

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
A.A., by his next friend and parent, C.A. and B.A., by her  
next friend and parent, C.A.,

20CV03849 (CS)(PED)

Plaintiffs,

**ANSWER WITH  
JURY DEMAND**

-against-

MAMARONECK UNION FREE SCHOOL DISTRICT;  
MAMARONECK UNION FREE SCHOOL DISTRICT  
BOARD OF EDUCATION; DR. ROBERT M. SHAPS,  
Superintendent of Mamaroneck Union Free School District,  
in his official and individual capacities; ELIZABETH CLAIN,  
Principal of Mamaroneck High School, in her official and  
individual capacities; and MARIO WASHINGTON, Assistant  
Principal of Mamaroneck High School, in his official and  
individual capacities

Defendants.

-----X

Defendants MAMARONECK UNION FREE SCHOOL DISTRICT, MAMARONECK  
UNION FREE SCHOOL DISTRICT BOARD OF EDUCATION, DR. ROBERT M. SHAPS,  
ELIZABETH CLAIN, and MARIO WASHINGTON (“the Defendants”), by their attorneys,  
Silverman & Associates, respectfully submit this as and for their Answer to the Amended  
Complaint of the Plaintiff herein, respectfully set forth as follows, upon information and belief:

**INTRODUCTION**

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “1” of the Complaint
2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “2” of the Complaint.
3. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “3” of the Complaint.

4. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “4” of the Complaint.
5. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “5” of the Complaint.
6. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “6” of the Complaint.
7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “7” of the Complaint.
8. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “8” of the Complaint.
9. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “9” of the Complaint.
10. Defendants deny the allegations set forth in Paragraph “10” of the Complaint.
11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “11” of the Complaint.
12. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “12” of the Complaint.
13. Defendants admit that A.A. and B.A. withdrew from the District in the Fall of 2019 as is set forth in Paragraph “13” of the Complaint.
14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “14” of the Complaint.
15. Defendants deny the allegations set forth in Paragraph “15” of the Complaint.
16. Defendants deny the allegations set forth in Paragraph “16” of the Complaint.

17. Defendants deny the allegations set forth in Paragraph “17” of the Complaint.

18. Defendant deny the allegations set forth in Paragraph “18” of the Complaint.

19. Defendants deny the allegations set forth in Paragraph “19” of the Complaint.

**PARTIES**

20. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “20” of the Complaint except admit that A.A. attended schools within the Mamaroneck Union Free School District between 2011 and 2019.

21. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “21” of the Complaint except admit that B.A. attended schools within the Mamaroneck Union Free School District between 2012 and 2019.

22. Defendants admit the allegations set forth in Paragraph “22” of the Complaint except deny the allegation that the District is a “person” within the meaning of 42 U.S.C. § 1983.

23. Defendants admit the allegations set forth in Paragraph “23” of the Complaint.

24. Defendant admit the allegations set forth in Paragraph “24” of the Complaint.

25. Defendants admit the allegations set forth in Paragraph “25” of the Complaint.

26. Defendants admit the allegations set forth in Paragraph “26” of the Complaint.

**JURISDICTION AND VENUE**

27. Defendants deny the allegations set forth in Paragraph “27” of the Complaint except admit that Plaintiffs purport to establish the jurisdiction of the Court as set forth therein.

28. Defendants deny the allegations set forth in Paragraph “28” of the Complaint except admit that Plaintiffs seek to establish that venue is proper as set forth therein.

29. Defendants admit the allegations set forth in Paragraph “29” of the Complaint.

**FACTUAL ALLEGATIONS**

30. Defendants deny the allegations set forth in Paragraph “30” of the Complaint.

31. Defendants deny the allegations set forth in Paragraph “31” of the Complaint.

32. Defendants deny the allegations set forth in Paragraph “32” of the Complaint.

33. Defendants admit the allegations set forth Paragraph “33” of the Complaint to the extent that an investigation was conducted and that the investigation concluded that the incident did not occur.

34. Defendant admit that the allegations set forth in Paragraph “34” represents quote from the website cited in the Paragraph.

35. Defendants deny the allegations set forth in Paragraph “35” of the Complaint except admit that the Commissioner of Education found that the student fulfilled residency requirements to remain in the District.

36. Defendants deny the allegations set forth in Paragraph “36” of the Complaint except admit that an investigation was conducted based upon a complaint regarding the placement of a student in a Kindergarten class and that Carol Priore was at one point employed as the District’s Assistant Superintendent for Personnel and Administration.

37. Defendant admit that the allegations set forth in Paragraph “37” represents a quote from the website cited in the Paragraph.

38. Defendants deny the allegations set forth in Paragraph “38” of the Complaint.

39. Defendants admit the allegations set forth in Paragraph “39” of the Complaint but deny that the District has ever acknowledged having a “significant racism problem, which it has systemically swept under the rug.”

40. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “40” of the Complaint.
41. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “41” of the Complaint.
42. Defendants deny the allegations set forth in Paragraph “42” of the Complaint.
43. Defendants deny the allegations set forth in Paragraph “43” of the Complaint.
44. Defendants admit that the allegations set forth in Paragraph “44” of the Complaint reflect the data set forth in the website referenced in the Paragraph.
45. Defendants deny the allegations set forth in Paragraph “45” of the Complaint.
46. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “46” of the Complaint.
47. Defendants admit the allegations set forth in Paragraph “47” of the Complaint.
48. Defendants deny the allegations set forth in Paragraph “48” of the Complaint.
49. No response is required to Paragraph “49” of the Amended Complaint.
50. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “50” of the Complaint.
51. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “51” of the Complaint.
52. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “52” of the Complaint.
53. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “53” of the Complaint.
54. Defendants admit the allegations set forth in Paragraph “54” of the Complaint.

55. Defendants deny the allegations set forth in Paragraph “55” of the Complaint.
56. Defendants deny the allegations set forth in Paragraph “56” of the Complaint.
57. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “57” of the Complaint except admit that A.A. informed a teacher that he had overheard a student use the term “n\*\*\*r.”
58. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “58” of the Complaint.
59. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “59” of the Complaint.
60. Defendants deny the allegations set forth in Paragraph “60” of the Complaint.
61. Defendants admit the allegations set forth in Paragraph “61” of the Complaint.
62. Defendants admit the allegation set forth in Paragraph “62” of the Complaint.
63. Defendants admit that the allegations in Paragraph “63” of the Complaint represent a portion of an email sent to Ms. Scharfstein and Ms. Sullivan.
64. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “64” of the Complaint.
65. Defendants deny the allegations set forth in Paragraph “65” of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph “65” regarding B.A.’s thoughts at the time.
66. Defendants deny the allegations set forth in Paragraph “66” of the Complaint.
67. Defendants deny the allegations set forth in Paragraph “67” of the Amended Complaint.
68. Defendants admit the allegations set forth in Paragraph “68” of the Complaint.
69. Defendants deny the allegation set forth in Paragraph “69” of the Complaint in the form

written.

70. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “70” of the Complaint.

71. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “71” of the Complaint.

72. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “72” of the Complaint.

73. Defendants deny the allegations set forth in Paragraph ‘73” of the Complaint.

74. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “74” of the Complaint.

75. Defendants deny the allegations set forth in Paragraph “75” of the Complaint except admit that A.A. did report the incident.

76. Defendants admit the allegation set forth in Paragraph “76” of the Complaint.

77. Defendants admit that the allegations set forth in Paragraph “77” of the Complaint represents a portion of an email.

78. Defendants admit that the allegations set forth in Paragraph “78” of the Complaint represents a portion of an email.

79. Defendants deny the allegations set forth in Paragraph “79” of the Complaint except admit that C.A. emailed Ms. Tramontozzi and claimed that A.A. was hesitant to go on a field trip.

80. Defendants deny the allegations set forth in Paragraph “80” of the Complaint.

81. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “81” of the Complaint.

82. Defendants deny the allegations set forth in Paragraph “82” of the Complaint.
83. Defendants deny the allegations set forth in Paragraph “83” of the Complaint.
84. Defendants deny the allegation set forth in Paragraph “84” of the Complaint except admit that at some point Mr. Andrews was assigned to the role of DASA Coordinator in addition to position at the time.
85. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “85” of the Complaint.
86. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “86” of the Complaint.
87. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “87” of the Complaint.
88. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “88” of the Complaint.
89. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “89” of the Complaint.
90. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “90” of the Complaint.
91. Defendants deny the allegation set forth in Paragraph “91” of the Complaint.
92. Defendants deny the allegations set forth in Paragraph “92” of the Complaint except admit that the issue was raised at a parent’s curriculum meeting in March 2019.
93. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “93” of the Complaint.
94. Defendants deny knowledge or information sufficient to form a belief as to the truth of



the allegations set forth in Paragraph “94” of the Complaint.

95. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “95” of the Complaint.

96. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “96” of the Complaint.

97. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “97” of the Complaint.

98. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “98” of the Complaint.

99. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “99” of the Complaint.

100. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “100” of the Complaint.

101. Defendants deny the allegations set forth in Paragraph “101” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding A.A.’s thoughts or feelings at that time.

102. Defendants deny the allegations set forth in Paragraph “102” of the Complaint except admit that, in February 2019, Plaintiffs informed Defendants of bullying in the locker room.

103. Defendants deny the allegations set forth in Paragraph “103” of the Complaint except admit that, in the course of an investigation into allegations of bullying, the District was informed that a student made remarks to A.A. regarding a Kenya soccer shirt.

104. Defendants deny the allegations set forth in Paragraph “104” of the Complaint except admit that that a DASA investigation was conducted and information related to that investigation was shared with Plaintiffs.
105. Defendants deny the allegations set forth in Paragraph “105” of the Complaint except admit that, in February 2019, the Plaintiffs informed the district of the incident described therein.
106. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “106” of the Complaint except admit that Ms. Clain was informed of the incident.
107. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “107” of the Complaint except admit that the students’ conduct was addressed by the District and their parents were contacted.
108. Defendants deny the allegations set forth in Paragraph “108” of the Complaint except admit that A.A.’s schedule was adjusted so he would no longer be in classes with the students he had identified in prior complaints.
109. Defendants deny the allegations set forth in Paragraph “109” of the Complaint.
110. Defendants deny the allegations set forth in Paragraph “110” of the Complaint.
111. Defendants admit the allegations set forth in Paragraph “111” of the Complaint.
112. Defendants deny the allegations set forth in Paragraph “112” of the Complaint.
113. Defendants deny the allegations set forth in Paragraph “113” of the Complaint.
114. Defendants deny the allegations set forth in Paragraph “114” of the Complaint.
115. Defendants admit the allegations set forth in Paragraph “115” of the Complaint.
116. Defendants deny the allegations set forth in Paragraph “116” of the Complaint.

117. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “117” of the Complaint.
118. Defendants deny the allegations set forth in Paragraph “118” of the Complaint.
119. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “119” of the Complaint.
120. Defendants deny the allegations set forth in Paragraph “120” of the Complaint.
121. Defendants admit the allegations set forth in Paragraph “121” of the Complaint.
122. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “122” of the Complaint.
123. Defendants deny the allegations set forth in Paragraph “123” of the Complaint except admit that Plaintiffs were asked to raise any future concerns immediately and directly to them.
124. Defendants deny the allegations set forth in Paragraph “124” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding B.A.’s thoughts or feelings.
125. Defendants deny the allegations set forth in Paragraph “125” of the Complaint.
126. Defendants deny the allegations set forth in Paragraph “126” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding B.A.’s thoughts or feelings.
127. Defendants deny the allegations set forth in Paragraph “127” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding B.A.’s thoughts or feelings.
128. Defendants deny the allegations set forth in Paragraph “128” of the Complaint.

129. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “129” of the Complaint.

130. No response is required to Paragraph “130” of the Complaint.

131. Defendants deny the allegations set forth in Paragraph “131” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding A.A.’s thoughts or feelings.

132. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “132” of the Complaint.

133. Defendants deny the allegations set forth in Paragraph “133” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding conversations among Plaintiffs but admit that Plaintiffs withdrew from the District in June 2019 and that A.A. was a Sophomore and B.A. was in Eighth Grade at the time.

134. Defendants admit that the allegation set forth in Paragraph “134” of the Complaint represents a portion of an email sent by C.A.

135. Defendants admit the allegations set forth in Paragraph “135” of the Complaint.

136. Defendants admit the allegations set forth in Paragraph “136” of the Complaint that, as per District policy, textbooks and musical instruments are not provided to members of the community who choose to homeschool their children.

137. Defendants deny the allegations set forth in Paragraph “137” of the Complaint.

138. Defendants deny the allegations set forth in Paragraph “138” of the Complaint.

139. Defendants deny the allegations set forth in Paragraph “139” of the Complaint.

140. Defendants deny the allegations set forth in Paragraph “140” of the Complaint.

141. Defendants deny the allegations set forth in Paragraph “141” of the Complaint.
142. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “142” of the Complaint.
143. Defendants deny the allegations set forth in Paragraph “143” of the Complaint.
144. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “144” of the Complaint.
145. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “145” of the Complaint.
146. Defendants deny the allegation set forth in Paragraph “146” of the Complaint.
147. Defendants deny the allegations set forth in Paragraph “147” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding A.A. and B.A.’s thoughts or feelings.
148. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “148” of the Complaint.
149. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “149” of the Complaint.
150. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “150” of the Complaint.
151. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph “151” of the Complaint.
152. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph “152” of the Complaint.
153. Defendants deny knowledge or information sufficient to form a belief as to the

truth of the allegations set forth in Paragraph “153” of the Complaint.

154. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “154” of the Complaint.

155. Defendants deny the allegations set forth in Paragraph “155” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding A.A. and B.A.’s thoughts or feelings.

156. Defendants deny the allegations set forth in Paragraph “156” of the Complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding A.A. and B.A.’s thoughts or feelings.

**Plaintiffs’ First Cause Of Action**  
**Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.**  
**Discrimination on the Basis of Race**

157. Defendants refer to their responses to Paragraphs “1” through “156” of the Complaint.

158. Defendants admit the allegations set forth in Paragraph “158” of the Complaint.

159. Defendants deny the allegations set forth in Paragraph “159” of the Complaint.

160. Defendants deny the allegations set forth in Paragraph “160” of the Complaint.

161. Defendants deny the allegations set forth in Paragraph “161” of the Complaint.

162. Defendants deny the allegations set forth in Paragraph “162” of the Complaint.

163. No response is required to Paragraph “163” of the Complaint.

**Plaintiffs’ Second Cause of Action**  
**42 U.S.C. § 1983 – U.S. Constitution Amendment XIV**  
**Denial of Equal Protection on the Basis of Race**

164. Defendants refer to their responses to Paragraphs “1” through “163” of the Complaint.

165. Defendants deny the allegations set forth in Paragraph “165” of the Complaint.
166. Defendants deny the allegations set forth in Paragraph “166” of the Complaint.
167. Defendants deny the allegations set forth in Paragraph “167” of the Complaint.
168. Defendants deny the allegations set forth in Paragraph “168” of the Complaint.
169. Defendants deny the allegations set forth in Paragraph “169” of the Complaint.
170. Defendants deny the allegations set forth in Paragraph “170” of the Complaint.
171. No response is required to Paragraph “171” of the Complaint.

**Plaintiffs’ Third Cause of Action**  
**New York Civil Rights Law §§ 40-c and 40-d**  
**Discrimination Based on Race**

172. Defendants refer to their responses to Paragraphs “1” through “171” of the Complaint.
173. Defendants deny the allegations set forth in Paragraph “173” of the Complaint.
174. Defendants deny the allegations set forth in Paragraph “174” of the Complaint.
175. Defendants deny the allegations set forth in Paragraph “175” of the Complaint.
176. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “176” of the Complaint.
177. No response is required to Paragraph “177” of the Complaint.
178. No response is required to Paragraph “178” of the Complaint.

**AS AND FOR A FIRST SEPARATE**  
**AND COMPLETE AFFIRMATIVE DEFENSE**

179. The Complaint fails to state a cause of action, either under Federal or State law, upon which relief can be granted against the Defendants.

**AS AND FOR A SECOND SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

180. That the Plaintiff is not entitled to punitive damages based on the fact that the Complaint fails to plead any facts sufficient to warrant such relief.

**AS AND FOR A THIRD SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

181. Defendants did not act maliciously or with ill will toward the Plaintiff.

**AS AND FOR A FOURTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

182. The answering Defendants did not make a deliberate decision to deprive the Plaintiff of any rights.

**AS AND FOR A FIFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

183. Plaintiff's claim for punitive damages violates, and is therefore barred by the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America on grounds including the following:

- (a) It is a violation of the Due Process of Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff's satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) The procedure pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the Due Process of Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- (c) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the United States Constitution;



(e) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(f) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(g) The award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law; and

(h) The procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

**AS AND FOR A SIXTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

184. Plaintiff's claim for punitive damages violates, and is therefore barred by the following provision of the Constitution of the State of New York, N.Y. Const. Art. I, §5, N.Y. Const. art. I, §6, N.Y. Const. Art. I, §6 and N.Y. Const. Art. I, §12 on grounds that include the following:

(a) It is a violation of the Due Process and Equal Protection Clauses to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff's satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;

(c) The procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the defendant;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of award of punitive damages;

(e) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts;

(f) The procedures pursuant to which punitive damages are awarded permit the

imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct;

(g) The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines;

(h) The award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of the law; and

(i) The procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

**AS AND FOR A SEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

185. That Plaintiff's Constitutional rights were not violated pursuant to a policy, practice, pattern, or custom of the Defendants.

**AS AND FOR AN EIGHTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

186. That Defendants at all times relative to Plaintiff's Complaint fully complied with all provisions of the Constitution of the United States, the Constitution of the State of New York and all applicable laws, statutes, rules and regulations.

**AS AND FOR A NINTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

187. The Plaintiff's action may be barred by the equitable doctrines of waiver, estoppel, and unclean hands.

**AS AND FOR A TENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

188. The answering Defendants, its agents, servants and/or employees did not take part in, or direct, any of the acts complained of which resulted in Plaintiff's alleged injuries.

**AS AND FOR AN ELEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

189. Punitive damages are not available against the Defendant District.

**AS AND FOR A TWELFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

190. The Defendants enjoy qualified immunity with respect to those acts that are performed pursuant to their duties and responsibilities.

**AS AND FOR A THIRTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

191. This Court lacks personal jurisdiction over the Defendants sued in their individual capacities.

**AS AND FOR A FOURTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

192. Defendants were not motivated by an intention to discriminate on the basis of impermissible considerations, to punish or inhibit the exercise of Constitutional rights, or by a malicious or bad faith intent to injure the Plaintiffs.

**DEMAND FOR A JURY TRIAL**

193. Defendants demand a trial by jury as to any and all issues raised in the Complaint and this answer which are triable before a jury.


**THAT**, by reason of this action, Defendants have been and will be put to costs and expense including attorney's fees.

**WHEREFORE**, Defendants demand judgment dismissing the Complaint herein, and costs, fees and disbursements incurred in this action.

Dated: White Plains, New York  
June 12, 2020

Respectfully submitted,

**SILVERMAN & ASSOCIATES**

BY:   
\_\_\_\_\_  
Gerald S. Smith  
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