

# EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

ORAL CLARKE, ROMANCE REED, GRACE  
PEREZ, PETER RAMON, ERNEST TIRADO, and  
DOROTHY FLOURNOY

Plaintiffs,

- against -

TOWN OF NEWBURGH and TOWN BOARD OF  
THE TOWN OF NEWBURGH,

Defendants.

Index No.

Date Summons Filed:

Basis for venue is Plaintiffs'  
Residence, CPLR 503(a)

**SUMMONS**

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on plaintiffs' attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: White Plains, New York

March 26, 2024

ABRAMS FENSTERMAN, LLP  
*Attorneys for Plaintiffs*

  
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81 Main Street Suite 400  
White Plains, New York 10601  
(914)-607-7010

**Defendants' Address:**

Town of Newburgh  
1496 Route 300  
Newburgh, NY 12550  
(845) 564-4554

Town of Newburgh Town Board  
1496 Route 300  
Newburgh, NY 12550  
(845) 564-4554

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**VERIFIED COMPLAINT**

Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy, by their attorneys, Abrams Fensterman, LLP, as and for their complaint against the defendants, allege as follows:

**NATURE OF THE ACTION**

1. This is an action to enforce the requirements of the John R. Lewis Voting Rights Act of New York ("NYVRA") in the Town of Newburgh, County of Orange (the "Town").

2. NYVRA was enacted by Chapter 226 of the Laws of 2022. It establishes the policy of the State of New York to (i) encourage participation in the elective franchise by all eligible voters to the maximum extent; and (ii) ensure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise. The NYVRA specifically allows lawsuits challenging municipal at-large elections.

3. The Town's "at-large" voting system violates NYVRA because it has for many years systematically prevented members of the Town's minority Black and Hispanic communities from electing any candidates of their choice to the Newburgh Town Board, thus denying the members of that community their most basic rights. Lacking any representation on the Town Board,

members of the Town's Black and Hispanic communities have been demoted to second class citizens whose concerns are ignored by the Town Board. Among other things, the Town Board has commenced litigation as part of its effort to prevent the housing of migrants in the Town and rejected calls to oppose a power plant whose emissions would disproportionately impact communities of color.

4. NYVRA requires that the Town's at-large voting system be promptly changed to remedy the inequitable treatment of Newburgh's Black and Hispanic communities and ensure that the members of those communities are no longer denied the adequate electoral representation they are guaranteed by law.

**THE DEPRIVATION OF VOTING RIGHTS BY THE TOWN OF NEWBURGH**

5. The Town was established in 1788.
6. The Town is a political subdivision of the State of New York that has its principal office at 1496 Route 300, Newburgh, Orange County, New York 12550
7. The Town Board is the Town's legislative and policy-making authority.
8. The Town's population has risen dramatically in recent decades. Nearly 32,000 individuals now call Newburgh home.
9. Much of that increase is attributable to a rapidly expanding Black and Hispanic communities which now comprise approximately 25 percent and 15 percent, respectively, of the Town's population.
10. The presence of the Black and Hispanic communities is particularly notable in areas immediately adjoining the City of Newburgh.
11. Despite the Town's significant Black and Hispanic populations, every person ever elected to the Newburgh Town Board, which is the Town's governing body, has, to plaintiffs'

knowledge, been white.

12. Voting in the Town is racially/ethnically polarized: Black and Hispanic voters together and non-Hispanic white voters consistently support different candidates and the candidates supported by non-Hispanic white voters usually prevail in Town elections.

13. It is no coincidence that the Town Board is unanimously white. It is the result of the Town's at-large voting system, under which every member of the Town Board is elected by vote of the entire voting population of the Town, and the presence of racially polarized voting. Black and Hispanic voters are politically cohesive and white voters are politically cohesive, but the Black and Hispanic voters typically prefer candidates other than the candidates preferred by white voters. Because white voters make up a majority of the electorate, racially polarized voting within Newburgh's at-large system invariably denies the Town's Black and Hispanic voters an opportunity to elect candidates of their choice to the Town Board.

14. "Slating" – the selection of candidates by party insiders – also contributes to the lack of electoral success by candidates preferred by Black and Hispanic voters. Upon information and belief, Republican candidates for Town Board are selected by the Town of Newburgh Republican Committee. Its approval is a golden ticket onto the ballot and, in almost all cases, onto the Town Board. Favored candidates are well-known to members of the committee, who have invariably been white. Because of the Town's racial polarization, prospective Black and Hispanic candidates are not able to develop the political connections that appear to be necessary to obtaining the nomination of the Republican party for Town office.

15. There has been no candidate of color for Town Board since 2011 because the at-large election system has created an environment in which the Black and Hispanic communities have lost hope that they will ever have a voice in Town government.

16. Because there is no Black or Hispanic representation on the Town Board, the Town routinely neglects the interests of the Black and Hispanic communities. Most recently, in response to the arrival of sixty asylum seekers from New York City, the Town Board sought an injunction preventing the housing of asylum seekers in the Town. This litigation has cost the Town's taxpayers substantial sums of money and continues to this day. *See Town of Newburgh, New York v. Newburgh EOM LLC, et al.*, Orange County Index No. EF003105-2023.

17. Meanwhile, the arrival of the asylum seekers set off a baseless media fire storm when a local not-for-profit group claimed that the migrants were displacing homeless veterans. It later came to light that these claims were false, and that the local not-for-profit had hired homeless men to pose as displaced veterans. This information came to light, however, only after local elected officials had sent out fundraising appeals for their campaigns attempting to capitalize on the false incident.

18. In addition to overt racial and ethnic hostility, the numerical advantage white voters enjoy under the at-large system forces the Town Board to favor the interests of predominantly white sections of the Town at the expense of communities of color. For example, in 2018 the Danskammer Power Plant attempted to expand its facility in the Town of Newburgh, an expansion that would have potentially emitted nearly two million tons of carbon emissions per year. In 2011, the Danskammer power plant was the third worst polluter in the entire state.<sup>1</sup> Unlike multiple surrounding municipalities, the leaders of the Town of Newburgh supported expansion of the Plant, despite the fact that the area around the power plant is disproportionately Black and Hispanic and that these populations generally suffer high rates of asthma and other similar diseases stemming

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<sup>1</sup>Adam Bosch, RECORDONLINE.COM, *Danskammer Plant in Town of Newburgh is New York State's 3rd worst polluter*, <https://www.recordonline.com/story/business/2011/01/05/danskammer-plant-in-town-newburgh/51324876007/>.

from emissions.<sup>2</sup> Racial minority groups came out against the plant,<sup>3</sup> but the Town's leadership ignored them and continued to support the plant's expansion.<sup>4</sup> As a result, Black and Hispanic populations were not heard in opposing the power plant expansion.

19. Plaintiffs are members of the Town's Black and Hispanic communities who seek by this action to remedy this situation in which they are unable to elect candidates of their choice and denied an equal opportunity to elect candidates of their choice compared to the white majority because voting in the Town is racially polarized, preventing Black and Hispanic candidates from being elected to the Town Board.

20. At-large voting systems, like the one utilized by the Town, are illegal in one of two circumstances: either "voting patterns of members of the protected class within the political subdivision are racially polarized; or ... under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." N.Y. Elec. Law § 17-206(2)(b)(i).

21. That is exactly the situation in the Town of Newburgh.

22. There are several potential effective remedies for the dilution of Black and Hispanic voting strength that results from the at-large system. The Town Board could draw single-member districts or institute a modified at-large system, such as proportional ranked-choice voting or cumulative voting, in combination with expanding or "unstaggering" the membership of the Town Board.

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<sup>2</sup> Hiroko Tabuchi & Nadja Popovich, THE NEW YORK TIMES, *People of Color Breach More Hazardous Air. The Sources are Everywhere*, <https://www.nytimes.com/2021/04/28/climate/air-pollution-minorities.html>.

<sup>3</sup> Arvind Dilawar, HUDSON VALLEY VIEWFINDER, *Danskammer Threatens Valley's Health and Environmental Justice*, <https://www.scenicudson.org/viewfinder/danskammer-threatens-valleys-health-and-environmental-justice/>.

<sup>4</sup> Gil Piaquadio, TIMES HERALD-RECORD, *My View: Danskammer Repowering the Clear Option to Meet Energy Needs*, <https://web.archive.org/web/20201023092617/https://www.recordonline.com/opinion/20190616/my-view-danskammer-repowering-clear-option-to-meet-energy-needs>.

23. The Town Board has done nothing to implement any of these remedies.

#### **THE PLAINTIFFS**

24. Plaintiff Oral Clarke is a Black citizen and registered voter residing in the Town of Newburgh, New York.

25. Plaintiff Romance Reed is a Black citizen and registered voter residing in the Town of Newburgh, New York.

26. Plaintiff Grace Perez is a Hispanic American citizen and registered voter residing in the Town of Newburgh, New York.

27. Plaintiff Peter Ramon is a Hispanic American citizen and registered voter residing in the Town of Newburgh, New York.

28. Plaintiff Ernest Tirado is a Hispanic American citizen and registered voter residing in the Town of Newburgh, New York.

29. Plaintiff Dorothy Flournoy is a Black citizen and registered voter residing in the Town of Newburgh, New York.

#### **JURISDICTION AND VENUE**

30. The Court has jurisdiction over this matter by virtue of Election Law § 17-206(4).

31. Venue is proper in Orange County under Election Law § 17-206(4), CPLR 504(2), because the Town is situated in Orange County, and CPLR 503(a), because the plaintiffs reside in Orange County.

#### **FACTS RELEVANT TO PLAINTIFFS' NYVRA CLAIMS**

32. According to the most recent census, the racial composition of the Town's population is approximately 61 percent white, 25 percent Hispanic, and 15 percent black.<sup>5</sup>

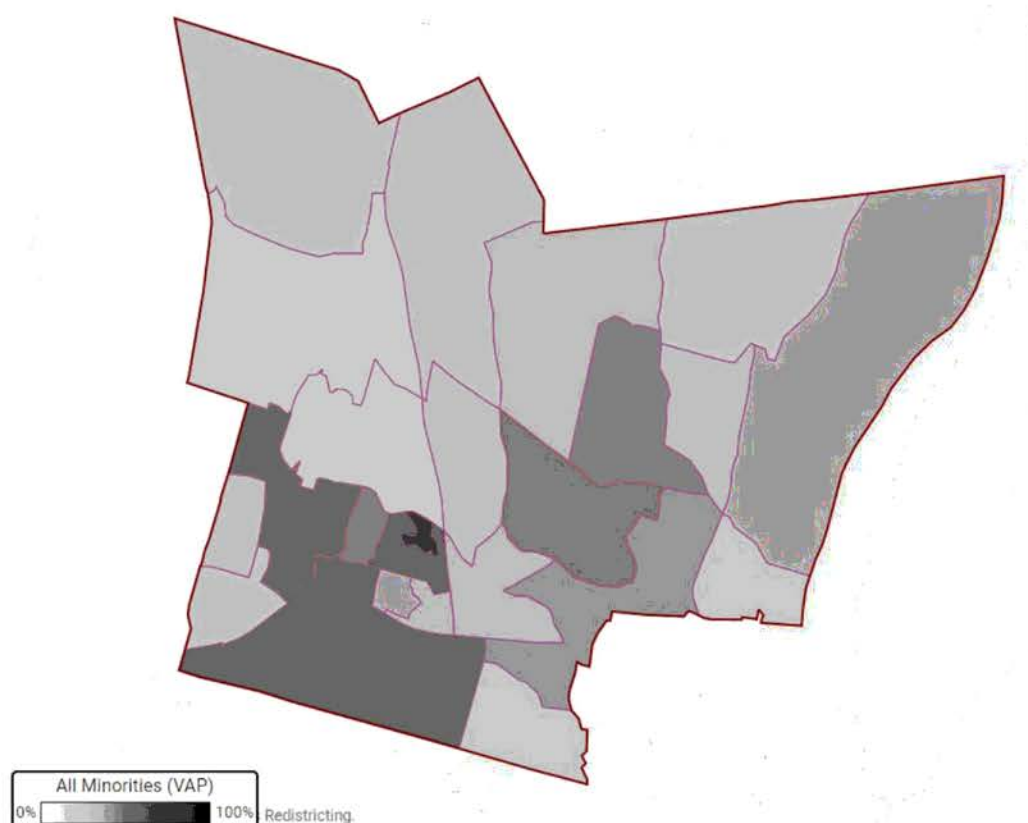
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<sup>5</sup> 2020 Census, Town of Newburgh,  
<https://www.census.gov/quickfacts/fact/table/newburghtownorangecountynewyork/PST045223>



33. Much of the Black and Hispanic population is concentrated in the southwest and eastern parts of the Town.

34. The map below shows the areas in which racial minorities are concentrated:



Source: <https://davesredistricting.org>

35. The Town has “at-large” elections, which means that every registered voter residing within the Town is eligible to vote for each Town office in every Town election.

36. The Town Board comprises five individuals: the Town Supervisor and four members of the Town Board.

37. The Town Supervisor is the chief elected official of the Town and serves a two-year term. Gil Piaquadio is the current Town Supervisor. Among other duties, the Town Supervisor sits as chairman of the Town Board.

38. The four Town Board members are elected to staggered, four-year terms. Thus, every two years, two seats on the Town Board are on the ballot. Betty Greene, Paul Ruggiero, Scott Manley, and Anthony LoBiondo are the current members of the Town Board.

39. The current members of the Town Board are all white Republicans.

40. The plaintiffs are not aware of any person of color who has ever been elected to the Town Board.

**A. The John R. Lewis Voting Rights Act of New York.**

41. NYVRA unequivocally declares that it is the public policy of the State of New York to “[e]ncourage participation in the elective franchise by all eligible voters to the maximum extent” and “[e]nsure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise.” Election Law § 17-200.

42. To achieve that policy, the Legislature further provided that “all statutes, rules and regulations, and local laws or ordinances related to the elective franchise shall be construed liberally in favor of (a) protecting the right of voters to have their ballot cast and counted; (b) ensuring that eligible voters are not impaired in registering to vote, and (c) ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process in registering to vote and voting.” Election Law § 17-202.

43. Under the NYVRA, an “at-large” method of election refers to “a method of electing members to the governing body of a political subdivision: (a) in which all of the voters of the entire political subdivision elect each of the members to the governing body; (b) in which candidates are required to reside within given areas of the political subdivision and all of the voters of the entire political subdivision elect each of the members to the governing body; or (c) that combines at-

large elections with district-based elections, unless the only member of the governing body of a political subdivision elected at-large holds exclusively executive responsibilities.” Election Law § 17-204(1).

44. A “political subdivision” is defined to include “a county, city, town, village, school district, or any other district organized pursuant to state or local law.” Election Law § 17-204(4).

45. The Town is a political subdivision under the NYVRA.

46. Because all voters in the Town elect the Town Supervisor and all four Town Board members, the Town utilizes an at-large method of election as defined in NYVRA.

47. The Town Board has the authority to change the Town’s at-large voting system but has thus far chosen not to do so.

48. Among other protections for voters, the NYVRA prohibits any political subdivision from using any method of election “having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution.” Election Law § 17-206(2)(a).

49. The Town’s Black residents are a “protected class” because they are “a class of eligible voters who are members of a race, color, or language-minority group.” Election Law § 17-204(5).

50. The Town’s Hispanic residents are a “protected class” because they are “a class of eligible voters who are members of a race, color, or language-minority group.” Election Law § 17-204(5).

51. A political subdivision utilizing an at-large method of election violates the prohibition against vote dilution where “(A) voting patterns of members of the protected class within the political subdivision are racially polarized; or (B) under the totality of the circumstances,

the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired.” Election Law § 17-206(2)(b)(i).

52. “Racially polarized voting” is defined as “voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate.” Election Law § 17-204(6).

53. Racially polarized voting “refers only to the existence of a correlation between the race of voters and the selection of certain candidates.” *Thornburg v. Gingles*, 478 U.S. 30, 74 (1986). “[E]vidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class is not required.” Election Law § 17-206(2)(c)(v).

54. Election Law § 17-206(8) states: “Coalition claims permitted. Members of different protected classes may file an action jointly pursuant to this title in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.” Thus, Black and Hispanic voters (who have voting preferences polarized against the rest of the electorate) bring this joint action.

#### **B. NYVRA’s notification requirement.**

55. Before commencing an action against a political subdivision under NYVRA, a prospective plaintiff must send a notification letter to the clerk of the political subdivision, asserting that the political subdivision may be in violation of NYVRA. Election Law § 17-206(7).

56. A prospective plaintiff cannot commence an action under NYVRA for at least 50 days after sending the notification letter. Election Law § 17-206(7)(a).

57. During that 50-day period, the governing body of the political subdivision may adopt a resolution affirming: “(i) the political subdivision’s intention to enact and implement a remedy for a potential violation of [the NYVRA]; (ii) specific steps the political subdivision will

undertake to facilitate approval and implementation of such a remedy; and (iii) a schedule for enacting and implementing such a remedy.” Election Law § 17-206(7)(b).

58. If the political subdivision timely adopts a resolution in response to a notification letter, the political subdivision has another 90 days to enact and implement a remedy before the prospective plaintiff may commence an action under the NYVRA. *Id.*

**C. Plaintiffs’ notification letter.**

59. On January 26, 2024, counsel for the plaintiffs sent a NYVRA notification letter by certified mail to Lisa Vance-Ayers, Newburgh Town Clerk, at the Town Clerk’s Office located at 1496 Route 300, Newburgh, New York 12550. A true and correct copy of the notification letter as well as the return receipt is attached as Exhibit A.

60. On March 15, 2024, within the 50-day period, the Town Board purportedly adopted a resolution providing that the Town Supervisor and the Town’s counsel will review and investigate the current at-large election system to “determine whether any potential violation of the NYVRA may exist” without committing the Town Board to any action other than to consider those findings. A true and correct copy of the resolution is attached as Exhibit B.

61. Furthermore, while directing that an evaluation of the at-large system be provided to the Town Board within 30 days, the March 15 resolution contains no “schedule” by which the Town Board must act on such an evaluation, instead giving the Town Board an indefinite deliberation period.

62. The Town took no other action purporting to respond to the NYVRA notification letter within the 50-day period which expired on March 18, 2024.

63. The Town Board’s March 15, 2024 resolution is void and of no effect because, upon information and belief, it was not duly adopted at a duly called meeting of the Town Board.

64. The Town Board’s March 15, 2024 does not satisfy the requirements of Election

Law § 17-206(7).

65. The Town Board's March 15, 2024 resolution was insufficient to require the plaintiffs to wait an additional 90 days before commencing this action.

**THE TOWN'S AT-LARGE ELECTION STRUCTURE VIOLATES NYVRA**

**A. The Town's voting patterns demonstrate racially polarized voting.**

66. The Town's at-large method of electing members of the Town Board violates NYVRA's prohibition against vote dilution because it causes candidates or electoral choices preferred by Black and Hispanic voters to usually be defeated and "voting patterns of members of the protected class within the political subdivision are racially polarized." Election Law § 17-206(2)(b)(i).

67. Racially polarized voting occurs when there is a divergence in the electoral choices of members of a politically cohesive racial or language-minority group from the rest of the electorate.

68. Under the NYVRA, where multiple racial or language-minority groups are both internally politically cohesive and politically cohesive with each other, those groups may be combined for purposes of analyzing whether voting is racially polarized and for determining appropriate remedies.

69. Voting is consistently racially polarized in the Town of Newburgh.

70. Black voters in the Town of Newburgh consistently vote cohesively for the same candidates.

71. Hispanic voters in the Town of Newburgh consistently vote cohesively for the same candidates.

72. Black and Hispanic voters in the Town of Newburgh are also politically cohesive with each other.

73. White voters in the Town of Newburgh consistently vote cohesively for the same candidates, who are not the candidates preferred by Black and Hispanic voters.

74. The preferred candidates of Black and Hispanic candidates are usually defeated by the preferred candidates of a cohesive bloc of white voters.

75. No candidate preferred by Black and Hispanic voters has been elected to Town Office in recent memory.

76. Because Newburgh's Black and Hispanic communities are politically cohesive and because voting is racially polarized, the Town's at-large system violates the NYVRA's protections against racial vote dilution.

**B. Under the totality of the circumstances, the Town violates the NYVRA.**

77. The Town also violates NYVRA if "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." Election Law § 17-206(2)(b)(i)(B).

78. The totality of the circumstances demonstrates the presence of vote dilution in the Town.

79. Election Law § 17-206(3) sets forth a non-exhaustive list of factors to be considered in determining vote dilution claims but also states that "[n]othing in this subdivision shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that such a violation has occurred." *Id.*, see also *Gingles*, 478 U.S. at 45 ("[T]here is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.") (internal quotation marks omitted).

80. When evaluating whether the ability of a minority community to participate in the political process has been impaired, courts must look beyond discrimination within the political

subdivision to consider history, socioeconomic factors, and discrimination not directly attributable to the political subdivision itself. *See Goosby v. Town Bd. of Town of Hempstead*, 180 F.3d 476, 488 (2d Cir. 1999) (considering effect of discriminatory voting laws enacted by Nassau County and New York State on Town elections); *Gomez v. City of Watsonville*, 863 F.2d 1407, 1418 (9th Cir. 1988) (“The district court apparently believed that it was required to consider only the existence and effects of discrimination committed by the *City of Watsonville itself*. That conclusion is incorrect”) (emphasis in original), *cert. denied* 489 U.S. 1080 (1989).

81. Considering the factors defined in NYVRA, Black and Hispanic voters in the Town are not able to participate equally in the political process.

*a. The history of discrimination in the subdivision.*

82. There is a long history of discrimination against the Black and Hispanic communities in the Town.

83. Most recently, on May 8, 2023, the Town of Newburgh Town Board voted to launch a lawsuit in an attempt to halt the housing of migrants or asylum seekers at the Crossroads Hotel in the Town of Newburgh.<sup>6</sup> Though ostensibly based on a zoning dispute specific to the Crossroads Hotel, the Town’s complaint also invokes an unrelated State of Emergency Order issued by the Orange County Executive prohibiting the housing of “asylum seekers” generally.<sup>7</sup> Ultimately, approximately sixty migrants were housed at the Crossroads Hotel.

84. The two-page executive order refers to migrants not less than nineteen times. Among other things, it states that “there is no reason to believe that these migrants or asylum seekers will leave Orange County,” “there is reasonable apprehension of immediate danger of

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<sup>6</sup> *Town of Newburgh, New York v. Newburgh EOM LLC et al.*, Orange County Index No. EF003105-2023 dkt. 1, Paragraph 24.

<sup>7</sup> *Id.* paragraph 23.



public emergency of potentially thousands of persons being transported to Orange County,” and that there is “reasonable apprehension of immediate danger thereof that public safety is imperiled thereby, for not only the migrant and asylum seekers, but also to the other affected residents of Orange County.”<sup>8</sup>

85. The Town of Newburgh also declared a State of Emergency in response to the housing of migrants in the Town<sup>9</sup> and sought an injunction preventing the arrival of migrants in the Town.<sup>10</sup> The litigation is still ongoing and has cost the Town substantial legal fees thus far.

86. After the Town filed its case seeking to prevent migrants from seeking shelter in the Town, sensational news stories emerged claiming that homeless veterans in Newburgh were being displaced to make room for asylum seekers.<sup>11</sup> The story quickly went viral, with State Assemblyman Brian Maher actively promoting the story. Local elected officials blasted the evictions. State elected officials introduced a bill in the New York State Legislature to outlaw the evictions. And Congressman Michael Lawler sent out a mass text attempting to raise money based on the allegations that veterans were being displaced by “unvetted migrants.”<sup>12</sup>

87. But the story was a complete fabrication. The alleged veterans were not veterans at all, but were simply homeless men who had been approached at a separate homeless shelter in

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<sup>8</sup> Orange County Government, Office of County Executive Steven M. Neuhaus, News Release dated May 8, 2023, <https://www.townofwoodbury.com/document-center/supervisor-s-office/town-of-woodbury-coronavirus-updates/2447-oc-executive-neuhaus-orange-county-newburgh-emergency-order-5-8-2023/file.html>.

<sup>9</sup> HUDSONVALLEYTIMES.COM, *Asylum Seekers Arrive in Town of Newburgh*, <https://www.timeshudsonvalley.com/stories/asylum-seekers-arrive-in-town-of-newburgh,80253>.

<sup>10</sup> *Town of Newburgh, New York v. Newburgh EOM LLC et al.*, Orange County Index No. EF003105-2023 dkt. 1.

<sup>11</sup> Bernadette Hogan & Kate Sheehy, NEW YORK POST, *Homeless Vets are Being Booted from NY Hotels to Make Room for Migrants: Advocates*, <https://nypost.com/2023/05/12/homeless-vets-are-being-booted-from-ny-hotels-to-make-room-for-migrants-advocates/>.

<sup>12</sup> Chris McKenna, LOHUD, *Assemblyman Recants Tale that Newburgh Hotel Evicted Homeless Vets to Board Asylum Seekers*, <https://www.lohud.com/story/news/2023/05/18/crossroads-hotel-newburgh-ny-evicted-veterans-for-asylum-seekers-questioned/70230243007/>.

Poughkeepsie, in Dutchess County, and paid \$100 and a bag of toiletries each to pose as veterans displaced by migrants.<sup>13</sup>

88. Despite this stunning admission that local elected officials had touted a completely fabricated story used to inflame passions against migrants, the Town made no statement of contrition or apology. The Town instead continued to press its litigation to attempt to oust the migrants from the Town, an effort that continues to this day.

89. The decision to spend taxpayers' money in an active attempt to displace a mere sixty asylum seekers from the Town is an example of discrimination perpetrated by the Town government.

90. Black and Hispanic voters were also disenfranchised in the Town's decision not to oppose a \$500 million expansion of the Danskammer Power Plant. The Danskammer Power Plant is in the Town of Newburgh. The area around the Plant has a higher proportion of racial minorities than the region as a whole. The Danskammer Plant historically has been one of the state's top polluters. In 2000, the Plant was one of the state's top ten air polluters,<sup>14</sup> in 2005 the plant was ranked one of the state's top releasers of mercury.<sup>15</sup> And in 2009 the plant was ranked the third worst polluter in the entire state.<sup>16</sup>

91. In 2019, the owners of the Danskammer Power Plant filed an application to construct and operate an expanded natural gas fired power plant on the site. The proposal would

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<sup>13</sup> Corey Kilgannon, THE NEW YORK TIMES, *Ugly Tale of Migrants Displacing Veterans Makes Waves and Then Dissolves*, <https://www.nytimes.com/2023/05/20/nyregion/migrants-veterans-ny.html>.

<sup>14</sup> Wayne A. Hall, TIMES HERALD-RECORD, *Newburgh Plant One of N.Y.'s Top 10 Polluters*, <https://www.recordonline.com/story/news/2002/07/11/newburgh-plant-one-n-y/51179462007/>.

<sup>15</sup> John Ferro, POUGHKEEPSIE JOURNAL, *Danskammer: An Old Plant Breeds New Controversies*, <https://www.poughkeepsiejournal.com/story/tech/science/environment/2014/11/22/danskammer-riverkeeper-hudon-environment/19419773/>.

<sup>16</sup> Bosch, *supra* note 1, <https://www.recordonline.com/story/business/2011/01/05/danskammer-plant-in-town-newburgh/51324876007/>.

have increased the emissions of harmful chemicals by over twenty-five times.<sup>17</sup> Black and Hispanic groups quickly opposed the expansion, arguing that increased emissions would adversely impact disproportionately minority communities around the plant.<sup>18</sup> Historically, Black and Hispanic populations on a national level suffer higher rates of asthma and other respiratory diseases due to higher levels of exposure to environmental pollutants.<sup>19</sup> In the region, Newburgh City residents already currently visit the emergency room at higher rates for asthma than the statewide average.<sup>20</sup>

92. However, despite this opposition from Black and Hispanic representatives, the Town openly supported the expansion of the Danskammer Power Plant. In June 2019, Newburgh Town Supervisor Gil Piaquadio authored an opinion piece in the Times Herald-Record supporting the expansion of the plant.<sup>21</sup> The piece has only one line concerning emissions concerns and says nothing about the Black or Hispanic communities either in the Town or the surrounding communities, demonstrating an indifference to the groups that would bear the environmental and health costs from the expansion of the power plant.

93. Meanwhile, over twenty communities in the area around the plant opposed its expansion including the Cities of Newburgh and Poughkeepsie.<sup>22</sup>

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<sup>17</sup> SCENICHUDSON.ORG, *What's Wrong with Danskammer in 9 Simple Words*, <https://www.scenichudson.org/news/whats-wrong-with-danskammer-in-9-simple-words/>.

<sup>18</sup> Dilawar, *supra* note 3, <https://www.scenichudson.org/viewfinder/danskammer-threatens-valleys-health-and-environmental-justice/>.

<sup>19</sup> Lara Morales, THE NEW PALTZ VOICE, *Hudson Valley Pushing Back Against a New Power Plants*, <https://www.newpaltzvoice.com/blog/laras-capstone>.

<sup>20</sup> SCENICHUDSON.ORG, *supra* note 17, <https://www.scenichudson.org/news/whats-wrong-with-danskammer-in-9-simple-words/>.

<sup>21</sup> Gil Piaquadio, TIMES HERALD-RECORD, *My View: Danskammer Repowering the Clear Option to Meet Energy Needs*, <https://web.archive.org/web/20201023092617/https://www.recordonline.com/opinion/20190616/my-view-danskammer-repowering-clear-option-to-meet-energy-needs>.

<sup>22</sup> MID HUDSON NEWS, *Communities Oppose Danskammer Fracked Gas Plant*, <https://midhudsonnews.com/2020/06/29/communities-oppose-danskammer-fracked-gas-plant/>.

94. The New York State Department of Environmental Conservation ultimately rejected the power plant expansion because of, among other things, the high emissions that would result from the plant.<sup>23</sup>

95. In sum, the Town's decision to publicly support expansion of the power plant even though expansion would disproportionately impact communities of color is an example of the Town's failure to address the needs of its minority residents.

***b. The extent to which members of the protected class have been elected to office in the political subdivision.***

96. No Black or Hispanic person has ever been elected to Town office.

97. The absence of Black or Hispanic candidates seeking election to Town office is further evidence of vote dilution. *See Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1209 n.9 (5th Cir. 1989) ("While the district court seems to reject the argument that black candidates 'don't run because they can't win' as a basis for considering evidence drawn from nonaldermanic elections, it is precisely this concern that underpins the refusal of this court and of the Supreme Court to preclude vote dilution claims where few or no black candidates have sought offices in the challenged electoral system. To hold otherwise would allow voting rights cases to be defeated at the outset by the very barriers to political participation that Congress has sought to remove"). "The Court will begin its totality of the circumstances consideration with the two Senate factors identified by the Supreme Court as most important: (1) the "extent to which minority group members have been elected to public office in the jurisdiction" and (2) the "extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 48 n. 15, 106 S.Ct. 2752 (citing Senate Report at 28–29, U.S.C.C.A.N.1982, p. 206). If those factors

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<sup>23</sup> Chris McKenna, RECORDONLINE.ORG, *DEC Rejects Key Permit for Proposed Danskammer Power Plant in Newburgh*, <https://www.recordonline.com/story/news/local/2021/10/27/dec-rejects-crucial-permit-new-danskammer-power-plant-newburgh/8566737002/>.

are present, the other factors “are supportive of, but not essential to, a minority voter's claim.”

*United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 277 (D.S.C. 2003), *aff'd sub nom. United States v. Charleston Cnty., S.C.*, 365 F.3d 341 (4th Cir. 2004)

*c. The use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme.*

98. The at-large method of election utilized by the Town ensures that the votes of the Black and Hispanic communities are diluted by those of the white majority.

99. This system prevents members of the Black and Hispanic communities in areas where they are more heavily concentrated from pooling their voting power to elect a candidate.

*d. Denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election.*

100. Republican and Democratic candidates for the Town Board are nominated by, respectively, the Newburgh Republican Committee and the Newburgh Democratic Committee.

101. Typically, the party approaches potential candidates for office or interested residents approach a member of a local party.

102. Black and Hispanic residents, many of whom are relative newcomers to the Town, do not have the institutional and political ties which many of the white residents enjoy, especially in the Newburgh Republican Committee.

103. Without those connections, potential Black and Hispanic candidates for public office are not even considered by the local parties for nomination.

104. The sentiment that it is not possible for a Black or Hispanic candidate even to be nominated for public office in the Town suppresses participation in government at the Town level, further decreasing the likelihood that Black or Hispanic residents will be considered for nomination in the future.

*e. The extent to which members of the protected class contribute to political campaigns at lower rates.*

105. The substantial barriers already identified prevent Black and Hispanic residents from fully participating in the Town's political process.

106. Upon information and belief, Black and Hispanic residents contribute to Town political campaigns at lower rates than their White counterparts.

*f. The extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate.*

107. Upon information and belief, due to the substantial barriers already identified and the sense of futility caused by the at-large system, the Town's Black and Hispanic population votes at a substantially lower rate than the white population.

*g. The extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection.*

108. Across a wide array of socioeconomic factors, the Town's Black and Hispanic residents are worse-off than their white counterparts.

109. Upon information and belief, Black and Hispanic residents are more likely to work in the service industry or in other blue-collar occupations than white residents of the Town.

110. Black and Hispanic residents of Newburgh have lower educational outcomes than their white counterparts.<sup>24</sup>

111. Similarly, Hispanic residents are more likely to have received food stamps than their white counterparts.<sup>25</sup>

112. Black and Hispanic residents were particularly disadvantaged by the Town Board's

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<sup>24</sup> ACS Educational Attainment, UNITED STATES CENSUS BUREAU (2021).

<sup>25</sup> ACS Receipt of Food Stamps/SNAP in the Past 12 Months by Race of Household, UNITED STATES CENSUS BUREAU.

support of expanding the Danskammer Power Plant, despite concerns raised by the Black and Hispanic communities that this would have a deleterious environmental impact particularly on minority groups which are highly concentrated near the plant.

*h. The extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process.*

113. Black and Hispanic residents are disadvantaged compared to white residents in areas affecting their ability to participate in the elective franchise.

114. Because of their disadvantaged economic status, Black and Hispanic residents are often not able to take time off work to vote.

115. In addition, information concerning political and other events in the Town is disseminated primarily through the Town's website, with which many Hispanic residents are unfamiliar.

116. Notices posted on the Town's website or sent via email are exclusively in English, and not in Spanish.

117. Upon information and belief, there are no Spanish speaking Town employees who work in Town Hall even though 25 percent of the Town's population is Hispanic.

118. For all of these reasons, Black and Hispanic voters, on average, receive less information concerning the issues at stake in Town elections and the candidates on the ballot than white voters.

*i. The use of overt or subtle racial appeals in political campaigns.*

119. Racial appeals are extremely common in the region's political campaigns.

120. As discussed, in response to the ultimately false reports that homeless veterans had been displaced by migrants in the Town of Newburgh, Congressman Michael Lawler sent

fundraising appeals attempting to exploit the incorrect claims.<sup>26</sup>

121. Similarly, as recently as March 2024, in the nearby Village of Montgomery, the village board declared itself an “un-sanctuary community” with regards to migrants.<sup>27</sup> The village board took this action mere days before the village elections, at the behest of a board member who was also a candidate for mayor. The candidate said the resolution was necessary so residents would not “wake up in the morning and find out that our senior center or our teen center or our elementary school is filled with migrants.”

*j. A significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class.*

122. The Town Board has shown little regard for the particularized concerns of the Black or Hispanic communities.

123. Upon information and belief, the Town routinely ignores concerns raised by Hispanic residents that the Town does not employ enough Spanish-speaking employees.

124. Upon information and belief, the Town has no Spanish speaking staff working in Town Hall even though 25 percent of the Town’s population is Hispanic.

125. Upon information and belief, Black and Hispanic residents make up a smaller portion of the Town’s boards and committees than their share of the Town population.

126. As discussed, Black and Hispanic groups openly opposed the Danskammer Power Plant expansion in part because of the expansion’s disproportionate impact on their communities, but despite this Town Board supported the expansion.

127. Similarly, as discussed, the Town has incurred substantial litigation expenses

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<sup>26</sup> McKenna, *supra* note 12, <https://www.lohud.com/story/news/2023/05/18/crossroads-hotel-newburgh-ny-evicted-veterans-for-asylum-seekers-questioned/70230243007/>.

<sup>27</sup> Blaise Gomez, NEWS12, *Montgomery Mayoral Candidates at Odds Over ‘Un-sanctuary’ Resolution*, <https://westchester.news12.com/montgomery-mayoral-candidates-at-odds-over-un-sanctuary-resolution>.



attempting to block the housing of migrants in the Town.

*k. Whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy.*

128. NYVRA requires that any burden on the right to vote be “narrowly tailored” and supported by a “compelling policy justification that must be supported by substantial evidence.” Election Law §17-202.

129. Upon information and belief, there is no compelling policy justification for maintaining the Town’s current at-large method of election.

130. Instead, it appears that the Town Board and its supporters cling to the current system because it preserves their stranglehold over Town government.

### **C. Remedies.**

131. NYVRA requires that where the court finds that a political subdivision has engaged in vote dilution under the NYVRA, the court “shall implement appropriate remedies to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process.” Election Law § 17-206(5)(a).

132. Those remedies may include, but are not limited to: “(i) a district-based method of election; (ii) an alternative method of election . . .” Election Law § 17-206(5)(a).

133. Here, a district-based method of election or alternative method of election would best serve to correct the ongoing vote dilution in the Town.

134. A single-member districting plan would curtail the ongoing disenfranchisement of Black and Hispanic voters. It is possible to draw a map that adheres to traditional districting principles and includes a compact, single-member district (or districts). That district (or districts) would provide the Town’s Black and Hispanic voters the opportunity to elect a candidate of their

choice or influence the outcome of elections.

135. Cumulative or ranked choice voting would also remedy the violation and allow the members of the Black and Hispanic populations to elect a candidate of their choice.

**D. The urgency of these proceedings and the need for expedited judicial review.**

136. NYVRA specifically provides for expedited judicial proceedings: “Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials, actions brought pursuant to this title shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference.” Election Law § 17-216.

137. The plaintiffs’ claim of vote dilution, which is brought subject to Election Law § 17-206(2), is accordingly entitled to expedited pretrial and trial proceedings as well as an automatic calendar preference.

138. Without expedited review, the plaintiffs, together with all Black and Hispanic voters in the Town, face the threat of irreparable harm.

139. The next scheduled election in the Town will take place in November 2025.

140. Under the existing system, the nomination process for candidates for Town office in November 2025 will begin in or around February 2025.

141. If the plaintiffs prevail in this action, the Court may order the Town to implement a districting plan.

142. Any districting plan would need to be implemented before the nomination process begins.

143. This action, including any appeals, must be decided with sufficient time to allow any court-ordered remedies to be implemented before February 2025.

144. If this action is not given expedited review, the 2025 election will continue to be tainted by the same NYVRA violations that are the subject of this action.

**AS AND FOR PLAINTIFFS' FIRST CAUSE OF ACTION**

**Vote dilution in violation Election Law § 17-206(2) by reason of racially polarized voting**

145. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth here.

146. Election Law § 17-206(2)(a) prohibits every political subdivision from using any method of election that has the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections as a result of vote dilution.

147. Election Law § 17-206(2)(b)(i)(A) provides that a violation of Election Law § 17-206(2)(a) by a political subdivision which utilizes an at-large method of election is established by evidence demonstrating that “voting patterns of members of the protected class within the political subdivision are racially polarized.”

148. The Town utilizes an at-large method of electing members of the Town Board.

149. Black and Hispanic voters residing within the Town, including Plaintiffs, are members of a protected class within the meaning of Election Law § 17-206(2)(a).

150. Election Law § 17-207(8) states: “Coalition claims permitted. Members of different protected classes may file an action jointly pursuant to this title in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.”

151. The facts as set forth in this complaint establish the existence of racially polarized voting in that Black and Hispanic voters consistently support certain candidates different from the candidates supported by non-Hispanic white voters. Thus, Black and Hispanic voting preferences are polarized against the rest of the electorate.

152. Candidates or electoral choices preferred by members of the Black and Hispanic communities in the Town would usually be defeated as a result of racially polarized voting in the Town.

153. Pursuant to Election Law § 17-206(2)(b)(i), the Town's at-large method of electing Town Board members, combined with the presence of racially polarized voting in the Town, establishes vote dilution that is prohibited by NYVRA.

154. Plaintiffs are entitled to the relief provided for in Election Law §§ 17-206(5) and 17-218 for the Town's violation of NYVRA.

155. There are alternative methods of election which would enfranchise the Black and Hispanic communities in the Town.

**AS AND FOR PLAINTIFFS' SECOND CAUSE OF ACTION**  
**Vote dilution in violation of Election Law § 17-206(2)**  
**under the totality of the circumstances**

156. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth here.

157. Election Law § 17-206(2)(b)(i)(B) provides that a violation of Election Law § 17-206(2)(a) by a political subdivision which utilizes an at-large method of election is established by evidence that "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." Election Law § 17-206(2)(b)(i)(B).

158. The Town utilizes an at-large method of electing members of the Town Board.

159. The facts as set forth in this complaint establish that the Town's at-large system of election for members of the Town Board violates NYVRA because, under the totality of the circumstances, that system impairs the ability of Black and Hispanic voters residing within the

Town to elect candidates of their choice or influence the outcome of elections.

160. Plaintiffs are entitled to the relief provided for in Election Law §§ 17-206(5) and 17-218 for the Town's violation of NYVRA.

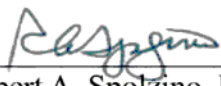
**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request judgment:

- (a) declaring that the use of an at-large system to elect members of the Newburgh Town Board violates Election Law § 17-206;
- (b) ordering the implementation for the 2025 Town election of a new method of election for the Newburgh Town Board as authorized by Election Law § 17-206(5)(a) that includes either a districting plan or an alternative method of election for the 2025 Town election that remedies the Town's violation of NYVRA;
- (c) awarding Plaintiffs' the reasonable attorneys' fees and litigation expenses incurred in asserting the claims in this complaint, including, but not limited to, expert witness fees and expenses pursuant to Election Law § 17-218;
- (d) retaining jurisdiction to render any and all further orders that this Court may deem appropriate; and
- (e) granting such other and further relief that the Court deems just and appropriate.

**ABRAMS FENSTERMAN, LLP**  
*Attorneys for Plaintiffs*

By: \_\_\_\_\_

  
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81 Main Street, Suite 400  
White Plains, NY 10601  
(914) 607-7010

Dated: White Plains, New York  
March 26, 2024

## VERIFICATION

State of New York     )  
                              ) cc.:  
County of Orange     )

ORAL CLARKE, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 22<sup>nd</sup> day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



ORAL CLARKE

## VERIFICATION

State of New York     )  
                                  ) cc.:  
County of Orange     )

ROMANCE REED, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 24 day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

 3/24/24  
ROMANCE REED





## VERIFICATION

State of New York     )  
                                  ) cc.:  
County of Orange     )

PETER RAMÓN, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 26 day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

  
\_\_\_\_\_  
PETER RAMÓN

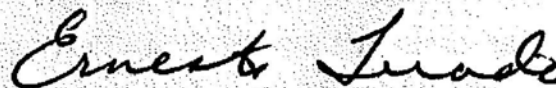
## VERIFICATION

State of New York     )  
                              ) cc.:  
County of Orange     )

ERNEST TIRADO, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 23 day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



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ERNEST TIRADO



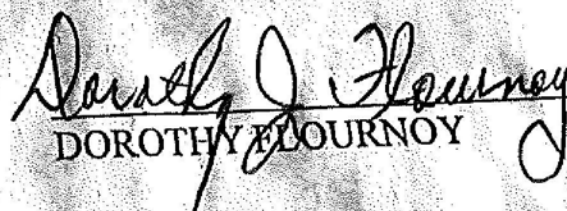
## VERIFICATION

State of New York     )  
                              ) co.;  
County of Orange     )

DOROTHY FLOURNOY, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 26 day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

  
DOROTHY FLOURNOY

