

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

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JOSEPH MONTAGNO,
Plaintiff

v.

CITY OF BURLINGTON,
Defendant

Civil No. 2:16-cv-232

COMPLAINT

Introduction

This lawsuit challenges the City of Burlington’s policy, practice, and/or custom of punishing the city’s tenants for requesting police assistance (hereinafter “Caller Punishment Policy”). The city’s Caller Punishment Policy is accomplished by 1) tracking the number of calls for Burlington Police Department (“BPD”) assistance from tenants, 2) arbitrarily classifying as a “public nuisance” any tenant deemed to have contacted BPD too frequently, 3) pressuring landlords to silence or evict tenants classified as “public nuisances,” and 4) failing to provide tenants with notice or an opportunity to challenge the city’s arbitrary actions. In addition, this suit challenges the city’s vague and overly broad ordinance used to enforce its Caller Punishment Policy. The city’s Caller Punishment Policy punishes and chills constitutionally protected speech, fails to provide procedural protections, and jeopardizes the safety of Burlington tenants.

Initially unbeknownst to him, Plaintiff Joseph Montagno was subject to the city’s Caller Punishment Policy because he requested BPD assistance. Between 2014 and 2016, the city tracked Mr. Montagno’s calls for police assistance, classified him as a “public nuisance,” threatened legal action against Mr. Montagno’s landlord if the landlord did not silence him, and failed to notify Mr. Montagno of its determination or provide him with an opportunity to

challenge it. As a direct result of the city's Caller Punishment Policy, Mr. Montagno's landlord threatened Mr. Montagno with eviction and commenced eviction proceedings against him. Consequently, Mr. Montagno is at risk of homelessness and his safety is continuously in jeopardy because the city's maintenance and enforcement of its Caller Punishment Policy has chilled his ability to request BPD assistance, even when crimes have been committed against him.

Mr. Montagno brings this action pursuant to 42 U.S.C. § 1983, the U.S. Constitution, and Vermont law. The city's Caller Punishment Policy violated Mr. Montagno's rights to free speech and to petition his government for redress of grievances under the First Amendment to the U.S. Constitution. Additionally, the city's Caller Punishment Policy chills Mr. Montagno's speech in violation of the First Amendment. The city's Caller Punishment Policy also violated Mr. Montagno's rights to substantive and procedural Due Process under the Fifth and Fourteenth Amendments to the U.S. Constitution, unlawfully interfered with his contractual relations with his landlord, and exceeded the city's limited authority. To correct and address these wrongs, Mr. Montagno asks this Court to provide declaratory and injunctive relief, compensatory damages, reasonable costs and fees, and other relief as the Court sees fit.

Jurisdiction and Venue

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a).
2. This Court has supplemental jurisdiction over the Vermont state law claims pursuant to 28 U.S.C. § 1367.
3. Declaratory relief is authorized by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.
4. Injunctive relief is authorized by Federal Rule of Civil Procedure 65.
5. This Court has personal jurisdiction over the City of Burlington because it is located in

the District of Vermont and the events that give rise to this action occurred within the District of Vermont.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

Plaintiff

7. Mr. Montagno is a resident of Burlington, Vermont.
8. Mr. Montagno intends to remain a resident of Burlington indefinitely.

Defendant

9. The defendant, City of Burlington, is a municipality located in Chittenden County, in the State of Vermont, with administrative offices at 149 Church Street, Burlington, VT 05401.
10. At all times relevant to this suit, the defendant did and does own, operate, manage, direct, and control the BPD and the Burlington Department of Code Enforcement Office (“BCE”).
11. At all times relevant to this suit, the defendant and its departments employed Director of BCE William Ward, Chief of BPD Brandon del Pozo, BPD Lieutenant Mathew O. Sullivan, BPD Officer Philip Tremblay, BPD Crime Analyst Connor Brooks, BPD Community Affairs Director Bonnie Beck, and BPD Community Affairs Liaison Lacey-Ann Smith.
12. At all times relevant to this suit, the defendant was and is a “person” acting under color of law for purposes of 42 U.S.C. § 1983.
13. Vermont cities derive their legislative powers either from state law or from their own charters. Burlington has a charter and possesses only that power authorized by said charter, state law, and the Vermont Constitution. Burlington’s Code of Ordinances does not reference any section of its charter or of state law permitting the adoption or

enforcement of the Caller Punishment Policy.

Facts

A. The Compliance Ordinance

14. The defendant's housing code requires Burlington landlords to obtain certificates of compliance for each property they desire to make available for rent to tenants.
[Burlington Code of Ordinances Chapter 18, Section 18].
15. The defendant's Suspension and Revocation of Certificate Ordinance (hereinafter "Compliance Ordinance") authorizes the defendant to suspend a landlord's certificate of compliance for a rental unit or an entire rental property for up to one year where "the fault for noncompliance is determined to rest with the landlord, not the tenant(s)."
[Burlington Code of Ordinances Chapter 18, Section 20(a)].
16. Compliance Ordinance subdivisions (a)(1) and (a)(2) authorize the defendant to suspend a certificate of compliance for up to one year for a rental unit where five "violations of . . . law" or two "major violations of . . . law" are alleged to have occurred within an eighteen-month period, if the landlord has not "rectified" the violations in the time allowed by a code enforcement officer. [Burlington Code of Ordinances Chapter 18, Section 20(a)(1) and (2)].
17. The Compliance Ordinance does not describe what constitutes "violations of . . . law."
18. The Compliance Ordinance does not describe what constitutes "major violations of . . . law."
19. The Compliance Ordinance does not describe under what circumstances a landlord will be deemed to have "rectified" a violation within a particular rental unit or property.
20. Compliance Ordinance subdivision (a)(3) authorizes the defendant to suspend a rental unit's certificate of compliance for up to one year if the unit is adjudicated to be a public

- nuisance at any time. [Burlington Code of Ordinances Chapter 18, Section 20(a)(3)].
21. Compliance Ordinance subdivision (a)(4) authorizes the defendant to suspend a certificate of compliance for up to one year for an entire property if there are three or more “adjudicated public nuisance type violations” within a twelve-month period where the landlord does not take “prompt and appropriate remedial action” against tenants as determined by a code enforcement officer. [Burlington Code of Ordinances Chapter 18, Section 20(a)(4)].
 22. The Compliance Ordinance describes “adjudicated public nuisance type violations” as “including but not limited to, excessive and unreasonable noise, public urination, or discharge of fireworks, firearms or airgun.” [Burlington Code of Ordinances Chapter 18, Section 20(a)(4)].
 23. The Compliance Ordinance states that “[a]ppropriate remedial action may mean a warning letter, a notice of termination or a filing of an ejectment action as determined by the enforcement officer based on the severity of the violations.” [Burlington Code of Ordinances Chapter 18, Section 20(a)(4)].
 24. The Compliance Ordinance does not provide a method to inform tenants whether, when, or how they might violate the ordinance.
 25. The Compliance Ordinance does not require or suggest that the defendant provide notification to tenants about their alleged violations of the ordinance.
 26. The Compliance Ordinance does not require or suggest that the defendant provide tenants an opportunity to challenge the defendant’s allegation that they may have violated the ordinance.
 27. The Compliance Ordinance does not require or suggest that the defendant provide notification to tenants that their alleged actions have resulted in the defendant’s threats of

or imposition of penalties on their landlord.

28. The defendant does not notify tenants that they may have violated the Compliance Ordinance.
29. The defendant does not provide tenants with an opportunity to challenge the defendant's allegation that their conduct may have violated the Compliance Ordinance.
30. The defendant does not notify tenants that their alleged actions have resulted in their landlord's compliance certificate being threatened with suspension by the defendant.
31. The Compliance Ordinance does not reference statutory authority allowing the defendant to adopt the Compliance Ordinance.
32. The Compliance Ordinance does not reference statutory authority allowing the defendant to enforce the ordinance against tenants.
33. The Compliance Ordinance does not reference statutory authority allowing the defendant to enforce the ordinance against tenants for requesting police assistance.

B. The Defendant's Caller Punishment Policy

34. The defendant's Caller Punishment Policy punishes Burlington tenants who it unilaterally and arbitrarily deems to have requested BPD assistance too frequently.
35. Under the Caller Punishment Policy, the defendant systematically tracks the number of calls for BPD assistance made by certain Burlington tenants.
36. Under the Caller Punishment Policy, the defendant unilaterally and arbitrarily decides when a tenant has requested BPD assistance too frequently.
37. Under the Caller Punishment Policy, when the defendant deems a tenant to have requested BPD assistance too frequently, the defendant classifies that tenant as a "public nuisance."
38. Under the Caller Punishment Policy, the defendant classifies tenants as "public

nuisances” regardless of whether tenants’ calls are frivolous or instead report safety concerns, criminal behavior, or other hazards.

39. Under the Caller Punishment Policy, the defendant pressures tenants’ landlords to threaten or undertake legal action against tenants that the defendant determines to have requested BPD assistance too frequently.
40. The defendant pressures landlords to take action to stop or reduce tenant calls for BPD assistance by threatening to suspend a rental unit’s or property’s certificate of compliance under the Compliance Ordinance.
41. The defendant’s threats to suspend a landlord’s certificate of compliance often result in threats to evict or the eviction of tenants.
42. The defendant has not published policies, regulations, or laws describing when a request for BPD assistance would constitute a “public nuisance.”
43. The defendant does not provide tenants with notice or the opportunity to challenge the application of the Caller Punishment Policy to their requests for BPD assistance.

C. Mr. Montagno’s Tenancy at 184 Church Street

44. Mr. Montagno signed a written one-year lease agreement contract with Sisters and Brothers Investment Group (hereinafter “S&B”) on March 15, 2013 for Apartment 25 at 184 Church Street in Burlington, Vermont.
45. Mr. Montagno’s initial lease term ended on February 28, 2014.
46. Mr. Montagno’s lease agreement was renewed in 2014, 2015, and 2016.
47. As a direct result of the defendant’s Caller Punishment Policy, S&B informed Mr. Montagno that it was terminating his lease agreement on March 31, 2016 for “no cause,” regardless of whether Mr. Montagno paid any rent owed.
48. As a direct result of the defendant’s Caller Punishment Policy, S&B refused to end its

eviction suit against Mr. Montagno unless Mr. Montagno agreed to end his lease agreement on August 31, 2016, six months before it would have expired otherwise.

49. Mr. Montagno contacted the defendant, through the BPD, multiple times during 2014, 2015, and 2016 regarding threatening and hazardous conduct, and other potentially criminal or hazardous occurrences, he experienced in and around 184 Church Street.
50. On May 4, 2016, Mr. Montagno was assaulted and threatened with a metal pipe outside his apartment door by a neighbor. The neighbor had repeatedly threatened to harm Mr. Montagno over the course of several months. Because of the defendant's actions pursuant to its Caller Punishment Policy, Mr. Montagno feared that calling BPD would result in the defendant taking action to punish him.
51. BPD responded to the May 4, 2016 incident, arrested the neighbor, and the neighbor was charged with simple assault by menace and disorderly conduct. The neighbor was later court ordered to have no contact with and to stay at least ten feet away from Mr. Montagno.

D. The Defendant Enforces its Caller Punishment Policy Against Mr. Montagno

- i. The BPD Tracked the Number of Mr. Montagno's and Other Tenants' Calls for BPD Assistance, Passed That Information to BCE, and Asked BCE to Help Stop or Reduce the Tenants' Calls.*
52. BPD employees created, maintained, and updated detailed electronic spreadsheets tracking the requests for BPD assistance from Mr. Montagno and other Burlington tenants.
53. On August 28, 2015, BPD Officer Philip Tremblay emailed BPD Crime Analyst Connor Brooks, copying BPD Lieutenant Matthew O. Sullivan, asking Mr. Brooks to create a spreadsheet of BPD-related actions regarding 184 Church Street tenants since May 1, 2015.

54. On September 1, 2015, Mr. Brooks emailed Mr. Tremblay, copying Lt. Sullivan, a spreadsheet purporting to describe calls from 184 Church Street tenants and the number of times each of twenty-six tenants was “involved in a call, whether or not they were a caller,” including Mr. Montagno.
55. On September 4, 2015, Lt. Sullivan emailed the spreadsheet of 184 Church Street tenant calls for BPD assistance to the BCE Director, William Ward.
56. Lt. Sullivan’s September 4, 2015 email asked Mr. Ward to review the spreadsheet of calls for BPD assistance and determine if there was a “code angle” that could be used to “reduce calls” coming from Mr. Montagno and other tenants of 184 Church Street.
57. The September 4, 2015 spreadsheet describes the subjects of calls for BPD assistance from tenants of 184 Church Street between May 1, 2015 and August 31, 2015 as mental health issues, suspicious events, threats/harassment, ordinance violations, disturbances, general calls for assistance, drug sales, disorderly conduct, intoxication, vandalism, compliance checks, assault, larceny, welfare checks, domestic disturbances, violations of conditions of release, ordinance violations, or drug overdoses.
58. On December 22, 2015, the BPD Community Affairs Liaison, Lacey-Ann Smith, sent an email to Mr. Ward attaching a new spreadsheet of calls for BPD assistance from tenants of 184 Church Street.
59. The spreadsheet attached to the December 22, 2015 email to Mr. Ward listed calls for service from tenants of 184 Church Street, indicating the “call type,” “call date/time,” call duration, and the address of the caller.
60. The December 22, 2015 spreadsheet included internal BPD server internet links to BPD incident reports for each call.
61. The December 22, 2015 spreadsheet’s internal BPD server internet links provided Mr.

Ward with access to BPD incident reports describing each call.

62. The BPD incident reports linked in the December 22, 2015 spreadsheet included names of individuals whose calls for BPD assistance were listed in the spreadsheet.
63. On December 22, 2015, Mr. Ward responded to Ms. Smith via email, stating that he “definitely [could] work on it” and that he planned to send a letter to Mr. Montagno’s landlord regarding tenants’ calls for BPD assistance.
64. On December 22, 2015, Ms. Smith responded to Mr. Ward, stating that she would inform the BPD Chief of Police, Brandon del Pozo, of Mr. Ward’s plan to send a letter to S&B regarding tenants’ calls for BPD assistance.
 - ii. *The Defendant’s Employees Threatened Action Against Mr. Montagno’s Landlord if Mr. Montagno and Other Tenants of 184 Church Street Did Not Stop Calling for BPD Assistance.*
65. Several times during 2015 BPD Community Affairs Liaison, Ms. Smith, contacted S&B representatives to demand that S&B representatives take action to stop or reduce the calls for BPD assistance coming from Mr. Montagno and other tenants of 184 Church Street.
66. In January 2016, Ms. Smith spoke with an S&B representative and asked him or her to stop or reduce the calls for BPD assistance coming from Mr. Montagno and other tenants of 184 Church Street.
67. On February 4, 2016, Mr. Ward sent a letter to S&B’s owner, Mr. Joseph Handy, identifying 184 Church Street as a “nuisance property” and “problem property based on police calls for service and Code Enforcement complaints.”
68. In his February 4, 2016 letter to Mr. Handy, Mr. Ward threatened “additional consequences” for S&B if 184 Church Street’s tenants were ticketed or arrested.
69. In his February 4, 2016 letter to Mr. Handy, Mr. Ward threatened to suspend 184 Church Street’s compliance certificate if calls for BPD assistance from Mr. Montagno and other

tenants of 184 Church Street did not stop or significantly reduce.

70. The February 4, 2016 letter to Mr. Handy included a copy of the Compliance Ordinance.
71. In his February 4, 2016 letter to Mr. Handy, Mr. Ward wrote that Mr. Handy was required to attend a meeting with BPD and BCE representatives on February 12, 2016 to discuss how Mr. Handy would stop or significantly reduce the calls for BPD assistance coming from Mr. Montagno and other tenants of 184 Church Street.
72. On February 4, 2016, Mr. Ward emailed BPD Community Affairs Officer Bonnie Beck and Ms. Smith a copy of the February 4, 2015 letter to Mr. Handy, stating that “[t]he letter is in the mail now!”
73. On February 12, 2016, Mr. Handy met with BPD representatives, including Ms. Smith, Mr. Ward, and other members of the “problem property team,” as required.
74. At the February 12, 2016 meeting, the meeting attendees discussed the calls for BPD assistance coming from Mr. Montagno and other tenants of 184 Church Street.
75. At the February 12, 2016 meeting the defendant’s employees told Mr. Handy that he was required to take action to stop or reduce the calls for BPD assistance from Mr. Montagno and other tenants of 184 Church Street.
76. At the February 12, 2016 meeting, Mr. Handy told the defendant’s employees that he would send a letter to the tenants of 184 Church Street, including Mr. Montagno, regarding the tenants’ calls for BPD assistance in order to stop or reduce the calls.
77. On February 18, 2016, S&B sent letters to each and every tenant of 184 Church Street, including Mr. Montagno, stating that “[t]hese nuisance calls need to stop. Over the last year there has[sic] been over 140 calls to the BPD for the building. If people continue to call for nuisance calls we will be forced to start evicting people.”
78. On February 19, 2016, Ms. Smith sent an email to Mr. Handy following up on an earlier

conversation regarding “frequent callers” for BPD assistance at 184 Church Street, with copies going to Mr. Ward and Ms. Beck.

79. Ms. Smith’s February 19, 2016 email provided a “breakdown” of the “frequent callers” who were tenants at 184 Church Street.
80. Ms. Smith’s February 19, 2016 email included the names of eight tenants of 184 Church Street and the number of times each tenant called for BPD assistance in 2015 and 2016.
81. Ms. Smith’s February 19, 2016 email stated that Mr. Montagno called for BPD assistance on forty-two occasions in 2015.
82. Ms. Smith’s February 19, 2016 email stated that Mr. Montagno called for BPD assistance on four occasions in 2016.
83. On February 25, 2016, S&B Property Manager Jennie Thompson provided Ms. Smith with a copy of S&B’s February 18, 2016 letter to 184 Church Street’s tenants threatening them with eviction for calling BPD.
84. On February 25, 2016, Ms. Smith forwarded S&B’s email and attached February 18, 2016 letter to Mr. Ward and Ms. Beck.
85. Neither Ms. Smith nor any other of the defendant’s employees responded to S&B with objections to S&B’s February 18, 2016 letter to tenants.
86. Neither Ms. Smith nor any other of the defendant’s employees responded to S&B seeking changes to S&B’s February 18, 2016 letter to tenants.
87. Neither Ms. Smith nor any other of the defendant’s employees contacted S&B representatives to ask that they cease their actions against Mr. Montagno.

iii. The Defendant’s Employees Continued to Threaten Mr. Montagno’s Landlord Because Mr. Montagno and Other Tenants Continued to Request BPD Assistance.

88. On March 11, 2016, Mr. Ward emailed S&B representatives regarding the “one month

check-in regarding . . . attempts at remedial action at 184 Church Street.”

89. In his March 11, 2016 email to S&B representatives, Mr. Ward stated that the calls for BPD assistance from Mr. Montagno and other tenants of 184 Church Street had not reduced or stopped since the February 12, 2016 meeting.
90. In his March 11, 2016 email to S&B representatives, Mr. Ward stated that, consequently, he would “make a referral of the property to the City Attorney’s office” to suspend the compliance certificate for 184 Church Street.
91. In his March 11, 2016 email to S&B representatives, Mr. Ward warned that S&B should “take more direct action” to reduce the number of calls for BPD assistance coming from tenants of 184 Church Street because “[t]he volume of calls is unreasonable and a nuisance to the neighboring properties.”
92. On March 18, 2016, Mr. Ward contacted the defendant’s City Attorney’s Office, Chief del Pozo, and the Mayor’s Office, recommending that 184 Church Street’s compliance certificate be suspended based on the calls for BPD assistance from Mr. Montagno and other tenants of 184 Church Street.
93. On March 21, 2016, Ms. Smith emailed Ms. Beck and Mr. Ward an attached spreadsheet entitled “184 church call for service breakdown 2015.”
94. The spreadsheet attached to Ms. Smith’s March 21, 2016 email to Ms. Beck and Mr. Ward named Mr. Montagno.
95. On April 11, 2016, Ms. Smith emailed the S&B property manager, Jennie Thompson, regarding a separate S&B property.
96. In her April 11, 2016 email, Ms. Smith described how BPD had previously contacted S&B regarding the calls from tenants of 184 Church Street for BPD assistance because, in her opinion, those calls were “petty” and not serious enough to warrant a call for BPD

assistance.

97. According to the defendant's records and correspondence, calls from tenants of 184 Church Street for BPD assistance in 2015 and 2016 included calls regarding vandalism, property damage, threats, harassment, mental health issues, assault, disorderly conduct, domestic violence, drug-related incidents, medical and fire emergencies, and theft.
98. According to the defendant's records and correspondence, Mr. Montagno requested BPD assistance on numerous occasions to report threats of bodily harm to his person, burglary, and other potentially criminal or hazardous occurrences.
99. Mr. Montagno is unaware of any polices, rules, regulations, or laws stating when it is or is not appropriate to contact the BPD for assistance.
100. The defendant did not inform Mr. Montagno of any policies, rules, regulations, or laws describing when it is or is not appropriate to contact the BPD for assistance because no such policies exist.

E. The Defendant's Unconstitutional Actions Directly Contributed to Mr. Montagno's Resulting Loss of His Apartment and Lease Agreement

101. In January 2016, after Ms. Smith asked S&B to take action against Mr. Montagno and other tenants to stop or reduce their calls for BPD assistance, S&B sent notices of lease termination to Mr. Montagno and other tenants.
102. On or about January 16, 2016, Mr. Montagno received a notice of lease termination from S&B stating that his yearly lease would terminate for "no cause" on March 31, 2016, regardless of whether he paid any rent owed.
103. After receiving Mr. Ward's February 4, 2016 letter and attending the required February 12, 2016 "problem property team" meeting, S&B representatives filed an eviction action against Mr. Montagno in the Superior Court of Chittenden County, Vermont.

104. On March 2, 2016, Mr. Ward emailed Mr. Handy to inquire about the date and time of a Chittenden Superior Court hearing related to the eviction case against Mr. Montagno.
105. On March 2, 2016, Mr. Handy responded to Mr. Ward, informing Mr. Ward that a Chittenden Superior Court hearing regarding the eviction case against Mr. Montagno was scheduled for March 22, 2016 at 8:30am.
106. On March 2, 2016, Mr. Ward responded to Mr. Handy stating that "I just updated my calendar and will be available that day if needed."
107. On March 22, 2016, Mr. Ward attended the Chittenden Superior Court hearing regarding the eviction case against Mr. Montagno.
108. On March 22, 2016, Mr. Ward offered to testify against Mr. Montagno.
109. In April 2016, while Mr. Montagno was visiting S&B's office, Mr. Handy told Mr. Montagno that the defendant's employees said that Mr. Montagno was calling BPD for assistance too frequently.
110. Mr. Montagno denied and denies making frivolous calls to BPD.
111. On April 7, 2016, the Winooski Housing Authority, the organization that provides Housing Payment Assistance to Mr. Montagno under the federal Section 8 Housing Choice Voucher Program, sent Mr. Montagno a letter stating that it would stop making payments to his landlord on May 1, 2016.
112. The April 7, 2016 letter informed Mr. Montagno that his Section 8 Voucher would be terminated if he did not secure housing with a landlord who would accept federal Housing Assistance Payments by October 28, 2016.
113. As a direct result of the defendant's threats to suspend S&B's compliance certificate, S&B refused to settle its eviction case against Mr. Montagno unless Mr. Montagno agreed to end his lease six months early, on August 31, 2016.

114. On May 20, 2016, because S&B refused to negotiate any further, and because he was afraid of more immediately losing his Section 8 Housing Choice Voucher and receiving a negative landlord reference from S&B, Mr. Montagno agreed to S&B's settlement terms.
115. As a part of the eviction case settlement, Mr. Montagno's lease agreement for Apartment 25 at 184 Church Street ends on August 31, 2016, six months earlier than it would have expired otherwise.
116. Mr. Montagno has, thus far, been unable to secure a lease contract for another apartment.
117. Mr. Montagno does not have any current prospects for a new lease contract, leaving him at significant risk of homelessness.
118. Mr. Montagno has suffered serious emotional and mental anguish because he has lost his possessory rights to his apartment and is at risk of homelessness and losing his Section 8 Voucher.
119. The defendant has never contacted Mr. Montagno to provide him notice that his calls for BPD assistance or his conduct constituted "violations of . . . law" under the Compliance Ordinance.
120. The defendant has never contacted Mr. Montagno to provide him notice that his calls for BPD assistance or his conduct constituted "adjudicated public nuisance type violations" under the Compliance Ordinance.
121. The defendant has never contacted Mr. Montagno to provide him notice that his calls for BPD assistance or his conduct resulted in the defendant's threats to S&B's compliance certificate for 184 Church Street.
122. Because the defendant failed to notify Mr. Montagno that his calls for BPD assistance and/or alleged conduct constituted "violations of . . . law" and/or "adjudicated public nuisance type violations" under the Compliance Ordinance, Mr. Montagno had no

opportunity to understand which of his actions constituted alleged violations, refrain from such actions, or challenge the defendant's allegations.

F. The Defendant's Maintenance and Enforcement of the Caller Punishment Policy Harmed Mr. Montagno

123. As a direct result of the defendant's Caller Punishment Policy, S&B threatened to evict and commenced eviction proceedings against Mr. Montagno based upon his calls for BPD assistance.
124. As a direct result of the defendant's Caller Punishment Policy, S&B informed Mr. Montagno that it was terminating his lease agreement on March 31, 2016 for "no cause," regardless of whether Mr. Montagno paid any rent owed.
125. As a direct result of the defendant's Caller Punishment Policy and actions pursuant thereto, S&B filed an eviction action against Mr. Montagno in the Superior Court of Chittenden County, Vermont.
126. As a direct result of the defendant's threats to suspend S&B's compliance certificate, S&B refused to settle its eviction case against Mr. Montagno unless Mr. Montagno agreed to end his lease early.
127. The defendant's maintenance and enforcement of its Caller Punishment Policy has caused Mr. Montagno to refrain from contacting the BPD for assistance on numerous occasions because he fears that such calls would result in the defendant further punishing him.
128. On one particular occasion, Mr. Montagno believed there was a break-in at his apartment, but he refrained from calling the BPD for assistance because he feared that the call would result in the defendant further punishing him.
129. On another particular occasion, Mr. Montagno heard neighbors threatening to shoot another person, but Mr. Montagno refrained from calling the BPD for assistance because

he feared the call would result in the defendant further punishing him.

130. The defendant's maintenance and past enforcement of the Caller Punishment Policy has caused Mr. Montagno to fear requesting BPD assistance in the future.
131. Because Mr. Montagno is afraid to call the BPD for assistance when his safety or the safety of others may be in jeopardy, the defendant has compromised Mr. Montagno's safety and the safety of others.

Count One: The Defendant's Caller Punishment Policy Violated and Continues to Violate Mr. Montagno's First Amendment Rights to Speak and to Petition His Government

(U.S. Const. amend. 1)

132. Paragraphs 1-131 are incorporated by reference as if set forth at length here.
133. The First Amendment to the United States Constitution guarantees the right to freedom of speech.
134. The First Amendment prohibits restrictions on the expression of information or speech, including punishment for reporting crime, requesting police assistance, or making complaints to the police.
135. The First Amendment to the United States Constitution guarantees the right to petition the government for redress of grievances.
136. The First Amendment's "right to petition" clause protects communications to law enforcement, including 1) reporting threats of harm received from another, 2) reporting criminal activity, and 3) filing a complaint with law enforcement.
137. The defendant's Caller Punishment Policy violated and violates Mr. Montagno's First Amendment rights by imposing penalties on him for requesting BPD assistance.
138. The defendant's Caller Punishment Policy has chilled and continues to chill Mr.

Montagno's exercise of his First Amendment right to contact the BPD for assistance by threatening to impose penalties on him for requesting BPD assistance, reporting potential crimes or safety hazards, and/or making complaints.

Count Two: The Defendant's Enforcement of its Caller Punishment Policy and/or Compliance Ordinance Violated Mr. Montagno's First Amendment Rights to Speak and to Petition His Government

(U.S. Const. amend. 1)

139. Paragraphs 1-138 are incorporated by reference as if set forth at length here.
140. The defendant enforced the Caller Punishment Policy and/or Compliance Ordinance against Mr. Montagno based on his calls for BPD assistance regarding violent threats against him, the burglary of his apartment, and other safety concerns in his apartment building.
141. The defendant sought to silence Mr. Montagno by pressuring his landlord, S&B, to threaten or undertake an eviction action against Mr. Montagno based on protected speech.
142. The Caller Punishment Policy and/or Compliance Ordinance, as enforced against Mr. Montagno, violated his First Amendment rights to free speech and to petition his government for redress of grievances.

Count Three: The Defendant Violated Mr. Montagno's Substantive Due Process Right to Freedom from Arbitrary Punishment for Exercising His Fundamental Rights to Speak and to Petition His Government

(U.S. Const. amends. 5 and 14)

143. Paragraphs 1-142 are incorporated by reference as if set forth at length here.
144. The defendant's maintenance and enforcement of its Caller Punishment Policy violated Mr. Montagno's substantive due process rights because the defendant arbitrarily punished Mr. Montagno based upon his exercise of his fundamental rights to freedom of speech and to petition his government for redress of grievances.

145. The Caller Punishment Policy does not advance any compelling government interest and is not narrowly tailored to justify the infringement of Mr. Montagno's fundamental right to make reports of potential crimes to the BPD free from arbitrary punishment.

Count Four: The Compliance Ordinance is Overly Broad and Void for Vagueness

(U.S. Const. amend. 14)

146. Paragraphs 1-145 are incorporated by reference as if set forth at length here.
147. On its face and/or as applied by the defendant against Mr. Montagno, the defendant's Compliance Ordinance is overly broad and void for vagueness under the Fourteenth Amendment to the U.S. Constitution because it fails to sufficiently define the terms "rectified," "violations of . . . law," "major violations of . . . law," "adjudicated public nuisance type violations," or "appropriate remedial action."
148. The defendant's failure to define the terms cited in ¶ 147 with the precision required by the U.S. Constitution encourages and has resulted in arbitrary enforcement unduly burdening the fundamental First Amendment freedoms of speech and to petition the government for redress of grievances.
149. Relying on the vagueness inherent in the Compliance Ordinance, the defendant arbitrarily and unilaterally alleged Mr. Montagno to have caused "adjudicated public nuisance type violations" and/or "violations of . . . law."
150. Relying on the vagueness inherent in the Compliance Ordinance, the defendant improperly pressured S&B to threaten or undertake an eviction action against Mr. Montagno for requesting BPD assistance.
151. The defendant's unconstitutionally broad and vague Compliance Ordinance prevented and prevents Mr. Montagno from knowing whether he could face eviction or threats of eviction based on his requests for BPD assistance, other constitutionally protected

activity, or other conduct not listed but potentially prohibited by the ordinance.

Count Five: The Defendant, its Caller Punishment Policy and its Compliance Ordinance Violated and Violate Mr. Montagno's Procedural Due Process Rights to Meaningful Notice and an Opportunity to Be Heard

(U.S. Const. amend. 14)

152. Paragraphs 1-151 are incorporated by reference as if set forth at length here.
153. The Fourteenth Amendment to the U.S. Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.
154. The defendant, its Caller Punishment Policy and/or its Compliance Ordinance threatened to deprive and did deprive Mr. Montagno of his property interests in his lease agreement and lawfully possessed apartment.
155. The defendant's threats to suspend S&B's compliance certificate for 184 Church Street if S&B did not take action against Mr. Montagno threatened and resulted in the deprivation of Mr. Montagno's property interests.
156. The defendant, its Caller Punishment Policy, and/or its Compliance Ordinance directed and/or improperly pressured S&B to initiate eviction proceedings against Mr. Montagno.
157. The defendant's Compliance Ordinance does not require the defendant to provide notice to tenants when it is enforced against a tenant, occupant, or landlord.
158. The defendant's Compliance Ordinance does not require the defendant to provide tenants an opportunity to contest the defendant's decision to allege "violations of . . . law," "major violations of . . . law," or "adjudicated public nuisance type violations."
159. The defendant's Compliance Ordinance does not provide tenants an opportunity to contest the defendant's decision to enforce or threaten to enforce the Compliance Ordinance against the tenants' landlord.
160. The defendant violated Mr. Montagno's due process rights by failing to provide him

procedural protections while its employees made decisions and took actions that deprived Mr. Montagno of his property interests.

Count Six: The Defendant Tortiously Interfered with the Contractual Relations Between Mr. Montagno and His Landlord, S&B

(Vermont State Law Claim)

161. Paragraphs 1-160 are incorporated by reference as if set forth at length here.
162. The defendant's enforcement of its Caller Punishment Policy and Compliance Ordinance intentionally and knowingly threatened S&B with suspension of 184 Church Street's compliance certificate in order to disrupt Mr. Montagno's lease agreement with S&B.
163. The defendant's threats and pressure resulted in S&B informing Mr. Montagno that it would terminate his lease as of March 31, 2016 for "no cause."
164. The defendant's threats and pressure gave rise to S&B filing an eviction action against Mr. Montagno, disrupting their lease agreement.
165. Due to the defendant's threats and pressure, S&B refused to settle its eviction suit against Mr. Montagno unless Mr. Montagno agreed to end his lease term six months early.
166. Mr. Montagno has experienced extreme emotional suffering and mental anguish because he has lost the right to remain in his current home, may lose his Section 8 Housing Choice Voucher, and is at risk of imminent homelessness due to the defendant's actions.

Count Seven: The Defendant's Maintenance and Enforcement of its Caller Punishment Policy and Compliance Ordinance Exceeded its Limited Powers

(Vermont State Law Claim)

167. Paragraphs 1-166 are incorporated by reference as if set forth at length here.
168. By maintaining and enforcing the Caller Punishment Policy and Compliance Ordinance in a manner designed to punish Mr. Montagno and others for requesting BPD assistance, and failing to provide due process protections, the defendant has exceeded its limited

powers under Vermont law.

Request for Relief

Wherefore, Mr. Montagno requests that this Court:

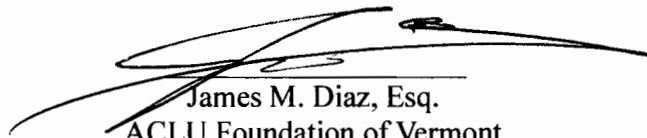
- a. Declare that the defendant's Caller Punishment Policy violates the U.S. Constitution pursuant to 28 U.S.C. 2201(a) and Federal Rule of Civil Procedure 57;
- b. Declare that the defendant's Compliance Ordinance violates the U.S. Constitution pursuant to 28 U.S.C. 2201(a) and Federal Rule of Civil Procedure 57;
- c. Declare that the defendant's actions against Mr. Montagno have violated the U.S. Constitution pursuant to 28 U.S.C. 2201(a) and Federal Rule of Civil Procedure 57;
- d. Declare that the defendant tortiously interfered with Mr. Montagno's contractual relations with his landlord, S&B;
- e. Declare that the Caller Punishment Policy and Compliance Ordinance, and the defendant's actions described in this complaint, exceeded the defendant's limited powers and thereby violated the laws of the State of Vermont;
- f. Enjoin the defendant and its employees from enforcing the Caller Punishment Policy, any part thereof, including the Compliance Ordinance, or any similar policy, against Mr. Montagno or any other Burlington tenants and apartment occupants;
- g. Enjoin the defendant and its employees from enforcing the Caller Punishment Policy, any part thereof, including the Compliance Ordinance, or any similar policy, against Mr. Montagno and any other Burlington tenants and apartment occupants unless it provides sufficient procedural due process protections to them;
- h. Award Mr. Montagno compensatory damages;
- i. Award Mr. Montagno for the costs and expenses of this action, including attorneys'

fees pursuant to 42 U.S.C. 1988(b); and,

- j. Award Mr. Montagno any further relief that the Court determines to be just and equitable.

The Plaintiff asserts his right to a trial by jury.

The American Civil Liberties Union Foundation of Vermont



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