DOCKET NO. X08-FST-CV19-6044650-S	:	SUPERIOR COURT
	:	COMPLEX LITIGATION
	:	
IJ GROUP, LLC,	:	
	:	JUDICIAL DISTRICT OF
Plaintiff,	:	STAMFORD / NORWALK AT
	:	STAMFORD
v.	:	
	:	
CITY OF NORWALK, *et al.*,	:	
	:	
Defendants.	:	OCTOBER 22, 2021

REDEVELOPMENT AGENCY OF THE CITY OF NORWALK'S
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

DEFENDANT –
REDEVELOPMENT AGENCY OF THE
CITY OF NORWALK

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" … I am looking to sue the Redevelopment Agency out of existence."
- Jason Milligan, Principal of Plaintiff IJ Group, LLC, January 15, 2021[1]

Pursuant to Sections 17-44 *et seq.* of the Connecticut Practice Book (2021), the Defendant, the Redevelopment Agency of the City of Norwalk (the "Agency"), respectfully moves that the Court enter summary judgment against Plaintiff IJ Group LLC's ("Plaintiff") March 19, 2020 Revised Second Amended Complaint. See Docket Entry # 140.00. In this case, Plaintiff asks that the Court invalidate a municipal redevelopment plan: Norwalk's 2019 "Wall Street-West Avenue Neighborhood Plan" (the "2019 Plan"). This case cannot be understood in a vacuum; rather, this case is part of a longstanding dispute between Jason Milligan, a wealthy and eccentric owner of multiple properties in Norwalk, and the City and its Redevelopment Agency.

As this Court knows from its handling of Redevelopment Agency of the City of Norwalk, *et al.* v. ILSR Owners, LLC, *et.*, Docket No. X08-FST-CV18-6038249-S (the "ILSR Case"), on May 31, 2018, Mr. Milligan, through one of his LLCs, purchased five properties in Norwalk from ILSR Owners, LLC ("ILSR") for a combined sum of $5,200,000.00. The purchase was brazenly, audaciously, and knowingly illegal. The Agency refers to its Memorandum in Support of Summary Judgment in the ILSR Case (Docket Entry # 430.00) for a full discussion of the pertinent facts. By way of high-level summary, pursuant to a public contract (land disposition agreement or "LDA") with the Agency, ILSR was prohibited from transferring the properties without prior written consent of the Agency. Such consent was never obtained, or even sought. The evidence is clear and undisputed that Mr. Milligan was keenly aware of this contractual provision prior to the purchase, and decided to proceed anyway. Not only this, but he misled City officials about his intentions, and encouraged those involved in the transaction to stay quiet, in order to prevent the City from learning of the transaction prior to closing and filing litigation

[1] See Plaintiff's Responses to the Agency's First Set of Requests for Admission (hereinafter, "Admissions") (attached hereto at Exhibit 1) at # 72.

to prevent it. The City and the Agency were not amused, and filed the ILSR Case which seeks, among other things, the reversal of the transfer and an award of monetary and punitive damages.

Mr. Milligan has apparently formed the belief that if he is able to invalidate the "2019 Plan," this will either mitigate, or defeat entirely, the claims against him for monetary damages in the ILSR Case. Accordingly, through another one of his LLCs – IJ Group, LLC, which purchased two properties in the redevelopment area ***during the plan approval process*** – he has filed the instant litigation, asking the Court to invalidate the 2019 Plan. His challenge falls into two general categories: (1) a procedural attack, which argues that the Agency failed to follow the notice requirements of the governing statute; and (2) an attack on the Agency's determination of "deteriorated or deteriorating" conditions in the redevelopment area.

The sheer, utter cynicism of this case is illustrated by the fact, of which this Court is well aware, that in the ILSR Case, Mr. Milligan has argued for years – and ***continues to argue*** – ***that the 2019 Plan is valid***.[2] In that case, Mr. Milligan is arguing (and is indeed asking this Court to declare) that the relevant LDA is void because, purportedly, the 2019 Plan ***replaced*** Norwalk's 2004 Wall Street Redevelopment Plan (the "2004 Plan") (upon which Mr. Milligan believes the LDA to be reliant). Simply put, the 2019 Plan could not "replace" the 2004 Plan if it is invalid. The fact that the Milligan parties are presenting two completely contradictory arguments in the two cases illustrates vividly that they have no genuine position on the validity of the 2019 Plan;

[2] For just one of many examples, see Docket Entry # 219.00 (page 13) in the ILSR Case, in which the Milligan Parties argued, ***after*** filing the instant case: " … there is no doubt but that the 2019 Redevelopment Plan was prepared and approved consistent with the requirements of [Section] 8-127 [of the Connecticut General Statutes], as a new plan …." See also ILSR Case Docket Entry #s 205.00 and 252.00. Note as well that in an e-mail dated June 27, 2019 (again, *after* this case was filed), Mr. Milligan stated: "The reality is the 2019 Plan is a brand new plan which replaces the expired 2004 Plan." See Exhibit 2.

their views on the 2019 Plan change based on how they believe, in any given moment, it can be used to advance their monetary interests in the ILSR Case.

The evidence shows that Mr. Milligan followed the Plan closely throughout its development process ***and supported it***, to the point of proposing ideas to the Agency which the Agency ultimately ***included in the 2019 Plan***. It was only ***after*** the ILSR Case was filed, and after Mr. Milligan apparently formed the belief that the purported invalidity of the Plan might strengthen his position in the ILSR Case, that he commenced this campaign of vindictiveness.

Since the 2019 Plan was adopted, Mr. Milligan has unleashed a relentless torrent of attacks on the City, the Agency, and the 2019 Plan. He has given juvenile nicknames to, and engaged in foul-mouthed personal insults against, public servants, their consultants, and attorneys. In a recent local news article, he referred to attorneys for the City in the ILSR Case as "mental retards." He has visited the Agency's offices unannounced and created disturbances so frequently, that exasperated Agency staff have purchased and installed locks and a security and intercom system for the building.[3] He has texted to Brian Bidolli (the Agency's Executive Director) a photograph of himself holding up the middle finger, and has also taped a photograph of himself to the windshield of Mr. Bidolli's car. Id. His deposition testimony in this case was an unhinged performance, replete with the constant use of four-letter vulgarities and the crudest of *ad hominem* insults, including dismissing the Agency's outside consultant, Melissa Kaplan-Macey (who is a single mother), as "working out of her bedroom while she's like babysitting. It's fucking retarded," calling the Agency's former Executive Director, Tami Strauss, a "crooked son of a bitch," referring to an Agency staff member as a "little punk," and referring to the

[3] See Deposition of Brian Bidolli at 221:11 – 223:16. Excerpts from Mr. Bidolli's deposition are attached hereto at Exhibit 3.

Agency as a "crooked pile of crap" and its staff as "lying, cheating, scumbags."[4] He has issued bombastic statements to a local news outlet, including recent comments in which he claimed to be "#winning" and "absolutely kicking ass" in the instant lawsuit. See Exhibit 5. This three-ring circus should not distract from the dearth of actual merit to this case.

The Redevelopment Agency and the public servants whom it employs worked tirelessly on this Plan, and, it should go without saying, derived no personal benefit from it whatsoever. Through this Plan, the Agency seeks to improve a neighborhood for the benefit of the City and all of its residents. In contrast, Mr. Milligan asks this Court to invalidate the 2019 Plan to help him wiggle out of the consequences of the absolute mess that he created for himself by illegally purchasing the aforementioned properties. The Court should not abide this audacious effort.

Mr. Milligan admits that there is no formal right of appeal of a redevelopment plan. No matter how much Mr. Milligan wishes it to be so, this ***is not*** a trial *de novo*. Our Supreme Court has held that the determination of a redevelopment area is within the broad discretion of the redevelopment agency, and the agency's determination in this regard is conclusive and generally non-reviewable. The Courts have held that they will not interfere with the agency's determination unless there is evidence of bad faith, unreasonableness, or abuse of power. In other words, the scope of judicial review is incredibly narrow. There is no such evidence whatsoever in this case. Mr. Milligan has taken nearly 100 hours of deposition testimony.[5]

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[4] See Deposition of Jason Milligan at 165:5-9; 181:18-19; 220:18-24; 242:22 – 243:3; 253:4. Excerpts from Mr. Milligan's deposition are attached hereto at Exhibit 4.

[5] In contrast, it was exceedingly difficult for the Agency to obtain meaningful discovery compliance from Mr. Milligan. Due to the Agency's suspicions that his productions were incomplete, the Agency served two third-party document subpoenas on individuals known to have communicated with Mr. Milligan about the 2019 Plan. Both yielded numerous e-mail communications from Mr. Milligan during the relevant time periods in which he discusses his thoughts on the 2019 Plan in detail – e-mails that Mr. Milligan himself had failed and/or refused to produce. The Agency contemplated seeking extensions to the dispositive motion and trial

None of Plaintiff's efforts have elicited any evidence that would suffice to meet the incredibly high bar for judicial intervention in the legislative function. Quite to the contrary, the evidence shows that the Agency went *above and beyond* all statutory requirements by hiring not just one, but *two* highly credentialed planning firms to consult on the 2019 Plan, and even seeking *two* legal opinions from attorneys on the validity of the consultants' methodologies prior to advancing the Plan to the Norwalk Common Council. *Both* attorneys opined that the consultants' methodologies were consistent with the General Statutes.[6] The Court should thus grant this Motion, and enter judgment against this case in its entirety.

I. PROCEDURAL HISTORY AND SUMMARY OF ALLEGATIONS

a. Procedural History

The ILSR Case was filed by the Agency and the City of Norwalk on or about September 25, 2018. In response, Plaintiff filed this case (originally in the Judicial District of Fairfield at Bridgeport) on or about April 26, 2019. At the outset, there were four defendants: (1) the City; (2) the Agency; (3) Regional Plan Association, Inc. ("RPA"); and (4) Harriman Associates, Inc. ("Harriman"). Plaintiff's original Complaint contained two causes of action against the Agency: (1) "Violations of Due Process" and (2) "Fraud." On June 17, 2019, prior to any of the Defendants even answering the Complaint, Plaintiff on its own initiative withdrew the case as to the City, without any explanation. See Docket Entry # 107.00. On July 16, 2019, the Agency filed a Motion to Strike both claims against it. Id. at # 111.00 – 112.00. On July 30, 2019, Plaintiff filed an Amended Complaint. Id. at # 115.00.

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deadlines on this ground, but opted instead to file this brief as scheduled and move toward finality on this matter.

[6] The Agency was not even planning to rely on, or even mention, these legal opinions, until Plaintiff made an issue of them and demanded their disclosure.

This case was ultimately transferred to the Judicial District of Stamford/Norwalk on November 25, 2019. Id. at # 126.33. On December 30, 2019 (upon agreement of the Parties) the case was transferred to Complex Litigation, due to Judge Lee's handling of, and familiarity with, the ILSR Case. Id. at # 127.01. During a Court Conference on February 19, 2020, Plaintiff conceded the validity of the Agency's Motion to Strike, and asked the Court for leave to file another amended complaint. On March 3, 2020, additional counsel appeared for Plaintiff. On March 13, 2020, Plaintiff filed a Second Amended Complaint. Id. # 136.00. On March 19, 2020, Plaintiff filed a Revised Second Amended Complaint (the "Complaint"). Id. at # 140.00.

The Complaint set forth the following causes of action against the Agency: (1) Slander of Title; (2) Declaratory Judgment; (3) Injunctive Relief; (4) Fraud; (5) Fraudulent Nondisclosure; and (6) Civil Conspiracy. Numerous causes of action were brought against RPA and Harriman. On April 17, 2020, the Agency moved to strike all causes of action against it. Id. #s 148.00 – 149.00. On June 5, 2020, Plaintiff filed its Objection to the Motion to Strike. Id. # 153.00. During oral argument on October 30, 2020, Plaintiff agreed to voluntarily withdraw its claim for Injunctive Relief and the Agency agreed to withdraw its Motion to Strike solely as to the claim for Declaratory Judgment. On December 3, 2020, the Court entered a Memorandum of Decision striking Plaintiff's claims for Slander of Title, Fraud, Fraudulent Nondisclosure, and Civil Conspiracy, finding that the claims were barred by statutory governmental immunity. Id. at # 148.02; IJ Group, LLC v. City of Norwalk, No. FST-CV19-6044650-S, 2020 Conn. Super. LEXIS 1541 (Conn. Super. Ct. Dec. 3, 2020) (Ozalis, J.).[7] On January 14, 2021, Plaintiff withdrew its claims against RPA and Harriman. See Docket Entry # 174.00.

[7] In his deposition, Mr. Milligan referred to statutory governmental immunity as "bullshit" and stated that Agency staff "should be going to jail" if not for governmental immunity. See Milligan Dep. at 178:4-9.

b. Summary of Allegations

The only surviving count in the Complaint is Count Four, which seeks a Declaratory Judgment invalidating the 2019 Plan. The allegations are lengthy. In the interest of brevity, the Agency refers to the Complaint itself, rather than summarizing the allegations herein.

II. STATEMENT OF UNDISPUTED FACTS

a. Background on Plaintiff IJ Group, LLC

The Plaintiff in this case is IJ Group, LLC. IJ Group is a two-member LLC; the members are Mr. Milligan and Daniel Groff. See Plaintiff's Responses to First Set of Interrogatories (Exhibit 6) at # 3; Milligan Dep. at 12:18-23. Mr. Milligan *does not* reside in Norwalk; he resides in New Canaan. See Admissions at #s 5-6; Milligan Dep. at 9:15-17. Likewise, Mr. Groff resides in New Canaan. See Milligan Dep. at 12:24 – 13:9. Mr. Milligan testified that Mr. Groff is "probably not" aware that this specific litigation is pending. Id. at 13:12-14. On December 18, 2018, *after* the 2019 Plan had been publicly released, Plaintiff became the owner of 67 and 69 Wall Street in Norwalk. See Admissions #s 15; 19. Mr. Milligan testified that he was "probably" aware that the Agency was working on a redevelopment plan *before* purchasing the properties. See Milligan Dep. at 24:20-24. Plaintiff purchased the properties from Fairfield County Bank for $1,200,000.00 cash. Id. at 25:16-18; 26:1-6.

b. Statutory Context

A brief amount of statutory context is necessary at this point to understand the discussion of undisputed facts that will follow. The statutory framework will be discussed in much greater detail in Section III(c) below. For present purposes, suffice it to say that in order to adopt a valid redevelopment plan, a redevelopment agency must first make a finding that there exists a "redevelopment area." See Conn. Gen. Stat. § 8-125. A "redevelopment area" is statutorily

defined as follows: "… an area within the state that is deteriorated, deteriorating, substandard or detrimental to the safety, health, morals of welfare of the community." See Conn. Gen. Stat. § 8-125(2). The terms "deteriorated" and "deteriorating" are defined as follows: "… an area within which at least twenty percent of the buildings contain one or more building deficiencies or environmental deficiencies, including, but not limited to …." See Conn. Gen. Stat. § 8-125(7). The definition then proceeds to provide a non-exhaustive list of thirteen (13) building and/or environmental deficiencies that may be considered by the agency. Id. The determination of "deteriorated and deteriorating conditions" was sometimes referred to by those involved as a "blight" determination. The witnesses all clarified, however, that the statute ***does not*** ask for a determination of "blight," and that the term was used merely as a colloquialism, or shorthand, for the lengthy phrase "deteriorated or deteriorating conditions determination." See Deposition of Emily Innes at 535:11 – 536:16; Deposition of Melissa Kaplan-Macey at 209:5-9; 241:17 – 243:11; Deposition of Tami Strauss Dep. at 570:5-8.[8]

c. Development and Approval of 2019 Plan

In 2004, a redevelopment plan had been enacted for the Wall Street area in Norwalk, and in 2006, a redevelopment plan had been enacted for the West Avenue area. Beginning in 2016, the Agency began the process of consolidating and updating those plans into what would eventually become the 2019 Plan. The Agency viewed the 2019 Plan as amending, or supplementing, the 2004 Plan. See Deposition of Timothy Sheehan at 174:13-24.[9] The purpose of the 2019 Plan was to take the currently-existing redevelopment plans for the Wall Street and

[8] Excerpts from Ms. Innes' deposition are attached hereto as Exhibit 7. Excerpts from Ms. Kaplan-Macey's deposition are attached hereto as Exhibit 8. Excerpts from Ms. Strauss' deposition are attached hereto as Exhibit 9.

[9] Excerpts from Mr. Sheehan's deposition are attached hereto as Exhibit 10.

West Avenue areas, and to consolidate and update them to reflect current conditions. See Deposition of Sabrina Church at 231:7-17;[10] Strauss Dep. at 23:18-22.

At the time, Timothy Sheehan was the Agency's Executive Director. See Sheehan Dep. at 16:11-21. Tami Strauss, at the time the Agency's Director of Community Development Planning, was the Agency's Project Manager with regard to the 2019 Plan.[11] See Church Dep. at 17:10-14; Kaplan-Macey Dep. at 55:2-3; Sheehan Dep. at 139:25 – 140:8; Strauss Dep. at 10:11-17; 11:24 – 12:1. Mr. Sheehan was Ms. Strauss's supervisor. See Strauss Dep. at 13:19-24. Sabrina Church, at the time a Community Development Planner with the Agency, provided support to Ms. Strauss.[12] See Church Dep. at 16:23 – 17:9; Strauss Dep. at 14:20-24.

i. ***The Agency retains RPA as a consultant on the Plan. One of RPA's many tasks is to perform a "deteriorated or deteriorating" conditions analysis in accordance with the General Statutes***

On September 20, 2016, the Agency entered into a contract with Regional Plan Association, Inc. ("RPA") for RPA to provide various services with regard to the development of the 2019 Plan. RPA is a non-profit planning, policy, and advocacy organization for the tri-state region which first began assisting municipalities with planning in 1929. See Kaplan-Macey Dep. at 17:5-10; 23:16 – 24:7. RPA was engaged because Mr. Sheehan was aware of its expertise in planning in the tri-state area, and because it has a skillset in planning that would be important for a redevelopment plan. See Sheehan Dep. at 271:13-18. The Agency's main contact person at

[10] Excerpts from Ms. Church's deposition are attached hereto as Exhibit 11.

[11] Ms. Strauss holds a Master's Degree in Urban Planning from New York University. See Strauss Dep. at 8:13-20. She has worked in urban planning in various roles since 1991. Id. at 9:3-24.

[12] Ms. Church holds a Master's Degree in Urban Planning from the University of Southern California. See Church Dep. at 7:19 – 8:3.

RPA was Melissa Kaplan-Macey.[13] See Church Dep. at 37:25 – 38:4; Sheehan Dep. at 273:2-9; Strauss Dep. at 16:5-7; 87:14-16; 579:4-9. Ms. Kaplan-Macey is RPA's Connecticut Director. See Kaplan-Macey Dep. at 17:5-10. On October 14, 2016, Ms. Strauss sent a "scope of work" to Ms. Kaplan-Macey. Id. at 43:9 – 44:15; Exhibit 12. One of the many tasks that RPA was asked to perform was an analysis of "deteriorated or deteriorating" conditions in the area. See Kaplan-Macey Dep. at 209:1-4; Strauss Dep. at 579:10-13. Ms. Kaplan-Macey understood her assignment to be an analysis of whether twenty percent or more of the buildings in the area had one or more building or environmental deficiencies. See Kaplan-Macey Dep. at 213:23 – 214:3. Ultimately, the decision belonged to the Agency; RPA was engaged to provide analyses and recommendations that the Agency could ultimately use to make its decision. See Church Dep. at 32:5-11; Kaplan-Macey Dep. at 56:10-17; 57:10-13l; Strauss Dep. at 238:13-24. Indeed, nothing in the governing statutes even requires a redevelopment agency to hire a third-party consultant for this analysis. See Church Dep. at 32:12-14. The Agency, however, felt that it would be good practice to procure an outside opinion on the issue. Id. at 33:14-21.

Ms. Strauss communicated to Ms. Kaplan-Macey that it was important that RPA's analysis comported with the Connecticut General Statutes. See Kaplan-Macey Dep. at 215:15 – 216:1; Strauss Dep. at 579:15-17. Indeed, on October 24, 2016, Ms. Strauss e-mailed Ms. Kaplan-Macey, among other things, a link to Chapter 130 of the Connecticut General Statutes.

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[13] Ms. Kaplan-Macey holds a Bachelor's degree in Urban Planning from Brown University and a Master's Degree in Urban Planning from New York University. See Kaplan-Macey Dep. at 10:16 – 11:5. She has worked in urban planning, in both the private and public sectors, since 2001. Id. at 11:12 – 22:8. In her private practice (in addition to the City of Norwalk) she has worked extensively on planning projects with the City of Bridgeport, and was one of the primary authors of Bridgeport's 2008 Master Plan. Id. at 14:17 – 15:6. She has been appointed by Governor Lamont as the Co-Chair of his Transition Transportation Policy Committee, and has also served on Governor Lamont's Fairfield County Transit Oriented Development Task Force. Id. at 237:5-14.

See Exhibit 13; Kaplan-Macey Dep. at 216:6 – 217:22; Strauss Dep. at 579:18 – 581:13. Ms. Strauss also sent Ms. Kaplan-Macey an updated "Scope of Work" sheet, with the first item being to review Chapter 130 of the General Statutes. See Kaplan-Macey Dep. at 216:6 – 217:22; Strauss Dep. at 581:14 – 582:14. Ms. Kaplan-Macey did, in fact, read Chapter 130 of the General Statutes prior to undertaking her analysis. See Kaplan-Macey Dep. at 52:9-12.

On November 18, 2016, Ms. Kaplan-Macey, along with an associate, visited Norwalk and toured the redevelopment area. Id. at 224:13 – 225:9; Strauss Dep. at 583:3 – 584:3. Ms. Kaplan-Macey ultimately visited the area numerous times. See Kaplan-Macey Dep. at 225:6-22.

ii. ***Ms. Strauss provides Ms. Kaplan-Macey with a previously-approved redevelopment plan, and asks her to use the same methodologies for the "deteriorated and deteriorating" conditions analysis as were used in that plan. The methodologies were chosen precisely because they had been previously approved by the Norwalk Common Council.***

On November 23, 2016, Ms. Strauss e-mailed Ms. Kaplan-Macey the so-called "blight" determinations from another redevelopment plan: Norwalk's 2016 "South Norwalk/TOD Redevelopment Plan" (hereinafter, the "TOD Plan"). Id. at 59:7 – 60:12; 218:13 – 219:16; Strauss Dep. at 584:4 – 585:12; Exhibit 14. Ms. Strauss asked Ms. Kaplan-Macey to use the same methodologies for the determination of "deteriorated or deteriorating conditions" that were utilized in the TOD Plan. See Church Dep. at 47:3 – 48:11; Kaplan-Macey Dep. at 63:10-22; 118:9-25; 217:23 – 219:22; Strauss Dep. at 76:1-4; 80:20 – 81:2; 96:12-16. Those methodologies were to analyze: (1) known or suspected environmental contamination (sometimes referred to colloquially as "brownfields"); (2) buildings suspected of containing lead paint; and (3) properties existing in a 100-year floodplain. Ms. Strauss herself had not worked on the TOD Plan. See Strauss Dep. at 585:19-22.

Ms. Strauss testified that the entire reason why she chose these methodologies, and instructed Ms. Kaplan-Macey to use them, was because she was aware that these precise

methodologies had previously been approved by both the Norwalk Common Council as well as the Agency's Board of Commissioners in the context of the approved and enacted TOD Plan. She stated: "… these were methodologies that were approved by the Common Council and the Agency previously." Id. at 158:16-25; 585:13-18; 586:13-25. She referred to the methodologies as "tested and proven." Id. at 96:24 – 97:1. Ms. Strauss also stated that these methodologies were chosen in order to be consistent with other approved redevelopment plans (*i.e.*, the TOD Plan). Id. at 100:20-24. Ms. Kaplan-Macey, for her part, fully understood that the methodologies had been chosen precisely because their use had previously been approved by the Norwalk Common Council. See Kaplan-Macey Dep. at 219:12-19. It struck Ms. Kaplan-Macey as perfectly reasonable that the methodologies were chosen for this reason. Id. at 220:17-21. Ms. Kaplan-Macey never objected to the use of these methodologies, nor did she ever suggest that other methodologies be used. Id. at 64:2-8; 219:23 - 220:5; Strauss Dep. at 587:1-12.

The Norwalk Common Council, in the context of the TOD Plan, found all three of these factors to constitute a building or environmental deficiency pursuant to the General Statutes. See Strauss Dep. at 591:12-24; 592:15-22; 599:13-23. Ms. Strauss (as well as Ms. Church) personally believed all three of these factors to constitute a building or environmental deficiency. See Church Dep. at 89:4-11; Strauss Dep. at 590:24 – 591:11; 592:5-14; 593:2-8. At no point did Ms. Kaplan-Macey ever disagree that these factors constituted building or environmental deficiencies. See Strauss Dep. at 591:25 – 592:4; 592:23 – 593:1.

With regard to lead paint, the Agency, both in the context of the TOD Plan as well as the 2019 Plan, focused on the probability of lead paint, rather than actually testing each and every property for lead paint. Id. at 594:6-8. Actually testing each property for lead paint would have been an incredibly expensive process involving XRF machine testing. Id. at 593:9-20. Further,

the Agency did not even have the legal authority to enter private properties to test for lead paint. See Sheehan Dep. at 289:14-20; Strauss Dep. at 593:21-24. Instead, the Agency and its consultant focused on pieces of factual data from the Norwalk Tax Assessor regarding each property, including the age of the property, the year of construction, and whether the properties had undergone improvements likely to have included lead abatement, to determine whether the property was suspected of containing lead paint. See Kaplan-Macey Dep. at 248:17-23; Strauss Dep. at 594:6 – 596:21. Ms. Strauss believed it to be reasonable to draw conclusions on the presence of lead paint based on these factual data points, as did her supervisor, Mr. Sheehan. See Sheehan Dep. at 257:12 – 258:9, 498:10-18; Strauss Dep. at 599:9-12. In fact, the Norwalk Common Council as well as the Agency's Board of Commissioners, in the context of the TOD Plan, approved this precise methodology of analyzing suspected lead paint as the basis for a redevelopment area finding. See Strauss Dep. at 599:18 – 600:14. Ms. Kaplan-Macey never, at any point, disagreed with this method of analysis. Id. at 600:16-18.

Ms. Strauss never instructed Ms. Kaplan-Macey to reach a particular conclusion, nor did Ms. Kaplan-Macey ever, at any point, feel pressure to reach a particular conclusion. See Kaplan-Macey Dep. at 221:11-14; Strauss Dep. at 587:13-19. Ms. Kaplan-Macey testified that had she determined that the area ***did not*** qualify as a redevelopment area, she "absolutely" would have informed the Agency. See Kaplan-Macey Dep. at 221:15-17. Indeed, Ms. Strauss testified that if Ms. Kaplan-Macey had determined that the area ***did not*** qualify as a redevelopment area, then she would have accepted that conclusion. See Strauss Dep. at 587:20-24. For her part, Ms. Church testified that there was no pre-conceived intent to find deteriorated or deteriorating conditions; if RPA had determined that the area did not qualify as "deteriorated or deteriorating," then the Agency would have accepted that conclusion and proceeded to draft a neighborhood

plan rather than a redevelopment plan. See Church Dep. at 93:13 – 94:6; 95:3-16.

After being provided with the methodologies to use, Ms. Kaplan-Macey compiled her own list of documentation and information that she needed from the Agency in order to perform the analysis. See Kaplan-Macey Dep. at 221:18 – 222:1. On December 13, 2016, she e-mailed her list to Ms. Strauss. Id. at 222:2-20; Exhibit 15. The list included: the tax assessor's database, GIS shape files, building department permit information, a brownfields inventory, and information on lead paint. Ms. Strauss responded immediately: "We're on it!" The Agency provided Ms. Kaplan-Macey with all of the information she had requested. See Kaplan-Macey Dep. at 223:10 – 224:11; Strauss Dep. at 588:1 – 590:15.

iii. ***The Agency assembles a "Working Group" of community stakeholders to advise and make recommendations on the Plan. Mr. Milligan participates in at least one meeting of the Working Group and provides ideas to the Agency for inclusion in the Plan.***

The Agency and RPA assembled a "Working Group" to provide input, feedback, guidance and opinions during the various developmental phases of the 2019 Plan. See Kaplan-Macey Dep. at 86:9-23; Strauss Dep. at 602:4-6. This group included elected and appointed officials, community stakeholders, and area business owners, and had separate "breakout groups" of developers, bankers, nonprofits, residents, and other local institutions. See Strauss Dep. at 15:2-11; 601:11-21. On January 27, 2017, the Agency sent an e-mail invitation to the members of the Working Group, indicating that the first meeting would occur on March 3, 2017. See Exhibit 16. Ultimately, the group met either every other month, or once per quarter, and the meetings were open to the public. See Kaplan-Macey Dep. at 86:15-23; Strauss Dep. at 601:22-24. Ms. Kaplan-Macey attended the Working Group meetings. See Strauss Dep. at 15:2-11. All materials that were presented to, or reviewed with, the Working Group were posted on the internet. See Church Dep. at 99:17 – 100:9. Jason Milligan was invited to participate in at least

one meeting of the Working Group. See Strauss Dep. at 602:7-9. During his deposition, Mr. Milligan derisively referred to the Working Group as "bullshit." See Milligan Dep. at 21:11-12.

On July 17, 2018, Mr. Milligan, at his request, participated by telephone in a monthly meeting of the Working Group. See Strauss Dep. at 602:10 – 606:22. Prior to the meeting, Ms. Strauss provided Mr. Milligan with her personal cell phone number, but jokingly told him: "delete my number right after using it tomorrow!" Mr. Milligan responded: "No way. Now I can contact you nights and weekends." Id. at 602:7 – 604:7; Exhibit 17. Ms. Strauss testified that the reason why she asked Mr. Milligan to delete her phone number was precisely because Mr. Milligan called her often to discuss the 2019 Plan. See Strauss Dep. at 604:8 – 605:1.

Ms. Strauss and Mr. Milligan spoke quite frequently regarding the 2019 Plan throughout its development process. Id. at 606:23 – 607:3. Throughout the process, Mr. Milligan was ***supportive*** of the 2019 Plan. Id. at 607:4-11. So supportive was Mr. Milligan that he ultimately provided ideas to Ms. Strauss for inclusion in the Plan. Id. at 607:12 – 609-18. In fact, Mr. Milligan's ideas regarding smaller units with reduced amenities (*i.e.* "micro units") were ***included*** in the 2019 Plan. Id. Ms. Strauss testified that at no time, in any of her many conversations with Jason Milligan regarding the 2019 Plan, did Mr. Milligan ***ever*** voice any opposition to the 2019 Plan or its "deteriorated or deteriorating conditions" conclusions (at least not before the ILSR Case was filed). Id. at 610:2 – 612:5.

iv. *RPA submits its "deteriorated or deteriorating" conditions analysis.*

On or about July 27, 2017, RPA submitted its first draft of the "deteriorated or deteriorating conditions" analysis. See Kaplan-Macey Dep. at 107:3 – 108:6. RPA issued its final report in August of 2017. See Exhibit 18. It concluded that the area did in fact meet the statutory criteria as a "deteriorated or deteriorating" area. Id.; Kaplan-Macey Dep. at 110:13-23.

With regard to suspected lead paint, the RPA Report stated that there were 260 buildings in the area that were built before 1978. See Exhibit 18. Buildings built before 1978 are considered to be at high risk for lead paint contamination. Id. RPA began by analyzing all properties built prior to 1978, and then determining whether the property had undergone substantial improvements or renovations since that time, in order to determine whether the property was at risk for lead paint. Id. Not all of these properties were deemed suspected of lead paint – quite far from it. In fact, the RPA Report concluded that only 147 of the 260 pre-1978 structures were suspected of lead paint; 113 of the 260 pre-1978 structures (approximately 44%) were deemed not suspected of lead paint. Id.; Strauss Dep. at 597:11 – 598:13. RPA explained its methodology thus:

> Due to lead's demonstrative negative effects on child development, the United States banned the manufacturing of lead-based house paint in 1978. Prior to this, paints with lead were widely used throughout the country. Lead paint remediation is a costly undertaking that is unlikely to be performed with regular home and building maintenance. Using Norwalk's Tax Assessor data, RPA analyzed buildings that were built before 1978, as these locations are assumed much more likely to contain lead-based paint than buildings built after 1978. RPA also analyzed the tax assessor data to determine properties constructed prior to 1978 that have undergone significant improvement, which are likely to have experienced lead abatement. For this analysis, RPA used the "effective date of construction" for buildings in the study area from the Tax Assessor's office to ascertain which properties have seen significant improvements. If the effective year for a parcel was a later date than the construction year, the parcel is assumed to have undergone extensive improvements, including remediation of the potential for lead paint onsite.

Id. With regard to the issue of brownfields, RPA concluded, that there were 29 known brownfields and 12 assumed brownfields in the redevelopment area. Id. With regard to flooding hazards, RPA concluded, upon analyzing FEMA definitions, that 44 parcels in the redevelopment area existed within a 100-year floodplain and thus are at risk of flooding. Id.

Ms. Kaplan-Macey stands behind her report, and believes that her work sufficiently established that twenty percent or more of the buildings in the area have one or more building or environmental deficiencies. See Kaplan-Macey Dep. at 215:8-14.

RPA's report was presented to the Working Group, and the members of the group were satisfied with it. See Strauss Dep. at 135:10-14. On February 14, 2018, a preliminary draft of the 2019 Plan – including RPA's report – was posted to the Agency's page on the City website by Sabrina Church, and also posted to the "Norwalk Tomorrow" website.[14] See Affidavit of Sabrina Church (attached hereto as Exhibit 19) at ¶ 4; Affidavit of Lawrence Manzi (attached hereto as Exhibit 20) at ¶ 3; Affidavit of Carolyn Ripp (attached hereto as Exhibit 21) at ¶¶ 5-6.

The ILSR Case was filed on or about September 25, 2018.

v. *The Plan is formally noticed for public comment.*

The Agency scheduled a Public Hearing on the 2019 Plan to occur on January 8, 2019. On November 14, 2018, Ms. Church posted a revised draft Redevelopment Plan (which would be the subject of the Public Hearing) on the Agency's page on the City Website. See Church Aff. at ¶ 5; Manzi Aff. at ¶ 5; Strauss Dep. at 615:24 – 616:6. A copy of the draft Plan was also posted on the Norwalk Tomorrow website on or about November 27, 2018. See Ripp Aff. at ¶¶ 7-8; Strauss Dep. at 615:19-21. Mr. Milligan read the Plan. See Milligan Dep. at 49:6-9. In his deposition – with characteristic elegance – he referred to it as a "pile of crap" and "some bullshit put out by the fraudulent Agency." Id. at 48:20 – 49:4.

[14] Norwalk Tomorrow is a planning engagement website that is a joint collaboration between the Agency, the Norwalk Parking Authority, and the Planning and Zoning Department. See Church Dep. at 100:10-17; Strauss Dep. at 140:20 – 141:1. Norwalk Tomorrow was specifically designed for public engagement, and is partially funded by the Agency. See Strauss Dep. 613:7-15.

On November 30, 2018, Ms. Strauss e-mailed the members of the Working Group, announcing the January 8, 2019 Public Hearing and asking for comment on the draft Plan. See Exhibit 22. Included in her e-mail were links to the draft Plan on both the Agency's Page on the City Website, as well as the Norwalk Tomorrow website. Id.; Strauss Dep. at 614:7 – 616:9. As of this point, Plaintiff ***did not*** own any property in the redevelopment area.

On December 4, 2018, notice of the January 8, 2019 Public Hearing was published in the *Norwalk Hour* newspaper. See Exhibit 23; Strauss Dep. at 616:10 – 617:14. The notice provided links to the draft Plan available on both the Agency Page on the City Website, as well as Norwalk Tomorrow. Id. It also stated that hard copies of the Plan were available at the Agency's office as well as the Norwalk Public Library. Notice was published for a second time in the *Norwalk Hour* on December 21, 2018. See Exhibit 24; Strauss Dep. at 617:25 – 618:11.

Prior to adoption of the 2019 Plan, the Agency sought a written opinion from the Planning Commission regarding the 2019 Plan's consistency with Norwalk's Plan of Conservation and Development ("POCD"). See Strauss Dep. at 618:12-17. On December 10, 2018, the Norwalk Planning Commission, by way of a formal memorandum and resolutions, determined the 2019 Plan to be consistent not only with the 2008 POCD, but also a draft 2019 Citywide Plan. Id. at 618:19 – 620:22; Exhibit 25. The very detailed resolution from the Planning Commission set forth eight ways in which the 2019 Plan was consistent with Norwalk's POCD. Id. As of this time, Plaintiff ***still*** did not own any property in the redevelopment area. In fact, Plaintiff did not become the owner of 67 and 69 Wall Street until December 18, 2018.

On January 3, 2019, the Agency published its Meeting Notice for the January 8, 2019 Public Hearing. See Exhibit 26. The Meeting Notice contained, among many other things, a link to the draft plan on the Agency's page on the City website. Id.

vi. *Mr. Milligan and select members of the "Wall Street Neighborhood Association" collaborate to oppose the 2019 Plan.*

Mr. Milligan is a member of the Board of Directors of the "Wall Street Neighborhood Association" ("WSNA"), which was formed in December of 2018. See Milligan Dep. at 53:23 – 54:12; 227:19-23. The other Board members (current and/or former) include Nancy McGuire, Michael McGuire, Marc Alan, and Frank Farricker. Id. at 53:23 – 54:12. The WSNA maintains a Facebook page which states, as its purpose: "501c3 in the State of Connecticut dedicated to revitalizing downtown Norwalk." See Exhibit 27. On May 4, 2018, the Board members of the WSNA published an op-ed in the *Norwalk Hour* newspaper announcing the group's formation, and listing its eight key goals. One of those goals was: "[i]dentify, punish, fix blight." See Exhibit 28; Milligan Dep. at 235:8 – 238:7. E-mail communications obtained through third-party subpoena indicate that this language was drafted by Mr. Milligan. See Exhibit 29.

On January 3, 2019, "Nancy on Norwalk" (an internet blog devoted to covering Norwalk news) posted a detailed article regarding the 2019 Plan. See Exhibit 30. That same day, Mr. Milligan posted a comment on the article which acknowledged (at least implicitly) that he had read the Plan, and stated, *inter alia*: "The new unnecessarily long and complicated plan has many good ideas in it, but 5 to 10 pages is more than enough to say it all, and we don't need the Redevelopment Agency in order to use the good ideas in the plan." Id.[15] During his deposition, Mr. Milligan admitted, that as of January 3, 2019, he had read a draft of the 2019 Plan. See Milligan Dep. at 49:6-9.

The WSNA discussed the 2019 Plan at its January 4, 2019 meeting. Id. at 57:3-6. On January 7, 2019, Mr. Milligan e-mailed the Meeting Notice for the Public Hearing to a number

[15] In his deposition, Mr. Milligan testified that any comments posted by "Jason Milligan" on the "Nancy on Norwalk" website are true and accurate copies of comments posted by him, unless he says otherwise. See Milligan Dep. at 98:15 – 99:13.

of individuals including Lisa Brinton, who opposed Mayor Harry Rilling in the 2019 election. See Exhibit 31. Also on January 7, 2019, Mr. Farricker e-mailed to Mr. Milligan and Mr. McGuire a draft letter on behalf of the WSNA which addressed, among other things, the 2019 Plan. See Exhibit 32. With regard to the Plan, the letter stated, *inter alia*: "The WSNA commends the participants of this plan on the drafting of such a comprehensive document. We believe it can act as a sound foundation for cooperative growth in the area." Id.; Milligan Dep. at 61:25 – 62:15. Mr. Milligan responded to Mr. Farricker and Mr. McGuire with two e-mails. See Exhibit 33. In the first, he said, among other things: "Very good. It [Mr. Farricker's draft letter] may lather it on too thick at times but it is good." Id. In the second, he said:

> I have been thinking about this letter. It may unnecessarily give [Mayor] Harry [Rilling] an exit without getting anything in return. I think that we should have this letter and stance be known to some people with Harry's ear. We would be happy to publicize this letter once we have the backing for our Village District initiat[iv]e and other action items. There is no guarantee that Harry plays ball and the truth is that the city still gave away two parking lots for almost nothing and they wasted years with the POKO eyesore. I would have no trouble giving Harry or others credit once they have agreed in principle to this path.

Id. Mr. Milligan has acknowledged that in this e-mail, he was suggesting to Mr. Farricker and Mr. McGuire that they publicize Mr. Farricker's draft letter if they were to receive various concessions that they desired from the administration. See Milligan Dep. at 84:19 – 85:4. Later that evening, Mr. Milligan wrote, *inter alia*: "We should not be ready to absolve Harry and his administration until we have some commitments." See Exhibit 34. On January 8, 2019 – the day that the Agency's Public Hearing on the 2019 Plan was scheduled to occur – Mr. Milligan e-mailed Mr. Farricker, Mr. McGuire, and Nancy McGuire: "I want to talk before the meeting. I am not in full support of Frank's strategy. I see no need to give Harry Rilling a get out of jail free card at this moment. Our main goal is to marginalize the RDA. We can trade support and cover for Rilling in exchange for [other] things once we get a better read on where he and the

council are." Id. Later that day, Mr. Milligan e-mailed the group: "The plan to play nice may have gone out the window … I have been trying to reach Frank. I think we need a pow wow before the meeting." See Exhibit 35.

vii. *The Public Hearing on the 2019 Plan is held on January 8, 2019.*

The Public Hearing on the 2019 Plan occurred on January 8, 2019. See Exhibit 36; Strauss Dep. at 159:24 – 160:1; 620:23-25. Mr. Milligan attended, and spoke at, the Public Hearing. See Admissions at #s 23-24; Milligan Dep. at 92:3-7; Strauss Dep. at 621:4-7. His comments on the Plan at this time were largely positive. During his public remarks to the Agency, he said: "I like a lot of things about the Redevelopment Plan, especially some of the big mentions to the zoning changes that they want to enact." See Admissions at # 26. He also stated: "… I think there was a lot of public participation, and I think a lot of the ideas in there are good." Id. at # 27. During the hearing, a number of individuals (including Mr. Farricker) were critical of the "deteriorated or deteriorating" conditions analysis. See Strauss Dep. at 161:9-16.

On January 9, 2019, the "Nancy on Norwalk" website posted an article summarizing the Public Hearing. See Exhibit 37. Mr. Milligan posted a number of comments to the article. Id. In one of them, he said: "At what point in the regular meeting did they talk about the hundreds of thousands of dollars they are wasting to sue me?" Id.

viii. *The Agency engages Harriman to provide supplemental analysis on the issue of "deteriorated or deteriorating" conditions, to address concerns that had been raised by a number of attendees at the Public Hearing.*

On January 9, 2019 – the day after the public hearing – Ms. Strauss and Ms. Kaplan-Macey e-mailed each other regarding Ms. Strauss' concern that certain members of the public had been critical of the so-called "blight determination." See Exhibit 38; Strauss Dep. at 622:4 – 623:17. Ms. Strauss conveyed to Ms. Kaplan-Macey that some of the speakers at the hearing

believed that RPA had "overreached" in its analysis. Id. At the same time, Ms. Strauss reiterated ***her own belief*** that the findings in RPA's report were ***correct***. See Exhibit 38; Strauss Dep. at 168:16-21; 184:10-23; 622:4 – 623:17. She asked Ms. Kaplan-Macey to perform follow-up work on the determination in order to address the comments that had been raised by attendees at the hearing. Id. Ms. Kaplan-Macey responded and, given the fact that her work product was now being criticized by certain members of the public, declined to undertake any further substantive work on the so-called "blight determination," and reminded Ms. Strauss that she had utilized methodologies that were provided by the Agency. Id.; Kaplan-Macey Dep. at 226:20 – 227:2. Ms. Strauss replied and stated, *inter alia*, that those methodologies were chosen because they were "previously approved" by the Common Council. Id. At this time, Ms. Strauss believed the RPA Report to be correct and sufficient; her only concern was the *some members of the public had concerns*. See Strauss Dep. at 623:5 – 624:11. Ms. Church likewise, at this point, believed the analysis to be sufficient. See Church Dep. at 140:9-11.

On January 9, 2019, given that Ms. Kaplan-Macey had declined further substantive work on the project, Ms. Strauss reached out to Emily Innes of Harriman Associates, Inc. ("Harriman") and asked her to perform supplemental work on the "deteriorated or deteriorating conditions" analysis. See Strauss Dep. at 624:18-22.[16] The Agency had an "on-call" services contract with Harriman's predecessor, The Cecil Group. See Sheehan Dep. at 343:18 – 344:17. The Cecil Group was bought by Harriman in or about 2016. See Innes Dep. at 19:3-7. Harriman provided urban planning services throughout New England, as well as New York and Florida. Id. at 21:4-20. Harriman was not hired to replace RPA; rather, Harriman was engaged to

[16] Ms. Innes is an AICP-certified planner. See Innes Dep. at 10:24 – 11:7. She has done numerous projects for municipal clients in Connecticut, including Norwalk and Wilton. Id. at 25:6-15. Over the course of her career, she has performed no less than eight so-called "blight" determinations. Id. at 219:7-16.

supplement the "deteriorated or deteriorating" conditions issue. See Church Dep. at 149:3-8; 153:8-12; 156:12-18; Innes Dep. at 48:1-11; 314:17-24; 375:16-21; 544:4-11; 554:23 – 555:1; Sheehan Dep. at 360:13-21. Agency staff believed that RPA's report had sufficiently found the existence of a "redevelopment area," but nonetheless engaged Harriman to be responsive to concerns raised by certain attendees at the Public Hearing. See Sheehan Dep. at 340:14-17; 362:2-8; 364:9-25. Mr. Sheehan testified that Harriman was engaged to provide "additional information … to support a finding, but the finding was already an acceptable finding." Id. at 429:22-25. He believed that the Harriman analysis was not even necessary. Id. at 430:2-9. For her part, Ms. Strauss did not believe that a supplemental report was required by statute, but that it was the "right thing to do," given that certain members of the public had raised concerns regarding the determination, and amounted to going above and beyond statutory requirements. See Strauss Dep. at 164:6-13; 625:11-24. She testified that she was merely looking to "beef up" an ***already sufficient*** conclusion. Id. at 185:22 – 186:3. Ms. Innes understood that she was being asked to do "an analysis on a single set of data and that data would be used as a supplemental piece of information in the overall blight analysis." See Innes Dep. at 85:4-7.

Harriman was chosen due to its expertise in the field, as well as the fact that it had worked on prior redevelopment plans for the Agency. See Strauss Dep. at 624:23 – 625:1. Mr. Sheehan testified that Harriman had done decades of work in Norwalk, and had a very good understanding of the area. See Sheehan Dep. at 438:17-19. Just as it had done with RPA, the Agency conveyed to Ms. Innes that her analysis must comply with the Connecticut General Statutes. See Innes Dep. at 533:7-10. At no point did anyone at the Agency instruct Ms. Innes to reach a particular conclusion, nor did Ms. Innes ever feel pressured to reach a particular conclusion. Id. at 193:7-21; 548:3-11. Ms. Innes had no preconceived notion as to whether the

area was "deteriorated or deteriorating;" she viewed her task as being: "to analyze the data and see where the data led." Id. at 139:7-15; 179:6-10.

At or around the time that Harriman was performing its analysis, Ms. Strauss directed Ms. Church and another Agency employee, Steven Ivan, to walk the redevelopment area and to photograph deteriorated or deteriorating conditions. See Church Dep. at 70:7 – 72:13; Strauss Dep. at 519:21-25; 520:4-14. Though Ms. Church and Mr. Ivan did not photograph every property, they spent hours photographing close to 100 properties in the area. The photos were compiled in a PowerPoint presentation and provided to Ms. Strauss. See Church Dep. at 75:3-7. The photographs are attached hereto as Exhibit 39.

On or around January 13, 2019, a small group of members of the WSNA, including Mr. Milligan, began working together to draft a document opposing the 2019 Plan's determination of "deteriorated or deteriorating" conditions. In a January 13, 2019 e-mail, Mr. Milligan suggested that the group's letter should be sent to the Common Council, the Mayor's Office, the Zoning Commission, and the press. See Exhibit 40. The ensuing days saw numerous e-mails among the group, strategizing on a public relations campaign against the 2019 Plan. On January 13, 2019, Mr. Milligan e-mailed the group, suggesting that they first attack the so-called "blight" finding, which will then lead to other questions, with the eventual goal of delay. See Exhibit 41. He said: "We don't want to come on too strong. Once we open the door, and we get them to do the blight survey properly then we can start asking more questions, and we can offer/demand to be involved in the process. If the process gets kicked out a few months then we will be winning." Id. That same day, he sent another e-mail: "Step 1 is to poke holes in their blight categorization, and to offer assistance to get it done right. That will cause enough delay." See Exhibit 42. He continued: "Only after everyone agrees to more accurately label the blight in the area do we start

questioning their definition of blight." Id. On January 14, 2019, Mr. Milligan e-mailed: "The #1 goal and priority is to get the council to require a new more accurate study that reports blight accurately. That alone puts this into campaign season and could easily add a year." See Exhibit 43. Mr. Farricker appears to have prepared a first draft of the WSNA's statement against the Plan, which was then edited by others, including Mr. Milligan. See Exhibit 44. On January 15, 2019, Mr. Milligan e-mailed the group: "We need to sow enough doubt to delay things. We need the RDA to redo the Blight study using accurate updated data. Once they begin that process then we introduce more questions. [I]n the meantime as this becomes public people like Mike or me or Lisa or Donna or Deb Goldstein or Eno Pride or whomever can make loud and confrontational noise. This can and will get away from them. Just as they are reeling we will be galvanizing and coalescing into a force, and a reasonable body to work with." See Exhibit 45. On January 15, 2019, the WSNA, through Nancy McGuire, sent its statement criticizing the "blight" determination in the 2019 Plan to the entire Norwalk Common Council, as well as the Agency's Commissioners. See Exhibit 46.

ix. ***Harriman and the Agency decide to analyze physical depreciation of the buildings in the Plan area as evidence of "deteriorated or deteriorating" conditions. Harriman concludes that the area qualifies as a redevelopment area.***

Ultimately, Harriman's analysis focused on physical depreciation of the buildings in the redevelopment area. See Strauss Dep. at 625:5-10. The decision to focus on physical depreciation was a collaborative one between Ms. Strauss and Ms. Innes. See Innes Dep. at 192:14-18. Ms. Strauss and Ms. Innes both believed that depreciation was the most comprehensive data showing deterioration of a building, and thus was indicative of deterioration in the area. Id. at 312:14-21; 319:10-12. Ms. Innes testified: "I liked the idea because it was a measurement of change in physical condition from a previous assessment. And so it represented,

in my understanding of how it was defined, this third party firm being on the ground looking at the properties and understanding what the condition of those properties were and then making a determination of the condition – of the change in condition, that's the depreciation, of the properties in a way that could be quantified across all properties and thus analyzed." Id. at 144:24 – 145:8. Ms. Strauss and Ms. Innes both believed that physical depreciation constitutes a building deficiency. Id. at 540:6-9; 553:15-21; Strauss Dep. at 625:25 – 626:6; 629:21-23.

On January 22, 2019, Ms. Strauss reached out to Simon Wake in the City Assessor's Office to ask a number of questions regarding the most recent assessment data. Ms. Strauss asked Mr. Wake, in his opinion, what percentage of physical depreciation constitutes a "deteriorated or deteriorating" condition. Mr. Wake responded that anything that is over 30% depreciated, in general, he would consider to be "undesirable (but fixable)." See Strauss Dep. at 626:13-22. Ms. Strauss did not ask Mr. Wake for a formal opinion in this regard; rather, Mr. Wake's guidance assisted Ms. Strauss in establishing a core "minimum" for the analysis. Id. at 627:9-23; Innes Dep. at 348:10 – 349:3. Ms. Innes testified that she had no reason to doubt Mr. Wake's statement. See Innes Dep. at 288:6-17; 545:6-15. Ms. Strauss believed that depreciation of 30% or more constituted a building deficiency. See Strauss Dep. at 237:9-11; 238:6-12. Ultimately (by way of an e-mail dated January 30, 2019), Ms. Strauss suggested to Ms. Innes that she go ***higher*** than what Mr. Wake had suggested, and to consider how many properties had 35% physical depreciation. See Exhibit 47; Innes Dep. at 293:5-9; 553:2-21; Strauss Dep. at 318:14-18; 628:19 – 629:13. At no point did Ms. Innes disagree with the concept that such a level of depreciation constituted a building deficiency; in fact, she fully agreed with it. See Innes Dep. at 547:11-23; Strauss Dep. at 629:17-20.

On February 5, 2019, Ms. Innes completed her study, which concluded that the area did indeed qualify as a "redevelopment area." Ultimately, as suggested by Ms. Strauss, ***not only*** did Ms. Innes consider properties with 30% or more physical depreciation, but she also went so high as ***40%*** depreciation. Even using 40% as the metric, Ms. Innes concluded that the area ***still*** qualified. See Innes Dep. at 545:17 – 546:13; Strauss Dep. at 629:1-13. Prior to inserting Ms. Innes' study into the 2019 Plan, Ms. Strauss (on February 6, 2019) first sent the report to Simon Wake and asked him to review it, and comment on it. See Exhibit 48. Mr. Wake reviewed the report and responded that he had no substantive revisions to it: "It looks fine to me …." Id.; Strauss Dep. at 630:6 – 633:3. Ms. Innes stands behind her conclusion on the issue of "deteriorated or deteriorating" conditions in the redevelopment area. See Innes Dep. at 547:24 – 548:2. She believes – and is indeed "confident" – that her analysis satisfied the criteria set forth in Section 8-125(7). Id. at 461:15-23; 463:11-25; 555:14-17.

On February 5, 2019, at 5:49 PM, Mr. Milligan e-mailed Felix Serrano (Chair of the Agency's Board of Commissioners), Mr. Sheehan, Ms. Strauss, as well as Nancy Chapman (publisher of the "Nancy on Norwalk" blog), asking whether the revised Plan would be posted online. See Exhibit 49; Strauss Dep. at 634:1-10. On February 6, 2019, Ms. Strauss returned Mr. Milligan's e-mail and provided him with a link to the revised draft of the Plan. Mr. Milligan responded: "Thank you." Id. On February 6, 2019, Mr. Milligan, Mr. McGuire, and other members of the WSNA exchanged e-mails discussing the Harriman report in excruciating detail, and discussing their next steps in terms of how to attack it. See Exhibit 50.

On February 6, 2019, "Nancy on Norwalk" published an editorial by the Board of the WSNA (including Mr. Milligan) titled: "Opinion: Wall Street-West Avenue Redevelopment

Plan should be rejected." See Exhibit 51. Mr. Milligan posted numerous comments on the article, among which he hinted at the possibility of a lawsuit to block the 2019 Plan. Id.

x. ***Harriman's report is publicly released; Mr. Milligan aggressively confronts Harriman's management team and threatens litigation; the Agency invites Mr. Milligan to an in-person meeting to discuss his concerns; Mr. Sheehan reaches out to the WSNA and offers to meet with them, make a presentation on the Plan, and answer their questions.***

On February 6, 2019, Ms. Church posted the revised version of the 2019 Plan on the Agency's page on the City website. See Church Aff. at ¶ 6; Manzi Aff. at ¶ 6; Strauss Dep. at 633:4-18. The version that was posted included the Harriman Report, but accidentally, by clerical error, deleted the RPA Report. See Strauss Dep. at 410:3-13; 411:8-13. The Agency never had any intention to delete the RPA Report from the Plan; this temporary deletion was wholly accidental. See Church Dep. at 208:17-23; Sheehan Dep. at 484:21 – 485:2.

On February 7, 2019, the draft Plan was discussed at the regular meeting of the Common Council's Planning Committee. Mr. Milligan attended and spoke at the meeting. See Admissions at #s 28; 30. During his (this time, critical) commentary, Mr. Milligan quoted from selected portions of Chapter 130 of the General Statutes. Id. at # 31. That evening, Mr. Milligan e-mailed members of the WSNA and went into significant detail regarding his criticisms of the Harriman report. See Exhibit 52. Among other things, he said: "Where does Harriman get the authority to proclaim that some amount of depreciation as determined by a tax appraiser is automatically the equivalent of deteriorated as described in the CT statute?" Id.

On February 7, 2019, at 10:44 p.m., Mr. Milligan e-mailed Harriman's entire leadership team. See Exhibit 53; Innes Dep. at 557:22 – 559:12; Strauss Dep. at 640:3 – 641:17. In his lengthy e-mail, Mr. Milligan attacked and criticized Harriman's work on the 2019 Plan. Id. He demanded that Harriman withdraw its analysis, and threatened litigation if it would not do so. Id. He stated: "It is a virtual guarantee that your methods and analysis referenced in the new

plan will be thoroughly scrutinized. It is highly likely that people from your company will be subpoenaed and or forced to give depositions." He concluded: "Given all of the above information it might be wise to temporarily withdraw your quantitative analysis to make sure it is up to your standards." Id. On February 8, 2019, Mr. Milligan followed-up with another lengthy e-mail to Harriman's leadership team. See Exhibit 54; Innes Dep. at 557:22 – 559:12.

Mr. Milligan's e-mails prompted Steven Cecil, at the time an owner of Harriman, to e-mail numerous Harriman employees, including Ms. Innes, on February 8, 2019. See Exhibit 55; Innes Dep. at 561:18 – 563:1. Mr. Cecil stated, among other things: "Please ignore the strange messages from Jason Milligan. I have informed him that he should direct all correspondence to the City as our client. It seems to be a crank e-mail." Id. Ms. Innes, at or around this point, googled "Jason Milligan" and discovered that Mr. Milligan was embroiled in litigation was the City; she came to understand that there were "larger issues" involving Mr. Milligan than merely the 2019 Plan. See Innes Dep. at 437:2-14.

On February 8, 2019, Ms. Strauss e-mailed Mr. Milligan (with Mr. Sheehan and Mr. Serrano copied) formally inviting him to an in-person meeting to discuss his concerns regarding the 2019 Plan. See Exhibit 56. She stated: "Jason, Please consider this email as an invitation to come into the Redevelopment office to discuss your concerns with the Wall Street-West Avenue Redevelopment Plan. Please let me know what dates/times work for you." Id. Mr. Milligan did indeed visit the offices of the Redevelopment Agency on February 13, 2019, and met with Tim Sheehan, Tami Strauss, and Sabrina Church regarding the 2019 Plan. See Milligan Dep. at 165:21-24. At 8:59 PM on February 13, 2019, Mr. Milligan e-mailed Ms. Strauss and Mr. Sheehan: "Thank you for the meeting today." See Exhibit 57. In his deposition, Mr. Milligan dismissed the meeting, referring to it as "total fucking bullshit" and a "bullshit, cover-your-ass

scam." See Milligan Dep. at 137:8-17; 165:11-15. He also referred to Ms. Strauss as a "crooked son of a bitch" who was, by inviting him to the meeting, trying to "cover her ass." Id. at 165:5-9.

Meanwhile, Mr. Milligan's berating of Harriman continued. On February 11, 2019, he e-mailed Mr. Cecil a link to an article on "Nancy on Norwalk" concerning the 2019 Plan. See Exhibit 58. On that same date, he left a voicemail for Harriman's President, Clifton Greim. See Exhibit 59; Innes Dep. at 434:3-6; 563:2 – 565:2. He also began calling Mr. Cecil's work phone, as well as calling and text-messaging his personal cell phone, over the weekend, with messages that Mr. Cecil deemed "threatening." On February 12, 2019, Mr. Cecil e-mailed Ms. Innes and Mr. Greim, stating as follows: "He [Mr. Milligan] has been calling my cell phone over the weekend and my phone here, text messaging and leaving threatening messages attacking us, but it is unwise to engage with him." See Exhibit 59; Innes Dep. at 563:2 – 565:2. He continued: "The individual [Mr. Milligan] is not a person of standing as I understand it, and has had a full debrief on the circumstances from Emily – we are in a good place on this, and his concerns are incorrect and unfounded. The matter is about an opinion we provided about the applicability of a certain method to establish a technical condition of blight. The definition of blight and its use is often misunderstood and the confusion can be used to create controversy." Id. Ms. Innes and Mr. Cecil discussed Mr. Milligan's attacks, and Mr. Cecil, after reviewing her work product, supported Ms. Innes, and expressed confidence in her work. See Innes Dep. at 564:21 – 565:2. Likewise, Ms. Innes also spoke to Mr. Greim about Mr. Milligan's accusations; Mr. Greim also supported Ms. Innes' work. Id. at 450:22 – 452:13.

On February 11, 2019, Nancy McGuire sent an e-mail to the WSNA membership regarding the 2019 Plan. In response, Mr. Sheehan e-mailed her: "If you choose to put forward information to the public regarding the Wall Street West Avenue Redevelopment Plan please be

responsible and ensure that you are accurately representing what the plan states. Some of your comments below are inconsistent with the plan and its intent." See Exhibit 60. He then offered to meet with the WSNA to discuss the 2019 Plan: "If the Wall Street Neighborhood Association would like the Agency to present the plan and discuss it with them, we would be happy to schedule a time to do that." Id. Ms. McGuire forwarded Mr. Sheehan's e-mail to, among others, Mr. Milligan, and asked whether the WSNA should invite Mr. Sheehan to its next meeting. Mr. Milligan responded: "absolutely not." Id.

xi. ***Two attorneys opine that the methodologies used by RPA and Harriman are consistent with the General Statutes. Ms. Strauss requests no further contact with Mr. Milligan due to his aggressiveness. Mr. Milligan continues his public relations campaign against the Plan. The Plan is approved by the Common Council and the Agency.***

On February 27, 2019, Attorney Marc Grenier of DePanfilis & Vallerie, LLC issued a letter to the Agency in which he opined that the methodologies used by both RPA and Harriman comported with Chapter 130 of the General Statutes. See Exhibit 61; Sheehan Dep. at 219:16 – 220:1; Strauss Dep. at 515:8 – 516:3. On February 28, 2019, Attorney Brian McCann, Assistant Corporation Counsel of the City of Norwalk, issued an opinion letter in which he likewise concluded that the methodologies used by RPA and Harriman comported with the General Statutes. See Exhibit 62; Sheehan Dep. at 219:16 – 220:1; Strauss Dep. at 515:8 – 516:3.[17]

On March 1, 2019, Ms. Church posted a revised version of the 2019 Plan on the Agency's page on the City website. See Church Aff. at ¶ 7; Manzi Aff. at ¶ 7. This version included both the Harriman Report (with a number of revisions, although none changing the conclusion), as well as an abbreviated version of the RPA Report. Though a number of stylistic

[17] The disclosure of the opinion letters by Attorneys Grenier and McCann was ordered by the Court, after request by the Plaintiff. Those letters are accordingly appended to this brief. Their inclusion, however, is not to be construed as a waiver of any applicable privilege regarding other communications between the Agency and its counsel.

revisions were made to the RPA Report at this time, any changes were ***non-substantive***; RPA's conclusions remained ***exactly the same***. This version of the Plan was the final version, and was the version ultimately presented to both the Common Council and the Agency for final approval.

On March 7, 2019, the 2019 Plan was on the agenda for the regular meeting of the Planning Committee of the Common Council. That evening, the Planning Committee voted to advance the Plan to the full Council. See Exhibit 63. Mr. Milligan attended the meeting and spoke during it. See Milligan Dep. at 171:13-18; Admissions #s 32; 34. During his public commentary at the March 7, 2019 meeting, Mr. Milligan commented on Chapter 130 of the General Statutes, and also commented on the ILSR Case. See Admissions #s 35-36. He further threatened that the Agency's "deteriorated or deteriorating" conditions analysis amounted to "fraud" and that there is "more than one person gathering a report to bring to the FBI." See Milligan Dep. at 174:21 – 175:25. On March 8, 2019, "Nancy on Norwalk" posted an article titled: "Milligan: FBI to be notified of Norwalk 'fraud.'" See Exhibit 64. That same day, "Nancy on Norwalk" posted another article titled: "Norwalk Center redevelopment plan given thumbs up, sent to Council," which summarized the March 7, 2019 meeting of the Planning Committee. See Exhibit 65. In the article, Mr. Milligan was quoted as saying that "An entire neighborhood association formed in opposition to the plan and the determination of the area as blighted." Id. This quote led Marc Alan – a Board member of the WSNA – to author his own "Nancy on Norwalk" opinion piece. In the March 9, 2019 piece, Mr. Alan referenced the Milligan quote and then stated: "As a board member of the Wall Street Neighborhood Association I must state for the record that this is factually incorrect." See Exhibit 66.

On March 8, 2019, Mr. Milligan placed a phone call to Ms. Strauss to again criticize her and the Agency over the 2019 Plan. See Exhibit 67; Milligan Dep. at 178:12 – 179:18. This call

prompted Ms. Strauss to, on March 8, 2019, send an e-mail to her supervisor, Mr. Sheehan, stating: "I wish to have no further conversation or contact with Mr. Milligan on the basis of harassment and sense of verbal hostility he displayed over the phone today and previously, and on the basis of physical hostility he has displayed previously in person." See Exhibit 67.

Mr. Milligan's onslaught continued. On March 11, 2019, he published an op-ed in "Nancy on Norwalk" titled "Blight criteria could be misused by developers seeking public subsidies." See Exhibit 68. He had the same op-ed published in the *Norwalk Hour* on March 11, 2019, with the title: "Jason Milligan: Concern about eminent domain on Wall Street." See Exhibit 69. In these op-ed pieces, Mr. Milligan argued passionately against the 2019 Plan. Further, on March 11, 2019, Mr. Milligan and others e-mailed each other coordinating their efforts in anticipation of the Common Council's vote on the Plan. See Exhibit 70. On or about March 12, 2019, Mr. Milligan apparently created a short video – complete with music – in opposition to the 2019 Plan. See Exhibit 71. He e-mailed it to various members of the WSNA and asked whether a "voice over" could be added to the video so that it could have the feel of a movie trailer. Id. He also suggested a script for the voice over. Id.

On March 12, 2019, the 2019 Plan was on the agenda for the meeting of the Norwalk Common Council. The Council voted to approve the Plan on this date. See Exhibit 72; Strauss Dep. at 641:18-20. Mr. Milligan attended the meeting, and spoke during it. See Milligan Dep. at 192:19-21; Admissions #s 37; 39. In fact, Mr. Milligan attended the meeting with a bullhorn and various posters in-hand. See Milligan Dep. at 208:3 – 209:15; Admissions # 41. During his comments at the meeting, Mr. Milligan stated that he had spoken to five Common Council members "at length" prior to the vote, and that "he appreciated all he spoke to and found them to be reasonable." See Exhibit 72. The morning of the meeting, "Nancy on Norwalk" published an

article titled: "Milligan plans Garden Cinema protest in opposition to Wall-West plan." See Exhibit 73. Mr. Milligan published a series of frenzied comments to the article; in one of them, he compared Mr. Sheehan to the Dr. Seuss character Sylvester McMonkey McBean: "Can you imagine Sylvester Mc[M]onkey Sheehan pulling into town peddling his wares asking the city to point him to the area where Slum & Blight exist." Id. He also made a number of impassioned comments about the ILSR Case. Id. Despite the boisterous commentary by Mr. Milligan – both inside and outside of the meeting – as well as critical comments from others, including Michael McGuire (who distributed materials that evening to the Council members in which he argued against the "deteriorated or deteriorating" conditions conclusions), the Common Council voted to approve the 2019 Plan by a margin of 13 "yes" votes and only 1 "no" vote. See Exhibit 72. Later that evening, Mr. Milligan posted: "The cake was baked before we got there. I will say I am happy to have made the acquaintance of several council people that I have not known. I will not mention you by name, but I appreciate the time you spent chatting with me." See Exhibit 73.

On March 13, 2019, a Special Meeting of the Redevelopment Agency was held, at which time the Agency Commissioners approved the 2019 Plan. See Exhibit 74; Strauss Dep. at 641:24 – 642:2. Mr. Milligan attended this meeting, and spoke during it. See Admissions #s 46-47. On March 14, 2019, "Nancy on Norwalk" published a story summarizing the meeting titled: "Wall-West Redevelopment Plan receives final approval." See Exhibit 75. Again, Mr. Milligan posted a series of frenzied comments to the article. Id.

xii. ***Mr. Milligan continues berating Melissa Kaplan-Macey and Emily Innes, threatening them with lawsuits and ethics complaints if they will not rescind their "deteriorated or deteriorating" conditions analyses. Both refuse to withdraw their work product.***

On March 14, 2019, Ms. Kaplan-Macey sent a lengthy e-mail to Ms. Strauss, in which she stated that it had come to her attention that at the previous night's hearing, various statements

were made by Mr. Milligan which were simply untrue. See Exhibit 76; Kaplan-Macey Dep. at 227:13 – 234:22; Strauss Dep. at 642:9 – 644:2. She also stated that it had come to her attention that Mr. Milligan was severely misrepresenting a telephone call that the two had had regarding the 2019 Plan. Id. She stated:

> My recollection of that conversation [with Mr. Milligan] is that I had explained that the methodology that RPA had used to conduct the analysis was consistent with the methodology that had previously been used for the blight analysis that was done for the South Norwalk neighborhood. And as I recall, during our conversation I had explained that the word 'blight' is a somewhat antiquated term, but that it remains in use because it is the term that remains in the state statute. **To be clear, I stand by RPA's blight finding for the redevelopment area.**

Id. (emphasis added). Ms. Kaplan-Macey concluded her e-mail: "As you can imagine, it was quite upsetting to hear that my words were taken so far out of context on the record at the public hearing." Id. Ms. Kaplan-Macey testified that as of March 2019, she stood by RPA's Report, and she continues to stand by the report to this day. See Kaplan-Macey Dep. at 232:13-22. During her deposition, when asked by Plaintiff's counsel whether, in hindsight, she would have done anything differently in her analysis, she answered in the negative. Id. at 111:13-16.

On March 27, 2019, at 1:57 PM, Ms. Kaplan-Macey e-mailed Ms. Strauss, with the subject line: "Jason Milligan." See Exhibit 77; Strauss Dep. at 644:6 – 645:16. She said: "I wanted to let you know that I received a phone call from Jason Milligan today. On the call, he verbally threatened me with a lawsuit regarding the blight analysis that RPA had done as part of the Wall Street-West Avenue plan. In his words to me on the phone and reiterated in a text message that he sent me immediately following the call, I have a choice whether to be called as a witness or a defendant in a lawsuit. And if that I'm not willing to be a witness, he will sue RPA for the work that we did on the blight analysis." Id.[18] Ms. Kaplan-Macey sent Ms. Strauss a

[18] Mr. Milligan has confirmed that he placed this call. See Milligan Dep. at 210:12-25.

transcription of a text message that Mr. Milligan had sent her. The text message is as follows:

> Melissa,
>
> You are very likely going to be a witness or a defendant in a lawsuit.
> I hoped witness.
> Please be sure to preserve the records and communication you have had with the Norwalk Redevelopment Agency …
> If you believe that your interests are 100% aligned with the NRA than you should probably ignore me, but if you think NRA should own the blight methods and determinations you should engaged with me and explain the process a bit more.
> Defendant or witness?[19]

Id. Ms. Kaplan-Macey concluded her e-mail: "Obviously this is very disturbing and upsetting to me." Id. The next day, March 28, 2018, Mr. Milligan sent another text message to Ms. Kaplan-Macey. See Exhibit 78. This time, he invoked the AICP Code of Ethics and Professional Conduct, stating: "The AICP Code of Ethics and Professional Conduct is very interesting reading. There are several sections that appear to have been ignored or violated to complete the Wall West Plan Blight determination." Id. He concluded the text with: "As an AICP, are you willing to rescind the blight finding that you did for the Wall/West Plan so that it can be redone properly and accurately? Either by you or someone else?" Id. He later followed up with another text, saying: "Please let me know soon." Id.; Milligan Dep. at 218:14 – 219:25. Mr. Milligan proceeded to place a phone call to Ms. Kaplan-Macey, but she did not answer.

The barrage continued. On March 28, 2019, Mr. Milligan left a voicemail for RPA's President, Tom Wright. See Exhibit 79. On March 29, 2019, Mr. Wright forwarded the voicemail to Ms. Kaplan-Macey and others, asking if they knew this person. Id.

Despite the avalanche of pressure from Mr. Milligan, Ms. Kaplan-Macey ***refused*** to withdraw her report. See Strauss Dep. at 646:14-16.

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[19] Mr. Milligan has confirmed that he sent the text message although, in a display of high irony, he testified that he did not preserve it (a text message in which *he demanded that Ms. Kaplan-Macey preserve evidence*) and no longer has it. See Milligan Dep. at 212:17 – 214:1.

Having failed to secure the type of response from RPA that he desired, Mr. Milligan shifted back to Harriman. On April 2, 2019, he placed a phone call to Ms. Innes. See Exhibit 80; Innes Dep. at 565:3 – 569:7. During the phone call, he again demanded that Ms. Innes withdraw her "deteriorated and deteriorating conditions" analysis, and threatened that if she would not do so, he would sue Harriman and also "report" Ms. Innes to the American Institute of Certified Planners for alleged "ethics" violations. Id. After the phone call, he followed up with an e-mail, again invoking the AICP Code of Ethics and Professional Conduct. Id. He concluded his e-mail thus: "As an AICP, are you willing to rescind the blight finding that you did for the Wall/West Plan so that it can be redone properly and accurately? Either by you or someone else? If not there will very likely be an ethics complaint made to AICP, and a lawsuit filed. Please let me know what you decide." Id. Like Ms. Kaplan-Macey, despite the ferocious onslaught of intimidation tactics from Mr. Milligan, Ms. Innes refused to withdraw her report. See Innes Dep. at 565:3 – 569:7. She testified that she stood behind her work product, as did her employer and her client (the Agency). See Innes Dep. at 568:12 – 569:7. Indeed, during her deposition, in a lengthy exchange, Plaintiff repeatedly demanded that Ms. Innes say that her report was "insufficient," but Ms. Innes steadfastly refused to do so. See Innes Dep. at 314:6 – 323:5. Plaintiff asked the question over and over again, before Ms. Innes said: "You clearly want me to say that it is insufficient, and I am giving you what I think of this. I've answered this question." See Innes Dep. at 322:15-21.

On December 6, 2019, Mr. Milligan sent an aggressive e-mail to Ms. Strauss in which he said, *inter alia*: "We live in America, so you are innocent until proven guilty, but if I were you I would hire a good lawyer and prepare yourself. You have a lot of explaining to do!" See Exhibit 81. Since the 2019 Plan was adopted in March of 2019, the municipal parties have never

indicated any intention to initiate eminent domain proceedings regarding 67 or 69 Wall Street. See Milligan Dep. at 32:9-13; 249:25 – 250:14. In fact, the 2019 Plan makes crystal clear that the Agency does not even have the power to initiate eminent domain proceedings.

III. ARGUMENT

a. Legal Standard[20]

Our Supreme Court has held that municipal redevelopment agencies "have broad powers to effectuate an urban redevelopment plan …." See United Oil Co. v. Urban Redevelopment Commission of the City of Stamford, 158 Conn. 364, 381 (1969) (citations omitted). As Plaintiff itself acknowledges, there is no right to appeal the adoption of a redevelopment plan. See Compl. at ¶ 136. While Courts have allowed declaratory judgment actions to proceed in extremely limited circumstances, our Supreme Court has held that substantial deference is afforded to the redevelopment agency, and the scope of judicial review of the adoption of a redevelopment plan is severely narrow. Indeed: "The determination of what constitutes a redevelopment area … is primarily a matter for the redevelopment agency, and its decision is open to judicial review only to discover whether it has acted unreasonably or in bad faith or has exceeded its powers." See Graham v. Houlihan, 147 Conn. 321, 328 (1960) (citations omitted); Maritime Ventures, LLC v. City of Norwalk, 277 Conn. 800, 813 (2006) ("As we have consistently stated, a redevelopment agency's exercise of its discretion is subject to judicial review only for unreasonableness, abuse of power or bad faith") (citations omitted); see also United Oil, *supra* at 381 ("… so long as [municipal redevelopment agencies] act within the limits of the formal powers conferred upon them and in due form of law the power of the courts to supervise, review or restrain them is necessarily limited"); Connecticut Freezers v. Comm. of

[20] The Agency presumes the Court's familiarity with the standard for summary judgment, and in the interest of brevity, does not recite it herein.

Transp., No. 385704, 1997 Conn. Super. LEXIS 377, at *2-3 (Conn. Super. Ct. Feb. 13, 1997) (Mulvey, J.) ("Municipal authorities have broad powers to effectuate redevelopment plans and their actions are not open to judicial review except where power granted in respect thereto are exceeded or exercised unreasonably or in bad faith") (citations omitted). Accordingly, the Court has held that the redevelopment agency's determination of a "redevelopment area" is **conclusive** unless, upon judicial review, it is found to have been unreasonable, the result of bad faith, or an abuse of power conferred. See, *e.g.*, Pet Car Products, Inc. v. Barnett, 150 Conn. 42, 51 (1962) (citations omitted); Gohld Realty Co. v. Hartford, 141 Conn. 135, 146-47 (1954). Indeed, our Supreme Court has acknowledged that it is "mindful of the limits on judicial review of a redevelopment agency's decisions implementing a redevelopment plan." See Maritime Ventures, *supra* at 808. The Court has also acknowledged that "to speculate regarding a redevelopment agency's intent … is inconsistent with that narrow scope of judicial review and would amount to judicial encroachment on the agency's exercise of the broad discretion delegated to it by the legislature." Id. at 813.

"'Where it appears that an honest judgment has been reasonably and fairly exercised after a full hearing, courts should be cautious about disturbing the decision of the local authority.'" Graham, *supra* at 329 (citations omitted).

b. Mr. Milligan's Procedural and Due Process Arguments

Mr. Milligan argues that the Agency did not follow the statutory notice requirements for the adoption of a redevelopment plan, and thus that his "due process" rights were violated. He argues that he was "not afforded a full opportunity to appear and oppose, and to offer any evidence [he] had in connection with … [the 2019 Plan]." See Compl. at ¶ 133. The allegation is entirely without merit, and borders on utterly frivolous.

As set forth in the statement of undisputed facts above, Mr. Milligan followed the development of the 2019 Plan closely every step of the way. He participated in a meeting of the Working Group, and presented ideas for the Plan which the Agency ultimately included in the Plan. After the ILSR Case was filed, his support turned to bitter opposition. Nonetheless, he attended, and spoke at, each and every public meeting regarding the 2019 Plan, with his comments oftentimes involving detailed citation to the General Statutes. He spoke with Agency staff frequently regarding the Plan, and was given Ms. Strauss' personal cell phone number.

He waged a ferocious public relations campaign against the Plan, which included publishing multiple op-eds in a variety of media outlets, frequently posting comments in a local news blog, and having detailed, one-on-one discussions regarding the Plan with a variety of members of the Common Council. He, and other members of the WSNA, authored a detailed argument against the Plan which was transmitted to the Council and the Agency Commissioners. He even directly contacted Melissa Kaplan-Macey and Emily Innes (***and their supervisors***) to present detailed argument against their work product. Ultimately, he demanded that Ms. Kaplan-Macey and Ms. Innes withdraw their respective reports, and threatened them with litigation if they would not do so. Most glaringly, the Agency invited him to an in-person meeting to discuss his concerns regarding the Plan – ***which he attended***. His private e-mail communications with select members of the WSNA (obtained by the Agency mostly through third-party subpoenas) reveal that Mr. Milligan followed each and every detail regarding the Plan ***obsessively*** throughout the approval process, and was at all times aware of each and every development. To suggest that ***Mr. Milligan***, of all people, was denied an opportunity to speak out in opposition to the 2019 Plan, or to make his views known, is frivolous to the point of laughable.

Mr. Milligan's argument simply did not carry the day. He lost. One cannot always expect to prevail on every matter in the political system, and the mere fact that an individual's argument did not prevail does not mean that the individual's due process rights were somehow violated. To quote the Supreme Court in Graham:

> The plaintiff claims that he was denied due process of law in that the hearing afforded him no opportunity to know and to meet, by rebuttal, cross-examination and argument, the evidence unfavorable to him. A public hearing was held after due notice, as the statute required. No claim is made to the contrary. The trial court found, and its finding is not challenged, that the plaintiff's representative appeared, spoke in opposition to the proposal and was heard without interruption, and that he did not seek to offer any evidence or to examine or cross-examine any witnesses. The due process clause of the fourteenth amendment to the federal constitution, which has substantially the same meaning as article first, § 12, of our state constitution, does not guarantee any particular form of state procedure … The plaintiff was afforded a full opportunity to appear and oppose, and to offer any evidence he had. For all that appears, he could have examined or cross-examined witnesses or questioned a member or employee of the agency, but he did not … There is no merit to his claim of denial of due process.

Graham, *supra* at 330 (internal citations omitted). Plaintiff nonetheless makes a number of specific arguments which will be addressed below.

i. *The Agency complied with all of the notice requirements of Section 8-127 of the General Statutes.*

Section 8-127 of the General Statutes contains a number of requirements for the adoption of a redevelopment plan, including: (1) a public hearing; (2) newspaper and internet postings; and (3) the Agency's procuring of an opinion of consistency with the Plan of Conservation and Development. As described fully in Section II(c)(v) above, the Agency satisfied all of these requirements. Indeed, Mr. Milligan concedes and admits that a public hearing was conducted and that proper notice of the same was published in the newspaper. See Compl. at ¶ 31.

Mr. Milligan argues, however, that the 2019 Plan was not posted on the Agency's website. Section 8-127(b) of the General Statutes provides, in relevant part: "At least thirty-five days prior to any public hearing, the redevelopment agency shall post the plan on the Internet

web site of the redevelopment agency, if any." Mr. Milligan's assertion that the Plan was not posted on the Agency's website is simply factually incorrect.

The Agency has three websites. See Church Dep. at 49:18-23; Deposition of Felix Serrano at 34:7-15;[21] Strauss Dep. at 138:9-11; 139:18-21, 140:1-2, 493:17-19; 494:7-8; 613:2-3. There is: (1) the Agency's dedicated page on the City of Norwalk website; (2) the "Norwalk Tomorrow" website, and (3) an Agency website that is used as a marketing tool to showcase final plan documents and current projects (www.norwalkredevelopmentagency.org). See Church Dep. at 49:18-23; Strauss Dep. at 140:1-5; 613:2-6, 16:22.

The Agency uses its page on the City website to conduct its normal business. See Church Dep. at 51:23 – 52:2. As shown in the wide variety of e-mail communications attached to this brief, the e-mail accounts of Agency staff – which the Agency used to communicate with members of the public including Jason Milligan – are through this very website (norwalkct.org). The Agency's page on the City website was used by the Agency to post draft plans and related materials such as meeting minutes and agendas. Id. at 99:17-24; Serrano Dep. at 34:16-22; 36:1-9; Sheehan Dep. at 511:16-20; Strauss Dep. at 140:6-15. Agency staff have log-in credentials to that web site, and have the ability to (and did) edit the website independently. See Strauss Dep. at 614:1-6; Church Aff. at ¶ 8. Agency staff considered the Agency's page on the City website to be the Agency's website, for purposes of statutory web-posting compliance, and consistently referred to it as such in writing during the Plan approval process. See Serrano Dep. at 34:19-22; Strauss Dep. at 139:9-14; 150:2-18; 497:6-7; 613:16-25; 614:7 – 615:9; 616:3-9; 617:13-24; Church Aff. at ¶ 9. This includes the legal notices of the Public Hearing posted in the *Norwalk Hour*, as well as Ms. Strauss' November 30, 2018 e-mail to the Working Group, both of which

[21] Excerpts from the deposition of Felix Serrano are attached hereto as Exhibit 82.

referred to the Agency's page on the City website as the "Agency's website." Indeed, ***Jason Milligan*** seems to have fully understood that this page was the Agency's website, as he himself, in a February 11, 2019 e-mail to Nancy Chapman, author of "Nancy on Norwalk," referred to the Agency's page on the City website as "There [sic] [the Agency's] website." See Exhibit 83.

Norwalk Tomorrow is a planning engagement website that is a joint collaboration between the Agency, the Norwalk Parking Authority, and the Planning and Zoning Department. See Church Dep. at 100:10-17; Strauss Dep. at 140:20 – 141:1. Norwalk Tomorrow was utilized by the Agency to post previous plans, plan drafts, market analyses, and other related materials. See Church Dep. at 100:22 – 101:8. Norwalk Tomorrow was specifically designed for public engagement, and is partially funded by the Agency. See Strauss Dep. 613:7-15. Both the Agency's page on the City website, as well as Norwalk Tomorrow, were utilized specifically to post draft documents to garner public comment and engage the public. Id. at 141:11:17. E-mails obtained through third-party subpoena show that Jason Milligan was reading the Norwalk Tomorrow website during the relevant time periods, and indeed sent links to content regarding the 2019 Plan on Norwalk Tomorrow to various WSNA members. See Exhibit 84.

The third website (www.norwalkredevelopmentagency.org) is considered a "promotional tool," a "marketing website," and a "business card" that showcases final plans and current projects. See Church Dep. at 52:2-7; 52:25 – 53:15; Serrano Dep. at 37:1-4; Sheehan Dep. at 511:19-20; Strauss Dep. at 141:3-6, 11-17; 494:25 – 495:2.

It is undisputed that the draft Plan was posted on the Agency's page on the City website (which both Agency staff and Mr. Milligan himself referred to as the "Agency's website") as well as on the Norwalk Tomorrow website ***more than*** 35 days prior to the Public Hearing, thus ***amply*** satisfying Section 8-127's web posting requirement. Not only this, but a very preliminary

draft of the Plan – containing RPA's final report, which is the subject of much of the instant litigation – was posted online in February of 2018, *i.e.*, *a full 11 months before the Public Hearing*. The Plan was posted not only on one web site, *but on two*. Mr. Milligan appears to fully acknowledge that the Plan was posted on two different websites well in advance of the public hearing. His argument appears to be that it was not posted on the third website referenced above, and thus that Section 8-127 was not satisfied and the *entire Plan should be scuttled*. The argument is without merit. As set forth above, the Agency maintains three websites, each of which is used for a distinct purpose. The Agency's page on the City website, which is the main website through which the Agency conducts its business and even maintains its e-mail accounts, is the primary website. The Plan was posted on two of the three websites. The final website, as the Agency's witnesses all testified, was maintained for the specific purpose of showcasing *final plans*; it was a "business card" and a "promotional tool" for the Agency.

It is important to note that Section 8-127 *does not even require* redevelopment agencies to have a website *at all*. The statute provides, in relevant part: "the redevelopment agency shall post the plan on the Internet web site of the redevelopment agency, **if any**." (Emphasis added). A redevelopment agency is not statutorily required to have a website, but is merely required to post a draft Plan online **if** it has a website. Accordingly, the statute explicitly contemplates a scenario in which a redevelopment plan is *never* posted on the internet *at all*, and yet is still completely valid. Here, the Agency's 2019 Plan was not only posted online, but was posted on *two different websites*. Mr. Milligan is cynically grasping at the thinnest of straws in arguing that the *entire Plan should be invalidated* because the Plan was not posted on the third website, which testimony established was used as a promotional tool for *final* plans.

The argument is invalid to begin with, but even more so considering its vessel: Jason Milligan, who appeared and spoke at each public meeting regarding the Plan, who indisputably accessed and read the Plan prior to the Public Hearing, and who accessed and scrutinized seemingly every plan document immediately upon its release.

ii. The Agency was not obligated to hold more than one public hearing before adopting the 2019 Plan.

Conn. Gen. Stat. § 8-127(b) provides, in part: "Before approving any redevelopment plan, the redevelopment agency shall hold a public hearing on the plan …." Plaintiff acknowledges and admits that the Agency *did* hold a "formally noticed" public hearing on the draft 2019 Plan on January 8, 2021. See Compl. at ¶ 31. Plaintiff claims, however, that because the Agency made changes to the Plan – specifically, the addition of the Harriman Report – it was obliged to hold an *additional* public hearing or hearings before adopting the Plan. See Compl. at ¶¶ 55, 60, 75, 113, 116, 132, 137. This claim is wholly without merit.

First, Conn. Gen. Stat. § 8-127(b) provides that the Agency must a hold "a public hearing," and not *multiple* public hearings, with respect to the adoption of a redevelopment plan. When a statute requires that a single public hearing be held, an administrative agency *may not* hold more than one public hearing on the proposal. See Frito-Lay, Inc. v. Planning & Zoning Com., 206 Conn. 554, 568, 574 (1988) (planning & zoning commission could not hold multiple public hearings on special permit application when enabling statute did not allow it); Gervais v. Town Plan & Zoning Comm'n, 184 Conn. 450, 453-54 (1981) (on remand, planning and zoning commission could not hold second public hearing on subdivision application because enabling statute "does not authorize multiple public hearings in connection with a single subdivision proposal."); Klug v. Inland Wetlands Comm'n, 30 Conn. App. 85, 94 (1993) ("[Inland Wetlands Act] provides that '[t]he commissioner shall . . . [c]onduct *a* public hearing . . . .' (Emphasis

added.) There is no provision in the Inland Wetlands Act that authorizes multiple public hearings for a single application.") (Brackets, parenthesis and italics in original)). Accordingly, the Agency did not err by failing to hold multiple public hearings on the 2019 Plan when the enabling statute authorized only a single public hearing.

Second, our Supreme Court has recognized that a central purpose of a statutorily-mandated public hearing is not only to allow the public to comment on the proposal, but also to allow the public agency to make changes to the proposal in response to those comments – a point also emphasized by the Agency Chairman Serrano at the commencement of the public hearing, when he stated: "The plan is a draft and is subject to change per the comments received during the public comment period as well as tonight's public hearing." See Exhibit 36. For example, in Neuger v. Zoning Bd. of Stamford, 145 Conn. 625 (1958), the plaintiff claimed, similar to the Plaintiff here, that a zoning board erred in modifying a zoning text amendment after closing the public hearing, and that the difference between a zoning amendment as originally proposed and as finally enacted was so significant that there was no legal notice of the public hearing of the amendment as passed. In rejecting this claim, the Court stated:

> Here, the notice of the public hearing clearly set forth that the hearing was called to consider an amendment of the zoning regulations which would add to them a definition of a shopping center and further would make possible the location in every such center of a liquor package store. The changes in the language of the amendment as a result of the views expressed at the hearing did not affect the sufficiency of the notice or the validity of the hearing. ***The very purpose of the hearing was to afford an opportunity to interested parties to make known their views and to enable the board to be guided by them. It is implicit in such a procedure that changes in the original proposal may ensue as a result of the views expressed at the hearing***. Couch v. Zoning Commission, 141 Conn. 349, 358, 106 A.2d 173; Pecora v. Zoning Commission, 145 Conn. 435, 444, 144 A.2d 48; Klaw v. Pau-Mar Construction Co., 50 Del. (11 Terry) 487, 135 A.2d 123. Notice of a hearing is not required to contain an accurate forecast of the precise action which will be taken upon the subject matter referred to in the notice. Ciaffone v. Community Shopping Corporation, 195 Va. 41, 50, 77 S.E.2d 817.

Id. at 630 (emphasis added); see also Frito Lay, *supra* (same); Kleinsmith v. Planning & Zoning Com., 157 Conn. 303, 311-312 (1968) (rejecting claim that zoning amendment was illegal because of changes made to text of amendment in response to comments made at public hearing, noting that "[t]he changes did not affect the fundamental character of the proposal for the consideration of which the hearing had been called and advertised."); Dupont v. Planning & Zoning Com., 156 Conn. 213, 218 (1968) (no error in commission adding language to proposed zoning text amendment following close of public hearing; changes were in accord with notice of public hearing which apprised the public of the nature and character of the action being proposed); Jacques v. Waterford Planning & Zoning Com., No. CV11-6010705, 2013 Conn. Super. LEXIS 656 (Conn. Super. Ct. Mar. 22, 2013) (Purtill, J.) (rejecting claim that changes to zoning amendment after the public hearing rendered regulations illegal); Jeffrey v. Planning & Zoning Comm'n, No. 553379, 2001 Conn. Super. LEXIS 2276 (Conn. Super. Ct. Aug. 10, 2001) (McMahon, J.) (fact that 74 changes were made to text of zoning amendment after the public hearing did not render action illegal where changes were within the subject matter of what was specified in the legal notice); R. Fuller, 9B Connecticut Practice Series: Land Use Law and Practice (3d Ed. 2007) § 46.5.

Here, the legal notice of public hearing (Exhibits 23 & 24) requested comment on the Wall Street-West Avenue Redevelopment Plan, and notified the public where and how the Plan could be viewed. During the Public Hearing, the Agency Chairman, Felix Serrano, specifically informed the public (including Mr. Milligan, who was present) that changes may be made to the plan after the public hearing in response to public comments. The changes made to the plan after the public hearing – particularly the addition of the Harriman report – were made *in response to* the public comments. Those changes did not affect the character of the Plan (for example, by

expanding the land covered by the plan), and were wholly within the action described in the legal notice of public hearing. Moreover, the legal notice properly informed the public of the nature and character of the action being proposed in order to allow the public to prepare for the hearing. See Kleinsmith, *supra* at 310.

Accordingly, there is no merit to the Plaintiff's claim that the Agency lacked authority to amend the Plan in response to the public comments received at the public hearing, or that it was obliged to hold additional public hearings if it chose to do so.

c. Mr. Milligan's Attack on the Agency's Determination of "Deteriorated" or "Deteriorating" Conditions in the Redevelopment Area.

i. The statutory requirements and Mr. Milligan's relentless and knowing misrepresentation of them.

" … Chapter 130 [of the General] Statute[s] gives **very broad discretion** to designate blight which makes sense. Blight, deteriorated, deteriorating conditions are cause[d] by a variety of factors. The statute gives municipalities a variety of ways to establish poor conditions."
- Jason Milligan, March 9, 2019[22]

Section 8-125 of the General Statutes contains crystal-clear definitions which govern the adoption of redevelopment plans. In order to have a redevelopment plan, the Agency must find a "redevelopment area." "Redevelopment area" is statutorily defined as follows: "… an area within the state that is deteriorated, deteriorating, substandard or detrimental to the safety, health, morals or welfare of the community." See Conn. Gen. Stat. § 8-125(2). The statute provides that a redevelopment area "… may include structures not in themselves substandard or insanitary which are found to be essential to complete an adequate unit of development, if the redevelopment area is deteriorated, deteriorating, substandard, or detrimental to the safety, health, morals or welfare of the community." Id. Importantly, "The conditions in the definition

[22] See Exhibit 85 (emphasis added). The Agency notes that it obtained this e-mail communication (which has a subject line of "Uphill battle") by way of a third-party subpoena, after Mr. Milligan failed and/or refused to produce it himself.

of a redevelopment area are stated disjunctively. [A redevelopment] agency could establish a redevelopment area if one or more of the conditions existed," (*i.e.*, the area must be deteriorated **or** deteriorating **or** substandard **or** detrimental to the safety, health, morals or welfare of the community). See Graham, *supra* at 329 (citation omitted). The statute, in its original iteration, merely referenced "deteriorat***ed***" areas. In 1959, the statute was amended to add the word "deteriorat***ing***." See Public Acts 1959, No. 397, S. 2. Our Supreme Court has held that the addition of the word "deteriorating" to the statute "is an indication of an intent that the sections are to be liberally construed within the broad language they contain." See Graham, *supra* at 328.

"Deteriorated" and "deteriorating" are also clearly defined in the statute:

> "Deteriorated" or "deteriorating" with respect to a redevelopment area **means an area** within which at least **twenty percent of the buildings contain one or more building deficiencies or environmental deficiencies, including, but not limited to**: (A) Defects that warrant clearance; (B) conditions from a defect that are not correctable by normal maintenance; (C) extensive minor defects that collectively have a negative effect on the surrounding area; (D) inadequate original construction or subsequent alterations; (E) inadequate or unsafe plumbing, heating or electrical facilities; (F) overcrowding or improper location of structures on land; (G) excessive density of dwelling units; (H) conversion of incompatible types of uses, such as conversion of a structure located near family dwelling units to rooming houses; (I) obsolete building types, such as large residences or other buildings which because of lack of use or maintenance have a blighting influence; (J) detrimental land uses or conditions, such as incompatible uses, structures in mixed use, or adverse influences from noise, smoke or fumes; (K) unsafe, congested, poorly designed, or otherwise deficient streets; (L) inadequate public utilities or community facilities that contribute to unsatisfactory living conditions or economic decline; or (M) other equally significant building deficiencies or environmental deficiencies.

See Conn. Gen. Stat. § 8-125(7) (emphases added). The definition of "deteriorated" and "deteriorating" was first added to the statute in 2007. See Public Acts 2007, No. 141, S. 5, No. 207, S. 1. The Agency's research has revealed no judicial opinions interpreting this specific statutory language. On its face, however, the definition is considerably broad. It: (1) provides a

non-exhaustive list of thirteen (13) building deficiencies or environmental deficiencies that the Agency may consider in making its determination; (2) expressly provides that ***other*** deficiencies that are not specifically listed may be considered by the Agency;[23] and (3) plainly provides that a building need only meet ***one*** such building deficiency in order to be included in the analysis.

To summarize: (1) the Agency must determine that there exists a "redevelopment area" (see Conn. Gen. Stat. § 8-125(2)); (2) a "redevelopment area" is a geographic area that is "deteriorated" or "deteriorating" (id.); and (3) an area that is "deteriorated" or "deteriorating" is one within which 20% or more of the buildings contain one or more building deficiencies or environmental deficiencies (see Conn. Gen. Stat. § 8-125(7)). Pursuant to the clear language of the statute, with regard to an individual building, the question is merely and simply whether that building has one or more building deficiencies or environmental deficiencies. If 20% or more of the buildings in the area contain one or more such deficiencies, then this indicates something about the condition of the overall area; namely, that the area is deteriorated or deteriorating, and hence qualifies as a redevelopment area. It is important to emphasize that not all properties included in the redevelopment area need be found to contain building deficiencies or environmental deficiencies. As our Supreme Court has noted: "The inclusion within the area of certain properties which are not substandard does not constitute unreasonable or arbitrary action, because it is the condition obtaining as to the entire area and not as to individual properties which is determinative. The statute specifically so states, and the area concept is borne out by the cases." Graham, *supra* at 328 (emphases added) (citations omitted).

[23] Note the statute's use of the phrase "including, but not limited to." Also note subparagraph (M), which states: "other equally significant building deficiencies or environmental deficiencies."

Plaintiff does not like Section 8-125 of the General Statutes, for obvious reasons. To quote Mr. Milligan, the statute gives the Agency "very broad discretion" to make a finding on deteriorated or deteriorating conditions. Accordingly, throughout this case, Plaintiff has attempted to create its own, much more stringent, definitions and argue that the Agency needed to meet ***those*** definitions in adopting the 2019 Plan. Plaintiff has argued that the Agency must make a determination of "blight" to find a valid redevelopment area. Plaintiff, at various points, has argued (without any support whatsoever) that in order to be included in the 20% of buildings required for the finding, the building must satisfy the definition of "blight" set forth in Chapter 58A of the Norwalk City Ordinances. See Compl. at ¶ 29. Most notable, however, Plaintiff has cited to Section 8-124 of the General Statutes, which is the declaration of public policy for the redevelopment statutes, and has repeatedly argued (again, without any support whatsoever) that this section constitutes definitions and criteria which the Agency must satisfy in order to find a valid redevelopment area. Plaintiff's Complaint is littered with demonstrably false allegations as to the statutory criteria necessary for the adoption of a redevelopment plan. See, ***e.g.***, Compl. at ¶ 51. So relentless has Plaintiff been in its invocations of "blight" and citations to Section 8-124 that Judge Charles Lee (who as the Court knows, was, prior to his appointment to the bench, the Chair of Stamford's Urban Redevelopment Commission) admonished the Milligan Parties to please stop mischaracterizing the statutes in such a manner. The following exchange occurred in open Court on March 7, 2019, in the context of the ILSR Case, during the Milligan Parties' questioning of Norwalk's Blight Officer, William Ireland:

ATTY. RUBIN:	… the Redevelopment Agency can determine blight. And there is --
THE COURT:	That's not quite accurate. You're combining – Chapter 130 is the chapter of the statutes about urban redevelopment.

ATTY. RUBIN: Right.

THE COURT: And you misquoted it.

…

THE COURT: Because what Chapter 130, Section 8-125, Sub 7, defines deteriorated or deteriorating with respect to redevelopment area means an area within at least, within which at least 20 percent of the buildings contain one or more building deficiencies or environmental deficiencies including a long list. It's deteriorated or deteriorating is the standard for an urban renewal area. It's not blight. Blight is the Blight Ordinance, which Mr. Ireland deals with. But they're two different sections and two different standards. Okay? And the [Redevelopment] Agency does determine whether it's deteriorated, deteriorating.

ATTY. RUBIN: Your Honor, I understand that that's the Court's understanding that is not --

THE COURT: That's what --

ATTY. RUBIN: That is not my understanding. My understanding is that there needs to be a finding of blight in connection -- of properties and there are arguments that are being made now relative to that. There needs to be a finding of 20 percent blight in order to have --

THE COURT: Based on what do you say that? Show me. It doesn't -- I mean that's not what the statute says.

ATTY. RUBIN: Well he's already testified that he doesn't know if you need blight for redevelopment area. You're, the Court is under the impression that you don't. We are under the impression that you do.

THE COURT: Based on what? (Pause)

ATTY. RUBIN: Based on the language that's contained in Section 8-124 of the Connecticut General Statute that under the redevelopment section, the declaration of public policy, it states -- and I quote: "It is found and declared that they are to have existed and will continue to exist in the future in municipalities of the state substandard, insanitary, deteriorated, deteriorating, slum, or blighted areas which

constitute a serious and growing menace, injurious and inimical to the public health, safety, morals, and welfare of the residents of the state, that the existence of such areas contribute substantially and increasingly to the spread of [disease] and crime necessitating excessive and disproportionate expenditures of public funds for the [preservation] of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency, and for the maintenance of adequate police, fire, and accident protection and the other public services and facilities. And the --

THE COURT: Please, please. So what?

ATTY. RUBIN: Your Honor, we believe that --

THE COURT: It mentions blight. It's true. But that's in the public policy section. When you look at the definitions, it's deteriorated or deteriorating areas and then they define a number of things here.

ATTY. RUBIN: We would argue that the deteriorated and deteriorating and blight are synonymous.

THE COURT: No, no. [One] is a defined term, the other isn't.

ATTY. RUBIN: Well, it's funny. I mean these are – okay. I will withdraw the questions ….

See Admissions # 81; Exhibit 86. Undeterred, Plaintiff has proceeded, in this case, to relentlessly grill non-attorney witnesses in depositions on "blight" and on Section 8-124 of the General Statutes. Plaintiff has shown non-attorney witnesses (most notably, Melissa Kaplan-Macey of RPA) a copy of Section 8-124 (without any reference whatsoever to Section 8-125, as though it does not exist), and asked whether the 2019 Plan comports with the statutes. Plaintiff has also repeatedly asked witnesses whether particular areas or properties are "blighted." This has been a significant source of frustration for the Agency, which has often had to lodge objection after objection during the depositions to the extent that Plaintiff was mischaracterizing the statutory requirements for a redevelopment plan, and asking witnesses for their opinion on

whether the 2019 Plan comports with Plaintiff's mischaracterization of the statutory requirements. During the deposition of Common Council member Tom Livingston on March 2, 2021, the Agency objected to Plaintiff's repeated use of the word "blight" and invocation of Section 8-124, and reminded Plaintiff of Judge Lee's comments in open Court on March 7, 2019. Plaintiff's response was that Judge Lee's opinion should not matter because he is no longer the presiding judge in this case:

> MR. ELLIOTT: I think here's the difficulty because you're asking the witness to what extent it relates to a redevelopment plan, and redevelopment plans are governed by Chapter 130 of the General Statutes, which contains very specific definitions. So I just want to be sure that when the witness is asked a question, he knows specifically what he's being asked about and that he's not giving an answer based on an alternate definition or understanding of blight.
>
> MR. RUBIN: I'm using blight not just in connection with Connecticut statute. I'm using blight in connection with federal statute – with state statute. I'm using blight also in connection with federal statute which specifically references – you're right, it does reference state statute but it also references blight in its definition. The public policy section of the blight -- of Chapter 130 actively [discusses] blight. That being said, there is a definition of what constitutes deteriorated or deteriorating conditions. You don't agree that it should be viewed expansively, you're trying to limit it. I don't think it should be limited. I'm trying to use it more expansively in connection with the statutes. Why don't we just agree that to the extent I use the word blight, it's consistent with Connecticut and state statutory definitions; and if the witness is confused as to what that might mean, we can -- we can look at it again.
>
> MR. ELLIOTT: … I do want to be careful with that as well because I understand you're referring to 8-124 when you use the word blight, but my understanding that the Court, Judge Lee, has already expressed an opinion that 8-124 is merely a statement of public policy and does not supplant the actual definition of 8-125. So I just want to be very careful with it.

MR. RUBIN: He did. Judge Lee's also, you know, [formerly] worked for the Stamford Redevelopment Agency, and he's no longer the judge. And it wasn't in a ruling … I'm not exactly sure that that is the law of the case. That issue wasn't even relating at the time. This action that you're involved with wasn't brought yet, and the relevance of this action to the ILSR action was not then before the Court. So I don't know that whatever Judge Lee said matters ….

See Deposition of Thomas Livingston (attached hereto at Exhibit 87) at 84:8 – 86:16. Indeed, at the outset of his deposition in this case, Mr. Milligan defiantly announced to the undersigned counsel that he would *not* use the term "deteriorated or deteriorating conditions," but rather would *only* be using the word "blight." See Milligan Dep. at 12:9-15.

The Court should not be fooled by Plaintiff's theatrics, which are intended to distract the Court from a broad statutory definition which Plaintiff dislikes. Pursuant to that clear statutory definition, the Agency's task is quite simple: to determine whether 20% or more of the buildings in the proposed redevelopment area have one or more building or environmental deficiencies.

ii. ***Plaintiff has elicited no evidence to meet the incredibly high bar for judicial intervention in the legislative function. Plaintiff cannot meet its burden of showing bad faith, unreasonableness, or abuse of power. Quite to the contrary, the Agency acted in the utmost of good faith.***

Plaintiff is asking the Court to invalidate a redevelopment plan that was enacted by the Norwalk Common Council by a vote of 13-1. There is no formal right to appeal a municipality's enactment of a redevelopment plan, and this *is not* a trial *de novo*. Our Supreme Court has outlined the substantial deference that is afforded to a redevelopment agency in making a "redevelopment area" determination, and has repeatedly emphasized that the scope of judicial review in these matters is severely narrow. To quote Mr. Milligan, the Agency is afforded "very broad discretion" in these matters. This is why Mr. Milligan has referred to his attack on the Plan as an "uphill battle." The Court has held that an agency's determination is generally conclusive and open to judicial review only to determine whether it was made in bad faith, was

unreasonable, or constituted an abuse of power. The Court has recognized the "limits" of judicial review in this context, and has advised that Courts should be "cautious" about disturbing the "honest judgment" of a local authority. Further, it has held that to "speculate" regarding the agency's intent is "inconsistent" with the narrow scope of judicial review and would amount to "judicial encroachment" on the agency's exercise of the discretion afforded to it by the legislature. With this framework in mind, the Agency notes as follows:

Mr. Milligan must prove that the Agency's determination on "deteriorated or deteriorating" conditions amounted to bad faith, unreasonableness, or abuse of power. The undisputed facts, however, bespeak the utmost of ***good faith*** by the Agency. The methodologies utilized in the RPA Report – suspected lead paint, known or suspected environmental contamination, and properties existing within a 100-year floodplain – were chosen by Tami Strauss ***precisely because they had been used previously in another approved and enacted Norwalk redevelopment plan – the "TOD Plan" – and had been approved by both the Norwalk Common Council and the Agency's Board of Commissioners*** in the context of that plan. The methodologies were chosen because Agency staff knew them to have already been approved by the Common Council, and also in an effort to ensure that the 2019 Plan was consistent with another important redevelopment plan in Norwalk. The Agency is authorized to conduct the analysis and make the determination all on its own, and certainly *could have* done so. But it did not. It instead took the step (not required by statute) of hiring (and paying) a third-party consultant (RPA) with deep experience in urban planning to conduct the analysis. That third-party consultant at no point ever disagreed with the methodologies. The Agency conveyed to Ms. Kaplan-Macey that her analysis must comport with the Connecticut General Statutes, and indeed, one of the very first communications that the Agency had with Ms. Kaplan-Macey was

to send her a link to the relevant sections of the General Statutes and ask her to review them. One cannot imagine how Mr. Milligan extrapolates "bad faith" from these undisputed facts.

Though Mr. Milligan will surely bark his oft-repeated conspiracy theories that the determination was a "*fait accompli*" and that the "cake was baked," Ms. Kaplan-Macey herself testified that she was given the ability to request whatever information she needed in connection with her analysis, that she was provided with all of the information that she requested, and that she at no point ever felt pressure to reach a particular conclusion. To countenance Mr. Milligan's evidence-free "*fait accompli*" theories would amount to exactly the type of speculation regarding an Agency's intent that the Supreme Court has explicitly warned against.

The Agency also expects Mr. Milligan to argue that lead paint, environmental contamination (*i.e.*, so-called brownfields) or existence within a 100-year floodplain do not constitute "blight," are not important issues, and do not satisfy the criteria set forth in Section 8-125(7) of the General Statutes. But this judgment is a matter for the Agency, not for Jason Milligan. The Agency has the discretion ("very broad" discretion, according to Mr. Milligan) to determine what conditions it considers to be building deficiencies or environmental deficiencies pursuant to Section 8-125(7). Indeed, it is ludicrous to suggest that lead paint, environmental contamination, and existence within a floodplain ***are not*** "building deficiencies" or "environmental deficiencies." The Agency attaches hereto at Exhibits 88, 89 and 90 the Expert Reports of AICP-Certified Planners Elizabeth ("Libby") Seifel and Michael Keane, as well as that of State of Connecticut Certified Lead Paint Inspector/Risk Assessor Peter Folino, all of whom opine, in significant detail, that the methodologies utilized and analyses undertaken by RPA and the Agency were eminently reasonable.

As Mr. Sheehan, Ms. Strauss and Ms. Church all testified, the RPA Report ***alone*** is sufficient to determine that 20% of the buildings in the area contained one or more building or environmental deficiencies. Indeed, the lead paint analysis within the RPA Report ***alone***, ***not even taking into account*** the floodplain and environmental contamination issues, is sufficient to meet the statutory criteria for a redevelopment area. Ms. Kaplan-Macey stands behind her report – both in 2019 and into the present day – and has refused to disavow it even in the face of phenomenal personal and professional pressure from Mr. Milligan.

The Agency could have stopped at the RPA Report and proceeded to Council approval on that basis alone. But it did not. Again bespeaking the utmost of good faith by the Agency, Agency staff proceeded to engage Emily Innes of Harriman to perform a supplemental study, ***even though Agency staff felt that the RPA Report was sufficient and that a supplemental analysis was not even statutorily required***. Ms. Strauss in particular testified that she did not feel that any supplemental analyses were necessary or required, but she nonetheless felt that it was the "right thing to do" in order to provide additional support to those members of the public who had raised concerns at the January 8, 2019 Public Hearing. In other words, the Agency did something that it was not even required to do simply to be responsive to public comment. That fact ***alone*** shows the Agency's good faith throughout this process. ***Perversely***, Mr. Milligan is now ***trying to use it against the Agency*** and to argue that the Plan should be ***invalidated*** because the Agency ***did something it was not even required to do in order to be responsive to public comment***. So responsive to public comment was the Agency that it invited Mr. Milligan to a meeting at its offices to discuss his concerns about the Plan. The Agency also offered to make a presentation to the members of the WSNA about the Plan.

The Agency further notes that two legal opinions were sought regarding the sufficiency of the methodologies utilized by RPA and Harriman before the Plan was advanced to the Common Council. Both Attorneys Grenier and McCann authored detailed opinion letters concluding that the methodologies were consistent with Section 8-125 of the General Statutes. The Agency was not even planning to reference those opinion letters in this brief until Plaintiff made an issue of them and demanded their disclosure.

Mr. Milligan may certainly feel passionately about the Agency's conclusions on deteriorated or deteriorating conditions. As set forth above, the Agency believes this passion to be rooted not so much in genuine substance, but rather in a desire to (as he sees it) advance his own monetary interests and to gain what he sees as leverage against the ILSR Case. To quote Mr. Milligan himself: "People that claim to be working for the greater good are the biggest liars. I am a greedy self interested businessman that happens to be ideologically aligned with the Wall Street Stakeholders and tax payers of Norwalk." See Exhibit 91. Though he has taken a "kitchen sink" approach to this case, and gone after every picayune topic about the 2019 Plan (including attacks on the professional competence of Ms. Strauss, Ms. Kaplan-Macey, and Ms. Innes), he cannot wish away the undisputed facts set forth above, he cannot wish away the ***actual*** definitions set forth in the General Statutes, and he cannot wish away the severe constraints on judicial review in this context that have been outlined by the Supreme Court. The undisputed facts thoroughly dispel any support for the heightened burden of proof that Mr. Milligan must satisfy in this case.

IV. CONCLUSION

In accordance with the foregoing, the Agency respectfully requests that the Court grant this Motion in its entirety, thus entering judgment against Plaintiff's Complaint with prejudice.

DEFENDANT –
REDEVELOPMENT AGENCY OF THE
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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was mailed first-class mail, postage prepaid, as well as e-mailed, to all counsel of record and *pro se* parties in this action on this the 22nd day of October, 2021, as follows:

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