JURY TRIAL DEMANDED

United States District Court
Eastern District of New York

WILLIAM STEPHEN DEAN
(a/k/a Billy Dean), et al.,

Plaintiffs,

v.

THE TOWN OF HEMPSTEAD, et al.,

Defendants.

Second Amended Complaint

Docket No. 2:14-cv-4951 (MKB) (SMG)
[Filed Electronically]

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILLIAM STEPHEN DEAN (a/k/a Billy Dean); RORI LEIGH GORDON; GREEN 2009 INC.; ONE55DAY INC.; and LOOK ENTERTAINMENT, LTD.,

Plaintiffs,

v.

THE TOWN OF HEMPSTEAD; ANTHONY J. SANTINO, individually and as the Supervisor of the Town of Hempstead; KATE MURRAY, individually and as the former Supervisor of the Town of Hempstead; JOHN E. ROTTKAMP, individually and as the Commissioner of the Department of Buildings of the Town of Hempstead; DAVID P. WEISS, individually and as the Chairman of the Town of Hempstead Board of Appeals; GERALD C. MARINO, individually and as a former Member of the Town of Hempstead Board of Appeals; KATURIA E. D'AMATO, individually and as a Member of the Town of Hempstead Board of Appeals; JOHN F. RAGANO, individually and as a Member of the Town of Hempstead Board of Appeals; FRANK A. MISTERO, individually and as a Member of the Town of Hempstead Board of Appeals; JOSEPH F. PELLEGRINI, individually and as a Member of the Town of Hempstead Board of Appeals; KIMBERLY A. PERRY, individually and as a Member of the Town of Hempstead Board of Appeals; DANIEL M. FISHER, individually and as a Member of the Town of Hempstead Board of Appeals; GARY HUDES, individually and as a member of the Town Board of the Town of Hempstead; and STEVEN D. RHOADS, individually and as a member of the Nassau County Legislature,

Defendants.

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SECOND AMENDED COMPLAINT

Docket No. 2:14-CV-4951 (MKB)(SMG)

Jury Trial Demanded

Plaintiffs, by their attorney, Erica T. Dubno, of Fahringer & Dubno / Herald Price Fahringer, PLLC, complaining of the Defendants, respectfully allege as follows:

Nature of the Proceeding

1. The Plaintiffs, William Stephen Dean (a/k/a Billy Dean), Rori Leigh Gordon, Green 2009 Inc., One55Day Inc., and Look Entertainment, Ltd., bring this action pursuant to 42 U.S.C. § 1983 and § 1985, because the Defendants, acting under color of law, have and continue to engage in an ongoing pattern of illicit conduct and a conspiracy to violate the Plaintiffs' civil rights, federal constitutional rights and privileges.

2. The Plaintiffs also challenge certain provisions of the Town's Building Zone Ordinance that are unconstitutional.

3. The Plaintiffs ask the Court to enter a judgment declaring that the Defendants' actions constitute an unconstitutional infringement on activities protected by the First, Fifth and Fourteenth Amendments to the United States Constitution, and the Plaintiffs' civil rights.

4. The Plaintiffs seek a judgment declaring that certain provisions of the Town's Building Zone Ordinance are unconstitutional.

5. The Plaintiffs also seek injunctive relief as well as actual damages, punitive damages, and the costs of this action, including reasonable attorney's fees, pursuant to 42 U.S.C. § 1988.

Jurisdiction

6. This suit is brought pursuant to 42 U.S.C. § 1983, et seq.

7. This case arises under the Constitution and laws of the United States.

8. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

9. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202.

Parties

10. Plaintiff One55Day Inc. is a domestic corporation with its principal place of business at 3500 Sunrise Highway, Wantagh, New York 11793, in the Town of Hempstead, in Nassau County. The Plaintiff has been incorporated under the laws of New York State since on or about January 8, 2009. The Plaintiff (the "Wantagh Landlord") is the owner of property located at 3500 Sunrise Highway in Wantagh.

11. Plaintiff Green 2009 Inc. is a domestic corporation with its principal place of business at 3500 Sunrise Highway, Wantagh, New York 11793, in the Town of Hempstead, in Nassau County. The Plaintiff has been incorporated under the laws of New York State since on or about February 10, 2009. The Plaintiff rents the commercial property located at 3500 Sunrise Highway in Wantagh (the "Wantagh Cabaret").

12. Plaintiff Look Entertainment, Ltd., is a domestic corporation with its principal place of business at 1536-38 Newbridge Road, North Bellmore, New York 11710, in the Town of Hempstead in Nassau County. The Plaintiff has been incorporated under the laws of New York State since on or about May 8, 1998. The Plaintiff is the lessee of a

commercial property located at 1536-38 Newbridge Road in North Bellmore. The Plaintiff has operated a commercial establishment referred to alternatively as "Showtime Café" or "Billy Dean's Showtime Café" at 1536-38 Newbridge Road in North Bellmore since 1998, a period of more than 18 years, ("Showtime Café" or the "Bellmore Cabaret").

13. Under New York law, a corporation is considered to be a "person" within the meaning of 42 U.S.C. § 1983. As such, the corporate Plaintiffs possess constitutional rights and are entitled to protection under the Civil Rights Act.

14. Plaintiff William Stephen Dean (a/k/a Billy Dean) is an individual resident of the State of New York, residing at 27 Irene Lane, Commack, New York 11725, within the Eastern District of the United States District Court for New York. He is a resident of Suffolk County. Billy Dean is the President of One55Day Inc. He is the Vice President of Look Entertainment, Ltd. and Green 2009 Inc.

15. Plaintiff Rori Leigh Gordon is an individual resident of the State of New York, residing at 25 Kristin Lane, Hauppauge, New York 11788, within the Eastern District of the United States District Court for New York. She is a resident of Suffolk County. Rori Gordon is the President of Look Entertainment, Ltd. and Green 2009 Inc. She is also the Vice President of One55Day Inc.

16. Defendant the Town of Hempstead was at all times mentioned, and still is, a municipal corporation duly organized under to the laws of the State of New York (the "Town"). The Town, where the two properties in dispute are located, is within Nassau County, New York. The Hempstead Town Hall is located at One Washington Street, Hempstead, New York 11550. The Town encompasses 22 villages and 35 hamlets, including the Hamlets of Bellmore and Wantagh. The Town is responsible for the actions of its Board of Appeals (formerly known as the Board of Zoning Appeals) (the "Board" or "Board of Appeals"), and its members. It is also responsible for the actions of the Town's Department of Buildings.

17. Defendant Anthony J. Santino is the Supervisor of the Town of Hempstead. Defendant Santino has been a Councilmember and member of the Town Board of the Town of Hempstead since 1993. He has been the Supervisor since on or about January 5, 2016, including at times relevant to this Complaint. In that capacity he is the Chief Executive Officer of the Town and is charged with carrying out the duties assigned by law to the Supervisor. The Supervisor's office oversees all of the operations within the Town. All Departments within the Town, including the Building Department, report to the Supervisor's office for direction. His office is located at Hempstead Town Hall, One Washington Street, Hempstead, New York 11550, within Nassau County. Defendant Santino is being sued in his individual and official capacity.

18. Defendant Kate Murray was the Supervisor of the Town of Hempstead from 2003 to on or about January 5, 2016, including at times relevant to this Complaint. In that capacity she was the Chief Executive Officer of the Town and was charged with carrying out the duties assigned by law to the Supervisor. Her office was located at Hempstead Town Hall, One Washington Street, Hempstead, New York

11550, within Nassau County. Defendant Murray is being sued in her individual and official capacity.

19. Defendant John E. Rottkamp is the Commissioner of the Department of Buildings of the Town of Hempstead. In that capacity, he is charged with overseeing the Town's Building Department. Upon information and belief, he has been the Commissioner at times relevant to this Complaint. His office is located at One Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in his individual and official capacity.

20. Defendant David P. Weiss is the Chairman and a member of the Town of Hempstead Board of Appeals. In that capacity, he is charged with the duties assigned by law to the Chairman and members of the Board. Upon information and belief, he has been the Chairman and a member of the Board of Appeals at times relevant to this Complaint. His office is located at One Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in his individual and official capacity.

21. Defendant Gerald C. Marino was a member of the Town of Hempstead Board of Appeals at times relevant to this Complaint. In that capacity, he was charged with the duties assigned to members of the Board. His office was located at One Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in his individual and official capacity.

22. Defendant Katuria E. D'Amato is a member of the Town of Hempstead Board of Appeals. In that capacity, she is charged with the duties assigned to members of the Board. Upon information and belief, she has been a member of the Board at times relevant to this Complaint. Her office is located at One Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in her individual and official capacity.

23. Defendant John F. Ragano is a member of the Town of Hempstead Board of Appeals. In that capacity, he is charged with the duties assigned to members of the Board. Upon information and belief, he has been a member of the Board at times relevant to this Complaint. His office is located at One Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in

his individual and official capacity.

24. Defendant Frank A. Mistero is a member of the Town of Hempstead Board of Appeals. In that capacity, he is charged with the duties assigned to members of the Board. Upon information and belief, he has been a member of the Board at times relevant to this Complaint. His office is located at One Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in his individual and official capacity.

25. Defendant Joseph F. Pellegrini is a member of the Town of Hempstead Board of Appeals. In that capacity, he is charged with the duties assigned to members of the Board. Upon information and belief, he has been a member of the Board at times relevant to this Complaint. His office is located at One Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in his individual and official capacity.

26. Defendant Kimberly A. Perry is a member of the Town of Hempstead Board of Appeals. In that capacity, she is charged with the duties assigned to members of the Board. Upon information and belief, she has been a member

of the Board at times relevant to this Complaint. Her office is located at One Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in her individual and official capacity.

27. Defendant Daniel M. Fisher is a member of the Town of Hempstead Board of Appeals. In that capacity, he is charged with the duties assigned to members of the Board. Upon information and belief, he has been a member of the Board at times relevant to this Complaint. His office is located at One Washington Street, Hempstead, New York 11550, within Nassau County. Upon information and belief, Defendant Fisher is married to Rita Fisher, the former Deputy Commissioner of the Town's Building Department. The Defendant is being sued in his individual and official capacity.

28. Defendant Gary Hudes is a Councilmember and member of the Town Board of the Town of Hempstead. In that capacity he is charged with the duties assigned by law to members of the Board. Upon information and belief, Defendant Hudes has been a member of the Board since on or about 2000, including at times relevant to this Complaint. His office is located at Hempstead Town Hall, One

Washington Street, Hempstead, New York 11550, within Nassau County. The Defendant is being sued in his individual and official capacity.

29. Defendant Steven D. Rhoads is a member of the Nassau County Legislature. In that capacity he is charged with the duties assigned by law to members of the Nassau County Legislature. Upon information and belief, Defendant Rhoads has been a member of the Nassau County Legislature since on or about March 10, 2015, including at times relevant to this Complaint. His office is located at 1550 Franklin Avenue, Mineola, New York 11501, within Nassau County. The Defendant is being sued in his individual and official capacity.

30. At all times material to this Complaint, the Defendants acted under color of law and under the statutes, customs, ordinances, and usage of the State of New York, and the Town of Hempstead.

Venue

31. All of the acts complained of here have occurred, and continue to occur, within the Eastern District of New York.

32. This is a "Long Island Case" under Rule 50.1(d)(2)(b)(i) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, because a substantial part of the events giving rise to the claims occurred in Nassau County.

33. However, on July 31, 2015, District Judge Joanna Seybert directed that the case be reassigned from Central Islip to the courthouse in Brooklyn.

Relevant Statutes

34. The First Amendment to the United States Constitution provides, in pertinent part, that "Congress shall make no law ... abridging the freedom of speech,... or the right of the people to peaceably assemble."

35. The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that "[n]o State shall ... deny any person of life, liberty, or property, without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws."

36. The federal civil rights statute, 42 U.S.C. § 1983 provides, in relevant part, as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

37. 42 U.S.C. § 1985(3), entitled, "Depriving persons of rights or privileges" regarding "Conspiracy to interfere with civil rights," provides in pertinent 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; ... 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.

38. The Code of the Town of Hempstead § 96.1(A) defines a "cabaret" as any

> room, place or space wherein musical entertainment, singing, dancing in a designated area or other form of amusement or entertainment is permitted in conjunction with the sale or service of food or drink to the public.

39. Section 272-C.(6) of the Town of Hempstead Building Zone Ordinance was amended, effective March 31, 1997, to provide that

> the grant of any cabaret use by the Board of Zoning Appeals shall be limited to the specific cabaret use applied for and approved by the Board of Zoning Appeals and no other cabaret use. This action shall apply to any cabaret use hereafter or previously granted by the Board of Zoning Appeals.

40. Section 52-3 of the Code of the Town of Hempstead provides, in part, that the

> Department of Buildings shall, under the general supervision of the Commissioner, have charge of the administration and enforcement of Building Plumbing, Electrical and Housing Codes; ordinances, rules and regulations with respect to ... places of public assembly; other laws, ordinances, rules and regulations relating to the use or occupancy of real property or buildings or structures located thereon.

41. Prior to December 9, 2014, § 267(D)(3) of the Town of Hempstead Building Zone Ordinance, governing the powers and duties of the Board of Appeals, provided, in part, that the

> Board of Appeals shall, in authorizing such permissive uses, impose such conditions and safeguards as it may deem appropriate, necessary or desirable to preserve and protect the spirit and objective of this ordinance.

42. Section 267(D)(3) of the Town of Hempstead Building Zone Ordinance, as amended on or about December 9, 2014, provides, in part, that

> the Board of Appeals shall, in authorizing such permissive uses, impose such conditions and safeguards as it may deem appropriate, necessary or desirable to preserve and protect the spirit and objectives of this ordinance.
>
> Where the Board of Appeals deems it appropriate under all of the circumstances of a case, it may impose a condition of a grant which shall make the grant temporary in nature, for a duration of time to be fixed by the Board, subject to renewals as the Board may deem appropriate.
>
> Any renewals shall be granted only if the Board shall find that the grant has not had an unreasonably deleterious effect on surrounding area character and property values, and/or the use and enjoyment of neighboring properties, during the temporary period, or the most recent temporary renewal period.
>
> The Board shall have authority to make any temporary grant permanent, upon the expiration of temporary period.

43. Section 384 of the Hempstead Building Zone Ordinance defines an "Adult Entertainment Cabaret" as a

> public or private establishment which presents topless dancers, strippers, male or female impersonators or exotic dancers or other similar entertainments and which establishment is customarily not open to the public generally but excludes any minor by reason of age.

Factual Background

44. The property located at 3500 Sunrise Highway in Wantagh is within a Business District.

45. Sunrise Highway, which is a State highway and one of the busiest roads on Long Island, has an average daily traffic volume of 60,000 vehicles, between Seaford Avenue and Oakland Avenue, where the property is located.

46. The property in Wantagh has two buildings: (1) a one-story commercial structure; and (2) a two-story residence.

47. There is only one Certificate of Occupancy for both structures at the property in Wantagh, which share one Tax Lot (Section 57; Block 102; Lot 518).

48. In 1969, the Town granted a permit for use of the commercial property located at 3500 Sunrise Highway (the "Wantagh Property") as an existing tavern and place of cabaret.

49. The 1969 grant did not contain any limitations or restrictions on the type of entertainment that could be offered at the Wantagh Property.

50. The Wantagh Property was operated as a cabaret called "The Soiree" from approximately 1969 to 1983, a period of 14 years. During the 1980s other cabarets were also operated at the Wantagh Property.

51. In the 1990s a major renovation of the Wantagh Property was completed at which point a full service kitchen was added to the building.

52. In 1997, the Town of Hempstead amended § 272-C.(6) of the Town of Hempstead Building Zone Ordinance to provide that the "grant of any cabaret use by the Board of Zoning Appeals shall be limited to the specific cabaret use applied for and approved by the Board of Zoning Appeals and no other cabaret use." The law further provided that this "action shall apply to any cabaret use hereafter or

previously granted by the Board of Zoning Appeals."

53. The building at 3500 Sunrise Highway continued to be operated, in accordance with its Certificate of Occupancy, as a cabaret and tavern through 2008. At that time the Wantagh Property was known as the "Artanas Rock Saloon," which featured Rock and Roll bands, live entertainment on a stage, and dancing.

54. On or about February 10, 2009, Plaintiff One55Day Inc. purchased the Wantagh Property for approximately $950,000. The Plaintiffs' decision to purchase the property was based upon the existing cabaret permit / special exception.

55. The Plaintiffs paid a premium and higher price for the Wantagh Property because it came with a special exception for cabaret use, which runs with the land.

56. On March 24, 2009, Plaintiff Green 2009 Inc. entered into a lease of the Wantagh Property for $90,000 per year with the intent to operate a cabaret. The Plaintiffs' decision to lease the property was based upon the existing cabaret permit.

57. The Plaintiffs planned to offer non-adult expressive dancing, as well as other forms of entertainment, at the cabaret.

58. The expression that the Plaintiffs intend to offer at the Wantagh Cabaret is protected by the First Amendment to the United States Constitution, as well as Article I, § 8 of the New York State Constitution.

59. On or about May 8, 2009, the Plaintiffs sought permission from the Hempstead Department of Buildings to make certain alterations to the premises to improve its use as a cabaret while maintaining changes made by a prior owner.

60. Other businesses, such as Anthony's Coal Fire Pizza, located down the street at 3430 Sunrise Highway, which was a brand new build-out and significantly larger, were not required to obtain a Certificate of Occupancy.

61. Similarly, The Treehouse Sports Café, located at 1833 Sunrise Highway, in Merrick, which has a cabaret permit, did far more extensive renovations including a complete demolition of the interior. However, upon information and belief, The Treehouse Sports Cafe was not

required to appear before the Board of Appeals.

62. The Plaintiffs believed that the intended use was permissible under the existing Certificate of Occupancy, which does not specify the type of cabaret that may exist at the premises. Nevertheless, in a show of good faith they filed the required application with the Town.

63. The Department of Buildings denied the request. It urged that the Plaintiffs had to obtain a special exception from the Board of Appeals to use the premises for a place of public assembly and amusement.

64. Upon information and belief, the Department of Buildings required the special exception because of who the Plaintiffs are and the Town's suppositions about how the premises would be used.

65. The prior occupants of the property were not required to obtain a special exception for a place of public assembly and amusement even though they featured rock bands performing on a stage.

66. The prior occupants were also not required to get a new Certificate of Occupancy for the Wantagh Property when, in 1991, they added a 400 square foot kitchen to the building.

67. A public hearing on the matter was held before the Board of Appeals on April 14, 2010, after proper notice was given to the community. At the hearing, Plaintiff Billy Dean testified that the premises would be used for a "variety of activities, interactive dinner theater, dancing, comedian, jugglers, contortionists [and] sword swallowers." It was further indicated that there would be "stage entertainment, live music and dancing."

68. Mr. Dean acknowledged that he owned another business in the Hamlet of Bellmore, which is also part of the Town of Hempstead, called "Showtime Café." The Board did not ask about the specific type of entertainment that is provided at Showtime Café.

69. However, Billy Dean is widely known for offering artistic -- but not adult -- dancing and entertainment at Showtime Café. For example, Showtime Café features dancers who wear pasties and G-strings. The dancers are not

strippers and do not remove any portion of their costumes when they are performing. The entertainment offered to the public at Showtime Café has been held to be a constitutionally protected form of expression ("Bellmore Entertainment").

70. During a sworn deposition on August 10, 2015 Defendant Rottkamp, the Building Commissioner, conceded under oath that the type of entertainment offered to the public at Showtime Café does not violate any law. Rottkamp Dep. Tr. 8/10/15 at 48.

71. Defendant Rottkamp further acknowledged, under oath, that the entertainment at Showtime Café is not a violation of any public assembly license that the Plaintiffs may have. Rottkamp Dep. Tr. 8/10/15 at 49.

72. Defendant Rottkamp also acknowledged, under oath, that the entertainment at Showtime Café does not pose a very real threat to public health and safety. Rottkamp Dep. Tr. 8/10/15 at 49.

73. At the public hearing on April 14, 2010, the Board asked about Showtime Café's location, size, number of employees, number of years opened and whether its Cabaret permit had been renewed.

74. Mr. Dean answered all of the Board's questions and confirmed that his Showtime Café in Bellmore had been operating for 12 years and the Town always renewed its Cabaret permit.

75. The Board of Appeals asked whether there would be dancing. The Plaintiffs indicated that there would be "stage dancing and floor dancing." Tr. 4/14/10 at 107.

76. A real estate expert also testified that the intended use of the Wantagh Property would not cause any adverse effect to the surrounding areas.

The Town Granted the Cabaret a Special Use Permit After Holding a Public Hearing on the Matter

77. On or about April 28, 2010, following the hearing, the Board granted a temporary special use permit to operate the Wantagh Cabaret. The Board imposed a number of conditions on the operation of the cabaret, with the first being that there shall be no "topless," "bottomless,"

or "nude entertainment."

78. Subsequently, on June 2, 2010, the Town issued an amended decision (the "Decision") making the special use permit permanent (the "Permit").

79. The Decision provided that if the Plaintiffs failed to comply with any of the nine conditions enumerated in the Decision -- including that there "shall be no entertainment commonly known as 'topless' or 'bottomless'" and "no nude entertainment" -- the case could be re-opened for further consideration.

80. In reliance on the Decision and Permit, the Plaintiffs immediately began renovating the Wantagh Cabaret.

81. For example, they raised the height of the building's roof by 25 feet to accommodate aerial acts.

82. The Plaintiffs spent a substantial sum of money on the renovations. This includes money paid for work already completed as well as for supplies ordered for work to be done.

83. The Wantagh Property was designed, by an architect, to resemble an airplane hangar. The club was supposed to be called "The Hangar." As such, the building was designed and built without windows, which is customary with airplane hangars.

84. The Cabaret passed all inspections conducted by the Town and other agencies, including at least 39 inspections by the Town's own building inspectors.

85. The Plaintiffs applied for and were approved by the New York State Liquor Authority for a liquor license for the Wantagh Cabaret.

86. However, before the renovations were completed -- and before the business was opened -- residents of the community prepared and executed a "Petition to Stop the Strip Club," which incorrectly claimed that the Wantagh Cabaret would operate as a strip club. The petition, which was signed by more than 200 people, stated that

> [w]e, the undersigned, request that the Board of Zoning Appeals reject the application of the property owner of 3500 Sunrise Highway in Wantagh for a cabaret license that will allow a strip club to operate in Wantagh.

87. In response to the extreme community pressure, the Town took the unprecedented action of unilaterally reopening the hearing relating to the grant of the Plaintiffs' Permit.

88. In May of 2011, Channel 5 (Fox News) reported that Defendant Supervisor Murray was "taking the unusual step of asking the Zoning Board to rescind approval and take away the cabaret license before the doors open."

89. On March 30, 2011, then Supervisor Murray and another Town Board member, Councilwoman Angie Cullin, sent a letter, on Town of Hempstead letterhead, to Wantagh community residents, which stated that "we have requested that the Board of Appeals reopen the case associated with approvals granted to Green 2009 Inc." (emphasis in original).

90. Defendant Murray's letter to community members further stated that "[i]n response, the Board of Appeals will reopen the case on the 3500 Sunrise Highway location" (emphasis in original).

91. Even though there has never been any allegation of prostitution in this matter, then Supervisor Murray, publicly stated that "we want to make sure that the quality of life of our neighborhoods is preserved and that this does not turn into a red-light district."

After the Plaintiffs Spent a Considerable Amount of Money Renovating the Premises, the Town Revoked the Plaintiffs' Permit

92. The highly publicized rehearing, held on May 18, 2011, was attended by almost 200 people. Defendant Kate Murray, then the Town Supervisor, attended the hearing even though it is virtually unprecedented for the Town Supervisor to personally participate in a Board hearing.

93. Defendant Supervisor Murray was taken out of order and allowed to testify first -- before the applicant presented its case.

94. Defendant Councilman Hudes was also allowed to testify out of order against the application.

95. The Town Supervisor and Councilmembers appoint the members of the Board of Appeals.

96. Nassau County Legislator David Denenberg also testified against the Plaintiffs and helped lead the charge against them. On January 21, 2015, former Legislator Denenberg pled guilty to eight counts of fraud in the United States District Court for the Eastern District of New York. United States v. Denenberg, No. 14-cr-594 (E.D.N.Y.)(JS).

97. The Board of Appeals is supposed to be a completely autonomous body of government and not controlled by the Town Board.

98. Nevertheless, Deputy Town Attorney Charles Kovit, who represents the Town, facilitated the meeting. The transcript of the hearing reveals that Mr. Kovit actively participated in questioning witnesses and deciding what evidence could be admitted into the record of the hearing.

99. For instance, Deputy Town Attorney Charles Kovit re-called the opposition's traffic expert and asked him leading questions to bolster the record against the Plaintiffs. Tr. 5/18/11 at 273 ("Mr. Kovit wants to ask Mr. Schneider a couple of other questions").

100. In addition, during the hearing Deputy Town Attorney Kovit questioned the Plaintiffs' counsel and asked "Mr. Cohn, just one thing you said to make sure I understand. Are you challenging the authority of the Board to call a hearing under Town Law 267-a.12?" Tr. 5/18/11 at 66.

101. Deputy Town Attorney Charles Kovit further proclaimed, regarding another issue, that "[t]hat is the position of this Board on the law." Tr. 5/18/11 at 72.

102. The permit issued in 1969 for the Wantagh Property was a general grant and did not limit the use of the property to a specific type of cabaret use.

103. However, during the rehearing Deputy Town Attorney Kovit argued, at length, that the Plaintiffs had to obtain a special exception for cabaret use and could not rely on the cabaret permit that was granted in 1969.

104. Deputy Town Attorney Kovit went outside of the face of the cabaret permit and, instead, relied upon a hearing transcript from 1969 to claim that the "only cabaret use being contemplated was basically a piano bar in order to take the place of a jukebox." Tr. 5/18/11 at 65.

105. Counsel for the Plaintiffs urged that the Board of Appeals does not have the authority to define or limit the operation of a business.

106. At the rehearing, the Plaintiffs elaborated on the intended use of the premises. Plaintiff Billy Dean confirmed that there would not be any adult entertainment at the Wantagh Cabaret.

107. Billy Dean reaffirmed that the form of entertainment to be provided would be similar to that of a Las Vegas style showroom. He explained that this entailed a variety of shows, such as dancers, aerial acts, jugglers, Brazilian shows, Hawaiian shows, knife throwers, Coney Island sideshows, as well as performances in the style of "America's Got Talent."

108. Despite these assurances, more than three months after the hearing, on August 25, 2011, the Board issued a one-page decision, rescinding its prior approval of the Plaintiffs' Permit for the Wantagh Cabaret.

109. The Board's decision contained no explanation for the unprecedented reversal of its prior determination and its denial of the Plaintiffs' Permit.

110. The revocation of the Plaintiffs' Permit received extensive press coverage.

111. On or about October 10, 2011, the Wantagh Cabaret filed a petition pursuant to Article 78 of New York's Civil Practice Law and Rules in the Supreme Court for Nassau County. The petition alleged that the Town's decision was arbitrary, capricious, unsupported by the record and contrary to the law; and that the Town was without authority to reopen the hearing. See Matter of Green 2009 Inc. v. Weiss, Index No. 14456/11 (Sup. Ct. Nassau Co.).

The Board Waited for Three Months -- Until After the Plaintiffs' Filed an Article 78 Proceeding -- to Issue Findings of Fact Explaining the Revocation of the Permit for the Wantagh Cabaret

112. On November 30, 2011, three months after the Town issued its summary order revoking the Plaintiffs' Permit -- and a month and a half after the Plaintiffs commenced the Article 78 proceeding -- the Board issued belated Findings of Fact.

113. Upon information and belief, the Findings of Fact were not drafted by the Board of Appeals. Instead, billing invoices obtained through Freedom of Information requests reveal that the Findings of Fact were drafted, at least in

large part, by the Town's outside counsel in this action, Peter Sullivan of Berkman, Henoch, Peterson & Peddy, P.C. and Deputy Town Attorney Kovit.

114. The Findings of Fact indicated that the Plaintiffs failed to establish that the business would not present adult entertainment, which would be a prohibited use in the location. However, the Plaintiffs never sought to use the premises for adult entertainment and should not have had to shoulder the burden of disproving a negative.

115. The Board's speculation was based on the mistaken claim that Billy Dean's other business -- Showtime Café in Bellmore -- features striptease dancing.

116. The Board also based its decision on the fact that the Plaintiffs placed an advertisement for the Wantagh Cabaret on the website for their Showtime Café in Bellmore. However, there was no mention in the advertisement that any adult entertainment would be offered at the Wantagh Cabaret.

117. Instead, the advertisement stated,

> [c]oming to 3500 Sunrise Highway, Wantagh, Long Island, 2011 brand new entertainment concept featuring dinner and shows combining creative and unique acts found only at Billy Deans brand new unnamed facility. This full service restaurant will

> feature dinner and show theatrical production packages with various types of variety entertainment. The new location will cater to anniversary, birthday, bachelorette and bachelor parties or groups of friends looking for a new twist for an exciting evening. Anticipate audience participation, hosted by Long Islands legend and king of entertainment Mr. Billy Dean. Check back for future updates.

118. The Findings of Fact indicated that the Board did not believe that Mr. Dean was candid during the initial hearing about the contemplated use of the premises. However, Mr. Dean had detailed the types of entertainment to be offered at the Wantagh Cabaret.

119. Under a section entitled "The Applicant's Lack of Good Faith," which preceded the actual "Decision" in the Findings of Fact, the Board noted that

> [t]he Applicant states that it intends to operate a cabaret in conjunction with a full service restaurant. Yet the premises are not laid out in such a manner as to support a full service restaurant and will not be entitled to a Certificate of Occupancy as so configured. We observe, notably, but without limitation, that there are no windows.

120. Upon information and belief, the Defendants, who were aware of the pending Article 78 proceeding, conspired and agreed to draft the Findings of Fact to prejudice and disadvantage the Plaintiffs in the State proceedings.

121. For example, upon information and belief, the Defendants intentionally crafted the Findings of Fact to suggest that the Board was reversing its decision based upon the Plaintiffs' alleged failure to prove that the premises would not be an adult cabaret. But, in fact, the Board of Appeals actually rescinded the Permit based upon the community's and Board's mistaken belief that the use would violate the Town's adult use regulations.

122. This artful crafting of the Findings of Fact was also intended to deprive the Plaintiffs of an opportunity to challenge the constitutionality of the Town's ordinances dealing with the operation of adult uses.

123. The manner in which the Findings of Fact were issued, which is part of the Town's custom, policy and practice to withhold the rationale for a decision until litigation has been commenced, deprived the Plaintiffs of a full and fair opportunity to litigate the Town's actions in

State court.

124. The Defendants' continued animus toward the Plaintiffs and unique treatment of this case is further evidenced by the fact that the Board of Appeals' Findings of Fact against the Plaintiffs, which were issued back in 2011, appeared prominently on the website for the Town's Board of Appeals until at least December of 2015.

125. In fact, as of December 11, 2015, out of the many cases decided by the Board, the Findings of Fact in the Plaintiffs' case were the only Findings of Fact listed on the Board of Appeals' website. Moreover, upon information and belief, the Findings of Fact relating to the Wantagh Cabaret were the only Findings of Fact ever listed on the home page of the Board's website.

The Article 78 Decisions

126. On May 14, 2012, Judge Antonio I. Brandveen of the Nassau County Supreme Court affirmed the Board's revocation of the Wantagh Cabaret's Permit.

127. On February 13, 2014, the New York Appellate Division, Second Department affirmed the judgment. Green 2009 Inc. v. Weiss, 114 A.D.3d 788, 980 N.Y.S.2d 510 (2d Dept.

2014).

128. On May 13, 2014, the New York Court of Appeals denied leave to appeal. See Green 2009 Inc. v. Weiss, 23 N.Y.3d 903, 988 N.Y.S.2d 130 (2014).

The Federal Action

129. On August 20, 2014, the Plaintiffs sought federal relief in the United States District Court for the Eastern District of New York. This civil rights action was brought against the Town of Hempstead, Supervisor Kate Murray, and eight other representatives of the Town and its Board of Appeals, including Katuria D'Amato, who is the wife of former Senator Alfonse D'Amato.

130. On October 23, 2014, the Defendants filed their Answer (Docket No. 17).

131. The next day Judge Sandra J. Feuerstein recused herself. Judges Wexler, Hurley, Azrack, Spatt, Bianco and Seybert all recused themselves sua sponte without explanation. The matter was eventually reassigned out of the Alfonse M. D'Amato Courthouse to Brooklyn (Docket Nos. 32-35).

132. On September 24, 2015, more than a year after the action was commenced, and in the midst of discovery, the Defendants moved to dismiss the Complaint pursuant to Rule 12(c).

133. On February 18, 2016, Judge John Gleeson denied the Defendants' motion to dismiss the Plaintiffs' facial constitutional claims (Docket No. No. 65 at 45). He did, however, dismiss the "as-applied claims without prejudice to renewal when the plaintiffs' claims have ripened or when they can show an exception to the ripeness doctrine." Id.

134. Judge Margo K. Brodie declined to hold the "as-applied claims" in abeyance while the Plaintiffs obtained final determinations from the Board of Appeals. However, on July 20, 2016, Judge Brodie granted the Plaintiffs permission to file an Amended Complaint by September 30, 2016.

135. On September 30, 2016, the Plaintiffs filed an Amended Complaint.

The Wantagh Property Passed the Pre-Final Inspection and the Plaintiffs Provided the Town with the Documents Required for the Certificate of Occupancy and Public Assembly Permit

136. Throughout more than 30 inspections and visits by representatives of the Town's Building Department, no one ever objected to the stage, which has existed at the building for more than 40 years, or the lack of windows.

137. There is absolutely no provision in the State Building Codes requiring a cabaret or restaurant to have windows or barring a stage. And, at that time, there was no provision in the Town's Building Zone Ordinance requiring a restaurant or any other commercial use to have windows.

138. This was conceded during depositions in this litigation by Defendant Building Commissioner John Rottkamp, Chief Plan Examiner Louis Carnovale, Code Enforcement Officer Christopher Cappelli and Building Inspector Robert Steppe.

139. Nevertheless, in September of 2011, after the Board of Appeals summarily revoked the Plaintiffs' cabaret permit, but before it issued any written explanation for its decision, Deputy Town Attorney Charles Kovit directed the Building Department "not to sign off" on the Plaintiffs'

construction permit "when done" (TOHB 05769).

140. The Town's records further state that as per the Deputy Town Attorney, the Plaintiffs "will need to file a [supplement] to add windows and remove the stage." Id.

141. However, the Buildings Department never notified the Plaintiffs -- through an Objection Sheet or other means -- that windows had to be added until the Plaintiffs commenced this § 1983 action three years later. Deputy Town Attorney Kovit had no authority to interfere with the Building Department's review of a construction permit.

142. Deputy Town Attorney Kovit had no authority to direct the Building Department not to sign off on the Plaintiffs' construction permit.

143. Deputy Town Attorney Kovit had no authority to require the Plaintiffs to file a supplement to their construction permit application to add windows and remove the stage.

144. In or about November of 2011, representatives of the Town communicated to each other, in sum and substance, that the Town will not allow a Certificate of Occupancy to be issued to the Plaintiffs for the Wantagh Property, as it is

currently laid out, for restaurant use.

145. This information was never formally conveyed to the Plaintiffs until this federal litigation was commenced.

146. In or around December of 2011, while the Plaintiffs' Article 78 proceeding was pending in the Supreme Court, Nassau County, the Plaintiffs engaged the services of John P. Ferrantello, a licensed land surveyor, to conduct a final survey of the property.

147. The surveyor prepared a survey, dated January 3, 2012.

148. On February 7, 2012, the Wantagh Property passed the pre-final inspection for its Certificate of Occupancy and Public Assembly conducted by the Town's Building Department even though the building had a stage and no windows. At that point, Building Inspector Robert Steppe informed Plaintiff Dean that he had to file a final survey to obtain the Certificate of Occupancy.

149. In February of 2012, after the pre-final inspection, Plaintiff Dean took three copies of the final survey to the Building Department for filing. He met with Chief Plan Examiner Frederick Jawitz at his office. Plaintiff

Dean gave Mr. Jawitz the survey and other documents that he requested.

150. Chief Plan Examiner Jawitz and Plaintiff Dean then walked together to the counter of the Building Department on the second floor.

151. At that time Chief Plan Examiner Jawitz submitted the surveys and documents to the Building Department.

152. On February 22, 2012, Building Department employee Jackie Williams advised Defendant Building Commissioner Rottkamp that she had the Plaintiffs' final survey. TOHB 00401.

153. That same day, Defendant Rottkamp was notified that Chief Plan Examiner Jawitz "reviewed the final survey and it appears ok." TOHB 00385.

154. Upon information and belief, Jackie Williams then forwarded a copy of the survey to the Town's Highways and Engineering Department for review.

155. Unbeknownst to the Plaintiffs, in March of 2012, the Town's Highways and Engineering Department raised objections to the survey, including that the Plaintiffs must install a sidewalk on Oakland Avenue.

156. The Wantagh Property, which had long been approved and used as a cabaret, never previously had a sidewalk on Oakland Avenue. The immediately adjacent property on Oakland Avenue also does not have a sidewalk and was never directed to install a sidewalk.

157. The Defendants never notified the Plaintiffs of the objections from the Town's Highways and Engineering Department. The Plaintiffs never received any objections to or correspondence from the Town relating to the survey that was properly filed in February of 2012.

158. The Defendants did not place the objections in the Building Department's file for the Wantagh Property.

159. Indeed, the Plaintiffs never even learned of the Town's Highways and Engineering Department's objections to the survey until in or about December of 2015, in connection with papers filed in support of the Defendants' motion to dismiss in this federal proceeding.

160. Once they learned -- quite belatedly -- of the objections, the Plaintiffs immediately engaged a contractor who corrected all of the objections.

161. On or about December 22, 2015, the Plaintiffs endeavored to file proof that the Town's Highways and Engineering Department's objections had been corrected. However, then Deputy Commissioner Rita Fisher of the Building Department refused to accept the Plaintiffs' filing.

162. Upon information and belief Deputy Commissioner Fisher is married to Daniel M. Fisher, who is a current member of the Hempstead Board of Appeals and recently voted against the Plaintiffs' applications regarding Wantagh.

163. Deputy Commissioner Fisher was extremely aggressive to Plaintiff William Dean.

164. It was only after the Plaintiffs' lawyer contacted the Hempstead Defendants' counsel, Peter Sullivan, that the Building Department eventually allowed the Plaintiffs to file the necessary documents.

165. Counsel for the Plaintiffs made a discovery request for the Building Department's surveillance videotape which depicted Deputy Commissioner Fisher's hostile treatment of Plaintiff Dean. However, to date, it was never produced to the Plaintiffs.

The Defendants Refused to Rule on the Plaintiffs' Application to Operate a Restaurant at the Wantagh Property Until this Federal Action was Commenced

166. Although the Plaintiffs remain committed to operating a cabaret at the property in Wantagh, in an effort to mitigate the severe damages that they are incurring each day their building remains unusable, and without waiving any claims, on or about January 12, 2012, counsel for the Plaintiffs wrote to Town Attorney asking if the Plaintiffs could open while the Article 78 proceedings were pending to minimize the financial hardship.

167. Then, on or about August 1, 2012, the Plaintiffs filed an application with the Town to use the Wantagh Property as a restaurant without live entertainment.

168. The Plaintiffs' good faith belief that they could operate a restaurant at the Wantagh Property was based, in large part, on the fact that the Board of Appeals, in rescinding its prior approval of the Plaintiffs' Permit for the Wantagh Cabaret, specifically approved the Plaintiffs' variance for off-street parking for restaurant use.

169. Moreover, pursuant to § 196 of the Hempstead Building Zone Ordinance, a restaurant is a "permitted use" within a Business District. Thus, a restaurant use is allowed as of right in the zoning district in which the Wantagh Property is located.

170. Upon information and belief, the records of the Building Department indicated that all required work performed under the Plaintiffs' building permits for a restaurant was completed.

171. For example, on or about October 14, 2011, the Nassau County Fire Marshal conducted a comprehensive inspection of the Wantagh Property and concluded that the fire extinguishing system is "in compliance and approved."

172. On or about October 12, 2011 and November 3, 2011, Electrical Inspection Certificates were issued by the Electrical Inspection Service, Inc., after the Wantagh Property was examined and "found to be in compliance with the Residential and Building Code of New York."

173. On January 6, 2012, the New York State Department of Transportation sent a letter to the Town's Building Department stating that work performed at the Wantagh Property was "satisfactorily completed." The Department of Transportation further noted that it "has no objection to the issuance of a Certificate of Occupancy" for the Wantagh Property by the Town of Hempstead.

174. On or about August 17, 2012, a Plan Examiner of the Town's Building Department called the Plaintiffs to say that the plan for a restaurant had been approved and could be picked up.

175. However, when Plaintiff Billy Dean went to the Building Department the Defendants refused to give him the approval.

176. The Town's file folder for the Plaintiffs' restaurant application had been marked "APPROVED." However, the Supervisor of Plan Examiners for the Building Department subsequently crossed out the word "APPROVED" on the file as directed by Deputy Town Attorney Charles Kovit.

177. Deputy Town Attorney Charles Kovit did not have the authority to direct the Building Department's Supervisor of Plan Examiners to cross out the approval granted by the Building Department.

178. On or about September 12, 2012, the Plaintiffs received a letter from the Board of Appeals stating that they had to go before the Board to obtain approval to use the property as a restaurant -- even though it is allowed as of right in the Business District where the Wantagh Property is located, pursuant to § 196 of the Hempstead Building Zone Ordinance.

179. Upon information and belief, the Board of Appeals does not have any authority -- under state or local rules -- to review an application to use a property as a restaurant, which is permitted as of right.

180. On or about December 4, 2012, an attorney for the Plaintiffs sent a letter to the Defendants inquiring as to why the Plaintiffs still had not received a Certificate of Occupancy for the restaurant use.

181. Eight months later, on or about August 16, 2013, the Plaintiffs' lawyer sent another letter to the Town inquiring as to why no action had been taken on the pending restaurant application.

182. The Defendants failed to respond to the inquiry or to act on the application.

183. On or about February 6, 2014, in response to yet another inquiry from the Plaintiffs, a Town Plan Examiner indicated to the Plaintiffs that their restaurant application file was "missing" from the Board of Appeals and Building Department. In addition, notations that the Plan Examiner made regarding the application -- including the initial approval -- had been deleted from the file in the Town's computer system.

184. The Town's Plan Examiner recommended that Plaintiff Billy Dean file another "duplicate" application for restaurant use at the Wantagh Property. That second application was promptly filed on or about February 10, 2014.

185. Significantly, the original 2012 restaurant application mysteriously surfaced in or about February of 2016 as part of the 2014 restaurant application that was belatedly disclosed to the Plaintiffs in discovery.

186. The Defendants never explained where this critical missing file was over a three year period of time.

187. On or about February 20, 2014, the application for restaurant use was again approved and the file folder was, once again, stamped "APPROVED" in capital letters. The file folder also indicated that a new Certificate of Occupancy was required for "restaurant use only" and "no cabaret permitted."

188. On or about February 20, 2014, the file was forwarded to the Town's Chief Plan Examiner for a second approval.

The Plaintiffs' Application for Restaurant Use at the Wantagh Property Languished in "Administrative Review"

189. On or about February 27, 2014, the Wantagh Property file was forwarded to the Board of Appeals for "Administrative Review."

190. As of August 20, 2014, when the Plaintiffs commenced this federal action, the application still had not been acted upon and the Plaintiffs remained unable to use the Wantagh Property as a restaurant.

191. Upon information and belief, the Board of Appeals has no authority to issue advisory opinions.

192. Nevertheless, on September 17, 2014, the Board of Appeals issued an unauthorized resolution recommending that the restaurant application be denied. That recommendation was based upon a claim that

> (a) as this issue has once been before this Board the current request for a Building Permit and Certificate of Occupancy is barred by administrative res judicata, and (b) as the Applicant has not submitted revised building plans for the proposed restaurant use to meet the conditions and to alleviate the concerns expressed by the this [sic] Board, the request for a Building Permit and

> Certificate of Occupancy for a restaurant use of the Subject Property is referred back to the Building Department with the recommendation of this Board that it be denied.

193. Neither the Plaintiffs nor their attorneys were served with a copy of this resolution. They only learned of it, for the very first time, on October 23, 2014, when it was annexed as an exhibit to the Town's Answer in this Court.

194. The Defendants conducted dozens of inspections of the Wantagh Property.

195. Building Inspector Robert Steppe conducted at least 34 inspections and visits of the building in Wantagh and found that it would not pose any threat to health or safety.

196. This is substantially more inspections than would typically be directed by the Hempstead Building Department for any other use or establishment. Instead, upon information and belief, on average, only 3 to 4 inspections would be conducted before a new use would be permitted to open.

197. The Wantagh Property passed all necessary inspections -- including electrical, plumbing, building code and fire code -- to allow the premises to be used as a restaurant and/or cabaret.

198. The Wantagh Property is currently configured in substantially the same way that it was configured, during its prior ownership, when the Town approved it to be operated as a restaurant and cabaret with live entertainment.

199. Upon information and belief, the Defendants conspired and agreed that they will never allow a Certificate of Occupancy for the Wantagh Property to be issued to the Plaintiffs.

200. The Defendants' coordinated actions, which have prevented the Wantagh Cabaret from opening and exhibiting constitutionally protected expression, are causing the Plaintiffs to suffer irreparable harm through the silencing of their expression. They are also incurring substantial pecuniary harm and damages from being unable to use their commercial property.

201. The Defendants have engaged in a coordinated plan to deprive the Plaintiffs of their property rights without due process.

202. The Defendants have engaged in a coordinated plan to treat the Plaintiffs differently in violation of their rights to equal protection of the law.

The Town Enacted a Resolution Requiring Restaurants to Have Windows

203. Throughout this litigation the Plaintiffs repeatedly urged that they could operate the Wantagh Property as a restaurant, as of right, within the Business District where it is located.

204. The Defendants then raised the novel -- and baseless -- claim that the Wantagh Property could not operate as a restaurant because the Board of Appeals decided that the building must have windows to be a properly configured restaurant.

205. During oral argument of the Defendants' motion to dismiss on December 11, 2015, Judge Gleeson questioned "from whence does that requirement of windows come?" Tr. 12/11/15 at 9.

206. Judge Gleeson also asked "[w]hat do windows have to do with health and safety?" Tr. 12/11/15 at 12.

207. Peter Sullivan, counsel for the Defendants, conceded that the windows requirement only came from the Board of Appeals. Tr. 12/11/15 at 9. He also conceded that the windows requirement "has to do with whether this is actually a restaurant or whether it's going to be something else." Tr. 12/11/15 at 12.

208. Mr. Sullivan identified no public safety or health basis for the windows requirement.

209. On January 12, 2016, as part of the conspiracy, Peter Sullivan met with the General Counsel for the Town of Hempstead, Joseph Ra, and discussed the "need to amend ordinances," among other things. This is confirmed by bills recently provided by the Town of Hempstead to a third party (Felix Procacci) under the Freedom of Information Law.

210. On January 13, 2016, Peter Sullivan met with Deputy Town Attorney Charles Kovit, Supervisor of Inspection Services Raymond Schwarz, Chief Plan Examiner Louis Carnovale and Board of Appeals Secretary Richard Regina to discuss amendments to ordinances.

211. Upon information and belief, the Defendants then hastily drafted a resolution to require all new restaurants in the Town of Hempstead that do not have Certificates of Occupancy to have windows. The Defendants also drafted a resolution to create a preference in consideration of applications that impact constitutionally protected free expression.

212. On January 15, 2016, Mr. Sullivan discussed "amending resolutions" with the Town and received an e-mail from the Town containing a "copy of Resolutions."

213. On January 26, 2016, which was the very next meeting of the Town Board, the Board adopted a resolution calling for a public hearing to be held on February 9, 2016, to amend the Building Zone Ordinance to require windows on the exterior walls of restaurants. That same day the Town Board also called for a hearing on the preference provision, which also directly related to the issues presented in this litigation.

214. On February 3, 2016, Peter Sullivan discussed the proposed code amendments and the need for legislative findings with Deputy Town Counsel Charles Kovit.

215. On February 9, 2016, just weeks after Judge Gleeson raised concerns about the windows requirement, the Hempstead Town Board enacted legislation, for the very first time in the Town's 373 year history, requiring all new restaurants, which have not yet received a Certificate of Occupancy, to have windows on all exterior walls.

216. Over the Plaintiffs' vigorous objections, the Town of Hempstead amended Section 302 of Article XXXI of the Building Zone Ordinance of the Town of Hempstead to create a new subsection 302(Q).

217. Section 302(Q), as enacted on February 9, 2016, provides:

> No building shall be erected or maintained, the principal use of which is to serve food to patrons for on-site consumption, unless each exterior wall of the building shall have a window or windows, to the extent that windows shall occupy not less than 20 percent of the surface area of each wall, and each such window is unobstructed such that persons may directly and substantially view the indoors or outdoors at all times that the use is open for business.
>
> Nothing herein shall be construed in a manner which would violate or supersede any applicable fire or building code regulations.

> This provision shall be applicable to all buildings to be constructed after the effective date hereof, and to any existing building which does not have a certificate of occupancy for restaurant use on the effective date hereof.

218. The resolution, which was enacted without any legislative history or consultation with the restaurant industry, was tailored specifically to impose extremely costly and onerous burdens on the Plaintiffs, whose Wantagh Property had been fully approved without windows but was still waiting to receive its Certificate of Occupancy.

219. On December 27, 2016, in response to a FOIL request, the Town conceded that no documents exist of any records used by the Town to write the windows resolution.

220. At least one member of the Town Board (Defendant Councilmember Hudes) who voted in favor of the windows resolution had, in the past, traveled to the Plaintiffs' property in Wantagh and held a press conference -- on or about September 8, 2014 -- opposing the business.

221. On February 9, 2016, Councilmember Hudes refused to recuse himself from voting on the windows resolution, even after the Plaintiffs' counsel objected to the conflict.

222. The Town claimed that the ordinance was enacted to address unidentified public health and safety concerns. However, the Town did not conduct any study or survey to determine whether such a law was required.

223. Jeffrey Greenfield, who is Chairman of the Nassau County Planning Commission, was the only person who testified in favor of the windows resolution. Mr. Greenfield purportedly testified in his personal capacity and not as a representative of the Nassau County Planning Commission.

224. Mr. Greenfield's support for the windows requirement was purportedly based upon an incident that occurred more than 30 years ago in the separate Town of North Hempstead. There, on May 29, 1982, patrons were accosted by armed gunmen at the windowless Sea Crest Diner in Old Westbury.

225. Since that time no municipality on Long Island or anywhere else in New York has required restaurants to have windows. To the contrary, most communities usually require any windows to be closed because of noise and light concerns.

226. Furthermore, in the months leading up to the enactment of the windows resolution there were a number of robberies of restaurants in Hempstead -- including several Dunkin' Donuts and Subway stores -- where armed bandits demanded money from employees after looking through windows to confirm that there are few people in the restaurant. Testimony regarding these incidents and perils were presented to the Hempstead Town Board.

227. The Defendants, who have a sad history of failing to give affected parties' proper notice of proposed legislation, tried to sneak the windows resolution into law without giving the Plaintiffs written notice, as required by law -- even though they were directly affected by the resolution, which clearly came about as a direct result of the proceedings before Judge Gleeson.

228. Indeed, on January 13, 2016, the parties attended a settlement meeting prompted by Judge Gleeson. At that time, no one from the Town or its counsel disclosed to the Plaintiffs that the Town was in the process of enacting a law requiring restaurant facilities to have windows on every external wall.

229. Similarly, at a day-long deposition held on February 8, 2016 -- the day before the Resolution was enacted -- relating largely to the Town's insistence that the Plaintiffs install windows at their establishment, neither the Town's Chief Plan Examiner nor the Defendants' lead attorney in this case, Peter Sullivan, ever disclosed to the Plaintiffs the proposed law or that a hearing on that specific issue was to take place the very next day.

230. Peter Sullivan was aware of the hearing before the Town Board, which he attended with Defendant Buildings Commissioner John Rottkamp on February 9, 2016. This is confirmed by Mr. Sullivan's billing records, obtained through a Freedom of Information request, which show that Mr. Sullivan billed the Town for his time at the February 9, 2016 hearing in connection with this litigation.

231. The Defendants' hastily enacted windows resolution caused substantial problems for other restaurant owners in the Town of Hempstead who were caught up in the sweeping windows law.

232. As a consequence, on May 10, 2016, the Town Board amended Building Zone Ordinance § 302(Q) to provide, in pertinent part, as follows:

> No building shall be erected or maintained, the principle use of which is to serve food to patrons for on-site consumption, unless each exterior wall of the building adjacent to all public occupancy areas except restrooms or toilet facilities shall have a window or windows, to the extent that windows shall occupy not less than 15 percent of the surface area of each such wall, and each such window is unobstructed such that persons may directly and substantially view the indoors or outdoors at all times that the use is open for business.

233. The amended resolution changed the percentage of wall space that must be occupied by windows from 20% to 15%. It also modified the provision to exclude restroom and toilet facilities.

234. The amended resolution still prevents the Plaintiffs from operating a restaurant at the Wantagh Property even though such a use is otherwise permissible as of right at that location.

235. At the hearing on May 10, 2016, Plaintiff Dean read a letter into the record from Peter McGinn, a retired Nassau County Police Detective with 32 years experience. Detective McGinn advised the Board that on Long Island there was a "series of sniper shooters shooting into occupied diners, where the sniper was able to have direct line of sight to patrons." Tr. 5/10/16 at 21.

236. Detective McGinn, who served for 15 years in the Nassau County Police Department's Major Offense Bureau, implored the Board to consider the regulations of commercial establishments through video monitoring instead of the windows requirement.

The Defendants Never Raised a Claim that the Portico of the Plaintiffs' Building in Wantagh Extends Slightly into the Zoning Setback until Well into the Federal Litigation

237. On a corner lot, such as the Wantagh Property, with limited exceptions the Hempstead Building Zone Ordinance does not permit structures to be located within 10 feet from the property line.

238. For more than 40 years there was a large sign at the Wantagh Property that encroached well into the required setback. The Plaintiffs removed that sign because Supervisor of Inspection Services Raymond Schwarz instructed the Plaintiffs that they had to remove the sign to obtain their Certificate of Occupancy.

239. Many other properties located on Sunrise Highway in the vicinity of the Wantagh Property also have significant encroachments into the zoning setback without having to obtain variances.

240. During more than 30 inspections of the Wantagh Property no one ever raised a claim that the building's portico extends less than two and a half feet into the setback.

241. This issue was only raised, for the very first time, on June 24, 2015, during the deposition of the Town's Chief Plan Examiner Louis Carnovale in connection with this litigation.

The Residence on the Wantagh Property

242. There is only one Certificate of Occupancy for both structures at the Wantagh Property (the commercial building and the residence), which share one Tax Lot.

243. When Plaintiff One55Day, Inc. purchased the Wantagh Property in 2009 it included both structures.

244. The residence has three bedrooms and two bathrooms.

245. The Plaintiffs have been unable to occupy, rent or otherwise use the residence based upon the Defendants' continued refusal to issue a new Certificate of Occupancy for the Wantagh Property.

The Defendants Again Summarily Denied the Plaintiffs' Applications After an Extensive Hearing

246. After having their plans for the Wantagh cabaret again rejected by the Town's Building Department, on or about June 24, 2016, the Plaintiffs applied to the Town's Board of Appeals for a special exception for cabaret use and related variances, as recommended by Judge Gleeson.

247. The Plaintiffs sought (1) a special exception to use the premises for a place of public assembly and amusement (cabaret permit); (2) a variance in off-street parking; (3) a variance to maintain the portico attached to the building that extends slightly into the front setback; (4) an appeal from the Building Department's determination that a new special exception approval is required to operate a cabaret; (5) an appeal from the Building Department's determination that a new parking variance approval is required to operate a cabaret; and (6) to maintain a fence required by the Town's Building Department.

248. On August 30, 2016, over the Plaintiffs' objections, the Board adjourned the hearing until October 13, 2016, based upon a request by community residents. The hearing before the Board of Appeals commenced at 9:42 a.m.

on October 13th. At least 36 people appeared in support of the Plaintiffs' applications.

249. The Plaintiffs presented extensive evidence in support of each of their applications.

250. The Plaintiffs presented voluminous records and documentary evidence.

251. They also presented the testimony of (1) Michael Chaut, an acclaimed magician and the producer of "Monday Night Magic," the longest running Off Broadway magic show; and (2) David Adamovich, a talent booking agent and professional knife thrower who has appeared on "America's Got Talent" and on the "Tonight Show" with David Letterman. Mr. Chaut and Dr. Adamovich testified about types of non-adult entertainment to be presented at the Wantagh Cabaret.

252. Plaintiff William Dean testified at length about, among numerous other things, the types of entertainment to be offered at the Wantagh Cabaret and how he did extensive renovations of his building based upon the approvals that he received from the Town back in 2009.

253. Mr. Dean further noted that when he testified before the Board of Appeals back in 2009 he had no intention to offer the type of entertainment offered at his Bellmore cabaret in Wantagh. However, after spending millions of dollars on the Wantagh property, construction and litigation, he is not precluding himself from offering any form of lawful entertainment in Wantagh, including Bellmore Entertainment, which has been found to fully comply with all laws and rules.

254. The Plaintiffs presented the testimony of Barry Nelson, a well recognized and respected expert in real estate, real estate values and zoning issues. Mr. Nelson has been a licensed real estate appraiser since 1992.

255. Mr. Nelson described the Business District in which the Wantagh Property is located -- on Sunrise Highway, next to a car dealership and across the street from a train station and municipal parking fields.

256. Mr. Nelson conducted a thorough investigation of the surrounding area, including taverns and other similar uses in the community. He also analyzed property values in the area around the Plaintiffs' cabaret in North Bellmore,

among other things.

257. The expert concluded that a cabaret at the Wantagh Property will not alter or change the essential character of the neighborhood or change or depreciate property values. He further noted that a tavern has been located at that very location since at least 1969.

258. Mr. Nelson also presented photographs where other businesses have encroachments in the zoning setback. Based on his experience and review, the expert concluded that the minor encroachment from the building's portico (2 feet 4 inches) would not alter or change the essential character of the neighborhood. The expert further testified that granting the variance would provide a benefit to the applicant without any corresponding detriment to the surrounding community.

259. Mr. Nelson addressed all of the legal factors in connection with the relief sought and provided substantial evidence which demonstrated that all of the relief requested should be approved.

260. The Plaintiffs then presented the testimony and report of Sean Mulryan, a recognized expert in traffic and parking. After an extensive study, Mr. Mulryan concluded that there is ample parking in the two municipal parking lots located across the street from the Wantagh Property, as well as on Sunrise Highway. The Plaintiffs further detailed the steps that they were willing to take to minimize any parking burdens on the adjacent community.

261. And, significantly, the Plaintiffs detailed, through the expert's report, that the parking availability being considered in connection with this most recent application for an off-street parking variance is identical to the parking availability previously considered by the Board of Appeals -- and found to be acceptable -- when the Board granted the Plaintiffs' off-street parking variances back in 2009 and again for a restaurant in 2010.

262. Mr. Mulryan also provided evidence and testimony that development of the Wantagh Property would not result in adverse traffic impacts and that any traffic impacts would be less than those resulting from uses permitted in the Town's Business Zoning District without the requirement of a special exception approval.

263. The Plaintiffs also presented the testimony of Charles Kuehn, a licensed architect, who testified about sound proofing at the building, to avoid any noise concerns. The architect further testified that the building was constructed in such a way to avoid creating any other type of nuisance or annoyance to neighbors.

264. Defendant Legislator Rhoads represented the opponents to the application during the hearing. He called Michael Sherack as a purported expert in the field of real estate. Mr. Sherack, whose background is in horse racing, merely took a real estate salesperson course at Hofstra University and passed the test to be a licensed real estate sales person. He is a real estate salesperson in a real estate office on Long Beach and only became involved in the real estate industry in January of 2016 -- less than a year before the hearing.

265. Defendant Chairman Weiss conceded, on the record, that he was “not terribly impressed with the credentials for qualifying” Mr. Sherack as an expert. Mr. Sherack is, however, a resident of Wantagh and, over the Plaintiffs’ objections, was permitted to testify as an expert for a limited purpose.

266. Defendant Legislator Rhoads also called Steven Schneider, a traffic engineer, regarding parking issues. Mr. Schneider referenced parking restrictions in the municipal lots that were clearly incorrect based upon the signage posted in the lots.

267. A number of community residents, concerned citizens, attorneys and others testified both in support of and against the applications.

268. The closest residential neighbor to the Plaintiffs' cabaret in North Bellmore, Cynthia Perez, testified that she lives behind Showtime Café. Ms. Perez, a single mother of two boys, detailed that she has never observed any incidents or problems involving the Plaintiffs' Bellmore Cabaret. She emphasized that she always feels safe having the Bellmore Cabaret in her neighborhood. She further testified that property values in that neighborhood are high and rents are increasing.

269. Defendant Legislator Rhoads made a lengthy summation.

270. During the proceedings, Chairman Weiss stated in sum or substance that “once we close the hearing at the end of the day the hearing will be closed.”

271. Similarly, at 5:09 p.m. Chairman Weiss stated in sum or substance that “when this date was chosen the plan was that we would go on with the hearing until we finish. We don’t have a choice.”

272. Then, at approximately 6:51 p.m. Chairman Weiss reconfirmed that “once we close the case today it is going to be closed” and “we are not going to keep this open after today.”

273. Thus, the parties soldiered on until after midnight with the clear understanding that the record would be closed since all of the witnesses testified. However, the record apparently was not closed.

274. On October 17, 2016, the Plaintiffs’ zoning counsel, Howard Avrutine, was at the Board of Appeals’ office in connection with another matter.

275. At that time, Richard Regina, the Board's Secretary, disclosed to Mr. Avrutine for the very first time that the Board would continue to accept submissions from the public until October 19th when the Board would formally close the hearing and the record.

276. The Plaintiffs vigorously objected to the Board keeping the record open for nearly an extra week.

277. Building Zone Ordinance § 272.1 provides, in relevant part, that the Board "shall render its decision on a completed application in no more than 15 days after the hearing record is closed, or at the next hearing, whichever time is shorter."

278. The Board's next hearing was scheduled for October 19th. As a consequence, if the hearing record was closed just after midnight on October 14 -- which it should have been -- the Applicants would have been entitled to a decision by October 19th. However, by keeping the hearing open until October 19, this extended the Board's time to issue a decision by two weeks (until November 2, 2016 -- which was the next scheduled Board meeting).

279. The Plaintiffs also objected to allowing additional public comments because Chairman Weiss never announced that the hearing was going to be continued to another date.

280. No notice that the meeting was being continued was published in Long Island Business News, as required by the Town laws and rules.

281. Thus, the Board failed to follow the steps that are required to keep the record open once the hearing testimony was completed.

282. Furthermore, the Plaintiffs only learned that the record had been left open for additional public comments well after the opposition's coordinated campaign continued to inundate the Board with emails and comments. Thus, the Plaintiffs did not receive the same opportunity to supplement the record.

283. The proceedings were fundamentally unfair and there was a clear appearance of impropriety.

284. On November 2, 2016, the Board of Appeals unanimously denied all of the relief sought by the Plaintiffs except the request to maintain a fence, required by the Town, subject to certain conditions, including a five year time limitation. The summary denials contain absolutely no findings of fact, conclusions of law or bases for the determinations.

285. Judge Brodie cautioned that "the plaintiff should not have to wait years for a decision." (Tr. 7/20/16 at 32). The Court further urged that the Defendants "try to move the process forward" so "we can get it resolved." (Tr. 7/20/16 at 33).

286. However, as of January 26, 2017, the Defendants still have not issued any findings of fact, conclusions of law or explanation for the summary denials.

287. Adequate findings are essential so that the Plaintiffs and the Court can ascertain the bases for the decisions. The summary denials impede the Plaintiffs' ability to challenge the decisions and also prevent the Court from reviewing the issues.

288. New York's Town Law § 267-a(9) provides in pertinent part that the decision of a Board of Appeals "shall be filed in the office of the town clerk within five business days after the day such decision is rendered."

289. The Defendants filed the summary Notices of Decision with the Town Clerk on December 28, 2016 -- nearly two months after the decisions were rendered.

290. The Plaintiffs have obtained a final decision from the Town as to each of the permits and variances at issue regarding the Wantagh Property.

291. The allegations regarding the Wantagh Property are ripe for federal review.

292. Where, as here, there are constitutional violations, federal courts are available to hear actions brought under 42 U.S.C. § 1983 without requiring the Plaintiffs to endure lengthy and costly state judicial review through a proceeding pursuant to Article 78 of New York's Civil Practice Law and Rules.

293. This is especially true where these Plaintiffs already suffered through three and a half years of state court proceedings resulting from the Defendants' decision back in 2010, which was ultimately found not to be final.

294. And, the Defendants then sought to dismiss the Plaintiffs' federal Complaint based upon allegations that the claims were barred by claim preclusion and state res judicata in light of the prior state proceedings (Docket No. 43-6 at 46-49).

295. Out of an abundance of caution -- and to avoid the Defendants claiming that any state review is time barred -- on January 19, 2017, the Plaintiffs' timely filed an Article 78 Petition relating to the Board of Appeals' summary denials, which were filed with the Town Clerk on December 28, 2016.

296. The cautionary filing of the Article 78 proceeding does not constitute a waiver by the Plaintiffs of any claims or rights.

The Defendants Have Deprived the Plaintiffs of their Permit to Operate their Cabaret in Bellmore for Nearly Five Years

297. For the last 18 years Plaintiffs Billy Dean, Rori Gordon and Look Entertainment, Ltd., have also operated a cabaret at 1536 Newbridge Road in North Bellmore called Showtime Café.

298. On or about September 1, 1998, more than 18 years ago, the Plaintiffs began to operate Showtime Café under the existing cabaret permit, including that the Plaintiffs could not offer entertainment such as "bottomless," "topless" or "see-through" type costumes. That permit was valid for a period of five years.

299. On or about June 11, 2003, following a public hearing, the Board unanimously renewed the permit to operate Showtime Café for another five years under the same conditions.

300. On or about March 28, 2007, following a public hearing, the Board again unanimously renewed the Plaintiffs' permit to operate Showtime Café for another five years -- until March 28, 2012 -- upon the same conditions.

301. The dancers at Showtime Café cover their breasts with pasties and wear G-strings. They wear those costumes the entire time they are on the premises. They never strip or remove their clothing in public or in the course of their performances.

302. The dancers perform expressive, artistic non-adult dances for patrons.

303. Representatives of the Town's Building Department regularly conduct inspections to determine if Showtime Café complies with the conditions imposed by its permits.

304. Since 2003 the Building Inspectors consistently found that Showtime Café fully complied with the conditions required for its permits.

305. On or about March 27, 2012, then Supervisor Defendant Kate Murray wrote to residents of North Bellmore. The letter stated, in part, that the

> owners of Billy Dean's Showtime Café, located at 1536-1538 Newbridge Road in North Bellmore, have submitted an application to the local Board of Appeals, seeking to renew a cabaret permit for their business. A cabaret permit provides for live music and entertainment at authorized locations. The hearing

> on this renewal application is scheduled for Wednesday, May 23 at 2 p.m.

306. Defendant Murray's letter continued that "[s]ome people have expressed concern that the owners of the property were not complying with the terms of their permit and that possible elicit [sic] activities may be occurring at this location."

307. The letter further stated that "[u]ndercover investigations by town building department inspectors and independent investigations by law enforcement agencies have not uncovered violations of the law."

308. On May 23, 2012, the Board of Appeals held a public hearing to consider the Plaintiffs' application to renew their permit to use Showtime Café as a place of public assembly and amusement (cabaret, live music, dancing and entertainment). The Plaintiffs were also seeking to renew their variance for off-street parking.

309. However, based on the highly publicized community uproar against the Plaintiffs in Wantagh, the Plaintiffs were suddenly confronted -- for the very first time -- with considerable difficulty in renewing their permit to operate

their cabaret in North Bellmore.

310. More than 25 people -- including many residents of North Bellmore -- signed in and appeared at the hearing to support the Plaintiffs' application to renew their permit. However, nine people -- mostly from Wantagh -- appeared at the hearing to oppose the application to renew the North Bellmore permit.

311. Defendant Murray participated in the proceeding through a representative, and asked that the Board deny the Plaintiffs' renewal application.

312. The Plaintiffs' counsel testified that Showtime Café has fully complied with the permit requirements and is not an Adult Entertainment Cabaret under the Hempstead Code, which only relates to establishments that present "topless dancers, strippers, male or female impersonators or exotic dancers or other similar entertainments." See Hempstead BZO § 384.

313. To date, the Board of Appeals has refused to act on the Plaintiffs' pending application to renew the permit for the Bellmore Cabaret or for a variance for off-street parking.

314. The Plaintiffs never agreed that their applications, which are currently pending before the Board of Appeals would be contingent or depend on the outcome of any proceeding regarding the Wantagh Property.

The Defendants Have Also Refused to Renew the Plaintiffs' Public Assembly Permit for Nearly Five Years

315. Since the inception of the Bellmore Cabaret, the Plaintiffs have consistently renewed their Public Assembly permit with the Town's Building Department each year.

316. However, on or about Friday, September 2, 2011, in the midst of the public outcry in Wantagh, the Public Assembly permit for the Bellmore Cabaret expired.

317. Upon information and belief, at approximately 12:05 a.m. on Saturday, September 3, 2011, officers of the Nassau County Police Department converged on the Bellmore Cabaret based upon a complaint from a Wantagh resident that the establishment was being operated without a Public Assembly permit. The police threatened to issue criminal summonses to the Plaintiffs if Billy Dean did not close down the premises.

318. Thus, on a busy holiday weekend, the Plaintiffs were forced to stop the entertainment at the Bellmore Cabaret and customers left the premises. The Plaintiffs ultimately were allowed to reopen and continue to operate.

319. The Town eventually renewed the Public Assembly permit for the Bellmore Cabaret.

320. However, when the Public Assembly permit expired on September 2, 2012, the Building Department declined to renew the permit even though the Bellmore Cabaret passed all inspections.

321. For example, on or about August 23, 2012, the Building Department conducted a full inspection of the premises. The Building Department determined that the first floor is “OK FOR USE.” Thus, there were no code violations, public safety concerns or any other bases for depriving the Bellmore Cabaret of its Cabaret permit or its Public Assembly permit.

322. Nevertheless, the Building Department failed to renew the Public Assembly permit for the Bellmore Cabaret.

323. On June 17, 2013, following another inspection, the Building Department determined that the location "meets Fire Code, Life Safety Code" criteria. The Code Enforcement Officer noted that a representative of the Plaintiffs "may appear at office to obtain Public Assembly License."

324. However, the Town still refused to renew the Public Assembly permit for the Bellmore Cabaret.

325. On or about August 12, 2014, inspectors from the Building Department conducted yet another full inspection of the premises. Once again, the inspectors concluded that there are no public safety concerns or other bases for depriving the Bellmore Cabaret of its Cabaret permit or its Public Assembly permit.

326. Chief Brian Nocella personally visited the Showtime Café in North Bellmore on several occasions, while the business was in operation, and never indicated that the cabaret posed any risk of harm or violated any provisions of the State or Town Code.

327. During the federal litigation the Town claimed, for the first time, that the Plaintiffs' Public Assembly permit for North Bellmore could not be renewed because the Town had not renewed their Cabaret permit.

328. The Town further claimed that the Plaintiffs' Cabaret permit will not be issued because they still have an outstanding building permit application for work relating to the ceiling height in the basement.

329. The entertainment at the cabaret in North Bellmore is on the main floor, not the basement. The Plaintiffs wanted to use the basement for patrons as well. However, the ceiling is slightly too low under the State Code for use by patrons. As a consequence, they made an application to the New York State Department of State for a variance to use the basement.

330. Through discovery in this federal litigation the Plaintiffs learned, for the first time, that while the application for a variance was pending before Department of State, a representative from the Town's Building Department -- Raymond Schwarz -- sent an ex parte letter to the State, purportedly on behalf of the Town of Hempstead, opposing

the Plaintiffs' application based upon "suspicions and allegations that the space is being used as a 'VIP' lounge."

331. Thus, the Town claimed that the Plaintiffs needed approval from the State while, at the same time, telling the State not to approve the pending application.

332. On March 21, 2016, as directed by Magistrate Judge Steven M. Gold, the parties engaged in a pre-application meeting at Hempstead Town Hall, located at One Washington Place in Hempstead (the "Pre-Application Meeting").

333. The following people attended the Pre-Application Meeting: Howard Avrutine (Plaintiffs' zoning counsel); Plaintiff William Dean; Erica Dubno (Plaintiffs' counsel); Plaintiff Rori Gordon; Charles Kuehn (Plaintiffs' architect); Richard Solomon (Plaintiffs' co-counsel); Louis Carnovale (Chief Plan Examiner for the Town of Hempstead); Charles Kovit (Hempstead Deputy Town Counsel); Richard Regina (Hempstead Board of Appeals Secretary); Raymond Schwarz (Hempstead Inspection Services Supervisor); and Peter Sullivan (Defendants' outside counsel).

334. Defendants' counsel, Peter Sullivan, subsequently described the Pre-Application Meeting as "not for 'settlement'" but so that Plaintiffs and counsel could fully inquire as to what is required of them to make applications for the variances and special permits they seek.

335. During the Pre-Application Meeting the parties discussed the procedure regarding the renewal process for North Bellmore. At that time Chief Plan Examiner Carnovale noted to Richard Regina, the Secretary for the Board of Appeals, that the Building Department cannot issue a Certificate of Completion until the Board issues a decision on a pending application for a Special Use Permit.

336. Similarly, Inspection Services Supervisor Schwarz stated that it would be necessary for the Board of Appeals to approve the use before the Building Department could certify an alteration permit.

337. The Plaintiffs filed all of the documents and records sought by the Defendants.

338. Nevertheless, the Plaintiffs continued to be frustrated by the Hempstead Building Department regarding their business in North Bellmore. For example, Deputy Plan Examiner Carnovale made specific written objections that the Department claimed had to be addressed. The Plaintiffs addressed and/or corrected each of those objections.

339. The Plaintiffs submitted new corrected plans and had another meeting with Mr. Carnovale. At that time he raised new issues that were not on the prior objection sheet and had not before been raised during the 17 years that the Plaintiffs operated the premises.

340. On September 7, 2016, the Plaintiffs again met with Deputy Chief Plan Examiner Carnovale.

341. On October 27, 2016, the Building Department issued a notice to Mark Siegel, the former owner of the property where the Bellmore Cabaret is located at 1536-38 Newbridge Road, indicating that his building permit application was approved.

342. The Building Department previously sent correspondence relating to the building permit application to the Plaintiffs' counsel -- not Mr. Siegel.

343. However, Building Department never sent this notification to Plaintiffs' counsel. Instead, the Building Department only purportedly mailed it to the building's former owner at a different address -- 2131 Newbridge Road. As a consequence, the Building Department never notified the Plaintiffs that the building permit application had been granted.

344. Instead, the Plaintiffs only learned that the building permit application had been granted more than a month later, on December 1, 2016, when the Plaintiffs' counsel, Peter Sullivan, submitted a letter to Magistrate Gold which erroneously stated that "Plaintiffs were notified to come in, pay the required fees, and to pick up their permit to start the corrective work" (Docket No. 130 at 2).

345. Plaintiffs' counsel, Peter Sullivan, further stated that "[w]hen that work is completed there will be an inspection; if all is in order, and the required fees are paid, a 'Certificate of Completion' will issue.... The BZA will then revisit the Plaintiffs' open 2012 applications for renewal of a variance and special use permit for the Bellmore premises" (Docket No. 130 at 2).

346. On October 31, 2016, the Plaintiffs' zoning counsel, Howard Avrutine, provided information requested by the Board of Appeals regarding the pending Bellmore applications. Mr. Avrutine also requested that the Board of Appeals render a decision in connection with the pending applications. The Plaintiffs did not receive any response from the Board of Appeals.

347. On December 7, 2016, Plaintiffs' zoning counsel sent another request to the Board of Appeals for a decision on the pending applications regarding Bellmore.

348. Having still not received any response or action on their application regarding Bellmore, on January 9, 2017, the Plaintiffs' zoning counsel sent yet another letter to Chairman Weiss quoting from Peter Sullivan's letter (Docket No. 130) and noting that Mr. Sullivan's "position is incorrect."

349. Expert zoning counsel's letter to the Board of Appeals' Chairman detailed that the

> plans submitted by the applicant depict alterations in conjunction with the cabaret use. Those plans were "approved" by Chief Plan Examiner Louis Carnovale solely as to compliance with applicable Building Code provisions. At the

> present time, the applicant does not have a valid special exception approval for its cabaret use at the premises.
>
> Therefore, a Building Permit authorizing alterations for a cabaret use cannot legally issue. Rather, in the event the Board approves the renewal application currently pending, such approval will then authorize the Building Department to issue and the applicant to obtain its Building Permit and then perform the necessary renovations. In fact, the applicant would expect any such approval to be expressly conditioned upon compliance with the "approved" plan.

350. Zoning counsel's letter to Chairman Weiss further provides that "in my almost 30 years of practice before the Board of Appeals of the Town of Hempstead I have never experienced such position being taken in connection with any original application for a special exception or a renewal."

351. Zoning counsel's letter to Chairman Weiss also states that "a Board approval authorizes issuance of the appropriate Building Permit and ensuing work pursuant to that permit. There is no logical or legal basis for a different position to be taken in this case. Further, from

a practical perspective, no applicant would pay permit fees and expend costs on construction in the hope that an approval will then be issued by the Board after all such work is completed."

352. Zoning counsel then requested a "prompt response" from the Board.

353. On January 26, 2017, the deadline set by Magistrate Gold for the Plaintiffs' submission of a proposed Second Amended Complaint to the Defendants, Hempstead Defendants' counsel mailed a response to the Plaintiffs' zoning counsel.

354. Hempstead Defendants' counsel claimed, without citation to code provisions, that with an "application for a renewal where there has been discovered un-permitted renovations," the Board of Appeals "will not render a decision (Indeed, not hold a hearing) until the Code violations are cured."

355. Counsel's new claim is completely belied by, inter alia, the fact that in this very case on May 23, 2012, the Board of Appeals held a public hearing to consider the Plaintiffs' application to renew their cabaret

permit in Bellmore even though the Town was well aware of the alleged un-permitted renovations at the time.

356. Indeed, Mr. Sullivan's letter of January 26, 2017, states that back in 2009 -- at least two years before the 2012 hearing -- the Town's Building inspectors knew that the basement contained walls, which had been installed by a prior occupant without approval, and that the ceiling was too low to accommodate a public assembly use.

357. Mr. Sullivan's recent letter also confirms that the Town knew that the Plaintiffs applied to the Defendants to legalize the renovations in the basement (which had been installed by a prior occupant) and that the Plaintiffs applied to the New York State Department of State, Southern Region - Board of Review, for a variance from the applicable provisions of the State's building code to allow public assembly use in the basement with insufficient ceiling height.

358. Furthermore, on September 19, 2011, the Building Department's Supervisor of Inspection Services, Raymond Schwarz, wrote to the Department of State to oppose Plaintiffs' application for a variance from the State based

upon an alleged improper use of the basement -- even though the Plaintiffs never received any Notice of Violation for improper use. This was eight months before the Board of Appeals held a hearing on the Plaintiffs' application to renew their cabaret permit in Bellmore.

359. Thus, the Board of Appeals is fully capable of holding hearings and entertaining applications for special exceptions even where renovations allegedly need to be conducted.

360. Indeed, the Board of Appeals held hearings and renewed the Plaintiffs' cabaret permit and off-street parking variances in 2003 and 2007 even though the Plaintiffs had open building permit applications for alterations of the basement.

361. Upon information and belief, in other cases the Board of Appeals has renewed special exceptions for cabaret use and/or other variances even though work needed to be performed.

362. Upon information and belief, the Board of Appeals is empowered to and frequently does renew special exceptions that are conditioned upon the applicant

performing the work that needs to be conducted.

363. The work that the Building Department is requiring the Plaintiffs to perform is extensive and expensive.

364. The work that the Building Department is requiring the Plaintiffs to perform is not related to life safety, as evidenced by the fact that the Town's own inspectors have repeatedly found that there are no public safety concerns or other bases for depriving the Bellmore Cabaret of its Cabaret permit or its Public Assembly permit.

365. Defense counsel's letter, dated January 26, 2017, further claims that the work that the Building Department is now requiring the Plaintiffs to perform in Bellmore is "to cure fundamental building code violations no matter what the intended use" (emphasis in original). However, that is wrong.

366. Much of the work demanded by the Defendants -- including, for example, the installation of handicap accessible space in the performance area -- would not be necessary if the business is to be operated as a retail

store instead of as a cabaret.

367. It is unreasonable to require the Plaintiffs -- who are merely tenants and do not own the Bellmore Property -- to undertake costly and burdensome construction costs before learning whether or not the Board of Appeals will renew their Cabaret permit and Public Assembly permit.

368. The Defendants can cite to absolutely no detriment or harm to them from the Board of Appeals issuing a final decision on the Plaintiffs' applications regarding Bellmore, which have been pending for more than four years.

369. In stark contrast, the Plaintiffs are substantially prejudiced by the Hempstead Defendants' continued refusal to issue a final determination -- supported by findings of fact and conclusions of law -- regarding the pending applications.

370. The Plaintiffs are also substantially prejudiced by the Hempstead Defendants' new claim -- raised for the first time well after the parties' extensive pre-application meeting-- that the Board of Appeals will not issue a decision on a matter that has been pending more than four years after a hearing was conducted -- because

work needs to be performed.

371. The Hempstead Defendants keep moving the goal posts, changing the rules, and making it impossible for the Plaintiffs to obtain a final determination regarding the Bellmore Cabaret.

372. Upon information and belief, the Board of Appeals is intentionally withholding any decision on the Bellmore Property to, among other things, (1) prevent the Plaintiffs from obtaining a final determination that would be reviewable in this Court; (2) delay the proceedings even more to further crush the Plaintiffs financially so they incur additional legal costs; and (3) avoid the "Hobson's Choice" of (a) denying the permits that the Plaintiffs held for at least 15 years without incident or (b) granting permits to the Plaintiffs in Bellmore for the type of business that the Defendants are trying to keep out of Wantagh.

The Town Enacted a Resolution Providing a Preference for Applications that Impact Constitutionally Protected Freedom of Expression

373. In August of 2015, the Plaintiffs commenced an action against the Defendants which had, as its Fifth Cause of Action, the allegation that the Town Code's failure to require the Board of Appeals and Building Department to timely act on pending applications deprives the Plaintiffs of their constitutional rights.

374. This cause of action was included, in large part, because the Hempstead Defendants intentionally allowed the Plaintiffs' applications to languish for years without any action or determination.

375. On February 9, 2016, the Hempstead Board enacted a new § 272.1 of Article XXVII of the Building Zone Ordinance in relation to preferences for certain cases before the Town's Board of Appeals and Departments of Buildings, Highways and Engineering (the "Preference Resolution").

376. The Preference Resolution provides, in relevant part, that

> [a]ny application which the applicant asserts to impact constitutionally protected freedom of expression shall have a preference over all other cases before the Board of Appeals in its review and scheduling of a public hearing, and the Department of Buildings, Department of Highways and Department of Engineering shall expedite all their ancillary functions with respect thereto, both prior to and after presentation to the Board of Appeals. The Board shall render its decision on a completed application in no more than 15 days after the hearing record is closed, or at the next hearing scheduled, whichever time is shorter (or at such other time as the applicant and Board may agree to).

377. The Plaintiffs did not oppose the enactment of the Preference Resolution, which appeared to be a reasonable and fair accommodation to the First Amendment.

378. The Plaintiffs also detrimentally relied upon the Preference Resolution when they filed their first Amended Complaint in this action which removed the Fifth Cause of Action.

379. However, since the Preference Resolution was enacted the Hempstead Defendants have failed to abide by its protective provisions.

380. For instance, the Town's Department of Buildings repeatedly failed to give a preference to the Plaintiffs' applications relating to the Bellmore Cabaret.

381. Indeed, when the Plaintiffs specifically sought expedited review by the Building Department they were advised by Chief Plan Examiner Carnovale that he had been instructed by the Hempstead Defendants' counsel, Peter Sullivan, that the preference only applies in consideration of similar types of applications and establishments. However, this is in defiance of the language of the Preference Resolution.

382. In addition, upon information and belief the Board of Appeals could have issued a decision regarding the Plaintiffs' pending applications regarding the Bellmore Cabaret on at least six different hearing dates since the Plaintiffs provided the supplemental information sought by the Board on October 31, 2016 -- November 2, 2016; November 30, 2016; December 7, 2016; December 14, 2016; January 11,

2017; and January 18, 2017.

383. Nevertheless, to date the Board of Appeals has not issued any decision regarding Bellmore.

384. And, despite repeated requests by Plaintiffs' counsel, the Plaintiffs cannot obtain a final determination regarding the Bellmore Cabaret.

385. Requiring the Plaintiffs to further exhaust their administrative remedies at this point would be futile.

386. The Defendants are not acting in good faith.

387. The Plaintiffs are sustaining considerable damages through the continuing deprivation of their Cabaret permit and Public Assembly permit.

388. Because of the Hempstead Defendants' failure to decide the pending applications, and to issue the necessary permits, the Plaintiffs have been forced to operate for nearly five years without a Cabaret permit or a Public Assembly permit.

389. The Cabaret permit and Public Assembly permit are essential to the Plaintiffs because they live in constant fear and apprehension that, at any time, they may be closed down or subjected to criminal charges. Moreover, in the event the Plaintiffs wanted to sell the Bellmore Cabaret, they would be significantly hindered because no reasonable investor would purchase such a cabaret use without the necessary Cabaret and Public Assembly permits.

390. The Plaintiffs have been the target of a pattern of harassment by the Town in the operation of the Showtime Café. For example, in May 15, 2010, they received a ticket from Code Enforcement Officer Roy Gunther for having a locked gate obstructing egress from the basement. However, the gate did not even belong to the Plaintiffs. Instead, it was the landlord's gate.

391. On June 14, 2010, the landlord replaced the gate. Plaintiff Dean brought proof that the violation had been corrected to court on June 24, 2010. Nevertheless, Roy Gunther and the town attorney, Brad Regenbogen, required Plaintiff Dean to come back to court 18 more times before that violation, and others, could be resolved.

392. The Town of Hempstead required Plaintiff Dean to appear in the Second District Court of Nassau County, Hempstead Part on the following dates related to a series of violations that were all eventually dismissed or resolved after the payment of a $2,000 fine: June 24, 2010; September 16, 2010; January 4, 2011; March 3, 2011; April 28, 2011; June 14, 2011; September 13, 2011; November 3, 2011; December 8, 2011; February 2, 2012; March 29, 2012; May 29, 2012; July 31, 2012; August 30, 2012; September 11, 2012; November 13, 2012; March 5, 2013; June 18, 2013; and September 12, 2013.

The Plaintiffs "Can Establish a Clear Pattern of Behavior on the Part of the Town Officials to Get [Them], There's No Question About It" -- Former Board of Appeals Member Christian Browne

393. On or about June 19, 2012, Former Board of Appeals Member Christian Browne, who was appointed by the Town Board and submitted an affirmation in support of the Defendants' motion to dismiss the Plaintiffs' Complaint in this case, revealed in a recording that the Plaintiffs

> can establish a clear pattern of behavior on the part of the Town officials to get [them], there's no question about it and on the part of the Board of Appeals to get [them], there's no doubt about it

(emphasis supplied).

394. Mr. Browne, who initially voted to grant the Plaintiffs a permanent cabaret permit in Wantagh but then voted to rescind it, further stated that the Plaintiffs "were given a grant, that grant was taken away. The Town people came down in front of the Board that they appoint and essentially demanded that we retract it."

395. On July 9, 2015, the Town's former Chief of Public Assembly, Christopher Cappelli, stated under oath in a sworn deposition, that Town's refusal to issue a Public Assembly license to the Plaintiffs for the Wantagh Property is "political" (Cappelli Dep. Tr. 7/9/15 at 88-90). He further described it as "the elephant in the room" (Cappelli Dep. Tr. 7/9/15 at 89).

The Defendants Continue to Engage in a Pattern of Delaying Discovery and Records Sought Through the Freedom of Information Law

396. Throughout the litigation the Hempstead Defendants engaged in a sad pattern of delaying disclosures and discovery until after their motion to dismiss was fully submitted to the Court, or after the Plaintiffs conducted extensive, costly discovery.

397. For instance, even though the Plaintiffs served their original discovery demand in June of 2015, and made repeated requests for records, the Hempstead Defendants held back extensive discovery that was essential to defend against the motion to dismiss.

398. Indeed, it was not until February 16, 2016 -- a mere two days before Judge Gleeson issued his decision -- that the Plaintiffs finally received a copy of their restaurant application for Wantagh, which they expressly requested eight months earlier.

399. On February 4, 2016, the Plaintiffs received discovery from the Hempstead Defendants revealing other critical records from the Town's Building Department.

400. Those records indicated that, back in September of 2011, Deputy Town Attorney Charles Kovit directed the Buildings Department "not to sign off" on the Plaintiffs' construction permit "when done." (TOHB 05769).

401. The records, which were only disclosed among hundreds of other documents days before Judge Gleeson issued his decision, further state that, as per Deputy Town Attorney Charles Kovit, the Plaintiffs "will need to file a

[supplement] to add windows and remove the stage." Id. However, upon information and belief, the Deputy Town Attorney has no authority to direct the Building Department to require a property owner to file a supplement to a building application.

402. On February 8, 2016, the Town's Chief Plan Examiner revealed that the Town had not produced in discovery the Plaintiffs' restaurant application which was filed back in 2014, and had been sought by the Plaintiffs through discovery in June of 2015.

403. A copy of that file was only produced to the Plaintiffs on February 16, 2016.

404. The Plaintiffs' site plan, which showed that the Buildings Department had previously approved the portico and parts of the building in Wantagh that the Town claims need to be corrected, is still missing.

405. On January 5, 2016, the Town Clerk's Record Access Officer indicated that there were 875 documents that are responsive to a FOIL request made, on November 30, 2015, for certain documents relating to the litigation that were never produced in discovery.

406. On January 19, 2016, the Town Clerk's Record Access Officer indicated that she was "advised by our Town Attorneys office that our attorneys from Berkman and Henoch are handling this [FOIL] request. If you have any questions please contact Peter Sullivan at (516) 222- 6200 Ext 284."

407. On January 27, 2016, the documents, requested through FOIL, were produced.

408. On February 16, 2016, the Plaintiffs receive the Defendants' Second Supplemental Rule 26(a) Disclosure containing the Plaintiffs' duplicate application for restaurant use for Wantagh, which was filed in 2014, after the Town lost the Plaintiffs' prior application, which was filed in 2012.

409. The Hempstead Defendants continue to withhold documents and records that were properly sought under the Freedom of Information law.

410. However, when Defendant Legislator Rhoads sought information under FOIL in connection with the Wantagh Property he received that information in one day, which demonstrates preferential treatment.

The Town Defendants Are Conspiring with Nassau County and State Legislators to Deprive the Plaintiffs of their Constitutional Rights and their Chance to Have a Fair Review of their Pending Applications

411. Former Senator Venditto worked as a Town Attorney for the Town of Hempstead in 2011 when the Wantagh Property rehearing was before the Board of Appeals.

412. On or about September 8, 2014, Defendant Hudes, Defendant Murray and Senator Venditto trespassed on the Plaintiffs' property, located at 3500 Sunrise Highway in Wantagh, and conducted a press conference after the Plaintiffs commenced this federal action. At that time Defendant Murray announced that "we will continue to fight this latest effort to open a cabaret at this location."

413. Upon information and belief, representatives of the Town of Hempstead provided former Senator Venditto with access to the e-mail addresses of residents of Wantagh, New York.

414. On September 7, 2016, former Senator Venditto sent an email from his official email address -- venditto@nysenate.gov -- to residents of Wantagh entitled "Press Release: Senator Venditto Urges Hempstead Zoning

Board of Appeals to Reject Billy Dean Application for Club in Wantagh."

415. Former Senator Venditto's Press Release, which was emailed out on September 7, 2016, but is dated August 30, 2016, provides, in pertinent part,

> Senator Michael Venditto (R-Massapequa) is once again standing with community members and speaking on their behalf in opposition to the opening of an adult entertainment club in Wantagh.
>
> Owner, Billy Dean, and his partner Rori Gordon, have refiled an application with the Town of Hempstead to open an adult establishment at the corner of Sunrise Highway and Oakland Avenue.

416. Former Senator Venditto falsely advised the press, community and public that the Plaintiffs "refiled an application" to "open an adult establishment."

417. The Plaintiffs never filed an application with the Town of Hempstead to open an adult establishment.

418. Former Senator Venditto's press release further states that "[t]hanks in part to Senator Venditto and other local representatives the [Plaintiff's prior application to open the premises in Wantagh] was rejected by the Hempstead

Zoning Board of Appeals."

419. On September 6, 2016, Former Senator Venditto's press release, containing four false claims that the Plaintiffs intend to operate an "adult entertainment" club, was published on LongIsland.com.

420. On September 14, 2016, Assemblyman David McDonough, then Senator Venditto and Defendant Legislator Steven Rhoads presided over a public meeting at the Wantagh fire station.

421. During the meeting Assemblyman McDonough publicly stated that if Plaintiff Billy Dean opens his establishment in Wantagh, Assemblyman McDonough and Senator Venditto are "going to do everything" they can to stop the New York State Liquor Authority from issuing the Plaintiffs a liquor license.

422. On September 29, 2016, the homepage of then Senator Venditto's official website -- https://www.nysenate.gov/senators/michael-venditto -- stated, in large letters, "Join Senator Venditto in Stopping Billy Dean's Adult Entertainment Club From Being Built in Wantagh!"

423. Then Senator Venditto's official website contained a link to a petition against the Plaintiffs. See https://www.nysenate.gov/petitions/michael-venditto/join-senator-venditto-stopping-billy-deans-adult-entertainment-club-being.

424. In August of 2016, Defendant Legislator Steven Rhoads presided over a public meeting at the Wantagh library. At that time Defendant Rhoads revealed that he had been contacted by someone on behalf of Plaintiff Billy Dean who indicated that Mr. Dean wanted an opportunity to address the public at the meeting and explain exactly what his application is for. However, Defendant Rhoads declined to hear from Plaintiff Dean.

425. On September 30, 2016, Defendant Rhoads posted on his official Facebook page about a "Community Rally against the Billy Deans proposal in Wantagh" on October 1, 2016. The public statement encouraged people to appear at the Wantagh Property to "demonstrate the strong feeling of our community that this proposal will create an unacceptable and potentially dangerous nuisance that will damage the character of this neighborhood" (emphasis supplied).

426. Upon information and belief, on or about October 1, 2016, Defendant Rhoads trespassed on the Wantagh Property and had a Nassau County podium set up on the Plaintiffs' property in connection with his planned rally.

427. Defendant Rhoads participated extensively during the hearing held on October 13, 2016, in opposition to the applications regarding the Wantagh Property.

428. Indeed, Defendant Rhoads cross-examined the Plaintiffs and their witnesses at length during the hearing.

429. Defendant Rhoads also called witnesses and submitted evidence in opposition to the applications.

430. In sum, Defendant Rhoads injected himself more than 110 times during the hearing.

431. As confirmed by photographic evidence, Defendant Rhoads also engaged in impermissible ex parte communications with Defendant Board Member Katuria D'Amato during a recess in the proceedings.

432. The hearing regarding the Wantagh Property took place in Hempstead on October 13, 2016. Defendant Rhoads participated in that administrative proceeding regarding permits for a single business in Wantagh while the Nassau Legislature was holding extremely important Budget Hearings in Mineola.

433. Although Defendant Rhoads did eventually leave the hearing to vote in the Budget Hearing he spent virtually the entire day as an advocate at the Plaintiffs' hearing and not performing his function as a legislator at the 2017 Budget Committee Hearing.

434. Defendant Rhoads clearly acted as a prosecutor -- not a legislator -- during the hearing.

435. On December 3, 2015, incoming Supervisor Santino wrote to Kevin Milano, then President of the Wantagh Civil Association, to state that

> [w]orking alongside Supervisor Kate Murray and my Town Board colleagues, I wholeheartedly support our town's efforts to protect the quality of life of the Wantagh and Seaford communities in the fight against a proposed "Las Vegas Style" cabaret next to a residential neighborhood, and will continue to do so as our town's

next Supervisor.

436. The Defendants are conspiring with others to deprive the Plaintiffs of their constitutional rights and their chance to have a fair review of their pending and future applications.

437. They are also depriving the Plaintiffs of equal protection of the law and due process, abusing their authority, and interfering with the Plaintiffs' business and livelihood.

438. The Constitutional violations by the Town of Hempstead and the municipal employees result from a government custom, policy, pattern and practice.

439. These practices include, but are not limited to, enacting specific litigation to target specific litigants; waiting until after litigation is commenced to craft, draft and issue Findings of Fact, resolutions and decisions; using public resources to destroy private businesses; harassing citizens with criminal summonses and then requiring them to make repeated -- and unnecessary -- court appearances; allegedly "losing" or "misplacing" necessary files to delay proceedings or determinations; disseminating false information to the public to galvanize opposition and

antagonism to private businesses; and failing to provide proper notice to interested parties when enacting legislation.

440. The unconstitutional practices of the municipal officials are so widespread and persistent that they constitute a custom and/or usage with the force of law.

441. The Defendants' actions against the Plaintiffs have been in bad faith and constitute a pattern of harassment.

442. The Plaintiffs have been and are suffering grave injury directly traceable to the Defendants' unconstitutional and improper actions. The Plaintiffs have no adequate remedy at law and, unless this Court grants the injunctive and declaratory relief requested, Plaintiffs will be unable to exercise their guaranteed rights under the United States Constitution and will be irreparably damaged.

"We Have Been Guaranteed by the Town that They Will Not Settle"

443. On January 27, 2016, the Plaintiffs obtained, through a Freedom of Information Law ("FOIL") request, a number of emails that were never previously provided by the Hempstead Defendants through discovery. The Town's production of the records, through FOIL, was delayed because the Town Clerk's Records Access Officer was "advised by" the Town Attorney's office that "our attorneys from Berkman and Henoch are handling this request."

444. Those recently discovered emails included correspondence from community activist Kevin Milano, dated November 30, 2015, to a number of Town representatives -- including Defendant Murray -- and members of the press. The publicly disclosed email, which relates directly to this case and the oral argument that was scheduled before Judge Gleeson, states that "[w]e have been guaranteed by the Town that they will not settle."

445. On February 9, 2016, an attorney for the Plaintiffs read Mr. Milano's statement of the Town's "guarantee" of no settlement to the Town's Board at the public hearing on the windows resolution, which was covered

by the press and attended by Peter Sullivan, counsel for the Hempstead Defendants. No representative of the Town or Defendants ever refuted or disputed the chilling allegation. Id.

446. The Plaintiffs have valuable property rights that are directly being affected by the Defendants' concerted actions, including, but not limited to, in their property, leases and goodwill.

CAUSE OF ACTION I : IMPOSING A PRIOR RESTRAINT AND INTERFERING WITH CONSTITUTIONALLY PROTECTED EXPRESSION AT THE WANTAGH PROPERTY

447. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

448. The Defendants, acting under color of law, have imposed an impermissible prior restraint and interference with expression and entertainment at the Wantagh Property, in violation of the Plaintiffs' rights to free expression, equal protection and due process, under the First, Fifth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 6, 8 and 11 of the New York

State Constitution.

CAUSE OF ACTION II : CONSPIRING TO DEPRIVE THE PLAINTIFFS OF THEIR CONSTITUTIONAL RIGHTS AND CIVIL RIGHTS

449. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

450. To demonstrate conspiracy under 42 U.S.C. § 1983 and § 1985, a plaintiff must show that two or more conspirators reached an agreement to deprive him or her of a constitutional right under color of law.

451. Upon information and belief, the Defendants conspired and reached an agreement to prevent the Plaintiffs from ever opening the Wantagh Cabaret.

452. The Defendants also conspired to prevent the Plaintiffs from mitigating their damages by opening a restaurant at the Wantagh Property as it is configured, after considerable expense to the Plaintiffs.

453. The Defendants have repeatedly taken steps to suppress the exhibition of dancing and other entertainment, protected by the federal and state constitutions, by engaging in a pattern of harassment of the Plaintiffs.

454. The Defendants further conspired to deprive the Plaintiffs of their Cabaret permit, Public Assembly permit and off-premises parking variance to operate the Bellmore Cabaret, even though the Town's own Building inspectors have repeatedly found -- after thorough inspections of the Bellmore Cabaret -- that there are no violations which would preclude issuance of the necessary permits.

455. The Defendants conspired, and continue to conspire, to suppress the exhibition of entertainment at the Wantagh Property and the Bellmore Cabaret, pursuant to unconstitutional provisions -- and unconstitutional application -- of the Town of Hempstead Code and the Hempstead Building Zone Ordinance to deprive the Plaintiffs of their rights under the First, Fifth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 6, 8 and 11 of the New York State Constitution.

456. The Defendants, jointly in concert, agreed, under color of the Town of Hempstead Code and the laws of New York State, to commit the alleged improper actions to deprive the Plaintiffs of their federal and state constitutional rights to offer expressive entertainment at the Wantagh Property and Bellmore Cabaret.

457. The Defendants also conspired to deprive the Plaintiffs of their property rights because of various political reasons, including, but not limited to, an articulated intent to silence a legitimate form expression at the Plaintiffs' establishments.

458. Even though the Defendants are acting pursuant to policies and usages of the Town of Hempstead, the Defendants have selectively targeted the Plaintiffs in such a way that no other taxpayers or businesses within the Town are treated comparably.

459. The Defendants have conspired to deprive the Plaintiffs of equal protection of the law.

460. The Defendants have conspired to deprive the Plaintiffs of due process of law.

461. The Defendants are, and continue, to conspire to prevent the Plaintiffs from obtaining a fair hearing and final determination before the Board of Appeals of their pending application regarding the Bellmore Cabaret.

462. The Defendants are, and continue, to conspire with others to interfere with and prevent the Plaintiffs from obtaining a liquor license from the State Liquor Authority -- which they were previously granted -- for the Wantagh Cabaret.

CAUSE OF ACTION III : RESTRICTING AND DEPRIVING THE PLAINTIFFS OF THEIR PROPERTY RIGHTS AT THE WANTAGH PROPERTY

463. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

464. The Plaintiffs made distinct and significant investments in the Wantagh Property for its specific use as a cabaret, which had been approved by the Board of Appeals. The Defendants' actions, which prevent the Plaintiffs from using their property for its intended (and historical)

purpose constitute an as applied partial taking.

465. The Defendants, acting under color of law, have taken and deprived the Plaintiffs of their significant property rights at the Wantagh Property without a sufficient legal or factual basis, and without due process, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, § 6 of the New York State Constitution.

CAUSE OF ACTION IV : DISCRIMINATING AGAINST THE PLAINTIFFS AND CONTINUING TO DEPRIVE THEM OF THEIR CABARET PERMIT, PUBLIC ASSEMBLY PERMIT AND OFF-PARKING VARIANCE AT THE BELLMORE CABARET

466. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

467. The Defendants, acting under color of law, have discriminated against the Plaintiffs based upon who they are and upon erroneous assumptions regarding the form of entertainment offered and to be offered at the Plaintiffs' establishments.

468. The Defendants continue to deprive the Plaintiffs of their Cabaret permit, Public Assembly permit and off-premises parking variance for the Bellmore Cabaret, in violation of the Plaintiff's federal and state constitutional rights to due process and equal protection. See U.S. Const. amends. V and XIV; N.Y. Const. art. I, §§ 6 and 11.

CAUSE OF ACTION V : REQUIRING RESTAURANTS TO HAVE WINDOWS

469. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

470. Section 302(Q) of the Town of Hempstead's Building Zone Ordinance is unconstitutional on its face and as applied to the Plaintiffs. There is no rational basis or conceivable legitimate governmental interest in requiring restaurants -- and no other type of commercial business -- to have windows.

471. There is no reasonably conceivable set of facts that could provide a rational basis for BZO § 302(Q).

472. There is no reasonably conceivable set of facts that could provide a rational basis for the requirement that BZO § 302(Q) should apply to "any existing building which does not have a certificate of occupancy for restaurant use on the effective date."

473. The provision that allows BZO § 302(Q) to apply to existing buildings is unconstitutional on its face and as applied to the Plaintiffs.

474. BZO § 302(Q) does not adequately advise the public, or the Plaintiffs, of what kind of an establishment comes within the reach of the law.

475. For example, ambiguity exists as to what constitutes the "principal use" of a building.

476. BZO § 302(Q) is also fatally vague and overbroad when it provides that each window shall be "unobstructed such that persons may directly and substantially view the indoors and outdoors."

477. The definitions fail to fulfill the requirements of the due process clause, Article I, § 6 of the New York State Constitution, and the Fourteenth Amendment to the United States Constitution.

478. BZO § 302(Q) contains vague and overbroad prohibitions that subject Plaintiffs and all others similarly situated to enforcement abuse.

CAUSE OF ACTION VI : IMPOSING A TEMPORAL RESTRICTION ON THE ISSUANCE OF PERMISSIVE USES INCLUDING CABARET PERMITS

479. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

480. Section 267(D)(3) of the Town of Hempstead Building Zone Ordinance, as amended on or about December 9, 2014, provides, in part, that

> the Board of Appeals shall, in authorizing such permissive uses, impose such conditions and safeguards as it may deem appropriate, necessary or desirable to preserve and protect the spirit and objectives of this ordinance.

> Where the Board of Appeals deems it appropriate under all of the circumstances of a case, it may impose a condition of a grant which shall make the grant temporary in nature, for a duration of time to be fixed by the Board, subject to renewals as the Board may deem appropriate.
>
> Any renewals shall be granted only if the Board shall find that the grant has not had an unreasonably deleterious effect on surrounding area character and property values, and/or the use and enjoyment of neighboring properties, during the temporary period, or the most recent temporary renewal period.
>
> The Board shall have authority to make any temporary grant permanent, upon the expiration of temporary period.

481. Section 267(D)(3) is unconstitutional on its face and as applied to the Plaintiffs.

482. Section 267(D)(3) authorizes the imposition of temporal limits on the grant of a Cabaret permit and other special uses. However, § 267(D)(3) does not set forth any specific time limitations or periods.

483. This deprives the Plaintiffs and public, who are seeking a special exception for cabaret use, of notice of how long their permit may last.

484. This is critical because it can be extremely expensive to open and operate a cabaret. For instance, business owners must enter into leases, contracts and other long-term investments that are contingent on knowing for how long the business can operate.

485. The condition that the Plaintiffs or any member of the public must reapply every one, two or five years -- and be subjected to the whims and caprices of the Board and community -- imposes a considerable burden on their right to be secure in their ability to use their property and to continue to operate a business in which they have made a considerable investment over the years.

486. The imposition of a temporal renewal requirement as a condition pursuant to § 267(D)(3) provides insufficient procedural safeguards to people, such as the Plaintiffs, who are forced to renew their permits without any rational basis.

487. It also jeopardizes the Plaintiffs' and the public's ability to continue to provide constitutionally protected expression to the public. After all, any curtailment on the exercise of free expression through

having to renew the permit -- and running the risk that it will not be renewed -- constitutes irreparable harm, even if momentarily.

488. There is no rational basis for this provision.

489. The Town's requirement that applicants for a Cabaret permit may have to renew their permit at whatever time periods are set by the Defendants is unconstitutional on its face, and as applied, and deprives the Plaintiffs and the public of their civil and constitutional rights, including, but not limited to, under the First, Fifth and Fourteenth Amendments to the United States Constitution; Article I, §§ 6 and 8 of the New York State Constitution; and procedural due process.

CAUSE OF ACTION VII : REQUIRING A SPECIAL EXEMPTION TO USE THE PREMISES FOR A PLACE OF PUBLIC ASSEMBLY AND AMUSEMENT

490. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

491. The provisions requiring a special exemption to use premises for a place of public assembly and amusement to be issued by the Board of Appeals -- including 272-C.(6) of the Town of Hempstead Building Zone Ordinance -- are unconstitutional on their face and as applied to the Plaintiffs.

492. There is no rational basis or conceivable legitimate governmental interest in allowing the Board of Appeals to dictate the type of lawful entertainment that can be conducted within a commercial establishment located within a Business District pursuant to a cabaret use permit.

493. The Town's police power, through the Board of Appeals, is limited to the public safety, health, welfare and morals.

494. There is no legitimate police power -- or any other governmental interest -- implicated in requiring business owners, who have a lawful cabaret use permit, to return to the Board of Appeals -- and be at the Board's mercy and possibly subject to rejection -- each time they want to modify the nature of the expression or

entertainment they want to offer at their cabaret.

CAUSE OF ACTION VIII : SELECTIVE ENFORCEMENT

495. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

496. The Plaintiffs are being treated differently from other similarly situated entities that have been permitted to operate in the Town of Hempstead.

497. The Plaintiffs are being targeted, harassed and treated differently in part because of the notoriety associated with the name "Billy Dean" and a form of constitutionally protected expression that is associated with that name.

498. The Plaintiffs' constitutional rights to equal protection, free expression and property rights have been violated by the Defendants' selective enforcement of Town and state codes and laws against the Plaintiffs. See U.S. Const. amends. I, V and XIV; N.Y. Const. art. I, §§ 6, 8 and 11.

499. The differential treatment of the Plaintiffs is based on impermissible considerations, such as the Defendants' intent to inhibit or punish the exercise of constitutional rights, as well as the malicious and bad faith intent to injure the Plaintiffs.

CAUSE OF ACTION IX : THE DEFENDANTS' FAILURE TO COMPLY WITH THE TOWN'S NEWLY ENACTED PREFERENCE STATUTE WHICH REQUIRES THE BOARD OF APPEALS AND BUILDING DEPARTMENT TO TIMELY ACT ON PENDING APPLICATIONS DEPRIVES THE PLAINTIFFS OF THEIR CONSTITUTIONAL RIGHTS

500. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

501. The applications to renew the Plaintiffs' Cabaret permit for the Bellmore Cabaret, and for an off-premises parking variance, have been pending before the Board of Appeals for more than three years without a decision.

502. The Plaintiffs' application to renew their Public Assembly permit for the Bellmore Cabaret has been pending before the Town's Building Department for more than three years without a decision.

503. The Defendants' failure to comply with Building Zone Ordinance § 272.1 renders that provision unconstitutional as applied to the Plaintiffs. Moreover, the Defendants' actions violate the Plaintiffs' state and federal constitutional rights. U.S. Const. amends. V and XIV; N.Y. Const. art. I, § 6.

CAUSE OF ACTION X: THE PLAINTIFFS ARE INCURRING SIGNIFICANT DAMAGES FROM THE CONTINUED CLOSURE OF THE WANTAGH CABARET AND INABILITY TO USE THEIR VALUABLE PROPERTY, AND THE CONTINUED HARASSMENT OF THE BELLMORE CABARET, INCLUDING THE REFUSAL TO ISSUE THE NECESSARY PERMITS

504. The Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

505. The Plaintiffs have sustained considerable costs through the continued closure of the Wantagh Cabaret, and their inability to use that valuable commercial property.

506. The Plaintiffs have sustained considerable costs through the Defendants' continued harassment of and refusal to issue the necessary permits to operate the Bellmore Cabaret.

507. As a consequence, Defendant Town of Hempstead is liable to the Plaintiffs at the present for Six Million Dollars for actual damages.

508. The Plaintiffs are entitled to damages suffered from August 25, 2011, when the Defendants reversed the decision granting the Plaintiffs a special use permit to operate the Wantagh Cabaret. The damages are continuing and include, but are not limited to, the refusal to approve a restaurant use at the Wantagh Property.

509. The Plaintiffs are entitled to punitive damages, together with legal fees.

CAUSE OF ACTION XI: THE CONDUCT OF THE INDIVIDUAL DEFENDANTS VIOLATED CLEARLY ESTABLISHED CONSTITUTIONAL RIGHTS

510. Plaintiffs repeat and reallege each and every allegation heretofore set forth as though fully set forth herein, and incorporate those facts and allegations in this Cause of Action by reference.

511. The law and authorities upon which the Plaintiffs' claims in this Complaint are founded have been well established in the federal and state courts for many years and prior to the Defendants' actions.

512. Any reasonable jury would conclude that it was "objectively unreasonable" for the individual Defendants not to believe or know they were acting in violation of established standards for First, Fifth and Fourteenth Amendment rights. The conduct of the individual Defendants violated clearly established constitutional rights and is not entitled to immunity.

513. The individual Defendants are jointly and severally liable to Plaintiffs at present for Six Million Dollars for actual damages and Five Million Dollars in punitive damages.

Claims for Relief

WHEREFORE, the Plaintiffs demand judgment as follows:

Preliminary and permanent injunctions enjoining and restraining the Defendants, and their employees, agents and servants, from further interference with the Plaintiffs' exercise of their right to freedom of speech, property rights, and right to operate their establishments;

a declaratory judgment compelling the Defendants to issue the Plaintiffs their Cabaret permit and/or Certificate of Occupancy to operate the Wantagh Cabaret;

a declaratory judgment compelling the Defendants to issue the Plaintiffs their Cabaret permit, Public Assembly permit and off-premises parking variance to operate the Bellmore Cabaret;

a judgment declaring Section 302(Q) of the Building Zone Ordinance of the Town of Hempstead arbitrary, unreasonable, discriminatory, confiscatory, void,

unconstitutional on its face and as applied to the Plaintiffs, and its enforcement should be enjoined;

a judgment declaring Section 272-C.(6) of the Town of Hempstead Building Zone Ordinance arbitrary, unreasonable, discriminatory, confiscatory, void, unconstitutional on its face and as applied to the Plaintiffs, and its enforcement should be enjoined;

a judgment declaring Section 267(D)(3) of the Town of Hempstead Building Zone Ordinance arbitrary, unreasonable, discriminatory, confiscatory, void, unconstitutional on its face and as applied to the Plaintiffs, and its enforcement should be enjoined;

an award of damages against the Defendant Town of Hempstead presently estimated to be Six Million Dollars, and continuing;

an award of actual damages against all of the individual Defendants at the present in the sum of Six Million Dollars, together with the sum of Five Million Dollars in punitive damages;

reasonable legal fees under 42 U.S.C. §§ 1983 and 1988;

costs and disbursements of this action; and for such other and further relief as shall seem just and proper including a hearing and oral argument.

Dated: New York, New York
February 7, 2017

_/s/ Erica T. Dubno_____
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Counsel for the Plaintiffs

DECLARATION

(28 U.S.C. § 1746)

I, William Stephen Dean, hereby declare as follows:

1. I am the President of One55Day Inc. and Vice President of Look Entertainment, LTD and Green 2009 Inc., the corporate Plaintiffs in this lawsuit. I am also an individual Plaintiff in this action.

2. I have read the foregoing Amended Complaint, and the facts alleged therein are true.

3. I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 7, 2017

William Stephen Dean

DECLARATION

(28 U.S.C. § 1746)

I, Rori Leigh Gordon, hereby declare as follows:

1. I am the President of Look Entertainment, LTD and Green 2009 Inc., and the Vice President of One55Day Inc., the corporate Plaintiffs in this lawsuit. I am also an individual Plaintiff in this action.

2. I have read the foregoing Amended Complaint, and the facts alleged therein are true.

3. I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 7, 2017

Rori Leigh Gordon

Rori Leigh Gordon