UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff,

v. C.A. No. 15-525

ROBERT F. STROM as the Finance Director Of the CITY OF CRANSTON, THE CITY OF CRANSTON, COL. MICHAEL J. WINQUIST, in his individual and in his official capacity as Chief of the CRANSTON POLICE DEPARTMENT, CAPT. RUSSELL HENRY, JR., in his individual and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT; MAJOR ROBERT QUIRK, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, SGT. BRANDON BARTH, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMEN, OFFICER JOHN MASTRATI, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, OFFICER WAYNE RUSSELL, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, OFFICER AUSTIN SMITH, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, and JOHN And JANE DOES NOS 1-10, in their individual capacities and their official capacities as officers of the CRANSTON POLICE DEPARTMENT,
Defendants.

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

I. Procedural Background

Plaintiff, Edward Caniglia ("Plaintiff"), has filed a complaint against the City of Cranston ("City") and several members of the Cranston Police Department ("CPD") as a result of the CPD's seizing his weapons in August of 2015. Plaintiff alleges various violations of his federal

and state constitutional rights and other violations of state statutory and common law. Defendants now move for summary judgment with respect to Counts I, II, III, V, VI, and VII of Plaintiff's amended complaint. See ECF No. 20.

II. Factual Background

On August 20, 2015, Plaintiff and his wife, Kim Caniglia ("Mrs. Caniglia"), had an argument over a coffee mug at their residence in Cranston, Rhode Island. Defendants' Statement of Undisputed Facts ("SUF") at 1. During the argument, Plaintiff told Mrs. Caniglia that her "family wasn't all that great,' that she "liked [her] brothers better than" Plaintiff and that she should "go live with" them. Id. at 2. Mrs. Caniglia asked Plaintiff "what's wrong? Why aren't you happy? I can't make you happy, you have to do that yourself. And that's when [Plaintiff] walked into the bedroom . . . [and] came out with a gun, threw it on the table, and said why don't you just shoot me and put me out of my misery." Id. at 3 (emphasis added).

After Plaintiff told his wife to "shoot" him, Mrs. Caniglia asked him "[w]hat are you thinking?" Id. at 4. Mrs. Caniglia told Plaintiff that she was going to contact 911 because she wanted Plaintiff to know that by bringing out the gun "he brought [the argument] to a different level." Id. at 5. Mrs. Caniglia thought Plaintiff's behavior was "shocking." Id. at 6. Shortly after she informed Plaintiff that she was going to contact 911, Plaintiff left the residence. Id. at 7. Mrs. Caniglia, however, did not contact 911. Id.

After Plaintiff left the residence, Mrs. Caniglia put the gun "between the mattress and the box spring" in their bedroom. Id. at 8. At her deposition, Mrs. Caniglia testified that it was at this point she discovered that the magazine was not in the gun. Id. at 9. She testified that she took the magazine "out from underneath the bed and . . . hid it in a drawer" in the bedroom. Id. at 9. In an affidavit executed before her deposition, however, Mrs. Caniglia averred that, during

the argument, Plaintiff brought an unloaded gun *and a magazine* to her and implored her to "shoot me now and get it over with." Id. at 10.

Mrs. Caniglia hid the gun and the magazine because she was worried about Plaintiff's "state of mind." Id. at 11. Plaintiff was "depressed," and Mrs. Caniglia was afraid that Plaintiff "was going to do something with the gun and the magazine" and "hurt himself" or "take[] his own life." Id. at 12.

Before Plaintiff returned to the residence, Mrs. Caniglia thought it best to "pack a bag" and "go to a hotel for a night." Id. at 13. When Plaintiff returned to the residence, he informed Mrs. Caniglia that the argument was "all [her] fault . . . ." Id. at 14. After that comment, Mrs. Caniglia left the residence and went to the Econo Lodge on Reservoir Avenue in Cranston. Id. At some point during that evening, Mrs. Caniglia spoke to Plaintiff by telephone. Id. at 14. Plaintiff asked Mrs. Caniglia to come home but she refused because she thought they needed time to "chill." Id. Plaintiff was upset and angry. Id.

At some point the following morning, Mrs. Caniglia contacted the CPD and "requested an officer to do a well call." Id. at 16. Mrs. Caniglia was "incredibly worried" that Plaintiff was going to harm himself or commit suicide. Id. at 17. During the telephone call to the CPD, Mrs. Caniglia requested an escort to her residence because she was a "little afraid" of Plaintiff. Id. at 18. Mrs. Caniglia also informed the CPD that (1) she and Plaintiff had "gotten into a verbal fight;" (2) Plaintiff took a gun and said "shoot me;" (3) Plaintiff took the gun *and magazine* and threw it on the table; (4) she spent the night in a hotel and was now in the parking lot of Scramblers Restaurant, and (5) she "hid the gun" and put the magazine in a drawer. Id.

As a result of Mrs. Caniglia's telephone call to the CPD, Cranston Police Officers John Mastrati ("Mastrati"), Austin Smith ("Smith") and Sgt. Brandon Barth ("Sgt. Barth") were

dispatched to Scrambler's Restaurant. Id. at 19. At Scramblers, Mrs. Caniglia informed a CPD officer "about the gun, about the words [Plaintiff] said and what [she] did with the gun" and magazine. Id. at 20. Mrs. Caniglia informed Officer Mastrati that she had an argument with Plaintiff and that during the argument Plaintiff took out an unloaded firearm and a magazine and asked Mrs. Caniglia to use it on him. Id. at 21. Mrs. Caniglia stated that she was concerned about Plaintiff's safety and what she would find when she returned home and told Mastrati that she was worried about Plaintiff committing suicide. Id. at 22.

Officer Mastrati contacted Plaintiff by telephone from Scramblers. Plaintiff agreed to speak to Mastrati at Plaintiff's residence. Id. at 23. CPD officers informed Mrs. Caniglia to follow them to the Caniglia residence but to stay in her car when they arrived at the residence. Id. at 24. Upon arrival at the residence, Officer Mastrati spoke to Plaintiff outside of the house, near or about the deck/porch area of the property. Id. at 24. Officers Barth, Smith and Officer Wayne Russell were also on scene, in or about the porch area. Id.

Plaintiff told Mastrati that he brought the gun out during the argument with Mrs. Caniglia. Id. at 26. Plaintiff "pretty much told [Mastrati] the same story that [Mrs. Caniglia] told" him. Id. at 27. Plaintiff corroborated what Mrs. Caniglia had informed Mastrati about the argument, the gun, and that Mrs. Caniglia should shoot him. Id. at 28. Plaintiff admitted to Mastrati that he and Mrs. Caniglia had had an argument over a coffee mug and he was "sick of the arguments" and he took out his unloaded handgun and told his wife to "just shoot me" because he "couldn't take it anymore." Id. at 29. Plaintiff admitted to a hospital employee that during the argument with Mrs. Caniglia he retrieved an unloaded gun and told Mrs. Caniglia that "she should just shoot him and put him out of his misery." Id. at 30. Plaintiff also admitted to imploring Mrs. Caniglia to "shoot [him] now and get it over with." Id.

At some point after Mrs. Caniglia arrived at the residence, an officer approached her car and told her she could come to the residence. Id. at 31. When she arrived at the residence, Plaintiff asked her why she had contacted the CPD. Id. at 32. Mrs. Caniglia informed Plaintiff that she was worried about him. Id. at 33. Plaintiff was "very upset" because Mrs. Caniglia contacted the CPD so she went back to her car. Id. at 34. While at the residence, Mrs. Caniglia overheard Plaintiff inform an officer that he had an argument with Mrs. Caniglia about a coffee mug and that he "did bring out a gun and set in on the table and told [Mrs. Caniglia] to just go ahead and shoot him and put him out of his misery." Id. at 35.

Although Plaintiff informed Mastrati that he was not suicidal, Mastrati was not convinced because a "normal person would [not] take out a gun and ask his wife to end his life . . . ." Id. at 36. Mastrati believed that Plaintiff was a danger to himself. Id. at 37. Sgt. Barth considered Plaintiff's statement to his wife to shoot him to be a suicidal statement. Id. at 38.

The CPD seized two guns and ammunition from the Caniglia residence for safekeeping. Id. at 39. Mrs. Caniglia showed police the location of the guns and ammunition. Id. at 40. The guns and ammunition were seized from the bedroom and a garage. Id. at 40. Sgt. Barth made the decision to seize the guns, however, that decision was approved by Captain Russell Henry ("Captain Henry"). Id. at 41. Captain Henry believed that if the CPD had left Plaintiff "there with the firearms, potentially, he's in danger, [Mrs. Caniglia] could be in danger, the neighbors could be in danger, any person that comes in contact with Mr. Caniglia could be in danger." Id. at 42.

Plaintiff was eventually transported to Kent County Hospital for a medical evaluation. Id. at 43. Plaintiff was evaluated at the hospital but was not admitted. Id. at 44. Plaintiff was not charged with any crime with respect to the incident. Id. at 45. The CPD did not prevent

Plaintiff from obtaining any firearms after the August 21, 2015 incident. Id. at 46. On or about October 1, 2015, Plaintiff's attorney sent Colonel Michael Winquist a letter requesting the return of his guns. Id. at 47. Plaintiff's guns were returned to him in late December 2015. Id. at 48. At his deposition Plaintiff testified that he believes that his life is "wonderful and great" and denied any "potential thoughts of suicide in the future." Id. at 49.[1]

III. The Amended Complaint

The amended complaint ("Complaint") includes seven counts against the City of Cranston and seven of its police officers, in both their individual and official capacities.[2] See Plaintiffs Amended Verified Complaint, ECF No. 20. Plaintiff claims violations the Second, Fourth, and Fourteenth amendments to the United States Constitution and the Rhode Island Constitution corollaries. See generally id. at 12-14. In addition, Plaintiff brings claims alleging violations of the Rhode Island Firearms Act, R.I. Gen. Laws § 11-47-1, et seq., and the Rhode Island Mental Health Law, R.I. Gen. Laws § 40.1-5-1 et seq. ECF No. 20 at 11, 14. Plaintiff also brings a claim for conversion. Id. at 15. Plaintiff brings each claim against *all* Defendants. Plaintiff also requests declaratory and injunctive relief. Id. at 16.

IV. Standard of Review

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue is "genuine" if the pertinent evidence is such that a rational factfinder could resolve the issue in favor of either party, and a fact is "material" if it "has the capacity to sway

[1] Colonel Michael Winquist and Major Robert Quirk were not at the scene nor were they consulted by officers at the scene. SUF at 50. Consequently, Defendants motion for summary judgment should be granted as to Colonel Winquist and Major Quirk as to Counts I, II, III, V, VI, and VII.

[2] A suit against an individual in his or her official capacity is a suit against the municipality. Andino-Pastrana v. Municipio de San Juan, 215 F.3d 179 (1st Cir. 2000). Thus, the claims against the individual Defendants in their official capacities should be dismissed as duplicative of the claims against the Town.

the outcome of the litigation under the applicable law." National Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 735 (1st Cir. 1995). The moving party bears the initial burden of showing the Court that no genuine issue of material fact exists. Id. Once the moving party makes this showing, the non-moving party must point to specific facts demonstrating a trialworthy issue. Id. The Court views all facts and draws all reasonable inferences in the light most favorable to the nonmoving party. Continental Casualty Co. v. Canadian Universal Insurance Co., 924 F.2d 370 (1st Cir. 1995).

V. Analysis

A. Count I – Rhode Island Firearms Act

1. The Rhode Island Firearms Act Does Not Apply to This Claim

In Count I of the Complaint Plaintiff alleges that Defendants violated the Rhode Island Firearms Act ("RIFA"), R.I Gen. Laws § 11-47-1 et seq. Plaintiff alleges that "Defendants unwritten policy of requiring persons whose guns they have seized to obtain an order in state court before they return them violates" RIFA. ECF No. 20 at ¶ 69.[3] Plaintiff, however, recognizes that RIFA does not provide for a private right of action and therefore attempts to bring a claim pursuant to R.I. Gen. Laws § 9-1-2. ECF No. 20 at ¶ 71.

In Richer v. Parmelee, 189 F. Supp. 3d 334 (D.R.I. 2016), this Court held that the Rhode Island Firearms Act "only contemplates injunctive relief, and not damages." Id. at 343. It is undisputed that Defendants returned Plaintiff's guns to him in December 2015. SUF at 48. Because Defendants returned Plaintiff's guns to him, RIFA is "no longer any help to" Plaintiff. Richer, 189 F. Supp. 3d at 343. Plaintiff cannot "circumvent" the limited relief contemplated by RIFA by "recasting his claim as arising under [R.I. Gen. Laws] § 9-1-2." Id. at 343 at n.14.

[3] For purposes of this summary judgment motion only, Defendants presume that Plaintiff has proffered admissible evidence of this purported "unwritten policy."

Because RIFA is not applicable in this matter, it is respectfully submitted that the Court grant Defendants' motion for summary judgment on Count I of the Complaint.

2. Even If RIFA Applied The Claim Against the City Would Fail As a Matter of Law Because the City Cannot Commit a Crime

Moreover, even if RIFA applied, any claim against the *City* would fail. R.I. General Laws § 9-1-2 provides that when a person suffers "any injury to his person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender." R.I. Gen. Laws § 9-1-2 (emphasis added). Section 9-1-2 is an enabling act that allows a person allegedly injured as a result of a crime "a right of action where none existed at common law." Mello v. DaLomba, 798 A.2d 405, 411 (R.I. 2002). "Section 9-1-2 creates a new right of action in that a victim can bring an action for damages for injuries even if no criminal complaint for the crime or offense has been filed." Lyons v. Scituate, 554 A.2d 1034, 1036 (R.I. 1989). To establish liability under § 9-1-2, Plaintiff must "first establish" that the City engaged in "criminal activity." Zarrella v. Minn. Mut. Life Ins. Co., 824 A.2d 1249, 1261 (R.I. 2003) (emphasis added); see also Willis v. Omar, 954 A.2d 126, 131 (R.I. 2008) (Section 9-1-2 "imposes civil liability for injuries resulting from a criminal act").

"[M]unicipal corporations can not . . . do a criminal act or a willful and malicious wrong . . . ." City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 261 (1981). "[T]he criminal intent of an agent of a municipal corporation cannot be imputed to the municipal corporation itself because the retribution for such a wrong should not be visited upon the shoulders of blameless or unknowing taxpayers." Bonsall Village, Inc. v. Patterson, No. 90-0457, 1990 U.S. Dist. LEXIS 12530, at *19 (E.D. Pa. Sept. 19, 1990) (internal quotation marks omitted); see also Ball v. City of Indianapolis, 760 F.3d 636, 646 (7th Cir. 2014) ("[b]ecause a crime is an offense against the

sovereign, it is axiomatic that the sovereign cannot commit a crime"); Nu-Life Construction Corp. v. Board of Education, 779 F. Supp. 248, 251 (E.D.N.Y. 1991) (the "criminal intent of municipal agents cannot be imputed to the municipality itself by reason of respondeat superior").

In State v. Ziliak, 464 N.E.2d 929 (Ind. Ct. App. 1984), employees of the state of Indiana removed certain Indian artifacts from the plaintiffs' land without consent. Id. at 930. The acts of the state employees violated three Indiana criminal statutes. Id. The plaintiffs sued the state for damages and sought certain remedies provided for in Ind. Code § 34-4-30-1. Id. Ind. Code. § 34-4-30-1 is a "statute enacted to provide additional civil remedies to crime victims . . . ." Id. (emphasis added.) Consistent with R.I. Gen. Laws § 9-1-2, in order to recover under Ind. Code § 34-4-30, it is not necessary for a plaintiff to show a conviction, rather "recovery may be had so long as the actions of the perpetrator amounted to a violation of the prescribed Indiana Code sections." Id. Furthermore, also consistent with R.I. Gen. Laws § 9-1-2, in order to recover under Ind. Code § 34-4-30-1, a plaintiff must prove a violation of the Indiana criminal code by a preponderance of the evidence. Id. Last, again like § 9-1-2, "although it is not necessary to show a conviction, the party seeking recovery under Ind. Code. Sec. 34-4-30-1 must prove commission of the crime." Id.

In Ziliak the plaintiffs did not seek recovery against the individual state employees, rather the plaintiffs sought recovery from the State of Indiana. Id. The Ziliak court held that because a crime is an offense against the sovereign, it was self-evident that the sovereign could not commit a crime. Id. at 930. The Ziliak court concluded that the state could not commit the "criminal act prerequisite to bringing the case within the terms of Ind. Code § 34-4-30-1. . . ." Id. at 931.

In order to recover against the City pursuant to § 9-1-2, Plaintiff must show that the City committed a criminal act. Zarrella, 824 A.2d 1249; Willis, 954 A.2d 126. A municipality,

however, cannot commit a criminal act. City of Newport, 453 U.S. 247; Ball, 760 F.3d 636; Bonsall Village, 1990 U.S. Dist. LEXIS 12530; Nu-Life Construction Corp., 779 F. Supp. 248; Ziliak, 464 N.E.2d at 931. Consequently, even if RIFA applied, Plaintiff's motion for summary judgment on Count I against the City would fail as a matter of law because Plaintiff cannot show that the City committed the criminal act prerequisite to bring this matter within the terms of R.I. Gen. Laws § 9-1-2. See generally Ziliak, 464 N.E. 2d at 931.

3. Even if the City Could Commit a Crime, the Claim Against the City Would Fail As a Matter of Law Because the City is Not an Offender

In addition, even if a municipality could commit a crime, § 9-1-2 does not grant Plaintiff any right of action against the *City*. Section 9-1-2 provides that

> [w]henever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender, and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made; and whenever any person shall be guilty of larceny, he or she shall be liable to the owner of the money or articles taken for twice the value thereof, unless the money or articles are restored, and for the value thereof in case of restoration.

R.I. Gen. Laws § 9-1-2 (emphasis added).

"[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Shine v. Moreau, 119 A.3d 1, 9 (R.I. 2015) (internal quotation marks omitted). In the event that the Court "find[s] the statute to be unambiguous, [the Court] appl[ies] the plain meaning and [the] interpretive task is done." Id. (internal quotation marks omitted). Plain statutory language is the best indicator of legislative intent. Id.

Section 9-1-2 provides that a victim of a crime may recover damages for an injury in a civil action against an "offender." Id. (emphasis added). The statue is clear and unambiguous.

An "offender" is a "person who has committed a crime." Black's Law Dictionary 1108 (7th ed. 1999) (emphasis added). It is clear that the term offender in the statue applies to a "person." R.I. Gen. Laws § 9-1-2. A municipality is not a person; consequently a municipality cannot be held liable for damages pursuant to § 9-1-2. Thus, even if a municipality could commit a crime, Plaintiff's claim would still fail as a matter of law because the Town is not an "offender" under R.I. Gen. Laws § 9-1-2.[4]

B. Count II – Right to Keep Arms

In Count II of the Complaint Plaintiff alleges that Defendants violated his Right to Keep Arms. Plaintiff alleges that Defendants violated his rights pursuant to the Second and Fourteenth Amendment to the United States Constitution and Art. 1 Sec. 22[5] of the Rhode Island Constitution. Plaintiff alleges that by maintaining and enforcing a set of customs, practices and polices depriving him of his weapons, Defendants have violated his right to keep and bear arms. ECF No. 20 at ¶74.

The Second Amendment provides that a "well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Although the Second Amendment confers an individual right to keep and bear arms, that right is not unlimited. District of Columbia v. Heller, 554 U.S. 570, 595 (2008). The right granted by the Second Amendment does not include the right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Id. at 626.

"Whether and to what extent the Second Amendment protects an individual's right to possess a particular gun . . . is an issue just beginning to receive judicial attention." Sutterfield v.

[4] Defendants also argue that they should be granted summary judgment on this Count as a result of state law immunity. See Section V C 3 below.

[5] In his complaint, Plaintiff alleges a violation of Art 1. Sec. 2 of the Rhode Island Constitution. ECF No. 20 at ¶ 74. Defendants assume this is a typographical error.

City of Milwaukee, 751 F.3d 542, 571 (7th Cir. 2014). Courts have generally held that the Second Amendment is not implicated by the seizure of a particular individual firearm. Hopkins v. Claroni, Civil No. 1:13-CV-229-DBH, 2015 U.S. Dist. LEXIS 64530 (D. Me. May 18, 2015) ("there is no Second Amendment right presented by the seizure of a particular firearm"); see also Fairbanks v. O'Hagan, 255 F. Supp. 3d 239, 245 (D. Mass. 2017) (the "Second Amendment is not implicated by the seizure of individual firearms"). The right to bear arms is not a right to "hold some particular gun." Vaher v. Town of Orangetown, 916 F. Supp. 2d 404 (S.D.N.Y. 2013) (internal quotation marks omitted); Garcha v. City of Beacon, 351 F. Supp. 2d 213, 217 (S.D.N.Y. 2005) (the right to bear arms is not a right to some particular gun). "[W]here a plaintiff's ability to acquire other firearms has not been abridged, a Second Amendment violation has not occurred even despite a seizure of a plaintiff's particular firearm." Doutel v. City of Norwalk, No. 3:11-CV-01164, 2013 U.S. Dist. Lexis 93436, at *79 (D. Conn. July 3, 2013) (emphasis in original); see also Vaher, 916 F. Supp. 2d 404; Tirado v. Cruz, Civil No. 10-2248, 2012 U.S. Dist. LEXIS 19978, at *17 (D.P.R. Feb. 16, 2012) (finding that Heller held that in order to show a Second Amendment violation, a plaintiff must do more than show he was deprived from possessing one particular firearm, rather "plaintiff must show that he has been kept from acquiring any other legal firearm"). "In order to establish a violation of the Second Amendment [P]laintiff must show that he has been kept from acquiring any other legal firearms." Fairbanks, 255 F. Supp. 3d at 245.

This Court has already decided this question in Richer. In Richer, the plaintiff alleged that the North Smithfield Police Department violated his right to bear arms when they seized his guns as a result of suicidal behavior. Richer, 189 F. Supp. 3d at 342. The North Smithfield Police, however, did not prevent the plaintiff from obtaining other firearms. Id. at 342-43. It is

undisputed that Defendants seized Plaintiff's guns on August 21, 2015. SUF at 39. Likewise, it is undisputed that Defendants did not prevent Plaintiff from obtaining other firearms after August 21, 2015. Id. at 46. "What prevents the [City or its officers] from confiscating [Plaintiff's] hypothetical new guns and what makes [that] conduct allegedly objectionable in this case, is [Plaintiff's] Fourth and Fourteenth Amendment rights to be secure in his home and possessions, not the Second Amendment." Richer, 189 F. Supp. 3d at 343 (emphasis added). Defendants have not violated Plaintiff's "Second Amendment rights, which remain intact." Id. (emphasis added). It is submitted that because the Second Amendment is not implicated in this matter, Defendants are entitled to summary judgment on Count II.[6] See generally id.

C. Count III -- Fourth Amendment

1. The Seizure of Plaintiff's Guns Was Consistent With The Fourth Amendment

In Count III of the Complaint, Plaintiff alleges that Defendants violated his rights under the Fourth Amendment and Article 1, Section 6 of the Rhode Island Constitution when they seized the guns from his house without a warrant. ECF No. 20 at ¶ 78.[7] It is submitted, however, that the seizure of Plaintiff's firearms was consistent with the community caretaking function.

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[6] Article 1, Section 22 of the Rhode Island Constitution provides that "[t]he right of the people to keep and bear arms shall not be infringed." R.I. Const. Art. I, § 22. The "right to keep arms" language in the Rhode Island Constitution mirrors the language contained in the Second Amendment. The Rhode Island Supreme Court has interpreted Article 1, Section 22 to provide a similar right to keep arms as the right to keep arms recognized by the Second Amendment. See generally Mosby v. Devine, 851 A.2d 1031 (R.I. 2004). It is therefore submitted that Defendants' Second Amendment argument would be equally dispositive of Plaintiff's claim pursuant to Article 1, Section 22. See generally Pelland v. Rhode Island, 317 F. Supp. 2d 86 (D.R.I. 2004); Jones v. Rhode Island, 724 F. Supp. 25 (D.R.I. 1989) (since the due process and equal protection clauses of the Rhode Island Constitution were intended by the drafters to parallel the language of the Fourteenth Amendment, a determination of a litigant's federal due process and equal protection claims is equally dispositive of his state due process and equal protection claims).

[7] It is submitted that an analysis under the Fourth Amendment also disposes of the state constitutional claim under Article 1, Section 6. See State v. Foster, 842 A.2d 1047, 1050 n.3 (R.I. 2004) (noting that the Fourth Amendment is "substantively the same as article 1, section 6 of the Rhode Island Constitution").

The touchstone under a Fourth Amendment analysis is reasonableness, United States v. Chaney, 647 F.3d 401 (1st Cir. 2011), and courts approach the Fourth Amendment with "pragmatism." Mora v. City of Gaithersburg, 519 F.3d 216, 222 (4th Cir. 2008). The community caretaking exception to the warrant requirement recognizes that police officers perform a wide array of community functions in addition to investigating crimes. United States v. Rodriguez-Morales, 929 F.2d 780 (1st Cir. R.I. 1991). In performing this caretaking role, a police officer is a "jack-of-all emergencies . . . expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing and provide an infinite variety of services to preserve and protect community safety." Id. at 784-85 (emphasis added) (citations omitted). The community caretaking doctrine "is a catchall for [a] wide range of [police] responsibilities . . . ." Lockhart-Bembery v. Sauro, 498 F.3d 69, 75 (1st Cir. 2007). The doctrine gives police officers a "great deal of flexibility" in how they carry out their community caretaking function. Id.

While the First Circuit has recognized the community caretaking function in motor vehicle cases, it has acknowledged that the reach of the doctrine is "poorly defined outside that milieu." MacDonald v. Town of Eastham, 745 F.3d 8, 13 (1st Cir. 2014). The First Circuit has held, however, that the "ultimate inquiry [in community caretaking situations] is whether, under the circumstances, the officer acted within the realm of reason." Lockhart-Bembery, 498 F.3d at 75 (internal quotation marks and citation omitted). In community caretaking situations, reasonableness has a "protean quality" and involves a "concept, not a constant" – thus what may be "reasonable in one type of situation may not be reasonable in another." Rodriguez-Morales, 929 F.2d at 785.

The Seventh Circuit has recognized "powerful arguments in favor of the temporary seizure [of a gun] as a prudential measure" in situations where officers remove a suspected suicidal individual from a home where guns are stored. See Sutterfield v. City of Milwaukee, 751 F.3d 542, 571 (7th Cir. 2014). In Sutterfield, the court assumed without deciding that the seizure of the suicidal individual's gun violated the Fourth Amendment but determined that the individual defendants were entitled to qualified immunity. See id. Sutterfield acknowledged the "lack of clarity in Fourth Amendment case law as to the appropriate legal framework that should be applied to warrantless intrusions motivated by purposes other than law enforcement evidence-gathering." Id. at 551. In discussing the competing interests implicated by the seizure, however, Sutterfield recognized that it "was natural, logical, and prudent for [the police] to believe that [the] firearm should be seized for safekeeping until such time as [the suspected suicidal individual] was evaluated and it was clear that [the individual] no longer posed a danger to herself." Id. at 570 (emphasis added); see also Arden v. McIntosh, No. 14-1517, 2015 U.S. App. LEXIS 12725, at *10 n.2 (10th Cir. July 23, 2015) (noting in its qualified immunity analysis that a "reasonable police officer might have thought, upon discovery of [a] gun [in a residence during a welfare check] that he was authorized by his community caretaking function to seize the gun for safekeeping").

In Matalon v. Hynnes, 806 F.3d 627 (1st Cir. 2015), the First Circuit addressed the question of whether the community caretaking function applied to a warrantless search of a home. In Matalon, the Boston Police Department ("BPD") received a report of a robbery from the manager of a restaurant located in the city. Id. at 631. BPD responded and learned that the owner of the restaurant had discovered a male removing money from a safe in the basement of the restaurant. Id. The manager reported that he had chased the thief out of the restaurant and

onto several different streets in the city. Id. The suspect was seen in the area of Farrington Avenue and the BPD took chase. Id. The BPD was then directed to 16 Farrington Avenue. Id. The BPD subsequently rang the doorbell, knocked on the door, and called out -- all to no avail. Id. A police officer at the scene thought he heard footsteps inside the dwelling and a search of the residence ensued. Id. at 632. The plaintiff was the only person inside the residence and was not pleased with the intrusion. Id. The plaintiff had an argument with the BPD and was eventually arrested. Id.

After the plaintiff was acquitted on criminal charges he brought suit against the officers and the City of Boston for violating his civil rights. Id. At the close of evidence, the police officer who searched the residence moved for judgment as a matter of law based on qualified immunity and the community caretaking doctrine. Id. The trial court denied the motion. Id. The jury found that the search of the dwelling was not justified by exigent circumstances nor any other "constitutionally accepted rationale." Id. at 631. The jury awarded the plaintiff $50,000 and an appeal ensued. Id.

The police officer appealed the trial court's denial of his motion for judgment as a matter of law. Id. at 632. The officer sought "refuge" in the community caretaking doctrine. Id. at 633. The Matalon court noted the genesis of the doctrine and acknowledged that it had "evolved into a catchall for the wide range of responsibilities that police officers must discharge aside from their criminal enforcement activities." Id. at 634 (internal quotation marks omitted) (emphasis added). The court stated that the community caretaking doctrine has most often been applied with respect to automobiles and acknowledged that its applicability "has been far less clear" in cases involving searches of homes. Id. The court stated, however, that "[a]lthough we do not decide the question [of whether the community caretaking doctrine applies to searches of homes], we

assume, favorably to [appellant] that the community caretaking exception may apply to warrantless residential searches." Id. (emphasis added).

The court found that while the "parameters of the community caretaking exception are nebulous in some respects (such as whether the exception applies to all residential searches), the heartland of the exception" is well defined. Id. (emphasis added). The doctrine requires a court to "look at the function performed by the police officer when the officer engages in a warrantless search or seizure." Id. (emphasis in original) (internal quotation marks omitted). Matalon stressed that the community caretaking function is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Id. (internal quotation marks omitted) (emphasis added). Cases that do not satisfy this requirement fall outside the heartland of the doctrine; "it is therefore not surprising that the courts that have addressed the exception have stressed the separation between the police's community caretaking functions and the normal work of criminal investigation." Id. at 635 (citing, among other cases, United States v. Quezada, 448 F.3d 1005 (8th Cir. 2006) (relying upon the doctrine in upholding warrantless search of a home); People v. Ray, 981 P.2d 928 (Cal. 1999) (plurality opinion) (relying upon the doctrine in warrantless entry into a home); State v. Deneui, 775 N.W.2d 221 (S.D. 2009) (concluding that the entry into the home was reasonable because the officers entered a home "not as part of a criminal investigation, but in pursuance of their community caretaking function")).

"[H]omes cannot be arbitrarily isolated from the community caretaking equation. The need to protect and preserve life or avoid serious injury cannot be limited to automobiles." Deneui, 775 N.W.2d at 239. "[P]olice officers may, without reasonable suspicion of criminal activity, intrude on a person's privacy to carry out community-caretaking functions to enhance

public safety." State v. Stanley, No. 13 MA 159, 2014 WL 7275341, at *4 (Ohio Ct. App. Dec. 19, 2014). The key to such permissible action is the reasonableness required by the Fourth Amendment. Id. The "community-caretaking function may initially explain why police enter a home, and depending on what occurs there, may further justify exploration of other parts of the home." Id.

Community caretaking activities are varied and are performed for different reasons. Ray, 981 P.2d at 934. Courts that have expanded the community caretaking doctrine outside of the automobile context analyze the application of the doctrine under a general reasonableness standard. "Each variant must be assessed according to its own rationale on a case-by-case basis. Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." Id. at 934 (internal quotation marks omitted).

In People v. Hand, 946 N.E.2d 537 (Ill. App. Ct. 2011), the defendant challenged a police officer's warrantless entry into her apartment. Id. Police were called to the apartment by the defendant's husband who was concerned about the defendant and his children who were also in the apartment. Id. at 540. The defendant's husband asked police for assistance in retrieving some personal items from the apartment. Id. Police attempted to gain consensual entry into the apartment but the defendant resisted and a scuffle between the defendant and police ensued. Id. Police eventually placed defendant under arrest. Id. The defendant moved to quash the arrest and suppress evidence arguing that there was no justification for the warrantless entry into her apartment. Id. at 542.

In Hand, the court held that "two general criteria must be present for a valid community caretaking exception to a prohibition against a warrantless search." Id. at 543-44. The court

determined that in order for the community caretaking exception to apply, (1) the police must be performing some function other than investigation of a crime, and (2) the scope of the search must be reasonable because it was done to protect the safety of the public. Id. at 544. The objective circumstances of the situation (not the subjective motivation of the police) must be scrutinized when ruling on the validity of the search. Id The question of reasonableness is measured in objective terms and is determined by evaluating the totality of the circumstances: the "court must balance a citizen's interest in going about his or her business free from police interference against the public's interest in having police officers perform services in addition to strictly law enforcement." Id. at 544. The court concluded that the community caretaking function justified the police officer's warrantless entry into the defendant's apartment. Id. at 545.

"Whether a given community caretaker function will pass must under the Fourth Amendment so as to permit a warrantless home entry depends upon whether the community caretaker function was reasonably exercised under the totality of the circumstances of the incident under review." State v. Pinkard, 785 N.W.2d 592, 598-99 (Wis. 2010) (emphasis added) (concluding that a reasonably exercised community caretaking function may permit a warrantless entry into a home). In order to determine whether the community caretaking function may justify a warrantless entry into a home, the Pinkard court applied a three part test. Id. at 601. Pinkard's test examined (1) whether a search or seizure under the Fourth Amendment had occurred; (2) if it had, whether the police were exercising a bona fide caretaking function; and, (3) if so, whether the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of the home. Id.

In United States v. Taylor, No. 3:09CR249, 2009 U.S. Dist. LEXIS 95555 (E.D. Va. Oct. 14, 2009), a police officer was on routine patrol when he received a call to respond to a four year old girl wandering alone. Id. at *1. The officer responded, found the girl and the girl took the officer to her home. Id. The door to the home was open and the officer followed the girl into the home. Id. at *2. The officer discovered the defendant in a bedroom and the defendant informed the officer that the child was his daughter. Id. While speaking to the defendant, the officer noticed several bullets in a plastic bag in plain view on a bedside table. Id. The defendant could not produce any form of identification but informed the officer that he his name was Anthony Jackson and that he did not know his social security number nor the address of the home. Id. at *3. The police investigated the name Anthony Jackson through several record systems but found no such person. Id. The police officer then performed a protective sweep of the area and located a firearm beneath the mattress where the defendant had been lying. Id. at *4. The police subsequently spoke to the child's grandmother and mother, uncovered the defendant's identity, and discovered that he had two felony convictions. Id. at *4-5. The police arrested the defendant for being a felon in possession of a firearm. Id. at *5.

The government defended the warrantless entry into the home by arguing that police were performing a community caretaking function. Id. at *7-8. The court stated that the community caretaking exception to the warrant requirement requires the court to look at the function performed by the police officer. Id. at *8. After summarizing several cases analyzing the community caretaking doctrine, the court held that the police officer entered the residence as a result of a "routine police procedure to attempt to locate the parent or guardian of a lost child." Id. at *18. The court concluded that the police officer's entry into the house was unrelated to the detection, investigation, or attempt to acquire evidence of a crime. Id. at *19. "'Life-or-death'

circumstances did not exist, but they are not required. An officer is not expected to leave his common sense at home." Id. The court concluded that the officer's entry into the home was pursuant to the officer's community caretaking function and was reasonable under the Fourth Amendment. Id. at *17-22.

"Surely, a police officer may enter a residence to protect a suicidal person and secure the premises if firearms are believed to be present." People v. Ovieda, 228 Cal. Rptr. 3d 67, 71 (Cal. Ct. App. 2018) (applying community caretaking function), petition for review granted, 231 Cal. Rptr. 731 (Ca. 2018). The community caretaking function "has [an] expansive temporal reach, in that its primary focus is on the purpose of police action rather than on its urgency." Sutterfield, 751 F.3d at 561 (emphasis added); see generally Matalon, 863 F.3d at 635 (the court must look to the function performed by the police). Moreover, because the community caretaking doctrine "presumes that the police are not acting for any law enforcement purpose, whether or not there is time to seek a traditional criminal warrant is immaterial . . . ." Sutterfield, 751 F.3d at 561 (emphasis added); see also Hand, 946 N.E.2d at 544 (probable cause is not a factor when police are engaging in a community caretaking function).

In Sutterfield, the Seventh Circuit struggled with the question of whether the community caretaking doctrine allowed police to forcibly enter the home of a suicidal individual and open a locked container and seize a gun that was found inside the container. Id. at 751 F.3d 542. In Sutterfield, a psychiatrist placed a 911 telephone call to report that the plaintiff had left an appointment with her and had expressed suicidal thoughts. Id. at 545. The psychiatrist informed police that the plaintiff, after receiving some bad news, had remarked "I guess I'll go home and blow my brains out." Id. The psychiatrist told the police that the plaintiff wore an empty gun holster to her appointment; thus she surmised that the plaintiff owned a gun. Id. Police

eventually located the plaintiff at her home but the plaintiff would not engage with the police except to inform them that she had "'called off' the police." Id. at 546. Police, however, forcibly entered the house and the plaintiff was handcuffed and placed into custody. Id. at 544. Once the plaintiff was secured, police performed a protective sweep of the house; one officer observed a compact disc carrying case in plain view. Id. The officer forced the case open and discovered a handgun. Id. The police seized the weapon for "safekeeping." Id. at 547. Another officer testified that he thought it was appropriate to seize the weapon so that the plaintiff, when released from the hospital, would not be able to use the gun to commit suicide. Id.

Sutterfield held that community caretaking cases cannot be viewed through the standard "lens" of criminal law enforcement. Id. at 551; see also Matalon, 806 F.3d at 635 (noting that courts stress the separation between the community caretaking function and "normal work of criminal investigation"). Courts have "long recognized the important role that police play in safeguarding individuals from dangers posed to themselves and others – a role that will, in appropriate circumstances, permit searches and seizures made without the judicial sanction of a warrant." Sutterfield, 751 F.3d at 551 (emphasis added).

The Sutterfield court, however, was frustratingly forestalled from finding that the community caretaking doctrine justified the warrantless entry into the plaintiff's home and the seizure of the weapon. In dicta, the court stated that "as a matter of doctrine" the community caretaker function would

> potentially be the best fit for this case, in that it captures the beneficent purpose for which police entered [the plaintiff's] home . . . .And because there is no suggestion that police had any law enforcement motive in entering the home, there would be a ready basis on which to distinguish criminal cases . . . which demand a search warrant when there is, in fact, time in which to seek one.

Id. (emphasis added). The court however noted that an earlier circuit decision precluded extending the community caretaking doctrine beyond the automobile context and specifically emphasized that not only had the defendant *not* asked the court to review that decision but the defendant also failed to argue the community caretaking doctrine on appeal. Id. at 561.

The courts that have extended the community caretaking function beyond the automobile context have done so pursuant to the Fourth Amendment's reasonableness decree. See generally Ray, 981 P.2d 928; Deneui, 775 N.W.2d 221; Hand, 946 N.E. 2d 537; Pinkard, 785 N.W.2d 592; Stanley, 2014 WL 7275341; Taylor, 2009 U.S. Dist. LEXIS 95555; Ovieda, 228 Cal. Rptr. 3d 67; see also Ferreira v. City of East Providence, 568 F. Supp. 2d 197 (D.R.I. 2008) (seizure of defendant was justified and reasonable under community caretaking function.) It is submitted that the reasoning of these courts is consistent with the First Circuit's view of the community caretaking doctrine.

In this Circuit, in order to apply the community caretaking doctrine, a court must first determine whether the function performed by the officer falls within the heartland of the community caretaking function. Matalon, 806 F.3d 627. It is incontrovertible that Cranston Police Officers arrived at the Caniglia residence as a result of a "wellness check" – a call to assist a suicidal individual – and *not* to investigate any type of crime. A police officer's response to an attempted suicide call is certainly part of that officer's community caretaking function. It is abundantly clear that the function that Cranston Police Officers performed at the Caniglia residence was within the heartland of the community caretaking function and did not involve any type of criminal investigation. Id. Thus, the ultimate inquiry for the court is to determine whether, under the circumstances, NSP "acted within the realm of reason." Lockhart-Bembery, 498 F.3d at 75 (internal quotation marks omitted). In community caretaking circumstances

reasonableness can take on many forms and is flexible; thus what may be "reasonable in one type of situation may not be reasonable in another." Rodriguez-Morales, 929 F.2d at 785 (internal quotation marks omitted). Courts must evaluate the totality of the circumstances. Id.

Defendants seized the guns to "prevent potential hazards from materializing." Rodriguez-Morales, 929 F.2d at 784. Defendants were presented with a situation where (1) Plaintiff and his wife had engaged in an argument, (2) Plaintiff had taken out a gun and implored his wife to shoot him, (3) Plaintiff's wife left the residence and stayed at a motel overnight, (4) Plaintiff's wife contacted police and expressed her concern that Plaintiff would harm himself or commit suicide, (5) Plaintiff had ready access to a firearm and ammunition; and (5) Plaintiff was upset that his wife had contacted police. Defendants could not have known whether Plaintiff would use the guns to harm himself, Mrs. Caniglia, or another individual. See generally Sutterfield, 751 F.3d at 570. Mastrati was convinced that a "normal" person would not take a gun out and implore a spouse to end their life. SUF at 36. Mastrati believed Plaintiff was a danger to himself. Id. at 37. Sgt. Barth believed Plaintiff made a suicidal statement. Id. at 38. Captain Henry determined that if they had left the guns at the residence with Plaintiff, Plaintiff could be in danger, Mrs. Caniglia could be in danger and anybody else that came into contact with Plaintiff could be in danger. SUF at 41. "Police officers providing assistance at the scene of a threatened suicide must concern themselves with more than simply the safety of the suicidal person. Protection of the physical safety of the police officers and other third parties is paramount." Ovieda, 228 Cal. Rptr. 3d at 71; see also United States v. Johnson, No. 4:18CR00151 ERW, 2018 U.S. Dist. LEXIS 190983 (E.D. Mo Nov. 8, 2018) (seizure of gun lawful under community caretaking function). This matter is akin to Sutterfield. In Sutterfield and this matter both individuals made suicidal statements to other individuals. Sutterfield, 751

F.3d at 545; SUF at 3, 18, 20, 21,27, 28, 29, 30. In this matter, unlike Sutterfield, Plaintiff actually brandished a weapon. Sutterfield determined that the community caretaking function was the "best fit" for the case – as it is in this matter. Sutterfield, 751 F.3d at 551. Under these *particular* circumstances, it is reasonable to *temporarily* remove the firearms from the house for safekeeping purposes pursuant to the "flexible" community caretaking function. See generally Lockhart-Bembery, 498 F.3d at 75; Rodriguez-Morales, 929 F.3d 780; Sutterfield, 751 F.3d 542.

> There may have been alternatives, but removing and securing the firearm was an obvious and reasonable measure. One need only imagine the public outcry that would have taken place had the police left the gun where it was and had [Plaintiff] . . . then used the gun to take [his] own life, or [that of another], to see the wisdom in what police did.

Sutterfield, 751 F.3d at 570 (emphasis added); see also Mora, 519 F.3d at 227 ("[t]here are no shortage of precedents approving preventive seizures for the sake of public safety"). The seizure of Plaintiff's firearms was pursuant to the CPD's community caretaking function and consistent with the Fourth Amendment.

2. The Individual Defendants Are Entitled to Qualified Immunity

It is also submitted that the individual Defendants are entitled to qualified immunity. "[G]overnment officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The purpose behind granting officials such immunity is to allow them to perform their duties and act in areas where clearly established rights are not implicated "with independence and without fear of consequence." Id. at 819.

The First Circuit applies a two part test to analyze the application of qualified immunity. Gonzalez v. Otero, 172 F. Supp. 3d 477 (D.P.R. 2016). In order to determine whether an individual police officer is entitled to qualified immunity the court must decide "(1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right; and (2) if so, whether the right was clearly established at the time of the defendant's alleged violation." Id. at 507 (internal citation marks omitted). A court is well within its authority "alter the choreography in the interests of efficiency beginning --- and perhaps ending --- with the second prong." Conlogue v. Hamilton, 906 F.3d 150, 155 (1st Cir. 2018) (internal quotation marks omitted).

The Court applies a good faith test that allows questions of qualified immunity to be decided as a matter of law in appropriate cases. Malachowski v. City of Keene, 787 F.2d 704, 714 (1st Cir. 1986). This test requires viewing the official's actions from an objectively reasonable standpoint. Id. The decisive question becomes whether another police officer, standing in the shoes of these Defendants, would have concluded that their actions violated a clearly established statutory or constitutional right. Ricci v. Urso, 974 F.2d 5, 7 (1st Cir. 1992). A "reasonable, although mistaken, conclusion about the lawfulness of one's conduct does not subject a government official to personal liability." Cookish v. Powell, 945 F.2d 441, 443 (1st Cir. 1991).

The First Circuit has observed that the "qualified immunity standard gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." Rivera v. Murphy, 979 F.2d 259, 263 (1st Cir. 1992) (internal quotation marks and citation omitted). When addressing claims for qualified immunity on summary judgment, the Court must grant summary judgment if the plaintiff fails to generate a trialworthy issue by

undermining the evidence supporting the defendant's objectively reasonable belief that his actions were lawful. Dean v. Worcester, 924 F.2d 364, 367 (1st Cir. 1991).

Whether a right is clearly established is a question of law for the court. Stamps v. Town of Framingham, 813 F.3d 27 (1st Cir. 2016). This analysis requires that the court first consider whether the contours of the right were sufficiently clear so that "a reasonable official would understand what he [did] violate[d] that right." Otero, 172 F. Supp. 3d at 507 (internal quotation marks omitted). Second, the court must also analyze whether a reasonable defendant would "have understood that his conduct violated the plaintiffs' constitutional rights in the situation with which the defendant was confronted." Id. (internal quotation marks omitted). "[T]he salient question is whether the state of the law at the time of the alleged violation gave the defendant fair warning that his particular conduct was unconstitutional." Id. (internal quotation marks omitted). Courts concentrate on "whether the violative nature of particular conduct is clearly established." Stamps, 813 F.3d at 39 (emphasis in original). The inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." Petrello v. City of Manchester, No. 16-cv-008-LM, 2017 U.S. Dist. LEXIS 40379, at *8 (D.N.H. March 21, 2017) (internal quotation marks omitted).

The second prong of the qualified immunity analysis in this matter revolves around whether Defendants' seizing firearms from a suspected suicidal individual violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow, 457 U.S. 800. The "relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable [official] that his conduct was unlawful in the situation he confronted." Rocket Learning, Inc. v. Rivera-Sánchez, 715 F.3d 1, 9 (1st Cir. 2013) (internal quotation marks and citation omitted) (emphasis in original and added).

The United States Supreme Court has instructed lower courts that an analysis on whether or not a right is "clearly established" must be *very narrow*.

> We have repeatedly told courts . . . not to define clearly established law at a high level of generality. The dispositive question is whether the violative nature of particular conduct is clearly established. This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition. Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts.

Mullenix v. Luna, ____ U.S. ____, ___136 S. Ct. 305, 308 (2015) (internal citations and quotations omitted) (emphasis in original and added). "In other words, existing precedent must have placed the . . . constitutional question beyond debate." Perry v. Spencer, No. 12-120702016 (MPK), 2016 U.S. Dist. LEXIS 136991, *51 (D. Mass. Sept. 30, 2016) (internal quotation marks omitted) (emphasis added). Plaintiff bears the "heavy" burden of showing that the law was clearly established at the time of the alleged violation. Petrello, 2017 U.S. Dist. LEXIS 40379, at *8. To meet his burden, Plaintiff must

> [i]dentify controlling authority or a robust consensus of persuasive authority such that any reasonable official in the defendant's position would have known that the challenged conduct is illegal in the particular circumstances that he or she faced -- then existing precedent, in other words, must have placed the statutory or constitutional question beyond debate.

Id. (internal quotation marks omitted) (emphasis added).

As noted above, Defendants were presented with a situation where (1) Plaintiff and his wife had engaged in an argument, (2) Plaintiff had taken out a gun and implored his wife to shoot him, (3) Plaintiff's wife left the residence and stayed at a motel overnight, (4) Plaintiff's wife contacted police and expressed her concern that Plaintiff would harm himself or commit suicide, (5) Plaintiff had ready access to a firearm and ammunition; and (5) Plaintiff was upset that his wife had contacted police. Convincing authority compels the conclusion that the

individual Defendants are entitled to qualified immunity. "[W]here the purpose [of defendant emergency responders] is to render solicited aid in an emergency rather than to enforce the law, punish, deter, or incarcerate there is no clearly established constitutional liability under the Fourth Amendment." Estate of Barnwell v. Grisby, 681 F. App'x 435, 440 (6th Cir. 2017) (internal quotation marks omitted); see also Sutterfield, 751 F.3d at 551 (noting the "lack of clarity" in Fourth Amendment case law as to the appropriate legal framework that should be applied to warrantless intrusions motivated by purposes other than law enforcement evidence-gathering). Both Sutherland and Arden held that individual officers were entitled to qualified immunity when seizing firearms from suicidal individuals during a police welfare check. Sutherland, 751 F.3d at 572-79; Arden, 622 F. App'x at 710-11. A "reasonable police officer might have thought, upon discovery of [a] gun [in a residence during a welfare check] that he was authorized by his community caretaking function to seize the gun for safekeeping." Sutherland, 751 F.3d at 578; see also Arden, 622 F. App'x at 710-11 (finding no authority clearly establishing that firearms may not be constitutionally removed from the house of a suicidal homeowner). The individual Defendants are entitled to qualified immunity.

3. The Individual Defendants Are Also Entitled to Qualified Immunity on State Law Claims

Plaintiff's conversion and RIFA claims are grounded in Defendants' seizure of his firearms. As a result, the individual Defendants are also entitled to qualified immunity with respect to these state law claims similar to the qualified immunity under § 1983. See Hatch v. Town of Middletown, 311 F.3d 83, 89-90 (1st Cir. 2002) (citing Pontbriand v. Sundlun, 699 A.2d 856, 867 (R.I. 1997) and Ensey v. Culhane, 727 A.2d 687, 690 (R.I. 1999)). "Pontbriand and Ensey reflect Rhode Island's recognition of a qualified immunity defense under state law analogous to the federal doctrine established by the United States Supreme Court in Harlow, 457

U.S. at 818, cited with approval in both Rhode Island decisions, and routinely applied in § 1983 cases." Hatch, 311 F.3d at 90. Furthermore, because the individual Defendants are immune from suit, so too is the City. See Morales v. Town of Johnston, 895 A.2d 721, 728-29 (R.I. 2006) (where high school soccer coaches have statutory immunity from suit, school district cannot be held liable based upon same conduct); see also DiQuinzio v. Panciera Lease Co., 612 A.2d 40, 43 (R.I. 1992) (because the operator of the vehicle was immune from suit pursuant to the exclusivity provision of the Workers' Compensation Act, R.I Gen. Laws § 28-29-20, there could be no cause of action against the vehicle's owner); Gray v. Derderian, 400 F. Supp. 2d 415, 424 (D.R.I. 2005) (no "liability can be charged to the [municipality], based on the doctrine of respondeat superior, if the [municipality's] agent or employee is immune from prosecution"); Calhoun v. City of Providence, 120 R.I. 619, 630, 390 A.2d 350, 356 (1978) ("if the agent is not liable for his conduct, the principal cannot be responsible").

D. Equal Protection – Count V

In count V of the Complaint, Plaintiff alleges that Defendants have violated his right to equal protection of the laws by maintaining and enforcing a set of customs, practices and policies depriving Plaintiff of his lawfully obtained weapons.[8] ECF No. 20 at ¶ 82. Plaintiff alleges that by maintaining a custom, policy or practice of requiring lawful weapon owners, but not other property owners, to engage in formal litigation to recover their seized property, Defendants have denied Plaintiff the equal protection of the laws. Id. at ¶ 60.

"The Equal Protection Clause prohibits selective enforcement based upon an unjustifiable standard such as race, religion, or other arbitrary classification." B & B Coastal Enters. v.

[8] Plaintiff brings his equal protection claim pursuant to the Fourteenth Amendment and Article 1 Section 2 of the Rhode Island Constitution. Rhode Island courts have found that the Rhode Island Constitution's equal protection standards are coterminous with its federal counterpart. Rhode Island Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 100 (R.I. 1995).

Demers, 276 F. Supp. 2d 155, 171 (D. Me. 2003) (citation omitted). Plaintiff alleges a disparate treatment Equal Protection claim. ECF No. 20 at ¶ 56. To set forth a disparate treatment claim, Plaintiff must show that he was subjected to differential treatment, as compared with similarly situated persons, on the basis of a protected class. See Williams v. Pennridge Sch. Dist., Civ. A. No. 15-4163, 2016 U.S. Dist. LEXIS 150216, at *34-35 (E.D. Pa. Oct. 31, 2016). The essence of the claim is that state actors intentionally discriminated against a plaintiff because of his membership in a protected class. See Freeman v. Town of Hudson, 714 F.3d 29, 38 (1st Cir. 2013). Thus, the plaintiff "must identify his [or her] putative comparators to make out a threshold case of disparate treatment." Harrington v. City of Attleboro, 172 F. Supp. 3d 337, 346 (D. Mass. 2016).

If no suspect class or fundamental right is at issue (*i.e.*, a "class of one" claim), a plaintiff must nonetheless identify peer comparators, and allege facts to establish that he was "intentionally treated differently from others who were similarly situated without a rational basis and the difference was 'due to malicious or bad faith intent on the part of the defendants to injure. . . .'" Pollard v. Georgetown Sch. Dist., 132 F. Supp. 3d 208, 223 (D. Mass. 2015) (quoting Priolo v. Town of Kingston, 839 F. Supp. 2d 454, 460 (D. Mass. 2012) (further citation omitted)). In a "class of one" claim, "proof of a similarly situated, but differently treated, comparator is essential." See Snyder v. Gaudet, 756 F.3d 30, 34 (1st Cir. 2014) (citation omitted).

Plaintiff has not alleged that he is a member of a protected class. As a result, it appears that Plaintiff alleges a "class of one" equal protection claim. Plaintiff must show an extremely high degree of similarity between himself and those to whom he seeks comparison. Freeman, 714 F.3d at 38. Plaintiff must show that he "engaged in the same activity . . . without such

distinguishing or mitigating circumstances as would render the comparison inutile." Cordi-Allen v. Conlon, 494 F.3d 245, 251 (1st Cir. 2007). Plaintiff alleges that he is similarly situated to "other property owners" not required to engage in formal litigation to recover their seized property. See ECF No. 20 at ¶ 60. "The law of equal protection requires more than superficial similarity . . . ." Perfect Puppy Inc. v. City of East Providence, 98 F. Supp. 3d 408, 419 (D.R.I. 2015), aff'd, 807 F.3d 415 (1st Cir. 2015).

Plaintiff's generalized comparison to "other property owners" does not meet the similarly situated standard. Freeman, 714 F.3d 29. Plaintiff has not identified an appropriate comparator; as a result, his equal protection claim fails. In addition, Plaintiff has not alleged a malicious or bad faith intent to injure. Pollard, 132 F. Supp. 3d at 223. The malicious/bad faith standard is an "exceptionally deferential one" that is "very high" and must be "scrupulously met." Walsh v. Town of Lakeville, 431 F. Supp. 2d 134, 145 (D. Mass. 2006). The record is absent any fact or facts that would support a claim that Defendants engaged in an "orchestrated and spiteful effort to 'get'" Plaintiff. Id. at 146. Plaintiff's Equal Protection Claim fails as a matter of law.

E. Rhode Island Mental Health Law – Count VI

In Count VI of the Complaint, Plaintiff alleges that Defendants violated the Rhode Island Mental Health Law, R.I. Gen. Laws § 40.1-5-1 et seq. Plaintiff alleges that Defendants did not obtain certification from a physician that Plaintiff was in need of immediate care and treatment or make an application for emergency certification of Plaintiff to a mental health facility. See ECF No. 20 at ¶ 85; R.I. Gen. Laws §§ 40.1-5-7 and 40.1-5-8. Instead, Plaintiff alleges that Defendants "insisted" that Plaintiff go to "Kent Hospital . . . for an evaluation." ECF No. 20 at ¶ 87. As a result, Plaintiff contends that by "insisting" Plaintiff be medically evaluated, certain unidentified Defendants conspired unlawfully *to attempt* to cause Plaintiff to be *admitted* or

certified to a medical facility. See ECF No. 20 at ¶ 88. Plaintiff concludes that, as result of this conspiracy to attempt to cause Plaintiff to be admitted or certified to a medical facility, Defendants have violated the Rhode Island Mental Health Law and thus committed a crime. ECF No. 20 at ¶ 89. Plaintiff, apparently recognizing that the Rhode Island Mental Health Law does not provide him with a private right of action, argues that R.I. Gen. Laws § 9-1-2 provides him with a private right of action. ECF No. 20 at ¶ 90.

Assuming for the sake of argument that a NSPD officer insisted that Plaintiff be transported to the hospital to be *evaluated* – transporting Plaintiff to the hospital was more than reasonable under the circumstances. Plaintiff had presented a firearm to his wife and implored her to shoot him and Mrs. Caniglia was concerned that Plaintiff would harm himself or attempt suicide. Mrs. Caniglia had good reason to question Plaintiff's health status.

Notwithstanding the reasonableness of Plaintiff's transport, Plaintiff's claim is based upon a faulty legal foundation. As noted above, Plaintiff brings his claim via R.I. Gen Laws § 9-1-2. R.I. General Laws § 9-1-2 provides that when a person suffers "any injury to his person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender." R.I. Gen. Laws § 9-1-2 (emphasis added).[9] Plaintiff relies upon R.I. Gen Laws § 40.1-5-38 for the premise that certain unnamed Defendants committed a crime. Plaintiff claims that certain unnamed Defendants conspired to attempt to admit or certify him to a medical facility. ECF No. 20 at ¶¶ 88-89. R.I. Gen. Laws § 40.1-5-38 provides that any

> person who knowingly and willfully conspires with any other person unlawfully to improperly cause to be admitted or certified to any facility, any person not covered by the provisions of this chapter, shall on conviction thereof, be fined not

[9] Defendants incorporate by reference their argument from section V A 2 & 3 above, and aver again that the City cannot commit a crime or be an offender under § 9-1-2, thus summary judgment must be granted on this claim in so far as Plaintiff brings it against the City. Moreover, § 40.1-5-38 does not apply to the City as it is not a "person."

> exceeding five thousand dollars ($5,000) or imprisoned not exceeding five (5) years at the discretion of the court.

R.I. Gen. Laws § 40.1-5-38 (emphasis added). When construing a statute, the court must be guided by the plain and ordinary meaning of unambiguous language. Walden v. City of Providence, 596 F.3d 68 (1st Cir. 2010). The statutory scheme prohibits "persons" from unlawfully conspiring to improperly "cause [an individual] to be admitted or certified" to a facility. It is undisputed that (1) Defendants did not make an application for a medical certification; (2) Defendants did not request that Plaintiff be admitted into a facility; and (3) Plaintiff was not admitted into a facility. Thus, Defendants did not violate the statute.

Furthermore, Rhode Island does not have an "over-arching" criminal "attempt" statute. State v. Lopez, P1 2014-0822 AG, 2105 R.I. Super LEXIS 119, at *10 n.6 (R.I. Super. Ct. Sept. 15, 2015). Unless the statutory scheme provides that an "attempt" is a crime – an attempt to commit the purported crime is not a cognizable offense. See id. When the General Assembly has intended to criminalize attempts – it has "said so explicitly." Id. Since, the Rhode Island General Assembly has not specifically provided that a purported *attempt* to cause an individual to be admitted into a mental health facility is crime, Plaintiff's theory of recovery fails at the starting gate.

Last, at the time of the incident, Rhode Island Gen. Laws § 40.1-5-7 provided that

> [a]ny physician, who after examining a person, has reason to believe that the person is in need of immediate care and treatment, and is one whose continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental disability, may apply at a facility for the emergency certification of the person thereto.
>
> . . . .
>
> In the event that no physician is available, a . . . police officer who believes the person to be in need of immediate care and treatment, and one whose continued unsupervised presence in the community would create an imminent likelihood of

> serious harm by reason of mental disability, may make the application for emergency certification to a facility.

R.I. Gen. Laws § 40.1-5-7(a)(1) (emphasis added) (2008). When construing a statute, the court must be guided by the plain and ordinary meaning of unambiguous language. Walden, 596 F.3d 68. Plaintiff employs the term "insisted" as a means to find applicability of the Mental Health statutory scheme. No Defendant made an application for emergency certification or admission to a medical facility. Furthermore, in this instance, a physician was not available on scene. After being transported to a physician who could evaluate Plaintiff, that physician examined Plaintiff and determined that Plaintiff was not a person in need of immediate care and treatment and determined that admission was not appropriate under the circumstances. Even assuming that Defendants somehow "insisted" that Plaintiff be transported to the hospital for an evaluation, that "insistence" is not a violation of the statutory scheme.

It is respectfully submitted that the Court grant Defendants' motion for summary judgment on Count VI of Plaintiff's complaint.

F. Conversion – Count VII

In Count VII of the Complaint Plaintiff alleges that Defendants converted his weapons. The "gravamen of an action for conversion lies in the defendant's taking the plaintiff's personalty without consent and exercising dominion and control over it inconsistent with the plaintiff's right to possession." Montecalvo v. Mandarelli, 682 A.2d 918, 928 (R.I. 1996) (internal quotation marks omitted). The focus of a court's examination in a conversion claim is "whether [a] defendant has appropriated to his own use the chattel of another without the latter's permission and without legal right." Terrien v. Joseph, 73 R.I. 112, 115, 53 A.2d 923, 925 (1947) (emphasis added).

1. Defendants Had A Legal Right to Plaintiff's Guns

Defendants had a "legal right" to Plaintiff's guns; they seized them pursuant to the community caretaking function. See Section V C above and Terrien, 73 R.I. at 115, 53 A.2d at 925 (conversion is based on the premise that s defendant did not have a legal right to property). The record reflect does not reflect that Plaintiff made a request to return his property to any of the named individual Defendants except Colonel Michael Winquist. Because Plaintiff made no demand to the remaining Defendants, Plaintiff's conversion claim against these Defendants fails. See generally Terrien, 53 A.2d at 925 (demand by owner required before an action in conversion can be brought against an individual who obtained property rightfully).

2. No Individual Defendant Seized Plaintiff's Guns For His Own Use

In addition, the Court's focus on a conversion claim is whether a defendant has "appropriated [another individual's property] to his own use. . . ." Terrien, 73 R.I. at 115, 53 A.2d at 925 (emphasis added). No individual Defendant used Plaintiff's weapons for their own personal use. Thus, the claim against the individual Defendants fail. See id.; see also Holzemer v. City of Memphis, No. 06-2436, 2008 U.S. Dist. LEXIS 123878, *79 (W.D. Tenn. Dec. 31, 2008) (a "claim for conversion will not stand against a government employee where the alleged conversion was not done for the employee's benefit").[10]

3. The Claim Against The Defendants Fails Because the Individual Defendants Are Entitled to State Law Immunity

Last, as noted above, because the individual Defendants are entitled to state law immunity on this claim, the claim fails as to all Defendants. See Section V C 2 & 3 above.

[10] Furthermore, because Plaintiff's "allegations concern the behavior of police officers while performing a police function, [his] tort claim is barred by Rhode Island's public duty doctrine." Haptonstahal v. Pawtucket Police Department, C.A. No. 18-184 WES, 2018 U.S. Dist. LEXIS 186997, at *6 (D.R.I. Nov. 1, 2018).

It is respectfully submitted that the court grant Defendants' motion for summary judgment on Count VII of the Complaint.

G. Plaintiff's Request for Equitable Relief Is Wholly Speculative

Plaintiff also requests declaratory and injunctive relief. Plaintiff's request for declaratory and injunctive relief is "moot, because his weapons have been returned." Richer, 189 F. Supp. 3d at 344 n. 15. Plaintiff "does not have standing to sue for [equitable relief] [a]bsent a sufficient likelihood that he will again be wronged in a similar way . . . ." Richer, 189 F. Supp. 3d at 344 n. 15 (citing City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983)).

Standing is a "threshold question" in every federal case and requires the court to consider "whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." American Postal Workers Union v. Frank, 968 F.2d 1373, 1374 (1st Cir. 1992) (internal quotation marks omitted) (emphasis in original). In order to meet the standing requirement, Plaintiff must show, inter alia, a "real and immediate" injury. Id. at 1375. Past exposure to harm will not confer equitable relief standing "absent a sufficient likelihood that [Plaintiff] will again be wronged in a similar way." Id. at 1376 (internal quotation marks and citation omitted). Plaintiff must show that *he* is "realistically threatened by a repetition of his experience" of September 28, 2008. Id. (internal quotation marks omitted). In order to meet the standing requirement, it is submitted that Plaintiff must show that *he* will again make a threat to harm himself and that a Cranston Police Officer will *seize and retain* his weapons. See generally id.

Plaintiff's claim for equitable relief fails at the outset. Plaintiff admits how "wonderful and great" life is and concedes that he does not have any potential thoughts of suicide in the

future. SUF at 49. As a result, Plaintiff cannot show that he is "realistically threatened by a repetition" of the August 21, 2015 experience. American Postal Workers, 968 F.2d at 1376. Thus, Plaintiff's claim for equitable relief fails as a matter of law.

Furthermore, the First Circuit rejected the argument that equitable relief would be appropriate if a plaintiff was faced with a practice that was a "routine, daily procedure implemented as a matter of policy . . . ." Id. at 1377. "Nothing in the relevant caselaw suggests that guaranteed repetition of the injury to someone lessens the need for a particularized dispute between the plaintiff and defendant." Id. at 1377 (emphasis in original and added). "Abstract injury is not enough. The plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." Stewart v. McGinnis, 5 F.3d 1031, 1037 (7th Cir. 1993) (internal quotation marks omitted) (emphasis added).

In Altman v. Kelly, 28 F. Supp. 2d 50 (D. Mass. 1998), the plaintiff was arrested for disorderly conduct in connection with his participation at a political rally. Id. The plaintiff alleged that two district attorneys failed to dismiss the disorderly conduct charge against him in order to retaliate against the plaintiff for exercising his constitutional rights. Id. at 52. The plaintiff sought declaratory relief declaring certain state statutes and the conduct of the defendants to be unconstitutional and an injunction against any attempt to enforce the purported unconstitutional laws. Id. The court dismissed the plaintiff's complaint with respect to the claim for equitable relief because the plaintiff did not have the proper standing to assert the requested relief. Id. at 54. "[P]ast injury suffered by a litigant, while sufficient to give that litigant

standing to bring an action for damages, is an insufficient predicate for equitable relief." Id. at 54 (emphasis in original and emphasis added).

In Altman, the plaintiff argued that the district attorney maintained policies and/or customs that were unconstitutional and, as a result, a threat of future violations existed. Id. Notwithstanding the plaintiff's custom/policy argument, the Altman court held that the plaintiff had not met the standing requirement. Id. The court held that the plaintiff had "not credibly alleged that he will sometime in the future exercise his rights to free speech at a political rally in such a manner that he will again be arrested for disorderly conduct and that the District Attorney will again attempt to wrongfully prosecute him for such conduct." Id. (emphasis in original).

In Taylor v. Humphries, 402 F. Supp. 2d 840 (W.D. Mich. 2005), aff'd , 502 F.3d 452 (6th Cir. 2007), the plaintiff requested injunctive relief based on his allegation that a state Department of Natural Resources maintained a custom or practice that was unconstitutional. Id. at 851. The court determined that, at best, the plaintiff had shown that he was subject to a single instance of allegedly unconstitutional activity and that he *could* be subject to a future injury. Id. The court concluded, however, that the plaintiff had not shown anything more than a speculative threat of repeated injury. Id. "[W]ithout any evidence of a threat of repeated injury, [the plaintiff] is no more entitled to an injunction than any other homeowner in the State . . . who asserts nothing more than a certain law enforcement practice is unconstitutional." Id.

It is submitted that the basis of Plaintiff's claim for equitable relief is unequivocally speculative. Because Plaintiff lacks the proper standing to bring a claim for equitable relief in his matter, the Court must grant Defendants' motion for summary judgment on Plaintiff's equitable relief claim.

VI. Conclusion

Based on the arguments as outlined above, it is respectfully submitted that the Court grant Defendants' motion for summary judgment on counts I, II, III, V, VI, and VII of the complaint.

Defendants,
By their attorneys,

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CERTIFICATION OF SERVICE

I hereby certify that the within document has been electronically filed with the Court on this 17th day of December 2018 and is available for viewing and downloading from the ECF system.

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