

NEW YORK SUPREME COURT  
COUNTY OF SUFFOLK

EDWARD CARTER, FRANK FIORILLO, KEVIN  
LAMM, JOSEPH NOFI, and THOMAS SNYDER,

Plaintiffs,

v.

INCORPORATED VILLAGE OF OCEAN BEACH;  
OCEAN BEACH POLICE DEPARTMENT; ACTING  
DEPUTY POLICE CHIEF GEORGE B. HESSE,  
individually and in his official capacity; ~~SUFFOLK~~  
COUNTY; ALISON SANCHEZ, individually and in her  
official capacity, TYREE BACON, individually;  
and PATRICK JOHN CHERRY, individually,

(14) Defendants.

Index Number:

016422-2  
"State  
Court  
action"  
Pleadings

10-10452

SUMMONS

To the above named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiffs' Attorney within 20 days after service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: March 18, 2010  
New York, New York

Yours, etc.

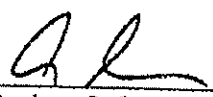
**FILED**

**MAR 19 2010**

Metro Attorney Service Inc.  
212-822-1421

THOMPSON WIGDOR & GILLY LLP  
Attorneys for Plaintiff

By:

  
Andrew S. Goodstadt  
85 Fifth Avenue  
New York, NY 10003  
(212) 257-6800

654 11 11 11

RECEIVED

NEW YORK SUPREME COURT  
COUNTY OF SUFFOLK

EDWARD CARTER, FRANK FIORILLO, KEVIN  
LAMM, JOSEPH NOFI, and THOMAS SNYDER,

Plaintiffs,

v.

INCORPORATED VILLAGE OF OCEAN BEACH;  
OCEAN BEACH POLICE DEPARTMENT; ACTING  
DEPUTY POLICE CHIEF GEORGE B. HESSE,  
individually and in his official capacity; SUFFOLK  
COUNTY; ALISON SANCHEZ, individually and in her  
official capacity, TYREE BACON, individually;  
and PATRICK JOHN CHERRY, individually,

Defendants.

Index Number:

VERIFIED COMPLAINT AND JURY DEMAND

Plaintiffs Edward Carter, Frank Fiorillo, Kevin Lamm, Joseph Nofi and Thomas Snyder (collectively "Plaintiffs"), by and through their undersigned counsel, as and for their Verified Complaint in this action, hereby respectfully allege, upon knowledge as to themselves and their own actions and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

Plaintiffs Edward Carter, Frank Fiorillo, Kevin Lamm, Joseph Nofi and Thomas Snyder are former police officers in the Ocean Beach Police Department ("OBPD") who spoke out in opposition to the regime of endemic corruption within the OBPD. Ultimately, when confronted by Plaintiffs' refusal to become complicit in the OBPD's rampant lawlessness, Defendants not only terminated Plaintiffs' employment as police officers, but also undertook a concerted effort to defame Plaintiffs and destroy their law enforcement careers. This lawsuit aims to restore Plaintiffs' good names, to reform the Ocean Beach Police Department, to ensure the safety of

Ocean Beach residents and those who come to visit Ocean Beach, and to punish those who are responsible for the unlawful conduct committed against Plaintiffs.

#### NATURE OF THE CLAIMS

1. This is an action for preliminary and permanent injunctive relief and for monetary and other damages to redress the wrongful termination, retaliation and other unlawful conduct perpetrated against Plaintiffs in violation of New York Civil Service Law § 75-b, as well as for claims of Defamation and Negligent Retention/Supervision of Unfit Employees under the laws of New York State.

2. Plaintiffs seek immediate reinstatement, complete "make whole" relief and other compensatory and punitive damages, as well as other equitable relief, to redress the violation of their statutory and common law rights.

#### JURISDICTION AND VENUE

3. The Court has personal jurisdiction over Defendants Incorporated Village of Ocean Beach, Ocean Beach Police Department and Suffolk County because they are incorporated and/or authorized to do business in the State of New York and have their principal executive offices in Suffolk County, New York.

4. The Court has personal jurisdiction over Defendants Hesse, Sanchez, Bacon and Cherry because a significant portion of the unlawful conduct, personnel actions and events giving rise to the claims herein occurred in Suffolk County, New York. In addition, each of Defendants Hesse, Sanchez, Bacon and Cherry is a domiciliary of Suffolk County, New York.

5. The Court has subject matter jurisdiction over this action by virtue of New York Civil Service Law § 75-b and the common law of the State of New York.

6. Venue is proper in this district pursuant to CPLR §§ 503 and 504 because all of the parties reside in Suffolk County, New York, and Defendants Incorporated Village of Ocean Beach, Ocean Beach Police Department and Suffolk County are all situated in Suffolk County, New York. Further, Plaintiffs were employed in Suffolk County, and a significant portion of the events giving rise to the claims herein occurred in Suffolk County.

### PARTIES

7. Plaintiff Edward Carter ("Officer Carter") is a male adult citizen who resides in Suffolk County, New York. Officer Carter was employed as a Police Officer in the Incorporated Village of Ocean Beach from May 1991 to September 1993, and from May 2001 to April 2, 2006, when he was unlawfully terminated in retaliation for his decision to come forward and raise complaints of police corruption and other violations of law and disregard of public and officer safety. Officer Carter was duly certified to serve as a police officer in Suffolk County in or around May 1991. At all relevant times, Officer Carter was a "public employee" or "employee" under all relevant statutes.

8. Plaintiff Frank Fiorillo ("Officer Fiorillo") is a male adult citizen who resides in Suffolk County, New York. Officer Fiorillo was employed as a Police Officer in the Incorporated Village of Ocean Beach from April 2002 to April 2, 2006, when he was unlawfully terminated in retaliation for his decision to come forward and raise complaints of police corruption and other violations of law and disregard of public and officer safety, as well as for his refusal to engage in a cover-up of police brutality. Officer Fiorillo was duly certified to serve as a police officer in Suffolk County on or about June 3, 2002. At all relevant times, Officer Fiorillo was a "public employee" or "employee" under all relevant statutes.

9. Plaintiff Kevin Lamm ("Officer Lamm") is a male adult citizen who resides in Suffolk County, New York. Officer Lamm was employed as a Police Officer in the Incorporated Village of Ocean Beach from May 1998 to April 2, 2006, when he was unlawfully terminated in retaliation for his decision to come forward and raise complaints of police corruption and other violations of law and disregard of public and officer safety, as well as for his refusal to engage in a cover-up of police brutality. Officer Lamm was duly certified to serve as a police officer in Suffolk County on or about May 8, 1998. At all relevant times, Officer Lamm was a "public employee" or "employee" under all relevant statutes.

10. Plaintiff Joseph Nofi ("Officer Nofi") is a male adult citizen who resides in Suffolk County, New York. Officer Nofi was employed as a Police Officer in the Incorporated Village of Ocean Beach from May 2000 to April 2, 2006, when he was unlawfully terminated in retaliation for his decision to come forward and raise complaints of police corruption and other violations of law and disregard of public and officer safety. Officer Nofi was duly certified to serve as a police officer in Suffolk County on or about May 5, 2000. At all relevant times, Officer Nofi was a "public employee" or "employee" under all relevant statutes.

11. Plaintiff Thomas Snyder ("Officer Snyder") is a male adult citizen who resides in Suffolk County, New York. Officer Snyder was employed as a Police Officer in the Incorporated Village of Ocean Beach from May 1991 to in or around July 1997, and from June 2001 to April 20, 2006, when he was unlawfully terminated in retaliation for his decision to come forward and raise complaints of police corruption and other violations of law and disregard of public and officer safety, as well as for his refusal to engage in a cover-up of police brutality. Officer Snyder was duly certified to serve as a police officer in Suffolk County in or around May

1991. At all relevant times, Officer Snyder was a "public employee" or "employee" under all relevant statutes.

12. Defendant Incorporated Village of Ocean Beach ("Ocean Beach" or the "Village") is a "public employer" or "employer" with its principal place of business at Bay and Cottage Walks, Ocean Beach, New York.

13. Defendant Ocean Beach Police Department is a "public employer" or "employer" with its principal place of business at Bay and Bayberry Walks, Ocean Beach, New York.

14. Defendant George B. Hesse ("Hesse") was and is employed by Ocean Beach and the OBPD, with his principal place of business at Bay and Bayberry Walks, Ocean Beach, New York. Hesse resides in Suffolk County, New York. At all times hereinafter mentioned, Defendant Hesse had management and supervisory responsibility within the OBPD, including its maintenance and operation, and at least as of January 2006, the Board of Trustees vested him with sole hiring, promotion, discipline and termination authority, as well as all other employment related, scheduling and budgeting issues. Additionally, Hesse was and is a policymaker for the OBPD, charged with the responsibility of ensuring that employees are not subject to unlawful treatment. He also was and is responsible for properly training and supervising employees of the OBPD. Hesse engaged in the unlawful conduct as set forth below.

15. Defendant Suffolk County was and is a municipal corporation of the State of New York. Defendant Suffolk County a "public employer" or "employer," with its principal place of business at H. Lee Dennison Building, 100 Veterans Memorial Highway, Hauppauge, New York.

16. Defendant Alison Sanchez ("Sanchez") was, at all relevant times herein, employed by the Suffolk County Department of Civil Service, with her principal place of business at North County Complex, 725 Veterans Memorial Highway, Building #158, Hauppauge, New York. Sanchez is a resident of Suffolk County, New York. Sanchez was directly responsible for overseeing personnel actions taken by Ocean Beach and the OBPD, and for ensuring that such personnel actions conform to Suffolk County Civil Service regulations and other applicable laws.

17. Defendant Tyree Bacon ("Bacon") was, at all relevant times herein, employed as a police officer by Defendants Ocean Beach and OBPD. Bacon is a resident of Suffolk County, New York. While Defendant Bacon was employed by Riverhead Police Department, he failed the polygraph examination because his answers to questions related to use of illegal drugs were deemed deceptive.

18. Defendant John Patrick Cherry ("Cherry") was employed as a police officer in the OBPD who, throughout his entire employment as a police officer in the OBPD, was not duly certified to serve as a police officer in Suffolk County. Upon information and belief, Cherry is currently employed as a Dispatcher for the OBPD.

#### **ADMINISTRATIVE PROCEEDINGS**

19. Plaintiffs timely served Notices of Claim and Demand on June 30, 2006 in accordance with New York General Municipal Law § 50-e.

20. Plaintiffs duly appeared for examinations pursuant to General Municipal Law 50(h) before counsel for Defendants Incorporated Village of Ocean Beach and the Ocean Beach Police Department on January 23, January 24 and January 31, 2007.

21. On March 21, 2007, Plaintiffs filed a Complaint in United States District Court, Eastern District of New York, alleging, among other things, violations of Civil Service Law § 75-b, defamation per se and negligent supervision/retention of unfit employees. On February 19, 2010, after more than two years of discovery, Judge Sandra Feuerstein declined to exercise jurisdiction over these claims, and denied Defendants' motion for summary judgment on these claims as moot.

22. All other administrative prerequisites have been satisfied.

### **FACTUAL ALLEGATIONS**

#### **Plaintiffs' Employment as Police Officers for the Village of Ocean Beach**

23. Plaintiffs were each hired as Ocean Beach Police Officers by Police Chief Edward Paradiso.

24. Plaintiffs are all graduates of the Suffolk County Police Academy ("SCPA"), having successfully completed a law enforcement training program sanctioned by the Municipal Bureau of Police and/or Municipal Police Training Council of the State of New York.

25. Plaintiffs also were duly certified by Suffolk County Civil Service to work as police officers in Ocean Beach, having satisfied an array of medical, physical agility, psychological, and mandatory polygraph examinations, as required, as well as comprehensive backgrounds checks.

26. Throughout their careers with the OBPD, Plaintiffs performed their duties in an exemplary fashion.

27. In fact, Plaintiffs regularly received commendations from residents and business owners in Ocean Beach.



### **The Unlawful Appointment and Promotion of Hesse**

28. The Board of Trustees of Ocean Beach vested Hesse with the authority of Police "Sergeant" in or around 2001 and permitted him to remain in this supervisory position, despite the fact that he failed the required Suffolk County Civil Service Examination to qualify for the position of Sergeant on at least three occasions, failed to appear for the examination on another occasion, and, during all relevant periods, never passed this required examination.

29. As such, at all times relevant to this action, Defendant Hesse was not permitted pursuant to Civil Service Law to serve in a supervisory role within the OBPD, and, pursuant to law, should not have had authority to hire or fire employees within the OBPD.

30. Defendants Ocean Beach and Suffolk County had knowledge that Hesse was not fit to serve in a supervisory capacity, yet turned their back on this violation of Civil Service Law, and empowered Hesse to continue unlawfully to remain in a supervisory capacity and exert his control over the OBPD.

31. Defendants Ocean Beach, Suffolk County and Sanchez also took great pains to cover-up the fact that Hesse was unlawfully serving in a supervisory role.

32. By way of example only, Ken Gray, legal counsel to Ocean Beach, instructed Mary Anne Minerva, Village Administrator, in writing, to "remove any reference to [Hesse's] title" in a memorandum about Hesse's job duties because "Civil Service will end up getting a copy of this [memorandum] & he is a 'Police Officer' in their records."

33. In addition, not only did Ocean Beach knowingly violate Civil Service Law by empowering Hesse as a "Sergeant," but the Village Board of Trustees also promoted him to "Deputy Chief of Police" by official resolution on January 28, 2006, "with all power and

authority involved with that position.” The Board took this action, notwithstanding the fact that its members knew that Hesse was not certified to serve in this supervisory position pursuant to governing Civil Service Law, and that he was the subject of numerous complaints of police brutality and use of excessive force.

34. And, notwithstanding this violation of Civil Service Law, Defendants Sanchez and Suffolk County knowingly turned a blind eye, and did nothing to prevent Defendant Hesse from serving as the top law enforcement officer in Ocean Beach, and even participated in his unlawful employment decisions and other unlawful misconduct. Indeed, Stanley Pelc, Principal Personnel Analyst at Suffolk County Civil Service, referred to Defendant Hesse as “Sgt. Hesse,” including in a written communication with Defendant Sanchez. Moreover, Defendant Sanchez admitted that she was aware that Defendant Hesse was exercising supervisory responsibilities over the OBPD.

35. In addition, while working at the OBPD, Defendant Hesse held other positions for which he was paid in cash and did not pay any taxes.

#### **A Regime of Corruption and Unlawful Abuse of Power**

36. In or around May 2002, Defendants Ocean Beach, OBPD, Hesse, Suffolk County and Sanchez began to install a regime of purported “officers” in the OBPD who failed to even take, let alone pass, the regimen of tests required for certification as a police officer in Suffolk County.

37. Many of these uncertified officers spent their shifts drinking at local bars while in uniform and officially on-duty. Moreover, Hesse instructed other officers under his command, including Plaintiffs, to neglect their own duties in order to chauffeur their intoxicated colleagues

both inside and outside of Ocean Beach. Hesse also encouraged and enabled on-duty officers to drink alcohol in the police station. Plaintiffs complained to Hesse about these uncertified officers drinking on and off-duty, and Officers Fiorillo and Snyder complained to then-Chief Paradiso about this misconduct that posed a serious risk to the public.

38. Indeed, Hesse admitted that he drank alcoholic beverages known as "rocket fuels" in the OBPD station on multiple occasions, which were delivered by an under-aged bartender from CJ's – a bar that Hesse instructed Plaintiffs not to issue any summons. And, on certain occasions, CJ's did not even charge Hesse for his rocket fuels.

39. Hesse believes that it was appropriate for him and other officers to drink alcohol in the police station, notwithstanding the fact that there are firearms stored there, as well as the fact that the station is open to the public. In fact, Hesse and some of the uncertified officers drank the beer that Plaintiffs confiscated from people on the beach.

40. Moreover, during the Summer of 2005, Officer Fiorillo complained to then-Trustee Joseph Loeffler, Jr. about Gary and Richard Bosetti (two uncertified officers) "running amok in the Village" and "constant drinking" in the Village, both on and off-duty. In response, Loeffler admitted knowing about these issues with the Bosettis, and stated that he was going to run for mayor of Ocean Beach, and the first thing he was going to do as mayor was fire the Bosettis.

41. Similarly, Officer Nofi, in Officer Fiorillo's presence, discussed the problems created by the uncertified officers with then-Trustee Steve Einig. However, nothing was done to correct these problems, and no discipline was imposed on the offending "officers."

42. Ocean Beach also hired, and Hesse and Ocean Beach retained, civilians as police dispatchers, despite the fact that they knew that such civilians did not meet minimum standards, in violation of Civil Service Law.

43. Plaintiffs advised Hesse on numerous occasions that the Department and Village were left dangerously short of personnel when Plaintiffs were assigned to chauffeur intoxicated officers and their civilian friends, and while such uncertified officers were drinking in the local bars. Hesse ignored Plaintiffs' repeated complaints that these officers were uncertified, as well as the resulting threat to public safety and Plaintiffs' own safety. Moreover, when Officer Lamm complained to then-Chief Paradiso about Hesse's directive to leave the Village shorthanded, nothing was done.

44. Moreover, Defendants Sanchez and Suffolk County failed to ensure that Ocean Beach was hiring police officers who were certified or qualified to work in Suffolk County, despite knowing that many of the "officers" on the police force were uncertified. Indeed, at least as early as December 2003, the Suffolk County Civil Service Department notified Ocean Beach of its unlawful employment of these uncertified officers, but did nothing for several years to correct these violations of law. To the contrary, Defendants Suffolk County and Sanchez permitted these uncertified officers to remain employed, and to be paid, as police officers, in violation of Civil Service Law.

45. Indeed, the OBPD's retention of uncertified officers posed a constant threat to public safety and Plaintiffs' own safety.

46. In addition, Hesse allowed the uncertified officers to assign dock masters to "cover" their shifts at the OBPD, blithely entrusting law enforcement power and responsibility to untrained and unsupervised civilians.

47. Defendant Hesse also allowed the uncertified officers to drink beer while patrolling in police vehicles. In fact, Hesse, Defendant Bacon and some of the uncertified officers admitted that they drank the beer that Plaintiffs confiscated from people on the beach. They even would tell Plaintiffs what brands of beer to confiscate. Plaintiffs frequently complained to Hesse about this unlawful and dangerous conduct.

48. Despite Plaintiffs' repeated complaints, Hesse's policy of allowing the uncertified officers to become intoxicated while on-duty became even more expansive during the Summer of 2004.

49. By way of example only, Officer Snyder was assigned to OBPD headquarters, where he served as an emergency dispatcher. Notwithstanding Hesse allowing the uncertified officers to frequent bars while on-duty, Officer Snyder frequently would attempt to contact them over the emergency police radio if no other officers were available to respond to a public emergency. In retaliation for what they perceived as Officer Snyder's unwarranted interruptions, the uncertified officers began confiscating the police Department's emergency cell phone from Officer Snyder at the start of his shift -- despite the fact that the emergency cell phone was the exclusive mechanism for receiving emergency calls from the public. When their shifts ended, they would return the emergency cell phone to Officer Snyder, who would then review a series of unanswered messages from residents and/or visitors of Ocean Beach who had attempted in vain to contact the OBPD.

#### **Unlawful Obstruction of Justice and Selective Enforcement Orchestrated by Hesse**

50. Hesse also selectively enforced the law, and even instructed Plaintiffs not to issue summons to certain of his friends and businesses in Ocean Beach, including, but not limited to, certain bars that Hesse and his clique of uncertified officers frequented both on and off duty,

even though those bars regularly served alcohol to minors. Plaintiffs frequently complained to Hesse about his unlawful directives to selectively enforce the law by disregarding crimes and other violations of law committed by Hesse's friends. Rather than taking these complaints seriously, Hesse retaliated against Plaintiffs for their complaints.

51. By way of example only, Hesse ridiculed, berated and condemned Officer Fiorillo for intervening in a fight at the village docks that involved a highly intoxicated off-duty police officer. In the presence of other assembled officers, including Officers Lamm and Nofi, Hesse chided Officer Fiorillo and identified the aggressor as a close personal friend and senior OBPD Officer. Rather than disciplining this Officer, Hesse insisted that his friends in the OBPD be afforded the freedom to violate the law with impunity.

52. In a separate incident that occurred shortly thereafter, Officer Fiorillo was on patrol, when Hesse, who was in uniform and on-duty, called and demanded that Officer Fiorillo transport him to a party at a private residence in Ocean Beach, leaving the Village understaffed and under-patrolled. Approximately two hours later, Hesse instructed Officer Fiorillo to return to the same residence and chauffeur him home, again leaving the Village without adequate police patrol.

53. Upon returning to the party to pick up Hesse, Officer Fiorillo recognized the residence as the home of a known drug dealer. When Officer Fiorillo inquired as to Hesse's relationship with the drug dealer, Hesse described him as a close personal friend, and, incredibly, forbade Officer Fiorillo to interfere with the known drug dealer's activities in Ocean Beach.

54. Indeed, Hesse freely admitted to Officer Fiorillo and others that he regularly spent the night at the known drug dealer's residences in Ocean Beach and Manhattan.

55. Hesse also required Officer Fiorillo, during his tour of duty, to chauffeur him to and from different residences so he could engage in sexual escapades. These trips, which happened on multiple occasions, left the Village under-patrolled and placed the public safety at risk. And, when Hesse would return from such locations, he would brag about sleeping with multiple women both inside and outside of Ocean Beach, making such comments as "She just had the German Sausage." And, while Hesse was married at the time, he posted his picture (including in his OBPD uniform) and profile on several on-line dating and social networking websites, including, but not limited to, loveinuniform.com, ashleymadison.com, adultdriendfinder.com, migente.com, and fubar.com. In fact, Hesse sent and received emails to and from people on these websites from his OBPD computer.

56. As another example of Hesse's improper selective enforcement, in or around July 2003, Officer Fiorillo issued a summons to the son of a business owner in Ocean Beach. The husband of the business owner later confronted Officer Fiorillo and demanded that he withdraw the summons because he "takes care of the Bosetti brothers," (two uncertified officers) at the OBPD. When Officer Fiorillo refused to withdraw the summons and advised the business owner to explain his objections to a judge, Hesse countermanded Officer Fiorillo's decision and personally tore the summons to pieces. Officer Fiorillo later learned that the business owner was a close acquaintance of Hesse.

57. In yet another incident in or around May 2004, Officers Snyder and Lamm were on a foot-post at Bay and Ocean Breeze Walks when they witnessed a downpour of beer fall at their feet as well as a laughing crowd on a third floor balcony above. Officers Snyder and Lamm contacted Hesse for assistance, and when he arrived, the trio proceeded to the apartment, where they observed a large group of underage youths drinking alcohol without any adult supervision,

as well as drug paraphernalia. Hesse directed Officers Lamm and Snyder not to issue any citations for the alcohol or drug violations or make any arrests, despite the fact that the youths were breaking the law. To the contrary, Hesse confiscated a marijuana pipe and threw it into the Great South Bay.

58. Subsequently, the OBPD received complaints that occupants of the same apartment were violating noise ordinances and endangering pedestrians by throwing objects onto the sidewalk. The Department also was notified that the youths were continuing to unlawfully consume alcohol and use other illegal drugs. However, Hesse continued to prohibit Officers Lamm and Snyder's investigation of these alleged crimes by instructing them to stay away from that apartment.

59. And, although Hesse confiscated certain illicit drugs and related drug paraphernalia from that apartment, he later failed to properly secure and inventory these items and did not issue any citations to the youths. In fact, Hesse used his unsecured desk drawer and a shelf above his desk to store evidence, including without limitation, illegal narcotics and drug paraphernalia. Indeed, on another occasion Plaintiffs even observed certain of the uncertified officers on the apartment balcony, drinking and socializing with the same group of minors.

60. In yet another instance of Hesse encouraging minors to abuse alcohol, Hesse intervened when another officer issued a citation to a minor carrying a case of beer. In the presence of Officers Lamm and Snyder, as well as the officer who had attempted to issue the citation, Hesse returned the case of beer to the underage youth. Hesse later ordered that Officer Lamm refrain from issuing citations or enforcing the law against this youth. Rather than uphold and enforce the laws, Hesse undermined Officers Snyder and Lamm's authority and



responsibility, and advised the youth and his friends that Officer Lamm was a "loser," that "no one likes him," and that they should "not listen to" Officer Lamm's lawful directives.

61. Similarly, when Officer Fiorillo caught three men using cocaine, he called Hesse to the scene. Rather than permitting Officer Fiorillo to arrest the men for their unlawful use of illegal narcotics, Hesse instructed Officer Fiorillo only to issue summons for trespassing, and nothing regarding their drug violation. Although Hesse confiscated the cocaine, upon information and belief, he did not properly voucher the unlawful narcotics. Officer Fiorillo complained to Hesse about his directive not to arrest the cocaine users, but Hesse did nothing about it.

62. Plaintiffs' repeated complaints about Hesse's selective enforcement and blatant undermining of their authority and duties were met with disdain and derision by Hesse, who not only ignored Plaintiffs' complaints, but actually ridiculed them in response.

63. In yet another example, in early September 2004, Officers Dyer and Fiorillo witnessed uncertified Officer Richard Bosetti plying an alleged domestic abuse victim with alcohol. Officer Dyer explained to Officers Snyder and Bockelman that Bosetti was "trying to talk [the victim] out of filing a domestic incident report." The victim's body was visibly cut and bruised at the time, and Officer Bockelman later discovered that she had not received medical attention for her injuries during Officer Bosetti's "interview," and that she was prevented from obtaining such care until at least three hours after the alleged incident of domestic abuse.

64. In a separate incident, occurring in or around June 2004, Officer Fiorillo was en route to the police station before noon when he observed Officer Richard Bosetti drinking at a local bar. Bosetti beckoned Officer Fiorillo and informed Officer Fiorillo that he and his brother Officer Gary Bosetti had thrown an OBPD file cabinet containing surveillance tapes and other

important Department property into the Great South Bay, directly beneath Chief Paradiso's apartment window. Richard Bosetti asserted that he and his brother should not be criticized for throwing the cabinet into the bay because they had been "too drunk" to control themselves when they decided to do so. Richard Bosetti then asked that Officer Fiorillo help retrieve the cabinet from the bay and return it to OBPD headquarters. Officer Fiorillo refused to comply with Bosetti's request, explaining that he would not assume responsibility for the Bosettis' misconduct. Officer Fiorillo later complained about this incident to Chief Paradiso, but no disciplinary action was ever taken in response.

65. Instead, on the very same day, Hesse mockingly instructed Officer Fiorillo, 40 minutes before Officer Fiorillo went on duty, to clean the OBPD vehicle. Although Officer Fiorillo was not on duty and the dock masters were already tasked with cleaning the police vehicles, Hesse responded with a tirade of verbal abuse, rendered in the presence of other officers. On his next tour, Officer Fiorillo complained about Hesse's retaliatory misconduct to then-Chief Paradiso. Hesse was not disciplined for his misconduct.

66. To the contrary, in a further act of retaliation, Hesse called Officer Fiorillo a "cry-baby" for complaining to Chief Paradiso, and ordered him to spend three consecutive shifts standing motionless beneath a streetlight at the intersection of Dehnhoff Walk and Bay Walk.

#### **OBPD Officers Brutalize Innocent Civilians & Plaintiffs Refuse to Participate in Cover-Up**

##### **The "Halloween Beating"**

67. Early on the morning of October 31, 2004, on-duty Officers Snyder, Fiorillo and Lamm were notified by an Ocean Beach resident that "the Bosettis are in a fight. You'd better get [to Houser's Bar] right away."

68. On their arrival at Houser's Bar, patrons were hastily vacating the premises, and two injured civilians, Christopher Shalick and John Tesoro, reported that they were "hit with a pool cue and beaten with fists by a [patron who identified himself as a] police officer" while attempting to defend a friend who was being "choked and beaten" with a pool cue.

69. During Officers Snyder, Fiorillo and Lamm's initial investigation of the beating, Officer Richard Bosetti, who was drinking with his brother Gary Bosetti both prior to and at the Halloween party at Houser's bar, told them that they "did not understand" what had happened, and then refused to answer further questions about either the beating or his brother Officer Gary Bosetti's whereabouts, and also refused to assist in the investigation.

70. In reaction to Officer Richard Bosetti's silence, the patrons who remained at Houser's Bar and had not fled the scene of the fight raised concerns of a "cover-up" by the police department. Officer Snyder assured the patrons that there would be no cover-up, and attempted to enter the bar after the victims of the attack reported the perpetrator was still inside.

71. However, Houser's bouncer physically prevented Officers Snyder and Lamm from entering the bar. When the bouncer finally allowed the Officers entrance, after being warned that his actions could constitute the unlawful "impeding of an investigation," the victims of the attack stated that the perpetrator was no longer at the scene.

72. Shortly thereafter, Officer Fiorillo returned to the police station with the third victim, Bryan Vankoot, who had sustained serious injuries to his face and neck. Officer Lamm photographed the injuries.

73. Joseph Loeffler, Jr., then serving in the capacities of Village Board member and official Police Liaison, was present in the station and stated that he believed the injuries to Vankoot constituted "assault second with a dangerous instrument."

74. Ocean Beach Rescue examined Vankoot and determined that his injuries — an unaligned/distended trachea — required hospitalization. Upon information and belief, a Suffolk County Marine Boat then transported Mr. Vankoot to the hospital.

#### The Cover-Up by Hesse

75. Pursuant to Department procedure, Officer Snyder completed a field report on the beating, which Officers Snyder, Lamm and Fiorillo submitted to Chief Edward Paradiso, along with statements from the assault victims, pictures of the assault victims and the Ocean Beach Rescue report.

76. Chief Paradiso and Officer Snyder spoke the morning of October 31, 2004, and Chief Paradiso stated that the victims wished to file a complaint, that they had identified Officer Gary Bosetti as their attacker, and that as a result, Bosetti would be fired. At the time, Gary Bosetti's whereabouts were still unknown to the officers.

77. On October 31, 2004, Chief Paradiso terminated Gary Bosetti's employment for his role in brutalizing the civilians at Houser's earlier that morning.

78. Within the same week, Hesse asked Officers Snyder, Fiorillo and Lamm to submit a "department internal correspondence 2042" describing what happened when they arrived on the scene, which was an uncommon practice for an officer to provide, particularly because these Officers already filed a Field Report regarding the Halloween Beating, and the victims filed statements about the beating.

79. After Officer Snyder complied with Hesse's directive to complete his statement, Hesse claimed that "there's some discrepancies between what you and [Officer Richard Bosetti] say." Although Officer Snyder reaffirmed that his report was fully accurate, Hesse later insisted to Officer Carter that Snyder's report was "a piece of shit," and indicated that Officer Snyder needed to protect Bosetti rather than the victims. Hesse later repeated this remark to Officer Fiorillo when Officer Fiorillo attempted to submit his own statement.

80. Hesse then directed Defendant Cherry, an uncertified OBPD officer, who was not on-duty and did not witness the fight at Houser's, to investigate the incident. Cherry conducted a sham investigation that included consulting with some of Hesse's friends who had been at Houser's Bar on the night of October 30 and morning of October 31. Indeed, Cherry never inquired whether any of these "witnesses" were drinking alcohol that evening, and none of these purported witnesses mentioned the fact that Gary Bosetti used a pool cue to strike the victims that evening – a fact that Bosetti admits. However, Gary Bosetti was rehired based on Cherry's witness statements, notwithstanding the fact that Bosetti was not certified to serve as a police officer in Suffolk County at that time.

81. Officers Fiorillo, Lamm and Snyder received no further information on the investigation from Hesse, Cherry, Richard Bosetti, or Gary Bosetti.

82. Later that week, Hesse demanded Officer Fiorillo to file a new amended statement concerning the October 31 beating at Houser's Bar and adopt Hesse's protection of Officers Gary and Richard Bosetti. Officer Fiorillo refused to participate in the cover-up being perpetrated by Hesse, and refused to rewrite the report to conceal the Bosettis' criminal, vicious and brutal attack on three civilians.

83. A short time later, Hesse disparaged Officer Fiorillo's statement in front of other officers and impugned its accuracy.

84. Hesse then showed Officer Snyder's statement to Officer Fiorillo, who noted that his statement and Officer Snyder's agreed as to the events of October 31. Hesse then disparaged Officer Snyder's statement as well.

85. Shortly thereafter, Hesse again demanded that Officer Fiorillo rewrite his statement, in an effort to cover-up Gary and Richard Bosetti's involvement in the beating. Officer Fiorillo again refused the request because his investigation on the night of the beating led to the conclusion that Officer Gary Bosetti had attacked the victims with a pool cue.

86. Hesse also insisted that Officer Lamm's report concerning the Halloween Beating "was no good" and told Officer Lamm that the incident described in his report "is not what happened."

87. Subsequently, Hesse handed a folder to Officer Lamm and said "this is what really happened." Officer Lamm refused to adopt Hesse's plainly inaccurate version of the Halloween Beating. In response, Officer Lamm complained to Hesse that he believed that Hesse had engaged in a cover-up of the Halloween Beating. Hesse even told Cherry about Officer Lamm's allegation of a cover-up.

88. Rather than disciplining Gary Bosetti for unlawfully brutalizing a civilian with a pool cue, Hesse instructed that Gary Bosetti actually arrest two of Bosetti's victims, Bryan Vankoot and Christopher Shalick, for their involvement in the Halloween Beating.

89. This was part of Hesse's pattern and practice of attempting to cover-up criminal assaults of civilians by OBPD officers by filing false criminal charges against the victims of such

brutal attacks. Indeed, several civilians have sued Ocean Beach and/or Defendant Hesse for use of excessive force and/or police brutality, including Michael Bloomberg, Kenneth Ryan, Christopher Cuneen, Bruce Mancada, Jesse Prisco and Samuel Gilberd (who had charges (which were later dismissed) brought against him for alleged disorderly conduct, resisting arrest and loitering).

90. Hesse later stated to Officers Fiorillo and Carter that Officer Snyder's report of the beating, "makes me sick," and indicated that he believed Officer Snyder "ha[d] it in for Gary Bosetti," implying that Officer Snyder had willfully submitted a false report implicating the Bosettis.

91. Subsequently, Officers Snyder and Fiorillo complained to then-Chief Edward Paradiso about Hesse's unlawful demands, and Plaintiff Fiorillo addressed Hesse's unlawful request, as well as other incidents of police brutality in Ocean Beach, with investigators from the Suffolk County District Attorney's Office.

#### **Hesse Retaliates Against Plaintiffs & Terminates Their Employment**

92. Rather than address Plaintiffs' refusal to engage in a cover-up of Officer Gary Bosetti's unlawful assault, as well as the other numerous complaints of unlawful conduct perpetrated by Hesse and several other officers, Hesse – the highest ranking official in the OBPD who was vested with final decision making authority over termination decisions – engaged in a concerted pattern of retaliatory conduct against Plaintiffs.

93. On or about November 1, 2005, Chief Paradiso withdrew from active duty and commenced an extended term of disability-leave from the OBPD. In his absence, Hesse was designated "Acting Police Chief" and vested with full responsibility for the OBPD's

maintenance, policy and operation, including but not limited to, the hiring, firing, granting of promotions and discipline of employees and all other employment related, scheduling and budgeting issues.

94. On March 11, 2006, Hesse sent a letter to all OBPD officers to announce that the annual Department meeting would be held on April 2, 2006, at which time "new ID cards will be issued to all."

95. The April 2 meeting represented the first opportunity for Acting Deputy Chief Hesse to exercise his newfound authority to purge the Department of the officers who complained about his and his friends' (both within and outside the Department) unlawful conduct.

96. Prior to making the unlawful decision to terminate Plaintiffs' employment, Hesse spoke with Defendant Sanchez to ensure that he could effectuate such terminations. After checking with her supervisor, Stanley Pelc, Principal Personnel Analyst at Suffolk County Civil Service, Sanchez assured Hesse, notwithstanding her knowledge that he was not certified to act in a supervisory capacity, that he could summarily terminate Plaintiffs' employment without notice or a hearing.

97. On April 2, shortly before the annual departmental meeting commenced, without prior notice, Hesse terminated Officers Fiorillo, Lamm, Carter and Nofi's employment with the Department. This sudden purge of the Department was deliberately timed to maximize Plaintiffs' humiliation, and to ensure that Plaintiffs would be unable to secure new civil service positions in advance of their termination.



98. As the highest ranking member of the OBPD, Hesse terminated Plaintiffs' employment pursuant to official Ocean Beach and Suffolk County policy, practice and custom, notwithstanding that such policies were, themselves unlawful.

99. Hesse told Officers Fiorillo, Lamm and Nofi that they were being terminated due to alleged departmental budget cuts, a statement obviously belied by the fact that the OBPD was actually slated to receive a budget *increase*, including an apparently sizable raise for Hesse. The pretextual nature of Hesse's purported explanation of budget cuts is also underscored by the fact that Hesse hired new officers in Plaintiffs' stead, including two full-time officers from the civil service list who scored lower on their examinations than Officer Lamm. Moreover, the remaining officers received pay increases for the 2006 season.

100. The officers fired were qualified under objective civil service standards, whereas at least one of the officers retained had neither taken the appropriate tests nor otherwise satisfied these standards.

101. Hesse also advised the remaining officers at the meeting that Plaintiffs were "rats," in an apparent reference to Plaintiffs' repeated complaints regarding abuse of power, obstruction of justice, uncertified officers, and other unlawful conduct by Hesse and his friends in the Department.

102. Hesse told Officer Carter that he was being terminated for his failure to follow "directives." However, Hesse was unable to explain to Officer Carter what "directives" he was referring to. At a later date, Hesse falsely stated to Officer Carter's supervisor at his full-time job that he was terminated for sleeping while on-duty. Such shifting explanations, neither of which can be supported by facts, demonstrate the pretextual nature of such purported justifications for Plaintiffs' termination.

103. On or about April 20, 2006, on a dock outside of Ocean Beach, Hesse (who was on-duty at his part-time job as a bay constable) told Officer Snyder that he was being terminated because he "was the guy who ratted to civil service about the uncertified officers working there."

104. Not only are Hesse's purported reasons for terminating Plaintiffs false, but he also admitted that he terminated them for their repeated complaints about his misconduct. Specifically, Hesse admitted, in writing, that Plaintiffs "can try and attack the chief and his men all you want. It will get you no where...well it did get you some where out of lawenforcement...NICCCE."

#### **Alison Sanchez Helps Destroy Plaintiffs' Careers**

105. Within days of their termination, Officers Fiorillo, Nofi and Lamm met with Alison Sanchez, the Suffolk County Civil Service official responsible for overseeing civil service compliance in Ocean Beach.

106. Sanchez assured Officers Fiorillo, Nofi and Lamm that their conversation would remain confidential, and that they should speak freely and candidly, particularly because Officer Nofi was a full-time employee of Suffolk County, and disclosure of his decision to seek recourse for Hesse and the OBPD's unlawful termination of his employment potentially would adversely affect his other job with the County.

107. Officers Fiorillo, Nofi and Lamm then relayed the substance of their employment experience at the OBPD, including their termination without notice or cause in retaliation for complaints regarding repeated instances of obstruction of justice, abuse of power and other unlawful conduct committed by, or at the direction or with the acquiescence of, Hesse.

108. In response, Sanchez advised Officers Fiorillo, Nofi and Lamm that Hesse had behaved lawfully and within his authority under Civil Service Law, and that Plaintiffs would not "have a leg to stand on" in their attempt to appeal their termination or raise further complaints against Hesse.

109. Sanchez knew that her statements to Plaintiffs were false, that Plaintiffs reasonably believed her statements to be true, and that Plaintiffs likely would act in reasonable reliance on her statements. Moreover, Sanchez made these false statements with an intent to deceive Plaintiffs and prevent them from seeking legal recourse in connection with their termination.

110. When Officers Fiorillo, Nofi and Lamm left Sanchez's office, Sanchez immediately called Hesse and notified him of the substance of her conversation with Plaintiffs, in flagrant disregard of her promise to keep Plaintiffs' conversation confidential.

#### **Hesse Unlawfully Interferes with Plaintiffs' Efforts to Obtain New Employment**

111. In or around May 2006, Hesse stated to Officer Carter that those "three fucking mutts [Fiorillo, Lamm and Nofi's] law enforcement careers are over." Hesse devoted himself to fulfilling this promise.

112. By way of example only, Hesse gave a false and defamatory reference, and forwarded false information regarding Officer Fiorillo to the Southampton Police Department.

113. Fiorillo was also denied a job with T&M Protection Resources in New York City because he no longer possessed the required police credentials.

114. As a result of false, damaging and baseless allegations by Hesse, as well as Hesse's calculated plan to prevent Plaintiffs from obtaining subsequent law enforcement jobs

through his pattern of malicious and false negative references, Plaintiffs have been unable to secure new, comparable employment in the law enforcement profession.

#### **Defendants Defame Plaintiffs**

115. Plaintiffs have also been humiliated and defamed by Defendants Hesse, Sanchez, Bacon and Cherry through false, malicious and baseless attacks on their integrity and record of public service that have been published on *The Schwartz Report*, a publicly accessible Internet "blog" accessed more than 70,000 times that is intended for review by members of law enforcement.

116. On April 8, 2006 at 6:16 AM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "And lets not forget the 2 town clowns from Islip. Ed and Tom. They too got canned for not doing their jobs. Do we need to bring up the Halloween incident. They are lucky that they didn't get charged with official misconduct and falsely reporting an incident" on the publicly accessible internet forum "The Schwartz Report."

117. On April 16, 2006 at 8:53 AM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Hey Villageldiot, you got one part right, you are an IDIOT... Why would you want to bring the EnCon Police in to this? Do you need more cops to rat on? Haven't you done enough of that already... Oh thats right, once a rat always a rat...So, you want to bring up the holloween incident...hmmm, lets talk about it...the only cover up there was how bad a job you did investigating it. Did you ever wonder why no one would talk to you guys during your shitty investigation. Everyone hates you. Everyone knew then you were a rat. Did you know that when the case was ran through the DAs office they wanted to investigate you and your rat partners? Did you know that it was the sergeant who protected you from being investigated? How about the time you and your asshole partner beat up those 3 girls and 1 of them got away in

handcuffs...that was real funny you moron...what a lawsuit that was going to be, but wait, it was the sergeant once again who protected your asses, amazing, truly amazing. This sergeant i talk of is currently the acting chief. Do you know why he's the acting chief? Its because he knows how to protect his men, the department and the village and cares enough to do,so. The previous administration (Chief) doesn't care about you, the police department or the village. so suck up the fact that your were let go and get on with yourself... see you around, oh wait, no i wont" on the publicly accessible internet forum "The Schwartz Report."

118. On April 17, 2006 at 7:59 AM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Just so you know IDIOT, this is not the chief. He would not stoop this low to entertain anything you had to say so lets get that straight. I'll do it for him and since you are a chicken shit and refuse to identify yourself, i will do the same for the time being. We all know how hard it is for you to come out of the closet. Whoops, did i let that slip out. Thats why you BEAT those girls isn't it. you were jealous of them, they were prettier then you, awwwww.. Now lets talk about the so called "TWINS" again. They we fired because of the previous chiefs incompetence to investigate anything, and for what its worth he believed the incompetence of you 3 morons. I mean really, did you read the paperwork you put together, i know i did. what a joke. and as far as cronies go, if you want to call the DA a cronie of the chief, i'm sure he'll take that as a compliment. They cleared the case stupid. So you want to talk about known drug dealers. What would you know about that? when was the last time or if ever you made an arrest for drugs? do you even know what cocaine looks like? i doubt you would. Any one that writes as many summonses as you and comes into contact with as many people as you and never made an arrest. but watch out, someone is eating peanuts on the beach, i better get her. oh my!!, look a red gatorade, i better kick his ass. LOSER!!! did you you write your mother a

ticket yet? WAIT!! someones pissing, theres the felon. OH 10-1, 10-1 i maced myself again...  
HA HA HA HA HA HA HA HA....HE's RESISTING!!!! and lets get another thing straight, the  
only walls that are closing in are the ones around your short feeble law enforcement career...." on  
the publicly accessible internet forum "The Schwartz Report."

119. On April 17, 2006 at 1:30 PM, Hesse posted the false, malicious and defamatory  
statement about Plaintiffs, "What a great post Still employed. Thats so funny i remember that  
night. Hes resisting Hes resisting!!!! . . . The "twins" are awesome. Everyone loves them. The rat  
pack is just jealous because the twins actually have a personality and are actually able to make  
friends and as far as the acting chief goes, there are no word to describe." on the publicly  
accessible internet forum "The Schwartz Report."

120. On April 29, 2006 at 9:33 PM, Hesse posted the false, malicious and defamatory  
statement about Plaintiffs, "here's a rat, there's a rat, everyone goes rat rat, old mcdonald had a  
farm, E I, E I....OOOOOOO" on the publicly accessible internet forum "The Schwartz Report."

121. On April 29, 2006 at 9:38 PM, Hesse posted the false, malicious and defamatory  
statement about Plaintiffs, "Hey, norm...what the hell are you talking about...you're talking to a  
bunch of retarded cops" on the publicly accessible internet forum "The Schwartz Report."

122. On May 10, 2006 at 4:02 PM, Hesse posted the false, malicious and defamatory  
statement about Plaintiffs, "Kevin Lamm and Frank Fiorello, Why don't you 2 take your lumps  
like real men and move on. The Deputy Chief let you go because you guys abuse the public. That  
is not how we do bussiness in this department. . . . But when you started to throw accusations  
around that was yet another case of you guys crossing the line. Just like so many times in the  
past. And now you wonder why you are on the outside looking in. You are at will employees,  
well I mean were. Now you have even less credibility than you did before. Congratulations for

truly earning the title "RAT" Neither of you will ever work another law enforcement job here in the United States. Maybe if you are lucky you can get a job working in Iraq, I hear they will take anyone over there. But you may become canon fodder! Good luck you rat bastards!" on the publicly accessible internet forum "The Schwartz Report."

123. On May 10, 2006 at 11:32 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "you guys are all done....pathetic little men... Watching you leave with your head between your legs from the meeting..amuzing..watching you get on the water taxi with your head between your legs.. funny going to civil service to be a rat and getting no play.. hysterical..trying to get a job with another law enforcement agency and not getting one.. priceless" on the publicly accessible internet forum "The Schwartz Report."

124. On May 10, 2006 at 11:39 PM, Hesse posted the malicious statement about Plaintiffs, "Check your facts again jack....how are those new job investigations going...." on the publicly accessible internet forum "The Schwartz Report."

125. On May 27, 2006 at 8:12 AM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Kevin Lamm, are you still a half a fag? Or are you sucking dick out in the open now as an out of the closet fag? No matter how you look at it you will always be a rat!" on the publicly accessible internet forum "The Schwartz Report."

126. On May 30, 2006 at 10:39 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "First, you couldn't handle being in Iraq. Second, you would be shot by your own men. Third, It was the Seargeant, now Chief that had to restrain you, Kevin Lamm, From beating the marine you talk about. He never touched the guy. HOMO!!!! Hows the airport square badges treating you these days you RAT!" on the publicly accessible internet forum "The Schwartz Report."

127. On May 30, 2006 at 10:51 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "How would you know, you never made an arrest unless it was someone peeing. Nice one. So, whats wrong? Only doing this to scare the chief?...lol like was scared. Whats wrong? your balls creeping up into your throat? oh thats right, you don't have any balls. Let me ask you this. How does it feel knowing you will never be a cop?...ha ha ha ha ha" on the publicly accessible internet forum "The Schwartz Report."

128. On June 22, 2006 at 2:14 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "The funny thing is that no one is scared. you're out of a job, get over it already loser...i want them to look in to the so called Holoween incident. It will show them how pethetic your police officer skills are. Thats why it.had to be taken over and investigated by someone else. . . . What, you think they will find a cover up you moron. Once again the only thing that was covered up was how poorly you investigated the incident. You can try and attack the chief and his men all you want. It will get you no where...well it did get you some where out of lawenforcement...NICCCE" on the publicly accessible internet forum "The Schwartz Report."

129. On April 12, 2007 at 2:37 AM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Hi Frank, That is you posting the 'Heeeessssssssseeeeee!!!!!!' responses, isn't it you sly devil??? Say how-do-you-spell your last name Frank? F-E-L-L-A-I-T-O ? I thought so. . . . Never did see you hanging out with any ladies at the beach, figured that were because you must have been hanging out with Keven Lamm, so I don't think that you were hot for her, or any GIRLS....lol. . . . Guess getting bumped up from an auxiliary cop to a seasonal/rent-a-cop was pretty heady for you...must have cost you a fortune to pass the psychological test. . . . Guess that you were working on getting bumped up to 'meter maid?' I figure that they forgot to tell you in the academy that being the top producer in a police



department doesn't give you any validation to be insubordinate to your boss (Sgt. Hesse) even though you surely did display this type of behavior. Yep, Georgie did make some mistakes; he should have documented your behavior and started a supervisor's paper trail then. . . . We all know where YOU want to unload your gun after that statement, don't we? Too bad that you don't get it, thanks to the fearless five corruption fighters, who only brought their complainants to the surface after they were not asked back (they worked at OB forever, and never noticed corruption before this?) have played into the hands of the DA..." on the publicly accessible internet forum "The Schwartz Report."

130. On May 9, 2007 at 9:52 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Frankie, Frankie, Frankie (Frank Fiorello) why are you so angry? Is it that you cant abuse the public anymore? What are you doing with all that pent up rage? are you brutalizing some poor helpless animals in your in your back yard?" on the publicly accessible internet forum "The Schwartz Report."

131. On May 17, 2007 at 9:01 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Kevin Lamm and Frank Fiorello, Just think about it, you have much more at stake here than the accused four. You see our lies and half truths will come home to roost. . . . You guys will be held accountable for you lies. It is called perjury, it is a crime and punishable by jail time. . . . Oh and the whistle blower act that you are trying to hide behind. That may work if you came forward with anything of subsance. But you decieded come forward with allegations that were non existant. This was after you were not invited back for your gross incompetence." on the publicly accessible internet forum "The Schwartz Report."

132. On July 22, 2007 at 6:14 AM, Hesse posted the false, malicious and defamatory statement about Plaintiffs statement, "Go suck a dick kevin" on the publicly accessible internet forum "The Schwartz Report."

133. On August 27, 2007 at 10:15 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Oh well, Kevin the fag, Ed the fat bastard, Tom the angry man, Joe the moron and Frank the abuser. . . . And lets see if you lying pricks will just have to sit back and watch the money roll in. . . . You know you wont be able to keep lying under oath. That is called perjury. And yes it is a crime. . . . LOL" on the publicly accessible internet forum "The Schwartz Report."

134. On September 4, 2007 at 2:29 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Your F\*\*\*ing retard Joe nofi, werent you the one who was quoted as saying the the Chief and is boys act like its Marti Gras??? Hmmm Looks like you were the one acting like that. And you F\*\*\*ing scumbag Frank Fiorello, you were quoted as saying that they placed the public at risk by drinking and carrying guns around children. Well looks like you were the guilty on." on the publicly accessible internet forum "The Schwartz Report."

135. On September 4, 2007 at 3:23 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "unregistered88 are you retarded.. the guys in the photo are the ones who attacked wives. . ." on the publicly accessible internet forum "The Schwartz Report."

136. On September 4, 2007 at 11:15 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "hiring an attorney (per dium), civil law suit (325mil), having a picture of the men accusing you of what they're doing in the picture for the world to see

(PRICELESS)!!!! my god frank. you must be joking. and poor retarded joe was stupid enough to follow you and have his photo taken. hey joe, how sick are you now? . . . you are all pathetic. the lies all the lies. hey ed, you talk about it being a public safety issue. must have been tuff patrolling from your bunk. what was going on in the village while joe and frank were with all these women drinking. and you all want to know why you dont have a job. you crack me up. . . whenever you're ready to read all your embarrassing original reports let the boss know. oh wait. hes not your boss anymore. . . . see you in hell!!" on the publicly accessible internet forum "The Schwartz Report."

137. On September 6, 2007 at 9:04 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Ed Carter, You fat readheaded clown f\*\*ck! Your next, what are you going to do when the DA looks into your time sheets from both the Town of Islip and Ocean Beach. Boy I sure hope you signed out and werent double dipping. The same goes for you you lying bald headed prick Tom Snyder. Lets see what happens when the DA squad crawls up your ass with a microscope. Burn in hell you lying scumbags!!! Cant wait to see what other photos show up. . ." on the publicly accessible internet forum "The Schwartz Report."

138. On April 11, 2009 at 1:22 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "this was either written by joe nofi or kevin lamm.. the both of you are illiterate bastards. hey kev.. hows the steroid use going.. you look like a swollen tick. . ." on the publicly accessible internet forum "The Schwartz Report."

139. On April 15, 2009 at 3:12 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Listen.. its one of 5 asses writing this stuff.. they started with the slander 3 days after they were fired from ocean beach and then blamed george for starting the blog. They are the chicken shits hiding behind this blog. They will never giver their names

because they already perjured themselves at depositions saying they never read or wrote on the blog. This is all they have left. It really is pathetic when you think about it. . . . they've been begging for a settlement and the ocean beach side wont give them one. . ." on the publicly accessible internet forum "The Schwartz Report."

140. On April 17, 2009 at 8:57 AM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "Was Kevin the bald graying guy with the mustache who always wore his class "a" uniform even though the others wore the bike uniform?" on the publicly accessible internet forum "The Schwartz Report."

141. On May 5, 2009 at 1:05 PM, Hesse posted the false, malicious and defamatory statement about Plaintiffs, "you asses came on the day they summed up the case.. you fucking losers.. looks like you all go to the same barber.. baldies are us..put your heads together and make a huge ass out of yourself. oh wait, you already did that with all your slanderous remarks about the OBPd.. how does it feel to be begging for a settlement. . . i love how you guys stick up for a guy like this when you beat everyone up you came in to contact with. Especially frank, joe and kevin.. how are you guys feeling these days knowing you'll never be cops again... Hey frank, do you even have a job yet?" on the publicly accessible internet forum "The Schwartz Report."

142. On April 6, 2006 at 1:38 PM, Sanchez posted the false, malicious and defamatory statement about Plaintiffs, "Gee guys, seems it's pretty obvious who is writing this about the Chief... . You guys look like nothing more than immature, resentful babies because your services were no longer wanted. You act like vengeful immature brats, no wonder OB doesnt want you on the force!! . . . Get over it, losers!! Move on. The only one who looks bad now is you!! Sore losers. Grow up." on the publicly accessible internet forum "The Schwartz Report."

143. On April 6, 2006 at 8:55 PM, Sanchez posted the false, malicious and defamatory statement about Plaintiffs, "You guys just feed into this crap. You want all "the dirt" ... what a bunch of wash women!! Dont you see this guy gets canned for doing a CRAP job, of course he is mad and wants to lash out, you are gonna actually believe anything this moron says??? I dont even know anyone involved, and it seems pretty clear that this revenge posting is all crap. How can you believe a word the guy says?? Anyone can say anything!!! Bottom line, he obviously is deficient in many ways which is WHY HE WAS PROBABLY CANNED IN THE FIRST PLACE!!! Get it????? You guys wanna make up stories so bad, then pick up your fired asses and go apply for a job on Days of Our Lives, I hear they are hiring - bitch!" on the publicly accessible internet forum "The Schwartz Report."

144. On April 26, 2006 at 9:27 PM, Alison Sanchez posted the false, malicious and defamatory statement about Plaintiffs, "You guys talk like the chief is banging everyone... reality check, he aint all that. But then again if you seem to think he is, then I suppose that says something about you, now doesn't it?? Maybe you should be hanging out at Cherry Grove instead of OB." on the publicly accessible internet forum "The Schwartz Report."

145. On May 27, 2009 at 8:10 PM, Bacon posted the false, malicious and defamatory statement about Plaintiffs, "Media accounts have it that Kevin Lamm was seen getting his salad tossed at a local park and ride by Frank Fiorillo. During this time The toothless Ed Carter was wearing a red clown wig while banging the retarded Joe Nofi in the ass, while the angry Tom Snyder was pushing from behind. . . That they were all so giddy with excitement the circle jerk wasn't cutting it anymore!" on the publicly accessible internet forum "The Schwartz Report."

146. On May 7, 2009 at 5:52 AM, Bacon posted the false, malicious and defamatory statement about Plaintiffs, "The SCPD is investigating reports that former police officer, now

unemployed civilian Frank Fiorillo was stalking young men in Islip Town Parks. It was discovered that when the Park Rangers initially got the call Ranger Tom Snyder was dispatched along with his supervisor Ed Carter. Upon arrival they found Frank in the mens room engaged in oral sex with Kevin Lamm. At the scene Joe Nofi was found crying saying "what about me, I want some too" with his pants around his ankles. " on the publicly accessible internet forum "The Schwartz Report."

147. On May 7, 2009 at 12:21 PM, Bacon posted the false, malicious and defamatory statement about Plaintiffs, "Hey Frank Fiorello I hear you are trolling for dick at McArthur Airport. This is with the help of your angry friend Kevin. Happy Hunting!" on the publicly accessible internet forum "The Schwartz Report."

148. On May 18, 2009 at 4:46 AM, Bacon posted the false, malicious and defamatory statement about Plaintiffs, "None of you 5 alleged there was any misconduct before you got fired hu? . . . Once again, I guess you were the guilty parties then too!" on the publicly accessible internet forum "The Schwartz Report."

149. On May 4, 2009 at 9:24 PM, Cherry posted the false, malicious and defamatory statement about Plaintiffs, "Oh and lets not forget Court Officer/ ex Police Officer Paul Carolo. The best thing he can do now is hang himself in his garage. But is is to cowardly to do that. So the next best thing is to leave the state and get a job elsewhere. But he will always be a rat and that will follow him wherever he goes. To bad you didnt have balls you lying fuck! Good luck getting your gun back with the courts! Then we have the 5 jerk offs who went running to the DA after they too were fired for incompetence and misconduct. Then they have the audacity to sue claiming they were wrongly terminated. When in fact they were the ones who had committed all the misconduct and that was the reason for their termination. . . So Kevin Lamm, Joe Nofi, Tom

Snyder, Ed Carter and Frank Fiorillo... What will happen when a slander suite is brought against you 5 and you are all found personally liable??? Oh and Kevin, it is only a matter of time before one of your roid rages get you in trouble elsewhere. And did the town send you for a drug test yet? . . . So Kevin Lamm and Frank Fiorillo, get over yourselves and move on. If you insist upon attacking anyone be man enough to sign your name to it. Oh thats right you arent even men! You are rats and will always be rats!!!" on the publicly accessible internet forum "The Schwartz Report."

150. On May 6, 2009 at 7:52 PM, Cherry posted the false, malicious and defamatory statement about Plaintiffs, "Or are you really talking about the your own civil suit? The bogus suit filed by the 5 losers who got fired. . . Now you ask if OBPD hires women. Why yes they do. But they fired 5 of them in one shot for being cunts! Their names are Ed Carter, Tom Snyder, Kevin Lamm, Frank Fiorillo and Joe Nofi. They werent fired for being women or females. They were fired for incompetence and misconduct. . . . Grow some balls and take responsibility for your own actions! Now don't take my word for it, or the word of any of the officers who work there. Maybe they should ask officers who worked with the the 5 clowns and have left for other police jobs. . . . So Ed, Tom, Kevin, Frank and Joe. Keep your circle jerk going. Because when it is all over. The only thing you will have is each others dicks in your hands!!!" on the publicly accessible internet forum "The Schwartz Report."

151. Defendants Hesse and Sanchez posted some of these false, defamatory and malicious statements about Plaintiffs on the *Schwartz Report* from their respective places of employment during the course of their employment. Upon information and belief, Defendants Ocean Beach, OBPD and Suffolk County have not disciplined or admonished Hesse or Sanchez for their unlawful and tortious misconduct.

152. Moreover, Defendants Hesse, Bacon and Cherry posted these malicious, defamatory and patently false statements about Plaintiffs despite "Deputy Chief" Hesse's written directive posted in the OBPD station, dated April 18, 2006, that "All officers are to refrain from writing on the blog. . . . Anyone caught writing in will be terminated." Neither Hesse, Bacon nor Cherry were disciplined, let alone terminated, for violating this directive.

153. Plaintiffs and their families have been repeatedly confronted and castigated by strangers who have assumed that these baseless and malicious allegations against Plaintiffs are true.

154. As a result of Defendants' pattern and practice of obstruction of justice, abuse of authority, corruption, and attacks against innocent civilians, and their subsequent retaliation against and defamation of Plaintiffs, Plaintiffs have suffered, and continue to suffer, severe mental anguish and emotional distress, including but not limited to humiliation, embarrassment, stress and anxiety, loss of self-esteem, self-confidence and personal dignity, and physical and emotional pain and suffering.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

**(N.Y. Civil Service Law 75-b)**

155. Plaintiffs hereby repeat and reallege each allegation contained in the preceding paragraphs as if fully set forth herein.

156. While employed by the OBPD and Ocean Beach, Plaintiffs were "public employees" within the meaning of the New York Civil Service Law 75-b.



157. At all times relevant to this complaint, Defendants OBPD, Ocean Beach and Suffolk County were "public employers" within the meaning of New York Civil Service Law 75-b.

158. At all times relevant to this complaint, Defendants Ocean Beach, OBPD and Suffolk County were "governmental bodies" within the meaning of New York Civil Service Law 75-b.

159. Defendants OBPD, Ocean Beach and Suffolk County terminated Plaintiffs' employment because they disclosed to governmental bodies information: (i) regarding numerous violations of law, rules or regulations which created and presented a substantial and specific danger to the public health or safety; and/or (ii) which Plaintiffs' reasonably believed to be true and reasonably believed constituted improper governmental action.

160. Defendants' termination of Plaintiffs' employment was an "adverse personnel action" taken in violation New York Civil Service Law 75-b.

161. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiffs have suffered and continue to suffer actual damages, including without limitation, lost past and future earnings.

#### **AS AND FOR AN SECOND CAUSE OF ACTION**

##### **(Defamation Per Se)**

162. Plaintiffs hereby repeat and reallege each allegation contained in the preceding paragraphs as if fully set forth herein.

163. As set forth above, Defendants published defamatory statements about Plaintiffs, including without limitation, assertions that: a) Plaintiffs were dishonest men, "rats," and rogue

law enforcement officers; b) Plaintiffs' had conspired to inculcate innocent police officers for acts of brutality against innocent citizens; c) Plaintiffs had conspired to disqualify fellow officers from continued employment with the OBPD without cause; d) that citizens of Ocean Beach should recognize that because "Officer Kevin Lamm is a loser and no one likes him," Officer Lamm's lawful directives should be freely ignored; e) that Plaintiffs committed unlawful acts during their employment with OBPD and Ocean Beach; and f) by advising prospective employers that Plaintiffs were terminated for cause and that Hesse could not comment favorably on Plaintiffs' performance as police officers, all in a manner and context that created the impression that these were not mere expressions of opinion, but rather well-founded assertions of fact.

164. Defendants also published false, malicious and defamatory statements about Plaintiffs on the *Schwartz Report*, an internet blog that has been accessed more than 70,000 times. Indeed, Defendants Hesse and Sanchez published these defamatory statements in the course of their employment.

165. These statements were false and maligned Plaintiffs' honesty, trustworthiness, dependability, and professional and business abilities.

166. Defendants published such statement to the public and others who have no need to know them.

167. Defendants had knowledge that such statements were false and/or acted with reckless disregard of their falsity.

168. As a result of the foregoing misconduct, Plaintiffs have suffered and will continue to suffer severe mental anguish and pain, including loss of self-esteem, personal dignity and

career fulfillment. Plaintiffs have confronted great inconvenience, indignity and risk, including but not limited to a loss of their livelihood, and a loss of their ability to meet various financial obligations. Thus, Plaintiffs were inhibited and prevented from enjoying life, and were forced to undergo emotional injury which they will continue to experience in the future.

169. The acts of Defendants were willful, wanton, malicious and oppressive and were motivated solely by a desire to harm Plaintiffs without regard for Plaintiffs' well-being and were based on a lack of concern and ill-will towards Plaintiffs.

### **AS AND FOR A THIRD CAUSE OF ACTION**

#### **(Negligent Retention/Supervision of Unfit Employees)**

170. Plaintiffs hereby repeat and reallege each allegation contained in the preceding paragraphs as if fully set forth herein.

171. As set forth above, Defendants Hesse, Ocean Beach, OBPD, Sanchez and Suffolk County deliberately retained and advanced the careers of uncertified and unqualified personnel who served alongside Plaintiffs as police officers, while Suffolk County and Ocean Beach negligently permitted Hesse to do so. Defendants Hesse, Ocean Beach, OBPD, Sanchez and Suffolk County had knowledge of the undue risk of harm to which Plaintiffs were thereby exposed based on: 1) explicit statutory standards governing minimum qualifications for police officers; and 2) actual knowledge of danger to which Plaintiffs were exposed by their reliance on fellow officers who were ignorant of OBPD policies and practices, including without limitation, emergency police radio codes.

172. As set forth above, Defendants Ocean Beach, OBPD, Sanchez and Suffolk County deliberately retained and advanced the career of Hesse, including, but not limited to

vesting him with the authority of Police "Sergeant," despite the fact that he failed the required Suffolk County Civil Service Examination to qualify for the position of Sergeant on at least two occasions, failed to appear for the examination on another occasion, and, during all relevant periods, never passed this required examination. As such, at all times relevant to this action, Defendant Hesse was not permitted pursuant to Civil Service Law to serve in a supervisory role within the OBPD.

173. Defendants Ocean Beach, OBPD, Sanchez and Suffolk County had knowledge that Defendant Hesse was not fit to serve in a supervisory capacity and was the subject of numerous claims of police brutality, but nonetheless delegated to him supervisory authority over the OBPD and its employees. Indeed, by official resolution of the Ocean Beach Board of Trustees, Defendant Hesse was promoted to "Deputy Chief of Police" on January 28, 2006, "with all power and authority involved with that position."

174. Ocean Beach and Ken Gray, attorney for Ocean Beach, took great pains to conceal the fact that Defendant Hesse was unlawfully serving in a supervisory role.

175. Moreover, notwithstanding this violation of Civil Service Law, Defendants Sanchez and Suffolk County knowingly turned a blind eye, and did nothing to prevent Hesse from serving as the top law enforcement officer in Ocean Beach.

176. Defendants Ocean Beach, OBPD, Sanchez and Suffolk County had knowledge of the undue risk of harm to which Plaintiffs were thereby exposed based on: 1) explicit statutory standards governing minimum qualifications for supervisory roles of Sergeant and Acting Police Chief; and 2) actual knowledge of danger to which Plaintiffs were exposed when Hesse decided to terminate their employment in retaliation for their numerous complaints of unlawful misconduct.

177. As a direct and proximate result of Defendants Hesse, Ocean Beach, OBPD, Sanchez and Suffolk County's breach of duty to supervise, Plaintiffs have been injured and have incurred damages thereby.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray this Court enter judgment in their favor and against Defendants, jointly and severally, containing the following relief:

- A. A declaratory judgment that Defendants' actions constitute unlawful retaliation in violation of New York Civil Service Law.
- B. A temporary restraining order and preliminary injunction immediately reinstating Plaintiffs to their civil service positions, together with backpay and complete restoration of all benefits, seniority and privileges of such employment, and prohibiting Defendants from further publication of defamatory statements concerning Plaintiffs;
- C. A permanent injunction reinstating Plaintiffs to their civil service positions, together with backpay and complete restoration of all benefits, seniority and privileges of such employment and permanently restraining Defendants from engaging in such wrongful and/or unlawful conduct in the future and enjoining Defendants from further publication of defamatory statements concerning Plaintiffs;
- D. An order directing Defendants to place Plaintiffs in the position they would have occupied but for Defendants' wrongful and/or unlawful conduct, as well as to take such affirmative action as is necessary to ensure that the effects of Defendants' wrongful and/or unlawful actions are eliminated and do not continue to affect Plaintiffs, including but not limited

to, reinstating Plaintiffs to their permanent civil service position, together with backpay and complete restoration of all benefits, seniority and privileges of such employment;

E. An award of damages in an amount to be determined at trial to compensate Plaintiffs for all monetary and/or economic damages, including but not limited to, the loss of past and future income, wages, and other compensation;

F. An award of damages in an amount to be determined at trial to compensate Plaintiffs for all non-monetary and/or compensatory damages, including but not limited to, compensation for their mental anguish, depression, humiliation, anxiety, embarrassment and emotional injury caused by Defendants;

G. An award of damages for any and all other monetary and/or non-monetary losses suffered by Plaintiff in an amount to be determined at trial, plus prejudgment interest;

H. An award of punitive damages, in an amount to determined at trial, sufficient to deter Defendants from engaging in future illegal, tortious and/or wrongful conduct;

I. An award of costs that Plaintiffs incurred in this action, as well as their reasonable attorneys' fees, to the fullest extent permitted by law; and

J. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues of fact and damages stated herein.

Dated: March 18, 2010

New York, New York

Respectfully submitted,  
THOMPSON WIGDOR & GILLY LLP

By:  \_\_\_\_\_

Douglas H. Wigdor  
Andrew Goodstadt  
85 Fifth Avenue  
New York, New York 10003  
Telephone: (212) 257-6800  
Facsimile: (212) 257-6845

*Counsel for Plaintiffs*

VERIFICATION

STATE OF NEW YORK     )  
                                  :  
COUNTY OF NEW YORK    )

Thomas Snyder, being duly sworn, deposes and says that he is one of the Plaintiffs in this matter, that he has read the foregoing Verified Complaint and Jury Demand and that he believes that the facts set forth therein are true and correct to the best of his knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes to be true. Mr. Snyder's knowledge or information and belief is based on personal knowledge of the facts of this case, as well as statements made to him by the other Plaintiffs in this matter and sworn testimony of some of the Defendants in this matter.

  
THOMAS SNYDER

Sworn to before me this  
18th day of March, 2010

  
NOTARY PUBLIC

ANDREW GOODSTADT  
Notary Public, State of New York  
No. 02GO6114080  
Qualified in Nassau County  
Commission Expires August 9, 20 12



PAYOR'S RECEIPT

Signature This  
Block Number  
On All Papers

County Suffolk County

V.

TIME

CASH

John H. H. H.

Form 100

10-11-2010

MAK 1.3 2010

10 10452

DO NOT WRITE IN THIS SPACE



St. Paul Fire & Marine Insurance Company  
701 Westchester Avenue  
Suite 102W  
White Plains NY 10604  
Telephone: (631)577-7159  
Fax: (866) 422-8263

September 10, 2007

**VIA CERTIFIED MAIL/RETURN RECEIPT AND REGULAR US MAIL**

Inc. Village of Ocean Beach  
Attn: Ms. Minerva Paradiso  
PO Box 457  
Ocean Beach NY 11770-0457

Police Officer Paul Corollo  
20 Jaymon Lane  
Commack, NY 11725

Chief of Police Edward T. Paradiso  
Village of Ocean Beach Police Department  
Bay and Bayberry Walks  
Ocean Beach, NY 11770

Police Officer David Gerdon  
10 Lerner Street  
West Babylon, NY 11704

Sergeant George Hesse  
Village of Ocean Beach Police Department  
Bay and Bayberry Walks  
Ocean Beach, NY 11770

Police Officer William Emburey  
205 Dartmouth Street  
Hempstead, NY 11550

Police Officer Arnold Hardman  
263 Washington Avenue  
Saint James, NY 11780

Police Officer Kenneth Bockelman  
25 Catherwood Crescent  
Melville, NY 11780

**RE: Our Insured:** Inc. Village of Ocean Beach  
**Plaintiff:** Samuel Gilbert  
**Date of Loss:** 08/27/2005  
**Our File Number:** 002 LR V2F2979

Dear Ms. Paradiso and Gentlemen:

As you are likely aware, St. Paul Fire & Marine Insurance Company ("Travelers") is the insurance carrier for the Inc. Village of Ocean Beach with regard to an incident involving the plaintiff, Samuel Gilbert. This letter will acknowledge receipt of the United States District Court Summons and Complaint entitled *Samuel W. Gilbert and Kanna Manglapus, plaintiff against Village of Ocean Beach, Ocean Beach Police Department, Chief of Police Edward T. Paradiso, Sergeant George Hesse, and Police Officers Arnold Hardman, Kenneth Bockelman, Paul Corolla, David Gerdon, William Emburey and John "Does" 1-5, (names representing additional police officers being fictitious and unknown to the plaintiff), defendants.* It will further serve to supplement our correspondence of September 27, 2005 and December 20, 2006 regarding the coverage available for this incident.

The above captioned summons and complaint was submitted to this company for consideration under policy number GP09312724 which was issued to the Inc. Village of Ocean Beach by St. Paul Fire and Marine Insurance Company for the policy period of 07/05/2005-07/05/2006. This policy contains limits of \$1,000,000 per event and \$2,000,000 general aggregate, subject to a \$5,000 deductible for each wrongful act.



RECEIVED  
SEP 21 2007

BY:.....

**CERTIFIED -- RETURN RECEIPT REQUESTED AND REGULAR MAIL**

September 17, 2007

Village of Ocean Beach  
P.O. Box 457  
Ocean Beach, New York 11770  
Attn: Mary Anne Minerva – Village Administrator

✓ Sergeant George Hesse  
Inc. Village of Ocean Beach Police Department  
P.O. Box 457  
Ocean Beach, New York 11770

Officer Arnold Hardman  
Inc. Village of Ocean Beach Police Department  
P.O. Box 457  
Ocean Beach, New York 11770

RE: Jesse J. Prisco v Village of Ocean Beach, Ocean Beach Police Department, Sergeant George Hesse and Police Officer Arnold Hardman

RE: Insured: Incorporated Village of Ocean Beach  
Plaintiff: Jesse J. Prisco  
Date of Loss: August 8, 2004  
File #: CU000632

Dear Sir or Madam:

Merchants Mutual Insurance Company (Merchants) acknowledges receipt of a Summons & Complaint as captioned above. Merchants is the Commercial Umbrella Insurance carrier for the Village of Ocean Beach under policy number CUP9135248. This policy provides an excess layer of liability coverage in the amount of \$3,000,000 and was newly issued on 7/5/04 and is effective 7/5/04 to 7/5/05. It is my understanding that Diamond State Insurance Company provides an underlying Police Professional Liability policy of insurance with liability limits in the amount of \$1,000,000.

This lawsuit arises out of an alleged incident involving Officer Hardman and Sergeant Hesse. Claims have been made by Mr. Jesse Prisco of unlawful arrest, assault and battery and violations of Mr. Prisco's civil rights. The lawsuit further alleges actions were taken to cover up the alleged incident.

**MERCHANTS INSURANCE GROUP**

250 Main Street P.O. Box 78 Buffalo, New York 14240 (716) 849-3333

**VILLAGE OF OCEAN BEACH**



James Mallott  
Mayor/ Police Commissioner

George B. Hesse  
Police Department

**POLICE DEPARTMENT  
623 BAY WALK, POB 425  
OCEAN BEACH, New York 11770  
631-583-5866 fax 631-583-8289**

May 23, 2020

To: James Mallott, Mayor/Police Commissioner

From: George B. Hesse, Chief of Police

Ref: Chris Norris, Village Trustee  
Violation of the Village of Ocean Beach Workplace Violence Prevention Policy

Dear Mayor Mallott;

On May 22, 2020, at approximately 1140hrs, Police Officers Eric Kirchner and Brian Redden were on residential bike patrol in the area of the fire house. They observed Brian Norris walking around on Bayberry Walk and the Fire Department tarmac without a face covering. The Officers stopped to question him. Brian Norris responded with demeaning and derogatory comments. My assumption is that he's annoyed that someone is illegally parked on his property. This, to my knowledge, has been a problem in the past especially with fireman always parking there. At this time Officer Kirchner asked for Brian's identification to prove he was in fact Brian Norris. While Officer Kirchner dealt with Brian Norris, Officer Redden ran the license plate of the illegally parked vehicle. After the ticket was issued to Brian for not wearing a face covering it was discovered the vehicle belonged to Gary from Love the Plumber. When Brian overheard this he said he didn't want to take any legal action against Gary. Just have the vehicle moved. After everything was complete and Officer Kirchner was walking away, Brian Norris continued to berate the Officer calling him an "asshole".

Approximately 10 minutes later Brian Norris responded to the police department demanding to see me and or Sgt. Hank Clemmens. Sgt. Clemmens was off duty and I was with you while you (Mayor Mallott) were being interviewed by Channel 12 News. Brian, unhappy with the fact that I wasn't present at the office left allegedly uttering in a threatening manner that we are all in "big trouble". (see officers notes)

Later in the day at approximately 1711hrs through 1805hrs, I received texts from Brian's father, Village of Ocean Beach Trustec Chris Norris asking me if I was aware of the ticket issued. I stated, yes I'm aware, and that there's more to the story. Trustee Norris really didn't care what I had to say. His responses were condescending in nature. I asked him if he wanted to come into the office and file a complaint against the officer and have us issue a ticket to Gary from Love, to come see me in the office the following day. Trustee Chris Norris responded "This will go legal". I asked Trustee Norris what he meant by that and he stated "exactly as it states". I took his statement as a blatant threat. It is my opinion that Trustee Chis Norris and his son Brian Norris violated the Villages Workplace Violence Prevention Policy:

Section E. Prohibited Conduct.

- Making Threatening Remarks

At no time should I as Chief of Police or any of my officers ever feel intimidated or be threatened by any Village Official or anyone for that matter for doing their job. The Men and Women of this Police Department come from varying backgrounds and levels of experience to serve this community with the utmost integrity and professionalism.

Respectfully Submitted;



George B. Hesse  
Chief of Police

See attached statements of:  
Officer Eric Kirchner #429  
Officer Andrew Becher #401  
Printed copies of Text messages received of Trustee Chris Norris  
Copy of ticket issued to Brian Norris  
Copy of Officers notes on back of ticket  
10 pages..

Cc: Steve Brautigam, Village Clerk  
Jonneigh Adrion, Deputy Village Clerk

***Christopher F. Norris***  
***591 Bayberry Walk***  
***Ocean Beach, New York 11702***  
***Cellular 917-626-3587***  
***Christopher.F.Norris@gmail.com***

Mayor and Police Commissioner James Mallot  
Village of Ocean Beach  
315 Cottage Walk, PO Box 457  
Ocean Beach, New York 11770

June 5, 2020

RE: Incident at 591 Bayberry, May 22, 2020

Mr. Mayor,

I begin this correspondence by stating unequivocally that I am writing in my capacity as a private citizen of the Village Ocean Beach and in NO WAY in my capacity a Village Official.

In my capacity as a private citizen and taxpaying homeowner, I write to make a complaint about two instances where the Ocean Beach Police Department failed to enforce Village law; arbitrarily and capriciously applied the law differently to different people; and specifically unfairly and improperly targeted my son Brian Norris.

**First Instance: Police Fail to Issue Summons for Trespass**

On May 22, 2020, my son Brian Norris, who is residing in the family home at 591 Bayberry Walk, Ocean Beach, observed a truck parked on our property. That is a trespass and a violation of Village law. As the Ocean Beach Police Department is well aware, this has been an ongoing issue over the years, one which precipitated my filing an affidavit with the Department some years ago stipulating that anyone found parking on this property, without explicit permission from me, should be issued summonses and or any other remedy available to citizens through legal means to cease the trespass.

As Brian looked to see where the driver of this truck was, he was approached by two Department officers, who demanded that he show them ID, and then issued him a summons for being marginally outside the boundaries of our property without a face mask (Summons # A 08585). The officers gave Brian no warning. The officers refused to listen to Brian's explanation about looking for the person trespassing on our property. Most improperly, the officers did not issue a summons for the trespass. To me as a citizen, the failure to issue a summons for the trespass means the police did not do their job of protecting citizens' property and fairly enforcing Village law. Instead, they unfairly and improperly targeted Brian by issuing only him a summons, not the trespasser.

**Second Instance: Police Fail to Issue Summons for Biking Without Mask**

The arbitrary and capricious nature of the Department's conduct was exacerbated by a second instance on May 28, 2020, when officers issued Brian a second summons. On this occasion, Brian approached a Village police officer to alert him to an individual who was not wearing a mask in immediate proximity of both Brian and the officer. Instead of issuing a summons to the individual for not properly wearing a mask, —i.e. the very same offense Brian was charged with a few days before—the officer instead issued yet another summons to Brian, this time for riding a skateboard. It should be noted that a total of 4 officers were involved in the issuance of this second summons.

**Christopher F. Norris**  
**591 Bayberry Walk**  
**Ocean Beach, New York 11702**  
**Cellular 917-626-3587**  
**Christopher.F.Norris@gmail.com**

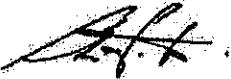
Conclusion

What stands out here is the inconsistency in the application of the law, which clearly varies from individual to individual and varies on the stringent application of one ordinance to the exclusion of another, even when both instances are linked as closely as the events of the 22<sup>nd</sup> had been. Why a summons for one infraction and the ignorance of another? These two incidents are emblematic of an arbitrary and capricious application of law by the Village Police Department.

These two instances of arbitrarily and capriciously failing to apply the law equally to all and targeting my son Brian specifically have been very upsetting to me, not only as a parent, but as a Village resident. In these times of all times, the Village needs to be able to trust that its Police Department will fairly, equally, and consistently apply the law evenly to all people. I do not know what about Brian as a person is making the Village Police target him so disproportionately and unfairly in comparison to other people. Whatever it is, to me as a citizen, these events are disconcerting in the extreme.

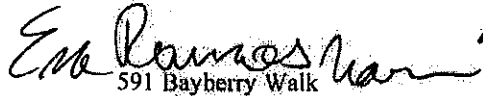
It is in this context that I respectfully submit a formal complaint concerning these events and look forward to your response.

Christopher Norris



591 Bayberry Walk

Eva Ramos Norris



591 Bayberry Walk

cc: Chief Hess, OBPD  
Trustees Blake, Hargraves, Norris & Power

Village of Ocean Beach  
Police Department

CIVILIAN COMPLAINT REPORT

**INSTRUCTIONS:** The officer in charge will complete the appropriate portions of this form in any complaint alleging misconduct by a member of the department. He will submit completed form as indicated above, including deposition form and any other documents of proof if available. An investigating officer will communicate with the complainant and/or their attorney to arrange for an interview regarding this investigation at a convenient time.

DATE RECEIVED <b>8/22/10</b>		HOW COMPLAINT RECEIVED <b>By Phone</b>	
RECEIVING OFFICER <b>Hesse, George B</b>	RANK <b>Chief</b>	SHIELD <b>101</b>	COMMAND <b>8900</b>
COMPLAINANT'S LAST NAME, FIRST, MIDDLE <b>Matz, Matthew R.</b>		D.O.B. <b>12/8/83</b>	<input checked="" type="checkbox"/> M <input type="checkbox"/> F
ADDRESS <b>19 Soundbreeze Trail, Wading River NY 11792</b>	HOME PHONE <b>631-886-1554</b>		
OCCUPATION	ADDRESS <b>Email - mrmatz83@gmail.com</b>	BUSINESS PHONE <b>631-664-4082</b>	
PRIMARY LANGUAGE OF COMPLAINANT <input checked="" type="checkbox"/> ENGLISH <input type="checkbox"/> SPANISH <input type="checkbox"/> OTHER		REPRESENTATIVE/INTERPRETER	
NAME OF POLICE OFFICER(S) IF UNKNOWN PROVIDE DESCRIPTIONS <b>Officer Joseph Cornetta #425</b>			
SHIELD(S) <b>Police Station</b>	TYPE OF DUTY <input type="checkbox"/> AUTO <input checked="" type="checkbox"/> FOOT PATROL <input type="checkbox"/> PLAIN CLOTHES <input type="checkbox"/> POST		
LOCATION OF INCIDENT <b>NONE / Video Tape</b>	DATE AND TIME OF INCIDENT <b>NONE</b>		
WITNESSES NAME/ADDRESS/PHONE NUMBER		NAME OF ATTORNEY/ADDRESS/OR PHONE NUMBER	

DOES COMPLAINANT GIVE PERMISSION TO BE CONTACTED AT PLACE OF EMPLOYMENT? ☐ YES ☐ NO  
DEPOSITION TAKEN ☐ YES ☐ NO  
OTHER DOCUMENTATION ☐ PHOTOGRAPHS ☐ PHYSICAL EVIDENCE ☐ OTHER  
BRIEF DETAILS OF COMPLAINT (INCLUDE CC# IF APPLICABLE)

Complainant States when he received his property back after Arrest it Appeared to have spit on it. 1 Blackberry Cell Phone, Wallet, and a baseball cap. The undersigned Officer looked at the Surveillance tapes and Found Officer Joseph Cornetta #425 Put a glue all over Mr. Matz Personal Items. As of 8/26/10 At 12:23 spoke to Mr. Matz and advised him to <sup>Safeguard</sup> ~~Safeguard~~ all Items and to bring them to me to lock in as evidence.

OFFICER IN CHARGE <input type="checkbox"/>	<input type="checkbox"/> RESOLVED-FORWARDED TO CHIEF	SIGNATURE <b>[Signature] #101</b>	DATE <b>8/23/10</b>
<input type="checkbox"/>	<input type="checkbox"/> UNRESOLVED-FORWARDED TO CHIEF		
CHIEF <input type="checkbox"/>	<input type="checkbox"/> RESOLVED-FILED	SIGNATURE _____	DATE _____
<input type="checkbox"/>	<input type="checkbox"/> UNRESOLVED		



Village of Ocean Beach  
Police Department

CIVILIAN COMPLAINT REPORT

INSTRUCTIONS: The officer in charge will complete the appropriate portions of this form in any complaint alleging misconduct by a member of the department. He will submit completed form as indicated above, including deposition form and any other documents of proof if available. An investigating officer will communicate with the complainant and/or their attorney to arrange for an interview regarding this investigation at a convenient time.

5/30/2020

DATE RECEIVED Hess		HOW COMPLAINT RECEIVED Chief	
RECEIVING OFFICER Norris, Brian, Scott	RANK 7/13/85	SHIELD	COMMAND
COMPLAINANT'S LAST NAME, FIRST, MIDDLE 28 Woodridge Ln Sen Cliff N.Y.		D.O.B.	[X] M [ ] F
ADDRESS		HOME PHONE	
OCCUPATION	ADDRESS	BUSINESS PHONE	
PRIMARY LANGUAGE OF COMPLAINANT [X] ENGLISH [ ] SPANISH [ ] OTHER		REPRESENTATIVE/INTERPRETER	
NAME OF POLICE OFFICER(S) IF UNKNOWN PROVIDE DESCRIPTIONS 401 Andrew Beecher			
SHIELD(S) Berry Walk	TYPE OF DUTY [ ] AUTO [X] FOOT PATROL [ ] PLAIN CLOTHES [ ] POST		
LOCATION OF INCIDENT Brian	DATE AND TIME OF INCIDENT		
WITNESSES-NAME/ADDRESS/PHONE NUMBER		NAME OF ATTORNEY/ADDRESS/OR PHONE NUMBER	
DOES COMPLAINANT GIVE PERMISSION TO BE CONTACTED AT PLACE OF EMPLOYMENT? [ ] YES [X] NO			
DEPOSITION TAKEN [ ] YES [X] NO			
OTHER DOCUMENTATION [ ] PHOTOGRAPHS [ ] PHYSICAL EVIDENCE [X] OTHER			
BRIEF DETAILS OF COMPLAINT (INCLUDE CC# IF APPLICABLE)			

At the time of witnessing my skateboard infraction, the ticketing officer witnessed another gentleman improperly wearing his face mask and refused to ticket, cite, or even address it. When I questioned the officer, he told me it was discretionary and proceeded to ticket me for my skateboard.

OFFICER IN CHARGE [ ]	RESOLVED-FORWARDED TO CHIEF	SIGNATURE	DATE
CHIEF [X]	UNRESOLVED-FORWARDED TO CHIEF		
	RESOLVED-FILED	SIGNATURE	DATE
	UNRESOLVED		5/30/2020



POLICE DEPARTMENT  
INCORPORATED VILLAGE OF OCEAN BEACH  
OCEAN BEACH, NEW YORK 11770

EDWARD T. PARADISO  
POLICE

ALERT # 070697-10

INSTRUCTIONS: The officer in charge (O.I.C.) will complete the appropriate portions of this form when reporting a civilian complaint (written, verbal or otherwise) alleging misconduct by a member of the Department or an improper or inadequate Department policy or procedure. The completed form along with any relative documents (photos, statement, medical records, etc.) will be forwarded to the commanding officer of the officer in charge. The complainant will be advised that the commanding officer or his representative will contact them regarding the complaint. The commanding officer will insure that the appropriate distribution of this form and related paperwork is made.

DISTRIBUTION: PERSONNEL: Original-Internal Affairs Bureau; 1st copy-subject officer's C.O.; 2nd copy-Division Chief; 3rd copy-Complainant.  
PROCEDURAL: Original-Internal Affairs Bureau; 1st copy-Chief Inspector; 2nd copy-Division Chief; 3rd copy-Complainant

DATE/TIME RECEIVED 7-6-97 11:35		HOW COMPLAINT RECEIVED <input type="checkbox"/> PERSON <input type="checkbox"/> MAIL <input checked="" type="checkbox"/> TELEPHONE <input type="checkbox"/> OTHER				
RECEIVING OFFICER		RANK		SHIELD	COMMAND	SQUAD
COMPLAINANT'S LAST NAME, FIRST, M.I. REGINA, ELAINE					DATE OF BIRTH	<input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE
ADDRESS 442 SPANGLER DRIVE					HOME PHONE 516-321-8623	
OCCUPATION		ADDRESS N. Babylon 11703			BUSINESS PHONE 665-6601	
PRIMARY LANGUAGE OF COMPLAINANT <input checked="" type="checkbox"/> ENGLISH <input type="checkbox"/> SPANISH <input type="checkbox"/> OTHER				REPRESENTATIVE/INTERPRETER		
ADDRESS					PHONE	
NAME OF POLICE OFFICER(S) IF UNKNOWN PROVIDE DESCRIPTION(S) PO Butler PO Hesse				SHIELD(S) 413 103	TYPE OF DUTY <input type="checkbox"/> AUTO <input checked="" type="checkbox"/> FOOT PATROL <input type="checkbox"/> CIVILIAN CLOTHES <input type="checkbox"/> OTHER (EXPLAIN)	CAR OR POST NO COMM. OR PCT.
LOCATION OF INCIDENT(S) (INCLUDE VILLAGE, TOWN, OR HAMLET) Village of Ocean Beach					DATE & TIME OF OCCURRENCE 7-5-97 12:07 PM	
WITNESSES - NAME/ADDRESS/PHONE NUMBER PO Butler				NAME OF ATTORNEY/ADDRESS/OR PHONE NUMBER		
DOES COMPLAINANT GIVE PERMISSION TO BE CONTACTED AT PLACE OF EMPLOYMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				DEPOSITION TAKEN <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	OTHER DOCUMENTATION <input checked="" type="checkbox"/> PHOTOGRAPHS <input type="checkbox"/> OTHER <input type="checkbox"/> PHYSICAL EVIDENCE	
INDICATE NATURE OF COMPLAINT: <input checked="" type="checkbox"/> PERSONNEL <input type="checkbox"/> PROCEDURAL (Mother of compl/Off)						
BRIEF DETAILS OF COMPLAINANT (INCLUDE CCN, AN, IF APPLICABLE) ABOVE STATES THAT SON WAS BEATEN CHOKED; DENIED BATTERED, SAT HANDCUFFED FOR 30 MIN WHILE IN THE CELL, DENIED PHONECALLS - LEFT PENNILESS WHEN RELEASED AT 4AM WITH NO PLACE TO GO.						
OFFICER IN CHARGE - ACTION TAKEN <input type="checkbox"/> RESOLVED - NO FURTHER ACTION REQUIRED <input type="checkbox"/> FORWARD TO C.O.				COMMANDING OFFICER - ACTION TAKEN <input checked="" type="checkbox"/> TO BE INVESTIGATED WITHIN COMMAND <input type="checkbox"/> RESOLVED WITHIN COMMAND INSTANTLY <input type="checkbox"/> FORWARD TO _____ FOR INVESTIGATION		
SIGNATURE	COMMAND/SQUAD	DATE/TIME	SIGNATURE	COMMAND/SQUAD	DATE/TIME	
						(200)

**VILLAGE OF OCEAN BEACH**



James Mallott  
Mayor/ Police Commissioner

George B. Hesse  
Police Department

**POLICE DEPARTMENT  
623 BAY WALK, POB 425  
OCEAN BEACH, NEW YORK 11770  
631-583-5866 fax 631-583-8289**

May 26<sup>th</sup>, 2019

To: Dispatcher Daniel Sicilian #550

From: George B. Hesse, Chief of Police

Re: Command Discipline

Disp. Daniel Sicilian #550 you have been found in violation of Chapter 5 Section 1 V.B.d Neglect or Disobedience.

On this date May 26, 2019, at approximately 1100hrs, Police Officer Michael Mills approached you at police headquarters explaining to you who to send on calls because the rest of the officer were detailed out for parade duty. At some point in my opinion the conversation became heated. It is also my opinion the expletive responses were inappropriate.

For your actions I recommend a 2 day suspension without pay. Your suspension days will be June 9, 2019 and June 16, 2019.

This is your first violation of the Rules and Procedures of the Ocean Beach Police Department. Any further violations may result in further disciplinary action.

Submitted,

A handwritten signature in black ink, appearing to read "G. B. Hesse", written over a horizontal line.

George B. Hesse  
Chief of Police



INCORPORATED VILLAGE OF OCEAN BEACH  
POST OFFICE BOX 457  
OCEAN BEACH, NEW YORK 11770-0457  
TEL: (631) 583-5940 FAX: (631) 583-7597  
www.villageofoceanbeach.org

RECEIVED  
AUG 30 2019

COMPLAINT FORM

BY: .....

DATE AUG 30 2019 RECEIVED BY Donnie

NAME OF COMPLAINANT: JAMES RAGUSA

ADDRESS OF COMPLAINANT: 879 EVERGREEN WALK  
OB NY 11770

SPECIFIC COMPLAINT: SELECTIVE ENFORCEMENT OF OBDV  
156-12 - VEHICLE CONCEALMENT

NUMEROUS VEHICLES ARE NOT CONCEALED AROUND  
HOUSES + OFFICES IN THE VILLAGE. I HAVE BEEN  
SINGLED OUT. THIS CODE HAS NOT BEEN ENFORCED  
IN YEARS! CHANGE CODE OR ENFORCE  
EQUALLY.

Respectfully James Ragusa  
8/30/19

cc: Kevin J. Schelling, Supt. of Public Works

OFFICE USE ONLY

ACTION TAKEN/DATE:


8/31/19

DEAR JIM + MEMBERS OF THE BOARD,

I AM COPIING YOU ON MY COMPLAINT FILED ON 8/30/19. THE VINDICTIVE POLICE CHIEF HAS AUDITED HIMSELF JUDGE, JURY + EXECUTIONER. A BAD THING FOR ALL OF US. HE HAS DECIDED TO IGNORE MY NOISE COMPLAINTS AT 987 SURFVIEW DUE TO A RELATIONSHIP OF ONE OF YOUR OFFICERS AND THE NEW OWNERS OF A PLACE IN THE SUN.

NOW HE SINGLES ME OUT FOR AN ORDINANCE I AM AWARE OF, THAT I FOLLOWED FOR YEARS. HOWEVER, NO ELSE DID SO I STOPPED. WHY A VEHICLE NEEDS TO BE CONCEALED IS NOT KNOWN.

I'VE BEEN SINGLED OUT BECAUSE I WOULD NOT STOP COMPLAINING ABOUT THE RECKLESS NOISE AT AN HOURS OF THE DAY + NIGHT AT 987 SURFVIEW WALK.

I WILL NOT STOP COMPLAINING OR BE BULLIED. THE HOUSE IS OUT OF ORDER. AT FIRST THERE WERE MANY VIOLATIONS OF THE VILLAGE CODE ON OPERATION OF A ROOMING HOUSE. MAYBE THE NEW BUILDING INSPECTOR SHOULD GO BY AND HAVE A LOOK.

THANK YOU,

James Raym

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

RECEIVED  
JUL 21 2017

BY: .....

-----X  
JORDAN TAFFET,

Claimant

**NOTICE OF CLAIM**

- against -

VILLAGE OF OCEAN BEACH NY,  
VILLAGE OF OCEAN BEACH NY BOARD OF TRUSTEES,  
VILLAGE OF OCEAN BEACH NY JUSTICE HON. WILLIAM D. WEXLER,  
VILLAGE OF OCEAN BEACH NY JUSTICE HON. PAMELA ESTERMAN  
VILLAGE OF OCEAN BEACH NY POLICE OFFICER GEORGE HESSE,  
VILLAGE OF OCEAN BEACH NY PROSECUTOR ROBERT T. FUCHS,  
Defendant(s)

-----X

TO THE VILLAGE OF OCEAN BEACH NY, Etal.  
Attention Village Attorney (Ken Gray)  
PO Box 457  
Ocean Beach, NY 11770

PLEASE TAKE NOTICE that the claimant herein hereby makes claim and demand against you as follow:

1. The name and post-office address of the claimant and of his/her attorney is:

Claimant

Jordan Taffet  
PO Box 658  
Rockville Centre, NY 11571

Claimant's Attorney

Pro Se

2. The nature and date of the claim is malicious prosecution, false arrest, false imprisonment, denial of civil rights, harassment, conspiracy to impede equal protection, conspiracy to impede due course of justice, conspiracy to obstruct justice, supervisory liability, intentional and negligent infliction of emotional distress, making injurious or false or fraudulent statements, and failure to intercede regarding my June 16, 2017 arrest, fixing of bail and imprisonment, all based on a fictitious and/or unlawful alleged missed court ordered appearance.
3. The list of damages or injuries claimed are:
- a) Violations of my rights under the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution; and
  - b) Loss of Physical Liberty; and
  - c) Pain and suffering, extreme fear, emotional trauma; and
  - d) Humiliation, embarrassment, and injury to reputation

That said claim and demand is hereby presented for adjustment and payment.  
You are hereby notified that unless it is adjusted and paid within the timeframe  
provided by law for the date of presentation to you, the claimant intends to  
commence an action of this claim.

  
\_\_\_\_\_  
Claimant Jordan Taffet

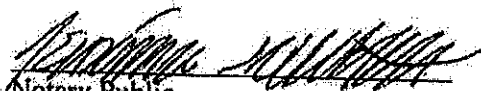
STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

JORDAN TAFFET, being duly sworn, says:

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.

  
\_\_\_\_\_  
Claimant Jordan Taffet

Sworn to before me this 19  
day of July, 20 17

  
\_\_\_\_\_  
Notary Public

KEVIN F SCOTT  
Notary Public - State of New York  
NO. 01SC6315646  
Qualified in Nassau County  
My Commission Expires Dec 1, 2018

SHORT FORM ORDER

INDEX NO.: 609185/2017

SUPREME COURT - STATE OF NEW YORK  
PART 6- SUFFOLK COUNTY

PRESENT:

Hon. Sanford Neil Berland, A.J.S.C.

JORDAN TAFFET,

Plaintiff,

-against-

INCORPORATED VILLAGE OF OCEAN  
BEACH, TRUSTEES OF THE  
INCORPORATED VILLAGE OF OCEAN  
BEACH, POLICE OFFICER GEORGE HESSE,  
HON. WILLIAM DOUGLAS WEXLER, ESQ.,  
ROBERT T. FUCHS, ESQ., KENNETH GRAY,  
ESQ., JOANNEIGH ADRION, COUNTY OF  
SUFFOLK NY DISTRICT ATTORNEY, and  
COUNTY OF SUFFOLK, NY,

Defendants.

ORIG. RETURN DATE: July 6, 2017  
FINAL RETURN DATE: May 28, 2019  
MOT. SEQ. #: 001 MG

ORIG. RETURN DATE: July 27, 2017  
FINAL RETURN DATE: May 28, 2019  
MOT. SEQ. #: 002 MotD

ORIG. RETURN DATE: August 16, 2017  
FINAL RETURN DATE: May 28, 2019  
MOT. SEQ. #: 003 MD

ORIG. RETURN DATE: June 26, 2018  
FINAL RETURN DATE: May 28, 2019  
MOT. SEQ. #: 004 MG

ORIG. RETURN DATE: January 8, 2019  
FINAL RETURN DATE: May 28, 2019  
MOT. SEQ. #: 005 MD

PLAINTIFF PRO SE:

JORDAN TAFFET  
P.O. Box 658  
Rockville Centre, New York 11571

DEFENDANTS' ATTORNEYS:

SUFFOLK COUNTY ATTORNEY'S OFFICE  
100 VETERANS MEMORIAL HIGHWAY  
HAUPPAUGE, NY 11788

DEVITT, SPELLMAN & BARRETT, LLP  
Attorneys for Village Defendants  
50 ROUTE 111  
SMITHTOWN, NY 11787

RIVKIN RADLER LLP  
Attorneys for Defendant Kenneth A. Gray, Esq.  
926 RXR Plaza  
Uniondale, New York 11556-0926

Upon the reading and filing of the following papers in this matter: (1) Notice of Motion (#001), by defendants County of Suffolk NY District Attorney, William Reynolds, and County of Suffolk, dated June 5,



2017, and supporting papers; (2) Affidavit In Opposition by plaintiff, dated June 27, 2017, and supporting papers; (3) Notice of Motion (#002) by defendant Kenneth Gray, Esq., dated July 10, 2017, and supporting papers; (4) Affidavit In Opposition by plaintiff, dated August 17, 2017, and supporting papers; (5) Affirmation In Opposition by defendant Kenneth Gray, dated August 22, 2017, and supporting papers; (6) Notice of Motion (#003) by plaintiff dated July 19, 2017, and supporting papers; (7) Affirmation In Opposition by defendants Incorporated Village of Ocean Beach, Trustees of the Incorporated Village of Ocean Beach, Police Officer George Hesse, Hon. William Douglas Wexler, Esq., Robert T. Fuchs, Esq., and Joanneigh Adrion, dated August 8, 2017, and supporting papers; (8) Affidavit In Opposition by plaintiff, dated August 16, 2017; (9) Notice of Motion (#004) by defendants Incorporated Village of Ocean Beach, Trustees of the Incorporated Village of Ocean Beach, Police Officer George Hesse, Hon. William Douglas Wexler, Esq., Robert T. Fuchs, Esq., and Joanneigh Adrion, dated April 4, 2018 and supporting papers; (10) Affidavit In Opposition by plaintiff, dated July 24, 2018 and supporting papers; (11) Reply Affirmation by defendants Incorporated Village of Ocean Beach, Trustees of the Incorporated Village of Ocean Beach, Police Officer George Hesse, Hon. William Douglas Wexler, Esq., Robert T. Fuchs, Esq., and Joanneigh Adrion, dated August 15, 2018 and supporting papers; (12) Notice of Motion (#005) by plaintiff, dated December 19, 2018 and supporting papers; and (13) Affirmation In Opposition by defendants Incorporated Village of Ocean Beach, Trustees of the Incorporated Village of Ocean Beach, Police Officer George Hesse, Hon. William Douglas Wexler, Esq., Robert T. Fuchs, Esq., and Joanneigh Adrion, dated December 28, 2018; it is

**ORDERED** that the motions sequenced #001, #002, #003, #004, and #005 are consolidated for the purposes of this determination; and it is further

**ORDERED** that the motion (seq. #001) by defendants County of Suffolk NY District Attorney, County of Suffolk, and William Reynolds, Esq. to dismiss the complaint against them pursuant to CPLR 3211 is granted; and it is further

**ORDERED** that the motion (seq. #002) by defendant Kenneth Gray, Esq., to dismiss the complaint against him pursuant to CPLR 3211 is granted; and it is further

**ORDERED** that the motion (seq. #002) by defendant Kenneth Gray, Esq. for an order imposing sanctions against plaintiff pursuant to 22 NYCRR § 130.1, *et seq.* is denied; and it is further

**ORDERED** that the motion (seq. #003) by plaintiff for a protective order is denied; and it is further

**ORDERED** that the motion (seq. #004) by defendants Incorporated Village of Ocean Beach, Trustees of the Incorporated Village of Ocean Beach, Police Officer George Hesse, Hon. William Douglas Wexler, Esq., Robert T. Fuchs, Esq., and Joanneigh Adrion for summary judgment pursuant to CPLR 3212 is granted; and it is further

**ORDERED** that the motion (seq.#005) by plaintiff for poor person relief pursuant to CPLR 1101 is denied.

This action arises out of a series of prosecutions of plaintiff for alleged violations of a number of provisions of the Code of the Village of Ocean Beach and of the New York State Penal Law related to his management of rental properties in the Village of Ocean Beach. Plaintiff contends that these prosecutions were the result of what amounted to a conspiracy by the defendants to harass and damage him in order to put him out of business. Plaintiff commenced this action by filing a Summons and Verified Complaint on May 15, 2017. Defendants Incorporated Village of Ocean Beach, Trustees of the Incorporated Village of Ocean Beach, Police Officer George Hesse, Hon. William Douglas Wexler, Esq., Robert T. Fuchs, Esq., and Joanneigh Adrion (collectively, the Village defendants) answered the complaint on June 27, 2017. Defendants County of Suffolk NY District Attorney, the County of Suffolk and William Reynolds<sup>1</sup> (collectively, the County defendants) have moved to dismiss the complaint pursuant to CPLR 3211 (seq. #001) for failure to state a cause of action and as time barred and for plaintiff's failure to serve a notice of claim as required by the General Municipal Law and, as to William Reynolds, on the additional ground that he is immune from civil liability. Defendant Kenneth Gray, Esq. has separately moved to dismiss the complaint pursuant to CPLR 3211 (seq.#002) for failure to state a cause of action and for the imposition of sanctions against the plaintiff. The Village defendants have moved for summary judgment in their favor, dismissing the complaint, on a variety grounds, pursuant to CPLR 3212 (seq.#004). Plaintiff has moved, *pro se*, for a protective order pursuant to CPLR 3103, directing that his deposition be held at a location other than the office of counsel for the Village defendants (seq.#003) and for permission to proceed as a poor person pursuant to CPLR 1101 (seq.#005).

**Background:**

The complaint seeks to allege twenty causes of action. Plaintiff, who is proceeding *pro se*, alleges essentially as follows: Plaintiff managed rental houses in the Village of Ocean Beach. In 2007 and 2010, the Village enacted new statutes revising the rental permit process to require that the name, address and telephone number of all tenants who would be occupying each dwelling be provided and that applications be amended with each change in tenant. Failure to comply with these new requirements would result in fines and/or jail. Plaintiff contends that these new statutes were designed to discourage rentals to groups of unrelated tenants. Plaintiff's business expanded with the institution of these new rules. Plaintiff alleges that defendant Hesse, the Chief of the Village of Ocean Beach Police Department, asked plaintiff to stop renting to groups and to rent instead to

---

<sup>1</sup>William Reynolds is not named in the caption of the Summons and Verified Complaint, but is cited in various sections of the complaint.

families. When plaintiff refused to do so, indicating that there was more money to be made under his current business model, Hesse threatened to write tickets imposing fines in order to take the profit out of plaintiff's business. On June 21, July 3 and July 5, 2013, six summonses were issued to plaintiff for violations that plaintiff claims the issuing officer knew plaintiff had not committed.<sup>2</sup> On August 3, 2013, plaintiff was arraigned on the tickets by defendant Hon. William Douglas Wexler, Esq., the Village Justice, and pled not guilty. Plaintiff alleges that the Village prosecutor handling plaintiff's case, defendant Robert T. Fuchs, Esq., ignored the facts and the law presented and argued by plaintiff's attorney and threatened to prolong plaintiff's case with repeated and unnecessary adjournments. At a court appearance on October 29, 2013, plaintiff alleges that defendants Fuchs and Justice Wexler refused to take the steps necessary to dismiss the tickets and threatened to continue to harass plaintiff. Plaintiff requested the minutes of this proceeding and filed a complaint against Fuchs and Justice Wexler with Appellate Term, which ordered that the minutes for the October 29, 2013 proceeding be released to the plaintiff. In July 2014, Justice Wexler filed an affidavit in the Appellate Term indicating that the Village Court's laptop had "crashed" and that the minutes from the October 29, 2013 proceeding had been destroyed. On May 29, 2014, Justice Wexler allegedly conducted what plaintiff has characterized as a "secret and undocumented arraignment" at which plaintiff was arraigned *in absentia* on six misdemeanor charges and twenty-three new tickets charging plaintiff with non-criminal violations of the Village of Ocean Beach code. The new tickets were signed by Hesse. Fuchs again appeared the Village prosecutor at this proceeding. Plaintiff was not present, but his attorney, Arnold Wolsky did appear. Mr. Wolsky indicated that he was not authorized to represent the plaintiff in connection with any criminal charges. In light of plaintiff's failure to appear, Justice Wexler issued a bench warrant, which he signed on May 31, 2014. When plaintiff sought the minutes from this proceeding, Justice Wexler advised that the court inadvertently had failed to record it. On June 7, 2014, plaintiff was arrested pursuant to the bench warrant issued by Justice Wexler and brought to the local police precinct. Hesse arrived at the precinct later that day and informed plaintiff that Justice Wexler had ordered that plaintiff be brought before him on the warrant, and plaintiff was released and directed to appear before Justice Wexler on June 14, 2014. Plaintiff appeared in court on the designated date, at which time Justice Wexler made a record of the arraignment held on May 29, 2014, and plaintiff was served with the new tickets. Plaintiff challenged the court's jurisdiction over him, and the court set \$1,000.00 bail on each of the six misdemeanor charges against plaintiff. Plaintiff was remanded for several hours until his father posted the \$6,000.00 bail that had been set by Justice Wexler. On August 30, 2014, plaintiff appeared for re-arraignment on the six misdemeanor charges. Even though he had been afforded several weeks' notice of the proceeding, plaintiff appeared without his

---

<sup>2</sup>The tickets were issued for the following alleged violations of the Code of the Village of Ocean Beach: (1) § 127-4.A-Rental Permit Required; (2) §96-01-Hours of Refuse Collection; (3) §87-10-No Smoke Detectors; (4) §87-9-No Fire Extinguisher; (5) §96-05-Bulk Items on Side of House; and (6) §96-2.A-No Proper Containers.

retained attorney, David Grossman, choosing instead to appear *pro se*. Plaintiff was arraigned and provided with hard copies of the criminal complaints against him. During the course of the summer of 2014, plaintiff had a number of court appearances. Plaintiff alleges that at some point during that summer, Fuchs suggested that plaintiff "settle" the various charges against him by paying \$25,000.00 and threatened that if he did not accept this offer, plaintiff would be subjected to a significantly greater amount in fines and would also be sent to jail.

On October 7, 2014, Justice Wexler held a trial against plaintiff on the six tickets that had been issued in June and July of 2013. Plaintiff was found guilty of four of the violations and acquitted on two. The court imposed consecutive sentences totaling twenty days, and plaintiff served eleven days in jail.

Plaintiff also claims that Hesse engaged in a campaign to spread "defamatory rumors" that negatively impacted plaintiff's business and forced him to shut it down. In an omnibus motion submitted by plaintiff to the Village Court on August 5, 2015, plaintiff requested that criminal charges be brought against Hesse. Plaintiff claims that he has "video evidence" of Hesse's crimes, which he alleges include false filings, harassment and obstruction of governmental administration. Plaintiff contends that Fuchs' and Reynolds' refusal to prosecute Hesse constituted an "abuse of process." Plaintiff further claims that an article that appeared in the *Fire Island Newspaper* on August 28, 2015 attributes to Hesse statements about plaintiff that plaintiff claims were untrue and defamatory. The following day, August 29, 2015, plaintiff again appeared before Justice Wexler. Fuchs appeared as the Village Prosecutor and William Reynolds appeared on behalf of the Suffolk County District Attorney's Office. At this proceeding, plaintiff was arraigned on four superseding misdemeanor informations and approximately twenty-one superseding informations on the previously-filed tickets for violations of the Village Code. These matters were set down for trial on September 16, 2015. On September 2, 2015, plaintiff commenced an Article 78 proceeding seeking, *inter alia*, a writ of prohibition on the grounds that Justice Wexler had never obtained jurisdiction over him because he was never properly arraigned on the misdemeanor charges. The court (Baisley, J.) held that, although the court was constrained to agree with plaintiff that he had not been properly arraigned on May 29, 2014 given the conceded unavailability of those proceedings, plaintiff's submissions had failed to establish a "clear legal right" to the relief sought in his petition.<sup>3</sup> Plaintiff sought a bill of particulars regarding the various tickets and misdemeanors with which he was

---

<sup>3</sup>Respondents had argued that even if plaintiff was not properly arraigned either on May 29, 2014 or on August 30, 2014, the error was corrected by subsequent proceedings and rendered moot by plaintiff's arraignment on superseding instruments on August 29, 2015. Justice Baisley opined that any jurisdictional or constitutional claims by plaintiff "are manifestly addressable on direct appeal if petitioner is aggrieved by any final verdict and judgment." (*See Matter of Taffet v. Wexler*, 2016 NY Slip Op 32131, 2016 WL 6472029 [S. Ct. Suffolk County August 2, 2016]).

charged, to which Reynolds responded by contending that the accusatory instruments in question adequately provided the information to which plaintiff was entitled pursuant to the Criminal Procedure Law.

On September 16, 2015, the trial of the now four misdemeanor charges was commenced before Justice Wexler. Pursuant to a plea offer made by Reynolds, plaintiff pled guilty to one of the pending tickets against him, which charged him with a violation of § 112-5F of the Village Code (Unreasonable Noise) in full satisfaction of all of the charges against him. As part of the plea agreement, a fine of \$1,000.00 was imposed upon plaintiff, which plaintiff agreed would be deducted from the bail posted on his behalf by his father. On November 3, 2015, plaintiff made a motion demanding the return of all of the bail posted on his behalf. On February 22, 2016, the Appellate Term reversed plaintiff's conviction on three of the four violations of which he had been convicted after trial on October 7, 2014, on the grounds that the accusatory instruments charging him with those violations were facially insufficient because they did not charge plaintiff with every element of each of the offenses in question. The Appellate Term affirmed plaintiff's conviction for violating § 127-4.A of the Village Code (Rental Permit Required). A total of \$550.00 in fines for the violations that had been reversed by the Appellate Term had been deducted from the bail money posted by plaintiff's father. This amount was refunded to Martin Taffet on March 28, 2016. On November 1, 2016, the Appellate Term reversed, in the interests of justice, plaintiff's conviction on the remaining Village Code violation for which he had been convicted on October 7, 2014, and on February 2, 2017, defendant Adrion wrote to the Office of State Comptroller requesting that the \$1,000 that had been deducted from the bail money posted by plaintiff's father to pay the fine that been imposed on that conviction be refunded to Martin Taffet. On December 28, 2016, plaintiff made a motion for the return of all bail money and the dismissal of all charges against him.

**MOTION TO DISMISS BY THE COUNTY DEFENDANTS (SEQ.# 001):**

The County defendants move to dismiss the complaint pursuant to CPLR 3211[a][5], [7] and [8] and General Municipal Law §§ 50-e and 50-h. In support of their motion, they proffer, *inter alia*, copies of notices of claim propounded by plaintiff, their demands for examination pursuant to GML § 50-h, and for medical record authorizations, notices regarding mailings to plaintiff, a letter to plaintiff rejecting his notice of claim and the summons and complaint in this action. Plaintiff provides his own affidavit in opposition to the motion.

The procedural history as pertinent to plaintiff's claim against the County defendants is as follows: On December 3, 2014, plaintiff addressed to the Suffolk County Attorney a paper entitled "Notice of Intention to File Claim," stating his intention to file a claim against "the State of New York and Village of Ocean Beach." On December 9, 2014, the Suffolk County Attorney's Office sent a letter to plaintiff advising him that his "Notice of Claim" did not "set forth" or "state the

nature of" any claim against the County and advising him that the County is "not legally responsible for the conduct of Village personnel." On or about November 1, 2016, plaintiff sent a Notice of Claim, dated and executed on October 29, 2016, to both the County and the Village. On November 23, 2016, the County sent plaintiff both a demand that he appear for examination pursuant to GML § 50-h and a demand for executed medical record authorizations. Both demands were sent to plaintiff by certified mail, return receipt requested, using the address stated on his Notice of Claim. However, according to notices received from the post office, two failed attempts were made to deliver these demands to plaintiff, and on December 10, 2016 they were returned as "undeliverable." It appears that a GML § 50-h examination of plaintiff was never conducted.

The County defendants contend that the only claim described against them consists of an allegation that Assistant District Attorney William Reynolds failed to provide plaintiff with a bill of particulars on his misdemeanor charges and that this failure, coupled with the various allegations against the Village defendants, served to coerce plaintiff into his guilty plea. The County contends that this allegation is insufficient to state a cause of action as a matter of law and that plaintiff has failed to state a single viable claim against any of the County defendants. The County defendants also contend that, among other grounds for their motion to dismiss for failure to state a claim, that Reynolds and the Suffolk County District Attorney are cloaked in absolute immunity from civil liability. They also contend that the court lacks personal jurisdiction over William Reynolds because he is not named in the caption of the complaint, that plaintiff has failed to comply with the mandates of the General Municipal Law by failing to appear for a duly demanded examination pursuant to § 50-h and that the complaint is barred by the applicable statute of limitations.

In addressing each element of the County defendants' motion to dismiss, the court is guided by black-letter law that "in considering a motion to dismiss pursuant to CPLR § 3211 [a] [7], the court should 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*Sinensky v. Rokowsky*, 22 A.D.3d 563,564, 802 NYS2d 491 [2d Dept. 2005] quoting *Leon v. Martinez*, 84 N.Y.2d 83,87-88, 614 NYS2d 972 [1994]; *Miglino v. Bally Total Fitness of Greater N.Y., Inc.*, 20 NY3d 342, 351, 961 NYS2d 364 [2013]; *Simos v. Vic-Armen Realty, LLC*, 92 A.D.3d 760, 938 NYS2d 609 [2d Dept. 2012]).

#### **Prosecutorial Immunity:**

Individual district attorneys are held absolutely immune from liability "for acts within the scope of their duties in initiating and pursuing a criminal prosecution" (*Pinaud v. County of Suffolk*, 52 F3d 1139, 1147 [2d Cir. 1995]; *Imbler v. Pachtman*, 424 US 409, 410, 96 SCt 984 [1976]). Absolute immunity is extended to a prosecutor "so far as is necessary to the effective functioning of the judicial process " (*Robison v. Via*, 821 F2d 913, 918 [2d Cir. 1987]; see also *Taylor v.*

**Kavanagh**, 640 F2d 450, 452 [2d Cir. 1981]). "The test is whether the prosecutor is engaged in activities that are 'intimately associated with the judicial phase of the criminal process'"(**Day v. Morgenthau**, 909 F2d 75, 77 [2d Cir. 1990], quoting **Imbler v. Pachtman**, *supra* at 430)); see generally **Buckley v. Fitzsimmons**, 509 US 259, 113 SCt 2606 [1993]). Prosecutorial immunity is broadly defined, covering all acts by the prosecutor as an advocate (see **Hill v. City of New York**, 45 F3d 653 [2d Cir. 1995]; see e.g. **Brenner v. County of Rockland**, 67 AD2d 901, 413 NYS2d 185 [2d Dept 1979](prosecutor had absolute immunity for manner in which he presented evidence to the Grand Jury and investigated the matter); **Spinner v. County of Nassau**, 103 AD3d 875, 962 NYS2d 222 [2d Dept 2013](prosecutors had absolute immunity for their alleged actions concerning investigation in the course of pretrial preparation); **Johnson v. Kings County District Attorney's Office**, 308 AD2d 278, 763 NYS2d 635 [2d Dept 2003] (prosecutor had absolute immunity for alleged failure to obtain fingerprints and other identifying evidence to determine if defendant was the fugitive sought); **Whitmore v. City of New York**, 80 AD2d 638, 436 NYS2d 323 [2d Dept 1981] (prosecutor had absolute immunity for the alleged withholding of exculpatory evidence). Here, although the failure of Reynolds to provide a bill of particulars does not give rise to a cognizable cause of action, even if it did, Reynolds is absolutely immune from liability as a matter of law.

**Municipal Liability for Alleged Constitutional Violations:**

"[A] municipality may not be held liable for unconstitutional acts of its municipal employees on the basis of *respondeat superior*"(**Johnson v. Kings County District Attorney's Office**, 308 AD2d 278, 293, 763 NYS2d 635 [2d Dept 2003], citing **City of Canton, Ohio v. Harris**, 489 US 378 [1989]); see also **Hillary v. St. Lawrence County**, 2019 WL 977876 [NDNY 2019]; **Ricciuti v. N.Y.C. Transit Authority**, 941 F2d 119, 122 [2d Cir. 1991]). In order for a municipality to be held liable, there must be some direct, affirmative culpability on the part of the municipality (**Johnson v. Kings County District Attorney's Office**, *supra* at 293, citing **Monell v. New York City Dept. of Social Servs.**, 436 US 658, 691, 98 SCt 2018, 2036 [1978]). To prevail in a cause of action to recover damages against a municipality, "the plaintiff must specifically plead and prove (1) an official policy or custom that (2) causes the claimant to be subjected to (3) a denial of a constitutional right"(**Jackson v. Police Dept. of City of N.Y.**, 192 AD2d 641, 642, 596 NYS2d 457 [2d Dept 1993]; see **Monell v. New York City Dept. of Social Servs.**, 436 US 658, 98 SCt 2018 [1978]; **Batista v. Rodriguez**, 702 F2d 393 [2d Cir. 1983]; **Willinger v. Town of Greenburgh**, 169 AD2d 715, 716, 564 NYS2d 466 [2d Dept 1991]). In order to maintain a cause of action against the Suffolk County District Attorney or the County, the plaintiff must plead that "some affirmative policy or custom or other knowing act on the part of . . . the county has caused the alleged constitutional deprivation" (**Payne v. County of Sullivan**, 12 AD3d 807, 809, 784 NYS2d 251 [3d Dept 2004], quoting **LaBelle v. County of St. Lawrence**, 85 AD2d 759, 760, 445 NYS2d 275 [3d Dept 1981]), that is, that the policy or custom at issue "caused or was the 'moving force' behind the violation" (**Dominguez v. Beame**, 603 F2d 337, 341 [2d Cir. 1979](internal citations omitted); see also **Olori v. Village of**

*Haverstraw*, 2002 WL 1997891 [SDNY 2002]; *Sulkowska v. City of New York*, 129 FSupp2d 274, 297 [SDNY 2001]; *Polk County v. Dodson*, 454 US 312, 326, 102 SCt 445 [1981]). The complaint is devoid of the requisite allegations and his claims against the County for alleged constitutional violations must, therefore, be dismissed.

### **Statute of Limitations**

General Municipal Law § 50-i[] provides, in pertinent part, as follows: “No action or special proceeding shall be prosecuted or maintained against a city, county, town, village . . . for personal injury, wrongful death or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful action of such city, county, town, village . . . or any officer, agent or employee thereof . . . unless . . . (a) a notice of claim shall have been made and served upon the city, county, town [or] village . . . in compliance with section fifty-e of this chapter, and . . . (c) the action or special proceeding shall have commenced within one year and ninety days after the happening of the event upon which the claim is based”(see GML § 50-i[1])(emphasis supplied). The requirement that the action or proceedings be commenced within one year and ninety days after the happening of the event constitutes a statute of limitations, and failure to comply with it in an action brought against a municipality or one or more of its officers, agents or employees acting in their official capacities requires dismissal of the action (see *Campbell v City of New York*, 4 NY3d 200, 203 [2005]; *Baez v New York City Health and Hosps. Corp.*, 80 NY2d 571, 576 [1992]; *Cohen v. Pearl Riv. Union Free School Dist.*, 51 NY2d 256, 434 NYS2d 138 [1980]; *Pierson v. City of New York*, 56 NY2d 950, 453 NYS2d 615 [1982]; *Campbell v. City of New York*, 4 NY3d 200, 791 NYS2d 880 [2005]; *Bonnano v. City of Rye*, 280 AD2d 630, 721 NYS2d 98 [2d Dept 2001]; *Barnes v. County of Onondaga*, 103 AD2d 624, 481 NYS2d 539 [4<sup>th</sup> Dept 1984]). Here, the events complained of in plaintiff’s Notice of Claim against the County defendants occurred on May 29, 2014, July 7, 2014, July 14, 2014, and August 28, 2015, respectively. The action was not commenced until May 15, 2017, when the summons and complaint were filed (CPLR 203[c]), more than twenty months later. The complaint specifically alleges that Reynolds and the District Attorney were each acting in his official “capacity as agent, servant, official, and/or employee of Defendant COUNTY OF SUFFOLK NY” (Verified Complaint, ¶¶ 10 and 11) with respect to the matters upon which plaintiff’s claims are predicated. Accordingly, the action against the County defendants is time barred and must be dismissed.

### **MOTION TO DISMISS BY DEFENDANT KENNETH GRAY, ESQ. (SEQ.#002):**

Defendant Kenneth Gray, Esq. has moved both to dismiss the complaint against him pursuant to CPLR 3211[a][7] for failure to state a cause of action and for the imposition of sanctions against plaintiff pursuant to 22 NYCRR § 130.1 *et seq.* In support of the motion, Gray proffers, *inter alia*,



the Summons and Verified Complaint, Appellate Term's decision dated November 1, 2016 and emails and a letter he sent to plaintiff.

Mr. Gray is an attorney who represents the Incorporated Village of Ocean Beach. Although he is named in the caption of the complaint, a search of the body of the complaint fails to yield any explicit or implicit reference to him. Plaintiff opposes the motion, however, averring that Mr. Gray's purported comment in the Fire Island Newspaper in which he expressed confidence that the 2014 verdict against plaintiff would be upheld by the appellate court was an intentional disparagement of plaintiff and poisoned the jury pool for his upcoming trial. This argument is unavailing, first, because these allegations are not contained within the complaint, and second, because the comment allegedly made by Mr. Gray is not actionable. As the complaint as originally pleaded against Mr. Gray is bereft of any allegations of wrongful conduct on Mr. Gray's part, and as the additional allegations plaintiff seeks to assert raise only inactionable matter, the complaint against Mr. Gray must be dismissed as a matter of law (*see Laxer v. Edelman*, 75 AD3d 586, 903 NYS2d 920 [2d Dept 2010]; *Aberbach v. Biomedical Tissue Servs., Ltd.*, 48 AD3d 716, 718, 854 NYS2d 143 [2d Dept 2008]; *Kew Gardens Hills Apt. Owners, Inc. v. Horing Welikson & Rosen, P.C.*, 35 AD3d 383, 386, 828 NYS2d 98 [2d Dept 2006]). Accordingly, so much of Mr. Gray's motion as seeks an order dismissing the complaint against him is granted. So much of Mr. Gray's motion as seeks the imposition of sanctions against plaintiff pursuant to 22 NYCRR § 130.1 is denied, in the exercise of the court's discretion based upon the facts and circumstances before the court.

**THE VILLAGE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (SEQ.#004):**

The Village defendants have moved for summary judgment in their favor pursuant to CPLR 3212. They contend that Justice Wexler and defendants Fuchs and Hesse are immune from liability, that plaintiff failed to comply with the requirements of the General Municipal Law, that certain of the causes of action are time barred and that plaintiff has failed to allege and/or a factual basis is wanting for the elements of each of the causes of action brought against them. In support of the motion, the defendants proffer, *inter alia*, the pleadings, an affidavit by defendant Adrion, resolutions concerning the hiring of defendant Adrion as a part-time court clerk and employee of the Village, tickets for Village Code violations issued to plaintiff, transcripts of proceedings before Justice Wexler, a certificate of conviction dated October 6, 2014, notices of claim, letters by plaintiff, a transcript of a statement made on the record memorializing plaintiff's failure to appear for a scheduled hearing pursuant to GML § 50-h, a bench warrant issued by Justice Wexler, a bail receipt for \$6,000.00 issued to Martin Taffet, a proposed judgment for \$1,550.00, checks issued to Martin Taffet, letters by Justice Wexler to the Office of the New York State Comptroller and Justice Wexler's decision of June 14, 2014. In opposition to the motion, plaintiff proffers, *inter alia*, a transcript of a proceeding held before Justice Wexler on October 6, 2014; undated Appellate Term affirmations by Justice Wexler and defendant Fuchs, both under the caption of a criminal proceeding against Mr. Taffet; an

Appellate Term affirmation by Arnold Wolsky, Esq., dated July 9, 2014, under the same caption as the Justice Wexler's and Mr. Fuchs's affirmations; an email by Arnold Wolsky to plaintiff dated July 17, 2014 forwarding an email of the same date addressed to the Ocean Beach Village Court Clerk; a tracking document from the USPS; and news articles dated March 27 and 28, 2007.

It is well settled that a party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The failure of the moving party to make a *prima facie* showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The burden then shifts to the party opposing the motion, who must produce evidentiary proof in admissible form sufficient to require a trial of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]).

#### **Immunity – Defendants Fuchs and Adrion and Justice Wexler:**

The complaint alleges against Robert T. Fuchs various actions that he either took or failed to take as a prosecutor engaging in advocacy activities that were associated with the judicial phase of the criminal process. He therefore is absolutely immune from civil liability, and the motion for summary judgment in favor defendant Fuchs, dismissing the claims against him, is granted.

Justice Wexler is also absolutely immune from civil liability with respect to the allegations asserted against him in this action. Judicial immunity extends to all judges and encompasses all judicial acts, even if they are alleged to have acted in excess of their jurisdiction and to have done so maliciously or corruptly (*see Sassower v. Finnerty*, 96 AD2d 585, 586, 465 NYS2d 543 [2d Dept 1983], *see also Mosher-Simons v. County of Alleghany*, 99 NY2d 214, 753 NYS2d 444 [2002]; *Greer v. Garito*, 47 AD3d 677, 848 NYS2d 900 [2d Dept 2008]; *Montesano v. State*, 11 AD3d 435, 782 NYS2d 362 [2d Dept 2004]). In opposition to the motion, plaintiff argues that Justice Wexler was not acting as a judge and, therefore, is not entitled to judicial immunity from liability. Plaintiff has not, however, produced any proof in admissible form to support this contention and to raise a triable issue of fact. Accordingly, the motion for summary judgment dismissing the claims against Justice Wexler is granted.

The actions allegedly taken by George Hesse, such as issuing tickets for Village Code violations, were discretionary acts in his function as a police officer for which he is immune from liability (*see Shahid v. City of New York*, 144 AD3d 1127, 1129, 43 NYS2d 88 [2d Dept 2016]; *Wolfanger v. Town of West Sparta*, 245 AD2d 1071, 666 NYS2d 77 [4<sup>th</sup> Dept 1977]). Accordingly,

the motion for summary judgment as to defendant Hesse is granted.

Plaintiff alleges, in his eighth cause of action, that defendant Joanneigh Adrion converted \$6,000.00 in bail money posted by plaintiff's father. Adrion argues that ministerial actions carried out during the course of her duties as a court clerk may only be the basis for civil liability on her part if she violated a special duty owed to the plaintiff apart from the duties she owed to the public in general (see *McLean v. City of New York*, 12 NY3d 194, 203, 878 NYS2d 238 [2009]; *Lauer v. City of New York*, 95 NY2d 95, 711 NYS2d 112 [2000]). Whether or not Adrion's contention is correct in the context of the plaintiff's specific allegations against her, her affidavit and supporting exhibits account for the proper disposition of all of the bail money posted by plaintiff's father<sup>4</sup> and thus established *prima facie* her entitlement to summary judgment dismissing this claim. The burden therefore shifted to plaintiff to demonstrate, through the submission of proof in admissible form, the existence of a triable issue of fact material with respect to this claim against Adrion. He has failed to do so. Moreover, with respect to the claims asserted in the seventh and ninth causes of action in the complaint, Adrion has provided copies of Village declarations showing that she was not yet employed by the Village at the time of the events alleged in those causes of action. Plaintiff has failed to produce any evidence to the contrary. Accordingly, so much of the Village defendants' motion as seeks summary judgment in favor of Adrion is granted, dismissing the claims against her.

**First through Fourth Causes of Action - Malicious Prosecution:**

The Village defendants contend, and plaintiff concedes, that the elements of malicious prosecution, alleged in the first four causes of action in the complaint, have not been met and that they must be dismissed as a matter of law. The court is in agreement (see *Rahman v Incagliato*, 84 AD3d 917, 918 [2d Dept 2011], quoting *MacFawn v. Kresler*, 88 N.Y.2d 859, 860 [1996] ("A criminal proceeding terminates favorably to the accused, for purposes of a malicious prosecution claim, when the final disposition of the proceeding involves the merits and indicates the accused's innocence")). Accordingly, the Village defendants are granted summary judgment dismissing those causes of action are dismissed.

**General Municipal Law §§ 50-e and 50-i**

---

<sup>4</sup> As of the date of her affidavit, Ms. Adrion was awaiting the refund of \$1,000 due Mr. Taffet father as a result of the vacation by Appellate Term of plaintiff's final remaining Village Court conviction so that she could, in turn, refund that amount to the elder Mt. Taffet. A copy Ms. Adrion's February 2, 2017 letter to the Office of the Comptroller's Justice Court Fund is annexed to the Village defendants' moving papers.

Pursuant to General Municipal Law § 50-e[1] and [3] and § 50-i[1] and CPLR 9801, a Notice of Claim that, *inter alia*, sufficiently identifies the claimant, states the nature of the claim, and describes the time when, the place where, and the manner in which the claim arose, is a condition precedent to a tort action against a municipality including a village, “for personal injury, wrongful death or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of such . . . village . . . or of any officer, agent or employee thereof, . . .” and must be served within ninety days after the claim arises (*see Boring v. Town of Babylon*, 147 AD3d 892, 47 NYS3d 419 [2d Dept 2017]; *Steins v. Incorporated Village of Garden City*, 127 AD3d 957, 959, 7 NYS3d 419 [2d Dept 2015]). Here, as to the eleventh, thirteenth and nineteenth causes of action against the Village, this condition precedent was not met. Further, as set forth below, to the extent these causes of action are asserted against the individual Village defendants allegedly acting in their respective official capacities, they are barred by the one-year-and-ninety-day commencement requirement of General Municipal Law § 50-i[1]; to the extent those defendants are alleged to have acted in their individual capacities, they are barred by the one-year statute of limitations of CPLR 215 (*see cases cited supra*, page 9). .

For the reasons that follow, the court finds with respect to each of the remaining causes of action asserted in the complaint that the Village defendants are entitled to summary judgment in their favor, dismissing the claims against them:

**Statute of Limitations: Fifth Cause of Action - Defamation; Sixth through Eleventh Causes of Action - Abuse of Process; Fifteenth Cause of Action - Intentional Infliction of Emotional Distress; Eighteenth Cause of Action False - Arrest/False Imprisonment:**

To the extent these claims are asserted against the Village, or against the individual Village defendants allegedly acting in their respective official capacities, they are governed by the one-year-and-ninety-day commencement time limit of General Municipal Law § 50-i[1][c] and are time barred (*see Campbell v City of New York*, *supra*, 4 NY3d at 203; *Baez v New York City Health and Hosps. Corp.*, *supra*, 80 NY2d at 576; *Cohen v. Pearl Riv. Union Free School Dist.*, *supra*, 51; *Pierson v. City of New York*, *supra*; *Campbell v. City of New York*, *supra*; *Bonnano v. City of Rye*, *supra*; *Barnes v. County of Onondaga*, *supra*). To the extent the time limit of General Municipal Law § 50-i[1][c] may be deemed to be inapplicable to any of these claims against individual Village defendants because the claimed unlawful or otherwise tortious acts are alleged, in whole or in part, to have been undertaken outside the scope of the individual Village defendants’ respective official duties (*see, e.g., Collins v Davirro*, 160 AD3d 1343, 1344 [4th Dept 2018]; *compare Blake v City of New York*, 148 AD3d 1101, 1105 [2d Dept 2017]), the claims asserted in each of these causes of action are governed by the one-year statute of limitations of CPLR 215, running from the accrual of each alleged cause of action, which, in each instance, occurred more than a year before this action was

commenced in May 2017 (*see, e.g., Morrison v. Nat'l Broad. Co.*, 19 N.Y.2d 453, 459, 280 N.Y.S.2d 641, 227 N.E.2d 572 (1967), and *Melious v Besignano*, 125 AD3d 727, 728 [2d Dept 2015] (“A cause of action alleging defamation is governed by a one-year statute of limitations . . . Such a cause of action accrues at the time the alleged statements are originally uttered”); *Cunningham v State*, 53 NY2d 851, 853 [1981] (abuse of process claim accrues at time of ) *Rice v New York City Hous. Auth.*, 149 AD2d 495, 496 [2d Dept 1989]) (false imprisonment, intentional infliction of emotional distress, libel and slander are governed by one-year statute of limitations of CPLR 215[3]), and *Hone v City of Oneonta*, *supra*, 157 AD3d at 1032 (“[a] cause of action for false arrest and imprisonment accrues when a party is released from confinement”); *Orellana v Macy's Retail Holdings, Inc.*, 17 CIV. 5192 (NRB), 2018 WL 3368716, at \*17 [SDNY July 10, 2018], *reconsideration denied sub nom. Reyes Orellana v Macy's Retail Holdings, Inc.*, 17 CIV. 5192 (NRB), 2019 WL 6334925 [SDNY Oct. 22, 2019] (“[u]nder New York law, a cause of action for abuse of process is subject to a one-year statute of limitations”[citation omitted] and “ordinarily ‘accrues at such time as the criminal process is set in motion—typically at arrest—against the plaintiff’” (*quoting Anderson v. County of Putnam*, No. 14-CV-7162 (CS), 2016 WL 297737, at \*3 [SDNY Jan. 22, 2016] *quoting Duamutef v. Moris*, 956 F. Supp. 1112, 1118 [SDNY 1997]), and *Cunningham v State*, *supra*, 53 NY2d 851, 853 [1981] (“accrual of a cause of action for abuse of process need not await the termination of an action in claimant's favor”).

Accordingly, the claims alleged against the Village defendants for defamation, abuse of process, failure to intervene, intentional infliction of emotional distress, false arrest and false imprisonment in the Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fifteenth and Eighteenth Causes of Action, respectively, are time barred and so much of the Village defendants' motion as seeks summary judgment in their favor with respect to each of those claims must be granted.

**Twelfth Cause of Action - 42 USC § 1983 and “Monell” Negligent Hiring, Training and Supervision Claims - Incorporated Village of Ocean Beach and Village Trustees:**

A claim for damages under 42 USC § 1983 is fatally defective if it fails to allege that the defendant against whom the claim is asserted is directly and personally responsible for the purported unlawful conduct (*Alfaro Motors, Inc. v. Ward*, 814 F2d 883, 886-887 [2d Cir. 1987], *citing Black v. United States*, 534 F2d 524, 527-528 [2d Cir. 1976]; *Owens v. Coughlin*, 561 FSupp 426, 428 [SDNY 1983]; *see also Brown v. New York City Housing Authority*, 2015 WL 4461558 [SDNY 2015]; *Green v. Bauvi*, 46 F3d 189, 194 [2d Cir. 1995]). That is, there must be some direct, affirmative culpability on the part of the municipality (*Johnson v. Kings County District Attorney's Office*, *supra* at 293, *citing Monell v. New York City Dept. of Social Servs.*, 436 US 658, 691, 98 SCt 2018, 2036 [1978]). Thus, as noted, above, in connection with the claims alleged against the

County and the District Attorney, "a municipality may not be held liable for unconstitutional acts of its municipal employees on the basis of *respondeat superior*" (*Johnson v. Kings County District Attorney's Office*, *supra*, 308 AD2d at 293, citing *City of Canton, Ohio v. Harris*, *supra*. Again, to recover damages against a municipality, "the plaintiff must specifically plead and prove (1) an official policy or custom that (2) causes the claimant to be subjected to (3) a denial of a constitutional right" (*Jackson v. Police Dept. of City of N.Y.*, *supra*, 192 AD2d at 642; see *Monell v. New York City Dept. of Social Servs.*, *supra*; *Batista v. Rodriguez*, *supra*; *Willinger v. Town of Greenburgh*, *supra*, 169 AD2d at 716).

Plaintiff alleges, in his Twelfth Cause of Action, that there were civil and criminal proceedings brought with respect to alleged misconduct by defendant Hesse and other members of the Village's police department in 2007 and earlier. However, the unlawful acts that he alleges were committed against him, and upon which he bases his claims, are alleged, by him, to have first occurred in 2013, and the complaint is devoid of any allegation that the injurious conduct complained of in this cause of action was undertaken directly or personally by the Village or its Trustees or was the result of a municipal custom or policy existing at the time of the 2013 and later unlawful acts he alleges caused injury to him. Accordingly, any claims asserted in the Twelfth Cause of Action against the Incorporated Village of Ocean Beach and the Trustees of the Incorporated Village of Ocean Beach must be dismissed. Further, because plaintiff's 42 USC § 1983 is in substance a claim for malicious prosecution, it fails for the same reason his state law claims for malicious prosecution fail:

In order to prevail on a § 1983 claim against a state actor for malicious prosecution, a plaintiff must show a violation of his rights under the Fourth Amendment, *see, e.g., Murphy v. Lynn*, 118 F.3d 938, 944 (2d Cir.1997), *cert. denied*, 522 U.S. 1115, 118 S.Ct. 1051, 140 L.Ed.2d 114 (1998), and establish the elements of a malicious prosecution claim under state law, *see, e.g., Russell v. Smith*, 68 F.3d 33, 36 (2d Cir.1995); *Janetka v. Dabe*, 892 F.2d 187, 189 (2d Cir.1989). To establish a malicious prosecution claim under New York law, a plaintiff must show that a proceeding was commenced or continued against him, with malice and without probable cause, and was terminated in his favor. *See, e.g., id.*; *Murphy v. Lynn*, 118 F.3d at 947; *Broughton v. State*, 37 N.Y.2d 451, 457, 373 N.Y.S.2d 87, 94, 335 N.E.2d 310, *cert. denied*, 423 U.S. 929, 96 S.Ct. 277, 46 L.Ed.2d 257 (1975).

(*Fulton v Robinson*, 289 F3d 188, 195 [2d Cir 2002] (emphasis supplied); *see also Cornejo v Bell*, 592 F3d 121, 129 [2d Cir 2010] ("§ 1983, in recognizing a malicious prosecution claim when the prosecution depends on a violation of federal rights, adopts the law of the forum state so far as the elements of the claim for malicious prosecution are concerned"). Because, as plaintiff concedes, he

cannot establish a claim for malicious prosecution because the criminal proceedings against him were not terminated on the merits and did not establish his innocence, his 42 USC § 1983 claim must fail as well.

**Failure to Intervene: Twelfth and Thirteenth Causes of Action:**

“A police officer cannot be held liable in damages for failure to intercede unless such failure permitted fellow officers to violate a suspect’s “clearly established statutory or constitutional rights” of which a reasonable person would have known”(*Ricciuti v. N.Y.C. Transit Authority*, 124 F3d 123, 129 [2d Cir.1997], *quoting Harlow v. Fitzgerald*, 457 US 800, 818, 102 SCt 2727 [1982]). Whatever application a claim of failure to intervene may have in other settings (*see, e.g., Ying Li v City of New York*, 246 F Supp 3d 578, 620 [EDNY 2017]) , here, however, it is nothing more than an attempt to recast in the language of a duty to intervene the very derivative liability that the courts have repeatedly refused to impose upon municipalities and their officers for the alleged unconstitutional acts of municipal employees in the absence of “(1) an official policy or custom that (2) causes the claimant to be subjected to (3) a denial of a constitutional right”(*Jackson v. Police Dept. of City of N.Y.*, *supra*, 192 AD2d at 642; *see Monell v. New York City Dept. of Social Servs.*, *supra*; *Batista v. Rodriguez*, *supra*; *Willinger v. Town of Greenburgh*, *supra*, 169 AD2d at 716). Moreover, to the extent the plaintiff’s direct claims for the alleged underlying acts are barred, his “failure to intervene” claims are necessarily barred as well, and for the same reasons. Accordingly, so much of the Village defendants’ motion as seeks summary judgment in their favor with respect plaintiff’s failure to intervene claims must be granted.

**Failure to Protect: Thirteenth Cause of Action:**

Municipalities may only be held subject to tort liability for a failure to protect individual citizens upon a showing of a special relationship between the municipality and the claimant, the elements of which are “(1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality’s agent that inaction could lead to harm; (3) some form of direct contact between the municipality’s agents and the injured party; and (4) that party’s justifiable reliance on the municipality’s affirmative undertaking” (*Cuffy v. City of New York*, 69 NY2d 255, 260, 513 NYS2d 372 [1987]; *see also Etienne v. New York City Police Dept.*, 37 AD3d 647, 649, 830 NYS2d 349 [2d Dept 2007]; *Valdez v. City of New York*, 18 NY3d 69, 76, 936 NYS2d 587 [2011]). Defendants correctly argue that the complaint does not allege the existence of a special relationship between plaintiff and the municipal Village defendants, nor do the elements of a cause of action for failure to protect apply to the individual Village defendants. Further, as in the case of plaintiff’s failure to

intervene claim, to the extent the plaintiff's direct claims for the alleged underlying acts are barred, his failure to protect claims are necessarily barred as well.

**Fourth Amendment Right to Privacy: Fourteenth Cause of Action:**

Defendants argue that plaintiff has failed to allege any specific conduct that serves as the basis for this cause of action, nor has he identified which defendants are implicated in this claim. The court is constrained to agree.

**Negligent Infliction of Emotional Distress: Fifteenth Cause of Action:**

To the extent the claims asserted by plaintiff in his Fifteenth Cause of Action are not barred by the one-year-and-ninety-day commencement period of GML § 50-i[1][c] or the one-year statute of limitations of CPLR 215 (discussion in text, *supra*), . . . The elements of a cause of action for intentional infliction of emotional distress are (1) extreme and outrageous conduct; (2) intent to cause, or disregard a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and the injury; and (4) the resultant severe emotional distress (*see Howell v. New York Post Co.*, 81 NY2d 115, 121, 596 NYS2d 350 [1993]; *Klein v. Metropolitan Child Servs., Inc.*, 100 AD3d 708, 710-711, 954 NYS2d 559 [2d Dept 2012]; *Taggart v. Costabile*, 131 AD3d 243, 249, 14 NYS3d 388 [2d Dept 2015]). Negligent infliction of emotional distress is recognized where "the mental injury is a direct, rather than a consequential, result of the breach and when the claim possesses some guarantee of genuineness" (*Taggart v. Costabile*, *supra* at 249). Defendants correctly argue that plaintiff has failed to allege any conduct which could be characterized as "extreme and outrageous" and has also failed to identify which defendants are implicated in this cause of action and what conduct they engaged in to inflict emotional distress upon plaintiff. Moreover, as to the Village municipal defendants, public policy bars claims for intentional infliction of emotional distress against a governmental entity (*see Liranzo v. New York City Health & Hosps. Corp.*, 300 AD2d 548, 752 NYS2d 568 [2d Dept 2002], *citing Lauer v. City of New York*, 240 AD2d 543, 659 NYS2d 57 [2d Dept 1997]; *Wheeler v. State of New York*, 104 AD2d 496, 479 NYS2d 244 [2d Dept 1984]). Accordingly, the Village defendants are entitled to summary judgment dismissing the Fifteenth Cause of Action.

**Prima Facie Tort: Sixteenth Cause of Action:**

The elements of a cause of action for *prima facie* tort are (1) intentional infliction of harm; (2) which results in special damages; (3) without any excuse or justification; (4) by an act or series of acts which would otherwise be lawful (*see Freihofer v. Hearst Corp.*, 65 NY2d 135, 141-142, 490 NYS2d 735 [1985]; *Diorio v. Ossining Union Free School Dist.*, 96 AD3d 710, 712, 946 NYS2d



195 [2d Dept 2012]). Special damages in this context consist of a specific and measurable loss "of something having economic or pecuniary value" (*Rufeh v. Schwartz*, 50 AD3d 1002, 1004, 858 NYS2d 194 [2d Dept 2008], quoting *Liberman v. Gelstein*, 80 NY2d 429, 434-435, 590 NYS2d 857 [1992], and citing *Aronson v. Wiersma*, 65 NY2d 592, 594-595, 493 NYS2d 1006 [1985]). Defendants argue that none of the elements of a cause of action for *prima facie* tort have been alleged in the complaint. The court is constrained to agree.

**Denial of Right to a Fair Trial: Seventeenth Cause of Action:**

Defendants argue that this cause of action is premised upon plaintiff's claim that he was denied a fair trial because Justice Wexler was biased against him and refused to recuse himself, and that even if true, Justice Wexler is cloaked in judicial immunity. There are no facts pled in the complaint implicating the other Village defendants in this cause of action. Accordingly, this cause of action must be dismissed.

**Unjust Enrichment: Nineteenth Cause of Action:**

"To prevail on a claim of unjust enrichment, a party must show that (1) the other party was enriched, (2) at that party's expense, and (3) that 'it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered'" (*Citibank, N.A. v. Walker*, 12 AD3d 480, 481, 787 NYS2d 48 [2d Dept 2004]; quoting *Paramount Film Distr. Corp. v. State of New York*, 30 NY2d 415, 421, 334 NYS2d 388 [1972]). Defendants argue that the complaint is devoid of any factual allegations to support this cause of action and that unjust enrichment was not asserted in any of the notices of claim plaintiff served. Further, to the extent that the claim is based upon the alleged failure to return the bail money posted by plaintiff's father, they provide the affidavit of defendant Adrion, who avers that all such bail money was, or is in the process of being, returned. Plaintiff has failed to provide any proof in opposition to defendants' contentions sufficient to refute them or to raise a triable issue of material fact with respect to his claim that defendants were unjustly enriched.

**Twentieth Cause of Action - Punitive Damages:**

A "demand or request for punitive damages is parasitic and possesses no viability absent its attachment to a substantive cause of action" (*Tighe v. North Shore Animal League Am.*, 142 AD3d 607, 610, 36 NYS3d 500 [2d Dept 2016], citing *McMorrow v. Angelopoulos*, 113 AD3d 736, 740, 979 NYS2d 353 [2d Dept 2014], and quoting *Rocanova v. Equitable Life Assur. Socy. of U.S.*, 83 NY2d 603, 616-617, 612 NYS2d 339 [1994]). Thus, the claim for punitive damages, to the extent it is asserted as an independent cause of action, is nugatory.

For all of the above reasons, the motion for summary judgment dismissing the complaint and

Taffet v. Incorporated Village of Ocean Beach, et al.  
Index No.: 609185/2017  
Page 19

all claims against the Village defendants is granted.

In light of the foregoing, plaintiff's motions for a protective order (seq.#003) and poor person relief (seq.#005) are both denied as moot.

The court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the above determinations.

The foregoing constitutes the decision and order of the court.

Dated: May 4, 2020

  
\_\_\_\_\_  
HON. SANFORD NEIL BERLAND, A.J.S.C.

XX FINAL DISPOSITION           NON-FINAL DISPOSITION

**NOTICE OF CLAIM**

X-----X

In the Matter of the Claim of

JOHN J. GUADAGNO, INDIVIDUALLY AND ALLIGATOR BAR INC. D/B/A THE  
SANDBAR

- against -

INCORPORATED VILLAGE OF OCEAN BEACH,

MAYOR JAMES S. MALLOT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY  
AS MAYOR AND MEMBER OF THE BOARD OF TRUSTEES OF THE  
INCORPORATED VILLAGE OF OCEAN BEACH,

THE BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE OF OCEAN  
BEACH,

MATTHEW M. BLAKE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS  
DEPUTY MAYOR AND MEMBER OF THE BOARD OF TRUSTEES OF THE  
INCORPORATED VILLAGE OF OCEAN BEACH,

JASON BENDICKSEN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A  
MEMBER OF THE BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE  
OF OCEAN BEACH,

CHRISTOPHER F. NORRIS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY  
AS A MEMBER OF THE BOARD OF TRUSTEES OF THE INCORPORATED  
VILLAGE OF OCEAN BEACH,

BRIAN C. POWER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A  
MEMBER OF THE BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE  
OF OCEAN BEACH,

INCORPORATED VILLAGE OF OCEAN BEACH POLICE DEPARTMENT,

GEORGE B. HESSE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE  
POLICE CHIEF OF THE INCORPORATED VILLAGE OF OCEAN BEACH POLICE  
DEPARTMENT,

X-----X

TO: George B. Hesse, individually and in his official capacity as the Police Chief of the  
Incorporated Village of Ocean Beach Police Department  
Steven W. Brautigam, Village Clerk/Village Administrator  
Bay and Cottage Walk  
P.O. Box 457  
Ocean Beach, New York 11770

PLEASE TAKE NOTICE that the undersigned claimants hereby make claim and demand against you as follows:

1. The name and post-office address of each claimant and claimants' attorney is:

CLAIMANTS: John J. Guadagno, individually and Alligator Bar, Inc. d/b/a The Sandbar  
136 East Main Street  
East Islip, New York 11730

ATTORNEY: Law Offices of Raymond A. Giusto, P.C.  
715 S Country Road  
West Bay Shore, New York 11706  
(631) 277-7086

2. **Nature of Claim:** The nature of the claim is to recover economic damages for the assault, battery, tortious interference with business, tortious interference with economic relations, tort per se, unjust enrichment, libel per quad, slander per se, loss of business reputation, obstruction of justice, abuse of power, ultra vires act(s), undue influence, intimidation, targeting, loss of income, attorneys' fees and expenses and all other damages sustained by John J. Guadagno, individually and Alligator Bar Inc., d/b/a The Sand Bar allowed by statute and case law as a result of the negligence, gross negligence, intentional, wanton, willful and malicious acts and pattern of conduct of the defendants individually and jointly along with their agents, servants, employees, departments, agencies and those acting under their direction, behest and control commencing on May 29, 2017 and continuing through the present time.

3. **The time when, the place where and the manner in which the claim arose:** Said claim initially arose on May 29, 2017, at approximately 12:05am when the defendants, and more specifically, the Incorporated Village of Ocean Beach Police Department (hereinafter "OBPD") and the Police Chief of the Incorporated Village of Ocean Beach George B. Hesse, (hereinafter "Hesse") without authority and without basis in law or fact, wrongfully, maliciously, and intentionally closed the claimant's business premises (hereinafter "The Sandbar") during normal lawful hours of operation thereby causing the claimant to suffer significant economic losses and all other damages as claimed herein. At or about 12:10am on May 29, 2017, the defendant, Hesse, intentionally, wilfully, wantonly and maliciously violently grabbed, flung, dragged, assaulted and battered the claimant, John J. Guadagno, outside of, and in front of, the Ocean Beach Police Department in public view and continued to drag, assault and batter the claimant, John J. Guadagno, within the premises of the aforesaid police department.

In the ensuing days, the defendants OBPD, Hesse and the Incorporated Village of Ocean Beach (hereinafter "The Village") in conjunction with the defendant, Mayor James S. Mallot (hereinafter "Mayor Mallot"), in an effort to attempt to justify and support their unlawful and unauthorized closing of the claimant(s)' business premises conspired to and, in fact, improperly and unlawfully charged the claimant(s) with a violation of New York Alcoholic Beverage Control Law Section 106.6 (Disorderly Premises). In addition thereto, the defendants OBPD, Hesse and The Village in conjunction with the defendant, Mayor Mallot in an effort to protect themselves, individually and jointly, against a potential criminal and/or civil suit arising from the assault and battery committed by the defendant, Hesse, on the claimant as set forth above conspired to, and in fact, improperly and unlawfully charged the claimant, John J. Guadagno, with a violation of Section 123-1.B.1 and 2 of the Code of the Village of Ocean Beach (Disorderly Conduct). In addition thereto, the defendants, OBPD, Hesse and The Village in conjunction with the defendant, Mayor Mallot in an effort to further justify their aforesaid conduct and to further restrict the claimant's continued lawful business operations conspired to, and in fact, improperly and unlawfully charged the claimants with a violation of Section 112-5.A of the Code of the Village of Ocean Beach (Unreasonable Noise).

Thereafter and from that time forward and continuing the defendants, The Village, Mayor Mallot, The Board of Trustees of the Incorporated Village of Ocean Beach (hereinafter "Board of Trustees") along with Matthew M. Blake, individually and in his official capacity as Deputy Mayor and member of the Board of Trustees (hereinafter "Blake"), Jason Bendicksen, individually and in his official capacity as a member of the Board of Trustees (hereinafter "Bendicksen"), Christopher F. Norris, individually and in his official capacity as a member of the Board of Trustees (hereinafter "Norris") and Brian C. Power, individually and in his official capacity as a member of the Board of Trustees (hereinafter "Power") have engaged in a persistent, intentional, wanton, willful and malicious pattern of conduct specifically designed to unlawfully target, significantly restrict and permanently close the claimants' business operations and premises, The Sandbar. Specifically, the defendants, The Village, Mayor Mallot, Board of Trustees, Blake, Bendicksen, Norris and Power, have abused their power, committed ultra vires act(s) and exerted undue influence and intimidation on other Incorporated Village of Ocean Beach governmental agencies including, but not limited to, the Incorporated Village of Ocean Beach Building Department, the Incorporated Village of Ocean Beach Village Prosecutor and the OBPD in their ongoing unlawful efforts to target, significantly restrict and permanently close the claimants' business operations and premises.

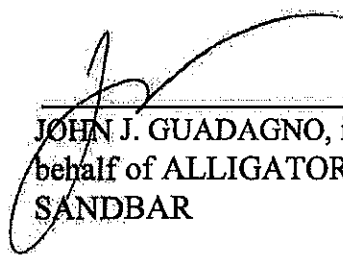
In addition thereto the defendants, The Village, Mayor Mallot, Board of Trustees, Blake, Bendicksen, Norris and Power, have abused their power, committed ultra vires act(s) and exerted undue influence and intimidation by attempting and, upon information and belief, continuing to attempt to implement, amend and/or modify existing Village Codes/Ordinances and/or to enact new Village Codes/Ordinances, which are specifically designed to unlawfully target, significantly restrict and permanently close the claimants' business operations and premises without due process of law and in violation of the Constitution of the United States. In so doing, all of the aforesaid defendants individually and jointly have abused their power, committed ultra vires act(s), obstructed justice and exerted undue influence and intimidation on other Incorporated Village of Ocean Beach governmental agencies including, but not limited to, the Incorporated Village of Ocean Beach Village Prosecutor and the OBPD in connection with the handling and prosecution

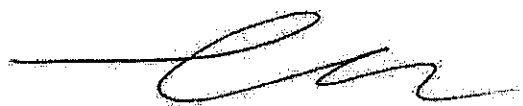
of the aforesaid pending charges against the claimants with the transparent intention of utilizing any or all of the aforesaid pending charges and/or a conviction on any or all of the aforesaid pending charges as a basis to unlawfully target, significantly restrict and permanently close the claimants' business operations and premises.

In addition thereto the defendants, The Village, Mayor Mallot, Board of Trustees, Blake, Bendicksen, Norris and Power, have, upon information and belief, engaged in the aforesaid pattern of conduct knowing that the defendant, Mayor Mallot, owns and operates a business (The Albatross) which is in direct competition with the claimants' business and that the defendant, Mayor Mallot, stands to significantly financially benefit from the targeting, restriction and closing of the claimants' business (The Sandbar). The aforesaid defendants, individually and jointly have nevertheless engaged in the aforesaid pattern of conduct with full knowledge that the role of the defendant, Mayor Mallot, as a competing business owner, Mayor and member of the Board of Trustees constitutes a Conflict of Interest in violation of the Village of Code and the Laws of the State of New York.

4. Claimants, John Guadagno, individually and Alligator Bar, Inc. d/b/a the Sandbar are making claims for significant economic damages arising from the aforesaid assault, battery, tortious interference with business, tortious interference with economic relations, tort per se, unjust enrichment, libel per quad, slander per se, obstruction of justice, abuse of power, ultra vires act(s), undue influence, intimidation, targeting, loss of income, loss of business profits and business reputation, attorneys' fees and expenses and all other damages sustained by John J. Guadagno, individually and Alligator Bar Inc., d/b/a The Sand Bar allowed by statute and case law.

Dated: West Bay Shore, New York  
August 23, 2017

  
JOHN J. GUADAGNO, individually and on  
behalf of ALLIGATOR BAR, INC. d/b/a THE  
SANDBAR

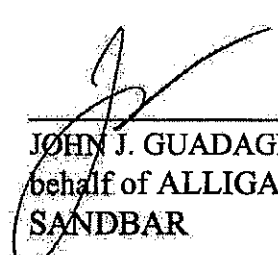
  
LAW OFFICES OF RAYMOND A. GIUSTO, P.C.  
Attorneys for Claimants  
715 S Country Road  
West Bay Shore, NY 11706  
(631) 277-7086

INDIVIDUAL VERIFICATION

State of New York, County of Suffolk ss.:

John J. Guadagno, individually and on behalf of Alligator Bar Inc. d/b/a The Sandbar

being duly sworn, deposes and says that deponent is the claimant in the within action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

  
JOHN J. GUADAGNO, individually and on  
behalf of ALLIGATOR BAR, INC. d/b/a THE  
SANDBAR

Sworn to before me this  
23<sup>rd</sup> day of August, 2017

  
Notary Public

JENNIFER LISI  
Notary Public, State of New York  
No. 01LI6017395  
Qualified in Suffolk County  
Commission Expires Feb. 03, 2017