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A.A., B.B., C.C., D.D., E.E., and F.F., on behalf of themselves and all others similarly situated, Plaintiffs, v. COLONEL PATRICK J. CALLAHAN, in his official capacity as Superintendent of State Police, Defendant.	Superior Court of New Jersey Law Division, Mercer County Docket No.: Civil Action **CLASS ACTION COMPLAINT**

Plaintiffs A.A., B.B., C.C., D.D., E.E., and F.F., by way of Class Action Complaint, on behalf of themselves and others similarly situated, say:

PRELIMINARY STATEMENT

1. This action is brought to compel the Division of State Police, more commonly known as the New Jersey State Police (NJSP), to timely process court orders requiring it to extract, isolate, seal, and impound the records of thousands of New Jerseyans who have successfully petitioned for expungement pursuant to N.J.S.A. 2C:52-1 to -32.

2. Plaintiffs in this case are individuals who obtained expungements to clear their criminal records. That process is designed to achieve the Legislature's goal of permitting prior offenders who have since rehabilitated to obtain licenses, jobs, and other benefits that

would otherwise be barred by their criminal histories. But Plaintiffs—and many others similarly situated—are not able to benefit from their expungements because the NJSP takes many months, or even over a year, to process their court orders and expunge their records. This means that potential employers and other organizations that run background checks learn about Plaintiffs' and class members' criminal histories, in contravention of the court orders expunging those records. Plaintiffs and many others have been denied jobs and other benefits due to the NJSP's lengthy and unreasonable processing delays. They are also fearful of submitting job and license applications, lest the NJSP improperly disclose their expunged criminal histories during a background check. Plaintiffs are therefore compelled to file this lawsuit, on behalf of themselves and all others similarly situated, seeking only the relief to which they are statutorily entitled: the timely sealing and impounding of their criminal records on file with the NJSP.

3. New Jersey law has provided formerly convicted individuals with the ability to seek expungement of their criminal history for nearly a century. Since then, and particularly in recent years, the Legislature has consistently taken steps to expand the reach of the expungement statute with the intent of providing its benefits to an increasingly broad group of individuals. These repeated expansions are in keeping with the expungement statute's primary purpose: to provide a right of relief to formerly convicted individuals who have demonstrated their commitment to a law-abiding life.

4. In more concrete terms, the right created by the expungement statute is the right to have one's criminal record sealed and impounded after successfully petitioning for expungement. The expungement statute therefore commands the NJSP, and all "law enforcement and criminal justice agencies which, at the time of the hearing of the petition,

possess the [expunged] records," to "remove[] [the records] from the[ir] files" and, except in limited specified circumstances, "ensure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose." N.J.S.A. 2C:52-15(a). If asked about "information or records of the person who was arrested or convicted," the agency must respond "that there is no record information." *Ibid.*

5. The NJSP is a crucial player in this process because the New Jersey Code specifically tasks it (through its subsidiary, the State Bureau of Identification) with disseminating criminal histories in response to background checks. N.J.S.A. 53:1-20.6(a); N.J.A.C. 13:59-1.2. But despite the importance of this duty—and access to $15 million in taxpayer money recently appropriated to address the issue—the agency has a significant backlog of unprocessed expungement orders, recently estimated to consist of over 46,000 cases. Through this extensive delay, the NJSP deprives the class of successful expungement petitioners of their statutory right to have their documents sealed within a reasonable time.

6. Because of this delay, criminal records that should have been expunged have instead been repeatedly shared with employers and other entities, throughout the State and in other jurisdictions, by the NJSP, for months after petitioners' expungement orders were granted and received by the agency. Other people who have obtained expungements are inhibited from submitting applications without assurance that their expunged records will not be exposed. The named Plaintiffs in this lawsuit all face such circumstances:

a. Plaintiff A.A., whose expungement order was issued in December 2021, has been turned away from multiple community volunteer positions that would allow him to coach his son's youth sports teams after the NJSP revealed his expunged criminal history in response to background checks.

b. Plaintiff B.B., whose expungement order was issued in March 2023, has declined to apply for casino jobs and related licenses without assurance that his expunged criminal history will not be disclosed.

c. Plaintiff C.C., whose expungement order was issued in September 2022, had her expunged criminal history disclosed in September 2023 when she applied for a massage therapy license.

d. Plaintiff D.D., whose expungement order was issued in July 2023, is waiting to apply for a United States Postal Service job or nursing home work until she can be assured that her expunged criminal history will not be disclosed on a job application.

e. Plaintiff E.E., whose expungement order was issued in July 2023, wants to return to the classroom as a substitute teacher, but cannot apply without knowing that her expunged criminal history will not be disclosed.

f. Plaintiff F.F., whose expungement order was issued in March 2023, seeks to obtain a firearm for defense of his home and business, but had his expunged criminal history disclosed in September 2023 and has been barred from purchasing a firearm until his criminal history is cleared by the NJSP.

7. Plaintiffs, and the class members they seek to represent, share a common grievance—that the NJSP's extreme delay in processing expungement orders deprives them of their right to a timely expungement and its resultant benefits. To remedy this deprivation, Plaintiffs now seek to represent a class of all persons similarly situated—people who have obtained expungement orders that the NJSP has not yet processed—and obtain an injunction compelling Defendant Colonel Patrick J. Callahan, in his official capacity as Superintendent

of State Police, to clear the backlog of outstanding expungement orders within such time as this Court finds reasonable and requiring that the agency process incoming expungement orders at a reasonable pace sufficient to prevent such a backlog from accumulating again in the future.

JURISDICTION AND VENUE

8. Plaintiffs bring this action against Defendant Callahan for injunctive relief under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c), on behalf of themselves and others similarly situated, as the conduct complained of is taken by the executive head of a State agency acting under color of state law, and such conduct by Defendant Callahan subjects Plaintiffs and class members to deprivations of a substantive right secured by New Jersey statutory law.

9. The Superior Court has jurisdiction under *N.J. Const.* Art. VI, § 3, ¶ 2. This Court has the authority to issue the injunctive relief sought herein under *N.J. Const.* Art. VI, § 3, ¶ 4.

10. Venue is proper in this County under *Rule* 4:3-2(a)(2) because Defendant is a public official and the cause of action arose in Mercer County.

PARTIES

11. Plaintiff A.A.[1] is a resident of Atlantic County who applied for a "clean slate" expungement on February 17, 2021. *See* N.J.S.A. 2C:52-5.3. His petition was granted by Judge Incarvito-Garrabrant of the Atlantic County Superior Court on December 21, 2021. In June of 2023, A.A. was denied a volunteer youth coaching position for his son's football team after the NJSP released Plaintiff's criminal history in response to a background check.

[1] Plaintiffs file this Complaint using pseudonymous initials. Each Plaintiff has obtained an order of expungement, and disclosure of Plaintiffs' names in connection with their criminal history would undermine the expungement statute's purpose of protecting them from having to disclose their past convictions. *See, e.g.*, *In re Kollman*, 210 N.J. 557, 569 (2012); *see also R.* 1:38-3(c)(7) ("[e]xpunged records" are excluded from public access). A motion to proceed by pseudonym will be filed in due course.

12. Plaintiff B.B. is a Maryland resident who applied to expunge his New Jersey criminal record—containing just one conviction—on July 22, 2022. *See* N.J.S.A. 2C:52-2. His petition was granted by Judge Incarvito-Garrabrant of the Atlantic County Superior Court on March 29, 2023. In the time since the order was granted, B.B. has been invited to apply for multiple well-paying jobs in the casino industry—where he worked for many years prior to his conviction—in New Jersey and elsewhere. However, B.B. has been chilled from applying because his contacts at these employers are personal friends who do not know about his criminal history, and because his conviction could disqualify him from obtaining the necessary licenses.

13. Plaintiff C.C. is a Hudson County resident whose criminal history was expunged in September 2022 after her successful graduation from Recovery Court (formerly Drug Court). *See* N.J.S.A. 2C:35-14(m) (establishing eligibility criteria for expungements post-Recovery Court). C.C. applied for licensure as a massage therapist with the New Jersey Board of Massage and Bodywork Therapy. However, C.C.'s application was flagged for investigation after a September 2023 background check revealed her criminal history.

14. Plaintiff D.D. is a Camden County resident whose "clean slate" expungement was granted on July 14, 2023 by Judge Michael Joyce of the Camden County Superior Court. D.D. is a single mother of three who currently works as a Certified Nursing Assistant and has been denied jobs at nursing homes because of her criminal record. She is also hoping to gain employment with the United States Postal Service, but D.D. does not want to submit her job application until she is sure her record has been expunged by the NJSP.

15. Plaintiff E.E. is a Camden County resident whose pro se expungement petition was granted on July 21, 2023 by Judge Michael Joyce of the Camden County Superior Court.

E.E. is a seventy-one-year-old retiree whose distant criminal history prevents her from using her college degree in education to work part-time as a substitute teacher.

16. Plaintiff F.F. is a Virginia resident whose expungement was ordered by Judge Candido Rodriguez Jr. of the Union County Superior Court on March 1, 2023. F.F. is a business owner and community activist who, after an attempted break-in at his home, attempted to purchase a firearm for defense of his home and business. After a background check revealed his criminal history, F.F. provided the Virginia State Police with his expungement order but was informed that they would not permit him to purchase a weapon until the NJSP had officially cleared his criminal history.

17. Defendant Colonel Patrick J. Callahan is the Superintendent of State Police. *See* N.J.S.A. 52:17B-7. In that role, he is "[t]he executive and administrative head of the Division of State Police." *Ibid.* The Division of State Police is a State agency in the Department of Law and Public Safety. N.J.S.A. 52:17B-6. Through the State Bureau of Identification, which is "under the supervision and control of the Superintendent of State Police," N.J.S.A. 53:1-12, Defendant Callahan is responsible for "collecting, filing, preserving, and distributing State criminal records." *Ibid.*; *see also* N.J.S.A. 53:1-20.6(a). As part of its role as repository of State criminal records, the NJSP is tasked with sealing and impounding the records of formerly convicted individuals who have successfully petitioned for expungement before the Superior Court. The NJSP receives and processes expungement orders through its Expungement Unit in West Trenton, New Jersey.

18. Defendant Callahan is a "person" within the meaning of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989). This lawsuit seeks injunctive relief against Defendant Callahan in his official

capacity and with regard to actions taken under color of state law. *See Brown v. State*, 442 N.J. Super. 406, 426 n.10 (App. Div. 2015) (citing *Ex parte Young*, 209 U.S. 123, 154 (1908)), *rev'd in part on other grounds*, 230 N.J. 84 (2017).

CLASS ALLEGATIONS

19. Plaintiffs bring this action individually and on behalf of all persons who, during the pendency of this lawsuit, have been granted orders of expungement but whose records have not been sealed by the NJSP within a reasonable time, pursuant to *Rules* 4:32-1(a), 4:32-1(b)(1)(A), and 4:32-1(b)(2).

20. The class is so numerous that joinder of all members is impractical. Though the exact size of this class is unknown, it is estimated based on information received from the NJSP pursuant to an Open Public Records Act (OPRA) request that at least 46,000 expungement orders remained unprocessed by the NJSP as of December 1, 2022.

21. There are questions of both law and fact common among all class members. Common questions of fact include the timeline of the NJSP's receipt and processing of expungement orders, and common questions of law include whether the NJSP's failure to timely process expungement orders violates the statutory rights of class members.

22. The claims of the representative parties are typical of the claims of the class.

23. The representative parties will fairly and adequately protect the interests of the class. There are no conflicts between the Plaintiffs and other class members. No class member has an interest in further delaying the processing of any expungement order.

24. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Defendant Callahan and the NJSP.

25. Defendant Callahan's agency has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

26. Plaintiffs have retained competent and experienced counsel who will fairly and adequately represent the interests of the class. The Office of the Public Defender has done substantial work in investigating and identifying potential claims in the action and has experience in handling class actions. Additionally, the Office of the Public Defender has previously been involved in litigation in support of expungement efforts in the New Jersey Courts and has partnered with bar associations and other organizations on expungement clinics. Accordingly, the Office of the Public Defender has knowledge of the applicable law and procedures that relate to these claims. Finally, as a statewide agency that has represented, and continues to represent, numerous expungement applicants, the Office of the Public Defender will commit substantial resources to representing the class.

FACTUAL BACKGROUND

The Expungement Statute's History, Purpose, and Operation

27. The expungement statute "is designed to eliminate the collateral consequences" of a criminal record "imposed upon otherwise law-abiding citizens." *In re Kollman*, 210 N.J. 557, 568 (2012) (internal quotation marks omitted). Since 1931, New Jersey has provided formerly convicted individuals with the ability to seek expungement of their criminal history, and thereby "relieve [themselves] . . . of the disabilities consequent upon the conviction[.]" *State v. Hawthorne*, 49 N.J. 130, 139 (1967). The statute is "intended to permit a defendant to regain many of those civil privileges that are lost attendant to a criminal conviction." *In re T.P.D.*, 314 N.J. Super. 643, 648 (Law Div. 1997), *aff'd o.b.*, 314 N.J. Super. 535 (App.

Div. 1998).

28. The statute "has been amended over time to expand opportunities for expungement." *In re T.O.*, 244 N.J. 514, 526 (2021). The Legislature has thus consistently extended the benefits of expungement to an increasingly broad group of individuals. *See, e.g.*, *L.* 1968, *c.* 279 (permitting expungements for disorderly persons offenses in addition to crimes); *L.* 1973, *c.* 191 (enabling expungements for records of arrests and indictments that did not result in conviction); *L.* 1980, *c.* 1963, § 1 (allowing expungements for juvenile delinquency adjudications); *L.* 2015, *c.* 261, § 1 (permitting expungements for recovery court graduates); N.J.S.A. 2C:52-6.1 (providing for automatic expungement of certain marijuana offenses). In 2019, the Legislature passed a statute permitting a "clean slate" expungement under which "individuals can seek to expunge multiple convictions after a period of ten years from their most recent conviction." *T.O.*, 244 N.J. at 526 (citing *L.* 2019, *c.* 269, § 7). Upon signing the clean slate law, Governor Murphy called it "one of the most progressive expungement laws in the nation, which will allow more New Jerseyans the opportunity to fully engage in our society." Press Release, Office of Governor Phil Murphy, Governor Murphy Signs Major Criminal Justice Reform Legislation (Dec. 18, 2019), https://www.nj.gov/governor/news/news/562019/20191218a.shtml.

29. These repeated expansions are in keeping with the expungement statute's primary purpose: "providing relief to the reformed offender who has led a life of rectitude and disassociated himself with unlawful activity[.]" N.J.S.A. 2C:52-32. To that end, the current expungement statute permits expungement of criminal convictions, disorderly persons offenses, juvenile delinquency adjudications, and arrest records, subject to certain conditions and exceptions. *See* N.J.S.A. 2C:52-2 to -6.1.

30. There are multiple paths to obtaining an expungement order. Individuals can, subject to statutory requirements, seek expungement of a criminal conviction, N.J.S.A. 2C:52-2, disorderly persons convictions, N.J.S.A. 2C:52-3, municipal ordinance violations, N.J.S.A. 2C:52-4, and juvenile delinquency adjudications, N.J.S.A. 2C:52-4.1. A person who does not qualify under those provisions may nonetheless be eligible for a "clean slate" expungement that expunges all of their convictions. *See* N.J.S.A. 2C:52-5.3. These expungement applications proceed by way of verified petition in the Superior Court. *See* N.J.S.A. 2C:52-7 to -8; *R.* 3:30-1; *R.* 3:30-2(d).[2] Arrests and charges that do not result in a conviction must be automatically expunged at the time of adjudication without a petition. *See* N.J.S.A. 2C:52-6; *R.* 3:30-2(c). Individuals who successfully complete Recovery Court are also entitled to automatic expungement without filing a petition, subject to the standard set forth in the statute. *See* N.J.S.A. 2C:35-14(m); *R.* 3:30-2(b); *In re T.B.*, 236 N.J. 262, 278 (2019) ("[P]articipants [in Recovery Court] are entitled to a rebuttable presumption that expungement is consistent with the public interest.").

31. The court must schedule a hearing on the petition at "a time not less than 35 nor more than 60 days" after filing. N.J.S.A. 2C:52-9. Petitions are electronically served upon the Superintendent of State Police (Defendant Callahan), the Attorney General, and the local county prosecutor's office, which "shall, within 60 days, review and confirm, as appropriate, the information against the person's criminal history record information files and notify the court of any inaccurate or incomplete data contained in the information files, or of any other basis for ineligibility, if applicable." N.J.S.A. 2C:52-10.1. The statute sets forth

[2] The statute also requires the State to develop an automated "clean slate" expungement process in the future. *See* N.J.S.A. 2C:52-5.4.

circumstances under which a court shall deny an expungement petition. N.J.S.A. 2C:52-14; *see also* N.J.S.A. 2C:52-12 (allowing court to deny petition under N.J.S.A. 2C:52-14 even if there is no objection). Otherwise, the petition should be granted. *See* N.J.S.A. 2C:52-11.

32. When an expungement is granted, the petitioner's criminal records, which "include complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, 'rap sheets' and judicial docket records," must be "extract[ed], seal[ed], impound[ed], or isolate[ed]" by any "law enforcement or criminal justice agency" that retains such records. N.J.S.A. 2C:52-1; *see also* N.J.S.A. 2C:52-15(a) ("[A]ll the records specified in [a granted expungement] order shall be removed from the files of the law enforcement and criminal justice agencies which, at the time of the hearing of the petition, possess the records."). If asked for "information or records" about a successful expungement petitioner's criminal history, the agency "shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information." N.J.S.A. 2C:52-15(a). The statute also makes it a disorderly persons offense for any person to "reveal[] to another the existence of an arrest, conviction or related legal proceeding with knowledge that the records and information pertaining thereto have been expunged or sealed." N.J.S.A. 2C:52-30; *see G.D. v. Kenny*, 205 N.J. 275, 299 (2011) ("[T]hose employed in certain statutorily named government agencies that have custody of expunged records are clearly bound by N.J.S.A. 2C:52-30.").

33. The expungement law therefore "allow[s] an individual to keep potentially embarrassing information about a prior criminal record private from the inquiry of employers and others." *In re T.P.D.*, 314 N.J. Super. 643, 648 (Law Div. 1997), *aff'd o.b.*, 314 N.J. Super. 535 (App. Div. 1998). The records can only be used for purposes delineated in the

statute. *See Kollman*, 210 N.J. at 569 (describing N.J.S.A. 2C:52-21 to -23). Otherwise, "the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred," and a person asked questions about those events in an employment or licensing application may respond by denying their existence. N.J.S.A. 2C:52-27; *see also Kollman*, 210 N.J. at 569 ("Except for certain defined circumstances . . . a successful [expungement] applicant does not have to answer questions affirmatively relating to expunged criminal records").

The NJSP's Crucial Role in the Expungement System

34. Though many State and local agencies retain criminal records, the New Jersey State Police is the record-holding agency most important to the successful operation of the expungement statute. This is because the NJSP is the only agency in the State with the authority to disseminate criminal records in response to background checks. N.J.S.A. 53:1-20.6(a) (charging the Superintendent of State Police (Defendant Callahan), through the State Bureau of Identification (SBI) within the Division of Police, with sharing criminal histories in response to background checks); N.J.A.C. 13:59-1.2 (same); *see also* Core Functions, New Jersey State Police, https://www.nj.gov/njsp/about/core-functions.shtml (last accessed Oct. 20, 2023) ("[M]aintenance of criminal records and identification systems is the exclusive responsibility of the [NJSP] . . . ."); Criminal History Record Information (CHRI), New Jersey State Police, https://nj.gov/njsp/criminal-history-records/index.shtml (last accessed Oct. 20, 2023) (describing who may request criminal records from the NJSP).

35. The NJSP processes expungement orders through a dedicated division called the Expungement Unit. *See* Expungement Unit, New Jersey State Police, https://nj.gov/njsp/eu/index.shtml (last accessed Oct. 20, 2023). When the Expungement

Unit receives an order of expungement, it is required to "remove[]" the expunged records from its general files and place the records "in the control of a person who has been designated . . . [to] ensure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose." N.J.S.A. 2C:52-15(a). This process is designed to ensure that the NJSP does not release "records [that] have been expunged pursuant to law" when responding to a request for an individual's criminal history, as required by its own administrative regulations. N.J.A.C. 13:59-1.2(a).

The NJSP's Delays in Processing Expungement Orders

36. Although the expungement statute does not specify a timeframe within which agencies must process incoming expungement orders, New Jersey law twice specifies that expungement orders must be distributed "promptly" so agencies like the NJSP can comply by sealing and impounding the expunged materials. *See* N.J.S.A. 2C:52-6(a)(4) ("The county prosecutor shall *promptly* distribute copies of the expungement order to appropriate law enforcement agencies . . . so that they may comply with the requirements of [N.J.S.A.] 2C:52-15.") (emphasis added); N.J.S.A. 2C:35-14(m)(3) ("The person [whose records are to be expunged] . . . shall *promptly* distribute copies of the expungement order to appropriate agencies . . . so that the agencies may comply with the requirements of [N.J.S.A.] 2C:52-15.") (emphasis added).

37. The Legislature has recognized the importance of the NJSP's role in promptly processing expungement applications. In 2019, the Legislature appropriated $15 million to the New Jersey Department of Law and Public Safety, which includes the Division of State Police, to implement improvements to the expungement system. *L.* 2019, *c.* 269, § 17. Despite this substantial appropriation, the NJSP does not "promptly" process expungement

orders as they are received.

38. On December 16, 2022, the American Civil Liberties Union of New Jersey (ACLU-NJ) submitted a request, under the Open Public Records Act (OPRA), in part to determine the rate at which the NJSP's processes incoming expungement orders. Based on responses provided to that OPRA request, it is estimated that NJSP had a backlog of at least 46,000 expungement orders that it had received, but not processed, as of December 1, 2022.

39. One client of the Office of the Public Defender was told by the Expungement Unit in September 2023 that the NJSP was processing expungement orders that were granted in February and March of 2022—a delay of 18 months.

40. In another instance, an attorney from the Office of the Public Defender received an email from the Expungement Unit in December 2022 that the NJSP was still processing "final orders received in 2021." The same attorney later received an email from the Expungement Unit in September 2023 that the NJSP was "still processing drug court[3] orders from the end of 2021 [and the] beginning of 2022."

Plaintiffs' Expungements and Failed Background Checks

41. The NJSP's substantial delay in processing expungement orders deprives Plaintiffs, and the class of people they seek to represent, of their rights to have their criminal histories extracted, isolated, impounded, and sealed from employers, licensing boards, and others. Each of the named Plaintiffs has worked diligently to overcome their criminal histories and reintegrate into society. Their stories demonstrate how the NJSP's failure to process their

[3] Effective January 1, 2022, the Judiciary renamed "Drug Court" to "Recovery Court." Press Release, N.J. Courts, New Jersey Drug Court Switches Name to Recovery Court (Dec. 29, 2021), https://www.njcourts.gov/sites/default/files/press-release/2021/pr122921a.pdf.

expungement orders frustrates these efforts and undermines the statute's goals.

Plaintiff A.A.

42. Plaintiff A.A. has been waiting to have his expungement order processed by the NJSP for over 20 months. A.A.'s distant criminal past, which stemmed from his mental health and drug addiction issues, has been improperly disclosed by the NJSP and therefore has prevented him from pursuing volunteer coaching positions for his son's youth sports teams, for which he should be legally eligible.

43. A.A.'s struggles with substance abuse began in the 1990s. A.A. grew up in Flemington, New Jersey, and enrolled in the military upon graduation from high school. After returning home from a deployment with the U.S. Army, where he participated in front-line combat, A.A. suffered from a then-undiagnosed traumatic brain injury and post-traumatic stress disorder. Although A.A. graduated college and took a job at a tourist resort, he developed anxiety and turned to alcohol to self-medicate. His therapeutic drinking gradually developed into an all-consuming addiction, which progressed from alcohol to harder drugs.

44. During this time, A.A. lacked an effective community support system. His decision to enter the military led to an estrangement from his parents. Though he had occasional subsequent contact with his family, and even lived with his parents at times, they practiced a "tough love" response to his addiction. A.A.'s parents once helped him get into an inpatient rehabilitation facility, but A.A. relapsed when he was released, and his parents responded by kicking him out of their home. A.A. also struggled to maintain stable employment because his addiction led to chronic tardiness and absenteeism, as well as poor job performance. In one instance when he held a stable job, he was fired when he misappropriated company

resources while conducting a side business to make extra money that he used to buy drugs.

45. A.A. thus spent the better part of the next decade addicted to alcohol, cocaine, and heroin, frequently homeless and unemployed, and occasionally committing petty theft to fund his addictions. This pattern continued until A.A. was arrested in Atlantic County in 2007 for criminal offenses of credit card fraud and drug possession. The next year, A.A. was convicted of these charges and sentenced to a total of five years in prison.

46. A.A. has been sober since his first day of incarceration—over fifteen years ago. While in state prison, he entered an Alcoholics Anonymous program. A.A. credits that program for breaking his cycle of addiction. He remains an active Alcoholics Anonymous member to this day.

47. A.A. was released from incarceration early through the Intensive Supervision Program (ISP) and completed the program without any violations. He has not been convicted, or even arrested, since his release from prison.

48. Since his release, A.A. has worked as a counselor for recovering addicts in both professional and volunteer capacities. He has numerous licenses and certifications in the field of addiction recovery. A.A. has also reconnected with his parents and maintains a close and stable relationship with them.

49. A.A. also has a family of his own; he is married with three stepchildren, and he also has a nine-year-old son from a previous relationship. A.A.'s son has been active in youth sports. A.A. is a former high school athlete and has long hoped to be a volunteer coach for his son's teams. However, his prior conviction has prevented him from passing the background checks necessary to be qualified as a volunteer.

50. In 2020, A.A. became eligible for expungement under the "clean slate" expungement statute, N.J.S.A. 2C:52-5.3. A.A. filed an expungement petition on February 21, 2021, and it was granted by Judge Incarvito-Garrabrant of the Atlantic County Superior Court ten months later, on December 21, 2021.[4]

51. A.A.'s expungement order has remained unprocessed for over 20 months. During that time, A.A. has been denied authorization to coach youth sports in two separate Townships on account of failed background checks. He was most recently denied authorization to participate as a volunteer coach on these grounds in June of 2023.

52. On some occasions, A.A. has appealed the denial of his volunteer application and provided the governing body with his expungement order. By that point, however, his expunged criminal history had already been revealed to his fellow community members, which caused A.A. the shame and embarrassment that his expungement was designed to

[4] The expungement statute requires the court to schedule a hearing between 35 and 60 days after a petition is filed. *See* N.J.S.A. 2C:52-9. If there is no objection to the petition by the date of the hearing, the court can grant the application unless the court concludes that the petitioner is not entitled to an expungement. *See* N.J.S.A. 2C:52-11, -12, -14. The court rules task the prosecutor's office with notifying the court of any objection to an expungement conviction within 60 days of the petition. *R.* 3:30-1(d). In recent years, the NJSP and some county prosecutors have asserted that no expungement petition should be granted until the NJSP affirmative indicates its lack of objection, even though the NJSP takes substantially longer than 60 days to respond to a petition. Thus, many expungement petitions, such as A.A.'s and those of other Plaintiffs in this case, have languished for months before being granted by the court. The Office of the Public Defender, the Rutgers Law School Expungement Clinic, and other attorneys have recently persuaded courts in multiple counties to grant expungement petitions after 60 days have passed even if the NJSP does not affirmatively indicate a lack of objection to the petition within that time frame. The NJSP, through a county prosecutor's office, is free to file a motion to vacate an expungement order within five years of the entry of the order if there was a statutory basis to deny the petition. *See* N.J.S.A. 2C:52-26; *R.* 3:30-1(h). This Complaint, however, addresses only the NJSP's failure to process final expungement orders that have been granted by the Court, not the delay that has frequently taken place prior to such orders being granted.

prevent. Additionally, even though the expungement is supposed to remove the disabilities associated with A.A.'s criminal history, the governing bodies have nonetheless been reluctant to authorize A.A. to participate as a volunteer coach once they learn about his past misconduct.

53. A.A. has received no indication that the NJSP has expunged his records in the intervening months, so he is hesitant to continue applying for new positions—including both volunteer positions and employment opportunities—for fear of further embarrassment and denial.

54. A.A. also plans to apply for a Firearms Purchaser Identification Card so that he may buy a firearm for hunting. A.A. was trained in the safe handling and operation of firearms during his time in the military and learned to hunt after returning to the United States from his tour of duty. A.A. hopes to pass these skills down to his son but is hesitant to submit the Firearms Purchaser application until he is sure his criminal history will not be revealed in a background check.

55. A.A. is frustrated that his distant past continues to impede his life's prospects after so many years have passed since his convictions, after his substantial and successful efforts to recover from his addiction, and after his expungement has already been granted by the Court. He is pursuing this litigation to finally be given the "clean slate" to which he is statutorily entitled.

Plaintiff B.B.

56. Plaintiff B.B. has received several job offers for high-paying casino management positions, but he is unable to accept these positions because his expungement order has not

been processed. Until his records are expunged by the NJSP, B.B. will remain in the same rut he has been stuck in for the last decade.

57. B.B. is a native of Camden, New Jersey, who spent the majority of his adult life working in the casino industry. As casinos began to lay off significant portions of their staff in the wake of the 2008 financial crisis, B.B. took a job managing real estate for an acquaintance who claimed to own several properties. The properties were actually in foreclosure and not owned by B.B.'s acquaintance. As a result, B.B. and his acquaintance were arrested and charged with criminal offenses. B.B. pled guilty to one count of fourth-degree criminal trespass and was sentenced to probation in November of 2012.

58. The conviction forced B.B. to resign from his casino job and forfeit his casino employee license. In the years following his conviction, B.B. was consistently denied jobs by both New Jersey and out-of-state employers who learned of his conviction during the job application process. Even when B.B. was able to make it through the application and interview processes successfully, employers who otherwise valued him as an employee would fire him when they eventually learned about his past. The embarrassment and financial precarity caused by this pattern of rejection and job termination eventually led B.B., who has always worked hard and earned a good living for himself, to become seriously depressed.

59. Around 2021, B.B. learned that his criminal record was eligible for expungement. He contacted the Expungement Clinic at Rutgers Law School, where lawyers and law students helped him draft an expungement petition that he filed on July 22, 2022. This petition was granted by Judge Incarvito-Garrabrant of the Atlantic County Superior Court on March 29, 2023. B.B. has not received any indication that his expungement order has been

processed since that time.

60. In the months since his expungement petition was granted, B.B. has reconnected with several former colleagues from his days in the casino industry. Some of these colleagues have worked their way into senior management positions at their respective casinos and have offered B.B. high-paying jobs based on their positive history of working together in years past. However, B.B. is chilled from applying for these positions for two reasons. First, since B.B.'s criminal conviction occurred toward the end of his career as a casino employee, his former colleagues are not aware of his criminal history. B.B. knows from experience that if he applies to those jobs before his expungement order is processed—even if the prospective employer is located outside of New Jersey—a background check will reveal his criminal history, which will taint his relationship with his former colleagues. By the same token, B.B. also knows that he would be denied these casino jobs since his conviction makes him ineligible for the state licensures required to work in a casino.

61. B.B. believed that when his expungement order was granted, he would finally be freed from the tired cycle of application, revelation, rejection, and dejection that has ensnared him for nearly a decade. But due to the NJSP's delays in processing these orders, B.B. fears that his goodwill with his former colleagues will dry up before his order is processed, trapping him in that same cycle until he is past working age.

Plaintiff C.C.

62. Plaintiff C.C. has a criminal history that resulted from the disease of addiction from which she has now recovered. Even though her criminal record was ordered to be expunged after successful completion of Drug Court probation in 2021, it has presented a roadblock to obtaining licensing and employment as a Massage and Bodywork Therapist. When C.C.

applied for that license, the NJSP improperly revealed her record to the Division of Consumer Affairs (DCA). C.C. was fortunately able to obtain the license after sharing her expungement order with the DCA, but she is apprehensive that other parties may not respond as justly if the NJSP continues to reveal her expunged criminal record. She also worries that, even if she can secure a job, repeated disclosure of her background will irreparably damage her reputation in her industry.

63. C.C. was raised in a loving and supportive home in Sussex County. At the age of 6, C.C.'s doctors discovered a brain tumor. The tumor was benign, but due to its size and rapid growth, the doctors believed that it would be terminal if untreated and operated to remove it. That surgery marked the first time C.C. experienced the sensation of being under the influence of drugs—in this case, morphine, a powerful opiate.

64. Due in part to the hazy but inviting memories of her childhood surgery, and in part to the social and existential anxiety she developed, C.C. manifested drug-seeking behaviors at a young age. These behaviors began as girlhood experiments with over-the-counter medication and progressed, by the dawn of her teenage years, to abuse of alcohol and marijuana. At the same time, C.C. excelled in school and especially in athletics, competing at a high-school level in a variety of sports while she was still a middle-schooler. But C.C.'s success in school and sports stood in marked contrast to her social life, which was characterized by frequent bullying and a dearth of meaningful friendships.

65. As the pressure of her athletic pursuits accelerated into her high school years, so did C.C.'s social anxiety and her dependence on drugs. By age 14, C.C. was using marijuana three times per day as a means of suppressing her anxiousness and started dealing the drug to classmates and acquaintances to monetarily support her habit. C.C. relished the attention

and companionship that came along with dealing marijuana, even if she knew deep down that her relationships with other drug users were at best superficial and at worst destructive. Those feelings eventually caused her to develop depression.

66. C.C.'s relationships with fellow marijuana users served as a catalyst for her addiction to other drugs. C.C. began to use oxycodone and heroin. C.C.'s addiction caused familial strife; during certain periods of her addiction, her parents no longer welcomed her into the family home, and C.C.'s sister abruptly cut all ties with her. By the time C.C finished high school, the seventeen-year-old was fully addicted to heroin and had already spent time in a juvenile delinquency facility. Self-medicating for anxiety, depression, fear, and the uncertainty of her life brought C.C. to face many consequences that she never expected as an intelligent and athletic young girl.

67. The next eight years of C.C.'s life were spent bouncing between rehabilitation facilities in the tri-state area, all the while collecting criminal convictions associated solely with her drug use. Desperate for change and exhausted from her lifestyle, at age 25 C.C. decided to turn herself in to the police, who arrested her on suspicion of burglary and held her in custody for roughly two months. She credits her decision to turn herself in—and to get clean for good—to her newfound devotion to Jesus and his teachings, which began during her years in rehab. Her belief and solidarity in her faith grew especially strong during her time in jail, and through thick and thin, it has not waned since then.

68. Upon her release from the county jail in 2017, C.C. was confronted with two choices: either face simple prison time with no recovery program, or enroll in Drug Court, which required undergoing a strict and lengthy five-year probation with mandatory rules, restrictions, and regulations to bring about a change in her lifestyle. Desperate for a path to

rehabilitation, C.C. chose the latter. She successfully completed Drug Court Probation in 2021. Her graduation from Drug Court resulted in the expungement of her criminal history in its entirety by Judge John Gizzo of the Essex County Superior Court on September 26, 2022. Around the time of her expungement, C.C. applied to rent an apartment but was turned away on account of her criminal history, which was unlawfully revealed to the landlord through a background check.

69. Since completing Drug Court, C.C. has sought a career that would allow her to help people as a way of making amends for her past. She enrolled in school for Massage and Bodywork Therapy so that she could obtain a license from the New Jersey Board of Massage and Bodywork Therapy (within the Division of Community Affairs). The license application required C.C. to respond about whether she had ever been arrested, charged with, or convicted of any felonies or disorderly persons offenses. Because she had obtained an order of expungement, C.C. answered that question "no," as permitted by her expungement order and the expungement statute. *See* N.J.S.A. 2C:52-27. However, because the NJSP had not yet expunged C.C.'s criminal record, the Board's background check revealed her criminal history, and in September 2023, the Board issued C.C. a letter seeking additional information about her criminal history so that it could consider disciplinary action under N.J.S.A. 45:1-21(f). The letter also suggested that C.C. had falsely answered the application's question about her criminal record and required her to submit a written narrative that would justify and explain her prior response. Receiving this letter caused C.C. shame, embarrassment, and concern that her long road to recovery from addiction and substantial effort to obtain a massage therapy license would be for naught.

70. In response to this disclosure, the Office of the Public Defender reached out to the

NJSP's Expungement Unit on C.C.'s behalf to inquire as to why her records were illegally disclosed. In response, an NJSP employee stated that the Expungement Unit is "still processing drug court orders from the end of 2021 [and the] beginning of 2022."

71. C.C. responded to the Board's initial denial of licensure by providing her expungement order. The Board thereafter approved her license application.

72. Although she was eventually granted her license, C.C. rightfully resents the invasion of privacy caused by NJSP's administrative delinquency. She worries that the Board's knowledge of her criminal history could lead it to take adverse action against her in the future, and for positions she applies for throughout her career. She is also hesitant to apply for these positions because she fears her criminal history (ordered to be expunged) will yet again be unlawfully revealed, causing her job applications to be denied without any further consideration, even if she were to present her expungement paperwork to employers. Even worse, C.C. believes that if her criminal history is revealed to multiple employers in the industry, her reputation will be damaged beyond repair, rendering futile her extensive (and expensive) training in Massage and Bodywork Therapy. C.C. looks forward to the day when her expungement order is processed so that she may finally put her hard-earned license to use.

Plaintiff D.D.

73. Plaintiff D.D. is a single mother seeking to gain employment with the United States Postal Service. However, she does not want to apply until she is sure that her expungement order has been processed, as she fears the revelation of her criminal history will prejudice her chances of being hired.

74. D.D. was raised as one of eleven children in a household in Camden, New Jersey.

D.D. grew up in a low-income household, and often sought the assistance of family members and local church groups for basic needs like clothing. D.D.'s mother struggled with drug addiction, so D.D. preferred to spend time outside the home, often visiting with her aunt, her cousins, and the family friends who hung around at her aunt's home.

75. Around age fifteen, D.D. began to covet the trendier clothing of her classmates and, because her family could not afford it, she eventually turned to shoplifting. This bad habit resulted in two juvenile adjudications for shoplifting, which—along with an assault charge stemming from a schoolyard fight—made up the entirety of D.D.'s adolescent criminal behavior.

76. By age sixteen, D.D. had her first child and became a single teenage mother. D.D. immediately dropped out of high school and began working full-time in the fast-food industry to support herself and her child. The grueling demands of raising a young child by herself—combined with the tedium of minimum wage labor—took a toll on D.D.'s wellbeing. On the rare days when D.D. could arrange childcare for her child, D.D. relieved her stress by meeting up with her high school friends to drink and party at clubs.

77. On one such occasion, a dispute between her group of friends and another cohort of clubgoers escalated into a brawl. Police responded to the scene; they charged D.D. with aggravated assault, to which she pled guilty and was sentenced to probation in 2006. In 2008, D.D. was involved in similar incident at a bar and pled guilty to aggravated assault, resulting in a suspended sentence of three years.

78. After her second conviction, D.D. realized the futility of using alcohol and partying to relieve her stress. D.D. decided to dedicate her life to being a good mother and left her job as a housekeeper to become a Certified Nursing Assistant. Although many nursing homes

and long-term care facilities turned her away due to her criminal history, D.D. eventually found a job doing hospice care for a local private hospital.

79. In the years immediately following her convictions, D.D. tried several times to expunge her record. She sought expungement both to further her own job opportunities and to be a role model for her children, showing them that even a person who has made mistakes and been in legal trouble can turn their life around. But before the "clean slate" expungement statute became effective in 2020, D.D. was disqualified from expungement because she had two criminal convictions.

80. In 2023, D.D. attended an expungement clinic on a whim, where she was pleased to learn that the recent expansion of the expungement statute rendered her eligible. She worked with attorneys and law students at the Rutgers Law School Expungement Clinic to submit an expungement petition, which was granted by Judge Michael Joyce of the Camden County Superior Court on July 14, 2023. She has not received any indication that the NJSP has processed her expungement order yet.

81. In order to build a sound financial base for herself and her children, D.D. seeks a stable job with good benefits and a reliable retirement plan. D.D. is specifically interested in working for the United States Postal Service, but she does not want to apply for that job until she is sure that her expungement order has been processed for fear of prejudicing her application. D.D. wants to show the world that it is never too late to turn one's life around; but until her expungement is processed, she is unable to do what is necessary to prove that lesson to be true.

Plaintiff E.E.

82. Plaintiff E.E. is a seventy-one-year-old woman living in Camden County. E.E.

previously worked as a high school teacher; now retired, she hopes to return to teaching in a part-time capacity to connect with the youth of her community and to supplement her income. But E.E.'s plans are hampered by two drug convictions from over twenty years ago, which resulted from a drug addiction that began during an abusive relationship with her ex-husband. Although she has successfully petitioned for expungement, E.E. has received no indication that her order has been processed, and she is hesitant to apply for the teaching position until she is sure her record is clean.

83. E.E. was born and raised in Chester, Pennsylvania by her single mother. After graduating high school, E.E. attended three years of college in Virginia before dropping out to marry her high-school sweetheart. For several years, E.E. moved frequently throughout the East Coast, following her husband as he was relocated by his employer. In each new town, E.E. quickly got involved with local church groups, obtained employment, and found time to finish her college degree in education.

84. Eventually, E.E. and her husband settled down in Cherry Hill, where E.E. had her first child. Around this time, E.E.'s husband developed addictions to cocaine and alcohol and became physically abusive toward her. For the next ten years, E.E. suffered this abuse silently, finding solace primarily in her church. E.E. occasionally used marijuana socially with her husband, but under pressure from her husband, E.E. also sometimes used cocaine as well. Eventually, E.E. filed for divorce, and her husband checked into an intensive inpatient rehabilitation program.

85. With her ex-husband out of the home, E.E. was left to raise her three children by herself. She immediately dedicated herself to providing for her kids, working as a welfare case manager during the day and eventually teaching classes to welfare clients as an adjunct

professor. E.E.'s life consisted of little more than working during the day, caring for her children at night, and attending church with her kids on the weekend. E.E. continued on as the primary caretaker even after her ex-husband returned from rehab. The all-consuming nature of single parenthood left E.E. lonely, stressed, and in need of support.

86. In the midst of her desire for companionship, E.E. was introduced to her friend's brother. Their relationship began as a friendship but turned romantic. Just like E.E.'s marriage, this relationship also became controlling and abusive. E.E.'s boyfriend was a frequent user of crack cocaine, and E.E. also did crack cocaine at her boyfriend's urging. As E.E.'s relationship with her boyfriend progressed, she grew distant from her church—although still attending services semi-regularly, E.E. prayed less, neglected her Bible, and abandoned wider ministry efforts.

87. E.E.'s intermittent social use of crack cocaine developed into a full-fledged, though largely private, addiction. E.E.'s boyfriend first introduced her to drug dealers, but eventually E.E. made additional connections herself. E.E. would go to Camden, buy drugs, bring them home, and use them by herself. E.E. and her boyfriend eventually separated, but the drug addiction outlasted the relationship.

88. Between 1997 and 1999, E.E. was arrested twice for drug possession. On one occasion, E.E. was stopped by an undercover agent after purchasing drugs from a known dealer; on the other occasion, police found drugs in E.E.'s purse after a car she rode passenger in was pulled over for speeding. In both instances, E.E. accepted full responsibility for her crimes by pleading guilty, paying her fines, and completing probation without issue. Aside from a dispute with a neighbor that led to a dismissed assault charge in 2008, these two instances form the entirety of E.E.'s criminal history.

89. After her arrest and conviction in 1999, E.E. began to see the negative impact that her private addiction had on herself and her children, and she accepted that she needed help. E.E. turned to her church community for support. With their help, E.E. underwent crisis treatment and then enrolled in an inpatient rehabilitation program. These treatments helped E.E. overcome the initial hurdles of recovery, but E.E. credits her long-lasting sobriety to her deep and sustained involvement with her church, which continues to this day. E.E. participates in her church's "crisis ministry," a program designed to assist parishioners overcome substance abuse problems like the one she battled herself. She has been sober for around twenty years.

90. E.E. is now retired from her job as a case manager and dedicates most of her time to her church. However, E.E. has a degree in education, and she taught high school in the early years of her marriage. E.E. now wishes to pursue part-time employment as a substitute teacher. That job would both allow E.E. to serve her community while also providing a supplemental source of income that she needs, especially because her Social Security retirement earnings are depressed because of work history that she missed while being a stay-at-home mother and battling her drug addiction. E.E. particularly desires the extra income so that she can move from her current home, which she still associates with the darkest moments of her drug addiction.

91. In pursuit of these goals, E.E. filed a pro se expungement petition on April 20, 2023 with the help of attorneys and law students from the Rutgers Law School Expungement Clinic. That petition was granted by Judge Michael Joyce of the Camden County Superior Court on July 21, 2023 and served on the NJSP shortly after. E.E. has received no indication that the NJSP has since processed her order.

92. Until E.E.'s expungement order is processed, she is hesitant to apply to work as a teacher for fear that her criminal history will be revealed, damaging her reputation and prejudicing her chances of being offered the job. As she advances in age, E.E.'s physical health has begun to deteriorate; she fears that if her expungement order is not processed soon, her years of good health will be wasted waiting when she should be teaching.

Plaintiff F.F.

93. Plaintiff F.F. is a forty-two-year-old business owner and community activist whose teenage criminal history prevents him from purchasing a firearm for defense of his home and business. Although his expungement was granted over seven months ago, the state police in his home state of Virginia refuse to allow him to purchase a firearm until the NJSP officially expunges his criminal history.

94. F.F. was born and raised in a low-income home in Plainfield, New Jersey with his brother, mother, and father. F.F.'s father was the family's primary source of income and consistently worked multiple jobs to support his children. F.F.'s father's work schedule meant that he was rarely at home. Furthermore, due to his struggles with post-traumatic stress disorder resulting from his tour of duty in the Vietnam War, F.F.'s father struggled to maintain consistent employment, resulting in an unstable financial situation for his family. F.F. recalls days when the lights in his home were shut off due to deficiencies in payment, and he often did not know where his next meal would come from. F.F.'s parents were always loving and kind to him and his brother, but the family's poverty made for a difficult upbringing.

95. As F.F. grew into early adolescence, he began to perceive more acutely how poverty affected his family more than those of his peers. And since F.F.'s father was not present—

because he was working and in school trying to provide a better life for his family—F.F. turned to his friends and neighbors to serve as financial role models. At age 11, F.F. got involved in the neighborhood drug trade, dealing marijuana on a small scale as a means of ingratiating himself with community members whom he respected. He also began to use marijuana around this time, a habit that accelerated throughout his teenage years into daily use and dependence upon the drug. His involvement in the local marijuana trade resulted in two juvenile arrests—one for marijuana possession and another for a curfew violation.

96. F.F.'s only adult convictions came in 2002 when he was still a teenager. On the day of his arrest, F.F. was out with a group of acquaintances from the neighborhood when one of the young men got into a fight. After an adult called the police, F.F. and his friends attempted to flee in a car. The young man who was involved in the fight had a loaded gun on him, so F.F. suggested that the man give F.F. the gun to stash under one of the car's seats. The police gave chase and pulled the vehicle over, at which point F.F.'s friends fled by foot. As the lone group member still on the scene, F.F. was arrested and charged with having possessed the gun and ammunition. F.F. pleaded guilty and was sentenced to probation.

97. After his adult arrest and conviction, F.F. realized the danger of his involvement in the drug trade and decided to orient his life toward more positive endeavors. F.F. has been sober since around the time of his arrest over 20 years ago. F.F. worked his way up the management chain at a major franchise and attended adult education classes to finish his high school diploma.

98. Even then, F.F.'s conviction inhibited his career advancement. The franchise where he worked made him an assistant store manager, but when F.F. sought a promotion to store manager, the franchise rejected him because of his criminal background. Without any further

opportunities for career advancement, F.F. quit his job.

99. Despite this setback, F.F. continued to seek opportunities to improve his future outlook. He enrolled in college and graduated with a major in business. Using the skills he acquired in school and at work, F.F. started his own landscaping business, which he has been operating full-time since 2011.

100. In addition to finishing his education and starting a business, F.F. started a non-profit foundation to provide mentoring and services to the youth of his community. F.F.'s foundation hosts musical and athletic events where local youth can congregate in a safe and supportive environment. At the events, the foundation assesses the specific needs of the attendees and draws on partnerships with other community organizations and local businesses to provide job training, healthcare, counseling, and other wraparound services to prepare the youth to build self-sufficient, pro-social lives for themselves. F.F., his wife, and his children recently moved to rural Virginia, where the need for these services is dire, and he is currently establishing a foothold for the foundation in his new community.

101. Shortly after he and his family moved to Virginia, there was an attempted break-in at F.F.'s home. After speaking with the police and his local business owners' association, F.F. took their advice and decided to try to obtain a firearm for protection of his home and business. Knowing that his criminal history would be a roadblock to his legal possession of a firearm, F.F. applied pro se for expungement of his criminal history, which was granted on March 1, 2023 by Judge Candido Rodriguez, Jr. of the Union County Superior Court.

102. After his expungement was granted, F.F. applied for a permit to carry a concealed firearm with his local police department. This application was initially denied after a background check revealed his New Jersey convictions—even though several months had

passed between the time his order was granted and the time he applied for the permit. F.F. appealed the denial by presenting his expungement order to the local police, who found the order to be sufficient and granted the application for the concealed carry permit.

103. With his concealed carry permit in hand, F.F. attempted to purchase a firearm around August of 2023 in Virginia. The gun shop conducted a mandatory background check, which again revealed F.F.'s criminal history. F.F. explained that the conviction had been expunged, and he provided a copy of his expungement order to the Virginia State Police. However, the Virginia State Police still rejected F.F.'s request to purchase the firearm. F.F. received an email from the Virgina State Police Firearms Transaction Center in September 2023 that states: "We have received your NJ expungement, but the charge still remains on your criminal record. I am not able to authenticate this expungement until the the [sic] NJSP removes the charge off of your criminal record."

104. F.F. is frustrated that his distant teenage misdeeds continue to impede him in his forties and is worried for the safety of his family and his business as he waits for the NJSP to act in accordance with their statutory duty.

CAUSES OF ACTION

Count I

Deprivation of Substantive Statutory Rights in Violation of the New Jersey Civil Rights Act

105. Plaintiffs incorporate by reference as if fully set forth here the allegations of all previous paragraphs of the Complaint.

106. New Jersey's expungement statute requires the NJSP, upon receipt of an expungement order from the Superior Court, to "extract[], seal[], impound[], or isolat[e]" all records "concerning a [petitioner's] detection, apprehension, arrest, detention, trial or

disposition of an offense within the criminal justice system." N.J.S.A. 2C:52-1; *see also* N.J.S.A. 2C:52-15(a).

107. The statute further requires the NJSP to "ensure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose," as well as to respond to requests for information contained in those records "that there is no record information." N.J.S.A. 2C:52-15(a). The statute makes it a disorderly persons offense to "reveal[] . . . the existence of an arrest, conviction or related legal proceeding with knowledge that the records and information pertaining thereto have been expunged or sealed." N.J.S.A. 2C:52-30. The NJSP's own administrative regulations further prohibit it from disseminating expunged criminal records. N.J.A.C. 13:59-1.2(a).

108. The "primary objective" of the expungement statute is "providing relief to the reformed offender who has led a life of rectitude and disassociated himself with unlawful activity[.]" N.J.S.A. 2C:52-32.

109. To ensure that objective is met, the statute grants a substantive right to successful expungement petitioners to have their expungements processed according to the statute's terms. *See Tumpson v. Farina*, 218 N.J. 450, 473 (2014) (explaining that the New Jersey Civil Rights Act provides a remedy for "deprivation of a statutory substantive right").

110. Defendant Colonel Patrick J. Callahan, in his official capacity as Superintendent of State Police, has deprived Plaintiffs and the class they represent of this right by allowing their expungement orders to languish unprocessed for an unreasonable amount of time after such orders were received by Defendant Callahan's office without extracting, sealing, impounding, and isolating their expunged records. *See* N.J.S.A. 2C:52-1; N.J.S.A. 2C:52-15(a).

111. Defendant Colonel Patrick J. Callahan, in his official capacity as Superintendent of State Police, has further deprived Plaintiffs and the class they represent of their rights under the expungement statute by disclosing their expunged criminal records in violation of governing law. *See* N.J.S.A. 2C:52-15(a); N.J.S.A. 2C:52-30; N.J.A.C. 13:59-1.2(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the class they represent, ask this Court to:

A. Certify this case as a class action;

B. Appoint Plaintiffs as class representatives;

C. Appoint Plaintiffs' counsel as class counsel;

D. Declare that Defendant Colonel Patrick J. Callahan, in his official capacity as Superintendent of State Police, has failed to process expungement orders within a reasonable time and therefore has deprived, and continues to deprive, Plaintiffs and similarly situated class members of their statutory substantive rights in violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2;

E. Enjoin Defendant Colonel Patrick J. Callahan, in his official capacity as Superintendent of State Police, to extract, seal, impound, isolate, and otherwise expunge the criminal history record information of Plaintiffs and all other successful expungement petitioners whose expungement orders remain unprocessed within such amount of time as the Court deems reasonable and appropriate; and

F. Award any other relief, including reasonable attorneys' fees and costs, pursuant to N.J.S.A. 10:6-2(f) or any other applicable law or rule, as the Court deems just.

Respectfully,

s/ Fletcher C. Duddy
Fletcher C. Duddy, Esq.
Deputy Public Defender

s/ Michael R. Noveck
Michael R. Noveck, Esq.
Assistant Deputy Public Defender

NEW JERSEY OFFICE OF THE PUBLIC DEFENDER
ATTORNEYS FOR PLAINTIFFS

Dated: October 23, 2023

CERTIFICATION BY COUNSEL

Pursuant to *Rule* 4:5-1(b)(2), the undersigned hereby certify that to the best of their knowledge, the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. The undersigned further certify that other than the parties set forth in this Complaint, they know of no other parties that should be made a part of this lawsuit. The undersigned recognize their continuing obligation to file and serve on all parties and the court an amended certification if there is a change to the facts stated in this certification.

s/ Fletcher C. Duddy
Fletcher C. Duddy, Esq.
Deputy Public Defender

s/ Michael R. Noveck
Michael R. Noveck, Esq.
Assistant Deputy Public Defender

NEW JERSEY OFFICE OF THE PUBLIC DEFENDER
ATTORNEYS FOR PLAINTIFFS

Dated: October 23, 2023

DESIGNATION OF TRIAL COUNSEL

Pursuant to *Rule* 4:5-1(c), Fletcher C. Duddy and Michael R. Noveck are designated as trial counsel.

s/ Fletcher C. Duddy
Fletcher C. Duddy, Esq.
Deputy Public Defender

s/ Michael R. Noveck
Michael R. Noveck, Esq.
Assistant Deputy Public Defender

NEW JERSEY OFFICE OF THE PUBLIC DEFENDER
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