, Deputy Chief Brian Holmes wrote to Chief David Del Papa of the Abington Police Department (“APD”) and advised, “I am writing to inform you that a member of your department who is also a former employee of this department, is a witness in an ongoing internal affairs investigation. Patrolman Joshua Heal will be requested to appear for an interview related to this investigation.” Deputy Chief Holmes continued, “Through my prior working relationship with Officer Heal I would anticipate his cooperation in this process” and “I expect to have an interview prepared prior to the end of the year.” A true and accurate copy of this correspondence is attached hereto as Exhibit 2.
12. At the conclusions of the IA investigation and continuing, neither Deputy Chief Brian Holmes nor SPD’s agent, Paul L’Italien, thought, believed, or concluded that Mr. Heal had done anything to warrant punitive measures.
13. Mr. Heal started work as an Animal Control Officer (“ACO”) for the Stoughton on March 6, 2016.
14. On an ordinary day, Mr. Heal began his shift at the Stoughton Police Department (“SPD”) located at 26 Rose Street, Stoughton, MA 02072.
15. Mr. Heal’s shift started around 8:00 o’clock AM at which time roll call for police officers would be ending. His typical routine would be to proceed to dispatch and then go down to the animal shelter.
16. The animal shelter is located at 499 West Street, Stoughton, MA 02072 and is approximately 1.5 miles from the SPD.
17. Mr. Heal did not have any personal relationship with Matthew Farwell outside of work and did not socialize with him.
18. Mr. Heal and Matthew Farwell were not friends.
19. Mr. Heal knew William Farwell as being employed by SPD and that he was the brother of Detective Matthew Farwell.

20. Mr. Heal was not friendly with William Farwell outside of work. He knew William Farwell in passing and described their engagements as “just water cooler talk.” William Farwell worked the opposite shift to Mr. Heal.
21. Mr. Heal had no personal relationship with Officer Robert Devine outside of work.
22. When Mr. Heal started employment at Stoughton, Officer Robert Devine was a dispatcher at SPD. Mr. Heal described their relationship as solely a professional one. The two men would have work related discussions and had no other personal relationship outside of work.
23. Mr. Heal and Mr. Devine were not friends.
24. Mr. Heal would use his department issued cell phone for official department business. He would keep that cell phone for work only.
25. When he spoke to or communicated with anyone else he would use his regular and personal cell phone.
26. During the IA investigation, Mr. Heal was asked about his private e-mail account because he received a voucher that he received from the Massachusetts Animal Fund. The e-mail was for receiving a voucher to spay or neuter animals.
27. The receipt of the voucher resulted in no cost to the town, and it was simply a form that he submitted to aid in his work as the town’s ACO.
28. The voucher and its receipt from the Massachusetts Animal Fund is the only mention of Mr. Heal’s private email account in the entirety of the IA investigation report.
29. There is no evidence or support in the IA investigation that Mr. Heal had any explicit or sexually charged emails with Sandra Birchmore.
30. The IA investigation revealed no evidence of email exchange between Mr. Heal and Sandra Birchmore.
31. At all times relevant, Mr. Heal was not a uniformed police officer.
32. Mr. Heal first met Ms. Birchmore in approximately the late summer or early fall of 2019 when she first came in to adopt a cat. This was the beginning of their friendship.
33. During his IA interview on December 21, 2021, Mr. Heal told Deputy Chief Holmes he first met Sandra Birchmore approximately two years ago.
34. Mr. Heal did not know who Ms. Birchmore was prior to that and had no personal relationship with her prior to that time.

35. According to the transcript of Mr. Heal's IA interview, Mr. Heal does not know the time when he first met Sandra Birchmore. He believed it was springtime, but he did not know the month, year, or date. He did however, know that soccer was being played on the fields adjacent to the Animal Shelter when he first met Sandra Birchmore.
36. Notwithstanding that he does not know the precise date when he met Ms. Birchmore, Mr. Heal did not know Ms. Birchmore when she was a minor and under the age of 18 and certainly not when Ms. Birchmore was younger than age 16.
37. Throughout the time he knew her, Mr. Heal considered Sandra Birchmore to be a friend.
38. Ms. Birchmore talked with Mr. Heal often about having sexual intercourse. He would not have sexual intercourse with her and rejected those advances.
39. Mr. Heal did not have sexual intercourse with Ms. Birchmore at the animal shelter or anywhere else.
40. During his IA interview with Deputy Chief Holmes and Paul L'Italien, and according to the transcript of his interview, Mr. Heal acknowledged one occasion where he received oral sex from Ms. Birchmore after work. He did not know the exact date or time of this encounter other than to state it occurred approximately two years ago.
41. This encounter occurred after work, off-duty and inside the animal shelter building.
42. Mr. Heal was reluctant to disclose the oral sex incident for no other reason than he was married at the time.
43. This encounter was a consensual act between two adults who knew each other.
44. Neither Stoughton nor SPD have alleged that this single act of oral sex between two consenting adults was an incident where Mr. Heal took advantage of Ms. Birchmore.
45. There is nothing in the IA investigation report wherein Deputy Chief Holmes, nor anyone else, reached the conclusion that Mr. Heal had taken advantage of Ms. Birchmore at any time or for any reason.
46. Neither Stoughton nor SPD have any evidence of Mr. Heal having taken advantage of Ms. Birchmore at any time.
47. The Personal Representative of Sandra Birchmore's estate has no knowledge, information or evidence that Mr. Heal took advantage of Ms. Birchmore at any time or that their single encounter was anything more than a consensual act between adults.
48. During his interview with IA, Mr. Heal was asked whether the incident he recounted took place on the love seat in the office of the animal shelter. Mr. Heal stated, "I don't think that was there at the time. I don't remember."

49. Notwithstanding this statement, SPD undertook a forensic examination of the love seat in the animal shelter.
50. The forensic examination, at taxpayer expense, revealed nothing showing any type of DNA or other result causing implication of Mr. Heal in any conduct related to the love seat.
51. At various times during their friendship, Ms. Birchmore tried to introduce Mr. Heal to a couple of her friends even though Ms. Birchmore knew Mr. Heal was married.
52. Mr. Heal made clear to Ms. Birchmore that they were friends and nothing more.
53. Ms. Birchmore would come to the animal shelter from time to time if she were in the area to visit, pet or play with the cats or dogs at the shelter.
54. Mr. Heal and Ms. Birchmore spoke frequently via text, sometimes on a daily basis and sometimes, not often, by telephone.
55. Based on this friendship, Mr. Heal got to know Ms. Birchmore and was then privy to what was going on in her life.
56. Ms. Birchmore would come to the animal shelter from time to time and the time and the schedule of her visits were variable.
57. When Ms. Birchmore first started talking with Mr. Heal, Ms. Birchmore would come by the animal shelter more often.
58. Mr. Heal was aware that Sandra Birchmore had been sectioned by SPD for some ongoing issues of mental health.
59. Based on their friendship, Mr. Heal learned Ms. Birchmore had struggled with her own mental health and that she was working to address those issues.
60. At all times relevant, Ms. Birchmore was fairly open in describing her mental health status.
61. Mr. Heal first learned Matthew Farwell was in Ms. Birchmore's life approximately three months after he met her.
62. When their friendship began, Ms. Birchmore shared with Mr. Heal that she was seeing someone and that they had her phone number and could track it.
63. Ms. Birchmore shared with Mr. Heal that the person who was tracking her could see that she was at the shelter with him and that that person was texting her and asking her why she was at the shelter.

64. Mr. Heal later learned the person tracking Ms. Birchmore's cell phone was Matthew Farwell.
65. Ms. Birchmore shared with Mr. Heal that the tracking on her cell phone was on because she had a bad relationship in the past and had taken out a restraining order against a former boyfriend.
66. Ms. Birchmore also shared with Mr. Heal that she was having sexual relations with Mr. Farwell's twin brother, William Farewell and another police officer, Robert Devine.
67. Ms. Birchmore shared with Mr. Heal that some of these sexual encounters would occur at Matthew Farwell's marital home or they would meet down at the soccer field near the animal shelter.
68. Based on what Ms. Birchmore told him, Mr. Heal formed the impression that these individuals were on duty when they met Ms. Birchmore for sexual encounters.
69. Ms. Birchmore shared with Mr. Heal that on some occasions, she would meet these men in a police cruiser, she would sit in the cruiser, and they would have a sexual encounter while in the cruiser.
70. Mr. Heal told Deputy Holmes during his interview on February 9, 2022, that Ms. Birchmore told him she had sexual relations with William Farwell on multiple occasions in a police cruiser.
71. Deputy Chief Brian Holmes and Paul L'Italien interviewed Mr. Heal on December 21, 2021, as part of SPD's IA Investigation.
72. Mr. Heal and Ms. Birchmore were not sex partners. Despite the fact that they would exchange graphic or explicit text messages, at no time had Mr. Heal and Ms. Birchmore engaged in sexual intercourse.
73. During the course of their friendship, Ms. Birchmore told Mr. Heal that she had a sexual relationship with Matthew Farwell.
74. She knew Mr. Farwell was married.
75. During the course of their friendship, Mr. heal encouraged Ms. Birchmore to move on with her life and to find her own track in life, such as going to college or doing what she wanted to do. Ms. Birchmore wanted to join the Army.
76. At all times relevant, based on what she said to him and her actions, Mr. Heal believed Ms. Birchmore was in love with Matthew Farwell.
77. As Ms. Birchmore's friend, Mr. Heal tried to explain to her that Mr. Farwell already had a family and that it was a lot for him to leave his family to be with her. Ms. Birchmore got

caught up in the fact that Mr. Farwell had a family, another baby on the way and that it was unlikely that Mr. Farwell would leave his wife to be with Ms. Birchmore.

78. Ms. Birchmore also told Mr. Heal she had been pregnant three times, that she was currently pregnant with Mr. Farwell's baby, that Mr. Farwell wanted her to have an abortion and that she was "very adamant about not having an abortion."
79. During his interview with IA, Mr. Heal told Deputy Chief Holmes and Paul L'Italien that Ms. Birchmore's goal "was to have a family where her and Matt would live together and have children together and live happily ever after."
80. Mr. Heal had a general awareness of the sexual relationships that Ms. Birchmore had with other members of the SPD.
81. Deputy Chief Holmes and Mr. L'Italien asked Mr. Heal if he believed all of what Ms. Birchmore had told him.
82. Mr. Heal responded that he did not always believe what Ms. Birchmore told him because he knew of her lying from time to time and he had previously caught her lying or embellishing various aspects of her life.
83. As time went on and Mr. Heal changed careers, his friendship with Ms. Birchmore "fizzled out" and they barely spoke.
84. For example, Mr. Heal did not know Sandra Birchmore moved from Stoughton to Canton.
85. Ms. Birchmore told Mr. Heal she was having sexual relationships with people in the SPD.
86. Mr. Heal acknowledged some of the text conversations got "pretty intense and graphic."
87. For example, Ms. Birchmore shared with Mr. Heal that she wanted to have a threesome.
88. Ms. Birchmore shared graphic and explicit photographs and/or video with Mr. Heal that William Farwell had sent of his own wife.
89. Ms. Birchmore also shared with Mr. Heal who stated during his IA interview that Matthew Farwell sent Ms. Birchmore explicit pictures, but that Ms. Birchmore did not share those pictures with him.
90. Ms. Birchmore did not share with Mr. Heal that she had any kind of sexual encounter or relationship when she was with or in the Stoughton Police Explorers.
91. Ms. Birchmore specifically told Mr. Heal she had a sexual relationship with Matthew Farwell.

92. At some point, Mr. Heal told Ms. Birchmore that Mr. Farwell and his wife were expecting their third child.
93. Ms. Birchmore had not known of this fact and “seemed a little upset about it.” She did not know because Mr. Farwell had not told her that his wife was expecting their third child.
94. Ms. Birchmore shared with Mr. Heal that she had planned to reach out to Mr. Farwell's wife and drafted a message that she had intended on sending to Mr. Farwell's wife.
95. During his IA interviews, Mr. Heal stated to Paul L'Italien that Ms. Birchmore never told him when the sexual relationship with Mr. Farwell started.
96. Ms. Birchmore did not share timeframes or ages when sexual relationships began.
97. Mr. Heal was positive of that because if a relationship began before she was 16, Mr. Heal stated, “that's something that would have been a red flag in my mind.”
98. At all times relevant, the information Mr. Heal reported to Paul L'Italien and Deputy Chief Brian Holmes was based on information Ms. Birchmore had shared with him and told him.
99. Mr. Heal did not receive information that he relayed in his statements during the Internal Affairs Investigation that came from William or Matthew Farwell or Robert Devine.
100. During the IA investigation, Mr. Heal told Mr. L'Italien Ms. Birchmore believed Matthew Farwell was the father of her baby.
101. Mr. Heal did not know whether to believe Ms. Birchmore because she was having sexual relations with other people.
102. At all times relevant, Mr. Heal did not speak or communicate with Matthew Farwell about Ms. Birchmore or any of the subject matter set forth in the Complaint.
103. At all times relevant, Mr. Heal did not speak or communicate with William Farwell about Ms. Birchmore or any of the subject matter set forth in the Complaint.
104. At all times relevant, Mr. Heal did not speak or communicate with Robert Devine about Ms. Birchmore or any of the subject matter set forth in the Complaint.
105. During his interviews during the IA Investigation, Mr. Heal told Deputy Chief Brian Holmes that he did not always believe what Ms. Birchmore told him because she “told lies all the time” and “[he] caught her in ‘lies’” “multiple times.” He advised that Ms. Birchmore was not always truthful.
106. Matthew Farwell did not personally communicate to Ms. Birchmore that his wife was pregnant with their third child.

107. Mr. Heal learned of Ms. Birchmore's death from Officer Victoria Denneno of SPD.
108. Officer Denneno knew Mr. Heal was friendly with Ms. Birchmore and wanted to let him know that she had passed away.
109. By February 9, 2021, Mr. Heal no longer worked for the Town of Stoughton and had taken a position as a police officer with the Town of Abington ("Abington").
110. Mr. Heal was aware Ms. Birchmore was a Police Explorer in the Town of Stoughton in the police Explorers Program.
111. At all times relevant, Mr. Heal was not employed by the Town of Stoughton or SPD when Ms. Birchmore was involved with the Stoughton Police Explorers Program.
112. At no time did Mr. Heal have any involvement oversight or participation in the Stoughton Police Explorer Program, nor did Mr. Heal have any involvement, oversight, or participation in the program when Ms. Birchmore was no longer a member or student of the program.
113. Ms. Birchmore was a member of the Stoughton Police Explorers program from 2010-2016.
114. Mr. Heal did not have any interaction with Ms. Birchmore when she was a member of the Stoughton Police Explorers Program.
115. On Friday, September 23, 2022, Chief of the Stoughton Police Department, Donna McNamara, held a press conference to release and discuss the results of the Internal Affairs Investigation.
116. The entire press conference was based upon the Internal Affairs Investigation.
117. During the press conference, Chief McNamara identified Matthew Farwell, William Farwell, and Robert Devine as the subjects of the investigation and that she was taking action to decertify these individuals as police officers so as to prevent them from ever working as police officers again.
118. Chief McNamara did not identify Mr. Heal by name at the press conference, however, indirectly insinuated that Mr. Heal was culpable or otherwise caused Ms. Birchmore's death and that he had taken advantage of her.
119. Chief McNamara knew at the time of the press conference that the encounter between Mr. Heal and Ms. Birchmore was consensual, and that SPD had no evidence that Mr. Heal had taken advantage of Ms. Birchmore at any time.
120. At the time of the press conference, Chief McNamara knew that the encounter between Mr. Heal and Ms. Birchmore took place when both were adults.

121. At the time of the press conference, Chief McNamara had in her possession, as did the Town of Stoughton, the IA Investigation Report that found Matthew Farwell, William Farwell and Robert Devine were the subject of the IA Investigation.
122. At all times relevant, Mr. Heal was not the subject of the IA Investigation.
123. At all times relevant, neither SPD nor the Town notified Mr. Heal that he was the subject of an IA Investigation.
124. In the IA Investigation Report, Deputy Chief Brian J. Holmes recommended that Chief McNamara make a report to the Massachusetts Peace Officers Standards and Training (“POST”) Commission and that the department sought to have Matthew Farwell, William Farwell and Robert Devine decertified as police officers and added to the National Decertification Index.
125. Deputy Chief Brian J. Holmes did not identify Mr. Joshua Heal as the target of the investigation nor did he recommend that Mr. Joshua Heal be recommended for decertification to POST.
126. On March 2, 2022, Deputy Chief Brian J. Holmes sent a memorandum to Chief David Del Papa of the Abington Police Department (“APD”) described in the IA Report’s index of exhibits as a “disposition memo.” A true and accurate copy of this Memorandum is attached hereto as Exhibit 3.
127. In his memorandum, Deputy Chief Holmes stated, “While Officer Heal was employed by this Town as the ACO, he made a friendship with a person named Sandra Birchmore. Birchmore was known to several members of this department as having mental health issues and a lack of direction in life, in general. During the course of their friendship, Birchmore disclosed to Heal many things including her relationships with other members of this department, in explicit detail. Officer Heal corroborated some facts for the investigation.”
128. He continued, “During the interview, Officer Heal admitted to a single act of indiscretion between himself and Birchmore. This action reportedly took place while Heal was off duty. It is anticipated that this investigation will be open and ongoing for several more months. I do not anticipate needing any additional interviews with Officer Heal. The full investigative report will be completed when the case is closed. Thank you again for your assistance. Please contact me if you have any questions.”
129. Deputy Chief Holmes made no findings or recommendations regarding any wrongdoing by Mr. Heal.
130. Deputy Chief Holmes did not advise Chief Del Papa that Mr. Heal had “taken advantage” of Ms. Birchmore, nor that he did anything wrong.

131. Deputy Chief Holmes described the oral sex incident as a “single act of indiscretion” which Mr. Heal admitted to.
132. Deputy Chief Holmes’ characterization is different from Chief McNamara’s characterization of Mr. Heal during the September 23, 2022, press conference.
133. To the contrary, Deputy Chief Holmes acknowledged to Chief Del Papa that the one incident that was learned during the investigation happened when Mr. Heal was “off duty.”
134. Despite not having identified Mr. Heal as a subject of the investigation, Deputy Chief Brian J. Holmes recommended that Chief McNamara send a copy of the transcript of Mr. Heal’s recorded interviews to Chief David Del Papa of the Abington Police Department.
135. Upon information and belief, SPD sent copies of the transcripts of Mr. Heal’s recorded interviews to Chief Del Papa and the APD.
136. At all times relevant, Stoughton, SPD and the MSP knew and were aware that Mr. Heal was not the target of any investigation.
137. At all times relevant, Mr. Heal was a fact witness who was interviewed by SPD’s IA investigation led by Deputy Chief Brian Holmes.
138. Deputy Chief Holmes did not recommend that Mr. Heal be put on administrative leave as a result of Mr. Heal being a fact witness in the IA investigation.
139. Even after the IA Investigation was complete, Deputy Chief Holmes did not recommend that Mr. Heal be disciplined or terminated from his employment by the Town of Abington and the APD.
140. SPD found that Mr. Heal did not meet nor know Ms. Birchmore until she was over the age of consent, age 16.
141. SPD did not make any findings that Mr. Heal participated in any act, conduct or behavior that constituted “grooming” behavior that it construed as exploitive of Ms. Birchmore.
142. At all times relevant, SPD knew that Mr. Heal had no interaction, involvement, supervision, or participation in the Stoughton Police Explorers program, either before, during or after Ms. Birchmore’s enrollment in said program.
143. SPD did not make any findings that Mr. Heal had any communication or contact with Matthew Farwell regarding the allegations raised in the Complaint before or after the Complaint was filed or while the acts alleged occurred.

144. SPD did not make any findings that Mr. Heal had any communication or contact with William Farwell regarding the allegations raised in the Complaint before or after the Complaint was filed or while the acts alleged occurred.
145. SPD did not make any findings that Mr. Heal had any communication or contact with Robert Devine regarding the allegations raised in the Complaint before or after the Complaint was filed or while the acts alleged occurred.
146. During its IA Investigation, SPD failed to uncover any conspiracy where Mr. Heal conspired with Matthew Farwell, William Farwell, and Robert Devine.
147. Despite the SPD IA investigation failing to implicate Mr. Heal in any wrongdoing or unlawful act with respect to Ms. Birchmore, on September 23, 2022, Chief Donna McNamara expressly and impliedly implicated Mr. Heal in the circumstances and allegations that were substantiated as to the co-defendants, Matthew Farwell, William Farwell, and Robert Devine.
148. Despite the SPD IA investigation failing to implicate Mr. Heal in any wrongdoing or unlawful act with respect to Ms. Birchmore, on September 23, 2022, Chief Donna McNamara referred to Mr. Heal as “another individual employed as a police officer in another town.”
149. Despite the SPD IA investigation failing to implicate Mr. Heal in any wrongdoing or unlawful act with respect to Ms. Birchmore, on or about September 23, 2022, or thereafter, the Town of Stoughton by and through the Stoughton Police Department and its employees caused the IA Investigation report to be disseminated to the public.
150. Upon information and belief, SPD took efforts to redact and conceal personal identifying information set forth in the SPD IA Report.
151. Notwithstanding the efforts to redact and conceal personal identifying information, SPD released the IA Investigation report without having redacted Mr. Heal’s identity and disclosed his identity to the public.
152. At the time of the release of the SPD IA Report, neither Stoughton nor the SPD, nor its Public Records Officer notified Mr. Heal of the report’s impending release nor did any of these entities or individuals allow Mr. Heal to object to the release of the report which contained private identifying information of a personal nature which related to his own identity and information protected from disclosure that was pertinent to the terms and conditions of his employment with the Town of Stoughton.
153. At all times relevant, personnel information related to Mr. Heal’s job duties, performance or incidents occurring during his employment with the Town of Stoughton were private and not subject to disclosure to third parties, even after he ceased working for the Town and especially because he was police officer.

154. Despite the fact that personnel matters other than dates of employment and salary and compensation information are private, SPD released information to third parties that invaded Mr. Heal's privacy which in turn caused significant and severe consequences and damages.
155. For example, on or about January 10, 2023, Kirk Minihane ("Minihane") of the Kirk Minihane Show hosted and a part of Barstool Sports ("Barstool") featured "The Sandra Birchmore" case on the podcast entitled, "The Case."
156. Minihane is a well-known on-air antagonist who previously worked in the Boston sports radio market.
157. During the podcast, Minihane made broad sweeping, verifiably false and defamatory statements about Mr. Heal.
158. Minihane exaggerated the December 7, 2022, letter from Deputy Chief Holmes to Chief David Del Papa by claiming Mr. Heal was a "material" witness and insinuating Holmes "could not get into specifics" and that Del Papa asked if he should place Mr. Heal on administrative leave.
159. At all times relevant, Mr. Heal was not on administrative leave from the Abington Police Department.
160. Minihane went on to say, "...by the way, says he's friendly with the Farwells" and "he got into some stuff with Sandra" and "he knew Sandra since say 2015" and "she was always around the Stoughton Police Department" and that Mr. Heal "traded a cat in exchange for oral sex with Sandra Birchmore. We know that's just a fact, that's what happened. That's why they did the DNA test on the couch."
161. The SPD IA investigation did not conclude that Mr. Heal was "friendly with the Farwells" and it was expressly related that Mr. Heal and the Farwells had no relationship whatsoever outside of work.
162. The SPD IA investigation showed definitively that Mr. Heal did not start employment with Stoughton until March 6, 2016.
163. The SPD IA investigation failed to disclose any evidence, nor did anyone involved with the investigation conclude that Mr. Heal "traded a cat for oral sex with Sandra Birchmore" nor is that "just a fact" or "what happened" nor is that "why they did the DNA test on the couch."
164. The SPD IA Investigation revealed that it was unclear if the "couch" in question was in the Stoughton Animal Shelter on the date when Ms. Birchmore is alleged to have engaged in consensual oral sex with Mr. Heal.

165. The SPD IA Investigation and forensic investigation and analysis of the “couch” produced no physical evidence corroborative of any of Minihane’s specious and false claims.
166. Had Stoughton and SPD not released a partially unredacted IA investigation report identifying Mr. Heal, neither Minihane nor his fatuous and ill-advised acolytes would have targeted Mr. Heal.

COUNT I – NEGLIGENCE

**(JOSHUA HEAL v. TOWN OF STOUGHTON
AND STOUGHTON POLICE DEPARTMENT)**

167. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.
168. At all times relevant, as Mr. Heal’s employer, the Town of Stoughton owed Mr. Heal a duty of reasonable care.
169. At all times relevant, the Stoughton Police Department owed Mr. Heal a duty of reasonable care as a town employee.
170. By releasing the IA Report and publicly identifying Mr. Heal, the Town of Stoughton and Stoughton Police Department were negligent.
171. As a direct and proximate cause of the breach of their respective duties of care, Mr. Heal suffered and sustained significant damages, including but not limited to damage to his reputation, lost wages, loss of earning capacity and the impugning of his standing to serve in his chosen career as a police officer.
172. On September 23, 2022, Chief of Police Donna McNamara held a press conference, hereinafter, “the Press Conference.”
173. At the Press Conference, Chief McNamara made statements that expressly or impliedly implicated Mr. Heal in the manipulating and taking advantage of Ms. Birchmore when she was a minor or that he groomed Ms. Birchmore to be nothing more than a sexual object.
174. At the Press Conference, Chief McNamara made statements tantamount to Mr. Heal being “guilty by association” with Matthew Farwell, William Farwell, and Robert Devine, despite the investigation having revealed no contact or communications between the Farwell brothers, Devine and Mr. Heal.

175. Chief McNamara knew or should have known that Mr. Heal's role in the investigation was not one of a perpetrator.
176. Despite this knowledge, Chief McNamara painted a picture at the Press Conference that Mr. Heal was a perpetrator and grouped him with Matthew Farwell, William Farwell, and Robert Devine.
177. At the Press Conference, Chief McNamara made statements that the SPD was taking action against Mr. Heal and that it was communicating those actions to the town in which Mr. Heal worked as a police officer.
178. At the time she made these statements and held the Press Conference, Chief McNamara knew that these statements about Mr. Heal were verifiably false.
179. Chief McNamara's statements that expressly or impliedly implicated Mr. Heal were negligent.
180. At the time of the Press Conference, Chief McNamara knew or should have known that those statements were verifiably false, misleading, and misrepresented the facts developed in the course of the SPD IA investigation.
181. At the time of the Press Conference, Chief McNamara knew or should have known that Joshua Heal was not a target nor a subject of the SPD IA investigation.
182. At the time of the Press Conference, in light of the IA Investigation, Chief McNamara knew or should have known that Joshua Heal was not involved nor did he participate in the Stoughton Police Explorers Program.
183. At the time of the Press Conference, in light of the IA Investigation, Chief McNamara knew or should have known that Joshua Heal did not know Sandra Birchmore when she was in the Stoughton Police Explorers Program.
184. At the time of the Press Conference, in light of the IA Investigation, Chief McNamara knew or should have known that Joshua Heal did not know Sandra Birchmore and did not have any ongoing sexual relationship with Sandra Birchmore at any time, including but not limited to any time that Sandra Birchmore was under the age of 16.
185. At the time of the Press Conference, in light of the IA Investigation, Chief McNamara knew or should have known that Joshua Heal did not have sexual intercourse with Sandra Birchmore.
186. At the time of the Press Conference, in light of the IA Investigation, Chief McNamara knew or should have known that Ms. Birchmore and Joshua Heal engaged in consensual oral sex when both individuals were adults on a single occasion described by her Deputy Chief as a "single act of indiscretion."

187. At the time of the Press Conference, in light of the IA Investigation, Chief McNamara knew or should have known that the IA investigation revealed no evidence to suggest that Ms. Birchmore was not a consenting adult when she engaged in oral sex with Mr. Heal.
188. At the time of the Press Conference, in light of the IA Investigation, Chief McNamara knew or should have known that Joshua Heal did not participate in and was not part of any grooming behavior nor did he communicate with Matthew Farwell, William Farwell or Robert Devine regarding Ms. Birchmore or any of the allegations, conduct or behavior alleged in the Complaint.
189. By making broad sweeping generalizations and commentary that expressly and impliedly implicated Mr. Heal in the scheme, Chief McNamara was negligent.
190. At all times relevant and especially during the Press Conference, Chief McNamara acted in the scope of her employment with the SPD and the Town.
191. At all times relevant and especially during his communications with Chief Del Papa, the APD and the Town of Abington, Deputy Chief Brian Holmes acted in the scope of his employment with the SPD and Town.
192. By communicating anything less than the full IA report to Chief Del Papa that did not implicate Mr. Heal, Deputy Chief Holmes was negligent.
193. The communication of any aspect of the investigation or insinuation that Mr. Heal was a target or subject of the investigation to any third parties prior to the completion of the IA investigation was knowingly and verifiably false and constituted a breach of the duty of reasonable care owed to Mr. Heal.
194. Deputy Chief Brian Holmes knew or should have known that the communication of any aspect of the investigation to anyone could have a substantial and detrimental impact on Mr. Heal, his reputation and his ability to continue his chosen career as a police officer.
195. During the Press Conference of September 23, 2022, Chief McNamara was negligent and careless in her comments, statements, and declarations when she expressly and impliedly implicated Mr. Heal in the IA investigation when she knew or should have known that Mr. Heal was not a target or subject of the IA investigation and that any comment, express or implied to the contrary was knowingly false.
196. Chief McNamara should have known based on her knowledge, education, training, and skill that these statements and implication of Mr. Heal would have a devastating effect and impact on him personally, including but not limited to his life, his privacy, his ability to make a living and support his livelihood.
197. The Town of Stoughton had a reasonable expectation that its police chief would not engage in a press conference where the Chief of Police either expressly or impliedly made

statements insinuating that Mr. Heal played a role in, groomed, took advantage of or was otherwise in any way responsible for the death of Sandra Birchmore.

198. Upon information and belief, since the commencement of the instant lawsuit, the Town of Stoughton and/or the SPD have taken active steps to remove the videorecording of the Press Conference in question from the publicly available channels of social media, etc.
199. Since September 23, 2022, and continuing the Town of Stoughton and SPD know and are acutely aware of the fact that the press conference was a substantial and problematic overreach which exposed the Town and SPD to substantial civil liability.
200. No reasonable and responsible person would have advised that the Press Conference was a good idea under the circumstances, including but not limited to the fact that there was an ongoing investigation and punitive measures to be taken against Matthew Farwell, William Farwell, and Robert Devine.
201. Upon information and belief, the acting Town Manager, did not approve nor participate in the preparation of the information to be produced and provided during the Press Conference, notwithstanding that the comments made during the Press Conference put Stoughton and the SPD squarely at risk for civil liability.;
202. No one from the Town of Stoughton nor the SPD engaged with any expert in crisis communications, nor did they seek the advice of how and when to release the IA report to the public, hold a press conference or discuss and decide what to say at such a press conference.
203. At all times relevant, the Town of Stoughton had or should have had a reasonable expectation that its Deputy Police Chief, Brian Holmes, would not engage in reporting any information regarding an internal personnel matter to third parties, including the Abington Police Chief, which would irreversibly damage and impact the ability of Mr. Heal to maintain his position as a police officer with the Town of Abington.
204. Had Mr. Heal's name and identity been appropriately protected from public view and scrutiny, including but not limited to protecting his identity from leak and public ridicule by Minihane, Barstool Sports ("Barstool") and their employees, agents, or those at their direction or under their control, it is unlikely that Mr. Heal would be named as a Defendant in this lawsuit.
205. Mr. Heal was not named as a Defendant in the instant lawsuit until after January 10, 2023, the date Minchane and Barstool released "Episode 5" of its podcast entitled, "The Case."
206. In Episode 5. Minchane and an individual named "David," whom upon information and belief is believed to be David Portnoy, defamed and ridiculed Mr. Heal insinuating that

he participated in the conduct and behavior that is the subject of the lawsuit and that he used his position in Abington to lure “young girls.”

207. During the podcast, Minihane stated that Mr. Heal used his duties as a K-9 officer and “using the dog:

208. Minihane stated: “So, was he using this dog as some way to meet girls? Certainly possible...”

209. Minihane implied Mr. Heal was a predator when Minihane stated, “He was around the schools for 10 months. He’s around the middle school,” and But for the entire school year, if I’m an Abington parent, Right now. And I hear this, or I see this. I am outraged beyond belief... “He’s a school resource officer. And is in charge of the comfort dog handling at the Abington police department. This guy is out there with this dog, with these kids...”

210. In light of the Birchmore case, Minihane stated his outrage and could not believe that Mr. Heal remained as the school resource officer in Abington because he had been implicated by Stoughton PD and Chief McNamara in both the IA report and the Press Conference when Mr. Heal did nothing wrong.

211. But for the SPD’s ill-advised release of an unredacted copy of the IA report, Mr. Heal’s name would not have been exposed to the public domain.

212. But for the SPD’s ill-advised release of an unredacted copy of the IA report, Mr. Heal would not have been the subject of the Barstool podcast or the target of Minehane and his cohorts.

213. Upon information and belief, Barstool, Minehane, its agents, employees or those acting under its or their direction and control, sent materials to counsel for the Plaintiff in this case.

214. But for the SPD’s ill-advised release of an unreacted copy of the IA report, Barstool, Minehane and others would not have communicated or sent materials and correspondence to counsel for the Plaintiff.

215. The materials, correspondence and communications directed from Minihane, Barstool or others to Plaintiff’s counsel was the impetus for the plaintiff to amend the complaint to add Mr. Heal as a Defendant.

216. Upon information and belief, Barstool Sports, its employees, including Kirk Minehane, David Portnoy, employees, or agents of Barstool acting on their behalf or at their behest communicated with and sent information to the Plaintiff via her counsel prompting Mr. Heal being added as a defendant.

217. The continuous chain of events stemming from SPD's release of the unredacted IA report, Minehane and Barstool's ill-advised and defamatory podcast and its communication with counsel for the Plaintiff leading to Mr. Heal being named as a Defendant is both the direct and proximate cause of Mr. Heal's damages.
218. Mr. Heal did not and had no intention of leaving his position or resigning from the Abington Police until being named as a Defendant in this lawsuit.
219. Mr. Heal being named as a defendant in this lawsuit is the direct and proximate result of the negligence of the Town of Stoughton, SPD and their respective employees acting within the scope of their employment.
220. As a direct and proximate result of Mr. Heal's name being revealed and released, he was targeted by Minihane and Barstool who then communicated directly to and with Plaintiff's counsel which led directly to the filing of the Second Amended Complaint.
221. Once the Second Amended Complaint was filed, Mr. Heal was left with no choice but to resign as a police officer with the Abington Police Department.
222. As a result of these negligent acts, Mr. Heal suffered substantial and ongoing damages, including but not limited to damage to his reputation, lost wages, lost earnings, lost earning capacity, significant and severe emotional distress, costs, and reasonable attorney's fees.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count I for negligence against the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney's fees.

COUNT II – NEGLIENT HIRING –
CHIEF MCNAMARA AND DEPUTY CHIEF HOLMES

**(JOSHUA HEAL v. TOWN OF STOUGHTON
AND STOUGHTON POLICE DEPARTMENT)**

223. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.
224. At all times relevant, as Mr. Heal's employer, the Town of Stoughton owed Mr. Heal a duty of reasonable care.
225. At all times relevant, the Stoughton Police Department, its officers, personnel, and employees owed Mr. Heal a duty of reasonable care as a town employee.
226. At all times relevant, the Town of Stoughton and SPD employed individuals tasked with keeping personnel matters and personnel files secure and not available for public viewing or disclosure.

227. At all times relevant, the Town of Stoughton and SPD employed individuals tasked with compliance with the Public Records Laws of the Commonwealth.
228. By releasing the IA Report and publicly identifying Mr. Heal, the Town of Stoughton and Stoughton Police Department were negligent.
229. As a direct and proximate cause of the breach of their respective duties of care, Mr. Heal suffered and sustained significant damages, including but not limited to damage to his reputation, lost wages, loss of earning capacity, significant and substantial emotional distress, and the impugning of his standing to serve in his chosen career as a police officer.
230. During the Press Conference of September 23, 2022, Chief McNamara was negligent and careless in her comments, statements, and declarations when she expressly and impliedly implicated Mr. Heal in the IA investigation and the fallout therefrom when she knew or should have known that Mr. Heal was not a target or subject of the IA investigation.
231. Chief McNamara should have known based on her knowledge, education, training and skill that these statements and implication of Mr. Heal would have a devastating effect and impact on him personally, his life and his livelihood.
232. The Town of Stoughton hired Chief McNamara.
233. Upon information and belief, the Town of Stoughton had a reasonable expectation that its police chief would not engage in a press conference where the Chief of Police either expressly or impliedly made statements insinuating that Mr. Heal played a role in or was otherwise responsible for the death of Sandra Birchmore when she knew or should have known that Mr. Heal was not involved and that the IA investigation supported that conclusion.
234. Upon information and belief, the Town of Stoughton and/or the SPD have taken active steps to remove the video recording of the Press Conference in question from the publicly available channels of social media and the internet.
235. The Town of Stoughton hired Deputy Chief Brian Holmes.
236. At all times relevant, the Town of Stoughton had or should have had a reasonable expectation that its Deputy Police Chief, Brian Holmes, would not engage in reporting any information regarding an internal personnel matter to third parties, including the Abington Police Chief, which would irreversibly damage and impact the ability of Mr. Heal to maintain his position as a police officer with the Town of Abington.
237. In a culmination of poor judgment, the public release of even a partially redacted IA report with Mr. Heal's name unredacted resulted directly in Mr. Heal being forced to resign from the Abington Police.

238. Had Mr. Heal's name and identity been appropriately protected from public view and scrutiny, including public ridicule by Kirk Minihane and Barstool Sports, it is unlikely that Mr. Heal would be named as a defendant in this lawsuit or that he would have been forced to resign.

239. Moreover, until the release of the Barstool Sports podcast, "The Case," wherein Mr. Minehane and an individual named "David" defamed and ridiculed Mr. Heal, he was not named as a defendant in this lawsuit.

240. Additionally, upon information and belief, Barstool Sports, its employees, including Kirk Minihan, David Portnoy or agents of Barstool acting on their behalf or at their behest communicated with and sent information to the Plaintiff via her counsel prompting Mr. Heal being added as a defendant.

241. The podcast and the outrageous allegations of the Podcast formed the basis for the Plaintiff's Second Amended Complaint which includes Mr. Heal as a Defendant.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count II against the Town of Stoughton and the Stoughton Police Department for negligent hiring together with costs and reasonable attorney's fees.

COUNT III – NEGLIENT HIRING –
WILLIAM FARWELL

**(JOSHUA HEAL v. TOWN OF STOUGHTON
AND STOUGHTON POLICE DEPARTMENT)**

242. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.

243. During the hiring process, Stoughton and SPD uncovered several facts regarding William Farwell's background that should have disqualified him from being hired and serving as a police officer.

244. First, William Farwell failed to disclose that he had been discharged from the military for misconduct.

245. Second, William Farwell omitted the fact that he had prior interactions with police and did not mention it during the interview process because he "did not know [his] name was in the report."

246. Third, William Farwell previously impersonated a police officer after having completed the Stoughton Explorers Program by activating strobe lights in his personal vehicle and pulling another vehicle over.

247. During the interview, Mr. Farwell was not truthful with the interviewer when confronted with the facts and circumstances of that incident that were observed by another officer, Officer Faria, of the Stoughton Police.
248. During the interview, when asked, Mr. Farwell directly lied about the incident and told the interviewer that he did not get out of his car when Officer Faria personally observed him out of his car apparently to confront the civilian that he had unlawfully stopped and detained.
249. Notwithstanding these incidents and having previously passed over Mr. Farwell for a position as a police officer with the SPD, SPD hired Mr. Farwell anyway.
250. At all times relevant, Stoughton and SPD had a duty of reasonable care to hire individuals who were fit to serve as police officers.
251. At the time Mr. Farwell was hired, Stoughton and SPD knew or should have known that hiring Mr. Farwell was not in the best interest of the people of Stoughton nor the SPD and its officers.
252. Mr. Farwell's dismal interview and background investigation was detrimental to his ability to serve as a police officer and directly impacted and impugned the integrity of the police department.
253. Despite a substantial and embarrassing background investigation and interview, Stoughton and SPD hired Mr. Farwell anyway.
254. But for SPD's hiring of Mr. Farwell, it is unlikely he would have had any communication with or interaction with Mr. Birchmore and Ms. Birchmore may still be alive today.
255. But for SPD's hiring of Mr. Farwell, he would not have met or had any interaction with Mr. Heal as Mr. Heal was hired in 2016.
256. Despite these warning signs that Mr. Farwell was unfit to serve because of facts and circumstances unearthed during his background check and his poor and less than forthright interview, Stoughton and SPD hired him anyway.
257. In breach of its duty of reasonable care, Stoughton and SPD hired Mr. Farwell when it knew or should have known that he was not fit to serve as a police officer.
258. As a direct and proximate result of Stoughton and SPD's negligent hiring of Mr. Farwell, Mr. Heal suffered damages by being implicated in the case alleging that Matthew Farwell, William Farwell and Robert Devine were responsible for Sandra Birchmore's death due to their conduct and behavior as alleged in the Complaint.

259. As a direct and proximate result of Stoughton and SPD's negligent hiring of Mr. Farwell, Mr. Heal was caused to suffer damages including but not limited to damage to his reputation, lost wages, lost earnings, lost earning capacity, significant and severe emotional distress, costs, and reasonable attorney's fees.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count III for negligent hiring of William Farwell against the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney's fees.

COUNT IV – NEGLIENT RETENTION
ROBERT DEVINE

**(JOSHUA HEAL v. TOWN OF STOUGHTON
AND STOUGHTON POLICE DEPARTMENT)**

260. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.
261. In or about January of 2015, while employed as SPD's Deputy Chief of Police, Robert Devine was the target of yet another SPD IA report which went public following an investigation by the Massachusetts State Police ("MSP").
262. Mr. Devine told the MSP he had a "months long affair with an Easton woman that went sour."
263. When the affair ended, SPD received graphic and explicit photos of Mr. Devine and his alleged mistress, Tiffany Overstreet.
264. Upon information and belief, there was a twelve-year age difference between Mr. Devine and Ms. Overstreet at the time the affair was alleged to have taken place.
265. There was also a significant age difference between Ms. Birchmore and Mr. Devine.
266. In February 2016, then Town Manager, Michael Hartman, issued a press release announcing that Mr. Devine would serve a lengthy period of unpaid suspension before he would be allowed to be reinstated.
267. Mr. Devine was later reinstated and demoted from Deputy Chief to Patrolman.
268. At the time, Stoughton and the SPD knew or should have known that the retention of Mr. Devine was not in the best interest of the people of Stoughton nor was the SPD and its officers.

269. Mr. Devine's conduct at the time was detrimental to his ability to continue to serve as a police officer and directly impacted the integrity of the police department.
270. Despite a substantial and embarrassing MSP investigation and public disclosure, Stoughton and SPD did not move to terminate Mr. Devine and instead suspended him and placed him on unpaid leave.
271. The severity of the allegations caused an incredible fall from grace from Deputy Chief to Patrolman, yet Stoughton continued to employ Mr. Devine as a police officer.
272. But for SPD's retention of Mr. Devine, it is unlikely he would have had any continued communication with or interaction with Mr. Birchmore and Ms. Birchmore may still be alive today.
273. But for SPD's retention of Mr. Devine, he would have not met or had any interaction with Mr. Heal as Mr. Heal was hired in 2016.
274. Despite these warning signs that Mr. Devine was unfit to serve because of poor judgment and poor moral character, SPD retained him anyway.
275. All times relevant, Stoughton and SPD had a duty of reasonable care to retain only those police officers who were suitable to serve as police officers.
276. In breach of that duty, Stoughton and SPD failed to fire Mr. Devine in or about 2016 with respect to the prior IA investigation.
277. As a direct and proximate result of Stoughton and SPD's negligent retention of Mr. Devine, Mr. Heal suffered damages by being implicated in the case alleging that Matthew Farwell, William Farwell and Robert Devine were responsible for Sandra Birchmore's death due to their conduct and behavior as alleged in the Complaint.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count IV for negligent retention against the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney's fees.

COUNT V – NEGLIGENT SUPERVISION

(JOSHUA HEAL v. TOWN OF STOUGHTON AND STOUGHTON POLICE DEPARTMENT)

278. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.
279. At all times relevant, as Mr. Heal's employer, the Town of Stoughton owed Mr. Heal a duty of reasonable care due to the special relationship of employer and employee.

280. At all times relevant, the Stoughton Police Department owed Mr. Heal a duty of reasonable care as a town employee.
281. At all times relevant, the Town of Stoughton and SPD employed individuals tasked with keeping personnel matters and personnel files secure and not available for public disclosure.
282. At all times relevant, the Town of Stoughton and SPD employed individuals tasked with compliance with the Public Records Laws of the Commonwealth, especially those associated with protection of such information regarding police officers.
283. Employees, agents or those under the control, management and supervision of town employees or employees of SPD, who were also town employees, released or caused to be released or produced a carelessly and partially redacted copy of the IA report that failed to redact or protect Mr. Heal's name.
284. By either intentionally or unintentionally failing to redact or protect Mr. Heal's identity, employees of the Town of Stoughton acted carelessly and disregarded their duty to keep Mr. Heal's personal, protected personnel information protected from disclosure to the public.
285. By either intentionally or unintentionally failing to redact or protect Mr. Heal's identity, employees of the Town of Stoughton acted carelessly and disregarded their duty to keep Mr. Heal's personal, protected personnel information protected from disclosure to the public under applicable exceptions to the Public Records Laws of this Commonwealth.
286. More particularly, there are applicable exceptions to the public records laws pertaining to the protection of disclosure of investigatory materials that name sources of information and innocent people who are not the targets or subject of an investigation.
287. By releasing a carelessly and partially redacted IA Report of SPD's investigation which publicly exposed and identified Mr. Heal, individuals employed by the Town of Stoughton and/or the SPD were negligent.
288. Stoughton and the SPD are liable for the tortious acts of their employees on a theory of vicarious liability whereas the individual or individuals who disclosed the carelessly and partially redacted report were acting at all times within the scope of their employment.
289. Stoughton and/or the SPD failed to maintain and promote reasonable standards and training for employees on how and when, if ever, to produce private and protected personnel information and information related to investigations conducted by police, and in particular internal affairs investigations.
290. Stoughton and/or the SPD failed to maintain and promote reasonable and consistent standards for the redaction, protection, withholding, logging, or cataloging of private information that was not subject to public disclosure either under the public records laws

or any other internal rule, policy, standard, regulation, statute or other guidance, directive, or order.

291. At all times relevant, managers and supervisors and in particular the chain of command at SPD had a duty to supervise and manage employees and staff charged with managing records, producing public records and the decision and policy making process on whether to produce certain records.

292. In dereliction of that duty, managers, and supervisors and in particular, the chain of command at SPD breached that duty to supervise and so manage employees charged with the maintenance and management of said records in order to prevent private and non-public records or information from being released or leaked to the public either advertently or inadvertently.

293. Managers and Supervisors within and for the Town of Stoughton and/or the Stoughton Police Department breached their respective duties of care to Mr. Heal by failing to protect or redact his name or any other personal identifying information from the Internal Affairs Report that was produced to third-parties.

294. As a direct and proximate cause of these breaches of the duties of care owed by managers and supervisors to ensure that private, personal personnel information remains private, Mr. Heal suffered and sustained significant damages, including but not limited to damage to his reputation, lost wages, loss of earning capacity and the impugning of his standing to serve in his chosen career as a police officer.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count V for negligent supervision of the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney's fees.

COUNT VI - NEGLIGENT MISREPRESENTATION

(JOSHUA HEAL v. TOWN OF STOUGHTON AND STOUGHTON POLICE DEPARTMENT)

295. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.

296. At all times relevant, as Mr. Heal's employer, the Town of Stoughton owed Mr. Heal a duty of reasonable care as his employer.

297. At all times relevant, the Stoughton Police Department owed Mr. Heal a duty of reasonable care as a town employee.

298. On September 23, 2022, during a Press Conference, Chief Donna McNamara made statements and comments that expressly or impliedly implicated Mr. Heal in the conduct

that is alleged to have been perpetrated by the Defendants, Matthew Farwell, William Farwell, and Robert Devine, as set forth in the Second Amended Complaint.

299. At the time Chief McNamara made those statements and comments, she knew or should have known that the IA Investigation and resulting report did not implicate Mr. Heal in any wrongdoing whatsoever.
300. At the time Chief McNamara made those statements and comments, she knew or should have known that the statements and comments she made were verifiably false.
301. At the time Chief McNamara made those statements and comments, she knew or should have known that Mr. Heal was not a Stoughton employee until November 2016 when Ms. Birchmore was over the age of 16 and a consenting adult.
302. At the time Chief McNamara made those statements and comments, she knew or should have known that the IA investigation made no recommendations for any punishment or punitive action against Mr. Heal.
303. Despite being armed with this knowledge and her department's own IA report conducted by her own Deputy Chief, Chief McNamara made statements and comments that were disparaging, false, damaging and which misrepresented the facts found during the IA investigation.
304. The IA investigation and resulting report did not implicate Mr. Heal in having had sexual intercourse at any time with Sandra Birchmore.
305. The IA investigation and the resulting report did not imply, expressly or impliedly, that Mr. Heal had any inappropriate relationship with Sandra Birchmore prior to 2019 or when Ms. Birchmore was a minor under the age of 16.
306. The IA investigation and the resulting report did not implicate, expressly or impliedly that Mr. Heal groomed or participated in grooming Ms. Birchmore in order to engage in a repetitive pattern or scheme of an ongoing sexual relationship.
307. Notwithstanding that the IA investigation and resulting report did not implicate Mr. Heal in the investigation, on September 23, 2022, and while in the court of her business and duties as Chief of Police, Donna McNamara, implicated Mr. Heal as a wrongdoer and disclosed the fact that he was a police officer in another jurisdiction.
308. Chief McNamara supplied false information for the guidance of others in their business transactions, including the continued employment of Mr. Heal as a police officer or whether to engage Mr. Heal as an employee for any employment.
309. By supplying false and misleading information, Chief McNamara caused Mr. Heal substantial pecuniary loss by implying his implication in the IA Investigation into the death of Sandra Birchmore.

310. Other third parties, including the press, Kirk Minehane and Barstool Sports relied upon the false and misleading information to justify news coverage and content for podcasts which painted Mr. Heal in a false light.

311. By her comments and commentary, Chief McNamara failed to exercise reasonable care or competence in obtaining or communicating the information she conveyed to the public and the press during the press conference that took place on September 23, 2022.

312. In breach of said duty as set forth in the previous paragraph, Mr. Heal suffered significant and substantial damages.

313. At all times, Chief McNamara acted in the scope of her employment and was on duty.

314. As such, the Town of Stoughton is liable for the tortious acts of its employees.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count VI for negligent misrepresentation against the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney's fees.

COUNT VII

TORTIOUS INTERFERENCE WITH ADVANTAGEOUS BUSINESS RELATIONSHIP

(JOSHUA HEAL v. TOWN OF STOUGHTON AND STOUGHTON POLICE DEPARTMENT)

315. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.

316. At all times relevant, Mr. Heal had a contract or advantageous business relationship with the Town of Abington and served as a police officer having undergone extensive recruiting and training at the police academy.

317. At all times relevant, SPD knew of Mr. Heal's employment with the Town of Abington as a police officer.

318. At all times relevant, SPD failed to communicate to Mr. Heal's superior officers, to wit, Chief David Del Papa, that he was not the subject nor target of the SPD's Internal Affairs Investigation.

319. There is no written policy or procedure mandating that the Town of Stoughton or SPD communicate any information about Mr. Heal's prior employment or an internal investigation where Mr. Heal was not the target or subject of the investigation.

320. At all times relevant, Mr. Heal did not and had not provided Stoughton or SPD permission to share any information regarding his private personnel information regarding his prior employment.
321. By communicating information about the SPD Internal Affairs Investigation to Mr. Heal's new employer, the Town of Abington, SPD, and its employees tortiously interfered with Mr. Heal's employment with the Town of Abington.
322. At the conclusion of the investigation, SPD failed to tell Chief Del Papa or the Town of Abington directly that Mr. Heal was cleared because there was nothing to clear him from.
323. Mr. Heal was not implicated in the IA Investigation into the death of Sandra Birchmore.
324. Neither Stoughton nor SPD told anyone from Abington that Mr. Heal did not participate in nor engage in any of the alleged acts of grooming, sexual abuse or taking advantage of a young woman.
325. At the conclusion of the investigation, SPD failed to notify Chief Del Papa or the Town of Abington that there was no reason for Mr. Heal to not continue his work as an Abington Police Officer.
326. At all times relevant, there was no reason for Mr. Heal to be placed on administrative leave at any time nor was there any written policy that he be so placed on leave.
327. To the extent Mr. Heal was ever officially on administrative leave, neither Stoughton nor SPD advised APD that Mr. Heal was to be immediately reinstated from administrative leave.
328. There was no reason for SPD to communicate private personnel matters outside of the SPD.
329. SPD engaged in communications with the general public about Mr. Heal's employment as a police officer "at another agency."
330. There was no reason to communicate this fact during the press conference when Mr. Heal was not implicated in the IA investigation and resulting report.
331. Likewise, there was no reason for Deputy Chief Brian Holmes to communicate with Chief Del Papa regarding the IA investigation and resulting report when Mr. Heal was not implicated in the investigation.

332. By communicating in this fashion, employees of the Town of Stoughton and in particular, the Stoughton Police Department interfered with and jeopardized Mr. Heal's position as a police officer in the Town of Abington without just cause.

333. Said communications were made by improper means and with improper motive.

334. Despite Mr. Heal not having been implicated in the investigation into Ms. Birchmore's death, by their comments, conduct, behavior, statements and communications, the Town of Stoughton and in particular the Stoughton Police Department implicated Mr. Heal.

335. Once Ms. Birchmore's estate filed suit and Mr. Heal having been identified as an Abington Police Officer, Mr. Heal was forced to resign or otherwise separated from his employment as a police officer with the Town of Abington as he could no longer effectively serve as a police officer.

336. As a result of the tortious interference of the Town of Stoughton and in particular, the Stoughton Police Department, Mr. Heal suffered and sustained significant damages in the form of lost wages, loss of earning capacity, significant emotional distress, substantial and irreparable damage to his image, reputation, and likeness.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count VII for tortious interference with advantageous business relationships against the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney's fees.

COUNT VIII- DEFAMATION

(JOSHUA HEAL v. TOWN OF STOUGHTON AND STOUGHTON POLICE DEPARTMENT)

337. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.

338. On or about September 23, 2022, at a press conference and continuing thereafter, the Crossclaim Defendants, the Town of Stoughton and the Stoughton Police Department published, and caused to be published, false statements regarding Mr. Heal which implicated him in the IA investigation relative to the death of Sandra Birchmore.

339. The statements made, published, and communicated to the press and general public at the press conference concerning Mr. Heal or impliedly implicating him in the IA investigation are defamation per se.

340. The statements made, published, and communicated to the press and general public at the press conference concerning Mr. Heal or impliedly implicating him in the investigation are verifiably false.

341. On or about September 23, 2022, and continuing thereafter, the Crossclaim Defendants communicated and published these false statements to third parties, including the press and general public.

342. The false statements made, published, and communicated to the general public and the press damaged Mr. Heal's reputation in the community and severely damaged and ended his career as a police officer.

343. The false statements made, published, and communicated to the general public by the Crossclaim defendants caused significant and severe economic loss or is otherwise actionable without proof of economic loss.

344. At all times relevant, Mr. Heal had a contract or advantageous business relationship with the Town of Abington and served as a police officer having undergone extensive recruiting and training at the police academy.

345. At all times relevant, SPD knew of Mr. Heal's employment with the Town of Abington as a police officer.

346. By their tortious acts and conduct, the Crossclaim defendants have caused Mr. Heal's name, image, and likeness to be posted on the internet and subject of podcasts and unflattering and defamatory press articles.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count VIII for defamation against the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney's fees.

COUNT IX- INVASION OF PRIVACY

(JOSHUA HEAL v. TOWN OF STOUGHTON AND STOUGHTON POLICE DEPARTMENT)

347. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.

348. On or about September 23, 2022, at a press conference and continuing thereafter, the Crossclaim Defendants, the Town of Stoughton and the Stoughton Police Department released and caused to be released an IA report that was not redacted and that which identified Mr. Heal by name.

349. Additionally, at the press conference on September 23, 2022, Chief McNamara referred to Mr. Heal as a police officer working "for another agency."

350. At the time this information was released, Mr. Heal was not implicated in the IA investigation regarding the death of Sandra Birchmore nor would he be implicated at any time at that time or in the future.

351. The Crossclaim defendants' abject failure to protect identifying information, including the name, the place of employment and nature of employment of Mr. Heal constitute unreasonable, substantial, and serious interference with his privacy and his right to be left alone.

352. In addition to the gross invasion of privacy, the release of this information by the Crossclaim defendants implicated Mr. Heal. denied him due process, an opportunity to be heard and denied him equal protection of the laws.

353. By their tortious acts and conduct, the Crossclaim defendants have caused Mr. Heal's name, image, and likeness to be posted on the internet and subject of podcasts and unflattering and defamatory press articles.

354. As a result of these continued and tortious acts, Mr. Heal suffered and sustained damages.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count IX for invasion of privacy against the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney's fees.

COUNT X- NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

**(JOSHUA HEAL v. TOWN OF STOUGHTON AND STOUGHTON POLICE
DEPARTMENT)**

355. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.

356. At all times relevant, the Town of Stoughton and the SPD owed Mr. Heal a duty of reasonable care to keep personnel matters private and to protect those personnel matters from being disclosed to the public.

357. Additionally, at all times relevant, the Town of Stoughton and SPD had a duty of care to not disclose any information or insinuate that Mr. Heal was implicated as a target or the subject of the IA investigation into the death of Sandra Birchmore.

358. In breach of said duty, on or about September 23, 2022, at a press conference and continuing thereafter, the Crossclaim Defendants, the Town of Stoughton and SPD released and caused to be released an IA report that was not redacted and that which identified Mr. Heal by name.

359. Additionally, at the press conference on September 23, 2022, Chief McNamara referred to Mr. Heal as a police officer working “for another agency.”

360. At the time this information was released, Mr. Heal was not implicated in the IA investigation regarding the death of Sandra Birchmore nor would he be implicated at any time at that time or in the future.

361. The Crossclaim Defendants’ abject failure to protect identifying information, including the name, the place of employment and nature of employment of Mr. Heal were the direct and proximate cause of substantial emotional distress.

362. By their tortious acts and conduct, the Crossclaim Defendants caused Mr. Heal’s name, image, and likeness to be posted on the internet and subject of podcasts and unflattering press articles.

363. As a direct and proximate result of the Crossclaim Defendant’s negligence, Mr. Heal suffered and continues to suffer emotional distress including difficulty sleeping, anxiety and difficulty maintaining relationships, employment and living in a constant state of worry due to the Crossclaim Defendants’ conduct in having named and identified him in such a way so as to give the perception that he was the target or subject of the IA investigation regarding the death of Sandra Birchmore.

364. Under the circumstances of extreme stress, and under those circumstances described and set forth above, any reasonable person would have suffered severe and ongoing emotional distress under the circumstances of this case.

365. As a direct and proximate result of the Crossclaim Defendant’s negligence, Mr. Heal suffered significant and substantial damages.

WHEREFORE, Mr. Heal prays that the Court enter judgment for damages to be determined by a jury as to Count X for negligent infliction of emotional distress against the Town of Stoughton and the Stoughton Police Department together with costs and reasonable attorney’s fees.

COUNT XI - CONTRIBUTION

(ALL DEFENDANTS)

366. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.

367. A majority of the Plaintiff’s claims against Mr. Heal sound in tort.

368. Two or more persons or entities may become jointly liable in tort for the injuries alleged in the Second Amended Complaint.

369. The Defendant, Mr. Heal is entitled to contribution from the co-defendants/crossclaim defendants pursuant to G.L. c. 231B.

WHEREFORE, Mr. Heal prays the Court enter judgment on Count XI for contribution against the Crossclaim Defendants, jointly and severally, for those amounts in excess of his pro rata share of any liability that may be imposed, together with his costs and reasonable attorney's fees.

COUNT XII – INDEMNIFICATION

(ALL DEFENDANTS)

370. Mr. Heal realleges, repleads and reavers the allegations set forth above as if fully set forth herein.

371. Mr. Heal did not meet Ms. Birchmore until 2019 when she was over the age of consent.

372. Mr. Heal did not join in the negligent acts alleged in the Complaint.

373. Mr. Heal did not engage or join in the conspiracy as alleged in the Complaint.

374. Mr. Heal did not engage in grooming activities or conduct, nor was he involved in or had anything to do with the Stoughton Police Explorers Program.

375. Any sexual encounter Mr. Heal is alleged to have engaged in was purely consensual between two consenting adults.

376. Any sexual encounter Mr. Heal is alleged to have engaged in is not actionable criminally or civilly.

377. Mr. Heal is without fault for the allegations alleged in the Complaint.

378. At all times relevant, Mr. Heal was and is compelled by operation of law to defend himself against the wrongful acts of Matthew Farwell, William Farwell, and Robert Devine.

379. As such, the Crossclaim Defendants are liable to Mr. Heal on a theory of common law indemnification permitting him to recover the entire amount of his loss, including his reasonable attorney's fees in accordance with G.L. c. 231B §1.

WHEREFORE, Mr. Heal prays the Court enter judgment on Count XII for indemnification and enter an order ordering the Crossclaim Defendants, jointly and severally, for those amounts in excess of his pro rata share of any liability that may be imposed, together with his costs and reasonable attorney's fees.

JURY DEMAND

Mr. Heal demands a trial by jury on all issues so triable.

Respectfully submitted,

JOSHUA HEAL

By his attorney,

Peter S. Farrell

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Date: May 1, 2023

CERTIFICATE OF SERVICE

I, Peter S. Farrell, counsel for the Defendant, Joshua Heal, certify that on this 1st day of May 2023, I served a copy of the foregoing upon all counsel of record as set forth below, by serving a copy via email as follows:

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