



**RUPP
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PFALZGRAF
CUNNINGHAM LLC
ATTORNEYS**

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CHAD A. DAVENPORT
davenport@ruppbaase.com

September 19, 2019

***VIA CERTIFIED MAIL RETURN
RECEIPT REQUESTED***

Danielle Wagner
Village Clerk
Village of Gowanda
27 East Main Street
Gowanda, New York 14070

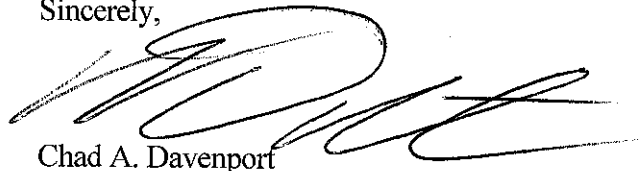
Dear Ms. Wagner:

Re: David E. Yezek v. Village of Gowanda

Enclosed please find a notice of claim directed to the Village of Gowanda and Village of Gowanda Police Department. Please advise whether the claim will be addressed or if the filing of a lawsuit will be necessary.

Should you have any questions or concerns regarding the foregoing, please call.

Sincerely,



Chad A. Davenport

Enclosures

Innovation in Practice

Rochester | Williamsville | Albany | Jamestown

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CATTARAUGUS

DAVID E. YEZEK,

Claimant,

VERIFIED
NOTICE OF CLAIM

v.

VILLAGE OF GOWANDA,
THE GOWANDA POLICE DEPARTMENT,
DENNIS FELDMAN, individually and in his capacity as
Officer-in-Charge of the Gowanda Police Department,
RICHARD COOPER, individually and in his capacity as a
Gowanda Police Officer,
SEAN HOTNICH, individually and in his capacity as a
Gowanda Police Officer,
PETER RANDALL, individually and in his capacity as a
Gowanda Police Officer, and
OTHER KNOWN OR UNKNOWN OFFICERS OF THE
GOWANDA POLICE DEPARTMENT.

Respondents.

STATE OF NEW YORK)
) ss:
COUNTY OF CATTARAUGUS)

TO: VILLAGE OF GOWANDA

Attn: Danielle Wagner
Village of Gowanda Clerk
27 East Main Street
Gowanda, New York 14070

PLEASE TAKE NOTICE that pursuant to any and all laws, rules, or regulations as may apply to the circumstances at hand, including but not limited to General Municipal Law § 50-e, Rupp Baase Pfalzgraf Cunningham LLC, on behalf of the claimant, David E. Yezek, hereby submits this notice of claim and demand to the Respondents as follows:

1. **Claimant:**

David E. Yezek
34 Torrance Place
Gowanda, New York 14070

2. **The Claimant's Attorney:**

R. Anthony Rupp III, Esq., of Rupp Baase Pfalzgraf Cunningham LLC
1600 Liberty Building, 424 Main Street
Buffalo, New York 14202.

3. **Nature of the Claim:** The claim is for Abuse of Power, Abuse of Process, Malicious Abuse of Legal Process, Malicious Use of Process, Malicious Prosecution, False Arrest, False Imprisonment, Unlawful Search and Seizure, Trespass, Unlawful Seizure and Arrest, Unlawful Detainment, Recklessness, Unlawful Restraint, Battery, Assault, Excessive Force, Negligence, Nuisance, Negligent Screening, Hiring, Retention, Training, or Supervision, Respondeat Superior, Slander, Libel, Defamation, Invasion of Privacy, Publicity Given to Private Life, Careless Acts, Failure to Carry Out Official Duties, Failure to Intervene, Negligence in the Performance of Official Duties, Official Misconduct, Tampering with Public Records, Breach of Fiduciary Duty, Dereliction of Official Duties, Negligent Unlawful Conduct, Acts, and Omissions of the Respondents, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Intentional Harassment, Civil Conspiracy, Violation of General Municipal Law § 51, a Violation of Mr. Yezek's Constitutional Rights Guaranteed Under the New York

State Constitution, and a Violation of Mr. Yezek's Constitutional Rights pursuant to 42 U.S.C. § 1983.

4. **Description of Claim and Time, Place, and Manner:** On July 20, 2018 at approximately 3:15 p.m., police officers Richard Cooper and Sean Hotnich committed a flagrant violation of Mr. Yezek's constitutional rights by entering Mr. Yezek's home without a search warrant and in the absence of probable cause. Based on the following allegations, it is clear that the Village of Gowanda police department harbored feelings of contempt towards Mr. Yezek, and this initial violation of his constitutional rights was no mere accident. The Village of Gowanda police department took concerted action against Mr. Yezek to ensure that he suffered as much harm as possible before he ever had his day in court. Detailed below are multiple violations of Mr. Yezek's constitutional rights which all stemmed from Officer Cooper and Officer Hotnich's initial violation of Mr. Yezek's Fourth Amendment right to be free from unreasonable search and seizure.

According to the Gowanda police department complaint information, a complaint was made by an anonymous caller of a "noxious" odor of marijuana emanating from Mr. Yezek's property at approximately 3:12 p.m. on July 20, 2018 (*see Exhibit A*). Upon information and belief, the anonymous tip was provided by Eugene Styles, 92 Buffalo Street, Gowanda, New York 14070. Attached hereto as **Exhibit B** is a Google Maps printout demonstrating that Mr. Styles lived nearly a mile from Mr. Yezek's house. Video surveillance footage from Mr. Yezek's property shows that Mr. Styles was never anywhere near Mr. Yezek's house on July 20, 2018. It is inconceivable that Mr. Styles could identify Mr. Yezek's property

as the source of the marijuana smell when he was nearly a mile away from his property.

Although a recording of the 911 call has not been made available to Mr. Yezek, upon information and belief, the 911 dispatcher made no efforts to verify or check the reliability of the facts disclosed by the individual providing the anonymous tip.

Based solely upon this anonymous tip, Officer Cooper and Officer Hotnich were dispatched and arrived at Mr. Yezek's property at approximately 3:15 p.m. When Officer Cooper and Officer Hotnich arrived, Mr. Yezek was sitting in his dining room area with his blinds closed and the door from his back room to his kitchen closed. Prior to Officer Cooper and Officer Hotnich's arrival, Mr. Yezek had been sitting in his dining room on his phone for at least fifteen minutes texting and researching different paints for the bed of his truck. Upon their arrival, without conducting any investigation whatsoever, Officer Cooper and Officer Hotnich immediately walked towards Mr. Yezek's back porch even though they parked right next to Mr. Yezek's side door which had a sign that read "**NO TRESPASSING**" and another sign that told visitors to use the front door with an arrow that pointed towards the front door. When Officer Cooper and Officer Hotnich reached the back deck, they discovered a doorway that led to Mr. Yezek's back room. The screen door was closed, and the back security gate was opened slightly. The video surveillance footage clearly shows that Officer Cooper **pulled** open the screen door, and then lightly knocked on the back security gate. Officer Hotnich then tapped once on the back security gate and simultaneously pushed the security gate open with his fingers. After he opened Mr. Yezek's back security gate, Officer Hotnich walked into Mr. Yezek's back room followed by Officer Cooper.

When Officer Cooper and Officer Hotnich entered Mr. Yezek's back room, they discovered that the door leading from the back room to the kitchen was closed. The back room does not lead to any room in Mr. Yezek's house besides his kitchen. Up until this point, Officer Cooper and Officer Hotnich made no effort whatsoever to announce their presence or their purpose. In an effort to deceive Mr. Yezek, the officers called out "Dave" from behind the back room to kitchen door, and when Mr. Yezek asked "who is it?" the officers opened the door and started walking into Mr. Yezek's kitchen. Mr. Yezek immediately got out of his chair, met Officer Cooper and Officer Hotnich at the door, and yelled at the officers to stop and that they could not enter his home without a search warrant. Mr. Yezek said to the officers "I got a front door. What about my side door? What about knocking?" Officer Hotnich told Mr. Yezek "we've been knocking for the last five minutes. We had a 911 call from a neighbor. We always use the back door." Mr. Yezek told the officers again that they could not come in without a search warrant.

Officer Hotnich started to push Mr. Yezek back into his dining room, and Officer Cooper pushed Officer Hotnich forward into the dining room. Mr. Yezek kept his hands by his side, and just tried to stand in the way to keep the officers from illegally entering his home. Officer Hotnich grabbed Mr. Yezek's shoulder, turned his body around, and then continued to push Mr. Yezek from behind into the dining room. Officer Hotnich immediately started to search a container on Mr. Yezek's table. When he did not find any illegal substances in the container, he continued to shove past Mr. Yezek into the living room. From the living room side of the dining room table, Officer Hotnich noticed a brown paper bag underneath Mr. Yezek's table. Officer Hotnich put the brown paper bag on Mr. Yezek's table and pulled out two bags of

marijuana. At this point, Officer Cooper and Officer Hotnich had walked through every room on Mr. Yezek's lower floor without a search warrant despite Mr. Yezek telling them repeatedly that they could not enter or search his house without a warrant.

Officer Hotnich immediately put handcuffs on Mr. Yezek with Mr. Yezek's arms in back of his body. He put the handcuffs on so tightly that they crushed Mr. Yezek's wrists which caused him severe pain. Officer Hotnich yelled at Mr. Yezek to tell the officers where the marijuana is. **At no point had either Officer Cooper or Officer Hotnich read to Mr. Yezek his Miranda rights.** Upon information and belief, an officer with the New York State police department arrived at the scene, and Officer Cooper and Officer Hotnich proudly displayed the two bags of marijuana on Mr. Yezek's table to the third officer at the scene. Officer Hotnich grabbed Mr. Yezek's handcuffed hands and started lifting Mr. Yezek's hands upward and behind Mr. Yezek's back. Officer Cooper and the third officer walked up to the second floor in Mr. Yezek's house, and one of the officers yelled "say, come up and look at this." Officer Hotnich yelled at Mr. Yezek "let's see what's upstairs now" and started to push Mr. Yezek from behind while holding his handcuffed hands above Mr. Yezek's head causing Mr. Yezek severe pain in both of his wrists and arms.

At this point, the Gowanda police department had searched **every** room in Mr. Yezek's house **without a search warrant**. Officer Hotnich left Mr. Yezek's house around 3:30 p.m. so he could obtain a search warrant. While Officer Hotnich was gone, Officer Cooper and the third officer continued to search Mr. Yezek's house while Mr. Yezek remained in the dining room. Officer Hotnich returned at approximately 3:40 p.m. without a search warrant.

It was not until approximately 5:03 p.m. that Officer Hotnich arrived at Mr. Yezek's house with a search warrant. From 3:40 p.m. to 5:03 p.m., a parade of individuals associated with the New York State, Cattaraugus County, and Village of Gowanda police departments had already entered and searched Mr. Yezek's home. In total, the video surveillance footage shows that no less than eight individuals entered and searched Mr. Yezek's home before a search warrant was obtained. The video surveillance footage also shows that Officer Cooper and other yet to be identified individuals took photos of the marijuana bags on Mr. Yezek's dining room table before obtaining a search warrant. Upon information and belief, Officer Cooper and the other yet to be identified individuals took pictures with their cell phones of the marijuana and marijuana plants found on Mr. Yezek's property and texted those photos to family, friends, co-workers, and news reporters before a search warrant was ever obtained.

The information contained in the application for a search warrant demonstrates that Officer Hotnich lied to the Court Justice for the Town of Persia in order to obtain the search warrant and cover up the fact that they entered Mr. Yezek's home without probable cause and without permission from Mr. Yezek. For instance, according to the application for a search warrant, Officer Cooper and Officer Hotnich announced themselves before entering the back room, but this is a lie (*see Exhibit C*). Officer Hotnich also told the Court Justice that they knocked on the door leading from Mr. Yezek's back room to his kitchen, and that "the door was partially opened from knocking." This, however, is impossible because the door leading from Mr. Yezek's back room to his kitchen pulls open. Officer Hotnich lied again when he said he yelled out "Hello," and that Mr. Yezek then said "come in." Officer Hotnich continued to lie when he told the Court Justice that he observed a "large amount of marihuana on the dining

room table.” The marijuana Officer Hotnich discovered was down inside a brown paper bag underneath Mr. Yezek’s dining room table. It was not in plain view, and the officers had no right to search for it without obtaining a search warrant. Officer Hotnich knew this, and he lied to cover up his misconduct.

Officer Hotnich also lied to the Court Justice when he said he “noticed extremely loud music coming from the upstairs window.” The music was coming from Mr. Yezek’s small portable radio which he kept right next to his upstairs window. The radio is more than 30 years old, and Mr. Yezek kept his window open so that he could hear the music while he was outside working on his truck. Officer Hotnich swore to the statements in his application for a search warrant, and therefore, his lies on the application were an act of perjury.

Upon information and belief, Officer Hotnich’s application for the search warrant was brought to Mr. Yezek’s property along with the search warrant on July 20, 2018. The other officers at Mr. Yezek’s property read the search warrant and Officer Hotnich’s application for a search warrant. The video surveillance footage shows one of the officers repeatedly simulating pulling the door to the back room open two minutes after Officer Hotnich arrived at the scene with the search warrant, appearing to question Officer Hotnich’s sworn statement that he knocked on the back door leading to the back room and that “the door was partially opened from knocking.” However, this officer did not raise any of the doubts that he had about the validity of the initial search by Officer Cooper and Officer Hotnich, nor did he bring attention to the fact that the search warrant may have been obtained illegally. In short, he was complicit in the violation of Mr. Yezek’s constitutional rights.

The search warrant that Officer Hotnich obtained stated that the officers were directed to seize "Marihuana, Marihuana Grow Equipment and Paraphernalia, Records and/or proceeds of illegal drug actions, and weapons." In addition to these items, the officers illegally stole Mr. Yezek's driver's license, garbage bags, and cell phone. The video surveillance footage clearly shows Officer Hotnich stole Mr. Yezek's driver's license even before he obtained the search warrant.

While in custody at the Gowanda police station, Officer Peter Randall told Mr. Yezek that he wanted him to sign a document stating that Mr. Yezek had been read his Miranda rights. Mr. Yezek informed Officer Randall that he had not been read his Miranda rights at any time. Officer Randall did not bother to read Mr. Yezek his Miranda rights. Instead, Officer Randall became very angry with Mr. Yezek. Officer Randall got up from behind his desk, walked around to the front and stood in front of Mr. Yezek. Officer Randall threatened Mr. Yezek with physical harm unless he signed the document. He yelled at Mr. Yezek "Don't give me any of your f***ing attitude. I'll bash your f***ing teeth in." At this time, Mr. Yezek had his right hand and leg secured to the bench that he was sitting on. Mr. Yezek signed the document stating that he had been read his Miranda rights.

Officer Randall also prepared two accusatory instruments against Mr. Yezek (see **Exhibit D**). The Complaints, dated July 20, 2018 and sworn to by Officer Randall on the same date, accused Mr. Yezek of Criminal Possession of Marijuana in the First Degree, a Class C Felony, and Growing Cannabis Without a License, a Class A Misdemeanor.

After Mr. Yezek's arraignment hearing on July 20, 2018, Officer Randall was tasked with transporting Mr. Yezek from the courthouse to the Cattaraugus County Jail. On the way to jail, Officer Randall stopped at Mr. Yezek's house while the other individuals associated with the New York State, Cattaraugus County, and Gowanda police departments were still searching Mr. Yezek's house. Officer Randall left Mr. Yezek handcuffed in the back of his police vehicle **with the windows up in the middle of the summer**. After about 10 minutes in the car, Mr. Yezek started to burn up. Mr. Yezek could not breathe and he started to panic. He yelled for help until Officer Cooper suddenly appeared and said "sorry, I didn't know you were in here." Officer Cooper let Mr. Yezek out of the vehicle. Mr. Yezek's clothes were soaked with sweat. A female officer who, upon information and belief, was a Cattaraugus County police officer, saw Mr. Yezek standing in the driveway and put him in her vehicle. Mr. Yezek begged the female officer to not leave him in the car with the windows up. The female officer allowed Mr. Yezek to keep the windows to her vehicle open, and she drove Mr. Yezek to the Cattaraugus County Jail.

Mr. Yezek was immediately placed into solitary confinement at the Cattaraugus County Jail where he remained for three days and two nights. To add even greater insult to injury, on July 21, 2018, one day after Mr. Yezek's illegal arrest and before Mr. Yezek ever had his day in court to contest the warrantless search of his home, the Gowanda police department posted on their Facebook page a WKBW news story about their arrest of Mr. Yezek. The Gowanda police department added a comment under the post **from their official Facebook account** that read:

The Village of Gowanda Police Department will actively pursue and prosecute the illegal sale and use of illegal substances in our community. It is our sworn duty to keep the citizens of Gowanda safe and secure [sic] in their community.

Included with the WKBW story were photos obtained by the police officers as a result of their warrantless and illegal search of Mr. Yezek's home. In other words, before Mr. Yezek ever had a chance to defend his innocence in a court of law, the Gowanda police department violated Mr. Yezek's due process rights and ensured that his name and reputation were forever tarnished. After the WKBW story was published and posted on the Gowanda police department Facebook page, The Buffalo News, Sunday Observer, and Gowanda/Lakeshore Pennysaver all published their own news stories about Mr. Yezek's arrest, including identifying information such as Mr. Yezek's full name, address, and age. All of these news stories reported the Gowanda police department's version of the facts of Mr. Yezek's arrest, facts that Mr. Yezek still had not been able to contest.

Mr. Yezek was able to bond out of jail Monday morning, July 23, 2018. When Mr. Yezek finally returned to his home, he found that the officers had completely disrespected his home and left it a total mess. The inside of the house was covered with dirt, his heating ducts were torn apart and broken, and the officers caused unnecessary damage to his dishes. Mr. Yezek was so distraught by this mess that he stayed with his friend, Felicia Pope and her husband, Chris Pope, for the first two nights after bonding out of jail.

On November 28, 2018, a Gowanda police officer drove by Mr. Yezek's house while Mr. Yezek was shoveling and asked him if Officer Randall took his fingerprints when he was arrested. Mr. Yezek answered the officer affirmatively, and the officer said "the same [officer] who threatened you?" Mr. Yezek answered "yep, that's the one." The officer drove off. Upon information and belief, the officer's sole purpose for this interaction was to maliciously harass Mr. Yezek.

On December 7, 2018, Mr. Yezek was harassed again by the Gowanda police department. This time, it was Officer Hotnich. Mr. Yezek was at the Village of Gowanda Town Hall paying his water utility bill when Officer Hotnich approached him and said that he needed to speak to Mr. Yezek. When Mr. Yezek tried to walk around Officer Hotnich, he stood in Mr. Yezek's way and blocked the doorway. Mr. Yezek was eventually able to step around Officer Hotnich, and as he did so Officer Hotnich threatened to get a court order from a judge to force Mr. Yezek to speak with him. Officer Hotnich also told Mr. Yezek "I liked your Halloween decorations" as Mr. Yezek was walking away, implying that the Gowanda Police Department was keeping surveillance on his property to try and find a reason to arrest Mr. Yezek.

On March 4, 2019, Mr. Yezek was contacted by the Assistant Superintendent of Sweet Home School District, Joann A. Balazs, and Mr. Yezek met with her at Maplemere School. When he arrived, Ms. Balazs had on her desk print outs from the WKBW news story regarding Mr. Yezek's arrest, the same news story posted on the Village of Gowanda police

department Facebook page. March 4, 2019 was the last time that Mr. Yezek worked in the Sweet Home School District as a substitute teacher.

On May 14, 2019, Mr. Yezek arrived for work at Ellicott School in the Orchard Park as a substitute teacher. However, Mr. Yezek was sent home. Later that day, Mr. Yezek received an email from the Orchard Park School District informing him that all of his scheduled assignments were cancelled and that he will be receiving a letter soon about his future employment in the district.

On May 20, 2019, Mr. Yezek received a letter from the New York State Department of Education informing him that his fingerprint clearance was on hold until his case was resolved. He also received a letter from the Office of School Personnel and Accountability of New York State Department of Education informing him that his fingerprints were on hold until an adjudication of the charges against him as well as providing to them a Certificate of Disposition.

All charges stemming from this July 20, 2019 incident were dropped against Mr. Yezek on July 29, 2019. The Cattaraugus County District Attorney, Lori Pettit Rieman, told Mr. Yezek that he could go to the law enforcement to retrieve his property, and that if there was a problem they could call the Cattaraugus County District Attorney's Office. Mr. Yezek went to the Village of Gowanda police department that day to retrieve his property, but he was told by Officer Green to return the next day because Officer Hotnich was in charge of the inventory and he was not there at the time.

Mr. Yezek returned to the Village of Gowanda police department on August 1, 2019. Mr. Yezek told Officer Feldman his intention to file a complaint against Eugene Styles for his false 911 call. Officer Feldman refused to assist Mr. Yezek with filing a complaint against Mr. Styles, and said to Mr. Yezek "the only reason you got off was because the weed never made it to the lab" and "I'm not taking any of your shit." Mr. Yezek asked politely to have his property returned to him, but his request was denied. To obtain his property, Mr. Yezek was forced to file a motion on August 19, 2019 with the Cattaraugus County Court seeking an order demanding the law enforcement/police return his property. Mr. Yezek was told on August 30, 2019 by an employee in the Cattaraugus County courthouse that there was no need for him to appear for the motion hearing on September 9, 2019 because the Judge was already drafting an order to compel the law enforcement, Southern Tier Regional Drug Task Force, and New York State Police return of Mr. Yezek's property.

Today, even though all charges against Mr. Yezek have been dismissed, the Village of Gowanda police department still has not deleted from its Facebook page the WKBW story concerning Mr. Yezek's arrest, nor have they deleted the comment from their official Facebook account associated with the post. A simple Google search of "David E. Yezek" will demonstrate that Mr. Yezek's character and reputation are forever damaged due to the Gowanda police department's unlawful search and trespass into his home (*see Exhibit E*).

In addition, Mr. Yezek has suffered eternal financial harm as a result of this incident. Not only did Mr. Yezek lose the \$5,359.93 loan from his retirement contributions and lose all future proceeds from that investment due to his early retirement; Mr. Yezek's chances to

secure permanent employment as a teacher have been destroyed as a result of this incident also affecting his retirement savings. Prior to his unlawful arrest, Mr. Yezek planned to seek a permanent position as a teacher in order to establish a new base salary for his retirement plan. The base salary for his retirement plan is determined by the average of his last three permanent jobs as a teacher. Mr. Yezek has now lost his ability to raise his base salary for retirement, an opportunity that can never be regained. Further, because it is nearly impossible for Mr. Yezek to secure work in his profession, Mr. Yezek can collect only a fraction of the social security benefits he otherwise would have if he was able to postpone his retirement.

As a result of this incident, Mr. Yezek lives in constant fear that the Village of Gowanda police department will illegally enter his home and arrest him at any moment. This has caused Mr. Yezek severe emotional and psychological distress. Prior to this incident, Mr. Yezek lived a simple life, a life that he was very pleased with. Since this incident, however, Mr. Yezek has had constant nightmares, suffers from insomnia, has severe depression, and even has had suicidal thoughts.

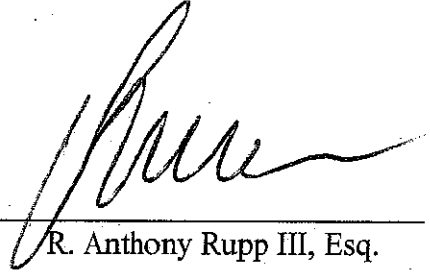
5. **Items of Damage or Injuries Sustained:** As a result of Respondents' unlawful conduct described in detail above, Respondents have caused harm to the public at large and to Mr. Yezek in the following respects:

- a. The Village of Gowanda either ignored or negligently performed their duty to investigate several complaints made by Mr. Yezek;
- b. Police officers violated Mr. Yezek's constitutional right to be free from unreasonable search and seizure by the government and other

officers failed to either intervene or discipline the officers responsible for the violation;

- c. Police officers put their own self-interests and those of their department before Mr. Yezek's rights protected under the Constitution of the United States by publicizing the incriminating evidence discovered as a result of the unreasonable search of Mr. Yezek's home;
- d. Police officers verbally and physically abused and harassed Mr. Yezek for no reason other than to harm Mr. Yezek and intimidate him so that Mr. Yezek did not expose the misconduct of the officers;
- e. The Village of Gowanda police department continues to employ officers who exceed their authority and engage in unlawful acts by causing harm to members of the public in contravention of every citizen's Constitutional rights;
- f. Mr. Yezek was unlawfully detained, threatened, and subjected to malicious prosecution causing damage to his reputation, damage to character, damage to social standing, financial harm, injury to his standing as a teacher, damage to his home, suffering, emotional and psychological distress, and physical damages as a result of the unlawful conduct outlined in this Notice of Claim;

WHEREFORE, Claimant requests that the Respondents be held accountable for their unlawful conduct in connection with this claim. Respondents hereby are notified that unless this claim is addressed within the time provided by law from the date of presentation, the Claimant intends to commence a lawsuit on this claim, together with interests, costs, and disbursements.



R. Anthony Rupp III, Esq.

STATE OF NEW YORK)
) ss.:
COUNTY OF CATTARAUGUS)

I, David E. Yezek, being duly sworn, deposes and says that I am the claimant in the above-entitled action. I have read the foregoing notice of claim and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

David E. Yezek
David E. Yezek

Sworn to before me this
19th day of September, 2019


Notary Public

JODI L. FOLEY-JOHNSTON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Nov. 22, 2021

Exhibit A

Gowanda Police Department

Complaint Information



Complaint# 18-003163 **Date Received: 07/20/2018** **Source: PHONE**

Dispatch Code: 2429 **Description:** NOXIOUS ODOR **Call Type:** POLICE

Street: 34 TORRANCE PL **Dispatch District:**

Cross Street: **Municipality:** GOWANDA

Business: **Call Back:**

Times: **Received:** 07/20/2018 15:12:34
 Dispatched: 07/20/2018 15:14:53
 Arrived: 07/20/2018 15:22:34
 Completed: 07/20/2018 21:30:49

Received By: GANG, DANIELLE (921) **Dispatcher:** MURPHY, SEAN (920)

Report (follow up):

Officers:	<u>Name</u>	<u>Badge</u>
	COOPER, RICHARD	7528

Disposition Codes: Police Report

Associated Persons:

Subject - YEZEK, DAVID E. DOB: 9/26/1959
 34 TORRANCE PL GOWANDA
 Home Phone: 716 532 3290

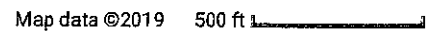
Remarks:

07/20/2018 15:11:53 GOW 921	Entry Initiated
07/20/2018 15:12:26 ALL 921	CATT CO RECIEVED A ANON CALL FOR A STRONG ODOR OF MARJ
07/20/2018 15:12:34 GOW 921	Sent to Dispatch - NOXIOUS ODOR - 34 TORRANCE PL GOW (5) Pri: 3
07/20/2018 15:13:54 ECS 920	Dispatched (Primary) - GOW-85 [HOTNICH, SEAN]
07/20/2018 15:13:54 ECS 920	Enroute - GOW-85 [HOTNICH, SEAN]
07/20/2018 15:14:35 ECS 920	Returned to Pending
07/20/2018 15:14:53 ECS 920	Dispatched (Primary) - GOW-85 [COOPER, RICHARD]
07/20/2018 15:14:53 ECS 920	Enroute - GOW-85 [COOPER, RICHARD]
07/20/2018 15:17:32 ECS 920	Entry Initiated
07/20/2018 15:17:32 ALL 920	GOW Complaint 18-003163 generated ECS Complaint 18-057666
07/20/2018 15:17:33 ECS 920	Dispatched (Primary) - 5N-58 [SCHENFIELD, JOEL]
07/20/2018 15:17:33 ECS 920	Enroute - 5N-58 [SCHENFIELD, JOEL]
07/20/2018 15:17:36 ECS 920	Dispatched - SP-98 [UNKNOWN, OFFICER SP]
07/20/2018 15:17:36 ECS 920	Enroute - SP-98 [UNKNOWN, OFFICER SP]
07/20/2018 15:18:45 ALL 920	85 SAYS BACK UP CAN DISREGARD
07/20/2018 15:18:48 ECS 920	Disposition Added - Referred Other Jurisdiction
07/20/2018 15:18:53 ECS 920	Call Type Changed - ASSIST OTHER POLICE Pri: 3
07/20/2018 15:18:56 ECS 920	Archived
07/20/2018 15:22:34 ECS 920	On Scene - GOW-85 [COOPER, RICHARD]
07/20/2018 15:24:03 ALL 920	3A35 ON SCENE
07/20/2018 15:26:17 ALL 920	MALE DETAINED
07/20/2018 15:28:14 ALL 920	2A34
07/20/2018 15:33:16 ALL 921	PER GOW OVER 100 PLANTS GROWING IN THE HOUSE

07/20/2018 16:25:36	ALL	920	SP CLEAR
07/20/2018 20:34:21	ALL	921	SUBJ CLR OF CRT ENR TO LITTLE VALLEY
07/20/2018 20:54:28	ALL	920	CATT CO CAR TOOK THE SUBJECT TO LITTLE VALLEY
07/20/2018 21:30:39	ALL	921	30 LBS AND 580 PLANTS CONFISCATED
07/20/2018 21:30:46	ECS	921	Disposition Added - Police Report
07/20/2018 21:30:49	ECS	921	Archived

Exhibit B

Walk 0.7 mile, 16 min



2 min

0.8 mile



16 min

0.7 mile

Exhibit C

SEARCH WARRANT

STATE OF NEW YORK
COUNTY OF
CATTARAUGUS

LOCAL CRIMINAL COURT TOWN OF PERSIA

To any police officer assigned to or assisting the Gowanda Police Department:

Proof by affidavit, having this day been made before me by, Sean Hotnich of the Gowanda Police Department, that there is probable cause to believe, pursuant to Section 690.10 of the New York State Criminal Procedure Law, that certain property is unlawfully possessed, to wit:

- A. Marihuana
- B. Marihuana Grow Equipment and Paraphernalia
- C. Proceeds from Illegal Drug Transactions
- D. Illegal Drugs
- E. Weapons

YOU ARE HEREBY DIRECTED to search, within ten days of the issuance this Search Warrant, the residence of: FIRST: There is reasonable cause to believe that certain property, to wit: The residence, out buildings and vehicles located at 34 Torrance Ave, Village of Gowanda, New York are believed to contain, various illicit drugs, including Marihuana, hash, and others, drug paraphernalia including drug packaging material and the proceeds from drug sales, in addition any weapons and or growing equipment.

. Also to include any out buildings, safes, lock boxes, vehicles and persons within.

Also, any other person (S) or vehicle (S) present or actually apparently engaging in drug trafficking for the following property:

- 1. Marihuana
- 2. Marihuana Grow Equipment and Paraphernalia
- 3. Records and/or proceeds of illegal drug transactions
- 4. Weapons

IF ANY SUCH PROPERTY IS FOUND, you are hereby directed to seize the same and, without unnecessary delay, return and deliver to this court such property together with this warrant.

YOU ARE HEREBY DIRECTED TO EXECUTE THIS WARRANT, TO ENTER THE PREMISES AT ANY TIME OF THE DAY OR NIGHT.

YOU ARE AUTHORIZED, IN THE EXECUTION OF THIS WARRANT, TO ENTER THE PREMISIS TO BE SEARCHED WITHOUT GIVING NOTICE OF YOUR AUTHORITY AND PURPOSE.

This Search Warrant issued this 20th day of July, 2018

Handwritten signature: #1 Wmell ASH le

STATE OF NEW YORK : COUNTY OF CATTARAUGUS

JUSTICE COURT : TOWN OF PERSIA , N.Y.

Officer Sean P. Hotnich, a police officer of the Village of Gowanda Police Department, Gowanda, NY

Does hereby make application for a search warrant pursuant to the provision of Article 690 of the Criminal Procedure Law and in connection therewith states as follows:

That there is reasonable cause to believe that certain property, of a character described in Section 690.10, subdivision 3 of the Criminal Procedure Law, to wit:

First: The residence, out buildings and vehicles located at 34 Torrance Ave, Village of Gowanda, New York are believed to contain, various illicit drugs, including Marihuana, hash, and others, drug paraphernalia including drug packaging material and the proceeds from drug sales, in addition any weapons and or growing equipment.

Second: The following allegation of facts is submitted in support of the above statement:

While on duty as a Village of Gowanda Police Officer, along with Officer Richard Cooper, a call for service was received from Erie County Dispatch reporting an odor of Marihuana coming from the residence at 34 Torrance Ave. Gowanda, New York. On Arrival, Officer Cooper parked the patrol vehicle approximately half way down the driveway. Immediately after exiting the vehicle a strong odor of marihuana filled the outside air. The officers also noticed extremely loud music coming from an upstairs window. Officers observed the garage door was open and called out to see if anyone was around, no reply. Officers walked to the rear of the residence to the enclosed back porch. Officers noticed a reinforced steal gate with two pad locks on same and a door. The gate was unlocked Officers knocked several times on the door which opened door with each knock. Officers announced themselves and entered the porch at which time the odor of marihuana intensified. Officers then knock on the interior door and also noticed two addition pad locks on same. Patrol yelled out "Hello" a male subject said "come in, "then said who is it" the door was partially opened from knocking at as I opened I observed a male familiar to me as David E. Yezek. I also observed a large amount of marihuana on the dining room table. The odor of marihuana intensified even more. Mr. Yezek was taken into custody.

Third: On June 30, 2017, at 5:02pm, The David E. Yezek reported a burglary at his residence where he claimed that over \$50,000 in cash was taken from his residence. During that investigation which was conducted by the deponent, it was discovered that the money was likely the proceeds from drugs sales.

Fourth: Based on your affiant's knowledge, training and experience and other law enforcement personnel. Your affiant knows that searches and seizures of evidence from a residence, building and or vehicles requires securing said property until such time a warrant could be secured

Fifth: Officer Richard Cooper and members of the State police have secured the scene since the time your deponent left the scene.

The basis for your deponent's belief being a personal investigation conducted of a valid complaint filed with the Erie County Sheriff's Office and said complaint dispatched to the Gowanda Police Department

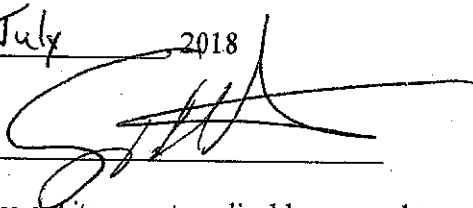
The above allegations of fact:

- * 1) are based upon personal knowledge of the applicant,
- * 2) are based upon information and belief, the sources of such information and the grounds of such belief are as follows: The sworn signed statement of the victim attached to and made a part there of.

Wherefore, the applicant requests that this Court issue a search warrant directing a search for and a seizure of the above described property in or upon the above designated or described place.

Subscribed and Sworn to

Before me this 20 day of

July 2018


Sean P. Hotnich
Police Officer

* Strike out items not applicable or sought

Exhibit D

COUNTY OF ~~CHENANGO~~ STATE OF NEW YORK

The People of the State of New York
vs.
DAVID E. YEZEK DOB: 09/26/1959
34 TORRANCE PL
GOWANDA, NY 14070

) **FELONY**
)
) **INFORMATION / COMPLAINT**
)
)
)

We, **Officer SEAN HOTNICH** and **Officer PETER RANDALL**, police officers herein, accuse **DAVID E. YEZEK**, the DEFENDANT of this action, and charge that on or about Friday, July 20, 2018 at 34 TORRANCE PL in the VILLAGE OF GOWANDA, County of ERIE, at about 03:11 PM, said DEFENDANT did commit the offense of:

CRIMINAL POSSESSION OF MARIJUANA IN THE FIRST DEGREE

a class C FELONY contrary to the provisions of section 221.30 of the Penal Law of the State of New York.

THE SAID DEFENDANT, AT THE AFORESAID TIME AND PLACE, DID KNOWINGLY AND UNLAWFULLY POSSESS, ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES OF AN AGGREGATE WEIGHT OF MORE THAN TEN POUNDS CONTAINING MARIJUANA.

I, Officer Randall, HAVE BEEN A POLICE OFFICER FOR THE LAST 1 YEAR. I AM CURRENTLY ASSIGNED TO GOWANDA PD. I HAVE BEEN TRAINED IN THE RECOGNITION, IDENTIFICATION, AND PACKAGING OF MARIJUANA AND IDENTIFIED THE SUBSTANCE SEIZED AS BEING MARIJUANA. TO WIT: David Yezek did knowingly and intentionally posses greater then ten pounds of marihuana inside multiple rooms of his residence at 34 Torrance Pl in the Village of Gowanda New York.

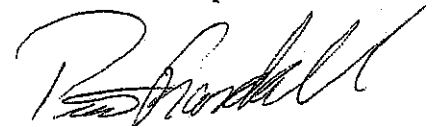
ALL CONTRARY TO THE PROVISIONS OF THE STATUTE IN SUCH CASES MADE AND PROVIDED. THE ABOVE ALLEGATIONS OF FACT ARE MADE BY THE COMPLAINANT HEREIN ON DIRECT KNOWLEDGE.

Therefore, the complainant requests that said defendant be dealt with according to the provisions of the Criminal Procedure Law, and according to law.

NOTICE

(Penal Law, Section 210.45)

It is a crime, punishable as a Class A Misdemeanor under the Laws of the State of New York, for a person, in a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true.



Complainant

Subscribed and sworn to me this
20th of July, 2018

^{6/27/2018}
 COUNTY OF ~~GL~~ STATE OF NEW YORK

The People of the State of New York)

vs.)

DAVID E. YEZEK DOB: 09/26/1959)

34 TORRANCE PL)

GOWANDA, NY 14070)

INFORMATION / COMPLAINT

We, Officer SEAN HOTNICH and Officer PETER RANDALL, police officers herein, accuse DAVID E. YEZEK, the DEFENDANT of this action, and charge that on or about Friday, July 20, 2018 at 34 TORRANCE PL in the VILLAGE OF GOWANDA, County of ERIE, at about 03:11 PM, said DEFENDANT did commit the offense of:

GROWING CANNABIS WITHOUT A LICENSE

a class A MISDEMEANOR contrary to the provisions of section 3382 of the Public Health of the State of New York.

THE SAID DEFENDANT DID AT THE AFORESAID TIME AND PLACE WITHOUT BEING LICENSED, GROW THE PLANT OF THE GENUS CANNABIS OR KNOWINGLY ALLOW IT TO GROW ON HIS LAND WITHOUT DESTROYING SAME. TO WIT: David Yezek did knowingly and unlawfully grow cannabis in his residence located at 34 Torrance Pl. in the Village of Gowanda New York.

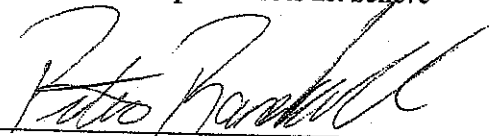
ALL CONTRARY TO THE PROVISIONS OF THE STATUTE IN SUCH CASES MADE AND PROVIDED. THE ABOVE ALLEGATIONS OF FACT ARE MADE BY THE COMPLAINANT HEREIN ON DIRECT KNOWLEDGE.

Therefore, the complainant requests that said defendant be dealt with according to the provisions of the Criminal Procedure Law, and according to law.

NOTICE

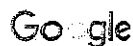
(Penal Law, Section 210.45)

It is a crime, punishable as a Class A Misdemeanor under the Laws of the State of New York, for a person, in a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true.


 Complainant

Subscribed and sworn to me this
 20th of July, 2018

Exhibit E



David E. Yezek



Sign in

All
 News
 Images
 Videos
 Shopping
 More
 Settings Tools

About 47,300 results (0.32 seconds)

'Noxious odor' leads police to 30 lbs. of marijuana, almost 600 ...

<https://buffalonews.com> › 2018/07/21 › noxious-odor-leads-to-the-discover...

Jul 21, 2018 - Officers traced the smell to a house on Torrance Place about 3 p.m. When David E. Yezek let them in, police said, they saw two large bags of ...

David Yezek (E), 59 - Gowanda, NY Has Court or Arrest ...

<https://www.mylife.com> › People Search › NY › Gowanda › David Yezek ▾

David Yezek's birthday is 09/26/1959 and is 59 years old. David's Reputation Score is 3.05. Previous to David's current city of Gowanda, NY, David Yezek lived ...

David E Yezek, (716) 532-3290, 34 Torrance Pl, Gowanda ...

<https://nuwber.com> › States › NY › Gowanda › 34 Torrance Pl ▾

Name: David E Yezek, Phone number: (716) 532-3290, State: NY, City: Gowanda, Zip Code: 14070 and more information.

Large marijuana growing operation uncovered in Gowanda ...

<https://www.observertoday.com> › uncategorized › 2018/07 › large-marijua... ▾

Jul 21, 2018 - Resident David Yezek, 58, was detained for further investigation and a search ... Yezek was charged with first-degree marijuana, a felony, ...

David Yezek's Phone Number, Email, Address, Public ...

<https://www.spokeo.com> › People › Last Name (Y) ▾

14 records for David Yezek. Find David Yezek's phone, address, and email on Spokeo, the leading online directory. ... David E Yezek, 59. Gowanda, NY.

David Yezek - Phone, Address, Background info | Whitepages

<https://www.whitepages.com> › name › David-Yezek ▾

Flons L Yezek • Vernbuster F Yezek • Vern E Yezek • Floris L Yezek • Janet Anne Yezek ... Denise D Ackler • Gordon N Ackler • Betty E Ackler • David Earl Ackler ...

David E Yezek, public records - AdvancedBackgroundChecks ...

<https://www.advancedbackgroundchecks.com> › david-yezek_id_G-ybGA9... ▾

Person search results for David Yezek. Get the most accurate information for David Yezek or anyone else 100% free.

David Yezek Facebook, Twitter & MySpace on PeekYou

<https://www.peakyou.com> › david_yezek ▾

48-year-old David E Yezek lives in Cortland, New York. David has also lived in Gowanda, New York. Some of David family members are Kathy M Ackler, Harry ...

Dave Yezek Facebook, Twitter & MySpace on PeekYou

<https://www.peakyou.com> › dave_yezek ▾

David E Yezek is 48 years old. David lives in Cortland, New York, but has also spent time in Gowanda, New York. Kathy M Ackler, Harry S-susan Yezek and ...

David Yezek Phone Number, House Address, Email & More ...

<https://www.beenverified.com> › ... › Yan to Young › Yeung to Yezzi

See David's age, contact number, home address, social profiles & run a ... We found 7 records in 8 states for David Yezek in the US. The top state of ... Relatives: Linda A Yezek, George E Yezek, Rose E Yezek; Email: david*****@aol.com, ...