

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

ZAKY TADROS,

Plaintiff,

v.

BRIAN P. STACK, in both his individual and official capacities, MARTIN MARTINETTI, in both his individual and official capacity, CITY OF UNION CITY, LUCIO P. FERNANDEZ, in both his individual and official capacities, MARYURY A. MARTINETTI, in both her individual and official capacities, CELIN J. VALDIVIA, in both his individual and official capacities, WENDY A. GRULLON, in both her individual and official capacities, CORRADO BELGIOVINE, in both his individual and official capacities, and THE ALEXANDER GROUP NJ, LLC, in both its individual and official capacities,

Defendants.

Case No.

**COMPLAINT  
DEMAND FOR JURY TRIAL**

Plaintiff Zaky Tadros (“Plaintiff”), with an address of 95 Avenue E, Bayonne, New Jersey 07002 an individual, by and through his undersigned attorney, by way of Complaint against Brian P. Stack (“Mayor Stack”), in both his individual and official capacities, with an official address of 3715 Palisade Avenue, Union City, New Jersey, 07087; Martin Martinetti (“Construction Official Martinetti”), in both his individual and official capacities, with an official address of 3715 Palisade Avenue, Union City, New Jersey, 07087; the City of Union City (“Union City”), with a municipal address of 3715 Palisade Avenue, Union City, New Jersey, 07087; Lucio P. Fernandez (“Commissioner Fernandez”), in both his individual and official

capacities, with an official address of 3715 Palisade Avenue, Union City, New Jersey, 07087; Maryury A. Martinetti (“Commissioner Martinetti”), in both her individual and official capacities, with an official address of 3715 Palisade Avenue, Union City, New Jersey, 07087; Celin J. Valdivia (“Commissioner Valdivia”), in both his individual and official capacities, with an official address of 3715 Palisade Avenue, Union City, New Jersey, 07087; Wendy A. Grullon (“Commissioner Grullon”), in both her individual and official capacities, with an official address of 3715 Palisade Avenue, Union City, New Jersey, 07087; Corrado Belgiovine (the “Receiver”), with an address at PO Box 17391, Jersey City, New Jersey 07307; and The Alexander Group NJ, LLC (“Alexander Group”), in both its individual and official capacities, with an address at PO Box 17391, Jersey City, New Jersey 07307, (together, the “Defendants”), alleges as follows:

## **I. NATURE OF THE ACTION**

1. Plaintiff brings this action under the Ku Klux Klan Act of 1871, 42 U.S.C. § 1983, against Union City, Mayor Stack, Construction Official Martinetti, and the other Defendants for damages suffered as a result of the violations of Plaintiff’s rights, privileges and immunities as secured under the United States Constitution.

2. The Takings Clause of the Fifth Amendment, as incorporated against the States under the Fourteenth Amendment, states that “private property [shall not] be taken for public use, without just compensation.” Defendants, through a scheme orchestrated by Mayor Stack, Construction Official Martinetti, and other members of Union City’s government, and in which those government officials acted under color of law, affected a Taking of Plaintiff’s property without providing just compensation.

3. Plaintiff is the fee simple owner of a ten-unit apartment building located at 130 40<sup>th</sup> Street, Union City, New Jersey (the “Property”). The Property is subject to Union City’s

strict Rent Control Ordinance, which has permitted only minimal or, in some years zero, rental increases. Starting in or around 2014, Mayor Stack, Construction Official Martinetti, and other Union City officials, for the benefit of politically favored Union City residents, began harassing Plaintiff with respect to certain conditions of the Property.

4. In September of 2016, after years of such harassment, and after Plaintiff made various repairs and capital improvements to the Property, Union City sought and was awarded a receivership, under various New Jersey statutes and the common law, over the Property with the stated purpose of making many of the same repairs and capital improvements that Plaintiff had already undertaken. In February 2017, the Receiver, acting under color of law as an agent and/or co-conspirator of Union City, took physical possession of and managerial control over Plaintiff's apartment building.

5. Since February 2017, the Receiver has operated the Property as a *de facto*, non-profit public housing project. All rental income from the Property has gone towards upgrades and capital improvements, many of which were outside the scope of the "Final Plan" and appear to be determined on an ad hoc basis, and that are not economically justifiable given the onerous Rent Control Ordinance. The remainder of the income has gone to enrich the Receiver, his attorney, and his preferred contractors and professionals. The Receiver has not made the repairs that were claimed to be necessary, but has enriched himself, his chosen contractors and professionals, Union City and, most importantly, the tenants, all at Plaintiff's expense. The Receiver has let units remain vacant and unrented and has failed to increase base rents under Union City's Rent Control Ordinance.

6. During the course of the receivership, Plaintiff has realized no distributions or other income from the Property. Adding insult to injury, the Receiver has refused to pay the

Property's carrying costs—including the debt service and property taxes—which Plaintiff has paid out of pocket since the Receiver took possession.

7. In 2017, the Receiver submitted its Final Plan, which was endorsed by the New Jersey Superior Court, and under which the Receiver averred that the repairs and renovations would be completed within “six to nine months,” at which time the Receiver would relinquish possession and control of the Property to Plaintiff. Now three-and-a-half years later, and three years since the date on which the receivership was to end, the Receiver retains complete and exclusive possession and control of the Property. When pressed for an estimated end date to the receivership, the Defendants recently advised that certain of the capital improvements set forth in the court-approved Final Plan cannot proceed because, shockingly, Union City, through Construction Official Martinetti, *is now refusing to issue construction permits for that work, indefinitely delaying the receivership's end date.* Defendants' actions amount to a constitutional Taking.

8. The Defendants have not simply taken a single strand from the bundle of rights that Plaintiff enjoys: they have chopped through the bundle, taking a slice of every strand. During the receivership, Plaintiff has not had possession of his property; Plaintiff has been barred from entering, using and/or enjoying his Property; Plaintiff has had no say in renovations, repairs or improvements being made to the Property and being financed by Plaintiff; the receivership has made alienating the Property an impracticability; Plaintiff has had no say in management of the Property; Plaintiff has received no distribution of income derived from the Property; Plaintiff has had no say in leaseholds granted to at least six separate individuals; and Plaintiff has had no say as to who can enter the Property and who must be excluded.

9. The Defendants, through the receivership, have affected a physical invasion and occupation of Plaintiff's Property. Moreover, the Defendants, through the receivership, have caused Plaintiff severe economic harms; have interfered with the reasonable investment-backed expectations that Plaintiff has in the Property in his capacity as an owner and landlord; and have engaged in government action that is at the heartland of Takings concerns.

10. Together, Defendants actions amount to a Taking for which the government must tender Just Compensation. The Defendants have failed to do so and, as a result, have violated Plaintiff's constitutional rights under color of law.

11. Aside from those injuries laid out above, Plaintiff has suffered and continues to suffer related damages caused by the Defendants' constitutional violations. These include, but are not limited to, the following. Plaintiff has lost rental income for nearly four years. Plaintiff has lost the opportunity to rent three of his units for nearly four years. Plaintiff has forever lost the right to take advantage of the modest rental increases permitted under Union City's Rent Control Ordinance. Plaintiff's rental income has been distributed to the Receiver and the Receiver's attorneys. Plaintiff has been ordered to pay the attorneys' fees that Union City incurred during the course of this Taking. Plaintiff has incurred his own attorneys' fees in defending Union City's unconstitutional conduct.

12. Plaintiff seeks relief against the Defendants under 42 U.S.C. § 1983 for, among other wrongs, the Defendants' violations under color of law of the rights, privileges, and immunities secured by the Takings Clause of the Fifth Amendment to the U.S. Constitution, as incorporated against the States via the Fourteenth Amendment to the U.S. Constitution. Plaintiff seeks compensatory damages, punitive damages, injunctive relief, costs and attorneys' fees

against the Defendants, joint and severally, and such other relief as this Court deems equitable and just.

## II. PARTIES

13. Plaintiff, Zaky Tadros, is an individual who, at all relevant times, was a resident of Bayonne, New Jersey. Plaintiff is a contractor by trade and has been a residential landlord for over twenty years. Plaintiff is the owner of the Property, which is located at 130 40<sup>th</sup> Street, Union City, County of Hudson, State of New Jersey that is the subject matter of this litigation.

14. Defendant, Mayor Stack, is an individual who, at all times relevant, was and is an elected official and served as Mayor of Union City. On information and belief, while clothed in the authority of Mayor of Union City, and while acting under the authority granted to Mayor Stack as Mayor of Union City, Mayor Stack directly and in conspiracy with the other Defendants deprived Plaintiff of his rights, privileges, and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

15. Defendant, Construction Official Martinetti, is an individual who, at all times relevant, was and is the construction official of Union City. On information and belief, while clothed in the authority of construction official of Union City, and while acting under the authority granted to Construction Official Martinetti as the construction official of Union City, Construction Official Martinetti directly and in conspiracy with the other Defendants deprived Plaintiff of his rights, privileges, and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

16. Defendant City of Union City, body politic, political subdivision of the State of New Jersey, and is a municipal corporation organized under the laws of the State of New Jersey with a municipal address of 3715 Palisade Avenue, Union City, New Jersey, 07087.

17. Defendant, Commissioner Fernandez, is an individual who, at all times relevant, was and is an elected official and served as a Commissioner of Union City. On information and belief, while clothed in the authority of Commissioner of Union City, and while acting under the authority granted to him as Commissioner of Union City, Commissioner Fernandez directly and in conspiracy with the other Defendants deprived Plaintiff of his rights, privileges, and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

18. Defendant, Commissioner Martinetti, is an individual who, at all times relevant, was and is an elected official and served as a Commissioner of Union City. On information and belief, while clothed in the authority of Commissioner of Union City, and while acting under the authority granted to her as Commissioner of Union City, Commissioner Martinetti directly and in conspiracy with the other Defendants deprived Plaintiff of his rights, privileges, and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

19. On information and belief, Construction Official Martinetti and Commissioner Martinetti are, and at all times relevant have been, married as husband and wife.

20. Defendant, Commissioner Valdivia, is an individual who, at all times relevant, was and is an elected official and served as a Commissioner of Union City. On information and belief, while clothed in the authority of Commissioner of Union City, and while acting under the authority granted to him as Commissioner of Union City, Commissioner Valdivia directly and in conspiracy with the other Defendants deprived Plaintiff of his rights, privileges, and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

21. Defendant, Commissioner Grullon, is an individual who, at all times relevant, was and is an elected official and served as a Commissioner of Union City. On information and

belief, while clothed in the authority of Commissioner of Union City, and while acting under the authority granted to her as Commissioner of Union City, Commissioner Grullon directly and in conspiracy with the other Defendants deprived Plaintiff of his rights, privileges, and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

22. Defendants Mayor Stack, Commissioner Fernandez, Commissioner Martinetti, Commissioner Valdivia, and Commissioner Grullon sometimes referred to collectively as the “Mayor and Commissioners,” who, as the elected officials of Union City, exercise the legislative and executive functions of Union City.

23. Defendant, Receiver Corrado Belgiovine is an individual who is the leader of the executive team for the property management division of the Alexander Group and who has functioned as the court-appointed receiver of the Property since February 15, 2017. On information and belief, while clothed in the authority of receiver as an agent of Union City, and while acting under the authority granted thereunder, the Receiver directly and in conspiracy with the other Defendants deprived Plaintiff of his rights, privileges, and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

24. Defendant Alexander Group NJ, LLC, is a limited liability company organized under the laws of the State of New Jersey with its principal offices in Jersey City, New Jersey who, through its employee and principal the Receiver, participated in the Receivership and conspired to and did actually deprive the Plaintiff of his constitutional rights. On information and belief, while clothed in the authority of receiver as an agent of Union City, and while acting under the authority granted thereunder, the Alexander Group directly and in conspiracy with the other Defendants deprived Plaintiff of his rights, privileges, and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.



25. The acts and omissions of the Receiver as alleged herein are attributable to the Alexander Group as the business entity through which the Receiver exercised authority under the receivership. All allegations set forth herein as and against the Receiver are also alleged against the Alexander Group.

### **III. JURISDICTION, VENUE & TIMELINESS**

26. This case arises under the United States Constitution and 42 U.S.C. §§ 1983 and 1988. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

27. This Court has supplemental jurisdiction over Plaintiff's state-law claims pursuant to 28 U.S.C. § 1367 because those state-law claims form part of the same case and controversy between the parties hereto.

28. The declaratory and injunctive relief sought by Plaintiff is authorized by 28 U.S.C. § 2201, 2202, 42 U.S.C. §§ 1983, and Rule 57 of the Federal Rules of Civil Procedure.

29. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2) as the actions took place in Union City in the County of Hudson, State of New Jersey, which is located in this judicial district, the District of New Jersey.

30. This Court has the authority to award Plaintiff attorneys' fees and costs under 42 U.S.C. § 1988.

31. Plaintiff has standing to bring these claims under Article III of the United States Constitution because he has suffered injuries in fact that are fairly traceable to the Defendants' complained of conduct and that will be redressed by a favorable ruling.

#### IV. FACTS COMMON TO ALL COUNTS

##### *A. Background<sup>1</sup>*

32. Plaintiff is the owner of the Property, which is improved as a multifamily apartment building consisting of ten separate residential apartments.

33. Plaintiff purchased the Property on December 30, 1999. Though Plaintiff has made various improvements and undertaken upkeep in the normal course of his ownership, the building's layout is identical as to when it was purchased in 1999, which is as follows:

- a. Basement: three studio apartments;
- b. First Floor: one 2-bedroom apartment and two studio apartments;
- c. Second Floor: two 2-bedroom apartments; and
- d. Third Floor: two 2-bedroom apartments.

34. By letter to Plaintiff dated December 28, 1999—i.e., immediately prior to Plaintiff's acquisition of the Property, Union City, through its construction official Vincent Prieto, confirmed that the Property was registered with the Tax Assessor's Office as a ten-family building and that there were no outstanding building code violations or other violations that would affect the habitability of the Property.

35. When Plaintiff purchased the Property in 1999, all ten units were occupied.

36. From the time that Plaintiff acquired the Property until the appointment of the Receiver, all ten units have been substantially occupied by tenants.

37. Through the deed conveying title in the Property, and in accordance with New Jersey law, Plaintiff holds fee simple title to and acquired all the "estate, right, title, interest, use, possession, property, claim and demand whatsoever" [N.J.S.A. 46:3-13] in the Property, which

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<sup>1</sup> Headings throughout this Complaint are intended as guideposts.

includes right to use and enjoy property and to exercise exclusive dominion and control over a particular piece of property.

38. The primary incidents of and rights arising under Plaintiff's ownership of the Property include the right to possession of the Property; the right to the use and enjoyment of the Property; the right to change or improve the Property; the right to alienate the property at will; the right to manage the Property's use by others; and the right to income derived from the Property.

39. Plaintiff's ownership of the Property also carries with it the right to exclude others, which has been deemed "one of the most essential sticks in the bundle of rights that are commonly characterized as property."

40. When Plaintiff purchased the Property, he did so with the investment-backed expectations of a reasonable landlord, including but not limited to the expectations: (a) that he would be able to earn a profit from his investment; (b) that he would have control over strategies with respect to renovating, improving and marketing the property, particularly given the restraints placed on rental income through Union City's Rent Leveling Ordinance; (c) that he could control and make decisions with respect to the equity in and debt on the Property; (d) that he could liquidate his investment at his discretion; (e) that he could exercise control over whether to grant an individual a leasehold in the Property; and (f) that he could make decisions about who to exclude from the Property.

41. Plaintiff, as the owner of the Property, had and has, among others, reasonable investment-backed expectations: that he would manage the Property as he sees fit; that he would make decisions about capital improvements and renovations to the Property; and that he would realize the income derived from the Property.

42. The last Rent Registration Statement that Plaintiff filed on October 31, 2016 with the Union City Rent Leveling Board with respect to the Property reflected monthly income of approximately \$9,596.65, upon which he was able to earn a profit that aligned with his reasonable investment-backed expectations.

43. The last Rent Registration Statement that Plaintiff filed on October 31, 2016 with the Union City Rent Leveling Board with respect to the Property reflected a gross monthly income that was substantially higher than any gross monthly income realized by the Receiver during the course of the Receivership.

44. Plaintiff maintained the Property in good and habitable condition and at all times made reasonable and necessary repairs at the request of tenants when feasible.

***B. Harassment of Plaintiff and Appointment of the Receiver***

45. The acrimony between Plaintiff and Union City arose out of a disgruntled tenant who made baseless claims about the condition of her apartment.<sup>2</sup> The tenant claimed that Plaintiff, as landlord, had been dilatory in making repairs to the premises. These claims were patently untrue. The tenant would call for repairs and then refuse Plaintiff or his workers access to her apartment. Unfortunately, and on information and belief, the tenant had political connections or other contacts with persons within the Union City government and sought to make trouble for Plaintiff.

46. On July 14, 2016, Union City, at the direction and on authorization of Mayor and Commissioners, commenced an action for the appointment of a receiver to take possession of, control and manage the Property.

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<sup>2</sup> Facts about the genesis of this dispute are being included for background purposes only.

47. At the time of the litigation, the receivership was sought based on Union City's allegations that the Plaintiff had failed to comply with certain Uniform Construction Code and Uniform Fire Code regulations.

48. New Jersey Superior Court Judge Sarkisian, J.S.C. entered an Order on September 30, 2016 ("September 2016 Order"), over Plaintiff's objection, divesting Plaintiff of possession, control and management of the Property and transferring same to the Receiver's predecessor receiver.

49. The September 2016 Order provides as follows:

- a. the Receiver's predecessor receiver was granted the power to sue and collect and receive rents, issues and profits thereof; to rent said premises or any part thereof at such time or times and for such rental as may prove necessary or proper; to make arrangements for leases of said premises, or any part thereof; to bring, conduct, and defend in all courts, actions, suits and legal proceedings against all persons, associations, societies, and corporations, individually, in the name of the [Plaintiff], and in any representative capacity, and against their sureties, guarantors, agents or assigns, for any matter required in the management of the premises, including but not limited to collection actions, foreclosure actions and eviction actions in the Superior Court, Special Civil Part, and to hire legal counsel when required in the sole discretion of the Receiver; to keep the mortgaged premises insured and pay the premiums for insurance protection against the usual hazards; to keep the mortgaged premises in repair and authorize emergent repairs to the premises which affect the habitability of any residential apartment or common area; to make and execute and negotiate contracts, and/or agreements

that, in the opinion of the Receiver are necessary and proper to be entered into for repairs and maintenance of the premises, in the name of Plaintiff; to accept and maintain tenant security deposits if needed; to market the mortgaged premises for sale and seek a potential purchaser for the premises, pursuant to N.J.S.A. 2A:50-31; and to do all things necessary or proper for the due care and management of the mortgaged premises, *pendente lite*.

- b. Plaintiff was restrained and enjoined from collecting or receiving all and/or part of the rents, issues or profits of the Property then due or thereafter becoming due; and the tenants of the Property were restrained and enjoined from paying rent to the Plaintiff, or to any other person whatsoever, except the receiver, all or any part of said rents then due or which thereafter became due.
- c. Plaintiff was directed immediately deliver to the predecessor receiver all information concerning the premises, including but not limited to account information for utility service, mortgage documentation, and repair history.
- d. Plaintiff was ordered to deliver to the predecessor receiver the keys to the Property within 10 days and, if Plaintiff failed to turn over the keys to the property within such period, the predecessor receiver was authorized to retain the services of a licensed and insured locksmith to change the locks to the Property.

50. By Order dated February 3, 2017, the Receiver was substituted to manage the receivership in lieu of the predecessor receiver.

51. On information and belief, on or about February 15, 2017, Plaintiff delivered the keys to the Property to the Receiver.

52. The Receiver took actual, physical possession and control of the Property from Plaintiff on February 15, 2017.

53. Since February 15, 2017, the Receiver, has had physical possession of the Property.

54. Since February 15, 2017, the Receiver, has had exclusive authority to determine who can and cannot enter the Property.

55. Since February 15, 2017, Plaintiff has been barred from entering the Property.

56. Since February 15, 2017, Plaintiff has not had any rights with respect to determining who can and cannot enter the Property and for what purpose.

57. Since February 15, 2017, Plaintiff has not had any rights with respect to determining what, if any, repairs or renovations are to be made to the Property.

58. Since February 15, 2017, Plaintiff has not had any rights with respect to determining what, if any, capital improvements are to be made to the Property.

59. Since February 15, 2017, Plaintiff has not had any rights with respect to determining to whom a leasehold should be granted.

60. Since taking possession and control of the Property, the Receiver has not paid any debt service (i.e., regular mortgage payments) or property taxes for the Property, which have been and continue to be borne solely by Plaintiff.

61. To summarize, since February 15, 2017, Plaintiff has been totally and absolutely divested of his rights in the Property and has realized no income or distributions from the Property. But during that same time period, he has been forced to pay, out of his personal funds, the mortgage payments and property taxes for the Property.

***C. The March 2018 Final Plan of the Receiver for Capital Improvements and Pentagon Scope of Work***

62. In July 2017, following the appointment of the Receiver, Union City sought a court order under New Jersey's Multifamily Housing Preservation and Receivership Act ("MHPRA") allowing the receiver to incur indebtedness in the amount of \$150,000 that would be used to fund massive capital improvements to the Property.

63. Also as part of the July 2017 application, Union City sought an Order allowing the Receiver to borrow \$150,000 via a bank loan, to be repaid by Plaintiff and secured by a mortgage on the Property, which funds would be used to pay, *inter alia*, the capital improvements, Receiver's management fee, and Receiver's legal fees.

64. The closing costs associated with this loan, as estimated under the Final Plan, were between \$10,000 and \$15,000, were to be charged to Plaintiff.

65. On information and belief, the Receiver's attorneys billed more than \$15,000 in attorneys' fees to procure this financing, which fees were paid from the rental income from Those attorneys' fees were then paid out of the rental income from Plaintiff's Property.

66. On October 27, 2017, the Receiver submitted its Final Plan outlining the proposed capital improvements based upon a proposed Scope of Work submitted by Pentagon Construction LLC ("Pentagon"), in which the contractor's estimate for the scope of work was increased to \$143,000 (exclusive of closing costs, legal fees, etc.). The Pentagon Scope of Work, which form the basis for the Final Plan as ultimately approved by Judge Sarkisian, included the following [*typos in the original*] (hereinafter referred to as the "Capital Improvements"):

- a. Remove and replace all ten existing apartment entry doors and two mechanical area room doors with solid wood fire rated doors and hollow metal frames and



closers as per drawing and include new locks sets, deadbolts and peepholes and painting doors and frames at a cost of \$18,000;

- b. Perform all masonry saw cutting, demolition, reframing of openings and repairs to interior and exterior to create proper roughing openings to install nineteen vinyl insulated double hung windows at a cost of \$22,500;
- c. Supply and install a complete steel pipe fire sprinkler system throughout the four floors of the entire building including all apartments and common areas. This includes all piping and heads and standpipe and jockey pump and including design drawings and hydraulic calculations to submit to the town at a cost of \$36,000;
- d. Supply and install a new 2" water main for the fire sprinkler system. This was proposed to include all excavation and street repair, sidewalk removal and replacement and wet tap of the city water line at a cost of \$17,500;
- e. Supply and install new fire alarm system including all horns, strobes, exit signs, emergency lighting, smoke detectors, carbon monoxide detectors, pull stations and fire alarm monitor panel at a cost of \$15,000;
- f. Cleaning and removal of all existing debris and any debris created by this scope of work at a cost of \$5,000;
- g. Supply all necessary building, plumbing, electric and fire permits at a cost of \$5,000; and
- h. General Contractor overhead of \$24,990.

67. This was ordered notwithstanding the fact that from September 2016 through February 2017, Plaintiff previously had made many of these improvements to the Property.

68. The Final Plan estimated that the Capital Improvements would be completed in six to nine months, at which point, the Receiver advised, it would relinquish its receivership.

69. On information and belief, the Receiver took no steps to borrow the \$150,000 for over eighteen months.

70. On information and belief, this delay was a strategic stall to prolong the Receiver's control of the Property in order to accomplish the Mayor Stack's intended goals of enriching the Property's voting tenants at the expense of Plaintiff, who resides and is registered to vote in a nearby city.

71. However, almost immediately after taking possession and control of the Property, the Receiver authorized and undertook various other improvements and renovations to the Property that were not included in the Final Plan, all of which were undertaken without the Plaintiff's knowledge, consent, or approval, which include but are not limited to:

- a. The installation of new flooring in Unit 3L at a cost of \$1,482.95;
- b. The installation a new refrigerator in Unit 3L at a cost of \$426.50;
- c. The installation of new door handles in Unit 3L at a cost of \$110;
- d. Turning over Unit 3L at a cost of \$2,640.00
- e. The installation of new flooring in Unit 2R at a cost of \$1,362.75;
- f. The installation of new tub and shower handle in Unit 2L at a cost of \$475.00;
- g. The installation of new windows, retile floors, and install new light switches in Unit 2L at a cost of \$1,245.00;
- h. Painting, the installation new windows, and other cosmetic adjustments in Unit 2A at a cost of \$2,355;
- i. The installation of new ceiling tiles throughout Unit 2A at a cost of \$550;

- j. The installation of new counter and sink in Unit 1L at a cost of \$1,495.00;
- k. The installation of new kitchen faucet in Unit B1 at a cost of \$298.50;
- l. The installation of new bathroom sink in Unit B1 at a cost of \$600.00;
- m. Repairs to the common area at various costs.

72. On information and belief, Mayor Stack, Construction Official Martinetti, and other Union City officials and/or employees have advised the Property's tenants to request these improvements from the Receiver, who would make those improvements during the pendency of the Receivership and would not seek rental increases, including those based on capital improvements as allowed under Union City's Rent Control Ordinance.

73. On information and belief, no prudent landlord acting in accordance with its reasonable investment backed expectations and charging the rents allowed under Union City's Rent Leveling Ordinance would have made the improvements and renovations undertaken by the Receiver.

74. Since December 2017, the Receiver has entered into at least five leases ("Post-Receivership Leases") granting at least six separate individuals ("Post-Receivership Tenants") leasehold rights in the Property.

75. Plaintiff has had no say in whether to grant those leasehold rights in the Property to those six Post-Receivership Tenants.

76. The Receiver remains in possession of the Property; Plaintiff has been stripped of his rights thereto.

77. On information and belief, by April 2019, a year later, the Receiver had not yet begun the capital improvements on the Property.

78. On information and belief, in or about November 2019, more than 18 months after the March 2018 approval of the Receiver's Final Plan, the Receiver entered into an agreement with ANA Mechanical Contractors, LLC ("ANA"), to perform capital improvements to the Property, though the scope of work was materially different than the scope of work presented by Pentagon and considered as the basis for the Superior Court's March 2018 approval of the Receiver's Final Plan.

79. The scope of work from ANA is materially different from the scope of work prepared by Pentagon, and includes the following proposed work, at a proposed cost of \$135,000:

- a. Demolition: basement hallway, basement apartments, bathrooms and kitchens to 3 basement apartments, 16 doors;
- b. General: install sheetrock in basement hallway, install 16 doors per drawing, install 3 basement kitchen cabinets with laminate counters 48" with upper cabinet, install 3 basement bath vanity and mirror, replace 7 basement windows in original openings, install vinyl floor tiles, tile tub and shower area;
- c. Plumbing: install 3 basement kitchen stainless over mount sinks with faucet and drains, install 3 basement bath tubs with shower diverters, install 3 basement vanity sinks with faucet and drains (all fixtures in existing locations, does not include roughing all fixtures to be replaced and same roughing is to be used, any roughing changes would be an extra) , install 2" water supply line from sidewalk (not street) for sprinkler system, install backflow preventer on sprinkler system, replace sidewalk sections that were removed;

- d. Electrical & Lighting: replace electrical panels for 3 basement apartments (60 amp), install fire alarm per drawing, install outlets, light fixtures, and switches for basement apartments to code, install emergency lighting and exit signs per code in hallway, install smoke detectors carbon monoxide detectors, and other alarm equipment per drawing on first floor and basement;
- e. Sprinkler system: install exposed piping for sprinkler in basement and first floor; install 28 sprinkler heads per drawing; and
- f. General: remove all debris from construction for offsite disposal, cost includes city permits; patch all holes left from electrician and plumber; if city requires additional engineering drawing this will be additional cost to owner, price includes all labor and material.

80. Upon information and belief, the Defendants intentionally overestimated the cost of the work so as to receive authorization for improvements that would not have been authorized under the MHPRA.

81. Upon information and belief, knowing of the severe limitations on the landlord's ability to increase rent in light of Union City's Rent Leveling Ordinance, the Defendants orchestrated a scheme to substantially improve the quality of the units while locking in rock bottom base rents for the tenants and interfering with Plaintiff's rights to increase the base rent as a result of the capital improvements.<sup>3</sup>

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<sup>3</sup> In the normal course, a landlord making capital improvements can apply for a substantial increase from the Rent Leveling Board based upon the cost of those capital improvements. The Receiver, however, has a track record of failing to apply for even the base increases each year.

82. The Defendant's scheme has drastically interfered with Plaintiff's investment backed expectations as a landlord.

83. It has now been *twenty-nine months* since the Receiver's Final Plan was approved and, on information and belief, the capital improvements have not been completed.

***D. The Receiver has failed to raise rents; failed to rent units; and failed to make distributions to Plaintiff.***

84. Union City has adopted a Rent Control Ordinance ("RCO") that regulates the manner and amount of increases in rent for residential tenants, including the tenants of the Property.

85. Under the RCO, the maximum permissible annual rent increase is the lesser of (a) 3.0% or (b) the amount equal to the percentage increase in the latest available consumer price index for the New York-Northern New Jersey Metropolitan Area. Union City Ord. § 334-10(B)(1).

86. The RCO further provides that in order for a landlord to raise rent, it must file an annual Rent Registration Statement with Union City's Rent Regulation Officer. Union City Ord. § 334-16(A).

87. On information and belief, upon having conspired with Union City, the Receiver has failed to file the annual Rent Registration Statements for the Property during the calendar years 2017 and 2018.

88. In addition, for the Rent Registration Statement that the Receiver filed on March 27, 2019, the reported base rent was lower than was recorded on the October 2016 Rent Registration Statement filed by Plaintiff, the last such statement that Plaintiff filed prior to the receiver's appointment.

89. Immediately prior to the appointment of the Receiver, the three ground-floor studio apartments were renting for \$778.91, \$775.15 and \$777.95, respectively.

90. During the receivership, the Receiver has failed to lease any of these units, foregoing \$109,604.47 in rental income.

91. On information and belief, during the time period when the Receiver took possession and control of the Property, certain tenants filed grievances with Union City's Rent Leveling Board.

92. On information and belief, those grievances were without merit.

93. On information and belief, Mayor Stack and other of the Defendants advised tenants of the Property that they could file the meritless grievances with the Union City Rent Leveling Board and that the Receiver, who was under the control of and acting at the direction of Mayor Stack, Union City, and/or its governing body, all of whom were hostile to Plaintiff, would settle those grievances on terms favorable to the tenants.

94. On information and belief, shortly after the Receiver gained possession and control of the Property, the Receiver settled grievances raised by the Property's tenants on terms favorable to the tenants.

95. On information and belief, the Receiver did not oppose the grievances raised by the Property's tenants in Court or before the Rent Leveling Board, despite having grounds to do so.

96. Since the Receiver assumed control and possession of the Property in February 2017, Plaintiff has never received a distribution of profits from the Receiver.

***E. Continuing efforts to incur indebtedness against the Property***

97. As described above, by November 2019, the Receiver had been in possession of and exercised control over the Property for more than 27 months.

98. Also as described above, during that 27-month period, the Receiver had expended tens of thousands of dollars in capital improvements.

99. By Order dated November 8, 2019 (“Jablonski Order”), the Hon. Jeffrey R. Jablonski, J.S.C., of the Superior Court of the State of New Jersey, Hudson Vicinage, authorized the Receiver to incur the indebtedness on a loan secured by a lien on the Property as outlined in a July 17, 2019 Term Letter of JP Morgan Chase Bank.

100. According Statement of Reasons accompanying the Jablonski Order, the purpose for incurring the indebtedness from JP Morgan was to address the building sprinkler system.

101. In the Final Plan approved by Judge Sarkisian, Pentagon estimated that the installation of the sprinkler system, including the installation of a dedicated 2” water main, excavation, street repair, sidewalk removal, and other related work, would cost \$53,500.

102. On information and belief, the Receiver is seeking to secure far more than the cost of installing the sprinkler system.

103. On information and belief, the Receiver has not yet incurred the indebtedness from JP Morgan Chase Bank but intends to do so imminently.

104. On information and belief, this is the latest step in the scheme amongst the Defendants to continue enriching the tenants at the cost of Plaintiff, thereby depriving Plaintiff of his property rights and reasonable, investment back expectations.

***F. The Receivership will continue indefinitely.***

105. Union City, through their agents, has advised Plaintiff that the work necessary to bring the receivership to an end cannot be completed because Union City’s building department,



which is headed by Construction Official Martinetti, is refusing to issue permits necessary to perform that work.

106. On information and belief, Union City is improperly withholding permits necessary for the completion of capital improvements, renovations and repairs that the Defendants claim are necessary to bring portions of the Property into compliance with relevant code.

107. On information and belief, this is the result of a conspiracy by the Construction Official Martinetti, Mayor Stack, and the other elected Defendants to indefinitely continue Union City's custody and control of the Property through the Receiver.

108. On information and belief, there is no prospect that Union City will issue those permits.

109. On information and belief, as a result, there is no prospect of the Receiver relinquishing possession and control of the Property back to Plaintiff.

110. On information and belief, the Receiver will continue to earn a profit from serving as the receiver of the Property.

111. On information and belief, the Receiver will continue to use the rental income to enrich the Property's tenants at the expense of Plaintiff.

112. On information and belief, the Receiver will not raise rents.

113. On information and belief, the Receiver will not rent out the basement apartment units.

114. On information and belief, Plaintiff will continue to be forced to pay all debt service, real estate taxes, and other carrying costs indefinitely.

115. On information and belief, there is no prospect that Plaintiff will be able to sell or otherwise alienate the Property.

***G. Liability and Damages.***

116. The conduct of the Defendants under and in connection with the receivership has the same effect as the complete destruction of Plaintiff's property rights in the Property.

117. The conduct of the Defendants under and in connection with the Receivership, as sought by and imposed for the benefit of Union City, conduct goes far beyond the normal exercise of Union City's police powers.

118. Union City and the Mayor and Commissioners acted under color of law by exercising power possessed by virtue of New Jersey law, including the MHPRA, to wit, procuring the appointment of a receiver and exercising control over the Property through receiver so as to affect an unconstitutional Taking.

119. Union City and the Mayor and Commissioners acted under color of law by exercising power through the exercise of their governmental authority through various executive actions, to wit, the authorization and prosecution of the receivership action against Plaintiff followed by the acts complained of herein.

120. The Receiver acted under color of law by exercising power possessed by virtue of New Jersey law, including the MHPRA, to wit, exercising possession and control of the Property to the exclusion of Plaintiff and the other various conduct complained of herein.

121. Construction Official Martinetti acted under color of law by exercising power possessed by virtue of New Jersey law, to wit, taking actions, including the improper withholding of construction permits, to indefinitely extend the receivership.

122. On information and belief, the Defendants acted under color of law by exercising power enjoyed to wit, the authorization and prosecution of the receivership action against Plaintiff followed by the acts complained of herein.

123. The Defendants have, both directly and as part of a conspiracy, effected a Taking of Plaintiff's property without just compensation.

124. The Defendants have, under color of law, affected a physical invasion and occupation of Plaintiff's Property.

125. The Defendants have, under color of law, barred Plaintiff from entering his own Property.

126. The Defendants have, under color of law, interfered with Plaintiff's reasonable investment-backed expectations that he would be able to earn a profit from the Property.

127. On information and belief, the Receiver calculated the value of the Property as on November 22, 2017 using an income approach with a 6.00% capitalization rate.

128. The Defendants' unconstitutional Taking has caused the Plaintiff economic injuries that include but are not limited to the following:

- a. Plaintiff has been saddled with more than \$100,000 of legal fees purportedly incurred by Union City;
- b. Plaintiff has incurred substantial legal fees in efforts to vindicate his constitutional rights;
- c. Plaintiff has paid through the Property's rental income \$25,800 in management fees paid to the Receiver;
- d. Plaintiff has paid through the Property's rental income \$28,422.50 in legal fees incurred by the Receiver in connection with his appointment as receiver;

- e. The three ground-floor studio apartments, with an estimated monthly rental value of *at least* \$750 each, have been vacant since at least January 2018, amounting to an estimated \$110,000 in unrealized rental income;
- f. Plaintiff has paid through the Property's rental income utilities for the three untenanted ground-floor apartments units, which utilities, in the normal course, would have been paid by tenants.
- g. Plaintiff has been forced to finance other capital improvements in an amount to be determined at trial;
- h. Plaintiff has been forced to pay hundreds of dollars per month in PSE&G bills accrued in purportedly unoccupied basement apartments in an amount to be determined at trial;
- i. Plaintiff has personally paid continuing debt service and real-estate taxes during the entirety of the Receivership; and
- j. Plaintiff has been forced to fund tens-of-thousands of dollars in repairs, the propriety and necessity of which are highly dubious.

129. There is no prospect of the Defendants relinquishing possession or control of the Property to Plaintiff.

130. Since the Receiver took possession and control of the Property in February 2017, Plaintiff has received no income or other distribution from the Property.

131. Plaintiff remains responsible for, and has paid, property taxes and carrying costs associated with the Property while under receivership, which include monthly mortgage payments.

132. On information and belief, the Receiver has not sought tenants for all ten units and, in fact, during the course of the Receiver's three-plus-year receivership, many of the units have gone and remain unrented.

133. On information and belief, the Receiver has not sought to increase the monthly rents on an annual basis, nor has the Receiver filed to increase the maximum allowable rent with the Union City Rent Leveling Board.

134. The Receiver's conduct has negatively affected the value of Plaintiff's interest in the Property.

135. The Receiver is encumbering Plaintiff's property with expenses and obligations that will bind and obligate Plaintiff for significant sums.

136. The Receiver is encumbering Plaintiff's property with debt obligations that Plaintiff will carry for decades.

137. The Fifth Amendment to the United States Constitution prohibits the taking of private property without just compensation.

138. The Fifth Amendment to the United States Constitution is applicable to the states through the Fourteenth Amendment to the United States Constitution.

139. At all times relevant hereto Plaintiff is the fee simple owner of the Property and had a vested property right in the Property.

140. The Defendants, through the receivership that was awarded under the MHPRA and other statutes and common law and through the authority vested in Union City by way of its status as a municipal body and political subdivision of the State of New Jersey, and the Mayor and Commissioners, and Construction Official Martinetti by way of their status as elected and

appointed officials thereof, have affected a compensable taking from the Plaintiff, and cause Plaintiff the other damages outlined herein.

141. At all times relevant, the Receiver and the Alexander Group have acted at the direction of and in a common enterprise with Construction Official Martinetti, the Mayor and Commissioners, and Union City.

142. At no point was Plaintiff provided with just compensation for the taking of the Property.

143. On information and belief, the Mayor and Commissioners and Construction Official Martinetti have acted to intentionally deprive Plaintiff of his constitutional rights, privileges and immunities as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

144. On information and belief, the Mayor and Commissioners and Construction Official Martinetti have acted out of personal animus towards Plaintiff in part because he does not reside in Union City and because he is not a member of the preferred class of persons, based on Plaintiff's race, ethnicity, religion and national origin, to whom the Mayor and Commissioners extend political favoritism.

145. On information and belief, the Mayor and Commissioners and Construction Official Martinetti have intentionally sought to redistribute Plaintiff's Property to those who are members of the preferred class of persons to whom the Mayor and Commissioners extend political favoritism.

146. On information and belief, the Mayor and Commissioners and Construction Official Martinetti have acted out of personal animus towards Plaintiff because he has litigated against the Union City in connection with the Property.

**V. CLAIM FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**42 U.S.C. § 1983 – U.S. Constitution, Fifth and Fourteenth Amendment  
Takings Clause Violation (against all Defendants)  
Conspiracy to Violate the Takings Clause (against all Defendants)**

147. Plaintiff repeats and realleges each and every allegation as if more fully set forth herein.

148. Plaintiff did and still does hold fee simple title to the Property located at 130 40<sup>th</sup> Street, Union City, New Jersey.

149. The Defendants, acting either individually or as part of a conspiracy, under color of law, have affected a physical invasion on and occupation of Plaintiff's Property.

150. The Defendants, acting either individually or as part of a conspiracy, under color of law, have caused Plaintiff severe economic harms with respect to the Property; have interfered with the reasonable investment-backed expectations that Plaintiff has in the Property in his capacity as an owner and landlord; and have engaged in government action that is at the heartland of Takings concerns.

151. Plaintiff has not received just compensation for the Taking of his Property.

152. Through the course of conduct described herein, the Defendants have deprived Plaintiff of his property rights in the property so as to amount to a Taking under the Fifth Amendment of the United States Constitution.

153. As a result, through the course of conduct described herein, the Defendants have caused Plaintiff suffer damages.

154. Defendants, acting under color of state law, have deprived Plaintiff of the rights, privileges, or immunities secured by the Takings Clause of the Fifth Amendment to the U.S. Constitution, as incorporated against the States via the Fourteenth Amendment to the U.S.

Constitution, in that Defendants, without justification, have intentionally pursued a course of action that amounts to a Taking of Plaintiff's private property.

155. Plaintiff has been damaged by the violation of his rights, privileges, or immunities secured by the Takings Clause of the Fifth Amendment to the U.S. Constitution, as incorporated against the States via the Fourteenth Amendment to the U.S. Constitution.

**WHEREFORE**, Plaintiff prays that final judgment be entered against each Defendant declaring, ordering, and adjudging that:

- a. Plaintiff be awarded compensatory and punitive damages against those Defendants as may be allowed by law in an amount to be determined at trial; and
- b. Plaintiff be awarded its costs of this action, reasonable attorney's fees, and such other relief as may be appropriate and as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff Zaky Tadros demands a jury trial on all issues so triable.

Dated: September 10, 2020

Respectfully submitted,

By: /s/ Martin R. Kafafian

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*Attorneys for Plaintiff*



**CERTIFICATION UNDER LOCAL CIVIL RULE 11.2**

I hereby certify that the matter in controversy is not the subject of any other action pending in this or any other court, except that there exist other pending disputes between certain of the parties hereto, including a summary action under New Jersey's Open Public Records Act captioned *Zaky Tadros v. City of Union City, et al.*, Docket No. HUD-L-2368-20 (New Jersey Superior Court, Hudson Vicinage) and *City of Union City v. Tadros*, Docket No. HUD-C-99-16 (New Jersey Superior Court, Hudson Vicinage).

Dated: September 10, 2020

Respectfully submitted,

By: /s/ Martin R. Kafafian

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**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 201.1**

I hereby certify that the above-captioned matter is not subject to compulsory arbitration because Plaintiff seeks damages in excess of \$150,000.

Dated: September 10, 2020

Respectfully submitted,

By: /s/ Martin R. Kafafian

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