

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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: Index No.
PATSY COMUNALE, individually and as Administrator
of the Estate of JOSEPH A. COMUNALE a/k/a JOSEPH : Date Purchased: November 13, 2018
ANTHONY COMUNALE,
: **SUMMONS**
Plaintiff,
: The basis of the venue is pursuant to
- against - : CPLR § 503(a).
:
GORDON N. GEMMA and SUZANNE M. DILIONE,
:
Defendants. :
:
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To The Above-Named Defendants:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your Answer, or, if the Verified Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorney(s) within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: November 13, 2018

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP



By: _____
Robert Abrams, Esq.
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Pursuant to 22 NYCRR § 130-1.1a

*Attorneys for Plaintiff
Patsy Comunale, individually and as Administrator
of the Estate of Joseph A. Comunale
a/k/a Joseph Anthony Comunale*

To: Gordon N. Gemma
68 Seneca Place
Oceanport, New Jersey 07757

Suzanne M. Dilione
50 Cayuga Avenue
Oceanport, New Jersey 07757

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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	Index No.
PATSY COMUNALE, individually and as Administrator of the Estate of JOSEPH A. COMUNALE a/k/a JOSEPH ANTHONY COMUNALE,	:
	VERIFIED COMPLAINT
	:
Plaintiff,	:
	:
- against -	:
	:
GORDON N. GEMMA and SUZANNE M. DILIONE,	:
	:
Defendants.	:
	:
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Plaintiff, Patsy Comunale (“Mr. Comunale” and/or “Plaintiff”), individually and as Administrator of the Estate of Joseph A. Comunale a/k/a Joseph Anthony Comunale (“Joey”), by and through his attorneys, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, as and for his Verified Complaint against Defendants, Gordon N. Gemma (“Defendant Gemma”) and Suzanne M. Dilione (“Defendant Dilione”) (collectively, the “Defendants” and/or the “Co-Defendants”), hereby alleges as follows:

SUMMARY OF ACTION

1. On Sunday, November 13, 2016, James Arthur Rackover a/k/a James Arthur Beaudoin (“James”), Lawrence Dilione (“Larry”)¹ and Max Gemma (“Max”)² each played an intricate role in the brutal killing of the victim, Joey, Plaintiff’s 26-year-old son, by engaging in, *inter alia*, unlawful and tortious conduct, which included, but was not limited to, assaulting, beating, kicking, punching, choking, stabbing and/or otherwise attacking Joey, placing Joey in a state of fear and apprehension of imminent death. As a result of this attack, Joey experienced

¹ Larry is the son of Defendant Dilione.
² Max is the son of Defendant Gemma.

excruciating pain, fear, anxiety and suffering. Eventually, Joey succumbed to the injuries sustained by the conduct of James, Larry and Max, and died.³

2. Thereafter, Defendants Gemma and Dilione conspired and agreed among themselves and others to conceal and cover-up the brutal murder of Joey, by intentionally and knowingly lying to law enforcement who were investigating the disappearance and murder of Joey, and by instructing others including, but not limited to Max and Larry, to lie to law enforcement and others looking for Joey, thereby interfering with the right of and/or otherwise prevent Mr. Comunale, as Joey's next-of-kin, from recovering Joey's remains.

3. The unlawful and illegal acts taken by the Defendants herein interfered with Plaintiff's indelible right, as Joey's next-of-kin, to the immediate possession of Joey's remains – prohibiting Plaintiff from immediately providing Joey with a proper burial and obtaining the solace and comfort from providing same.

4. As a result of this horrific tragedy, consisting of various intentional acts, and extreme and outrageous conduct committed by, *inter alia*, the Defendants herein, Plaintiff suffered and continues to suffer extreme emotional distress, humiliation, mental and physical anguish and emotional and physical injuries, as well as economic losses.

³ As stated in the Press Release issued by the New York County District Attorney's Office ("District Attorney") on May 10, 2017 ("DA VANCE: JAMES RACKOVER, LAWRENCE DILIONE INDICTED FOR MURDER OF JOSEPH COMUNALE"):

[a]ccording to court documents and statements made on the record in court, Joseph Comunale was repeatedly stabbed on November 13, 2016, inside of RACKOVER's East 59th Street apartment, following a party attended by DILIONE and GEMMA. At approximately 9:45 p.m. that night, RACKOVER and DILIONE drove Mr. Comunale's body, which had been burned, from RACKOVER's apartment to Oceanport, New Jersey, where they buried it in a shallow ditch. Mr. Comunale's body was discovered by NYPD and Oceanport police officers on November 16, 2016.

5. On Wednesday, November 16, 2016, Joey's lifeless body was discovered in a shallow grave in a wooded area in Oceanport, New Jersey. Having sustained, *inter alia*, sharp force injuries to his chest, including, but not limited to, fifteen (15) stab wounds, the manner of Joey's death was deemed a homicide. Joey had sustained various other injuries, including, but not limited to, several skull fractures, a portion of his face was seriously fractured, most of his ribs on the right side of his body were fractured, and his legs were badly burned. As indicated by the District Attorney, an attempt was made to burn Joey's body with gasoline to conceal evidence of how he was killed and to prevent his body from being identified.

NAMED PARTIES

6. Mr. Comunale is Joey's father, and resides in Fairfield County, Connecticut. By Decree Granting Administration or Probate of Will, dated March 9, 2017 (the "Decree"), Mr. Comunale was appointed Administrator of the Estate of Joseph A. Comunale, deceased, a/k/a Joseph Anthony Comunale. A true and accurate copy of the Decree is attached hereto as **Exhibit "A"** and is incorporated herein by reference. Mr. Comunale, the Plaintiff, appears herein individually and in his capacity as Administrator of Joey's Estate.

7. Defendant Gemma is an individual who resides at 68 Seneca Place, Oceanport, New Jersey 07757. Defendant Gemma is Max's father.

8. Defendant Dilione is an individual who resides at 50 Cayuga Avenue, Oceanport, New Jersey 07757. Defendant Dilione is Larry's mother.

OTHER INTERESTED PERSONS

9. James, born March 12, 1991, is currently in the custody of the New York City Department of Correction (NYSID number 13217109P) at the Manhattan Detention Complex, located at 125 White Street, New York, New York, and is being held pending sentencing in

connection with the brutal murder of Joey and the concealment and cover-up of that crime.⁴ Prior to his arrest, James resided at 418 East 59th Street, Apartment 4C, New York, New York 10022.

10. Larry, born July 27, 1988, is currently in the custody of the New York City Department of Correction (NYSID number 13714285Z) at the Anna M. Kross Correctional Facility, located at 1818 Hazen Street, East Elmhurst, New York, and is being held without bail for the murder of Joey and the concealment and cover-up of that crime.⁵ Prior to his arrest, Larry resided at 255 Warren Street, Apt. 1603, Jersey City, New Jersey 07302 (“The Gotham”) with Defendant Gemma’s son, Max.

11. Max, born November 21, 1987, resides at 255 Warren Street, Apt. 1603, Jersey City, New Jersey 07302, and is under indictment for various crimes relating to the concealment and cover-up of the murder of Joey and remains out of custody following the posting of a \$200,000 bond, secured by his parents, Defendant Gemma and Stacy Gemma.⁶ Max was Larry’s roommate at the time of Joey’s murder until Larry was incarcerated.

⁴ James was indicted by a New York County Grand Jury and charged on Wednesday, May 10, 2017 with one count of Murder in the Second Degree, a Class “A” Felony, for the slaying of Joey, by Indictment # 1616/2017 (People of the State of New York v. James Rackover, Lawrence R. Dilione and Max Gemma, Case No. 01616-2017 (Sup. Ct. N.Y. Cnty. Crim. Term 2017) (the “Criminal Proceeding”). In addition, James was charged with multiple counts of Concealment of a Human Corpse, a Class “E” Felony, one count of Hindering Prosecution in the First Degree, a Class “D” Felony, and one count of Tampering with Physical Evidence, a Class “E” Felony. As noted by the Press Release issued by the New York County District Attorney’s Office on November 2, 2018, James was convicted after trial of all charges. James is scheduled to be sentenced on December 5, 2018.

⁵ Larry was indicted by a New York County Grand Jury and charged on Wednesday, May 10, 2017 with one count of Murder in the Second Degree, a Class “A” Felony, for the slaying of Joey, with multiple counts of Concealment of a Human Corpse, a Class “E” Felony, one count of Hindering Prosecution in the First Degree, a Class “D” Felony, and one count of Tampering with Physical Evidence, a Class “E” Felony. The trial against Larry in connection with the Criminal Proceeding is scheduled to commence on January 14, 2019.

⁶ Max was indicted by a New York County Grand Jury and charged on Wednesday, May 10, 2017 with three counts of Hindering Prosecution in the First Degree, a Class “D” Felony, and one count of Tampering with Physical Evidence, a Class “E” Felony. Each charge carries a potential prison sentence of either 2 1/3 to 7 years and 1 1/3 to 4 years, respectively. The trial in connection with the Criminal Proceeding against Max is expected to commence in or around February 25, 2019, after the conclusion of the trial against Larry. To date, Max has not been charged with murder in connection with the Criminal Proceeding but,

FACTS

12. As noted hereinabove, Joey was brutally murdered in the early morning hours of November 13, 2016 in James' apartment, located at 418 East 59th Street, Apartment 4C, New York, New York 10022, in a building known as The Grand Sutton.

13. There were three people in the apartment when Joey was murdered: James, Larry and Max.

14. As evidenced by Larry's sworn testimony given during a suppression hearing held on March 12, 2018 in connection with the Criminal Proceeding and the evidence presented at James' murder trial, James and Larry committed, *inter alia*, the following heinous acts to dispose of Joey's remains:

- a. They attempted to dismember Joey's lifeless remains so that it would be easier for them to discard his body parts and avoid detection;
- b. They drove across state lines to a secluded area in Larry's hometown of Oceanport, New Jersey and dumped Joey's body in a shallow hole;
- c. As Joey's body laid in the hole they created, they poured gasoline all over Joey's body and attempted to burn him to ashes to further avoid their possible detection and involvement in his murder; and
- d. Although Max was not present when Joey's remains were transferred from New York City to Oceanport, New Jersey and dumped in a hole and set on fire, he (Max) was in constant phone contact with Larry and James, who kept him apprised of their efforts to hide Joey's remains.

given, *inter alia*, the evidence that has been secured by members of law enforcement, the possibility exists that Max may also be charged with murder.

THE DEFENDANTS' INVOLVEMENT IN THE COVER-UP

15. Wearing clothes Max borrowed from James because his own clothes were covered with Joey's blood from his participation in the murder and post-murder activity, Max left the murder scene at approximately 8:42 A.M. and eventually returned to the apartment he shared with Larry at The Gotham in Jersey City, New Jersey.

16. Plaintiff is informed and believes that, as part of their initial plan, Max went directly to New Jersey to secure the assistance of, *inter alia*, his father, Defendant Gemma, in the concealment and cover-up of the brutal murder of Joey.

17. As Larry and James attempted to dismember Joey and then attempted to discard his body, Max remained in constant contact with Larry and James and assisted in the coordination of the cover-up.

18. Max immediately sought the help of, among others, his father, Defendant Gemma, the former mayor of Oceanport, New Jersey and an attorney with an ethically questionable past,⁷ and, in coordination with Larry, the help of Larry's mother, Defendant Dilione.

19. Upon learning of their respective sons' participation in Joey's assault, murder, dismemberment and/or disappearance, Defendants Gemma and Dilione decided that rather than encourage their children to take responsibility or report the crimes themselves, Defendants Gemma and Dilione elected to actively participate in the cover-up of this horrific crime by conspiring and agreeing to intentionally and knowingly lie to members of law enforcement to prevent the detection and recovery of evidence material and relevant to the investigation of Joey's disappearance and murder.

⁷ By CORRECTED Decision, dated April 23, 2008, the Disciplinary Review Board of the Supreme Court of New Jersey agreed with the Office of Attorney Ethics for the imposition of a reprimand against Defendant Gemma for, *inter alia*, negligently misappropriating client funds in a multitude of matters.

20. Within hours of Max's return to Jersey City, New Jersey on Sunday, November 13, 2016, Max informed his father, Defendant Gemma, of his and Larry's involvement in, *inter alia*, Joey's murder and disappearance. Similarly, Larry informed his mother, Defendant Dilione, of their (Larry and Max's) involvement.

21. On Monday, November 14, 2016, Defendants Gemma and Dilione, who have known each other since Max and Larry were in grade school, communicated with each other to concoct a plan for Max and Larry to avoid responsibility for their involvement in Joey's murder and disappearance.

22. Individually and collectively, Defendants Gemma and Dilione, in tandem with their sons, initially decided that the best course of action was to falsely deny any knowledge as to what happened to Joey. To be clear, rather than inform the Plaintiff, the police and any of the other Comunale friends and family who were searching for Joey, the Co-Defendants denied Plaintiff the right to recover his son's remains and, instead, actively participated in the cover-up of this horrific crime, thereby interfering with Plaintiff's immediate right to recover of Joey's remains.

23. During this initial phase of the cover-up, Defendants Gemma and Dilione agreed to join not only Larry and Max, but also James, in lying to the police as well as to Joey's family and friends as to their knowledge of Joey's whereabouts.

24. On multiple instances, as evidenced by police records, sworn testimony at James' murder trial and Larry's sworn testimony at the suppression hearing, on Sunday evening November 13th, 2016 and Monday, November 14th, 2016, James and Larry told various members of law enforcement, Joey's father, Joey's uncle and Joey's friends that he (Joey) left The Grand Sutton early Sunday morning, November 13, 2016. Both James and Larry told these lies while Joey laid bludgeoned and dead in James' bathtub and repeated these lies when James and Larry

transported Joey's remains to Oceanport, New Jersey where they dumped him in a shallow hole before pouring gasoline on him in a failed attempt to burn Joey's dead body into a heap of unrecognizable ashes.

25. Beginning late Monday night, November 14, 2016, however, Defendants Gemma and Dilione, in consultation with their killer sons, realized that the police now had overwhelming evidence that Joey returned to James' apartment and had reason to believe that all three men – Larry, Max and James – were not being truthful about what they knew regarding Joey's whereabouts.

26. At this time, Defendants Gemma and Dilione conspired and agreed to convince their sons that in order to avoid a lengthy jail sentence, they needed to concoct an alibi that would minimize their criminal exposure, as it was becoming increasingly clear that the police now believed that there was a strong possibility that Joey was dead and that the three other men in the apartment (Larry, Max and James) were likely responsible.

27. The Defendants, along with their sons, decided that both Larry and Max should remain quiet, but that if the police ultimately found Joey's dead body, they should then provide a false narrative that James killed Joey as a result of a "roid rage" eruption. In other words, the revised plan was to blame the murder solely on James.

28. As the Defendants went to sleep on Monday, November 14, 2016, they were cautiously optimistic that their sons would escape detection and responsibility. Defendant Gemma believed this plan would work so long as all of them, particularly Larry, kept their mouths shut and deferred all possible questioning to the Defendants, particularly Defendant Gemma.

29. On Tuesday, November 15, 2016, at approximately 7:30 A.M., Detectives from the New York City Police Department ("NYPD") and members of the Oceanport Police Department

visited the home of Defendant Dilione, in an attempt to speak with Larry. The police apparently did not know, at this time, that approximately one month earlier, the then-28-year-old Larry left his parents' home and moved in with Max in an apartment located at 255 Warren Street, Jersey City, New Jersey 07302.

30. According to Larry's father, Lawrence Dilione, Jr. ("Lawrence Dilione"), at approximately 7:30 A.M., Detectives knocked on the door of their family home in an effort to speak with Larry about what he knew about a "missing person" (Joey).

31. Lawrence Dilione attempted to reach Larry on his cell phone during the police visit, but was allegedly unable to reach him.

32. At around 8:00 A.M., after the police left, Larry called his father. According to Lawrence Dilione's testimony at the suppression hearing, Larry told his father that he spoke to the police the day before and that he had no information regarding Joey's whereabouts. Both Larry and his father knew at that time that this was a lie.

33. At some point between 7:30 A.M. and 8:40 A.M., Defendant Gemma was made aware that the police were at Defendant Dilione's home.

34. Thereafter, at approximately 8:40 A.M., a little over an hour after the police visited the Dilione home and approximately a half hour after Defendant Dilione's husband, Lawrence Dilione, informed their son, Larry, that the police wanted to speak with him in connection with Joey's disappearance, Defendant Gemma, using his son, Max's, cell phone called Larry's mother, Defendant Dilione, with whom he apparently had little or no contact with over the past several years.

35. During the suppression hearing held on March 8, 2018, without any explanation as to how Defendant Gemma became aware of the police presence at Defendant Dilione's home on

the morning of Tuesday, November 15, 2016, or how Defendant Gemma became aware that Defendant Dilione allegedly required Defendant Gemma's "assistance," Defendant Gemma claimed that he called Defendant Dilione because ". . . there were police officers at her house in Oceanport and she didn't know what was going on. She asked me if I would represent Larry as they were asking for Larry."

36. According to Defendant Dilione's husband, sometime around 9:30 A.M., the Co-Defendants had another conversation while he (Lawrence Dilione) was driving his wife to Old Bridge, New Jersey.

37. Defendant Gemma subsequently acknowledged during the suppression hearing that Defendant Dilione did know, as did he when he made this phone call, why the police wanted to speak with Larry and, by omission, implicitly admitted that he communicated with his Co-Defendant multiple times on November 15, 2016 to further their plan to conceal the whereabouts of Joey's remains and to shield their respective sons from prosecution.

38. Later, during the evening of November 15, 2016, Defendant Gemma, in concert with Defendant Dilione and their respective sons, among others, intentionally lied to the police who were desperately trying to locate Joey.

39. As each of their sons had done previously, the Defendants feigned ignorance regarding Joey's whereabouts and the nature of the calls between and among them and/or their respective spouses. For example, as confirmed explicitly in Lawrence Dilione's testimony during the suppression hearing, he did not know if and when his wife, Defendant Dilione, spoke with Defendant Gemma and claims that he himself (Lawrence Dilione) purportedly did not recall speaking with Defendant Gemma, nor does he recall discussing these calls with his wife even though he knew his son was, once again, in serious legal trouble.

40. Between the hours of 9:00 P.M. on November 15, 2016 and the early morning hours of Wednesday, November 16, 2016, there were significant interactions between and among the police and the Co-Defendants.

41. At 9:00 P.M. on November 15, 2016, Detectives returned to the Dilione family residence in Oceanport, New Jersey as law enforcement intensified their search to find Joey. Once again, Larry was not there.

42. At approximately the same time at The Gotham – the building where Max and Larry shared an apartment and where Defendant Gemma and his wife, Max’s mother, also had an apartment – a different set of NYPD Detectives arrived looking to speak with Max regarding his knowledge and involvement in Joey’s disappearance.

43. Defendant Gemma claims he first suspected that the police were there to look for Larry and feigned surprise that they were actually there to question his son and joked about the investigation, arrogantly questioning that this was “all over a missing.”

44. In an effort to control the narrative presented by his and Defendant Dilione’s son, Defendant Gemma first claimed he was Larry’s attorney but, thereafter, stated he could not represent Larry as he needed to represent his son, Max.

45. Defendant Gemma subsequently agreed to allow the police to interview his son, Max, on the condition that he (Defendant Gemma) was allowed to be present and that Max would not be forced to return to New York to be interviewed. He threatened the police that if “my son goes back to Manhattan, I’m going to tell him not to speak with you.”

46. As evidenced by the suppression hearing testimony, the interview took place in Max’s 16th floor apartment at The Gotham – four floors below Defendant Gemma’s apartment – where just minutes earlier, Defendant Gemma, his wife, Stacy Gemma, their younger son, Bryan

Gemma, and one or more of Max's friends discussed the cover-up plan previously concocted by Defendants Gemma and Dilione.

47. As evidenced by, *inter alia*, the suppression hearing testimony in connection with the Criminal Proceeding and the evidence presented during James' murder trial, Max, following the instructions of his father, Defendant Gemma, knowingly and intentionally lied to the police in furtherance of the Defendants' conspiracy to intentionally impede the investigation into Joey's disappearance.

48. The following is a partial list of the lies that, in the presence and at the insistence of his father, Max told NYPD Detectives Ford and Wall on the night of November 15, 2016 at approximately 11:00 P.M.:

Max's Lie: Max told the NYPD Detectives he was tired after he, Larry, Joey and four other people arrived at James' apartment at The Grand Sutton in the early morning hours of November 13, 2016 after an evening of partying in New York City. Max claimed that he fell asleep on James' couch after changing his clothes so that he could be more comfortable.

The Truth: Max never went to sleep. He was awake the entire time and participated in, *inter alia*, the assault and murder of Joey. He changed his clothes because, *inter alia*, his clothes were partially covered with Joey's blood.

Max's Lie: Max told the NYPD detectives that he slept for an hour and a half or two hours.

The Truth: Max, along with the rest of the guests, arrived at James' apartment at around 4:30 A.M. He was awake the entire time the other

guests were present and when they left the apartment at 7:30 A.M. Max is on video leaving The Grand Sutton approximately one and a half (1.5) hours after the girls. He never went to sleep. In fact, Joey was murdered during the period of time between when the girls left and when Max left.

Max's Lie: As stated by Detective Ford during his suppression hearing testimony on March 6, 2018, Max told the NYPD detectives that “when he woke up, the apartment was dark, he didn't see anyone, and he grabbed his wallet and keys and left the apartment.”

The Truth: Max was awake and a willing participant in the violent and deadly beating which resulted in the murder of Plaintiff's son. Before leaving James' apartment, he conspired with Larry and James on how to cover-up this horrific murder.

Max's Lie: Max told the NYPD detectives that his phone conversations with Larry after he left the apartment were to discuss a furniture delivery to their Jersey City apartment.

The Truth: His post-murder conversations with Larry were to further discuss the cover-up of this murder, including their plan to dispose of Joey's remains in a deserted area in Oceanport, New Jersey where he (Max) and Larry were raised by their parents – the Co-Defendants herein.

49. In furtherance of the conspiracy, Defendant Gemma presented his son Max as his client and knowingly permitted and instructed Max – his alleged client – to give false statements to the NYPD and attempted to control the interview in that, during the interview, “when [the

Detectives] asked Max a question, Gordon would ask that question again to Max and Max would answer the question that [they] originally asked him.”⁸

50. Toward the end of the interview, two new NYPD Detectives joined them and asked Max the following question: “when did the fight start[?]”

51. Defendant Gemma would not allow his son to answer this question because, according to Defendant Gemma, “it presupposed a fight had started.” Defendant Gemma knew that if Max acknowledged he was present during the fight, he would incriminate himself as being an active participant in Joey’s murder, as well as expose the prior false statements that both he and his son had just made to the police. At this time, when Defendant Gemma knowingly and willfully was obstructing justice, he probably did not envision that, several months later, he would have to lie, while under oath, in a suppression hearing as to his involvement in the attempted cover-up of Joey’s murder.

52. Twice during this interview, in the presence of police officers, Defendant Gemma attempted to call Larry. Defendant Gemma claimed he had a brief conversation with Larry at 10:58 P.M., but was not able to reach him when he made the second call.

53. According to Detective Ford, when Defendant Gemma hung up the phone after the second call, he muttered the following: “I hope Larry does not go to the police, he can’t shut his mouth.”

54. In furtherance of their conspiracy, Defendant Gemma was contacting Larry with the specific intent and purpose of impeding the police investigation.

⁸ Defendant Gordon, an attorney duly licensed to practice law before the Courts of the State of New Jersey, with an ethically questionable past, breached his ethical obligations as an attorney and counselor at law by, *inter alia*, permitting and instructing his son Max to knowingly give a false statement in furtherance of their conspiracy to cover-up Joey’s murder.

55. Defendant Gemma's concern about Larry's loquaciousness and his refusal to allow Max to acknowledge that a fight took place in James' apartment are but two examples of how the Co-Defendants' plan to cover-up this crime and prevent the police and Joey's family from finding Joey was beginning to unravel.

56. In fact, as evidenced by Larry's testimony in the suppression hearing, Defendant Gemma's fears were realized when Larry subsequently told police that they could find Joey's remains in a shallow hole behind Foggia Florist & Greenhouses in Oceanport, New Jersey.

57. Moreover, a loquacious Larry also admitted to the police the following critical information on the evening of November 15, 2016 and in the early morning hours of November 16, 2016:

- a. He had beaten a defenseless Joey into unconsciousness;
- b. Max was awake and present during this altercation; and
- c. James, in a fit of "roid rage," killed and then attempted to dismember Joey because he did not want to spend the rest of his life in prison.

AS AND FOR A FIRST CAUSE OF ACTION
(VIOLATION OF THE RIGHT OF SEPULCHER)

58. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered "1" through "57 (a) – (c)" as if more fully set forth hereat.

59. Larry, Max and James engaged in an unlawful and tortious course of conduct against Joey, including, but not limited to, assaulting, beating, kicking, punching, choking, stabbing and/or otherwise attacking Joey on Sunday, November 13, 2016.

60. Larry, Max and James killed Joey on Sunday, November 13, 2016 and, thereafter, disposed of his mutilated body in an attempt to conceal and cover-up Joey's killing and interfere

with the right of and/or otherwise prevent Mr. Comunale, as Joey's next-of-kin, from recovering Joey's body.

61. Defendants Gemma and Dilione conspired and agreed with, *inter alia*, their sons, Max and Larry, to conceal and cover-up Joey's killing and interfere with the right of and/or otherwise prevent Mr. Comunale, as Joey's next-of-kin, from recovering Joey's body by, *inter alia*, concocting a false narrative and executing a plan to interfere with the police's investigation into Joey's disappearance and murder, and to assist, *inter alia*, Larry and Max in evading prosecution and further hindering the NYPD from locating Joey's remains.

62. With the knowledge that Joey had been murdered and that his body was buried in a shallow grave in Oceanport, New Jersey, Defendants Gemma and Dilione intentionally lied to the police and instructed Max and Larry to lie to the police to prevent the recovery of Joey's remains by Joey's next-of-kin, Plaintiff herein, and by law enforcement.

63. In furtherance of this conspiracy, Defendants Gemma and Dilione, intentionally and with knowledge that Joey's parents, including Plaintiff, Mr. Comunale, were looking for their son, and that Joey was actively being searched for by law enforcement, *inter alia*, lied and instructed their sons to lie to the police and to Joey's family and friends, in order to prevent Joey's next-of-kin, namely Plaintiff, Mr. Comunale, from recovering Joey's body and to evade prosecution.

64. In furtherance of this conspiracy, Defendants Gemma and Dilione intentionally, knowingly and with knowledge that Joey's next-of-kin were searching for him, did participate in and had knowledge that, after Joey was murdered, his body was concealed to prevent its discovery by the next-of-kin and the police who were actively searching for Joey.

65. The actions and inactions taken by Defendants Gemma and Dilione, in furtherance of the conspiracy, were undertaken with the specific purpose of hindering the investigation into Joey's disappearance and murder, interfering with the next-of-kin's immediate possession of Joey's body following his murder and prohibiting the recovery of Joey's remains by Plaintiff and/or the NYPD.

66. Defendants Gemma and Dilione acted without authorization and intentionally and knowingly interfered with the next-of-kin's immediate possession of Joey's body following his murder and the body remained concealed as a result of the Defendants' actions from November 13, 2016 through and including November 16, 2016.

67. Larry and James have made various admissions and statements against penal interests that they were involved with the murder of Joey, and Larry subsequently informed the NYPD where Joey's body could be found, and directly and indirectly about the involvement of Defendants Gemma and Dilione in assisting them to cover-up the crime and evade prosecution.

68. As a result of the outrageous and extreme conduct of Defendants Gemma and Dilione, Joey's next-of-kin, the Plaintiff herein, suffered extreme emotional distress, humiliation, mental and physical anguish, and emotional injuries, all to Plaintiff's detriment, in amounts to be proven at trial.

WHEREFORE, Plaintiff respectfully prays that this Court enters judgment against Defendants for:

1. General, compensatory, and special damages, in an amount to be determined by the Court, but in any event exceeding the jurisdictional limits of all lower Courts;

2. Punitive damages, in an amount to be determined by the Court, but in any event exceeding the jurisdictional limits of all lower Courts;

3. Reasonable attorneys' fees and costs; and
4. Such other and further relief as the Court deems just, proper and equitable.

Dated: November 13, 2018

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP



By: _____

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Pursuant to 22 NYCRR § 130-1.1a

*Attorneys for Plaintiff
Patsy Comunale, individually and as the
Administrator of the Estate of Joseph A. Comunale
a/k/a Joseph Anthony Comunale*

ATTORNEY VERIFICATION

The undersigned, being an attorney duly admitted to practice in all of the Courts of the State of New York, affirms the following under the penalty of perjury:

That I am the attorney for the Plaintiff in the within action. That I have read and know the contents of the foregoing Complaint and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe same to be true.

This verification is made by the affirmant and not by the Plaintiff herein because the Plaintiff does not reside within the county where affirmant maintains his office.

This verification is based upon, *inter alia*, information furnished by the Plaintiff in this action, information contained in affirmant's file and information contained in Court files.

Dated: November 13, 2018



Robert Abrams