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Attorneys for Plaintiff(s) Fletcher Mack, Attorney in Fact for Jack Lee Collins, Jack Lee Collins

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

<p>FLETCHER MACK, Individually, and as Attorney in Fact for Jack Lee Collins, JACK LEE COLLINS</p> <p>Plaintiff(s),</p> <p>-vs-</p> <p>THE TOWNSHIP OF DENNIS individually, THOMAS V. WHELAM, ROBERT MILCARCK, RAYMOND BOZARTH, RAY'S AUTO SALVAGE, I/S/A</p> <p>Defendant(s)</p>	<p>CIVIL ACTION NO: 08-0537</p> <p>SECOND AMENDED COMPLAINT</p>
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Fletcher Mack currently residing in the Town of Eldora, County of Cape May, State of New Jersey by way of Complaint against the defendant says:

GROUNDS FOR JURISDICTION

FED. RULE. CIV. PROCEDURE 8(a)(1): The District Court has original jurisdiction over this civil action pursuant to 28 U.S.C. 1343[a](1), [3] and 42 U.S.C. 1331 and 42 U.S.C. 1983, Federal question jurisdiction. The Court has pendent jurisdiction over all common law claims plead herein as part of the same case or controversy. U.S.C. §1367.

STATEMENT OF VENUE: Venue in this action is properly laid in the United States District Court for District of New Jersey, Camden Vicinage as all defendants reside and or are residents of Dennis Township in the County of Cape May, and the property in question is located in the

Township of Dennis, County of Cape May.

FIRST COUNT

1. Plaintiff, Fletcher Mack was duly appointed the Attorney in Fact and agent for plaintiff, Jack Lee Colins owner of property located in the Township of Dennis, State of New Jersey County of Cape May with an address of 264 Stipsons Island Road, on or around January 24, 2005.
2. As part of his duties as the Attorney in Fact for Jack Lee Colins plaintiff function as the caretaker for the 264 Stipsons Island Road property in the Township of Dennis and was recognized by Dennis Township and its officials as the representative for the property owner.
3. In or around June of 2006, plaintiff received a call from a realtor making an unsolicited offer to purchase the 264 Stipsons Island Road property from an anonymous person. Plaintiff on behalf of the property owner as Attorney in Fact and agent made a counteroffer which the anonymous purchaser rejected at the time. The realtor who made the initial offer to plaintiff thereafter informed plaintiff that the offer to purchase the property came from the neighboring property owner defendant Thomas V. Whelan.
4. In approximately August of 2006 one month later, plaintiff received a visit from defendant Robert Milcarck a Code Enforcement Official and or Officer of defendant Dennis Township with respect to the 254 Stipsons Island Road property. At the time, defendant Milcarck handed plaintiff a letter from defendant Whelan's attorney, directed to defendant Milcarck complaining about the condition of the property at 264 Stipsons Island Road which was being managed by plaintiff Fletcher Mack. At the time, defendant Milcarck informed the plaintiff that he had in fact inspected the 264 Stipsons Island Road property and did not see a problem and therefore would take no action with respect to the same. Plaintiff Fletcher Mack informed defendant Milcarck at the time to please let him know if there are problems that arise in the future with respect to the same.

5. Thereafter, on March 15, 2007, plaintiff while checking on the 264 Stipsons Island Road property had noticed that the yard was dug up by heavy equipment tires and machinery. At that time, plaintiff also noted that the property of Mr. Collins a 1998 Saturn station wagon and his 41 foot boat along with plaintiff Fletcher Mack's 1979 Cadillac and a School Bus were missing from the property.

6. Upon noticing that these items of personal property were missing from the location, plaintiff immediately contacted the State Police.

7. Plaintiff was met by the State Police at a business in Dennis Township known as defendant Ray's Auto Salvage which is owned and operated by defendant Ray Bozarth.

8. At that time, defendant Ray Bozarth the owner of defendant Ray's Auto Salvage, informed plaintiff and the State Police Trooper Murray Badge #6920 that he was instructed by defendant Dennis Township Code Enforcement Officer defendant Robert Milcarck to enter 264 Stipsons Island Road property and to seize and remove a School Bus, a Cadillac and a Saturn vehicle as well as boat from the property.

9. Upon information and belief, defendant Bozarth was given a statement signed by defendant Milcarck directing the removal of the said items of personal property.

10. Plaintiff observed at the time that he was at the defendant Ray's Auto Salvage, that the two cars had already been destroyed and crushed and that the bus was parked in the yard. The whereabouts of the boat were unknown to plaintiff.

11. Thereafter, plaintiff proceeded to the Municipal Building for the defendant Dennis Township and confronted defendant Milcarck who presented plaintiff with a document entitled Township of Dennis Office of Code Enforcement & Zoning with handwritten ink notations concerning removal of

an old school bus and a dilapidated boat from the property with a date written in of 10/15/06. Plaintiff had never received such documents or seen such documents prior to that date and that time of March 15, 2007. Plaintiff also alleges that the ink on the documents appeared and smelled fresh.

12. Plaintiff requested that Milcarek present to him proof that the same were either mailed Certified Mail, and or regular mail to him and or Mr. Collins and or the address of the property and or proof of any personal delivery of the same which defendant Milcarek could not produce.

13. The value of the aforementioned property seized by the defendants and each of them was approximately in excess of \$50,000.00.

14. The defendants and each of them, unlawfully agreed and or conspired to take without the consent or permission of the plaintiff, personal property that was in the care, custody and control of the plaintiff and some of which the plaintiff was the owner of and converted the same to their own uses in destroying the same despite the plaintiff demanding return of the same thereby constituting the tort of unlawful civil conversion.

15. As a direct and proximate cause of defendant's actions as aforementioned, plaintiff has been deprived the use and enjoyment and value of this property.

WHEREFORE, the plaintiff demands judgment against the defendants for the value of the property in excess of \$50,000.00 for damages, punitive damages, interest and cost of suit and such other relief as the Court deems just and proper.

SECOND COUNT

1. Plaintiff repeats the allegations set forth in Count One of this Complaint as if fully set forth herein at length.

2. The defendant's actions in unlawfully entering the property owned, maintained and or controlled by the plaintiff without plaintiff's permission, and thereafter removing the personal

property of the plaintiff and its owner without notice to the plaintiff and without providing plaintiff an opportunity for a hearing and to be heard regarding the same constituted a deprivation of plaintiff's property rights in violation of the plaintiff's New Jersey Constitutional Rights and Federal Constitutional Rights to due process under the law protected by the Fourth Amendment, the Fifth Amendment and the Fourteenth Amendment of the United States Constitution and similar provisions of the New Jersey State Constitution.

3. The defendant's actions in conspiring with each other to direct removal of the personal property of the plaintiff and the owner of the property from the 264 Stipsons Island Road address on March 15, 2007 constituted a violation of U.S.C. 42 §1981, 1983 and 1985 in depriving the plaintiff his property without notice and an opportunity to be heard before destruction of the same. The actions of the defendant were taken pursuant to a custom, practice and unconstitutional ordinance Chapter 178 section 2 of the Code of the Township of Dennis, 178 2 and 178 8-8 and as such, the defendant Township of Dennis is vicariously liable for the acts of its agents, servants and employees.

4. The defendants further violated the plaintiff's rights in failing to afford plaintiff a post deprivation hearing and opportunity to be heard with respect to his property rights thereby depriving him of the use, value and enjoyment of same.

5. The actions of the defendants and each of them as aforementioned in this Complaint were each performed individually and or in agreement and conspiracy with an agent, servant and employee of Dennis Township that were otherwise under color of state law.

6. The actions of the defendants aforementioned further constitute violations of New Jersey's Civil Rights Act N.J.S.A 10:6-1 et seq. As a direct and proximate result of the violation of the plaintiff's constitutional rights as aforementioned, the plaintiff has been deprived his use, value and enjoyment of his property and has been otherwise emotionally and economically damaged all to his

detriment.

WHEREFORE, the plaintiff demands judgment against the defendants for damages, punitive damages, interest and cost of suit and such other relief as the Court deems just and proper.

THIRD COUNT

1. Plaintiff repeats the allegations set forth in Counts One and Two of this Complaint as if fully set forth herein at length.

2. The actions of the defendant as set forth above and more specifically in entering plaintiff's property without plaintiff's permission, damaging plaintiff's property and removal of the personal property from plaintiff's property constitutes the common law tort of invasion of privacy and to the intrusion into the seclusion of the plaintiff and the common law tort of trespass.

3. As a direct and proximate result of the conduct of the defendants as aforementioned, the plaintiff was caused the loss of the use and enjoyment and value of his property causing extreme emotional stress and mental anguish, embarrassment and humiliation in the community and such other damages all to his detriment.

WHEREFORE, the plaintiff demands judgment against the defendants jointly, severally and in the alternative for damages, punitive damages, interest and cost of suit and such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues herein.

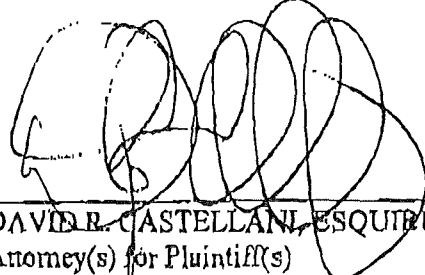
CERTIFICATION

I, **DAVID R. CASTELLANI, ESQUIRE**, hereby certify, pursuant to New Jersey Court Rule 4:5-1, that to the best of my knowledge, the claims raised herein are not the subject of any other action pending in any Court or the subject of any arbitration proceeding, and no such other

action or arbitration is contemplated.

I certify that the foregoing statements made by me are true to my personal knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment for perjury.

Dated: December 30, 2008



DAVID R. CASTELLANI, ESQUIRE
Attorney(s) for Plaintiff(s)

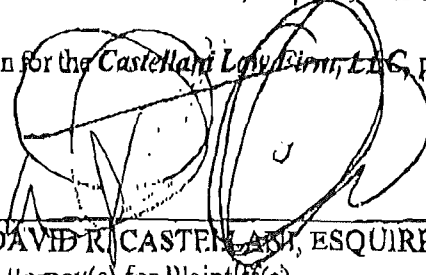
DEMAND FOR INTERROGATORY ANSWERS PURSUANT TO R.4:17-1(b)(ii)

Plaintiff's hereby demand that defendants answer form e uniform interrogatories as contained in Appendix II of the New Jersey Rules of Court in lieu of services of the Interrogatories themselves pursuant to R.4:17-1(b)(ii).

NOTICE OF TRIAL COUNSEL

PLEASE TAKE NOTICE that *David R. Castellani, Esquire*, is hereby designated as trial counsel in the above captioned litigation for the *Castellani Law Firm, LLC*, pursuant to Rule 4:25-4.

Dated: December 30, 2008



DAVID R. CASTELLANI, ESQUIRE
Attorney(s) for Plaintiff(s)

RELEASE

This Release, dated 12/2/09, 2009 is given

BY the Releasor(s) Fletcher Mack, Attorney In Fact For Jack Lee Colins,
Jack Lee Colins
(Social Security #)

TO The Township of Dennis, Robert Milcarek and
The Atlantic County Municipal Joint Insurance Fund

1. Release. I release and give up and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

For any and all claims which are the subject of litigation, commenced in the United States District Court, District of New Jersey, Camden County, under Civil Action No. 08-0537.

In consideration for making this Release, you have agreed to pay me a settlement of \$50,000.00. I understand and agree that I will not seek anything further, including any other payments, from you.

It is also understood and agreed that acceptance of the said amount is in full accord and satisfaction and in compromise of all disputed claims and that the payment thereof is not an admission of liability, but is made for the purpose of terminating all disputes and litigation between the parties.

2. Payment. I have been paid a total of ****\$50,000.00****, in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

3. Who is Bound. I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. Signatures. I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

Fletcher Mack, Individually

Fletcher Mack, Attorney In Fact
For Jack Lee Colins

STATE OF NEW JERSEY

SS

COUNTY OF *ATLANTIC*

I CERTIFY that on *12/7*, 2009, *Fletcher Hacc*

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument; and
- (b) executed this instrument as his or her own act.

[Signature]
MARYZALUOS
Notary Public of New Jersey
My Commission Expires
[Date]