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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

OM 309-311 6TH STREET, LLC, OM 1101-1109 PALISADE AVENUE, LLC, THE STELLA ON PARK, LLC, GOLDEN CREST 3347 PARK AVENUE, LLC, OM 422-426 5TH STREET, LLC, OM-309-315 11TH STREET, LLC, and OM 812 NEW YORK AVENUE, LLC,

Plaintiffs,

vs.

THE CITY OF UNION CITY, UNION CITY RENT STABLIZATION BOARD AKA THE CITY OF UNION CITY RENT LEVELING BOARD, KENNEDY NG, NILDA MERCADO, YOELIS MARTE, ROSANNA COLON, NORMA GUEVARA, YAMIRYS HOLGUIN, SANDRA VASQUEZ, JUAN MILAN, ANANCY JAFARGIAN BOLIVAR CARDENAS, MICHAEL LOPEZ, HECTOR ROSARIO, MAYOR BRIAN P. STACK, JOHN V. SALIERNO, and NEIL D. MAROTTA,

Defendants.

Civil Action No. 2:21-cv-12501

FIRST AMENDED COMPLAINT

Plaintiffs OM 309-311 6th Street, LLC, OM 1101-1109 Palisade Avenue, LLC, The Stella on Park, LLC, Golden Crest 3347 Park Avenue, LLC, OM 422-426 5th Street, LLC, OM-309-315 11th Street, LLC, and OM-812 New York Avenue, LLC, (collectively “Plaintiffs”), by and through

their attorneys, Kranjac Tripodi & Partners LLP, as and for their First Amended Complaint against the defendants allege as follows:

INTRODUCTION

1. Plaintiffs bring this action under 42 U.S.C. § 1983, as a result of the shocking abusive acts of Defendants who, under color of law, engaged in a collective and coordinated scheme to not only deprive Plaintiffs of their right to collect legal rents from its tenants, but to also demand that one of Plaintiffs reimburse its tenant for improperly calculated overcharges of rent that had purportedly been charged to the tenant by a prior owner of that Plaintiff's property.

2. Through this shocking abuse of power set forth in detail below, Defendants knowingly and deliberately deprived Plaintiffs of their constitutional rights to due process.

PARTIES

3. Plaintiff OM 309-311 6th Street, LLC ("Plaintiff OM 309-311 6th Street") is a New Jersey limited liability company with its principal place of business located at 316 Eisenhower Parkway, Livingston, New Jersey 07039.

4. Plaintiff OM 309-311 6th Street is currently the owner of the property located at 309-311 Sixth Street, Union City ("Property #1"). Property #1 is located on the tax map of Union City at Block 25, Lot # 10. Property #1 is a 41-unit apartment building.

5. Plaintiff OM 1101-1109 Palisade Avenue, LLC ("Plaintiff OM 1101-1109 Palisade Avenue") is a New Jersey limited liability company with its principal place of business located at 316 Eisenhower Parkway, Livingston, New Jersey 07039.

6. Plaintiff OM 1101-1109 Palisade Avenue is currently the owner of properties located at 300-11th Street a/k/a 1101 Palisade Avenue, Union City ("Property #2"), 1103 Palisade Avenue, Union City ("Property #3"), and 1109 Palisade Avenue, Union City ("Property #4").

7. Plaintiff The Stella on Park, LLC is a New Jersey limited liability company with its principal place of business located at 316 Eisenhower Parkway, Livingston, New Jersey 07039.

8. Plaintiff The Stella on Park, LLC is currently the owner of a property located at 3401 Park Avenue, Union City (“Property #5”).

9. Plaintiff Golden Crest 3347 Park Avenue, LLC is a New Jersey limited liability company with its principal place of business located at 316 Eisenhower Parkway, Livingston, New Jersey 07039.

10. Plaintiff Golden Crest 3347 Park Avenue, LLC is currently the owner of a property located at 3347 Park Avenue, Union City (“Property #6”).

11. Plaintiff OM 422-426 5th Street, LLC is a New Jersey limited liability company with its principal place of business located at 316 Eisenhower Parkway, Livingston, New Jersey 07039.

12. Plaintiff OM 422-426 5th Street, LLC is currently the owner of a property located at 426 5th Street, Union City (“Property #7”).

13. Plaintiff OM 309-315 11th Street, LLC is a New Jersey limited liability company with its principal place of business located at 316 Eisenhower Parkway, Livingston, New Jersey 07039.

14. Plaintiff OM 309-315 11th Street, LLC is currently the owner of a property located at 313-315 11th Street, Union City (“Property #8”).

15. Plaintiff OM 812 New York Avenue, LLC is a New Jersey limited liability company with its principal place of business located at 316 Eisenhower Parkway, Livingston, New Jersey 07039.

16. Plaintiff OM 812 New York Avenue, LLC is currently the owner of a property located at 812 New York Avenue, Union City (“Property #9”).

17. Defendant, the City of Union City (the “City”), is a municipal corporation and political subdivision of the State of New Jersey that has authorized the establishment of and has control over the actions of its agency, the City of Union City Rent Leveling Board.

18. Defendant City of Union City Rent Leveling Board (the “Board”) is a public entity with offices located at 3715 Palisade Avenue, Union City, New Jersey 07087. The Board is a body of the City of Union City established pursuant to New Jersey law and Union City municipal ordinance and is empowered to execute, consistent with New Jersey law, Union City’s rent control ordinance. In this regard, the Board is statutorily tasked with, among other things, enforcing the City of Union City’s rent stabilization ordinance.

19. Defendant Mayor Brian P. Stack (“Mayor Stack”) is charged with the duty to control, oversee, and regulate the administration and functions of the City.

20. Defendant Kennedy Ng (“Ng”) is the Rent Leveling Administrator of the City of Union City and is empowered, among other things, to accept and process complaints from tenants of illegal rental increases, to coordinate and supervise all staff associated with the operation of the Ordinance, to notify landlords that there is no record of compliance by the landlord with the provision of the Ordinance and to attend all meetings of the Rent Stabilization Board.

21. Defendant Nilda Mercado (“Mercado”) was the Secretary of the City of Union City Rent Leveling Board until 2020.

22. Defendant Yoelis Marte (“Marte”) was the Secretary of the City of Union City Rent Leveling Board until August 2021.

23. Defendant Juan Milan (“Milan”) is the Chairman of the City of Union City Rent Leveling Board and is empowered to determine legal rents and to adjudicate rent disputes pursuant to the Ordinance.

24. Defendant Sandra Vasquez (“Vasquez”) is the Vice Chairwoman of the City of Union City Rent Leveling Board and is empowered to determine legal rents and to adjudicate rent disputes pursuant to the Ordinance.

25. Defendant Rosanna Colon (“Colon”) is a member of the City of Union City Rent Leveling Board and is empowered to determine legal rents and to adjudicate rent disputes pursuant to the Ordinance.

26. Defendant Nancy Jafargian (“Jafargian”) is a member of the City of Union City Rent Leveling Board and is empowered to determine legal rents and to adjudicate rent disputes pursuant to the Ordinance.

27. Defendant Hector Rosario (“Rosario”) is a member of the City of Union City Rent Leveling Board and is empowered to determine legal rents and to adjudicate rent disputes pursuant to the Ordinance.

28. Defendant Norma Guevara (“Guevara”) is a member of the City of Union City Rent Leveling Board and is empowered to determine legal rents and to adjudicate rent disputes pursuant to the Ordinance.

29. Defendant Yamirus Holguin (“Holguin”) is a member of the City of Union City Rent Leveling Board and is empowered to determine legal rents and to adjudicate rent disputes pursuant to the Ordinance.

30. Defendant Neil D. Marotta, Esq. (“Marotta”) is the Attorney for the City of Union City Rent Leveling Board.

31. Defendant John V. Salierno, Esq. (“Salierno”) is the Tenant Advocate Attorney for the City of Union City. The Tenant Advocate Attorney is charged with, among other things, “[giving] free advice and assistance to apartment dwellers in their dealings with the City Rent Stabilization Board and/or before any court or administrative tribunal as may be assigned by the appropriate official of the City.”

JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 because Counts One through Four of the First Amended Complaint arise under 42 U.S.C. § 1983.

33. The Court has supplemental jurisdiction over the state law claims in Counts Five and Six pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the federal claims that they form the same case or controversy.

34. Venue is proper under 28 U.S.C. § 1391(b) and (c) because all Defendants are subject to personal jurisdiction in the District of New Jersey and because a substantial part of the events or omissions that gave rise to this action occurred in the District of New Jersey.

FACTUAL SUMMARY

I. UNION CITY ADOPTS RENT CONTROL IN 1973.

35. New Jersey is one of only four other states (New York, Maryland, Oregon and California) plus Washington, D.C., that imposes rent control.

36. While some states enforce rent control statewide, New Jersey’s rent control ordinances are enacted by municipalities.

37. New Jersey adopted rent control in or around 1973.

38. In or around that time, in 1973, Union City passed its first rent control ordinance (“Ordinance”). Among other drastic measures, the Ordinance established as of 1973 a base rent for all rent-controlled units in Union City. Any permissible increase in the base rent amount under the Ordinance was to be calculated from that original 1973 base rent.

39. In 1996, after having already adopted six (6) amendments to the Ordinance over the years, Union City adopted a seventh amended ordinance (the “1996 Ordinance”). Of particular import, the 1996 Ordinance contained an express and unambiguous de-control provision that allowed for a reestablishment and/or reset of the original base rent of 1973 (from which allowed increases were to be calculated) for any rent-controlled unit that became vacant subsequent to the adoption for the 1996 Ordinance.

40. Specifically, the 1996 Ordinance provided that:

Existing tenants will continue to be protected by rent control while they remain in their units. For these tenants, a landlord must still comply with the requirements of this chapter. All rents established by landlords and tenants on March 1, 1973, and any subsequent increase shall represent the base rent from which permitted increases are calculated. **As to those units vacant at the time of the adoption of this chapter or which subsequently become vacant under the terms of this chapter, the rent agreed to by the landlord and tenant shall become the new base rent by which the permitted increases under this chapter shall be determined.**

See 1996 Ordinance at § 14-2(c) (emphasis added).

41. In short, upon the vacancy of any unit subsequent to the 1996 Ordinance, a landlord was permitted to establish a new base rent for that unit upon agreement with the new tenant. Any subsequent permitted increases under the 1996 Ordinance (or any subsequent amended ordinances) to the rental amount would be based upon that newly established base rent.

II. UNION CITY IGNORES ITS RENT CONTROL ORDINANCE, ITS OWN RECORDS, AND NEW JERSEY COURT RULES IN ORDER TO PREVENT PLAINTIFF OM 309-311 6TH STREET FROM CHARGING LEGALLY PERMITTED RENT.

42. In or around 1999, after the adoption of the 1996 Ordinance and before any amendments thereto, the tenant residing in Unit 1B of Property #1 vacated the unit.

43. At or around that same time, a new tenant (“Tenant #1”) moved into the unit.

44. Pursuant to the 1996 Ordinance, because Unit 1B became vacant after the adoption of the 1996 Ordinance, the new rent agreed to by the landlord and Tenant #1 became “the new base rent by which the permitted increases under this chapter shall be determined” and the original base rent established in 1973 ceased to be the operative base rent. *See* 1996 Ordinance at § 14-2(c).

45. At the time the new tenant moved into the vacated Unit 1B, the new base rent agreed to by the landlord/owner at the time and the new tenant equaled \$487.33.

46. As such, pursuant to § 14-2(c) of the 1996 Ordinance, \$487.33 was, from then on, the new base rent for Unit 1B – the base rent was no longer the one established in 1973.

47. In 2018, Plaintiff OM 309-311 6th Street and its affiliates began negotiations to enter into a contract to purchase a portfolio of properties in Union City, including Property #1.

48. At the time, Union City had amended its rent control ordinance numerous time, and the then operative ordinance had been adopted in 2017 (the “2017 Ordinance”).

49. Pursuant to Section 334-14(E) of the 2017 Ordinance, prior to purchasing the portfolio of properties, including Property #1, Plaintiff OM 309-311 6th Street and its affiliates sought from the City rent registrations for each of their properties from the Rent Control Office of Union City.

50. Specifically, via OPRA request dated October 17, 2018 (and received by the City the same day), Plaintiff OM 309-311 6th Street and its affiliates sought for each property in the proposed

portfolio (including Property #1): “Violations for zoning, building dept, city, fire dept or task force, unpaid fines or penalties” and “Rent registrations for past 3 years.”

51. On March 6, 2019, four months after receiving the OPRA request, the City finally provided a limited response to the OPRA request.

52. Shortly thereafter, again in an attempt to comply with Section 334-14(E) of the 2017 Ordinance and to obtain the required rent calculation information for Property #1 prior to Plaintiff OM 309-311 6th Street’s purchase of the same, Plaintiff OM 309-311 6th Street served the City with a second OPRA request seeking all documents in the City’s records related to Property #1.

53. However, as was par with the City’s course of dealing with Plaintiff OM 309-311 6th Street, it failed to timely respond to the OPRA request.

54. As a result, due to fixed closing deadlines set by the seller of Property #1, Plaintiff OM 309-311 6th Street had no choice but to move forward with the closing of the purchase of Property #1 on January 22, 2019.

55. At the time of the purchase, Plaintiff OM 309-311 6th Street had not been able to obtain the rent calculations for Property #1 due entirely to the City’s own delay and ineptitude in responding to Plaintiff OM 309-311 6th Street’s repeated requests over the course of the proceeding months.

56. On April 18, 2019, in a continued effort to cooperate with the City and comply with the 2017 Ordinance, Plaintiff OM 309-311 6th Street met with Mercado of the Rent Leveling Board to discuss Plaintiff OM 309-311 6th Street’s acquisition of Property #1, along with a number of other properties in Union City. During this meeting, Plaintiff OM 309-311 6th Street indicated that it had attempted to obtain rent registration documents for months from the City, but still had received none. The next day, on April 19, 2019, Plaintiff OM 309-311 6th Street provided Mercado with a complete

lists of all properties Plaintiff OM 309-311 6th Street and its affiliates had purchased, all in an effort to have open communications with the Rent Leveling Board and to ensure that it complied with the 2017 Ordinance.

57. Finally, on May 7, 2019, weeks after receiving the second OPRA request and after Plaintiff OM 309-311 6th Street was forced to close on its purchase of Property #1 without the requested information, the City finally provided a response to Plaintiff OM 309-311 6th Street's second OPRA request regarding Property #1. Incredibly, however, the documents provided by the City were entirely non-responsive – they did not include any documents for Property #1, but rather included records related to completely different properties. In short, the City sat idle for weeks, waited until Plaintiff OM 309-311 6th Street purchased Property #1, and then provided non-responsive documents.

58. In a continued effort to comply with the Ordinance and to proceed in good faith and to cooperate with the City, Plaintiff OM 309-311 6th Street immediately (also on May 7, 2019) informed the City that the documents were not related to Property #1 and were not responsive to the OPRA request.

59. Plaintiff OM 309-311 6th Street received no response from the City. As such, on May 13, 2019, still in a continued effort to comply with Section 334-14(E) of the 2017 Ordinance, Plaintiff OM 309-311 6th Street followed up with the City regarding its request for rent registrations for Property #1.

60. Again, Plaintiff received no response. As such, yet again, on May 20, 2019, Plaintiff OM 309-311 6th Street followed up with the City regarding its request for rent registrations for Property #1.

61. In response, the City merely stated, without any detail or estimate of the timeframe for the production of the documents, that it was “circling back with Rent Control” – nothing more.

62. Two weeks later, Plaintiff OM 309-311 6th Street had still received nothing from the City or the Rent Control Office. As such, on June 4, 2019, and again in further attempt to comply with Section 334-14(E) of the 2017 Ordinance, Plaintiff OM 309-311 6th Street asked if the City had received any documents from the Rent Control Office regarding the rent registrations for Property #1.

63. Then, via letter dated August 30, 2019, Mercado informed Plaintiff OM 309-311 6th Street that the current tenant in Unit 1B of Property #1, Emilio Puente (“Puente”), who had lived in the Unit since 2014, had complained for the first time about his rent to the Rent Leveling Board and that, incredibly, as a result thereof, the City had unilaterally determined based on its faulty rent calculation that Puente had been overcharged \$16,113.08 in past rent paid from February 2014 to June 2019, because the legal rent as arbitrarily calculated by Ms. Mercado was \$764.72 in lieu of the correct legal rent of \$996.05. Worse, even had the \$764.72 been accurate—and it was not—Mercado improperly calculated the purported overcharge (i.e. by including an extra month).

64. The Rent Leveling Board never contacted Plaintiff OM 309-311 6th Street to inform it that Puente had made a complaint regarding his rent – this is because the City’s Ordinance provides no duty to do so and effectively eliminates Plaintiff OM 309-311 6th Street’s ability to respond or seek information. More, the Rent Leveling Board never notified Plaintiff OM 309-311 6th Street that it was performing a recalculation of the legal base rent for Unit 1B – again this is because the City’s Ordinance provides no duty to do so, which again eliminates Plaintiff OM 309-311 6th Street’s ability to respond before the new base rent is unilaterally and arbitrarily calculated.

65. This deliberate failure to provide any notice to Plaintiff OM 309-311 6th Street is part of Defendants' carefully crafted scheme by which they routinely deprive property owners' rights by unilaterally—and without any notice to the landlord—improperly and arbitrarily lower rents for tenants and then direct those tenants to immediately begin paying the lower rent (or no rent at all with the anticipation of a credit refund).

66. Indeed, this letter was the first time that Plaintiff OM 309-311 6th Street had been provided any notice that Puente had made a complaint to the Rent Leveling Board regarding his rent. It was also the first time that Plaintiff OM 309-311 6th Street was provided notice that the Rent Leveling Board had performed a recalculation of the legal base rent. As such, Plaintiff OM 309-311 6th Street was never given any opportunity to object to, appeal, or even review the documents upon which Mercado relied to reduce the purported legal base rent.

67. More, as set forth above, this overcharge calculation by the Rent Leveling Board (and specifically Mercado) was inaccurate as it was based on an improper use of a legal determination of base rent from 1987 and not the new base rent established in 1999 when Unit 1B had been vacated and rented to a new tenant who had agreed to that new base rent.

68. And more, in her letter, Ms. Mercado informed Plaintiff OM 309-311 6th Street that it owed the entirety of this overcharge (dating back to 2014) and mandated that Plaintiff OM 309-311 6th Street pay said overcharge within ten (10) days, even though it had only purchased Property #1 in 2019. In so directing Plaintiff OM 309-311 6th Street to pay this overcharge within ten (10) days, Mercado deliberately and knowingly prevented Plaintiff OM 309-311 6th Street from exercising its right to appeal the overcharge calculation.

69. In fact, Plaintiff OM 309-311 6th Street would later discover via a response to an OPRA request it had sent to the Rent Leveling Board that, in June 2019, Mercado had mistakenly

sent a letter of Puente's complaint and new base rent to the prior owner of Property #1 – even though, as set forth above, Mercado had met with Plaintiff OM 309-311 6th Street in early 2019 and had been informed orally and in writing that Plaintiff OM 309-311 6th Street was the current owner of Property #1.

70. As such, Plaintiff OM 309-311 6th Street was arbitrarily and unfairly punished and deprived of its rights to respond to Puente's complaint and object to the new base rent calculation due to the City's own mistake, which it deliberately ignored.

71. On September 6, 2019, and in shock after receiving Mercado's August 30, 2019 correspondence, Plaintiff OM 309-311 6th Street emailed Mayor Stack, Marotta, Ng, and the Rent Leveling Board to notify them of the letter and its contents and its objection to the demand for the overcharge refund to Puente.

72. On September 10, 2019, Marotta responded to Plaintiff OM 309-311 6th Street via an email copied to Mayor Stack and Ng. In that email, Marotta first admitted that the City's June 18 2019 correspondence had been sent to the prior owner. Incredibly, though, Marotta blamed this mistake on the fact that the City purportedly had only the prior owner's address on file, despite the fact that Plaintiff OM 309-311 6th Street had not only met with Mercado on April 17, 2019 to inform her of Plaintiff OM 309-311 6th Street's purchase of Property #1, but also sent her the day after (April 18, 2019) a list of all of the properties that it and its affiliates had acquired, including Property #1!

73. In addition, in his September 10, 2019 email, Marotta further attempted to place the blame on Plaintiff OM 309-311 6th Street for Mercado's mistake in sending her letter to the wrong address on the purported fact that Plaintiff OM 309-311 6th Street had purportedly failed to "follow[] the ordinance and register[] timely." However, as set forth above, the failure to register timely fell squarely on the Rent Leveling Board's and City's failure to respond properly and timely to Plaintiff

OM 309-311 6th Street's OPRA requests that had been submitted prior to Plaintiff OM 309-311 6th Street's purchase of Property #1. In addition, Marotta's attempted placement of blame on Plaintiff OM 309-311 6th Street was even more astounding since Plaintiff OM 309-311 6th Street had previously met with Marotta and Ng to discuss filing the registration statements at a later date.

74. By letter dated September 10, 2019, Plaintiff OM 309-311 6th Street informed the Rent Leveling Board and Mercado that Mercado's August 30, 2019 correspondence was the first time Plaintiff OM 309-311 6th Street had been informed of any legal rent calculation or overcharge for the tenant – let alone that the Puente had complained to the Rent Leveling Board regarding his rent. Plaintiff OM 309-311 6th Street further disputed the rent calculation on the grounds that it was improperly based on a legal determination of base rent from 1987 (and not the new rent established under the 1996 Ordinance when the unit was vacated and a new rent was agreed upon by the new tenant that subsequently moved into the unit in 1999) and thus appealed the faulty rent calculation to the Rent Leveling Board.

75. Then, on September 13, 2019, Plaintiff OM 309-311 6th Street responded to Marotta's September 10, 2019 email setting forth the lengthy history of the City's repeated delays and failure to provide information to Plaintiff OM 309-311 6th Street prior to the purchase and failure to properly advise Plaintiff OM 309-311 6th Street of the registration requirements, even though Plaintiff OM 309-311 6th Street had been in constant communication with the City (and had even had meetings with Mercado).

76. Unsurprisingly, Plaintiff OM 309-311 6th Street received no response – because the City had no viable response or explanation to give.

77. Instead, two months later, via letter dated December 12, 2019, yet again based on an improper legal determination of base rent from 1987, and arbitrarily disregarding the fact that the base

rent had been reset under the 1997 Ordinance in 1999 when the unit had been vacated, the Rent Leveling Board and Mercado formally informed Plaintiff OM 309-311 6th Street that as of October 1, 2019, the legal rent for Unit 1B was reduced to \$764.73.

78. Plaintiff OM 309-311 6th Street thereafter timely appealed the rent recalculation (the “First Appeal”).

79. On February 10, 2020, the Board held a hearing (the “First Hearing”) on Plaintiff OM 309-311 6th Street’s First Appeal.

80. Present at the First Appeal were: Ng, Mercado, Marotta, Colon, Jafargian, Rosario, Vasquez, Milan, and Salierno.

81. At the hearing, Plaintiff OM 309-311 6th Street provided both testimony and documentary evidence (via rent registration statements from the City’s own records) showing that the tenant in Unit 1B had changed in 1999 – and thus, necessarily that Unit 1B had been vacated prior to the new tenant moving in,

82. As such, Plaintiff OM 309-311 6th Street argued that under the applicable ordinance at the time (the “1996 Ordinance”), the base rent for Unit 1B was reset to the rent amount agreed to by the owner at the time and the new tenant, named Mr. Zambrano, – in May 1999 – and the prior base rent was no longer applicable.

83. Plaintiff OM 309-311 6th Street further demonstrated that the new base rent for Unit 1B, which was agreed to by the owner and the new tenant, Mr. Zambrano, equaled \$463.86. This was evidenced by a comparison of the rent registrations for that period – again, which was in the City’s files, and which showed a change in the tenant for Unit 1B in 1999.

84. Plaintiff OM 309-311 6th Street then testified that it had calculated the rent as of October 2019 as \$904.23 (due to permitted yearly increases under the applicable ordinances) from

that new base rent (as set forth in the 1996 Ordinance) and introduced at the hearing documentary evidence of that calculation.

85. In response, Salierno, as Tenant Advocate on behalf of Puente, asked if Plaintiff OM 309-311 6th Street was in possession of the lease that had been entered by the new tenant in 1999. Obviously, since Plaintiff OM 309-311 6th Street did not purchase Property #1 until ten (10) years later, Plaintiff OM 309-311 6th Street could not have had those records. This was especially the case since Property #1 had been previously owned by at least three different owners. More, prior to Plaintiff OM 309-311 6th Street purchasing Property #1, it was routine practice (and considered legal by the State of New Jersey) for landlords to enter into oral month to month leases with tenants – in those cases, it would be impossible to obtain a copy of a non-existent document.

86. In fact, Salierno's inquiry was disingenuous, since to require a potential owner to somehow obtain a copy of a written lease for every single unit in every single property they purchase from a prior owner (who themselves may have purchased Property #1 from an even prior owner), from the date those properties were built (no matter how long ago) would be entirely overly burdensome, if not impossible. To place that kind of burden on a landlord would be beyond onerous, especially where an owner **and** the City have the benefit of the rent registration statements filed by the prior owners. Nonetheless, Salierno argued that burden should be imposed upon Plaintiff OM 309-311 6th Street.

87. Plaintiff OM 309-311 6th Street responded that it relied on the only documented records available, which were in the City's files, i.e. the rent registration statements. As set forth above, it would have been impossible for Plaintiff OM 309-311 6th Street to have obtained copies of written leases for every single past tenant of Property #1.

88. In response, Marotta stepped in and attempted to discount the City's own records (i.e. the rent registration statements) on the grounds that without an actual lease, there was no evidence of a meeting of the minds between Mr. Zambrano and the prior owner. This was immediately countered by Plaintiff OM 309-311 6th Street in demonstrating that Mr. Zambrano had remained a tenant in Unit 1B for 13 years, until 2012, which necessarily showed a meeting of the minds by the parties' course of conduct.

89. The Board ignored this reasoning without any basis.

90. In fact, nothing in the 1996 Ordinance states that a vacancy and agreed upon new rent must be proven via only a lease. In fact, it could not, since many landlords routinely entered into oral month to month leases with tenants.

91. Mercado, the secretary of the Rent Leveling Board who had performed the rent recalculation, then testified. While she acknowledged that the rent registration statements relied on by Plaintiff OM 309-311 6th Street showed a change in the tenant for Unit 1B in 1999, she unilaterally chose to disregard the statements on the grounds that she believed that, at times, some rent registration statements may contain mistakes. However, she did not testify that she was aware of any mistakes on the rent registration statements provided by Plaintiff OM 309-311 6th Street showing the change in tenancy at the Unit. In addition, she testified that in lieu of relying on signed, completed, and filed registration statements, she preferred to rely on unsworn, informal letters that might be in the City's records.

92. Mercado's testimony and reasoning for refusing to consider Plaintiff OM 309-311 6th Street's documentary evidence available was entirely arbitrary and knowingly disingenuous. Indeed, pursuant to Section 334-16 of City's current Ordinance, owners are required to register their tenants/rents via a rent registration statement. In setting forth this requirement, the City necessarily

acknowledges and concedes that the information on a rent registration statement is valid and provides sufficient evidence of, among other things, (i) the occupant of a unit (*see* § 334-16(1)(a)) and (ii) the current rent for the unit (*see* § 334-16(1)(c)). In fact, the City had accepted, checked, and relied upon the information contained in the rent registrations for Property #1 for twenty-five (25 years).

93. However, apparently, pursuant to Mercado's testimony, the City has full and complete arbitrary discretion as to when it chooses to rely on registration statements (e.g. when it benefits the City) or when to reject information on a registration statement (e.g. when it favors a landlord). This was made all the more apparent by the fact that Mercado had calculated the lowered rent based upon a rent amount she had extrapolated from an August 21, 1987 letter that she had located in the Rent Leveling Board's records that apparently noted the rent amount for the unit at the time.

94. After hearing testimony and argument, the Board, via Milan, first stated that he was not sure how to rule and that "I can see going either way and usually I hate when I am tentative about a decision." He then held as follows:

. . . we leave the rent as the administrators have set based on the fact I don't have a lease or rent or anything but because I can see that there is ambiguity in landlord in good faith could have been somewhat confused on this, if there is any arrears or any overcharges that might be due, I will say they should be waived.

95. Salierno, who, as Tenant Advocate, was acting as counsel for Puente, did not express any disagreement and did not state any objection to that decision.

96. Marotta also did not object to the decision. Instead, he went out of his way to recognize that "the ordinance does give some pretty broad powers to the board" but that "It doesn't specifically say waive an overcharge . . . [.]"

97. In stating as much, Marotta acknowledged that he had access to the applicable ordinance and that nothing in the ordinance prevented the Board from waiving any overcharges.

98. Milan then again reiterated:

We uphold the decision of the administrators but because of the ambiguity regarding what constitutes proof especially since it's a new landlord who was not there at the time when originally these decisions were made, that there won't be any, overcharges will be waived.

99. Board members Rosario, Jafargian, Vasquez, Colon, and Milan then all confirmed their agreement with that decision.

100. Puente was present throughout the entirety of the First Hearing, and had an interpreter. As such, Puente understood the testimony presented at the First Hearing, and certainly understood the Board's decision to waive the overcharge.

101. On July 13, 2020, five months after the First Hearing, the Board finally entered its resolution (the "First Resolution") regarding Plaintiff OM 309-311 6th Street's First appeal. In the Resolution, the Board incredibly (i) failed to recite that Plaintiff OM 309-311 6th Street had produced evidence that Unit 1B had been vacated via rent registration statements on file at the Rent Leveling Board that unequivocally showed a change in the tenant of Unit 1B in 1999 (and thus that the only basic, good faith, logical conclusion that Unit 1B was vacated by the previous tenant), and (ii) that it instead relied exclusively on Mercado's testimony that she had deliberately and arbitrarily ignored the rent registration statements showing a vacancy in Unit 1B in 1999 (and thus used the wrong base rent in lieu of the newly established base rent in 1999) simply because she personally believed that rent registration statements are "often inaccurate." Even worse, the Board made no finding in the First Resolution that the rent registration statements offered by Plaintiff OM 309-311 6th Street were actually inaccurate in any way.

102. In short, the Board, in its Resolution, memorialized that it rejected documentary evidence of a vacancy in 1999 on the sole fact that the secretary of the Rent Leveling Board said that, because some unspecified registration statements may not always accurate, then not one single registration statement (even those not actually demonstrated to be inaccurate) can be relied upon by a landlord for purposes of resetting the legal base rent (and, instead, the City could rely on some letter in its file to an unspecified tenant from 1987 to set the base rent). In so doing, the Board therefore arbitrary, capriciously and unreasonable ignored relevant information in its First Resolution.

103. Based upon these findings, the Board upheld Mercado's rent determination of \$764.73. However, tacitly acknowledging that this decision was improper and contrary to the 1997 Ordinance, the Board further expressly stated that "due to an ambiguity as to what constitutes proof [of a vacancy] especially for a new landlord, any overcharges that might be due, are waived."

104. A week later, on July 20, 2020, Marotta served Plaintiff OM 309-311 6th Street's attorney **and** Salierno with the First Resolution, via email sent to Plaintiff OM 309-311 6th Street's email address and Salierno's email address (johnsaliernolegal@gmail.com).

105. Pursuant to the then-current Ordinance (adopted in 2019) at § 334-8:

Either the landlord or the tenant may appeal the decision of the Rent Stabilization Board. All decision of the Board are final. Any landlord or tenant wishing to appeal the decisions of the Board may do so in the Superior Court of New Jersey pursuant to its rules and procedures.

106. Pursuant to New Jersey Court Rule 4:69-6, an appeal of a Board decision "shall [not] be commenced **later than 45 days** after the accrual of the right to review, hearing or relief claimed[.]" (Emphasis added).

107. As such, Plaintiff OM 309-311 6th Street and Salierno, the Tenant Advocate, were required (without exception provided in the rules) to file an appeal of the First Resolution within 45 days of July 20, 2020, **or by September 3, 2020.**

108. Although Plaintiff OM 309-311 6th Street vehemently disagreed with the Board's adoption of Mercado's deliberate ignorance of the documentary evidence showing a vacancy in Unit 1B in 1999 and thus improper rent calculation, it made a financial and strategic decision to not appeal the First Resolution since the Board had expressly stated that no overcharges would be due Puente.

109. Incredibly, on September 30, 2020, (i) almost eight (8) months after the Board had already decided at the February 10, 2020 hearing that Plaintiff OM 309-311 6th Street need not pay any overcharge to Puente, (ii) two and half months after the Board had entered its formal Resolution, which expressly stated that Plaintiff OM 309-311 6th Street need not pay any overcharge to Puente, and (iii) almost two and half months after Salierno had received a copy of the Resolution, Salierno unilaterally notified Plaintiff OM 309-311 6th Street that "[on] August 30, 2019, the secretary of the Rent Leveling Board . . . determined that, based on her calculation of the legal rent, Mr. Puente overpaid in rent in the amount of \$16,113.08" and that "Puente hereby elects to credit that amount against future rent."

110. As set forth above, not only was the purported rent calculation improper as it relied on a legal determination of base rent from 1987 and continued to deliberately ignore that the base rent had been reset in 1999, but Salierno knowingly and directly contradicted the Board's decision and First Resolution.

111. Via letter dated October 2, 2020, Plaintiff OM 309-311 6th Street reminded Salierno of the First Resolution, and particularly that it expressly stated that any overcharges were waived. Plaintiff OM 309-311 6th Street further reiterated that although the rent calculation adopted by the Board was improper (as evidenced by the rent registration statements produced at the First Hearing), it had made the strategic decision to not appeal the decision. Plaintiff OM 309-311 6th Street thus

requested that Salierno comply with the Board's First Resolution and retract his September 30, 2020 notification.

112. Over the course of the next month, Plaintiff OM 309-311 6th Street followed up several times with Salierno and explained that Puente had failed to pay rent for a number of months. Salierno had evidently directed Puente to cease paying the rent – since he had informed Plaintiff OM 309-311 6th Street in his September 30, 2020 letter that Puente had elected to take a credit in the amount of the purported overcharge towards future rent.

113. Finally, on November 16, 2020, despite Plaintiff OM 309-311 6th Street's repeated requests for a response, and even though Salierno knew that the Board's Resolution expressly stated that any overcharge would be waived, Salierno responded to Plaintiff OM 309-311 6th Street. In his response, Salierno confirmed that he had "explained everything" to Puente (including that the overcharge had been waived) and that he had instructed Puente to pay the back rent immediately. However, this was false.

114. Indeed, shockingly, on November 25, 2020, Salierno requested via letter to Marotta that the Board "reconsider its decision" that the overcharges be waived and to "hold the current owner liable for the refund." In support thereof, Salierno cited to § 334-5(a)(3)(k) of the 2019 Ordinance that provides "... the Landlord shall refund to the Tenant the amount of the overcharge . . ." or the tenant may "take the refund as a credit against future rent[.].

115. Salierno and Marotta knew that Salierno's request for reconsideration was made out of time as it was sent (i) almost four and a half months after the First Resolution was entered, (ii) a little over four months after Salierno had received a copy of the First Resolution, and (iii) **83 days** after the September 3, 2020 deadline to appeal the First Resolution.

116. In fact, realizing that his request was egregiously late and improper, Salierno attempted to couch the appeal as a “reconsideration.”

117. However, § 334-8 of the 2019 Ordinance unequivocally provides that only the “Board, on **its own motion**, may reconsider any of its prior determinations, or those of the Rent Regulation Officer, **upon a finding that there is new evidence not readily available at the time of the prior determination.**” (Emphasis added). In short, a reconsideration of the First Resolution could only occur (i) upon the Board’s own motion (and not upon a request by the Tenant Advocate well over **nine months** after the Board made its decision on the record at the First Hearing and over **four months** after the First Resolution was entered), **and** (ii) upon the discovery of new evidence not available at the time of the hearing (and certainly not based upon a citation—not even evidence—to a section of the Ordinance that was obviously readily available and relied upon by everyone, including the Board and the Tenant Advocate, at the First Hearing).

118. Salierno, as Tenant Advocate, thus knew that his reconsideration request was improper and not permitted under § 334-8 of the 2019 Ordinance. So did Marotta.

119. Via letter dated December 7, 2020, Plaintiff OM 309-311 6th Street informed Marotta that it objected to Salierno’s request for reconsideration and reminded Marotta that (i) it had owned Property #1 for only five months when the improper rent recalculation decrease the rent from \$996.05 to \$764.72 had been done, (ii) it had appealed that reduction and the Board had heard argument at the First hearing and improperly rejected Plaintiff OM 309-311 6th Street’s documentary evidence showing a vacancy in the unit in 1999 solely based on the testimony of Mercado, and (iii) it had chosen not to appeal that decision because the overcharges had been waived, to which Salierno did not object at the First Hearing and instead sat idly by and waited nine months to object to the same.

120. In another shocking development, (i) despite the fact that the overcharges had been waived both at the First Hearing and in the First Resolution, (ii) despite the fact that Salierno was present at the First Hearing and received the First Resolution, he never objected at the time to the waiver, (iii) despite the fact that Salierno failed to file an appeal of the decision within 45 days of receipt of the First Resolution and, thus, was out of time to file an appeal under the New Jersey Court Rules, and (iv) despite the fact the Board could only reconsider its final decision on its own motion (which it did not do) and only if new evidence came to light (which none did), Marotta deliberately ignored Plaintiff OM 309-311 6th Street's legally supported objections to a rehearing and directed the Board to schedule another hearing (the "Second Hearing") on the exact same issues and evidence that were presented at the First Hearing and in connection with which Marotta and Salierno knew the Board had issued a final decision that could no longer be appealed or reconsidered.

121. Completely ignoring the very terms of its own Ordinance, and in violation of Plaintiff OM 309-311 6th Street's due process rights, the Board then scheduled the Second Hearing for February 8, 2021, which was later adjourned to March 8, 2021.

122. Board members Colon, Guevara, Holguin, Vasquez, and Milan were present. Marotta, Ng, and Salierno were also present.

123. At the Second Hearing, Salierno argued that Section 334-5(a)(3)(k) of the 2019 Ordinance provides that a landlord shall refund to a tenant and, if not, a tenant may take a credit against future rent for any overcharges. Salierno further stated that the section further provides that any overcharge shall run with the property and that a successor owner shall be responsible for the refund. Based on this language alone, Salierno argued that the Board did not have the power to waive the overcharge.

124. In making this argument, Salierno knowingly and deliberately ignored and failed to mention that there was nothing in the ordinance that specifically prevented the Board from waiving overcharges under certain circumstances, such as those set forth by the Board at the First Hearing.

125. More, Salierno also failed to mention that Marotta had expressly acknowledged at the First Hearing that the Board had broad powers and that it was not specifically prevented by the ordinance from waiving an overcharge under certain circumstances.

126. Plaintiff OM 309-311 6th Street responded first that the Second Hearing was essentially a complete rehearing of the First Hearing and of the First Appeal, and that any appeal of the Board's decision at the First Hearing and of the First Resolution should have been filed by no later than September 3, 2020 pursuant to the New Jersey Court Rules. Since Salierno had made his request **83 days** after that deadline, under the New Jersey Court Rules, the Second Hearing was legally improper.

127. Plaintiff OM 309-311 6th Street also argued that Salierno's attempt to couch the request for a rehearing as one for reconsideration also failed because (i) only the Board itself could order the regarding on its own motion (which did not happen), and (ii) no new evidence that had not been available at the First Hearing was being presented. As such, reconsideration was not legally permitted.

128. Plaintiff OM 309-311 6th Street finally explained that, despite the Board's Resolution waiving any overcharges, Plaintiff OM 309-311 6th Street, in good faith and without any legal duty to do so, provided a credit to Puente of \$2,203.83.

129. In response to Plaintiff OM 309-311 6th Street's argument that Salierno failed to file his appeal by September 3, 2021 (or 45 days from the day Plaintiff OM 309-311 6th Street received

the Board's Resolution), Salierno incredibly falsely represented to the Board on three separate occasions during the hearing that he had not received the Resolution in July or August:

I know I didn't receive [the Resolution] in July.

...

I remember waiting a long time to get to – to get the Resolution . . . I know I didn't receive it in – in July or August[.]

...

I – I know it wasn't in July or August.

130. Upon hearing this unabashed and unwavering false declaration by Salierno that he had not received the Resolution in July or August in an attempt to argue that he had not filed his appeal out of time, Marotta sat quiet and did not say anything.

131. Astoundingly, however, Salierno had, in fact, received the Resolution on July 20, 2020 – in complete contravention to his representations. Worse yet, Marotta himself had sent Salierno the Resolution on the date, via email. The reason Plaintiff OM 309-311 6th Street knows this is that Plaintiff OM 309-311 6th Street's attorney was included on the same email.

132. As such, both Salierno, via his representations to the Board, and Marotta, via his silence even though he knew Salierno was making material misrepresentations to the Board, deliberately and knowingly misled the Board into believing that Salierno had not filed his appeal within the time set forth under the New Jersey Court Rules.

133. Then a further shocking moment came when Puente testified under oath that sometime in May 2020, after he was directed to pay his rent and that he was not being given a credit for the overcharge (since the Board had waived the overcharge), he went straight to the Union City Police Department at which time he was given purported legal advice by the police that the failure of Plaintiff

OM 309-311 6th Street to give him a credit for the overcharge (even though the Board had held it was waived) was somehow a fraud by Plaintiff OM 309-311 6th Street.

When I went home – before getting home I went to the Police Station in Union City and I put my record down notifying what happened. The Police gave me something that said it was fraud [.]

134. But that was not the end of it, Puente then stated that he then went to Mayor Stack's residence to discuss the overcharge issue.

When I – when I – when I was going home, since Mr. Brian lives close to where New York [Avenue] is, I spoke to him. I said, Mr. Brian, I have a problem. I'm paying my rent seriously and now they're saying the month of rent that I paid, they're – they never got it. I only have two people can help me.

135. Not coincidentally, after Puente spoke with both the Police Department and Mayor Stack, Salierno sent his letter to Plaintiff OM 309-311 6th Street demanding payment of the overcharges and then sent his letter to Marotta seeking a new hearing on the issue. This made clear that Mayor Stack orchestrated and directed the events set forth herein, including the Second Hearing, by which Plaintiff OM 309-311 6th Street was deprived of its due process rights.

136. If that were not enough, both Salierno and Marotta blatantly attempted to lead Puente (during his testimony at the Second Hearing and during which he had an interpreter) to state that somehow, somehow, Puente had not understood at the First Hearing that the overcharges had been waived, and that is why he did not appeal the decision on time. However, Puente admitted that he could hear the interpreter during the hearing, who explained everything (thus necessarily that the overcharge would be waived). Specifically, Puente admitted:

Yes. [The interpreter] was explaining everything, the whole process.

137. Then, after Marotta and Salierno realized that Puente would not actually say that he had not understood anything at the First Hearing, Marotta and Salierno both began to literally testify on Puente's behalf while Puente was still under oath and being examined. First, Marotta stated:

Based on his testimony it appears that he believed it was still in effect.

Salierno then went even further and stated:

I think he testified that the Board was discussing different things but his under – what he understood the outcome to mean what – what’s essentially reflected in the letter and what he had been told before that if the – if the calculation was affirmed, there would be an – there would be money due to him.

138. Salierno did all of this at the Second Hearing despite the fact that Salierno, the Tenant Advocate charged with providing legal services to Puente at the First Hearing necessarily had informed Puente that the overcharges had been waived. He also necessarily informed Puente of the First Resolution that expressly stated that the overcharges would be waived. If Salierno had not, then he would have violated and/or breached his duties to Puente as legal advocate – surely that did not happen.

139. Naturally, Plaintiff OM 309-311 6th Street’s attorney immediately objected to this testimony. Unsurprisingly, and in conformance with the Board’s decisions at the First Hearing, refusal to accept documentary evidence provided by Plaintiff OM 309-311 6th Street, and agreement to hold the Second Hearing, the objection fell on deaf ears.

140. Plaintiff OM 309-311 6th Street then argued that the provision relied upon by Salierno in attempt to impose liability on Plaintiff OM 309-311 6th Street (an owner of only 5 months) for overcharges purportedly incurred prior to its purchase of Property #1 was not in effect at the time the property was purchased, and thus could not be applied to Plaintiff OM 309-311 6th Street. Indeed, that provision, i.e. § 334-5(a)(3)(k) (which provides that overcharges run with property and a successor owner shall be responsible for any refund) exists only in the 2019 Ordinance, which was adopted *after* Plaintiff OM 309-311 6th Street purchased Property #1.

141. In fact, the applicable ordinance at the time was the 2017 Ordinance, which makes no mention of any overcharge running with a property or that a successive property owner shall be liable for said overcharges incurred prior to the purchase of the property.

142. Plaintiff OM 309-311 6th Street then argued that, even if the 2019 Ordinance were to apply the provision cited by Salierno is unconstitutional, as it imposes undue hardship and penalties on a successive owner in violation of due process.

143. Finally, Plaintiff OM 309-311 6th Street provided additional testimony and documentary evidence that, notwithstanding the foregoing, the base rent recalculation by Mercado was improper because it relied on a legal determination of base rent from 1987 and arbitrarily and capriciously ignored the factual documentation that showed that there existed a vacancy in Unit 1B (and thus a reset of the base rent) in 1999. Plaintiff OM 309-311 6th Street also demonstrated that, even if Mercado had used the correct base rent (which she did not), she nonetheless miscalculated the overcharge due.

144. Even more, Plaintiff OM 309-311 6th Street demonstrated via testimony and documentary evidence that, even if Mercado's arbitrary ignorance of the rent registration statements were somehow legitimate—and it was not—she nonetheless miscalculated the current rent she claims was to be paid by Puente because she arbitrarily and for no valid reason failed to provide a permitted increase in that rent for the year 1998.

145. After hearing argument and testimony, the Board unsurprisingly ruled against Plaintiff OM 309-311 6th Street and in favor of Puente. First, based on Salierno's false testimony and Marotta's silence regarding when Salierno received the First Resolution, the Board stated that it could not conclude that the appeal had been filed out of time – even though it had been filed months late. Second, despite the express language of the 2019 Ordinance that states that a Board may reconsider

a decision only upon the discovery of new evidence, it nonetheless concluded that it could also do so without new evidence, without citation to any ordinance provision or law. Third, despite acknowledging that the 2017 Ordinance, which did not have a provision providing that any overcharge ran with a property and that a successive owner could be liable therefore, the Board arbitrarily and for no stated reason, applied the 2019 Ordinance, which was not in effect at the time Plaintiff OM 309-311 6th Street purchased Property #1. As a result of all of these arbitrary and capricious decisions, the Board then completely reversed course from its decision at the First Hearing and in its First Resolution, and concluded that Plaintiff OM 309-311 6th Street was now liable for overcharges that had been waived a year prior.

146. Each of the Board members present agreed with that decision on the record.

147. Via letter dated April 28, 2021, Plaintiff OM 309-311 6th Street was served with a copy of the resolution (the “Second Resolution”) memorializing the Board’s decision at the February 10, 2020 hearing.

148. Among other things, the Resolution stated the following reasons for its decision to impose the overcharge on Plaintiff OM 309-311 6th Street:

- Salierno testified that he had not received the First Resolution in July 2020 – **when in fact he had.**
- Puente testified that he did not understand that the overcharges had been waived at the First Hearing and in the First Resolution – **even though he had an interpreter present at the First Hearing, and even though he was represented by Salierno at the time and Salierno necessarily informed him of the same.**
- The Board did not have the authority to waive the overcharges under the 2019 Ordinance – **even though the Board acknowledged it had broad powers, that nothing in the 2019 Ordinance stated that it did not have the discretion to waive overcharges under certain circumstances, and that the applicable ordinance at the time, the 2017 Ordinance, did not contain any provision stating that an overcharge could run with the land and be imposed on a successive owner.**

III. UNION CITY IGNORES ITS RENT CONTROL ORDINANCE AND RECORDS IN ORDER TO PREVENT PLAINTIFF OM 1101-1109 PALISADE AVENUE FROM CHARGING LEGALLY PERMITTED RENT.

149. Plaintiff OM 1101-1109 Palisade Avenue purchased Property #2 on January 22, 2019.

150. Prior to purchasing Property #2, Plaintiff OM 1101-1109 Palisade Avenue had made similar requests (as described above) for rent registration filed from the City in order to determine the proper rents; but, like with Plaintiff OM 309-311 6th Street, it had not received records from the City.

151. At the time Plaintiff OM 1101-1109 Palisade Avenue, Ramon Gracesqui (“Gracesqui”) resided in Apartment 2 of Property #2. Gracesqui had entered into a written lease agreement with the prior owner of the property, with an initial term beginning May 1, 2018, at a monthly rate of \$1,650.00. Gracesqui signed the lease agreement, and thus agreed to the \$1,650.00 monthly rent.

152. In accordance with the lease agreement, Gracesqui continued to pay the agreed upon \$1,650.00 rent for Apartment 2 after OM 1101-1109 Palisade Avenue purchased Property #2.

153. Then, on or about June 18, 2020, upon information and belief at the behest of a City official, Gracesqui filed a complaint with the Rent Leveling Board regarding his rent.

154. Prior to that date, Gracesqui had never complained about his rent.

155. Upon information and belief, Gracesqui only complained about his rent in 2020 at the suggestion of City officials.

156. Despite receiving this complaint, the City never informed Plaintiff OM 1101-1109 Palisade Avenue of the filing of the complaint. And the City never allowed Plaintiff OM 1101-1109 Palisade Avenue to provide a response.

157. Then, over a year after Plaintiff OM 1101-1109 Palisade Avenue purchased Property #2, over a year after Gracesqui continued to pay the rate he had agreed to pay pursuant to his written lease, and almost two months after Gracesqui filed his complaint with the City, Plaintiff OM 1101-1109 Palisade Avenue received a letter from the City of Union City, dated August 11, 2020 regarding Gracesqui's rent.

158. Specifically, in the letter, the City informed Plaintiff OM 1101-1109 Palisade Avenue that (i) on some unspecified date, Gracesqui had visited the Rent Leveling Board's office and had purportedly complained to the City about his rent for Apartment 2, and (ii) the City took it upon itself, without notice to Plaintiff OM 1101-1109 Palisade Avenue, to unilaterally recalculate and lower Gracesqui's rent to \$1041.49 per month, effective October 1, 2019. In the letter, the City did not set forth what documents the City had reviewed to calculate the new rent (other than to state that it had reviewed "your rent registration files"). Finally, the letter notified that the City's unilateral decision could be appealed within thirty (30) days.

159. Like with Plaintiff OM 309-311 6th Street, prior to receiving this letter, Plaintiff OM 1101-1109 Palisade Avenue had never received any complaint from Gracesqui, and had never been informed by the City had made any complaint to it. The City had also never notified Plaintiff OM 1101-1109 Palisade Avenue that it intended to perform a review and recalculation of Gracesqui's rental rate.

160. As a result, Plaintiff OM 1101-1109 Palisade Avenue was deprived of any opportunity to have any input (let alone any notice) regarding what Gracesqui's complaint was, or why the rent calculation was performed.

161. As such, in an effort to determine to what documents the City was referring to in the letter, Plaintiff OM 1101-1109 Palisade Avenue sought, via OPRA request dated August 19, 2020,

the “full rental registration history file” and “all documents regarding rental history” in the City’s records for Property #2. This necessarily included all documents in the City’s file related to the rental rate for Apartment 2.

162. On August 25, 2020, the City produced to Plaintiff OM 1101-1109 Palisade Avenue the rent control file for Property #2 in response to the OPRA Request. In producing the same in response to an OPRA request, the City necessarily represented that the records were accurate and reliable, and that they included the rent registrations and rent calculations for Property #2.

163. Among the City’s records was a copy of letter, dated June 7, 2016, (the “June 7, 2016 Rent Calculation”) from the City to the then existing tenant of Apartment 2 of Property #2. As identified on the letter, the letter was sent by the Rent Leveling Board, and specifically, Mayor Stack, Ng, and Mercado.

164. Of vital importance, the letter set forth a detailed rental rate calculation for Apartment 2, showing the allowable rent beginning in 2001 and through 2017. As of 2015, the letter provided that the correct rental fee (as calculated by the City itself) for Apartment 2 was \$1,472.93.

165. Based upon the City’s calculation of the monthly rent at \$1,472.93, the monthly rent for Apartment 2 as of 2015, after allowing for permissible increases under the applicable City Ordinances, equaled approximately \$1,640.46.

166. However, as set forth above, for some inexplicable reason, the City’s August 11, 2020 letter stated that the rent was significantly lower, \$1,041.49.

167. In fact, as would be discovered later (and set forth in detail below), the City had unilaterally and improperly disregarded its own June 7, 2016 Rent Calculation for Apartment 2 and, instead, had chosen to rely on an earlier rent calculation from **five years prior**, dated July 18, 2011.

168. As also set forth in more detail below, this unilateral decision to disregard the June 7, 2016 Rent Calculation violated the express terms of the applicable City Ordinance, which specifically provides that in making a rent calculation, the City is obligated to use the most recent rent calculation in its files. Simply put, per its own ordinance, the City should have used its June 7, 2016 Rent Calculation, and not the July 18, 2011 calculation.

169. Since the August 11, 2020 legal rent calculation was incorrect, Plaintiff OM 1101-1109 Palisade Avenue filed a timely appeal of the decision.

170. After eight months, on May 24, 2021, the Rent Leveling Board held a hearing of Plaintiff OM 1101-1109 Palisade Avenue's appeal.

171. Present at the appeal were Colon, Guevara, Vasquez, Milan, Ng, Marte, Marotta, and Salierno.

172. During the hearing, Plaintiff OM 1101-1109 Palisade Avenue explained to the Board that the City had improperly disregarded the June 7, 2016 Rent Calculation in violation of Section 334-5 of the City's Ordinance (which sets forth the various duties of the City's Rent Regulation Officer), which explicitly provides that the Rent Regulation Officer **must** use the most recent rent calculation in the City's records to determine the correct rent for a unit.

173. Specifically, Section 334-5(k) provides:

To conduct rent calculations to determine the correct rent to be applied to a dwelling unit. In making his or her calculation, the Rent Regulation Officer shall utilize the earliest recorded rent registration filed with the Rent Control Office *or, in the event a rent calculation was performed by the Rent Control Office, the most recent rent calculation performed by the Office.*

Section 334-5(k) (Emphasis in original).

174. Plaintiff OM 1101-1109 Palisade Avenue further explained that, pursuant to Section 334-5(k) of the City's Ordinance, and based upon permissible increases of the June 7, 2016 Rent Calculation, the current rent should be \$1,640.46.

175. This explanation should have been sufficient to overturn the City's August 11, 2020 rent calculation.

176. In response, Salierno first argued that the June 7, 2016 Rent Calculation was "perhaps" incorrect and that the August 11, 2020 calculation "was correct." However, Salierno incredibly acknowledged that using the drastically lowered August 11, 2020 calculation of \$1,041.49 would be "prejudicial" and "unfair" to Plaintiff OM 1101-1109 Palisade Avenue, but that he thought "it would be -- better serve the interests and the intent of the ordinance, which is to stabilize rents in the City[.]"

177. In making this statement, Salierno admitted that Plaintiff OM 1101-1109 Palisade Avenue was being unfairly prejudiced for the benefit of Gracesqui.

178. In response, Plaintiff OM 1101-1109 Palisade Avenue testified that when it had purchased Property #2, it had relied on the lease agreement that Gracesqui had signed and agreed upon to continue charging the \$1,650.00 monthly rent to date. A copy of the lease agreement was introduced as an exhibit in support of that testimony.

179. Plaintiff OM 1101-1109 Palisade Avenue further explained how, after receiving the City's 2011 letter setting the new rent at \$1,041.49, they sought and obtained records for Apartment 2. In so doing, the representative explained to the Board that the file included the June 7, 2016 Rent Calculation, which should have been used in lieu of the July 18, 2011 calculation pursuant to Section 334-5(k) of the City's Ordinance. A copy of the June 7, 2016 Rent Calculation was also introduced as an exhibit in support of this testimony.

180. Plaintiff OM 1101-1109 Palisade Avenue finally testified that based upon the June 7, 2016 Rent Calculation, the current rent should be \$1,640.46.

181. As such, based on Plaintiff OM 1101-1109 Palisade Avenue's testimony and the evidence presented to the Board, Plaintiff OM 1101-1109 Palisade Avenue demonstrated that the proper rent for Apartment 2 was \$1,640.46, and not \$1,041.49.

182. In response to the representative's testimony, the City's attorney called Marte, the City's then Secretary, Board/Commission who had recently replaced Mercado, to testify.

183. During her testimony, Marte made several startling admissions.

184. As a preliminary matter, Marte testified that she had only been Secretary and had worked in legal rent calculations for only a year. She then explained that to determine proper rents, she will "go through the file and – based on the Ordinance, we go through the file, we check if we – we have legal – prior legal rent or letter rent determination."

185. Marte then stated that she had performed the 2020 rent calculation after Gracesqui had filled out a complaint, and that her calculation resulted in a rent of \$1,041.49.

186. However, her testimony as to how she based her calculation was astonishing. First, she admitted that she had unilaterally disregarded the June 7, 2016 Rent Calculation—in violation of a Section 334-5(k) of the City's Ordinance—and instead had decided to rely on an older July 18, 2011 calculation because she subjectively "believe[d]" that the June 7, 2016 Rent Calculation was "a mistake" and was not actually for Apartment 2, but was for a different apartment in a different building. This, even though (i) the June 7, 2016 Rent Calculation was in the City's records for Property #2 and (ii) the City had always taken (and continues to take) the position that rent calculations by the City must be used and relied on by owners/landlords to calculate the rent they may

charge their tenants. In short, Marte testified that although landlords are required to abide by the City's rent calculations, the City may, at its complete discretion, disregard the same calculations.

187. She further explained that the sole basis for this purported belief was the she believed the June 7, 2016 Rent Calculation was based on some "Rental Unit Renovation Allowance", which she could not find any records thereof for Apartment 2 in the City's files.

188. Marte then testified that, while she performs the rent calculations herself, she is normally assisted by Ng and Marotta (in the event she has any questions) when rendering rent control decisions.

189. Marte then testified that although she, herself, had performed the 2020 calculation, she had not performed the June 7, 2016 Rent Calculation. More importantly, she admitted that although she knew the City had performed the June 7, 2016 Rent Calculation, she did not know what documents or files the City had relied on to perform that June 7, 2016 Rent Calculation.

Q. So you don't know what they looked at when they prepared that, do you?

A. No.

190. More, Marte admitted that, when calculating a current rent based on a past calculation, she as a matter of course relies on the then current ordinance, and not the ordinance applicable at the time of the past rent calculation – this is improper.

191. In that regard, she even admitted that she did not recognize that during the time period of 1996 to 2013 (when the City's ordinance provided for rent decontrol), the ordinance was different than the current ordinance (which now does not contain rent decontrol, and upon which she relied).

192. Marte also testified that when determining whether rent registrations are correct she reviews the entire file for a property, which would include rent registration statements.

193. This is because rent registration statements are relevant to determining whether a rent calculation is correct, since they provide information regarding the rents charged over the course of the relevant time period.

194. However, Marte testified that, despite the City requiring that owners submit rent registration statements each year, which are then maintained in the City's files, she chose to not rely on specific rent registration statements in the City's file for Property #2, and thus Apartment 2, for purposes of determining the legal rent for Apartment 2, even though those statements provided direct evidence showing that the June 7, 2016 Rent Calculation was, in fact, correct.

195. Indeed, Plaintiff OM 1101-1109 Palisade Avenue introduced into evidence and showed Marte rent registration statements for Property #2 for the years 1995 through 2013. Those statements showed that in 2003, the tenant in Apartment 2 changed and that the new tenant agreed to a rent of \$950.

196. This information was relevant because (i) from 1996 to 2013, thus including 2003, the City's Ordinance provided for rent decontrol (i.e. that when a rent controlled apartment was vacated, the new rent agreed by the new tenant became the new base rent for the apartment), (ii) the new base rent for Apartment 2 in 2003 was \$950, and (iii) calculating allowable increases in rent from 2003 to June 2016 (when the June 7, 2016 Rent Calculation was completed) would amount to a rent similar to that set forth in the June 7, 2016 Rent Calculation, and not the amount in the 2020 calculation performed by Marte.

197. Incredibly, like Mercado, Marte testified that she chose to disregard this directly relevant evidence, which supported the June 7, 2016 Rent Calculation. Indeed, she testified that she disregarded the relevant registration statements and gave them no evidentiary weight, because as a matter of course she relied only on written leases – even though (i) written leases are not maintained

in the City's rent registration files, (ii) she also acknowledged that sometimes leases were not even available due to the fact that the State of New Jersey permits oral leases, and (iii) nothing in the City's Ordinances provides that rent registration statements are unreliable and should not be considered when calculating rent.

198. This testimony was even more preposterous in light of the fact that the City requires that owners/landlords file rent registration statements on a yearly basis (and pay fees in connection with the same) on which the owners/landlords are required to attest under penalty of perjury that the information contained therein is true and accurate.

199. In short, Marte acknowledged that, where there was no written lease (which is legal), she refused to rely on nineteen years of rent registration statements, even where they provided relevant information regarding the proper rent. She also indirectly admitted that the City will use information contained in rent registration statements when it serves it (e.g. when it chooses to reduce a tenant's rent), but then disregards those same statements when the information contained therein benefits the landlord/owner (e.g. supports the legal rent charged by the landlord/owner).

200. Realizing that this testimony was troublesome for the City, Marotta attempted to interject himself and prevent OM 1101-1109 Palisade Avenue for asking additional questions regarding that purported, unsupported, policy of the City disregarding rent registrations.

201. To make matters worse, in an attempt to prevent Marte from making any acknowledgment or admission that rent registration statements are, in fact, reliable (and thus contradicting her and Mercado's testimony that they must rely only on written leases because rent registration statements are not reliable), Salierno objected to OM 1101-1109 Palisade Avenue's questioning on the preposterous ground that it "[e]xceed[ed] the scope" of direct. Marotta, in turn,

also objected to the questioning, but on the grounds that it had been “[a]sked and answered”, even though the record shows it had not.

202. As such, Plaintiff OM 1101-1109 Palisade Avenue then asked Marte if, when she reviewed the file for Apartment 2 in 2020 (and made her recalculation of the lower rent), anyone had instructed her to disregard the June 7, 2016 Rent Calculation.

203. Evidently, fearful that Marte would disclose that someone from the City had improperly instructed her to disregard the June 7, 2016 Rent Calculation, Salierno immediately objected to the question.

Q. In your review of the file in 2020, when you were calculating your August 2020 rent calculation, did anyone tell you to disregard that 2016 rent calculation?

A. Objection.

204. There was no legitimate legal and/or evidentiary basis for such an objection.

205. Regardless, Marte followed Salierno’s lead and refused to state if anyone had instructed her to disregard the June 7, 2016 Rent Calculation.

206. Marte admitted however that she had conferred with a City employee, at which time she suddenly determined that the June 7, 2016 Rent Calculation was a mistake.

Q. Did anyone instruct you to disregard the 2016 rent control determination?

A. I checked within the office. I checked with the Administrator and I saw that it is a mistake.

207. Then, when asked who the Administrator was, Marotta and Ng improperly interjected themselves into the cross-examination to stop her from answering – again, evidently for fear of Marte admitting that she had been instructed to disregard the June 7, 2016 Rent Calculation.

Q. -- who is the Administrator that you talked to that told you to disregard the 2016 –
Mr. Marotta. Wait. Objection.

Mr. Ng. She did – she didn't say –

...

Mr. Ng. She didn't say that.

...

Mr. Ng. Okay? Don't – don't put – don't put words in her mouth --

208. Despite these improper interjections, Marte admitted that Ng was the Administrator that she had spoken to about the June 7, 2016 Rent Calculation (at which time she suddenly decided that it was a mistake).

209. This testimony made clear that Ng, in fact, had instructed Marte to improperly disregard the June 7, 2016 Rent Calculation, in direct violation of the City's own Ordinance.

210. Incredibly, though—despite having repeatedly stated that she disregarded the June 7, 2016 Rent Calculation because she believed it was a mistake—Marte subsequently admitted that an owner in 2018 could have relied on the June 7, 2016 Rent Calculation as setting the correct rent for Apartment 2.

Q. In 2018, could the owner of this property have relied on the June 7th, 2016 rent calculation that was prepared by the City of Union City.

A. Correct.

211. Via this testimony, Marte seemed to inadvertently admit that the June 7, 2016 Rent Calculation was reliable and accurate.

212. At the conclusion of testimony, after there had been no direct evidence presented showing that Marte's disregard of the June 7, 2016 Rent Calculation was proper or justified, or any evidence of who had made the June 7, 2016 Rent Calculation and how, Salierno attempted to convince the Board that the June 7, 2016 Rent Calculation was nonetheless properly disregarded because doing

so was in the “spirit” of the City’s desire to promote fair housing, at the expense of property owners – i.e. without regard to the rights of Plaintiffs.

Salierno: -- and what Miss Marte did was in that spirit. She – if – if she hadn’t done what she did, the outcome would have been destabilization. A huge rise or a huge jump from the rent before to the – to the – to the subsequent tenant. And so she – she made that decision.

She used her discretion in that spirit to – to be fair, to make it stable; not to have huge increases from one to the other.

213. After hearing testimony and argument, the Board improperly denied the appeal, via a majority vote.

214. On July 8, 2021, the City served OM 1101-1109 Palisade Avenue with a copy of the Board’s Resolution regarding the matter.

215. The Resolution provides that “The Board found that the prior Legal Rent Calculation was incorrect as it was based on the wrong apartment. The Board upholds the rent determination, in the sum of \$1,041.49 per month, as provided in the record.”

216. In adopting this Resolution, the Board knowingly and improperly disregarded the June 7, 2016 Rent Calculation, improperly refused to consider relevant evidence supporting the June 7, 2016 Rent Calculation (i.e. the rent registration statements), and directly violated Section 334-5 of the City’s Ordinance.

IV. MAYOR STACK AND OTHER CITY OFFICIALS RETALIATE AGAINST PLAINTIFFS FOR LAWFULLY ASSERTING THEIR CONSTITUTIONAL RIGHTS

217. In an effort to protect themselves from Defendants’ constitutional violations, Plaintiff OM 309-311 6th Street sought relief by filing this lawsuit.

218. In response, Mayor Stack, apparently believing he could repeatedly violate his own constituents’ rights with impunity, immediately drafted a letter addressed *to the majority of* Plaintiffs’

tenants in which he made a series of outrageous and defamatory statements regarding Plaintiffs, all of which were clearly aimed at attacking and retaliating against Plaintiffs.

219. In his letter, Mayor Stack first stated, with **not one scintilla** of factual or legal support, that Plaintiffs “filed numerous fraudulent lawsuits in an attempt to intimidate city officials and myself.”

220. Mayor Stack’s use of the term “fraudulent” to describe this lawsuit (without providing any factual background or even identifying the name of the lawsuit) was outrageous, was meant to turn every tenant against Plaintiffs, and was meant to retaliate and punish Plaintiffs from accessing this very Court to defend their constitutional rights.

221. Mayor Stack then finished his letter by intimating that Plaintiffs were violating their tenants’ rights and essentially encouraging every single tenant to visit the City’s Rent Leveling Office to challenge the rents that Plaintiffs have been lawfully charging – stating “I have city lawyers who will help you at no charge – totally free – to protect your rights.”

222. Upon information and belief, Mayor Stack then directed several city officials and city employees to mass distribute his letter as flyers on three separate occasions during the week of August 10, 2021 to each of the properties (i.e. Properties #3-#9) owned by The Stella on Park, LLC, Golden Crest 3347 Park Avenue, LLC, OM 422-426 5th Street, LLC, OM-309-315 11th Street, LLC, and OM-812 New York Avenue, LLC.

223. Again, Mayor Stack’s mass distribution of this letter was outrageous and was meant to retaliate and punish Plaintiffs from accessing this very Court to defend their constitutional rights.

224. More, Mayor Stack’s deliberate and overt efforts in making these blatantly false and unsupported statements regarding Plaintiffs and in ordering the mass distribution of these flyers

confirmed that Mayor Stack had directed and coordinated the rampant abuse of power and violations of Plaintiffs' constitutional rights as set forth at length above.

225. As a result of Defendants' coordinated egregious abuse of power, under color of law, Plaintiffs have suffered extensive monetary and other damages in the form of, among other things, lost rents and the diminution of the value of their properties.

COUNT ONE
DEPRIVATION OF SUBSTANTIVE DUE PROCESS UNDER THE
FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

226. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if set forth at length herein.

227. Plaintiffs have the right to substantive due process, guaranteed under the Fourteenth Amendment of the United States Constitution, not to be deprived of their constitutionally protected property interests and liberties and to be free from the deliberate and arbitrary abuse of government power.

228. Plaintiffs have property interests and liberties in the ownership of their properties, leaseholds, and operation of their businesses.

229. Defendants in this action acted under the color of state law.

230. Defendants have arbitrarily and capriciously interfered with Plaintiffs' constitutionally protected property interests and rights to operate a business.

231. Defendants acting under color of law, deliberately, unreasonably, arbitrarily and capriciously, among other things, (i) failed to provide information requested by Plaintiffs in an effort to comply with the City's ordinances, (ii) improperly calculated the rent for Plaintiffs' tenants, (iii) improperly permitted an appeal that was not permitted pursuant to the New Jersey Court Rules, (iv) improperly permitted a rehearing on a final decision of the Board, (v) improperly

considered unsubstantiated testimony from the Rent Leveling Board secretary, (vi) improperly relied on knowingly false testimony from the Tenant Advocate, (vii) improperly relied upon an improper ordinance, (viii) improperly reversed course and imposed an overcharge on Plaintiffs that had already been waived, (ix) improperly enforced a provision of its ordinance that arbitrarily and unfairly imposes an overcharge by a prior owner on a new owner; (x) failed to provide any mechanism to object to Plaintiffs' tenants' demand for a recalculation of their rent; (xi) improperly disregarded relevant evidence of tenants' rents, including registration statements, (xii) improperly violated its own Ordinance in failing to utilize the most recent rent calculations in their own files, and (xiii) retaliating against Plaintiffs for asserting their constitutionally protected rights.

232. The actions of Defendants as aforesaid lacked any legitimate reason and were arbitrary, capricious, not rationally related to any legitimate government interest, improperly motivated and conscience-shocking, in violation of the substantive due process guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

233. The actions of Union City as aforesaid were taken out of ill will and designed to harm Plaintiffs and to deny them the legal and proper use of their property.

234. Defendants acted with knowledge that its actions against Plaintiffs were unrelated to any legitimate government interest.

235. Plaintiffs have been deprived of the legal and proper use of its property, leasehold, and business and was otherwise injured as a result of Defendants' actions.

236. As such, by the aforementioned conduct, Union City has denied Plaintiffs their rights, privileges and immunities secured by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

COUNT TWO
DEPRIVATION OF PROCEDURAL DUE PROCESS UNDER THE
FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

237. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if set forth at length herein.

238. Plaintiffs have the right to procedural due process, guaranteed under the Fourteenth Amendment of the United States Constitution.

239. Defendants have arbitrarily and capriciously interfered with Plaintiffs' constitutionally protected right to procedural due process by depriving Plaintiffs of their liberty and property interests without one of the fundamental elements of procedural due process, *i.e.* the opportunity to be heard.

240. Defendants acting under color of law, deliberately, unreasonably, arbitrarily and capriciously, among other things, (i) failed to provide information requested by Plaintiffs in an effort to comply with the City's ordinances, (ii) improperly calculated the rent for Plaintiffs' tenants, (iii) improperly permitted an appeal that was not permitted pursuant to the New Jersey Court Rules, (iv) improperly permitted a rehearing on a final decision of the Board, (v) improperly considered unsubstantiated testimony from the Rent Leveling Board secretary, (vi) improperly relied on knowingly false testimony from the Tenant Advocate, (vii) improperly relied upon an improper ordinance, (viii) improperly reversed course and imposed an overcharge on Plaintiffs that had already been waived, (ix) improperly enforced a provision of its ordinance that arbitrarily and unfairly imposes an overcharge by a prior owner on a new owner; (x) failed to provide any mechanism to object to Plaintiffs' tenants' demand for a recalculation of their rent; (xi) improperly disregarded relevant evidence of tenants' rents, including registration statements, (xii) improperly

violated its own Ordinance in failing to utilize the most recent rent calculations in their own files, and (xiii) retaliating against Plaintiffs for asserting their constitutionally protected rights.

241. By deliberately, unreasonably, arbitrarily and capriciously engaging in the aforementioned conduct, Defendants knew, or should have known, that they were violating Plaintiffs' established constitutional rights by denying Plaintiffs one of the fundamental elements of procedural due process, and it was not objectively reasonable for Defendants to believe that its conduct did not violate Plaintiffs' established constitutional rights to procedural due process.

242. The actions of Defendants as aforesaid were taken out of ill will and designed to harm Plaintiffs and to deny them the legal and proper use of their property.

243. Defendants acted with knowledge that its actions against Plaintiffs were unrelated to any legitimate government interest.

244. As such, by the aforementioned conduct, Defendants have denied Plaintiffs their rights, privileges and immunities secured by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

COUNT THREE
CONSPIRACY TO DEPRIVE DUE PROCESS UNDER THE
FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

245. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if set forth at length herein.

246. Defendants agreed to, and in fact conspired to, engage in a collective campaign to deprive Plaintiffs of their property and liberty interests, as guaranteed by the Fourteenth Amendment of the United States Constitution.

247. As set forth above, Defendants' conduct was arbitrary and capricious and did not bear any substantial, rational or compelling relation to the administration and/or management of their relative governmental duties.

248. Defendants, in concert with each other, acting under color of law, deliberately, unreasonably, arbitrarily and capriciously, among other things, (i) failed to provide information requested by Plaintiffs in an effort to comply with the City's ordinances, (ii) improperly calculated the rent for Plaintiffs' tenants, (iii) improperly permitted an appeal that was not permitted pursuant to the New Jersey Court Rules, (iv) improperly permitted a rehearing on a final decision of the Board, (v) improperly considered unsubstantiated testimony from the Rent Leveling Board secretary, (vi) improperly relied on knowingly false testimony from the Tenant Advocate, (vii) improperly relied upon an improper ordinance, (viii) improperly reversed course and imposed an overcharge on Plaintiffs that had already been waived, (ix) improperly enforced a provision of its ordinance that arbitrarily and unfairly imposes an overcharge by a prior owner on a new owner; (x) failed to provide any mechanism to object to Plaintiffs' tenants' demand for a recalculation of their rent; (xi) improperly disregarded relevant evidence of tenants' rents, including registration statements, (xii) improperly violated its own Ordinance in failing to utilize the most recent rent calculations in their own files, and (xiii) retaliating against Plaintiffs for asserting their constitutionally protected rights.

249. In doing all of these things, Defendants knew, or should have known, that they were violating Plaintiffs' established constitutional rights, and it was not objectively reasonable for Defendants to believe that their conduct did not violate Plaintiffs' established constitutional rights.

250. Defendants' conduct set forth herein constitutes such egregious abuse of power that it shocks the conscience.

251. As such, by the aforementioned conduct, Defendants, in concert with each other, denied and continue to deny Plaintiffs their rights, privileges and immunities secured by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

252. As a direct and proximate result of Defendants' unlawful conduct described above, Plaintiffs have suffered and continues to suffer serious economic, property, mental and emotional, and other damages. In addition, Defendants' actions as alleged above were committed intentionally and with malice, or with such recklessness as to be tantamount to intentional conduct, entitling Plaintiffs to punitive damages.

COUNT FOUR
FIFTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION
TAKINGS CLAUSE
(42 U.S.C. § 1983)

253. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if set forth at length herein.

254. The Takings Clause of the Fifth and Fourteenth Amendments to the United States Constitution provides “. . . nor shall private property be taken for public use, without just compensation.”

255. The actions of Union City as aforesaid fail to substantially advance any legitimate purpose and have the effect of depriving Plaintiffs of the beneficial use of their property, in violation of Plaintiffs' constitutional rights as secured by the Fifth and Fourteenth Amendments to the United States Constitution.

256. As a result of Union City's actions as aforesaid, practical and feasible use of Plaintiffs' properties and rights has been denied.

257. The actions of Union City as aforesaid have the effect of regulating Plaintiffs' properties, without compensation having been paid, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

COUNT FIVE
CLAIM IN LIEU OF PREROGATIVE WRIT
(Relief from Denial of Appeal)

258. Plaintiff OM 309-311 6th Street repeats and re-alleges each of the foregoing allegations as if they were fully set forth at length herein.

259. The Board's denial of Plaintiff OM 309-311 6th Street's appeal was arbitrary, capricious, unreasonable, without legal or factual basis, and an abuse of discretion because, among other things, Defendants (i) failed to provide information requested by Plaintiff OM 309-311 6th Street in an effort to comply with the City's ordinances, (ii) improperly calculated the rent for Plaintiff OM 309-311 6th Street's tenant, (iii) improperly permitted an appeal that was not permitted pursuant to the New Jersey Court Rules, (iv) improperly permitted a rehearing on a final decision of the Board, (v) improperly considered unsubstantiated testimony from the Rent Leveling Board secretary, (vi) improperly relied on knowingly false testimony from the Tenant Advocate, (vii) improperly relied upon an improper ordinance, (viii) improperly reversed course and imposed an overcharge on Plaintiff OM 309-311 6th Street that had already been waived, (ix) improperly enforced a provision of its ordinance that arbitrarily and unfairly imposes an overcharge by a prior owner on a new owner; and (x) failed to provide any mechanism to object to Plaintiff OM 309-311 6th Street's tenant's demand for a recalculation of his rent.

COUNT SIX
CLAIM IN LIEU OF PREROGATIVE WRIT
(Relief from Denial of Appeal)

260. Plaintiff OM 1101-1109 Palisade Avenue repeats and re-alleges each of the foregoing allegations as if they were fully set forth at length herein.

261. The Board's denial of Plaintiff OM 1101-1109 Palisade Avenue's appeal was arbitrary, capricious, unreasonable, without legal or factual basis, and an abuse of discretion because, among other things, Defendants (i) improperly calculated the rent for Plaintiff OM 1101-1109 Palisade Avenue's tenant, (ii) improperly disregarded the City's Ordinance, which required that the Board rely on the most recent rent calculation, (iii) improperly disregarded its own records, including its most recent rent calculation and rent registration statements, and (iv) failed to provide any mechanism to object to OM 1101-1109 Palisade Avenue's tenant's demand for a recalculation of his rent.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- a. declaring that Defendants violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- b. awarding injunctive relief prohibiting and enjoining Defendants from interfering with or unlawfully targeting Plaintiffs' business and use of their Property;
- c. finding that the Board acted in an arbitrary and capricious manner, and reversing the Board's decision relating to the rent calculation of the Rent Leveling Board and relating to the decision to impose upon Plaintiff OM 309-311 6th Street the obligation to pay its tenant an overcharge;
- d. finding that the Board acted in an arbitrary and capricious manner, and reversing the Board's decision relating to the rent calculation of the Rent Leveling Board as to Plaintiff OM 1101-1109 Palisade Avenue's tenant;
- e. declaring that the 2019 Ordinance and all amendments thereto, which purports to limit, diminish, alter or impair the constitutional protected rights of Plaintiffs, unconstitutional;

- f. awarding compensatory damages;
- g. awarding exemplary and punitive damages;
- h. awarding treble damages;
- i. awarding attorneys' fees; and
- j. awarding such other and further relief as the Court may deem just and proper either in law or in equity.

Dated: August 21, 2021

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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify that, to the best of my knowledge, information and belief, the matter in controversy is otherwise not the subject of any action pending in any Court or of a pending arbitration proceeding and that no other action or arbitration proceeding is contemplated.

Dated: August 21, 2021

s/ Xavier M. Bailliard
Xavier M. Bailliard