

IN THE MATTER OF THE CLAIM OF
JOSEPH A. FISCHETTI, SR. AND HWEY JEN LEE

-against-

THE CITY OF NEW YORK,
THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,
OFFICE OF EMERGENCY MANAGEMENT,
and the STATE OF NEW YORK,

respondents.

NOTICE OF CLAIM

TO: CITY OF NEW YORK COMPTROLLER
One Centre Street
Rm. 1225
New York, NY 10007

CITY OF NEW YORK
CORPORATION COUNSEL
100 Church Street
New York, NY 10007

New York City Department of Environmental Protection
59-17 Junction Boulevard, 13th Floor
Flushing, NY 11373

New York City Department of Environmental Protection
886 St Nicholas Ave
New York, NY 10032

Office of Emergency Management
930 Flushing Avenue
Brooklyn, NY 11206

Office of Emergency Management
165 Cadmen Plaza East
Brooklyn, NY 11201

State of New York - **NOTICE OF INTENTION TO MAKE CLAIM**
Office of the Attorney General
120 Broadway
New York, NY 10271

2014 JUL 31 AM 9:01
LEGAL AFFAIRS OFFICE
RECEIVED

SIR(S): PLEASE TAKE NOTICE that the claimants herein hereby make claim and demand against the above-named respondents **as follows:**

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

CLAIMANTS:

All claimants reside in Lindenwood, Howard Beach, County of Queens, City of New York, zip code 11414 (hereinafter referred to as "the neighborhood"). Their exact street addresses are listed below. Upon information and belief, there are additional claimants that reside in the 11414 zip code district who also have claims that arise out of the same incident, the same negligence, the same actions, or the same failures to act, as those set forth herein, and have suffered the same or similar damages as those set forth herein.

Joseph A. Fischetti, Sr.

PII
Howard Beach, NY 11414

Hwey Jen Lee

PII
Howard Beach, NY 11414

ATTORNEY

Nora Constance Marino, Esq.
175 East Shore Road
Great Neck, NY 11023
ph.: 516-829-8399
fax: 516-829-4699
info@MarinoLawNY.com

2. The nature of the claim:

Claim for personal injuries, property damage, loss of property, cost of cleaning; cost of repairs, lost wages, loss of property values, and a compromised ability to obtain insurance, which may result in future damages, *inter alia*, arising out of an incident involving the of flooding of claimants' homes, premises, and property, both real and personal, which occurred on April 30, 2014, in the neighborhood known as Lindenwood, Howard Beach, County of Queens, City of

New York, State of New York, zip code 11414, due to the negligence of the respondents herein.

3. The time when, the place where, and the manner in which the claim arose:

The incident initially occurred on April 30, 2014, in the neighborhood known as Howard Beach, County of Queens, City of New York, zip code 11414, after significant rainfall that day, when, following said heavy rain during the day, at or around between 6:00 and 10:00 p.m. (in some cases as early as 4:00 p.m., but in most cases approximately 7:00 p.m.), water started to rise inside the homes of claimants, continuing throughout the night, and did not start to recede until at or around between 12:00 and 6:00 a.m. in the morning of May 1 (in most cases, approximately between 2:00 and 4:00 a.m.). Depending on the area of the specific room and/or the specific home, water levels rose to levels between a few inches to six feet.

Said flood was caused by a defect and/or failure in the drainage and/or sewer system and/or sanitary and storm combined sewer system located at and/or throughout said neighborhood, or, the drainage and or sewer system and/or facility that is responsible for maintaining water, sewage, and drainage in the subject neighborhood. Respondents engaged in an act that caused the incident, or the respondents failed to engage in an act, and such failure caused the incident. Respondents failed to properly man a facility; respondents failed to properly clean and/or maintain the subject sewers and/or drainage system in the neighborhood; respondents failed to properly control relevant valves, and/or gates, and/or dams, and/or other properties or materials pertaining to a sewage and/or drainage system; and were otherwise negligent.

Because of the negligence of respondents, claimants were caused to endure large amounts of water within their homes and/or garages, ranging from several inches to several feet, destroying and damaging massive amounts of property, and causing massive amounts of damage to the homes themselves, requiring repair, demolition, replacement, cleaning and mold removal, among other things. Further, the property values of respondents' homes are believed to have decreased dramatically due to this flood resulting from the negligence of the respondents.

Respondents created, caused, and allowed a dangerous and hazardous condition to exist and persist. That the negligence of respondents consisted of failing to properly and safely maintain and control the aforementioned sewer and/or drainage system; in allowing the existence of a condition which was known or should have been known to cause damage or destruction of property, or be inherently dangerous and/or hazardous; in allowing a condition to exist that posed a risk to the citizens and residents of the aforementioned neighborhood; in allowing the sewer and/or draining system to remain in a defective state and/or condition; in causing and permitting a dangerous condition; in failing to act in a reasonable and prudent manner; in creating a condition which caused claimants to be damaged; in negligently maintaining and/or repairing said sewer and/or drainage system, or in failing to entirely; in negligently inspecting said sewer and/or drainage system, or in failing to entirely; in failing to give any warning of the impending flood; in failing to properly prevent the subject flood.

Said incident was the result of the negligence and carelessness of the respondents herein, their agents, servants, and/or employees, in disregarding their duty to maintain the sewer and/or drainage system in a safe and proper manner; in failing to act as reasonable and prudent persons would have acted under the circumstances then and there existing; in failing to properly maintain and/or repair the above-identified location and surrounding areas in a safe and proper condition; in failing to properly inspect the above-identified location; in permitting said area and surrounding areas to become dangerous and defective as described above, thus creating a dangerous and hazardous condition that caused significant losses; in undertaking to act and in so acting, failed to act in a reasonable and prudent manner; in creating a condition which caused claimants to lose significant amounts of personal property and suffer significant amounts of damage to real and structural property; in causing the existence of mold in claimant's homes and residences; in exposing claimants to harmful pathogens, bacteria, and other hazardous and unknown substances; in failing to give any warning of the hazardous condition. Said conduct, by permitting and allowing the above-identified dangerous condition to exist, thereby creating a hazardous and dangerous condition, and failing to repair, maintain, and control, shows a complete disregard for the safety and well-being of claimants.

Respondents had at least constructive notice of said condition but permitted same to remain uncorrected. Respondents had actual

notice of said condition but permitted same to remain uncorrected. Respondents had prior written notice of said condition. Respondents caused and created the condition. Respondents knew the weather report called for significant rainfall, but failed to take any action at any reasonable time prior to the flood to prevent flooding, failed to man relevant and crucial facilities; failed to implement any type of fail-safe procedure at relevant and crucial facilities, although duly had ample opportunity to do so, thus creating the defective and hazardous condition.

That the negligence of respondents consisted of failing to properly and safely maintain and control the aforementioned area; in neglecting and/or failing to properly maintain, inspect, and/or repair the infrastructure of the aforementioned sewer and/or drainage system in the aforementioned neighborhood, and thereby causing the resulting flood and creating the condition complained of; in failing to properly clear and/or clean sewers in a reasonable, and/or regular, and/or timely manner in the aforementioned neighborhood of debris; in failing to prevent a backup of water during a rainstorm; in failing to properly man related facilities, including but not limited to the Spring Creek [Combined Sewer Overflow] Facility; in failing to properly maintain, control, manage, and/or repair that and/or other facilities, including but not limited to the Spring Creek [Combined Sewer Overflow] Facility; in allowing improperly and incorrectly pitched catch basins to remain in a defective, inadequate, and ineffective condition; in allowing and permitting a failure to occur at a related sewer overflow facility, causing sewers to back up into claimants' homes; in failing to properly and timely upgrade and/or maintain the subject sewer system; in failing to properly clean sewer grates and/or allowing garbage and debris to accumulate in same; in negligently relying on computer action rather than human action; in causing and permitting a dangerous condition; in failing to act in a reasonable and prudent manner; in creating a hazardous condition; in failing to comply with the appropriate code requirements; in and thereby creating a hazardous and dangerous condition.

4. The items of damage or injuries claimed are:

All claimants suffered serious, significant, and substantial damage to and losses of substantial amounts of personal property, **including but not limited to:** boilers, water heaters, furniture, clothing, shoes, cosmetics, toiletries, body and hair care products, beds, bedding,

mattresses, pillows, towels, decorations, ornaments, collectibles, paintings, pictures, memorabilia, appliances, tools, paint, sports equipment, insulation, household items such as paper products and cleaning products, utensils, dishes, pots and pans, lawn mowers, TVs, DVD players, computers, generators, barbeque grills, antiques, motor vehicles, dolls, toys, *inter alia*.

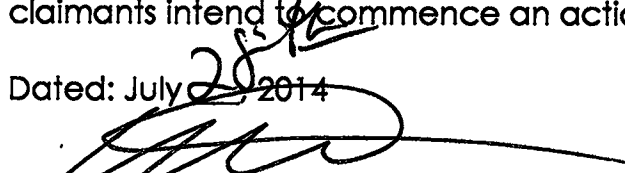
Claimants suffered serious, significant, and substantial damage to real and/or structural property, requiring extensive cleaning, debris removal, mold treatment and/or removal, demolition of existing sheet rock, painting, floor replacement, window casing replacement, baseboard heating replacement, door replacement, *inter alia*.

Claimants have suffered property value losses and rental income losses. Claimants have suffered lost time from work and lost wages.

Claimants have suffered personal injuries as a result of mold; claimants have also experienced exposure to pathogens, bacteria, and other unknown substances due to exposure to unsanitary sewer water which will or may lead to illness. Claimant's ability to obtain renters and/or home owners' insurance has been compromised, which will or may result in additional future damages. The full extent of all damages is currently unknown.

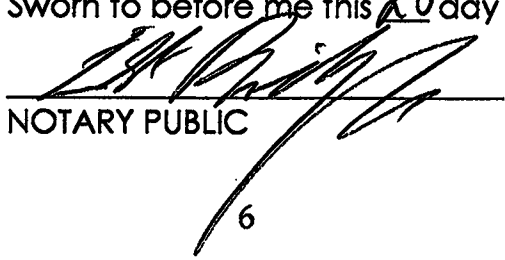
The undersigned therefore signs and presents this claim for adjustment and payment on behalf of all claimants pursuant to General Municipal Law Section 50-e(2). You are hereby notified that unless it is adjusted and paid, the claimants intend to commence an action on this claim.

Dated: July 28th, 2014


 NORA CONSTANCE MARINO
 ATTORNEY FOR CLAIMANTS
 175 East Shore Road
 Great Neck, New York 11023
 516.829.8399
 My File No.: 1529

ESTHER BICHOUPAN
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01BI6220969
 Qualified in Nassau County
 My Commission Expires April 26, 2018

Sworn to before me this 28th day of July, 2014


 NOTARY PUBLIC

INDIVIDUAL VERIFICATION

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

The undersigned, being duly sworn, deposes and says, that I am the claimant in the within action, that I have read the foregoing **NOTICE OF CLAIM/ NOTICE OF INTENTION TO MAKE CLAIM** and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters, I believe them to be true.

DATED: July 28, 2014

[Signature] L.S.

Sworn to before me this
 day of

28th
July 2014

Notary Public

[Signature]

NORA CONSTANCE MARINO
 Notary Public, State of New York
 No. 02MA5084119
 Qualified in Queens County
 Commission Expires September 26, 2017

2014-07-20 10:30

90 CHURCH ST 2123060723 >> 3168294699

P 9/11

INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
COUNTY OF New York)

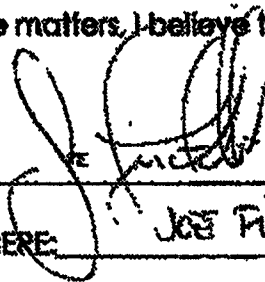
ss.:

The undersigned, being duly sworn, deposes and says, that I am a claimant in the within action, that I have read the foregoing **NOTICE OF CLAIM** /**NOTICE OF INTENTION TO MAKE CLAIM** and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters, I believe them to be true.

DATED: ^{July} ~~June~~ 28, 2014

SIGN HERE: X

PRINT NAME HERE:



JOE FISCHETTI

Sworn to before me this 28
day of ~~June~~ ^{July}, 2014


Notary Public

MAXINE WHITE
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN KINGS COUNTY
REG. #010740230005
MY COM. EXPIRES 12/31/2015

ATTORNEY VERIFICATION

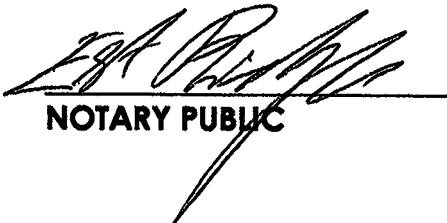
STATE OF NEW YORK)
)
 COUNTY OF NASSAU) ss.:

NORA CONSTANCE MARINO, an attorney duly licensed to practice law, affirms under penalties of perjury, that I am the attorney of record for the plaintiff in the within action; that I have read the foregoing **NOTICE OF CLAIM and NOTICE OF INTENTION TO MAKE CLAIM**, and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters, I believe it to be true. The reason this verification is made by me and not by any particular claimants named herein, who may not have verified this notice of claim individually, is that the claimant(s) resides in a different county then your deponent maintains her office in.

DATED: July 28th, 2014


NORA CONSTANCE MARINO

28th Sworn to before me this
 ___ day of July, 2014


NOTARY PUBLIC

ESTHER BICHOUPAN
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01BI6220969
 Qualified In Nassau County
 My Commission Expires April 26, 2018

In the Matter of the Claim of
MULTIPLE CLAIMANTS RE THE APRIL 30, 2014 FLOOD IN HOWARD BEACH,

Claimants,

- against -

**THE CITY OF NEW YORK,
THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,
OFFICE OF EMERGENCY MANAGEMENT,
and the STATE OF NEW YORK,**

Respondents.

**NOTICE OF CLAIM
NOTICE OF INTENTION TO MAKE CLAIM**

**Law Offices Of
NORA CONSTANCE MARINO
Attorney for Plaintiff/Claimant
Office and Post Office Address, Telephone
175 East Shore Road
Great Neck, New York 11023
516.829.8399**

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: _____ 20__

Nora Constance Marino

To :

*Service of a copy of the within
is hereby admitted.*

Dated: _____ 20__

Attorney(s) for:

PLEASE TAKE NOTICE :

☐ **NOTICE** that the within is a *(certified)* true copy of a

OF ENTRY: duly entered in the office of the clerk of the within named court on _____ 20__

☐ **NOTICE OF** that an order of which the within is a true copy will be presented for settlement to the

SETTLEMENT: HON. _____ One of the judges of the within named Court, at
on _____ 20__ at M.

Dated: _____, 20__

Yours, etc.

**Law Offices Of
NORA CONSTANCE MARINO**