

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM E. MOLINA and
M&O PARTNERS, INC.,

Plaintiffs,

v.

CITY OF POUGHKEEPSIE,
GARY E. BECK, JR., and
PAUL ACKERMAN,

Defendants.

Case No. 11-CIV-9726 (CS)

ECF CASE

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

COME NOW THE PLAINTIFFS, William E. Molina and M&O Partners, Inc., by their attorney, Steven M. Warshawsky, for their first amended complaint against the defendants and alleging as follows:

NATURE OF THE CASE

1. This is a civil rights action under 42 U.S.C. § 1983 and 42 U.S.C. § 1985 to redress the defendants' knowing and intentional violations of the plaintiffs' constitutional rights. In this case, the defendants, the City of Poughkeepsie and local government officials, egregiously and maliciously abused their power to interfere with and ultimately destroy Mr. Molina's restaurant/bar in downtown Poughkeepsie (d/b/a Temptations). First, they subjected Mr. Molina to an illegal bureaucratic run-around, repeatedly demanding that he comply with unauthorized, irrational, and onerous building permit requirements. As a result, the opening of Mr. Molina's restaurant was delayed approximately five months. Then, after Mr. Molina started holding "hip-hop nights" at Temptations, which attracted a predominately black clientele, the defendants subjected Mr. Molina to a pervasive, intrusive, and unjustified police presence

intended to drive away his customers and undermine his business. The defendants' campaign of harassment and intimidation culminated in unfounded legal proceedings against Mr. Molina (for an alleged public assembly violation) intended to blackmail Mr. Molina into abandoning his business. Sadly, they succeeded. There was no legitimate, lawful basis for the defendants' actions in this case, as a result of which the plaintiffs suffered economic and non-economic injuries, including lost investments, lost profits, out of pocket expenses, mental anguish, emotional distress, insult, embarrassment, humiliation, and other compensable injuries.

PARTIES

2. Plaintiff **William E. Molina** is a citizen of New York, and resides in New City, New York. Mr. Molina was born in El Salvador in 1987 and immigrated with his family to the United States in 1990. He became an American citizen in 2007. Mr. Molina graduated cum laude from Pace University in 2009 with a degree in business administration. He does not have a criminal record. He does not use illegal drugs. Mr. Molina's ambition in life is to be a successful entrepreneur, obtain an M.B.A., and raise a family.

3. Plaintiff **M&O Partners, Inc.**, is a New York corporation, founded on January 27, 2010. Mr. Molina is the sole shareholder and officer of M&O Partners, Inc. Mr. Molina founded M&O Partners for the specific purpose of operating a restaurant/bar in the City of Poughkeepsie.

4. Defendant **City of Poughkeepsie** is a municipality of the State of New York. The Mayor of the City of Poughkeepsie is John C. Tkazyik. His office is located at City Hall – 3rd Floor, 62 Civic Center Plaza, Poughkeepsie, New York, 12601; (845) 451-4073. The unconstitutional conduct alleged in this case was carried out by various known and unknown city officials and employees acting under color of state law and in the scope of their employment

with the City of Poughkeepsie. The City of Poughkeepsie is being sued in its municipal capacity under 42 U.S.C. § 1983, pursuant to Monell v. Department of Social Services, 436 U.S. 658 (1978), and its progeny. At all relevant times, one or more city officials with final policy-making authority within the meaning of Monell v. Department of Social Services, 436 U.S. 658 (1978), and its progeny, had knowledge of and authorized, approved, and/or acquiesced in the unconstitutional conduct alleged in this case.

5. Defendant **Gary E. Beck, Jr.**, is the Building Inspector of the City of Poughkeepsie. Upon information and belief, Mr. Beck was appointed Building Inspector sometime in 2010. His office is located at City Hall – 2nd Floor, 62 Civic Center Plaza, Poughkeepsie, New York, 12601; (845) 451-4007. Mr. Beck previously served as Deputy Building Inspector, including at times relevant to this case. The Building Inspector is responsible for issuing building permits, performing construction inspections, issuing certificates of occupancy, and enforcing the New York State Building Code and pertinent provisions of the City of Poughkeepsie Code of Ordinances. Mr. Beck personally participated in the unconstitutional conduct alleged in this action. At all relevant times, Mr. Beck was acting under color of state law and in the scope of his employment with the City of Poughkeepsie. At all relevant times, Mr. Beck exercised final policy-making authority within the meaning of Monell v. Department of Social Services, 436 U.S. 658 (1978), and its progeny. Mr. Beck is being sued in his individual capacity under 42 U.S.C. § 1983 and 42 U.S.C. § 1985.

6. Defendant **Paul Ackerman** is the newly-appointed Corporation Counsel of the City of Poughkeepsie. His office is located at City Hall – 3rd Floor, 62 Civic Center Plaza, Poughkeepsie, New York, 12601; (845) 451-4065. Mr. Ackerman previously served as Assistant Corporation Counsel, including at all times relevant to this case. The Corporation

Counsel represents the City of Poughkeepsie in all legal matters. It prosecutes criminal actions in City Court, advises the Mayor, Common Council, and all City departments, drafts legislation, negotiates labor, real estate, and development contracts, and handles all litigation. Mr. Ackerman personally participated in the unconstitutional conduct alleged in this action. At all relevant times, Mr. Ackerman was acting under color of state law and in the scope of his employment with the City of Poughkeepsie. At all relevant times, Mr. Ackerman exercised final policy-making authority within the meaning of Monell v. Department of Social Services, 436 U.S. 658 (1978), and its progeny. Mr. Ackerman is being sued in his individual capacity under 42 U.S.C. § 1983 and 42 U.S.C. § 1985.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, because this action arises under the Constitution and civil rights laws of the United States.

8. This Court has venue over this action pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to this action occurred in this district.

9. There are no administrative exhaustion requirements for bringing the present civil rights action under 42 U.S.C. § 1983.

FACTUAL ALLEGATIONS

10. On or about January 28, 2010, M&O Partners entered into a five-year lease, commencing February 1, 2010, for the premises known as the first floor and basement of the building at 302 Main Street, Poughkeepsie, New York, 12601 (in downtown Poughkeepsie),

together with the existing furniture, fixtures, and restaurant/bar equipment at the premises (which M&O Partners purchased for \$35,000). The lessor was Chrome Enterprises, Inc., a New York corporation. The lease was executed on behalf of M&O Partners by Mr. Molina and on behalf of Chrome Enterprises by Glenn Meacham, the President of Chrome Enterprises and the owner of the building.

11. Mr. Molina leased the premises at 302 Main Street for the purpose of operating a Mexican restaurant and Latin-themed bar/nightclub d/b/a “Temptations.” The property was zoned and approved for use as a restaurant/nightclub and previously had been used for that purpose by Mr. Meacham. No change in use would result from Mr. Molina’s intended business operations.

12. On or about February 1, 2010, Mr. Molina sent the required notice to the City of Poughkeepsie regarding his intention to apply for a state liquor license for Temptations.

13. On or about March 1, 2010, the City of Poughkeepsie sent a letter to the New York State Liquor Authority (SLA) responding to Mr. Molina’s proposed application. The letter was written on the letterhead of Paul Ackerman, Assistant Corporation Counsel, and was signed by Michael A. Long, City Administrator. The letter stated that “the City does not oppose the granting of a license at this time” and acknowledged that “[a] restaurant is a permitted use in the building comprising the premises that are the subject of the application.” The letter noted, however, that a previous bar at the location had generated a large number of noise complaints, and requested that “the applicant address ways to mitigate noise that may be a result of the use of this location as a restaurant.” The letter was cc’d to Corporation Counsel, Police Chief, and Building Department.

14. On or about March 2, 2010, Mr. Molina telephoned Ronald J. Knapp, Chief of Police, to request a meeting to address the City's concerns raised in its letter to the SLA. The meeting was held in the Mayor's office on or about March 8, 2010. In attendance were Chief Knapp, Mr. Molina, Mr. Meacham, Mr. Ackerman, Mr. Long, Judy Knauss, Deputy Zoning Administrator, Peter Longi, Fire Inspector, and George McGann, Building Inspector. During this meeting, Mr. Molina was questioned about his family background, education, work experience, and business plans. The only concern raised by Chief Knapp and the other officials was the potential noise problem. To address this concern, Mr. Molina agreed to use both the front entrance on Main Street and the back door emergency exit to allow patrons to leave the restaurant (so as to avoid large crowds leaving at one time).

15. On or about March 15, 2010, Mr. Molina submitted his liquor license application to the SLA. The SLA Board held a hearing on the application on June 23, 2010. At the hearing, the Board instructed Mr. Molina to submit a proposed security plan for the premises, which he did. The Board approved the application on July 7, 2010.

16. In the meantime, while his liquor license application was pending, Mr. Molina intended to open and operate Temptations as a restaurant only, beginning on or about May 10, 2010.

17. On or about March 17, 2010, Mr. Molina submitted an application for a public assembly license (i.e., the certificate of occupancy posted inside public buildings) to the Fire Department, along with a check for \$100. Although the check was cashed on April 21, 2010, no public assembly license was issued. Mr. Molina was legally entitled to a public assembly license for Temptations, which met all of the requirements for said license. There is

either a certainty or a strong likelihood that said license would have been issued in a timely manner but for the improper conduct of the defendants, as alleged herein.

18. In April 2010, Mr. Molina spent several days preparing the premises for business, cleaning, painting, removing old decorations, and rearranging equipment and furniture. He was not performing any work (including alterations, renovations, plumbing or electrical work) that required a building permit or other official approval to be completed.

19. On April 19, 2010, Gary Beck, Deputy Building Inspector (subsequently appointed Building Inspector), entered the premises by the back door and told Mr. Molina that he had received a “complaint” about work being done without a permit. Mr. Beck did not conduct an inspection of the premises or take photographs, but remained standing near the back door, where his conversation with Mr. Molina took place. Mr. Molina explained to Mr. Beck the work he was doing and that he did not require a building permit. Mr. Beck disagreed and falsely advised Mr. Molina that he needed a building permit for any work, including painting and removing decorations. When Mr. Molina disputed Mr. Beck’s position, Mr. Beck threatened him with legal action. Mr. Beck ordered Mr. Molina to stop work and told him to submit a building permit application along with a double fee (supposedly because work had been commenced without a permit). Upon information and belief, Mr. Beck knew that a building permit was not required for the type of work being performed at the premises and that he lacked legal authority to order Mr. Molina to stop work. There was no legitimate, rational basis for Mr. Beck’s order. This was not a good faith mistake. Mr. Beck knowingly and intentionally interfered with Mr. Molina’s right to the beneficial commercial use of the premises. Upon information and belief, Mr. Beck was motivated at least in part by Mr. Molina’s ethnicity.

20. On April 20, 2010, a stop work order, signed by Mr. Beck, was posted at the premises. The order was addressed to Chrome Enterprises (Mr. Meacham's corporation and the previous proprietor at the premises). The order stated that "the Building Inspector has determined that he has reasonable grounds to believe that work on this building is being carried out in violation of applicable laws, ordinances and regulations in that: NO BUILDING PERMIT HAS BEEN OBTAINED FOR WORK BEING PERFORMED." (Caps in original.) The order further stated that "work on this project may not be resumed until ALL NECESSARY PAPERWORK IS OBTAINED (building permit with stamped plans)." (Caps in original.) The order threatened that failure to comply with the order could result in civil liability and criminal prosecution. Upon information and belief, Mr. Beck knew that a building permit was not required for the type of work being performed at the premises and that he lacked legal authority to issue the stop work order. There was no legitimate, rational basis for the stop work order. This was not a good faith mistake. Mr. Beck knowingly and intentionally interfered with Mr. Molina's right to the beneficial commercial use of the premises. Upon information and belief, Mr. Beck was motivated at least in part by Mr. Molina's ethnicity.

21. The stop work order was substantively and procedurally defective. The order was substantively defective because, under the state and city building codes, no building permit was required for the type of work being performed by Mr. Molina at the premises and, therefore, Mr. Beck did not have, and could not have had, "reasonable grounds for belief that there has been a violation" at the premises. Moreover, under the state and city building codes, Mr. Beck lacked discretionary authority to require a building permit. Hence, the stop work order was issued without legal authority, without rational basis, and in bad faith. The order was procedurally defective because, contrary to city law, it did not "give notice of" and "specify" the

alleged building code violations being committed by Mr. Molina; it did not identify which work was being performed “in violation” of which “laws, ordinances, or regulations” and for which a “building permit with stamped plans” was required. The stop work order also failed to advise Mr. Molina “of his right to apply for a hearing” within ten days to contest the order.

22. Later that day (on April 20), Mr. Molina went to Mr. Beck’s office to discuss the stop work order. During their brief conversation, Mr. Molina again described to Mr. Beck the work he was doing at the premises, which did not require a building permit. Mr. Beck ignored what Mr. Molina was saying and falsely accused him of “altering” the premises, performing plumbing and electrical work, and building a “stage.” This was the first time that Mr. Beck said anything to Mr. Molina about an alleged “stage” (this becomes a recurring accusation). There was no factual basis for these accusations. Upon information and belief, Mr. Beck knew that his accusations were false; that is, Mr. Beck was lying about the alleged work being done at the premises. This was not a good faith mistake. Mr. Beck told Mr. Molina that he must submit “stamped plans” (formal architectural drawings) and obtain “zoning board” approval for the work being performed. Upon information and belief, Mr. Beck knew that no such requirements applied to the type of work being performed at the premises. This was not a good faith mistake.

23. Seeking to resolve the situation without further delay, following his conversation with Mr. Beck (on April 20), Mr. Molina submitted a building permit application, which he completed in accordance with Mr. Beck’s instructions, along with a check for \$1,835.70 (representing a double fee). On April 22, Mr. Molina discussed the stop work order with his attorney, Michelle Almeida. Ms. Almeida advised him that no building permit was required for the work he was doing and recommended that he withdraw his application. Around

5:00 p.m. that evening, Mr. Molina left a voice message for Mr. Beck asking him to withdraw the application and return the check. Mr. Beck returned Mr. Molina's call on April 23 and agreed to his request.

24. On April 29, 2010, Ms. Almeida faxed a letter to Mr. Beck in which she described the work being performed by Mr. Molina – painting, spackling, removing old decorations, and laying some vinyl flooring – and explained that no building permit was required. Ms. Almeida also advised Mr. Beck that the alleged “stage” (which was not an actual stage, structure, or fixture, but merely some square wooden tables that had been pushed against a wall) was being removed (i.e., the pieces of furniture were moved away from the wall). Ms. Almeida asked Mr. Beck to contact her “so we may discuss the lifting of the Stop Work Order.” Mr. Beck did not respond to the letter, or to Ms. Almeida's follow-up telephone calls.

25. On May 12, 2010, Mr. Molina emailed Mr. Beck to complain about the stop work order. In the email, Mr. Molina again described the work he was doing at the premises, which did not require a building permit. Mr. Molina closed his email stating: “It is my belief that I am being targeting inappropriately for reasons I do not know. . . . I urge your review of this information and look forward to your prompt response.” Mr. Beck did not respond to Mr. Molina's email for nearly two weeks. On May 24, 2010, Mr. Beck replied by email, stating simply: “This matter has been referred to the City's Law Department.” Upon information and belief, Mr. Beck knew that no building permit or other official approval was required for the type of work being performed by Mr. Molina at the premises. Upon information and belief, Mr. Beck knew that he lacked legal authority to issue the stop work order. Instead of rescinding the order, however, Mr. Beck conspired with Assistant Corporation Counsel Paul Ackerman (and other city officials, to be identified in discovery) to subject Mr. Molina to an

abusive and illegal bureaucratic run-around lasting several months. The purpose of this conspiracy was to delay and/or prevent the opening of Mr. Molina's restaurant in downtown Poughkeepsie. Mr. Beck and Mr. Ackerman (and other city officials, to be identified in discovery) knowingly and intentionally interfered with Mr. Molina's right to the beneficial commercial use of the premises. Upon information and belief, Mr. Beck and Mr. Ackerman were motivated at least in part by Mr. Molina's ethnicity.

26. On May 25, 2010, Ms. Almeida told Mr. Molina that she had spoken with Mr. Ackerman about the situation. According to Ms. Almeida, Mr. Ackerman agreed that a building permit was not required for the work being performed by Mr. Molina at the premises and that Mr. Molina only needed to remove the "stage" for the stop work order to be lifted. Mr. Ackerman said that he would speak with Mr. Beck about the situation and that Mr. Molina should call Mr. Beck's office to set up another inspection.

27. Mr. Molina was not able to reach Mr. Beck until June 3, 2010, when they spoke briefly by telephone. Mr. Beck now told Mr. Molina that he needed a "demolition permit" to remove the "stage" (a "stage" that, in fact, did not exist and, therefore, would not and could not be "demolished"). When Mr. Molina objected that this was not what Ms. Almeida and Mr. Ackerman agreed to, Mr. Beck insisted that a "demolition permit" was required and that Mr. Ackerman agreed with him. Mr. Beck refused to schedule another inspection or lift the stop work order. Upon information and belief, Mr. Beck and Mr. Ackerman knew that no "demolition permit" or other official approval was required for Mr. Molina to remove the alleged "stage" (which was not an actual stage, structure, or fixture, but merely some square wooden tables that had been pushed against a wall). Upon information and belief, Mr. Beck and Mr.

Ackerman knew that they lacked legal authority to demand that Mr. Molina obtain a “demolition permit” in order to lift the stop work order. This was not a good faith mistake.

28. On June 4, 2010, Mr. Molina went to Mr. Ackerman’s office to discuss the ongoing situation involving the stop work order. Mr. Molina told Mr. Ackerman that he was “feeling harassed” by Mr. Beck. Mr. Ackerman’s demeanor was hostile and dismissive. Mr. Ackerman repeated Mr. Beck’s false accusation about work being performed at the premises without a building permit and reiterated that Mr. Molina needed to obtain a “demolition permit,” not only to remove the alleged “stage” but also to remove the old decorations (specifically, decorative “tiki grass” that had been applied by the previous proprietor to some of the walls inside the restaurant). During the meeting, Mr. Molina requested a letter from Mr. Ackerman describing the alleged building code violations. Mr. Ackerman told Mr. Molina to look at the stop work order, but Mr. Molina pointed out (correctly) that the stop work order did not describe the alleged violations. Mr. Ackerman ignored Mr. Molina’s request for the letter (which never was provided), but said he would arrange a meeting with Mr. Beck to discuss the matter. Upon information and belief, Mr. Ackerman knew that no “demolition permit” or other official approval was required for the type of work being performed by Mr. Molina at the premises. On this and other occasions relevant to this case, Mr. Ackerman was acting in bad faith.

29. On or about June 9, 2010, Mr. Molina contacted the office of New York State Senator Stephen M. Saland seeking his assistance. On or about June 18, 2010, Senator Saland sent a letter to City of Poughkeepsie Mayor John Tkazyik in which he stated that Mr. Molina “is attempting to open a Mexican restaurant in the City of Poughkeepsie and feels that the various requirements he has been given are discriminatory.” Senator Saland asked Mayor Tkazyik to “review” the situation.

30. On June 14, 2010, a meeting was held in Mr. Ackerman's office to discuss the stop work order. In attendance were Mr. Molina, Mr. Molina's attorney (one of Ms. Almeida's colleagues), Mr. Ackerman, and Mr. Beck. Mr. Beck again accused Mr. Molina of constructing a "stage" at the premises. Mr. Molina explained that the alleged "stage" was merely some square wooden tables that had been pushed against the wall and that they already had been removed. Significantly, Mr. Beck never bothered to inspect the premises to confirm Mr. Molina's explanation – let alone substantiate his own bogus claim that a "stage" had been built inside the restaurant. Upon information and belief, Mr. Beck knew from the start that no "stage" had been constructed at the premises. Nevertheless, Mr. Beck insisted that Mr. Molina needed a building permit to remove the "stage" as well as to remove the old decorations and spackle and paint the walls. Mr. Beck further instructed Mr. Molina to submit floor plans with his application. Mr. Ackerman seconded Mr. Beck's position. Upon information and belief, Mr. Beck and Mr. Ackerman knew that no building permit or other official approval was required for the type of work being performed by Mr. Molina at the premises. Upon information and belief, Mr. Beck and Mr. Ackerman knew that they lacked legal authority to require Mr. Molina to submit a building permit application or any other paperwork in order to lift the stop work order. There was no legitimate, rational basis for the defendants' demands. This was not a good faith mistake. Mr. Beck and Mr. Ackerman knowingly and intentionally interfered with Mr. Molina's right to the beneficial commercial use of the premises.

31. The day after the meeting (on June 15), Mr. Molina telephoned Mr. Beck and left a voice message seeking confirmation that Mr. Beck did not require "stamped plans" (formal architectural drawings) to be submitted with the building permit application. Mr. Beck returned Mr. Molina's call on June 17 and agreed that "stamped plans" were not required and

that Mr. Molina could submit the unofficial floor plans he had included in his state liquor license application.

32. On or about June 24, 2010, in accordance with Mr. Beck's and Mr. Ackerman's instructions at the June 14 meeting, Mr. Molina submitted a revised building permit application, along with a check for \$595, and a request for inspection, along with a check for \$100 (both checks were cashed on July 23, 2010). In the application, Mr. Molina described the work to be performed as "paint, spackle small sheetrock, remove decorative straw (legal), remove pre-existing garbage boxes (stage)." Although Mr. Molina believed (correctly) that a building permit was not required for this work, he submitted the application in an effort to resolve the situation, so he would be allowed to open his restaurant. Outrageously, the defendants continued to subject Mr. Molina to an abusive and illegal bureaucratic run-around.

33. On June 30, 2010, Mr. Molina telephoned Mr. Ackerman about the status of his building permit application. Mr. Ackerman's response was vague and noncommittal. Mr. Molina again requested a letter describing the alleged building code violations and what Mr. Molina needed to do to address them. Mr. Ackerman said he would send such a letter, but he never did. Throughout this entire process, the defendants repeatedly refused to commit their positions to writing. Upon information and belief, this was an intentional, bad faith strategy intended to obfuscate the issues, allow the defendants to change their demands at will, and impede Mr. Molina's ability to resolve the situation and open his restaurant.

34. On July 1, 2010, Mr. Molina received a telephone call from Mr. Beck, who told Mr. Molina that his building permit application was incomplete and that a "code review" now was required. This was the first time that Mr. Beck said anything to Mr. Molina about a "code review" (which was not mentioned in the stop work order). A "code review" is a

formal professional review of a structure's compliance with applicable state and local building regulations. No "code review" was required by law in this case, which involved no alterations, renovations, or change in use of the premises. Upon information and belief, Mr. Beck knew that no "code review" was required for the work being done at the premises and that he lacked legal authority to require Mr. Molina to submit a "code review" in connection with the stop work order. There was no legitimate, rational basis for this requirement. This was not a good faith mistake. During their conversation, Mr. Molina asked Mr. Beck for a letter describing the basis for the "code review" requirement. Although Mr. Beck said he would provide Mr. Molina with a "deficiency letter," he never did.

35. Mr. Molina then hired Kevin Donohue of Municipal Code Consulting to review the case and provide an expert opinion to the defendants. Mr. Donohue formerly served as Building Inspector for the City of Poughkeepsie. Mr. Donohue conducted an investigation, inspected the premises, and spoke with Mr. Beck and Mr. Longi (the Fire Inspector) about the case. Mr. Donohue mailed a written report to Mr. Beck on or about July 17, 2010 (received on July 19). In his report, Mr. Donohue first reviewed the stop work order and noted that the order "does [not] indicate the type of work being carried out for which a building permit is required." Based on his conversation with Mr. Beck and Mr. Longi, however, Mr. Donohue identified the work at issue as "a stage, decorative grass, vinyl floor tile and painting." Mr. Donohue explained that the alleged stage was "an assembly of square table cubes or furniture that was not attached to the floor, wall or each other. There was no electric[,] plumbing or mechanicals, no stairs access or lighting above or dedicated to this area." Mr. Donohue then quoted the building code definitions of "stage" and "platform" and concluded (correctly) that "[t]he assembly of square table cubes or furniture is not a stage." Mr. Donohue next explained that a review of applicable

state and local building regulations “revealed no specific requirement for a building permit for the removal of furniture and decorative grass nor for the painting, wallpapering, patching, tiling, carpeting and other similar finish work where such repairs did not involve [certain inapplicable structural alterations].” (Underlining in original.) Mr. Donohue concluded: “In summary, No Building Permit is required for the removal of furniture and decorative grass nor for painting, patching and tiling as intended by the Stop Work Order. Mr. Molina requests that the Stop Work Order be rescinded or that [he] be provided with sufficient detail of ‘work being carried out’ to understand the type of compliance and code review or appeal to be undertaken.”

36. On July 19, 2010, Mr. Molina submitted a written request for Mr. Longi to inspect the premises and issue a public assembly license (certificate of occupancy). Mr. Molina followed-up with several voice messages on July 19 and July 20. Mr. Longi returned Mr. Molina’s calls on July 21, and told Mr. Molina that he could not perform the public assembly inspection due to the stop work order. Mr. Molina asked Mr. Longi for a letter to this effect. Mr. Longi did not provide such a letter. Mr. Molina was legally entitled to a public assembly license for Temptations, which met all of the requirements for said license. There is either a certainty or a strong likelihood that said license would have been issued in a timely manner but for the improper conduct of the defendants, as alleged herein.

37. Growing increasingly frustrated and angry over the situation, on July 22 and 23, 2010, Mr. Molina telephoned Mayor Tkazyik and City Administrator Long and left several messages complaining about the ongoing bureaucratic run-around. On July 26, Mr. Long returned Mr. Molina’s calls and told him that he would review the case with Mr. Beck. On July 27, Mayor Tkazyik telephoned Mr. Molina and likewise told him that he would review the case with Mr. Beck. During their conversation, Mr. Molina asked Mayor Tkazyik about Senator

Saland's letter. Mayor Tkazyik told Mr. Molina that the letter had been placed in his "file." Mr. Molina never heard back from either Mayor Tkazyik or Mr. Long. Upon information and belief, Mayor Tkazyik and Mr. Long conferred with Mr. Beck and Mr. Ackerman about this matter, and authorized, approved, and/or acquiesced in the manner in which it was being handled by the defendants. At all relevant times, Mayor Tkazyik and Mr. Long exercised final policy-making authority within the meaning of Monell v. Department of Social Services, 436 U.S. 658 (1978), and its progeny.

38. On July 23, 2010, on Mr. Donohue's recommendation, Mr. Molina submitted a "request for hearing" to Mr. Beck's office appealing the stop work order.

39. On or about July 28, 2010, Mr. Molina sent a letter to New York State Assemblyman Frank Skartados seeking his assistance. Upon information and belief, Assemblyman Skartados spoke with Mr. Beck about the situation and urged that Mr. Molina be allowed to open his restaurant.

40. On July 29, 2010, Mr. Molina went to Mr. Ackerman's office to discuss the status of his case. Mr. Molina told Mr. Ackerman that he was being harassed and discriminated against by the defendants. He told him that he had not received anything in writing from the defendants. Mr. Ackerman's demeanor was hostile and dismissive. He told Mr. Molina that his appeal (request for hearing) was untimely and would not be considered, because it had been submitted more than 10 days after the stop work order. Mr. Molina pointed out (correctly) that the stop work order failed to advise him of his appeal rights as required by city law, but Mr. Ackerman was unmoved. When Mr. Molina protested that he was being treated unfairly, Mr. Ackerman repeated Mr. Beck's false accusations that Mr. Molina had "built a stage" and "changed the configuration of the space." There was no factual basis for these

accusations. Upon information and belief, Mr. Ackerman knew that these accusations were false. Incredibly, Mr. Ackerman blamed Mr. Molina for “holding up” the process, telling him “you’re the one dragging it.” He insisted that Mr. Molina hire a “design professional” to submit official floor plans (i.e., “stamped plans” – contrary to Mr. Molina and Mr. Beck’s previous agreement) and a formal code review. There was no legal basis for these requirements. Upon information and belief, Mr. Ackerman knew that he lacked legal authority to impose these requirements on Mr. Molina. This was not a good faith mistake. After Mr. Molina made repeated requests, Mr. Ackerman agreed to “send you a letter and I’ll tell you what you did wrong.” He never sent the letter.

41. On July 30, 2010, Mr. Molina sent an email to Mr. Ackerman, cc’d to Mayor Tkazyik and Mr. Long, addressing certain issues discussed at their meeting the day before. First, Mr. Molina disputed Mr. Ackerman’s position that his appeal was untimely, and quoted the provision of the City building code requiring that a stop work order “shall inform the person to whom it is directed of his right to apply for a hearing.” Mr. Molina flatly stated in the email: “I have been DENIED my right to due process.” (Caps in original.) Next, Mr. Molina denied that “stamped plans” were required under the City building code, and noted that he already submitted two copies of floor plans (the same floor plans he had submitted to the State Liquor Authority) on or about June 22. Mr. Molina reiterated his (correct) position that neither a building permit nor “zoning board” approval was required for the work he was doing at the premises. Mr. Molina closed by requesting “an immediate hearing as my formal notice of appeal was not given to me.”

42. Later that same day (on July 30), Mr. Molina spoke briefly by telephone with Mr. Ackerman, who acknowledged receiving Mr. Molina’s email but maintained that Mr.

Molina's right to appeal had expired. At Mr. Molina's request, Mr. Ackerman said he would provide a response in writing, but he never did.

43. Also on July 30, Mr. Molina telephoned Mr. Beck about Mr. Donohue's report. Mr. Beck denied receiving the report, which was a lie. (Documents obtained from the City of Poughkeepsie through a FOIL request show that Mr. Donohue's report was stamped "received" by the Building Department on July 19.) Mr. Beck told Mr. Molina that Mr. Ackerman would respond to the report.

44. Sometime at the end of July or beginning of August, Mr. Ackerman sent a letter to Mr. Donohue responding to his July 17 report (Mr. Ackerman's undated letter was received by Mr. Donohue on August 5). Mr. Ackerman's letter stated that the report had been forwarded to him by Mr. Beck. The letter repeated Mr. Beck's false and unsubstantiated claims that "work had been performed at the location without a permit" and that "a stage had been constructed." Upon information and belief, Mr. Ackerman knew that these claims were false. Indeed, in response to Mr. Donohue's evidence that no "stage" had been built (it was merely "an assembly of square table cubes or furniture"), Mr. Ackerman asserted, "whatever the makeup of the stage, [it] substantially altered the space and as such required a building permit." (Underlining added.) Yet the "makeup of the stage" was the very issue supposedly in dispute. Mr. Ackerman's response implicitly acknowledged that no "stage" in fact had been constructed, but he insisted nevertheless that a building permit was required. Mr. Ackerman's position was without legal authority, without rational basis, and in bad faith. Mr. Ackerman's bad faith was illustrated again in the letter when he admitted to Mr. Donohue that "[h]ad the basis of the stop-work order been the removal of decorative items, I would agree with your assertion [that no building permit was required]." So why did Mr. Ackerman tell Mr. Molina during the June 4

and June 14 meetings that a building permit was required to remove the old decorations? This is a clear example of how the defendants changed their positions arbitrarily and at will.

45. On July 31, 2010, Mr. Molina sent an email to Mr. Ackerman, Mayor Tkazyik, Mr. Long, and Mr. Beck. In the email, Mr. Molina complained about “wrongful discrimination and negligence (due to my ethnic background – Latino) to allow me to pursue my right to due process as per NYS and City of Poughkeepsie law.” Mr. Molina again explained (correctly) the legal deficiencies in the stop work order: that it was wrongfully issued, that it did not inform Mr. Molina of the alleged building code violations, and that it did not notify Mr. Molina of his right to appeal. Mr. Molina accused the defendants of denying his civil rights and “insist[ed] on [his] right to due process.” Mr. Molina closed by requesting “an emergency formal hearing by a hearing officer.”

46. Mr. Molina’s July 31 email apparently had some effect, because a few days later Mr. Ackerman told Ms. Almeida that he agreed “as a courtesy” to hold a hearing on the stop work order. Mr. Ackerman conveyed this decision by letter dated August 3, 2010.

47. The hearing was held on August 10, 2010, in the Office of the Corporation Counsel. The “hearing officer” was Craig Wallace, an attorney in private practice in Poughkeepsie, New York. Mr. Beck and Mr. Ackerman appeared on behalf of the City. Mr. Molina, Mr. Donohue, Mr. Meacham, and Mr. Molina’s new attorney, Jon Adams, appeared on behalf of Mr. Molina. (The original stop work order had been addressed to Mr. Meacham’s corporation, Chrome Enterprises.) At the hearing, the City maintained its position that Mr. Molina was “altering” the premises, including building a “stage.” The only evidence the City offered was Mr. Beck’s testimony. Upon information and belief, Mr. Beck knew that there was no factual basis for his testimony. Mr. Molina denied the allegations, which he disproved with

his own testimony, Mr. Donohue's testimony, Mr. Meacham's testimony, and photographs of the premises. Even in the face of this overwhelming evidence, the City refused to reconsider its position and, at the end of the first hearing day, no resolution was reached.

48. By this time, Mr. Molina realized that the defendants never would agree to lift the stop work order unless he complied with their requirements, however illegal and unauthorized they were. If Mr. Molina wanted to open his restaurant – which already had been delayed several months – he had no choice but to submit the “stamped plans” and “code review” demanded by Mr. Beck and Mr. Ackerman. Ultimately, Mr. Molina agreed to the City's demands and dismissed his appeal, in exchange for Mr. Beck's promise that he would complete the building permit review process promptly after receiving the paperwork. Mr. Molina hired an architect (at substantial cost to himself) and submitted the paperwork on or about August 25, 2010. The building permit was approved the same day.

49. On or about September 3, 2010, the final building department inspection was performed by Deputy Zoning Administrator Judy Knauss, who approved the work. On or about September 17, 2010, Mr. Longi issued Mr. Molina a public assembly license (certificate of occupancy) for the first floor of the restaurant (“to get you started”) with a maximum occupancy of 350. The following week, Mr. Longi issued Mr. Molina a revised public assembly license with a maximum occupancy for the first floor of 175 and for the basement of 50. When Mr. Molina asked him about the change, Mr. Longi told him: “That's something you'll have to talk to Gary [Beck] about. This is what he told me to give you.”

50. Mr. Molina's restaurant finally opened for business on Tuesday, October 5, 2010. The hours of operation were Monday, Tuesday, and Wednesday, from 11am to 9pm (later extended to 4am on Tuesdays); Thursday, Friday, and Saturday, from 11am to 4am; and

Sunday, from 10pm to 4am. For late night operations, Mr. Molina hired licensed security guards to maintain order, check IDs, and prevent any drugs or violence on the premises. To Mr. Molina's knowledge, no criminal activity took place at Temptations. The police never reported any such criminal activity to Mr. Molina.

51. Through the end of 2010 and beginning of 2011, Mr. Molina operated his restaurant without any complaints from neighboring residents, businesses, or city officials. His immediate challenge was establishing himself in the local marketplace and growing his clientele. Unfortunately, launching his restaurant in the fall instead of the spring hampered his start-up period, which was made more difficult by the hard winter of 2010-2011.

52. In February 2011, Mr. Molina decided to increase his business by holding hip-hop themed events on Friday nights, the slowest night of the week for his restaurant. He believed this would be a successful business strategy, as Temptations would be the only bar/nightclub in the area holding hip-hop events on Friday nights. (Restaurants like Temptations make most of their money through bar/nightclub operations.) At first, Mr. Molina advertised the events using flyers and social media. The first hip-hop nights were held on February 18 and February 25, and drew small crowds. At the end of February, Mr. Molina started advertising the events on the radio. This advertising campaign resulted in much larger crowds. On March 4, he had approximately 50-75 customers. On March 11, he had approximately 150-200 customers.

53. The hip-hop nights attracted a predominantly black clientele, made up of men and women in their 20s and 30s. Upon information and belief, the defendants are opposed to businesses that draw large numbers of black customers to downtown Poughkeepsie. Upon information and belief, other bar/nightclub owners in the City of Poughkeepsie have been

pressured by City officials to “change their clientele” and stop catering to black customers (for example, by changing their music format).

54. Upon information and belief, following the initial success of hip-hop nights at Temptations, the defendants decided to force Temptations out of business. The strategy they employed was a pervasive, intrusive, and unjustified police presence in and around Temptations intended to frighten Mr. Molina’s customers (primarily black, hispanic, and college-aged) and to deter them from patronizing Temptations. Upon information and belief, this strategy was authorized, approved, and/or acquiesced in by one or more city officials with final policy-making authority within the meaning of Monell v. Department of Social Services, 436 U.S. 658 (1978), and its progeny, including Mayor Tkazyik, Police Chief Knapp, and Mr. Ackerman. This pervasive, intrusive, and unjustified police presence was not prompted by legitimate law enforcement concerns. Within a few months, this campaign of harassment and intimidation succeeded in undermining Mr. Molina’s business. The defendants’ strategy culminated in unfounded legal proceedings against Mr. Molina (for an alleged public assembly violation) intended to blackmail Mr. Molina into abandoning his business and surrendering the premises back to Mr. Meacham.

55. The police harassment and intimidation began on Friday, March 18, 2011, a hip-hop night. Mr. Molina had approximately 150-200 customers that night. That night, a police car with one or two uniformed police officers was parked outside Temptations from around 3:15 a.m. to 3:45 a.m. The police officers were observing the black customers as they left the restaurant.

56. On Friday, March 25, a hip-hop night, a police car with two uniformed police officers was parked outside Temptations around 1:30 a.m. Mr. Molina spoke with the

officers when he returned from running an errand, and they asked him to turn down the music inside the restaurant, which he did. Later that night, another police car was parked outside Temptations around 3:00 a.m. The officers told one of Mr. Molina's security guards that, to avoid any "problems," Mr. Molina needed to turn off the music at 3:30 a.m., which he did. Around 4:00 a.m., Mr. Molina went outside to speak with the officers. They told Mr. Molina that "everything is okay," but that "their kind" – gesturing towards the black customers leaving the restaurant – "cause a lot of problems." They told Mr. Molina that black customers have caused problems at other bars in the area and advised him to be "extra careful."

57. On Friday, April 1, a hip-hop night, a police car with two uniformed police officers was parked outside Temptations around 1:00 a.m., which was the time when most of the patrons arrived at the club on Fridays. Around 1:15 a.m., the police officers performed a walk-through inspection of the premises, accompanied by Mr. Molina. They told Mr. Molina they had been sent by their sergeants to make sure "everything is in order." They questioned Mr. Molina about his liquor license and about the number of customers inside the restaurant. No violations were found and no citations were issued. One of the police officers told Mr. Molina that they "have a camera pointed right at" his business. He further told Mr. Molina that the "type of crowd" he was attracting "is not very welcome" and that the police have had many problems "with them" in the past.

58. On Saturday, April 2, a Latin-themed night, a police car with two uniformed police officers was parked outside Temptations around 1:15 a.m. A short time later, the police officers entered the restaurant without speaking with Mr. Molina and conducted a brief walk-through inspection of the premises. No violations were found and no citations were issued. Naturally, the police officers' presence attracted the attention and comments of the customers

inside the restaurant. Clearly, the purpose of these walk-through inspections was not to carry out legitimate law enforcement objectives, but to frighten and intimidate Mr. Molina's customers into leaving the restaurant and not patronizing Temptations in the future. The police were successful. On this night, Mr. Molina's customers left early, and he closed by 3:00 a.m.

59. On Tuesday, April 5, a college-themed night, a police car with one or two uniformed police officers was parked outside Temptations around 10:00 p.m., which was the time when most of the patrons arrived at the club on Tuesdays. The police officers were observing the entrance to the restaurant and making notes. The police presence scared away Mr. Molina's customers, and he closed by 12:30 a.m.

60. On Friday, April 8, a hip-hop night, a marked police car with one or two uniformed police officers was parked outside Temptations around 1:00 a.m.

61. Significantly, earlier that night (on April 8), Mr. Molina received a text message from Glenn Meacham, who told Mr. Molina that he "would stop by with people with badges [i.e., law enforcement officers] good for pr [public relations]." Mr. Meacham arrived at Temptations around midnight, unaccompanied by any law enforcement officers, and spoke with Mr. Molina. He told Mr. Molina that he had been at an event at the Poughkeepsie Grand Hotel with a group of police officers. When he invited them afterwards to Temptations for drinks, they told him that Temptations was "bad news" and they would not go there. Mr. Meacham told Mr. Molina this was caused by the hip-hop nights and that he was being shunned by his police officer friends because of his association with him.

62. Later that same night (on April 8) around 2:00 a.m., there were approximately 10 police officers standing at the corner of Main Street & Liberty Street (just down the street from the entrance to Temptations). Mr. Molina stepped outside and asked one of

the officers if there was a problem, and the officer told him everything was fine. Around 3:30 a.m., a marked police car with two uniformed police officers was parked outside Temptations. Mr. Molina asked them if there were any problems. They told him everything was fine. Mr. Molina told the officers that this would be the last night he held a hip-hop event, and the officers told him “that’s probably the smartest thing to do.”

63. On Saturday, April 9, a Latin-themed night, a police car with two uniformed police officers was parked outside Temptations around 12:45 a.m. A short time later, the police officers performed a walk-through inspection of the premises for approximately 10 minutes. No violations were found and no citations were issued. When they were in the basement, one of the officers told Mr. Molina that “the type of crowd you’re attracting on Fridays is a big concern. They are ex-convicts, felons, and dangerous people. We’re here in the interest of the City. We understand bar owners are tempted because of the money, but it isn’t worth it.” Mr. Molina told the officers that the previous night had been his last hip-hop event, to which one of the officers responded: “We think that’s the best decision you can possibly make.” Again, the police officers’ presence attracted the attention and comments of the customers inside the restaurant. On this night, Mr. Molina’s customers left early, and he closed by 3:00 a.m.

64. On Tuesday, April 12, a college-themed night, a police car was parked in front of Temptations around 12:30 a.m. Another police car was parked across the street. Two uniformed police officers were standing outside the restaurant next to the entrance. When a group of college students left the bar, they were followed down the street and confronted by three officers. Upon information and belief, the police officers checked IDs and advised the students not to patronize Temptations. The police officers then returned to their vehicles. When

Mr. Molina, who witnessed this incident, asked the officers if there were any problems, they ignored the question. One officer said “just doing our job.”

65. On April 15, 2010, Mr. Molina was notified that his public assembly license had expired. This concerned Mr. Molina, as he had submitted the renewal application for the license on or about March 12, 2011, to the Fire Department. (The renewal deadline was March 15, 2011.) Unbeknownst to Mr. Molina, the City had moved the public assembly licensing function from the Fire Department to the Building Department. This change in administrative procedures was not communicated to Mr. Molina. Upon information and belief, the defendants were aware of but intentionally failed to process Mr. Molina’s renewal application. As a result, Mr. Molina could not open for business until he re-submitted the renewal application, which he did on April 17.

66. Later that same day (on April 15), Mr. Meacham stopped by the restaurant and spoke with Mr. Molina. Mr. Meacham said that he had been pulled over by a police sergeant and two detectives (he did not give their names). He said they began “tearing him a new one” about Mr. Molina and Temptations. Mr. Meacham told Mr. Molina that the police officers said that Mr. Molina was being investigated for prostitution, drug dealing, and purchasing liquor illegally. They claimed they had evidence of Mr. Molina’s alleged illegal activities – evidence which never was, and never has been, discussed with Mr. Molina by the police. Indeed, because Mr. Molina never engaged in any criminal activity, the police officers either were lying about the “investigation” or were “investigating” Mr. Molina without cause and in bad faith. Mr. Meacham said that the sergeant told him to tell Mr. Molina to “get the fuck out of their City.” Mr. Meacham told Mr. Molina that he wanted to avoid any publicity that would

make him look bad. Mr. Meacham said that “the worst thing” was that the police thought that he and Mr. Molina were friends.

67. On April 16, 2011, Temptations was not open for business. Instead, Mr. Molina used his restaurant in the evening for a private party to celebrate his birthday. That evening, he saw Gary Beck driving back and forth on Main Street in a black SUV observing the restaurant. The police showed up twice that night. The first time, the police officers told Mr. Molina that they had been informed he would be closed due to a public assembly violation. Mr. Molina explained that he was holding a private party for his birthday. The officers entered and inspected the restaurant. There were about 30 people inside. No public assembly license is required to host a private event for fewer than 50 people. The second time the officers showed up (the same officers), they asked Mr. Molina for his driver’s license and liquor license information. No violations were found and no citations were issued.

68. Temptations re-opened for business on Tuesday, April 19, 2011. Temptations had very little business that night. Mr. Molina overheard one of his customers telling a security guard that “everyone’s afraid of this place; the cops are always here.”

69. On Friday, April 22, the music format was “house music” instead of hip hop. Mr. Molina changed the music format to house music (which attracted a predominately white clientele) in direct response to the ongoing police harassment of his business. Mr. Molina hoped that, as a result of the change, he would be allowed to operate his business in peace and according to the demands of the marketplace, not the bigotry and hostility of city officials. He was wrong. Around 1:00 a.m. that night, a police sergeant and another police officer entered and inspected the restaurant, attracting the attention and comments of the customers inside. When Mr. Molina asked them why they were there, the sergeant said “we’re just checking the place

out.” Around 2:00 a.m. that same night, two other officers showed up and conducted another walk-through inspection. When Mr. Molina asked them if there had been a complaint, they said “no” in a rude manner and left. No violations were found and no citations were issued.

70. On Saturday, April 23, no uniformed police officers entered and inspected the restaurant. Instead, the City planted an undercover police officer or informant inside the restaurant. One patron, who appeared to be drunk, stayed until closing time (around 4:00 a.m.). When Mr. Molina and one of the security guards asked him to leave, he pretended to stumble around the restaurant (obviously looking everything over) and then exited through the front door. As he was leaving, he looked at Mr. Molina and told him in Spanish, “When you don’t think they are watching you, they are.” As Mr. Molina closed the door behind him, the man spoke into his jacket saying, “there are five inside.” Upon information and belief, this was not the only occasion that the City planted undercover police officers or informants inside the restaurant.

71. On Friday, April 29, Mr. Molina sent a text message to Mr. Meacham telling him that “restaurant is open if you wanna eat the same food we had before.” Mr. Meacham ominously replied, “make sure my rent is there and don’t make any mistakes.” Later that night, around 3:00 a.m., a uniformed police officer stood outside the restaurant next to the main entrance, watching customers as they left. Mr. Molina asked him why he was there, but the officer ignored him.

72. On Saturday, April 30, two uniformed police officers entered and inspected the restaurant around 1:30 a.m. No violations were found and no citations were issued.

73. On Tuesday, May 3, Temptations closed early due to a lack of customers.

74. On Friday, May 6, a police car with a police sergeant and a police officer was parked outside Temptations around 12:30 a.m. The officers remained outside the restaurant

for about 30 minutes, observing and talking with one of the persons who had helped Mr. Molina set up the party that night. Later that night, around 1:30 a.m., two other police officers entered the restaurant, which was nearly empty. They looked around, started laughing, and left.

75. On Saturday, May 7, a police car with two uniformed police officers was parked outside Temptations around 12:30 a.m. Around 1:00 a.m., Mr. Molina spoke with them, joking that “you visit me more than my girlfriend. Is everything okay?” The officers laughed and said everything was fine.

76. On Tuesday, May 10, Temptations closed early due to a lack of customers.

77. On May 12, 2011, Mr. Molina and “Temptations Lounge” were served with a criminal summons to appear in City Court on May 18. They were charged by information with operating without a public assembly license on April 17, 2011, at 12:30 a.m. (i.e., late at night on April 16). This was the night of Mr. Molina’s private birthday party, for which no public assembly license was required. The information was signed by Mr. Beck and notarized by Mr. Ackerman. Upon information and belief, Mr. Beck and Mr. Ackerman knew that Mr. Molina had hosted a private party that evening for which no public assembly license was required. Indeed, attached to the information was a “supporting deposition” (affidavit) by Police Officer Gary Gancz. Officer Gancz stated that around 12:30 a.m. on April 17, he and his partner “conducted a walk through with the owner William Molina,” that “[w]e observed less than twenty people in the establishment,” and that Mr. Molina “said that he was closed to the general public and that he was conducting a private party because his birthday was last week.” Officer Gancz further stated that he and his partner “did a second walk through” around 2:25 a.m. They observed that “the bar appeared to be closed and there were less than twelve people inside who all appeared to be getting ready to leave.” The police officers then “conducted a foot

post outside the bar and within twenty minutes all person[s] left and the door was locked.” Clearly, on its face, this affidavit does not establish a public assembly violation. Upon information and belief, Mr. Beck and Mr. Ackerman knew that no public assembly violation had been committed by Mr. Molina, but they charged him with a criminal offense, without probable cause or other legal justification, as part of the defendants’ illegal and malicious campaign to force Mr. Molina out of business and out of the City of Poughkeepsie.

78. Friday, May 13, 2011, was the last day that Temptations was open for business. The defendants’ oppressive police presence had driven away most of Mr. Molina’s clientele, and he could not afford to remain in business.

79. Upon information and belief, no similarly-situated bar/nightclubs in Poughkeepsie experienced the same level of police scrutiny as Temptations. These similarly-situated establishments included: Bull and Buddha/Orient, 319 Main Street, Poughkeepsie, New York, 12601; The Nuddy Irishman/Nuddy Bar & Grill, 367 Main Street, Poughkeepsie, New York, 12601; Karma Lounge, 202 Main Street, Poughkeepsie, New York, 12601; and The Mad Hatter, 51 Market Street, Poughkeepsie, New York, 12601. These establishments operated in the same geographic area, operated late night hours, played music, and served alcoholic beverages. Moreover, Temptations did not experience more drugs, violence, or criminal activity than these establishments. Nevertheless, these establishments were not subjected to repeated surveillance, inspections, and harassment by the police. The relevant difference between these establishments and Temptations was the hip-hop nights and the large crowds of black customers at Temptations. These other establishments cater to a predominantly white clientele. This was the reason that the defendants decided to force Mr. Molina and Temptations out of business.

80. On May 14, 2011, Mr. Molina sent a text message to Mr. Meacham: “Glenn, we have to talk. I closed my doors for business yesterday.” Mr. Meacham responded, “what happened”? Mr. Molina answered, “I just don’t have money to keep operating. I’ll work something out with you with the license so it’s fair to you.”

81. On May 15, 2011, Mr. Molina and Mr. Meacham had the following conversation by text message: Mr. Meacham: “what’s your schedule like”? Mr. Molina: “I’m pretty much free now, I got called to court on weds for the public assembly license. So aside from that I’m free.” Mr. Meacham: “PPD [Poughkeepsie Police Department] wants to know when I take ctrl [control] over premises they hinted once landlord takes over the investigation would be dropped asap.” Mr. Molina: “Considering I haven’t done anything wrong...but for all intent...you take over as soon as I get my stuff out of there.” Mr. Meacham: “I know I did tell them that and you were wanting to resolve any problems in the future as well.” Mr. Molina: “Ok, property is yours asap.” Meacham: “ok thanks.”

82. On May 16, 2011, Mr. Molina received a telephone message from Sheriff Craig Winters. Mr. Molina feared he was being forcibly evicted from the premises. He tried calling the sheriff, but was not able to reach him. Mr. Molina sent text messages to Mr. Meacham, asking if he was being evicted and how much time he had to remove his possessions. Later that afternoon (on May 16), Mr. Molina had a telephone conversation with Mr. Meacham. Mr. Meacham told him that he had been contacted by Paul Ackerman and the sheriff about the status of the restaurant. They both asked about Mr. Molina’s whereabouts and why Temptations did not open on May 14. Mr. Meacham told Mr. Molina that the sheriff said to contact Mr. Ackerman because they wanted Mr. Molina to surrender the property to Mr. Meacham.

83. On May 18, 2011, around 8:30 a.m. (before Mr. Molina's scheduled court appearance), Mr. Molina met with Mr. Meacham behind the restaurant. Mr. Meacham recounted his conversation with Mr. Ackerman about the premises. Mr. Meacham said that Mr. Ackerman told him that what had been going on was to put pressure on Mr. Molina to leave. Mr. Meacham said it all started with the hip-hop parties. Mr. Meacham then presented Mr. Molina with a letter of surrender to sign, which Mr. Meacham said he would give to Mr. Ackerman. Mr. Meacham told Mr. Molina that Mr. Ackerman said that Mr. Molina should go to court, tell Mr. Ackerman he had surrendered the property, and all charges would be dropped immediately.

84. Mr. Molina arrived at court around 9:00 a.m. that morning (on May 18). Mr. Ackerman was there, representing the City. Mr. Molina and Mr. Ackerman spoke outside the courtroom. Mr. Molina told Mr. Ackerman that he had surrendered the premises to Mr. Meacham, as directed. Mr. Ackerman then said that he would ask the judge to dismiss the charges, which he did; the charges were dismissed that morning. Neither Mr. Molina nor M&O Partners was found guilty of a public assembly violation, which they could not have been based on the evidence attached to Mr. Beck's information. The criminal prosecution initiated by Mr. Beck and Mr. Ackerman was a sham.

85. The defendants achieved their objective of destroying Temptations. The restaurant now is an empty store front on Main Street.

86. Mayor Tkazyik was re-elected in November 2011. At a mayoral debate held on October 19, 2011, Mayor Tkazyik proudly told the audience about his record as mayor: "We have had to shut down several businesses for community safety and for the safety of our police officers." Presumably one of the businesses he was referring to was Temptations. There is no evidence that Temptations ever presented a threat to community or police safety – unless

catering to black customers is deemed such a threat, as it apparently is by the defendants. Later in the same debate, Mayor Tkazyik made an even more telling remark: “It is a lot easier to destroy a business than to build one.” Indeed.

COUNT ONE: SUBSTANTIVE DUE PROCESS

87. Plaintiffs repeat and re-allege Paragraphs 1-85 above.

88. The Fourteenth Amendment to the United States Constitution guarantees that no person shall be deprived “of life, liberty or property, without due process of law.” U.S. Const. amend. XIV § 1. “[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This ‘liberty’ is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints” Moore v. City of East Cleveland, 431 U.S. 494, 502 (1977) (quoting Poe v. Ullman, 367 U.S. 497, 542-43 (1961) (Harlan, J., dissenting)).

89. The plaintiffs’ right to substantive due process was violated by the defendants under color of state law in violation of 42 U.S.C. § 1983.

90. The plaintiffs had a protected property interest in timely receiving a public assembly license (certificate of occupancy) for Temptations. Such license should have been, and in the ordinary course would have been, issued in time for the plaintiffs to begin restaurant operations in May 2010.

91. The plaintiffs had a protected property interest in the beneficial commercial use of the premises.

92. Under New York law, the defendants lacked authority to issue the stop work order dated April 20, 2010, to require the plaintiffs to apply for various building permits, to refuse to issue in a timely manner a public assembly license for Temptations, and to interfere with the plaintiffs' beneficial commercial use of the premises.

93. As alleged above, the defendants infringed upon the plaintiffs' protected property interests without a legitimate, rational basis for their actions, which were so outrageously arbitrary as to constitute a gross abuse of governmental authority.

94. As alleged above, the defendants acted with intentional, knowing, callous, and/or reckless indifference to the plaintiffs' constitutional rights.

95. As alleged above, defendants Beck and Ackerman are individually liable for the due process violations because they personally participated in the unconstitutional conduct. Neither Mr. Beck nor Mr. Ackerman is entitled to qualified immunity, as their conduct violated the plaintiffs' clearly established constitutional rights and it was not objectively reasonable for them to believe that their conduct was lawful. Mr. Ackerman is not entitled to absolute immunity, as his conduct was administrative and/or investigative in nature and was not intimately associated with his role as prosecutor or advocate.

96. As alleged above, defendant City of Poughkeepsie is liable for the due process violations because, upon information and belief, the unconstitutional conduct was ordered and/or carried out pursuant to a pervasive custom or practice of the City of Poughkeepsie and/or the unconstitutional conduct was authorized by one or more high-ranking city officials who have final policymaking authority in this area and/or the City of Poughkeepsie was deliberately indifferent to the plaintiffs' constitutional rights by failing to train and supervise the city officials who ordered and/or carried out the unconstitutional conduct.

97. As a result of the defendants' culpable conduct, the plaintiffs suffered economic and non-economic injuries, including lost investments, lost profits, out of pocket expenses, mental anguish, emotional distress, insult, embarrassment, humiliation, and other compensable injuries, for which they are entitled to an award of actual, compensatory, and punitive damages as provided by law.

COUNT TWO: EQUAL PROTECTION OF THE LAW

98. Plaintiffs repeat and re-allege Paragraphs 1-95 above.

99. The Fourteenth Amendment to the United States Constitution guarantees that no person shall be deprived of "the equal protection of the laws." U.S. Const. amend. XIV § 1. As explained by the U.S. Supreme Court in Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886): "Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution."

100. The plaintiffs' right to equal protection of the law was violated by the defendants under color of state law in violation of 42 U.S.C. § 1983.

101. As alleged above, the plaintiffs were treated in an intentionally disparate manner by the defendants compared to other similarly-situated establishments in Poughkeepsie. There was no rational, legitimate basis for the disparate treatment accorded the plaintiffs.

102. As alleged above, the disparate treatment was based on impermissible considerations, to wit, the race of the plaintiffs' clientele. Specifically, the defendants initiated their campaign to force the plaintiffs out of business following and in response to Mr. Molina's

decision to hold hip-hop events on Friday nights at Temptations, which attracted a predominately black clientele.

103. As alleged above, the defendants' mistreatment was based on impermissible considerations, to wit, a malicious and bad faith intention to injure the plaintiffs. Specifically, even after Mr. Molina stopped holding hip-hop events at Temptations, the defendants continued their campaign to force the plaintiffs out of business.

104. As alleged above, the defendants acted with intentional, knowing, callous, and/or reckless indifference to the plaintiffs' constitutional rights.

105. As alleged above, defendants Beck and Ackerman are individually liable for the equal protection violations because they personally participated in the unconstitutional conduct. Neither Mr. Beck nor Mr. Ackerman is entitled to qualified immunity, as their conduct violated the plaintiffs' clearly established constitutional rights and it was not objectively reasonable for them to believe that their conduct was lawful. Mr. Ackerman is not entitled to absolute immunity, as his conduct was administrative and/or investigative in nature and was not intimately associated with his role as prosecutor or advocate.

106. As alleged above, defendant City of Poughkeepsie is liable for the equal protection violations because, upon information and belief, the unconstitutional conduct was ordered and/or carried out pursuant to a pervasive custom or practice of the City of Poughkeepsie and/or the unconstitutional conduct was authorized by one or more high-ranking city officials who have final policymaking authority in this area and/or the City of Poughkeepsie was deliberately indifferent to the plaintiffs' constitutional rights by failing to train and supervise the city officials who ordered and/or carried out the unconstitutional conduct.

107. As a result of the defendants' culpable conduct, the plaintiffs suffered economic and non-economic injuries, including lost investments, lost profits, out of pocket expenses, mental anguish, emotional distress, insult, embarrassment, humiliation, and other compensable injuries, for which they are entitled to an award of actual, compensatory, and punitive damages as provided by law.

COUNT THREE: CONSPIRACY

108. Plaintiffs repeat and re-allege Paragraphs 1-105 above.

109. 42 U.S.C. § 1985 provides, in relevant part: "If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . [and] in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

110. As alleged above, defendants Beck and Ackerman conspired to deprive the plaintiffs of their constitutional rights, and carried out such conspiracy, in violation of 42 U.S.C. § 1985.

111. As alleged above, Mr. Beck and Mr. Ackerman entered into an agreement to deprive the plaintiffs of their constitutional rights, specifically, their rights to substantive due process and the equal protection of the law.

112. As alleged above, Mr. Beck and Mr. Ackerman committed one or more overt acts in furtherance of the conspiracy.

113. As alleged above, Mr. Beck and Mr. Ackerman's actions in fact deprived the plaintiffs of their constitutional rights to substantive due process and the equal protection of the law.

114. As alleged above, Mr. Beck and Mr. Ackerman's actions were motivated by invidious discriminatory animus, to wit, animus towards Mr. Molina based on his own ethnicity (hispanic) and based on the ethnicity of his clientele (black).

115. As alleged above, the defendants acted with intentional, knowing, callous, and/or reckless indifference to the plaintiffs' constitutional rights.

116. As alleged above, defendants Beck and Ackerman are individually liable for conspiracy because they personally participated in the unlawful conduct. Neither Mr. Beck nor Mr. Ackerman is entitled to qualified immunity, as their conduct violated the plaintiffs' clearly established constitutional rights and it was not objectively reasonable for them to believe that their conduct was lawful. Mr. Ackerman is not entitled to absolute immunity, as his conduct was administrative and/or investigative in nature and was not intimately associated with his role as prosecutor or advocate.

117. As a result of the defendants' culpable conduct, the plaintiffs suffered economic and non-economic injuries, including lost investments, lost profits, out of pocket expenses, mental anguish, emotional distress, insult, embarrassment, humiliation, and other compensable injuries, for which they are entitled to an award of actual, compensatory, and punitive damages as provided by law.

PRAYER FOR RELIEF

WHEREFORE the plaintiffs demand judgment against the defendants for:

- A. Actual damages in an amount to be proved at trial;
- B. Compensatory damages in an amount to be proved at trial;
- C. Punitive damages in an amount to be proved at trial;
- D. Pre-judgment and post-judgment interest;
- E. Attorney's fees, costs, and disbursements, pursuant to 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d), and all other applicable laws and rules; and
- F. All other relief that the plaintiffs may be entitled to under law, or as justice may require.

Dated: May 24, 2012
New York, New York

Respectfully submitted,

Steven M. Warshawsky

By:

STEVEN M. WARSHAWSKY (SW 5431)
Empire State Building
350 Fifth Avenue, 59th Floor
New York, NY 10118
Tel: (212) 601-1980
Fax: (212) 601-2610
Email: smw@warshawskylawfirm.com
Website: www.warshawskylawfirm.com