STATE OF RHODE ISLAND

NEWPORT, SC. **SUPERIOR COURT**

(FILED: June 20, 2025)

RICHARD P. BRUNO, JR., individually as Statutory Beneficiary of Nathan R. Bruno and as Administrator of the Estate of Nathan R. Bruno,	:	
Plaintiff,	:	
v.	:	**C.A. No. NC-2019-0433**
LISA MILLS, in her capacity as Finance Director for the TOWN OF PORTSMOUTH; RYAN MONIZ; STEPHEN TREZVANT; JOSEPH AMARAL; PAIGE KIRWIN-CLAIR; MADDIE PIRRI; CHRISTINA D. COLLINS, in her capacity as Finance Director for the TOWN OF JAMESTOWN; and DEREK CARLINO,	:	
***Defendants*.**	:	

DECISION

LICHT, J. This trial stems from the tragic death by suicide of Nathan Bruno (Nathan), a fifteen-year-old student at Portsmouth High School. After a nearly six-week trial, the jury returned a verdict on Plaintiff's claim for wrongful death against Defendant Ryan Moniz (Mr. Moniz). Following trial, Defendants Mr. Moniz, Lisa Mills, in her capacity as Finance Director for the Town of Portsmouth (Ms. Mills), Stephen Trezvant (Mr. Trezvant), Joseph Amaral (Mr. Amaral), Paige Kirwin-Clair (Ms. Kirwin-Clair), and Maddie Pirri (Ms. Pirri) (collectively, Portsmouth Defendants) filed various post-trial motions: (1) motion for new trial pursuant to Rule 59 of the Superior Court Rules of Civil Procedure or, in the alternative, remittitur, (2) renewed motion for judgment as a matter of law pursuant to Rule 50 of the Superior Court Rules of Civil Procedure,

(3) motion to apply the statutory cap as set forth in G.L. 1956 § 9-31-3, and (4) motion to dismiss Misty Kolbeck (Ms. Kolbeck)[1] as a plaintiff. Plaintiff Richard P. Bruno, Jr., individually as statutory beneficiary of Nathan R. Bruno and as administrator of the Estate of Nathan R. Bruno (Plaintiff), objected to most of the Portsmouth Defendants' motions and brought two post-trial motions of his own: (1) motion for additur and (2) motion to alter or amend judgment. For the reasons stated herein, the Court **GRANTS** Plaintiff's motion for additur and Plaintiff's motion to alter or amend judgment, and **DENIES** the Portsmouth Defendants' renewed motion for judgment as a matter of law and the Portsmouth Defendants' motion for new trial, or in the alternative, remittitur.

I

Facts and Travel

A

Nathan's Childhood

Nathan was born on June 19, 2002 to Plaintiff and Ms. Kolbeck in Rhode Island. (Bruno Trial Tr. 69:21-70:1, 72:7-8, Sept. 25, 2024.)[2] Due to Plaintiff and Ms. Kolbeck breaking up shortly after Nathan's birth, Ms. Kolbeck and Nathan left Rhode Island to live in Wisconsin and later Colorado, resulting in Plaintiff only seeing Nathan during holidays and extended visits for the first few years of his life. *Id.* at 72:12-73:21. After it was discovered that Ms. Kolbeck was struggling with substance abuse issues, Nathan, then around age three, began living with Plaintiff

[1] Ms. Kolbeck was Nathan's mother and passed away prior to trial. At oral argument on these motions, Plaintiff agreed that she could be dismissed as a plaintiff in this matter.

[2] Not all the transcripts referenced throughout this Decision are official transcripts but rather the Court references both final transcripts and rough transcripts. For this reason, in the event of an appeal, the transcripts submitted to the Supreme Court may vary in pagination as compared to the transcripts referenced in this Decision.

in Newport, Rhode Island, leading to Plaintiff eventually being awarded live-in custody and later full custody in 2008. *Id.* at 73:21-76:16; (Bruno Trial Tr. 58:10-22, 71:8-72:8, Sept. 26, 2024). While Ms. Kolbeck had supervised visitation with Nathan every other week, (Bruno Trial Tr. 66:5-14, Sept. 26, 2024), Nathan and Ms. Kolbeck's relationship became strained over time, especially after Ms. Kolbeck moved to Florida when Nathan was in eighth grade, after which point Nathan only sparsely communicated with her over the phone. (Bruno Trial Tr. 99:6-100:16, Sept. 25, 2024.)

B

Nathan's Teenage Years

In 2011, Plaintiff and Nathan moved to Portsmouth, Rhode Island, where Nathan quickly established himself. (Bruno Trial Tr. 76:17-24, 80:1-14, Sept. 25, 2024.) Plaintiff described Nathan's life during these years as including skateboarding, baseball, karate, and snowboarding, the latter for which he had a special affinity. *Id.* at 78:5-79:25. Nathan also had a very close-knit group of friends during his adolescence with whom he enjoyed going to the beach, playing video games, and having sleepovers at the Bruno residence. *Id.* at 80:1-81:7, 84:3-9; (Perry Trial Tr. 156:18-22, Sept. 26, 2024); (Duclos Trial Tr. 83:2-10, Sept. 30, 2024); (Alix Trial Tr. 29:2-21, Oct. 1, 2024); (Ross Trial Tr. 4:16-18, Oct. 2, 2024). Nathan's friends described him as being funny, loyal, kind, happy, and well-liked by those around him.[3] (Perry Trial Tr. 155:20-156-3, Sept. 26, 2024); (Duclos Trial Tr. 82:20-83:1, Sept. 30, 2024); (Alix Trial Tr. 27:3-9, Oct. 1, 2024); (Ross Trial Tr. 3:24-4:1, Oct. 2, 2024); (Cord Trial Tr. 19:12-17, Oct. 11, 2024). While Nathan was shyer around adults, his friends described Nathan as always being respectful and polite to

[3] It is worth noting that even Mr. Amaral, Portsmouth High School's principal, described Nathan to be a happy, well-liked kid with a "contagious smile." (Amaral Trial Tr. 67:15-68:25, Oct. 1, 2024.)

those around him. (Perry Trial Tr. 156:4-17, Sept. 26, 2024); (Ross Trial Tr. 3:24-25:1, Oct. 2, 2024). In terms of his familial relationships, Nathan and Plaintiff had a close father-son relationship in which together they took special summer and winter vacations, (Bruno Trial Tr. 84:16-85:7, Sept. 25, 2024), attended church and religious classes, *id.* at 85:18-86:2, prayed at nightly family dinners, *id.* at 86:3-23, discussed life issues, *id.* at 87:19-25, maintained connections with extended family, *id.* at 91:2-19, and shared traditions and special moments. *Id.* at 96:9-97:8. Nathan's friends also noted the positive relationship between Nathan and Plaintiff based not only on how highly Nathan spoke of his dad but also on their own first-hand observations of Plaintiff's dedication to Nathan. (Perry Trial Tr. 157:3-160:22, Sept. 26, 2024); (Duclos Trial Tr. 83:19-84:5, Sept. 30, 2024); (Alix Trial Tr. 29:22-30:10, Oct. 1, 2024); (Ross Trial Tr. 4:21-5:13, Oct. 2, 2024); (Cord Trial Tr. 19:22-21:5, Oct. 11, 2024).

While Nathan was certainly adored by those closest to him, around eighth grade, Nathan began to get into trouble, (Perry Trial Tr. 160:23-161:9, Sept. 26, 2024); (Bruno Trial Tr. 100:25-101:6, Sept. 25, 2024), such as by sneaking out with friends, (Bruno Trial Tr. 88:11-16, 107:2-20, Sept. 25, 2024), and using marijuana. *Id.* at 89:2-7, 107:2-20. Much to the dismay of Plaintiff, Nathan continued to experience various disciplinary, academic, and drug issues upon enrolling at Portsmouth High School. To start, Nathan was caught sneaking out of school to smoke marijuana with a few classmates during his freshman year. *Id.* at 109:17-110:4. Nathan's grades also began to decline with him receiving failing or close to failing grades in many of his classes. *Id.* at 112:7-18. Because of Nathan's issues during his freshman year, Nathan regularly was referred to meet with his school-appointed guidance counselor Erin Phillips (Ms. Phillips), as well as Kelly O'Loughlin (Ms. O'Loughlin), his student assistance counselor. *Id.* at 110:5-111:15, 112:19-113:13; (Bruno Trial Tr. 75:1-10, Sept. 26, 2024.) While Nathan made positive strides in joining

the freshman football team coached by Dan Sanderson,[4] he declined to play varsity football thereafter. (Bruno Trial Tr. 120:5-121:18, Sept. 25, 2024); (Perry Trial Tr. 166:6-9, Sept. 26, 2024).

Nathan's issues persisted into the summer after his freshman year when Nathan and Collin Cord (Mr. Cord), Nathan's close friend, were apprehended by Portsmouth police officers for vandalizing Portsmouth High School's property, namely by throwing cinderblocks off the building's roof.[5] (Bruno Trial Tr. 113:22-114:16, Sept. 25, 2024); (Cord Trial Tr. 23:14-25:4, Oct. 11, 2024). In December 2017, Plaintiff was contacted by the Portsmouth Police Department and informed that charges were being pressed against Nathan for the vandalism incident at Portsmouth High School in summer 2017, resulting in a hearing being set before the juvenile hearing board on February 8, 2018.[6] (Bruno Trial Tr. 123:23-126:1, Sept. 25, 2024.)

Also in summer 2017, Nathan was diagnosed with ADHD and the school was so informed. *Id.* at 115:9-117:20. Upon starting his sophomore year at Portsmouth High School, Nathan's academic issues continued, which caused Plaintiff to reach out to Ms. Phillips for further assistance. *Id.* at 121:25-122:6. Around January 2018, Plaintiff also engaged Brian Mitchell (Mr. Mitchell), a private tutor, to assist Nathan with his academic and organizational issues. (Bruno

[4] Although Mr. Moniz was not the freshman football coach, Mr. Moniz allegedly admonished the freshman football team on one occasion for losing a game and allegedly called Nathan a "pussy" upon turning his jersey in at the end of his freshman year. (Perry Trial Tr. 169:13-170:5, 171:13-173:5, Sept. 26, 2024.) While Connor Perry testified to this incident, Mr. Moniz denied it. (Moniz Trial Tr. 61:1-8, Sept. 27, 2024.)

[5] Mr. Cord testified that they had heard a rumor that the Portsmouth High School roof was readily accessible, so they went to explore during the daytime after going to the beach. (Cord Trial Tr. 23:19-24:1, Oct. 11, 2024.) Mr. Cord and Nathan decided to throw the cinderblocks housed on Portsmouth High School's roof because it seemed like fun and the blocks made a cool sound when they hit the open pavement below. *Id.* at 24:1-11.

[6] Mr. Cord also had charges pressed against him and had a hearing set before the juvenile hearing board on February 8, 2018. (Cord Trial Tr. 26:5-29:8, Oct. 11, 2024.)

Trial Tr. 2:25-3:11, Sept. 26, 2024). Both Plaintiff and Mr. Mitchell believed Nathan was making progress as evidenced by Nathan's improving test scores. (Bruno Trial Tr. 123:1-22, Sept. 25, 2024); (Bruno Trial Tr. 83:10-20, Sept. 26, 2024). While Nathan's grades appeared to be on the mend, Nathan continued to face various disciplinary issues both in and out of school. Nathan also continued to regularly sneak out of his house to smoke marijuana as late as January 2018 despite Plaintiff installing security cameras inside the Bruno residence and sporadically drug testing Nathan. (Bruno Trial Tr. 108:18-109:6, Sept. 25, 2024); (Bruno Trial Tr. 48:19-51:16, 93:1-24, Sept. 26, 2024). Additionally, Nathan was reprimanded by his English teacher for plagiarizing parts of an assignment in mid-January 2018. (Bruno Trial Tr. 86:12-87:19, Sept. 26, 2024.) Around the same time, Colleen Larson (Ms. Larson), Portsmouth High School's assistant principal, disclosed to Plaintiff that Nathan was incessantly wandering the halls during class and vaping in the bathrooms. (Bruno Trial Tr. 10:12-11:13, 87:25-88:19, Sept. 26, 2024.)

C

The Prank Texts/Calls Situation

This case centers around a situation that unfolded during Nathan's sophomore year at Portsmouth High School. On December 14, 2017, Mr. Moniz[7] received various prank calls and texts from an anonymous number while at home with his family. (Moniz Trial Tr. 40:22-41:5, Sept. 27, 2024); (Moniz Trial Tr. 7:3-7, Oct. 16, 2024). Unbeknownst to Mr. Moniz at the time, Nathan and a few of his friends, including Stephen Alix (Mr. Alix), Angel Duclos (Mr. Duclos), and Mr. Cord, were participating in a gaming party,[8] during which time Nathan made the prank

[7] As of December 2018, Mr. Moniz was a physical education teacher at Portsmouth High School and the head coach of the Portsmouth High School football team, a position he held since 2010. (Moniz Trial Tr. 40:3-19, 59:6-7, Sept. 27, 2024.)

[8] A gaming party refers to when multiple gamers connect online while playing one centralized game with the ability to speak to one another through the use of a headset. (Perry Trial Tr. 164:22-

calls and texts[9] to Mr. Moniz.[10] (Duclos Trial Tr. 87:16-89:15, Sept. 30, 2024); (Perry Trial Tr. 177:4-24, Sept. 26, 2024); (Alix Trial Tr. 31:19-33:17, Oct. 1, 2024); (Cord Trial Tr. 30:19-31:19, Oct. 11, 2024). Mr. Moniz only picked up one prank call in which the caller mimicked the words Mr. Moniz was saying. (Moniz Trial Tr. 6:12-7:2, Oct. 16, 2024.) The prank texts criticized Mr. Moniz's abilities as a coach, such as blaming him for the team's inability to beat Bishop Hendricken High School. *See* Pl.'s Ex. 003. While the texts did contain some curse words and called Mr. Moniz "Shrek," *see id.*, there is no indication that the prank communications were threatening in any way.

On December 14, 2017, in the midst of receiving these anonymous calls and texts, Mr. Moniz reached out for guidance from two of his friends who worked in law enforcement, as well as Bruce Massarotti (Mr. Massarotti), the assistant coach of the Portsmouth High School football team, and Ms. Pirri, the school resource officer, the latter of whom referred him to reach out to the police department where he lives. (Moniz Trial Tr. 64:2-70:14, Sept. 27, 2024); (Moniz Trial Tr. 7:22-8:3, Oct. 16, 2024); (Pirri Trial Tr. 94:25-97:23, Oct. 2, 2024).

The following day, on December 15, 2017, while at school, Mr. Moniz informed Ms. Larson and Ms. Kirwin-Clair, an Assistant Principal at Portsmouth High School who served as

165:7, Sept. 26, 2024); (Alix Trial Tr. 31:23-32:1, Oct. 1, 2024); (Duclos Trial Tr. 87:16-25, Sept. 30, 2024).

[9] While many of the prank texts made on December 14, 2017 were concocted by Nathan himself, Nathan told Plaintiff that his friends told him what to send to Mr. Moniz. (Bruno Trial Tr. 137:21-138:5, 141:15-25, Sept. 26, 2024.) However, Mr. Duclos and Mr. Alix disputed that anyone besides Nathan created any texts or made any calls. (Duclos Trial Tr. 102:8-11, Sept. 30, 2024); (Alix Trial Tr. 55:5-56:25, Oct. 1, 2024).

[10] According to Mr. Perry, Nathan prank called/texted Mr. Moniz due to animosity he harbored from Mr. Moniz's conduct toward Nathan in the past. (Perry Trial Tr. 178:16-179:3, Sept. 26, 2024.)

interim Principal in late 2017 to January 2018,[11] about the prank texts/calls situation.[12] (Kirwin-Clair Trial Tr. 28:14-29:23, Oct. 2, 2024.) Mr. Moniz also touched base at school with Ms. Pirri, who again advised him to contact the Jamestown Police Department due to Mr. Moniz conveying that the calls happened to him at home. (Pirri Trial Tr. 98:25-107:24, Oct. 2, 2024.) Mr. Moniz also reached out to Mr. Trezvant,[13] the Athletic Director at Portsmouth High School, whom he involved due to his suspicions that the culprit may be a football player. (Moniz Trial Tr. 88:7-90:4, Sept. 27, 2024); (Moniz Trial Tr. 2:14-25, Sept. 30, 2024); (Trezvant Trial Tr. 119:7-11, Sept. 30, 2024). Due to the volume and anonymity of these calls,[14] on December 21, 2017, Mr. Moniz reached out to the Jamestown Police Department for assistance, where the matter was assigned to Detective Derek Carlino (Detective Carlino). (Moniz Trial Tr. 48:11-50:22, Sept. 27, 2024.) At

[11] Mr. Amaral was the Principal of Portsmouth High School from 2016 to 2022. (Amaral Trial Tr. 60:13-18, Oct. 1, 2024.) Mr. Amaral took medical leave from early November 2017 until February 2018 during which time Ms. Kirwin-Clair served as interim principal in his place. *Id.* at 60:25-61:9. Mr. Amaral returned in mid-January on a part-time basis as he recovered from his medical issue. *Id.* at 61:10-15.

[12] While Mr. Moniz claims to have received an additional missed prank call while at school speaking with Ms. Larson and Ms. Kirwin-Clair, (Moniz Trial Tr. 61:21-64:1, Sept. 27, 2024); (Moniz Trial Tr. 1:10-24, Sept. 30, 2024); (Moniz Trial Tr. 10:6-18, Oct. 16, 2024), Ms. Kirwin-Clair did not recall him receiving such a call. (Kirwin-Clair Trial Tr. 29:24-30:12, Oct. 2, 2024). Rather, Ms. Kirwin-Clair only recalls being apprised of the situation and recommending that Mr. Moniz contact Ms. Pirri for further assistance. *Id.* at 30:13-31:24.

[13] Although Mr. Moniz recalls contacting Mr. Trezvant in December 2017, Mr. Trezvant did not believe he was apprised of the situation until mid-to-late January 2018. (Trezvant Trial Tr. 127:25-128:12, Sept. 30, 2024.)

[14] The prank calls/texts persisted beyond the gaming party on December 14, 2017 with Mr. Moniz receiving calls and texts from different anonymous numbers up until the first week of January 2018. (Moniz Trial Tr. 48:14-49:21, 106:9-16, Sept. 27, 2024.)

some point in December 2017, Mr. Moniz also sent screenshots of the prank texts to his football team through a text thread.[15] (Moniz Trial Tr. 3:1-7, Sept. 30, 2024.)

Thereafter, on January 5, 2018, Mr. Moniz received a call from Detective Carlino in which Detective Carlino informed Mr. Moniz that his preliminary investigation led him to the name "Nathan" to which Mr. Moniz asked if he was referring to someone with the last name "Bruno."[16] (Moniz Trial Tr. 50:23-51:16, 61:18-20, Sept. 27, 2024.) While Mr. Moniz suspected the culprit to be Nathan, Mr. Moniz awaited the phone records subpoenaed by Detective Carlino for concrete proof. *Id.* at 57:25-58:2, 94:12-15. Meanwhile, on January 10, 2018, without mentioning Nathan's name,[17] Mr. Moniz held a football meeting[18] to discuss the prank texts/calls situation in which he raised the possibility of stepping down as coach if the unknown sender's feelings were shared by those on the team. (Moniz Trial Tr. 101:3-104:4, Sept. 27, 2024); (Moniz Trial Tr. 3:8-13, Sept. 30, 2024). While Mr. Moniz did not recall whether he displayed the actual screenshots of the text messages to the team, (Moniz Trial Tr. 52:5-16, Oct. 16, 2024), some in attendance recalled him doing so.[19] (Perry Trial Tr. 3:8-4:19, 5:21-7:5, Sept. 27, 2024); (Duclos Trial Tr. 89:16-21, Sept.

[15] While Mr. Moniz testified that Ms. Kirwin-Clair approved of him sending screenshots to the team in order to scope out the culprit, she denies that this conversation took place. (Kirwin-Clair Trial Tr. 32:4-33:9, Oct. 2, 2024.)

[16] Mr. Moniz says that he thought of Nathan Bruno when given the name "Nathan" by Detective Carlino because there was not a lot of students at the school with that name and Nathan was known to be in some trouble. (Moniz Trial Tr. 19:7-20, Oct. 16, 2024.)

[17] While Nathan was not named, Mr. Alix recalled Mr. Moniz directing his words in the meeting at himself and the other sophomore football members that were known to be friends of Nathan. (Alix Trial Tr. 34:18-35:35:12, Oct. 1, 2024.)

[18] Mr. Moniz told Mr. Trezvant in advance of the January 2018 football meeting that he was planning to speak with the football team but failed to inform Mr. Trezvant as to the particulars that would be discussed. (Trezvant Trial Tr. 130:12-132:15, Sept. 30, 2024.) According to Mr. Trezvant, he was not aware of the prank texts/calls until late January when Mr. Moniz confided in him about the situation and shared his concerns for his family. *Id.* at 137:17-21.

[19] Mr. Moniz initially testified that he did not recall any January meeting taking place. (Moniz Trial Tr. 91:5-19, Sept. 27, 2024.) However, he later acknowledged that he confronted his players with the text messages during January 2018. *Id.* at 94:16-23.

30, 2024); (Alix Trial Tr. 34:4-35:5, Oct. 1, 2024). Connor Perry (Mr. Perry), another of Nathan's close friends and a football player, recalled Mr. Moniz asking him on several occasions thereafter who was behind the prank texts and calls and inquiring whether it was someone connected to Nathan.[20] (Perry Trial Tr. 4:20-5:20, Sept. 27, 2024.) Also, during January 2018, Mr. Moniz approached Ms. Kirwin-Clair to switch Nathan out of his second semester gym class, which was done without apprising Plaintiff of the reason for the class switch, i.e., the police investigation into the prank texts/calls situation. (Moniz Trial Tr. 95:7-100:21, Sept. 27, 2024); (Kirwin-Clair Trial Tr. 43:10-45:22, Oct. 2, 2024).

As of early February 2018, there was a buzz around Portsmouth High School that Nathan was behind the prank texts/calls to Mr. Moniz. (Amaral Trial Tr. 87:2-18, Oct. 1, 2024.) The buzz around Portsmouth High School became so widespread that Mr. Amaral himself had to intervene by asking students to refrain from discussing the situation. *Id.* at 87:19-88:6.

On February 1, 2018, Detective Carlino contacted Mr. Moniz to notify him that the subpoenaed information from Cox confirmed that the harassing communications came from the Bruno residence. (Moniz Trial Tr. 107:16-108:1, Sept. 27, 2024.) At this point, Mr. Moniz pressed charges against Nathan and informed the school of the same. *Id.* at 108:2-11. While Plaintiff noticed something awry with Nathan in mid-January 2018, it was not until charges were pressed on February 1, 2018 that Plaintiff became aware of the prank texts/calls situation from Detective Carlino, who called Plaintiff to notify him that the police had tracked the IP address of a number harassing Mr. Moniz back to the Bruno residence. (Bruno Trial Tr. 1:15-2:24, 3:12-4:4, Sept. 26,

[20] Mr. Moniz denies ever bringing up Nathan to Mr. Perry either before or after the prank texts/calls situation occurred. (Moniz Trial Tr. 107:2-9, Sept. 27, 2024.) However, apart from Mr. Perry's accusations, Mr. Alix also recalled Mr. Moniz encouraging him to disassociate from Nathan due to Nathan being a troublemaker. (Alix Trial Tr. 36:8-14, Oct. 1, 2024.)

2024.) Thereafter, Plaintiff confronted Nathan who confessed that he was responsible for the prank texts/calls to Mr. Moniz, which occurred at a PlayStation gaming party where unnamed friends egged Nathan on. *Id.* at 142:1-20.

On February 2, 2018, Plaintiff took Nathan to the Jamestown Police Department at which time Nathan spoke with Detective Carlino about the prank texts/calls. *Id.* at 12:10-15:16. While Nathan acknowledged that others were involved, he would not disclose the names, which led Detective Carlino to inform Nathan that absent Nathan identifying such individuals or those individuals coming forward themselves Nathan's punishment could be more serious. *Id.* at 14:6-15:16. After leaving the Jamestown Police Department, Nathan's phone was confiscated by Plaintiff. *Id.* at 106:23-25. With Nathan's knowledge, Plaintiff e-mailed Mr. Moniz asking to speak about the situation, which led to a phone call in which Mr. Moniz agreed to accept an apology from Nathan and Plaintiff informed Mr. Moniz that two others were involved. *Id.* at 17:9-19:7, 107:24-108:2; (Moniz Trial Tr. 108:19-109:15, Sept. 27, 2024.) While Nathan initially seemed annoyed, Plaintiff noted that Nathan seemed neutral thereafter and purchased with his own money a Brick Alley Pub gift card to give Mr. Moniz when they were to meet. (Moniz Trial Tr. 19:24-20:24, 144:22-145:8, Sept. 26, 2024.)

D

The Events of February 6, 2018

On the morning of February 6, 2018, Detective Carlino e-mailed Mr. Moniz to inform him of certain updates in his investigation, including that Nathan admitted for the first time that his two accomplices in the prank texts/calls situation were two football players. (Moniz Trial Tr. 26:25-28:3, Oct. 16, 2024.) Due to this new development, Mr. Moniz e-mailed Plaintiff stating that he would no longer accept Nathan's apology absent Nathan identifying the others involved, would be

holding a team meeting to figure out who else was involved, and would be putting Nathan "on the clock" to resolve the matter. (Moniz Trial Tr. 112:12-14, 118:18-120:3, Sept. 26, 2024); (Bruno Trial Tr. 21:5-25:10, 112:24-113:7, Sept. 26, 2024).

Upon arriving to school on February 6, 2018, Nathan was notified by Ms. Larson that, with Plaintiff's approval, Nathan would be placed on hall pass restriction due to him leaving class and vaping in the bathrooms. (Bruno Trial Tr. 87:25-89:10, Sept. 26, 2024.) That same morning, Mr. Moniz spoke with Mr. Amaral, the principal of Portsmouth High School, to inform him of the updates from Detective Carlino, leading Mr. Amaral to pull Nathan from class to question him in the presence of Mr. Trezvant as to the identities of the two football players involved.[21] (Moniz Trial Tr. 115:17-116:24, Sept. 27, 2024); (Moniz Trial Tr. 11:6-12:20, 21:24-25:9, Sept. 30, 2024); (Amaral Trial Tr. 96:16-99:6, Oct. 1, 2024); (Trezvant Trial Tr. 141:24-142:7, 152:23-154:18, Sept. 30, 2024). Despite Mr. Amaral's efforts, Nathan refused to disclose the names of the two football players involved. (Moniz Trial Tr. 23:11-20, Sept. 30, 2024); (Trezvant Trial Tr. 154:16-156:6, Sept. 30, 2024); (Amaral Trial Tr. 100:14-20, 104:24-105:8, Oct. 1, 2024). Although both Mr. Amaral and Mr. Trezvant categorized the meeting as cordial with no signs of Nathan being in crisis, (Trezvant Trial Tr. 153:8-13, 156:17-157:2, Sept. 30, 2024); (Trezvant Trial Tr. 18:5-13, Oct. 1, 2024); (Amaral Trial Tr. 110:14-23, 140:9-142:4, Oct. 1, 2024), Owen Ross (Mr. Ross), a friend of Nathan's, noted that Nathan seemed very upset after returning to advisory period[22] and

[21] While there was conflicting testimony as to whether one or two meetings took place between Mr. Amaral and Nathan on February 6, 2018, Mr. Amaral maintained that only one meeting took place with Nathan during the morning in the presence of Mr. Trezvant. (Amaral Trial Tr. 112:22-113:13, Oct. 1, 2024.)

[22] Advisory period lasted for twenty minutes after first period and allowed for students to utilize their time in the classroom as they saw fit. (Ross Trial Tr. 7:2-11, Oct. 2, 2024.) While Mr. Ross did not have advisory period with Nathan, the two boys' advisory periods were next door to one another, allowing them to see into each other's classrooms and interact with one another. (Ross Trial Tr. 7:2-7, Oct. 2, 2024.)

told Mr. Ross that Mr. Amaral "yelled" and "flipped out" on him due to the prank texts/calls situation. (Ross Trial Tr. 7:2-9:3, Oct. 2, 2024.) Mr. Alix also remembered Nathan arriving to digital photography after advisory period seeming not like himself.[23] (Alix Trial Tr. 37:10-25, Oct. 1, 2024.)

Later in the school day, Nathan attended lunch and sat with his usual group of friends, many of whom were members of the football team. (Perry Trial Tr. 8:10-9:2, Sept. 27, 2024.) Several of Nathan's friends, including Mr. Perry, Mr. Duclos, Mr. Alix, and Mr. Cord, testified that Mr. Moniz was present in the lunchroom with only Mr. Ross testifying that he could not remember one way or the other if Mr. Moniz was present.[24] (Perry Trial Tr. 10:8-12, 11:15-18, 26:12-17, Sept. 27, 2024); (Duclos Trial Tr. 94:2-12, Sept. 30, 2024); (Alix Trial Tr. 40:1-5, Oct. 1, 2024); (Ross Trial Tr. 13:20-25, 14:14-15:3, Oct. 2, 2024); (Cord Trial Tr. 32:23-33:13, Oct. 11, 2024). Nathan's friends recalled Mr. Moniz staring down their friend group, which led Nathan's football friends to leave their lunch table out of fear that Mr. Moniz would refuse to play them in retaliation for socializing with Nathan. (Perry Trial Tr. 10:13-11:1, Sept. 27, 2024); (Duclos Trial Tr. 94:2-96:6, Sept. 30, 2024); (Alix Trial Tr. 38:14-40:5, Oct. 1, 2024). With the exception of Mr. Ross and Mr. Alix, as well as Mr. Perry for a brief portion of lunch, the rest of

[23] On cross-examination, Mr. Alix recognized that in his deposition testimony and his comments to police in the days following Nathan's death he recalled Nathan seeming "happy go lucky and positive" but clarified that these comments were made while in shock over Nathan's sudden suicide. (Alix Trial Tr. 50:7-54:17, Oct. 1, 2024.) Furthermore, Mr. Alix claimed that his comments in his deposition and to police only related to his observations of Nathan at lunch, with him at all times maintaining that Nathan seemed off earlier in the day in class. *Id.* at 58:21-59:18, Oct. 1, 2024.)

[24] A few of Nathan's friends described Portsmouth High School's gym class structure through their trial testimony. For example, Mr. Perry testified that because several gym classes occurred at the same time it was not uncommon for one teacher to leave class while the other teachers monitored that teacher's students. (Perry Trial Tr. 36:5-37:6, Sept. 27, 2024.)

Nathan's friends left Nathan alone.[25] (Perry Trial Tr. 11:1-15, 15:10-25, Sept. 27, 2024); (Duclos Trial Tr. 96:11-18, Sept. 30, 2024); (Alix Trial Tr. 38:14-40:5, Oct. 1, 2024); (Cord Trial Tr. 34:8-17, 35:18-36:4, Oct. 11, 2024). Contrary to the testimony of Nathan's friends, Mr. Moniz testified that he was teaching physical education in the annexed gym building[26] during Nathan's lunch session and did not stare down any football players sitting with Nathan.[27] (Moniz Trial Tr. 124:12-16, Sept. 27, 2024); (Moniz Trial Tr. 1:10-2:6, Oct. 16, 2024).

Around midday, Mr. Moniz notified Mr. Amaral and Mr. Trezvant of his intentions to hold a football team meeting to discuss the prank texts/calls situation and the team's satisfaction with him as coach. (Moniz Trial Tr. 122:12-20, Sept. 27, 2024); (Moniz Trial Tr. 12:21-13:6, Sept. 30, 2024); (Trezvant Trial Tr. 137:22-139:13, Sept. 30, 2024); (Amaral Trial Tr. 113:14-114:1, 117:2-118:1, Oct. 1, 2024). While Mr. Moniz claims that both Mr. Amaral and Mr. Trezvant knew he would discuss the possibility of him stepping back as coach if the other two involved did not identify themselves, (Moniz Trial Tr. 66:18-67:7, Sept. 30, 2024), only Mr. Trezvant recalled

[25] Mr. Perry and Mr. Duclos briefly went up to Nathan at the end of lunch but only spoke for a few seconds before going to class, after which point they never saw or spoke to Nathan again. (Duclos Trial Tr. 96:14-97:12, Sept. 30, 2024.)

[26] Ms. Kirwin-Clair testified that all gym classes during the 2017/2018 school year took place in the new gym, with the old gym contained in the main building only being used for non-gym small courses, such as an applied advanced course. (Kirwin-Clair Trial Tr. 77:12-78:5, Oct. 2, 2024.) However, Mr. Cord described the gym class structure in 2018 as being that gym classes would meet in the main building and then walk over to the annexed gym building. (Cord Trial Tr. 36:14-37:22, Oct. 11, 2024.) Moreover, Mr. Cord remembered that for half of the semester gym classes consisted of a health class, which took place in the E-wing right below the cafeteria in the main building, not the annexed gym building. *Id.* at 37:23-38:5. While Mr. Moniz affirmed that health classes did take place for half of the semester in the main school building, Mr. Moniz stated that the health classes only started in the second half of the semester after February vacation and President's Day. (Moniz Trial Tr. 2:7-3:5, Oct. 16, 2024.)

[27] Mr. Amaral affirmed that Nathan's schedule on February 6, 2018 had him attending second lunch whereas Mr. Moniz's schedule the same day had him attending third lunch. (Amaral Trial Tr. 132:5-12, Oct. 1, 2024.) Teachers were not allowed to leave their students during lunch periods where they are teaching. *Id.* at 132:13-17.

being notified, (Trezvant Trial Tr. 139:1-13, Sept. 30, 2024), whereas Mr. Amaral testified that he had no such knowledge that Mr. Moniz would threaten the football team with his departure as coach if the situation were not resolved as he would have communicated that this type of conduct is unacceptable. (Amaral Trial Tr. 118:2-121:2, Oct. 1, 2024.) Nonetheless, at the end of the school day, Mr. Moniz held a football team meeting in lieu of the team's scheduled lifting session. (Perry Trial Tr. 17:25-18:11, Sept. 27, 2024.) Several of Nathan's friends recalled walking into the meeting to find Mr. Moniz, Mr. Massarotti, Mr. Trezvant,[28] and the upperclassmen football players staring them down. (Perry Trial Tr. 18:19-19:20, 21:5-22:3, Sept. 27, 2024); (Duclos Trial Tr. 98:16-22, Sept. 30, 2024); (Alix Trial Tr. 40:18-41:9, Oct. 1, 2024). While Nathan's football player friends categorized the meeting as an unpleasant affair filled with yelling and anger, (Perry Trial Tr. 19:24-20:4, Sept. 27, 2024); (Duclos Trial Tr. 98:23-100:2, Sept. 30, 2024); (Alix Trial Tr. 41:18-21, Oct. 1, 2024), Mr. Moniz rejected that any yelling took place but rather said he only spoke from a place of concern. (Moniz Trial Tr. 24:3-12, Sept. 30, 2024.) Mr. Moniz spoke in depth to the team about the prank texts/calls situation and threatened to step back from coaching if the other two students involved did not turn themselves in. (Moniz Trial Tr. 126:1-19, Sept. 27, 2024); (Perry Trial Tr. 20:5-21:3, Sept. 27, 2024); (Duclos Trial Tr. 99:1-15, Sept. 30, 2024); (Alix Trial Tr. 41:10-17, Oct. 1, 2024). Mr. Trezvant also spoke at the meeting to express his frustrations with the situation and to reiterate his support of Mr. Moniz. (Trezvant Trial Tr. 160:11-161:21, Sept. 30, 2024); (Perry Trial Tr. 21:4-22, Sept. 27, 2024); (Duclos Trial Tr. 99:25-100:8, Sept. 30, 2024); (Alix Trial Tr. 41:22-42:11, Oct. 1, 2024). Mr. Massarotti also spoke at the meeting to encourage the team to identify the other two involved. (Alix Trial Tr. 42:12-19, Oct. 1, 2024.)

[28] Mr. Trezvant disputed that he was already in the room, testifying that he only walked into the meeting after Mr. Moniz finished speaking. (Trezvant Trial Tr. 160:5-10, Sept. 30, 2024.)

After Mr. Moniz, Mr. Trezvant, and Mr. Massarotti all departed the team meeting, the upperclassmen football players spoke tensely to the sophomore players, including Nathan's friends, in an effort to weed out the other two individuals involved with the prank. (Perry Trial Tr. 22:1-24, Sept. 27, 2024); (Duclos Trial Tr. 101:1-17, Sept. 30, 2024); (Alix Trial Tr. 43:1-44:3, Oct. 1, 2024).

Following the meeting, Mr. Alix and Mr. Duclos approached Mr. Moniz and informed him that they were present at the gaming party when Nathan made the prank texts/calls, leading them to believe they were the two others said to be involved. (Duclos Trial Tr. 101:19-103:6, Sept. 30, 2024); (Alix Trial Tr. 44:4-15, Oct. 1, 2024); (Moniz Trial Tr. 28:17-29:14, Sept. 30, 2024). However, Mr. Moniz dismissed their admissions, finding them not to be involved based on Nathan's comments to Detective Carlino. (Duclos Trial Tr. 102:23-25, Sept. 30, 2024); (Alix Trial Tr. 44:8-11, Oct. 1, 2024); (Moniz Trial Tr. 31:2-32:23, Sept. 30, 2024). Due to his doubts that Mr. Alix and Mr. Duclos were Nathan's accomplices, Mr. Moniz reached out to Detective Carlino for further advice on how to pressure Nathan to disclose the names of the two involved, leading Detective Carlino to inform Mr. Moniz that the only thing he could "hold over [Nathan's] head" would be to send the criminal complaint to Family Court. (Moniz Trial Tr. 33:22-39:19, Sept. 30, 2024.)

After Nathan returned home from school on February 6, 2018, Plaintiff informed Nathan of Mr. Moniz's refusal to accept Nathan's apology absent him disclosing who else was involved to which Nathan replied that he would not disclose the names. (Bruno Trial Tr. 26:14-25, Sept. 26, 2024.) Shortly thereafter, three football players arrived at the Bruno residence on their own accord to discuss the prank texts/calls situation. *Id.* at 27:1-7; (Moniz Trial Tr. 42:7-43:11, Sept. 30, 2024); (Hamilton Trial Tr. 57:14-58:5, Oct. 11, 2024). In Plaintiff's presence, Brian Hamilton (Mr.

Hamilton), Connor Stone (Mr. Stone), and Marc Gurney (Mr. Gurney), the three football players, spoke with Nathan about Mr. Moniz threatening to quit over the prank texts/calls situation absent the other names being disclosed. (Bruno Trial Tr. 28:19-29:2, 30:3-15, 115:14-17, Sept. 26, 2024); (Alix Trial Tr. 45:22-46:8, Oct. 1, 2024); (Hamilton Trial Tr. 58:6-59:10, Oct. 11, 2024). Plaintiff described the meeting as cordial. (Bruno Trial Tr. 28:19-29:2, 30:3-15, 115:14-17, Sept. 26, 2024.) In this conversation, it was shared with Plaintiff and Nathan that Mr. Alix and Mr. Duclos had come forward to Mr. Moniz as the other two involved, which Nathan confirmed. *Id.* at 29:3-22, 115:18-118:8.

After the three football players departed the Bruno residence, Plaintiff contacted Mr. Moniz to inform him that Nathan confirmed Mr. Alix and Mr. Duclos were the other two participants. *Id.* at 30:13-31:24. However, Mr. Moniz did not believe Mr. Alix and Mr. Duclos were involved and noted that, unbeknownst to Plaintiff, Mr. Amaral had also questioned Nathan earlier in the school day on the matter. *Id.* at 31:25-33:10, 119:25-120:14. Eventually, Mr. Moniz and Plaintiff had a phone call around 5 p.m.[29] in which Mr. Moniz reiterated his doubts that Mr. Alix and Mr. Duclos were the two involved based on Mr. Amaral being told by Nathan earlier that day that two different level classmen were involved, not two sophomores. *Id.* at 35:17-37:2, 121:4-20; (Moniz Trial Tr. 49:7-50:5, Sept. 30, 2024). After speaking with Nathan about needing to be careful with his phone and Mr. Moniz potentially resigning from the football team, Plaintiff e-mailed Mr. Moniz one final

[29] While there was conflicting testimony as to whether only one call occurred around 5 p.m. or if another call occurred later the same night, Mr. Moniz agreed that at all times while on the phone with Plaintiff he refused to accept Nathan's apology and kept Nathan on the clock. (Moniz Trial Tr. 49:7-55:7, Sept. 30, 2024.)

time to notify him that he spoke with Nathan and would notify him with any further updates. (Bruno Trial Tr. 37:3-24, 124:5-15, Sept. 26, 2024.)

As the night went on, Nathan asked for Plaintiff's permission to skip gym class the next day to which Plaintiff agreed. *Id.* at 38:9-39:7. Nathan and Plaintiff also argued a couple times due to Plaintiff refusing to allow Nathan to use his phone without supervision. *Id.* at 38:18-39:20, 135:3-24. After the last argument over Nathan's phone, Plaintiff observed Nathan watching television in the living room as Plaintiff headed to bed around 8 p.m. *Id.* at 39:17-25, 125:4-126:4, 129:20-130:7. Based on finding a pizza box in the trash, it is believed that Nathan reheated pizza for himself for dinner after Plaintiff went to sleep. *Id.* at 127:2-9. According to footage from the Bruno residence's surveillance system,[30] the rest of Nathan's actions that night consisted of using the bathroom, relaxing in the living room, and heading upstairs to bed. *Id.* at 45:16-46:6, 127:2-9.

E

Nathan's Death

Around 5 a.m. on February 7, 2018, Plaintiff saw an e-mail sent from Mr. Moniz the night prior at 7:58 p.m.,[31] in which Mr. Moniz agreed to meet with Nathan after all. *Id.* at 42:20-44:25. In an e-mail to Mr. Moniz at 5:18 a.m., Plaintiff readily accepted Mr. Moniz's offer and agreed to bring Nathan after school to a nearby Dunkin Donuts to apologize to Mr. Moniz. *Id.* at 44:1-15. Thereafter, around 6 a.m., Plaintiff left for work and asked his brother Robert Bruno (Robert) to visit the Bruno residence to ensure Nathan was up for school. *Id.* at 42:20-43:6, 44:19-22, 127:10-

[30] The surveillance system footage looped every two weeks, causing the footage to be destroyed after this point in time. (Bruno Trial Tr. 52:14-18, Sept. 26, 2024.) Because the police had already seen the footage and ruled out foul play, Plaintiff did not think it was imperative at that point in time to preserve the footage from the night Nathan died. *Id.* at 53:4-16.

[31] Mr. Moniz sent this e-mail despite his prior discussions with Plaintiff due to his newfound belief that no one else besides Nathan was involved. (Moniz Trial Tr. 56:11-57:5, Sept. 30, 2024.)

16. Shortly after arriving at the Bruno residence, Robert called Plaintiff to inform him that Nathan tragically hung himself. *Id.* at 44:22-45:10. Nathan's autopsy confirmed that no drugs were in Nathan's system at the time of his death. *Id.* at 46:7-10. Police ruled out any foul play in connection to Nathan's death. *Id.* at 53:8-16. Moreover, Plaintiff never found a suicide note from Nathan. *Id.* at 45:11-15.

F

The Instant Litigation – Trial Testimony

Plaintiff initially filed his Complaint in 2019. *See* Compl. Thereafter, Plaintiff filed an Amended Complaint, which contained two causes of action for wrongful death, one of which was against the Portsmouth Defendants and the other of which was against Detective Carlino and Christina D. Collins (Ms. Collins), in her capacity as the Finance Director for the Town of Jamestown (collectively, Jamestown Defendants). *See* Am. Compl. In September 2024, this matter went to trial, spanning almost six weeks with twenty-six witnesses testifying. For brevity, the Court will briefly list each testifying witness and their relation to the case:

1. Richard Bruno (Plaintiff's witness) – Nathan's father
2. Connor Perry (Plaintiff's witness) – Nathan's friend and classmate, as well as a member of the Portsmouth High School football team
3. Ryan Moniz (Plaintiff's witness and Portsmouth Defendants' witness) – Portsmouth High School's football coach and physical education teacher
4. Angel Duclos (Plaintiff's witness) – Nathan's friend and classmate, as well as a member of the Portsmouth High School football team
5. Steven Trezvant (Plaintiff's witness) – Portsmouth High School's athletic director

6. Stephen Alix (Plaintiff's witness) – Nathan's friend and classmate, as well as a member of the Portsmouth High School football team
7. Joseph Amaral (Plaintiff's witness) – Portsmouth High School's principal
8. Owen Ross (Plaintiff's witness) – Nathan's friend and classmate
9. Paige Kirwin-Clair (Plaintiff's witness) – Portsmouth High School's assistant principal and interim principal from November 2017 until February 2018
10. Maddie Pirri (Plaintiff's witness) – Portsmouth High School's school resource officer
11. Erin Phillips (Plaintiff's witness) – Nathan's assigned guidance counselor at Portsmouth High School
12. Brian Mitchell (Plaintiff's witness) – Nathan's private tutor
13. Kelly O'Loughlin (Plaintiff's witness) – Nathan's student assistance counselor at Portsmouth High School
14. Dr. Susan Leonard (Plaintiff's witness) – educational expert on the duty of care owed by school personnel to their students
15. Detective Derek Carlino (Plaintiff's witness) – Jamestown Police officer assigned to investigate Mr. Moniz's criminal complaint
16. Dr. Barry Feldman (Plaintiff's witness) – expert in suicide prevention and suicidology
17. Colonel Steven O'Donnell (Plaintiff's witness) – expert in police procedures and practices
18. Dr. Leonard Lardaro (Plaintiff's witness) – expert in economics
19. Collin Cord (Plaintiff's witness – testifying remotely) – Nathan's friend and classmate
20. Brian Hamilton (Portsmouth Defendants' witness) – Nathan's classmate and an upperclassman member of the Portsmouth High School football team

21. Lieutenant Lee Trott (Portsmouth Defendants' witness) – Portsmouth Police officer that responded to the Bruno residence on February 7, 2018 and investigated Nathan's death
22. Retired Deputy Chief Michael Arnold (Portsmouth Defendants' witness) – Portsmouth Police officer that responded to the Bruno residence on February 7, 2018
23. Dr. Wade Cooper Myers (Portsmouth Defendants' witness) – expert in adolescent psychiatry
24. Misty Kolbeck (Portsmouth Defendants' witness – testifying by deposition) – Nathan's mother
25. Retired Chief Edward Mello (Jamestown Defendants' witness) – former Jamestown Police Chief who served during the time Detective Carlino investigated Mr. Moniz's criminal complaint
26. Donti Rosciti (Jamestown Defendants' witness) – expert in police procedures and practices

With the exception of Mr. Moniz, the Court found all testifying fact witnesses to be candid in expressing their experiences and observations in relation to Nathan and the prank texts/calls situation. As for Mr. Moniz, the Court views the various inconsistencies in his telling of key events as compared to that of other fact witnesses to be indicative of his lack of honesty and truthfulness when testifying. Among the various inconsistencies, the Court found most concerning Mr. Moniz's contrasting testimony with Nathan's friends as to the lunchroom incident on February 6, 2018, as well as with Mr. Amaral, Ms. Kirwin-Clair, and Mr. Trezvant as to his intended talking points with the football team during their January 10, 2018 team meeting and/or February 6, 2018 team meeting.

G

Jury Verdict

The jury verdict form in this case asked three distinct questions for each defendant in the case, which read as follows:

> "As to defendant [NAME]:
>
> > "a. Do you find that defendant [NAME] breached the standard of care with respect to Nathan Bruno?
> >
> > "Yes ____ No ____
> >
> > "If your answer is Yes, answer question [NUMBER]b. If your answer is No, skip question [NUMBER]b. and answer question [ON NEXT DEFENDANT].
> >
> > "b. Do you find that [NAME]'s breach of the standard of care was a proximate cause of a mental state or state of insanity in Nathan Bruno?
> >
> > "Yes ____ No ____
> >
> > "If your answer is Yes, answer question [NUMBER]c. If your answer is No, skip question [NUMBER]c. and answer question [ON NEXT DEFENDANT].
> >
> > "c. Do you find that the mental state or state of insanity prevented Nathan from realizing the nature of his condition or made it impossible for Nathan to resist a suicidal impulse?
> >
> > "Yes ____ No ____"

Ultimately, the jury found that Mr. Moniz, Mr. Amaral, Ms. Kirwin-Clair, and Mr. Carlino breached a standard of care with respect to Nathan by answering "yes" to subsection (a). *See* Jury Verdict Form at 1-4. The jury also found that Mr. Moniz and Mr. Carlino's respective breaches of the standard of care were proximate causes of a mental state or state of insanity in Nathan by answering "yes" to subsection (b). *See id.* However, the jury only found ultimate liability as to Mr. Moniz as indicated by their affirmative answer to subsection (c), finding that the mental state

or state of insanity Mr. Moniz put Nathan in prevented him from realizing the nature of his condition or made it impossible for Nathan to resist a suicidal impulse. *See id.* at 2. The jury then apportioned damages as follows:

> "If you answered "yes" to sub-questions (a), (b), and (c) for one or more defendants, then you must indicate below what damages you award for the three categories of damages permitted by the Rhode Island Wrongful Death Act:
>
> "If you answered "no" to either sub-question (a), (b), or (c) for all defendants, then your deliberations are at an end and you are not to answer this question 7.
>
> "Pecuniary damages for Nathan Bruno's lost future earnings:
>
> "$_____0_____
>
> "Damages to the Estate of Nathan Bruno for Nathan Bruno's pre-death pain and suffering:
>
> "$_____1M_____
>
> "Damages to Richard Bruno for his loss of Nathan Bruno's society and companionship:
>
> "$____2.2M_____"

The Court entered judgment for Plaintiff in the sum of $3.2 million with interest in the sum of $2,596,471.23 for a total judgment amount of $5,796,471.23. *See* Judgment on Verdict. The judgment dismissed Ms. Pirri, Mr. Trezvant, Detective Carlino, Mr. Amaral, and Ms. Kirwin-Clair from the action. *See id.*

H

Post-Trial Motions

Following the entry of judgment, both Plaintiff and the Portsmouth Defendants filed various post-trial motions. As previously mentioned, the Portsmouth Defendants filed four motions: (1) motion for new trial pursuant to Rule 59 or, in the alternative, remittitur, (2) renewed

motion for judgment as a matter of law pursuant to Rule 50, (3) motion to apply the statutory cap as set forth in § 9-31-3, and (4) motion to dismiss Misty Kolbeck as a plaintiff, and Plaintiff submitted two post-trial motions of his own: (1) motion for additur and (2) motion to alter or amend judgment. With the exception of the Portsmouth Defendants' motion to dismiss Misty Kolbeck as a plaintiff,[32] all motions were objected to by the opposing side. The Court heard oral argument on all motions on April 10, 2025.

II

Analysis

Given the number of post-trial motions before the Court, the Court will address each separately below.

A

The Portsmouth Defendants' Rule 59(a) Motion for New Trial

1

Standard of Review

After a trial by jury, "[a] new trial may be granted to all or any of the parties and on all or part of the issues for error of law occurring at the trial or for any of the reasons for which new trials have heretofore been granted in the courts of this state." Super. R. Civ. P. 59(a). The Rhode Island Supreme Court has stated that, "when ruling on a motion for a new trial, the trial justice functions as a 'seventh juror[.]'" *Salvatore v. Palangio*, 247 A.3d 1250, 1263 (R.I. 2021) (quoting *Yi Gu v. Rhode Island Public Transit Authority*, 38 A.3d 1093, 1101 (R.I. 2012)). In this role, the trial justice "'exercises independent judgment on the credibility of [the] witnesses and on the

[32] Because Plaintiff did not object to the Portsmouth Defendants' motion to dismiss Misty Kolbeck as a plaintiff in the case, the Court grants this motion, and no further discussion will be provided on this point.

weight of the evidence.'" *State v. DiCarlo*, 987 A.2d 867, 870 (R.I. 2010) (quoting *State v. Banach*, 648 A.2d 1363, 1367 (R.I. 1994)). The trial justice is permitted, at his or her discretion, to admit evidence by drawing proper inferences. *Barbato v. Epstein*, 97 R.I. 191, 193, 196 A.2d 836, 837 (1964).

In acting as a "super juror," "[t]he trial justice must carry out at least a three-step analytical process[.]" *Bonn v. Pepin*, 11 A.3d 76, 78 (R.I. 2011); *see DiCarlo*, 987 A.2d at 870.

> "First, the trial justice must consider the evidence in light of the charge to the jury, a charge that is presumably correct and fair to the defendant. Next, the trial justice should form his or her own opinion of the evidence. In doing so, [t]he trial justice must . . . weigh the credibility of the witnesses and [the] other evidence and choose which conflicting testimony and evidence to accept and which to reject. Finally, the trial justice must determine by an individual assessment of the evidence and in light of the charge to the jury, whether the justice would have reached a different result from that of the jury." *State v. Salvatore*, 763 A.2d 985, 991 (R.I. 2001) (internal quotations and citations omitted).

Upon a determination that "'the evidence is evenly balanced or is such that reasonable minds, in considering that same evidence, could come to different conclusions, then the trial justice should allow the verdict to stand,'" even if the trial justice entertains some doubt as to its correctness. *Graff v. Motta*, 748 A.2d 249, 255 (R.I. 2000) (quoting *Morrocco v. Piccardi*, 713 A.2d 250, 253 (R.I. 1998)) (per curiam). However, if after making an independent review of the evidence, "'the trial justice finds that the jury's verdict is against the fair preponderance of the evidence'" and fails to do substantial justice, the verdict must be set aside. *Reccko v. Criss Cadillac Co.*, 610 A.2d 542, 545 (R.I. 1992) (quoting *Sarkisian v. NewPaper, Inc.*, 512 A.2d 831, 836 (R.I. 1986)). Even though the trial justice "need not perform an exhaustive analysis of the evidence, he or she should refer with some specificity to the facts which prompted him or her to

make the decision so that the reviewing court can determine whether error was committed." *Reccko,* 610 A.2d at 545 (citing *Zarrella v. Robinson,* 460 A.2d 415, 418 (R.I. 1983)).

2

Analysis

The Portsmouth Defendants argue that they are entitled to a new trial on various grounds, each of which will be addressed separately below. (Defs.' Mem. in Supp. of Mot. for New Trial or Remittitur (Defs.' New Trial Mem.) 1-2.)

a

Errors of Law

"A new trial may be granted to all or any of the parties and on all or part of the issues for error of law occurring at the trial or for any of the reasons for which new trials have heretofore been granted in the courts of this state." Super. R. Civ. P. 59(a). "Any error of law, if prejudicial, is a good ground for a new trial." *Votolato v. Merandi,* 747 A.2d 455, 460 (R.I. 2000) (internal quotation omitted).

The first ground that the Portsmouth Defendants' new trial motion is based on is errors of law committed throughout the trial. Specifically, the Portsmouth Defendants argue that there were three distinct errors of law, any of which would entitle them to a new trial.

i

Foreseeability and the *Clift*[33] Standard

First, the Portsmouth Defendants contend that the Court failed to instruct the jury that Plaintiff had the burden of showing that Nathan's suicide was a foreseeable result of the Portsmouth Defendants' conduct. (Defs.' New Trial Mem. 23-24); (Defs.' Reply to Pl.'s Obj. to

[33] *Clift v. Narragansett Television, L.P.,* 688 A.2d 805 (R.I. 1996).

Mot. for New Trial or Remittitur (Defs.' New Trial Reply) 5-6); (Defs.' Mem. in Supp. of Mot. for Renewed J. as a Matter of Law (Defs.' JMOL Mem.) 7-22); (Defs.' Mem. in Supp. of Reply to Obj. to Mot. for Renewed J. as a Matter of Law (Defs.' JMOL Reply) 4-5).[34] They assert that *Clift* and other cases adopting the uncontrollable impulse theory of negligence require a finding of foreseeability in addition to the uncontrollable impulse elements. (Defs.' New Trial Mem. 23-24); (Defs.' New Trial Reply 5-6); (Defs.' JMOL Mem. 7-22); (Defs.' JMOL Reply 4-5). Because Plaintiff failed to produce evidence at trial demonstrating that Nathan's death by suicide was a foreseeable result of the Portsmouth Defendants' conduct, including that of Mr. Moniz, the Portsmouth Defendants argue that they are entitled to judgment as a matter of law as causation was not properly established. (Defs.' New Trial Reply 6); (Defs.' JMOL Reply 5). However, Plaintiff rejects these arguments and instead contends that the Court properly held in a pre-trial motion *in limine* ruling that foreseeability was only an additional element of the special relationship exception to suicide liability, not the uncontrollable impulse exception. (Pl.'s Mem. in Supp. of Obj. to Mot. for New Trial or Remittitur (Pl.'s New Trial Obj.) 8); (Pl.'s Mem. in Supp. of Obj. to Mot. for Renewed J. as a Matter of Law (Pl.'s JMOL Obj.) 2-4).

The uncontrollable impulse theory is derived from the Rhode Island Supreme Court's decision in *Clift,* 688 A.2d 805. In *Clift,* the Supreme Court acknowledged that suicide was historically treated as a felony in Rhode Island, meaning that the act of suicide terminated all civil liability. *Id.* at 808. However, the Court acknowledged that two distinct exceptions to this general rule had evolved which permitted a civil action for damages. *Id.* The first exception recognized in

[34] The Portsmouth Defendants incorporated the arguments set forth in their renewed motion for judgment as a matter of law for their motion for new trial. (Defs.' New Trial Mem. 23.)

Clift is the uncontrollable impulse exception, which, as stated in Restatement (Second) *Torts* § 455 (1965), provided:

> "If the actor's negligent conduct so brings about the delirium or insanity of another as to make the actor liable for it, the actor is also liable for harm done by the other to himself while delirious or insane, if his delirium or insanity
>
> > "(a) prevents him from realizing the nature of his act and the certainty or risk of harm involved therein, or
> >
> > "(b) makes it impossible for him to resist an impulse caused by his insanity which deprives him of his capacity to govern his conduct in accordance with reason." *Id.* at 808, 810.

The second exception recognized in *Clift* is the special relationship theory,[35] which held that a duty of ordinary care between a defendant and a suicide-deceased can render the defendant liable for the resulting suicide, "notwithstanding the absence of any uncontrollable impulse, *if the suicide was a foreseeable risk* stemming from the defendant's negligent acts." *Id.* at 809-10 (emphasis added). Therefore, "[w]ith regard to civil claims alleging, as a basis for liability, *the negligence of a defendant as being the proximate cause of a decedent's suicide*, the majority rule that has evolved is that unless a special relationship existed between the defendant and the deceased that created an increased or higher duty of care to protect a potentially suicidal person from foreseeable injury, [the uncontrollable impulse theory] is the most favored and applied." *Id.* at 810 (emphasis added).

As these excerpts from *Clift* accentuate, like in all negligence cases, both the special relationship exception and the uncontrollable impulse exception to traditional suicide liability

[35] While our Supreme Court has never applied the special relationship exception, other courts that have done so generally have found a special relationship when there is a custodial relationship, such as with a prisoner and prison officials. *See* Restatement (Second) *Torts* § 314A (1965); *see also Thomas v. County Commissioners of Shawnee County*, 198 P.3d 182, 190 (Kan. App. 2008); *see also Murdock v. City of Keene*, 623 A.2d 755, 756 (N.H. 1993).

require a plaintiff to show that *the negligence of a defendant was the proximate cause* of the decedent's suicide.[36] *See id.* Foreseeability is only mentioned in *Clift's* majority opinion in the following ways: (1) noting that traditional suicide liability laws typically found suicide to not be "the foreseeable result of any alleged negligence," *id.* at 808, (2) acknowledging that a California case contemplated in *dicta*, but did not adopt, a broader suicide liability rule, *id.* at 809, (3) mentioning that foreseeability is a component of the special relationship exception, *id.* at 809-10, and (4) stating that intentional infliction of emotional distress can warrant imposition of negligence liability in suicide cases where it is foreseeable that the mental distress might cause such harm. *Id.* at 812. As these excerpts demonstrate, *Clift* never expressly or implicitly indicates that foreseeability is a component of the uncontrollable impulse theory. Because the language of *Clift* does not support the Portsmouth Defendants' argument that foreseeability was a required element separate and apart from proximate cause, the Court does not view foreseeability to be an additional requirement to recover under the uncontrollable impulse exception.

While the Portsmouth Defendants argue at length that two decisions underpinning the Supreme Court's decision in *Clift* – namely, *Tate v. Canonica*, 5 Cal. Rptr. 28, 40 (Cal. 1960) and *Bogust v. Iverson*, 102 N.W.2d 228 (Wis. 1960) – support the proposition that foreseeability is an express requirement under the uncontrollable impulse exception, a reading of these two cases

[36] "A plaintiff must not only prove that a defendant is the cause-in-fact of an injury, but also must prove that a defendant proximately caused the injury. . . Indeed, [t]he word 'proximate,' in the legal context of 'proximate cause,' requires a factual finding that the harm would not have occurred but for the [act] and that the harm [was a] natural and probable consequence of the [act]." *Almonte v. Kurl*, 46 A.3d 1, 18 (R.I. 2012) (internal citations omitted) (internal quotations omitted). Other jurisdictions have specifically discussed proximate cause when deciding uncontrollable impulse negligence actions. *See Walsh v. Tehachapi Unified School District*, 997 F. Supp. 2d 1071, 1079 (E.D. Cal. 2014) ("In other words, if a defendant's negligence causes the decedent to suffer a mental condition in which the decedent cannot control his suicidal impulses, the defendant's negligence is considered the proximate cause of the death and the defendant may be held liable.").

yields a different understanding. Beginning with *Bogust*, this decision hailing from the Supreme Court of Wisconsin does not take a stance as to whether foreseeability is a factor under the uncontrollable impulse exception. *Bogust*, 102 N.W.2d 228. In fact, *Bogust's* discussion of the uncontrollable impulse exception is quite short and only regurgitates the ruling by the Supreme Judicial Court of Massachusetts in *Daniels v. New York, N.H. & H.R. Co.*, 67 N.E. 424 (Mass. 1903), which notably did not mention foreseeability. *Id.* at 232. Interestingly, foreseeability is only mentioned three times in the entirety of *Bogust*, none of which were contained in the two paragraphs discussing the uncontrollable impulse exception. *See generally id.* Turning to *Tate*, this case fails to expressly state that foreseeability is a requisite element for negligently caused suicide under the uncontrollable impulse exception. *Tate*, 5 Cal. Rptr. at 39-41. As the Portsmouth Defendants point out, *Tate* acknowledges that "whether the act of suicide is such an intervening force as to break the chain of events flowing from the acts complained of and to make those acts not the 'proximate cause' of the death" is a primary inquiry when assessing liability for negligent acts leading to suicide. *Id.* at 39. However, the court never expressly discussed the need to show foreseeability as part of the uncontrollable impulse exception separate and apart from proximate causation.[37] Instead, the court plainly adopted the Restatement (Second) *Torts* § 455 just as *Clift* did. *Id.* at 40. Because neither *Bogust* nor *Tate* support the argument that the uncontrollable impulse exception requires an express showing of foreseeability separate and apart from causation,

[37] While the Portsmouth Defendants quote in their memorandum that *Tate* stated that "[a]s a general rule a person will not be relieved of liability by an intervening force *which could reasonably have been foreseen*, nor by one which is a normal incident of the risk created" as proof that foreseeability is a requirement for negligently caused suicide, (Defs.' JMOL Mem. 13), this statement was made while discussing the "older rule" for liability, not when discussing the actual rule adopted by the court. *Tate v. Canonica*, 5 Cal. Rptr. 28, 39 (Cal. Ct. App. 1960).

the law was not misconstrued to the jury for their deliberations.[38] The jury instructions properly instructed the jury to follow Restatement (Second) *Torts* § 455 when analyzing the uncontrollable impulse exception.

Despite the Portsmouth Defendants' arguments to the contrary, the Court is not persuaded that the absence of the term "foreseeability" in the jury instructions misled the jury to believe that they need not find proximate cause prior to imposing liability. The Court's proximate cause instruction read as follows:

> "'Proximate cause' is a necessary element plaintiff's claims brought against the defendants. The concept behind proximate cause is that even if a person has been negligent, that person will not be held responsible or liable unless that negligent conduct caused actual harm to someone else. If a person is negligent and that negligence is not a substantial or moving cause of some harm, then the person should not be held responsible for his or her negligence. Only where a person's negligence causes harm do we hold the person responsible for that harm. There must be a link or connection between a defendant's negligence and the harm in order to hold a person responsible.
>
> "The question is "to what extent did the alleged negligent conduct proximately cause plaintiff's injury"? The law requires that the connection or link between the negligent conduct and the resulting injury be legally sufficient, that is, something more than insubstantial or insignificant.
>
> "Proximate cause means a cause that in a natural, continuous, and unbroken sequence produces an event or injury without which the event or injury would not have occurred. Causes that are merely incidental, or temporally close to the primary event or injury, are not proximate causes. Unless the defendant's negligence is a proximate cause of some injury caused to the plaintiff, then the defendant cannot be held responsible to the plaintiff.

[38] The Portsmouth Defendants discuss at length cases hailing from all areas of the country that apparently indicate that foreseeability is an express requirement under the uncontrollable impulse exception. *See* Defs.' JMOL Mem. 7-22. However, since *Clift* and the two main cases cited therein do not support this argument, the Court is not bound to look to these other cases for guidance.

> "A cause that is a proximate cause may be the sole or only cause of an event or injury. Or, it may be one of two or more or even several causes of an event or injury, some of which are a proximate cause and some of which are not. A cause is a proximate cause even if it comes together with or unites with some other cause and produces the event or injury. The test is whether the particular cause at issue is a substantial cause or whether it is merely incidental. Plaintiff must demonstrate proximate cause by reasonable inferences drawn from the facts in evidence.
>
> "You cannot find the defendants liable, even if you find that they breached a duty of care to the plaintiffs, unless you also find that such negligent acts were the proximate cause of Nathan's suicide. With respect to suicide, to find the negligent acts of one or more of the defendants was the proximate cause of Nathan's suicide, the law requires you to find that the defendants' negligent conduct caused Nathan to be placed in a state of insanity or other mental state, such that it was impossible for him to resist the uncontrollable impulse to commit suicide. If you find that the defendants' conduct caused Nathan to be in such a state of insanity or mental state, you must then determine whether the plaintiffs have established by competent evidence that, while in a state of insanity or other mental state, Nathan could not realize the nature of his condition or it was impossible for Nathan to resist the suicidal impulse by depriving him of the capacity to reasonably control his conduct and not carry out the suicidal impulse." *See* Jury Instruction No. 13.

While the jury instructions provided in this case did not use the term "foreseeable" or any variation thereof when explaining proximate cause, the Court was not bound to include this "magic word." Rather, the Court properly opted to mirror the language contained in § 1001.4 of the 2002 Rhode Island Model Jury Instructions,[39] a widely accepted authority among Rhode Island judges and

[39] "Negligence and the legal term 'proximate cause' work together. We refer to 'proximate cause' as a necessary element of negligence. The concept is that even if a person has been negligent that person will not be held responsible or liable unless that negligent conduct caused actual harm to someone else. If a person is negligent but that negligence is not a substantial or moving cause of some harm, then the person should not be held responsible for his or her negligence. Only where a person's negligence causes harm do we hold the person responsible for that harm. There must be a link or connection between the negligence and the harm in order to hold a person responsible.

"The question is to what extent did the negligent conduct cause the event/injury/harm? The law requires that the connection or link between the negligent conduct and the resulting harm be *legally* sufficient, that is, something more than insubstantial or insignificant.

lawyers alike, which notably does not use the term "foreseeability." Given the widespread use of these model jury instructions, the Court rejects the Portsmouth Defendants' contention that the failure to use "foreseeability" when discussing proximate cause somehow misled the jury to believe that they need not find proximate cause under the uncontrollable impulse exception.

For these reasons, the Portsmouth Defendants' new trial motion is **DENIED** on this ground.

ii

"Insanity or Other Mental State" and the *Clift* Standard

Second, the Portsmouth Defendants contend it was error for the Court to instruct the jury using the term "other mental state" as such language is omitted in *Clift's* adoption of Restatement (Second) *Torts* § 455's uncontrollable impulse exception. (Defs.' New Trial Mem. 25-27); (Defs.' New Trial Reply 6-9). Even if other cases referenced in *Clift* allowed for "mental state" to be used, the ambiguous term "other" is never found in these cases. (Defs.' New Trial Mem. 26-27.) Because such language was improperly included, the Portsmouth Defendants argue that the jury

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"Proximate cause means a cause that in a natural, continuous and unbroken sequence produces an event or injury and without which the event or injury would not have occurred. The proximate cause of an event or injury is a substantial, primary or moving cause without which the event or injury would not have happened. Causes that are merely incidental are not proximate causes. Unless the defendant(s)' negligence is a proximate cause of some harm caused to the plaintiff(s) then the defendant(s) cannot be held responsible to the plaintiff(s) for negligence.

"A cause that is a proximate cause may be the sole or only cause of an event or injury. Or, it may be one of two or more or even several causes of an event or injury some of which are a proximate cause and some of which are not. A cause is a proximate cause even if it comes together with or unites with some other cause and produces the event or injury. The test is whether the particular cause at issue is a substantial cause or whether it is merely incidental.

"If you find the defendant(s) was negligent you must then consider whether the negligence was a proximate cause of the plaintiff's injuries." Rhode Island Model Civil Jury Instruction § 1001.4 (2002).

was misled to believe that less than "insanity or delirium," such as sadness, was sufficient to impose liability. *Id.* at 25-27. In response, Plaintiff argues that the jury instructions properly instructed the jury to use "mental state," as the term is used twice in footnote three of the *Clift* opinion. (Pl.'s New Trial Obj. 9.) However, the Portsmouth Defendants argue that this footnote was merely *dicta* and that the language set forth in Restatement (Second) *Torts*, namely insanity or delirium, determined the requisite mental state. (Defs.' New Trial Reply 8.)

Clift adopted Restatement (Second) *Torts* § 455 as the rule for the uncontrollable impulse exception to traditional suicide liability. *Clift*, 688 A.2d at 808-10. The Supreme Court described the Restatement rule as "recogniz[ing] liability for negligent conduct (1) that brings about *delirium or insanity* in another and (2) if while that condition of *delirium or insanity* continues to exist, it prevents the affected person from realizing the nature of his or her condition *or* makes it impossible for him or her to resist the suicidal impulse by depriving that person of the capacity to reasonably control his or her conduct and not carry out the suicidal impulse." *Id.* at 810 (emphasis added). However, in discussing another court's review of *Tate*, a case referenced in *Clift*, the Supreme Court categorized the Restatement rule as "permit[ting] recovery if the deceased's *mental state* prevented realization of the nature of his act *or* if the deceased's *mental state* prevented him from overcoming his irresistible impulse to commit suicide." *Id.* at 809 n.3 (emphasis added).

The Portsmouth Defendants are correct that *Clift* quotes and adopts Restatement (Second) *Torts* § 455 for the uncontrollable impulse exception, which only lists the terms "delirium or insanity" as the requisite mental conditions that the decedent must be in for recovery to be possible. However, as Plaintiff points out, the Supreme Court later categorized its own understanding of the Restatement rule as allowing for recovery if the deceased possessed a certain "mental state." While the Portsmouth Defendants avidly contend that the use of "mental state" was either unintentional

or a mistake, the fact remains that the Supreme Court, in its own words, acknowledged that recovery was possible under the Restatement's uncontrollable impulse exception not only when a decedent was operating under delirium or insanity but also when the decedent's *mental state* prevented the decedent from realizing what he was doing or from resisting the impulse to die by suicide.[40] Since this plain language is contained in *Clift*, the Court does not view the inclusion of "mental state" in the jury instructions to be an error of law. Further, despite "mental state" not being accompanied by the term "other" in footnote three, the Court is not persuaded by the Portsmouth Defendants' argument that the addition of the word "other" preceding "mental state" was erroneous. The term "other" merely means "additional," "different," and "being . . . distinct from that or those first mentioned or implied[.]" Merriam-Webster, *Other*, https://www.merriam-webster.com/dictionary/other (last visited June 9, 2025). Given that the term "mental state" already lends itself to different interpretations, the Court does not glean any different meaning between an instruction which reads "mental state" or one that reads "other mental state." For these reasons, the Court finds the jury instruction on the requisite mental state in *Clift* to be proper based on a plain reading of the decision itself.

The Court views its ruling to be fair, especially given that other courts adopting the Restatement have also taken it upon themselves to include terms besides "delirium or insanity"

[40] The Portsmouth Defendants submitted a letter to the Court following oral argument on the post-trial motions asking the Court to look at *District of Columbia v. Peters*, 527 A.2d 1269 (D.C. 1987). The Portsmouth Defendants highlighted that this case expressly found "insanity" to be synonymous with the terms "mental condition" and "mental illness." *Id.* at 1276. The Portsmouth Defendants found notable that, despite this case already being decided prior to *Clift* and embracing a more liberal mental state definition than the Restatement, the Rhode Island Supreme Court opted to embrace Restatement (Second) *Torts* § 455's mental state language instead, which only recognized "delirium or insanity." However, *Clift* itself chose to broadly categorize the Restatement rule in footnote three as "permit[ting] recovery if the deceased's *mental state* . . . prevented him from overcoming his irresistible impulse to commit suicide." *Clift*, 688 A.2d at 809 n.3 (emphasis added). As such, the Court does not find *Peters* to be persuasive.

despite such language not being expressly provided in the Restatement. *See Walsh v. Tehachapi Unified School District*, 997 F. Supp. 2d 1071, 1079 (E.D. Cal. 2014) (finding based on California common law and Restatement (Second) *Torts* § 455 that the uncontrollable impulse exception applied where a decedent suffered from a "mental condition" that prevented him from controlling his suicidal impulses); *see also Rollins v. Wackenhut Services*, 802 F. Supp. 2d 111, 120 (D.D.C. 2011) (finding based on Restatement (Second) *Torts* § 455 that "delirium, insanity, or other mental conditions" must have inhibited the decedent from making an intentional choice to die by suicide in order for there to be an actionable claim); *see also Halko v. New Jersey Transit Rail Operations, Inc.*, 677 F. Supp. 135, 142 (S.D.N.Y. 1987) (finding based on Restatement (Second) *Torts* § 455 that liability may exist for a suicide where a decedent suffered from "mental anguish" that prevented him from exercising restraint or understanding his actions).

The Court also views other courts' departures from the Restatement's specific terms of "delirium or insanity" to be indicative of changing views on the causes and triggers of suicide throughout the country. Such changing attitudes toward suicide have also been championed right here in Rhode Island with various laws going into effect that require training of school personnel on suicide and student education on suicide with the aim that its causes and triggers may be more readily identified. *See* G.L. 1956 chapter 21.7 of title 16; *see also* G.L. 1956 §§ 16-22-4, 16-22-14. Given Rhode Island's own progressive views on suicide in recent years, the Court finds its decision not to confine the jury to only consider whether Nathan was suffering from "delirium or insanity" to be proper.

For these reasons, the Portsmouth Defendants' new trial motion is **DENIED** on this ground.

iii

Scales of Justice

Third, the Portsmouth Defendants contend that the Court erred by providing the scales of justice analogy to the jury in its instruction on preponderance of the evidence, thus leading the jury to believe that lack of evidence should not be afforded any weight when determining liability and that the Portsmouth Defendants had the burden to present evidence to rebut liability. (Defs.' New Trial Mem. 27-29.) Plaintiff rejects this categorization of the scales of justice analogy, urging that the jury understood the burden of proof was on him as stated in the jury instructions. (Pl.'s New Trial Obj. 9-10.)

"It is reasonable to view a [jury] charge as inadequate to clarify the burden of proof relating to the issues where it reasonably may mislead or confuse a jury comprised of laymen as to the extent of the burden of proof incumbent upon the plaintiff." *Macaruso v. Massart*, 96 R.I. 168, 173, 190 A.2d 14, 17 (1963). However, "[i]f a trial judge in a civil case instructs the jury that plaintiff has the burden of proof the *defendant* has no cause for complaint, because of what is implicit in that phrase when it stands alone." *Id.* (internal quotation omitted). While neither the Rhode Island Supreme Court nor the Superior Court has yet addressed the permissibility of the scales of justice analogy, other courts in the country have found that such language accurately encapsulates the preponderance of the evidence standard. *See Ostrowski v. Atlantic Mutual Insurance Companies*, 968 F.2d 171, 187 (2d Cir. 1992) ("[T]he court should instruct the jury that it is to conclude that a fact has been proven by a preponderance of the evidence if it find[s] that the scales tip, however slightly, in favor of the party with th[e] burden of proof as to that fact.") (internal quotations omitted); *see also Blossom v. CSX Transportation, Inc.*, 13 F.3d 1477, 1479-80 (11th Cir. 1994) ("We agree with Blossom that his counsel's 'tipping the scales' language was a proper illustration of Blossom's burden of proof. Courts have specifically endorsed this

language for use in civil jury instructions . . . [T]his language generally is a proper illustration of a plaintiff's burden of proof."). Various secondary sources have also acknowledged the usefulness of the analogy when describing to the jury the burden of proof in various contexts. *See* Michael D. Freeman, *Litigating Minor Impact Soft Tissue Cases*, § 47:7 (2023 ed.) ("The jury must be instructed that the standard of 'beyond a reasonable doubt' has no place in a civil trial. This slide may be crafted by taking the precise jury instruction language coupled with a graphic of the scales of justice."); *see also* Charles M. Cork, III, *A Better Orientation for Jury Instructions*, 54 Mercer L. Rev. 1, 38 (2002) ("The trial judge would then state that the plaintiff has a burden to prove the case by what is known as a preponderance of the evidence, that is, evidence upon the issues involved which, while not enough to wholly free the mind from a reasonable doubt, is yet sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other. The pretrial instruction on the preponderance standard elaborates with the example of the scales of justice, stating that the burden of proof requires a 'definite tilt' of the scales."); *see also* Association of Trial Lawyers of America, *Final Strokes: Painting the Whole Picture at Summation*, ATLA-CLE 185 (Feb. 2002) ("Discuss the law, using, as clearly as possible, the same language the court will use in the charge to the jury. Explain what is meant by the preponderance of the evidence. This can be done by drawing the scales of justice on a blackboard or by describing the very delicate scales of justice . . . and point out that a slight tilting in your favor—no matter *how* slight—is sufficient to carry the burden of proof.").

The scales of justice instruction given in this case was as follows:

> "To determine whether the Plaintiff has met his burden of proof, I suggest that you picture the scales of justice when you consider each item of evidence on a given proposition and consider whether it favors the Plaintiff or the Defendants. If it favors the Plaintiff, visually place it on one side of the scales. If it favors the Defendants, visually place it on the other side. After you have visually placed

> each item of evidence on one side or the other, picture the scales of justice. If they tip ever so slightly in favor of the Plaintiff against the Defendants, then they have sustained their burden of proof on that proposition against the Defendants by the fair preponderance of the evidence.
>
> "However, if the scales are evenly balanced or tip in favor of the Defendants, then Plaintiff has failed to meet his burden of proof on that proposition.
>
> "You may also find that the Plaintiff has met his burden of proof against one or more Defendants but failed to do so against other Defendants." Jury Instruction No. 3.

Given that the Portsmouth Defendants cannot point to any case law or authority that denounces the use of the scales of justice analogy, the Court stands by including it in the jury instructions. Just as other courts and authorities have found the analogy to be helpful in explaining to the jury the burden of proof in a given case, the Court finds that this analogy was a helpful resource to the jury in this case, especially given their hefty task of determining various defendants' liability based on an extensive record of evidence.

The Court is not convinced that this analogy misled the jury to believe that the Portsmouth Defendants had the burden of putting on evidence in this case as the jury instructions stated the exact opposite both directly before the scales of justice analogy was provided and later in the jury instructions in the damages section. *See* Jury Instruction No. 3 ("[T]he law places the burden of proof on Mr. Bruno to prove that which he claims. He must do that by a fair preponderance of the evidence, which is proof by the greater weight of evidence . . . By contrast, Defendants are under no obligation to disprove that which the Plaintiff asserts or claims."); *see also* Jury Instruction No. 14 ("[T]he burden of proof is on the Plaintiff to establish his damages by a preponderance of the evidence."). Moreover, even prior to voir dire, the Court told the jury panel to "[k]eep in mind that the defendants do not have to prove anything or disprove anything. The burden of proof is on the

plaintiff. It's Mr. Bruno's burden to prove that which he claims." This very sentence was then repeated prior to opening arguments. (Trial Tr. 2:14-17, Sept. 24, 2024.)

For these reasons, the Portsmouth Defendants' new trial motion is **DENIED** on this ground.

b

Evidentiary Issues with Nathan's Past Misconduct and Plaintiff's Past Misconduct

The second major ground that the Portsmouth Defendants' new trial motion is based on is the Court's failure to include certain pieces of evidence about Nathan and Plaintiff's respective past misconduct. (Defs.' New Trial Mem. 12-22.) Specifically, the Portsmouth Defendants contend that it was error for the Court to exclude evidence of Nathan's full background, including Nathan's past inappropriate text messages, Plaintiff's past domestic strife with Nathan's mother, and Plaintiff's past substance abuse issues. *Id.* Because Dr. Wade Cooper Myers (Dr. Myers),[41] the Portsmouth Defendants' expert witness, deemed such evidence highly relevant in assessing the cause of Nathan's suicide, the Portsmouth Defendants contend that such evidence should have survived a Rhode Island Rules of Evidence Rule 403 analysis. *Id.* In refusing to admit such evidence, the Portsmouth Defendants argue that the Court improperly usurped the province of the jury by deeming Dr. Myers' approach to suicide causation to be uncredible. (Defs.' New Trial

[41] Dr. Myers received his undergraduate degree at Stetson University in Florida, after which point, he attended medical school at Temple University. (Myers Trial Tr. 5:1-3, Oct. 15, 2024.) While initially pursuing a residency in surgery at the University of South Florida, Dr. Myers transferred to the University of Florida to complete a psychiatry residency. *Id.* at 5:3-8. Afterwards, Dr. Myers completed a two-year fellowship at the University of Florida in child adolescent psychiatry, as well as a one-year fellowship in forensic psychiatry. *Id.* at 5:8-12, 6:1-15. Dr. Myers has taught adolescent psychiatry at various institutions, including at the University of Florida for fifteen to eighteen years and the University of South Florida for five years. *Id.* at 6:20-8:12. For the last fourteen years, Dr. Myers has served in his current role as a professor of psychiatry at Brown University where he teaches courses involving issues of adolescent suicide. *Id.* at 4:17-18, 8:12-9:13.

Reply 1-5.) However, Plaintiff argues that the Court properly excluded such evidence as each event was remote in time and had minimal, if any, probative value as to the cause of Nathan's death by suicide, making it clear that under Rule 403 such evidence was substantially outweighed by unfair prejudice to Nathan and Plaintiff. (Pl.'s New Trial Obj. 2-8.)

"Decisions concerning the admission or exclusion of evidence on the grounds of relevance are left to the sound discretion of the trial justice." *Skaling v. Aetna Insurance Co.*, 742 A.2d 282, 288 (R.I. 1999). A trial justice's decision to admit or exclude evidence is proper so long as the trial justice's "discretion has been soundly and judicially exercised . . . in the light of reason applied to all the facts with a view to the rights of all the parties to the action." *Id.* (internal quotation omitted). "An aggrieved party challenging the ruling of the trial justice additionally bears the supplementary burden of establishing that the excluded evidence was material and that the exclusion thereof had an impermissibly prejudicial influence on the decision of the factfinder." *Graff*, 748 A.2d at 252 (internal quotation omitted).

i

Nathan's Past Misconduct

The Portsmouth Defendants contend that Nathan's past (1) inappropriate sexual text messages to a female classmate, (2) antisemitic text messages with a classmate, and (3) e-mail exchanges with a classmate using drug lingo were erroneously excluded from the jury's consideration. (Defs.' New Trial. Mem. 13-19.)

"'Suicide is not easily explained or understood. Its causes, prevention, triggers and warning signs cannot be readily calculated. We conclude that the average person lacks the experience, training or education about the complexities of suicide to be able to assess whether [particular circumstances] . . . contributed to [an individual's] self-inflicted death or whether the [individual] would have committed suicide even absent the challenged circumstances' . . . For that reason,

expert testimony [is] necessary to inform the fact-finder as to an expert's opinion concerning whether or not [a defendant's act] was a proximate cause of [a decedent's] death by suicide." *Almonte v. Kurl*, 46 A.3d 1, 18–19 (R.I. 2012) (quoting *Estate of Joshua T. v. State*, 840 A.2d 768, 772 (N.H. 2003)). Under Rule 703 of the Rhode Island Rules of Evidence, "[a]n expert's opinion may be based on a hypothetical question, facts or data perceived by the expert at or before the hearing, or facts or data in evidence. If of a type reasonably and customarily relied upon by experts in the particular field in forming opinions upon the subject, the underlying facts or data shall be admissible without testimony from the primary source." R.I. R. Evid. 703. However, evidence deemed admissible under Rule 703 still must pass Rule 403 to be admitted into evidence. *See State v. Thornton*, 800 A.2d 1016, 1043 (R.I. 2002) ("Notwithstanding . . . admissib[ility] under Rules 703 and 705 . . ., we reiterate our longstanding rule that their admission must still satisfy Rule 403.").

The Court does not doubt that expert testimony was necessary for the jury to determine what caused Nathan's death by suicide. At trial, Plaintiff provided such testimony through Dr. Barry Feldman (Dr. Feldman),[42] and the Portsmouth Defendants provided such testimony through

[42] Dr. Feldman earned his bachelor's degree at the University of Massachusetts Amherst, after which point, he pursued both his master's degree and doctoral degree at Boston College. (Feldman Trial Tr. 7:6-9, Oct. 9, 2024.) Dr. Feldman worked for much of his career as a clinician in psychotherapy, which he was qualified to do by way of his accreditations both in Massachusetts and South Carolina as a licensed independent social worker. *Id.* at 7:10-15. In terms of his specific career experience, Dr. Feldman was a faculty member at the University of New Hampshire for about three years, where he conducted privately-funded research related to suicide prevention. *Id.* at 9:5-10:17, 11:10-14. Based on this research, Dr. Feldman developed his own trainings specific to suicide prevention designed for mental health clinicians, which he shared with various national organizations. *Id.* at 10:18-11:9. After leaving the University of New Hampshire, Dr. Feldman briefly worked for a private organization specializing in first responder training, which involved training related to suicide prevention. *Id.* at 11:14-21. Thereafter, Dr. Feldman became employed by the University of Massachusetts where he initially provided trainings to the psychiatry department, which were approximately 85 percent to 90 percent on the topic of suicide, and eventually served as a faculty member with clinical privileges, which required Dr. Feldman to

Dr. Myers. As to Dr. Myers, the Court acknowledges that he was completely within his right to consider all of Nathan's adverse childhood experiences[43] (ACEs) when determining the cause of Nathan's suicide as this is an approach embraced by some in the psychiatry field, rendering it permissible under Rule 703. However, there is no case law or authority to support the notion that Dr. Myers' ACEs determination binds the Court to admit such evidence. Rather, as stated in *Thornton*, notwithstanding an expert witness's reliance on evidence pursuant to Rule 703, the Court still must conduct an independent Rule 403 analysis to determine whether such evidence may ultimately be admitted. The Court considered the admissibility of Nathan's past misconduct[44] when ruling on Plaintiff's motion *in limine* on the same. Ultimately, the Court granted the motion *in limine*, finding that these three instances of misconduct, all of which occurred one year or more prior to Nathan's death by suicide, were significantly and unfairly prejudicial in that they associated Nathan with negative qualities – being sexually aggressive, an antisemite, and a user of hard drugs – that he need not necessarily have embodied at all but especially at the time of his suicide. Additionally, the texts were hearsay, and the context was not readily known. For example, Mr. Cord spoke about Nathan's antisemitic texts in his deposition. Mr. Cord categorized the texts

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devote approximately 80 percent of his work time to mental health issues related to suicide. *Id.* at 11:22-12:18, 13:1-6, 14:1-4. Dr. Feldman remained with the University of Massachusetts until 2020. *Id.* at 12:23-25. Throughout his long career, Dr. Feldman engaged in training programs related to mental health and adolescent suicide. *Id.* at 14:1-17:16. Currently, Dr. Feldman works as a clinician psychotherapist and consultant for certain organizations relative to suicide prevention. *Id.* at 4:7-9.

[43] ACEs tap into the areas of child maltreatment and family dysfunction. (Myers Trial Tr. 54:17-23, Oct. 15, 2024.) There are ten categories of ACEs; the more ACEs a child has the more likely it is that the child will be susceptible to mental conditions and suicide. *Id.* at 54:23-55:1.

[44] Plaintiff sought to preclude references and exclude evidence of the following through his motion *in limine*: (1) Nathan's offensive text message to a female classmate in October of 2015 describing his sexual desires for her, (2) Nathan's November 10, 2016, e-mails with a fellow classmate that included antisemitic rhetoric, and (3) Nathan's e-mail exchange with a classmate purportedly discussing drug lingo, such as "dog food," which apparently referenced "molly," in October of 2016. *See* Pl.'s Mot. in Lim. to Preclude Evid. of Nathan's Remote Misconduct.

as being juvenile, obnoxious jokes about Mr. Cord's father of which Mr. Cord and his father were both aware and found funny. (Cord Dep. Tr. 63:10-64:13, Aug. 22, 2023.) Also, there was no evidence adduced at trial showing that Nathan used drugs other than marijuana prior to his death as confirmed by Plaintiff's regular drug tests of Nathan and Nathan's negative autopsy toxicology findings. (Bruno Trial Tr. 46:7-10, 173:20-174:9, Sept. 26, 2024.)

The Court has trouble reconciling how this motion *in limine* ruling resulted in material evidence being excluded as these three instances of misconduct were remote in time to when Nathan died by suicide. More importantly, the Court's ruling did not result in Dr. Myers' expert report being wholly devoid of factual support, as the Court allowed the Portsmouth Defendants to introduce evidence of Nathan's other misconduct that Dr. Myers relied upon for his ACEs analysis. Namely, the Portsmouth Defendants were free to introduce evidence of Nathan's behavioral reports with Alanna Sadoff (Ms. Sadoff), criminal charges for throwing bricks off the Portsmouth High School roof, fractured relationship with his mother, use of marijuana, sneaking out, plagiarism, and punishments at home by Plaintiff, all of which were sufficient to stress to the jury that Nathan was not a "picture perfect" teenager. As such, the Court stands by its motion *in limine* ruling that these three instances of misconduct were more prejudicial than probative.

For these reasons, the Portsmouth Defendants' new trial motion is **DENIED** on this ground.

ii

Plaintiff's Past Substance Abuse and Domestic Conflict

The Portsmouth Defendants argue that it was erroneous to exclude evidence of Plaintiff's past substance abuse issues and his past domestic incident with Ms. Kolbeck, as both were ACEs

that Dr. Myers considered in his assessment of Nathan's cause of suicide. (Defs.' New Trial Mem. 19-21.)

Again, there is no doubt that expert testimony needed to be provided to the jury to allow them to determine what caused Nathan's suicide. The Portsmouth Defendants provided such testimony through Dr. Myers, who utilized an ACEs analysis to determine Nathan's cause of suicide as allowed by Rule 703. However, as discussed for Nathan's remote misconduct, the Court was not bound to admit evidence of Plaintiff's misconduct simply because Dr. Myers relied on it under Rule 703. Rather, as stated in *Thornton*, the Court still must conduct an independent Rule 403 analysis itself. While the Court did not bar evidence of Ms. Kolbeck's substance abuse and addiction during major parts of Nathan's life, the Court granted the motion *in limine* barring Plaintiff's own substance abuse. Similarly, while the Court did not bar evidence of Plaintiff's past custody battle with Ms. Kolbeck given that it impacted Nathan during major parts of his life, the Court granted the motion *in limine* as to Plaintiff's one-time physical altercation with Ms. Kolbeck upon finding her in bed with another man. While Dr. Myers' expert report found Plaintiff's past substance abuse and domestic altercation with Ms. Kolbeck to be relevant ACEs that made Nathan more susceptible to childhood suicide, the Court finds no fault in its decision to exclude such evidence prior to trial. Unlike Ms. Kolbeck's substance abuse and addiction, Plaintiff's substance abuse and addiction completely ceased by the time Nathan was eighteen months old, meaning Plaintiff was sober for all of that part of Nathan's life of which Nathan would have any memory. The Court believes that the fact that Plaintiff was addicted for the first eighteen months of Nathan's life was of no probative value and was certainly prejudicial as its admission would have resulted in Plaintiff being painted to the jury as an unstable, drug addict father to Nathan when this was not the case.

Likewise, the Court stands by its decision to exclude the domestic altercation between Plaintiff and Ms. Kolbeck as this was a one-time occurrence when Nathan was only two and a half years old and not present in the home. There was also no evidence that Nathan was ever aware of this incident thereafter. Furthermore, all charges related to this incident were dropped. Since this was a "one-off" encounter where Plaintiff's tensions were reasonably high due to discovering Ms. Kolbeck being unfaithful, the Court properly found this incident to have limited, if not no, probative value that was substantially outweighed by the unfair prejudice that would befall Plaintiff by depicting him as a domestic abuser when this was not the case.[45] However, even assuming that the Portsmouth Defendants were correct in their assertion that Plaintiff's past substance abuse and domestic conflict with Ms. Kolbeck were material pieces of evidence erroneously excluded by this Court, it cannot be said that the Portsmouth Defendants suffered any sort of prejudice in the eyes of the jury as they were well equipped with additional evidence to bolster Dr. Myers' ACEs analysis that Nathan's parental issues contributed to the cause of his death by suicide, such as his fractured relationship with his mother, Plaintiff and Ms. Kolbeck's custody battle, Nathan's longing for his mother as documented by his evaluations with Ms. Sadoff,

[45] It is also worth noting that the Court's reasoning has been echoed by other courts around the country. For example, in *Smith for J.L. v. Los Angeles Unified School District*, No. CV 16-2358 SS, 2018 WL 6137133, at *1-3 (C.D. Cal. Feb. 13, 2018), plaintiffs sued on behalf of a middle school student for emotional distress he allegedly suffered while attending defendants' middle school. *Smith for J.L.*, 2018 WL 6137133, at *1-3. The question before the court was whether defendants could cross-examine plaintiffs' witnesses with evidence concerning the student's emotional health, including stressors like his parents' prior custody battle and domestic strife. *Id.* Because plaintiffs alleged that the student's significant and substantial emotional distress was a result of defendants' conduct, the court found that evidence could properly be submitted to show that the student was directly subjected to other events that may have played a role in any emotional distress he was suffering from. *Id.* at *2-3. However, where the student himself was not necessarily aware of or impacted by certain adverse events, evidence of such events was deemed inadmissible due to the evidence being more prejudicial than probative. *Id.* at *3.

and Nathan's fighting with Plaintiff. As such, the Court finds that the exclusion of this evidence does not warrant a new trial.

For these reasons, the Portsmouth Defendants' new trial motion is **DENIED** on this ground.

c

Sufficiency of the Evidence

The Portsmouth Defendants argue that a new trial should be granted because there is insufficient evidence on three main points: (1) Mr. Moniz's conduct constituting a breach of an educator or coach's general duty to students and/or players; (2) Mr. Moniz's conduct being so severe as to cause Nathan to suffer from "insanity or other mental state" such that he had the uncontrollable impulse to die by suicide; and (3) Nathan being in such a state of insanity or other mental state at the time of his suicide such that he was unable to realize the nature of his condition or that it was impossible for him to resist the suicidal impulse. (Defs.' New Trial Mem. 29-30.)

i

Mr. Moniz's Breach of a Duty Owed to Nathan

The Portsmouth Defendants contend that Mr. Moniz did not owe Nathan a duty to keep him safe as Nathan was not one of Mr. Moniz's players or gym students. *Id.* at 30-31. However, even if such a duty existed between Mr. Moniz and Nathan, they assert that Mr. Moniz's conduct did not breach his duties as he never interacted with Nathan directly and his handling of the prank texts/calls situation did not adversely affect Nathan. *Id.* at 31-34. In response, Plaintiff argues that Mr. Moniz breached his duty to Nathan as an educator by "putting him on the clock" through a series of conduct aimed at manipulating Nathan, either directly or through those around him, to divulge the names of the other two football players involved in the prank texts/calls situation. (Pl.'s New Trial Obj. 10-15.) Plaintiff contends that Mr. Moniz's breach was further confirmed by Dr.

Leonard, who provided expert testimony that Mr. Moniz's conduct fell below what is expected of educators. *Id.* at 16-17.

As noted by both parties, whether sufficient evidence was presented that Mr. Moniz breached a standard of care as to Nathan in large part depends on the substance of Dr. Leonard's testimony. Dr. Leonard was qualified as an educational expert to speak on the duty of care owed by school personnel to their students.[46] (Leonard Trial Tr. 11:17-12:2, 36:11-37:6, Oct. 8, 2024.) Despite Dr. Leonard never having testified before in a case such as this one, Dr. Leonard was a qualified expert witness in that she had multiple higher education degrees relating to educational administration, approximately twenty years of experience working in school administration on the middle and high school levels, and award recognition for her work in education. *Id.* at 6:8-10:19. Dr. Leonard also appeared to be a candid and credible witness in that she repeatedly stated on cross-examination that she would not be afraid to retract aspects of her opinion if new evidence was presented. *Id.* at 41:22-42:14. Despite Dr. Leonard getting tripped up at times as to when certain events occurred and failing to review the Rhode Island state educational policies and the Portsmouth High School policies prior to rendering her opinion, *id.* at 40:14-41:8, the Court found Dr. Leonard to be well prepared given that she reviewed all the materials provided to her by

[46] Dr. Leonard received her bachelor's degree in social studies education from the University of Kansas. (Leonard Trial Tr. 6:8-13, Oct. 8, 2024.) Thereafter, Dr. Leonard received her master's degree in educational administration, which trained her for leadership positions with coursework in staff development, human resources, professional development, and managing student concerns. *Id.* at 6:19-7:6. Dr. Leonard later returned to the University of Kansas for a doctorate degree in policy and leadership studies. *Id.* at 6:13-18, 7:11-15. In terms of work experience, Dr. Leonard began her career as a social studies teacher and sports coach. *Id.* at 7:16-8:21. Subsequently, Dr. Leonard served in various administrative positions, including serving for nine years as a middle school assistant principal, seven years as a principal of a private high school, and several years as an assistant principal of a large public high school. *Id.* at 9:4-10:4. Currently, Dr. Leonard works at Rockhurst University as a teaching professor in the educational doctoral program, which requires her to teach classes touching on legal ethics and administrative practices. *Id.* at 5:8-6:7. Dr. Leonard has received various awards and accolades for her work in education. *Id.* at 10:5-19.

Plaintiff's counsel, such as the deposition testimony of the Portsmouth Defendants and other fact witnesses, and she utilized her own experiences working with global/national educational standards. *Id.* at 11:2-16, 41:9-12, 58:13-59:13, 62:15-63:1. Dr. Leonard's diligence in serving as an expert was also evident by how she navigated conflicting deposition testimony, which she approached by deriving the truth of each witness's account and then identifying what witnesses would have more of a motive to fabricate the truth than others. *Id.* at 47:15-23, 51:19-52:23. As such, in terms of her qualifications and preparedness, the Court found Dr. Leonard capable and qualified to provide expert testimony.

In terms of the substance of Dr. Leonard's expert testimony, the Court finds that Dr. Leonard adequately explained the duties and conduct expected of school personnel and addressed how Mr. Moniz's specific conduct constituted a breach thereof. To start, Dr. Leonard explained that when a student is subject to a criminal investigation involving a school educator, the standard of care owed by school personnel includes informing the student's at-school support system and parents of all developments and limiting discussion among other students to prevent interference with the police investigation. *Id.* at 13:2-20. Even though Mr. Moniz was neither Nathan's coach nor his gym teacher, Dr. Leonard still found Mr. Moniz to have breached a standard of care as to Nathan because, despite handing off the prank texts/calls situation to the Jamestown Police, Mr. Moniz continued to pursue his own investigation into Nathan. *Id.* at 13:25-14:22, 18:9-21, 60:16-21. To start, Dr. Leonard found that Mr. Moniz ran afoul of his duty to keep the criminal investigation away from the student body by meeting with the football team on February 6, 2018 in which he dangled his resignation as football coach over the players' heads unless Nathan's two coconspirators were identified. *Id.* at 14:19-15:2, 16:10-17:6, 56:13-58:7. Dr. Leonard also found that Mr. Moniz ran afoul of his duty as a member of the school's staff to apprise Plaintiff of various

developments involving his child, including his request that Nathan be switched from his gym class for the next trimester, *id.* at 67:18-69:12, and his ongoing discussions with Mr. Amaral about meeting with Nathan on February 6, 2018 to elicit further information on who else was involved. *Id.* at 22:11-23:10, 30:2-8.

Although Mr. Moniz did not directly interact with Nathan in engaging in this conduct, Dr. Leonard noted that Mr. Moniz knew as an educator the importance of peer support but nonetheless engaged in conduct that stripped Nathan of his support system and made him feel cornered and alone. *Id.* at 20:2-21:11. Moreover, Mr. Moniz's actions in threatening to quit absent the other involved players coming forward inappropriately subjected Nathan to a great deal of community pressure as shown by several football players feeling the need to visit him at his home on the afternoon of February 6, 2018 to communicate what Mr. Moniz had threatened at the meeting earlier that day. *Id.* at 21:12-22:7, 71:10-22. Again, while not communicated directly to Nathan, Dr. Leonard found Mr. Moniz's tactic of putting Nathan "on the clock" to be highly inappropriate in that it left Nathan feeling that resolve was not possible absent him turning on those close to him. *Id.* at 18:22-20:6.

While Mr. Moniz maintained throughout trial that his conduct in handling the prank texts/calls situation, including that which directly or indirectly impacted Nathan, was proper, the Court finds, just as Dr. Leonard did, that Mr. Moniz's testimony to this effect was uncredible and self-serving. Given the facts Dr. Leonard relied upon and her evaluation of these facts through the scope of her expertise, there was ample evidence upon which the jury could find that Mr. Moniz did indeed owe a duty to Nathan and that such a duty was breached by way of Mr. Moniz's handling of the prank texts/calls situation. *See Peloso v. Imperatore*, 107 R.I. 47, 52, 264 A.2d 901, 904 (1970) ("Where it appears to [the trial justice], after complying with this obligation, that

the situation is one in which the conflicting evidence on the issue of liability is so evenly balanced that reasonable men might well draw different conclusions therefrom, he is without any right to substitute his judgment for that of the jury and his prime duty is to deny the motion for new trial and leave the verdict undisturbed . . . where [the trial justice] finds that the evidence is in balance and that the inferences drawn therefrom by the jury are reasonable and probable, he is not to draw inferences on his own from the evidence contrary to those of the jury . . . even though he might be inclined to reach conclusions contrary to those of a jury.").

For these reasons, the Portsmouth Defendants' new trial motion is **DENIED** on this ground.

ii

Evidence that Mr. Moniz's Conduct Caused Nathan's Insanity or Other Mental State Such that Nathan Could Not Control his Suicidal Impulse

Even if Mr. Moniz did breach a duty to Nathan, the Portsmouth Defendants argue that there is no evidence that Mr. Moniz's conduct caused Nathan to experience "insanity or other mental state" such that it was impossible for him to resist the impulse to die by suicide. (Defs.' New Trial Mem. 34-41); (Defs.' New Trial Reply 9-12). Specifically, the Portsmouth Defendants point to Dr. Feldman's lack of knowledge as to Nathan's state of mind at the time he took his own life, which they argue indicates that Dr. Feldman's testimony as to Nathan's mental state was premised on mere speculation. (Defs.' New Trial Mem. 35-36.) The Portsmouth Defendants also highlight Nathan's normal nighttime routine after hearing about Mr. Moniz's refusal to meet with him, which they argue contradicts Dr. Feldman's conclusion that Nathan's "insanity or other mental state" made it impossible for him to resist the impulse to die by suicide. *Id.* at 39-40. With these factual deficiencies in mind, the Portsmouth Defendants contend that Dr. Feldman was unable to causally link Nathan's death with Mr. Moniz's conduct as required by *Clift*, especially given that

Nathan was exposed to multiple other stressors that reasonably could have caused his suicide. *Id.* at 37-38; (Defs.' New Trial Reply 14-15). However, Plaintiff argues that the jury properly imposed liability against Mr. Moniz because Dr. Feldman's testimony was sufficient evidence upon which the jury could find that Mr. Moniz's conduct triggered the mental state in Nathan that led him to die by suicide. (Pl.'s New Trial Obj. 17.) Namely, Dr. Feldman utilized his training as a suicidologist[47] and his understanding of the events leading up to February 6, 2018 to conclude that Mr. Moniz's witch hunt against Nathan on February 6, 2018 caused Nathan to suffer psycheache, a term in the suicidology community synonymous with insanity, which made Nathan unable to control the impulse to die by suicide. *Id.* at 17-21.

"A plaintiff must not only prove that a defendant is the cause-in-fact of an injury, but also must prove that a defendant proximately caused the injury." *Almonte*, 46 A.3d at 18 (citing *State v. Lead Industries Association, Inc.*, 951 A.2d 428, 451 (R.I. 2008)). In other words, there must be "a factual finding that the harm would not have occurred but for the [act] and that the harm [was a] natural and probable consequence of the [act]." *Id.* (citing *Pierce v. Providence Retirement Board*, 15 A.3d 957, 964 (R.I. 2011)) (internal quotations omitted). "To prove proximate cause, a plaintiff must establish the required causal relationship by competent evidence." *Id.* "It is also well established that expert testimony is required to establish any matter that is not obvious to a lay person and thus lies beyond common knowledge." *Id.* (internal quotation omitted). "Moreover, when proximate causation is presented through the testimony of a medical expert, such evidence must speak in terms of 'probabilities' rather than possibilities." *Id.* (internal

[47] Dr. Feldman defined "suicidology" as a recognized field of specialization in the broader field of mental health. (Feldman Trial Tr. 5:8-10, Oct. 9, 2024.) Dr. Feldman described a suicidologist to be one who specializes in issues related to suicide prevention by way of their teaching, research, and clinical/psychotherapy training. *Id.* at 5:1-7.

quotation omitted). "As a result, [a]lthough absolute certainty is not required, the expert must show that the result most probably came from the cause alleged." *Id.* (internal quotation omitted).

In *Almonte*, the Rhode Island Supreme Court dealt with an appeal arising from a wrongful death action in which the decedent died by suicide thirty-six hours after he was discharged from a hospital emergency room. *Id.* at 5. In discussing the requirement of proximate cause, the Supreme Court held that expert testimony was required because it would not be obvious to a lay person what would most probably have resulted if the decedent were properly committed or treated in some form of custodial care. *Id.* at 18. The Court specifically noted the need for expert testimony given that the case involved the causes, prevention, triggers, and warning signs of suicide, as well as there being other simultaneous life stressors that could have contributed to the decedent's suicide. *Id.* at 19. Ultimately, the Court found that the jury would not be able to properly assess the complex evidence without the benefit of expert testimony. *Id.*

As stated in *Almonte*, suicide cases have been treated by the Supreme Court as being so complex that expert testimony is needed to aid the jury. Like in *Almonte*, the present case required the jury to consider the cause, triggers, and warning signs of Nathan's death by suicide at a time where Nathan had multiple stressors going on in his life. For this reason, the Portsmouth Defendants are correct that for the jury's verdict to be supported by evidence Dr. Feldman's expert testimony must have indicated that Mr. Moniz's negligent conduct caused Nathan's state of insanity or other mental state such that he could not realize the nature of his condition or it was impossible for him to resist the suicidal impulse.

Dr. Feldman's testimony as it relates to the points raised by the Portsmouth Defendants can be summarized as follows. Where a suicide decedent dies without leaving a note or telling anyone the reason for their suicide, a suicide expert can step in to render an opinion with a high

degree of probability, not absolute certainty, as to the cause of the suicide. (Feldman Trial Tr. 23:14-22, Oct. 9, 2024.) In undertaking this analysis, an expert must conduct a psychological autopsy whereby the expert determines the cause of death by distinguishing between proximate events and distal events, the latter of which are vulnerabilities not directly pertinent to the reason for suicide. *Id.* at 25:2-26:19. Based on his review of counseling records, neuro-psychological reports, the testimony of Nathan's family and friends, and the various events occurring around the time of Nathan's suicide, Dr. Feldman rendered an expert opinion that the severe stressors Nathan experienced on February 6, 2018 caused Nathan's "psychache"[48] mental state that prevented Nathan from controlling his suicidal impulse, resulting in him dying by suicide. *Id.* at 26:20-28:16, 55:13-20.

The major stressors that caused Nathan's uncontrollable impulse to die by suicide on February 6, 2018 specifically included the meeting with Mr. Amaral, Mr. Moniz's pressure on Nathan to give up the names of the other two players involved, the buzz around the school about Nathan's involvement in the prank texts/calls situation, Mr. Moniz's intimidation of Nathan's friends in the lunchroom, Mr. Moniz's decision to cancel his meeting with Nathan, and the football players coming to Nathan's house, all of which led Nathan to feel isolated, cornered, and hopeless in finding a way to resolve the situation without being forced to "rat" on his friends. *Id.* at 46:23-54:19, 59:10-60:4, 120:7-121:10. Nathan's state of psychache was not attributable to other remote events in Nathan's life, such as his February 8, 2018 juvenile board meeting, his plagiarism violation, his hall pass monitoring restrictions, his estrangement from his mother, his use of marijuana, or Plaintiff's punishment of him, because Nathan never vocalized any serious issues

[48] Dr. Feldman noted that "psychache" is a term used in the field of mental health and among suicidologists to describe a state of intense emotional pain that can influence a person's inability to make good decisions. (Feldman Trial Tr. 54:20-55:10, Oct. 9, 2024.)

with these ongoing situations but rather seemed to be handling them just as other adolescents would. *Id.* at 55:21-59:9, 60:5-62:17. The impulsivity of Nathan's suicide purely from the events on February 6, 2018 was further evident from Nathan's lack of prior suicide attempts, his use of objects in his immediate vicinity to carry out the suicide, the lack of warning signs leading up to his suicide,[49] and his future oriented behavior in the hours leading up to his suicide as foretold by Plaintiff, such as when Nathan asked if he could skip gym class the next day. *Id.* at 28:6-30:18. Had Mr. Moniz held the meeting with Nathan as scheduled, Nathan would still be alive as this major stressor in his life would have been amicably resolved. *Id.* at 65:10-66:5. Instead, because Nathan remained in this state of psychache from the February 6, 2018 stressors, Nathan suffered intense emotional distress that prevented him from being able to resist the uncontrollable impulse to take his life later that night. *Id.* at 70:5-20.

It is true that Dr. Myers also provided expert testimony in this matter contradicting Dr. Feldman's expert analysis. Dr. Myers' testimony can be summarized as follows. Psychache is not a recognized medical term in the field of psychiatry. (Myers Trial Tr. 17:2-14, Oct. 15, 2024.) Rather, insanity is the recognized psychiatric term, which occurs when a person is suffering from a mental disorder that impairs him or her from understanding his or her actions or differentiating between right and wrong. *Id.* at 17:15-19:17. In determining the cause of Nathan's death by suicide, the events leading up to February 6, 2018, including Mr. Moniz's conduct, are not to blame but rather the available information makes it impossible to discern what caused Nathan's death.

[49] Despite Nathan's estrangement with his mother, Dr. Feldman noted that Nathan's January 2016 evaluation by Ms. Sadoff indicated that Nathan was doing well mentally without any signs of suicidal thoughts, planning, or issues. (Feldman Trial Tr. 37:18-38:2, Oct. 9, 2024.) Although the July/August 2017 evaluation by Ms. Sadoff raised some issues with Nathan using marijuana, throwing bricks off the Portsmouth High School roof, plagiarizing an English paper, and showing ADHD impulsivity, Dr. Feldman found none of these issues except the ADHD impulsivity to be potentially relevant to Nathan's suicide on February 7, 2018. *Id.* at 38:24-46:22.

Id. at 21:14-24. In coming to this conclusion, Dr. Myers conducted a psychological autopsy of Nathan that considered his entire life history and weighed factors that made him more susceptible to suicide. *Id.* at 21:25-23:14. Ultimately, Nathan had several ACEs that put him at heightened risk of suicide, including his chaotic upbringing prior to Plaintiff getting full custody, Plaintiff and Ms. Kolbeck's custody battle over him, the absence of Ms. Kolbeck in much of his life, his ADHD and impulsivity issues, his history of disciplinary issues at school, his criminal issues stemming from the vandalism incident, his use of marijuana, Plaintiff's strict parenting style, such as by stripping Nathan of his phone, and his tumultuous relationship with Plaintiff as he got older. *Id.* at 23:15-57:4. The conclusion that the events of February 6, 2018 did not cause Nathan's death by suicide is further bolstered considering that Nathan did not demonstrate any impulsivity to die by suicide at any point on February 6, 2018. *Id.* at 57:14-58:5. Even in the hours leading up to the suicide, Nathan's conduct did not seem out of the norm with him calmly making a pizza, watching television, and then heading upstairs to bed, all of which invalidates any inference that Nathan was acting in an impulsive state. *Id.* at 58:5-18. The manner of suicide itself also tends to show that Nathan's mental state was decisive rather than impulsive as he had to take various steps in order to die by suicide, such as finding a belt, affixing the belt to the chin up bar, putting his head in the self-made strap, and then lowering his body weight on it. *Id.* at 59:8-20.

As a preliminary matter, the Court found both Dr. Feldman and Dr. Myers to be qualified and credible witnesses as each had ample experience with adolescent psychiatry and/or suicide and used those experiences to promulgate their expert opinions. Although there was support for and against imposing liability vis-à-vis these experts' testimony, the jury was well within their right to disregard Dr. Myers' ACEs approach and to instead embrace Dr. Feldman's opinion that Mr. Moniz's conduct caused Nathan's psychache thus triggering the uncontrollable impulse to die

by suicide. Dr. Feldman's testimony succinctly outlined the stress factors that he found proximately caused Nathan's psychache, which notably included Mr. Moniz's handling of the prank texts/calls situation, his intimidation of Nathan's friends in the lunchroom, his team meeting threatening to quit, which led some football players to visit Nathan, and his revocation of his offer to meet with Nathan. Dr. Feldman made clear that these stressors caused Nathan's psychache in that they led Nathan to feel isolated and as if the situation would have no resolve unless he turned on his close friends, which Nathan refused to do according to Plaintiff's testimony, leaving him cornered.

While the Portsmouth Defendants contend that Dr. Feldman's testimony could not be relied upon by the jury given that he could not say with certainty what Nathan's mental state was at the time of his suicide or whether it was unequivocally impossible for Nathan to resist the impulse to die by suicide, the Portsmouth Defendants' contention demonstrates their misunderstanding of the applicable law, which only requires reasonable certainty, not absolute certainty.[50] The Portsmouth Defendants pressed Dr. Feldman on cross-examination as to the specific details surrounding Nathan's manner of suicide and his mental state immediately preceding it to which Dr. Feldman consistently responded that he could not definitively know this information given that Nathan died by suicide alone without any note indicating his reasoning. (Feldman Trial Tr. 89:4-90:2, 92:17-94:17, 99:15-100:7, 107:17-109:12, Oct. 9, 2024.) However, this does not mean that Dr. Feldman's expert opinion was not rendered with reasonable certainty

[50] The Supreme Court made clear that "absolute certainty is not required" by an expert but rather "the expert must show that the result most probably came from the cause alleged." *Almonte*, 46 A.3d at 18 (internal quotation omitted). This point was also emphasized in the jury instructions, which specifically provided that, "[i]n those cases where expert testimony is relied on to show that out of several potential causes a given result came from one specific cause, the expert must report that the result in question 'most probably' came from the cause alleged. Probability is the key, not possibility, nor is absolute certainty required." *See* Jury Instruction No. 9.

as the law requires. Rather, Dr. Feldman conducted a psychological autopsy of Nathan that led Dr. Feldman to reasonably believe that the proximal factors occurring on February 6, 2018, particularly Mr. Moniz's actions, caused Nathan to experience a mental state where he could not control his impulsivity to die by suicide. *Id.* at 110:25-111:5, 112:18-22. Dr. Feldman affirmed that, in his expert opinion, Nathan was suffering from acute psychopathy or psychache at the time of his death that made it "highly likely" that he could not resist the impulse to die by suicide, "certainly hindered . . . his ability to make . . . a rational decision," deprived him of all power to control himself, and resulted in him being unable to control his suicidal impulse. *Id.* at 127:5-16, 128:20-129:25. As such, while Dr. Feldman did not feel comfortable using the precise word "impossible," *id.* at 128:5-7, his testimony still evidenced that it was made with reasonable certainty such that it supported the jury's verdict.

The Court acknowledges that there was sufficient evidence presented by the Portsmouth Defendants vis-à-vis Dr. Myers to support a different verdict. However, because the evidence in this case is balanced such as to support the jury's verdict, the Court **DENIES** the motion for new trial on this ground. *See Kazarian v. New London County Mutual Insurance Company*, 331 A.3d 984, 991 (R.I. 2025) ("If, after conducting this analysis, the trial justice concludes that the evidence is evenly balanced or that reasonable minds could differ on the verdict, she or he should not disturb the jury's decision.") (internal quotation omitted).

B

The Portsmouth Defendants' Motion for Remittitur

1

Standard of Review

"A trial justice can employ the mechanism of remittitur to either 'reassess an erroneous damage award' or 'correct a jury's misapportionment of liability as it may relate to comparative negligence.'" *Bitgood v. Greene*, 108 A.3d 1023, 1030 (R.I. 2015) (quoting *Cotrona v. Johnson & Wales College*, 501 A.2d 728, 734 (R.I. 1985)). "A remittitur is appropriate when a jury award clearly appears to be excessive or is found to be the result of the jury's passion and prejudice." *Id.* (internal quotation omitted). It is a "well-established rule that, no mathematical formula exists for awarding a plaintiff damages for his or her pain and suffering, which is in the nature of compensatory damages." *Grieco ex rel. Doe v. Napolitano*, 813 A.2d 994, 998 (R.I. 2003) (internal quotation omitted). "There is no requirement that expert testimony be presented to recover damages for pain and suffering." *Oliveira v. Jacobson*, 846 A.2d 822, 827 (R.I. 2004). Rather, "[a] determination of this issue is within the ken and experience of a lay jury." *Id.* A jury is entitled to rely on "common sense and common experience" when apportioning pain and suffering damages. *See Sinkov v. Americor, Inc.*, 419 F. App'x 86, 92 (2nd Cir. 2011).

2

Analysis

As an alternative to their motion for a new trial, the Portsmouth Defendants argue that a remittitur should issue reducing the jury award of $1 million for pain and suffering to zero because Plaintiff made no effort to provide the jury with any evidence demonstrating the pain and suffering endured by Nathan beyond the fact that he died by hanging himself with a belt on a chin-up bar

attached to his closet. (Defs.' New Trial Mem. 41-42); (Defs.' New Trial Reply 15-18). However, Plaintiff contends that the jury award is supported by testimony from both experts regarding Nathan's severe emotional pain leading up to his suicide, as well as by circumstantial evidence of the manner and means of his death. (Pl.'s New Trial Obj. 23-26.)

To this Court's knowledge, no Rhode Island courts have evaluated a jury's award of pain and suffering damages in a wrongful death action with facts similar to this case. As such, the Court looks to other jurisdictions for guidance. In *Sinkov*, the Second Circuit considered whether damages for pain and suffering were warranted in a case involving the suicide of an inmate located at a New York State Corrections facility. *Sinkov*, 419 F. App'x at 92. The correction facility's final report noted that a guard found the inmate hanging from the cell bars by his sweatshirt, which was tied at the top of the front cell bars, with one foot on the floor and one foot on the bunk. *Id.* The report also noted that the inmate hit his head on a table when staff cut him down after which point CPR was attempted for fifteen minutes prior to the inmate being declared dead. *Id.* Given these facts, the Second Circuit upheld the $300,000 pain and suffering damages award, noting that "[t]he jury was entitled to rely on common sense and common experience to conclude that an amateur, improvised hanging is likely to produce a painful death by asphyxiation, and reasonably could have concluded that [the inmate] struggled and suffered in the period between when he placed his homemade noose around his neck and when he lost consciousness." *Id.*

The jury instructions in this case provided the jury with clear parameters in awarding pain and suffering damages:

> "Pain means physical pain, the kind resulting from a physical impact or injury. Pain must be conscious pain, that is, something that Plaintiff was aware of.
>
> "Suffering, on the other hand, can be equated with what we sometimes call the mental anguish that arises from physical pain or injury to the body.

> "An award for pain and suffering must be fair and reasonable. It must be grounded in the evidence and not based upon speculation and conjecture. Nor may you arbitrarily pick some amount. Your award for pain and suffering should be based on the evidence that has been presented to show just how much pain and suffering Nathan endured as a result of his injuries.
>
> "There is no particular formula by which to compute damages for pain and suffering. There are no objective guidelines by which you can measure the money equivalent of these injuries; the only real measuring stick, if it can be so described, is your collective and enlightened conscience. You alone are the sole judges of what, if anything, should be awarded for pain and suffering." Jury Instruction No. 14.

Because the jury instructions allowed the jury to award damages for Nathan's physical and conscious pain, there were grounds to award pain and suffering damages stemming from Nathan's suicide itself. While not binding, the Court finds the Second Circuit's decision in *Sinkov* to be highly persuasive on this point. In *Sinkov*, the inmate died by hanging, specifically by fashioning a noose out of a sweatshirt and affixing it to his cell's top bar. Despite there being no autopsy reports or detailed information on the inmate's death but only a description of how the inmate's body was found and recovered, the Second Circuit still upheld the award of pain and suffering damages, reasoning that the jury could use its own common sense that dying by asphyxiation as a result of an amateur suicide attempt was likely to be a painful manner of death. Given that Nathan also died from an amateur suicide attempt, specifically by making a noose out of a belt and affixing it to the chin-up bar in his closet, the Court finds for the same reasons articulated in *Sinkov* that the jury was capable of using their common sense to find that Nathan suffered pain through his death by asphyxiation. While one million dollars is no small sum, the Court does not find the award to be so excessive that a remittitur is necessary given the manner in which Nathan died.

Accordingly, the Court **DENIES** the motion for remittitur of pain and suffering damages.

C

The Portsmouth Defendants' Motion to Apply the Statutory Cap

1

Standard of Review

"Capacity is critical to the damage award because in an official-capacity suit damages are limited by the Government Tort Liability Act[.]" *Feeney v. Napolitano*, 825 A.2d 1, 4 (R.I. 2003). In other words, "'a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.'" *Andrade v. Perry*, 863 A.2d 1272, 1278 (R.I. 2004) (quoting *Capital Properties, Inc. v. State*, 749 A.2d 1069, 1081 (R.I. 1999)). "However, there is no limitation on damages in an individual capacity suit." *Feeney*, 825 A.2d at 4. "[T]he Superior Court Rules [of Civil Procedure] do not require a plaintiff to specify capacity in her complaint."[51] *Andrade*, 863 A.2d at 1279. "Instead, the general rule is that if a defendant wishes to contest his or her capacity to be sued individually, he or she must do so in the form of an affirmative defense[.]" *Feeney*, 825 A.2d at 4. However, where the plaintiff's complaint makes it clear that a defendant is only being sued in their official capacity, no such affirmative defense needs to be raised. *See id.*

[51] "It is not necessary to aver the capacity of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge." Super. R. Civ. P. 9(a).

2

Analysis

The parties starkly disagree as to whether the allegations in the Complaint and the evidence adduced at trial support Mr. Moniz being liable not only in his official capacity as an educator and coach for the Town of Portsmouth but also in his personal capacity. (Defs.' Mem. in Supp. Mot. to Apply Statutory Cap (Defs.' Statutory Cap Mem.) 1-4); (Pl.'s Obj. to Defs.' Mot. to Apply Statutory Cap (Pl.'s Statutory Cap Obj.) 1-3); (Defs.' Reply to Pl.'s Obj. to Defs.' Mot. to Apply Statutory Cap (Defs.' Statutory Cap Reply) 1-3).

The two main cases that the parties cite on this issue are *Feeney* and *Andrade*. In *Feeney*, the defendant, a Providence Department of Public Works employee, was driving a snowplow truck in the course of his employment when he accidentally struck the plaintiff while she was crossing the street. *Feeney*, 825 A.2d at 2-3. While the defendant did not raise as an affirmative defense that he only acted within his official capacity, the Supreme Court held that the defendant could only be sued in his official capacity based on the allegations in the complaint. *Id.* at 4. The Supreme Court noted that the plaintiff's complaint alleged that the defendant was "[acting] in his capacity as an employee of the city" and contained no express allegations or inferential facts tending to show the plaintiff intended to personally sue the defendant. *Id.* The Supreme Court also emphasized that no testimony at trial justified imposing individual liability. *Id.* The Supreme Court found it unavailing that the complaint added "capacity" language to another defendant while only listing the defendant by name because the complaint's allegations made clear that the defendant's alleged wrongful conduct was in his official capacity. *Id.* at 5. The Supreme Court concluded by noting that it "refuse[d] to allow plaintiff to benefit from her own poor drafting, and [defendant] to be punished by the same." *Id.* at 5.

In *Andrade*, the defendant, a South Kingstown police officer, inadvertently struck another vehicle while on patrol in the course of his official duties. *Andrade*, 863 A.2d at 1273. The Supreme Court distinguished the factual scenario before the Court with *Feeney* due to the complaint at issue neither referencing the defendant police officer's official capacity nor inferring that his liability stemmed from his official capacity. *Id.* at 1278. The Supreme Court also pointed to the interrogatories served in the matter, which were served on the defendant police officer without any reference to his official title. *Id.* Because the defendant had ample opportunity to contest the complaint and failed to do so, the Supreme Court allowed prejudgment interest to remain against the defendant in his personal capacity. *Id.* at 1279.

Andrade and *Feeney* both indicate that the allegations in the complaint largely dictate whether a defendant is subject to liability in his/her official capacity versus his/her personal capacity. Like the present case, both *Andrade* and *Feeney* dealt with complaints that named one defendant with reference to their official title while only listing the other defendant by name; however, the specific allegations in the complaint led to two different outcomes in terms of imposing personal liability. Specifically, in *Andrade*, the defendants in the case were listed as follows: "David B. Perry and Alan Lord, in his capacity as Finance Director of the Town of Kingstown[.]" As such, one defendant had an official title reference while the other was referenced solely by name. Because the complaint only categorized the negligence of the defendant police officer by framing him as "the operator of a vehicle owned by the Town of South Kingstown" and interrogatories were issued to him only by name, the Supreme Court held that the complaint allowed for personal liability as his official capacity was not made clear. *Andrade*, 863 A.2d at 1278. The complaint in *Feeney* listed the defendants in a similar fashion: "Stephen T. Napolitano, in his *[sic]* as the Treasurer of the City of Providence and Donald Masi." *Feeney*, 825 A.2d at 5.

Again, one defendant had an official title reference while the other was referenced solely by name. However, the Supreme Court came out differently in *Feeney* by holding that the complaint only sued the defendant in his official capacity. The Court specifically pointed out that the complaint stated in one of its paragraphs that "the defendant, Donald Masi, *[acting] in his capacity as an employee of the [c]ity* . . . , was the operator of the motor vehicle, owned by . . . [the c]ity . . . , [and was] traveling on Benefit Street in the vicinity of Providence, Rhode Island." *Feeney*, 825 A.2d at 4. In this way, the different outcome in *Feeney* seems to be attributable to the fact that the allegations in the complaint framed the defendant's involvement as being in his official capacity as an employee of the city, negating any personal liability against the defendant.

For this case, the Amended Complaint listed the defendants in the caption as follows: "Lisa Mills, in her capacity as Finance Director for the Town of Portsmouth; Ryan Moniz; Stephen Trezvant; Joseph Amaral; Paige Kirwin-Clair; Maddie Pirri; Christina D. Collins, in her capacity as Finance Director for the Town of Jamestown; and Derek Carlino." In this way, the Amended Complaint here involves the same kind of naming mechanism as was at issue in *Feeney* and *Andrade* in that some defendants are referenced only by name while others are referenced by their official title with the municipality. However, the allegations in the Amended Complaint are unique in that they neither contain the precise words "in his/her official capacity" when discussing the individually named defendants like in *Feeney* nor wholly lack reference to the individually named defendants' affiliation with the municipality like in *Andrade*. Instead, the Amended Complaint blurs the lines by categorizing the individually named defendants, including Mr. Moniz, as

employees and agents of the Town of Portsmouth but failing to expressly indicate that such individuals were being sued in their official capacity as was done in *Feeney*.[52]

The present case is also distinguishable from *Feeney* in that some of the testimony elicited at trial calls into question whether Mr. Moniz's conduct was within his official capacity for the Town of Portsmouth or whether it went beyond the scope of his employment. Admittedly, part of Plaintiff's trial strategy aimed to demonstrate to the jury that the individually named defendants, including Mr. Moniz, breached the standard of care they each owed to Nathan as his teachers and administrators, as established by the testimony of Dr. Leonard. However, just because an employment relationship existed between Mr. Moniz and the Town of Portsmouth during the events at issue does not mean that all of Mr. Moniz's actions fell within the scope of his employment. Rather, Mr. Moniz testified in depth at trial that the initial prank texts/calls were made to him while at his home. (Moniz Trial Tr. 40:22-41:5, Sept. 27, 2024.) Upon notifying Ms. Pirri of the situation, Mr. Moniz was recommended by Ms. Pirri to file a claim in Jamestown, not Portsmouth, given that the calls/texts were being made/received outside of school. (Pirri Trial Tr.

[52] For example, the Amended Complaint states that "[Mr. Moniz] was at all relevant times acting as the varsity high school football coach and physical education teacher at Portsmouth High School." *See* Am. Compl. ¶ 4. Similar language is contained in the Amended Complaint for the other individually named defendants. *See* Am. Compl. ¶¶ 5-8. Mr. Moniz also has an additional sentence listed about him, which states that "[a]t all relevant times, [Mr. Moniz] was an agent, servant, or employee of defendant Town of Portsmouth." *See id.* ¶ 4. The remaining allegations contained in Count I categorize the individually named defendants' involvement as being their failure to uphold the standard of care they owed as personnel for the Town of Portsmouth, yet they are never expressly listed in their official capacity. *See id.* ¶¶ 12-15 ("Defendant Town of Portsmouth, acting through defendants Moniz, Amaral, Trezvant, and Kirwin-Clair, as educators and administrators, owed a duty of reasonable care for the safety of Nathan Bruno . . . Defendant Town of Portsmouth, acting through its School Resources Officer, defendant Pirri, owed a duty of reasonable care for the safety of Nathan Bruno . . . defendants Moniz, Amaral, Trezvant, Kirwin-Clair, and Office Pirri negligently breached their duties to Nathan Bruno through acts and omissions . . . Defendants breached their duties and were negligent in that they failed to exercise the requisite degree of care required by educators and administrators in maintaining the health and safety of Nathan Bruno.").

94:25-97:23, Oct. 2, 2024.) Mr. Moniz also recalled that his initial motivation in investigating the prank texts/calls was due to his concerns for his wife and young children, not due to any concerns as a coach or teacher. (Moniz Trial Tr. 42:1-43:11, Sept. 27, 2024.) Moreover, Mr. Moniz's cancelling of the apology meeting, putting Nathan "on the clock," and threatening to quit as coach unless the other two names were revealed did not seem to implicate his official duties as a teacher or coach but rather occurred as a result of Mr. Moniz's bruised ego. Given these facts, the Court cannot unequivocally say that Mr. Moniz's conduct wholly stemmed from his official duties at Portsmouth High School but instead the Court finds that Mr. Moniz's conduct regarding the prank texts/calls situation was also largely motivated by Mr. Moniz's concerns as a private citizen. Because some of Mr. Moniz's actions were privately motivated and did not arise from his role as a teacher or coach at Portsmouth High School, the Court finds that the testimony elicited at trial distinguishes this case from *Feeney*, meaning that Mr. Moniz can be held personally liable in this case.

The statutory cap at issue in this case provides that "[i]n any tort action against any city or town or any fire district, any damages recovered therein shall not exceed the sum of one hundred thousand dollars ($100,000)[.]" Section 9-31-3. However, because Mr. Moniz was also acting in his personal capacity, the damages for which Mr. Moniz is liable are not subject to the $100,000 statutory cap. As such, the Court **DENIES** the Portsmouth Defendants' motion to apply the statutory cap.

D

The Portsmouth Defendants' Rule 50 Renewed Motion for Judgment as a Matter of Law

1

Standard of Review

Rule 50 of the Superior Court Rules of Civil Procedure governs motions for judgment as a matter of law. It provides in pertinent part:

> "If during a trial by jury a party has been fully heard on an issue and there is *no legally sufficient evidentiary basis* for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue." Super. R. Civ. P. 50(a)(1) (emphasis added).

"Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any [other] reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion." Super. R. Civ. P. 50(b). This renewed motion for judgment as a matter of law must be filed and served no later than ten days after entry of judgment and may be joined with a Rule 59 motion for a new trial. *Id.* When addressing a renewed motion for judgment as a matter of law, "[t]he trial justice . . . must examine 'the evidence in the light most favorable to the nonmoving party, without weighing the evidence or evaluating the credibility of witnesses, and draw[] from the record all reasonable inferences that support the position of the nonmoving party.'" *Lemont v. Estate of Ventura*, 157 A.3d 31, 36 (R.I. 2017) (quoting *Roy v. State*, 139 A.3d 480, 488 (R.I. 2016)). If, after such review, "there are factual issues upon which reasonable people may have differing conclusions[,]" the motion for judgment as a matter of law must be denied. *Broadley v. State*, 939 A.2d 1016, 1020 (R.I. 2008).

"However, if the only reasonable conclusion that can be drawn from the evidence is that the plaintiff is not entitled to recover, then the motion must be granted." *Kenney Manufacturing Co. v. Starkweather & Shepley, Inc.*, 643 A.2d 203, 206 (R.I. 1994) (citing *Hulton v. Phaneuf*, 85 R.I. 406, 410, 132 A.2d 85, 88 (1957)). Thus, "'a trial justice should enter judgment as a matter of law when the evidence permits only one legitimate conclusion in regard to the outcome.'" *Lemont*, 157 A.3d at 36 (quoting *Roy*, 139 A.3d at 488). In other words, for a defendant to prevail on its motion, the court must find that no reasonable jury could have found for plaintiff based on the evidence presented. *See McLaughlin v. Moura*, 754 A.2d 95, 98 (R.I. 2000).

2

Analysis

The Portsmouth Defendants argue that they are entitled to renewed judgment as a matter of law for three main reasons. (Defs.' JMOL Mem. 1-2.) First, the Portsmouth Defendants contend that the Court improperly instructed the jury on the *Clift* standard. *Id.* at 7-22; (Defs.' JMOL Reply 4-5). Second, the Portsmouth Defendants argue that Plaintiff failed to adduce sufficient evidence at trial showing either that Nathan experienced insanity, delirium, or another mental state[53] such that it was impossible for him to resist the impulse to die by suicide or that Mr. Moniz's conduct caused such a mental state/uncontrollable impulse in Nathan. (Defs.' JMOL Mem. 22-33.) Third, the Portsmouth Defendants contend that each of them, including Mr. Moniz, should not be made liable in their personal capacities as the allegations in the Amended Complaint and the evidence

[53] Although the Portsmouth Defendants argue that the Court's instructions to the jury materially deviated from the language of *Clift*, they assume for the sake of the renewed motion for judgment as a matter of law that "other mental state" was a sufficient descriptor. (Defs.' JMOL Mem. 22-23.)

adduced at trial only pertain to conduct undertaken in the individuals' roles as school officials/personnel. (Defs.' JMOL Mem. 33-35); (Defs.' JMOL Reply 6-7).

The Court need not analyze the issues raised in the renewed motion for judgment as a matter of law as the prior rulings on the other post-trial motions address each issue. Specifically, the Court's denial of the Portsmouth Defendants' motion for new trial details why the Court's reading of *Clift* was proper, how the evidence presented at trial supported the jury's finding that Mr. Moniz's conduct rendered him liable, and how the evidence adduced at trial showed Nathan was suffering from "insanity or other mental state" such that he could not control the impulse to die by suicide. Further, the Court's denial of the Portsmouth Defendants' motion to apply the statutory cap explains why Mr. Moniz is subject to liability both in his official and personal capacities.

For these reasons, the Court **DENIES** the Portsmouth Defendants' renewed motion for judgment as a matter of law.

E

Plaintiff's Motion to Alter or Amend Judgment

1

Standard of Review

"A motion to alter or amend the judgment shall be served not later than ten (10) days after entry of the judgment." Super. R. Civ. P. 59(e). A writ of execution issued by the Superior Court requires certain information from the judgment, including against whom the judgment was enforced. G.L. 1956 § 9-25-7 ("Whereas ..... of ..... by the consideration of the SUPERIOR

COURT holden at ..... did on the ..... day of ..... *recover judgment against* ..... of ..... for the sum of ..... debt (or damages) and ..... costs of suit . . .") (emphasis added).

2

Analysis

Pursuant to Rule 59(e), Plaintiff argues that the judgment should be altered or amended as it is currently unenforceable in that it fails to indicate that the judgment is against Mr. Moniz and the Town of Portsmouth by way of Ms. Mills. (Pl.'s Mem. in Supp. Mot. to Alter or Amend Judgment (Pl.'s Judgment Mem.) 1-2.) Plaintiff contends that the judgment may be altered/amended to add Mr. Moniz as the jury's verdict form responses found liability against him. *Id.* As for the Town of Portsmouth, Plaintiff argues that it may be added as a matter of law by simple application of the doctrine of respondeat superior and because the Portsmouth Defendants' answer to the Amended Complaint admitted that Mr. Moniz was "at all relevant times acting as the varsity high school football coach and physical education teacher at Portsmouth High School." *Id.* at 1-3; (Pl.'s Reply to Defs.' Obj. to Pl.'s' Mot. to Alter or Amend Judgment (Pl.'s Judgment Reply) 1-2). While the Portsmouth Defendants have no objection to the judgment being amended to either add Mr. Moniz in his official capacity or add the Town of Portsmouth in lieu of Mr. Moniz being added in his official capacity, the Portsmouth Defendants object to Mr. Moniz being added in his personal capacity. (Defs.' Obj. to Pl.'s Mot. to Alter or Amend Judgment (Defs.' Judgment Obj.) 1-2.) The Portsmouth Defendants also object to the Town of Portsmouth being added as Plaintiff never moved for judgment as a matter of law against the Town of Portsmouth and the jury

failed to make any factual findings that Mr. Moniz was acting within the scope of his employment such that respondeat superior can be applied by the Court. *Id.* at 2-4.

The judgment as it stands only states the amount of damages awarded by the jury and dismisses the non-negligent defendants without addressing Mr. Moniz or Ms. Mills' respective liability, leaving the judgment unenforceable in that no party is listed against whom the judgment may be enforced. Consequently, the Court must amend the judgment to reflect the jury's liability findings.

As stated in the Court's denial of the Portsmouth Defendants' motion to apply the statutory cap, some of Mr. Moniz's negligent conduct occurred in his personal capacity. For this reason, the judgment can be amended to reflect that Mr. Moniz himself is liable for the judgment both in his personal and official capacities. However, one might question how, if the Court has decided not to impose the statutory cap, can it now hold the Town of Portsmouth liable for Mr. Moniz's negligence. Notably, the Court found Mr. Moniz's negligent conduct to not only implicate his personal capacity but also his official capacity as an educator and coach. As such, Mr. Moniz's negligent conduct implicated his official capacity such that the Town of Portsmouth could potentially be held liable pursuant to the doctrine of respondeat superior. However, given that the verdict form in this case never prompted the jury to determine whether any of the Portsmouth Defendants, including Mr. Moniz, acted within the scope of their employment, the Court must conduct further analysis before amending the judgment to make the Town of Portsmouth liable for Mr. Moniz's negligent conduct in his official capacity.

"It is well-established that . . . an employer will incur vicarious liability for its employee's negligent act if that act is committed within the scope of the latter's employment[.]" *Poletti v. Glynn*, 234 A.3d 941, 946 (R.I. 2020) (internal quotation omitted). "[I]t is a question of fact as to

whether *respondeat superior* liability has been established." *Korsak v. Honey Dew Associates, Inc.*, No. PC 13-0105, 2015 WL 5478208, at *23 (R.I. Super. Sept. 15, 2015); *see also Houle v. Galloway School Lines, Inc.*, 643 A.2d 822, 826 (R.I. 1994) ("[T]he issue of [potential employee's] negligence in operating the bus and [potential employer's] vicarious liability should have been submitted to the jury."). However, "[a] judicially admitted fact is conclusively established," meaning that it is "removed from the area of controversy" and does not require "the plaintiff to produce evidence on the fact" as the defendant can no longer challenge the fact. *Martin v. Lilly*, 505 A.2d 1156, 1161 (R.I. 1986).

As previously mentioned, it is undisputed that the jury was not tasked with finding whether any of the individual Portsmouth Defendants, such as Mr. Moniz, were acting within the scope of their employment during the complained of conduct such that vicarious liability or respondeat superior may be imposed. However, the jury need not have found such a fact as the Portsmouth Defendants admitted this in their answer to the Amended Complaint, thus removing it from the controversy. Specifically, the Amended Complaint stated that "[a]t all times relevant to this action, defendant Town of Portsmouth acted through its agents, servants, or employees." *See* Am. Compl. ¶ 3. For Mr. Moniz, the Amended Complaint pled that "[a]t all relevant times, he was an agent, servant, or employee of defendant Town of Portsmouth." *See id.* ¶ 4. In Count I against the Portsmouth Defendants, the Amended Complaint pled that "Defendant Town of Portsmouth, acting through defendants Moniz, Amaral, Trezvant, and Kirwin-Clair, as educators and administrators . . ." *See id.* ¶ 12. These allegations were all admitted by the Portsmouth Defendants in their answer to the Amended Complaint. *See* Answer to Am. Compl. ¶¶ 1-2. In this Court's view, these judicially admitted facts conclusively establish for the purposes of this motion that Mr. Moniz acted on behalf of the Town of Portsmouth. For this reason, the jury need not have

determined as a question of fact that Mr. Moniz was acting within the scope of his employment with the Town of Portsmouth for the judgment to now be amended to reflect the Town's vicarious liability. *See Martin*, 505 A.2d at 1161.

Therefore, the Court **GRANTS** Plaintiff's motion to alter or amend judgment. The amended judgment must reflect Mr. Moniz's personal and official liability, as well as the Town of Portsmouth's liability vis-à-vis respondeat superior.

F

Plaintiff's Motion for Additur

1

Standard of Review

"The rule for either a motion for a new trial or a motion for additur is substantially the same." *Mowry v. Allstate Insurance Co.*, 267 A.3d 1281, 1286 (R.I. 2022) (internal quotation omitted). "A trial justice may grant an additur if he or she finds a demonstrable disparity between the jury's verdict and the damage sustained [such] that an additur [is] required in order to make the verdict truly responsive to the merits of the controversy and to achieve substantial justice between the parties." *Id.* (internal quotation omitted). "This Court has held that motions for additur, remittitur, or a new trial are to be reviewed by the trial justice from the p[er]spective of a seventh juror." *Id.* (internal quotation omitted). "When a trial justice sits as a 'super juror,' he or she is required to make an independent appraisal of the evidence in the light of his or her charge to the jury." *Id.* (internal quotation omitted). "Once the trial justice has sift[ed] through the material evidence and pass[ed] on the credibility of the witnesses, the trial justice must then refer to those aspects of the case which have prompted his [or her] ruling." *Id.* (internal quotation omitted). If the nonmoving party does not assent to the additur, then the trial justice may award a

new trial on damages alone. *See Michalopoulos v. C&D Restaurant, Inc.*, 764 A.2d 121, 125 (R.I. 2001).

2

Analysis

Plaintiff argues that the jury's finding of liability against Mr. Moniz entitled him to recovery under all categories of damages under the Wrongful Death Act (WDA), including pecuniary damages, which the uncontroverted expert testimony of Dr. Leonard Lardaro (Dr. Lardaro) established. (Pl.'s Mem. in Supp. Mot. for Additur (Pl.'s Additur Mem.) 4-6); (Pl.'s Reply to Defs.' Obj. to Pl.'s Mot. for Additur (Pl.'s Additur Reply) 1-3). As such, Plaintiff requests that the Court do one of the following: (1) award him $2,204,908 in lost earnings (average earnings by males), (2) award him $1,525,893 (average earnings by males with only high school education), or (3) award him an average of those two figures, i.e., $1,865,400.50 (Pl.'s Additur Mem. 5-6.) However, the Portsmouth Defendants read the WDA as making available several types of damages of which at least $250,000 must be awarded if liability is found. (Defs.' Obj. to Pl.'s Mot. for Additur (Defs.' Obj.) 2.) Since the jury awarded loss of companionship and society damages to Plaintiff in excess of $250,000, the Portsmouth Defendants view all damages required by the statute to be satisfied, meaning the jury need not consider Dr. Lardaro's testimony on pecuniary damages. *Id.* at 2-5.

The WDA provides that "[w]henever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who, or the corporation which, would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured[.]" G.L.

1956 § 10-7-1. The minimum amount of damages recoverable under the WDA is the sum of not less than two hundred fifty thousand dollars ($250,000).[54] Section 10-7-2. The WDA also provides for other categories of damages. Relevant to this case are pecuniary damages[55] and loss of society and companionship for a parent who loses a child.[56]

While the Portsmouth Defendants argue that there is no requirement to award pecuniary damages once the threshold of $250,000 has been reached, the Court believes otherwise. The WDA states that the parent of a deceased son or daughter "*may* recover" for the loss of their child's society and companionship. *See* § 10-7-1.2(c) (emphasis added). However, unlike the discretionary language used in § 10-7-1.2(c), § 10-7-1.1 states that "[p]ecuniary damages . . .

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[54] As of January 1, 2024, G.L. 1956 § 10-7-2 imposed a new damages minimum of $350,000. However, because this action was commenced prior to this date, the $250,000 damages minimum previously in effect controls in this case.

[55] "Pecuniary damages to the beneficiaries described under § 10-7-2 and recoverable by the beneficiaries shall be ascertained as follows:

> "(1) Determine the gross amount of the decedent's prospective income or earnings over the remainder of his or her life expectancy, including all estimated income he or she would probably have earned by his or her own exertions, both physical and mental. Pecuniary damages shall include the value of homemaker services lost as a result of the death of a homemaker. The fair value of homemaker services shall not be limited to moneys actually expended to replace the services usually provided by the homemaker. In such a suit, the value of homemaker services may be shown by expert testimony, but expert testimony is not required.
>
> "(2) Deduct from the amount determined in subdivision (1) the estimated personal expenses that the decedent would probably have incurred for himself or herself, exclusive of any of his dependents, over the course of his or her life expectancy.
>
> "(3) Reduce the remainder thus ascertained to its present value as of the date of the award. In determining the award, evidence shall be admissible concerning economic trends, including but not limited to projected purchasing power of money, inflation, and projected increase or decrease in the costs of living." G.L. 1956 § 10-7-1.1.

[56] "Whenever the death of a son or daughter shall be caused by the wrongful act, neglect, or default of another person, the parent or parents of the son or daughter may recover damages against the person for the loss of the son's or daughter's society and companionship[.]" G.L. 1956 § 10-7-1.2(c).

recoverable by the beneficiaries *shall be ascertained . . .*" *See* § 10-7-1.1 (emphasis added). The language "shall be ascertained" indicates to the Court that pecuniary damages must be awarded.

Still, even if the WDA was read to not require the award of pecuniary damages, the Court has the ability to award an additur to reassess an erroneous damage award. *See Gardiner v. Schobel*, 521 A.2d 1011, 1015 (R.I. 1987). For example, in *Mowry*, the Rhode Island Supreme Court reviewed a trial justice's decision to grant an additur where the jury only awarded damages for medical expenses but provided nothing for bodily injury and impairment. *Mowry*, 267 A.3d at 1286-88. The Supreme Court upheld the trial judge's decision to grant an additur in the case given that there was uncontradicted evidence at trial vis-à-vis a credible medical expert that the plaintiff had a certain percentage of permanent whole-body impairment, thus warranting this category of damages. *Id.* at 1287.

The jury found liability against Mr. Moniz for the wrongful death of Nathan as indicated by their responses to the jury verdict form. For the reasons outlined in the Court's ruling on the motion for new trial, there is ample evidence to support this assessment of liability. Accordingly, liability was established such that any of the three category of damages made available under the WDA could have been awarded by the jury. As the jury verdict currently stands, damages under the WDA were only awarded for Plaintiff's loss of society and companionship. However, in the Court's role as a "super juror," the Court can independently weigh the evidence and assess the credibility of witnesses when determining if the verdict is truly responsive to the merits of the controversy. *Id.* at 1286.

The jury heard testimony from Dr. Lardaro, a qualified economics expert who teaches at the University of Rhode Island.[57] (Lardaro Trial Tr. 1:21-2:4, Oct. 11, 2024.) Dr. Lardaro provided the jury with a step-by-step analysis of how he calculated Nathan's earning capacity. To start, relying on government data sources to establish parameters for work-life expectancy, life expectancy, and earning potential, Dr. Lardaro calculated the income that Nathan would have made in his lifetime based on two scenarios – one that assumed Nathan graduated high school and the other that was based on average earnings for all white males. *Id.* at 7:4-9:12. Dr. Lardaro then subtracted out lifetime expenses Nathan would have incurred based on government data and adjusted the figure to present value. *Id.* at 9:13-10:25. Dr. Lardaro concluded by providing two different figures to the jury for Nathan's lost earnings: $1,475,616, which assumed Nathan finished high school, and $2,148,500, which was based on average income of all white males. *Id.* at 11:8-15:10.

The Court finds Dr. Lardaro to be a credible and informed expert witness based on his extensive experience and well-explained technique. Moreover, after Dr. Lardaro's direct testimony, neither the Portsmouth Defendants nor the Jamestown Defendants attempted to cross-examine him or ask him a single question. As such, Dr. Lardaro's testimony stands uncontradicted. Although the jury instructions provided that the jury could accept all, some, or

[57] Dr. Lardaro received his bachelor's degree in economics from the University of Rhode Island. (Lardaro Trial Tr. 2:9-12, Oct. 11, 2024.) Dr. Lardaro went on to receive his master's degree at Indiana University. *Id.* at 2:12-13. Afterwards, Dr. Lardaro received his doctorate degree in philosophy and economics. *Id.* at 1:16-18, 2:13. While initially working as a professor of economics in Miami, Florida at Florida International University, Dr. Lardaro went on to establish a career in economics at the University of Rhode Island. *Id.* at 2:9-3:1. In addition to serving as a professor of economics at the University of Rhode Island, Dr. Lardaro consults with attorneys on issues that involve economics and loss of earnings in legal cases. *Id.* at 1:21-2:4. Dr. Lardaro has served as an economic consultant and expert for attorneys since the 1990s, working on over 300 cases of which about one quarter to one third were wrongful death cases. *Id.* at 3:2-18.

none of an expert's opinion, *see* Jury Instruction No. 9, the Court finds that the jury's award for pecuniary damages does not comport with the liability findings in this case and the merits of the controversy. Specifically, since Nathan died at such a young age and Dr. Lardaro's credible, uncontradicted testimony provided informed benchmarks as to his lost future earnings, substantial justice can only be preserved by awarding an additur for pecuniary damages. This Court's decision to grant an additur on this ground is not an action out of left field as the Supreme Court upheld the granting of an additur in *Mowry* where there was similar uncontradicted expert testimony on a particular category of damages. Given Nathan's shaky academic record, including his plagiarism issues, and the lack of evidence as to Nathan's aspirations to attend college, trade school, or any other post-high school institution, (Bruno Trial Tr. 98:16-20, Sept. 25, 2024), the Court finds Dr. Lardaro's calculations based on the average earnings by males with only a high school education to be the proper amount for pecuniary damages.

Therefore, the Court **GRANTS** Plaintiff's motion for additur, thus giving the Portsmouth Defendants the choice between accepting an additur of $1,525,893 or getting a new trial on this category of damages alone.

IV

Conclusion

The Court **GRANTS** Plaintiff's motion for additur and Plaintiff's motion to alter or amend judgment, and **DENIES** the Portsmouth Defendants' renewed motion for judgment as a matter of law, the Portsmouth Defendants' motion to impose the statutory cap, and the Portsmouth Defendants' motion for new trial, or in the alternative, remittitur. Counsel shall confer and present the Court with the appropriate order and judgment.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Richard P. Bruno, Jr., v. Lisa Mills, et al.**
CASE NO:	**NC-2019-0433**
COURT:	**Newport County Superior Court**
DATE DECISION FILED:	**June 20, 2025**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Peter J. Cerilli, Esq.; John S. Foley, Esq.; Kevin Vendituoli, Esq.**
For Defendant:	**Kathleen M. Daniels, Esq.; Sarah D. Boucher, Esq.; Marc Desisto, Esq.; Karen K. Corcoran, Esq.; Caroline Murphy, Esq.**