

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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MARY ELLEN MAUN,

Plaintiff,

—against—

JASON BRAUN, MATTHEW ALFIERI, MICHAEL  
VARIANO, ANNE MCKISSICK SADAR and  
JAMES BRADY (as Officers and Members of  
the Executive Committee of the Board of the  
Edgemont Condominium), John Doe Board Member(s)  
No. 1, etc. (identities currently unknown) and  
EDGEMONT AT TARRYTOWN CONDOMINIUM,

Defendants.  
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SUMMONS

The Plaintiff designates  
Westchester County as the  
place for trial.

The basis of this venue is  
Plaintiff’s residence

Edgemont Condominium  
Unit 539  
539 Martling Avenue  
Tarrytown, New York 10591

Index No.:

To the above named Defendants:

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff’s Attorneys within **20** days of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
January 30, 2018

Defendants’ Addresses

Jason Braun  
7 Allen Road  
Garrison, NY 10524

Matthew Alfieri  
Edgemont Condominium, Unit 369  
369 Martling Avenue  
Tarrytown, New York 10591

Michael Variano  
Edgemont Condominium, Unit 327  
327 Martling Avenue  
Tarrytown, New York 10591

Anne McKissick Sadar  
Edgemont Condominium, Unit 373  
373 Martling Avenue  
Tarrytown, New York 10591

James Brady  
Edgemont Condominium, Unit 333  
333 Martling Avenue  
Tarrytown, New York 10591

Edgemont at Tarrytown Condominium  
301 Martling Avenue  
Tarrytown, New York 10591

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COUNTY OF WESTCHESTER

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JASON BRAUN, MATTHEW ALFIERI, MICHAEL  
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**COMPLAINT**

Index No.:

**NATURE OF THE CASE**

1. This Complaint is filed in response to a series of discriminatory, retaliatory, punitive and intentionally oppressive and censorial acts, by the Board of the Edgemont at Tarrytown Condominium (hereafter the “Condo Board” or the “Board”), and/or some of its members who have served on the Board’s Executive Committee, culminating in the commencement of two consecutive, baseless defamation actions against Mary Ellen Maun, a resident and unit owner at the Edgemont Condominium (hereafter, “Plaintiff” or “Maun”).

2. The two defamation actions against Maun were commenced in the name of a single person acting as the Plaintiff in each case. However, on information and belief, the two legal actions were brought, or at least instigated, and supported in some fashion, by the Condo Board.

3. Both actions were without merit. The first was ultimately dismissed on motion on the pleadings and the documentary evidence and the second was ultimately withdrawn. On information and belief, however, this lack of merit was of no particular concern to the Board defendants who were responsible for committing Condo resources, if not actual financing, in support of both actions.

4. On information and belief, the purpose of the two legal actions supported by the Condo Board was not necessarily to prevail in the actions, but rather to deter Maun from speaking – and to punish her for speaking out – by imposing on her all of the financial and psychological costs and burdens associated with defending a legal claims.

5. At the same time, on information and belief, the Defendants, or some of them to be identified, also envisioned that the two actions would not only deter Maun from speaking out about Condominium activities and affairs, but that it would also chill the willingness of all other Condo owners and residents to speak freely within the condo and among members of the condo community – both personally about Condo business and individual concerns, and also politically with regard to general Condo policies and Condo Board elections –without fear of similar retribution.

6. On information and belief the two actions, served in two consecutive years, were conceived of and supported in one fashion or another by: (i) Defendant Edgemont at Tarrytown Condominium (hereafter, the “Edgemont Condominium,” the “Condominium” or the “Condo”), (ii) certain of its Board members (some currently unknown, but including the Board’s current President, Defendant Matthew Alfieri, and its immediate past President, Sandra Peterson, who was also the person named as the plaintiff in the first defamation action against Maun), (iii) some or all of the rest of the Board’s Executive Committee), and (iv) the Condominium’s Property

Manager (Defendant Jason Braun, who was named as the plaintiff in the second defamation action), represented as counsel of record in both cases by one of the Condo's attorneys, non-party Alan Brill.

7. The two defamation actions were commenced in breach of the fiduciary and other legal duties owed by the Defendant Condo Board members to the Condominium, and its owners and residents, and in breach of other laws and regulations of the State of New York.

8. Finally, both legal actions were asserted against Maun, because she was considered by the Defendants to be a political opponent – within the Condominium – who, on information and belief, they believed should be punished in order to, quite frankly, shut her up.

9. In actuality, Plaintiff is simply someone who attempts to stand up for her individual and personal rights in the community; who has also politically opposed the Condo's current, entrenched Board; and who, because of her gender and for other improper reasons, has been discriminated against by that entrenched faction of the Board for many years. as well as by the Condo's "Property Manager" (formerly the chief handyman), who was installed and has been enabled and also instructed and provoked in his discriminatory and oppressive actions against Plaintiff, by the Defendant Board members, or some of them.

10. Regardless of its purpose, the effect of Defendants' wrongful actions was to suppress, inhibit and chill Plaintiff Maun's ability, as a shareholder and resident of the Condo, to freely exercise her speech, petition and association rights – rights protected under the First Amendment to the United States Constitution, under Article I, Section 8 of the New York State constitution, and also under the provisions of Sections 70-a and 76-a of the N.Y Civil Rights

Law (the anti-SLAPP<sup>1</sup> statute). These proscribed effects were felt by Plaintiff not only when she spoke out internally within the Condo community, but when and because she also publicly petitioned and participated in voicing complaints to local authorities with jurisdiction and authority under local governmental regulations over such matters as dangerous and/or noncompliant conditions at the Condominium.

11. In short, of the Condo's two defamation actions against Plaintiff, the first had the intended effect of a SLAPP, although as a technical matter it did not qualify for coverage under the somewhat arcane definitions of the anti-SLAPP statute. However, key claims of the second defamation action indisputably make that action a SLAPP, subject to the proscriptions and powerful remedies of the N. Y. Civil Rights Law.

12. Taken together, the two baseless defamation actions singled out Maun, imposed severe costs on her (psychological and financial) and in that manner attempted to hold Plaintiff up to other Condo residents and owners as an object lesson to any or all who might consider speaking up within the community to oppose the Board or its policies and activities.

### **THE PARTIES**

13. Plaintiff Mary Ellen Maun (hereafter "Maun" or "Plaintiff") is a resident of the County of Westchester in the State of New York. Plaintiff resides in what is commonly known as the Edgemont at Tarrytown Condominium. She owns one unit in the Condominium, #539.

14. On information and belief, the Defendant Jason Braun ("hereafter "Defendant Braun" or "Braun") is a resident of the County of Putnam in the State of New York. At all times

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<sup>1</sup> "SLAPP" has become a widely-known and frequently-used acronym for a "Strategic Lawsuit Against Public Participation." And the diligent protection and preservation of the right to "public participation" is a hallmark of New York's anti-SLAPP statute.

relevant to the claims stated herein, Braun was – and he still is – employed by the Condominium Board as the Condo’s Property Manager. In that position, over the years, Braun time and again failed to provide the services necessary for Plaintiff to properly maintain her home, leading in several instances to severe damage to her Condo unit and property. On information and belief, in complicity with the Defendants, and possibly others, Defendant Braun has also made discriminatory, derogatory comments about and to Plaintiff, and has refused to provide Maun the necessary repairs and services that were provided to other owners.

15. As proof of the failure by the Condominium to provide proper services to Plaintiff, in a deposition dated May 7, 2013, Defendant Braun expressly admitted that when he was first promoted from chief handyman to Property Manager, he was told by former President – and later defamation plaintiff against Maun – Sandra Peterson, to ignore all of Plaintiff’s concerns and not to do any work for her. Finally, Defendant Braun’s willing complicity with the other Defendants ultimately extended to his agreeing to serve – wrongfully and merely nominally – as the Defendants’ chosen stalking horse in the second, on information and belief Board-sponsored, defamation action – the SLAPP here complained of – against Plaintiff.

16. Defendant Matthew Alfieri (hereafter “Defendant Alfieri” or “Alfieri”) is a resident of the Edgemont Condominium (unit #369), and was the elected President of the Condo’s Board, and a member of its four-person Executive Committee, at the time in late 2016 that the Braun SLAPP was authorized and commenced. On information and belief, he also served in these positions when funding and/or other material or institutional support for the Braun SLAPP was also approved, formally or informally, by the Condo Board’s Executive Committee. Defendant Alfieri was also President of the Board when, on information and belief, in February, 2016, the previous defamation suit against Maun, commenced in the name of the

immediate past President of the Condo Board, Sandra Peterson<sup>2</sup>. On information and belief, the Peterson defamation action was similarly authorized, approved and funded, or otherwise supported, by the Executive Committee and possibly by other members of the Condo Board, whose identities are presently not known.

17. Defendant Michael Variano (hereafter “Defendant Variano” or “Variano”) is a resident of the Edgemont Condominium (unit #327). Variano was elected by the other Board members as Vice President of the Condo Board and as such was also a member of the Board’s Executive Committee. On information and belief, in his role on the Executive Committee and as Board Vice President, Variano either formally voted for, and/or informally acted to authorize and support, the Peterson defamation suit against Plaintiff in 2016 and the Braun SLAPP action, commenced in December 2016 and served on her in March, 2017.

18. Defendant Anne McKissick Sadar (hereafter “Defendant Sadar” or “Sadar”) is a resident of the Edgemont Condominium (unit #373). Sadar has been the elected Treasurer of the Condo Board since May 2016 (before the Braun SLAPP was filed) and was as such also a member of the Board’s Executive Committee during that period. On information and belief, in her role on the Executive Committee, Sadar either formally voted for, and/or informally acted to authorize and support, at least the Braun SLAPP suit against Plaintiff at the end of 2016.

19. Defendant James Brady (hereafter “Defendant Brady” or “Brady”) is a resident of the Edgemont Condominium (unit #333). Brady was elected Secretary of the Condo Board beginning in May 2016 and as such was also a member of the Board’s Executive Committee during that period. On information and belief, in his role on the Executive Committee and/or the Board, Brady either formally voted for, and/or informally acted to authorize and support, the

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<sup>2</sup> On information and belief, Sandra Peterson is now deceased. She had been ill and passed away at some time after her defamation action against Maun had been dismissed by the Court.



Braun SLAPP commenced against Plaintiff in December, 2016. On information and belief, Brady was not a member of the Condo Board when the Peterson defamation suit against Plaintiff was commenced in February, 2016.

20. One additional Board member, Harriet Klugman, is not named as a defendant herein, at the present time, although she was an officer (Secretary), and thus a member of the Executive Committee when, on information and belief, the Executive Committee authorized and voted to support the Peterson defamation action in 2015. Non-party Klugman was still serving on the Board, but was no longer an officer or member of the Executive Committee when, on information and belief, the Braun action was authorized by the Executive Committee.

21. The John Doe Board Member Defendant(s) No(s). 1, etc. (hereafter “the John Doe Board Defendant(s)”) is/are (a) resident(s) of the Edgemont Condominium (residing in unit(s) to be identified). The John Doe Board Defendants, if any, to be identified and joined with the current Defendants in this action, are other members of the Edgemont Condominium Board, whose identities are currently unknown to Plaintiff, but who may have been aware of, and who may have voted to fund, or otherwise affirmatively acted to authorize or support, the Peterson defamation action against Plaintiff Maun at the beginning of 2016 and/or the Braun SLAPP action against Plaintiff filed in December, 2016 but not served until March, 2017.

22. On information and belief, Defendant Edgemont Condominium at Tarrytown is a New York condominium occupying approximately 23.5 acres of land at Benedict Avenue and Martling Avenue, in Tarrytown, New York, more particularly 301 Martling Avenue, Tarrytown, New York. The Condominium, as a defendant herein, is legally responsible for all acts or omissions of the Condo, its Board and/or individual Board members, and its employees and staff. Also on information and belief, the Edgemont Condominium maintains liability insurance to

protect against the cost of claims or judgments against the Condominium or the other covered individuals or entities. For purposes of the derivative, second cause of action, based on individual Board members' alleged breaches of their fiduciary duties (see ¶¶ 64-68, infra), the Edgemont Condominium is also named as a "nominal-party" plaintiff herein, as its duty to protect and preserve its own funds, and those of all of the condo owners, renders it also a "victim" of the wasteful fiduciary breaches of the individual Defendants in pursuing baseless litigation, for wrongful purposes, that also potentially exposed the Condo to the even more significant sanctions, lost revenues and loss of reputation that could easily result from public disclosure of such a pattern of questionable and wasteful, Board-instigated and/or -sponsored litigation against a Condo resident and owner.

23. In the aggregate, the individual Defendants named in this action, who are and/or were at pertinent times Members of the Edgemont Condominium Executive Committee and/or Board, are referred to hereafter as "Executive Committee Members" and/or "the Board Defendants."

24. Finally, on information and belief, non-party Alan Brill is an attorney licensed to practice law in the State of New York. Brill was counsel of record in the Peterson defamation action against Plaintiff. Brill was also counsel of record in the Braun SLAPP suit against Maun. Brill had also done and, on information and belief he continues to do, other legal work for the Edgemont Condominium from time to time.

#### JURISDICTION AND VENUE

25. The Court has jurisdiction over this action because all of the Defendants are residents of, or have their principal place of business in, the State of New York. In addition, the

Defendants' acts as alleged herein – which injured Plaintiff and the Nominal Party in Westchester County – all occurred in the State of New York.

26. Venue is proper in the County of Westchester, pursuant to N.Y. CPLR Sec. 503, inasmuch as most of the individual Defendants reside, on information and belief, in Westchester County and the Condominium is located in and does business solely within the County. And once again, most if not all of the actions complained of, by Plaintiff and by the Nominal Party, occurred in Westchester

### **PLAINTIFF'S THREE CAUSES OF ACTION**

27. Plaintiff's First Cause of Action seeks to secure for herself the remedies and protections provided under N.Y. Civil Rights Law §§70-a and 76-a ("the anti-SLAPP statute"). The anti-SLAPP statute proscribes abridgement of Maun's constitutional, and her constitutionally-related, rights and establishes procedures intended to speed enhanced compensation to Plaintiff for the damages she has suffered that were caused by the Defendants' wrongful commencement of not one but two related defamation actions, one after another, against Plaintiff, neither one of them having had a substantial basis in fact or in law.

28. On information and belief both actions were instituted by the Defendants for the identical purposes of harassing, intimidating, punishing and/or otherwise maliciously retaliating against Maun and inhibiting Plaintiff's free exercise of her speech, petition or association rights in connection with matters of importance to the Condominium owners and community, including matters of public interest and concern as recognized and defined under the anti-SLAPP statute. Moreover, as specifically alleged in the First Cause of Action, at least the second of those two

suits (Braun) fully qualifies as a “strategic lawsuit against public participation and petition” (a “SLAPP” suit), under the current definitions of the N.Y. anti-SLAPP statute.

29. Plaintiff’s Second Cause of Action is closely related to the First. It seeks to hold the Executive Committee, and other Board member Defendants, accountable for breaches of their fiduciary duties to the Condominium corporation, the condo’s shareholders generally and to Plaintiff individually as well as in connection with their wrongful waste and misuse of condo and shareholder funds by, on information and belief, conceiving of, approving, commencing and/or financially supporting, wrongful, meritless, retaliatory litigation against the Plaintiff as a shareholder of the condominium and as a public petitioner and participant, as those terms are defined under the anti-SLAPP statute.

30. And finally, in this same context, Plaintiff’s Third Cause of Action asserts Maun’s statutory right to be free from prohibited retaliation by the Condo in connection with a discrimination action Maun had previously commenced against the Condo and Defendant Braun. This retaliation, on information and belief by decision of the Executive Committee and/or other Condo Board members, was pursued in the form of not one but two lawsuits against Maun in retaliation for asserting her statutory (and underlying constitutional) rights. This Third Cause of Action is pled under New York’s Human Rights Law, which protects a human-rights violation claimant, such as Maun, from retaliation for pursuing claims of sexual and gender discrimination.

**FIRST CAUSE OF ACTION****(WRONGFUL COMMENCEMENT OF A “SLAPP” SUIT,  
BY ALL DEFENDANTS,  
IN VIOLATION OF §70-A AND §76-A OF THE N.Y. CIVIL RIGHTS LAW)**

31. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 – 30 of this Complaint.

32. On December 1, 2016, Defendant Jason Braun, represented by attorney Alan Brill, who had previously represented former Board President Peterson and, on information and belief, the Condo from time to time, filed his 2016 action against Plaintiff for defamation based on certain complaints lodged against him by Maun, expressing her views as to many deficiencies in his performance and activities – public as well as private – as Property Manager of the Condominium, over a period of several years.

33. For reasons not yet known, service of the Braun complaint was not attempted for more than an additional three months after its December filing – until early March, 2017 – and was not finally completed until March 8, 2017.

34. At the time the Braun suit was filed, non-party Alan Brill, counsel of record for Braun, was also still counsel of record in the defamation case of Peterson v. Maun, commenced in 2016. In the Peterson defamation action, Defendant Maun’s motion to dismiss had been made and fully briefed but was still sub judice when the Braun action was filed.

35. Coincidentally, or conveniently, at almost exactly the same time service of the Complaint in the Braun action was finally being attempted in the Peterson case, Maun’s motion to dismiss the action in its entirety, on the face of the complaint pursuant to CPLR 3211(a)(7), and on the “documentary evidence” pursuant to CPLR 3211(a)(1), was about to be granted, in an opinion ultimately dated March 7, 2017.

36. In readily dismissing the Peterson action, Judge Sam D. Walker in the Westchester County Supreme Court held that most of the allegedly defamatory statements complained of by Peterson were “true,” based on the documentary evidence, or that they were non-actionable statements of opinion, or that they were privileged statements of fact.

37. Both the Peterson and Braun actions are SLAPP suits, in the non-statutory sense of their suppressive and retaliatory intent. Both seek to employ baseless litigation to chill disfavored expression by a critic. And both also seek to punish a critic who has also raised issues involving public participation and public permittees throughout the entire period covered by both actions – Peterson as well as Braun.

38. Unfortunately, although the Supreme Court found Peterson’s defamation claims against Maun to be entirely without merit, as a technical matter that first action by Peterson against Plaintiff was not subject to the anti-SLAPP provisions of the Civil Rights Law. For that reason, Maun did not attempt to invoke the anti-SLAPP statute in the Peterson case. Specifically, this is because the Peterson claims were all focused on allegedly defamatory statements by Maun made wholly within the context of intra-condominium communications. At the present time the anti-SLAPP statute only applies to statements made in the course of “public participation,” as defined.

39. The Braun action, however, is different. And because of that difference it fits squarely within the specific and intended coverage of the anti-SLAPP suit law.

40. Thus, in his defamation action, plaintiff Jason Braun complains of (Cplt. ¶¶11-12) allegedly defamatory statements, disseminated on March 9, 2015, in a web post to “Fellow Edgemont Owners.” Braun complains that those allegedly false and defamatory statements accused him, according to his Complaint, “of failing to identify and address crucial safety issues

and of endangering the residents of Edgemont.” (Id. ¶11) (Maun’s entire March 9, 2015 web post to fellow owners is annexed to this Complaint as Exhibit 1.)

41. Braun then reproduces the text of that web post, including the following language:

“Our Board and Property manager did not act on or respond to multiple missives I sent them regarding the safety issue of blocked signage and buried fire hydrants.

Their failure to address these crucial safety issues had left us vulnerable and endangered for weeks.

.....  
It is frightening to think that our property manager and Board have not incorporated these essential safety tasks in their storm protocol.”

42. Braun’s Complaint then adds another related, allegedly false and defamatory statement by Maun, in her email, dated March 6, 2015, “addressed to an official at the Village of Tarrytown ... accus[ing] the plaintiff [Braun] of being dismissive of safety issues regarding signage at Edgemont.” (Cplt. ¶13-14)

43. What Braun’s complaint does not reveal or acknowledge is that, in addressing her concerns to a Village official with regulatory jurisdiction over the Edgemont Condominium, Maun had become a “public participant,” under the anti-SLAPP statute, who was in that email addressing her safety concerns about a “public permittee” – i.e., the Edgemont Condominium – when it came to the issue of officially-required signage on the streets and highways of the Village.

44. In fact, as the Braun Complaint also does not discuss or reveal, Maun’s complained-of March 6 email “to an official at the Village of Tarrytown” (id. ¶13), generated a written back and forth with Village officials, in which the Town Mayor became involved, forwarding Maun’s safety concerns about inaccessible fire hydrants and direction signage buried

in the snow, to the Village Administrator. (The relevant email exchange is annexed to this Complaint as Exhibit 2.)

45. In Exhibit 2, the Village Administrator, in turn, assures Maun that her concerns “will be addressed with the [condominium’s] Management company...” and he refers the matter to the Tarrytown building inspector. Later, the building inspector did contact Braun, advising him of the Administrator’s official determination that the Condo hydrants must be made accessible immediately. The inspector adds that “Unit signage at Edgemont is unclear at the best of times and should never be blocked [in a snow storm].” Finally, the inspector recommends that Braun set up a meeting with the Police, Fire and ambulance corps” in order to bring the Condominium into full compliance with Town safety regulations regarding signage. (See email from Michael J. McGarvey to Jason Braun, Exhibit 1 attached hereto.)

46. Maun in turn advises and updates fellow unit owners on these developments in her March 9 web post, reproduced in Braun’s complaint and also alleged to represent another false and defamatory publication. (Braun complaint, . §§11-12)

47. In other words, this is a classic, casebook case of Maun being “SLAPPED” (by Braun, supported, on information and belief, by at least the Executive Committee of the Edgemont Condominium) due to her public participation in matters of public concern regarding the Edgemont condominium as a publicly-regulated permittee and her related informational communications to other concerned residents of the publicly-regulated Condominium.

48. Or, in the language of the anti-SLAPP statute, the Edgemont Condominium was for these purposes a “public applicant or permittee” within the meaning of N. Y. Civil Rights Law Section 76-a (“Public applicant or permittee’ shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or



permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission.”)

49. The other Defendants, correlatively, are for those same purposes, “persons with an interest, connection or affiliation” with the Edgemont Condominium, thus also associated with public applications or permits, as Board members controlling the public, regulated activities and legal compliance obligations of the Edgemont Condominium. And Defendant Braun, as the condo’s Property Manager, was also actively involved on a daily basis with the Condominium’s public regulatory and compliance obligations.

50. Accordingly, on information and belief, all of the Defendants were, in one fashion or another, responsible for the baseless Braun defamation suit, being pursued to “maliciously inhibit[] the free exercise of speech” – acts that all fall squarely within the reach of the anti-SLAPP provisions of N. Y. Civil Rights Law Section 70-a.

51. Before issue had been joined in the Braun SLAPP suit, Braun’s attorney, Mr. Brill, had already served a Notice of Appeal from dismissal of Peterson’s defamation action. (Subsequently, however, Brill failed to perfect Peterson’s appeal, the six-month time for which expired on or about October 7, 2017 – or now more than 3 months ago.

52. Braun’s complaint alleged causes of action for defamation based on some 44 statements claimed to have been made by Maun over a period of eight (8) years, from 2009 to 2015.

53. Of these 44 statements, a total of 38 were clearly non-actionable, having been made between the years 2009 and 2015 - all after – and many long after – the one-year New York statute of limitations for defamation had run on Braun’s claims first filed on December 1, 2016.

54. Accordingly, the claims – that were made in 24 of the 26 paragraph of Braun’s complaint alleging defamatory statements by Maun, were frivolous on their face and without substantial basis as a matter of fact or of law. Attorney Brill must have been aware that he was baselessly including a multiplicity of dead claims in the action, or else he appears to have been guilty of legal malpractice.

55. Moreover, the only two claims asserted by Braun that were within the statute of limitations were dismissible on their face because – to the extent that they even possessed the requisite “defamatory meaning” to support a defamation claim – they would have readily been understood by reasonable readers to have been statements of opinion. Thus, ¶9 of the complaint complains of a statement accusing Braun (on 7/28/16) of being (“disrespectful,” “inefficient” and “[un]caring”) and ¶30 (on 12/17/15) accuses Braun, *inter alia*, of being “rude,” “threatening” and “disinterested”).

56. For this and other reasons, the Braun action – including the live claims subject to the anti-SLAPP statute – was on its face commenced without substantial basis in fact or in law.

57. On information and belief, Braun’s attorney Brill knew – or he should have known – that the one-year statute of limitations for defamation had run on most of the asserted defamation claims. Indeed, it was at the very least frivolous to have included them in the action he had drafted and then commenced on Braun's behalf.

58. Also, on information and belief, Brill knew – or he should have known – that the claims that were not time-barred were deficient as a matter of fact and law. These include those alleged, non-time-barred claims related to statements made by Plaintiff in the context of a public application or permit, as those terms are defined under the anti-SLAPP statute.

59. Brill knew – or he should have known – that even the still-live allegedly defamatory statements (e.g., accusing Braun of a “lack of respect” or having responded to plaintiff’s concerns with a “snotty answer” or acting as if he could “care less”) on their face lacked the requisite defamatory meaning to support a defamation claim.

60. In addition, Brill knew – or he should have known – that these allegedly defamatory statements would be understood by reasonable viewers and listeners to be statements of opinion protected under both common law and the New York State and United States Constitutions.

61. Finally, Brill knew – or he should have known – that all these statements were either protected by an absolute privilege, in the case of statements made within the confines of her discrimination action, or a qualified privilege for communications on matters of common interest or concern.

62. Accordingly, the Defendant Board members who had authorized and/or supported the Braun action, were also responsible for clear violations of the anti-SLAPP statute, as was Mr. Braun, who must have known that he was being put up to an action, being funded, or supported in other ways, by the Condominium, and that, on information and belief, he had otherwise never intended to pursue.

63. When confronted by Maun’s counsel with these many glaring deficiencies – establishing beyond peradventure that the Braun claims against Plaintiff were without substantial basis in fact or in law – Brill ultimately voluntarily withdrew the action, which was discontinued, with prejudice, within approximately six weeks of its service, but not before it had caused significant additional damage to Plaintiff.

## SECOND CAUSE OF ACTION

### (BREACH OF FIDUCIARY DUTY BY THE BOARD DEFENDANTS)

64. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 – 63 of this Complaint.

65. Members of the Board of Directors of a Condominium owe an implied and inherent fiduciary duty to the Condominium corporation and also to the individual owners of condominium units and other shareholders of the corporation, if any.

66. Such fiduciary obligations include the duties of honesty, good faith, loyalty, fairness, integrity and fidelity; the duty to exercise reasonable skill, diligence, knowledge and due care; and the duty not to waste corporate assets, engage in self-dealing transactions, or make use of corporate resources for their own personal gain.

67. On its face, the Defendant Board members violated their fiduciary obligations and duties by their decisions, on information and belief, to authorize the use of Condominium funds:

- to pursue a factually and legally baseless SLAPP suit, for defamation, against one condo unit owner on behalf of an employee of the condo who otherwise would have had no interest in, or financial wherewithal, to support the costs of commencing and prosecuting such an action on his own; and

- on information and belief, to also pursue for wrongful purposes attempts to thwart factually-based claims of discrimination by the Condo, by retaliating against the unit owner for pursuing such claims; and

- to baselessly commence the SLAPP, for the purpose (indeed, on information and belief for the sole purpose) of punishing and chilling the free speech rights of that unit owner and others.

68. All of the foregoing wrongful acts and questionable purposes by the Defendants, represent clear and gross breaches of the fiduciary obligations of the involved Executive Committee (and any other involved Board members) to the Condominium and to unit owners to not waste or misappropriate Condominium funds for wrongful purposes that, in any event, could only jeopardize the standing and reputation of the Condominium, as well as its financial status – if not solvency – given the risk of a countersuit or separate action seeking the compensatory and punitive damages and reimbursement of attorneys fee provided for under the Civil Rights Act.

**THIRD CAUSE OF ACTION**

**(FOR RETALIATION BY THE CONDOMINIUM, AND THE OTHER DEFENDANTS,  
AGAINST PLAINTIFF, DUE TO HER DISCRIMINATION ACTION  
UNDER THE N.Y. HUMAN RIGHTS LAW)**

69. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 – 68 of this Complaint.

70. Plaintiff's claims in the First and Second Causes of Action are addressed to one form of speech-suppressive retaliation, related to punitive defamation actions filed against statements made in the course of "public petition and participation," barred by Sections 70-a and 76-a of the N.Y. Civil Rights Law (the anti-SLAPP suit statute).

71. The "retaliation" that is the subject matter of this Third Cause of Action flows not only from the self-evident retaliatory motives reflected by commencement of the Braun defamation SLAPP suit, but also the retaliatory commencement of an action that is barred by Section 296, et seq., of the N.Y. Executive Law (generally known, and referred to herein, as the "New York Human Rights Law" or the "NYHRL").

72. On or about June 15, 2011, Maun filed an action alleging gender discrimination, under the NYHRL, against the Edgemont Condominium and related defendants, including Mr. Braun. See Maun, Mary Ellen v. Edgemont at Tarrytown, Index No. 51584/2011 (Westchester County).

73. Essentially, Maun's Human Rights Law action was premised on the persistently discriminatory treatment she alleged she had suffered, over an extended period of time, at the hands of the Condominium and its officers and staff.

74. Maun's discrimination action was still pending when the Braun action was commenced. There can be no doubt but that the two consecutive defamation actions, served on Plaintiff Maun, in 2016 and 2017, while her NYHRL claim was pending, are directly related to – and on information and belief were being pursued, at least in part, in retaliation for – Maun's commencement and pursuit of that discrimination action.

75. Moreover, there is equally little doubt that commencement of both the Braun and the Peterson defamation actions – especially to the extent they were commenced with the encouragement if not actual support of the Condominium and Board defendants as alleged herein – was reflective of a prima facie causal connection between those consecutive and baseless legal actions and Plaintiff Maun's NYHRL action.

76. Indeed, the implication of a retaliatory motive for the two latter actions is impossible to ignore. Thus, when the defamation action commenced by the Board's past president, Sandra Peterson, was dismissed, the same attorney who represented Peterson, and who thereafter allowed Peterson's appeal from the dismissal in her case to lapse, came forth suddenly, and on information and belief not coincidentally, to represent a low-level, non-executive

employee of the Condominium in pursuing the second consecutive defamation action on information and belief brought by the Condo – or its nominee – against Maun.

77. This Court may be justifiably skeptical of the motivation of a salaried employee who, suffered silently, according to implicit admissions in his own Complaint, Maun’s allegedly derogatory, hurtful and damaging statements, for as many as eight years, before finally coming forward, years after he had also been named in Maun’s discrimination action and just at the moment that Peterson’s defamation claim had been (or was about to be) dismissed.

78. A further degree of skepticism is warranted in light of Braun’s admission, in a previous action for damages caused, that he had been specifically ordered not to provide services to Maun – in reaction to which Maun had allegedly defamed Braun by claiming he was unwilling, and had refused, to provide her with the services to which every unit owner is entitled. Yet he admitted in the previous action that those complaints against him by Plaintiff Maun were true.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in her favor, and in favor of the Nominal Parties, as against the Defendants, or some of them, as follows:

79. Finding, under the special expedited procedures provided for, that all of the Defendants violated Plaintiff’s rights under §70-a and §76-a of the N.Y. Civil Rights Act;

80. For those Defendants (individual and/or corporate) found responsible for commencing the Braun action, “without a substantial basis in fact or in law,” awarding to Plaintiff her costs and attorneys fees;

81. From the Defendants (individual and/or corporate) also found responsible for commencing the Braun action “for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights,” awarding to Plaintiff her compensatory damages in an amount to be determined by the Court;

82. From the Defendants (individual and/or corporate) additionally found to have commenced the Braun action “for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights” (emphasis added), awarding to Plaintiff punitive damages in an amount to be determined by the Court;

83. Moreover, in making and calculating the requested punitive damage award, the Court should keep clearly in mind the “legislative findings and purpose” of the anti-SLAPP statute: namely, that “the legislature hereby declares it to be the policy of the state that the rights of citizens to participate freely in the public process must be safeguarded with great diligence. The laws of the state must provide the utmost protection for the free exercise of speech, petition and association rights, particularly where such rights are exercised in a public forum with respect to issues of public concern. The legislature further finds that the threat of personal damages and litigation costs can be and has been used as a means of harassing, intimidating or punishing individuals, unincorporated associations, not-for-profit corporations and others who have involved themselves in public affairs.” (emphasis added)

84. From those Defendants found responsible for retaliation against Maun, due to her separately-filed discrimination claim pursuant to the NYHRL, actual and punitive damages in an amount to be determined.



85. And from those Defendants found to have breached their fiduciary duties to the Nominal Party Edgemont Condominium, an award of damages, to the Condominium and/or in turn to all owners of condominium units not responsible for the fiduciary breaches, in an amount to be determined by the Court.

Dated: January 30, 2018  
New York, New York

HENRY R. KAUFMAN, P.C.

By: \_\_\_\_\_/s/\_\_\_\_\_  
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*Attorneys for Plaintiff*

VERIFICATION

STATE OF NEW YORK

ss.:

COUNTY OF ~~NEW YORK~~  
WESTCHESTER

MARY ELLEN MAUN, being duly sworn, deposes and says:

I am the Plaintiff in this action. I have read the foregoing Complaint. I know the contents thereof and the same are true to my own knowledge, except as to the matters stated therein to be alleged on information and belief, as to which matters I believe them to be true.'

Mary Ellen Maun

Mary Ellen Maun

Sworn to before me this

30th day of January, 2018

Blerim Boqolli

Notary Public

