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2011 SEP 21 PM 1:42

DURHAM COUNTY C.S.C.

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FRANKIE DELANO WASHINGTON and FRANKIE DELANO WASHINGTON, JR.,
Plaintiffs,

v.

TRACEY CLINE, ANTHONY SMITH, WILLIAM BELL, JOHN PETER, ANDRE T. CALDWELL, MOSES IRVING, ANTHONY MARSH, EDWARD SARVIS, BEVERLY COUNCIL, STEVEN CHALMERS, PATRICK BAKER, THE CITY OF DURHAM, NC, and THE STATE OF NORTH CAROLINA,
Defendants.

11-CV-__________

COMPLAINT
&
DEMAND FOR A JURY TRIAL

Dated: September 21, 2011

Respectfully submitted by:
EKSTRAND & EKSTRAND LLP

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STATE OF NORTH CAROLINA
DURHAM COUNTY

THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FRANKIE DELANO WASHINGTON and FRANKIE DELANO WASHINGTON, JR.,

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COMPLAINT
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DEMAND FOR A JURY TRIAL

Dated: September 22, 2011

Respectfully submitted by:

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THE PARTIES

A. Plaintiffs

1. FRANKIE DELANO WASHINGTON, SR., is an African-American citizen and resident of Durham County, North Carolina.[1]

2. FRANKIE DELANO WASHINGTON, JR., is the only son of Frankie Washington, Sr. He is a citizen and resident of Orange County, North Carolina.

B. Defendants

1. The City Defendants

3. TRACEY CLINE is, and at all times relevant to this action, was either the elected District Attorney or an Assistant District Attorney in North Carolina's Fourteenth Prosecutorial District. The State of North Carolina is sued only based upon Plaintiffs' official capacity claims against Cline. At all times relevant to this action, Defendant Cline was a citizen and resident of North Carolina.

4. THE CITY OF DURHAM, NORTH CAROLINA, is a municipal corporation formed under the laws of North Carolina. The City of Durham operates and controls the Durham Police Department, including its District patrol officers and investigators, which is the city department having law enforcement authority in the City of Durham. Upon information and belief, the City of Durham has waived its governmental immunity pursuant to N.C. Gen. Stat. § 160A-485 by purchasing liability insurance, participating in a local government risk pooling scheme, and/or establishing a funded reserve for the declared purpose of waiving the City's governmental immunity.

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[1] For purposes of this Complaint, Frankie Washington, Sr. is referred to as "Plaintiff" or "Frankie Washington," and his son, Frankie Washington, Jr. is referred to as "Plaintiff Frankie Washington, Jr."

2. The Supervisory Defendants

5. EDWARD SARVIS was, at all times relevant to this action, employed by the City of Durham as the Commander of the City Police Department's Patrol District 2. In that capacity, Sarvis was a supervisory official with final policymaking authority for the City over the Investigator Defendants and their investigation of the Breeze Home Invasion and Frankie Washington. Sarvis is a citizen and resident of North Carolina.

6. BEVERLY COUNCIL was, at all times relevant to this action, the Commander of the Uniform Patrol Bureau for the Durham Police Department. In that capacity, Council was a supervisory official with final policymaking authority for the City over the operations of all of the City's uniform patrol officers and districts, including the investigation of the Trinity Park Rapes and the investigation and prosecution of Frankie Washington. Subsequent to the events alleged herein, Council's employment was abruptly terminated by the City in connection with allegations that Council defrauded the City by filing false claims for compensation for work she claimed to have performed but did not. Upon information and belief, Council is a citizen and resident of North Carolina.

7. STEVEN CHALMERS was, at all times relevant to this action, employed by the City of Durham as the Chief of the City's Police Department. In that capacity, Chalmers was a supervisory official with final policymaking authority for the City over the Trinity Park Rapist Task Force, its investigation of the Trinity Park Rapes, and the investigation and prosecution of Frankie Washington. Upon information and belief, Chalmers is a citizen and resident of North Carolina.

8. PATRICK BAKER was, at all times relevant to this action, employed by the City as its City Manager. In that capacity, Baker was a supervisory official with final policymaking authority for the City over the Trinity Park Rapist Task Force, its investigation of the Trinity Park Rapes, and the investigation of Frankie Washington. Upon information and belief, Baker is a citizen and resident of North Carolina.

9. Collectively, Defendants Sarvis, Council, Chalmers, and Baker are referred to herein as the "Supervisory Defendants."

3. The Investigator Defendants

10. WILLIAM BELL was employed by the City of Durham as a Sergeant assigned to the City's Patrol District 2 at the time of Frankie Washington's arrest and

incarceration. In that capacity, Bell was a supervisory official responsible for the City's patrol officers assigned to District 2, including the Investigator Defendants, and was a City official with final policymaking authority over the initial investigation of the Breeze Home Invasion, the seizure of Frankie Washington, the "drive-by" identification procedure used to fabricate probable cause to initiate and maintain the criminal proceedings against Mr. Washington, and the decision to initiate those criminal proceedings. Defendant Bell retired from the City's Police Department in June of 2002. Upon information and belief, Defendant Bell is and was, at all relevant times, a citizen and resident of North Carolina.

11. JOHN PETER was, at all times relevant to this action, employed by the City of Durham as a Sergeant assigned to the City's Patrol District 2. In that capacity, he served as a supervisory officer responsible for the patrol officers assigned to District 2, including the Investigator Defendants. In that capacity, Sgt. Peter was a City official with final policymaking authority over the conduct of the investigation of the Breeze Home Invasion and the indictment and maintenance of the criminal proceedings initiated against Plaintiff. Defendant Peter also participated as a member of the Durham Police Department's Trinity Park Rapist Task Force. Upon information and belief, Defendant Peter is a citizen and resident of Durham County North Carolina.

12. ANDRE CALDWELL was, at all relevant times, employed by the City of Durham as a patrol officer assigned to the Police Department's Patrol District 2. On the night of the Breeze Home Invasion, Defendant Caldwell was assigned to Beat 214, within which the Breeze home was located. Upon information and belief, Defendant Caldwell was a member of the City's Trinity Park Rapist Task Force. Upon information and belief, Caldwell is a citizen and resident of North Carolina.

13. MOSES IRVING was, at all times relevant to this action, employed by the City of Durham as an officer in the City Police Department's K-9 Unit. In that capacity, he was dispatched to investigate the Breeze Home Invasion by conducting a K-9 track of the suspect soon after he fled from the Breeze home. Upon information and belief, Defendant Irving is a citizen and resident of North Carolina.

14. ANTHONY MARSH was, at all relevant times, employed by the City of Durham as a Sergeant in the City's Police Department and as the officer in charge of the Department's Trinity Park Rapist Task Force. In that capacity, he was a supervisory officer responsible for the investigations of the Trinity Park Rapes,

including the Breeze Home Invasion, and for the Trinity Park Task Force and its member officers. At all times relevant to this action, Defendant Marsh was acting with original or delegated final policymaking authority over the investigations alleged in this Complaint, including all matters relating to the forensic testing of evidence collected in those investigations. Upon information and belief, Marsh is and was, at all times relevant to this action, a citizen and resident of North Carolina.

15. ANTHONY SMITH was, at all times relevant to this action, employed by the City of Durham as a violent crimes detective in the City's Criminal Investigations Division. Defendant Smith was the lead investigator assigned to the City Police Department's investigation of the Breeze Home Invasion. In that capacity, Defendant Smith was a City official with final policymaking authority over that investigation, including the Police Department's compliance with the trial court's Order compelling specific forensic tests of the evidence in the Breeze Home Invasion. Defendant Smith was also a member of the Durham Police Department's Task Force assembled to investigate the Trinity Park Rapes. Smith was the Police Department's lead detective assigned to the investigation of the Breeze Home Invasion, the subsequent court proceedings in the prosecution of Mr. Washington, and he attended every day of Frankie Washington's trial. At all times relevant to this action, Defendant Smith acted with delegated final policymaking authority over the forensic testing of evidence collected in those investigations. Upon information and belief, Smith is a citizen and resident of North Carolina.

16. UNKNOWN TASK FORCE DEFENDANTS. Several unknown officers employed with the City Police Department and other law enforcement entities participated in the task force created by the City to identify and apprehend the Trinity Park Rapist. Those officers and entities may be named in their individual and/or their official capacities when information relating to their identity and role in the task force becomes available to the Plaintiffs in the course of this action.

17. Defendants Bell, Peter, Caldwell, Irving, Smith and Marsh are sometimes referred to herein collectively as "the Investigator Defendants."

JURISDICTION & VENUE

18. The Court has subject matter jurisdiction over this action because the claims asserted herein arise under the constitution and laws of the State of North Carolina.

19. The Court has personal jurisdiction over the parties because they all reside and/or conduct business in the State of North Carolina, and all defendants engaged in the conduct complained of herein within the State of North Carolina.

20. Venue is proper in Durham County pursuant to N.C. Gen. Stat. §1-77(2) because this action is brought against the City of Durham and against Durham public officers or persons for acts done by virtue of and in connection with their office.

21. This action is properly brought in the Superior Court Division of the General Court of Justice because the amount in controversy exceeds $10,000.00, exclusive of interest and costs.

FACTUAL ALLEGATIONS

A. TRINITY PARK, WALLTOWN, AND THE CREEK THAT RUNS THROUGH THEM

22. A creek runs through Trinity Park and Walltown, two neighborhoods adjacent to Duke University's East Campus in Durham, North Carolina.

23. The creek bed is deep; ten to fifteen feet deep in places. Typically, it is dry, and one can easily walk the length of it on foot.

24. The creek winds through Trinity Park until it reaches Walltown Park and turns back down into the Walltown neighborhood. From Walltown Park, the creek runs directly to the back yard of the home where Lawrence Hawes grew up with his grandmother and where he lived when crimes that came to be known as the Trinity Park Rapes were committed.

B. LAWRENCE HAWES

25. Lawrence Hawes is a serial rapist.

26. From the age of two, Hawes lived with his grandmother in her home at 1017A Sedgefield Street in Walltown, just north of Trinity Park.

27. Throughout his adult life, when Hawes was not incarcerated for sexual offenses he committed in and around Trinity Park, he was committing home invasions and sexual assaults in Trinity Park.

28. Hawes' criminal conduct began at a very early age. The public record of Hawes' home invasions and sexual assaults begins on the very first day that any public record of his criminal propensities could possibly exist: the day he turned 16 years old, September 13, 1982, when he perpetrated a home invasion for which he was convicted of felonious breaking and entering of a dwelling.

29. Over the next six years, from 1982 to 1988, when Hawes was not incarcerated, he was engaged in a pattern of home invasions and sexual assaults in and around Trinity Park. Hawes' home invasions and sexual assaults ceased in 1988 when Hawes was incarcerated on a 40 year active sentence for raping and beating a Duke Student in her dorm on Duke's East Campus, adjacent to Trinity Park.

30. Hawes became eligible for release after serving 14 years of his 40-year sentence, and returned to live with his grandmother on Sedgefield Street. Hawes registered as a sexual offender, and identified his grandmother's home as his residence. He lived in an apartment that had a separate entrance in the back of the house overlooking Walltown Creek.

31. Beginning shortly after Hawes returned to his grandmother's home on Sedgefield Street and ending with Hawes' arrest for burglary and rape in September of 2002, reports of home invasions in Trinity Park resumed, all committed in the same way that Hawes committed the same crimes in the same area until he was incarcerated on charges of rape and burglary in 1988. All of the Trinity Park home invasions and sexual assaults in 2002 occurred within a small radius of Hawes home, including:

- **a.** January 10, 2002, on the 400 block of Gregson Street;

b. February 20, 2002, on the 600 block of Buchanan Street;

c. March 7, 2002, on Englewood Avenue;

d. April 1, 2002, on the 2800 block of Guess Road;

e. May 30, 2002, at 911 Gregson Street (the Breeze Home Invasion);

f. July 1, 2002, on the 800 block of Wilkerson Avenue;

g. July 17, 2002, on the 1400 block of Carolina Avenue;

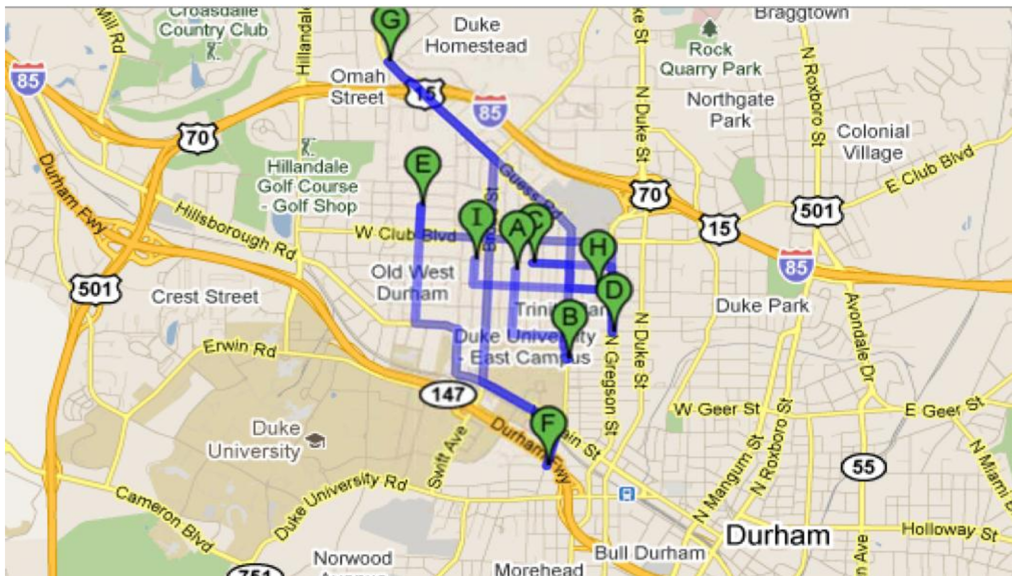
h. August 7, 2002, on the 1100 block of Iredell Street;

i. August 17, 2002, on Knox Street;

j. August 23, 2002, on the 1400 block of Carolina Avenue; and

k. September 5, 2002, on the 800 block of Wilkerson Avenue.

32. The Trinity Park Rapes all occurred within a short radius of Hawes' home on Sedgefield Street:



33. The Trinity Park home invasions and sexual assaults in 2002 were all committed in the same way. In each one, the attacker identified women in the Trinity Park neighborhood alone, often returning to their homes late at night. When the women were inside of their home, the attacker would enter through an open door or window, confront the woman with a deadly weapon and wield it to force her submission to the

sexual assault that ensued. Before leaving, the attacker would demand cash and valuables that he could carry. He would force his victims to remain inside the home while he fled on foot.

34. The victims reported nearly identical physical descriptions of their attacker: the attacker was a tall, thin African-American male with a light complexion. He concealed his facial features behind a bandana that covered his mouth and nose, and he wore a cap to cover his head. Only "a sliver" of his face – the area around his eyes – was visible. And the victims reported that the attacker was careful to remain behind them throughout the encounter.

35. By way of illustration, the Englewood Avenue Home Invasion on March 7, 2002, was committed in precisely that way. The victim reported that she was alone in her home late at night when she was roused from sleep by a noise. She opened her eyes to find a tall, thin African-American male standing over her. He wore blue jeans and hooded sweatshirt. His face was covered by a dark colored bandana and his head was covered with the hood of his sweatshirt. The victim could only see the sliver of his face around his eyes. The attacker was holding a sawed-off shotgun, which he aimed at her, and ordered her to stand up. When she did, the attacker stood behind her and threatened to kill her if she looked at him. He directed her to lead him to her bedroom, where he sexually assaulted her. Before leaving, the attacker demanded that the victim show him where she kept her purse and valuables. After taking what he could carry, he forced her to lie face down on the floor, and told her to count to seventy-five before getting up. He left the home and fled on foot.

36. It was plainly obvious from the striking similarities among the 2002 Trinity Park home invasions and sexual assaults that they were committed by the same person. And, as the assaults continued month after month within the small confines of Trinity Park, the City's policymakers were under increasingly intense pressure from the well-organized citizen groups of Trinity Park to apprehend the rapist.

37. By the time of the Breeze Home Invasion on 30 May 2002, the pattern of home invasions and sexual assaults in Trinity Park had become known as the Trinity Park Rapes and their perpetrator had become known as the Trinity Park Rapist.

C. THE BREEZE HOME INVASION

38. At around 3:00 a.m. on 30 May 2002, sixteen-year-old Katherine Breeze ("Katherine") was returning to her home at 911 North Gregson Street in the Trinity Park. Katherine entered her home neighborhood of Durham through a sliding door on the side of the house. She did not lock the door as she came in.

39. Mary Breeze ("Mrs. Breeze"), Bill Breeze ("Mr. Breeze") and their twelve-year-old son, William Breeze ("Will Breeze"), were asleep upstairs.

40. Shortly after Katherine entered her home, tall, thin, African-American male wearing blue jeans entered behind her. He entered through the sliding glass door Katherine had closed, but left unlocked. He was carrying a sawed-off, pistol-grip shotgun. The attacker masked his face with a dark blue bandana and covered his head with a dark colored toboggan cap, leaving only a sliver of his face around his eyes exposed. He was not wearing gloves.

41. Katherine's parents and brother awoke when the family's dog began barking at the attacker.

42. Without putting on his glasses (he wore trifocals), Mr. Breeze rushed downstairs to see why the dog was barking. When he reached the bottom landing of the stairs, the attacker pointed his shotgun at Mr. Breeze's face.

43. Mrs. Breeze heard Mr. Breeze remonstrating with the attacker downstairs, and left the bedroom to see what was happening. She, too, wore glasses and forgot to put them on. So when Ms. Breeze looked down the staircase, she could discern only the figure of a man holding a shotgun to her husband's head. She screamed.

44. At that, her son, Will, came out of his bedroom and stood with her on the second floor overlooking the landing where the attacker held Mr. Breeze at gunpoint. Katherine Breeze stayed in her room and called 911.

45. The attacker saw Mary and Will at the top of the staircase. As the attacker climbed the stairs towards them, Mr. Breeze ran out of the house to summon help from his neighbors. The attacker confronted Will and Mrs. Breeze at the top of the stairs, directed them to turn their backs to him and not to look at him, and threatened to kill them if they did not comply.

46. The attacker pushed Will onto a couch, and, directed Ms. Breeze to continue walking, still holding his gun to the back of her head. Once inside the den, the attacker shut the door, and forced his hand into Mrs. Breeze's underpants. Because Mrs. Breeze had just undergone surgery, she had several drain lines attached to the surgical sites. When the attacker noticed them, Ms. Breeze said, "If you're not careful, you're going to kill me." The attacker then abandoned the sexual assault, and ordered Mrs. Breeze to tell him where she kept her cash.

47. Mrs. Breeze handed her purse to the attacker. The purse contained approximately $150 cash, a wallet, a palm pilot ("PDA"), and several accessories for the PDA. The attacker then left the home through the side door onto West Markham Avenue carrying Mrs. Breeze's purse and his shotgun.

48. Mr. Breeze was on West Markham Street at the time, and the attacker confronted him there. With the sawed-off shotgun pointed directly at Mr. Breeze's face, the attacker directed Mr. Breeze to go back inside the house. When Mr. Breeze refused, the attacker hit his face hard with either his fist or his shotgun (Mr. Breeze would be unable to remember which).

49. Mr. Breeze watched the attacker flee on foot, first heading west on Markham Street towards Duke University's East Campus, and then north onto Watts Street, where Mr. Breeze lost sight of him.

4. The Breezes Described a Tall, Thin, Youthful Attacker, Eliminating Frankie Washington as a Plausible Suspect.

50. The Breezes called 911. The 911 call taker obtained descriptions of the attacker from every member of the Breeze family shortly after the attacker fled. Katherine could offer nothing because she had not seen the attacker at all. Will recalled only that the attacker "had a blue thing over his face." Mary Breeze reported only that the attacker was an African-American male, about 6-feet tall with a "slight" frame, that he wore blue jeans, a dark colored bandana covering his face and a cap covering his head, and that he was distinctively young – between 20 and 25 years old. Mr. Breeze reported that the attacker was fleeing on foot and was heading north carrying his wife's purse and a sawed-off shotgun.

51. As the Breezes reported this description to the 911 call taker, Frankie Washington had just left his girlfriend's apartment, located northwest of the Breeze Home, and was walking south toward Trinity Park.

5. The K-9 Officer Eliminated Frankie Washington

52. The Durham patrol officers who first responded to the Breeze home summoned Lars, a K-9 officer, to the scene. The K-9 Officer, named Lars, arrived shortly thereafter with his handler, Officer Moses Irving. Irving led Lars to the location where Mr. Breeze indicated the attacker had confronted him on Markham Street just before he fled.

53. Lars hit on the attacker's scent and chambered it. Lars then began tracking the attacker's scent steadily along the same route that Mr. Breeze reported the attacker took when fleeing: west on Markham Avenue towards Duke's East Campus, then north on Watts Street.

54. As Lars tracked the scent steadily northward, the patrol officers searching for the attacker moved the perimeter in that direction. Defendant Bell was beyond the perimeter in his patrol car.

55. Lars continued to track the attacker's scent north on Watts Street, then west onto Green Street for a short distance, and then north again onto an unpaved alley called Alley 6. Alley 6 runs directly to the Walltown Park entrance, where Walltown Creek intersects with the park. Later that day, Police would find the attacker's toboggan cap in a trash can in Alley 6, and they would find the attacker's pistol-grip shotgun, his blue bandana, Mrs. Breeze's purse, PDA and attachments in the creek bed where it intersects with Walltown Park and begins to turn back down into Walltown and runs directly to Lawrence Hawes' back yard on Sedgefield Street.

56. While Lars was tracking the attacker's scent northbound along Alley 6, Sgt. Bell advised all units involved in the search that he had detained an African-American male on Berkeley Street who, Bell claimed, "fit the description of the suspect." The individual in Bell's custody was Frankie Washington.

57. Although Lars was tracking the attackers' scent several blocks to the east and in the opposite direction that Frankie Washington was walking, Sgt. Bell, ordered Officer Irving to transport Lars to his location on Berkeley Street to see Frankie's scent matched the scent that Lars had chambered. If it did, Lars would leave no doubt of

that in anyone's mind; Lars would have to be restrained from attacking Mr. Washington.

58. Officer Irving complied with Bell's order, and transported Lars to Berkeley Street by car. Irving parked near Bell and Washington on Berkeley Street, and released Lars from his vehicle. Lars saw Frankie, approached him, and moved on in an obvious effort to locate the attacker's scent and resume his track.

6. Washington Cooperated Fully With the Police.

59. Bell did not release Frankie Washington after Lars failed to detect the attacker's scent on or around him. Bell continued to interrogate Frankie. Aware of his privilege against self-incrimination, Frankie never invoked it. Rather, Frankie answered all of Defendant Bell's questions, explained that he was an auto mechanic, where he worked, where he lived, where he was coming from, and where he was going.

60. Officer Bell then directed Mr. Washington to empty his pockets, and, again, Mr. Washington cooperated with Bell's command. Bell found nothing in Frankie's pockets connecting Mr. Washington with the Breeze Home Invasion; Frankie did not have any of the items stolen with Ms. Breeze's black bag, not even the cash.

61. Frankie implored Sgt. Bell to go to his girlfriend's apartment to confirm he had been there and had just left. Bell refused.

62. Defendants Searched the Area Surrounding the Location Where Washington Was Detained and Found No Evidence Connected to the Breeze Home Invasion

63. Bell directed the Investigator Defendants to search the area surrounding the location where Mr. Washington was detained and arrested. They also searched along the route Mr. Washington had been traveling.

64. The Investigator Defendants and Lars found no evidence of the attacker's presence in the area surrounding Frankie or along the route he had been walking before Sgt. Bell detained him.

65. Lars continued searching for the attackers' scent until, far away from where Washington was still being detained, Lars located the attacker's scent in the creek bed of Walltown Creek, and resumed tracking it from there. Lars' handler, Defendant Irving, explained that Lars was giving clear indications that the attacker had recently

traveled along the creek bed and that at some point the attacker remained in one spot for a considerable amount of time, as though the attacker had recently been "hiding out" there.

7. Knowing That No Evidence Connected Mr. Washington to the Breeze Home Invasion Defendants Fabricated It.

66. Defendants Bell, Peter, Caldwell, Irving, and other Investigator Defendants involved in the search for the attacker all knew that no evidence connected Frankie Washington to the Breeze Home Invasion, and that the evidence that they had eliminated him as a plausible suspect. Among other things, those Defendants knew:

a. The attacker was "tall and slight," Frankie is short and stocky;

b. The attacker was at least 6-feet tall; Frankie is 5'6" with his shoes on;

c. The attacker was between 20 and 25 years old; Frankie was 41 years old at that time;

d. The attacker was "distinctively young" in appearance; Frankie was a laborer all his life and an auto mechanic at that time – there was nothing "distinctively young" about his appearance or manner;

e. Frankie was detained several blocks away from the path on which Lars was tracking the attacker's scent

f. Frankie was walking south towards the Breeze Home; the attacker was running north, away from it;

g. Mr. Washington had no cash on him; the attacker had just stolen $150.00 in cash as he left the Breeze Home

h. Frankie had none of the other valuables the attacker stole from Mrs. Breeze; the attacker had fled carrying all of her valuables in her purse;

i. Frankie had no gun; the attacker fled the crime scene carrying the sawed off shotgun that he brought with him;

j. Frankie's shoes and pants were not wet, muddy or dirty; the attacker had fled along the creek bed and had been in it for a considerable time;

k. Frankie had no toboggan and no bandana; the attacker fled north on Watts Street wearing both; and

l. Lars located and tracked the attacker's scent both before and after he was taken to where Frankie Washington was detained; yet Lars did not detect the attacker's scent on Frankie or anywhere around where he was or had been before Bell detained him.

67. Aware of these facts, Sgt. Bell and the Investigator Defendants knew that there was no probable cause to believe Mr. Washington was the attacker in the Breeze Home Invasion. Nevertheless, Sgt. Bell arrested Frankie Washington, handcuffed him, and put him in the back of his patrol car.

68. Bell then summoned his subordinate officers who agreed to fabricate probable cause arrest and charge Frankie Washington with the crimes committed in the Breeze Home Invasion. They agreed to fabricate probable cause by manufacturing false identification evidence through what they called a "drive-by" identification procedure.

69. The "drive-by" identification procedure was employed by officers of the Durham Police Department under such circumstances frequently enough that the Investigator Defendants executed it with no specific instructions from Bell.

70. Pursuant to the "drive by" identification procedure, Defendant Caldwell returned to the Breeze home, informed the family that a suspect was in custody in the back of Sgt. Bell's patrol car, that the suspect fit their description of the attacker, and that police needed the Breezes to identify the suspect as the attacker. Bill, Mary, and Will Breeze agreed.

71. Defendant Caldwell then drove the Breezes to Mr. Washington's location. Caldwell told them they could remain inside Caldwell's patrol car as Sgt. Bell pulled Frankie Washington out of the back of his patrol car. Frankie saw Caldwell's vehicle approaching him, and watched as it slowed down to a near stop more than a hundred yards away and then turn around and drive off.

72. Inside Caldwell's vehicle, Caldwell asked Bill and Mary Breeze if they could identify the African-American male that Sgt. Bell's had pulled from the back seat of his vehicle in handcuffs was their attacker. In the dark of night, from that distance and while ensconced in the back seat of a patrol car, the Breezes haltingly said that they thought so. Defendant Caldwell then returned the Breezes to their home.

73. Based on that manufactured identification of Frankie Washington, Defendant Bell transported Frankie to the Durham County Jail and charged him with the crimes committed in the Breeze home invasion. The magistrate ordered that Frankie would remain incarcerated in the Durham County Jail until he posted a bond in the amount of $1 million.

74. Frankie Washington would not be tried on those charges for nearly five years.

75. In the intervening four years and nine months, the Investigator Defendants and the Durham Police Department agreed not to conduct any legitimate or otherwise non-suggestive eyewitness identification procedures. They also agreed to conceal the evidence of their fabrication of the identification evidence and to interfere with and otherwise obstruct the SBI Lab's production of contradictory forensic identification evidence.

76. During the subsequent four years and nine months, Defendants and other parties to the unlawful agreement acted in furtherance of the agreement by, for example, interfering with a court order directing them to transfer evidence to the SBI for forensic testing, interfering with the SBI's efforts to conduct tests that the Court specifically ordered, preventing the SBI Lab from comparing Frankie Washington's DNA and fingerprints with DNA and fingerprints found on evidence collected in the investigation of the Breeze home invasion, and caused the SBI to deviate from its established protocol requiring its agents to run any unidentified DNA or fingerprint found on evidence submitted to the SBI with the DNA profiles and fingerprints stored in the State's CODIS and AFIS databases.

77. As a result of those and other acts in furtherance of the Defendants' conspiracy plaintiff was deprived of rights guaranteed by the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of the North Carolina Constitution.

78. As a result of those constitutional deprivations, Plaintiff suffered all of the compensable harms alleged herein.

8. Defendant's "Drive-By" Identification Procedure Violated Clearly Established Constitutional Standards.

79. The Defendants' "drive-by" identification procedure did not merely create a substantial likelihood of irreparable misidentification, the procedure was designed and intended to produce an irreparable misidentification, particularly under these circumstances. By way of illustration:

a. Every witness who participated in the procedure had no opportunity whatsoever to view the perpetrator's face at the time of the crime;

b. No witness who participated in the procedure had either the opportunity or ability to exercise any degree of attention upon the intruder's facial characteristics; they could only ascertain his height and body type.

c. Every witness who participated in the procedure described the attacker as tall (6-feet tall) and thin (or slight); yet Frankie Washington is short and stocky (5' 6" with his boots on).

d. Every witness who participated in the procedure described their attacker was taller than themselves; yet all of them are taller than Frankie Washington. (This problem was also avoided by the design of the "drive-by" which allowed the witnesses to view Mr. Washington from a sitting position in the back of a police vehicle at a considerable distance from him.)

e. No witness conveyed certainty in their identification of Frankie Washington as the perpetrator during the "drive-by identification procedure." Yet, foreseeably, five-years later, the same witnesses later conveyed great certainty in their in-court identifications of Plaintiff.

80. Knowing those facts and aware that a non-suggestive identification procedure would impugn the identification evidence manufactured in the "drive-by" procedure, Cline and the City Defendants agreed not to conduct a reliable identification procedure in the four years and nine months between Plaintiff's arrest and his trial. In furtherance of that agreement, the City Defendants conducted no reliable

identification procedures during that time. They declined to do so despite the fact that, throughout that time, there was no probable cause to believe that Frankie Washington committed the Breeze Home Invasion and that there was overwhelming evidence that Lawrence Hawes did. And throughout those nearly five years, the City Defendants had ensured that Frankie was either incarcerated or subject to a strict release order through which they could compel him to submit to any number of non-testimonial identification procedures at any time.

81. Further, knowing that forensic testing of the evidence collected in the Breeze Home Invasion would similarly impugn their fabricated identification evidence, Cline and the City Defendants agreed to prevent such forensic testing from being conducted. In furtherance of their unlawful agreement to conceal their fabrication of evidence and to obstruct justice, Cline and the City Defendants, individually and in concert, engaged in overt acts to defy court orders compelling the City Defendants to obtain specific forensic identification tests on the evidence collected in the Breeze Home Invasion. They also willfully defied the same court orders by refusing to provide reports of the limited tests that were eventually conducted to the defense when the results were available, if at all.

82. Defendants entered into these conspiracies and acted in furtherance of them with the purpose of covering up their fabrication of probable cause to support the arrest and initiation of criminal proceedings against Frankie Washington. Cline's and the City Defendants' reckless and callous disregard of public justice in this State and their deliberate indifference to the deprivation of Plaintiff's fundamental rights evinced their malice, spite, and ill-will toward Plaintiff.

83. Knowing of their subordinates' misconduct and their conspiracy to cover it up and obstruct justice further in the criminal proceedings they initiated against Frankie Washington, the Supervisory Defendants ratified and condoned it. They did so aware of the substantial likelihood that their subordinates' misconduct would cause other and further deprivations of Frankie Washington's constitutional rights, including his right to a speedy trial. Knowing these things, the Supervisory Defendants turned a blind eye and did nothing. They did not reeducate, retrain, discipline, terminate or otherwise reduce the high probability that their subordinates would continue to engage in constitutional violations. The Supervisory Defendants' response evinced their deliberate indifference to the substantial likelihood that their subordinates would lead to the deprivation of Plaintiff's federal rights.

9. Police Found Evidence of the Breeze Home Invasion in Alley 6 and the Creek Bed at Walltown Park

84. On the day of the Breeze Home Invasion, 30 May 2002, a neighborhood boy reported to Durham Police that a sawed off shotgun had been left in Walltown Creek, where the creek intersects with Walltown Park.

85. The boy led investigators to the creek bed at the entrance of Walltown Park, and in the creek bed, Police found the Mossberg sawed-off shotgun that the attacker used in the Breeze Home Invasion. Near the shotgun, police found the attacker's dark blue bandana, and Mary Breeze's purse, her wallet, her PDA, and the attachments she reported were in her purse when the attacker stole it. The only thing missing from her purse was the cash. City police also found fecal matter among those items. Police believed the fecal matter had been left by the attacker as well.

86. The black toboggan the attacker wore was found in a trash can in Alley 6 – the same alley along which Lars tracked the attackers' scent. That evening, Mary Breeze reported that she found a cigarette butt she believed must have been smoked by the attacker because, no one in her home (nor any of their guests) ever smoked in her home.

87. That same day, Defendant Smith met with Frankie Washington in the Durham County Jail. Smith asked Frankie if he would submit to a suspect kit (the collection of his head hair, pubic hair, cheek swab, and a blood sample to obtain his DNA profile). Smith advised Frankie that they would compare his DNA with genetic material found in the clothing the attacker wore and other evidence collected that day.

88. Frankie enthusiastically agreed to submit to the suspect kit. Frankie believed that Defendant Smith had collected evidence with the attackers' genetic material, and Frankie told Defendant Smith that, if DNA can convict you, it can also set you free. Believing that the gun, bandana, toboggan, cigarette butt, and the black bag (as well as all of its contents) would likely contain the attacker's genetic material and fingerprints, a simple comparison to his own would end the ordeal for him. In other words, Frankie, as told Smith, he was certain that DNA tests would prove his innocence.

89. Instead of a prompt exoneration through DNA testing, the DNA testing did not occur because Defendants refused to request it, even in direct violation of a court order to do so. As a result, Washington remained in the Durham County Jail subject

to his exorbitant bond condition for over a year, and he remained subject to a release order and the pending felony charges for almost five years.

90. After several motions produced incremental reductions to the $1 Million secured bond, the trial court set Frankie's bond requirement was ultimately reduced to $ 37,500.00 on 7 May 2003. Mr. Washington was able to retain a bondsman to post a bond in that, and was released from the Durham County Jail soon thereafter, although he remained subject to all the conditions of his pretrial release order and the limitations the order imposed on his freedoms. Four more years would pass before Frankie would be brought to trial.

10. City Officials with Final Policymaking Authority over Forensic Testing in the City's Police Investigations Delegated That Authority To Defendant's Smith And Cline.

91. Cline was assigned to prosecute the Trinity Park Rape cases in the summer of 2002, Cline contacted Durham Police officials, who, upon information and belief, included the Supervisory Defendants, and they agreed that Cline would direct or help direct the police investigation.

92. Long before Frankie Washington's case came to trial in February of 2007, Cline was well aware of the facts pointing to Frankie Washington's innocence and Lawrence Hawes' guilt for the crimes committed in the Breeze Home Invasion. Her knowledge came directly from her own prosecution of Hawes for the March Trinity Park Rape and Home Invasion on Englewood Avenue.

93. Cline also knew that the manner in which all of the Trinity Park Rapes and Home Invasions were committed was uncannily similar, including the Breeze Home Invasion. Cline knew that they were so similar, in fact, that Cline used evidence of Hawes' perpetration of one of the Trinity Park Rapes to prove that Hawes committed another.

94. Cline was prosecuted Lawrence Hawes in 2003 for one of the earliest of the Trinity Park Rapes. In that capacity, Cline received direct verbal and written reports from the State Bureau of Investigation of all of the forensic tests the SBI Lab conducted on evidence collected in the investigations of the Trinity Park Rapes. Upon information and belief, all of the SBI Lab reports of tests conducted on evidence collected in the Trinity Park Rapes showed that Hawes was the perpetrator of those crimes.

95. Based upon the SBI Lab reports, the victims' uniform description of their attacker, and the fact that the Trinity Park Rapes ceased as soon as Lawrence Hawes was incarcerated in September of 2002, Cline knew that Lawrence Hawes was the attacker in the Breeze Home Invasion, and was deliberately indifferent to the near certainty that Frankie Washington was innocent.

96. Further, Cline and Smith understood that, if tested, the fingerprints and DNA profiles found on the bandana, toboggan, purse, and other evidence collected in the Breeze Home Invasion would match Lawrence Hawes. They also knew that if the SBI Lab compared the DNA and fingerprints found on that evidence with the DNA profiles and fingerprints stored in the State's databases (CODIS and AFIS, respectively), the SBI Lab would produce a report showing a match between those DNA profiles and fingerprints and those of Lawrence Hawes.

97. Aware of these things, Cline and Investigator Smith agreed that neither she nor the City's Police Department would make any requests that would trigger the SBI's submission of fingerprint or DNA profiles found on the evidence collected in the Breeze Home Invasion for comparison with DNA profiles and fingerprints stored in CODIS and AFIS.

98. In furtherance of their agreement, Cline and Smith submitted the dark blue bandana worn by the attacker in the Breeze Home Invasion to the SBI Lab, but directed the Lab to conduct only a "hair analysis." Predictably, on October 11, 2002, the SBI Lab conducted that analysis and found no "hair" evidence on the bandana, reported that result, and returned the bandana to the Durham Police. No DNA analysis would ever be conducted on the bandana.

99. On July 11, 2002, Durham Police submitted a cigarette butt found at the Breeze home that the family believed to have been left by the attacker for testing by the SBI. The Durham Police Department requested that the SBI Lab only analyze the cigarette butt for the presence of controlled substances. The SBI Lab ran that analysis, and reported that no controlled substances were found on the cigarette butt on September 16, 2002.

100. Much later, on January 30, 2006, the SBI Lab conducted an STR/DNA analysis on a cutting from the black toboggan cap worn by the attacker in the Breeze Home Invasion. The analyst extracted a mixture of DNA profiles from the cutting of the

black toboggan. Frankie Washington's DNA did not match any of the DNA profiles in the mixture extracted from the toboggan. Thus the STR/DNA analysis excluded Frankie Washington as a possible contributor to the DNA mixture found in the toboggan. The DNA mixture was not submitted to the State's DNA database (CODIS) to determine whether the profiles in the DNA mixture matched any of the known DNA profiles stored in CODIS. Rather, pursuant to the instructions of Cline and the Durham Police Department, the SBI Lab returned the extracted DNA and the cutting for pick up by the Durham investigator.

D. AWARE THAT THERE WAS NO PROBABLE CAUSE SUPPORTING FRANKIE WASHINGTON'S ARREST OR PRE-DETENTION, CLINE AND SMITH AGREED TO PRESENT THE MANUFACTURED IDENTIFICATIONS TO THE GRAND JURY.

101. In the summer of 2002, Cline met with Smith for a briefing on their investigation of the Breeze Home Invasion. At the time, no evidence connected Frankie Washington the Breeze Home Invasion, with the exception of the fabricated identifications the Investigator Defendants manufactured in their "drive-by" identification procedure. At that time, Cline and Smith also knew that:

a. the Breezes' contemporaneous description of their attacker excluded Frankie Washington as a plausible suspect as a matter of physiological fact (human beings do not shrink in height);

b. the eyewitness identification evidence was manufactured through the Investigator Defendants' "drive-by" identification procedure;

c. that Frankie Washington was 5'6" tall and the Breezes described the attacker as 6' tall;

d. that Frankie Washington was stocky and the Breezes described their attacker as thin or "slight;"

e. that Washington was 41 years old and the Breezes reported that the attacker was "decidedly" young, in his early 20s;

f. that Frankie Washington had cooperated fully with the Investigator Defendants and provided every form of genetic sample he could give to the police;

g. that Frankie Washington repeatedly told Smith and other investigators that DNA tests would prove he was innocent;

h. that the home invasions and sexual assaults continued to occur at the same steady clip while Frankie languished in the Durham County Jail;

i. that Mary Breeze told representatives of the news media that the physical description and modus operandi of the attacker that the other victims of the Trinity Park home invasions described were nearly identical to those of her attacker; and

j. All of the credible evidence showed that Frankie Washington was not the perpetrator of the Breeze Home Invasion.

102. Knowing these things and deliberately indifferent to the near certainty that Frankie Washington was not the perpetrator of the Breeze Home Invasion, Cline and Smith agreed to seek indictments charging Frankie with the crimes committed in the Breeze Home Invasion.

103. Further, knowing that the only evidence connecting Frankie Washington to the Breeze Home Invasion was the manufactured identification evidence, Cline and Smith agreed that Smith would obtain indictments against Frankie Washington by presenting the fabricated identification evidence to the grand jury.

104. Defendant Smith did so, and, on August 19, 2002, the grand jury indicted Frankie for the crimes committed in the Breeze Home Invasion.

E. FRANKIE WASHINGTON REPEATEDLY DEMANDED DNA TESTING OF THE EVIDENCE

105. From virtually the moment of his arrest on 30 May 2002, Frankie Washington demanded that DNA testing be conducted on whatever evidence Defendants had collected in connection with the Breeze Home Invasion.

106. From his appointment in May of 2002 until the last witness he presented at Frankie's trial, Frankie Washington's defense counsel assiduously requested, demanded, cajoled, and moved to compel forensic testing of the evidence collected in the Breeze Home Invasion.

107. In all of his early demands for testing, Frankie's defense counsel specifically insisted that any DNA profile or fingerprint that did not match Frankie Washington be submitted for comparison to the known DNA profiles and fingerprints maintained in the State's databases (CODIS and AFIS, respectively).

108. In response to this request, Cline advised Frankie's defense counsel that the SBI Lab submits unknown DNA profiles and fingerprints CODIS and AFIS as a matter of course because SBI protocols require that. Thereafter, in reliance on Cline's representation, defense counsel reasonably believed that he need not continue to demand that all unknown DNA profiles and fingerprints be submitted to the State's databases.

109. On 23 October 2003, Plaintiff moved to compel SBI analysis of the physical evidence collected by City police on the grounds that another person, Lawrence Hawes, had been arrested as a suspect in a string of home invasions in the Trinity Park neighborhood of Durham, including six home invasions that occurred after Mr. Washington's 30 May 2002 arrest.

110. On 18 March 2004, the trial court granted Plaintiff's motion, and issued an order compelling the forensic tests Mr. Washington requested.

111. On 24 June 2005, Plaintiff asserted his right to a speedy trial and moved to dismiss all charges on the grounds that Defendants' failure to comply with the court order compelling specific DNA and fingerprint analyses had deprived him of his right to a speedy trial under the Sixth Amendment to the United States Constitution and Article I of the North Carolina Constitution.

112. Cline resisted Plaintiff's motion, claiming that all of the testing that could be done by the SBI Lab had been done. But it was not.

113. Cline also claimed that the delay in bringing the case to trial was caused by Plaintiff's request to have the fecal matter tested because the SBI, she claimed, could not conduct DNA testing on fecal matter. However, that, too, was false. The SBI

rejected the fecal matter submitted to the lab because, pursuant to SBI protocols, samples of fecal matter were required to be submitted on swabs. Defendants never did so. As a result, not only was that evidence not tested, but Frankie Washington and his defense counsel were misled into the incorrect belief that the SBI Lab could not conduct DNA testing on that evidence, when, in fact, it routinely did.

114. On 30 January 2006, the SBI produced reports of some of the DNA and fingerprint analyses that the trial court compelled in its March 2004 Order. For instance, no DNA testing was conducted – at all – on the bandana that the attacker wore over his face throughout the home invasion and while he fled from the scene. Rather, Defendants requested that the bandana be analyzed only for hair. The "hair analysis" turned up no evidence of hair and the bandana was returned to the City Police Department.

115. And while unknown sources of DNA were found in the black toboggan worn by the attacker, after concluding that Mr. Washington could not be a contributor of any of the genetic found in the toboggan, the unidentified DNA profiles were never submitted for comparison with the known DNA profiles stored in the State's DNA database, CODIS,.

116. Similarly, the SBI Lab extracted at least three identifiable fingerprints the black purse that the attacker stole from Mary Breeze. Again, after excluding Frankie Washington as a possible source of the fingerprints, the unmatched fingerprints were not submitted for comparison with the known fingerprints stored in the state's fingerprint database, AFIS.

117. At the time, the SBI Lab's protocols required that any unmatched DNA or fingerprint extracted from evidence submitted for analysis must be submitted for comparison to the known DNA profiles and fingerprints in CODIS and AFIS.

118. Upon information and belief, the foregoing violations of the SBI Lab protocols were the product of an agreement among Cline, Smith, and the SBI Lab's analysts.

F. THE TRINITY PARK RAPES CONTINUED UNABATED WHILE FRANKIE WASHINGTON WAS INCARCERATED IN THE DURHAM COUNTY JAIL AND DID NOT CEASE UNTIL HAWES WAS ARRESTED.

119. Mrs. Breeze told a representative of the Durham Herald Sun shortly after the home invasion that, by all accounts, her attacker was the same man who had committed the spate of rapes and home invasions in the Trinity Park neighborhood in the prior six months. She noted that her attacker, like the attacker in the other Trinity Park Rapes was not primarily interested in her valuables; his purpose was to commit a sexual offense. The descriptions of the attacker and the attacker's modus operandi in all of the Trinity Park Rapes were nearly identical to what Mrs. Breeze experienced in her home on 30 May 2002.

120. While Frankie Washington was incarcerated from 30 May 2002 through the next 366 days, the Trinity Park Rapes did not cease. Rather, the Trinity Park Rapist continued his pattern of home invasions and sexual assaults in and around the Trinity Park neighborhood pursuant to the same modus operandi used in all of the Trinity Park home invasions that began shortly after Hawes was paroled and returned to his grandmother's Sedgefield Street home.

121. There was, of course, one difference in the Trinity Park Rapists signature after the Breeze Home Invasion on 30 May 2002: the attacker no longer carried a sawed-off, pistol grip shotgun. Instead, he wielded various other weapons, including a handgun, and other substitutes for the shotgun that police found in the creek bed at Walltown Park hours after he committed the Breeze Home Invasion.

122. As the Trinity Park Rapes continued unabated after 30 May 2002, Frankie Washington languished in the Durham County Jail unable to meet his $1,000,000.00 bail requirement.

123. The Investigator Defendants created a map showing the locations of the Trinity Park home invasions that began in January of 2002. The map showed that all of them occurred within a small radius of the home address of a registered sexual offender who had recently been paroled: Lawrence Hawes. According to the Durham County sexual offender registry, Hawes was a tall, thin African-American male who had been incarcerated beginning in 1988 after committing a series of rapes in the Trinity Park neighborhood which ended with Hawes' arrest, conviction, and 40-year sentence for the brutal rape and beating of a Duke student in 1988. The registry

also showed that Lawrence Hawes was paroled from his 40-year sentence and three days before the first of the 2002 Trinity Park Rapes occurred registered as a sexual offender living at 1017-A Sedgefield Street.

124. Like the victims of the Trinity Park Rapes that occurred before Frankie Washington's arrest on 30 May 2002 and the victims of the Trinity Park Rapes that occurred before Hawes' conviction in 1988, the victims of the Trinity Park Rapes that occurred after 30 May 2002 all reported that their attacker was a tall, thin, African-American male, who was young and covered his face and head so that only his eyes could be seen.

125. Defendants knew that the Trinity Park Rapes continued while Mr. Washington was in the custody of the Durham County Jail, and they also knew that they immediately ceased as soon as Hawes was arrested and incarcerated. They knew that the results of multiple forensic analyses of evidence collected in the investigations of the Trinity Park Rapes connected Lawrence Hawes to those crimes with scientific certainty, including matches of Hawes' DNA to DNA extracted from evidence collected in the investigations of the Trinity Park rapes, matches Hawes' shoes to footprints found at the scenes of the Trinity Park rapes; matches Hawes' fingerprints to fingerprints extracted from evidence collected in those investigations; and, of course, matches of Hawes' physical makeup to the physical descriptions of the attacker that victims of the Trinity Park Rapes reported to police.

126. Upon information and belief, Defendants also knew that Frankie Washington was excluded as a possible contributor of genetic material found on evidence they collected at the scenes of the Trinity Park Rapes, including the Breeze Home Invasion.

127. Based upon a SBI Lab report establishing a conclusive match between Lawrence Hawes' DNA and genetic material found in the first of the Trinity Park rapes, the Supervisory Defendants, the Investigator Defendants, and Task Force Defendants agreed to seek a warrant to arrest Lawrence Hawes and search his home, vehicle and person.

128. In affidavits supporting issuance of a search warrant for Hawes' girlfriend's residents Defendants asserted that forensic evidence linked Hawes to several of the Trinity Park Rapes; the Trinity Park Rapes were committed by the same person,

employing the same modus operandi, and having the same physical description; that DNA testing conducted by the SBI Lab revealed that Lawrence Hawes' DNA matched genetic material found in the evidence collected in the investigation of several of the Trinity Park Rapes; and that other forensic evidence collected in the investigation of the Trinity Park Rapes matches Hawes.

129. On Friday September 13, 2002, warrants for the arrest of Lawrence Hawes and the search of Hawes' grandmother's house and his vehicle were issued. The same day, Defendants executed a sting operation whereby they followed Hawes' car, pulled him over and arrested him.

130. The search of Hawes' vehicle and his girlfriend's home produced many of the tools and hallmarks of the Trinity Park Rapist. Hawes' was arrested, his bond was set at $1 million, and he was incarcerated in the same jail where Frankie Washington had been languishing since 30 May 2002 unable to meet his bond's financial terms and awaiting a trial that would not begin until February of 2007.

131. The Trinity Park Rapes ceased after Lawrence Hawes was arrested on 13 September 2002. Upon his incarceration, no other home invasions, sexual assaults, and burglaries carried out in the manner that all of the Trinity Park Rapes were reported in or around the Trinity Park neighborhood.

132. In the subsequent weeks and months, the Investigator Defendants, and the Supervisory Defendants received forensic and testimonial evidence linking Lawrence Hawes to each one of the Trinity Park Rapes, including the Breeze Home Invasion for which criminal proceedings remained pending against Mr. Washington, who remained in pre-trial detention, under a $1,000,000.00 bond that Defendants participated in securing by fabricating false identification evidence implicating Mr. Washington in a crime they knew he did not commit.

133. Aware of these facts, Defendants turned a blind eye and did nothing to intervene to prevent the ongoing detention of Frankie Washington without probable cause. Instead, Defendants agreed to participate in a course of conduct designed to perpetuate Washington's detention and their malicious prosecution of him through to a trial and conviction. In furtherance of that agreement, Defendants, individually and in concert, defied the March 2004 Order of Superior Court Judge Ronald Stephens compelling them to transfer the evidence collected in the Breeze Home Invasion to

the SBI Lab and to direct the SBI Lab to conduct specific forensic tests on that evidence. The purpose of Defendants' unlawful agreement was to cover up their fabrication of probable cause to support Frankie Washington's arrest by manufacturing false identification evidence implicating Washington in a crime they knew he did not commit.

G. WASHINGTON ASSERTED HIS RIGHT TO A SPEEDY TRIAL AND MOVED TO COMPEL FORENSIC TESTING

134. Frankie Washington asserted his Speedy Trial early and often. He did so directly and through motions to compel forensic testing that, he knew, would prove his innocence, thereby hastening the termination of the criminal proceedings in his favor.

135. The motion was brought before the trial court, but trial court did not enter a written order granting or denying Washington's motion. Rather, upon information and belief, Cline avoided entry of an order granting the motion by mooting it; that is, Cline avoided a court order compelling the testing by assuring the Court and defense counsel that the testing sought in the motion was already underway. Cline also advised the Court and defense counsel that Washington's request that any unmatched fingerprints or DNA be submitted for comparison to the DNA profiles and fingerprints in the state databases, CODIS and AFIS, was done by the SBI Lab as a matter of course pursuant to its protocols. The trial court accepted Cline's representations, and declined to enter a written order granting or denying Washington's motion at that time.

136. On 23 October 2003, Frankie's defense counsel filed another motion to compel forensic testing of the evidence.

137. On 18 March 2004, Washington's defense counsel brought Plaintiff's motion to compel forensic testing on for hearing before the Honorable Ronald L. Stephens in the Durham County Superior Court, and Judge Stephens entered a written order granting Plaintiff's motion. The 18 March 2004 Order provided that "the North Carolina State Bureau of Investigation will perform the following tests … as soon as practicable:

a. Analysis of the fingerprints recovered from 911 N. Gregson St. and make appropriate comparisons to those of the Defendant;

b. STR/DNA analysis of the blue bandana, and make appropriate comparisons to the Defendant;

c. Hair analysis of the black toboggan, and make appropriate comparisons to the Defendant;

d. Fingerprint analysis of the shotgun, and make appropriate comparisons to the Defendant;

e. Fingerprint analysis of the palm pilot connector and make appropriate comparisons to the Defendant;

f. Fingerprint analysis of the black purse and make appropriate comparisons to the Defendant; and

g. STR/DNA analysis of the feces, and make appropriate comparisons to the Defendant.

138. Judge Stephens further ordered that "[i]f the SBI determines that any of the tests cannot be performed, the Examining Agent is to provide a written statement to that effect, stating the specific reasons the test(s) cannot be performed [; and] to provide the test(s) results and any other documentation to Assistant District Attorney Tracy Cline of the Durham County District Attorney's Office.

139. Prior to the 18 March 2004 Order, Defendants had requested testing on only three items of evidence in Plaintiff's case:

a. On 11 July 2002, Durham Police submitted the blue bandana to the SBI Lab with a request for a hair analysis. The SBI examined the blue bandana for hairs, found none, and reported that result to the Durham Police Department and the District Attorney's Office on 11 October 2002.

b. On 11 July 2002, Durham Police submitted the cigarette butt to the SBI Lab with a request for an examination of the evidence for the presence of controlled substances on that evidence. The SBI Lab

tested for the presence of controlled substances, found none, and submitted written reports of that result to the Durham Police Department and the District Attorney's Office on 16 September 2003.

c. On 25 September 2002, the cigarette butt was transferred to the DNA section of the SBI Lab to conduct STR/DNA testing on any genetic material found on the evidence. On 17 December 2002, the SBI Lab conducted the DNA testing, obtained a DNA profile from the cigarette butt and concluded that the source of the DNA did not match Frankie Washington's DNA, and reported the results to the Durham Police Department with a copy sent to the District Attorney's Office on 17 December 2002.

140. As of July 2005 – 16 months following Judge Stephens' 18 March 2004 Order – no evidence from Plaintiff's case was submitted to the SBI Lab for testing and the lab conducted no tests.

141. Contrary to the SBI Lab's protocol, the unknown DNA and fingerprint evidence obtained in connection with the Breeze home invasion were not submitted to the State's databases for comparison to the known DNA profiles and fingerprints stored there.

142. In Hawes' trial, three years before Plaintiff's, SBI Agents who conducted forensic testing in the case testified that it was the SBI Lab's protocol to submit forensic identification evidence (e.g., DNA profiles and fingerprints) for comparison to those stored in the State's DNA database (CODIS) whenever the DNA profile could not be matched to a suspect.

143. Thus, SBI Agent Christopher Parker was following that SBI policy when, on September 12, 2002, he submitted a DNA profile found on the vaginal swabs collected from the victim of the 7 March 2002 Trinity Park Home Invasion to CODIS for comparison to the known DNA profiles stored there. CODIS produced the match to Lawrence Hawes that led directly to his arrest, prosecution, and conviction in 2002.

144. Agent Parker explained how the SBI's CODIS protocol led to the identification of Hawes as the perpetrator:

Well, the first thing that we are going to do is we're going to go place that DNA profile, that unknown DNA profile into our CODIS System, which stands for Combined DNA Index System, to search against our database to see if we can hit up against a sample that's in our data base. … When I searched the CODIS System, the unknown DNA profile hit on that of Lawrence Hawes.

145. But the SBI did not follow its protocol with the unknown DNA obtained from the black toboggan or the bandana, or the unmatched fingerprints lifted from inside of Mrs. Breeze's purse. When pressed on this point, SBI Agents gave false testimony describing the SBI's protocols relating to unidentified DNA profiles and fingerprints to the State's databases as the opposite of the protocol they described in Hawes' trial.

146. For example, SBI Forensic Scientist Natassha Robinson testified that fingerprints lifted from Ms. Breeze's purse did not match Frankie Washington's; yet, she never sent the unidentified fingerprints for comparison with those in the AFIS database. Robinson testified that the SBI Lab will not submit unmatched fingerprints to AFIS unless the investigative agency specifically requests it, which, she testified, the Durham Police did not do. As a result, the three fingerprints have never been submitted to AFIS.

147. Defendants knew no later than September 12, 2002 that the AFIS database included the fingerprints of Lawrence Hawes, and that the CODIS database contained his DNA profile. The SBI analysts violation of SBI's policies to withhold the unidentified DNA and fingerprints in Plaintiff's case were acts in furtherance of their agreement with Cline and the Investigator Defendants to violate the policy thereby preventing the obstructing the production of forensic identification evidence that would impugn the "drive-by" identifications and conclusively establish that Plaintiff was innocent and Hawes was guilty of the crimes committed in the Breeze Home Invasion.

148. Cline and Defendants requested that the Lab limit its reporting of forensic tests in the case solely to reports of identification evidence that matched the Plaintiff, and to exclude from their reports any match between evidence collected in the Breeze home invasion and any known DNA profiles or fingerprints in the State's databases.

149. Based upon the Defendant's fabricated identification evidence and their agreement to defy the Court Order in order to obstruct and suppress the production of exonerating forensic reports, Plaintiff was found guilty of first-degree burglary, two counts of second-degree kidnapping, robbery with a dangerous weapon, attempted robbery with a dangerous weapon, assault and battery, and attempted first-degree sex offense. The trial court sentenced Plaintiff to consecutive terms of imprisonment of 46 to 56 months, 46 to 56 months, 117 to 150 months, 117 to 150 months, and 251 to 311 months, and 20 days. In all, the sentence assured an active term of at least 58 years (a minimum of 577 months), and extending up to more than 60 years (a maximum of 723 months).

H. The SBI Lab Matched Lawrence Hawes DNA with DNA Extracted From Evidence in one of the Trinity Park Rapes

150. After Frankie Washington was arrested, while he languished in the Durham County Jail, the home invasions and sexual assaults in Trinity Park continued as they had since the beginning of the year. In response, the City Police Department established a "Sexual Assault Task Force." The sole purpose of the task force was to identify and apprehend the Trinity Park Rapist.

151. In early September, 2002, the SBI Lab submitted to CODIS an unknown male DNA profile extracted from the rape kit of a victim of a sexual assault in one of the Trinity Park home invasions. The DNA profile matched the DNA profile of Lawrence Hawes.

152. Based upon that conclusive DNA match, on September 13, 2002, Lawrence Hawes was arrested by the Durham Sexual Assault Task Force and charged with burglary and sexual assault offenses.

153. After Hawes' arrest, the spate of home invasions and sexual offenses in Trinity Park ceased, just as they had ceased in 1988, after Hawes was arrested for the burglary, rape, and beating of a Duke student in a dorm adjacent to Trinity Park.

154. Frankie Washington's defense counsel moved to compel forensic testing of the evidence in the Breeze Home Invasion. Among the grounds for his motion was the fact that Hawes had been arrested based upon a DNA match to the rape kit in one of

the Trinity Park Home Invasions. Defense counsel alerted the Court, Cline and the City Defendants that the SBI Lab had not compared Hawes' fingerprints or DNA profile with those they could extract from the evidence collected in the Breeze Home Invasion. Plaintiff also asserted that the SBI had not attempted to match Hawes' fingerprints or DNA profile to DNA and fingerprints found on the evidence that Defendant Smith had already submitted to the SBI Lab.

155. The similarity between the attacker's conduct in the Breeze Home Invasion and the modus operandi of Lawrence Hawes in the other Trinity Park Rapes was so obvious that the Court of Appeals took judicial notice of it – sua sponte. In its opinion vacating Washington's convictions, the Court explained that it could rely upon the record of the crimes Hawes committed "[b]ecause it is referenced in the record of appeal and is material to the issue of state neglect."

156. Specifically, when affirming Hawes' convictions, the Court of Appeals noted that the State's evidence at his trial "tended to show that on 7 March 2002, Lawrence Hawes, a black male, wore a maroon bandana over his nose and mouth and pointed a sawed-off shotgun at the victim before raping and robbing her. Lawrence Hawes' DNA profile was a match to the DNA recovered from the victim's pajama bottoms. Hawes' shoe print matched a print recovered from the scene of another nearby home invasion and sexual assault that occurred on 5 September 2002" [the last of the Trinity Park Rapes]. The Court also noted that, incident to Hawes' September 13, 2002 arrest, police found a semi-automatic handgun, four types of hats, four shirts, a bandana, and a toolbox. Their search of Hawes' residence produced still more evidence that Hawes was the Trinity Park Rapist.

157. As of 13 September 2002, Defendants knew that Lawrence Hawes was the Trinity Park Rapist. They knew that Hawes was the attacker in at least nine of the home invasions in Trinity Park; that Hawes physically matched the attacker described by the victims in all of those attacks; that Hawes had a substantial history of committing the same crimes in Trinity Park before spending a decade in prison; and that forensic testing of genetic material found on the evidence of those crimes had produced conclusive matches to Hawes. The Investigator and Supervisory Defendants knew that Frankie Washington was not the perpetrator of the Breeze Home Invasion and that Lawrence was.

158. Knowing these and all of the foregoing things, the Investigator Defendants and the Supervisory Defendants continued to conceal the evidence of Frankie Washington's innocence and Lawrence Hawes' culpability for the Breeze Home Invasion. For example, Cline and the City Defendants refused to produce a report of the SBI Lab's comparison of DNA profiles and fingerprints collected in the Breeze investigation with the DNA profiles and fingerprints in the State's DNA and fingerprint databases -- CODIS and AFIS – which included Lawrence Hawes' DNA profile and fingerprints, in violation of the 18 March 2004 Order compelling them to do so.

159. As a result, the SBI Lab did not compare the fingerprints obtained from Mrs. Breeze's purse to the fingerprints in the AFIS database (which contained Hawes' fingerprints), and the lab did not compare the DNA profiles extracted from the black toboggan to the State's CODIS database (which contained Hawes' DNA profile).

160. Likewise, Durham Police Defendants did not request that the unidentified DNA profiles obtained from the attacker's toboggan, which did not match Plaintiff, be compared with the DNA of convicted offenders in NCSBI's Database, CODIS.

161. The North Carolina Court of Appeals concluded that the State's failure to request such comparisons was evidence of "the State's repeated neglect of this case over the course of the prosecution."

162. The delay was not caused by a lack of state or court resources; it was the product of Defendants' agreement to interfere with the court-ordered production of forensic evidence

163. Finally, the record shows that for nearly two years the Durham County District Attorney's Office failed to notify the SBI that it had been court ordered on 18 March 2004 to analyze the evidence. As such, the SBI lab did not comply with the Order and did not conduct all of the tests mandated by Judge Stephens.

164. The North Carolina Court of Appeals found that, even if the State had provided the SBI with a copy of Judge Stephens' Order in 2004, the SBI could not have tested the purse or toboggan at that time because the State did not submit those items to the lab for examination until August of 2005.

165. The 18 March 2004 Order mandated that the SBI conduct eight types of tests on the evidence and that if any of those tests could not be performed, that the agency provide Assistant District Attorney Tracy Cline with a written statement explaining the reason that any such test could not be performed. At trial, Special Agent Jennifer Elwell of the SBI testified to the following:

> Q. Is there in [the SBI files on the case] a Court Order signed on the 18th day of March, 2004, ordering the SBI to perform certain tests?
>
> A. No, sir, there is no Court Order in either file.
>
> Q. So [to] your personal knowledge, no one from the Durham Police Department contacted you and let you know sometime after the 18th day of March, 2004 that the SBI was under Court Order to perform certain tests?
>
> A. I'm going to refer right now to my phone logs, not my phone logs, but the phone logs that were generated in this case, and see if there is any kind of telephone conversation. It is our standard operating procedure that if a conversation had occurred we would have written it down in the phone log.
>
> A. No, sir, there is no indication of a phone conversation regarding a Court Order.
>
> Q. From the Durham Police?
>
> A. No.
>
> Q. Or the Durham County District Attorney's Office?
>
> A. That would be correct.

166. In total, four different SBI agents – Jennifer Elwell, Michael Joseph Budzynski, Natassha Robinson, and James Gregory – testified that Durham Police did not convey to the SBI any form of notice of the March 18 Court Order.

167. Moreover, despite the 2004 order that the SBI conduct STR/DNA analysis of the bandana and make appropriate comparisons to Plaintiff, the lab report shows that neither Defendant Smith nor Durham Assistant District Attorney Tracey Cline requested such a test. Accordingly, the SBI only conducted a hair analysis of the bandana and never examined the bandana for the presence of DNA contained in microscopic epithelial cells that can be detected though Y-STR technology.

168. Thus, in violation of the trial court's order, no STR testing has been conducted to identify the DNA on the bandana to this day.

169. In sum, the nearly five-year delay in brining Plaintiff's case to trial was the direct result of the Defendants' deliberate or deliberately indifferent failures to comply the a court order directing them to submit evidence in Plaintiff's case to the SBI lab; to request that such evidence be compared to the AFIS Database and convicted offender indexes of the NCSBI State Database; or notify the SBI that it had been court ordered to conduct tests necessary for its prosecution is prima facie evidence of State neglect and underutilization of court resources during the course of this prosecution.

I. DEFENDANTS TRIED AND CONVICTED LAWRENCE HAWES WITHIN ONE YEAR OF HIS ARREST.

170. Cline brought Lawrence Hawes to trial on June 2, 2003, within one year of his arrest, on charges in connection with one of the first in the 2002 Trinity Park Rapes.

171. Cline convicted Hawes on the strength of direct evidence that Hawes committed the crime with which he was charged, and on the strength of evidence that Hawes committed other Trinity Park Rapes. Evidence of Hawes' commission of other Trinity Park Rapes was offered as evidence that Hawes committed the charged offense under N.C. R. Evid. Rule 404(b). Cline presented the overwhelming evidence that the Trinity Park Rapes were committed by a single perpetrator pursuant to a signature, and Cline presented conclusive DNA test results to prove that the signature belonged to Hawes.

172. The trial court agreed. So, too, did the North Carolina Court of Appeals. Both held that there were an extraordinary number of unusual and peculiarly similar

facts in the assaults and home invasions, which, they concluded, pointed to a single perpetrator.

173. Two days after his trial began; Hawes was convicted of first-degree rape, first-degree burglary, first-degree kidnapping, and two counts of first-degree sexual offense for acts committed in only one of the Trinity Park Home Invasions.

174. The trial court entered a prayer for judgment continued on the burglary and kidnapping convictions, sentenced Hawes to three active terms of 384 to 470 months imprisonment, and ordered that he serve those sentences consecutively. The sentence was a *de facto* life term. As such, any subsequent prosecution of Hawes for the uncharged Trinity Park Rapes would be futile.

175. Yet, after establishing Hawes' signature and arguing successfully that the Trinity Park Rapes were committed pursuant to that signature, Cline and the Defendants, individually and in concert, unlawfully maintained the criminal charges they brought against Frankie Washington without probable cause. They did so for nearly four more years.

J. THE NORTH CAROLINA COURT OF APPEALS VACATED PLAINTIFF'S CONVICTIONS AND DISMISSED THE INDICTMENTS WITH PREJUDICE

176. Plaintiff appealed his convictions. The Court of Appeals vacated each of Plaintiffs' convictions, and dismissed with prejudice the indictments upon which they were based.

177. The Court of Appeals concluded that the State had deprived Plaintiff of the right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution and Article I, §18 of the North Carolina Constitution. The Court of Appeals' decision was based upon a record that "contain[ed] overwhelming evidence that the actual reason for the delay in this case was not a neutral factor, but rather, was repeated neglect and underutilization of court resources …" and the State's inability to rebut that evidence.

178. Defendants delayed the trial for nearly five years in bad faith, and, as a result, Plaintiff was prejudiced.

1. Defendants Caused the Delay by Obstructing the Court Order Compelling Them to Obtain Specific Forensic Tests.

179. Much of the delay was caused by Defendants' agreement to interfere with the forensic tests that the trial court compelled them to obtain in its March 2004 Order.

180. Plaintiff was arrested on 30 May 2002, and indicted on 19 August 2002. During that time Plaintiff was incarcerated in the Durham County Jail, unable to post the $1 Million bond set at his initial appearance. And in the roughly three months between Plaintiff's arrest and Defendants' decision to indict him, the Trinity Park Rapist continued his spree of home invasions and sexual offenses in the Trinity Park neighborhood.

181. Knowing that the Trinity Park Rapes continued to occur while Frankie Washington remained in pretrial detention, Defendants maliciously initiated criminal proceedings against Plaintiff for the crimes committed in the Breeze Home Invasion. Moreover, Defendants opposed Plaintiff's several motions for bond reductions, falsely asserting that there was evidence to believe that Plaintiff was a danger to the community (he had no ties to any location apart from Durham). As a result, Plaintiff would remain in pretrial incarceration for 366 days. During that time (and for the next four years) Plaintiff's trial date would be continued on the grounds that the SBI had not completed its analysis of the physical evidence in the case. Over the course of nearly two years, Cline, accompanied by Smith, represented to the Court, falsely, that the testing was largely complete and that reports of the court ordered testing had been or were being compared.

182. From 26 August 2002 to 7 May 2003, Plaintiff moved the court four times to reduce his bond, which was originally set at $1 million. With each motion, the trial court incrementally reduced Plaintiff's bond and directed Defendants to ensure that reports of all court-ordered tests be completed and produced as expeditiously as possible.

183. By 20 July 2006 – four years after Plaintiff's arrest – the case had been placed on at least three trial calendars. Each time, the trial was continued upon Cline's motion, and each motion was based on the fact that the court-ordered forensic tests had not been obtained. Thus, the first four years of delay, from 30 May 2002 to 20 July 2006, was caused solely by the Defendants' failure to ask the SBI to perform the

court-ordered tests (and in some cases by their failure to submit the evidence to the Lab).

184. Defendants' repeated assurances to the Court and to defense counsel that the delay was the product of an SBI "backlog" were false. For example, Natasha Robinson, the forensic scientist who conducted the latent print examination and comparison on the pistol-grip shotgun, the PDA, and the purse, testified at trial that while Defendants submitted the PDA and shotgun to the Lab in June and July of 2002, respectively, they never submitted Plaintiff's fingerprints for comparison to those found on the evidence submitted.

185. Unable to obtain Plaintiff's fingerprints from Defendants, on 31 August 2005, the SBI Lab found Plaintiff's fingerprints in its internal system, which the Lab had acquired previously. The Lab used those fingerprints to conclude that none of the latent prints on the evidence collected in connection with the Breeze Home Invasion matched Plaintiff's fingerprints.

186. The black purse, containing three exclusionary fingerprints, and the black toboggan, containing exclusionary DNA evidence, were not submitted to the SBI lab for analysis until 4 August 2005 – more than three years after Defendants collected the evidence.

187. All of the items that Defendants submitted for testing in June and July of 2002 had been fully analyzed by October 20, 2002.

188. The SBI completed its work on the case in January of 2006, but the SBI's reports showed that only some of the forensic tests ordered by the trial court were conducted.

189. Thus, the delays and outright failure to obtain the forensic tests compelled by the Trial Court's Order was wholly within the Defendants' control: their failure or refusal to submit the evidence to the Lab for testing and their failure to actually request that the tests be conducted (or a statement explaining why any particular court-ordered forensic test could not be conducted).

190. Defendants suppressed exculpatory evidence by causing the SBI Lab to violate the SBI policy requiring submission of any unidentified DNA or fingerprints for

comparison to the known DNA profiles and fingerprints in the State's DNA and fingerprint databases.

191. The Court of Appeals, sua sponte, took judicial notice of the evidence showing the guilt of another individual – Lawrence Hawes – for the crimes committed in the Breeze Home Invasion that emerged while Frankie was incarcerated in the Durham County Jail. In the same breath, the Court of Appeals noted Defendants' inexplicable failure "to request that the SBI make appropriate comparisons of the evidence [in the Breeze Home Invasion] to Hawes."

192. As early as 23 October 2003, Frankie Washington, through counsel, put Defendants on legal notice of the high probability that DNA and/or fingerprints found on the evidence collected in the investigation of the Breeze Home Invasion would not only not match Frankie, but also would match Lawrence Hawes. This was entirely consistent with Defendants' own public statements that the evidence showed that only one individual was responsible for all of the Trinity Park Rapes and the individual was Lawrence Hawes.

193. On 23 October 2003, Plaintiff filed his first motion to compel forensic tests of the evidence collected in connection with the Breeze Home Invasion. Plaintiff supported the motion by documenting, among other things, that:

194. Lawrence Hawes had been arrested upon a match between his DNA profile and genetic material found in the rape kit taken from the victim of the March 2002 rape and home invasion, and on the grounds that Defendants had declared Lawrence Hawes to be a suspect in all six of the Trinity Park home invasions committed while Plaintiff was incarcerated in the Durham County Jail, unable to post a $1 Million bond.

2. As a result of Defendants' five-year delay of the trial, Frankie Washington suffered actual prejudice.

195. The North Carolina Court of Appeals found that the State-caused near five-year delay resulted in actual prejudice to Plaintiff.

196. Plaintiff was incarcerated for more than 366 days prior to his trial.

197. Plaintiff's pretrial incarceration not only severed Plaintiff's employment as an auto mechanic, but also disrupted his family life. At 3:00 p.m. on the afternoon

following Plaintiff's arrest, police found Plaintiff's ten-year-old son home alone in Plaintiff's apartment. The North Carolina Court of Appeals concluded that the Plaintiff's "sudden separation from his child, which lasted for more than a year, is a form of prejudice that we must consider."

198. The delay significantly impaired Mr. Washington's defense. For example:

a. The delay led to the inability of many of the witnesses to recall details pertinent to the defense. The trial transcript reveals that the witnesses' inability to accurately recall the events that occurred nearly five years prior, on 30 May 2002, repeatedly interfered with Plaintiff's ability to establish circumstantial evidence relevant to his defense and impeded Plaintiff's ability to challenge the reliability of the State's identification evidence on cross-examination.

b. Because there was no forensic or physical evidence connecting Plaintiff to the evidence collected in the investigation of the Breeze Home Invasion or the Breeze Home itself, Defendants' prejudiced Plaintiff by refusing to comply with standing court-orders compelling them to obtain forensic tests because, among other things:

c. The court-ordered tests would have impugned the identification testimony they manufactured in their "drive-by" identification procedure, thereby depriving the proceedings of probable cause;

d. The court-ordered tests would have also established Plaintiff's actual innocence.

e. The court-ordered tests would have established Lawrence Hawes' culpability for the crimes committed in the Breeze Home Invasion.

199. Without any forensic evidence implicating Plaintiff in the Breeze Home Invasion, the prosecution relied at trial solely on the witnesses' long-faded memories of the circumstances surrounding Plaintiff's arrest. After five years, the police witnesses recalled no details. They relied, instead, upon the false statements made in their reports of those events to cast false legitimacy upon the probable cause they fabricated. There were several instances at trial where the defense inquired about

facts that were not contained in police reports, but were highly relevant to the defense, and the officers stated that they did not recall the information.

200. The defense's ability to highlight any discrepancies between Plaintiff's physical characteristics and the description of the intruder that was given to law enforcement was repeatedly impeded by the Investigators' purported inability to recall details of Breezes' description of the attacker, which categorically eliminated Frankie Washington as a plausible suspect and which Defendants had agreed to omit from their reports. The following testimony in Plaintiff's trial illustrates this recurring prejudice:

> Q. You indicated that Officer Caldwell gave out a description of this person who had been in the house with the shotgun?
>
> A. Uh-huh.
>
> Q. What was that description?
>
> A. The description was a black male with a shotgun. I think he said blue T-shirt and jeans.
>
> Q. Did the person that gave out the initial description say anything about his height?
>
> A. I don't recall.
>
> Q. Did they say anything about the person's weight?
>
> A. I don't recall that either.

201. Another exculpatory fact that the delay enabled Defendants to obfuscate was the fact was that Plaintiff did not have the cash (approximately $150.00) that the attacker stole in Mrs. Breeze's black bag. Pursuant to their agreement to omit exculpatory facts from their reports, Bell, Smith and the Investigator Defendants' reports all failed to note whether or not Plaintiff was in possession of Mary Breeze's $150.00 (or any money at all) at the time of his arrest.

202. While omitting any report of the cash in Plaintiff's possession tended to imply that Plaintiff did not have it on his person at the time of his arrest. But the five-year delay enabled them to testify that their recollections were not clear about that fact.

For example, the lead detective assigned to the Breeze Home Invasion, Defendant Smith (who was not called by Cline to testify in the State's case in chief), was called by the Defense to resolve the uncertainty about whether or not Plaintiff was carrying the stolen cash at the time of his arrest. Defendant Smith, too, made no report regarding whether Plaintiff possessed the stolen cash or not. Defendant Smith also had no clear recollection on that subject: due to the five year delay he caused by refusing to obtain the court-ordered testing.

203. The crux of the State's evidence establishing plaintiff's guilt was the identification testimony fabricated by Sgt. Bell and the Investigator Defendants and in-court identifications to the same effect. Here, again, the victims' blurred recollections as to the details that were plainly blurred to them at the time they occurred repeatedly interfered with Plaintiff's ability to prove the unreliability of their identifications.

204. For example, Bill and Mary Breeze's inability to recall the conditions under which they "identified" Plaintiff included virtually every fact relevant to reliability. They could not recall even how far away Plaintiff was during Defendants' "drive-by" identification procedure; they incorrectly recalled the description of the attacker that they, consistently provided to police until Defendants provided them with the contradictory details of Frankie Washington's height and weight.

205. The North Carolina Court of Appeals concluded that the delay prejudiced Plaintiff in other ways, including, for example, by making it substantially more difficult for Plaintiff to challenge the Breezes' opportunity to accurately see any of Plaintiff's features or otherwise expose the multiple dimensions of their identifications' unreliability.

3. The Court of Appeals, *Sua Sponte*, Addressed Defendants' Grossly Suggestive "Drive-By" Identification Procedure

206. The North Carolina Court of Appeals, sua sponte, raised the Defendants' "troubling" use of a "highly suggestive show-up procedure" to identify the Plaintiff, particularly in light of the absence of any other evidence connecting Mr. Washington to the Breeze Home Invasion.

207. In May of 2002, Mrs. Breeze could only identify the attacker's pants (blue jeans), the bandana that covered his face and the toboggan that covered his head. Yet,

at trial in 2007, Cline asked her whether the shirt Plaintiff wore in his mug shot accurately depicted the same "exact" blue shirt that she had seen on the attacker nearly five years earlier.

208. Similarly, Will Breeze and Mr. Breeze, who testified that they had only seen a slice of the intruder's face for only a few brief moments under extreme duress in May of 2002, were asked to identify whether plaintiff (sitting at the defense table) was the attacker who was in their home almost five years before.

209. The Court of Appeals found that the Breezes' in-court identifications of Plaintiff were substantially more likely to result in a misidentification of Plaintiff as the attacker charged than if they would have been if they were made sooner than five years after the fact.

210. The near five-year pretrial delay resulted in actual prejudice to the Plaintiff, including an oppressive 366-day pretrial incarceration of Plaintiff; the loss of exculpatory circumstantial evidence surrounding Plaintiff's arrest; the loss of direct evidence of Plaintiff's actual innocence; the impairment to the defense's ability to challenge pretrial identification evidence; and a substantially greater likelihood that the in-court identifications would result in misidentification of plaintiff as the perpetrator of the offenses.

K. After Washington Was Released, Cline Made Numerous False, Stigmatizing Claims of Frankie Washington's Guilt

211. The Court of Appeals decision was certified on September 22, 2008, and became final shortly thereafter when the time for the State to file a notice of appeal expired.

212. Since that time, Cline made numerous false, conclusory assertions of Frankie Washington's guilt to representatives of the media in response to the media's harsh criticism of her prosecutions, which focused in particular on Cline's prosecution of Frankie.

213. Cline insisted that a local newspaper publish all of the statements she made in correspondence with its reporters. When the lead reporter on her story advised her that the newspaper was extremely reluctant to publish the statements she made to

them because they contained many "errors of fact," and they naturally had concerns about publishing false statements.

214. Cline did not share those concerns. She replied, "[t]he errors are mine," that she had "no problem with that at all," urging the newspaper to "[p]lease post everything." She explained that she "wanted the public [to] be made fully aware" of her statements, which included multiple false, stigmatizing assertions relating to Frankie Washington, including, for example, Cline falsely reported to representatives of the news media that:

a. Frankie matched the descriptions given by the Breeze family in the 911 call;

b. The Breeze family did not describe their attacker as 6'1" ;

c. The Breeze family members did not describe the attacker as 6-feet tall;

d. Will's description of the attacker was reliable and matched Frankie;

e. The K-9 officer tracked Frankie along the path he took;

f. The K-9 officer identified Frankie;

g. Frankie clothes were wet and muddy when Sgt. Bell detained him;

h. There was no useful purpose in comparing the DNA and fingerprints collected in the Breeze Home Invasion with those of Lawrence Hawes because it was "clear" that Frankie Washington "was the person who did it," there was "no doubt that Frankie Washington committed the offense[s]," and there was no evidence that the Breeze Home Invasion had "any connection with Hawes."

i. The "drive-by" identification procedure was a reliable, good identification procedure that is "still frequently used" by the Durham Police Department.

215. All of the foregoing statements are false, and were published in written and spoken form within weeks of the filing of this lawsuit.

216. Cline published these statements in written correspondence with representatives of the news media, and Cline re-published and amplified on them in spoken form during an interview with representatives of the news media.

* * * * * *

217. As a direct and proximate result of the Defendant's unlawful conduct, Plaintiff was deprived of rights guaranteed by the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of the North Carolina Constitution.

218. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered irreparable harm to his reputation, emotional trauma, physical harm, and the loss of liberty, privacy, education, training, earnings, and earning capacity.

219. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

CAUSES OF ACTION

FIRST CAUSE OF ACTION:

DEPRIVATION OF PLAINTIFF'S RIGHT TO A SPEEDY TRIAL (42 U.S.C. § 1983)

(Against Cline and Smith in their individual capacities)

220. Plaintiff incorporates all of the foregoing allegations by reference, as though fully set forth here.

221. Cline and Smith are "persons," as that term is used in the text of 42 U.S.C. § 1983.

222. Plaintiff timely asserted his right to a speedy trial. He did so directly in open court, in papers filed with the court, and through his repeated motions for an order compelling forensic tests of the evidence in his case which would have proven his innocence and hastened the conclusion of the criminal proceedings.

223. Under color of state law, Cline and Smith, acting individually and in concert, tacitly or expressly agreed to:

k. Ignore, obstruct, and otherwise frustrate the purpose of the 18 March 2004 Order directing them to obtain specific forensic tests of the evidence in Plaintiff's case;

l. Make and corroborate false statements to the Court and to defense counsel designed to mislead them regarding the status of the court ordered forensic testing, the SBI's ability to conduct certain forensic tests, and the status of the testing being conducted pursuant to the 18 March 2004 Order;

m. Conceal from the SBI Lab the court order to produce reports of forensic identification tests, knowing that the results of those tests would impugn the eyewitness identification evidence the Investigator Defendants manufactured through their "drive-by" identification procedure; and

n. Through those agreements, delay Plaintiff's criminal trial to an extent that witnesses would have little or no memory of the details of the events of the Breeze Home Invasion, particularly the physical features of the attacker the Breeze family encountered in their home on 30 May 2002.

224. The delay was neither necessary nor justified.

225. As a result of the delay, Plaintiff was prejudiced at trial.

226. The conduct of Smith and Cline evinced malice and a reckless and callous disregard of, and deliberate indifference to, Plaintiff's constitutional rights.

227. As result of unconstitutional delay in bringing the charges against Plaintiff to trial, Mr. Washington was deprived of rights guaranteed to him by the Sixth Amendment to the United States Constitution and the parallel provisions of the North Carolina Constitution.

228. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered irreparable harm to his reputation, emotional distress, fear, personal humiliation and indignation, physical harm, as well as the loss of liberty, privacy, education, training, earnings, and earning capacity.

229. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

SECOND CAUSE OF ACTION:
FABRICATION OF EVIDENCE AND CONSPIRACY (42 U.S.C. § 1983)

(Against Bell and Caldwell in their individual capacities)

230. Plaintiff incorporates by reference all of the foregoing allegations as though fully set forth here.

231. Defendants Bell, Caldwell, and Smith are "persons," as that term is used in the text of 42 U.S.C. § 1983, and, at all relevant times, were acting under color of law.

232. Defendants Bell and Caldwell, acting individually and in concert, manufactured eye-witness identification evidence that was likely to influence the decisions of magistrates, grand juries, and petit juries by, for example:

a. Conducting a grossly suggestive "can't miss" identification procedure;

b. Misrepresenting to the Breeze family immediately before the "drive-by" identification procedure that they had a "suspect" in custody who "matched the physical description" they gave of their attacker,

when, in fact, their physical descriptions of the attacker excluded Frankie Washington as a plausible suspect;

c. Creating false and misleading investigative reports of the circumstances surrounding Plaintiff's arrest and identification on May 30, 2002, that omitted exculpatory facts known to them that Washington could not be the attacker in the Breeze family described;

233. Defendant Smith presented the manufactured identification evidence to the grand jury to secure Frankie Washington's indictment, thereby participating in and ratifying Bell and Caldwell's fabrication of probable cause where there was none.

234. As a result of Defendants' conduct, Plaintiff was subjected to searches, seizures, detention, denial of bail, and incarceration without probable cause, thereby depriving him of his personal liberty in violation of the Fourth and Fourteenth Amendments to the United States constitution and the parallel provisions of the North Carolina Constitution.

235. Defendants engaged in this conduct in bad faith and with a callous and reckless disregard of, and deliberate indifference to, Plaintiff's constitutional rights.

236. As result of Defendants' conduct, Plaintiff was deprived of rights guaranteed by the Fourteenth Amendment to the United States Constitution, and the parallel provisions of the North Carolina Constitution.

237. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered irreparable harm to his reputation, emotional distress, fear, personal humiliation and indignation, physical harm, as well as the loss of liberty, privacy, education, training, earnings, and earning capacity.

238. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

<u>THIRD CAUSE OF ACTION:</u>

CONCEALMENT OF EVIDENCE AND CONSPIRACY (42 U.S.C. § 1983)

(Against Cline, Smith, Bell, Peter, Irving, Caldwell and the Investigator Defendants in their individual capacities)

239. Plaintiff incorporates all of the foregoing paragraphs as though fully set forth here.

240. Cline, Smith, Bell, Peter, Irving, and Caldwell are "persons," as that term is used in the text of 42 U.S.C. § 1983, and, at all times, these Defendants were acting under color of law.

241. Cline, Smith, Bell, Peter, Irving, and Caldwell, acting individually and in concert, concealed exculpatory evidence in breach of their obligation to disclose exculpatory evidence to the prosecutor so the prosecutor may discharge the obligation to disclose it to the defense.

242. Cline, Smith, Bell, Peter, Irving, and Caldwell concealed exculpatory evidence proving that Lawrence Hawes was the attacker in the Breeze Home Invasion, including, for example:

a. Exculpatory reports of forensic DNA tests and comparisons;

b. Exculpatory reports of forensic fingerprint comparisons;

c. Exculpatory reports of other forensic testing and analyses;

d. Exculpatory reports of the Breezes' initial description of their attacker's height, body type, and other features that eliminated Plaintiff as a plausible suspect in the Breeze Home Invasion; and

e. Exculpatory descriptions of the same attacker provided by the victims in the other Trinity Park Rapes which similarly eliminated Plaintiff as a plausible suspect.

243. Smith and Cline obstructed and otherwise interfered with the SBI Lab's execution of the 18 March 2004 Court Order compelling forensic tests that Smith and

Cline knew would show that Frankie Washington was not the attacker and that Lawrence Hawes was.

244. Cline, Smith, Bell, Peter, Irving, and Caldwell all concealed notes, reports, and records of exculpatory materials they obtained in the investigation of the Breeze Home Invasion and in the investigation of the other home invasions in Trinity Park, which led to the conviction of Lawrence Hawes.

245. All of the foregoing evidence was material to Plaintiff's defense

246. The Defendants engaged in this conduct in bad faith and with the intent to conceal forensic evidence of Plaintiff's innocence.

247. As a result of Defendants' conduct, Plaintiff was deprived of his rights under the Fourteenth Amendment to the United States Constitution and the parallel provisions of the North Carolina Constitution.

248. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered irreparable harm to his reputation, emotional distress, fear, personal humiliation and indignation, physical harm, as well as the loss of liberty, privacy, education, training, earnings, and earning capacity.

249. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

FOURTH CAUSE OF ACTION:

SEARCH AND SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT AND CONSPIRACY

(Against Bell, Caldwell, and the Investigator Defendants in their individual capacities)

250. Plaintiff incorporates by reference all of the foregoing allegations as though fully set forth here.

251. Bell, Caldwell, and the Investigator Defendants are "persons," as that term is used in the text of 42 U.S.C. § 1983.

252. Under color of state law, Bell, Caldwell, and the Investigator Defendants, individually and in concert, subjected Plaintiff to searches and seizures without probable cause in violation of Plaintiff's Fourth Amendment right to be free from searches and seizures except upon probable cause.

253. When Investigator Defendants (known to Plaintiff only as "Hodge" and "Polk") took Frankie into their custody, transported him to the Durham County Jail, and subjected him to a $1 million pre-trial bond, no probable cause existed to justify the arrest, pre-trial detention, indictment, or criminal proceedings that followed.

254. The criminal proceedings terminated in Plaintiff's favor upon the expiration of the State's right to appeal the decision of the North Carolina Court of Appeals vacating Plaintiff's convictions and dismissed Defendants Cline and Smith's indictments with prejudice, which became final on or soon after September 22, 2008.

255. The conduct of Bell, Caldwell, Hodge, and Polk evinces malice and a reckless and callous disregard for, and deliberate indifference to, Plaintiff's constitutional rights.

256. As result of Defendants' unlawful seizure of Plaintiff's person and Defendants' wrongful prosecution of the Plaintiff, Plaintiff was deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

257. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered irreparable harm to his reputation, emotional distress, fear, personal humiliation and indignation, physical harm, as well as the loss of liberty, privacy, education, training, earnings, and earning capacity.

258. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

FIFTH CAUSE OF ACTION:

STIGMATIZATION IN VIOLATION OF THE FOURTEENTH AMENDMENT AND CONSPIRACY

(Against Cline, Smith, Bell, Caldwell, and the Investigator Defendants, in their individual capacities)

259. Cline, Smith, Bell, Caldwell, and the Investigator Defendants are named in this cause of action are all "persons," as that term is used in the text of 42 U.S.C. § 1983.

260. Beginning on May 30, 2002 and continuing through September 22, 2008, after seizing Plaintiff and initiating criminal proceedings against him without probable cause, Cline made false, public, stigmatizing statements of and concerning Plaintiff to representatives of the media in connection with the deprivations of Plaintiff's federal rights caused by Defendants Smith, Bell, Caldwell, Hodge, and Pope, including, for example, that;

a. That Frankie Washington was responsible for the robbery, attempted rape, kidnapping, and sexual offense crimes committed in the Breeze Home Invasion;

b. That Frankie Washington "matched" the description the Breezes gave of their attacker given;

c. That there was credible evidence that Frankie Washington had been in the creek bed where the shotgun and other evidence connected to the Breeze Home Invasion were found and the K-9 Officer had tracked the suspect;

d. That the victims of the Breeze Home Invasion accurately and reliably identified Frankie as their attacker through Defendant's grossly suggestive procedure;

e. That there probable cause to support Frankie Washington's arrest and indictment for the crimes committed in the Breeze Home Invasion; and

261. Cline, despite the clearly expressed concerns of editors that Cline's statements contained many "errors of fact," Cline insisted that the editors publish all her statements about the cases she prosecuted that have recently come under great scrutiny. Acknowledging that, "[t]he errors are mine," and asserting that she had "no problem with that at all," she urged the editors to "[p]lease post everything."

262. They did. Among the litany of defamatory statements Cline made in connection with Frankie Washington's wrongful conviction, and which she "wanted the public [to] be made fully aware of," were the following false, stigmatizing public statements:

a. Frankie matched the descriptions given by the Breeze family in the 911 call;

b. The Breeze family did not describe their attacker as 6'1" ;

c. The Breeze family members did not describe the attacker as 6-feet tall;

d. Will's description of the attacker was reliable and matched Frankie;

e. The K-9 officer tracked Frankie along the path he took;

f. The K-9 officer identified Frankie;

g. Frankie clothes were wet and muddy when Sgt. Bell detained him;

h. There was no useful purpose in comparing the DNA and fingerprints collected in the Breeze Home Invasion with those of Lawrence Hawes because it was "clear" that Frankie Washington "was the person who did it," there was "no doubt that Frankie Washington committed the offense[s]," and there was no evidence that the Breeze Home Invasion had "any connection with Hawes."

i. The "drive-by" identification procedure was a reliable, good identification procedure that is "still frequently used" by the Durham Police Department.

263. Defendants published the foregoing false and stigmatizing statements to representatives of the news media, knowing they would be published broadly throughout his community, and would subject plaintiff to public scorn and obloquy in the eyes of hundreds of thousands of people.

264. Defendants' false statements, were intended to – and did – inflame the Durham community, the grand jury pool, and the jury pool against the Plaintiff, thereby undermining fundamental fairness in setting the conditions of Plaintiff's pre-trial release, in the grand jury proceedings, and in Plaintiff's criminal trial.

265. The Defendants published these false, stigmatizing public statements in connection with their deprivation of Frankie Washington's constitutional rights and tangible interests, including Plaintiff's rights under the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of the North Carolina Constitution.

266. Defendants' conduct evinces a reckless and callous disregard of, and deliberate indifference to, Plaintiff' constitutional rights.

267. As a result of Defendants' false, stigmatizing public statements in connection with the deprivation of his constitutional rights and tangible interests, Plaintiff was deprived of rights guaranteed by the Fourteenth Amendment to the United States Constitution and the parallel provisions of the North Carolina Constitution.

268. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered irreparable harm to his reputation, emotional trauma, physical harm, as well as the loss of liberty, privacy, education, training, earnings, and earning capacity.

269. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

SIXTH CAUSE OF ACTION:

FAILURE TO INTERVENE AND CONSPIRACY (42 U.S.C. § 1983)

(Against Smith, Bell, Caldwell, Peter, Irving, Marsh,
Sarvis, Council, Chalmers, and Baker
in their individual capacities)

270. The Smith, Bell, Caldwell, Peter, Irving, Marsh, Sarvis, Council, Chalmers, Baker, and the City of Durham are "persons" as that term is used in the text of 42 U.S.C. § 1983, and were acting under color of state law at all times relevant to this cause of action.

271. Smith, Bell, Caldwell, Peter, Irving, Marsh, Sarvis, Council, Chalmers, Baker, and the City of Durham all had an affirmative duty to intercede on behalf of Plaintiff, whose constitutional rights were being violated by other officers in their presence or within their knowledge.

272. Defendants breached their duty by turning a blind eye and doing nothing to intercede to prevent or aid in preventing the foreseeable harms caused by their fellow officers' misconduct.

273. The Investigator Defendants and the Supervisory Defendants knew that no evidence connected Frankie Washington to the Breeze Home Invasion; that the purported "identification" of Mr. Washington was manufactured in a rigged "drive-by" identification procedure; and that it was plainly obvious that Lawrence Hawes was the attacker in the Breeze Home Invasion.

274. Aware their fellow law enforcement officers' conduct was unconstitutional and alerted to the need to protect the plaintiff from further violations, Defendants had an opportunity to intercede to prevent or aid in preventing the violations, but did not do so.

275. Defendants' conduct evinces a wanton and callous disregard for, and deliberate indifference to, Plaintiff's state and federal constitutional rights.

276. As a direct and foreseeable consequence of Defendants' conduct, Plaintiff was deprived of rights under the Fourteenth Amendment to the United States Constitution and the parallel provisions the North Carolina Constitution.

277. As a result of those deprivations, Plaintiff suffered irreparable harm to his reputation, emotional trauma, physical harm, and the loss of liberty, privacy, education, training, earnings, and earning capacity.

278. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

SEVENTH CAUSE OF ACTION:

MUNICIPAL LIABILITY

(42 U.S.C. § 1983 *MONELL*)

(Against the City of Durham, directly, based on its employees' conduct in their official capacities)

279. Plaintiff incorporate the foregoing allegations as though fully set forth here.

280. The Supervisory Defendants and the City of Durham are "persons," as that term is used in the text of 42 U.S.C. § 1983.

1. Officials with Final Policymaking Authority for the City of Durham Participated in the Violations of Plaintiff's Constitutional Rights.

281. Defendant Bell participated and orchestrated unconstitutional conduct alleged herein. Defendant Bell designed, directed, and participated personally in the Investigator Defendant's "drive-by" identification procedure with the intent to fabricate probable cause by manufacturing false identification evidence, which was then used to subject Plaintiff to arrest, indictment, pre-trial detention, and convict Plaintiff without probable cause.

282. At the time Defendant Bell orchestrated and participated in the unconstitutional conduct alleged herein, he was acting in his capacity as the City official with final policymaking authority over the investigation of the Breeze Home Invasion and the procedures used to identify and investigate suspects in that investigation.

283. It would have been plainly obvious to a reasonable policymaker in the same circumstances that Bell's use of a "drive-by" identification procedure would result in the constitutional deprivations that occurred here.

284. As a direct and foreseeable consequence of these policy decisions and actions, Plaintiff was deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

2. City Officials with Final Policymaking Authority Ratified and condoned the conduct that caused the deprivation of Plaintiff's constitutional rights.

285. Upon information and belief, the Supervisory Defendants and other City officials having final policymaking authority for Durham Police had contemporaneous knowledge, directly and through the chain of command, that Bell and the Investigator Defendants had arrested and charged Plaintiff without probable cause and based upon Bell's fabricated identifications obtained in Bell's a grossly suggestive and manipulative "drive-by identification procedure."

286. Upon information and belief, the Supervisory Defendants and other City officials having final policymaking authority for Durham Police had contemporaneous knowledge, directly and through the chain of command, that Bell, Peter, Irving, and Caldwell had concealed evidence of Plaintiff's innocence from their reports and sworn statements to judicial officials surrounding the arrest and identification of Plaintiff.

287. Upon information and belief, the Supervisory Defendants and other City officials having final policymaking authority for Durham Police had contemporaneous knowledge, directly and through the chain of command, that Bell and the Investigator Defendants had made stigmatizing false public statements prematurely asserting Plaintiff's guilt in connection with the Breeze Home Invasion and the Trinity Park Rapes.

288. Nevertheless, upon information and belief, the Supervisory Defendants and other City officials with final policymaking authority agreed to, approved, and ratified the unconstitutional conduct of their subordinates in Durham Police Department.

289. Upon information and belief, this unconstitutional conduct also occurred after the Supervisory Defendants and other officials in the City of Durham with delegated final policymaking authority for the City over the investigation of the Breeze Home Invasion directed, participated in, condoned, or otherwise ratified the Investigator Defendants to orchestrate an unconstitutional, patently suggestive "drive by" identification procedure for the specific purpose of fabricating probable cause to arrest Mr. Washington and to cause legal process to issue charging Mr. Washington with crimes he did not commit.

290. Upon information and belief, the Supervisory Defendants and other City officials with final policymaking authority over the investigation of the Breeze Home Invasion were aware that the Investigator Defendants were obstructing, defying, and otherwise preventing the execution of an Order of the North Carolina Superior Court to conceal and suppress exculpatory evidence in bad faith, and to delay the trial for such a prolonged period of time that defendant would be unable to effectively cross examine any of the witnesses against him in the criminal matter.

291. It would have been plainly obvious to a reasonable policymaker in the same circumstances that such orders and/or extortionate pressures would result in the deprivations of Plaintiff's federal rights.

292. As a direct and foreseeable consequence of the conduct and decisions of the City's officials with policymaking authority over the investigation and subsequent prosecutions, Plaintiff was deprived of his rights under the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

3. The deprivations of plaintiffs' constitutional rights were caused by the City of Durham's established policy or custom of fabricating probable cause through sham identification procedures.

293. At the time of the conduct alleged herein, the Defendants were acting pursuant to a City policy or custom of fabricating probable cause to initiate and maintain the criminal proceedings against a suspect through sham eyewitness identification

procedures that are plainly designed to manufacture false identification evidence. For example:

294. In State of North Carolina v. Eric Daniels, the Durham Police found no evidence of two assailants who robbed a Durham woman of $6,000.00 in her home on September 21, 2000. Although there were several indications that the report was false and the crime had not occurred, the Durham Police undertook to overcome their inability to find a scintilla of evidence at the crime scene by manufacturing bogus identification evidence. Notwithstanding the fact that the victim had reported that both assailants wore masks completely covering their faces, Durham Police nevertheless conducted what they called a "Yearbook Identification Procedure," whereby they asked the victim to identify the intruder by presenting her with a compendium of photographs of seventh graders attending Chewning Middle School: three pages from the school's yearbook. When the victim chose then fifteen year old Eric Daniels from the yearbook pages, Durham Police used that manufactured identification evidence to fabric.

295. Ate probable cause to support Eric Daniels' arrest, prosecution, and wrongful conviction, all of which were based upon nothing more than the Durham Police Department's fabricated identification evidence and nothing more. Eric Daniels had been incarcerated for 7 years when Durham County's Senior Resident Superior Court Judge vacated his convictions and dismissed the supporting indictments with prejudice for want of probable cause.

296. So pervasive was the policy and custom of employing rigged photo identification procedures to fabricate probable cause to arrest and initiate criminal proceedings where no other evidence exists, former Durham Police Sergeant M.D. Gottlieb testified that even after the Yearbook identification procedure employed to convict Eric Daniels was ostensibly barred by the Department's General Order No. 4077, the Durham Police officers understood that General Order No. 4077 did not apply to that or other forms of egregiously suggestive identification procedures.

297. In another manifestation of the City's policy or custom of fabricating probable cause by manufacturing witness identification evidence, the Durham Police Department manufactured probable cause to initiate criminal proceedings against three members of Duke University's Men's Lacrosse Team without probable cause by

employing an identification procedure condemned by experts as akin to "shooting ducks in a barrel."

298. In the three Durham County cases, *North Carolina v. Reade Seligmann*, *North Carolina v. Colin Finnerty*, and *North Carolina v. David Evans*, Durham Police initiated criminal proceedings against three demonstrably innocent young men by presenting their drug-addled accuser with a "power point presentation" of photographs of every member of the team. The Durham Police officers advised the accuser that the power point presentation contained all of the suspects and only the suspects, then instructed her to identify her "attackers."

299. The officers – also employed in the Police Department's Patrol District 2 – designed and orchestrated this sham identification procedure after a private DNA lab advised them that, while there were a number of male DNA sources in the accuser's rape kit, none of it matched any member of the lacrosse team, after the accuser failed to identify (or recognize) the same individuals in several less overtly suggestive identification procedures, and after a woman who was present with the accuser the entire evening told investigators that her allegations were "a crock."

300. At the time Defendants initiated criminal proceedings against Mr. Washington based upon the "drive-by identification procedure," it was the City's policy or custom to utilize sham identification procedures for the purpose of manufacturing probable cause to arrest and charge a suspect where probable cause does not exist.

301. Sgt. Bell directed the "drive-by" identification procedure pursuant to the same City policy or custom. Like the four illustrative malicious prosecutions described above, Sgt. Bell directed the Investigator Defendants to orchestrate the sham "drive-by identification" of Frankie Washington because there was no evidence implicating Frankie Washington to the Breeze Home Invasion. Mr. Washington bore no resemblance to the attacker described by the Breezes, except insofar as he, like the attacker, was black. The K-9 dog did not react to Mr. Washington or otherwise connect him to the scent that the dog had quickly picked up and was tracking when Sergeant Bell ordered Officer Irving to take the K-9 off the scent and transport him to Frankie Washington's location.

302. It was plainly obvious to Sgt. Bell and the Investigator Defendants that there would be no evidence connecting Mr. Washington to the Breeze Home Invasion, just

as it was plainly obvious that there would be no evidence connecting Eric Daniels, Reade Seligmann, Colin Finnerty, or David Evans to the violent crimes they were falsely accused of committing.

303. Pursuant to the same unconstitutional Durham Police Department's policy or custom, when Sgt. Bell and the Investigator Defendants were confronted with the absence of probable cause to arrest or charge Mr. Washington for the crimes committed in the Breeze Home Invasion, they cut the Gordian Knot by employing the City Police Department's policy and custom of fabricating probable cause by manufacturing identification evidence through a sham identification procedure calculated solely for that purpose.

304. It would have been plainly obvious to a reasonable policymaker in the same circumstances that such conduct would result in the constitutional deprivations that occurred here.

305. As a direct and foreseeable consequence of these policy decisions and actions, Plaintiff was deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

306. The Durham Police Officers' Stigmatization of Frankie Washington was caused by the City's custom of permitting officers to freely publish baseless assertions of the guilt of the accused.

307. Acting in the course and scope of their employment with the City, in their capacities as representatives of its Police Department, pursuant to established custom or policy, and with the acquiescence or approval of the Supervisory Defendants, Durham Police Officers made false, stigmatizing public statements to representatives of the media declaring that Frankie Washington was the attacker in the Breeze Home Invasion and the Trinity Park Rapist, responsible also for the rapes, home invasions, and robberies that had terrorized the citizens living in and around Trinity Park.

308. At the time the false, inflammatory, and stigmatizing public statements were published, the officers making them were acting pursuant to established customs or policies of the City of Durham and the Durham Police Department, and with the acquiescence or approval of the Supervisory Defendants and other officials with policymaking authority over public statements in connection with the Police

Department's investigations, who were aware of the statements and condone or ratified them.

309. As a direct and foreseeable consequence of the City's policy or custom of permitting Durham Police officers involved in the City's criminal investigations to publish premature conclusions of the criminality and guilt of an accused, Plaintiff was deprived of rights guaranteed to him by the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

4. City Officials with Final Policymaking Authority over the Investigation of the Breeze Home Invasion Failed to Supervise the Officers Who Participated in it.

310. The Supervisory Defendants and, upon information and belief, other officials with final policymaking authority in the City of Durham and the Durham Police agreed Smith and Bell would direct and control the flow of evidence, including that required by the Court's Orders, to the SBI.

311. Before and after Smith was given this authority with respect to the Durham Police investigation, the Supervisory Defendants and other officials with final policymaking authority in the City of Durham and the Durham Police had actual or constructive knowledge that Smith and Bell did not have the experience or training to direct or help direct a complex criminal investigation; and that he had made decisions that committed the investigation of the Breeze Home Invasion to a predetermined outcome.

312. In these circumstances, adequate scrutiny of Bell and Smith's experience, conduct, training, and background in the Investigator division would have made it plainly obvious to a reasonable policymaker that the decision to confer this authority upon them with respect to the Durham Police investigation of the Breeze Home Invasion would lead to deprivations of Plaintiff's constitutional rights.

313. Nevertheless, the Supervisory Defendants and other officials in the City of Durham and the Durham Police Department conferred this authority upon Cline with respect to the investigation knowing, or with deliberate indifference to the likelihood, that their decision would result in violations of Plaintiff's constitutional rights.

314. After Bell and Smith were given this authority with respect to the investigation, the Supervisory Defendants and other officials with final policymaking authority in the City of Durham and the Durham Police had actual or constructive knowledge that Smith and Bell had authorized and/or personally engaged in decisions from which it would have been plainly obvious to a reasonable supervisory official that violations of Plaintiff's constitutional rights inevitably would occur, including their abuse of false identification evidence produced through a grossly suggestive identification procedure that deviated from all constitutional and departmental requirements, their acts in furtherance of the conspiracy to fabricate identification evidence and conceal the forensic identification evidence that would have impugned their manufactured identifications of Plaintiff, and their public statements falsely and prematurely declaring Plaintiff to be the Trinity Park Rapist, even as the rapes and home invasions in Trinity Park continued while Plaintiff was incarcerated.

315. Nevertheless, the Supervisory Defendants and other officials in the City of Durham and the Durham Police Department took no corrective action and instead continued to recognize the authority of Smith and Bell to control the Durham Police investigation of the Breeze home invasion, communicating with the SBI Lab with respect to forensic testing of evidence, the administration of court orders directing the Durham Police to cause the SBI to conduct specific forensic tests of evidence in the case, making requests of the SBI for testing of fingerprints and submission of identification evidence to the State's databases of offenders, and continued to direct Durham Police to report them, knowing or with reckless disregard or deliberate indifference to the likelihood that their decision would result in further violations of Plaintiff's constitutional rights.

316. It would have been plainly obvious to a reasonable policymaker in the same circumstances that such conduct would result in the constitutional deprivations that occurred here.

317. As a direct and foreseeable consequence of these policy decisions and actions, Plaintiff was deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

5. Officials with Final Policymaking Authority Failed to Exercise Adequate Supervisory Responsibility Over Bell, Smith, and the Investigator Defendants

318. Upon information and belief, as of March 13, 2002, Smith had a documented history of selective and malicious prosecution, fabricating false evidence, and rigging identification procedures for the purpose of manufacturing probable cause to arrest citizens.

319. The Supervisory Defendants and other officials in the City of Durham and the Durham Police Department consistently failed to take adequate or meaningful steps to discipline, correct, retrain, or terminate its employment of Bell, Smith, and the Investigator Defendants.

320. By these omissions, these officials endorsed and ratified the Investigator Defendants' unconstitutional conduct, the City's established custom or practice of manufacturing probable cause to arrest, indict and convict innocent suspects by fabricating identification evidence though sham identification procedures, and the City's established custom and practice of failing to correct the unconstitutional conduct of Durham Police officers.

321. In these circumstances, it would have been plainly obvious to a reasonable policymaker that the decision to place Bell, Smith, Peter, and the Investigator Defendants in a position to control and participate in the investigation would lead to deprivations of Plaintiff's constitutional rights.

322. Despite this evidence, the Supervisory Defendants and other officials in the City of Durham and the Durham Police Department, assigned Smith to lead the investigation knowing, or with deliberate indifference to the likelihood, that their decision would result in violations of Plaintiff's constitutional rights.

323. As a direct and foreseeable consequence of this official action, Plaintiff was deprived of rights guaranteed by the Fourteenth Amendment to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

324. After being given final policymaking authority over the investigation of the breeze home invasion, Smith and Bell participated in, directed, condoned, and ratified their subordinates' constitutional violations.

325. Shortly after Frankie Washington's illegal seizure and detention without probable cause, the Supervisory Defendants and City officials with final policymaking authority in the City of Durham and the Durham Police Department's investigations agreed that Smith and Bell would direct the Durham Police investigation into the allegations of rape, sexual offense, and kidnapping directed against Frankie Washington based solely upon the grossly suggestive identification procedure.

326. Shortly after the unlawful arrest of Frankie Washington, the Supervisory Defendants and other officials in the City of Durham and the Durham Police Department instructed officers involved in the investigation of the Breeze home invasion and the other Trinity Park home invasions should take their direction from Smith and Bell regarding their investigation, rather than the usual CID chain of command, and that they should also report events in the investigation and court proceedings to senior command staff on the investigation's progress.

327. By agreeing that Smith and Bell would direct the investigation, and by instructing Durham Police personnel to take direction from them instead of the usual Criminal Investigations Division (CID) chain of command, the Supervisory Defendants, the City of Durham, and the Durham Police Department delegated to Smith and Bell the final policymaking authority over the investigative procedures implemented by the Durham Police Department, Durham Police personnel involved in the investigation, and compliance with court Orders compelling the production of evidence to the SBI Lab for forensic testing.

328. Acting pursuant to this delegated authority, Smith, Bell, and Peter implemented investigative policies and actions including, among other things, the orchestration of a grossly suggesting "drive-by identification procedure," the decision to conduct no other identification procedures, the decision not to request submission of the fingerprint and DNA evidence obtained in connection with the Breeze Home Invasion to the state or national databases for comparison to known offenders like Lawrence Hawes, the decision to ignore or defy the March 18 Order compelling forensic testing of that evidence, obstructing the production of reports of forensic tests and the other bad faith concealment of exculpatory evidence alleged herein.

329. Smith, Bell, and Peter made these policy decisions and engaged in this conduct aware of and deliberately indifferent to the likelihood that they would result in violations of Plaintiff's constitutional rights.

330. Upon information and belief, the Supervisory Defendants and other officials in the City of Durham and the Durham Police, were aware of the foregoing investigative policy decisions and conduct of Smith and Bell, and were deliberately indifferent to the likelihood that they would result in violations of Plaintiff's constitutional rights.

331. After the violations of Plaintiffs' constitutional rights subsequently occurred, the Supervisory Defendants and other officials in the City of Durham and the Durham Police ratified and condoned the investigative policies and conduct that caused the violations.

332. It would have been plainly obvious to a reasonable policymaker in the same circumstances that such conduct would result in the constitutional deprivations that occurred here.

333. As a direct and foreseeable consequence, Plaintiff was deprived of his rights guaranteed by the Fourteenth Amendments to the United States Constitution, and the parallel provisions of Article I of the North Carolina Constitution.

* * *

334. As a direct and foreseeable consequence of each of the foregoing constitutional deprivations caused by policymaking officials, customs and practices, and policies of the City of Durham and its Police Department, Plaintiff has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education and training, loss of earning capacity, and irreparable harm to his reputation.

335. As a further consequence of these deprivations, Plaintiff was required to incur exorbitant costs associated with securing bail, retaining professional assistance, and other expenses associated with defending against the unlawful criminal proceedings Defendants initiated and maintained against him without probable cause.

EIGHTH CAUSE OF ACTION:
SUPERVISORY LIABILITY (42 U.S.C. § 1983)

(Against the Supervisory Defendants
in their individual capacities)

336. Plaintiff incorporates by reference all of the foregoing allegations as though fully set forth here.

337. The Supervisory Defendants are "persons," as that term is used in the text of 42 U.S.C. § 1983, and were acting under color of law at all times relevant to this cause of action.

338. The Supervisory Defendants' failure to supervise the investigation caused the deprivation of Plaintiff's constitutional rights.

339. During the course of the investigation of the Trinity Park Rapes, including the Breeze Home Invasion, the Investigator Defendants individually and in concert engaged in a number of investigative abuses, including the fabrication of identification evidence, the concealment of exculpatory forensic identification evidence, and manipulation of witness identification procedures to manufacture probable cause to arrest, indict, and ultimately convict Plaintiff, knowing that no probable cause, in fact, existed.

340. The Supervisory Defendants knew, or should have known, about these abuses and failed to take meaningful preventative or remedial action.

341. The Supervisory Defendants' conduct in response to those known and obvious abuses evidenced a reckless and callous disregard for, and deliberate indifference to, Plaintiff's constitutional rights.

342. As a direct and foreseeable consequence of these acts and omissions, Plaintiff was deprived of his rights under the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

343. The Supervisory Defendants' Failure to Control and Supervise the Investigator Defendants Led to the Deprivation of Plaintiff's Constitutional Rights.

344. By May 2002, Bell had a demonstrated propensity for fabricating probable cause to arrest suspects without probable cause by abusing grossly suggestive identification procedures.

345. Upon information and belief, by May 2002, the Investigator Defendants had demonstrated a propensity for preparing false and misleading investigative reports designed to sustain criminal proceedings they initiate.

346. The Supervisory Defendants knew or should have known these things and that the Investigator Defendants lacked the training or experience required to conduct a complex investigation of a serial rapist, but failed to take meaningful remedial action upon learning that Sgt. Bell and the Investigator Defendants had engaged in conduct in the investigation of the Breeze Home Invasion that posed a pervasive and unreasonable risk of constitutional injury to citizens like Plaintiff, including their fabrication of probable cause through the "drive-by" identification procedure they used to arrest and detain Plaintiff.

347. After learning of the Investigator Defendants' fabrication of probable cause, the Supervisory Defendants turned a blind eye, and did nothing to take remedial or preventative action to correct or prevent the conduct. Rather, they continued to allow Smith, Peter, and the Investigator Defendants to control the investigation of the Breeze Home Invasion, and took no corrective action with respect to the known violations of Plaintiff's constitutional rights or the pervasive risk of further constitutional injury if left unchecked.

348. Under the circumstances, it was plainly obvious that maintaining the Investigator Defendants in charge of the Breeze Home Invasion had already led to the deprivation of Plaintiffs' constitutional rights, and, that failing to intervene by taking remedial and corrective action would lead to further deprivations of Plaintiffs' constitutional rights.

349. The Supervisory Defendants' failure to respond to the Investigator Defendants' established patterns of unconstitutional conduct or to the pervasive risk of further constitutional injury to citizens like Plaintiff evinced their deliberate indifference or tacit authorization of the unconstitutional conduct of the Investigator

Defendants and their deliberate indifference to the risk of constitutional injury that their conduct posed.

350. The Supervisory Defendants' acquiescence to and ratification of the Investigator Defendants' constitutional violations evinced a callous, reckless, and deliberate indifference to Plaintiff's constitutional rights.

351. As a direct and foreseeable consequence of the Supervisory Defendants' deliberate indifference to Plaintiff's constitutional rights, Plaintiff was deprived of his rights under the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

352. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education and training, loss of earning capacity, and irreparable harm to his reputation.

353. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

NINTH CAUSE OF ACTION:
CONSPIRACY (42 U.S.C. § 1983)

(Against Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, in their individual and official capacities; and against the City of Durham, directly, based on the conduct of its employees and agents acting in their official capacities).

354. Plaintiff incorporates the foregoing allegations as though fully set forth here.

355. The Investigator Defendants, the Supervisory Defendants, and the City of Durham are "persons," as that term is used in the text of 42 U.S.C. § 1983.

356. Under color of state law, the Investigator Defendants, the Supervisory Defendants, and the City of Durham conspired and entered into express and/or implied agreements, understandings, or meetings of the minds among themselves to deprive Plaintiff of his constitutional rights by seizing and initiating criminal proceedings against him on charges of attempted rape and sexual offense, burglary, kidnapping, and other crimes which these Defendants knew were not supported by probable cause.

357. The Investigator Defendants, the Supervisory Defendants, and other City officials with final policymaking authority participated in these agreements and acted with the intent to further their illegal purposes by various means, including, for example:

a. Fabricating probable cause by manufacturing phony identification procedures implicating Plaintiff in a crime he did not commit;

b. Condoning and ratifying the fabrication of identification evidence implicating Plaintiff and directing those who controlled the investigation not to conduct a subsequent, valid identification procedure;

c. Making false and materially incomplete statements to judicial officials who authorized Plaintiff's arrest and pre-trial detention, or ratifying or condoning that conduct;

d. Making false and materially incomplete statements to the grand jury that indicted Plaintiff for crimes that Defendants knew were committed by Lawrence Hawes and not by Frankie Washington, or ratifying and condoning that conduct;

e. Fabricating additional false evidence before and after Plaintiff's indictment through their investigative reports of the circumstances surrounding Plaintiff's arrest.

f. Agreeing to conceal from their reports the exonerating evidence of Hawes' culpability for the Breeze Home Invasions;

g. Publishing false and inflammatory public statements regarding Plaintiff;

h. Interfering with and otherwise obstructing the performance of tests and comparisons that were ordered by the Superior Court in the March 18 Order compelling the SBI Lab to conduct forensic tests of specific articles of evidence, knowing that would have established Frankie Washington's innocence and Lawrence Hawes' culpability for the Breeze Home Invasion and identity as the Trinity Park Rapist; and

i. Engaging in all of the foregoing conduct for the unlawful purpose of initiating and maintaining criminal proceedings against Plaintiff and securing his wrongful conviction without probable cause.

358. The foregoing conduct evinced Defendants' reckless and callous disregard for, and deliberate indifference to, Plaintiff's constitutional rights.

359. As a direct and foreseeable consequence of this conspiracy and Defendants' conduct in furtherance of it, Plaintiff was deprived of rights under the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

360. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education and training, loss of earning capacity, and irreparable harm to his reputation.

361. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

TENTH CAUSE OF ACTION:

CONSPIRACY (42 U.S.C. § 1985(2))

(Against Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, in their individual and official capacities; and against the City of Durham, directly, based on the conduct of its employees and agents acting in their official capacities)

362. Plaintiff incorporates by reference all of the foregoing allegations as though fully set forth here.

363. Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, and the City of Durham are "persons," as that term is used in 42 U.S.C. § 1985.

364. Under color of law, Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, and the City of Durham conspired and entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of impeding, hindering, obstructing and defeating the due course of justice in the State of North Carolina, with the intent to deny Plaintiff the equal protection of the laws.

365. In furtherance of this conspiracy, one or more of these Defendants engaged in overt acts that were motivated by invidious racial animus, intended to foment invidious racial animus against Plaintiff in the Durham community, and/or intended to take advantage of the invidious racial animus that they had fomented in the Durham community against Plaintiff.

366. Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, and the City of Durham's conduct evidenced a reckless and callous disregard for, and deliberate indifference to, Plaintiff's constitutional rights.

367. As a direct and foreseeable consequence of this conspiracy, Plaintiff was deprived of rights guaranteed by the Fourteenth Amendment to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

368. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education and training, loss of earning capacity, and irreparable harm to his reputation.

369. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

ELEVENTH CAUSE OF ACTION:

CONSPIRACY (42 U.S.C. § 1985(3))

(Against Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, in their individual and official capacities; and against the City of Durham, directly, based on the conduct of its employees and agents acting in their official capacities).

370. Plaintiff incorporates by reference all of the foregoing allegations as though fully set forth here.

371. Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, and the City of Durham are "persons," as that term is used in 42 U.S.C. § 1985.

372. Under color of state law, the Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, and the City of Durham conspired and entered into express and/or implied agreements, understandings, or meetings of the minds among themselves for the purpose of depriving, either directly or indirectly, Plaintiff of the equal protection of the laws and of their equal privileges and immunities under the laws.

373. In furtherance of this conspiracy, one or more of these Defendants engaged in overt acts that were motivated by invidious racial animus, intended to foment invidious racial animus against Plaintiff in the Durham community, and/or intended

to take advantage of the invidious racial animus that they had fomented in the Durham community against Plaintiff.

374. Bell, Peter, Caldwell, Irving, Smith, the Investigator Defendants, the Supervisory Defendants, and the City of Durham's conduct evinced a reckless and callous disregard for, and deliberate indifference to, Plaintiff's constitutional rights.

375. As a direct and foreseeable consequence of this conspiracy, Plaintiff was deprived of rights under the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

376. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education and training, loss of earning capacity, and irreparable harm to his reputation.

377. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings Defendants initiated and maintained against him.

TWELFTH CAUSE OF ACTION:

CONSPIRACY (42 U.S.C. § 1986)

(Against the Investigator Defendants and the
Supervisory Defendants, in their individual; and against
the City of Durham, directly, based on the conduct of its
employees and agents acting in their official capacities)

378. Plaintiff incorporates by reference all of the foregoing allegations as though fully set forth here.

379. Bell, Peter, Smith, the Supervisory Defendants, and the City of Durham are "persons," as that term is used in 42 U.S.C. § 1986.

380. Bell, Peter, Smith, the Supervisory Defendants, and the City of Durham had prior knowledge of the wrongs conspired to be done by Smith, the Investigator

Defendants, the Supervisory Defendants, and the City of Durham in violation of 42 U.S.C. § 1985.

381. Bell, Peter, Smith, the Supervisory Defendants, and the City of Durham had the power to prevent or aid in preventing the commission of those wrongs, and which, by reasonable diligence could have been prevented, but they neglected and/or refused to exercise such power.

382. As a direct and foreseeable result of Defendants' failure, neglect, or refusal to act to prevent or aid in preventing the commission of those wrongs, Plaintiff suffered the injuries and damages alleged herein.

383. Bell, Peter, Smith, the Supervisory Defendants and the City of Durham's conduct evinced a reckless and callous disregard for, and deliberate indifference to, Plaintiff's constitutional rights.

384. As a result, Plaintiff was deprived of rights guaranteed by the Fourteenth Amendment to the United States Constitution and the parallel provisions of Article I of the North Carolina Constitution.

385. As a direct and foreseeable consequence of these deprivations, Plaintiff suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education and training, loss of earning capacity, and irreparable harm to his reputation.

386. As a further consequence of these deprivations, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

THIRTEENTH CAUSE OF ACTION:
MALICIOUS PROSECUTION AND CONSPIRACY

(Against the Investigator Defendants, in their individual capacities, and the City of Durham based on the conduct of their and agents in their official employees capacities)

387. Plaintiff incorporates the foregoing allegations by reference as though fully set forth here.

388. Beginning with the May 30, 2002 arrest of Plaintiff, the Investigator Defendants acting individually and in concert, instituted or participated in the institution of criminal proceedings against Plaintiff.

389. These proceedings were not supported by probable cause and terminated in Plaintiff's favor when the North Carolina Court of Appeals decision vacating Plaintiff's convictions and dismissing his indictments with prejudice became final on September 22, 2008.

390. Smith, Bell, Peter, Caldwell, Irving, and the Investigator Defendants acted with malice, ill-will, and wanton and willful disregard for Plaintiff's rights by, for example:

a. Conspiring to manufacture – and manufacturing – false and misleading identification evidence for the purpose of fabricating probable cause to support the Plaintiff's arrest, detention, indictment, prosecution, and subsequent incarceration.

b. Attempting to conceal – and concealing – exculpatory forensic DNA, fingerprint, and other identification evidence.

c. Conspiring to obstruct – and obstructing -- the due completion of court-ordered forensic testing, knowing that the test results would prove Plaintiff's innocence and identify Lawrence Hawes as the perpetrator of the Breeze Home Invasion.

d. Conspiring to delay – and delaying – Plaintiff's criminal trial for four years and nine months through the foregoing unlawful acts.

391. As a result, Defendants subjected Plaintiff to wrongful pretrial detention, indictment, criminal prosecution, and conviction without probable cause in violation of Plaintiff's rights under the Fourth and Fourteenth Amendment to the United States Constitution and the parallel provisions of the North Carolina Constitution.

392. As a direct and foreseeable consequence of these deprivations, Plaintiff has suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education and training, loss of earning capacity, and irreparable harm to his reputation.

393. As a further direct and foreseeable consequence of Defendants' conduct, Plaintiff incurred expenses associated with obtaining pre-trial release on bail during the criminal proceedings and other expenses in connection with defending against the unlawful criminal proceedings pursued against him.

394. The conduct that caused the injuries for which Plaintiff is entitled to compensatory damages, was "egregiously wrongful" as that phrase is used in N.C.G.S. §1D-1, *et seq*., and was accompanied by fraud, malice and willful and wanton conduct.

FOURTEENTH CAUSE OF ACTION:

COMMON LAW OBSTRUCTION OF JUSTICE AND CONSPIRACY

(Against the Investigator Defendants and against the City of Durham, directly, based on the conduct of its employees and agents acting in their official capacities)

395. Plaintiff incorporates all of the foregoing allegations as though fully set forth here.

396. Between May 30, 2002 and September 22, 2008, Bell, Smith, Peter, Caldwell, Irving, and the other Investigator Defendants, acting individually and in concert, entered into express or tacit agreements, understandings, and meetings of the minds to participate in a common scheme and plan to prevent, obstruct, impede, and hinder public and legal justice in the State of North Carolina, as alleged above.

397. In furtherance of this conspiracy, one or more of these Defendants committed acts that attempted to and did prevent, obstruct, impede, and hinder public and legal justice in the State of North Carolina. For example:

398. The Investigator Defendants engaged in this obstruction of justice by conspiring to manufacture and by manufacturing false and eye witness identification evidence for the specific purpose of fabricating probable cause to support Plaintiff's arrest, indictment, prosecution and conviction, knowing that no probable cause existed to implicate Frankie Washington in the Breeze Home Invasion. At the time the Defendants engaged in this conduct, they knew, callously disregarded, or were deliberately indifferent to the fact that the results of the court-ordered testing would prove with scientific certainty not only Plaintiff's innocence but also Lawrence Hawes' responsibility for the Breeze Home Invasion.

399. The Investigator Defendants engaged in this obstruction of justice by conspiring to conceal and prevent – and by acting to conceal and prevent – the production of reports of court ordered forensic testing and analyses, including DNA and fingerprint analyses, that were designed to identify the contributor of genetic material and fingerprints left on evidence collected in the investigation of the Breeze Home Invasion. At the time of their conspiracy and their conduct in furtherance of it, the Investigator Defendants knew, callously disregarded, and were deliberately indifferent to the fact that the reports of the court-ordered tests and analyses would prove with scientific certainty not only Plaintiff's innocence but also Lawrence Hawes' responsibility for the Breeze Home Invasion.

400. The Investigator Defendants engaged in this obstruction of justice by conspiring to interfere with the delivery and/or communication of the Order of the North Carolina Superior Court directing the Durham Police to deliver certain articles of evidence to the SBI Lab for purposes of conducting the forensic testing and analysis ordered by the Court. At the time they entered into this conspiracy and engaged in conduct in furtherance of its purpose, they knew or were deliberately indifferent to the fact that the court-ordered testing would prove Plaintiff's innocence and Lawrence Hawes' culpability in the Breeze Home Invasion with scientific certainty.

401. The Investigator Defendants engaged in this obstruction of justice by conspiring to manufacture and by manufacturing false and misleading investigative

reports, including the reports of the victims' description of the perpetrator of the Breeze Home Invasion to harmonize those descriptions with Plaintiff's very different body type, height and weight. These Defendants knew that fabricating these reports was required to bolster the probable cause that they fabricated by orchestrating a rigged and unconstitutionally suggestive "show-up" procedure, which was to be used as the sole basis for initiating and maintaining their malicious prosecution of Plaintiff. At the time they entered into this conspiracy and engaged in conduct in furtherance of its purpose, they knew, callously disregarded, or were deliberately indifferent to the fact that the results of the court-ordered testing would prove with scientific certainty not only Plaintiff's innocence but also Lawrence Hawes' responsibility for the Breeze Home Invasion.

402. The Investigator Defendants participated in this obstruction of justice by conspiring to prevent, and by engaging in conduct that did, in fact, prevent the court-ordered forensic testing of evidence collected in the investigation of the Breeze Home Invasion. At the time they entered into this conspiracy and engaged in conduct in furtherance of its unlawful purpose, they knew, callously disregarded, or were deliberately indifferent to the fact that the results of the court-ordered testing would prove with scientific certainty not only Plaintiff's innocence but also Lawrence Hawes' responsibility for the Breeze Home Invasion.

403. The Investigator Defendants engaged in this obstruction of justice by conspiring to manipulate and by manipulating witness identification procedures for the purpose of fabricating probable cause to arrest, detain, indict, and to sustain the malicious prosecution of Plaintiff. At the time they entered into this conspiracy and engaged in conduct in furtherance of its purpose, they knew, callously disregarded, or were deliberately indifferent to the fact that the results of the court-ordered testing would prove with scientific certainty not only Plaintiff's innocence but also Lawrence Hawes' responsibility for the Breeze Home Invasion.

404. The Investigator Defendants participated in this obstruction of justice by conspiring to cause the delay and by delaying the production of court-ordered forensic evidence, knowing that the evidence would prove Plaintiff's innocence and that intentionally delaying its production would cause the deprivation of Plaintiff's constitutional rights, including his right to a speedy trial under the Fourteenth Amendment to the United States Constitution and the parallel provisions of the Article I of the North Carolina Constitution.

405. As a direct and foreseeable consequence of the foregoing acts and other conduct in furtherance of the conspiracy to obstruct justice, Plaintiff was unreasonably and unlawfully subjected to arrest, detention, indictment, conviction, and incarceration without probable cause.

406. As a direct and foreseeable consequence of Defendants' obstruction of justice and their acts in furtherance of their conspiracy to obstruct justice, Plaintiff suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education, and irreparable reputational harm.

407. As a further, direct and foreseeable consequence of Defendants' obstruction of justice and their acts in furtherance of their conspiracy to obstruct justice, Plaintiff incurred expenses and costs in connection with securing bail and being subjected to the unlawful seizure and malicious prosecution alleged herein.

408. Defendants' conduct in connection with the injuries for which Plaintiff is entitled to compensatory damages as alleged herein, was "egregiously wrongful" as that phrase is used in N.C.G.S. §1D-1, et seq., and was accompanied by fraud, malice and willful and wanton conduct.

FIFTEENTH CAUSE OF ACTION:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND CONSPIRACY

(Against the Investigator Defendants, in their individual capacities, and the City of Durham, directly, based on conduct of its employees and agents acting in their official capacities)

409. Plaintiff incorporates all of the foregoing allegations by reference as though set forth here.

410. The Investigator Defendants acted individually and in concert to manufacture bogus inculpatory identification evidence and to conceal exculpatory evidence for the purpose of fabricating probable cause to initiate and perpetuate a criminal action against Plaintiffs, falsely charging him with the crimes committed in the Breeze Home Invasion – charges that were calculated to subject Plaintiff to public shame, humiliation, condemnation, obloquy, and infamy.

411. The Investigator Defendants, acting individually and in concert, manipulated witness identification procedures with the intention of fabricating probable cause to arrest and initiate criminal proceedings against Plaintiff.

412. The Investigator Defendants repeatedly made false, offensive, and inflammatory assertions about Plaintiff calculated to subject Plaintiff to public shame, humiliation, condemnation, obloquy, and infamy.

413. Smith and the Investigator Defendants, acting individually and in concert, obstructed and interfered with the execution of the March 18 Order compelling specific forensic DNA and fingerprint tests and comparisons, knowing that doing so would prevent the production of exculpatory evidence exonerating Plaintiff of the crimes committed in the Breeze Home Invasion.

414. Smith and the Investigator Defendants, acting individually and in concert, deliberately concealed, buried, and otherwise withheld from reports to prosecutors evidence that connected Lawrence Hawes to the Breeze Home Invasion and established Plaintiff's innocence of any involvement in it.

415. The Supervisory Defendants, knowing of the constitutional violations caused by their subordinates' misconduct, condoned and ratified their conduct.

416. The conduct of the Investigator Defendants and the ratification of that conduct by the Supervisory Defendants was extreme and outrageous.

417. Defendants engaged in this extreme and outrageous behavior with the intent to cause Plaintiff to suffer severe emotional distress, or with callous disregard and reckless indifference to the likelihood that their conduct would cause Plaintiff to suffer severe emotional distress.

418. The conduct of the Investigator Defendants and the Supervisory Defendants' ratification of it did, in fact, cause Plaintiff to suffer severe emotional distress resulting from emotional and mental conditions generally recognized and diagnosed by trained professionals.

419. Defendants' conduct had the direct and foreseeable consequence of marking Plaintiff as an infamous violent criminal who committed racially motivated crimes against the white women of Trinity Park in the minds of thousands of people.

420. Defendants' conduct had the further foreseeable consequence of turning Plaintiff into a public pariah, subjecting him to extreme and sustained public obloquy, causing him and his family to endure similar public scorn, taunts, and insults, and subjecting him to assaults on his character for peaceableness by the local media and national publications that reproduced those local reports.

421. Despite Plaintiff's exoneration by the Court of Appeals, Defendants' conduct will continue to have deleterious effects on Plaintiff, who will always be associated with the Breeze Home Invasion, the Trinity Park Rapes, and the related false allegations that Defendants advanced and repeatedly publicized.

422. As a direct and foreseeable consequence of those conditions, Plaintiff has suffered, and continues to suffer severe, disabling emotional, mental, and physical harm.

423. Defendants' conduct in connection with the injuries for which Plaintiff is entitled to compensatory damages as alleged herein, was "egregiously wrongful" as

that phrase is used in N.C.G.S. §1D-1, et seq., and was accompanied by fraud, malice and willful and wanton conduct.

SIXTEENTH CAUSE OF ACTION:
NEGLIGENCE

(Against the Investigator Defendants and the Supervisory Defendants in their individual capacities, and against the City of Durham, directly, based on the conduct of City employees and agents acting in their official capacities)

424. Plaintiff incorporates all of the foregoing allegations by reference as though set forth here.

425. At the time of the events alleged above, the Investigator Defendants and the Supervisory Defendants owed Plaintiff a duty to use due care with respect to their conduct in connection with the investigation of the Trinity Park Rapes, including the use of egregiously suggestive identification procedures, the deliberate violations of standing court orders to procure specific forensic tests of the evidence they collected in connection with the Breeze home invasion; the fabrication of false and misleading reports to prosecutors, grand juries, and magistrates; and their public statements identifying Frankie Washington as the perpetrator of those crimes (the "Trinity Park Rapist").

426. At the time that the Investigator Defendants engaged in the conduct alleged above, the Investigator Defendants and the Supervisory Defendants knew or should have known that their conduct caused violations Plaintiff's clearly established state and federal constitutional rights, state and federal statutory rights, the common law of North Carolina, and standing orders of the North Carolina Superior Court.

427. At the time that the Investigator Defendants engaged in the conduct alleged above, the Investigator Defendants and the Supervisory Defendants knew or should have known that their conduct would cause further and continuing violations of Plaintiff's rights and would cause Plaintiff to suffer the foreseeable harms described herein.

428. By engaging in the conduct alleged herein, the Investigator Defendants breached their duties to exercise due care to avoid foreseeable harm to Plaintiff.

429. By condoning and ratifying the misconduct of the Investigator Defendants, the Supervisory Defendants breached their duties to exercise due care to avoid foreseeable harm to Plaintiff.

430. As a direct and proximate result of the Defendants' breach of their duty to exercise due care, Plaintiff suffered the harms alleged herein.

SEVENTEENTH CAUSE OF ACTION:

NEGLIGENT SUPERVISION, HIRING, TRAINING, DISCIPLINE, & RETENTION

(Against the Investigator Defendants and the Supervisory Defendants in their individual capacities, and against the City of Durham, directly, based on the conduct of City employees and agents acting in their official capacities)

431. Plaintiff incorporates all of the foregoing allegations by reference as though set forth here.

432. At the time of the events alleged above, each of the Supervisory Defendants owed Plaintiff a duty to use due care with respect to the hiring, training, and retention, supervision, discipline, and retention of the Durham Police personnel involved in the investigation of the Trinity Park Rapes, including the Breeze Home Invasion.

433. The Supervisory Defendants were negligent in their supervision of Bell, Peter, and the Investigator Defendants by failing to discipline, correct, or remediate the Investigator Defendants' routine use of grossly suggestive identification procedures to manufacture probable cause to arrest and initiate proceedings against suspects in their investigations. Instead, the Supervisory Defendants turned a blind eye to those abuses and retained them in a position to continue to conduct investigations, including the investigation of the Breeze Home Invasion and the Trinity Park Rapist.

434. The Supervisory Defendants negligently supervised the Investigator Defendants by assigning them to the police investigation of the Breeze home invasion despite their knowledge of the Investigator Defendants' lack of sufficient skill, training, or experience in major felony investigations, particularly the investigation and identification of violent, serial sexual offenders.

435. The Supervisory Defendants negligently supervised the Investigator Defendants by failing to monitor them, provide them with proper training, and ensure their compliance with the safeguards and procedures required for the lawful conduct of criminal investigations, including, for example:

a. the appropriate chain of command in criminal investigations;

b. the issuance of public statements relating to an open investigation;

c. the design, conduct, and purpose of eyewitness identification procedures;

d. compliance with court orders compelling the delivery of evidence to forensic laboratories for purposes of conducting forensic tests, and the proper methods of requesting specific tests required by such court orders;

e. the standards for police reports, investigator's notes, and other reports of investigations, including the timely and truthful preparation of such documents;

f. the required contents of affidavits and sworn statements made for purposes of establishing probable cause for the issuance of criminal process; and

g. the probable cause standard.

436. Upon information and belief, Bell, Peter, and the Supervisory Defendants further negligently supervised and participated in their subordinate's negligence, by directing their subordinates to conduct a sham identification procedure to manufacture probable cause to arrest a suspect with no connection to the Breeze Home Invasion, May 30, 2002. Further, after learning of the constitutional violations

committed by their subordinates, the Supervisory Defendants participated in, ratified, and condoned the continuing wrongful detention, indictment, prosecution and conviction of Plaintiff after it became plainly obvious that no probable cause existed to believe that Frankie Washington was responsible for the Breeze home invasion, and that it was plainly obvious that Lawrence Hawes was the perpetrator of the Breeze Home Invasion.

437. Through the foregoing acts or omissions, Smith, Bell, Peter, and the Supervisory Defendants negligently breached their duty to use due care in supervising their subordinates' conduct of the investigation.

438. As a direct and proximate result, Plaintiff suffered the constitutional deprivations, harms, and injuries alleged herein.

EIGHTEENTH CAUSE OF ACTION:

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(Against Cline, Smith, Bell, Caldwell, Hodge, Irving, Marsh, Sarvis, Council, Chalmers, Baker, in their individual and official capacities, and City of Durham based on the conduct of its employees acting in their official capacities)

439. Plaintiff incorporates all of the foregoing allegations by reference as though set forth here.

440. The Cline, Smith, Bell, Caldwell, Hodge, Irving, Marsh, Sarvis, Council, Chalmers, and Baker, individually and in concert, presented false and misleading evidence to magistrates and the grand jury, and, as a result, Plaintiff was subjected to searches, seizures, detention, indictment, and conviction without probable cause.

441. Cline and Smith failed to comply with a standing court order compelling specific forensic tests that would have conclusively established that Plaintiff did not

commit the Breeze Home Invasion, that Plaintiff was not the Trinity Park Rapist, and that Hawes was.

442. The Defendants engaged in these acts and omissions they failed to perceive the foreseeable risk that Plaintiff would be subjected to searches, seizures, pre-trial detention, indictment, prosecution and conviction without probable cause.

443. As a result of the Defendants' failure to perceive that foreseeable risk of harms, Defendants

a. Made the False Public Statements presuming Frankie Washington's guilt as the perpetrator of the Breeze Home Invasion and falsely establishing his identity in the public eye as the Trinity Park Rapist;

b. Subjected Plaintiff to public obloquy, reduced him to a pariah in his community, and forced him to endure the extortionate pressures of being the subject of media scrutiny as the "Trinity Park Rapist;"

c. Subjected Plaintiff to unconstitutionally suggestive identification procedures that produced the misidentification of Plaintiff, violated constitutional safeguards, and even violated the City's written policies and procedures (e.g., General Order #4077);

d. Subjected Plaintiff to more than 366 days of pretrial incarceration, knowing that no probable cause supported the Plaintiff's arrest or detention;

e. Subjected Plaintiff to a delay of nearly five years in Plaintiff's trial, which delay substantially impaired Plaintiff's defense;

f. Caused Plaintiff to be convicted upon evidence that Defendants fabricated, and simultaneously interfered with the SBI Laboratory's compliance with the court order directing the SBI Lab to conduct specific DNA and fingerprint testing that would have demonstrated with scientific certainty that Lawrence Hawes—and not Frankie Washington—committed the Breeze Home Invasion.

g. Deprived Plaintiff of evidence in their possession, custody, or control that exonerated the Plaintiff; and

444. At the time these Defendants engaged in the foregoing negligent conduct, it was reasonably foreseeable that their conduct would cause Plaintiff to suffer severe emotional and psychological distress.

445. As a direct and foreseeable consequence of the foregoing negligent conduct, Plaintiff suffered severe emotional distress, including but not limited to severe emotional distress resulting in severe and chronic depression, anxiety, and other diagnosable emotional conditions.

NINETEENTH CAUSE OF ACTION:
LOSS OF PARENTAL SERVICES AND CONSORTIUM

(Against the Investigator Defendants in their individual capacities, the Supervisory Defendants in their individual capacities, and against the City of Durham based on the conduct of its employees in their official capacities)

446. Plaintiff incorporates all of the foregoing allegations by reference as though fully set forth here.

447. This Cause of Action is so related to the foregoing causes of action that it forms part of the same case.

448. Frankie Washington brings this Cause of Action in his capacity as father on behalf of his son, Frankie Washington, Jr., for loss of parental counsel, guidance, and consortium with his father.

449. Absent the Defendants' tortuous and unconstitutional conduct, there would not have been a scintilla of evidence of Frankie Washington's culpability for the Breeze Home Invasion.

450. Absent the Defendants' tortuous and unconstitutional conduct, there would not have been probable cause to arrest Frankie Washington for the crimes committed in the Breeze Home Invasion.

451. Absent the Defendants' tortuous and unconstitutional conduct, there would not have been a scintilla of evidence that in any way or manner would rebut the evidence of Frankie Washington innocence.

452. Absent the Defendants' tortuous and unconstitutional conduct, Frankie Washington, Jr. would not have suffered the loss of his father's consortium, guidance, and counsel during his father's incarceration.

453. As a direct and proximate result of the acts of Defendants City of Durham, and the Investigator Defendants, Frankie Washington, Jr. was deprived of the parental consortium of his father, Plaintiff Frankie Washington, for the period of his wrongful incarceration.

454. As a direct and proximate result of those deprivations, Frankie Washington, Jr. suffered damages in an amount to be proved at trial.

455. Defendants' conduct, as alleged herein, was "egregiously wrongful" as that phrase is used in N.C.G.S. §1D-1, et seq., and was accompanied by fraud, malice and willful and wanton conduct in connection with the injuries for which Plaintiff is entitled to compensatory damages. As such, Plaintiff Frankie Washington, Jr., is entitled to punitive damages in an amount to be proven at trial.

TWENTY-FIRST CAUSE OF ACTION:
LIBEL

(Against Cline
in her individual and official capacities)

456. All of the foregoing allegations are incorporated by reference as though fully set forth here.

457. Defendant Cline published writings and caused them to be republished through the news media, which, when considered alone and without innuendo, charges that Frankie Washington has committed an infamous crime, tends to impeach him in his trade, and otherwise tends to subject the him to ridicule, contempt, and disgrace.

458. Cline's writings are also defamatory when considered with innuendo, colloquium, and the circumstances attending them.

459. The writings were false.

460. Defendant published the writings with malice, which is also presumed by law.

461. As a direct and foreseeable consequence of Defendant Cline's libelous statements, Plaintiff has suffered irreparable harm to his reputation, emotional distress, fear, personal humiliation and indignation, physical harm, as well as the loss of liberty, privacy, education, training, earnings, and earning capacity.

TWENTY-SECOND CAUSE OF ACTION:
SLANDER

(Against Cline
in her individual and official capacities)

462. All of the foregoing allegations are incorporated by reference as though fully set forth here.

463. Defendant Cline published spoken statements to representatives of the news media, which, when considered alone without innuendo, accuses Frankie Washington of committing crimes of moral turpitude.

464. The statements, when considered only in consequence of extrinsic, explanatory facts showing their injurious effect, constitute accusations that the plaintiff committed a crime or offense involving moral turpitude

465. Defendant Cline's spoken statements were false.

466. Defendant Cline published these false statements with malice, which is also presumed as a matter of law.

467. In addition to the special damages that are presumed by law, as a direct and foreseeable result of Defendant Cline's slander, Plaintiff has suffered irreparable

harm to his reputation, emotional distress, fear, personal humiliation and indignation, as well as the loss of liberty, privacy, education, training, earnings, and earning capacity.

TWENTY-THIRD CAUSE OF ACTION:

VIOLATIONS OF ARTICLE I OF THE NORTH CAROLINA CONSTITUTION

(Against Cline, in her official capacity, and the City of Durham based on the conduct of its agents acting in their official capacities)

468. Plaintiff incorporates all of the foregoing allegations by reference as though fully set forth here.

469. As a direct and foreseeable result of the foregoing conduct of the employees of the City of Durham and the employees of the State of North Carolina, while acting under color of state law and in their official capacities as employees and agents of the City of Durham, Plaintiff suffered deprivations of rights guaranteed to him by Article I, §§ 18, 19, and 20 of the North Carolina Constitution.

470. As a direct and foreseeable consequence of these deprivations, Plaintiff suffered economic loss, physical harm, emotional trauma, loss of liberty, loss of privacy, loss of education and training, loss of earning capacity, and irreparable harm to his reputation.

471. As a further consequence of these deprivations, Plaintiff was required to incur exorbitant costs associated with securing bail, retaining professional assistance in connection with the criminal proceedings brought against him, and other expenses associated with defending against the unlawful criminal proceedings that Defendants initiated and sustained without probable cause against Frankie Washington.

472. Plaintiff pleads this Cause of Action as an alternative remedy, should Plaintiff's state law remedies prove to be "inadequate" as that term is used by the North Carolina Supreme Court in determining whether a plaintiff may proceed with direct claims against the State and its subdivisions under the North Carolina Constitution.

PRAYER FOR RELIEF

473. WHEREFORE, to redress the injuries caused by Defendants' conduct as alleged herein, and to prevent the substantial risk of irreparable injury to other persons in the City of Durham or to Plaintiffs while living within or visiting the City of Durham as a result of the policies, customs, practices, and supervisory misconduct alleged herein, Plaintiffs hereby request the following relief:

A. A permanent injunction that:

1. appoints an independent monitor (the "Monitor"), to be determined by the Court, who shall oversee certain activities of the Durham Police Department for a period of ten (10) years, and who shall report to the Court on an annual basis regarding Defendants' compliance or non-compliance with the terms of the Permanent Injunction;

2. authorizes the Monitor to establish, review, and enforce all policies applicable to the management of the Durham Police Department;

3. provides the Monitor with the authority to hire, fire, and promote all Durham Police officials, including the Chief of Police;

4. establishes an independent citizen Police Review Committee, composed of three members selected by the Court, which shall review and hear publicly complaints of misconduct by Durham residents against Durham Police personnel and make recommendations to the Monitor as to discipline or innocence;

5. orders that all eyewitness identification arrays, lineups, and similar procedures conducted by the Durham Police Department, whether formal or informal, and/or of suspects or "witnesses," conform to the provisions of General Order No. 4077 and be recorded by videotape;

6. orders that any reports of DNA or other scientific testing requested by the Durham Police Department or District Attorney's Office include the results of all testing, and all notes, charts, or raw data generated during such testing; that any such request include a request that any DNA profile or identifiable fingerprint detected in the testing be submitted to CODIS, AFIS, and/or any other applicable state or national database for comparison; that any matches

between such DNA profiles and fingerprints be included in the report of scientific testing; and that a copy of each such report be provided to the Monitor to ensure compliance;

7. orders that the Durham Police Department provide proper training, based on materials and plans approved by the Monitor, to all current and new personnel (the "Remedial Training") on the following matters:

a. the appropriate chain of command in criminal investigations;

b. the issuance of public statements relating to an open investigation;

c. the conduct of eyewitness identification procedures;

d. the standards for police reports, investigator's notes, and other reports of investigations, including the complete and truthful preparation of such materials;

e. the supervision of extra-municipal entities and individuals, including but not limited to prosecuting attorneys, to whom the City delegates policymaking authority over criminal investigations;

f. the identification, interpretation, compliance with, and service of Orders issued by courts of competent jurisdiction relating to forensic testing that such courts direct to be conducted by forensic labs, agencies and/or individuals; and

g. the standards for probable cause.

8. orders the Durham Police Department to implement a policy requiring Durham Police personnel to present exculpatory evidence when testifying before a grand jury; and

9. orders the Durham Police Department to implement a policy requiring Durham Police personnel to video record their presentations to grand juries; and requires the City of Durham to pay all costs relating to the Monitor, Police Review Committee, and Remedial Training for the duration of the Permanent Injunction.

B. Damages in an amount to be established at trial as compensation for the state and federal constitutional deprivations; past and future economic loss, physical harm, emotional trauma, loss of privacy, and loss of reputation; loss of education; loss of parental services and consortium; and expenses in connection with retaining the services of a bondsman to secure Plaintiff's release and defending against the criminal proceedings initiated and sustained by Defendants' unlawful conduct;

C. Damages in an amount to be established at trial to punish Defendants for outrageous conduct pursued out of actual malice, in reckless and callous disregard of, and deliberately indifferent to Plaintiffs' constitutional rights, to discourage Defendants from engaging in similar conduct in the future, and to deter others similarly situated from engaging in similar misconduct in the future;

D. Attorneys' fees, expert fees, and costs authorized by state and federal law, including attorneys' fees pursuant to 42 U.S.C. § 1988(b), 28 U.S.C. § 2412, and Rule 54 of the Federal Rules of Civil Procedure.

E. The reasonable and customary costs, and expenses incurred in connection with the prosecution of this action, pre-judgment and post-judgment interest; and

F. All other and further relief the Court deems just and proper.

DEMAND FOR A JURY TRIAL

474. Plaintiffs hereby demand a trial by jury on all issues. In the event that the Court determines that the conduct at issue in this action constitutes a governmental function or that N.C. Gen. Stat. § 153A-435(b) applies, Plaintiffs demand a trial by jury on all issues except for issues that relate to insurance.

Dated: September 22, 2011

Respectfully submitted by:

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