

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOHN DEPIETRO,

Plaintiff,

- against -

THE CITY OF NEW YORK, NEW YORK CITY
SCHOOL CONSTRUCTION AUTHORITY,
VINCENT IGNIZIO, LOUIS TOBACCO,
VITO MUSTACIUOLO, IRA GLUCKMAN,
WILLIAM DELUCA, ROBERT RUVOLO,
STEPHEN COYLE, A. RUSSO WRECKING, INC.,
ALBERT GIRIMONTE, RICHARD GUTCH,
LIEUTENANT FALCONE, JEFFREY WALTER,
TRACY LAVELLE, EUGENE McARDLE and
JOHN DOE NUMBERS 1 THROUGH 25,

Defendants.

-----X
Plaintiff, by his attorney, Samuel A. Ehrenfeld, complaining of the Defendants herein,
respectfully states and alleges:

THE PARTIES

1. Plaintiff JOHN DEPIETRO is a natural person, residing at RD 1, Box 608, Dingmans Ferry, PA 18328.
2. DePietro is the owner of the property located at 527 Page Avenue, Staten Island, Richmond County, NY 10307 (the "Property").

CIVIL CASE NO.
09-CV-932
(SLT)(JMA)(ECF Case)

**AMENDED VERIFIED
COMPLAINT**

JURY TRIAL DEMANDED

21 FEB 2010 15 27
CLERK OF COURT
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

3. Defendant THE CITY OF NEW YORK (the "City") is a municipal corporation duly constituted under the laws of the State of New York, with its principal offices located at the Municipal Building, One Centre St., New York, NY 10007.
4. NEW YORK CITY DEPARTMENT OF BUILDINGS (the "DOB") is a department or division of the City, with its principal offices located at 280 Broadway, 7th Floor, New York, NY 10007.
5. NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT (the "HPD") is a department or division of the City, with its principal offices at 100 Gold St., New York, NY 10038.
6. NEW YORK CITY POLICE DEPARTMENT (the "NYPD") is a department or division of the City, with its principal offices at 1 Police Plaza, New York, NY.
7. NEW YORK CITY DEPARTMENT OF TRANSPORTATION (the "DOT") is a department or division of the City, with its principal offices at 40 Worth St., New York, NY 10013.
8. NEW YORK CITY DEPARTMENT OF SANITATION ("Sanitation") is a department or division of the City, with its principal offices at 346 Broadway, New York, NY 10013.
9. NEW YORK CITY DEPARTMENT OF EDUCATION ("Education") is a department or division of the City, with its principal offices at 52 Chambers St., New York, NY 10007.
10. Defendant NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY (the "SCA") is a department or division of the City, with its principal offices at 30-30 Thomson Avenue, Long Island City, NY 11101.

11. NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP") is a department or division of the City, with its principal offices at 57-17 Junction Boulevard, Flushing, NY 11373.
12. NEW YORK CITY DEPARTMENT OF CITY PLANNING ("Planning") is a department or division of the City, with its principal offices at 22 Reade St., New York, NY 10007.
13. NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION (the "DDC") is a department or division of the City, with its principal offices at 30-30 Thomson Avenue, Long Island City, NY 11101.
14. NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE (the "DOH") is a department or division of the City, with its principal offices at 125 Worth St., New York, NY 10013.
15. Defendant NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION ("Parks") is a department or division of the City, with its principal offices at The Arsenal, Central Park, 830 Fifth Ave., New York, NY 10065.
16. NEW YORK CITY ENVIRONMENTAL CONTROL BOARD ("ECB") is an administrative tribunal of the City, with its principal offices at 66 John St., New York, NY 10038.
17. Defendant VINCENT IGNIZIO is the New York City Council Member for the 51st District in Staten Island, New York. Upon information and belief, he is a resident of the City and State of New York, and his place of business is at 3944 Richmond Avenue, Staten Island, NY 10312.
18. Defendant LOUIS TOBACCO, is the New York State Assembly Member for the 62nd Assembly in Staten Island, New York. Upon information and belief, he is a resident of

the City and State of New York, and his place of business is at 4062 Amboy Rd., Staten Island, NY 10308.

19. Defendant VITO MUSTACIUOLO is Associate Commissioner of HPD. Upon information and belief, he is a resident of the City and State of New York and his place of business is c/o New York City Department of Housing Preservation and Development, 100 Gold St., New York, NY 10038.
20. Defendant IRA GLUCKMAN was Staten Island Borough Commissioner for the DOB at the relevant times herein. He is now the Queens Borough Commissioner for the DOB. Upon information and belief, he is a resident of the City and State of New York, and his place of business is c/o New York City Department of Buildings, 280 Broadway, New York, NY 10007.
21. Defendant WILLIAM DELUCA is, upon information and belief, an inspector with the DOB. Upon information and belief, he is a resident of the City and State of New York, and his place of business is c/o New York City Department of Buildings, 280 Broadway, New York, NY 10007.
22. Defendant ROBERT RUVOLO is, upon information and belief, an employee of the DOB. Upon information and belief, he is a resident of the City and State of New York, and his place of business is c/o New York City Department of Buildings, 280 Broadway, New York, NY 10007.
23. Defendant STEPHEN COYLE is, upon information and belief, an inspector with the DOB. Upon information and belief, he is a resident of the City and State of New York, and his place of business is c/o New York City Department of Buildings, 280 Broadway, New York, NY 10007.

24. Defendant A. RUSSO WRECKING, INC. ("RUSSO") is a corporation duly organized and existing under the laws of the State of New York, with a principal place of business located at 67 East Ave., Lawrence, NY 11559.
25. Defendant ALBERT GIRIMONTE was, upon information and belief, the NYPD Staten Island Borough Chief working in the 122nd precinct until he retired, upon information and belief in 2008. Upon information and belief, he is a resident of the City and State of New York and his residence is at 55 Chess Loop, Staten Island, N.Y. 10306.
26. Defendant RICHARD GUTCH is, upon information and belief, a NYPD captain in the 123rd precinct. Upon information and belief, he is a resident of the City and State of New York, and his place of business is c/o New York City Police Department – 123rd Precinct, 116 Main St., Staten Island, N.Y. 10307.
27. Defendant LIEUTENANT FALCONE is, upon information and belief, a NYPD lieutenant in the 122nd precinct. Upon information and belief, he is a resident of the City and State of New York, and his place of business is c/o New York City Police Department – 122nd Precinct, 2320 Hylan Blvd., Staten Island, N.Y. 10306.
28. Defendant JEFFREY WALTER is, upon information and belief, a NYPD officer in the 123rd precinct. Upon information and belief, he is a resident of the City and State of New York, and his place of business is c/o New York City Police Department – 123rd Precinct, 116 Main St., Staten Island, N.Y. 10307.
29. Defendant TRACY LAVELLE is, upon information and belief, a NYPD officer in the 123rd precinct. Upon information and belief, he is a resident of the City and State of New York, and his place of business is c/o New York City Police Department – 123rd Precinct, 116 Main St., Staten Island, N.Y. 10307.

30. Defendant EUGENE McARDLE is, upon information and belief, Director of HPD.

Upon information and belief, he is a resident of the City and State of New York and his place of business is c/o New York City Department of Housing Preservation and Development, 100 Gold St., New York, NY 10038.

31. Defendants JOHN DOE 1 THROUGH 25 are fictitious names intended to designate other employees and agents of the Defendants and city agencies named herein whose names are not currently known, but who participated by their actions and/or inactions in the wrongful conduct alleged in this Complaint.

JURISDICTION AND VENUE

32. This Court has jurisdiction of this action by virtue of 28 U.S.C. Sections 1343 and 1331 on the grounds that it is based on a deprivation under color of state law of DePietro's constitutional rights guaranteed by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and the violations of DePietro's civil rights under 42 U.S.C. Sections 1983 and 1986.

33. This Court has supplemental jurisdiction pursuant to Rule 18(a) of the Federal Rules of Civil Procedure and 28 U.S.C. Section 1367 to hear DePietro's claims for (a) wrongful demolition, wrongful eviction, trespass, conversion, conspiracy and intentional infliction of emotional distress, (b) violations of Article I Section 6 of the Constitution of the State of New York and (c) violations of Chapter 6 of the New York City Administrative Code ("Administrative Code"),¹ because these claims are so related to the violations of DePietro's civil rights under 42 U.S.C. Sections 1983 and 1986 and the Fourth, Fifth and

¹ All references herein to the Administrative Code are to the Administrative Code in force as of December 6, 2007.

Fourteenth Amendments to the Constitution of the United States that they form part of the same case or controversy under Article III of the Constitution of the United States.

34. Venue in this Court is proper pursuant to 28 U.S.C. Section 1391(b), since a substantial portion of the events or omissions giving rise to DePietro's causes of action occurred within this judicial district, (b) the subject property is located in this judicial district, and (c) all Defendants do business in the City and State of New York.
35. On March 4, 2008, DePietro served upon the City a Notice of Claim which was served upon the City within ninety (90) days after the causes of action herein alleged accrued.
36. At least thirty (30) days have elapsed since the Notice of Claim upon which this action is predicated was presented to the City for adjustment, and the City has neglected and/or refused to make adjustment or payment therefor.
37. The City has not demanded an examination of DePietro's claim, as provided under New York General Municipal Law Section 50-h.
38. This case has been commenced against the City within the period of one (1) year and ninety (90) days after the cause of action herein alleged accrued.
39. This case has been commenced within the period of three (3) years after the causes of action herein alleged accrued, and is within the statute of limitations for civil rights actions under 42 U.S.C. Section 1983.

BRIEF SUMMARY

40. This action is brought for alleged civil rights and constitutional due process and equal protection violations, damages caused by the wrongful demolition of Plaintiff's buildings from December 6, 2007 to December 10, 2007, and certain other related intentional and

negligent actions and inactions alleged herein.

BACKGROUND

41. DePietro acquired the Property in 1995. The Property is situated at the corner of Page Avenue and Academy Avenue, in Richmond County.
42. DePietro intended to substantially renovate the Property and to reside there with his family.
43. DePietro stayed at the Property for approximately two to three days per week prior to the demolition of the buildings on the Property in December 2007, as described below.
44. From 1995 to 2007 DePietro expended a substantial amount of money, time and effort in renovating the Property, including hiring architects to produce detailed renovation plans.
45. Until December 6, 2007, the Property contained four (4) structures that were connected: the main house, the Florida room, a two-car garage and a single-car garage.
46. In or about the latter part of the 1990s, the SCA began construction of a public school on several lots along Page Avenue extending from Academy Avenue to Bartow Avenue.
47. Upon information and belief, prior to construction of the public school, SCA engaged consultants to investigate the potential environmental impact of the school construction project on the community.
48. Upon information and belief, the construction plans for the school and for the roads adjacent to the school were made and reviewed by various authorities and agencies, including Education, SCA, Planning, DDC and/or DEP.
49. As part of the construction of the public school, SCA, DEP, DDC and/or DOT placed two storm drain sewers in the street bed at the corner of Page Avenue and Bartow Avenue

abutting the school's property, but negligently did not install any storm drain sewers in the street bed at the corner of Page Avenue and Academy Avenue. Instead, SCA, DEP, DDC and/or DOT placed in the street bed at the corner of Page Avenue and Academy Avenue a catch basin that was not connected to the City's sewer system, which only made the water runoff problem worse for DePietro's Property.

50. Throughout the period of the construction of the public school, and thereafter, water continually ran off from the public school onto the Property. This condition continues to this day.
51. The water runoff is a trespass and nuisance with respect to the Property.
52. The water runoff caused, and continues to cause, damage to the Property, including the land, the buildings, and personal property located on the Property. The water runoff continues to this day.
53. Because of the water damage, DePietro was forced to reconsider his plans to make the Property the primary residence for his family.
54. On numerous occasions, DePietro complained to the public school and various City agencies, including the SCA and Education, and various commissioners, regarding the water runoff, but his complaints were ignored.
55. Various City agencies, including DOT and SCA, installed a swale on Academy Avenue near Page Avenue to divert the excess water from the school, and aimed the excess water directly at the Property. At the end of the swale, they installed several large seepage holding tanks which were approximately eight (8) feet from DePietro's basement, causing flooding to occur constantly in the main house building and underground. The conditions described still exist today although the buildings have been demolished.

56. Various City agencies, including DOT, Sanitation and/or Parks, unlawfully, intentionally and wantonly, and without notice, cut down trees located on and adjacent to the Property. Several branches that were cut off from the trees fell down and caused damage to DePietro's equipment.
57. In or about 2003 and 2004, DOB recommended certain improvements to be made to the Property under a precept issued by New York State Supreme Court, Richmond County. DePietro fully complied with DOB's and the court's recommendations to cure the conditions, and the precept was lifted.
58. Prior to August 2007, DePietro met with the commissioner of DOT and with employees of various other City agencies on numerous occasions to complain about the water runoff problem that was damaging his Property.
59. In August 2007, DePietro again met with the Staten Island commissioner for DOT to complain about the water runoff situation on Academy Avenue. Although at first the commissioner denied any knowledge of the situation, he asked DePietro for some time to investigate the matter. DePietro assured the commissioner that he would wait until January 2008 before instituting any actions.
60. Upon information and belief, on and prior to December 6, 2007, Defendants Ignizio, Mustaciuolo and Tobacco conspired with various City agencies and their employees to bring about the demolition of the buildings at the Property without giving notice to DePietro.

EVENTS OF DECEMBER 5, 2007 TO DECEMBER 10, 2007

DePietro's efforts to Forestall the Wrongful Demolition

61. On December 5, 2007, DePietro received a telephone message left by Con Edison on his telephone answering machine informing DePietro that power to the Property was being disconnected because the buildings were scheduled for demolition.
62. On December 5, 2007, DePietro went to the DOB and spoke to Defendant Gluckman to find out information about the proposed demolition. Defendant Gluckman told DePietro that the demolition was scheduled for December 6, 2007 and there was nothing DePietro could do to forestall the demolition.
63. Immediately thereafter, on December 5, 2007, DePietro had a meeting with Defendant Gluckman and the chief inspector for Staten Island. The chief inspector told DePietro that the demolition was scheduled for December 6, 2007 and there was nothing DePietro could do to forestall the demolition.
64. DePietro then received assurances from Defendant Gluckman that the Florida Room building and the garages on the Property would not be demolished, because they had been fully renovated and were in perfect condition, and because they contained DePietro's valuable personal property, including furniture, appliances, building materials, supplies, tools, equipment, clothing and personal documents.
65. Immediately thereafter, on December 5, 2007, DePietro went to the office of the new Staten Island commissioner of DOT, Tom Cocola, to inquire about the DOT's progress in its investigation of the water runoff problem, and to ask him to intercede and try to forestall the planned demolition. Cocola was not available.

DePietro Obtains an Order to Show Cause to Halt the Demolition

66. Immediately thereafter, on December 5, 2007, DePietro went to each of the New York Supreme Court courts in Staten Island, Brooklyn, Manhattan and Queens to try to find a

judge who would sign an Order to Show Cause to forestall the demolition scheduled for December 6, 2007. Unfortunately, he could not locate any available judges on that evening.

67. Immediately thereafter, DePietro returned to the New York Supreme Court courthouse in Staten Island, intending to be there the first thing on the morning of December 6, 2007 to obtain a signature on the Order to Show Cause.

68. During the night, DePietro made several trips to the Property, and ensured that the buildings were locked, sealed and safeguarded properly.

69. The first judge that DePietro spoke with in Staten Island on December 6, 2007, Judge McMahon, recused herself from considering DePietro's application for an Order to Show Cause, because of her ties with DOB.

70. The second judge that DePietro spoke with on the morning of December 6, 2007, Judge Maltese, signed the Order to Show Cause with a return date of December 21, 2007 in the Supreme Court of the State of New York, Richmond County, and, upon information and belief, issued a Stop-Work Order enjoining temporarily the demolition of the buildings at the Property, and instructed DePietro to serve DOB and the demolition crew at the Property.

71. The Order to Show Cause and the Stop-Work Order were served on DOB on December 6, 2007, as DePietro was instructed by Judge Maltese.

72. The Order to Show Cause and the Stop-Work Order were also brought to the Property to be served on the various personnel there on December 6, 2007, as DePietro was instructed by Judge Maltese, as detailed below.

73.

74. Immediately after the Order to Show Cause and the Stop-Work Order were served on DOB on December 6, 2007, DePietro received a telephone call from an official with FDNY at One MetroTech Center, Brooklyn, New York. The FDNY official warned DePietro not to attend the demolition or he would be arrested.
75. Upon information and belief, prior to December 6, 2007, Defendants Ignizio, Mustaciuolo and Tobacco gleefully notified the media, including the Staten Island Advance and New York One of the scheduled demolition of the Property.
76. None of the Defendants, including Ignizio, Mustaciuolo and Tobacco, made any effort to notify DePietro and warn him of the scheduled demolition.

Defendants' Failure to Comply with the Required New York City Notice Laws

77. DePietro received no notice of the proposed demolition, as required by Administrative Code Sections 26-236 and 26-237. In particular, Administrative Code Section 236(b) requires personal service if the owner can be found within the city after diligent search. Under Administrative Code Section 244(d), if the owner cannot be found within the city after diligent search, proper service includes (a) posting the notice in a conspicuous place on the premises and (b) depositing a copy of the notice in a post office in the city²⁴ enclosed in a sealed, postpaid wrapper addressed to the owner at his last known place of residence.
78. There was no service of notices and orders upon DePietro pursuant to Administrative Code Section 26-117.
79. The City and its agencies made no diligent search for DePietro in order to serve him with notice as prescribed by Administrative Code Section 26-236(b).

80. DePietro was within the city when the decision was made to declare an Emergency Condition as described below, and the relevant City and agency officials were well aware of his whereabouts.
81. Employees of the City and its agencies, including HPD, knew DePietro's telephone number, and easily could have contacted him to arrange for proper personal service of a notice.
82. The City and its agencies did not post any notice in a conspicuous place on the Property as required under Administrative Code Section 26-244(d) if an owner cannot be found within the city after diligent search.
83. DePietro was not afforded an opportunity to be heard.
84. Upon information and belief, a survey was performed on the Property on November 28, 2007, however only one inspector appeared, rather than the three inspectors required under Administrative Code Section 26-238(a). This survey was not posted on the Property as required by Administrative Code Section 26-238(b).
85. The corporation counsel of the City of New York did not place the survey of the Premises and the notice before the justice holding a special term of the court named in the notice, as required under Administrative Code Section 26-239(a).
86. The court did not issue a precept directed to the superintendent requiring the demolition of the Property, as required under Administrative Code Section 26-239(d).
87. Upon information and belief, the HPD superintendent did not make a determination to seal the Property and did not provide written notice to DePietro, under Administrative Code Section 26-240(a).

88. Upon information and belief, the superintendent did not order DePietro to vacate the Property, as required under Administrative Code Section 26-243(c) where there is “actual and immediate danger that any structure or part thereof will fall so as to endanger life or property”
89. Upon information and belief, the superintendent ordered the structures on the Property to be demolished, without the benefit of a precept ordering him to do so, as required by Administrative Code Section 26-240(a).
90. Upon information and belief, the superintendent ordered the demolition of the Property, without considering any alternative work that could have been done to render such structure or part thereof temporarily safe from any alleged unsafe conditions, until the proper proceedings provided for unsafe structures could be instituted, as required under Administrative Code Section 26-243(b) for structures that are in the opinion of the superintendent actual and immediate dangers that any structure or part thereof will fall so as to endanger life or property.
91. The buildings on the Property were not abandoned or vacant.
92. There were no emergency conditions, immediate emergency conditions or imminent emergency conditions on the Property. There were no holes in the roof. There was no fire damage. There was no wall collapse. There was no roof collapse. The garage was in perfect condition. The Florida room was in perfect condition.
93. The buildings were adequately locked and safeguarded, and there was a six-foot PVC fence around the Property.
94. On November 26, 2007, DOB Deputy Commissioner Fatma Amer (“Amer”) sent a Memorandum to Defendant Mustaciuolo indicating that Defendant Gluckman had

declared an Immediate Emergency Condition with respect to the house on the Property, based on an inspection conducted by Defendant Coyle on November 21, 2007.

Defendant Coyle's report, which recommended an Immediate Emergency Condition, did not allege, identify or specify any emergency conditions that threatened life or property, and contained lies, misrepresentations and/or factual errors with respect to the condition of the Property.

95. On December 7, 2007, one day after the demolition project had begun, Amer sent a Memorandum to Defendant Mustaciulo indicating that Defendant Gluckman had declared an Immediate Emergency Condition with respect to one of the garages on the Property, based on an inspection conducted by Defendant DeLuca on December 6, 2007. Defendant DeLuca's report, which recommended an Immediate Emergency Condition, did not allege, identify or specify any emergency conditions that threatened life or property, and contained lies, misrepresentations and/or factual errors with respect to the condition of the Property.

96. The actions taken by Defendants Mustaciulo, Gluckman, Coyle and DeLuca in categorizing the conditions of the buildings on the Property as Immediate Emergencies were abusive, arbitrary and capricious. Any allegations noted on the reports as to the conditions on the Property that may have been true could easily have been remedied in an effective and efficient manner without resorting to demolition.

Defendants' Refusal to Comply with the Court Order

97. On December 6, 2007, DePietro's daughter, Kristin DePietro ("Kristin"), brought the Order to Show Cause and the Stop-Work Order to the Property.

98. Kristin observed that Defendants Ignizio, Mustaciolo, Tobacco, McArdle, several police officers and several employees of Defendant Russo were unlawfully trespassing on the Property.
99. Kristin attempted to deliver the Order to Show Cause and the Stop-Work Order to a chief of the FDNY, who refused to accept them.
100. Kristin attempted to deliver the Order to Show Cause and the Stop-Work Order to Defendant McArdle, who refused to accept them.
101. Kristin attempted to deliver the Order to Show Cause and the Stop-Work Order to employees of Defendant Russo, who refused to accept them.
102. Kristin attempted to deliver the Order to Show Cause and the Stop-Work Order to Police Officers Jeffrey Walter and Tracy Lavelle, who refused to accept them.
103. Kristin attempted to deliver the Order to Show Cause and the Stop-Work Order to Defendant Ruvolo, who refused to accept them.
104. Kristin attempted to deliver the Order to Show Cause and the Stop-Work Order to several other employees and agents of the City and its agencies, who refused to accept them.
105. Finally, Defendant Ignizio examined the Order to Show Cause and the Stop-Work Order, and disregarded them.
106. In addition, upon information and belief, Defendant McArdle determined that the Order to Show Cause and the Stop-Work Order were not applicable to HPD.
107. The City, the City Agencies and Russo, and all their employees and agents, all disregarded the Order to Show Cause and the Stop-Work Order brought to the Property by Kristin on the morning of December 6, 2007.

108. The City, through its agents, including Defendant Russo, unlawfully began demolishing the buildings on December 6, 2007.
109. The City, through its agents, including Defendant Russo, unlawfully destroyed or took possession of DePietro's personal property at the Property, and unlawfully removed various personal possessions of DePietro's from the Property.
110. The City, through its agents, including Defendant Russo, unlawfully and maliciously damaged and/or destroyed DePietro's car, back-hoe, Bobcat, dump-truck, trailers, wood-chipper, and other equipment and personal property.
111. On December 10, 2007, DePietro received an Urgent Notice from HPD dated November 27, 2007, informing DePietro that DOB had issued a Declaration of Emergency with respect to the buildings, and that HPD would proceed to cure the emergency condition unless HPD was notified by DOB within three (3) business days of the notification that DePietro would cure the emergency condition. Of course, by December 10, 2007, the buildings had already been demolished unlawfully.
112. On December 10, 2007, DePietro visited the Property and found workmen with machinery, in the process of backfilling and grading. DePietro collapsed.
113. Upon information and belief, DOB did not issue a Work Permit authorizing the demolition until January 15, 2008.
114. On various occasions on December 6, December 7, and December 10, 2007, DePietro attempted to enforce the Order to Show Cause and the Stop-Work Order and to file police reports with various police officers and other NYPD employees at the Property and at the 123rd precinct with respect to the above events at the Property, including the unlawful demolition of the buildings in violation of the Order to Show Cause and the Stop-Work

Order, as well as the damage and theft of his personal property and equipment, but the various officers and NYPD employees refused to comply. Some officers even refused to identify themselves.

115. NYPD members have a duty to protect the citizens of New York City from crimes and injuries to property.

116. NYPD members are required to issue police reports upon being made aware of the occurrence of crimes.

117. NYPD members did not protect DePietro from the intentional and wrongful demolition of the buildings on the Property or from the unlawful damage and removal of personal property.

118. NYPD members refused to enforce the Order to Show Cause and the Stop-Work Order.

119. NYPD members refused to issue police reports upon DePietro's request regarding the crimes committed at the Property.

120. Because of the NYPD members' failure to issue any police reports in this matter, DePietro has been unable to press criminal charges on any of the Defendants.

EVENTS SUBSEQUENT TO THE DEMOLITION

121. Between December 10, 2007 and December 17, 2007, DePietro attempted to speak with Albert Girimonte who at the time was the NYPD Staten Island Borough Chief (but who retired in 2008, upon information and belief) in the 122nd Precinct about this matter, but his request was denied.

122. Between December 10, 2007 and December 17, 2007, DePietro spoke with NYPD Lt. Falcone of the 122nd precinct about this matter, but Lt. Falcone refused to issue a police report.
123. Between December 10, 2007 and December 17, 2007, DePietro spoke with NYPD Captain Richard Gutch of the 123rd precinct about this matter, but Captain Gutch refused to issue a police report.
124. On December 11, 2007, DePietro filed a complaint with the office of the Attorney General for the State of New York regarding the events at the Property. On February 19, 2008, this complaint was referred to Commissioner Rose Gill Hearn of the City of New York Department of Investigation and to John Woods, Inspector General of the DOB for further action. DePietro has not heard from Ms. Hearn or Mr. Woods in regard to this matter since then.
125. On December 11, 2007, DePietro filed a complaint with the office of the United States Attorney for the Eastern District of New York. On January 30, 2008, this complaint was referred to the Federal Bureau of Investigation (the "FBI"). DePietro has been in sporadic contact with the FBI in regard to this matter since then, while the FBI continues to investigate.
126. On December 17, 2007, DePietro wrote a letter to NYPD Police Commissioner Raymond W. Kelly, informing him of the outrageous events at the Property as described above, and asking him to investigate the matter.
127. Upon information and belief, Police Commissioner Kelly referred the matter back to Chief Girimonte.

128. DePietro never received a response from Police Commissioner Kelly or Chief Girimonte.
129. DePietro has also been constantly bombarded by the City agencies with a baffling array of assessments, penalties and fines relating to the Property by various City agencies, including (a) substantially increased real estate taxes despite the fact that the buildings no longer exist, and (b) water and sewer charges despite the fact that there is no water and sewer service to the Property.
130. As a result of the foregoing, DePietro has suffered grievous injuries, financially, physically and emotionally. The above events have severely impacted DePietro's physical condition, including (a) causing him to experience chronic thoracic and abdominal pain, (b) aggravating his esophageal achalasia condition and digestive disorders, (c) causing him to become sexually impotent, (d) causing him to suffer sleep deprivation, and (e) generally making it difficult for him to function normally. In addition, since the events described above, DePietro continually suffers pain from various psychological and emotional conditions, including paranoia, depression and anxiety.
131. Ironically, and sadly, on April 23, 2008, Police Officer Miller of the 123rd precinct issued a police report with respect to the theft of DePietro's mailbox and mailbox post from the Property.

COUNT 1: VIOLATION OF 42 U.S.C. SECTION 1983
(Unlawful Seizure, Due Process and Equal Protection Clauses of the Fourth, Fifth and Fourteenth Amendments)

132. DePietro repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 131 above with the same force and effect as if herein set forth.

133. At all relevant times herein, DePietro was guaranteed the rights under the due process and equal protection clauses of the constitutions of the United States and New York State not to be deprived of his constitutionally protected interests in his property.
134. At all relevant times herein, Defendants were state actors and their conduct was subject to the provisions of 42 U.S.C. Section 1983.
135. The buildings on the Property were not in an emergency condition, much less were they in an immediate emergency condition or an imminent emergency condition.
136. Since there was no emergency with respect to the condition of the buildings on the Property, DePietro was entitled to a pre-deprivation hearing prior to the demolition of the buildings, as required under the Fourteenth Amendment and under Administrative Code Sections 26-236 through 26-249 (the "Unsafe Buildings Procedures").
137. Defendants prevented DePietro from receiving a pre-deprivation hearing with respect to the demolition of the buildings on the Property by failing to provide notice to DePietro timely and adequately under the City's Unsafe Buildings Procedures.
138. As a result of their actions and inactions, Defendants unlawfully deprived DePietro of his procedural due process rights, privileges and immunities secured to him by the Fifth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. Section 1983.
139. As a direct and proximate result of Defendants' violations of DePietro's procedural due process rights, DePietro suffered grievous financial, physical and emotional injuries as described above.
140. Defendants' deceitful declaration of Immediate Emergencies with respect to the Property and the unlawful demolition of the buildings, conducted in conspiracy in the

manner described above and in willful and total disregard of the well-known and established Unsafe Buildings Procedures constitute an unlawful seizure in violation of the Fourth Amendment to the United States Constitution, and thus violate 42 U.S.C. Section 1983.

141. The deprivation described above was carried out by each Defendant individually, and by all Defendants collectively as co-conspirators, under the color of New York State Law, including such law as has been delegated to the municipality, the City, and thus under the color of New York State law.

142. The deprivation described above was carried out by each Defendant individually, and by all Defendants collectively as co-conspirators, willfully, maliciously, intentionally, wantonly, and with full knowledge that DePietro's said constitutional rights to due process were being egregiously violated as described above. To the extent that, hypothetically, any Defendant may allege and be able to prove lack of actual intent to harm DePietro, such Defendant would have then committed such acts with such depraved indifference to DePietro's constitutional rights under the Fourth, Fifth and Fourteenth Amendment and the Unsafe Buildings Procedures as to be deemed to have committed such acts with the full equivalent under the law.

143. Therefore, by reason of the exceptionally well-known nature of the Unsafe Buildings Procedures, particularly among these Defendants, who purportedly deal with such situations on a daily basis, Defendants have acted as described above with intent and malice and/or reckless and callous indifference to the constitutional rights of DePietro, so as to warrant the imposition of punitive and exemplary damages against all the Defendants that are natural persons or corporations (i.e., with the exception of the City).

144. As a proximate result of Defendants' violations of DePietro's rights to protection from unlawful seizure, DePietro has suffered grievous financial, physical and emotional injuries as described above.
145. Defendants, individually and collectively as co-conspirators, intentionally treated DePietro differently from all others similarly situated and there is no rational basis for the difference in treatment. DePietro was subjected to intentional, arbitrary and unjustifiable discrimination by Defendants in the application, misapplication or non-application of the well-known and established Unsafe Buildings Procedures.
146. Defendants have thereby deprived DePietro of the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the United States Constitution.
147. Therefore, DePietro is entitled to recover from all Defendants twenty-five million dollars (\$25,000,000.00) in compensatory damages, and to recover from the Defendants who are natural persons or corporations (i.e., against all non-City Defendants) punitive and exemplary damages of twenty-five million dollars (\$25,000,000.00), plus interest from December 6, 2007 and DePietro's costs in this action, including attorneys' fees.

COUNT 2: CONSPIRACY

148. DePietro repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 147 above with the same force and effect as if herein set forth.
149. At all relevant times herein, DePietro was guaranteed the constitutional rights against unlawful seizure and under the due process and equal protection clauses of the constitutions of the United States and New York State not to be deprived of his constitutionally protected interests in his property.

150. In addition, as described above, DePietro was granted an Order to Show Cause and Stop Work Order by Judge Maltese, which were served on DOB and on various individuals at the Property on December 6, 2007, but which were ignored in a manner that forces the conclusion that a conspiracy among the Defendants.

151. Furthermore, the inaction of the NYPD officers and employees with respect to their refusal (a) to enforce the court orders to halt the demolition project, and (b) to issue police reports indicates that the NYPD officers and employees were co-conspirators.

152. As described above, the Defendants unlawfully conspired to intentionally, willfully and arbitrarily plan to violate his constitutionally protected rights and unlawfully demolish the Property and trespass upon the Property.

153. Therefore, the Defendants are in violation of the common law tort of conspiracy.

154. Therefore, DePietro is entitled to recover from all Defendants twenty-five million dollars (\$25,000,000.00) in compensatory damages, and to recover from the Defendants who are natural persons or corporations (i.e., against all non-City Defendants) punitive and exemplary damages of twenty-five million dollars (\$25,000,000.00), plus interest from December 6, 2007 and DePietro's costs in this action, including attorneys' fees.

COUNT 3: VIOLATION OF ARTICLE 1, SECTION 6 OF THE NEW YORK STATE CONSTITUTION

155. DePietro repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 154 above with the same force and effect as if herein set forth.

156. This claim, arising out of the same facts and circumstances as the federal claims herein and thus part of the same case or controversy as the federal claims, is asserted under the supplemental jurisdiction of this Court.

157. Article 1, Section 6 of the Constitution of the State of New York provides that no “person shall be deprived of life, liberty or property without due process of law.”

158. As described above, the Defendants’ actions and inactions were in violation of Article 1, Section 6 of the Constitution of the State of New York.

159. As a result, DePietro has been deprived of the buildings on the Property and valuable personal property.

160. Therefore, DePietro is entitled to recover from all Defendants twenty-five million dollars (\$25,000,000.00) in compensatory damages, and to recover from the Defendants who are natural persons or corporations (i.e., against all non-City Defendants) punitive and exemplary damages of twenty-five million dollars (\$25,000,000.00), plus interest from December 6, 2007 and DePietro’s costs in this action, including attorneys’ fees.

**COUNT 4: TRESPASS, INJURY TO PROPERTY, WRONGFUL DEMOLITION AND
CONVERSION**

161. DePietro repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 160 above with the same force and effect as if herein set forth.

162. This claim, arising out of the same facts and circumstances as the federal claims herein and thus part of the same case or controversy as the federal claims, is asserted under the supplemental jurisdiction of this Court.

163. At all relevant times, DePietro owned and possessed the Property and personal property located at the Property to the exclusion of rights of all others, including the Defendants.
164. As described above, Defendants, individually and collectively as co-conspirators, in violation of the Unsafe Buildings Procedures and without a validly obtained court precept, unlawfully broke into and entered upon the Property.
165. In the course of and in the furtherance of such trespass upon the Property, Defendants committed a wrongful demolition of the buildings, cut down trees on the Property and damaged, destroyed and/or removed DePietro's personal property.
166. Furthermore, the water runoff damage caused by the negligent planning and construction of the school across the street from the Property and the related actions of the SCA and DOT and other City agencies involved in planning and construction for schools and roads, constitute an ongoing trespass and nuisance with respect to the Property.
167. In addition, prior to the demolition of the buildings on the Property, DePietro had a substantial amount of valuable personal property on the Property, including a back-hoe, a Bobcat, a dump-truck, trailers, a wood-chipper, furniture, appliances, building materials, supplies, tools, equipment, clothing and personal documents.
168. In the course of the demolition of the buildings, Defendants intentionally, willfully and wantonly, destroyed, damaged and/or removed all DePietro's personal property from the Property. To the extent that, hypothetically, any Defendant may allege and be able to prove lack of actual intent to harm DePietro, such Defendant would have then committed

such acts with such depraved indifference as to be deemed to have committed such acts with the full equivalent under the law.

169. Such trespass, injury to property, wrongful demolition and damage, destruction and conversion of DePietro's buildings and personal property were carried out by each Defendant individually, and by all Defendants collectively as co-conspirators, willfully, maliciously, intentionally, wantonly, and with full knowledge that DePietro's said constitutional rights to due process were being egregiously violated as described above. To the extent that, hypothetically, any Defendant may allege and be able to prove lack of actual intent to harm DePietro, such Defendant would have then committed such acts with such depraved indifference as to be deemed to have committed such acts with the full equivalent under the law.

170. Therefore, DePietro is entitled to recover from all Defendants twenty-five million dollars (\$25,000,000.00) in compensatory damages, and to recover from the Defendants who are natural persons or corporations (i.e., against all non-City Defendants) punitive and exemplary damages of twenty-five million dollars (\$25,000,000.00), plus interest from December 6, 2007 and DePietro's costs in this action, including attorneys' fees.

COUNT 5: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

171. DePietro repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 170 above with the same force and effect as if herein set forth.

172. This claim, arising out of the same facts and circumstances as the federal claims herein and thus part of the same case or controversy as the federal claims, is asserted under the supplemental jurisdiction of this Court.

173. As described above, the conspiracy, trespass, wrongful demolition and conversion were carried out by each Defendant individually, and by all Defendants collectively as co-conspirators, willfully, maliciously, intentionally, wantonly, and with full knowledge that DePietro's said constitutional rights to due process were being egregiously violated. To the extent that, hypothetically, any Defendant may allege and be able to prove lack of actual intent to harm DePietro, such Defendant would have then committed such acts with such depraved indifference to DePietro's constitutional rights under the Fourteenth Amendment and the Unsafe Buildings Procedures as to be deemed to have committed such acts with the full equivalent under the law.

174. As described above, Defendants' actions and inactions were extreme and outrageous.

175. As described above, Defendants' actions and inactions caused DePietro to suffer severe emotional distress.

176. As described above, Defendants' actions and inactions were the direct and proximate cause of DePietro's emotional distress.

177. Therefore, DePietro is entitled to recover from all Defendants twenty-five million dollars (\$25,000,000.00) in compensatory damages, and to recover from the Defendants who are natural persons or corporations (i.e., against all non-City Defendants) punitive and exemplary damages of twenty-five million dollars (\$25,000,000.00), plus interest from December 6, 2007 and DePietro's costs in this action, including attorneys' fees.

COUNT 6: FAILURE TO PROTECT

178. DePietro repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 177 above with the same force and effect as if herein set forth.

179. This claim, arising out of the same facts and circumstances as the federal claims herein and thus part of the same case or controversy as the federal claims, is asserted under the supplemental jurisdiction of this Court.

180. As described above, the conspiracy, trespass, wrongful demolition and conversion were carried out by each Defendant individually, and by all Defendants collectively as co-conspirators, willfully, maliciously, intentionally, wantonly, and with full knowledge that DePietro's said constitutional rights to due process were being egregiously violated. To the extent that, hypothetically, any Defendant may allege and be able to prove lack of actual intent to harm DePietro, such Defendant would have then committed such acts with such depraved indifference to DePietro's constitutional rights under the Fourteenth Amendment and the Unsafe Buildings Procedures as to be deemed to have committed such acts with the full equivalent under the law.

181. Defendant City and various City agencies, and in particular members of the NYPD, have a duty to protect the citizens of New York City from crimes and injuries to their property.

182. Defendant City, including the City agencies and in particular NYPD members, did not protect DePietro's property from injury.

183. Therefore, DePietro is entitled to recover from the City and its agencies, including NYPD, twenty-five million dollars (\$25,000,000.00) in compensatory damages, plus interest from December 6, 2007 and DePietro's costs in this action, including attorneys' fees.

COUNT 7: NEGLIGENCE

184. DePietro repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 183 above with the same force and effect as if herein set forth.
185. This claim, arising out of the same facts and circumstances as the federal claims herein and thus part of the same case or controversy as the federal claims, is asserted under the supplemental jurisdiction of this Court. Defendants' actions and inactions in constructing the public school in close proximity to the Property without proper drainage facilities were negligent, reckless and careless.
186. As a result of the ensuing and continuing water runoff, the Property was damaged.
187. In addition, in conducting the demolition of the buildings on the Property, Defendants had a duty to minimize the damage to DePietro's property.
188. Defendants' actions and inactions, in (a) misrepresenting the conditions on the Property, (b) failing to consider alternative remedies, (c) failing to take all reasonable safety precautions, (d) ignoring and/or disregarding the Order to Show Cause and the Stop-Work Order, (e) hastening demolition work to avoid judicial intervention, and (f) failing to adequately protect DePietro's property, were negligent, reckless and careless.
189. As a result, DePietro has been deprived of the buildings on the Property and his valuable personal property.
190. Therefore, DePietro is entitled to recover from all Defendants twenty-five million dollars (\$25,000,000.00) in compensatory damages, and to recover from the Defendants who are natural persons or corporations (i.e., against all non-City Defendants) punitive and exemplary damages of twenty-five million dollars (\$25,000,000.00), plus interest from December 6, 2007 and DePietro's costs in this action, including attorneys' fees.

WHEREFORE, Plaintiff DePietro respectfully demands a judgment in his favor against the Defendants, as follows:

1. Upon the First, Second, Third Fourth, Fifth, Sixth and Seventh Counts:

Awarding to DePietro (a) a judgment against all Defendants other than SCA, jointly and severally, in the sum of \$25,000,000.00 in compensatory damages, (b) a judgment against all Defendants other than the City, jointly and severally, in the sum of \$25,000,000.00 as and for punitive and exemplary damages, (c) a judgment against SCA for the damages caused by its negligent construction of the school across the street from the Property, (d) interest from December 6, 2007, (e) DePietro's costs in this action, including attorneys' fees in accordance with 42 U.S.C. Section 1988, and (e) the reversal of all charges billed by Defendants to DiPietro, including the costs of the demolition, all real property taxes and water and sewer charges that have accrued since December 5, 2007, and all penalties and fines assessed by Sanitation, Parks DOH, ECB, EPA or any other City agency with respect to the Property.

2. Upon the Seventh Count: An order directing the City and its agencies to cure the water runoff problem at Academy Avenue immediately, by (a) installing at least two (2) storm drain sewers in the street bed at the corner of Academy Avenue and Page Avenue abutting the school's

property and at least two (2) storm drain sewers in the street bed at the corner of Academy Avenue and Page Avenue abutting the Property, (b) removing the swale constructed on Academy Avenue that directs the flow of water runoff directly at the Property, (c) removing the catch basin and holding tanks at Academy Avenue near Page Avenue, and (d) any and all other appropriate measures.

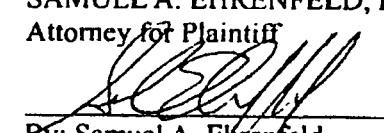
3. Such other and further relief as to this Court may seem just and proper, including the costs and disbursements and attorneys' fees of this action.

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff hereby demands a trial by jury of all issues in this action that are triable by jury.

Dated: February 17, 2010
New York, New York

SAMUEL A. EHRENFELD, ESQ.
Attorney for Plaintiff

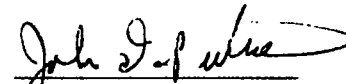

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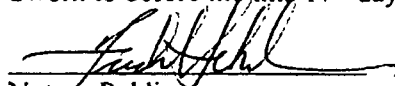
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

John DePietro, being duly sworn, deposes and says:

I have read the annexed Amended Verified Complaint and know of the contents thereof, and the same is true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to such matters I believe them to be true.


JOHN DEPIETRO

Sworn to before me this 17th day of February 2010.


Notary Public

FREDRICK SCHULMAN
Notary Public, State of New York
No. 025C4704709
Qualified in Westchester County
Certificate Filed in Westchester County
Commission Expires 10/31/17
13