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**IN THE COURT OF COMMON PLEAS
OF PERRY COUNTY, PENNSYLVANIA**

Barbara Hench, et al.,	:	
	:	
Plaintiffs	:	Civil Action – Declaratory Judgment
	:	
v.	:	
	:	
	:	Docket No. 2014-454
Perry County Sheriff Carl Nace	:	
Defendant	:	

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S
PRELIMINARY OBJECTIONS TO PLAINTIFFS’ COMPLAINT**

Defendant Sheriff Carl Nace, by and through his attorney, Joshua Prince, Esq., submits this Memorandum of Law in support of his Preliminary Objections to the Plaintiffs’ Complaint. Although the Perry County Local Rules do not require the person filing preliminary objections to file a memorandum of law in support, Defendant Sheriff desires to assist the Court in disposing of this matter.

I. PROCEDURAL HISTORY

The Perry County Auditors, Barbara Hench, Donna Jones and Kimberly McMullen, (hereinafter “Plaintiffs,”), brought an action for declaratory relief against Perry County Sheriff Carl Nace by filing a Complaint with the Perry County Prothonotary on June 11, 2014. Service was not perfected until June 26, 2014. On July 14, 2014, Sheriff Nace timely filed Preliminary Objections, to which the Court issued an

Order on July 21, 2014, directing that the Auditors file a brief concerning the issues raised in the Preliminary Objections on or before August 21, 2014, and scheduling a hearing for August 28, 2014. The Plaintiffs timely filed a Response to the Preliminary Objections on July 31, 2014 and thereafter filed their brief, as required by the Order, on August 19, 2014.

On August 7, 2014, the Pennsylvania Sheriffs' Association filed a Petition for Leave to Participate *Amicus Curiae*, along with a Brief in support of Sheriff Carl Nace. The Petition was joined by forty-one (41) Pennsylvania legislators and interested organizations. On August 11, 2014, an Amended Petition for Leave to Participate *Amicus Curiae* was filed by the Pennsylvania Sheriffs' Association. The purpose for the Amended Petition was to include twelve (12) additional Pennsylvania legislators, who wished to join in the *Amicus Curiae* Petition and Brief.

By Order of August 12, 2014, the hearing was rescheduled to September 2, 2014.

II. STATEMENT OF FACTS

Contrary to averments P. 18 and 19 in the Complaint and Plaintiffs' other filings, Defendant Sheriff Nace in his twelve years of being Sheriff of Perry County has never provided the Perry County Auditors with unredacted records containing License to Carry Firearms (hereinafter, "LTCF") applicant information.

In April of 2014, the Plaintiffs requested Defendant Sheriff Nace's LTCF applicant financial records. Defendant Sheriff Nace prepared the financial records by redacting the names and other confidential LTCF applicant information, per 18 Pa.C.S. § 6111(g)(3.1) and 6111(i), and offered them to the Plaintiffs. The Plaintiffs refused to

accept the redacted records and chose to initiate an action for declaratory relief against Sheriff Nace.

Plaintiffs claim, without any legal authority or explanation as to how the redacted information hampers or otherwise restricts their ability to audit the financial records, that they are entitled to unredacted LTCF applicant information, in violation of 18 Pa.C.S. §§ 6109(l)(2), 6111(g)(3.1), 6111(i) and 37 Pa.Code 33.103.

III. STATUTORY AND REGULATORY LAW

In general, 18 Pa.C.S. § 6109 deals with the issuance of LTCFs.¹

18 Pa.C.S. § 6109(l)(2) provides:

Notwithstanding any other law regarding the confidentiality of information, inquiries to the Firearms License Validation System regarding the validity of any Pennsylvania license to carry a firearm may only be made by law enforcement personnel acting within the scope of their official duties.² (Emphasis added).

18 Pa.C.S. § 6111(g)(3.1) provides:

Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally obtains or furnishes information collected or maintained pursuant to section 6109 for any purpose other than compliance with this chapter or who knowingly or intentionally disseminates, publishes or otherwise makes available such information to any person other than the subject of the information commits a felony of the third degree. (Emphasis added).

18 Pa.C.S. § 6111(i) provides:

¹ As Section 6109 is somewhat lengthy, it is not included at length; however, it is important to recognize that Section 6109 deals with the issuance of licenses to carry firearms and the information collected pursuant thereto, as Section 6111 specifically refers to “section 6109.” *See, e.g.*, 18 Pa.C.S. §§ 6111(g)(3.1), 6111(i).

² “Law Enforcement Officer” is defined as “Any person employed by any police department or organization of the Commonwealth or political subdivision thereof who is empowered to effect an arrest with or without warrant and who is authorized to carry a firearm in the performance of that person's duties.”

Confidentiality. All information provided by the ... applicant, including, but not limited to, the ... applicant's name or identity, furnished by ... any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees. (Emphasis added).

37 Pa.Code. 33.103 provides, in pertinent part:³

(a) Information furnished under this chapter by an applicant ... or collected by the designated issuing authority⁴ under this chapter, is confidential and not subject to public disclosure.

...

(d) No disclosure of information forwarded, collected or maintained under this chapter will be made to requests of noncriminal justice agencies,⁵

³ The General Assembly has bestowed the power upon the Pennsylvania State Police to regulate PA's Uniform Firearms Act, hereinafter "UFA."

"The Pennsylvania State Police shall in the manner provided by law promulgate the rules and regulations necessary to carry out this chapter, including regulations to ensure the identity, confidentiality and security of all records and data provided pursuant hereto." 18 Pa.C.S. § 6111.5. Further, 18 Pa.C.S. § 6124 provides that the Commissioner of the PSP "may establish form specifications and regulations, consistent with section 6109(c) (relating to licenses)..."

⁴ Pursuant to 37 Pa.Code. 33.114(a) and 33.115(a), "issuing authority" is defined as "county sheriff or a chief of police for a city of the first class," which is consistent to the General Assembly's dictate in 18 Pa.C.S. §§ 6109(b), (c), (e), (f), and (i). In this matter, it appears to be undisputed that the issuing authority is the Perry County Sheriff and the only city of the first class that currently exists in Pennsylvania is Philadelphia. Pennsylvania Department of General Services, *The Pennsylvania Manual*, Vol. 121 at 6-5, (2013), available at, http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_8486_1294_24473_9_43/http%3B/pubcontent.state.pa.us/publishedcontent/publish/cop_general_government_operations/dgs/community_content/publications_and_media_services/subcommunities/publications/portlets/pa_manual_home/vol_121_entire_manual.pdf.

⁵ "Criminal justice agencies" are defined as "as any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its

or individuals other than the applicant, licensee, purchaser or transferee as described in sections 6109 and 6111 of the act. (Emphasis added).

IV. STATEMENT OF THE QUESTIONS INVOLVED

1. **Whether the Court must sustain Sheriff Nace’s preliminary objection pursuant to Pa.R.C.P. 1028(a)(2) – scandalous matter – where the Auditors seek to require Sheriff Nace to provide confidential LTCF information, which would result in both Sheriff Nace and the Auditors committing a felony of the third degree and where the Auditors falsely state that Sheriff Nace has previously provided confidential LTCF information?**

Suggested Answer in the **Affirmative**.

2. **Whether the Court must sustain Sheriff Nace’s preliminary objection pursuant to Pa.R.C.P. 1028(a)(3) – insufficient specificity in pleading – where the Auditors have: (1) failed to aver that they are “law enforcement officers” and a finding that the Auditors are law enforcement officers is not supported by the law; (2) failed to cite to any statute, regulation or case to support their proposition that they are entitled to confidential LTCF applicant information, especially under Pennsylvania’s Uniform Firearms Act; and (3) failed to aver how the redacted LTCF applicant financial records offered by Defendant Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit?**

Suggested Answer in the **Affirmative**.

3. **Whether the Court must sustain Sheriff Nace’s preliminary objection pursuant to Pa.R.C.P. 1028(a)(4) – demurrer – where the Auditors have: (1) failed to aver that they are “law enforcement officers” and a finding that the Auditors are law enforcement officers is not supported by the law; (2) failed to cite to any statute, regulation or case to support their proposition that they are entitled to confidential LTCF applicant information, especially under Pennsylvania’s Uniform Firearms Act; and (3) have failed to establish any direct and immediate harm?**

principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to this function. Criminal justice agencies include: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards and agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions, or both.” 37 Pa.Code 33.103

Suggested Answer in the **Affirmative**.

4. **Whether the Court must sustain Sheriff Nace’s preliminary objection pursuant to Pa.R.C.P. 1028(a)(5) – lack of capacity to sue – where the Auditors do not have standing to pursue a claim under the Declaratory Judgment Act?**

Suggested Answer in the **Affirmative**.

5. **Whether the Court must sustain Sheriff Nace’s preliminary objection pursuant to Pa.R.C.P. 1028(a)(8) – full, complete and adequate non-statutory remedy at law – where the Auditors have failed to aver how the redacted LTCF applicant financial records offered by Defendant Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit, pursuant to 16 P.S. §§ 1721, 1724?**

Suggested Answer in the **Affirmative**.

V. ARGUMENT

1. **The Court must sustain Sheriff Nace’s preliminary objection pursuant to Pa.R.C.P. 1028(a)(2) – scandalous matter – because the Auditors seek to require Sheriff Nace to provide confidential LTCF information, which would result in both Sheriff Nace and the Auditors committing a felony of the third degree and because the Auditors falsely state that Sheriff Nace has previously provided confidential LTCF information.**

Pa.R.C.P. 1028(a)(2) provides “inclusion of scandalous or impertinent matter” as a basis for preliminary objections.

Generally, for an allegation to be scandalous or impertinent, it must be “immaterial and inappropriate to the proof of the cause of action.” *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 114 (Commw.1998) *aff’d*, 562 Pa. 632, 757 A.2d 367 (2000). However, for public officials to file a declaratory action against another public official, let alone the Chief Law Enforcement Officer, to seek Court approval of his and their felonious violation of the law is scandalous and must be stricken.

18 Pa.C.S. 6111(g)(3.1) provides in relevant part:

Any person ... who knowingly and intentionally obtains or furnishes information collected or maintained pursuant to section 6109⁶ for any purpose other than compliance with this chapter or who knowingly or intentionally disseminates, publishes or otherwise makes available such information to any person other than the subject of the information commits a felony of the third degree. (Emphasis added).

This portion of the Code explicitly provides that any person who purposely obtains confidential LTCF applicant information *for any purpose other than compliance with this chapter* commits a felony of the third degree. Further, any person who purposely discloses confidential LTCF applicant information *to any person other than the LTCF applicant* commits a felony of the third degree. In this matter, the Plaintiffs seek to have this Honorable Court direct the Sheriff to provide this confidential information in direct violation of Section 6111(g)(3.1), as they have failed to show that their request is in *compliance with this chapter* or that the *information is their own personal LTCF information*. Their entire reliance is on 16 P.S. §§ 1721, 1724, which is not found anywhere within Pennsylvania's Uniform Firearms Act, 18 Pa.C.S. §§ 6101 – 6187. Further, they fail to aver anywhere within the Complaint that the information they seek is solely restricted to their own personal LTCF applicant information.

a. General Principles of Statutory Construction

In reviewing the Statutory Construction Act, 1 Pa.C.S. § 1501, *et seq.*, it directs that the object of all interpretation and construction of statutes is to ascertain and effectuate the legislature's intent. 1 Pa.C.S. § 1921(a); Chanceford Aviation Properties,

⁶ This references 18 Pa.C.S. § 6109, which is the section that deals with the issuance and information collected in relation to LTCFs.

LLP v. Chanceford Twp. Bd. Of Supervisors, 923 A.2d 1099, 1104 (Pa. 2007).

Generally, the best indicator of legislative intent is the plain language of the statute.

Walker v. Eleby, 842 A.2d 389, 400 (Pa. 2004). In construing statutory language, “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage.” 1 Pa.C.S. § 1903(a). When the words of a statute are clear and unambiguous, there is no need to look beyond the plain meaning of the statute “under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b); Commonwealth v. Conklin, 897 A.2d 1168, 1175 (Pa. 2006). Only “[w]hen the words of the statute are not explicit” may a court resort to the rules of statutory construction including those provided in 1 Pa.C.S. § 1921(c) and Chanceford, 923 A.2d at 1104. The statute must “be construed, if possible, to give effect to all its provisions,” so that no provisions is reduced to mere surplusage. 1 Pa.C.S. § 1921(a); Walker, 842 A.2d at 400.

There can be no dispute that pursuant to Section 6111(g)(3.1), neither can the Auditors request or obtain this information, nor can the Sheriff provide this information, as the Auditors have failed to show that such disclosure would be in compliance with the Uniform Firearms Act or that they are solely seeking their own personal LTCF applicant information. To hold otherwise would be to ignore the legislative intent and the Statutory Construction Act. As the statutory language is clear and unambiguous, the plain meaning of the statute must prevail.⁷

⁷ If the Auditors are dissatisfied with the language in the statute, like any other constituent in Pennsylvania, they can petition their legislators to have the language amended or an additional exemption added.

Although the Auditors continually cite to Section 6111(i), discussed *infra*, for the proposition that they are not the public and therefore there is no violation of the law by Sheriff Nace providing the confidential LTCF applicant information,⁸ Section 6111(g)(3.1) does not provide for any exception, regardless of whether the disclosure or acquisition of confidential LTCF information is public or private. The acquisition or disclosure of any LTCF information for any reason other than the enumerated ones – one’s own LTCF information⁹ or by a law enforcement agency in relation to a legitimate law enforcement function¹⁰ – is absolutely criminal and felonious.

Assuming, *arguendo*, that the Court were to consider pursuing the spirit of the statute, it is clear that the General Assembly sought to make LTCF applicant information *only* available to law enforcement. 18 Pa.C.S. § 6109(l)(2) provides:

Notwithstanding any other law regarding the confidentiality of information,¹¹ inquiries to the Firearms License Validation System regarding the validity of any Pennsylvania license to carry a firearm may only be made by law enforcement personnel acting within the scope of their official duties.¹² (Emphasis added).

⁸ Sheriff Nace does not concede that this analysis is correct, as the Legislature specified in the statute that LTCF applicant information is both confidential and not subject to disclosure. These are two separate and distinct elements, having different meaning and affording different protections. 1 Pa.C.S. § 1921(a); *Walker*, 842 A.2d at 400 (requiring that a statute must “be construed, if possible, to give effect to all its provisions,” so that no provisions is reduced to mere surplusage.)

⁹ 18 Pa.C.S. § 6111(g)(3.1)

¹⁰ 18 Pa.C.S. § 6109(l)(2)

¹¹ It must be noted that the Legislature was keenly aware of how to draft exceptions for access to LTCF applicant information; yet, did not provide any such exception to auditors or under 16 P.S. § 1701, et seq.

¹² “Law Enforcement Officer” is defined as “Any person employed by any police department or organization of the Commonwealth or political subdivision thereof who is

After having made explicitly clear that the information can only be disclosed to law enforcement officers *within the scope of their official duties* and providing for felony charging of any person that obtains, furnishes, disseminates, publishes or otherwise makes available LTCF applicant information, the Legislature then additionally enacted a statutory civil damage provision for disclosure of LTCF applicant information. Section 6111(i) provides, in pertinent part:

Confidentiality. All information provided by the ... applicant, including, but not limited to, the ... applicant's name or identity, furnished by ... any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees. (Emphasis added).

The Pennsylvania State Police (hereinafter, “PSP”) have also enacted a regulation regarding the protection of LTCF applicant information. 37 Pa.Code. 33.103 in pertinent part¹³ provides:¹⁴

(a) Information furnished under this chapter by an applicant ... or collected by the designated issuing authority¹⁵ under this chapter, is confidential and not subject to public disclosure.

empowered to effect an arrest with or without warrant and who is authorized to carry a firearm in the performance of that person's duties.”

¹³ Subsections (b), (c), and (e) relate to regulations specific to the PSP, as reflected by the limiting language contained therein (*e.g.* “State Police”) and not applicable here. Subsections (a) and (d) both lack that restricting language, as those regulations apply to everyone, not merely the PSP.

¹⁴ *See supra* note 3 for discussion of the Pennsylvania State Police’s power to regulate the UFA.

¹⁵ *See supra* note 4 for the definition of “issuing authority.”

...

- (d) No disclosure of information forwarded, collected or maintained under this chapter will be made to requests of noncriminal justice agencies,¹⁶ or individuals other than the applicant, licensee, purchaser or transferee as described in sections 6109 and 6111 of the act. (Emphasis added).

As evidenced by the numerous statutory provisions enacted by the Legislature, the regulation enacted by the PSP, and the sheer number of bipartisan legislators that have joined in the *Amicus Curiae* brief of the Pennsylvania Sheriffs' Association, it cannot be said that that the spirit of Section 6111(g)(3.1) is anything but to preclude the dissemination of LTCF applicant information to everyone, except the applicant and law enforcement officers within the scope of their official duties. As the Auditors are neither the applicants nor law enforcement officer within the scope of their official duties, the LTCF applicant information cannot be disclosed to them. The Auditors cannot by *ipse dixit* establish their authority to view confidential information when the applicable law and regulations clearly preclude such access.

b. Statutory Construction – Particular Controls General

As the Auditors have seemingly implied in their Complaint and filings that 16 P.S. §§ 1721, 1724 somehow override 18 Pa.C.S. §§ 6109(1)(2), 6111(g)(3.1), and 6111(i), it is important to note that under the Statutory Construction Act, the particular controls the general. 1 Pa.C.S. § 1933 provides:

Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is

¹⁶ See *supra* note 5 for the definition of “criminal justice agency.”

irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision...

In this matter, although the Legislature provided County Auditors with a general power to audit County accounts, the Legislature was exactly clear that only law enforcement officers in the scope of their official duties may obtain LTCF applicant information. Sections 6109(1)(2), 6111(g)(3.1) and 6111(i) are special provisions that, per Section 1933, must be treated as exceptions to the general power to audit.

c. False Statements

The Auditors' averments in their Complaint that Sheriff Nace has provided confidential LTCF applicant information to them in years past is scandalous, as it is a blatant lie, which subjects Sheriff Nace and themselves to potential criminal prosecution, as well as subjecting the County to civil damages for such disclosures. Complaint, ¶¶ 18-19. As such, these averments must be struck.

For these reasons, the Court must sustain Sheriff Nace's preliminary objection pursuant to Pa.R.C.P. 1028(a)(2) – scandalous matter – and dismiss the action with prejudice because the Auditors seek to require Sheriff Nace to provide confidential LTCF information, which would result in both Sheriff Nace and the Auditors committing a felony of the third degree and where the Auditors falsely state that Sheriff Nace has previously provided confidential LTCF information.

- 2. The Court must sustain Sheriff Nace's preliminary objection pursuant to Pa.R.C.P. 1028(a)(3) – insufficient specificity in pleading – because the Auditors have: (1) failed to aver that they are "law enforcement officers" and a finding that the Auditors are law enforcement officers is not supported by the law; (2) failed to cite to any statute, regulation or case to support their proposition that they are entitled to confidential LTCF applicant**

information, especially under Pennsylvania’s Uniform Firearms Act; and (3) failed to aver how the redacted LTCF applicant financial records offered by Defendant Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit.

Pa.R.C.P. 1028(a)(3) provides “insufficient specificity in a pleading” as a basis for preliminary objections.

Pursuant to PA.R.C.P 1028(a)(3), a complaint must be “sufficiently clear to enable the defendant to prepare his defense,” or inform the “defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.” Rambo v. Greene, 2006 PA Super 231, 906 A.2d 1232, 1236 (Pa. Super. Ct. 2006). In this matter, the Complaint fails to aver that the Auditors are law enforcement officers entitling them to the exception provided for by Section 6109(l)(2) and fails to otherwise cite any statute, regulation or case supporting their entitlement to LTCF applicant information under the Uniform Firearms Act, per Section 6111(g)(3.1). Further, the Auditors have failed to aver how the redacted LTCF applicant financial records provided by Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit.

For brevity, Sheriff Nace incorporates by reference his arguments in Section V. 1., regarding Section 6109(1)(2), 6111(g)(3.1), and 6111(i) and the Auditors’ failure to aver either that they are law enforcement officers under the laws of the Commonwealth or that they are requesting their own personal LTCF applicant information. Therefore, as the Complaint is not sufficiently clear as to the specific basis on which recovery is sought, Sheriff Nace’s Preliminary Objections must be sustained and the Complaint stricken.

Further, the Complaint fails to aver in any sense how the redacted LTCF applicant financial records provided by Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit. Rather, the Auditors merely continually recite that “[t]he Auditors cannot perform their statutory duties under 16 P.S. 1721(a) and 1724 to audit the Sheriff’s receipt and disbursement of application fees for licenses to carry firearms unless the Auditors review the original, unredacted records where the Sheriff records the receipt and disbursement of such fees.” Complaint, ¶ 17. When one reviews Sections 1721(a) and 1724, there is no specific requirement that the Auditors be provided the name and information of the individual paying the fee received by any County department, let alone confidential LTCF applicant information.

Section 1721(a) provides:

The auditors shall audit, settle and adjust the accounts of all county officers of the county, and make an annual report thereof, on or before the first day of the following July, to the court of common pleas, unless upon due cause shown the court shall grant an extension of time therefor. Said report shall be in detail, showing distinctly and separately all receipts and expenditures of the several offices, and all debts and accounts due, and the amount raised from each source of revenue, and the expenditures in detail and classified by reference to the object thereof, together with a full statement of the financial conditions of the county, and a statement of the balance due from or to such county officers.

Turning to Section 1724, it provides:

It shall also be the duty of the controller or auditors to audit, settle and adjust the accounts of the treasurer of the county with the State Treasury, and of each of such other officers in the county receiving money for the use of the Commonwealth, as may be referred to them by the Auditor General or the Department of Revenue, and to make a separate report thereof to the court of common pleas, together with a statement of the balances due from or to such treasurer or other officer. A certified copy of such report shall be transmitted to the Auditor General or Department of Revenue, as the case may be, within ten days after the same is prepared.

While it is not disputed that the Auditors require the financial information to audit, settle and adjust the accounts of County departments and officers, there exists no language within the statutory provisions cited that supports the Auditors' contention that they must be provided the names and contact information of the payers reflected in the financial records. As the Statutory Construction Act requires that the plain meaning of the statute be accepted, the Auditors cannot claim that this additional information is required. 1 Pa.C.S. § 1921(b); Conklin, 897 A.2d at 1175. Therefore, as the Complaint is not sufficiently clear as to the specific basis on which recovery is sought, Sheriff Nace's Preliminary Objections must be sustained and the Complaint stricken.

- 3. The Court must sustain Sheriff Nace's preliminary objection pursuant to Pa.R.C.P. 1028(a)(4) – demurrer – because the Auditors have: (1) failed to aver that they are “law enforcement officers” and a finding that the Auditors are law enforcement officers is not supported by the law; (2) failed to cite to any statute, regulation or case to support their proposition that they are entitled to confidential LTCF applicant information, especially under Pennsylvania's Uniform Firearms Act; and (3) have failed to establish any direct and immediate harm.**

Pa.R.C.P. 1028(a)(4) provides “legal insufficiency of a pleading (demurrer)” as a basis for preliminary objections.

“A preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient” Weiley v. Albert Einstein Med. Ctr., 2012 PA Super 106, 51 A.3d 202, 208 (Pa. Super. Ct. 2012). In determining whether to grant a demurrer, “[t]he impetus of [the] inquiry is to determine the legal sufficiency of the complaint and whether the pleading would permit recovery if ultimately proven.” Further, as the Commonwealth Court has held, “[w]hile ordinarily a demurrer must be limited to facts appearing on the face of the challenged pleading, ‘a limited exception to

the rule against speaking demurrers exists for documents filed in support of a demurrer where a plaintiff has averred the existence of certain written documents and premised his cause of action upon those documents’.” Richardson v. Wetzel, 74 A.3d 353, 358 n. 4 (Pa. Cmwlth. 2013), *quoting* Barndt v. Department of Corrections, 902 A.2d 589, 591 n. 2 (Pa. Cmwlth. 2006).

For brevity, Sheriff Nace incorporates by reference his arguments in Sections V. 1. and 2., regarding Section 6109(1)(2), 6111(g)(3.1), and 6111(i) and the Auditors’ failure to aver either that they are law enforcement officers under the laws of the Commonwealth or that they are requesting their own personal LTCF applicant information and that the redacted LTCF applicant financial records provided by Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit. Therefore, as the Complaint does not provide for a cause of action or any recovery if ultimately proven, it is therefore legally insufficient and must be dismissed with prejudice.

In turning to the Sworn Affidavit of Robert W. Morris, III,¹⁷ while not directly on point with the holding in Richardson, the issue is substantially similar as the Auditors claim an inability to conduct their audit with the redacted financial records; yet, Robert W. Morris & Company, P.C. was able to perfect an audit without difficulty utilizing the redacted financial records. Therefore, as the Complaint fails to specify any direct and immediate harm or inability to conduct the audit utilizing the redacted financial records, the Complaint must be dismissed with prejudice.

¹⁷ See, Exhibit B to Sheriff Nace’s Preliminary Objections.

4. The Court must sustain Sheriff Nace’s preliminary objection pursuant to Pa.R.C.P. 1028(a)(5) – lack of capacity to sue – because the Auditors do not have standing to pursue a claim under the Declaratory Judgment Act.

Pa.R.C.P. 1028(a)(5) provides “lack of capacity to sue” as a basis for preliminary objections.

As a general principle, “[a] party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action.” In re Hickson, 573 Pa. 127, 135, 821 A.2d 1238, 1243 (2003). For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the action has, in fact, been aggrieved. Pittsburgh Palisades Park, LLC v. Com., 585 Pa. 196, 203, (2005). As the Pennsylvania Supreme Court explained, “the core concept [of standing] is that a person who is not adversely affected in any way by the matter he seeks to challenge is not ‘aggrieved’ thereby and has no standing to obtain a judicial resolution to his challenge.” Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 192 (1975). A party aggrieved for purposes of establishing standing when the party has a “substantial, direct and immediate interest” in the outcome of the litigation. Johnson v. Am. Standard, 607 Pa. 492, 516 (2010). A party’s interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; and finally, a party’s interest is immediate when the causal connection with the alleged harm is neither remote nor speculative. Id.

Although the purpose of the Declaratory Judgment Act, 42 Pa.C.S. § 7531, et seq., is to “settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered,”

the available of declaratory relief is limited by certain justiciability concerns. 42 Pa.C.S. § 7541(a). In order for a plaintiff to meet his/her burden under the Declaratory Judgment Act, he/she must allege an interest which is direct, substantial and immediate, and must demonstrate the existence of a real or actual controversy, as the courts of this Commonwealth are generally proscribed from rendering decisions in the abstract or issuing purely advisory opinions. *See, Pittsburgh Palisades Park*, 585 Pa. at 203; *In re Hickson*, 573 Pa. at 135-36.

For brevity, Sheriff Nace incorporates by reference his arguments in Sections V. 1. and 2., regarding Section 6109(1)(2), 6111(g)(3.1), and 6111(i) and the Auditors' failure to aver either that they are law enforcement officers under the laws of the Commonwealth or that they are requesting their own personal LTCF applicant information and that the redacted LTCF applicant financial records provided by Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit. Therefore, as the Complaint does not aver facts or law to suggest that the Auditors have been aggrieved, thereby failing to establish a real or actual controversy, the Plaintiffs have failed to establish standing and the Complaint must be dismissed with prejudice.

- 5. The Court must sustain Sheriff Nace's preliminary objection pursuant to Pa.R.C.P. 1028(a)(8) – full, complete and adequate non-statutory remedy at law – because the Auditors have failed to aver how the redacted LTCF applicant financial records offered by Defendant Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit, pursuant to 16 P.S. §§ 1721, 1724.**

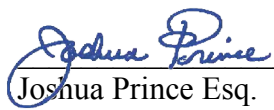
Pa.R.C.P. 1028(a)(8) provides “full, complete and adequate non-statutory remedy at law” as a basis for preliminary objections.

For brevity, Sheriff Nace incorporates by reference his arguments in Sections V. 2., regarding the Auditors’ failure to aver that the redacted LTCF applicant financial records provided by Sheriff Nace have hampered, impeded or otherwise restricted their ability to conduct or perform their audit. Therefore, as the Complaint fails to aver how the redacted financial records hamper, impede or otherwise restrict the Auditor’s ability to conduct or perform their audit, the redacted financial records must be found to be a full, complete and non-statutory remedy at law and the Complaint must be dismissed with prejudice.

VI. CONCLUSION

For the reason set-forth above, Sheriff Carl Nace respectfully requests that this Honorable Court sustain his Preliminary Objections and dismiss this action with prejudice.

Respectfully Submitted,



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