

**STATE OF NEW MEXICO
COUNTY OF RIO ARRIBA
FIRST JUDICIAL DISTRICT**

**MICHELLE SANDOVAL, SAMUEL
HERRERA, ARTHUR MARTINEZ, MIGUEL
MEDINA, JESSICA MARQUEZ, PATSY
SALCIDO, DONNIE GARDUNO, JUAN
RODRIGUEZ, APRIL MARTINEZ,
CANDALARIA CHACON, MARIA
TRUJILLO, JESUS FRANCO, JEREMY
LOPEZ, MARIA LOUISA AGUILAR, LEODIS
HARRIS, and MATT RATTIBOY,**

Plaintiffs,

D-117-CV-2024-00082

FILED 1st JUDICIAL DISTRICT COURT Rio Arriba

v. No. _____ Case assigned to Lidyard, Jason

Judge: _____

**JOHN BOSLEY; BOSLEY MANAGEMENT, INC.;;
SANTA CLARA APARMENTS, a limited
Partnership; BOSLEY MANAGEMENT OF
ARIZONA, INC.; WHG PARTNERSHIP; JUDY
BUSTAMANTE; and THE CITY OF ESPANOLA,**

Defendants.

COMPLAINT AND DEMAND FOR SIX PERSON JURY TRIAL

I. Introduction.

1. This suit arises from the unlawful acts and omissions of the Defendants that resulted in Plaintiffs' tragic eviction from their homes through no fault of their own and the loss of valuable personal property. Plaintiffs are former residents and lessees of the Santa Clara Apartments who were thrown out of their homes shortly before Thanksgiving, 2022, by Defendant City of Espanola ("City"). The forced eviction occurred because Defendant City had condemned the apartment complex on the grounds that it was not fit for human habitation. The apartment complex was owned and operated by various entities and individuals from Wyoming, including

Bosley, who were doing business in New Mexico as Bosley Management Inc., and/or Bosley Management of Arizona, Inc., and/or WHG Partnership (“ the Bosley Defendants”). The apartment complex was managed locally by Defendant Judy Bustamante.

2. Plaintiffs are citizens of extremely limited economic means. Each Plaintiff had a lease with the Bosely Defendants at the time they were forced from their homes. Rental payments for these apartments were funded in whole or in large part by a United States Department of Agriculture “USDA”) program for rural multi-family housing. The Santa Clara Apartments and another federally subsidized apartment complex owned by the Bosley Defendants were the only USDA multi-family housing in the Espanola, New Mexico area.

3. The condemnation of the apartment building resulted from years of mismanagement and gross neglect by the Bosley Defendants, acquiescence in that mismanagement by Defendant City of Espanola, and the failure of Defendant City to exercise its authority to require the Bosley Defendants to correct this mismanagement and neglect. The Bosley Defendants had received numerous correspondence and complaints from the USDA, the State of New Mexico and the City of Espanola informing them that the conditions in the apartment building were substandard and presented a danger to the tenants, including Plaintiffs, and needed to be fixed. The physical structure of the apartment building was sound.

4. The numerous defects and problems that were brought to the attention of the Bosley Defendants were capable of being repaired. However, the Bosley Defendants, happy to collect millions of dollars in rent from Plaintiffs, other tenants and from the USDA, chose not to spend the money to make their building safe and secure for Plaintiffs and failed to take adequate steps to repair and maintain the building. As described below, the Bosley Defendants acted negligently, grossly negligently and with reckless disregard for the well-being and safety of the Plaintiffs.

5. Sections 3-46-43, *et seq.*, NMSA(1978) set out mandatory requirements that must be

followed by a municipality before a building may be condemned and its residents forced to leave their homes. Plaintiffs had a property interest in having those procedures followed. However, as set out below, Defendant City failed to follow the requisite procedures and violated the due process rights of each Plaintiff guaranteed by the Constitution of the State of New Mexico.

6. Moreover, Defendant City failed to provide Plaintiffs with a reasonable time in which to locate new housing, used a police presence on the day of the eviction to threaten and intimidate Plaintiffs and their family members, and failed to take adequate steps to protect and preserve Plaintiffs' personal property after their eviction. As set forth below, the Defendant City acted intentionally and/or in a grossly negligent manner and /or with deliberate indifference toward the rights of Plaintiffs and in an objectively unreasonable manner.

7. As a direct result of the acts and omissions of the Defendants, Plaintiffs suffered and continue to suffer severe damage. The damages include, but are not limited to, the loss of their homes, the inability to find an adequate, or in some cases, any place for them and their families to live, the loss of personal property, humiliation, and severe emotional distress.

II. Parties and Jurisdiction.

8. Plaintiff Michelle Sandoval lived at the Santa Clara Apartments for seven years and was a lawful resident there on November 22, 2022. Ms. Sandoval suffers from Type 1 diabetes and is on Social Security disability.

9. Plaintiff Samuel Herrera lived at the Santa Clara Apartments for 20 years and was a lawful resident there on November 22, 2022.

10. Plaintiff Arthur Martinez lived at the Santa Clara Apartments for 27 years and was a lawful resident there on November 22, 2022. Mr. Martinez has been disabled since 1991 and receives Social Security disability.

11. Plaintiff Miguel Medina lived at the Santa Clara Apartments for four years and was a

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lawful resident there on November 22, 2022.

12. Plaintiff Jessica Marquez lived at the Santa Clara Apartments for three and a half years and was a lawful resident there on November 22, 2022.

13. Plaintiff Patsy Salcido lived at the Santa Clara Apartments for over six years and was a lawful resident there on November 22, 2022.

14. Plaintiff Donnie Garduno lived at the Santa Clara Apartments for about six years and was a lawful resident there on November 22, 2022. Mr. Garduno suffers from diabetes and had partial amputation of his feet shortly before he was forced to leave his home.

15. Plaintiff Juan Rodriguez lived at the Santa Clara Apartments for over five years and was a lawful resident there on November 22, 2022.

16. Plaintiff April Martinez lived at the Santa Clara Apartments for four years and was a lawful resident there on November 22, 2022.

17. Plaintiff Candalaria Chacon lived at the Santa Clara Apartments for over one year and was a lawful resident there on November 22, 2022.

18. Plaintiff Maria Trujillo lived at the Santa Clara Apartments for three years and was a lawful resident there on November 22, 2022.

19. Plaintiff Jesus Franco lived at the Santa Clara Apartments for 10 years and was a lawful resident there on November 22, 2022.

20. Plaintiff Jeremy Lopez lived at the Santa Clara Apartments for two years and was lawful resident there on November 22, 2022.

21. Plaintiff Maria Louisa Aguilar lived at the Santa Clara Apartments for five years and as a lawful resident there on November 22, 2022.

22. Plaintiff Leodis Harris lived at the Santa Clara Apartments for about four years and

was a lawful resident there on November 22, 2022.

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23. Plaintiff Matt Rattiboy lived at the Santa Clara Apartments for three months and was a lawful resident there on November 22, 2022.

24. Defendants Bosley Management, Inc. and Bosley Management of Arizona, Inc. are family-owned corporations run by Defendant John Bosley and other members of his family. These entities are incorporated in the State of Wyoming. Defendant Santa Clara Apartments is a limited partnership registered in New Mexico with its principal place of business in Espanola, New Mexico. WHG Partnerships is a general partnership based in Wyoming. These entities are run by

and/or for Defendant Bosley and his family. All of these Defendants were doing business in Rio Arriba County, New Mexico for decades and were doing so at all times material hereto. 25.

Defendant WHG Management became the general partner of Defendant Santa Clara Apartments, a partnership. Defendant WHG appears to have acquired “all rights and interest” owned by A&M Partnership in the Santa Clara Apartments in 1995. Defendant John Bosley served as the representative for these entities and dealt directly with Defendant City and the USDA. Defendant Bosley was the managing agent for the Santa Clara Apartments. At all times material hereto, these defendants, along with Bosley Management, Inc. and Bosley Management of Arizona, Inc., owned and operated the Santa Clara Apartment building in Espanola, New Mexico. At all times material hereto, Defendant Judy Bustamante was employed by the Bosley Defendants as the on-site manager of the Santa Clara Apartments in Espanola, New Mexico who was responsible, along with Defendant Bosley for ensuring that the Apartments were maintained in a safe and secure manner. The Defendants in this and the previous paragraph are collectively referred to as “the Bosley Defendants.”

26. Defendant City of Espanola is a municipality located in Rio Arriba County, New

Mexico. It is a “public body” as defined in the New Mexico Civil Rights Act, §41-4A-2 NMSA 109.

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27. The claims against Defendant City of Espanola are claims for money damages as allowed by the New Mexico Civil Rights Act, §§41-4(A)(3), NMSA (2021). Under the Act, Defendant City of Espanola is liable for the acts and omissions of its City Manager Jordan Yutzy, its mayor John Ramon Vigil, its police department and other City officials alleged herein. Notice of the claims involving acts or omission by Defendant’s police department was provided to Defendant on October 11, 2023, less than a year after the incidents that give rise to Plaintiff’s claims.

28. This Court has jurisdiction over this case and venue is proper in this District pursuant to 1978 NMSA, §§38-3-1 (A) and 38-3-2.

III. Facts Regarding the Failure of the Bosley Defendants to Provide a Safe and Habitable Living Situation for Plaintiffs.

29. On or about October 4, 1985, Bosley Defendants obtained a warranty deed from Rim Construction for the Santa Clara Apartments building in Espanola, New Mexico. The deed was issued to Defendant Santa Clara Apartments, a limited Partnership in Sheridan, Wyoming. This entity was also a New Mexico limited partnership. The property was purchased with a loan for over \$1,600,000 from the USDA to be used solely to provide housing to low-income residents of Espanola.

30. After acquiring the building, Defendants began to rent out apartments to individual tenants. The rent payments to Defendants were subsidized by the USDA. Under federal law, Defendants were required, *inter alia*, to:

Provide decent, safe, and sanitary housing; maintain the security of the property . . . maintain housing projects in compliance with local, state and federal laws and regulations and according to the following Agency requirements for affordable, decent, safe, and sanitary housing . . . Recreation areas must be maintained in a safe and clean manner . . .

The housing project must have fence lines that are free of trash, weeds, vines, and other vegetation . . . The housing project, including common areas, must be free of trash, litter, and debris . . . The housing project must have screens that are free of tears, breaks and rips and windows that are unbroken . . . exterior of windows and doors must be continuous and free of cracks

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. . . Doors must be weather tight, free of holes, and provide security with functional locks . . . the carpet must be clean, without excessive wear, and seams that are secure and stretched properly . . . The housing project must have walls, floors, and ceilings that are free of holes, evidence of current water leaks . . . The housing project must have doors that are free of holes, secure, unbroken and easily operable hardware, deadbolt locks which are in place and secure . . . The housing project must have heating and cooling units that are free of bare wires and which are functioning properly, including thermostats . . . The housing project must not have uncovered outlets or other evident safety hazards, switches which work improperly, or light fixtures which are broken and inoperable . . . The housing project must have smoke alarms which are properly located according to local code and which operate properly.

7 CFR 3560, 3560.103, *et seq.*

31. The Bosley Defendants owed Plaintiffs a duty to exercise reasonable care to maintain the common areas of the Santa Clara Apartments, including a duty to provide reasonable security in those areas for tenants.

32. Pursuant to §47-8-20 NMSA 1978, the Bosley Defendants also owed Plaintiffs a duty to make repairs and do whatever is necessary to maintain the premises in a safe condition as provided by applicable law and rules and regulations; keep common areas of the premises in a safe condition; maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, supplied or required to be supplied; and to provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle.

33. Bosley Defendants hired an on-site manager and a security guard for the premises. However, over the ensuing years, the Bosely Defendants failed to exercise reasonable care to properly maintain the Santa Clara Apartment building, including a failure to reasonably maintain the common areas of the building. Additionally, the Bosley Defendants failed to hire persons

competent to serve as security guards in a low-income housing complex and failed to provide reasonable security for its residents, including Plaintiffs.

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34. The failure to exercise reasonable care to maintain the common areas of the apartment building grew increasingly worse by 2020. Numerous persons who were not tenants or guests of tenants were sleeping, defecating and urinating in common areas; graffiti were written on hallway walls; cigarette butts were all over the floors in the common area; widespread drug dealing and drug use by non-tenants were occurring in the common areas; criminal acts were taking place in the common areas and the tenants, including Plaintiffs, faced danger from this. Bosley Defendants failed to hire reasonably competent security guards and, in fact, some of those hired contributed to the above-described problems. These Defendants failed to provide the tenants, including Plaintiffs, with reasonable security. The ongoing unlawful conduct at the Santa Clara Apartments was known to and acquiesced in by the local manager(s), including Defendant Bustamante and Defendant Bosley, and the other Bosley Defendants were aware of it.

35. On or about June 2, 2021, the USDA notified Bosley Defendants, through notification sent to Defendant John Bosley, that Defendants were failing to meet the obligations required of them by federal law. Among numerous violations, the USDA found the following: fire extinguishers were missing, exterior doors were unable to close or lock, interior doors did not have proper locking mechanisms, weeds covered the property, and the common area carpet and vinyl were in grossly inadequate condition.

36. After receiving the June 2, 2021 USDA notification, Bosley Defendants failed to take adequate action to remedy the violations set forth in that notification. Additionally, Defendants failed to address the problems described in paragraph 34 above, which continued to worsen.

37. On January 28, 2022, the New Mexico State Fire Marshall and the Defendant City of Espanola Fire Marshall Pablo Montoya conducted an inspection of the Santa Clara Apartments.

The results of inspection were documented in a February 7, 2022 report issued by the New Mexico Department of Homeland Security, Office of the New Mexico Fire Marshall. Numerous violations

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of state and/or City fire codes were found, including violations cited by the USDA in June 2021 which had gone uncorrected. Additionally, the report found the presence of hazardous materials in the common areas and the presence of “extremely hazardous” electrical wiring problems. The report noted that the Fire Marshall had been unable to inspect the entire building because “multiple areas of the building could not be entered.” A seven-day action plan to correct the violations was to be submitted by Bosley Defendants to the State Fire Marshall.

38. Around the time the State Fire Marshall’s report was issued, the Defendant City of Espanola Fire Marshall issued his report. That report documented findings similar to those documented by the State Fire Marshall’s Office. It concluded that the Santa Clara Apartments had failed the inspection and stated that all the problems noted in the report “must be addressed and repaired immediately.”

39. Defendant John Bosley was present and was otherwise aware of the findings of the January 2022 inspection by the State and Defendant City Fire Marshalls. Despite the documented reports of the State Fire Marshall and the City Fire Marshall, the Bosley Defendants failed to take reasonable action to make the Santa Clara Apartments safe and secure for the tenants, including Plaintiffs.

40. On August 22, 2022, the State Fire Marshall’s Office inspector, along with the Assistant City of Espanola Fire Marshall and two other Defendant City employees, inspected the Santa Clara Apartments again. They found that the Bosley Defendants had done little to nothing to correct the deficiencies and violations documented in the reports that followed the January 2022 inspection. The fire alarm system was still not functional. The State Fire Marshall

documented and photographed numerous “life safety discrepancies.” These included multiple problems with the fire alarm, electrical burn marks “in and around overloaded power receptacles, burn marks on numerous light fixtures, burnt carpeting throughout common areas, staircases and corridors,

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improper storing of flammable liquids, unapproved locks and latches on resident doors, openings in the ceilings and penetrations through wall and doors.” The State Fire Marshall noted that life safety devices had been tampered with and were not in proper working condition. He concluded “this is a continuous life safety concern putting the residents of Santa Clara apartments at risk.”

41. Most, if not all, of the health and safety concerns documented by the State Fire Marshall in January 2022 and August 2022 had been documented by the USDA on June 2, 2021. 42.

Meanwhile, during 2021 and 2022, the failure to exercise reasonable care to maintain the common areas of the apartment building continued to grow worse. Numerous persons who were not tenants or guests of tenants but were trespassers continued to be able to sleep, defecate and urinate in common areas. Widespread drug dealing and drug use by non-tenants occurred in the common areas. Needles from intravenous drug use were all over the common areas and the playground area located immediately next to the building. Numerous criminal acts by non-tenants took place in the common areas. The Bosley Defendants continued their failure to hire reasonably competent security guards and to provide the tenants, including Plaintiffs, with reasonable security. The unlawful conduct described above was known to and acquiesced in by the local manager(s), including Defendant Bustamante, Defendant Bosley, Defendants’ so-called security guard. In addition, the other Bosley Defendants were well aware of these conditions. In fact, repeated complaints were made to Defendant Manager Bustamante by Plaintiffs Herrera, Salcido and others but nothing was done. Additionally, tenants, including many Plaintiffs, lacked working water heaters and air conditioning because the Bosley Defendants failed to repair them.

43. On or about September 15, 2022, the USDA again notified Defendants Bosley, Santa Clara Apartments, LP, and Bosley Management of AZ, Inc. that numerous health and safety violations were still present at the Santa Clara Apartments, most, if not all of which had been found in the USDA June 2, 2021 report to Defendants and/or in the February 2, 2022 New Mexico State

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Fire Marshall's report. Specifically, Defendants were informed that certain electrical hazards had been reported to the Apartment building staff. Defendants were further informed that the USDA had found the following additional health and safety violations:

- ◆ Drug Paraphernalia in the common areas, hallways, and playground.
- ◆ Human waste in and outside the building.
- ◆ Failure to secure the building.
- ◆ Non-Working Security Camera system
- ◆ Fire System – Violations – Failed Fire Inspection. Including but not limited to:
 - ◆ Unilluminated fire exit paths and exits
 - ◆ Boarded up and blocked fire exits
 - ◆ Inoperable fire alarm system
 - ◆ Burn marks on the flooring from cigarettes and small fires
 - ◆ Individuals living in common areas blocking egress
- ◆ Fences and Retaining Walls - Damaged Dumpster Fence.
- ◆ Debris and Graffiti – Garbage around the dumpster and in and around the apartment building including drug paraphernalia and needles. Graffiti inside and out of the apartment building.
- ◆ Exterior walls and siding – at least one bullet hole in the siding, damaged siding, and poor repairs without being painted
- ◆ Doors – Damaged doors. Exterior doors do not close properly and allow individuals that are not tenants to enter the building. Interior apartment doors are damaged, don't close properly and/or are boarded up from the interior. Some doors have graffiti.
- ◆ Maintenance – overall the maintenance at the property does not meet USDA, Rural Development standards for decent, safe and sanitary housing.
- ◆ Flooring – Flooring in the common areas is damaged and stained.
- ◆ Stairways – Damaged and dirty stairways
- ◆ Walls – Walls are damaged, dirty, and have graffiti on them.
- ◆ Landscaping and Grounds – The area around the apartment complex and playground has garbage, human waste and drug paraphernalia that is hazardous to the occupants of the building.

44. The USDA informed the Bosley Defendants they were in violation of numerous USDA Rural Development regulations and agreements:

7 CFR 3560, 3560.103 Maintaining Housing Projects. (a) Physical Maintenance (1) The purpose of physical maintenance are the following: (i) Provide decent, safe, and sanitary housing an; and (ii) maintain the security of the property. You are not providing decent, safe or sanitary housing or maintaining the loan security. There are currently multiple health and safety issues at the property.

7 CFR 3560, 3560.103 (a)(2) Borrowers are responsible for the long-term, cost-effective preservation of the housing project. The housing is not being preserved.

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7 CFR 3560, 3560.103 (a)(3) At all times, borrower must maintain housing projects in compliance with local, state, decent, safe, and sanitary housing. You have not stayed in compliance with local, state or federal laws or the Agency requirements for decent, safe and sanitary housing.

7 CFR 3560, 3560.103 Housing Maintenance Standards – Maintenance Standards for Rural Development properties are not being met. Loan Agreement Section 6, Regulatory Covenants – “So long as the loan obligations remain unsatisfied, the partnership shall comply with all appropriate FmHA regulations” By not providing decent, safe and sanitary housing, you are not complying with your loan agreement.

Management Certification 3, “We agree to a. comply with the projects mortgage and promissory note, and Loan Agreement/Resolution” b. Comply with Rural Development Handbooks and other policy directives that relate to the Management of the project”. By not providing decent, safe and sanitary housing, you are not meeting the requirements of the Management Certification.

USDA informed the Bosley Defendants: “We are asking that you contact this office within 15 days of the date of this letter to inform us of the corrective actions you have taken, or plan to take, to correct the concerns listed. All health and safety violations and maintenance issues must be corrected. Our office address and telephone number are: 2208 E. Chicago, Suite C, Caldwell, Idaho 83605, 208-779-3437.”

45. The Bosley Defendants failed to make the repairs necessary to remedy the above described violations and the apartment tenants, including Plaintiffs, were forced to continue to live in unsafe conditions and without reasonable security.

IV. Prior to November 8, 2022, Defendant City Failed to Take Reasonable Steps to Protect the Health and Safety of Plaintiffs and Acquiesced in the Unlawful Conduct of the Bosley Defendants.

46. Pursuant to Defendant City of Espanola Ordinance 222-3, Defendant’s City Manager

or his authorized representative was authorized and *directed* to make inspections to determine the condition of dwellings, dwelling units, rooming units, and premises located within the City “in order that he may perform his duty of safeguarding the health, safety, or morals of the occupants of dwellings and of the general public.”

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47. Espanola City Ordinance 254-1, *et seq.*, prohibits the maintenance of a nuisance within the city limits. Section 254-2(D) defines a nuisance to include “Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.” 48. The manner in which the Bosley Defendants maintained the Santa Clara Apartments created a nuisance in violation of Espanola City Ordinance 254-2(D) and Defendant City was aware of this. Under Section 253, it was unlawful for any person to cause, permit or allow a nuisance to exist.

49. Defendant City’s high-ranking officials, including its various mayors, councilors, city managers and city police chiefs, knew for years that the common areas of the Santa Clara Apartments were not being properly maintained, that they were rife with criminal activity by non tenants, and that the failure to adequately maintain the apartment complex created health and safety issues for the tenants, including Plaintiffs. The Bosley Defendants were not providing adequate security for residents at the Santa Clara Apartments and had failed to take reasonable steps to maintain the apartments in a manner which protected the health and safety of its tenants, including Plaintiffs. Defendant City had received information, *inter alia*, from the above-mentioned Fire Marshall reports and from reports from the Espanola Police Department confirming this. Defendant’s police department received numerous calls that “unwanted persons” were on the premises, that guns were being fired, that “suspicious persons” were on the premises,

that drug overdoses were occurring. However, few, if any arrests were made. Although Defendant City was aware that the Bosley Defendants were in violation of City Ordinance 254-1, *et seq.*, since at least 2021, Defendant City refused or otherwise failed to exercise the powers provided to it by law to force the Bosley Defendants to remedy the unsafe and hazardous conditions that were present

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in the common areas of the building.

V. Defendant City's Continued Failure to Act to Protect Plaintiffs, Its Continued Acquiescence in the Unlawful Conduct of the Bosley Defendants, and Its Decision to Evict Plaintiffs From Their Homes.

50. Under City Ordinance 254-4, Defendant City was required to give the Bosley Defendants 10 days written notice which was to contain an order to abate the nuisance or request a hearing within three days. The order was required to state what actions were necessary to abate the nuisance and to further state that if the nuisance was not abated as directed and no request for a hearing was made within the prescribed time, Defendant City would abate the nuisance.

51. Section 254-5 required that in the event the property owner failed to abate the nuisance, the Defendant City must proceed to abate the nuisance and prepare a statement of costs incurred in the abatement to be assessed against the property owner. Under Section 254-6, any and all costs incurred constituted a lien for the Defendant City against the property which was to be filed and accrue interest. The lien was to be collected as provided by law. Alternatively, Section 254-7 allowed the Defendant City to file a civil action against the Bosley Defendants in the Municipal Court to abate the nuisance and in the event the court found there was a nuisance, the Bosley Defendants would have to abate the nuisance and pay all reasonable attorney's fees and costs incurred by the City.

52. City Ordinance 254-1, *et seq.*, was intended to protect the public, including Plaintiffs, from the hazards and dangers of a nuisance by requiring Defendant City to force the persons who

own and maintain the nuisance to abate it by making the necessary repairs. Defendant City chose not to take the steps required by its own ordinances to make the Bosley Defendants abate the nuisance, and thus allowed Plaintiffs to live in a building that was unfit for human habitation.

53. Section 3-46-43(A), NMSA (1978) provided Defendant City with the power to require or cause the repair of dwellings that are found to be unfit for human habitation due to “dilapidation;

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defects increasing the hazards of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities; or other conditions, including those set forth in Subsection C of this section, rendering the dwellings unsafe and unsanitary or dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of the municipality.” “Power is conferred upon the municipality to require or cause the repair, closing or demolition or removal of the dwellings in the manner provided in this section.” “Dwelling” means “a building or structure or part thereof used and occupied for human habitation or intended to be so used and includes any appurtenances usually enjoyed in the dwelling.”

54. §3-46-43(B), NMSA 1978 states that “upon the adoption of an ordinance finding that dwelling conditions of the character described in Section (A) exist, the municipality may adopt ordinances relating to dwellings within the municipality that are unfit for human habitation.” Defendant City adopted an ordinance and, pursuant to §3-46-43(B)(1), appointed City Manager Jordan Yutzy to exercise the powers provided by the ordinance adopted.

55. Defendant City’s Ordinance §222-5(A) adopted the wording of §3-46-43(B)(2), NMSA 1978, and, like the statute, requires that:

Whenever it appears to the public officer, on the officer's own motion, that a dwelling is unfit for human habitation, the officer shall, if the officer's preliminary investigation discloses a basis for the charges, issue and cause to be served on the owner, every mortgagee of record and all parties in interest in the dwelling, including persons in possession, a complaint stating the charges in that respect. The complaint shall contain a notice that a hearing will be held before the public officer or the officer's designated agent at a place fixed in the complaint not less than ten days nor more than thirty days after the

serving of the complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and the time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public office.

Emph. added.

56. On October 19, 2022, Defendant's City Manager Yutzy sent a Complaint and Notice to the Bosley Defendants informing them that the Santa Clara Apartments had been inspected and

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found to be unfit for human habitation. *Inter alia*, the Complaint cited the findings of the January 2022 and August 2022 State Fire Marshall's office referred to above. The Complaint attached the reports of the State Fire Marshall and a letter from the Jemez Mountain Electric Coop regarding electrical issues. It stated that a hearing would be held on November 1, 2022 on the alleged violations at the City Council chambers and informed these Defendants that they had a right to file an Answer to the Complaint and to appear and give testimony. It further stated that at the end of the hearing, the hearing officer would determine whether the Santa Clara Apartments were unfit for human habitation and "upon such a determination, will order the actions to be taken to place the premises in a condition fit for human habitation."

57. Plaintiffs, as tenants of the Santa Clara Apartments, had a property interest in their tenancy and were entitled to due process before being deprived of their "right to continued residence" in their homes. *Connecticut v. Doehr*, 501 U.S. 1, 12 (1991). *See also*, *U.S. v. Petty Motor Co.*, 327 U.S. 372, 379 (1946) (a tenancy or leasehold is a property interest and the holder is entitled to constitutional protection of that property interest). *See also*, §§42-3-1, *et seq.*, and §§47-8-1, *et seq.*, NMSA 1978.

58. Plaintiffs' protected property interest was expressly recognized by the mandatory requirement of both Defendant City Ordinance §222-5(A) and §3-46-43(B)(2) NMSA that, like the owner of the dwelling, the persons in possession of the tenancy (i.e., Plaintiffs) must be provided a copy of the Complaint and the Notice of Hearing and the right to present testimony at

the hearing.

59. Despite the requirements of state law and local ordinance, Defendant City did not cause the Complaint and Notice of Hearing to be served on Plaintiffs.

60. Defendant City did not conduct a hearing on November 1, 2023. Rather, a hearing was held on November 7, 2022. But Plaintiffs were also not provided with a copy of a Complaint or a

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Notice of this hearing, either.

61. Section 3-46-43(B)(3) NMSA, *emph. added*, requires that:

if after the notice and hearing the public officer determines that the dwelling under consideration is unfit for human habitation, the officer *shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner an order in writing that advises the owner of the owner's rights under Subsection E of this section and that:*

- (a) if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for that purpose and *require* the owner, within the time specified in the order, to repair, alter or improve the dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or
- (b) if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for the purpose, and require the owner, within the time specified in the order, to remove or demolish the dwelling;

62. Pursuant to §3-46-43(B)(3) NMSA, Defendant City adopted Ordinance 222-5. This requires that “*if after the notice and hearing, a determination is made of unfitness, written findings must be issued advising the owner of his rights, including the right to repair and improve the dwelling or to demolish it if it cannot be repaired at a reasonable cost in relation to the value of the dwelling (50% of the value).*” Pursuant to Section 222-5(B), *if the owner refuses to act*, the City may cause the dwelling to be vacated or closed.

63. City Manager Yutzy began the November 7, 2022 “hearing” by making it clear that the purpose of the hearing was not to determine whether the evidence supported a finding that the

Santa Clara Apartments were fit for human habitation or to determine what action should be taken to make the premises fit for human habitation, as the October 19, 2022 Complaint sent to the Bosley Defendants stated the purpose would be. Rather, at the outset of the “hearing,” City Manager Yutzy stated its purpose was to confirm the decision already made by Defendant City to condemn the apartments.

64. Representatives of the Defendant City’s Fire Department Police Department and other

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agencies of the Defendant City testified as did several other people, including a school principal. The Fire Department personnel testified about the hazardous conditions that had been noted in their reports and about the Bosley Defendants’ refusal to remedy the problems. All testified regarding the conditions that the Bosley Defendants allowed to exist in the common areas of the Bosley property and the numerous non-tenants who “hung around” the building using and selling drugs and creating a threatening environment in the area. No representative of the Bosley Defendants testified or spoke at the hearing.

65. Lou Baker, Defendant City’s Acting Planning Director and the Community Development Coordinator and Acting Planning Director, stated that the Santa Clara Apartments had a negative impact on the economic development of the City, that they were bad for businesses, that the Defendant City would gain in gross receipts tax income if the Apartment was shut down and Plaintiffs were forced to leave, and that it would continue to cost the City not to do so.

66. On November 8, 2022, Defendant’s City Manager Yutzy wrote the Bosley Defendants, stating that Defendant City had determined that their apartment building was not fit for human habitation. The decision cited the fire code violations, electrical problems, and the testimony regarding the conditions in the common areas of the apartment building and in the areas immediately surrounding the building. No structural defects in the building were discussed at the hearing or cited in the decision. All of this information was known to Defendant City for many years and Defendant City had acquiesced in the deterioration of the apartment complex.

All the areas cited were capable of being repaired and remedied, but the City did not mandate that these repairs be performed by the Bosley Defendants.

VI. Defendant City's Acts of Deceit, Harassment and Intimidation Undertaken in Further Violation of the Eviction of Plaintiffs and The Loss of Plaintiffs' Property Caused by the Acts and Omissions of Defendant City.

67. Although Defendant City determined that the Bosley Defendants had created and were

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maintaining a public nuisance within the meaning of City Ordinance 254-5, the City took no action to abate the nuisance.

68. Section 3-46-43(B)(3) NMSA and City Ordinance 222-5(B)(1) and (2) require that an order should have been issued after the hearing by the City notifying the owner, the Bosley Defendants, that repairs must be made to improve the building unless it cannot be repaired at a reasonable cost. Thus, prior to closing down the apartments and forcing Plaintiffs and other residents of the Santa Clara Apartments to leave their homes, the Bosley Defendants were required to determine whether the property could be repaired and improved at a reasonable cost in relation to the value of the premises. Defendant City's Ordinance 222-5 defined a reasonable cost in relation to the value of the dwelling to be "50% of the value" of the property.

69. However, Defendant City's order to the Bosley Defendants did not require the Bosley Defendants to determine the cost of repairs and to present this information to Defendant. Nor did Defendant City make any such determination of the cost of repair in relation to the value of the property prior to ejecting Plaintiffs from their homes. Rather, Defendant City determined that Plaintiffs and all other occupants had to leave within less than two weeks of the November 8, 2022 letter and that the Espanola Police Department would forcibly remove anyone who had not left by November 21, 2022. A copy of the City's Order to the Bosley Defendants was not served upon Plaintiffs or any other residents.

70. At some point after the hearing, a placard was allegedly posted at the apartment

building. The placard purported to notify Plaintiffs and other tenants that the building had been condemned and that failure to comply with the order to leave by November 22, 2022, “will result in up to 90 days in jail or up to \$500 in fines” for each day they remained at their home after November 22.

71. On November 8, 2022, Defendant City Mayor Vigil, City Manager Yutzy and City

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Police Chief Garcia met with Plaintiffs Herrera, Patsy Salcido, Sandoval, Rodriguez, April Martinez, Aguilar, and Orozco. Plaintiffs complained about the process used to evict them from their homes and the fact that Defendant City was “throwing them out onto the street.” The City falsely told Plaintiffs that the Bosely Defendants had until November 21, 2022 to make needed repairs to the apartments. Plaintiffs were also falsely told that Defendant City would fix up the building in the event the Bosley Defendants did not. Mayor Vigil also told Plaintiffs that Defendant City had a buyer for the building. Plaintiffs were falsely told “not to worry” and that they “would not be put out on the street.” Mayor Vigil falsely told Plaintiffs that they would have at least another 30 days to stay in their homes while seeking other places to live. Likewise, Defendant City Councilor Denise Benevidez also informed Plaintiff Herrera that he and the other tenants would not be forced to leave their homes for at least 30 days.

72. At this meeting, Plaintiffs and other tenants discussed the fact that the problems at the apartments were caused primarily, if not exclusively, by non-residents who were “squatting there.” Defendant City Police Chief Garcia falsely claimed that the City could not do anything to help alleviate this because it was occurring on private property.

73. On or about November 10, 2022, the Bosley Defendants sent a letter to Plaintiffs that they had 11 days to leave their homes and that on November 21, 2022, Defendants would cut off all electric service, gas service and water. Some or all of the Plaintiffs did not receive this letter until November 15, 2022 or later. For most of Plaintiffs, this was the first notice they received

informing them that they must vacate their homes by November 22, 2022.

74. On or about November 17, 2022, Defendant City Manager Yutzy told the Santa Fe New Mexican newspaper that Defendant had nothing to do with the Bosley letter, that Defendant City was not going to immediately board up the Santa Clara Apartment complex or shut off utilities, and that the tenants would not be “kicked out” of their homes by Defendant. Defendant

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City Councilor Denise Benavidez also said that Defendant City planned to give tenants time to find new housing before boarding up the building. These statements were false and misleading.

75. Defendant City’s Section 222-6(C)) states that a “dwelling or dwelling unit condemned as unfit for human habitation, and so designated and placarded by the City Manager or his authorized representative as provided in this chapter, shall be vacated *within a reasonable time* as ordered by the City Manager or his authorized representative.” Emph. added. 76. Defendant City was well aware that Plaintiffs and the other residents of the Santa Clara Apartments had low or no income, included children and disabled persons, and many lacked transportation. Defendants also knew there was virtually no other low-income housing available in the Espanola area and that it would take far more time than 13 or 14 days for Plaintiffs to locate another place to live. Defendant City’s order, issued only days before Thanksgiving and only weeks before the Christmas holidays, did not provide Plaintiffs with “reasonable time” in which to find another place to live.

77. After the November 8, 2022 meeting where Plaintiffs voiced concerns about the conduct of Defendant City, Defendant City decided to implement a show of force in order to coerce, harass and intimidate Plaintiffs and other tenants to leave the Bosley Defendants’ property by 5:00 p.m. on November 22, 2022.

78. Defendant City ordered numerous police officers to go to the Santa Clara Apartments on November 22, 2022 to ensure the eviction of Plaintiffs and other tenants from the Apartments.

Chief of Police Garcia was present to supervise the eviction. At approximately 10:00a.m, on November 22 City Manager Yutzy arrived at the Apartments. Defendant's Acting City Planning Director Baker was also present.

79. At least seven Espanola Police officers came to the Santa Clara Apartments to make certain that Plaintiffs vacated their homes by 5:00pm that day. The officers were armed and their

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sidearms were visible. As described below, the language and tone of voice of several officers made it clear that compliance with their order to leave would be compelled by arrest if necessary.

80. Ms. Baker informed Plaintiffs and other tenants that they would be able to stay there that evening if necessary and possibly until after Thanksgiving, which was only days away. However, around 4:40p.m., Defendant City's Chief of Police Garcia informed his officers that he had instructions from City Manager Yutzy, approved by Mayor Vigil, regarding how the eviction was to be carried to its conclusion. The officers were told to inform the residents that they must vacate their homes by 5:00p.m. and that those who were not gone at that time would be arrested and jailed. Residents were then told by Defendant City law enforcement officers, including the Chief of Police, that after 5:00p.m. the apartments would be boarded up, that entry would be prohibited, and that their personal property would be protected.

81. Plaintiffs and other tenants were in a state of shock and severe distress. For example, Plaintiff Salcido told police that she took care of her son who was diabetic, his toes had been amputated, he was in a wheelchair, he had recently gotten out of the hospital and she had no transportation to move her and her son out of her apartment by 5:00p.m. She was told by a police supervisor that the police had been given orders and that she needed to be out within minutes. Another resident told the police that he had to go to work and would not be able to return until midnight; he asked if he could return for his belongings then. He was told that he needed to leave immediately.

82. Some Defendant City police officers treated Plaintiffs in an extremely disrespectful and hostile manner. For example, a police supervisor instructed the residents that they had five minutes to “get your shit” out of their homes or they would be arrested and taken to jail. The same supervisor told residents to get the “f---” out.

83. Residents were told that vouchers were available to stay the night at a local motel, but

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no transportation was provided for them. Residents who were unable to get all their personal property out for transport elsewhere were told conflicting stories about what they could do. City officials told some residents that the City would secure the building so that no one would be able to get inside and that they could return on November 23 to get their personal property. Other residents were told they must get everything out that afternoon.

84. Rather than risk arrest and incarceration, Plaintiffs left their homes and their personal property as required by the order of Defendant City. Many residents, such as Plaintiff Marquez, had no vehicle and were forced to walk in the cold from the Santa Clara Apartments.

85. In fact, the City did not secure the apartment building and many of Plaintiffs’ valuable personal property that they were forced to leave in their apartments was stolen and/or destroyed after November 22, 2023. This included, but is not limited to, furniture, family heirlooms, jewelry, computers, printers, stereo equipment.

VII. The Events Following the Forced Eviction of Plaintiffs from Their Homes. 86. After Defendant City carried out the eviction of Plaintiffs on November 22, 2022, the Bosley Defendants and Defendant City began to strategize about the potential gain each might achieve from the eviction of the Plaintiffs and other tenants from the apartment complex. Defendant City imposed no duty on the Bosley Defendants to try make reasonable efforts to repair, or to even ascertain the potential costs of repair.

87. The Bosley Defendants were seeking to sell this property along with the second low income, USDA funded apartment complex, they owned in Espanola, to get out from under the \$1,200,000 they still owed USDA from the original loan of over \$1,600,000, and to get out from under money they owed Defendant City for fines and/or liens for unpaid fines. Defendant City, inter alia, was seeking to have replace low-income housing with middle or market rate housing and increase its tax base.

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88. The Bosley Defendants unsuccessfully tried to sell both the Santa Clara Apartments and the Rio Vista Apartments. Had they succeeded in doing so, there would have been no low income housing in Defendant City. By mid-May 2023, the Bosley Defendants finalized a deal with Leroy Priester Jr., the managing member for Sueno Real Casitas, an entity involved in the sale of market value properties and notified the USDA that the Bosley Defendants were to receive \$350,000 for the Santa Clara Apartment property.

89. On June 13, 2023, the Bosley Defendants notified USDA that Defendant City had agreed to allow the Bosley Defendants to escape liability for the \$160,000 those defendants owed Defendant City. Shortly thereafter, the Bosley Defendants got the USDA to accept \$90,000 in full payment for the over \$1,200,000 they owed the USDA on their loan.

90. Subsequently, documents produced by the USDA appear to show that the Bosley Defendants sold the Santa Clara Apartments to an entity calling itself “Dakovian Management, LLC, a South Carolina limited liability corporation.” The details of this transaction are not yet known to Plaintiffs.

91. Based on documents produced by the USDA, Plaintiffs allege that over the course of over twenty-five years, the Bosley Defendants collected over \$2,000,000 in rent payments while putting little of that back into the maintenance of the apartment complex.

VIII. Damages.

92. Since being removed from their homes by Defendant City, Plaintiffs have struggled to find adequate and affordable housing. Plaintiffs were given vouchers to temporarily stay in motels in Espanola which lasted from late November 2022 through February 2023 when they were told they had to leave the motels in which they had been housed. Plaintiffs had no kitchens in the motel rooms in which they were placed and had to expend substantial sums of their own money to either go out to eat or bring-take out to their rooms. In addition, as a result of not being able to cook their

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own meals, Plaintiffs Arthur Martinez, Michelle Sandoval and other Plaintiffs were unable to eat properly and suffered from a less nutritious diet.

93. Those Plaintiffs who have found long-term housing since their eviction have had to pay significantly more in rent than they had to pay at the Santa Clara Apartments where the USDA was providing subsidies on their behalf to the Bosley Defendants. For example, Michelle Sandoval paid \$187 per month to live in the Santa Clara Apartments and now pays \$850 per month to live in a comparable apartment; April Martinez paid zero rent at the Apartments and now pays \$920 per month; Louisa Aguilar paid \$11/month at the Apartments and now pays \$975 per month; Jessica Marquez paid \$28/month at the Apartments and now pays \$1,050 per month; Maria Trujillo paid \$161/month at the Apartments and now pays \$650 per month; and Leodis Harris paid \$140/month at the Apartments and now pays \$900 per month.

94. Other Plaintiffs, including Juan Rodriguez, Sam Herrera, and Miguel Medina, could not find housing and had to live outside in bitter cold weather for lengthy periods after their eviction.

95. Many Plaintiffs were not able to recover all or part of the housing deposit they had paid to the Bosley Defendants. For example, the Bosley Defendants returned to Plaintiff Sandoval only \$350 of her \$450 deposit.

96. Plaintiffs suffered the loss of necessities and personal property that were extremely valuable to them. These included food, medicine, clothing, jewelry, furniture, rugs, dishes, cooking equipment, home cleaning equipment, kitchen appliances, televisions, tools, personal photos, CDs and DVDs, family heirlooms, art, musical instruments, and automobiles.

97. The refusal by Bosley Defendants to protect Plaintiffs from deteriorating conditions at the Santa Clara Apartments, the refusal by Bosley Defendants to repair the Apartments, the City Defendant's failure to require Bosley defendants to repair the Apartments, the City Defendant's

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sudden eviction of Plaintiffs before Thanksgiving, the lies told to Plaintiffs by City officials and their aggressive treatment by the City police, the loss of their long-time homes and substantial personal property, the difficulty of trying to find another place to live, the challenges of being homeless, the cost of paying significantly higher rent, and the other consequences of the Bosley Defendants' and City Defendant's unlawful actions described in this Complaint directly and proximately caused Plaintiffs to suffer serious emotional pain and suffering, physical pain, humiliation, medical bills, embarrassment, and the fear from the loss of secure housing that continues to this date. Because of the nature of the conduct of Defendants, Plaintiffs also seek an award of punitive damages.

IX. Claims Against the Bosley Defendants.

98. The Bosley Defendants owed Plaintiffs a duty under the common law and under Section 47-8-20 NMSA to exercise reasonable care to maintain the common areas of the Santa Clara Apartments in a reasonably safe condition, which included a duty to take reasonable steps to ensure that the common areas were maintained in a manner which made them physically safe for the tenants, including Plaintiffs.

99. Over nearly 40 years the Bosley Defendants reaped huge economic benefits from the federal subsidies provided by the USDA and the rents charged to Plaintiffs. In order to increase

their economic gain, these defendants breached their duty to exercise reasonable care to maintain the common areas of the Santa Clara Apartments in a safe and secure manner. The numerous ways in which this breach occurred are set out above. The injuries suffered by Plaintiffs herein included having to live for over three years in a situation where drug use and/or drug sales occurred in the common areas, dirty needles and other drug paraphernalia littered those areas, persons who were not tenants and had no lawful right to be in the building were allowed to remain there and to urinate and defecate in the common areas of the apartment building. In addition, Plaintiffs suffered substantial injury as a result of being forced to leave their homes due to the Bosley Defendants'

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failure to maintain the Apartments and the City's decision to evict them. These injuries were reasonably foreseeable and were directly and proximately caused by the acts and omissions of the Bosley Defendants described in this Complaint.

100. The Bosley Defendants acted negligently, in a grossly negligent manner, and/or with reckless disregard for the rights of Plaintiffs.

X. Claims Against Defendant City of Espanola Under the New Mexico Civil Rights Act.

A. Defendant City Violated Plaintiffs' Rights Under Article 10, Section 18 of the New Mexico Constitution by Depriving Them of Their Property Interest in Their Tenancy by Evicting Them From Their Homes Without Due Process of Law.

101. Article II, Section 18 of the New Mexico Constitution protects citizens, including Plaintiffs, from being deprived of their liberty and property interests without due process of law. In *State v. Martinez*, 2021-NMSC-002, ¶85, the New Mexico Supreme Court held that the due process clause of the New Mexico Constitution, Article 10, Section 18 provides broader protection to citizens than that provided by the due process clause of the Fourteenth Amendment of the United States Constitution.

102. In *Memphis Light, Gas and Water v. Craft*, 436 U.S. 1, 16-20 (1978), the United

States Supreme Court applied the due process balancing analysis of *Mathews v. Eldridge*, 424 US 319 (1976): “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and the administrative burdens that the additional or substitute procedural requirement would entail.” The *Craft* Court noted that an essential service, such as utility service, “is a necessity of modern life” and that “the discontinuation of water or heating for even short periods of time may threaten health and safety” and that “the cessation of essential service for any appreciable time works a uniquely final deprivation.” In this case,

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Plaintiffs suffered the permanent loss of their homes.

103. New Mexico due process standards were well established long before November 2022. In *New Mexico Workforce Solutions v. Garduno*, 2016-NMSC-002, ¶11, the New Mexico Supreme Court reiterated that in New Mexico, the *Mathews* test “is the appropriate analytical framework for a due process issue.” The Court stated that “[u]nder the *Mathews* test, identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; *second, the risk of an erroneous deprivation of such interest through the procedures used*, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. at 335. *See also, Rex Inc. v. Manufactured Housing Committee for the State of New Mexico*, 2003-NMCA-134 (governing test for a due process claim was that set out in *Mathews v. Eldridge*).

104. The *Garduno* Court further stated that notice is important to due process because the

“right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. ... Due process does not require the same form of notice in all contexts; instead, the notice should be appropriate to the nature of the case. Put simply, we must determine whether the notice was reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (Citations omitted). *Id.* ¶24. “In New Mexico, *the distinguishing factor used to determine whether there was or was not a violation of due process rights depends on whether the defective notice deprived the claimant of the ability to participate in the proceeding.*” *Id.* ¶27 (emph. added).

105. Plaintiffs, as tenants of the Santa Clara Apartments, had a property interest in their

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tenancy and were entitled to due process before being deprived of their “right to continued residence” in their homes. *Connecticut v. Doehr*, 501 U.S. 1, 12 (1991). *See also, U.S. v. Petty Motor Co.* 327 U.S. 372, 379 (1946) (a tenancy or leasehold is a property interest and the holder is entitled to constitutional protection of that property interest). *See also, §42-3-1, et seq., NMSA 1978 and §§47-8-1, et seq., NMSA 1978.*

106. Plaintiffs’ protected property interest was expressly recognized by the mandatory requirement of both Defendant City’s Ordinance §222-5(A) and §3-46-43(B)(2), NMSA 1978 that require that the persons in possession of the property must be provided a copy of the Complaint and the Notice of Hearing where condemnation of their residence is at issue and the right to present testimony at the hearing.

107. For years prior to November 2022, Defendant City knowingly permitted the Bosley Defendants to allow the living conditions at the Santa Clara Apartments to deteriorate to the point where the health and safety of Plaintiffs was put in jeopardy. Defendant City failed to take steps to alleviate the situation despite the that fact that Defendant’s own nuisance ordinance required it

to mandate the Bosley Defendants to repair the premises so as to make it fit for human habitation. 108. In addition to its failure to require the Bosley Defendants to make the Apartments habitable, and despite the requirements of state law and local ordinance, Defendant City decided to condemn Plaintiffs' home without providing Plaintiffs with a copy of the Complaint filed against the Bosley Defendants and without providing Plaintiffs with notice of the hearing that Defendant was going to hold on the issue of condemnation. Plaintiffs were deprived of the opportunity to participate in the proceeding where Plaintiffs would have had the opportunity to present testimony regarding why Defendant City had to require the Bosley Defendants to address the defects and problems raised by the City, rather than immediately evict Plaintiffs from their homes.

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109. Here, the hearing required by law to determine what should be done about the apartments was actually a sham because the outcome was decided prior to the hearing by Defendant City Manager Yutzy. At the conclusion of the "hearing", Defendant City failed to require the Bosley Defendants to submit documentation regarding the estimated costs of repairing the apartments and to compare those costs to the value of the property, which was over \$350,000. State law and Defendant City's Ordinance required that the Bosley Defendants do this before a final decision to evict Plaintiffs by condemning the apartments was made.

110. Defendant City then failed to allow Plaintiffs a reasonable period of time to look for housing and gather their personal property. Rather, Defendant City officials deceived Plaintiffs by telling them on November 8, 2022, that they would not be evicted from their homes for at least another 30 days.

111. Defendant City acted in a negligent manner, a grossly negligent manner, and/or with deliberate indifference to the rights of Plaintiffs. Under the standards set out by the New Mexico Supreme Court in *New Mexico Workforce Solutions v. Garduno, supra*, Defendant City's acts and

omissions, including its failure to provide Plaintiffs with the Complaint filed against the Bosley Defendants and with notice of the hearing on the condemnation issue, and its failure to allow Plaintiffs a reasonable time to find new housing, constituted violation of Plaintiffs' right to due process guaranteed to them by Article II, Section 18 of the New Mexico Constitution.

B. Defendant City Unlawfully Seized Plaintiffs' Personal Property and Then Caused the Permanent Loss of That Personal Property Thereby Violating Plaintiffs' Rights Under Article II, Section 18 of the New Mexico Constitution.

112. Article II, Section 10 of the New Mexico Constitution protects citizens, including Plaintiff, from unreasonable seizures of their person. Article II, Section 10 has long been interpreted to provide greater protection from unreasonable searches and seizures than its federal counterpart, the Fourth Amendment to the United States Constitution. *See, e.g. State v. Gutierrez,*

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1993-NMSC-062 ¶¶50-56. Under well-established United States Supreme Court law, the Fourth Amendment to the United States Constitution protects property and an unlawful seizure that takes place outside the criminal context may violate the Fourth Amendment even when no search has occurred. *Soldal v. Cook County*, 506 U.S. 56, 66-68 (1992).

113. The placard posted around November 8, 2022 at the Santa Clara Apartments by Defendant City stated that “the building must be vacated and secured by November 22, 2022,” that the apartments were going to be condemned, and that “failure to vacate by that date would result in up to 90 days in jail or \$500 in fines for each day the property remained occupied.”

114. On the afternoon of November 22, 2022, Defendant City, acting through its law enforcement officers, told Plaintiffs the City was seizing the Santa Clara Apartments and ordered Plaintiffs to leave their homes by 5:00 p.m. or face arrest, regardless of whether Plaintiffs could remove all their personal property by that time.

115. Defendant City and its police officers, like Plaintiffs, knew that the area around the Santa Clara Apartments had become a high crime area. Plaintiffs and other tenants expressed

concern and complained to the Defendant City of Espanola police officers sent to evict them and seize the apartment building that they could not get all their personal property out by 5:00pm that day, that they needed additional time, and that they were concerned over the safety of their property

once they were forced to leave the Apartments.

116. Defendant City law enforcement officers told Plaintiffs and other tenants that their property would be safe because Defendant City was going to secure the building that evening and that they could return on November 23, 2022 to retrieve their property. Plaintiffs were further told they would be arrested if they were not gone by 5:00pm that afternoon (November 22).

117. Plaintiffs acted reasonably in complying with the orders of the Espanola Police officers to leave their homes and reasonably relied on the officers' statements that their personal property

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left behind and seized by the Defendant City would be secured and protected by the Defendant City until it was retrieved later. After forcing Plaintiffs to leave their homes, at 5:00pm on November 22, 2022, Defendant City, through its police department, took complete custody of and exercised control over the building and all the personal property that remained in Plaintiffs' apartments. When Plaintiffs later returned to remove their personal property from the Apartments, their personal property was either gone or broken. Defendant City's failure to exercise reasonable control and protection over the property that they had taken into their custody and over which they had complete responsibility constituted an unreasonable seizure of Plaintiffs' property in violation of Article II, Section 10 of the New Mexico Constitution.

C. Defendant City Violated Plaintiffs' Rights Under Article 10, Section 18 of the New Mexico Constitution by Depriving Them of Their Personal Property Without Due Process of Law.

118. Under well-established New Mexico law described above, Plaintiffs had a protected property interest in the continued use, possession and enjoyment of the personal property they lawfully owned and kept in their homes. *Fuentes v. Shevin*, , 407 U.S. 67 (1972); *Soldal v. Cook County*, 506 U.S. 56, 66-68 (1992); *See also, Coleman v. Turpen*, 697 F.2d 1341,1344-45 (10th Cir. 1982).

119. As a direct and proximate result of the conduct of Defendant City of Espanola set forth above, Plaintiffs were deprived of their personal property and Defendant City failed to provide them with any notice or opportunity for a hearing prior to the deprivation. Because Plaintiffs' property was stolen, lost or destroyed, there was no point to a post-deprivation hearing.

120. Defendant's acts and omissions violated Plaintiffs' rights to procedural due process guaranteed to them by Article II, Section 18 of the New Mexico Constitution.

D. Defendant City Affirmatively Increased Plaintiffs' Vulnerability to the Loss of Their Personal Property in Violation of Their Substantive Right to Due Process of

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Law Under Article 10, Section 18 of the New Mexico Constitution.

121. Article II, Section 18 of the New Mexico Constitution protects citizens, including Plaintiffs, from being deprived of a liberty interest without due process of the law. In *State v. Martinez*, 2021-NMSC-002, ¶85, the New Mexico Supreme Court held that the due process clause of the New Mexico Constitution, Article 10, Section 18, provides broader protection to citizens than that provided by the due process clause of the Fourteenth Amendment of the United States Constitution. Under Article II, Section 18, once a plaintiff proves that 1) the conduct of a defendant has increased the plaintiff's vulnerability to harm, 2) by an affirmative act that placed the plaintiff at a substantial risk of serious and immediate harm, 3) when the risk is obvious or known, and 4) the defendant's conduct is reckless or deliberately indifferent to that risk, the plaintiff does not need to also show that defendant's conduct is "shocking to the conscience."

122. As of November 22, 2022, Plaintiffs were lawful tenants of the Santa Clara Apartments, a group consisting of approximately 34 people.

123. On November 22, 2022, Defendant City's law enforcement officers, acting pursuant to the orders of the Defendant City's mayor, City Manager, and/or Chief of Police ordered Plaintiffs to leave their homes by 5:00pm that day. When several plaintiffs and other tenants complained they could not get their personal property out of the building by 5:00pm, Defendant City police officers affirmatively told Plaintiffs that it was safe to leave their property there because Defendant City was going to take custody and control of the building after 5:00 pm and would protect their property by securing the building so that no one would be able to enter. Plaintiffs were told they could go to City Hall the following day and get letters of permission allowing them to return to their apartments to get their personal property.

124. Defendant City and its Police Department, including Chief Garcia, knew that the common areas of the Santa Clara Apartments and the area immediately surrounding the apartment

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complex had become a high crime area. In fact, that was one of the reasons Defendant City claimed was the basis for its decision to condemn the apartment complex and evict Plaintiffs and the other lawful tenants. The risk that drug addicts and criminals would come into the building and steal any property left there was obvious and known.

125. As a result of Defendant City's decision to evict Plaintiffs from their homes by 5:00pm on November 22, 2022, and then its inducing Plaintiffs to leave their personal property in their apartments by telling them that the property would be safe, Defendant had a duty to protect that property. Defendant breached that duty by its failure to secure the building in a manner that would prevent the drug addicts and other criminals Defendant knew were in the immediate area from entering the building and stealing Plaintiffs' property. As was reasonably foreseeable, when

Plaintiffs returned to get their property, they learned that their property had been stolen and, in some cases, destroyed.

126. Defendant City, through its law enforcement officers, Mayor and City Manager, affirmatively acted to create or increase Plaintiffs' vulnerability to the loss of their personal property through theft and violence by the private actors who were allowed to enter the unsecured building, after Defendant ordered Plaintiffs to leave the Apartments and assured them that they could safely leave their personal property in their apartments.

127. Additionally, under the totality of the circumstances, including the facts that: 1) Defendant knew there was an extremely high risk of crime in the building because of multiple trespassers, drug addicts and criminals; 2) Defendant knew Plaintiffs were economically impoverished citizens whose property could not easily be replaced; 3) Defendant knew there was no emergency that required Plaintiffs to leave their apartments unattended in November 22, 2022, and 4) Defendant's officers induced Plaintiffs to leave their personal property in a building and then failed to secure as promised, the conduct of the Defendant City and its agents was reckless

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and deliberately indifferent to the safety of Plaintiffs' personal property and to Plaintiffs' need for that property.

128. Defendant's acts and omissions violated Plaintiffs rights to substantive due process guaranteed to them by Article II, Section 18 of the New Mexico Constitution

XII. Jury Demand.

129. Plaintiffs hereby demand a trial by a six-person jury.

Respectfully submitted,

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