

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----X

STUART TIEKERT,

Plaintiff,

-against-

**AMENDED VERIFIED
COMPLAINT**

VILLAGE OF MAMARONECK, THOMAS MURPHY,
CHARLOTTE MOUNTAIN, JERRY BARBERIO, DAN
SARNOFF, DAN GRAY, FRANK TAVOLACCI,
SHAWN JIMISON, and ROBIN KRAMER,

JURY TRIAL DEMANDED

Defendants.

-----X

Plaintiff Stuart Tiekert, by his attorney Brian M. Higbie, Esq., as and for his
Verified Complaint against the Defendants, alleges as follows:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action asserts claims based on the First and Fourteenth Amendments to the United States Constitution (U.S. Const. Amends. I & XIV) and under 42 U.S.C. § 1983.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1343 because the claims asserted seek to redress the deprivation of rights and privileges secured by the Constitution under color of state law.

VENUE

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because Westchester County is in the Southern District of New York and because, on information and belief, all individual Defendants reside in this district.

4. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because all

the events and omissions giving rise to this action took place in the Southern District of New York.

PARTIES

5. That at all times hereinafter mentioned, the Plaintiff Stuart Tiekert, was and is a resident of the Village of Mamaroneck, the owner of 130 Beach Avenue, Unit B, Mamaroneck, NY (the “Home” or “Premises”), whose outspoken advocacy on matters of public concern has drawn the ire of the Defendants.

6. That at all times hereinafter mentioned, the defendant Village of Mamaroneck, its departments, offices, officials, employees, and agents (the “VILLAGE”) was and is a domestic municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York, with a place of business at 123 Mamaroneck Avenue, Mamaroneck, New York.

7. That at all times hereinafter mentioned, the defendant Thomas Murphy (“MURPHY”) is named both in his official capacity as Mayor of the Village of Mamaroneck, and in his individual capacity. Some or all of MURPHY’s acts and omission that have injured the Plaintiff were outside the scope of his official duties as Mayor. In all instances alleged, MURPHY acted under color of state law. Upon information and belief, Murphy is a resident of Westchester County, New York.

8. That at all times hereinafter mentioned, the defendant Charlotte Mountain (“MOUNTAIN”) is named both in her official capacity as Code Enforcement Officer of the Village of Mamaroneck, and in her individual capacity. Upon information and belief, Mountain is a resident of Orange County, New York.

9. That at all times hereinafter mentioned, the defendant Jerry Barberio

("BARBERIO") is named both in his official capacity as Village Manager of the Village of Mamaroneck, and in his individual capacity. Upon information and belief, BARBERIO is a resident of Westchester County, New York.

10. That at all times hereinafter mentioned, the defendant Dan Sarnoff ("SARNOFF") is named both in his official capacity as Deputy Village Manager of the Village of Mamaroneck, and in his individual capacity. Upon information and belief, SARNOFF is a resident of Westchester County, New York.

11. That at all times hereinafter mentioned, the defendant Dan Gray ("GRAY") is named both in his official capacity as the former Building Inspector of the Village of Mamaroneck, and in his individual capacity. Upon information and belief, GRAY is a resident of New York.

12. That at all times hereinafter mentioned, the defendant Frank Tivolacci ("TAVOLACCI") is named both in his official capacity as the Building Inspector of the Village of Mamaroneck, and in his individual capacity. Upon information and belief, TAVOLACCI is a resident of Westchester County, New York.

13. That at all times hereinafter mentioned, the defendant Shawn Jimison ("JIMISON") is named both in his official capacity as Fire Inspector of the Village of Mamaroneck, and in his individual capacity. Upon information and belief, JIMISON is a resident of Westchester County, New York.

14. That at all times hereinafter mentioned, the defendant Robin Kramer ("KRAMER") is named both in her official capacity as the Chair of the Zoning Board of Appeals of the Village of Mamaroneck, and in her individual capacity. Upon information and belief, KRAMER is a resident of Westchester County, New York.

FACTS COMMON TO CAUSES OF ACTION

15. On September 9, 2019 at approximately 2:39 pm, four employees of the Village of Mamaroneck, namely, Lt. Dom Falcone, Detective Richie Carroll, Defendant JIMISON, and Defendant MOUNTAIN entered the home owned by Plaintiff Stuart Tiekert, Unit B of 130 Beach Avenue, Mamaroneck, NY (the "Home" or the "Premises").

16. Plaintiff Stuart Tiekert was at Home and was handed a single-page warrant that said the following:

CITY COURT: CITY OF NEW ROCHELLE

COUNTY OF WESTCHESTER

Hon. Anthony A. Carbone ~~Justice~~-Judge.

To any Police Officer of the Village of Mamaroneck Police Department:

YOU ARE HEREBY AUTHORIZED AND DIRECTED to search the following names or described premises: 130 Beach Avenue, Unit B, Village of Mamaroneck, Town of Rye, New York.

Pursuant to CPL 6980.45 (6), this warrant must be executed between 6:00 A.M. and 9:00 P.M.

This warrant must be executed not more than 10 days after the date of its issuance and any property seized shall be returned and delivered to the court without unnecessary delay.

Dated: September 9, 2019 at 11:07 AM

Mamaroneck, New York

signature

Hon. Anthony A. Carbone
Judge ~~Justice~~ of the City Court
City of New Rochelle
County of Westchester

17. The criminal warrant specified who could search the Premises, and the location of the Premises, and the dates and hours when the search was authorized, but did not specify the purpose of the search, what was being searched for, or any person subject to arrest.

18. Defendants MOUNTAIN and JIMISON entered the Home despite lacking authorization under the warrant.

19. Defendant MOUNTAIN took photographs of the interior of Plaintiff's Home.

20. Upon leaving, only Defendant MOUNTAIN spoke, and told Tiekert only that she would be in touch.

21. The Defendants ignored or failed to follow proper procedures for inspection of the Home.

22. The warrant is and was facially defective.

23. The warrant is and was legally defective.

24. The warrant is and was obtained under false pretenses.

25. The warrant is and was obtained without probable cause of a crime.

26. The warrant is and was obtained without adequate evidence of any code violation.

27. The warrant is and was obtained without meeting the requisite legal burden.

28. The Defendants' use of a criminal court and a criminal warrant for administrative inspection is part of a policy or custom.

29. The Defendants relied on an anonymous witness.

30. The Defendants failed to disclose the anonymous witness as required by law.

31. The Defendants knew or should have known of the flaws, defects, and/or illegality of the warrant.

28. The Defendants ignored the defects in the warrant.

29. Plaintiff Tiekert obtained the application in support of the search warrant on September 19, 2019, pursuant to a FOIL request.

30. The caption of the affidavit submitted by one or more Defendants in support of the unlawful warrant indicated the Justice Court of the Village of Mamaroneck "In the Matter of the Application of CHARLOTTE MOUNTAIN, As Code Enforcement Officer of the Village of Mamaroneck, to conduct a search of premises at 130 Beach Avenue, Unit B, Mamaroneck, New York, **Pursuant to Criminal Procedure Law §690.05.**" (emphasis added).

3XX. The VILLAGE lacks any law or procedure authorizing or permitting administrative warrants.

318. In her affidavit, MOUNTAIN purported "that the facts which follow provide reasonable cause to believe that the premises at 130 Beach Avenue, Unit B, are

presently in violation of Chapters 126 and 342 of the Code of the Village of Mamaroneck and Property Maintenance Code 2015 of New York State §403.3 and §404.7."

319. Such violations do not constitute crimes.

320. Moreover, MOUNTAIN's "facts" failed to meet the constitutionally required probable cause standard necessary to violate a resident's right to privacy in their homes pursuant to the Fourth Amendment of the Constitution of the United States.

321. Because she had no personal knowledge of the interior of the third floor of 130 Beach Avenue prior to the search, MOUNTAIN's report on the current configuration of the space as compared to code requirements completely lacked credibility.

322. Lacking personal knowledge, MOUNTAIN simply speculated about potential code violations: "If there have been any alterations of Unit B such as the addition of a kitchen or separation between the second and third floors, there would be a violation of Village Code §126-4, which requires a building permit for the construction, enlargement, alteration, improvement, removal or demolition of any building or structure or any portion."

323. MOUNTAIN's speculative "if" statement could be written about any residence in the Village of Mamaroneck, and it provided no factual basis for a search of this particular residence.

324. Furthermore, walls and doors separating the second and third floors of Unit B were already shown on the 1991 condo plans filed with Westchester County. There was no need to conduct a "criminal search" for features already documented on a signed, sealed, and publicly filed plan.

325. MOUNTAIN falsely averred that Stainkamp and Tiekert had each termed the third floor an "apartment" when neither had done so.

326. Specifically, Stainkamp's W-9 simply stated his residence as 130 Beach Avenue, Unit B, third floor" as did his invoice for the painting work.

327. Tiekert had not used the word "apartment" in his conversation with MOUNTAIN.

328. Moreover, the term "apartment" was undefined by the codes cited.

329. Defendants failed to inform the court that the third floor could be lawfully occupied by a tenant.

3XX. Defendants failed to inform the court that plaintiff asserted that his third floor could be and was lawfully occupied by a tenant.

330. Specifically, MOUNTAIN never cited the Village of Mamaroneck Code provision authorizing "no more than two roomers or boarders" as a permitted accessory use to the one-family primary use.

331. Similarly, MOUNTAIN never cited the provision of the Property Maintenance Code providing for habitable spaces called "rooming units" where tenants might live without cooking facilities.

332. MOUNTAIN falsely averred that "The records of the Building Department reflect no building permits or other approvals since 1986 authorizing any change in the configuration of Unit B."

333. The Building Department document "portal" contained records of electrical permits and inspections from 1999/2000 issued by then Assistant Building Inspector

Len Russo – of which permits and inspection Tiekert had specifically informed to MOUNTAIN.

ZZ. Despite having provided this information, MOUNTAIN, MURPHY, BARBERIO, TAVOLACCI and others, both on behalf of the VILLAGE and in their individual capacities, have continued to the present to claim to other agencies, bodies, and courts that no such permits existed and no such inspection had ever taken place.

334. MOUNTAIN falsely reported that Tiekert had denied a voluntary inspection when he had not.

335. MOUNTAIN never stated in her affidavit the particular evidence that she was searching for.

Zz. Neither the warrant itself nor MOUNTAIN's affidavit satisfied the constitutional standard for particularity.

336. MOUNTAIN is not a police officer and the warrant provided only police officers the authority to enter Plaintiff's Home.

337. MOUNTAIN entered Plaintiff's Home and took photographs of the interior of Tiekert's unit but was not authorized by the warrant to do so.

338. Fire Inspector JIMISON entered Plaintiff's Home, but he is not a police officer and was not authorized by the warrant to enter.

339. The trained police officers who executed the warrant acted unlawfully in entering Tiekert's residence because they had no evidence of a crime, no criminal evidence to search for, and nobody to arrest.

ZZ. The trained police officers who executed the warrant should not have permitted MOUNTAIN and JIMISON to enter Plaintiff's Home pursuant to the illegal warrant.

ZZ. MOUNTAIN failed to inform the court that the VILLAGE of Mamaroneck Code provided no authority to conduct a non-criminal, administrative search.

341. MOUNTAIN and the VILLAGE Prosecutor who applied for the warrant, failed to inform the court of their reliance on an anonymous informant, believed to be the Mayor of the VILLAGE of Mamaroneck, defendant MURPHY.

ZZ. Such failure prevented the court from interviewing this informant and assessing his credibility and information for the purposes of determining probable cause.

342. The Defendants have continued their unlawful activities, and have declared their intention to continue to use and abuse their authority and the courts to enter Plaintiff's Home, demolish Plaintiff's Home, and otherwise coerce, harass, attack, gaslight, intimidate, abuse, malign, and demonize Plaintiff.

Pre-Warrant attempts to enter Plaintiff's Home

17. Approximately two months before the search, Defendant JIMISON sent notice of an intent to inspect Tiekert's Home under the guise of an annual "fire inspection" and Defendant BARBERIO made a point of noting that he wanted to accompany Defendant JIMISON on the fire inspection.

18. Tiekert has owned and resided in his Home for decades without having any such previous request.

19. Tiekert questioned the legal authority for such a fire inspection.

20. Approximately 7 weeks later, by email dated August 30, 2019, Defendant BARBERIO conceded that Plaintiff's Home was not lawfully subject to an annual fire inspection.

21. The next attempt to enter Tiekert's property was alleged to be due to a "complaint" about an "illegal apartment".

22. Plaintiff has repeatedly sought from Defendants' proof of the claim that a complaint had been made, but no proof was ever produced.

Upon information and belief, no one had complained about any state or condition of the Home.

27. Upon information and belief, no one had raised any health, safety, or welfare concerns about the Home.

22. On August 14, 2019, Defendant MOUNTAIN approached Paul Stainkamp, who also resides at the Home and pays rent there, outside a municipal building where he had been hired to paint a judge's chambers.

23. Upon information and belief, Stainkamp told Defendant MOUNTAIN that he resides at the Home and pays rent there.

24. Upon information and belief, within a day, Defendant MOUNTAIN participated in hour-long calls with Defendant TAVOLACCI, Defendant BARBERIO, and Village attorneys.

25. On August 27, 2019, without permission or appointment, Defendant MOUNTAIN unlawfully entered the first-floor enclosed porch of Plaintiff's Home.

29. Defendant MOUNTAIN reported that she rang doorbells, alerted Tiekert to her presence, and advised him "there was a complaint that there was a third-floor apartment on the premises."

30. Plaintiff Tiekert informed Defendant MOUNTAIN that there was no apartment within his Home, and further informed Defendant MOUNTAIN that the Home had been previously inspected and all work approved by former Assistant Building Inspector Len Russo.

31. Defendant MOUNTAIN asked to inspect the third floor but Plaintiff Tiekert deferred authorizing an inspection until after he could see the complaint and notify Stainkamp, the other resident of the Home.

32. Defendant MOUNTAIN failed to produce any complaint or any information about the alleged complaint or identify any complainant.

33. On or about August 27, 2019, Plaintiff Tiekert requested the complaint pursuant to New York State's Freedom of Information Law (FOIL).

34. No complaint was provided in response to the FOIL request within the time allowed by law.

35. Upon information and belief, Defendant MOUNTAIN began consulting with high-level Village officials almost daily.

36. On or about August 27, 2019, Village attorneys reported 1.2 hours consulting with Defendants MOUNTAIN, BARBERIO, TAVOLACCI, and SARNOFF regarding the Home.

37. Upon information and belief, Defendant MOUNTAIN called Stainkamp and falsely stated to him that Plaintiff Tiekert gave her his phone number and told her to call him.

38. Not knowing that a cadre of Village officials had already been involved, Plaintiff Tiekert contacted Defendant BARBERIO the next day to inform him of Defendant MOUNTAIN's trespass upon the Home and her lies to Stainkamp.

39. Upon information and belief, that same day, Defendants MOUNTAIN, TAVOLACCI, BARBERIO, and SARNOFF again collaborated with Village attorneys regarding Plaintiff's Home.

40. The urgent, high-priority treatment continued on August 29, 2019, with attorneys billing nearly 2 hours for communications and strategy discussion with Defendants MOUNTAIN and BARBERIO, and this time, the Village Prosecutor.

41. The next day, another nearly 2 hours were spent by Village attorney(s) conferring now with Defendant MURPHY, Defendant BARBERIO, and the Village Prosecutor.

42. Unaware that his Home had become a subject of high-level Village discussion involving the Village prosecutor and lawyers, Plaintiff Tiekert sent an email to the Board of Trustees and Defendant BARBERIO complaining that his Home and its occupants had over the last five weeks been harassed by Building Department personnel; the Fire Inspector had sent a defective inspection notice; and a code enforcement officer had trespassed and called Stainkamp with lies and misrepresentations; and that no complaint was divulged in response to either his verbal request to Defendant MOUNTAIN or his FOIL request.

43. On or about August 30, 2019, Defendant BARBERIO responded denying there had been any harassment and saying that the Village "received information that you have a third-floor apartment within your unit."

44. Tiekert informed Defendant BARBERIO that there is no apartment within his Home, and that sharing his Home with another person and charging rent is a permitted use.

45. At this point, Defendant MOUNTAIN had neither viewed the Home nor documented any Code violations, yet Village officials and the Defendants had spent numerous hours and legal fees on a matter involving a single adult man sharing his living space with another adult man.

46. On or about September 5, 2019, Defendant MOUNTAIN again contacted Stainkamp and asked whether he had an oven or stove on the third floor, and he answered, "no".

47. There neither is nor was an oven or stove on the third floor of the Home.

48. On September 6, 2019, a Friday, Plaintiff Tiekert told Defendant MOUNTAIN that he received permission from Stainkamp so that an inspection of the Home may be arranged but he was still waiting for her to provide a copy of the complaint that he had requested 10 days earlier.

49. Instead of providing the alleged complaint and scheduling the voluntary inspection, on Monday, September 9, 2019, the Defendants applied for and received the Criminal Warrant for an illegal search of the Home.

50. The illegal search occurred later that same Monday.

50. The illegal search did not uncover any illegal apartment.

51. Notwithstanding, the Defendants continued their unlawful and damaging acts against Plaintiff because none of this was about building codes, it was retaliation by the Defendants against Plaintiff Tiekert for his participation in public affairs.

The Mason

XX. In or around June 2019, Plaintiff communicated to the Defendants that the \$30 Million development project being constructed, known as The Mason, violated multiple laws.

XX. Plaintiff contended that The Mason was being constructed without a lawfully approved plan, in the middle of a flood plain.

XX. Plaintiff documented flood plain violations, zoning violations, lack of first responder access, lack of adequate parking, and more.

XX. Plaintiff further documented that the developer of The Mason, in violation of their Environmental Impact Statement, brought in 25,000 cubic yards of fill and raised the 2+ acre site up by seven feet.

XX. Plaintiff challenged as unlawful a closed-door meeting of the Board of Trustees regarding approvals for The Mason's continued construction.

XX. The project was nearing completion despite its many legal failings.

XX. Defendant GRAY, the then Building Inspector, had allowed the buildings to be occupied under Temporary Certificates of Occupancy, in Violation of 186-4 D (7) (a).

XX. Plaintiff made multiple FOIL requests for records pertaining to The Mason.

XX. Plaintiff received a response to one FOIL request wherein Defendant DAN GRAY remarks about Plaintiff: **This Guy Won't Go Away** (emphasis added).

XX. In another FOIL request, Plaintiff sought documents that would corroborate a statement by GRAY that fire officials have signed off on fire equipment access to The Mason.

XX. The FOIL response was "Nothing Responsive".

XX. Plaintiff communicated with details of his complaints and findings about The Mason with Defendant MURPHY, the Board of Trustees including Defendant KRAMER, and the Village Manager, Defendant BARBERIO.

XX. Defendants' many violations of Plaintiff's rights and privileges began soon after Plaintiff spoke out about the legal failings of the Defendants with respect to The Mason project.

XX. Because Plaintiff was complaining to the Defendants about unlawful activity, the Defendants tried to enter his Home pursuant to the concocted "fire inspection".

XX. Because Plaintiff was complaining to the Defendants about unlawful activity, the Defendants conducted an illegal search of Plaintiff's Home pursuant to an unlawful criminal search warrant.

XX. Because Plaintiff was complaining to the Defendants about unlawful activity, the Defendants falsely charged Plaintiff with having an illegal apartment.

**Concerted Effort to End Plaintiff's Ability to
Receive Income from Lawfully Sharing His Home**

52. Plaintiff Stuart Tiekert is a senior citizen, and was so at all relevant times.

XX. As a senior citizen, Plaintiff is financially vulnerable.

XX. Plaintiff's financial well-being depends on the income from sharing his home with a roomer, which is legal under local and state law.

XX. Upon information and belief, Plaintiff being such a senior citizen, is why the Defendant's chose to target his Home in furtherance of their retaliation for Plaintiff's outspokenness.

XX. Despite the fact that the illegal search did not turn up proof of the "illegal apartment" the Defendants alleged he had, Defendants have been relentless in their continuing efforts to damage the Plaintiff.

XX. After the illegal search, extraordinary official attention was again paid to Plaintiff's Home.

53. On September 10, 2019, one day after the illegal search, an attorney for VILLAGE met with Defendant MOUNTAIN and Defendant GRAY for 1.3 hours. Later that same day, the same attorney had a 0.2-hour discussion with the Village Attorney regarding Plaintiff's Home.

54. On September 13, 2019, the Village Attorney logged an hour of time preparing a memorandum on Plaintiff's home for the Board of Trustees.

55. The Board of Trustees do not normally receive legal memorandums on violation notices issued or to be issued.

56. Some time after the illegal search, Plaintiff received notices of violation.

57. Two of the notices of violation involved plumbing and electrical. Plaintiff Tiekert informed Defendant MOUNTAIN that he would be contacting a licensed plumber and electrician.

58. On or about September 19, 2019, Plaintiff Tiekert received seven (7) “orders to remedy”, dated in the future, namely September 26, 2019.

XX. Plaintiff also re-asserted to MOUNTAIN that the plumbing and electric were previously permitted and approved.

XX. On October 7, 2019, VJS Plumbing (d/b/a Victor Scelia Plumbing and Heating Company) found that all piping work related to the third-floor sink was code-compliant.

61. On October 17, 2019, Viking Power and Light LLC found the electrical to be code compliant.

XX. Certain that the plumbing and electric were previously permitted and/or approved, Plaintiff sought the proof from the Building Department, but the Building Department did not locate any prior permits.

XX. The prior permits did exist and were found later on in the course of events.

62. However, at that time, Plaintiff’s plumber and electrician both applied for permits since the Building Department located no prior ones.

63. Tiekert also filed an October 28, 2019, building permit application for the interior walls and doors that were cited in violation notices, in spite of the fact that said interior walls and doors were present when Plaintiff purchased the Home and were shown on the 1991 Condo Declaration.

XX. A few changes were made to the third floor of Plaintiff’s Home in or around 2000.

64. Every aspect of Plaintiff's Home that existed at the time Defendant's crusade against Plaintiff began (which notably is prior to the illegal search), was in place in 2000 when then Assistant Building Inspector Lenny Russo conducted his final inspection of the third floor and approved it all.

XX. Moreover, in 2000, then Assistant Building Inspector Lenny Russo informed Plaintiff that he was permitted to have a sink, fridge, and microwave on the third floor.

65. Filing the paperwork for code-compliant improvements is legally sufficient to remedy the alleged violations.

XX. Notwithstanding, in a subsequent affidavit by MOUNTAIN, she falsely averred that Plaintiff did not respond to the violation notices.

66. The VILLAGE unlawfully refused to act on any of the permit applications.

67. The Defendants' actions were not due to concerns about suspected or actual code compliance, but rather were retaliation against Tiekert for his public participation.

68. On October 28, 2019, Tiekert gave notice of a zoning appeal for an interpretation and reversal of the zoning violations and, if necessary, a special permit from the ZBA pursuant to Village of Mamaroneck Code §342-64A.

The Zoning Appeal

69. The violations issued by the Building Department alleged that Tiekert had an unlawful dwelling unit made so by adding interior doors and locking hardware.

70. These features were in place when he purchased Unit B and, except for the locks, were plainly shown on the filed Condominium Plan.

71. Moreover, interior doors and locking hardware do not constitute a dwelling unit under the law. For one thing, under the Village of Mamaroneck Code §342-3, a dwelling unit explicitly requires "cooking facilities" to be installed, namely a stove and/or oven.

72. As averred, the Defendants were made aware, prior to their illegal search, that there was no stove or oven on the upper floor of the Home. The illegal search itself corroborated that there was no stove or oven on the upper floor of the Home.

73. Stainkamp had a coffee pot and an unaffixed microwave that he owned and used. However, these do not transform the upper floor of the Home into a separate dwelling unit, under the law.

74. Another reason why the upper floor of the Home could not be legally construed to be a separate dwelling unit, is that it was not self-contained insofar as the second and third floor share an enclosed staircase. The Village of Mamaroneck Code excludes from the definition of "dwelling unit" spaces that share stairways.

75. Tiekert's position is and was that he desired and intended to have a rooming unit so that he could share his living space and the costs of living.

76. The zoning code expressly allowed "roomers or boarders" as an accessory use in conjunction with the permitted one-family dwelling.

77. Tiekert has explained to the Defendants and the ZBA that the third floor of his Home was not a dwelling unit but rather was a "rooming unit" as it is and was a commodious, light-filled area with a fire escape and a hard-wired smoke detector, that had been previously inspected by Village Officials and found suitable for a roomer to occupy according to a former building inspector and electrical inspector.

78. The NYS Unified Building Code and International Property Maintenance Code (IPMC) - both of which apply to Mamaroneck structures -- define "dwelling unit" more specifically than the Village of Mamaroneck zoning code insofar as the required facilities are enumerated:

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. IPMC §202 Definitions.

79. IPMC further explains that "Rooming units differ from dwelling units since no permanent cooking facilities are located in any rooming unit. The IPMC defines rooming units as:

Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes. IPMC § 202 Definitions.

80. Further, IPMC Section 403.3 –precisely the section that Mountain had cited in support of the warrant– clarifies that the rules for cooking facilities in rooming units allow non-permanent personal countertop appliances:

Unless approved through the certificate of occupancy, cooking shall not be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in the rooming unit or dormitory unit.

Exceptions:

1. Where specifically approved in writing by the code official.
2. Devices such as coffee pots and microwave ovens shall not be considered cooking appliances.

81. While the notices of violation identified the locks and doors as changes that created an unlawful dwelling unit, the IPMC **requires** that both a dwelling unit and a rooming unit being leased have privacy including doors and locking hardware:

Doors providing access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a deadbolt lock designed to be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort and shall have a minimum lock throw of 1 inch (25 mm). Such dead- bolt locks shall be installed according to the manufacturer's specifications and maintained in good working order. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock. IPMC of 2015, Section 304.18.1.

82. IPMC commentary for this section explains:

Everyone has a right to feel safe in their own dwelling; therefore, the installation of locking hardware to secure entry doorways is essential. When installed for security purposes, however, locks and latches can intentionally prohibit the use of an egress door and thus interfere with or prevent the egress of occupants at the time of an emergency, such as a fire. The ability of occupants to easily egress a building in case of a fire or emergency situation is a primary concern to help prevent the loss of human life. Examples of special knowledge would be a combination lock or an unlocking device in an unknown, unexpected or hidden location. Special effort would require unusual and unexpected physical ability to unlock or make the door fully available for egress.

84. According to the IPMC, "Privacy is a fundamental psychological need. Every person needs a space to relax, sleep and dress that is separate from public or common rooms. Walls, corridors and doors should be arranged to offer the occupants their own private space." As a result, the IPMC § 404.1 requires that "Dwelling units,

hotel units, housekeeping units, rooming units and dormitory units shall be arranged to provide privacy and be separate from other adjoining spaces."

85. Under the NYS Building Codes and IPMC codes as well as the Village Code, the third floor of Plaintiff's Home satisfied the definition of a rooming unit and its requirements --it was separated from other living spaces to provide privacy, it had a door with appropriate locking hardware to provide personal security, and it had no permanent provisions for cooking.

86. Rather than acknowledging that these features were minimum and necessary requirements for the public health and safety of a roomer as the former assistant Building Inspector Russo had concluded in or around 2000, the Defendants falsely insisted that the very same conditions that made the space a proper "rooming unit", rendered the space an "illegal dwelling unit."

87. In particular, Defendant MOUNTAIN falsely averred in support of the illegal search, expressly and purposely distorting IPMC requirements: "If Mr. Stainkamp is living in a dwelling unit without access to a kitchen, that is a violation of the Property Maintenance Code §403.3 and §403.7."

88. The public zoning hearing spanned months, starting with in-person hearings beginning in January 9, 2020, and converting to online "zoom" meetings through June 4, 2020, at which point the public hearing was closed.

90. Village building officials characterized Tiekert as a bad actor who should not be allowed rental income from his "illegal apartment."

91. For example, Defendant TAVOLACCI, the Building Inspector swore falsely that Plaintiff "ran a 220-amp (sic) electrical circuit...that was never applied for or inspected by a fire underwriter which is required by code."

92. This 220-v circuit to which Defendant TAVOLACCI referred had been inspected and approved by the Village of Mamaroneck in 2000, and inspected and approved by a duly licensed electrician not only in 2000 but again in 2019, however the Defendants preferred to lie and disparage Plaintiff Tiekert rather than to report accurately that the electrical installation was certified safe.

93. Defendant TAVOLACCI further maligned Tiekert by claiming that he had proceeded to make the very same changes to his third floor space that had been denied by a prior Zoning Board. Defendant never made the changes previously requested and denied by a prior Zoning Board, which were raising the roof for more floor space, installing a kitchen, and creating an independent stairway.

94. Defendant TAVOLACCI made the false and specious claim that Plaintiff Tiekert had removed a stove on the third floor in the "13 days between refusing to allow the inspection and being compelled to allow the inspection."

95. Plaintiff Tiekert did no such thing. There was no stove on the third floor and Tiekert never refused to allow an inspection.

96. Defendant MOUNTAIN falsely stated that Tiekert had not responded to the Notices of Violation when he plainly had done so on September 19, 2019.

97. Defendant MOUNTAIN also falsely averred that Tiekert denied an inspection when he reasonably and lawfully asked to first notify Stainkamp who resided in the space they sought to inspect, and to see the alleged complaint.

98. Continuously, Building Department officials repeated and relied upon false claims and disparagement rather than facts and law to convince the ZBA to uphold the violations.

99. A zoning appeal in the State of New York to interpret a violation is a *de novo* review, rather than an adverse party proceeding pitting the Village Building Department against the property owner. Yet, the Building Department styled itself as an antagonist, pushing to uphold the violations when New York State and local law provided them no such role and provided no support for their arguments.

100. At the final public hearing session on June 4, 2019, one ZBA member, Gretta Heaney ("Heaney"), an attorney, became troubled that the standard for a property search had not been satisfied and questioned Defendant MOUNTAIN about her affidavit in support of the warrant.

101. In particular, Heaney noted that Defendant MOUNTAIN's affidavit repeatedly used the term "apartment" to describe Plaintiff Tiekert's third floor.

102. Heaney expressed concern that Defendant MOUNTAIN never presented the court with an explanation of Tiekert's lawful claim to have roomers or boarders.

103. Instead, in "damned if you do, damned if you don't" fashion, Defendant MOUNTAIN's affidavit claimed both that it was unlawful for Stainkamp to live on the third floor without cooking facilities and equally unlawful for him to live on the third floor *with* cooking facilities.

104. The fact that the law could allow Stainkamp to live on the third floor as a roomer was withheld from the court's consideration in deciding whether to issue the

warrant, and in fact, Defendant MOUNTAIN falsely averred that such a legal arrangement was illegal.

105. Defendant MOUNTAIN's affidavit, in Heaney's view, biased the court's assessment of satisfying the applicable standard of proof.

106. To be clear, Defendant MOUNTAIN had no factual or legal basis for representing to the court that Stainkamp living on the third floor was unlawful.

107. Moreover, Stainkamp submitted an affidavit attesting to the fact that he did not live in a separate apartment, that he used the kitchen on the second floor, and that he had use of the entire apartment.

108. Heaney also noted that in three places in Defendant MOUNTAIN's affidavit, the warrant application had falsely asserted or implied that Plaintiff Tiekert had performed work that had been previously denied in a 1986 variance application.

109. "When I read the warrant for the first time and read that provision, I got a significant negative inference that Mr. Tiekert was doing something nefarious." After hearing the matter further, she understood that raising the 35-year old application was highly prejudicial and without probative value because Tiekert had not undertaken the changes requested in the 1986 variance application.

110. Under Heaney's questioning, Defendant MOUNTAIN reported that this was the first search warrant that she had personally prepared and said attorneys had helped her with the technical parts.

111. From re-reading the affidavit in support of the warrant, Heaney reported that she personally believed that the Building Department really wanted to "get" Mr. Tiekert.

112. In Heaney's view, the Village, the state, and the federal government had to be even-handed and should not "target" people it does not like (such as a single "difficult" resident) nor should it give perks to people it does like.

113. Heaney concluded that the basis for the search was "so biased, so arbitrary and capricious, and selective" that the violations should be dismissed.

114. Defendant MOUNTAIN countered that Mr. Tiekert wasn't targeted, "this rolled out of a conversation with Mr. Stainkamp."

115. However, had the Stainkamp conversation sufficed to issue a violation, no warrant would have been necessary.

116. Further, this ignores that the "conversation with Mr. Stainkamp" came after a prior attempt by Defendants to search the Home based on false pretenses, namely the "routine fire inspection" that was withdrawn.

117. Defendant MOUNTAIN also explained that if Tiekert had called Stainkamp his "roommate" rather than his "tenant," that would have been the end of the matter.

118. This statement only reflects the ignorance of Defendant MOUNTAIN, since, legally, a roommate is a tenant.

119. Further, Defendant MOUNTAIN stated all that was needed was for Plaintiff Tiekert to remove the door locks but that she withheld that information because Tiekert had not asked.

120. That of course ignores the fact that the door locks violate no law or code and in fact are required for the arrangement to meet New York State and IMPC regulations.

121. At its July 23, 2020, deliberations, Defendant KRAMER, chair of the ZBA, directed the other ZBA members to ignore the issues with the search warrant.

122. The enforcement proceedings are precisely the place to consider challenges to the warrant.

123. Notwithstanding, by a vote of 3-2, the ZBA adopted a resolution with multiple factual errors and internal contradictions.

124. A detailed two-member written dissent to the ZBA decision was placed in the record.

125. The ZBA decision said Stainkamp was "not akin to a roomer" but did not say what a roomer was or what Stainkamp was "akin to" if not a roomer.

126. The ZBA majority avoided applying the words of the statutory definition of "dwelling unit" and instead determined that "The totality of the use and occupancy of the third floor unit by Mr. Stainkamp demonstrates that the third floor is a separate dwelling unit."

127. The deciding ZBA member, Abby Roberts, reported struggling because she understood that an oven was often looked at as the determining factor. She also noted that Defendant MOUNTAIN had said that all that Tiekert needed to do was remove the locks. Ultimately, Roberts came out on the side that it's a "dwelling unit" but strongly urged that the residents and the ZBA needed guidance from the Board of Trustees.

128. The ZBA upheld four of the violations and reversed one that said Tiekert had converted Unit B from a single dwelling unit to two dwelling units:

Order to Remedy Violation #19-4655: " Unit B was altered contrary to law. There is an electrical installation without permits, a plumbing installation without permits, and a separate dwelling unit created without permits. These conditions render the space unlawful. VIOLATION UPHELD.

Order to Remedy Violation 19-4656: "Unit B has been altered from one dwelling unit to two dwelling units. This includes but is not limited to the reconfiguration and addition of interior doors and locking hardware." VIOLATION UPHELD.

Order to Remedy Violation 19-4657: "Unit B has been converted from a single dwelling unit to two dwelling units. Both units are occupied. No certificate of occupancy has been issued for the change of use." VIOLATION REVERSED.

Order to Remedy Violation 19-4658: "The nonconforming use of the building has ceased. A nonconforming two-family has been altered without permits and approvals to a three family. A permit must be applied for to return the structure to a conforming use in the zone." VIOLATION UPHELD.

Order to Remedy Violation 19-4667: "A pre-existing nonconforming 2 family structure located in the Zone R-5 has been altered without permits and Zoning Board of Appeals Approval to create a three-family structure." VIOLATION UPHELD.

129. The resolution did not explain why one of the five violations was reversed while the others were upheld given their closely related nature.

Post-ZBA Appeal Events

130. Despite Defendant MOUNTAIN's statement that it would have sufficed for Tiekert to remove the locks, the Village was not and clearly would not be satisfied with Plaintiff Tiekert removing locks.

131. Plaintiff Tiekert's attempts to remedy the violations were thwarted as the Building Department refused to act on Plaintiff's permit applications.

132. Moreover, Plaintiff Tiekert's many questions to the Village about how to comply and remedy the violations were met with stonewalling and animosity, but never answers.

133. On or about October 22, 2020, the Building Inspector, Defendant TAVOLACCI, sent Plaintiff a list of demolition requirements for Tiekert's third floor, none of which were mentioned anywhere in the Zoning Board Resolution dated September 10, 2020.

134. Plaintiff Tiekert asked two questions by email to clarify the October 22, 2020 instructions: "Do I have to evict my tenant or am I allowed to have a roomer based on the ZBA resolution?" and "What do I have to [do to] alter my unit to be allowed to have a roomer?"

135. On November 5, 2020, Defendant TAVOLACCI sent an email prompting Tiekert to "conform to the ZBA directive" but Tiekert reminded Defendant TAVOLACCI of his unanswered questions.

136. The Village Manager opined that "Legal can help with this but I would say he needs to remove the door and what is left of the kitchen. A roomer has to have access to his kitchen and fridge. That is what I think and not what I know."

137. The Village Attorney, Robert Spolzino said, "Frank [Defendant TAVOLACCI] already addressed this in his letter. Frank told him he has to take out the kitchen. This is just Stuart being Stuart."

138. There is no kitchen in the third-floor apartment.

139. The Village Manager replied, "Ok. Good. Frank should reiterate what he said in the letter to answer the questions he is asking and cite him when his time is up. Portico Painting [i.e. the tenant Paul Stainkamp] has to move out."

140. Defendant TAVOLACCI, after receiving this input from the Village Manager and Village Attorney, responded to Tiekert as follows, "If you wanted to keep

your tenant/boarder in the residence he would have to live in your second floor apartment, share your kitchen and bath facilities and reside as a common household residence or sleeping place. Your focus should be responding to the ongoing violation."

141. The intrusive directives from TAVOLACCI were disconnected from IPMC requirements for privacy and security.

142. Simultaneous compliance with both TAVOLACCI's directives and IPMC requirements was and is impossible.

143. The Defendants had prevailed in the ZBA appeal and felt empowered to demand dismantling of third floor improvements to punish Tiekert, irrespective of whether these features were code-complaint and/or previously permitted and inspected.

144. Most shocking was, at the height of the COVID-19 Pandemic, that the VILLAGE was insisting that either Stainkamp move out or that they share a bedroom, when there is no zoning requirement or public interest in regulating how two adult men share 2400-square-feet of space.

145. On or about October 28, 2020, Tiekert filed a NYS CPLR Article 78 petition seeking judicial review of the resolution of the ZBA.

146. Defendant KRAMER swore falsely in her affidavit submitted in the Article 78 action, ascribing positions to the ZBA they did not take in their resolution.

147. Moreover, Plaintiff Tiekert performed a search of the building department records and discovered the proof of prior building permits that the Defendants had been hiding, or derelict in their duty to find.

148. Plaintiff found the Building Department records that showed electrical permits, inspections and approvals for electrical and plumbing work done on the third floor in 2000.

149. On December 21, 2020, Tiekert sent an email to Defendant TAVOLACCI to make him aware of permits and inspections.

150. These are permits and inspections that the Defendants swore under oath did not exist, and that Plaintiff Tiekert always insisted did exist.

151. These permit and inspection records undermined every determination by the Defendants, the Building Department, and the ZBA.

152. Defendant TAVOLACCI replied to news of the permits and inspections with rank indifference.

153. Defendant TAVOLACCI continued to ignore the current inspections and requests for permits.

154. Defendant TAVOLACCI insisted that Tiekert undertake demolition as he ordered, irrespective of legal requirements or rights.

155. ZBA member Gretta Heaney had been correct about this matter being undertaken in bad faith: The VILLAGE wanted to harm Tiekert personally rather than confirm code compliance.

156. Plaintiff Tiekert filed yet another appeal with the Zoning Board of Appeals for review of Defendant TAVOLACCI's October 22, 2020 letter.

157. By correspondence dated January 12, 2021, Village Attorney Robert Spolzino told Tiekert that "the Board of Trustees authorized me to commence an action in the Supreme Court of the State of New York for an injunction prohibiting the

continued use of the premises at 130 Beach Avenue in violation of the Village Code and to recover civil penalties provided for by law. The Board of Trustees further directed me to advise you that the action will not be commenced if you bring the premises into compliance by January 31, 2021."

158. Tiekert notified the Board of Trustees that its "authorization" was unlawful because any such authorization must have necessarily violated the New York State Open Meetings Law.

159. When the matter was properly brought to a meeting of the Board of Trustees, the motion brought by Defendant MURPHY to authorize legal action against Tiekert failed.

160. Notably, it is not the proper role of the Mayor of the Village of Mamaroneck to enforce zoning laws or building codes.

161. Defendant MURPHY went to the press.

162. In a LoHud story about the aforementioned Board of Trustees meeting, Defendant MURPHY publicly questioned the ethics of the Board members.

163. Defendant MURPHY publicly accused the Board members of deciding the matter based on a personal relationship with Tiekert, ironically, stating: "When you're an elected official, you have to be careful of the appearance of conflict. It's very important for this community to know the laws are administered even-handedly and fairly and this situation could give people cause to wonder if this is happening."

164. Little did the reporter know about Defendant MURPHY's personal vendetta against Tiekert.

165. Upon information and belief, Defendant MURPHY's public statements were intended to punish the Board members for failing to toe MURPHY's line, and to send a message to the members of the Board of Trustees and the Zoning Board of Appeals, and to VILLAGE employees that they had better demonstrate loyalty in future decisions pertaining to Plaintiff Tiekert or else there will be consequences.

Post-zoning developments shed new light on Defedants Actions

166. On September 21, 2020, before the ZBA resolution had even been finalized, Defendant MURPHY sent an unsolicited email to the Zoning Board members, to the Board of Trustees, to the Village Manager, to the Village Planner, and to the attorney who represented the Zoning Board commending them on their "correct conclusion" in the matter with Plaintiff Tiekert.

167. In that email, Defendant MURPHY claimed he had personal knowledge of the matter and had considered offering testimony but decided otherwise.

168. Defendant MURPHY alleged that in 2011, he had been newly separated from his wife and was renting a "cramped apartment" down the street from Tiekert. He reported being friendly with Tiekert at the time (but specified that he was no longer) and at Tiekert's invitation saw the "newly vacant" third floor of 130 Beach Avenue. Murphy described the third floor as a "complete attic apartment with a bathroom and a full kitchen with an electric range. The price I believe was \$1600 which was the going rate for a one bedroom flat in Mamaroneck at that time."

169. Defendant MURPHY had unwittingly identified himself as the sole Village official claiming knowledge of the interior configuration of the third floor of the Home before the search took place, and explained many unanswered questions.

170. Plaintiff Tiekert has no memory of Defendant MURPHY having ever been in the third floor of the Home.

171. Defendant MURPHY's email offered other insights. First, Defendant MURPHY revealed that he objected so strongly to Tiekert's public participation that he no longer considered Tiekert to be a friend.

172. Second, even if he were to be believed, it would mean that Defendant MURPHY waited 8 years to assert that Tiekert had an "illegal apartment" only when he felt a need to retaliate against Tiekert.

173. Third, Defendant MURPHY reported a reluctance to participate publicly in the matter but Village legal invoices show he participated privately.

174. Fourth, Defendant MURPHY believed his public involvement would "politicize the issue" and was motivated to keep his behind-the-scenes involvement hidden; working through staff and attorneys who would keep his involvement secret.

175. Even when Defendant MURPHY's behind-the-scenes report of an electric range proved false, the violations for a "dwelling unit" were upheld by the ZBA and Defendant MURPHY appeared relieved enough to congratulate the participants, treating the matter as an achievement in his personal battle against Tiekert.

176. Defendant MURPHY's involvement also sheds light on the following: The VILLAGE wanted a surprise inspection so they could find the stove about which Defendant MURPHY claimed personal knowledge.

177. Recall that Defendant MOUNTAIN did not timely produce the alleged complaint about the Home.

178. Defendant MOUNTAIN knew that Defendant MURPHY was the true source of the complaint but needed to protect his identify, so she drafted a self-serving "complaint" whose true date of creation is unknown.

179. The FOIL officer provided the "complaint" to Tiekert long after he requested it, when their plans for a surprise search pursuant to a warrant had already been hatched with the Village prosecutor.

180. MOUNTAIN alleged to have called Tiekert to request an inspection after he had received the complaint.

181. If such calls were ever made, these calls were not made from official phone lines.

182. Defendant the VILLAGE worked hard to protect its element of surprise, hid Defendant MURPHY's identify, and rushed to obtain a warrant, only to have Defendant MURPHY's claim about a stove prove false.

183. Defendant TAVOLACCI then falsely claimed Tiekert must have removed the stove in the 13 days between Defendant MOUNTAIN's demand to inspect and the VILLAGE's illegal search.

184. Defendant TAVOLACCI's false statement was not based on any evidence that Tiekert removed a stove.

185. Upon information and belief, Defendant TAVOLACCI was emboldened to make this false accusation because Defendant MURPHY claimed personal knowledge that a stove was there.

186. Village officials treated Defendant MURPHY as an "anonymous" informant who was reporting, at best, 8-year old information.

187. The judge issuing the warrant did not know of Defendant MURPHY's participation, nor of Defendant MURPHY's hostility toward Tiekert, nor did the judge know of the staleness of Defendant MURPHY's claims when the warrant was issued.

188. If Defendant MURPHY's claim of personal knowledge was relied upon in any way, it was illegal for the Defendants to fail to disclose it.

189. Corroboration of Defendant MURPHY as the individual who started the matter comes from mundane attorney invoices.

190. Defendant MOUNTAIN had averred to the court that the complaint against Plaintiff's Home was "department initiated" while Tiekert and the ZBA were led to believe that Defendant MOUNTAIN herself had filed the formal complaint.

191. Yet in February 2020 attorney invoices, the complaint and warrant were characterized as "anonymous."

192. Specifically, on February 6, 2020, Attorney Christy Mason reported a 0.9-hour "Call with C. Mountain and [Assistant Village Manager] D. Sarnoff re: illegal apartment and research on anonymous complaints."

193. On February 7, 2020, Attorney Mason reported an entry for "Research anonymity and impact on warrants" for 0.8 hours.

194. On February 10, 2020, Attorney Mason reported, "Research anonymity and impact on warrants" for 0.8 hours and a second entry this same day for 1.2 hours for "Research on illegal 3rd floor apartments and complaint procedures."

195. These three entries tie together Plaintiff's Home and anonymity (i.e. somebody whose identity Village officials were protecting) with the warrant application.

196. Further inquiry eliminated any possibility that this legal research involved a property other than Plaintiff's Home.

197. The anonymous tipster for the "complaint" against Plaintiff's Home was Defendant MURPHY, the only Village official claiming to have knowledge of the inside of the third floor of the Home.

198. Building Department officials, the Village Manager, and Village attorneys knew of Defendant MURPHY's involvement in the actions against Plaintiff and his Home but hid it, thus violating the law and conspiring to mislead the judge who signed the warrant and to violate Tiekert's constitutional rights.

199. Notwithstanding what they knew at that time, they since know that Defendant MURPHY's "personal knowledge" is false.

200. In the course of the ZBA process, Plaintiff submitted the affidavit of Margi Pasquet stating she lived in the Home during the time when Defendant MURPHY claims that he was in the Home and through 2013 and there was no stove or oven.

201. Despite the Pasquet Affidavit and the Stainkamp Affidavit, both attesting that there was no stove or oven in the third floor, the Defendants persisted in their false assertions.

Related and Ongoing Pattern of Disparagement, Defamation, and Contempt for Tiekert and his Rights in response to his public participation

202. Tiekert has always actively participated in Village affairs, but when his actions cut too close to uncomfortable truths, the Defendants have retaliated.

203. On July 16, 2012, Tiekert was speaking at a Village Board meeting during the designated "Communication from the Public." Then-Mayor Norman Rosenblum

ordered a police officer to remove Tiekert without justification. The Village subsequently paid a settlement to Tiekert for the violation of his civil rights.

204. Since the Illegal Search, the VILLAGE and its officials and employees have continued to retaliate against Tiekert for his public participation.

205. Upon information and belief, at all relevant times, Defendant MURPHY was the leader of the Defendants' pattern and practice of disparaging, defaming, and showing contempt for Tiekert and violating his rights.

206. Before he became Mayor, Defendant MURPHY encouraged Tiekert's public participation, benefitted from Tiekert's personal efforts and assistance on behalf of Defendant MURPHY's election campaign, and considered Tiekert both a personal confidant and a trustworthy supporter.

2XX. Defendant MURPHY once regarded Tiekert so highly that he wrote this about Plaintiff and another friend in 2017: "Stewart and Robert, thank you both very much. If I were in a foxhole I'd want you guys with me."

207. Defendant MURPHY wrote to Tiekert and others personally involved in the campaign, "...I know the huge amount of time devoted, I saw the effort, I saw the commitment to make our community a better place. You did it because deep inside you all believe, as I do, that this American experiment in democracy can still be salvaged."

208. Defendant MURPHY and his running mate pledged to make Mamaroneck the best-run Village in Westchester and both were elected to terms beginning in December 2017. Tiekert's public participation was aimed at that allegedly shared goal.

209. By March 2018, Defendant MURPHY's demeanor toward Plaintiff changed when Plaintiff Tiekert became involved in the issue of a \$3-million waterline under Flagler Drive, a private road serving a gated community.

210. Defendant MURPHY supported paying for the waterline with public funds while Tiekert and other residents believed it was wrong to be using public funds to pay for a private waterline, and were pushing for the Village to obtain an opinion from the Office of the Attorney General.

211. Tiekert questioned the "emergency repair" and no-bid contract for the waterline, requesting records from the Westchester Joint Water Works.

212. On or about March 13, 2018, Defendant MURPHY sent an angry message to Plaintiff complaining about his FOIL request and clearly intending to dissuade Plaintiff from making further inquiry into the Flagler Drive waterline matter.

213. Thus began a multi-year pattern and practice of attacking Tiekert personally and abusing the power of government to retaliate against Tiekert rather than addressing the matters of public concern that Tiekert raises.

214. Tiekert sent emails to VILLAGE officials on July 30, 2018, regarding concerns over Village-wide mosquito control.

215. Defendant MURPHY responded angrily, disparagingly, and dismissively.

2XX. After Tiekert spent years documenting ineffective mosquito-control practices only to be dismissed and disparaged by Defendant MURPHY and VILLAGE Officials, a long-time VILLAGE employee and resident was diagnosed with West Nile virus and was hospitalized for weeks with debilitating injuries.

216. After a series of emails by Tiekert regarding racist policing practices, Defendant MURPHY sent a January 22, 2019 email in response with ad hominem attacks and refusal to address the concerns.

217. On or about May 19, 2019, Defendant MURPHY emailed two other trustees with *ad hominem* attacks against Plaintiff.

218. But it was in July 2019, in retaliation for Plaintiff's outspoken complaints about The Mason development project, that Defendant MURPHY and other Defendants began their campaign to harm Tiekert, violate his rights, and deny him government response and services for which he pays taxes and is entitled.

2ZZ. It was right after Plaintiff started speaking out against The Mason that the VILLAGE attempted to unlawfully gain access to the interior of Plaintiff's Home using the pretext of a fire inspection.

2XX. There was no basis in law to perform any fire inspection of Plaintiff's living space.

2XX. Upon information and belief, the Defendants made no attempt to inspect any of the other units in the condominium.

2XX. Upon information and belief, the Defendants made no attempt to communicate with the condo board regarding the alleged need for a fire inspection.

2ZZ. And then the VILLAGE started asking to inspect the third floor of Plaintiff's Home due to an alleged complaint of an "illegal apartment".

2ZZ. The Illegal Search was performed one week after Plaintiff sent an email to Defendant MURPHY, Defendant BARBERIO, and the other Defendants they

supervised, as well as the Board of Trustees including Defendant KRAMER, regarding the multiple legal shortcomings of The Mason project.

2ZZ. Defendants chose to attack Plaintiff's having of a roommate because Defendants know that Plaintiff is a financially vulnerable senior citizen and they seek to cut off a source of income that he depends on.

2ZZ. Defendant MURPHY makes clear in at least one email in October 2021 to Plaintiff that he and the other defendants whom he is supervising, and with whom he is acting in concert and under color of law to deprive Plaintiff of his rights and privileges, are knowingly acting to deprive Plaintiff of the income on which he depends by interfering with his ability to share his Home with a roomer.

2ZZ. Recently in or around October 2023, Defendant BARBERIO emailed the Mayor of the VILLAGE, other Defendants, and other officials and employees, a picture of Plaintiff and two others outside of the VILLAGE municipal building taken from distance, and sent it around saying "I could have easily been gummed to death by the denture crew in the photo, but I escaped unscathed."

2ZZ. Tiekert's public concerns were countered not with substantive facts but rather with disparaging personal attacks aimed at damaging Tiekert and his personal reputation and his standing in the community where he lived and worked, and with retaliation.

2XX. Tiekert devoted time to noting and commenting on local compliance with stormwater laws and regulations.

223. For years, Tiekert raised concerns that the Village of Mamaroneck had not been complying with legal requirements for its MS-4 report (Municipal Storm Sewer).

224. On or about March 15, 2021, Tiekert requested, pursuant to the Freedom of Information Law, the records that would be used to compile the next annual report.

2XX. A FOIL should never have been necessary as the wording of the SPDES permit itself requires that such records be available to the public at reasonable times during regular business hours.

225. Tiekert received a tirade in response which among other things, accused Tiekert of sending 47 FOIL requests.

226. Tiekert had sent one (1) FOIL request, which the Village had divided into 47 separate FOIL requests for data required for the MS-4 report yet, somehow, this request had become cause for outrage and attack.

227. Tiekert had raised these MS-4 issues with the Committee for the Environment in 2021 and years past. Rather than acknowledging that the records were required by law to be made public and there was a required public hearing about the report, the VILLAGE decided that Tiekert should be disparaged for being interested and seeking records of recognized public concern.

2XX. At a meeting on April 12, 2021, Defendant MURPHY publicly disparaged Tiekert for bringing his zoning appeal and for challenging the ZBA's decision on his violations.

234. Defendant Murphy publicly blamed Tiekert for the VILLAGE's legal costs incurred from violating Tiekert's rights and damaging him.

235. Defendant MURPHY received comments from life-long resident Glenn Tippet, who complained that he had raised his hand but had been unable to comment

at a public meeting held on zoom. Tippet separately commented on the topic of the extraordinarily unusual treatment of Plaintiff's Home:

Finally 130 Beach Ave. should have never been addressed in such a one sided manner it solidifies the owners position of selective enforcement. 1] I have never seen a similar type of eviction in this village. Evictions are based on overcrowding and dangerous conditions and complaints generated by citizens. 2] I have never seen the board of trustees have a vote on forcing someone to evict a tenant or face daily fines. 3] I never seen the Mayor who never comments on any litigation pending against the village make a five minute speech on such a matter last night. The owner of 130 Beach Ave has a perfect right to challenge the questionable actions taken by this village. Maybe if more time was spent by the village in a fair manner to rectify the issue instead of draconian edicts we could save some legal costs. Personally I think the owner and tenant of 130 Beach Ave should say they are now in a relationship and call it a day.

236. On May 24, 2021, Tiekert sent an email to the Village Clerk/Treasurer seeking a Storm Water Pollution Prevention Plan record that was slated for discussion before the Planning Board.

237. After the record was posted, Tiekert alerted the planner that the posted record was not a DEC-compliant SWPPP.

238. Defendant MURPHY responded on May 25, 2021, with more personal attacks and comments disparaging Tiekert.

2XX. In late June and early July of 2021, Defendants MURPHY and BARBERIO began to publicly characterize Tiekert's public participation as "harassing" behavior.

241. By email dated June 22, 2021, Defendant BARBERIO, in order to buttress the negative characterization of Plaintiff's public participation in matters of public concern, stated to multiple VILLAGE officials that said officials need to be protected,

repeating the false and defamatory allegations that Plaintiff Tiekert “harassed” and “trolled” and “followed repeatedly” a committee member.

242. Upon information and belief, the BOT consulted its labor attorney and was told that a member of the public, sending emails on matters of public interest, attending public meetings, requesting public records, and volunteering at events was not evidence of harassment.

243. On July 9, 2021, after seeking records relating to a construction site's stormwater containment plans and being told that no responsive records could be located, Tiekert filed a Building Department complaint with photographs showing 1606 Ellis Place had neither a stabilized construction entrance or a silt fence, accompanied by photographs of soil contaminated stormwater flowing into the river.

244. Defendant BARBERIO, the Village Manager, informed the Building Inspector that Tiekert's email "has been reviewed for harassing, inappropriate and threatening language" with direction to do all of his other assigned work first, effectively telling Tiekert that irrespective of the environmental damage caused by an ongoing violation, Tiekert's complaints would be the last to be acted upon.

245. On the agenda for the July 12, 2021 Board of Trustees meeting, agenda item K appeared with the subject line of "Constant and Intentional Harassment of Staff."

246. Agenda item K had the Mayor's Proposed Resolution (targeting Tiekert) that said the following:

Please put this as back up to the agenda item about staff being harassed. A resolution I would hope to pass.

Whereas, the Village of Mamaroneck since its inception in 1895 has been fortunate to be served by excellent employees and staff,

Whereas, the staff who currently serve the Village, from the Manager, Department heads and all the employees are perhaps the finest public servants that Mamaroneck has ever had in its employ,

Whereas, these employees have gone above and beyond what duty demands during these last sixteen months during the COVID crisis,

Whereas, some of these employees have been subjected to unwarranted, unfair and unkind criticism by members of the community, therefore the Board feels it is imperative to voice our support for all our employees.

Resolved that the Board of Trustees of the Village of Mamaroneck rejects and condemns the toxic, corrosive and unkind invective that our staff has been subjected to and voices our support, admiration and appreciation for both our senior staff and all who serve our residents.

Respectfully,
Tom Murphy
Mayor, Village of Mamaroneck

2XX. In or around May 2021, Plaintiff became aware that the Defendants had published and exhibited photographs of the interior of Plaintiff's Home on a public website, further violating Tiekert's privacy.

2XX. Said photographs are still viewable on the public website to this day.

**The Certificate of Sanitary Sewer Compliance and
Defendants' Surveillance and Subsequent Entries into Plaintiff's Home**

2XX. In June 2021, in correspondence with Defendant TAVOLACCI, Plaintiff documented multiple deficiencies and irregularities with the Certificate of Sanitary

Sewer Compliance (CSSC) for 515 Pine Street, which impacts the condo of which Plaintiff's Home is part.

2XX. Eventually, the VILLAGE acknowledged the defect, pledged to correct it, and then retaliated against Plaintiff.

2XX. In a July 2021 conversation with Defendant TAVOLACCI where Plaintiff had raised the CSSC issues, Defendant TAVOLACCI pivoted to ask Plaintiff whether he was doing any construction work.

2XX. Plaintiff responded that he wasn't.

2XX. Defendant TAVOLACCI then admitted that the Defendants have been surveilling the Plaintiff and his Home.

2ZZ. Defendant TAVOLACCI informed Plaintiff that he had pictures of "construction debris" being removed from Plaintiff's Home.

2ZZ. Plaintiff said that damaged ceiling was removed to expose the source of a leak in the common elements.

2ZZ. Despite this work not being done by Plaintiff nor to his Unit, Defendant TAVOLACCI accused Plaintiff of failing to get a permit, and that Defendant TAVOLACCI was going to enter Plaintiff's Home to inspect and would rip out drywall to see for himself.

2ZZ. In fact, Defendant TAVOLACCI, supervised by Defendants MURPHY and BARBERIO, forced four (4) inspections of the interior of Plaintiff's Home under the pretext of confirming compliance with local laws and codes.

2ZZ. Subsequently to Defendant TAVOLACCI or those he supervised entering Plaintiff's Home four (4) times, he forced Plaintiff to apply for a permit.

2ZZ. Contrary to the Defendants' contentions, no permit was legally required and, even if one were, it would be required of the condominium, not Plaintiff.

2ZZ. Nevertheless, Plaintiff applied for the permit because it had already become clear to him that resisting the Defendants would bring no redress.

247. On July 30, 2021, Defendant BARBERIO sent an email to the Board of Trustees, all department heads, and dozens of employees and members of the public stating that an "investigation approved by the BOT" had taken place at Plaintiff's Home. The email further stated falsely that there had been an "admission of illegal plumbing and interior work by the property owner" and Plaintiff Tiekert was identified as an "illegal offender" undertaking "dangerous" activities.

248. The email said "The BOT supports our efforts." Upon information and belief, this statement was false.

249. This email confirmed for Tiekert that VILLAGE employees or agents had been surveilling his Home and had taken photographs of him and his Home.

251. Tiekert sought records pursuant to FOIL to corroborate Defendant BARBERIO's claim of a BOT-authorized investigation.

252. Tiekert was informed there were no records of any BOT approval of an investigation of his Home.

253. Tiekert attended the August 9, 2021 BOT meeting.

254. During the portion of the meeting related to "Communication from the public", Tiekert directly asked if the BOT had approved the "investigation" of his Home after he had been told that no record of official action had been found.

255. Defendant MURPHY cut Tiekert off with a "time's up" comment and the question went unanswered.

256. Afterward Tiekert attempted to expose the false claim by Defendant BARBERIO about a BOT-approved inspection.

257. Defendant BARBERIO responded by filing a complaint with the police department of a "suspicious incident" involving Tiekert.

258. Defendant BARBERIO reported to Police that Tiekert approached him in the lobby of the Village courtroom where Defendant BARBERIO was engaged in a private conversation with Village resident, and member of the Committee on the Environment, Liam O'Hagan.

259. Defendant BARBERIO reported to Police that Tiekert stood in his "personal space" for 1.5 - 2 minutes, "stared at him in an intimidating manner", and then returned to the court room.

260. Tiekert had approached the two because he thought they were discussing a parking issue in which Tiekert was interested, but left without any comment after he heard the subject of the discussion was the proposed Tree Law.

261. Reporting this non-event to the Police as "a suspicious incident" is representative of the outrageous behavior of the Defendants.

2XX. On or about August 25, 2021, Plaintiff corresponded with Defendant TAVOLACCI regarding the CSSC issues and Defendant TAVOLACCI again pivoted to Plaintiff's Home and the pretext of alleged construction without a permit.

2XX. On this subject, Defendant MURPHY wrote to Plaintiff (and other VILLAGE officials and employees, including Defendants) disparaged Plaintiff, attacked

his character, and “diagnosed” Plaintiff with Narcissism, and spoke to Defendant TAVOLACCI encouraging him to keep hounding Plaintiff.

2XX. Defendant MURPHY also acknowledged that one of the Defendants’ goals was to interfere with Plaintiff’s ability to derive income from sharing his Home.

2XX. The attacks, lies, and disparagement of Plaintiff continued.

262. In September 2021, the Village of Mamaroneck experienced catastrophic flooding from the remnants of Hurricane Ida. Tiekert shared on social media site Nextdoor commentary that regarded flood mitigation he’d seen posted on themamaroneckproject.com.

263. In a direct social media post to Tiekert on September 12, 2021, Defendant MURPHY diagnosed Tiekert as a narcissist, and dismissed him as needing “help”.

264. Defendant MURPHY publicly commented with personal attacks against Tiekert, and incited others to follow suit.

265. A resident by the name of Hillary S. commented: "Please go and see the dangerous post Stuart has started with an anonymous blog. Our mayor must be emotionally and physically exhausted at this point..."

266. A comment by a Daniel B. to Defendant MURPHY stated: “Everybody knows you dislike Stu but really as a mayor this is not the time to go at it with him. We should be worried about the homeless and children at this point.”

267. On September 15, 2021, Defendant MURPHY responded further to the social media posts, this time falsely declaring publicly that Tiekert was the author of themamaroneckproject.com website and has a stock-in-trade of "dissembling and telling half-stories".

268. In reality, it was Defendant MURPHY who was selfishly motivated to disparage Tiekert personally and who made wild, baseless assertions against Tiekert in retaliation for sharing commentary on a matter of public concern.

269. In defense of his reputation and in an attempt to correct the facts, on September 23, 2021, Tiekert wrote to Defendant MURPHY and to the Board of Trustees to object to the false and disparaging email by Murphy dated September 15th and an email by Defendant BARBERIO dated July 30, 2021.

270. Defendant BARBERIO's response from a VILLAGE email account was, "Poor Baby! Want some tissues for those tears."

271. Defendant MURPHY's response from a VILLAGE email account was, "This email drips in self referential narcissism on a scale I have yet to witness."

228. In 2021, Tiekert volunteered to staff a table sponsored by the Committee for the Environment at the winter farmer's market, to aid the Committee's goal of selling compost kits.

229. After spending 10+ hours, only two compost kits had sold. In order that future efforts would see improvement, Tiekert sent his observations and suggestions to Ellen Silver, the Chair of the Committee for the Environment, in an email entitled, "Compost Program."

230. Silver replied critically to Tiekert's suggestions and observations saying that "We are not interested in having volunteers sit and read a book and be a crackpot."

2XX. Silver turned out to be the "committee member" that Defendants falsely claimed Plaintiff followed, trolled, and harassed.

231. Upon information and belief, Silver received encouragement by VILLAGE Officials, acting either within or outside of the scope of their official duties, to disparage and denigrate Tiekert.

**The So-Called “Illegal Apartment” issues are resolved
by the ZBA, but the Defendants Retaliate On**

272. On or about September 21, 2021, the Zoning Board of Appeals determined that Tiekert could resolve all zoning violations by keying the locks on the second and third floors the same, and by putting the third-floor electric meter in his name.

273. The ZBA further acknowledged Plaintiff’s zoning right to have roomers or boarders (no more than two), with nothing in the zoning code that further limited the way that accessory use could be employed.

274. Notwithstanding the vindication of Plaintiff’s property rights, Defendant TAVOLACCI, acting under color of state law, sent an email to the Board of Trustees, the Zoning Board of Appeals, and its attorneys, stating that he intended to ignore the ZBA resolution.

275. Defendant TAVOLACCI stated in pertinent part:

I want to make it crystal clear to the applicant and this Zoning Board that all concealed spaces that were altered illegally, without permits or inspections will be exposed and inspected by this Building Department. This includes, but not limited to the enclosed stairwell walls on the second and third floor. The framing lumber, their spacing, and the method of attachment will be inspected for conformance to the Uniform Fire Code. This also includes the Kitchen Cabinets and the concealed space behind their install. If the applicant is entitled to keep kitchen cabinets in this space after it is inspected and meets our Uniform code and as per the Zoning Board directive, he can reinstall, providing he takes out the

required permits. The plumbing connections, specifically the venting of the kitchen sink will also have to be inspected by our inspectors to verify it complies with the N.Y.S. Plumbing code. The sink can be reinstalled provided it meets N.Y.S. Plumbing and the Uniform Code. I will not accept a Plumbers affidavit for work not inspected by this department. In regards to all of the electrical work that was done illegally, I will not accept a certification by the applicant's electrician that never witnessed the original installation. When and If these visuals are approved by our department, the Fire Inspector and the Independent NYS electrical Underwriters, we will then allow the applicant or his tenant to legally occupy this space. It is also necessary that it meets the N.Y.S. Uniform Electric code as well. All of the wiring that fed this kitchen from the panel will be exposed and inspected by this department.

The prior permit application and fees which were never cashed will have to be reissued in order for this process to proceed. ...

276. Defendant TAVOLACCI plainly believes that he and the other Defendants, all of whom acted in concert and under color of state law, can disregard the ZBA's resolution of the matter, and that Tiekert's compliance with the ZBA's resolution was not reason enough for Defendants to end their vendetta.

277. No matter how the law and facts were adjudged, the Defendants intended to continue to use and abuse their authority to cause Tiekert to suffer intrusions and forced alterations of his Home in retaliation for his public participation.

2XX. Defendant MURPHY took most every opportunity to state that Plaintiff has an "illegal apartment" as a means of defaming and threatening Plaintiff.

278. In even the simplest matters, the Defendants show contempt for Tiekert and his rights, and a spirit of retaliation using the powers of municipal government.

279. For example, on October 19, 2021, Tiekert sought confirmation from Defendant TAVOLACCI that the Department had received the condominium declaration

and bylaws for 130 Beach Avenue after his email transmitting them a month earlier on September 17, 2021.

280. With no response after six more days, Tiekert sent a follow-up email to Defendant TAVOLACCI on October 25, 2021, which said only, "[t]he courtesy of a reply is appreciated."

281. This resulted in an email response from Defendant MURPHY stating, "Said the most discourteous resident of the Village."

2ZZ. On October 29, 2021, Defendant MURPHY inserted himself into an email exchange between Plaintiff and Defendant TOVALACCI.

2ZZ. In said email addressed to Plaintiff, MURPHY first speaks to Plaintiff, saying "You [sic] narcissistic behavior knows no limits."

2ZZ. In the same email, MURPHY then addresses TOVALACCI but is plainly speaking to Plaintiff; MURPHY tells TOVALACCI to continue his persecution of Plaintiff no matter the resistance he receives.

2ZZ. In the same email, MURPHY makes clear that he and the other defendants whom he is supervising, and with whom he is acting in concert and under color of law to deprive Plaintiff of his rights and privileges, are knowingly acting to deprive Plaintiff of the income on which he depends by interfering with his ability to share his home with a roomer.

2ZZ. That same email illustrates the Defendants' intention to disregard the ruling of the ZBA that resolved all alleged violations by Plaintiff.

282. The Defendants next illustrated their intention to disregard the ruling of the ZBA that allowed resolution of all outstanding code issues by keying the locks and re-titling the electric meter by sending threatening letters marked "FINAL NOTICE".

283. On November 17, 2021, Tiekert received by first-class mail, five "FINAL NOTICE" letters dated November 15, 2021.

284. These "FINAL NOTICE" letters pertained to previously issued Orders to Remedy Violations 19-2653, 19-4655, 19-4656, 19-4657 and 19-4667. The letters said that unless the items listed were "corrected immediately", the Building Department would institute legal proceedings against Tiekert and his property.

285. These Orders to Remedy Violations were already resolved by the ZBA decision.

286. Each and everyone of the Orders to Remedy Violations are predicated on a finding of a separate dwelling unit.

287. Besides the findings mentioned above, on or about October 7, 2021 the ZBA granted Plaintiff's appeal and ruled that, if Plaintiff keys the interior locks the same and puts the third-floor electric meter in his name, then the "totality of this space [Plaintiff's third floor] no longer constitutes a separate dwelling unit."

288. Tiekert complied with the ruling of the Zoning Board of Appeals by keying the locks the same and, by the end of November 2021, Tiekert could confirm that the third-floor electric meter was now in his name.

289. On November 30, 2021, Tiekert emailed Defendant MOUNTAIN notifying the VILLAGE that the issues raised about his Home were resolved by keying the locks

the same and putting the third-floor electric meter in his name in compliance with the ZBA ruling.

290. Tiekert's email also reminded Defendant MOUNTAIN that he had submitted all the permit applications that had been requested by the Orders to Remedy prior to the ZBA ruling.

291. Tiekert received no response from MOUNTAIN to this email reminding her that he had submitted all required permit applications nor from the Village regarding his permit applications.

292. On November 22, 2021, Tiekert filed a FOIL appeal from the Village's denial of his FOIL request dated August 2, 2021, seeking photographs taken by the Defendants of Plaintiff himself during their surveillance of Plaintiff's property.

293. On November 22, 2021, Defendant BARBERIO responded to Plaintiff's FOIL appeal, and copied Defendant MURPHY, the Board of Trustees, the Committee on Open Government, the VILLAGE Attorney, VILLAGE of Mamaroneck personnel, and members of the VILLAGE Police Department and Fire Department, writing:

"My psychiatrist told me I was crazy and I said I want a second opinion. He said, 'Okay, you're ugly too.'"

Source: Rodney Dangerfield - Birthplace, Deer Park, Long Island.

294. In an email from around the same time, Defendant MURPHY attacks and gaslights Plaintiff Tiekert, stating in pertinent part, "You twist the truth and facts to serve your self indulgent and narcissistic purposes. I say this in all sincerity, you truly need help, I hope you get it."

295. Unfulfilled, approximately an hour and a half later, Defendant MURPHY gaslights Plaintiff again, in a one-sentence email: “Truly please seek help”; this time copying the members of the Board of Trustees and two other VILLAGE employees.

3ZZ. Despite the October 2021 ruling of the ZBA that there is no separate dwelling unit, and despite Defendants’ acknowledgment in their October 11, 2023 letter to this Court that Plaintiff cured the alleged violations, no Certificate of Compliance or Certificate of Occupancy has been issued.

3ZZ. On the contrary, on or about December 14, 2021, MURPHY and the other defendants acting in concert with him under color of law, commenced a legal action against Plaintiff, People v. Tiekert, which was transferred to the Town of Rye Court pursuant to NY Criminal Procedure Law 170.15, and is now pending.

3ZZ. Said action references violation of 101.2.7.4 of the NYS Property Maintenance Code, which states:

If during the inspection of a premises, building or structure, or any building system or equipment, in whole or in part, constitutes a clear and imminent threat to human life, safety or health, the authority having jurisdiction charged with the administration and enforcement of the Uniform Code shall exercise its powers in due and proper manner so as to extend to the public protection from the hazards of threat to human life, safety, or health.

3ZZ. It is plain that there is neither a clear nor imminent threat to human, life, safety or health from Plaintiff’s home.

3ZZ. Defendants admit as much, for example, when counsel for Defendants stated in their letter to Judge Seibell (SDNY) dated October 11, 2023, “[Plaintiff] eventually cured the violations in the manner required by the Zoning Board of Appeals.”

3ZZ. Resuming their public attacks Plaintiff, on March 9, 2022, Defendant MURPHY emailed the NYS Committee on Open Government and others, asserting that Plaintiff has a mental illness.

297. To illustrate how far the Defendants have taken things, upon information and belief, Defendant MURPHY was overheard to say at a public meeting that he desires to kill Plaintiff Tiekert.

298. Most recently, on July 11, 2023, Plaintiff forwarded to Defendant MURPHY and the VILLAGE Board of Trustees his FOIL appeal from the Village's response dated July 5, 2023, to his FOIL request dated March 27, 2023, seeking documents relating to an Audit of the Bills dated March 24, 2023.

299. By email dated July 11, 2023, Defendant Murphy replied to Plaintiff with information on the symptoms and causes of Obsessive-Compulsive Disorder adding, "I truly hope this helps!" to further gaslight, attack, harass, demonize, ridicule, and patronize Plaintiff.

3ZZ. On one or more occasions, when Plaintiff brought matters before the VILLAGE, Defendants MURPHY and/or BARBERIO and/or TAVOLACCI would misuse their power to deny Plaintiff a hearing and due process.

3ZZ. For one example, when Plaintiff appealed a building permit for 866 Orienta Avenue to add a second dwelling unit to their one-family residence, the Defendants, acting either in their individual capacities or their official capacities, and under color of law, made efforts to have the ZBA summarily dismiss or deny Plaintiff's application without a hearing, contrary to the ZBA's procedures and legal obligations and the rights of Plaintiff.

3ZZ. For another example, when Plaintiff sought resolution of the CSSC storm drain issues, Defendant TAVOLACCI told Plaintiff that he refuses to comply with the law or procedures “until you correct your own shortcomings.”

300. On or about July 18, 2023, Plaintiff notified the Defendants of his claims, injuries, and grievances through the VILLAGE Attorney and offered to resolve the matter without Court involvement, but the VILLAGE Attorney declined without relaying Plaintiff’s settlement offer to any of the Defendants.

XXX. On or about July 20, 2023, Plaintiff served Notices of Claim but asserts that Notices of Claim are not required by law under these circumstances.

301. The Defendants’ acts or omissions are ongoing, thus the instant action ensued.

Nature of the action

302. In this matter, Plaintiff Tiekert seeks injunctive relief, compensatory damages, punitive damages, and his attorneys’ fees and costs for violations of Tiekert’s personal rights, privacy rights, property rights, and constitutional rights involving Defendants’ illegal trespass, illegal search and seizure, violations of his privacy rights, unlawful attempts to deprive Tiekert of his property rights, the taking of his property without just compensation, retaliation for his constitutionally protected speech, efforts to silence Tiekert and prevent him from exercising his constitutionally protected speech, efforts to silence Tiekert and prevent him due process of law, malicious prosecution, and selective enforcement. Tiekert seeks compensatory damages and punitive damages individually from those Defendants who have negligently and/or intentionally inflicted emotional distress, and/or have defamed him, including allegations of criminal

behavior, making public statements inferring mental illness, and other statements made to damage him and his reputation in the community.

AS A FIRST CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S FIRST AND FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. § 1983

303. Plaintiff incorporates by reference all the foregoing allegations.

304. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. §1983.

305. The acts of the Defendants complained of herein have been taken under color of state law.

306. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

307. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

308. The Defendants have infringed upon and chilled Plaintiff's rights of free expression, deprived Plaintiff of his rights, privileges and immunities under the First and Fourteenth Amendments to the Constitution of the United States, and retaliated against Plaintiff by prosecuting Plaintiff in manner that violates due process and equal protection requirements, and by targeting Plaintiff's ability to lawfully derive income from his Home in retaliation for his protected speech.

309. Plaintiff suffered concrete harms as set forth above.

310. The conduct of the Defendants violates 42 U.S.C. §1983.

311. The Defendants' retaliatory acts have been intentional, malicious, willful, purposeful and/or wanton.

312. The motivating factor in the Defendants' acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

313. The Defendants' actions were substantially caused by Plaintiff's exercise of his protected free speech rights.

314. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A SECOND CAUSE OF ACTION FOR VIOLATION OF
PLAINTIFF'S FIRST AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

315. Plaintiff incorporates by reference all the foregoing allegations.

316. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. § 1983.

317. The acts of the Defendants complained of herein have been taken under color of state law.

318. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

319. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

320. The Defendants have deprived Plaintiff of his rights under the First Amendment to the Constitution of the United States by libeling, defaming, disparaging Plaintiff and by causing or encouraging others to loathe and/or disparage him based on falsehoods, and actually exposing Plaintiff to scorn and derision in his community, in retaliation for his protected speech.

321. Plaintiff suffered concrete harms as set forth above.

322. The conduct of the Defendants violates 42 U.S.C. § 1983.

323. The Defendants' retaliatory acts have been intentional, malicious, willful, purposeful, and/or wanton.

324. The motivating factor in the Defendants' acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

325. The Defendants' actions were substantially caused by Plaintiff's exercise of his protected free speech rights.

326. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A THIRD CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FIRST AND FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. § 1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the First and Fourteenth Amendments to the Constitution of the United States by discriminating against Plaintiff on the basis of his age, in retaliation for his protected speech.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants' discriminatory acts have been intentional, malicious, willful, and/or wanton.

3XX. The Defendants targeted Plaintiff because of his age.

3XX. The Defendants targeted Plaintiff's housing because of his age.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

AS A FOURTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S FIRST AND FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. § 1983

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. § 1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the First and Fourteenth Amendments to the Constitution of the United States by denying him government services and responses to which he is entitled and for which he pays taxes in retaliation for his protected speech.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants’ retaliatory acts have been intentional, malicious, willful, and/or wanton.

3XX. The motivating factor in the Defendants’ acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

3XX. The Defendants’ actions were substantially caused by Plaintiff’s exercise of his protected free speech rights.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A FIFTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FIRST AND FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. § 1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. § 1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the First and Fourteenth Amendments to the Constitution of the United States by targeting Plaintiff's Home as containing an “illegal apartment” after their investigation found no evidence of an “illegal apartment” under any legal definition, in retaliation for his protected speech.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants' retaliatory acts have been intentional, malicious, willful, and/or wanton.

3XX. The motivating factor in the Defendants' acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

3XX. The Defendants' actions were substantially caused by Plaintiff's exercise of his protected free speech rights.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A SIXTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FIRST AND FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. § 1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. § 1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the First and Fourteenth Amendments to the Constitution of the United States by prosecuting Plaintiff for allegedly violating laws and/or codes after they themselves acknowledge that Plaintiff resolved the alleged violations, in retaliation for his protected speech.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants' retaliatory acts have been intentional, malicious, willful, and/or wanton.

3XX. The motivating factor in the Defendants' acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

3XX. The Defendants' actions were substantially caused by Plaintiff's exercise of his protected free speech rights.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A SEVENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FIRST AND FOURTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. § 1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. § 1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the First and Fourth Amendments to the Constitution of the United States by publishing and/or exhibiting photographs of the interior of Plaintiff's Home, in retaliation for his protected speech.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants' retaliatory acts have been intentional, malicious, willful, and/or wanton.

3XX. The motivating factor in the Defendants' acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

3XX. The Defendants' actions were substantially caused by Plaintiff's exercise of his protected free speech rights.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS AN EIGHTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FIRST AND FOURTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. § 1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. § 1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the First and Fourth Amendments to the Constitution of the United States by surveilling and photographing Plaintiff and/or his Home, and for publishing and/or exhibiting photographs of Plaintiff and/or his Home, in retaliation for his protected speech.

3XX. Plaintiff suffered concrete harms as a result and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants’ retaliatory acts have been intentional, malicious, willful, and/or wanton.

3XX. The motivating factor in the Defendants’ acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

3XX. The Defendants’ actions were substantially caused by Plaintiff’s exercise of his protected free speech rights.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A NINTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FIRST AND FOURTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. § 1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. § 1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the First and Fourth Amendments to the Constitution of the United States by forcing inspections of the interior of his Home, when no inspections were required by law, in retaliation for his protected speech.

3XX. Plaintiff suffered concrete harms as a result and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants' retaliatory acts have been intentional, malicious, willful, and/or wanton.

3XX. The motivating factor in the Defendants' acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

3XX. The Defendants' actions were substantially caused by Plaintiff's exercise of his protected free speech rights.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A TENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FIRST AND FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. § 1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. § 1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the First and Fourth Amendments to the Constitution of the United States by forcing Plaintiff to get a permit(s), when no permits were required by law, in retaliation for his protected speech.

3XX. Plaintiff suffered concrete harms as a result and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants' retaliatory acts have been intentional, malicious, willful, and/or wanton.

3XX. The motivating factor in the Defendants' acts has been to retaliate against Plaintiff for his exercise of protected free speech rights.

3XX. The Defendants' actions were substantially caused by Plaintiff's exercise of his protected free speech rights.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS AN ELEVENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. The Defendants have deprived Plaintiff of his rights under the Fourteenth Amendment to the Constitution of the United States by using and/or abusing their governmental powers to interfere with Plaintiff's ability to lawfully derive income from his Home, in a manner that violates due process and equal protection requirements.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A TWELFTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourteenth Amendment to the Constitution of the United States by discriminating against him on the basis of age.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. § 1983.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A THIRTEENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourteenth Amendment to the Constitution of the United States by refusing to act on his permit applications, and in other ways denying him government services and responses to which he is entitled and for which he pays taxes.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A FOURTEENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourteenth Amendment to the Constitution of the United States by using and abusing their governmental powers to prosecute Plaintiff for an “illegal apartment” after they already failed to turn up evidence of any illegal apartment under any legal definition.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants’ acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A FIFTEENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF’S
FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourteenth Amendment to the Constitution of the United States by prosecuting Plaintiff for allegedly violating laws and/or codes after they themselves acknowledge that Plaintiff resolved the alleged violations.

3XX. Plaintiff suffered concrete harms as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A SIXTEENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourteenth Amendment to the Constitution of the United States by unlawfully surveilling and photographing Plaintiff and/or his Home, and for publishing and/or exhibiting photographs of Plaintiff and/or his Home.

3XX. Plaintiff suffered concrete harms, including but not limited to harms to his sense of safety, sense of privacy, and his emotional well-being, and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants’ acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.
in an amount to be determined at trial.

**AS A SEVENTEENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourteenth Amendment to the Constitution of the United States by forcing inspections of the interior of his Home, when no inspections were required by law.

3XX. Plaintiff suffered concrete harms, including but not limited to harms to his sense of safety, sense of privacy, and his emotional well-being, and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants’ acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS AN EIGHTEENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTEENTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourteenth Amendment to the Constitution of the United States by forcing Plaintiff to get a permit(s), when no permits were required by law.

3XX. Plaintiff suffered concrete harms, including but not limited to harms to his sense of safety, sense of privacy, and his emotional well-being, and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A NINETEENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourth Amendment to the Constitution of the United States by publishing and/or exhibiting photographs of the interior of Plaintiff's Home.

3XX. Plaintiff suffered concrete harms, including but not limited to harms to his sense of safety, sense of privacy, and his emotional well-being, and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A TWENTIETH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourth Amendment to the Constitution of the United States by unlawfully surveilling and photographing Plaintiff and/or his Home, and for publishing and/or exhibiting photographs of Plaintiff and/or his Home.

3XX. Plaintiff suffered concrete harms, including but not limited to harms to his sense of safety, sense of privacy, and his emotional well-being, and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A TWENTY-FIRST CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S
FOURTH AMENDMENT RIGHTS PURSUANT TO 42 U.S.C. §1983**

327. Plaintiff incorporates by reference all the foregoing allegations.

328. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. §1983.

329. The acts of the Defendants complained of herein have been taken under color of state law.

3XX. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the Fourth Amendment to the Constitution of the United States by forcing inspections of the interior of his Home, when no inspections were required by law.

3XX. Plaintiff suffered concrete harms, including but not limited to harms to his sense of safety, sense of privacy, and his emotional well-being, and as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1983.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1983 and other legal bases, in an amount to be determined at trial.

**AS A TWENTY-SECOND CAUSE OF ACTION FOR VIOLATION
OF PLAINTIFF'S RIGHTS PURSUANT TO 42 U.S.C. §1985**

354. Plaintiff incorporates by reference all the foregoing allegations.

355. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are "persons" and "state actors" for purposes of 42 U.S.C. §1985.

329. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the First, Fourth, and Fourteenth Amendments to the Constitution of the United States.

3XX. The Defendants have conspired and/or acted in concert, and continue to conspire and act in concert for the purposes of depriving Plaintiff, either directly or indirectly, of his rights guaranteed to him under the U.S. Constitution, and/or of the equal protection of the laws, and/or of equal privileges and immunities of the laws, and/or for the purpose of preventing or hindering a government authority from giving or securing to Plaintiff the equal protection of the laws.

3XX. Plaintiff's age was a causal agent of Defendants' actions.

3XX. Plaintiff suffered concrete harms, including but not limited to the loss of government protections and services to which he is entitled and for which he pays taxes, harms to his sense of safety, sense of privacy, and his emotional well-being, and more as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1985.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1985 and other legal bases, in an amount to be determined at trial.

**AS A TWENTY-THIRD CAUSE OF ACTION FOR VIOLATION
OF PLAINTIFF'S RIGHTS PURSUANT TO 42 U.S.C. §1986**

354. Plaintiff incorporates by reference all the foregoing allegations.

355. Defendants the VILLAGE of Mamaroneck, MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, are “persons” and “state actors” for purposes of 42 U.S.C. §1986.

329. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

3XX. As alleged above, the Defendants have deprived Plaintiff of his rights under the First, Fourth, and Fourteenth Amendments to the Constitution of the United States.

3XX. The Defendants have conspired and/or acted in concert, and continue to conspire and act in concert for the purposes of depriving Plaintiff, either directly or indirectly, of his rights guaranteed to him under the U.S. Constitution, and/or of the equal protection of the laws, and/or of equal privileges and immunities of the laws, and/or for the purpose of preventing or hindering a government authority from giving or securing to Plaintiff the equal protection of the laws.

3XX. Plaintiff’s age was a causal agent of Defendants’ actions.

3XX. Said Defendants each had and have knowledge of the things conspired to be done to Plaintiff.

3XX. Said Defendants each had knowledge that the things conspired to be done to Plaintiff were about to be committed.

360. Said Defendants each had the power to prevent or aid in preventing the commission of same.

361. Said Defendants each failed or neglected or refused to do so.

3XX. Plaintiff suffered concrete harms, including but not limited to the loss of government protections and services to which he is entitled and for which he pays taxes, harms to his sense of safety, sense of privacy, and his emotional well-being, and more as set forth above.

3XX. The conduct of the Defendants violates 42 U.S.C. §1986.

3XX. The Defendants' acts have been intentional, malicious, willful, wanton and/or purposeful.

3XX. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages pursuant to 42 U.S.C. §1986 and other legal bases, in an amount to be determined at trial.

AS A TWENTY-FOURTH CAUSE OF ACTION FOR MALICIOUS PROSECUTION

354. Plaintiff incorporates by reference all the foregoing allegations.

355. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their individual capacities.

3XX. In the alternative, Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and/or KRAMER acted in their official capacities.

4XX. That the aforementioned conduct by Defendants shows that Defendants have deprived and continue to deprive Plaintiff of liberties, and further that Defendants

have surveilled Plaintiff and subjected Plaintiff to an unreasonable search or searches of Plaintiff's private property and same are threatened to continue.

4XX. Furthermore, Defendants acted with malice, pursuing a vendetta against Plaintiff, repeatedly gaslighting, denigrating, and defaming him, and seeking to damage his reputation in his community.

4XX. Defendants' actions are egregious, and the fact that they are a government and public servants and/or wielding the power and authority of a government and public servants is an aggravating factor and shocks the conscience.

4XX. There has been no final determination against the Plaintiff.

4XX. Notwithstanding, Plaintiff was prosecuted for having an "illegal apartment" and no illegal apartment was found.

4XX. Furthermore, the Defendants have conceded that Plaintiff has already resolved the violations that have been alleged.

4XX. The Defendants targeted Plaintiff where he was most vulnerable, a senior citizen whose survival depends on the income he derives from sharing his Home.

365. That the aforementioned conduct by the Defendants constituted and constitutes malicious prosecution of Plaintiff, for which these Defendants are liable under New York State law and for which the VILLAGE of Mamaroneck is directly liable and/or vicariously liable.

366. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly and severally, for injuries and damages in an amount to be determined at trial.

AS A TWENTY-FIFTH CAUSE OF ACTION FOR SELECTIVE PROSECUTION

367.

368. Defendants treated similarly situated residents very differently. To name just three examples, the owners of 1330 Mamaroneck Avenue, 886 Orienta Avenue, and 467 North Barry Avenue, each in the VILLAGE, were not searched, nor were violations issued, despite the Defendants having enough evidence of additional dwelling units (which, ironically, Plaintiff did not even have).

369. At the same time as Tiekert's ZBA appeal, the owners of 1330 Mamaroneck Avenue appealed for a variance. The property known as 1330 Mamaroneck Avenue was a two-family residence in 1968 when it was zoned into a one-family R-5 residential district and made non-conforming. The building had one dwelling unit on the upper floor and another on the lower floor in a similar layout; each floor had independent outside access.

370. In 2015, the property at 1330 Mamaroneck Avenue was converted to a one-family by simply "disconnecting the stove" on the first floor and was granted a certificate of occupancy for a conforming use in a one-family residence district.

371. In late 2019, the property owners applied for a variance to expand the second-floor living space and submitted signed and sealed plans showing that each floor of their dwelling had a complete kitchen – including a range.

372. The voter rolls showed two families (5 voters) living in 1330 Mamaroneck Avenue – the owners, who live on the upper floor, and another couple on the lower floor. While Tiekert's application and the 1330 Mamaroneck Avenue application were both before the ZBA, Tiekert questioned why the two apparent dwelling units at 1330 Mamaroneck Avenue – shown with ranges in the kitchens of both floors – had been

treated differently than his third floor that had no range at all. That question went unanswered.

373. The owners of 1330 Mamaroneck Avenue subsequently submitted a revised set of plans that showed no range on the first floor and the Board of appeals granted a variance, not finding in the case of 1330 Mamaroneck Avenue that a sink, refrigerator and cabinets constituted an area “arranged, designed, equipped, used and dedicated solely for the preparation of food for consumption” that made the floor space an unlawful dwelling unit.

374. The ZBA’s finding that Tiekert’s third floor was a separate dwelling unit when it had none of the requisite cooking facilities nor a separate entrance, cannot be reconciled with its finding that the first floor of 1330 Mamaroneck Avenue was not a separate dwelling unit after its range was removed from plans and when it had separate entrances to the first and second floors. Either a dwelling unit needs permanent provisions for cooking (a range) or it does not.

375. For another example of selective enforcement, wealthy property owners at 866 Orienta Avenue, the Orienta section of the Village, were issued a building permit to renovate a carriage house in away that would create a second dwelling unit on the parcel. When a ZBA appeal was filed challenging the building permit, the Village Manager intervened on the property owners’ behalf urging the ZBA Chair to not hear the application.

376. For another example, 467 North Barry Avenue was constructed as a 2-family property but was sold as a 3-family. At no point did the VILLAGE seek to correct this open and obvious violation of the building and zoning laws, even after the

Plaintiff pointed out the disparate treatment he was receiving. Moreover, one unit of that illegal 3-family property lacks fire egresses. Despite these, Defendants have taken no enforcement actions.

4XX. For another example, 427 Rushmore Avenue has two kitchens in a single-family dwelling unit, creating a second dwelling unit, in violation of local law.

4XX. No variance was issued to the owners of 427 Rushmore Avenue.

4XX. The Defendants became aware of said fact and approved of it, tacitly or otherwise, while prosecuting Plaintiff for allegedly having a second kitchen, which he did not in fact have.

4XX. The Defendants had notice of the said conditions at these example properties, the owners having advertised the unlawful dwelling units in some instances.

4XX. Moreover, the Plaintiff brought these conditions to the attention of the Defendants.

4XX. Nevertheless, the Defendants treated similar situations very differently.

4XX. The Defendants targeted Plaintiff where he was most vulnerable, a senior citizen whose survival depends on the income he derives from sharing his Home.

4XX. In the alternative, the Defendants targeted Plaintiff as a Class of One.

4XX. Defendants' animus toward Plaintiff is well documented above and elsewhere.

4XX. There is no rational basis for treating Plaintiff differently from these other properties, even if he had the "illegal apartment" Defendants claimed (which he did not).

377. That the aforementioned conduct by the Defendants constituted a selective enforcement of the laws as against Plaintiff, for which these Defendants are liable under New York State law and for which the Village of Mamaroneck is liable.

378. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly and severally, for injuries and damages in an amount to be determined at trial.

AS A TWENTY-SIXTH CAUSE OF ACTION FOR ABUSE OF PROCESS

379. Plaintiff incorporates by reference all the foregoing allegations.

4XX. The defendants went to a criminal court and requested and received a criminal search warrant to unlawfully search Plaintiff's premises. Then in or around 2022, the Defendants commenced and continue today to prosecute the action People v. Tiekert which was transferred to the Town of Rye Court pursuant to NY Criminal Procedure Law 170.15.

4XX. This action remains pending despite the fact that Defendants acknowledge that Plaintiff resolved the alleged violations.

4XX. The prosecution is a pretext for harming Plaintiff and carrying out their vendetta against him.

380. That the aforementioned conduct by Defendants constitutes an abuse of process as against Plaintiff, for which these Defendants are liable under New York State law and for which the Village of Mamaroneck is also liable.

381. By reason of the foregoing, Defendants are liable to the Plaintiff, jointly and severally, for injuries and damages in an amount to be determined at trial.

AS A TWENTY-SEVENTH CAUSE OF ACTION FOR VIOLATION OF THE NEW YORK STATE CONSTITUTION

382. Plaintiff incorporates by reference all the foregoing allegations.

383. The aforementioned facts and conduct by Defendant the VILLAGE of Mamaroneck, including Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, in their individual and/or official capacities, were and are undertaken under color of law, were and are ongoing, and have and do violate Plaintiff's rights under Article 1, Section 12 of the New York State Constitution not to be subject to surveillance, photographing, retaliation, disparate treatment, unreasonable searches and seizures, invasions of privacy, or abuse of governmental authority.

384. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages in an amount to be determined at trial.

**AS A TWENTY-EIGHTH CAUSE OF ACTION FOR
VIOLATION OF THE NEW YORK STATE CONSTITUTION**

385. Plaintiff incorporates by reference all the foregoing allegations.

386. The aforementioned facts and conduct by Defendant the VILLAGE of Mamaroneck, including Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, in their individual and/or official capacities, were undertaken under color of law, were and are ongoing, and violated Plaintiff's rights under Article 1, Section 6 of the New York State Constitution by depriving Plaintiff of rights without due process of law.

387. By reason of the foregoing, said Defendants are liable to the Plaintiff, jointly and severally, for damages in an amount to be determined at trial.

AS A TWENTY-NINTH CAUSE OF ACTION FOR A *MONELL* CLAIM

388. Plaintiff incorporates by reference all the foregoing allegations.

389. That the aforementioned conduct by Defendants constitutes a deliberate indifference by the VILLAGE of Mamaroneck to a pattern of unconstitutional conduct by its officials, including and in particular Defendant MURPHY, and a deliberate indifference to the rights and safety of U.S. citizens and citizens of the State of New York.

390. By reason of the foregoing, the Village of Mamaroneck is directly liable and/or vicariously liable under the doctrine of *respondeat superior* to the Plaintiff, for injuries and damages, under 42 U.S.C. §1983 and pursuant to Monell v. Dep't of Social Servs' of N.Y.C., 436 U.S. 658, in an amount to be determined at trial.

AS A THIRTIETH CAUSE OF ACTION AGAINST THE DEFENDANTS

391. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "390" of Plaintiff's Verified Complaint, inclusive, with the same force and effect as though more fully set forth herein at length.

392. The conduct of Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, as described above, was extreme and outrageous and beyond the bounds of decency tolerated in a civilized society.

393. Said Defendants' conduct, which included multiple instances of gaslighting and diagnoses of various mental illnesses, was intended to cause Plaintiff emotional distress, and the Defendants acted with intent and/or with a reckless disregard to the probability that Plaintiff would suffer emotional distress.

394. Plaintiff has suffered emotional distress including but not limited to the development of anxiety that severely interfered with his ability to undertake his daily tasks and responsibilities.

395. Said Defendants were a substantial factor in causing Plaintiff's emotional distress.

396. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER acted either in concert or independently, or both, to harm Plaintiff.

397. As a direct and proximate result of the tortious, unlawful, and wrongful acts and conduct of said Defendants, and each of them, Plaintiff has suffered past and future special damages and past and future general damages in an amount to be proven at trial or inquest. The damages caused to Plaintiff by said Defendants has manifested physically, emotionally, and financially, including but not limited to suffering from pain, anxiety, depression, emotional distress, and ridicule, as well as loss of health, income, employment, and career benefits.

398. The unlawful acts of said Defendants were reckless and willful and caused great harm to Plaintiff. Given such intentional or reckless, vexatious, fraudulent, oppressive, despicable, and malicious conduct, and the conscious disregard for Plaintiff's health, well-being, and rights, Plaintiff is entitled to recover compensatory damages as well as exemplary damages sufficient to punish said Defendants and to serve as an example to deter said Defendants from similar conduct in the future.

399. The aforementioned facts and conduct by Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER,

were beyond the scope of their official duties, and thus were undertaken in their individual capacities.

400. By reason of the foregoing, said Defendants are individually liable to the Plaintiff, jointly and severally, for damages in an amount to be determined at trial.

AS A THIRTY-FIRST CAUSE OF ACTION AGAINST THE DEFENDANTS

401. Plaintiff incorporates by reference all the foregoing allegations.

402. Regardless of their intentions, it was foreseeable and probable that Plaintiff would suffer emotional distress from the conduct of Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, as described above.

403. Said Defendants were negligent in their conduct when they repeatedly harassed, verbally attacked, ridiculed, libeled, slandered, and gaslighted Plaintiff.

404. Plaintiff has suffered and continues to suffer emotional distress.

405. Said Defendants were and are a substantial factor in causing Plaintiff's emotional distress.

406. Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER acted either in concert or independently, or both, to harm Plaintiff.

407. As a direct and proximate result of the tortious, unlawful, and wrongful acts and conduct of said Defendants, and each of them, Plaintiff has suffered past and future special damages and past and future general damages in an amount to be proven at trial. The damages caused to Plaintiff by said Defendants has manifested physically, emotionally, and financially, including but not limited to suffering from pain,

anxiety, depression, emotional distress, and ridicule, as well as loss of health, income, employment, and career benefits.

408. The wrongful acts and practices of said Defendants were reckless and negligent and caused great harm to Plaintiff. Given such vexatious, oppressive, fraudulent, oppressive, despicable, and malicious conduct, and the negligent disregard for Plaintiffs health, well-being, and rights, Plaintiff is entitled to recover compensatory damages as well as exemplary damages sufficient to punish said Defendants and to serve as an example to deter said Defendants from similar conduct in the future.

409. The aforementioned facts and conduct by Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, were beyond the scope of their official duties, and thus were undertaken in their individual capacities.

410. By reason of the foregoing, said Defendants are individually liable to the Plaintiff, jointly and severally, for damages in an amount to be determined at trial.

AS A THIRTY-SECOND CAUSE OF ACTION AGAINST THE DEFENDANTS

411. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "410" of Plaintiff's Verified Complaint, inclusive, with the same force and effect as though more fully set forth herein at length.

412. Statements about Plaintiff made by each of the Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, set forth above, are either directly false, disparaging, and derogatory or imply falsehoods.

413. Said statements were published.

414. Many of the statements are in the public record such that may be viewed or heard repeatedly and continuously.

415. Said statements tend to expose Plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in the community.

416. Said statements have caused and continue to cause injury to Plaintiff's name and reputation.

417. As a direct and proximate result of this defamation, Plaintiff has been damaged in an amount to be proven at trial.

418. Some or all of said statements concerning Plaintiff are libelous per se.

419. Each Defendant acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.

420. Each Defendants' false statements or implied falsehoods were committed with wanton and malicious disregard for the truth of those statements such that punitive damages are warranted.

AS A THIRTY-THIRD CAUSE OF ACTION AGAINST THE DEFENDANTS

421. Plaintiff incorporates by reference all the foregoing allegations.

422. The aforementioned facts and conduct by Defendant the VILLAGE of Mamaroneck, including Defendants MURPHY, MOUNTAIN, BARBERIO, SARNOFF, GRAY, TAVOLACCI, JIMISON, and KRAMER, in their individual and/or official capacities, are ongoing, and have and will continue to violate Plaintiff's rights.

423. The Defendants have declared their intention to continue to interfere with Plaintiff's quiet enjoyment of his Home, abuse process, selectively enforce, maliciously prosecute, search and seize, and retaliate against Plaintiff, and ignore findings of fact by reviewing authorities and ignore laws and rulings by reviewing authorities that contradict or undermine their intentions toward Plaintiff.

424. While monetary damages may adequately compensate Plaintiff for harms that remain in the past, monetary damages would not adequately compensate Plaintiff for ongoing and continuing mistreatment, threats of entry into his Home, threats to demolish aspects of his Home, and those damages Plaintiff will sustain in the future as a result of the events described above.

425. By reason of the foregoing, Plaintiff will be irreparably harmed if the Defendants are not enjoined from threatening to use and actually using the power and authority of municipal government to continue to injure Plaintiff, violate or threaten to violate his right to privacy and his right to be secure in his person and effects, or interfere with his right to quiet enjoyment of his property or the value thereof.

WHEREFORE, Plaintiff demands the following relief jointly and severally against each defendant:

- a. Compensatory damages in an amount against each defendant herein which exceeds the jurisdictional limits of all lower courts that might otherwise have jurisdiction herein;
- b. Punitive damages in an amount to be determined by a jury;
- c. Injunctive Relief;
- d. Declaratory Relief;
- e. Attorney's fees pursuant to 42 U.S.C. §1988;
- f. An award of Plaintiff's costs of suit;
- g. Pre-judgment and post-judgment interest;

- h. A finding that the violations of Plaintiff's rights and the damages done to him are of a seriousness that they should be fully redressed by this Court in the interests of justice despite any legal barriers and/or by extension or modification of existing laws and by reversal to precedent and/or law, if necessary; and
- h. Such other further relief as this Court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interest of justice.

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Dated: Ossining, New York
February 5, 2024

LAW OFFICE OF BRIAN M. HIGBIE
Attorney for the Plaintiff



By: _____
Brian M. Higbie BH6952
202 Barnes Street
Ossining, NY 10562
HigbieLaw@gmail.com
(914) 613-9250