COURT OF COMMON PLEAS
COUNTY OF CHESTER
COMMONWEALTH OF PENNSYLVANIA
(Justice Center, 201 West Market Street, West Chester, PA 19380-0989)

TIMOTHY SHELLEY, *Plaintiff*, v. KENNETT LIBRARY and CHESTER COUNTY LIBRARY SYSTEM *Defendants*	)	Docket No. 2023-10395-MJ

CIVIL COMPLAINT FOR EQUITABLE AND LEGAL RELIEF

IN

PROMISSORY ESTOPPEL, EQUITABLE ESTOPPEL, QUASI-CONTRACT,

CONSTRUCTIVE TRUST, AND CONVERSION

AND

REGARDING

VIOLATION OF FEDERAL CONSTITUTIONAL RIGHTS

(DUE PROCESS, FREEDOM OF SPEECH, AND FREEDOM OF THE PRESS)

AND

VIOLATION OF STATE CONSTITUTIONAL RIGHTS

(DUE PROCESS AND FREEDOMS TO SPEAK, WRITE, AND PRINT)

WHEREAS Defendant Chester County Library System maintains a facility through Defendant Kennett Library, in Kennett Square, Pennsylvania, and it has acted through such facility with respect to the matters set forth herein; and

WHEREAS Plaintiff resides in Unionville, Pennsylvania, and he has suffered the wrongs set forth herein as to such matters;

NOW, THEREFORE, Plaintiff makes the following allegations, complaints, and arguments, to seek judgment against each of Defendants, and he petitions this Court that each of Defendants be held jointly and severably liable for an amount of up to thirty-five thousand and five dollars ($35,005.00), plus costs, for damages arising from the claims set forth below (pp.53-56):

(i) Promissory Estoppel (pp.15-20),

(ii) Equitable Estoppel (pp.21-26),

(iii) Quasi-Contract (pp.27-28),

(iv) Constructive Trust (pp.29-33),

(v) Conversion (pp.33-35),

(vi) Federal Constitutional Rights to Due Process (pp.36-39),

(vii) State Constitutional Rights to Due Process (pp.40-44),

(viii) Federal Constitutional Rights to Freedoms of Speech and the Press (pp.44-51), and

(ix) State Constitutional Rights to Freedoms To Speak, Write, and Print (pp.51-53); and

FURTHER, Plaintiff respectfully demands a jury trial, as to questions of fact, with a jury of twelve (12) members, under the authorities set forth below (pp.56-58).

STATEMENT OF FACTS

¶ 1 Plaintiff is a lawyer in good standing, admitted to practice in the State of Delaware and the District of Columbia, who practiced transactional law for a period of thirteen (13) years.

¶ 2 Plaintiff holds a doctorate in literature, along with three (3) other advanced degrees, and he has taught courses in writing, communications, public speaking, liberal arts, great books, global awareness, business, government, and political science for a period of twelve (12) years.

¶ 3 Plaintiff is an investigative journalist who has written more than five hundred (558) articles on his website, Fighting Monarch, which receives traffic from every country in the world, except three, while his articles have received more than two million (2,498,432) hits.

¶ 4 Plaintiff is an author, who has written three (3) fact-novels, through his publishing venture, Hokahey Books, of which more than seventy-two thousand (72,645) copies have been downloaded with (a) more than twenty-four thousand (24,055) copies of his first book, Stories When Little: Growing-Up under MK-ULTRA, in circulation, (b) more than twenty-three thousand (23,476) copies of his second book, Playboy's Progress: Coming of Age under MK-ULTRA, in circulation, and (c) more than twenty-five thousand (25,114) copies of his third book, WonderWomen: Growing to Manhood under MK-ULTRA, in circulation.

¶ 5 Although Plaintiff's books have a wide circulation in electronic form, they exist in a very limited edition of printed copies, so that only twenty-five (25) beautiful

hardbacks, with laminated board, sewn bindings, and one-hundred-pound weight paper, of each of Stories When Little and Playboy's Progress exist in the world.

¶ 6 These books are priceless, but they have International Sales Book Numbers (ISBNs) with bar-codes, on each cover, listing their price at one hundred dollars ($100.00) per volume, while signed copies, such as those given to Defendants have a greater monetary value.

¶ 7 In the Summer of 1979, Plaintiff got one of his first library cards from Defendants, more than forty years ago, when he was only nine years old, before he started school at Unionville Elementary as he visited what was then the Bayard Taylor Memorial Library but is now Defendant Kennett Library.

¶ 8 Over the past forty-four years, Plaintiff checked out books from Defendants, while Defendants sometimes contacted Plaintiff over the telephone to let him know the status of their volumes and Defendants sometimes contacted Plaintiff to ask him to contribute money, as a gift, to their enterprise.

¶ 9 Defendant Chester County Library System is a county-owned institution, organized to serve Chester County's seven hundred and sixty (760) square miles, fifteen (15) boroughs, fifty-seven (57) townships, fourteen (14) school districts, and its county seat, along with more than half a million (524,989) residents, while it has provided a public forum devoted to Freedom of Speech, Freedom of the Press, Freedom To Speak, Freedom To Write, and Freedom To Print as it expressed commitment to principles enshrined in the First Amendment of

the Constitution of the United States, Article One of the Constitution of the Commonwealth of Pennsylvania, and associated law.

¶ 10 Defendant Chester County Library System has been selected as one of sixteen (16) public libraries nationwide to receive a ten-thousand-dollar ($10,000.00) grant through the American Dream Literacy Initiative from the American Library Association ("ALA"), which promotes Banned Books Week, a time "that celebrates the freedom to read, draws attention to banned and challenged books, and highlights persecuted individuals."

¶ 11 Defendant Chester County Library System has promoted Banned Books Week through sponsored events such as "Intellectual Freedom & Social Justice - A Sign of the Times," featuring James LaRue, who served as Executive Director of the ALA's Office for Intellectual Freedom and the Freedom to Read Foundation, as indicated on the advertisement, on Defendants' website, attached hereto as Exhibit A (the "Intellectual Freedom Statement").

¶ 12 Defendant Chester County Library System has promoted Banned Books Week through sponsored events such as "Classic Movie Night - Films Based on Banned Books," where it "recognize[d] some of those banned books made into classic films," as indicated in its advertisements, on its website and social media, attached hereto as Exhibit B (the "Anti-Banning Statement").

¶ 13 Following his long years of friendly association with the library, Plaintiff relied on statements and practices made by Defendants, like the Intellectual Freedom Statement and the Anti-Banning Statement, when he chose to give the very first copies of his controversial books to Defendants.

¶ 14 At the beginning of April in 2021, Plaintiff approached the circulation desk of Defendant Kennett Library, Plaintiff identified himself as a local author, and Plaintiff asked Amanda Murphy, Director of Marketing & Communications, if Defendants would like signed hardback copies of his books.

¶ 15 Acting in her capacity as Director of Marketing & Communications of Defendant Kennett Library, Ms. Murphy expressed enthusiasm and interest, as she told Plaintiff that his books would be cataloged and shelved by Defendants, so, in further reliance on such statements, Plaintiff signed the very first copies of his books, which he gifted, on the spot, to Defendants.

¶ 16 Acting in her capacity as Director of Marketing & Communications of Defendant Kennett Library, Ms. Murphy accepted the signed hardbacks, and she gave Plaintiff the business card of John Catlett, who served as Programs & Social Media Coordinator of Defendant Kennett Library, so that Plaintiff could follow up with Defendants in order to do readings, lectures, and podcasts, in his capacity as a local author, at the library.

¶ 17 On Saturday, April 3, 2021, Plaintiff wrote to John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, as he referred to the gift of signed hardbacks, their friendly acceptance by Ms. Murphy, and his offer to do readings, lectures, and podcasts for the library in order to promote not only his books, and the library, but also what he saw, at that time, as a shared commitment to a love of reading.

¶ 18 Plaintiff's e-mail to John Catlett is included in a series attached hereto as Exhibit C (the "First Set of E-Mails"), where he identified himself in its opening line as follows: "I am a local author who just gifted two signed books to our library." Exhibit C.

¶ 19 Attached to the First Set of E-Mails, Plaintiff sent Defendants the following three items, which contained hyperlinks to electronic copies of his books: (a) an author biography, from his publishing house, Hokahey Books (the "Author Biography from Hokahey Books"), in the form attached hereto as Exhibit D, (b) a press release, from his publishing house, Hokahey Books, as to his book, Stories When Little (the "Press Release for Plaintiff's First Book"), in the form attached hereto as Exhibit E, and (c) a press release, from his publishing house, Hokahey Books, as to his book, Playboy's Progress, (the "Press Release for Plaintiff's Second Book") in the form attached hereto as Exhibit F.

¶ 20 On Tuesday, April 6, 2021, John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, responded in the First Set of E-Mails, as he expressed enthusiasm following Defendants' acceptance of the donation in connection with possible readings, lectures, and podcasts to be hosted by Defendants: "Thank you for the generous donations of your book[s], e-books, and press releases. I'll brainstorm some ideas, and get back to you with those!" Exhibit C.

¶ 21 Defendant Kennett Library sent the books to Defendant Chester County Library System, which cataloged each of the books, as it assigned each of the books a subject and a number in the Dewey Decimal System.

¶ 22 On Thursday, April 15, 2021, John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, wrote to Plaintiff in the e-mails attached hereto as Exhibit G (the "Second Set of E-Mails").

¶ 23 In the Second Set of E-Mails, John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, wrote to Plaintiff as follows: "We got the books back from Chester County today—since we're part of the Chester County Library System, they catalog them there since the book[s] will be circulated throughout the county, but will live here in Kennett Square." Exhibit G.

¶ 24 In the Second Set of E-Mails, John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, wrote to Plaintiff as follows: "I'd love to have you do a reading & signing." Exhibit G.

¶ 25 In the Second Set of E-Mails, Plaintiff responded to Defendants, acting through John Catlett, as follows: "It gives me pride to know my books will stand displayed, when not checked out, among other local authors, across from the circulation desk." Exhibit G.

¶ 26 Defendants never displayed the books on the shelf for local authors across from the circulation desk.

¶ 27 Defendants never placed the books on the public shelves of the library.

¶ 28 Defendants never contacted Plaintiff as to podcasts, lectures, or readings.

¶ 29 As indicated in the e-mails attached hereto as Exhibit H (the "Third Set of E-Mails"), Defendants cataloged the books, assigning them the subjects of Biography and Military Psychology.

¶ 30 At the beginning of May in 2021, Plaintiff visited Defendant Kennett Library, where he was pleased to find the books in the catalog with the subjects and numbers assigned by Defendant Chester County Library System.

¶ 31 In reliance on Defendants' repeated assurances, through word and deed, Plaintiff told others—friends, neighbors, and strangers—that they could find his books in the catalog of Defendants.

¶ 32 In reliance on Defendants' repeated assurances, through word and deed, Plaintiff told others—friends, neighbors, and strangers—that they could read his books at Defendant Kennett Library.

¶ 33 At the end of July in 2021, Plaintiff visited Defendant Kennett Library, where he found, to his surprize, that his books were no longer listed in the library catalog.

¶ 34 So, that day, on July 31, 2021, Plaintiff wrote to John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, and to Paul Sapko, in his capacity as Reference/Circulation Desk Librarian of Defendant Kennett Library, to tell the facts set forth above and to make the following statement of understanding, complaint, and request: "I understand that my books are controversial, and, as I plainly indicated in the press releases that Mr. Catlett received and gratefully acknowledged, they contain some graphic sexual material—although they are certainly not pornography—so that, in some communities, they might become banned books, much like those of Anaïs Nin or Henry Miller, which you carry in your catalog." Exhibit H.

¶ 35 In the Third Set of E-Mails, Plaintiff described his reliance on Defendants' statements and actions, while he requested clarification, along with the return or shelving of his books, in part, as follows: "I gave expensive signed copies of my books to you with the understanding that you would shelve them—or, at least, keep them in your catalog and available, upon request, behind the desk. If you didn't want my books, and you changed your mind, you had my e-mail, from our previous correspondence, and my address and telephone from your other records. Why did you not contact me if you meant to remove the books from your library?" Exhibit H.

¶ 36 In the Third Set of E-Mails, Plaintiff concluded with a polite but firm demand: "I would like my books either to reappear in your catalog, or I would like them back." Exhibit H.

¶ 37 On Monday, August 2, 2021, Paul Sapko, in his capacity as Reference/ Circulation Desk Librarian of Defendant Kennett Library, wrote to Plaintiff, in the Third Set of E-Mails, to say, "Our Library Director Megan Walters is looking into the matter and will contact you." Exhibit H.

¶ 38 On Thursday, August 5, 2021, Megan Walters, in her capacity as Executive Director of Defendant Kennett Library, sent one of the e-mails attached hereto as Exhibit I (the "Fourth Set of E-Mails"), to Plaintiff, where she wrote as follows: "I received the email you sent below regarding the status of the two books that you donated to the library. Due to the size of the volumes, we recently decided to reclassify your books under our reference section. Because of this change, it has to go back to Exton to get a catalogue entry. At this time,

the turnaround is taking longer due to COVID. Once we receive the books back, they will be searchable through the catalogue." Exhibit I.

¶ 39 On Thursday, August 5, 2021, in the Fourth Set of E-Mails, Plaintiff wrote back to Megan Walters, in her capacity as Executive Director of Defendant Kennett Library, to say, "That's a relief, because I was wondering what was going on! I look forward to the return of my books to your shelves." Exhibit I.

¶ 40 Defendant Chester County Library System recataloged the books, and Defendant Chester County Library System returned the books to Defendant Kennett Library.

¶ 41 In the Winter of 2022, Plaintiff visited the library, where he found entries for his books in the catalog, but he could not find them on the shelves.

¶ 42 Plaintiff approached the circulation desk, where he asked Paul Sapko, in his capacity as Reference/Circulation Desk Librarian of Defendant Kennett Library, where he could find copies of his books.

¶ 43 Paul Sapko, in his capacity as Reference/Circulation Desk Librarian of Defendant Kennett Library, told Plaintiff that the books were kept behind the circulation desk, where Plaintiff could see them hidden, through a doorway, on a shelf, behind and to the right side of Mr. Sapko.

¶ 44 Plaintiff told Paul Sapko, in his capacity as Reference/Circulation Desk Librarian of Defendant Kennett Library, that Plaintiff thought there should at least be a notation in the catalog to show library patrons that the books were "kept behind the circulation desk" or "available upon request."

¶ 45 Paul Sapko, in his capacity as Reference/Circulation Desk Librarian of Defendant Kennett Library, brushed aside Plaintiff's suggestions, although he reassured Plaintiff that the books would be properly shelved and displayed following the library's move to its new building next door, which has subsequently been built on a lot of one acre, with an auditorium holding one hundred and ten (110) seats, in addition to fourteen (14) meeting rooms, at costs of more than twenty-two million dollars ($22,000,000.00), which was donated by eight (8) local municipalities, library patrons, and others.

¶ 46 In reliance on Defendants' repeated assurances, through word and deed, Plaintiff did not demand the return of the books he had donated to Defendants.

¶ 47 In reliance on Defendants' repeated assurances, through word and deed, Plaintiff continued to tell others—friends, neighbors, and strangers—that they could find his books in the catalog of Defendants.

¶ 48 In reliance on Defendants' repeated assurances, through word and deed, Plaintiff told others—friends, neighbors, and strangers—that they could read his books at Defendant Kennett Library.

¶ 49 Due to Plaintiff's reliance on Defendants' repeated assurances, through word and deed, and Defendants' subsequent conversion of Plaintiff's books, which they removed from the catalog, and never publicly shelved, as set forth above and below, upon information and belief, many people to whom Plaintiff identified himself as a local author, while he told them they could find his books in the library, went to the library to find no books in the catalog or on

the shelf, as they will continue to do, for the indefinite future, so they think that Plaintiff is either crazy, or a liar, or both, and his reputation in the community has been damaged.

¶ 50 At the end of June in 2022, Plaintiff visited the library, where he found the catalog had been revised so there was no reference to his books, while his books remained off the shelf in a now undetermined location.

¶ 51 Plaintiff approached the circulation desk, where he asked a female librarian what had happened to his books.

¶ 52 While Paul Sapko, in his capacity as Reference/Circulation Desk Librarian of Defendant Kennett Library, stood in the background, next to the area where the books had formerly been hidden, the librarian refused to acknowledge that Defendants had ever received any books from Plaintiff.

¶ 53 Plaintiff told the librarian that the library could have contacted him at any time, as it had done many times in the past, over unrelated matters, and he would have been happy to have picked up his priceless and irreplaceable books.

¶ 54 While continuing to refuse to acknowledge that the books had been donated, and cataloged, the librarian told Plaintiff that Defendants had adopted a unilateral policy allowing the elimination of books from the catalog at any time, for any reason, without notice, and she gave him a printed copy of the policy.

¶ 55 Defendants had never provided Plaintiff with any notice of such policy, and, if they had, he never would have donated his books to the library or, upon learning of such policy, he would have immediately requested the return of his books.

¶ 56 Plaintiff told the librarian these facts, Plaintiff said the actions of the library were tantamount to the banning, or even the burning, of books, and Plaintiff stated his intent to sue the library.

¶ 57 As Plaintiff calmly strode out the door, never to return to the library, where he had gotten his childhood library card more than forty years before, the local author overheard a bystander express an opinion as to his sanity: "That man needs to be medicated."

¶ 58 Then, after all that, Plaintiff received a letter from Defendants, in which they asked for money, soliciting a donation to finance their new building, where they had promised to shelve and display his books, as it was constructed at a cost of twenty-two million dollars ($22,000,000.00), with a brochure entitled "Great Communities Build Great Libraries" (the "Subsequent Request for Financial Donations").

¶ 59 In the Subsequent Request for Financial Donations, Defendants described how "a symbolic book brigade will pass ceremonial books from the old library to the new," in connection with "a celebratory 'Grand Opening'…with…governmental leaders, project partners, library stakeholders, and, most importantly, the public."

¶ 60 In the Subsequent Request for Financial Donations, Jeff Yetter, Chair of the Capital Campaign Cabinet, and former President of the Board of Trustees, of Defendants, said, "We have one challenge left, to raise the remaining $3 million so that all the resources we raise in the future will go towards helping us serve our neighbors," and, so, Defendants asked Plaintiff to make a donation of twenty-five thousand dollars ($25,000.00), ten thousand dollars

($10,000.00), five thousand dollars ($5,000.00), or various lesser amounts—all after they had earlier accepted, discarded, and denied the donation of his books.

¶ 61 Although Defendants never contacted Plaintiff as to their adoption of a unilateral policy in which they purported to give themselves the authority to discard his books—without notice—they have subsequently sent unsolicited e-mails, on a regular basis, to Plaintiff.

¶ 62 Although Defendants never contacted Plaintiff as to their disposal of his books—without notice—they have subsequently sent unsolicited e-mails, on a regular basis, to Plaintiff.

¶ 63 Defendants could have easily avoided this entire lawsuit if they had contacted Plaintiff—which they know how to do, and continue to do, on a regular basis.

¶ 64 Defendants could have easily avoided this entire lawsuit if they had been honest with Plaintiff.

FIRST COUNT
PROMISSORY ESTOPPEL

¶ 65 The foregoing allegations are realleged and incorporated herein.

¶ 66 As the Supreme Court of Pennsylvania has repeatedly opined, "The doctrine embodied in s 90 of the Restatement (Second) of Contracts, the doctrine of promissory estoppel, is the law of Pennsylvania." Central Storage & Transfer Co. v. Kaplan, 487 Pa. 485, 489, 410 A.2d 292, 294 (1979), *ctg.* Murphy v. Burke, 454 Pa. 391, 311 A.2d 904 (1973). *See also* Thatcher's Drug Store of West Goshen, Inc. v. Consolidated Supermarkets, Inc., 535 Pa. 469, 476, 636 A.22 156, 160 (1994).

¶ 67 THE RESTATEMENT (2D) OF CONTRACTS § 90 states, "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." *See also* Fried v. Fisher, 328 Pa. 497, 501, 196 A. 39, 41 (1938); Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 606, 747 A.2d 358, 361 (2000); Osborne-Davis Transp. Co. Inc. v. Mothers Work Inc., 3 Pa. D. & C. 5th 53, 56-57, 2008 WL 2175580 (Ct. Com. Pl. Phila. Feb. 20, 2008).

¶ 68 The Supreme Court of Pennsylvania has described the roots of the doctrine in the common law: "Historically speaking equity validated and enforced promises predicated on what we now label 'promissory estoppel' centuries before bargained-for consideration was conceived. What is presently referred to as 'equity' originated in 1349, when Edward III by a general writ referred all matters as were within the king's divine 'prerogative of Grace' to the Chancellor for adjudication. This general authority (prerogative of Grace) required the Chancellor to base all decisions on the principles of 'Conscience, Good Faith, Honesty, and Equity.' If someone had committed any unconscientious act or breach of faith and the 'rigour of the law' favored that party, then the other party who suffered thereby would be granted corrective relief 'under the head of conscience.' With its source in that writ, the 'Good Faith' basis of promissory estoppel was subsequently recognized and applied by American courts. [¶]. Based on good faith and conscience, Chancery, during the fourteenth and fifteenth centuries, applied the four principles (which are commingled and now referred to as 'equity') and gave 'promissory estoppel' relief to plaintiffs who had incurred detriment on the faith of a defendant's promise.'"

Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 604-605, 747 A.2d 358, 361 (2000), *qtg*. III CORBIN ON CONTRACTS § 8.11 (1996). *See also* Osborne-Davis Transp. Co. Inc. v. Mothers Work Inc., 3 Pa. D. & C. 5th 53, 56-57, 2008 WL 2175580 (Ct. Com. Pl. Phila. Feb. 20, 2008).

¶ 69 "[T]he doctrine of promissory estoppel is invoked to avoid injustice by making enforceable a promise made by one party to the other when the promisee relies on the promise and therefore changes his position to his own detriment." Crouse v. Cyclops Indus., 560 Pa. 394, 402, 745 A.2d 606, 610 (2000).

¶ 70 Plaintiff relied on Defendants' promises, as made on April 3, 2021, by the Director of Marketing & Communications of Defendant Kennett Library, which Defendants should have reasonably expected to induce his action and/or his forbearance, and which did induce such action and/or forbearance, when he "gave expensive signed copies of my books to you with the understanding that you would shelve them—or, at least, keep them in your catalog and available, upon request, behind the desk." Exhibit H.

¶ 71 Plaintiff relied on Defendants' promises, as made on April 6 and April 15, 2021, by the Programs Coordinator of Defendant Kennett Library, which Defendants should have reasonably expected to induce his action and/or his forbearance, and which did induce such action and/or forbearance, as to "the generous donations of your book[s]," that "the book[s] will be circulated throughout the county, but will live here in Kennett Square." Exhibit C; Exhibit G.

¶ 72 Plaintiff relied on Defendants' promises, as made on August 5, 2021, by the Executive Director of Defendant Kennett Library, which Defendants should have reasonably expected to induce his action and/or his forbearance, and which did induce such action and/or

forbearance, "regarding the status of the two books…donated to the library," that "they will be searchable through the catalogue." Exhibit I.

¶ 73 Plaintiff changed his position to his own detriment, due to his reliance on such promises, which Defendants should have reasonably expected to induce his action and/or his forbearance, and which did induce such action and/or forbearance, since he stated, "I would like my books either to reappear in your catalog, or I would like them back," but, once the Executive Director of Defendant Kennett Library made promises as to their return to the catalog, Plaintiff altered his position, stating, "That's a relief, because I was wondering what was going on! I look forward to the return of my books to your shelves." Exhibit H; Exhibit I.

¶ 74 The enforcement of Defendants' promises to Plaintiff is necessary to avoid injustice.

¶ 75 "In order to maintain an action in promissory estoppel, the aggrieved party must show that 1) the promisor made a promise that he should have reasonably expected to induce action or forbearance on the part of the promisee; 2) the promisee actually took action or refrained from taking action in reliance on the promise; and 3) injustice can be avoided only by enforcing the promise." Crouse v. Cyclops Indus., 560 Pa. 394, 403, 745 A.2d 606, 610 (2000). *See also* RESTATEMENT (2D) OF CONTRACTS § 90.

¶ 76 Plaintiff never would have taken action, giving the very first copies of his treasured books to Defendants, if he had not placed reliance on the promises of the Director of Marketing & Communications of Defendant Kennett Library, who stood behind the circulation

desk, when he signed and gifted copies, while Defendants made promises they should have reasonably expected to induce action on the part of Plaintiff.

¶ 77 Plaintiff never would have refrained from taking action, forbearing to demand the return of his treasured books from Defendants, if he had not placed reliance on the promises of the Programs Coordinator of Defendant Kennett Library, who thanked him for his "generous donations," as he promised that "the book[s] will be circulated throughout the county, but will live here in Kennett Square," while Defendants made promises they should have reasonably expected to induce action or forbearance on the part of Plaintiff. Exhibit C and Exhibit G.

¶ 78 Plaintiff never would have refrained from taking action, forbearing to demand the return of his treasured books from Defendants, if he had not placed reliance on the promises of the Executive Director of Defendant Kennett Library, who wrote "regarding the status of the two books…donated to the library," as she promised that "they will be searchable through the catalogue," while Defendants made promises they should have reasonably expected to induce action or forbearance on the part of Plaintiff. Exhibit I.

¶ 79 Plaintiff's treasured books, which are priceless first editions of a limited run, should be on the shelves of the library, and in its catalog, so that everyone can read them; but, now, they are gone forever, and cannot even be given to a different person, because (a) Defendants made promises that they reasonably expected to induce action (the gift of the books) or forbearance (the non-demand for their return) on the part of Plaintiff, (b) Plaintiff actually took action (donated the books) or refrained from taking action (let go his demand for their

return) in reliance on the promises of Defendants, and (c) injustice can be avoided only by enforcing the promise.

¶ 80 To the extent Defendants had the right to discard the books, and to remove them from the catalog, they promised to abandon this right through their repeated assurances to Plaintiff that they would shelve, catalog, and recatalog his books, so they must be estopped from reasserting the right they repeatedly promised to abstain from exercising, while the doctrine of promissory estoppel does not require Defendants to have gotten any gain or advantage, for, as the Supreme Court of Pennsylvania opined, in the leading case on the doctrine, "Its most frequent application has been to cases in which a person announces his intention of abandoning an existing right, and thereby leads another, relying thereon, to some action or forbearance…. 'There is no rule more necessary to enforce good faith than that which compels a person to abstain from enforcing claims which he has induced others to suppose he would not rely on. The rule does not rest upon the assumption that he has obtained any personal gain or advantage, but on the fact that he has induced others to act in such a manner that they will be seriously prejudiced.'" Fried v. Fisher, 328 Pa. 497, 502, 196 A. 39, 42 (1938).

¶ 81 Plaintiff respectfully asks this Court to apply the doctrine of promissory estoppel, enforcing the promises of Defendants, to avoid injustice, estopping their assertion of alleged rights, and awarding monetary damages, since Defendants have made their promised performance impossible.

SECOND COUNT
EQUITABLE ESTOPPEL

¶ 82 The foregoing allegations are realleged and incorporated herein.

¶ 83 As the Supreme Court of Pennsylvania has opined, promissory estoppel has "its origins in the more ancient concept of equitable estoppel." Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 605, 747 A.2d 358, 361 (2000).

¶ 84 "[J]ust as the law has consistently upheld the doctrine that, under given circumstances, a person may be estopped by his conduct, his statements, or even his silence, if another has thereby been induced to act to his detriment, so from the earliest times there was recognized the principle that an estoppel might similarly arise from the making of a promise, even though without consideration, if it was intended that the promise be relied upon and in fact it was relied upon…. [The basis of promissory estoppel] is not so much one of contract, with a substitute for consideration, as an application of the general principle of estoppel to certain situations. It is important to bear in mind that, as already pointed out, the doctrine is much older in its origin and applications than the terminology now employed to describe it." Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 605, 747 A.2d 358, 361 (2000), *qtg.* Fried v. Fisher, 328 Pa. 497, 500-501, 196 A. 39, 41-42 (1938). *See also* Osborne-Davis Transp. Co. Inc. v. Mothers Work Inc., 3 Pa. D. & C. 5th 53, 57, 2008 WL 2175580 (Ct. Com. Pl. Phila. Feb. 20, 2008).

¶ 85 "Equitable estoppel is a doctrine that prevents one from doing an act differently than the manner in which another was induced by word or deed to expect. A doctrine

sounding in equity, equitable estoppel recognizes that an informal promise implied by one's words, deeds or representations which leads another to rely justifiably thereon to his own injury or detriment may be enforced in equity." Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 606, 747 A.2d 358, 361 (2000), *qtg.* Novelty Knitting Mills v. Siskind, 500 Pa. 432, 457 A.2d 502 (1983).

¶ 86 Where an estoppel is sought, with an appropriate remedy, based on a person's "conduct…not promises, the applicable theory is equitable estoppel, not what is termed promissory estoppel." Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 606, 747 A.2d 358, 361-362 (2000).

¶ 87 Defendants did not merely induce Plaintiff to act, to his detriment, in giving away priceless and irreplaceable signed volumes of the limited first edition of his books, and Defendants did not merely induce Plaintiff to forebear, to his detriment, in not demanding the return of the books, through their words; but they also induced action and forbearance, detrimental to Plaintiff, through their conduct, their deeds, their representations, and their silence.

¶ 88 Defendants intended for Plaintiff to rely on their conduct, their deeds, their representations, and their silence, and Plaintiff did rely on such things, to his detriment, so the doctrine of equitable estoppel prevents them from doing differently—i.e. removing the books from the catalog and the shelves.

¶ 89 As set forth above, Defendants accepted "the generous donations" of the books, to which they assigned numbers in the Dewey Decimal System, as they placed the books in their catalog under the subjects of Biography and Military Psychology. Exhibit C; Exhibit H.

¶ 90 When they accepted delivery of the books, and placed the books in their catalog, and recataloged the books, Defendants intended for Plaintiff to rely on their repeated informal promises, made by their conduct, deeds, and representations, particularly in that they induced Plaintiff to refrain from his demand for the return of the books, as he stated, "I would like my books either to reappear in your catalog, or I would like them back," when Megan Walters, in her capacity as Executive Director of Defendant Kennett Library, described the action "to reclassify your books under our reference sections," so that "the two books that you donated to the library" would be "searchable through the catalogue." Exhibit H; Exhibit I.

¶ 91 Plaintiff did not merely justifiably rely, to his detriment, on the written and spoken promises of Defendants, as they sought to make him stop complaining, and to go away, while they retained possession of the books, eventually converting the books to their own use, as they destroyed the priceless treasures, depriving the community they purport to serve of access to the books, when Plaintiff forbore from his demand for the return of the books, letting the matter temporarily go, but Plaintiff also relied, to his detriment, on Defendants' repeated informal promises, made by their conduct, deeds, and representations, when he checked and rechecked the catalog and the shelves to see if Defendants had done what they promised.

¶ 92 Every time that Plaintiff found the books were not on the shelves, or in the catalog, while he justifiably relied not merely on Defendants' words but on Defendants' actions, Plaintiff complained to Defendants, demanding either the return of the books or their reappearance in the catalog.

¶ 93 But every time that Plaintiff found the books were on the shelves, or in the catalog, while he justifiably relied not merely on Defendants' words but on Defendants' actions, Plaintiff dropped his demand for their return.

¶ 94 At some times but not at others, it was not sufficient for Defendants to make an oral or written promise to Plaintiff, for them to induce his action or forbearance, but Defendants chose to act in a certain way, to demonstrate their promise, so they could induce the action or forbearance of Plaintiff—leading him not only to donate the books but to drop his demand for their return, as they sought to make him go away.

¶ 95 Each of Defendants is not merely "estopped by his conduct," but each of Defendants is "estopped by…his silence," since Plaintiff had "thereby been induced to act to his detriment," in that Defendants remained silent as to their unilateral adoption of an arbitrary policy that purported to allow them to convert, discard, or eliminate the books. Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 605, 747 A.2d 358, 361 (2000), *qtg.* Fried v. Fisher, 328 Pa. 497, 500-501, 196 A. 39, 41-42 (1938). *See also* Osborne-Davis Transp. Co. Inc. v. Mothers Work Inc., 3 Pa. D. & C. 5th 53, 57, 2008 WL 2175580 (Ct. Com. Pl. Phila. Feb. 20, 2008).

¶ 96 Each of Defendants is not merely "estopped by his conduct," but each of Defendants is "estopped by…his silence," since Plaintiff had "thereby been induced to act to his detriment," in that Defendants remained silent as to their plans to convert, discard, or eliminate the books. Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 605, 747 A.2d 358, 361 (2000), *qtg.* Fried v. Fisher, 328 Pa. 497, 500-501, 196 A. 39, 41-42 (1938). *See also* Osborne-

Davis Transp. Co. Inc. v. Mothers Work Inc., 3 Pa. D. & C. 5th 53, 57, 2008 WL 2175580 (Ct. Com. Pl. Phila. Feb. 20, 2008).

¶ 97 If Defendants had told Plaintiff of their unilateral adoption of an arbitrary policy that purported to allow them to convert, discard, or eliminate the books, instead of remaining silent, so as to mislead him, Plaintiff would have instantly demanded the return of the books.

¶ 98 If Defendants had told Plaintiff of their plans to convert, discard, or eliminate the books, instead of remaining silent, so as to mislead him, Plaintiff would have instantly demanded the return of the books.

¶ 99 Defendants have repeatedly contacted Plaintiff by e-mail, mail, and telephone, over the last forty-four (44) years, to let him know the status of books that he checked out, or requested, and even to ask him to donate money to their facility, built at costs of more than twenty-two million dollars ($22,000,000.00), as donated by eight (8) local municipalities, library patrons, and others, in which they promised to shelve his books.

¶ 100 Defendants chose to remain silent, so they induced Plaintiff to act and refrain from acting to his detriment, and, had they not done so, Plaintiff never would have lost irreplaceable copies of the limited first edition of his books.

¶ 101 The only thing that Defendants had to do was to call Plaintiff on the telephone, write him a short letter, or send him an e-mail, with the contact information they repeatedly used over decades, saying they no longer wanted his books, as they knew this is what he expected them to do, based on his statements and their actions, including but not limited to

their promulgation of the Intellectual Freedom Statement and the Anti-Banning Statement, and Plaintiff would have simply driven to the library, while he picked up the books, and this lawsuit would not have been necessary.

¶ 102 Because of not only their words but also their actions, and their silence, Defendants cannot now be heard to assert a right to remain silent or to throw out books, "doing an act differently than the manner in which another was induced by word or deed to expect," but they should be estopped under ancient equitable doctrines applied repeatedly by the Pennsylvania Supreme Court. Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 606, 747 A.2d 358, 361 (2000), *qtg.* Novelty Knitting Mills v. Siskind, 500 Pa. 432, 457 A.2d 502 (1983).

¶ 103 By accepting the books, by cataloging the books, by recataloging the books, and by remaining silent, Defendants made more than one "informal promise implied by one's words, deeds or representations," and these promises led Plaintiff "to rely justifiably thereon to his own injury or detriment" so that they "may be enforced in equity." Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 606, 747 A.2d 358, 361 (2000), *qtg.* Novelty Knitting Mills v. Siskind, 500 Pa. 432, 457 A.2d 502 (1983).

¶ 104 Plaintiff respectfully asks this Court to apply the doctrine of equitable estoppel, enforcing the promises of Defendants, in order to do equity, estopping their assertion of alleged rights, and awarding monetary damages, since Defendants have made their promised performance impossible.

THIRD COUNT
QUASI-CONTRACT

¶ 105 The foregoing allegations are realleged and incorporated herein.

¶ 106 "Quasi-contracts, or contracts implied in law are to be distinguished from express contracts or contracts implied in fact. '(U)nlike true contracts, quasi-contracts are not based on the apparent intention of the parties to undertake the performances in question, nor are they promises. They are obligations created by law for reasons of justice.' Quasi-contracts may be found in the absence of any expression of assent by the party to be charged and may indeed be found in spite of the party's contrary intention." Schott v. Westinghouse Electric Corp., 436 Pa. 279, 290-291, 259 A.2d 443, 449 (1969) (citations omitted).

¶ 107 "A quasi contract arises where the law imposes a duty upon a person, not because of any express or implied promise on his part to perform it, but even in spite of any intention he might have to the contrary." Cameron v. Eynon, 332 Pa. 529, 532, 3 A.2d 423, 424 (1939).

¶ 108 "A quasi contract…arises where the parties agree upon the obligations to be incurred, but their intention, instead of being expressed in words, is inferred from their acts in the light of the surrounding circumstances." Cameron v. Eynon, 332 Pa. 529, 532, 3 A.2d 423, 424 (1939).

¶ 109 Plaintiff is a local author who gifted books to a local library, which promised to shelve, catalog, and recatalog his books, and did catalog and recatalog his books, while Plaintiff not only relied on Defendants' informal promises, made by word and deed, but

Plaintiff plainly told Defendants that if they did not want his books, then they had to give them back, all while Defendants expressed their interest in the books and their support of controversial books through the Anti-Banning Statement and the Intellectual Freedom Statement.

¶ 110 Defendants' intention, or even their contrary intention, is completely irrelevant under the doctrine of quasi-contract, while "obligations created by law for reasons of justice" may be "inferred from their acts in the light of the surrounding circumstances." Schott v. Westinghouse Electric Corp., 436 Pa. 279, 290-291, 259 A.2d 443, 449 (1969); Cameron v. Eynon, 332 Pa. 529, 532, 3 A.2d 423, 424 (1939).

¶ 111 Defendants were unjustly enriched when they converted the books to their own use, as they removed them from the catalog and the library, for however short a time, even if they later destroyed the books, just as a man who embezzled twenty dollars could not claim not to have been unjustly enriched if he destroyed the banknote by using it to light a cigar.

¶ 112 It does not matter if Defendants never intended to keep their promises, or if they never made any money from the conversion of the books, but only that the surrounding circumstances, which they created, impose an obligation on them, as they purport to serve our community, making public statements as to their support of controversial books and their opposition to the banning of books.

¶ 113 Plaintiff respectfully asks this Court to apply the doctrine of quasi-contract, creating obligations for reasons of justice, and awarding monetary damages, since Defendants have made their promised performance impossible.

FOURTH COUNT
CONSTRUCTIVE TRUST

¶ 114 The foregoing allegations are realleged and incorporated herein.

¶ 115 This Court has the power in equity to impose a constructive trust, as to the books, to find that Defendants breached that trust, as they converted the books to their property, before disposing of the books, and to hold them liable for damages, which Plaintiff hereby requests.

¶ 116 "Constructive trusts are trusts not created by words expressed or implied, evincing an intention to create a trust, but by the construction of equity, in order to satisfy the demands of justice." Fox v. Fox, 125 Pa. Super. 541, 547, 189 A. 758, 761 (1937), *qtd. at* City of Philadelphia v. Mancini, 431 Pa. 355, 365, 246 A.2d 320, 324 (1968), *qtd. at* Mogavero v. Mogavero, 52 Pa. D. & C. 2d 161, 168, 93 Montg. 361 (Ct. Com. Pl. 1970).

¶ 117 Plaintiff gave Defendants signed hardback copies of his books, from a limited edition, and a select printing of only fifty (50) volumes, so that the community could enjoy the books, and learn from them, while a love of reading was fostered, and so that Plaintiff could enhance his reputation in the community as a local author.

¶ 118 It is not right, just, or equitable that Defendants should deprive the community they purport to serve of access to printed copies of Plaintiff's books, while they obtained those books, and kept possession of them, only due to their repeated misrepresentations not only to the community, through the Intellectual Freedom Statement and the Anti-Banning Statement, but also their repeated misrepresentations to Plaintiff, who would never have made

"generous donations" of "the two books…donated to the library" if Defendants had been honest. Exhibit C; Exhibit I.

¶ 119 "[A] constructive trust arises where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it." Gray v. Liebert, 357 Pa. 130, 135, 53 A.2d 132, 135 (1947), *qtd. at* Chambers v. Chambers, 406 Pa. 50, 54, 176 A.2d 673, 675 (1962), *qtd. at* Truver v. Kennedy, 425 Pa. 294, 305, 229 A.2d 468, 474 (1967).

¶ 120 Defendants had an equitable duty to convey the books to holders of library cards, and members of the community, through the cataloging of the books, which they did, undid, and promised, and through the shelving of the books, which they refused to do while they made misrepresentations as to their intentions, policies, and practices.

¶ 121 As United States Supreme Court Justice Cardozo wrote, in an opinion repeatedly applied by the Supreme Court of Pennsylvania, "A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest equity converts him into a trustee." Beatty v. Guggenheim Exploration Co., 225 N.Y. 380, 122 N.E. 378, 380 (1919), *qtd. at* Chambers v. Chambers, 406 Pa. 50, 55, 176 A.2d 673, 675 (1962), *qtd. at* Truver v. Kennedy, 425 Pa. 294, 305, 229 A.2d 468, 474 (1967), *qtd. at* Mogavero v. Mogavero, 52 Pa. D. & C. 2d 161, 168, 93 Montg. 361 (Ct. Com. Pl. 1970).

¶ 122 "A constructive trust has been defined as a relationship with respect to property subjecting the person by whom the title to the property is held to an equitable duty to

convey it to another on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property." Mogavero v. Mogavero, 52 Pa. D. & C. 2d 161, 167-168, 93 Montg. 361 (Ct. Com. Pl. 1970), *ctg.* Truver v. Kennedy, 425 Pa. 294, 229 A.2d 468 (1967) and Chambers v. Chambers, 406 Pa. 50, 176 A.2d 673 (1962).

¶ 123 Defendants may not in good conscience retain the beneficial interest in the books, even for the short time before the books were transferred to another, or thrown away.

¶ 124 While a librarian acted on behalf of Defendants, it would not have been acceptable for a librarian to convert the books to his or her own use, following their donation, as he or she took them home, and removed them from the catalog, nor would it have been acceptable for a librarian to convert them to his or her possession, or to convert them to someone else's possession, prior to or without throwing them away.

¶ 125 Acting on behalf of Defendants, a librarian could not have taken these actions immediately after the "generous donations" of "the two books…donated to the library," and a librarian could not have taken these actions one year after the "generous donations" of "the two books…donated to the library"—especially given the repeated assurances that Defendants gave to Plaintiff. Exhibit C; Exhibit I.

¶ 126 Defendants themselves used the language of trust, which involves *donors*, *donees*, and *donations*, when they referred to Plaintiff's "generous donations" of the *res* of the constructive trust, "the two books…donated to the library," whose legal title they held and whose

beneficial interest they were entrusted to convey to the community they purport to serve. Exhibit C; Exhibit I.

¶ 127 One way to understand the duties of the library, as described above, is to impose a constructive trust on Defendants, while their actions can be understood as conversion and breach of trust.

¶ 128 "A constructive trust…may result where fraud or misrepresentation are present." Mogavero v. Mogavero, 52 Pa. D. & C. 2d 161, 168, 93 Montg. 361 (Ct. Com. Pl. 1970), *ctg.* RESTATEMENT (2D) OF TRUSTS § 44.

¶ 129 "Such a trust…may arise out of circumstances evidencing fraud, duress, undue influence or mistake." Chambers v. Chambers, 406 Pa. 50, 54, 176 A.2d 673, 675 (1962), *ctg.* RESTATEMENT (2D) OF TRUSTS § 44.

¶ 130 As set forth above, Defendants made repeated misrepresentations to Plaintiff, and their refusal to deal straight, or to tell the truth, carried into their public denial that the books had ever been gifted to the library, that the books had ever been cataloged by the library, or that they had ever possessed or heard of the books, so that a stranger within the library publicly expressed doubts as to Plaintiff's sanity while he claimed, due to Defendants' misrepresentations, that Plaintiff should be medicated.

¶ 131 As United States Supreme Court Justice Cardozo wrote, in an opinion repeatedly applied by the Supreme Court of Pennsylvania, "A court of equity in decreeing a constructive trust is bound by no unyielding formula. The equity of the transaction must shape the measure of relief.'" Beatty v. Guggenheim Exploration Co., 225 N.Y. 380, 122 N.E. 378,

380 (1919), *qtd. at* Chambers v. Chambers, 406 Pa. 50, 55, 176 A.2d 673, 675 (1962), *qtd. at* Truver v. Kennedy, 425 Pa. 294, 305, 229 A.2d 468, 474 (1967), *qtd. at* Mogavero v. Mogavero, 52 Pa. D. & C. 2d 161, 168, 93 Montg. 361 (Ct. Com. Pl. 1970).

¶ 132 Plaintiff respectfully asks this Court to shape the measure of relief according to the equity of the transaction, as this Court has the power to do, while it imposes a constructive trust, and finds a breach of trust, or conversion, and awards monetary damages, since Defendants have made their promised performance impossible.

FIFTH COUNT
CONVERSION

¶ 133 The foregoing allegations are realleged and incorporated herein.

¶ 134 "A conversion is the deprivation of another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification." Gottesfeld v. Mechanics and Traders Insurance Co., 196 Pa. Super. 109, 115, 173 A.2d 763, 766 (1961), *qtd. at* Stevenson v. Economy Bank of Ambridge, 413 Pa. 442, 451, 197 A.2d 721, 726 (1964).

¶ 135 "[C]onversion is an act of interference with the dominion or control over a chattel…. Conversion may be committed by…[u]nreasonably withholding possession from one who has the right to it." PROSSER ON TORTS § 15 (1955), *qtd. at* Stevenson v. Economy Bank of Ambridge, 413 Pa. 442, 451-452, 197 A.2d 721, 726 (1964).

¶ 136 Plaintiff retained a limited "right of property in, or use or possession of, a chattel," in that he retained the uncontested right to demand the return of the books, and to have

the books returned to his possession, a right that he asserted when he wrote, "I would like my books either to reappear in your catalog, or I would like them back," while Defendants responded not by denying his right but by acquiescing to his demand, and by following his instruction, as they recataloged the books. Exhibit H; Gottesfeld v. Mechanics and Traders Insurance Co., 196 Pa. Super. 109, 115, 173 A.2d 763, 766 (1961), *qtd. at* Stevenson v. Economy Bank of Ambridge, 413 Pa. 442, 451, 197 A.2d 721, 726 (1964).

¶ 137 Defendants have prevented Plaintiff from demanding the return of the books, and to have the books returned to his possession, through "an act of interference with the dominion or control over a chattel," i.e. there is no way for Plaintiff to get his priceless books back since Defendants are, now, forever, "[u]nreasonably withholding possession from one who has the right to it." PROSSER ON TORTS § 15 (1955), *qtd. at* Stevenson v. Economy Bank of Ambridge, 413 Pa. 442, 451-452, 197 A.2d 721, 726 (1964).

¶ 138 Plaintiff did not merely make what Defendants called the "generous donations of your book[s]" (while he retained the uncontested right to revoke such donations), so that the entire community served by the library, of more than fifteen (15) boroughs, fifty-seven (57) townships, and fourteen (14) school districts, and its more than half a million (524,989) residents, could read, enjoy, and learn from what Defendants admitted to be "the two books… donated to the library," but Plaintiff retained a limited "right of property in, or use or possession of, a chattel," in that, so long as the books were cataloged, and kept, by Defendants, he could check them out, to read them at his home, he could remove them from the shelves, to read them at the library, and he could view the catalog entries with pride, as they contributed to his

reputation, which Defendants damaged by conversion of the books, while, by entrusting the books to the library, and recommending them to others, he could make the books available to more than half a million people. Exhibit C; Exhibit I; Gottesfeld v. Mechanics and Traders Insurance Co., 196 Pa. Super. 109, 115, 173 A.2d 763, 766 (1961), *qtd. at* Stevenson v. Economy Bank of Ambridge, 413 Pa. 442, 451, 197 A.2d 721, 726 (1964).

¶ 139 Defendants have prevented Plaintiff, and the entire community they purport to serve, from reading the beautiful hardback volumes, written and signed by a local author, by converting them to an improper use, through "an act of interference with the dominion or control over a chattel," i.e. the right of Plaintiff, or any cardholder, to check out the books, or to read them at the library, since Defendants are, now, forever, "[u]nreasonably withholding possession from one who has the right to it." PROSSER ON TORTS § 15 (1955), *qtd. at* Stevenson v. Economy Bank of Ambridge, 413 Pa. 442, 451-452, 197 A.2d 721, 726 (1964).

¶ 140 Plaintiff respectfully asks this Court to hold Defendants liable for conversion, awarding monetary damages, since Defendants have deprived, and interfered with, (a) the right of Plaintiff to demand the return of the books, and to have the books returned to his possession, since the revocability of his donation was admitted by Defendants and (b) the right of Plaintiff, along with our entire community, to possess, through borrowing, to read, and otherwise to use the priceless hardback volumes that were printed on heavy paper, had sewn bindings, and were signed by a local author.

SIXTH COUNT
FEDERAL CONSTITUTIONAL RIGHTS
TO DUE PROCESS

¶ 141 The foregoing allegations are realleged and incorporated herein.

¶ 142 Defendants are an instrumentality of the Commonwealth of Pennsylvania, subject to the United States Constitution, in that they constitute a "County library," a "Library system," and a "Local library," as defined in Title 24, Part VI, Chapter 93, of the Statutes of Pennsylvania, while they are further subject to the Public Library Code, which "relates to public libraries," and their actions set forth in this Complaint constitute state actions that implicate federal constitutional rights since their taking of the residual property interests in the books, and associated property rights, was done without Due Process. 24 Pa. Code § 9301.

¶ 143 The Fourteenth Amendment of the United States Constitution provides, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const., Amt. XIV.

¶ 144 In Matthews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33 (1976), *ctg.* Goldberg v. Kelly, 397 U.S. 254, 263-271, 90 S. Ct. 1011, 1018-1022, 25 L. Ed. 2d 287 (1970), the United States Supreme Court formulated a methodology for assessing whether state action offends the Fourteenth Amendment's due process guarantees, as it identified three distinct factors that must be considered: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;

and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements will entail."

¶ 145 Under Matthews v. Eldridge, Plaintiff's "private interest" was his retained property rights in the books, so that he could demand their return, see them on the shelves of the library, read them at the library, and recommend them to others, while his reputation was affected by the cataloging, shelving, and removal of the books. *See* Matthews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33 (1976), *ctg.* Goldberg v. Kelly, 397 U.S. 254, 263-271, 90 S. Ct. 1011, 1018-1022, 25 L. Ed. 2d 287 (1970).

¶ 146 Under Matthews v. Eldridge, "the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards" were that priceless books of literary and historical value, which expressed controversial political ideas penned by a college teacher of political science, were removed from the library, so that Plaintiff's property rights were taken without Due Process, when all Defendants had to do to avoid "the risk of an erroneous deprivation" in the way of "substitute procedural safeguards" was to call Plaintiff on the telephone, as they had done countless times before, or to send him an e-mail, as they had done countless times before, or to send him a letter, as they had done countless times before, including when they recently asked him to make a further donation of twenty-five thousand dollars ($25,000.00), ten thousand dollars ($10,000.00), five thousand dollars ($5,000.00), or various lesser amounts to finance their new twenty-two million dollar building, where they promised his books would be shelved, so that Plaintiff would have simply driven to the library, and picked up his books, which then would not

have been taken without Due Process, so this entire lawsuit would not have been necessary. Matthews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33 (1976), *ctg.* Goldberg v. Kelly, 397 U.S. 254, 263-271, 90 S. Ct. 1011, 1018-1022, 25 L. Ed. 2d 287 (1970).

¶ 147 Under Matthews v. Eldridge, "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements will entail" is hard to identify since the destruction of the books served no purpose, except to repress controversial political ideas and historical analysis, in works of literature written by a college teacher of writing, communication, and political science, which have been downloaded in electronic format more than forty-seven thousand (47,531) times, while they remain hidden from the local community due to the actions of the library, and there would have been an absolutely minimal fiscal and administrative burden involved in sending a stamped letter, writing an e-mail, or picking up the telephone. Matthews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33 (1976), *ctg.* Goldberg v. Kelly, 397 U.S. 254, 263-271, 90 S. Ct. 1011, 1018-1022, 25 L. Ed. 2d 287 (1970).

¶ 148 In taking the books, whose donation was revocable, the residual rights in the books, and associated property rights, Defendants violated the Due Process Rights of Plaintiff because they acted arbitrarily, discarding the books for no apparent reason, while they refused to tell him the truth or to contact him as to the subject of this lawsuit.

¶ 149 Plaintiff respectfully asks this Court to hold Defendants liable for the violation of his constitutional rights, set forth in this Count, awarding general damages as set

forth below for the taking of his reputation, and actual damages as set forth below for the taking of his property rights in the books, and associated rights, without Due Process.

¶ 150 Plaintiff respectfully asks this Court to hold Defendants liable for the violation of his constitutional rights, set forth in this Count, awarding damages, in an amount of one dollar, pursuant to, *inter alia*, Uzuegbunam v. Preczewski, 592 U.S. ___, 141 S. Ct. 792, 802, 209 L. Ed. 2d 94 (2021), wherein the Supreme Court of the United States granted a one-dollar award for "a completed violation of [Petitioner's] constitutional rights when respondents enforced their speech policies against him, since 'every violation [of a right] imports damage,'" so that "nominal damages can redress [Plaintiff's] injury even if he cannot or chooses not to quantify that harm in economic terms." *See also* Pellegrino Food Products Co., Inc. v. The Valley Voice, 33 Media L. Rep. 2259, 2005 Pa. Super. 191, 875 A.2d 1161, 1165 (2005), *qtg.* Gertz v. Robert Welch, Inc., 418 U.S. 323, 350, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) ("there 'need be no evidence which assigns an actual dollar value to the injury"); Wecht v. PG Publishing Co., 27 Media L. Rep. 2210, 725 A.2d 788, 791 (Pa. Super. 1999) (damages available "where there is a technical tort but no actual damage"); Meas v. Johnson, 185 Pa. 12, 19, 39 A. 562, 563 (1898) ("While special damage in this case was neither averred nor proven, nevertheless plaintiff was entitled to go to the jury on the question of general damages, for the wrong done him in reputation, which last our 'Bill of Rights' puts in the same class with life, liberty, and property").

SEVENTH COUNT
STATE CONSTITUTIONAL RIGHTS
TO DUE PROCESS

¶ 151 The foregoing allegations are realleged and incorporated herein.

¶ 152 Defendants are an instrumentality of the Commonwealth of Pennsylvania, subject to the Pennsylvania Constitution, in that they constitute a "County library," a "Library system," and a "Local library," as defined in Title 24, Part VI, Chapter 93, of the Statutes of Pennsylvania, while they are further subject to the Public Library Code, which "relates to public libraries," and their actions set forth in this Complaint constitute state actions that implicate state constitutional rights since their taking of the residual property interests in the books, and associated property rights, was done without Due Process. 24 Pa. Code § 9301.

¶ 153 Through its Declaration of Rights, the Constitution of Pennsylvania provides, "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." Penna. Const., Art. I, Sec. 7.

¶ 154 "This declaration was copied verbatim from the Constitutions of 1838 (article 9, § 1) and 1790 (article 9, § 1) and is the practical equivalent of clause 1 of the Declaration of Rights in the Constitution of 1776; so that it reaches back to the very beginnings of our existence as a commonwealth." Roher v. Milk Control Board, 322 Pa. 257, 258, 186 A. 336, 359 (1936).

¶ 155 Through its Declaration of Rights, the Constitution of Pennsylvania provides, "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law and right and justice administered without sale, denial or delay." Penna. Const., Art. I, Sec. 11.

¶ 156 "Section 1 of Article I of the Pennsylvania Constitution establishes the right of 'acquiring, possessing and protecting property.'" R. v. Commonwealth, 535 Pa. 440, 461, 636 A.2d 142, 152 (1994), *ctg*. Best v. Zoning Board of Adjustment, 393 Pa. 106, 110-111, 141 A.2d 606, 609 (1958).

¶ 157 "[T]he inherent and indefeasible right to acquire, possess and protect property 'amounts substantially to the provision contained in the 14th Amendment to the Federal Constitution, that no State shall 'deprive any person ... of property, without due process of law.'" R. v. Commonwealth, 535 Pa. 440, 461, 636 A.2d 142, 152 (1994), *qtg.* Wilcox v. Pennsylvania Mutual Life Insurance Co., 357 Pa. 581, 590, 55 A.2d 521, 526 (1947). *See also* Best v. Zoning Board of Adjustment, 393 Pa. 106, 141 A.2d 606 (1958).

¶ 158 "'The requirements of this section are not distinguishable from those of Section 1 of the Fourteenth Amendment to the Federal Constitution—nor shall any State deprive any person ... of property, without due process of law.'" R. v. Commonwealth, 535 Pa. 440, 461, 636 A.2d 142, 152 (1994), *ctg*. Best v. Zoning Board of Adjustment, 393 Pa. 106, 110-111, 141 A.2d 606, 609 (1958).

¶ 159 "[T]he Pennsylvania Constitution establishes reputation as one of the fundamental rights that cannot be abridged without compliance with state constitutional standards of due process and equal protection." Hatchard v. Westinghouse Broadcasting Co., 516 Pa. 184, 193-194, 532 A.2d 346, 350-351 (1987), *ctg.* Wolfe v. Beal, 477 Pa. 477, 384 A.2d 1187 (1978) and Moyer v. Phillips, 462 Pa. 395, 341 A.2d 441 (1975). *See also* In re J.B., 630 Pa. 408, FN 26, 107 A.3d 1 (2014).

¶ 160 "[O]ur Declaration of Rights places reputation 'in the same class with life, liberty and property.'" Hatchard v. Westinghouse Broadcasting Co., 516 Pa. 184, 194, 532 A.2d 346, 351 (1987), *qtg.* Meas v. Johnson, 185 Pa. 12, 19, 39 A. 562, 563 (1898).

¶ 161 "Pennsylvania's constitution, unlike its federal counterpart, includes reputation as an 'inherent and indefeasible' right." Commonwealth v. Molina, 628 Pa. 465, FN13, 104 A.3d 430 (2014).

¶ 162 "Therefore, the due process guarantees that apply to deprivations of property under Section 1 apply with equal force to deprivations of reputation and Section 1's other protected interests." R. v. Commonwealth, 535 Pa. 440, 462, 636 A.2d 142, 152-153 (1994).

¶ 163 "[R]ights enumerated in the Declaration of Rights are deemed to be inviolate and may not be transgressed by government." Gondelman v. Commonwealth, 520 Pa. 451, 467, 554 A.2d 896, 904 (1989), *ctg.* Spayd v. Ringing Rock Lodge No. 665, 270 Pa. 67, 113 A. 70 (1921).

¶ 164 "[T]hose guarantees are identical to those which extend to interests protected by the Due Process Clause of the Fourteenth Amendment." R. v. Commonwealth, 535 Pa. 440, 462, 636 A.2d 142, 153 (1994).

¶ 165 In assessing whether state action offends due process guarantees, the Supreme Court of Pennsylvania has adopted the three-factor analysis set forth in Matthews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33 (1976). R. v. Commonwealth, 535 Pa. 440, 462, 636 A.2d 142, 153 (1994).

¶ 166 For the reasons set forth in the Sixth Count of this Complaint, Defendants violated the Due Process Rights of Plaintiff because they acted arbitrarily, discarding the books for no apparent reason, while they refused to tell him the truth or to contact him as to the subject of this lawsuit with the addition that his reputation, which was taken through state action, is especially protected by the Pennsylvania Constitution.

¶ 167 Plaintiff respectfully asks this Court to hold Defendants liable for the violation of his constitutional rights, set forth in this Count, awarding general damages as set forth below for the taking of his reputation, and actual damages as set forth below for the taking of his property rights in the books, and associated rights, without Due Process.

¶ 168 Plaintiff respectfully asks this Court to hold Defendants liable for the violation of his constitutional rights, set forth in this Count, awarding damages, in an amount of one dollar, pursuant to, *inter alia*, Uzuegbunam v. Preczewski, 592 U.S. ___, 141 S. Ct. 792, 802, 209 L. Ed. 2d 94 (2021), wherein the Supreme Court of the United States granted a one-

dollar award for "a completed violation of [Petitioner's] constitutional rights when respondents enforced their speech policies against him, since 'every violation [of a right] imports damage,'" so that "nominal damages can redress [Plaintiff's] injury even if he cannot or chooses not to quantify that harm in economic terms." *See also* Pellegrino Food Products Co., Inc. v. The Valley Voice, 33 Media L. Rep. 2259, 2005 Pa. Super. 191, 875 A.2d 1161, 1165 (2005), *qtg.* Gertz v. Robert Welch, Inc., 418 U.S. 323, 350, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) ("there 'need be no evidence which assigns an actual dollar value to the injury"); Wecht v. PG Publishing Co., 27 Media L. Rep. 2210, 725 A.2d 788, 791 (Pa. Super. 1999) (damages available "where there is a technical tort but no actual damage"); Meas v. Johnson, 185 Pa. 12, 19, 39 A. 562, 563 (1898) ("While special damage in this case was neither averred nor proven, nevertheless plaintiff was entitled to go to the jury on the question of general damages, for the wrong done him in reputation, which last our 'Bill of Rights' puts in the same class with life, liberty, and property").

EIGHTH COUNT

FEDERAL CONSTITUTIONAL RIGHTS

TO FREEDOM OF SPEECH & FREEDOM OF THE PRESS

¶ 169 The foregoing allegations are realleged and incorporated herein.

¶ 170 Defendants are an instrumentality of the Commonwealth of Pennsylvania, subject to the United States Constitution, in that they constitute a "County library," a "Library system," and a "Local library," as defined in Title 24, Part VI, Chapter 93, of the Statutes of Pennsylvania, while they are further subject to the Public Library Code, which "relates to public

libraries," and their actions set forth in this Complaint constitute state actions that implicate federal constitutional rights since they have violated Plaintiff's rights under the First Amendment of the United States Constitution. 24 Pa. Code § 9301.

¶ 171 The First Amendment of the United States Constitution provides, "Congress shall make no law…abridging the freedom of speech, or of the press." U.S. Const., Amt. I.

¶ 172 In Board of Education v. Pico, 457 U.S. 853, 869, 857, 102 S. Ct. 2799, 2809, 2803, 73 L. Ed. 2d 435 (1982), the Supreme Court of the United States "reject[ed] petitioners' claim of absolute discretion to remove books from their school libraries" in a case similar to that before this Court—except that Plaintiff's position is stronger in that (a) a school library, which serves children, has a greater interest in censoring material than a public library, which serves adults, (b) Plaintiff is an author who donated his own books to the library not merely a reader of donated books at the library, and (c) Plaintiff's books express controversial political ideas more than the works of literature that were characterized by a school board as "anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy" while it asserted a "duty, [and] moral obligation, to protect the children in our schools from this moral danger."

¶ 173 "Whether petitioners' removal of books from the libraries denied respondents their First Amendment rights depends upon the motivation behind petitioners' actions. Local school boards may not remove books from school libraries simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'" Board of Education v.

Pico, 457 U.S. 853, 854, 102 S. Ct. 2799, 2802, 73 L. Ed. 2d 435 (1982), *qtg.* West Virginia Board of Education v. Barnette, 319 U.S. 624, 642, 63 S. Ct. 1178, 1187, 87 L. Ed. 1628 (1943).

¶ 174 In Board of Education v. Pico, 457 U.S. 853, 866-867, 102 S. Ct. 2799, 2808, 73 L. Ed. 2d 435 (1982), the United States Supreme Court went on to discuss the need for a library to support a free marketplace of ideas where writers like Plaintiff could distribute controversial information and ideas, and readers like Plaintiff could receive controversial information and ideas:

> [T]he First Amendment rights of students may be directly and sharply implicated by the removal of books from the shelves of a school library. Our precedents have focused 'not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas.' First National Bank of Boston v. Bellotti, 435 U.S. 765, 783, 98 S. Ct. 1407, 1419, 55 L. Ed. 2d 707 (1978). And we have recognized that 'the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge.' Griswold v. Connecticut, 381 U.S. 479, 482, 85 S. Ct. 1678, 1680, 14 L. Ed. 2d 510 (1965). In keeping with this principle, we have held that in a variety of contexts 'the Constitution protects the right to receive information and ideas.' Stanley v. Georgia, 394 U.S. 557, 564, 89 S. Ct. 1243, 1247, 22 L. Ed. 2d 542 (1969); *see* Kleindienst v. Mandel, 408 U.S. 753, 762– 763, 92 S. Ct. 2576, 2581, 33 L. Ed. 2d 683 (1972) (citing cases). This right is an inherent corollary of the

> rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the sender's First Amendment right to send them: 'The right of freedom of speech and press…embraces the right to distribute literature, and necessarily protects the right to receive it.' Martin v. Struthers, 319 U.S. 141, 143, 63 S. Ct. 862, 863, 87 L. Ed. 1313 (1943).

¶ 175 "[S]chool officials may not remove books from school libraries for the purpose of restricting access to the political ideas or social perspectives discussed in the books, when that action is motivated simply by the officials' disapproval of the ideas involved." Board of Education v. Pico, 457 U.S. 853, 854, 102 S. Ct. 2799, 2802, 73 L. Ed. 2d 435 (1982).

¶ 176 Defendants could not remove Plaintiff's books in their "absolute discretion" or "simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'" Board of Education v. Pico, 457 U.S. 853, 869, 854, 102 S. Ct. 2799, 2809, 2802, 73 L. Ed. 2d 435 (1982), *qtg.* West Virginia Board of Education v. Barnette, 319 U.S. 624, 642, 63 S. Ct. 1178, 1187, 87 L. Ed. 1628 (1943).

¶ 177 Plaintiff's books concern deeply controversial and political subjects, while, as a lawyer and an adjunct professor, he teaches not only writing, literature, and liberal arts but also political science, so, as he wrote to John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, and to Paul Sapko, in his capacity as Reference/Circulation Desk Librarian of Defendant Kennett Library, "I understand that my

books are controversial…so that, in some communities, they might become banned books." Exhibit H.

¶ 178 Plaintiff supplied John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, the Author Biography from Hokahey Books, which plainly refers to "his political activism against the Central Intelligence Agency." Exhibit C; Exhibit D.

¶ 179 Plaintiff supplied John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, the Press Release for Plaintiff's First Book, which plainly describes how his "surprisingly funny and carefully structured epic addresses race relations, sexual entrainment, microwave harassment, cybernetic implantation, brainwashing, state-sponsored terrorism, satanic ritual abuse, and murder," how the book "describes mind control methods employed by the Tavistock Institute and the Central Intelligence Agency involving drugs, hypnosis, electroshock, and sexual abuse," and how it regards four different projects of the Central Intelligence Agency (CIA). Exhibit C; Exhibit E.

¶ 180 Plaintiff supplied John Catlett, in his capacity as Programs & Social Media Coordinator of Defendant Kennett Library, the Press Release for Plaintiff's Second Book, which plainly describes "the social engineering programs run by CIA, NSA, MI-6, and their affiliates" in addition to his relationship with "the granddaughter of a cyberneticist who worked for both the Nazis and the Pentagon." Exhibit C; Exhibit F.

¶ 181 Defendants cataloged the books, assigning them the subjects of Biography and Military Psychology. *See* Exhibit H.

¶ 182 Then, without notice to Plaintiff, although the books had been in Defendants' possession for a mere fifteen (15) months, and Defendants would move to their new twenty-two million dollar facility only one month later, where they promised they would shelve Plaintiff's controversial books, and they had plenty of room to shelve Plaintiff's controversial books, which they had already cataloged under biography and military psychology, Defendants removed the books permanently from their catalog, their shelves, and the local "marketplace of ideas."

¶ 183 In doing so, Defendants restricted Plaintiff's "individual self-expression," while they denied the public "access to discussion, debate, and dissemination of information and ideas" so that they "contract[ed] the spectrum of available knowledge" despite the fact that "the Constitution protects the right to receive information and ideas" and "[t]he right of freedom of speech and press…embraces the right to distribute literature, and necessarily protects the right to receive it." Board of Education v. Pico, 457 U.S. 853, 866-867, 102 S. Ct. 2799, 2808, 73 L. Ed. 2d 435 (1982), *qtg.* First National Bank of Boston v. Bellotti, 435 U.S. 765, 783, 98 S. Ct. 1407, 1419, 55 L. Ed. 2d 707 (1978), *and qtg.* Griswold v. Connecticut, 381 U.S. 479, 482, 85 S. Ct. 1678, 1680, 14 L. Ed. 2d 510 (1965), *and qtg.* Stanley v. Georgia, 394 U.S. 557, 564, 89 S. Ct. 1243, 1247, 22 L. Ed. 2d 542 (1969), *and qtg.* Martin v. Struthers, 319 U.S. 141, 143, 63 S. Ct. 862, 863, 87 L. Ed. 1313 (1943).

¶ 184 Defendants' actions are ironic given their publication of the Intellectual Freedom Statement and the Anti-Banning Statement, on which Plaintiff relied in gifting priceless signed copies of the limited first edition of his controversial books.

¶ 185 The disconnect between Defendants' suppression of First Amendment Rights and their statements that they support such rights—which they make to the community they purport to serve, while they solicit donations, and receive public funds—parallels the disconnect between their repeated promises to Plaintiff and their actions toward Plaintiff.

¶ 186 Upon information and belief, Defendants removed Plaintiff's controversial books in violation of state and federal constitutional law either in their "absolute discretion" or "simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'" Board of Education v. Pico, 457 U.S. 853, 869, 854, 102 S. Ct. 2799, 2809, 2802, 73 L. Ed. 2d 435 (1982), *qtg.* West Virginia Board of Education v. Barnette, 319 U.S. 624, 642, 63 S. Ct. 1178, 1187, 87 L. Ed. 1628 (1943).

¶ 187 Plaintiff respectfully asks this Court to hold Defendants liable for the violation of his constitutional rights, set forth in this Count, awarding damages, in an amount of one dollar, pursuant to, *inter alia*, Uzuegbunam v. Preczewski, 592 U.S. ___, 141 S. Ct. 792, 802, 209 L. Ed. 2d 94 (2021), wherein the Supreme Court of the United States granted a one-dollar award for "a completed violation of [Petitioner's] constitutional rights when respondents enforced their speech policies against him, since 'every violation [of a right] imports damage,'" so that "nominal damages can redress [Plaintiff's] injury even if he cannot or chooses not to quantify that harm in economic terms." *See also* Pellegrino Food Products Co., Inc. v. The Valley Voice, 33 Media L. Rep. 2259, 2005 Pa. Super. 191, 875 A.2d 1161, 1165 (2005), *qtg.* Gertz v. Robert Welch, Inc., 418 U.S. 323, 350, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) ("there

'need be no evidence which assigns an actual dollar value to the injury"); Wecht v. PG Publishing Co., 27 Media L. Rep. 2210, 725 A.2d 788, 791 (Pa. Super. 1999) (damages available "where there is a technical tort but no actual damage"); Meas v. Johnson, 185 Pa. 12, 19, 39 A. 562, 563 (1898) ("While special damage in this case was neither averred nor proven, nevertheless plaintiff was entitled to go to the jury on the question of general damages, for the wrong done him in reputation, which last our 'Bill of Rights' puts in the same class with life, liberty, and property").

NINTH COUNT

STATE CONSTITUTIONAL RIGHTS

TO FREEDOM TO SPEAK, FREEDOM TO WRITE, AND FREEDOM TO PRINT

¶ 188 The foregoing allegations are realleged and incorporated herein.

¶ 189 Defendants are an instrumentality of the Commonwealth of Pennsylvania, subject to the Pennsylvania Constitution, in that they constitute a "County library," a "Library system," and a "Local library," as defined in Title 24, Part VI, Chapter 93, of the Statutes of Pennsylvania, while they are further subject to the Public Library Code, which "relates to public libraries," and their actions set forth in this Complaint constitute state actions that implicate state constitutional rights since they have violated Plaintiff's rights under Article One of the Pennsylvania Constitution. 24 Pa. Code § 9301.

¶ 190 The Supreme Court of Pennsylvania has "on numerous occasions recognized the Pennsylvania Constitution to be an alternative and independent source of individual rights." Commonwealth v. Tate, 495 Pa. 158, 169, 432 A.2d 1382, 1388 (1980).

¶ 191 Protected interests include not only property and reputation but also the freedom of the press and the freedom of speech, or their state equivalents, since, through its Declaration of Rights, the Constitution of Pennsylvania provides, "The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject." Art. I, Sec. 7. *See* Commonwealth v. Tate, 495 Pa. 158, 168-169, 432 A.2d 1382, 1387 (1980).

¶ 192 "It is well settled that a state may provide through its constitution a basis for the rights and liberties of its citizens independent from that provided by the Federal Constitution, and that the rights so guaranteed may be more expansive than their federal counterparts." Commonwealth v. Tate, 495 Pa. 158, 169, 432 A.2d 1382, 1387 (1980).

¶ 193 For these reasons and those set forth above, Defendants' removal of Plaintiff's books from the Kennett Library violated not only his rights under the United States Constitution but also his rights under the Pennsylvania Constitution.

¶ 194 Plaintiff respectfully asks this Court to hold Defendants liable for the violation of his constitutional rights, set forth in this Count, awarding damages, in an amount of one dollar, pursuant to, *inter alia*, Uzuegbunam v. Preczewski, 592 U.S. ___, 141 S. Ct. 792, 802, 209 L. Ed. 2d 94 (2021), wherein the Supreme Court of the United States granted a one-dollar award for "a completed violation of [Petitioner's] constitutional rights when respondents enforced their speech policies against him, since 'every violation [of a right] imports damage,'" so that "nominal damages can redress [Plaintiff's] injury even if he cannot or chooses not to quantify that harm in economic terms." *See also* Pellegrino Food Products Co., Inc. v. The

Valley Voice, 33 Media L. Rep. 2259, 2005 Pa. Super. 191, 875 A.2d 1161, 1165 (2005), *qtg.* Gertz v. Robert Welch, Inc., 418 U.S. 323, 350, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) ("there 'need be no evidence which assigns an actual dollar value to the injury"); Wecht v. PG Publishing Co., 27 Media L. Rep. 2210, 725 A.2d 788, 791 (Pa. Super. 1999) (damages available "where there is a technical tort but no actual damage"); Meas v. Johnson, 185 Pa. 12, 19, 39 A. 562, 563 (1898) ("While special damage in this case was neither averred nor proven, nevertheless plaintiff was entitled to go to the jury on the question of general damages, for the wrong done him in reputation, which last our 'Bill of Rights' puts in the same class with life, liberty, and property").

DAMAGES

¶ 195 The foregoing allegations are realleged and incorporated herein.

¶ 196 "By its very nature, injury to reputation does not work its greatest mischief in the form of monetary loss." Agriss v. Roadway Express, Inc., 334 Pa. Super. 295, 328, 483 A.2d 456, 473 (1984).

¶ 197 "The law can furnish no definite measure for damages [to reputation] that are essentially indefinite." Pennsylvania Railroad Company v. McCloskey's Administrator, 23 Pa. 526 (1854).

¶ 198 "Private persons…may recover for 'impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering' and there 'need be no evidence which assigns an actual dollar value to the injury." Pellegrino Food Products Co., Inc.

v. The Valley Voice, 33 Media L. Rep. 2259, 2005 Pa. Super. 191, 875 A.2d 1161, 1165 (2005), *qtg.* Gertz v. Robert Welch, Inc., 418 U.S. 323, 350, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974).

¶ 199 "[U]nder the head of general damages the jury may award a substantial sum." Binder v. Pottstown Daily News Publishing Co., 33 Pa. Super. 411, 428 (1906), *ctg.* Leitz v. Hohman, 16 Pa. Super. 276 (1900).

¶ 200 "Actual harm includes 'impairment of reputation and standing in the community, … personal humiliation, and mental anguish and suffering.'" Brinich v. Jencka, 2000 Pa. Super. 209, 757 A.2d 388, 397 (2000) (citations omitted). *See also* Meas v. Johnson, 185 Pa. 12, 19, 39 A. 562, 563 (1898) ("While special damage in this case was neither averred nor proven, nevertheless plaintiff was entitled to go to the jury on the question of general damages, for the wrong done him in reputation, which last our 'Bill of Rights' puts in the same class with life, liberty, and property.")

¶ 201 "[G]eneral damages…include emotional distress." Miller v. Hubbard, 205 Pa. Super. 111, 116, 207 A.2d 913, 916 (1965).

¶ 202 Plaintiff was damaged by Defendants in that they discarded his books, which have International Sales Book Numbers (ISBNs) embossed on their covers, pricing them at one hundred dollars each; but, since the books were signed by Plaintiff, since the books were part of a limited first edition of only twenty-five (25) copies each, and since the books have increased in demand so that more than forty-seven thousand (47,531) copies have been downloaded from his website, where he has written more than five hundred (558) pieces of

independent journalism, with more than two million (2,498,432) hits, the value of the books has increased beyond their original price.

¶ 203 Upon information and belief, the signed books, which Plaintiff could have recovered if Defendants had played straight, and simply contacted him, are now worth as much as five hundred dollars per volume for a total of up to one thousand dollars ($1,000.00).

¶ 204 The books have priceless sentimental value to Plaintiff, who dreamed of being an author, whose books would be shelved in his local library, where he and others could read his hardbacks, since he got his childhood library card from Defendants forty-four years ago, and, while a price cannot be put on their destruction, Plaintiff would value them at an additional two thousand dollars per volume for a total of up to four thousand dollars ($4,000.00).

¶ 205 Defendants' actions have caused Plaintiff emotional distress, accompanied by mental anguish and suffering, so that he will never trust another library, and he will never give volumes to another library, and he will never set foot in the libraries owned by Defendants, and, while a price cannot be put on his emotional distress, mental anguish and suffering, Plaintiff would value them at an additional amount of up to five thousand dollars ($5,000.00).

¶ 206 Plaintiff suffered personal humiliation when a library patron questioned his sanity because Defendants denied ever receiving the books, or their existence, in public, and, while a price cannot be put on his personal humiliation, Plaintiff would value it at an additional amount of up to five thousand dollars ($5,000.00).

¶ 207 Plaintiff suffered impairment of reputation and standing in the community in that, while Plaintiff is a college professor, a lawyer in good standing, an online publisher, an

independent journalist, and a local author, Defendants have made him look like a lunatic, or a liar, because anyone he told to read his books at his local library will now find no record of their existence.

¶ 208 While a price cannot be put on the impairment of his reputation and standing in the community, which Defendants promised to increase but instead damaged, Plaintiff would value it at an additional amount of up to twenty thousand dollars ($20,000.00).

¶ 209 Plaintiff requests nominal damages for the impairment of his reputation and standing in the community, which may be available "where there is a technical tort but no actual damage," in an amount of one dollar, in addition to the four requests for damages, each in an amount of one dollar, set forth above for the violation of his federal and state constitutional rights, for a total amount of up to five dollars ($5.00). Wecht v. PG Publishing Co., 27 Media L. Rep. 2210, 725 A.2d 788, 791 (Pa. Super. 1999). *See also* Uzuegbunam v. Preczewski, 592 U.S. ___, 141 S. Ct. 792, 802, 209 L. Ed. 2d 94 (2021).

¶ 210 Plaintiff requests that a jury composed of twelve (12) members determine his damages in an amount of up to thirty-five thousand and five dollars ($35,005.00), and he also requests his costs.

DEMAND FOR JURY TRIAL

¶ 211 The foregoing allegations are realleged and incorporated herein.

¶ 212 In granting a plaintiff the right to a jury trial for a claim of promissory estoppel, the Court of Common Pleas of Pennsylvania, Philadelphia County, correctly described the right of Plaintiff to a jury trial for the claims set forth in this Complaint as follows:

"Although Osborne-Davis' promissory estoppel is rooted in equity, that historical fact does not prevent factual determinations from being a jury question. The Pennsylvania Supreme Court has decided that a plaintiff is entitled to a jury trial on a promissory estoppel claim. When the Supreme Court first held that the doctrine of promissory estoppel was cognizable in Pennsylvania the court affirmed a judgment entered on the verdict of a jury. [Fried v. Fisher, 328 Pa. 497, 499-500, 196 A. 39, 41 (1938).] The court in Crouse v. Cyclops Industries, 560 Pa. 394, 403, 745 A.2d 606, 610 (2000), remanded a promissory estoppel claim for a jury trial." Osborne-Davis Transp. Co. Inc. v. Mothers Work Inc., 3 Pa. D. & C. 5th 53, 57-58, 2008 WL 2175580 (Ct. Com. Pl. Phila. Feb. 20, 2008).

¶ 213 Osborne-Davis also held that a plaintiff was "entitled to a jury determination of facts because it has asserted a quasi-contract claim for monetary damages only," and since Plaintiff here asserts such a claim, Plaintiff has a further right to jury trial. Transp. Co. Inc. v. Mothers Work Inc., 3 Pa. D. & C. 5th 53, 60, 2008 WL 2175580 (Ct. Com. Pl. Phila. Feb. 20, 2008).

¶ 214 This case involves factual questions to be determined by a jury as to, *inter alia*, (a) the expectations of Defendants, (b) the statements of Defendants, (b) the actions of Defendants, (c) the reliance of Plaintiff, (d) the surrounding circumstances, (e) the procedures Defendants employed in removing the books from the library, (f) the reasons why Defendants removed the books from the library, and (g) the amount of Plaintiff's damages; so that a jury should be the decider of fact.

¶ 215 Such a trial would also be proper since a jury would be composed of members of the public whose ability to read the books, which were written by a local author, has been impacted by the actions of Defendants, who purport not only to uphold their own Anti-Banning Statement and Intellectual Freedom Statement, as they claim to support and defend the Freedom of Speech, the Freedom of the Press, the Freedom To Speak, the Freedom To Write, and the Freedom To Print, along with associated freedoms of expression.

¶ 216 Therefore, Plaintiff respectfully and expressly demands a jury trial, with a jury composed of its full complement of twelve (12) members, as to his claims set forth in this Complaint.

[*Signature page follows.*]

I, Timothy Shelley, verify that the facts set forth in this Complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C.S. § 4904) related to unsworn falsification to authorities.

I further certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

I make these certifications and verifications on the date set forth below.

/s/ Timothy Shelley
Timothy Shelley, *Plaintiff, pro se*
[CONTACT INFO REDACTED]
[& EXHIBITS REDACTED]

Dated: December 28, 2023