

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:25-cv-00087-MEO-DCK

CHRISTOPHER M. COMISKEY and
VICTORIA L. COMISKEY,

Plaintiffs,

v.

VILLAGE OF MARVIN; KIM
VANDENBERG, individually;
MICHAEL VANDENBERG; DEREK
DURST; ADAM WESLEY
KUYKENDALL; MILAN DAMANI;
RICH VALENTI; MARNIE BLACK;
EDDIE CATHEY, individually and in
his official capacity as Sheriff of Union
County, North Carolina; D. BRANDON
CHRISTIAN, individually; JAMIE
LEIN, individually; and ROBERT
NUNNENKAMP, individually,

Defendants.

SECOND AMENDED COMPLAINT

[JURY TRIAL DEMANDED]

1. Plaintiffs Christopher and Victoria Comiskey are a married couple raising their children in the Marvin Creek subdivision of Defendant Village of Marvin (“Village”). For many years, the Village has pursued an increasingly unpopular campaign to develop approximately 125 acres of suburban and rural land along Marvin School Road and New Town Road into what it calls the “Marvin Heritage District.” The Village promotes the heritage district as a boon to Village residents; in fact, the development threatens to exacerbate the Village’s already significant density and traffic issues for the primary, if not exclusive, benefit of a handful of private real

estate investors, owners, and developers, each of whom stands to realize a significant financial benefit from the Village's efforts.

2. Among those efforts is the Village's push to create an interconnected greenway or public trail system that will connect to or be part of the Marvin Loop, which would provide pedestrian access to the bars, restaurants, and offices that would eventually make up the heritage district ("Trail Project"). To advance the Trail Project, the Village has, in the past, required planned community developers to dedicate certain area within their development to use as a public greenway or trail.

3. These trails, like the heritage district, are unpopular. In 2024, the Village asked residents through a referendum to approve bonds that would allocate millions of dollars toward the construction of public parks and roads, including greenways and trails. Residents voted overwhelmingly against the bonds on March 5, 2024; upon information and belief, the transportation bond failed approximately 1,489 to 417 and the parks bond approximately 1,550 to 355. But the unpopularity of the Trail Project did not (at least immediately) stop the Village leaders from pressing forward. In particular, Defendant Kim Vandenberg, the former mayor pro tempore of the Village, has aggressively pushed the Trail Project agenda, including through associates who have, in the past, used Vandenberg's access to nonpublic information to bully, harass, and intimidate the Marvin residents who advocate against the Trail Project and the heritage district.

4. Beginning in July 2022, the Village's Public Facilities Manager approached the president of the board of directors of the Marvin Creek Community

Association, Inc. (“MC Association”), Defendant Milan Damani, and by July 2023, the MC Association’s directors Defendants Rich Valenti and Marnie Black, and solicited the MC Association to grant the Village an easement over MC Association common area for the purpose of constructing a trail as part of the Trail Project. In November 2023, the MC Association, unbeknownst to most of its members, executed a Trail Easement Agreement (“Trail Agreement”) with the Village that, for the sum of \$1, gave the Village the perpetual right to use MC Association common area for the construction, maintenance, and use of a paved, unpaved, or elevated trail system and related improvements (“Easement”).

5. Plaintiffs objected to the Easement immediately and voiced their objections publicly, including at meetings of Village Council. In response, certain Village officials, including Vandenberg, Jamie Lein, and Robert Nunnenkamp, and other public officials, including the Union County Sheriff Eddie Cathey and his former Chief Legal Counsel Brandon Christian, have coordinated to defame, discredit, and intimidate Plaintiffs in an effort to chill Plaintiffs’ speech and promote the interests of local developers. This action follows.

Parties

6. Plaintiffs Christopher Comiskey and Victoria Comiskey are citizens and residents of Union County, North Carolina.

7. The Village is a municipal corporation and political subdivision of the State of North Carolina, situated in Union County, North Carolina.

8. Defendant Kimberly Vandenberg is a citizen and resident of Union County, North Carolina. She was a member of the Village Council—the Village’s governing body—until December 2025, when her term expired and she did not seek reelection. She is sued here in her individual capacity.

9. Defendant Michael Vandenberg is Kim Vandenberg’s husband and a citizen and resident of Union County, North Carolina. At relevant times, Defendant Michael Vandenberg has coordinated with Kim Vandenberg to defame and discredit Plaintiffs, to accuse Plaintiffs of extorting or bribing public officials, and to spread other misinformation about Plaintiffs and the Trail Project through various channels, including social media pages like the Marvin Messenger. Upon information and belief, Marvin Messenger is operated directly by Michael Vandenberg, or Michael Vandenberg regularly provides content to the administrators of the Marvin Messenger page, who then post such content at Michael Vandenberg’s direction, including content concerning Plaintiffs. Michael Vandenberg has also, at relevant times, been given access by Kim Vandenberg to nonpublic information that he has weaponized against Plaintiffs in various social media posts and other publications.

10. Defendant Adam Wesley Kuykendall is a citizen and resident of Mecklenburg County, North Carolina, and who conspired with the Vandenberg’s to discredit and defame Plaintiff Christopher Comiskey by, at least, making a false report concerning Christopher Comiskey’s conduct to Christopher Comiskey’s employer, resulting in an internal investigation.

11. Defendants Milan Damani, Rich Valenti, and Marnie Black are each citizens and residents of Union County, North Carolina, who, at relevant times, served as members of the board of directors—that is, the governing body—of the MC Association. Damani, Valenti, and Black conspired with Village officials, including Kim Vandenberg, to grant the Village the Easement and then spread misinformation to MC Association members in an effort to delay and disrupt Plaintiffs’ efforts to secure the termination of the Easement.

12. Defendant Jamie Lein is a former member of the Village Council and a citizen and resident of Charlotte County, Florida. He is sued individually. Lein moved to Florida during his term in office, which made him ineligible to continue to serve, but this fact was withheld from the public so that Lein and Defendant Kim Vandenberg could conspire with the Village to handpick Lein’s successor. Kim Vandenberg originally planned for that successor to be her but ultimately chose Robert Nunnenkamp, who was appointed to the Village Council by a vote of the Council in December 2025.

13. Defendant Robert Nunnenkamp is a citizen and resident of Union County, North Carolina, and a member of the Village Council. He was appointed to Village Council in December 2025 at Lein and Kim Vandenberg’s urging and has used his role on Village Council, at Kim Vandenberg’s urging, to interfere in and obstruct Plaintiffs’ efforts to resolve their dispute with the Village.

14. Defendant Eddie Cathey is the Union County Sheriff and a citizen and resident of Union County. He is sued in his official and individual capacity.

15. Defendant Brandon Christian is a citizen and resident of Union County, North Carolina, and the former Chief Legal Counsel for the Union County Sheriff's Office. In October 2025, Christian sent Christopher Comiskey a letter that, among other things, purported to restrict Christopher Comiskey's access to law enforcement services due to the content of Christopher Comiskey's protected speech. Upon information and belief, Village officials requested that Christian send the letter.

Jurisdiction & Venue

16. The Court has jurisdiction under section 1331 of title 28 of the U.S. Code because this case involves claims arising under federal law.

17. The Court has jurisdiction over Defendants pursuant to section 1-75.1 of the North Carolina General Statutes and may exercise such jurisdiction in a manner consistent with the requirements of due process.

18. The Court is the proper venue for this action pursuant to section 1391 of title 28 of the U.S. Code because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

Waiver of Immunity

19. The Village is not immune from the claims alleged in this action. To the extent that the Village would otherwise be immune, the Village has waived such immunity through the purchase of liability insurance of participation in a local government risk pool.

Facts

I. The Trail Project

20. For years, a majority of the members of the Village Council have pursued the development of what they refer to as the Marvin Heritage District. The heritage district development would transform suburban and residential rural property into commercial retail, restaurant, and office space at or around the intersection of Marvin School Road and New Town Road. Much of that property borders residential neighborhoods, including Marvin Creek, and is owned by a handful of real estate investors and their holding companies.

21. An important part of the heritage district plan involved the development of a connected set of public greenway, sidewalks, and walking trails that would permit access to the retail, office, and restaurant establishments that would presumably fill the heritage district.¹ The Trail Project was, in part, the brainchild of Defendant Derek Durst², who was the Village's Public Facilities Manager in 2022 and 2023, until about May 2023.

22. The heritage district has become an increasingly unpopular idea in the Village. Residents (particularly residents who live in the neighboring communities), have expressed concerns over noise and light pollution, development density, road congestion, environmental impact, and other issues implicated by the sudden

¹ The Trail Project was important to the developers and investors owning property identified for development as part of the heritage district because it made retail, office, and restaurant space more attractive to potential buyers and tenants who might otherwise be concerned about accessibility issues, including lack of adequate parking, at their properties.

² Durst was employed by the Village from at least April 2017 until about the first week of May 2023.

construction of a “downtown” Marvin area. The Village Council, including Defendant Kimberly Vandenberg, have, at all times relevant, been aware of these concerns, but have moved forward with heritage district planning and the Trail Project anyway in order to appease a small group of local real estate investors and developers with financial interests in the project.

23. To overcome the unpopularity of the project, the Village has, from time to time, turned to deception. For example, in October 2019, in the survey report prepared with the Centralina Regional Council for the Village's Land Use Plan, and again in the 2020 Land Use Plan itself, the Village published the results of a survey of residents concerning development in the Village. The “word cloud” that was released to the public suggested that resident responses were positive and focused on the development of new trails connected to commercial developments—in fact, the Village or Centralina Regional Council or both had removed the most-used words (including “development,” “commercial,” “village,” and the negations “no,” “not,” and “more,” the terms that, read together in the raw comments, are “no more commercial development”) from the word cloud. Still, the Village Council adopted the Land Use Plan carrying the word cloud in 2020 to support its plans to continue with the development of the heritage district and the Trail Project.

II. The Marvin Creek Trail Agreement

24. Beginning in July 2022, Village officials, including Durst, approached members of the board of directors of the MC Association, including Defendants

Damani, Valenti, and Black, about acquiring an easement over MC Association common area.

25. Unlike with other planned communities bordering the proposed heritage district, Marvin Creek's developers had never promised or granted the Village any easement or other interest that would permit the Village, absent the exercise of eminent domain, to develop, maintain, or use any public walking trail over Marvin Creek's common area. That is, if the Village wanted to develop a public walking trail over Marvin Creek common area, it would need the MC Association to agree to convey the Village those rights.³

26. In 2023, the Village needed to obtain an easement from the MC Association in order to complete the Trail Project as it was then conceived.

27. At a meeting noticed for July 24, 2023, the MC Association's board of directors met with Village representatives concerning the proposed easement.⁴

³ The Village pursued that agreement over Plaintiffs' known objection, with its Manager's written approval. On February 14, 2023, Durst wrote the Association's president that "the residents at 312 Painted Turtle Ct have some concerns about the trail ... the visibility of it from their house and ... any potential flood impacts," and asked, "are you as an HOA going to want their 'blessing' on the project or are you willing to pursue it regardless?" On March 23, 2023, the Village Manager wrote to the president: "there is one property owner requesting some flood plain studies ... We will not be doing those unfortunately." On March 28, 2023 at 1:51 p.m., Durst reported to the Village Planner and the Manager that the president, "despite the one neighbor on Painted Turtle not being a fan," would present it "to the board for a vote" and "thinks that he can get a 4-1 vote in favor of it," and asked, "Christina, if you're okay ... we can see if we can make this thing happen." The Manager replied at 1:58 p.m., "Im fine with that assuming ... doesn't cost us money to produce," and at 2:49 p.m.: "Perfect! Proceed! Thanks and good news."

⁴ The meeting was July 24, 2023. On June 26, 2023, the Association's president wrote to the Village Planner, the managing agent, and Defendants Valenti and Black: "we

During the meeting, the Village described a potential easement over a portion of the Marvin Creek common area that would permit the Village's construction of a greenway or walking path that would connect a nearby public trail to the Marvin Creek common area, cut through a flood plain, and connect, through the Preserve internal trail and the Marvin Loop, to a newly zoned commercial lot with plans for a tavern (bar/restaurant). Plaintiffs attended that meeting, as did Defendant Durst. At the meeting, Plaintiffs objected to the proposed easement in Durst's presence; many other members objected as well.

28. Plaintiffs stood to be (and still are) particularly impacted by the easement that the Village proposed. Plaintiffs own the real property at 312 Painted Turtle Court, Marvin, North Carolina, 28173 ("Home"). Plaintiffs bought their Home primarily for the private, suburban quality of the neighborhood and of their lot in particular. They have young children. The Easement is immediately adjacent to Plaintiffs' side and rear yards—its use a public trail will destroy the privacy that

will hold a meeting with notice on July 24th ... with an intention to vote on the project. Per discussion, mods were made to move further down the path and aware from the visibility of the garage. Just need to know why we didn't push down even further - just know we will be asked." The Planner answered the same day that "The Village would like to request a 30 Foot Easement for the connector," and that "I am having our attorney draft the easement documents for your review." On July 10, 2023 he sent "the drafted easement from the attorney" and the trail builder's quote for "approximately 800 Linear Feet of trail"; on July 11 he confirmed he "will be there in person with Tyler and the trail builder" for "the 24th at 6:30 with the board" and "a broader open session for 15-20 min at 7." On July 24 at 9:43 p.m. the president wrote, "Thanks for the time tonight ... I've got a few follow ups and will discuss with the board over the next week or two"; on July 25 the Planner thanked him "for the opportunity to speak with the board and members of the community." No vote was taken at that meeting.

Plaintiffs sought and had previously enjoyed. It also exposes Plaintiffs to certain dangers: the trail, as conceived, will connect local neighborhoods to bars and restaurants that will serve alcohol and be open until late into the evening. Moreover, the trails provide easy access to Plaintiffs' backyard and Home to criminals and vagrants through a publicly maintained but not actively monitored walking path. These issues are unique to Plaintiffs because of the location of their Home in Marvin Creek.

29. From at least September 27, 2022 through the end of 2023, Plaintiffs voiced their opposition to the proposed easement to the MC Association and Village officials, including members of Village Council. Plaintiffs expressed both legal and practical concerns. Plaintiffs asserted that the Declaration of Covenants, Conditions, and Restrictions Marvin Creek ("Declaration")—the restrictions applicable to Plaintiffs' planned community—forbade the grant of any easement over Marvin Creek common area if the effect of the grant was to make private property public.⁵ Plaintiffs also argued that the trails were dangerous, half-baked, and inherently at odds with the interests of Marvin Creek lot owners.

⁵ The Declaration says that "[n]otwithstanding the recordation of any Plat or *any other action by Declarant or the Association*, all Common Areas *shall remain private property* and shall not be considered as dedicated to the use and enjoyment of the public," subject to two exceptions, for the Roadways and for the rights of "Licensees" under Article III, Section 4, individuals licensed to use the Amenity Areas. (Emphasis added).

30. The MC Association, through Damani, informed Plaintiffs that the MC Association would not agree to convey any easement to the Village without Plaintiffs' consent or the overwhelming support of the other members of the MC Association.

31. The MC Association never had Plaintiffs consent to grant the Village any easement for a public walking trail.

32. The MC Association never had the overwhelming support of the other members of the MC Association to grant the Village any easement for a public walking trail.

33. In fact, the MC Association has never had the support of even a simple majority of the members of the MC Association to grant the Village any easement for a public walking trail.⁶

34. Still, on November 2, 2023 (five days before the 2023 municipal election), Damani executed the Trail Agreement.

35. Plaintiffs did not know that Damani had executed the Trail Agreement in November 2023 or December 2023. The MC Association did not notify its membership of any meeting of its board of directors for the purpose of considering a proposed Trail Agreement. Upon information and belief, the MC Association did not vote to approve any such agreement at any open meeting of the board of directors. Thus, Plaintiffs believed the issue was still open and continued to campaign publicly against and raise awareness of the proposed easement until December 11, 2023, when

⁶ The MC Association's failure to obtain the written approval of its membership prior to the conveyance of the Easement also renders the Easement void. *See* N.C. Gen. Stat. § 47F-3-112(a), (c).

Victoria learned at an Association meeting that the Board had approved the project; Plaintiffs did not learn that the Trail Agreement had been executed and recorded until late January 2024. The MC Association has never submitted the Trail Agreement to its members for approval or ratification, before or after its execution.

III. Durst's Threats

36. On New Year's Day 2024, Christopher Comiskey was outside watching his children play in his yard when he was confronted by Durst. By that time, Durst was no longer employed by the Village. Nor did Durst live in Marvin Creek. Durst did, and still does, however, have an interest in the Trail Project: the Trail Project had been at least partly Durst's idea, and, upon information and belief, Durst's family owns a multi-acre tract of developable land that touches a corner of the proposed interconnected walking trails. Durst also had a direct text-message channel with Vandenberg, outside Village email, from January 2022. While he was employed by the Village, Durst worked closely with Vandenberg to push the Trail Project agenda,⁷ even as it became increasingly unpopular.

⁷ Durst initially led the Village's efforts to obtain the Trail Agreement. As early as April 2023, Durst told the Village's trail builder that "the HOA is willing to sign off on the connector trail." On April 26, 2023 he wrote the Association's president that "the trail builder has flagged the route" and that he was "only a Marvin employee for another week." On April 28, 2023 at 4:48 p.m., an email from Durst's Village mailbox, addressed to the Village Planner and to Kim Vandenberg, reported: "Great news. The Marvin Creek HOA Pres is ready to move forward with the connector trail. I walked the proposed route today ... and they are good with it. They just have one slight shift they want to make happen ... keep this ball rolling as best possible as I transition out."

37. Durst was standing on Marvin Creek common area when Chris saw him. Chris had no idea why Durst was there and believed him to be trespassing.

38. When Durst saw Chris, he angrily threatened, within hearing of Chris's children, to physically assault Chris. Specifically, Durst told Chris that because Durst's family had been in the Marvin area since the 1970s, Durst's preference for the trail outweighed Chris's privacy concerns and he told Chris that if Durst saw Chris outside of his house again, Durst would assault him. During the confrontation, Chris was concerned that Durst, who was standing only a few feet away, might attack him.

39. Plaintiffs reported the incident to the Union County Sheriff.⁸ The Union County Sheriff conducted no meaningful investigation of the incident—in fact, the Union County Sheriff created no report of the incident in its system until over a year later, when it marked the investigation as closed due to the victim's failure to cooperate. Lieutenant Maye is identified on the report as the deputy supervising the incident investigation.

40. Plaintiffs never failed to cooperate in the Union County Sheriff's investigation of the Durst incident, or otherwise.

41. Plaintiffs also reported Durst's conduct, because that conduct occurred on Marvin Creek common area, to the MC Association.⁹ The MC Association took no

⁸ The Village has no police force. The Union County Sheriff's Office provides law enforcement services to the Village pursuant to a contract with the Village.

⁹ Chris reported the threat in writing that night, at 10:18 p.m., to the Association's managing agent and to Damani.

meaningful action in response to Plaintiffs' report or Plaintiff's follow up request for action. The MC Association likewise failed to inform Plaintiffs at that time that it had executed the Trail Agreement and purportedly conveyed the Easement to the Village.

42. When Chris saw him, Durst was standing on the portion of the common area over which the Easement ran. At that time, however, the Trail Agreement had not been recorded. Upon information and belief, Durst learned about the execution of the Trail Agreement from Village officials, including Kim Vandenberg.¹⁰

IV. Official Retaliation

43. The Village did not record the Trail Agreement until January 8, 2024 (after the 2023 municipal election), more than two months after it was executed.

44. Plaintiffs learned about the Trail Agreement in or around late January 2024, and, despite their concerns about Durst's threats, immediately voiced their opposition to the MC Association board and Village officials and demanded that the Trail Agreement be rescinded.

¹⁰ Public records suggest that the Village communicated with Durst about the trails after he left his employment with the Village. Specifically, a staff member told Village Council during an April 9, 2024, meeting that the staff member had contacted Durst with questions about whether he had spoken with all residents who abutted the Easement, and Durst responded that he had spoken with all residents who were present at the July 24, 2023 meeting except one resident whose property abutted the Easement. Plaintiffs attended that meeting and are the abutting owners with whom Durst said he never spoke.

45. From there forward, the Village and other public officials have bullied, intimidated, and harassed Plaintiffs in retaliation for Plaintiffs' protected speech and in violation of Plaintiffs' rights to equal protection. Such conduct has taken at least three forms, including: (A) the coordinated spread of misinformation by Kim Vandenberg, the MC Association and its board, the Union County Sheriff, Michael Vandenberg, and Adam Kuykendall; (B) threats by law enforcement officials, including Defendant Brandon Christian, and the limitation of Chris Comiskey's access to law enforcement services; and (C) the deliberately slow or indefinitely delayed release of public records subject to one or more of Plaintiffs' lawful records requests.

A. Deceit and Defamation

46. In 2024, Plaintiffs were engaged with the Village in pre-suit settlement negotiations concerning the Easement.

47. Plaintiffs were also actively campaigning within the MC Association—specifically, Plaintiffs wanted the MC Association's board of directors to attempt to rescind the Trail Agreement or, if they would not cooperate in those efforts, be removed from office.

48. To force the issue, Plaintiffs obtained the requisite number of signatures from MC Association members to call a special meeting for the purpose of voting to remove and replace directors.

49. While Plaintiffs were working to set the special meeting and engaging Village officials on settlement, Plaintiffs sent two emails of note to Village officials.

a. First, on February 28, 2024, at 5:33 p.m., Victoria Comiskey sent Kim Vandenberg a petition signed by Marvin Creek residents over the preceding two days opposing the connector, ahead of the Council's February 29 work session ("Resident Email"). Victoria sent the Resident Email to rebut Kim Vandenberg's public statements to the effect that Marvin Creek community sentiment favored the Easement.

b. Second, on October 29, 2024, at 6:59 p.m., Christopher Comiskey emailed a settlement offer to the Village through its lawyer, Jake Stewart ("Settlement Email"). The settlement offer laid out several possible resolutions, including resolutions that involved the payment of settlement funds to Plaintiffs.

50. Defendant Kim Vandenberg, upon her receipt of the Resident Email, forwarded the Resident Email to her personal email address on March 1, 2024, at 11:34 a.m. and then, at 11:35 a.m., forwarded it from her personal email address to Defendant Marnie Black. While the Resident Email would have been a "public record" within the meaning of chapter 132 of the North Carolina General Statutes, it does not appear that Black requested that the Village produce that record. Instead, Kim

Vandenberg simply chose to forward that communication to Black,¹¹ one of the board members that Victoria Comiskey was seeking to have removed from office.¹²

51. Black used the list to identify members of the MC Association that were in opposition to the Easement.

52. On November 1, 2024, three days after the Settlement Email, Black sent a public records request to the Village. The public records request sought all of Christopher Comiskey's emails to and from the Village Council from October 28 to November 1, 2024. The Village fulfilled the request with incredible speed—by November 4, 2024, three days later, Black had the Settlement Email. Upon information and belief, in November 2024, Black then told the members she had contacted that Plaintiffs' position that the Easement was invalid had no merit and was part of a scheme to extort the Village.

53. Plaintiffs believe that Black knew about the Settlement Email because Kimberly Vandenberg told her about the Settlement Email.

54. Upon information and belief, Black then used the Settlement Email both in private communications with MC Association members and at the special meeting called as the result of Plaintiffs' efforts to (falsely) assert that Plaintiffs were

¹¹ On September 6, 2024, Chris filed PRR-022 seeking "All Kim Vandenberg Yahoo Account emails to or from Marvin Creek HOA Board members Milan Damani or Marnie Black." On September 12, 2024, the Village Clerk certified PRR-022 "Complete, no records exist." The March 1, 2024 forward existed and the Village had it: on July 3, 2024, Vandenberg forwarded the chain to the Village Manager, who forwarded it one minute later to the Village Attorney and the Clerk.

¹² Kim Vandenberg does not live in Marvin Creek.

attempting to extort the Village and that Plaintiffs intended to tie the MC Association up (and thereby expend MC Association and member resources) in protracted litigation with the Village and Kimberly Vandenberg.¹³

55. Black's disinformation campaign, aided by Kimberly Vandenberg and the Village's unusually prompt fulfillment of Black's records request, was successful: Victoria Comiskey's efforts to have Black and her co-Defendants Valenti and Damani removed from the board of the MC Association failed.¹⁴

56. But Black was not the only person who used information from Kimberly Vandenberg to defame and discredit Plaintiffs.

57. Kimberly Vandenberg provided the Settlement Email to her husband, Defendant Michael Vandenberg.

58. Michael Vandenberg, who, upon information and belief, operates or supplies content to the Facebook page/account "Marvin Messenger," and who

¹³ On November 4, 2024, the Board's management platform sent every homeowner a flyer captioned "You spoke. We listened. Your Marvin Creek Board of Directors ... SUPPORT ORDERLY CHANGE," listing first: "A promise not to sue or extort monies from the Village of Marvin and to protect your funds from related legal expenses."

¹⁴ Another reason that those efforts failed is because Damani, Black, and Valenti promised that they would attempt to negotiate the termination of the Easement with the Village. In October 2024, the MC Association board of directors finally got around to asking the MC Association, by way of a survey, whether they supported the Easement. A clear majority of respondents opposed the Easement. Thus the MC Association board acknowledged that the community was not in support of the Easement and promised to try to undo it.

The Board did email the Village to request the termination of the Easement, but then abandoned those efforts after the MC Association's lawyers advised that the Village could simply take the Easement by eminent domain.

regularly uses his social media presence to bully and intimidate his wife's political opponents or people who oppose the heritage district development, then used the Settlement Email to falsely assert in social media posts that Plaintiffs were attempting to extort the Village. For example:

- a. On November 2, 2024, the day Kim Vandenberg forwarded the Settlement Email to him, the "Marvin Messenger" Facebook page published a post reproducing the Settlement Email beneath the following text: "To all Village of Marvin taxpayers: We would like to inform you about an individual attempting to use litigation to extort money from the town or to pressure the local government into meeting personal demands. This individual's actions would misuse taxpayer dollars on baseless claims, setting an unfortunate precedent. The Village of Marvin does not have \$3 million to meet this demand." Upon information and belief, Michael Vandenberg supplied the content of that post.

59. Then, in or about late October 2025, an anonymous person filed a report against Christopher Comiskey to his employer. The report asserted that Chris Comiskey, a lawyer,¹⁵ had behaved unethically in the course of his dealings with the

¹⁵ Christopher Comiskey is licensed to practice law in New Jersey (admitted November 2010), New York (admitted January 2011), and Ohio (admitted May 2013), and is registered to practice before the United States Patent and Trademark Office (Registration No. 63,487, November 2008). He works as an attorney for RTX Corporation practicing law under the corporate counsel exception in North Carolina.

Village concerning the Easement. The report resulted in an internal investigation. Christopher Comiskey was ultimately cleared, but not before the investigation was completed, and only after suffering the embarrassment associated with such a report.

60. Plaintiffs are informed and believe that Adam Kuykendall, an associate of the Vandenberg, made the report, at the urging of the Vandenberg.

B. Coordinated Threats and Retaliation from the Village and UCSO

61. During public comment at the February 13, 2024 meeting of Village Council, Victoria Comiskey stated that she had information from the Union County Sheriff that certain break-ins in and around Marvin, including a September 2022 breaking and entering on Wingfoot Drive, and in neighboring Weddington, had been committed by individuals who utilized public walking trails like those proposed by the Village to access their victim's homes.

62. After Victoria's comments, on February 20, 2024, Christina Amos, Village Manager, upon information and belief at the direction of Kimberly Vandenberg, wrote at 12:34 p.m. to Detective Brandon Trull, Lieutenant James Maye, the sheriff's liason to the Village, and Lieutenant Mayhew, copying the Clerk, the Village's contract deputy, and Sheriff Cathey, and specifically requested that the Union County Sheriff send someone to the next Village Council meeting to rebut Victoria's statements. The email asked that Victoria's statements be reviewed "to ascertain if they are factual" and stated that "we respectfully request a statement in relation to the above claimed allegations"; the request was that someone from the Union County Sheriff discredit those statements. Lieutenant Maye replied at 2:15

p.m. that he had “reviewed the questions you submitted and will begin looking into them,” and Kim Vandenberg, to whom Amos forwarded the email, replied at 5:45 p.m. “Thank you.”¹⁶

63. At the Council’s February 29, 2024, work session, Lieutenant Maye was called to the podium and questioned by councilmembers. Maye advised that there was “no evidence” that walking trails had been used in connection with local burglaries.

64. Maye’s statement was false. Victoria’s comments were sourced from a conversation she had with Union County Sheriff’s Office Detective Brandon Trull, who specifically told Victoria that he believed the walking trails were used to access the homes in the area, including in Marvin.

65. Maye either knew the statement was false or did not care whether it was false; he was there at the behest of the Village, including particularly Defendant Kimberly Vandenberg, for the specific purpose of discrediting Victoria Comiskey.

66. Later, at the Council’s August 12, 2025 meeting, then-Mayor Joseph Pollino invited Lieutenant Maye to speak again about Victoria’s claim concerning information she learned from Detective Trull. Maye stated that he had “asked for those recordings ... several times over the past year from the person that recorded them” and had “been denied access”; Plaintiffs know of one such request. Implicit in

¹⁶ As discussed below, this email was withheld from production in response to Plaintiffs’ public records request for 545 days, from November 7, 2024 to May 6, 2026.

Pollino's exchange with Maye at the August 12, 2025 meeting was the idea that Victoria had simply made the information up.

67. At that same meeting, Chris Comiskey spoke during public comment about the 2020 Land Use Plan and the word cloud described at paragraph 24, stating that the image the Village had published as community input did not display the words residents had used most and that the Village's 2020 Land Use Plan was thus built on a misrepresentation.. About ten minutes later, Pollino, referring impliedly to Christopher Comiskey's public comment, said that decorum "can go south pretty quick as you can see," that "as we've seen in the past, it gets sometimes way out of hand," and that "if someone's being unruly, me being the mayor, after so many violations, then I can ask them to leave and if they don't leave, then I ask the officers to get involved to escort them out"; a member of Village staff added that a person "acting in a irrational and improper way" could "still be charged with disorderly conduct and removed."

68. There was nothing disorderly, irrational, or improper about Christopher Comiskey's public comment.

69. The August 12, 2025, meeting prompted Christopher Comiskey to send an October 23, 2025, letter to Pollino, Maye, and other Village officials, with members of the local press copied. In the email, Chris Comiskey voiced his concern with Maye and Pollino's efforts to discredit his wife, expressed his anger over the way that the Union County Sheriff had handled the Durst incident, and demanded certain action from Pollino and Lieutenant Maye, including that they cease and desist any further

retaliatory or harassing conduct. Later that day, Christopher Comiskey also sent a public records request to the Union County Sheriff's Office, requesting information related to off-duty work performed by Lieutenant Maye.

70. On October 28, 2025, Defendant Christian, in his capacity as Chief Legal Counsel for the Union County Sheriff, sent a letter to Christopher Comiskey that, among other things:

a. Accused Chris of defamation of a law enforcement officer and the Union County Sheriff, including by making “provably false and defamatory claims against the UCSO and its employees.”

b. “[S]trongly question[ed] the validity” of Chris and Tori’s claims against the Village.

c. Told Chris that any statement indicating that the Union County Sheriff or Lieutenant Maye “has engaged in corruption will not be tolerated.”

d. Told Chris that “I [meaning Christian] very much enjoy litigation. So, as the old movie says, ‘go ahead, and make my day.’”¹⁷

e. Told Chris that “Legal actions come with risks,” and that “I [meaning Christian] have advised Lt. Maye that if you file any sort of action against him in his personal capacity that he counterclaim against you for

¹⁷ The quote is from a scene in the film *Sudden Impact* in which a cop, Harry Callahan, having shot the other robbers in a diner, dares the last one, who is holding a hostage, to give him a reason to fire.

defamation and abuse of process,” and that “[i]f you file any action against the UCSO or any of its employees in their official capacities, I will pursue abuse of process claims against you, including punitive damages and attorney’s fees.”

f. Referred to Chris’s efforts to stop the Village from using or maintaining the Easement as “nonsense.”

g. Threatened Chris with criminal prosecution for the unauthorized practice of law.

h. Told Chris not to communicate with the Union County Sheriff except through a lawyer.

i. Told Chris not to contact the Union County Sheriff except through 911 and then only in case of an emergency.

71. Since October 28, 2025, Plaintiffs have sought to have the Union County Sheriff review and rescind Christian’s letter and restore Chris’s access to law enforcement services¹⁸. To date, no one from the Union County Sheriff has agreed to rescind the letter or has otherwise acknowledged that Chris is entitled to equal access to law enforcement services. To the contrary, on one occasion when Chris Comiskey sought internal review of Christian’s letter, he telephoned 911, asked expressly and repeatedly that his internal affairs complaint about Lieutenant Maye and Christian not be given to either of them, and about fifteen minutes later Lieutenant Maye telephoned him.

¹⁸ Chris Comiskey has repeatedly requested, either directly or through other public officials, that the UCSO tell him whether the terms and conditions of Christian’s letter will be rescinded. UCSO has refused to respond.

72. Upon information and belief, Christian sent the October 28, 2025, letter, at the request and direction of Village officials, including Defendant Kim Vandenberg.

73. The Village has since ratified the Union County Sheriff's Office refusal to retract the October 28, 2025, letter. At a meeting at Village Hall in December 2025, Sheriff Cathey and Christian met with the new members of Village Council, who expressed concern that the October 28, 2025, letter, and the restrictions set forth in the letter, were inappropriate. The Sheriff told them that, despite the letter's plain language, everyone in Marvin was receiving the same services from the Union County Sheriff's Office. That was not true, but the Village accepted that explanation and apparently agreed with the Union County Sheriff's Office that it was not necessary to inform Christopher Comiskey that the letter had been rescinded or otherwise state publicly that the letter was inappropriate or ineffective.

C. Violations of Public Records Laws

74. In connection with their efforts to voice opposition to the Easement, Plaintiffs have submitted numerous public records requests to the Village. The Village has responded to several of those requests. But whereas the Village managed to satisfy certain parties' and non-parties' requests in a matter of days, the Village's responses to Plaintiffs' requests have come slowly and have regularly been materially incomplete. Additionally, the Village has failed and refused to respond at all to certain requests, including through the assertion of frivolous privilege concerns.

75. For example, in 2024, Plaintiffs submitted multiple requests, including a request on October 22, 2024 (PRR028), seeking records concerning the targeting of the Comiskey family, including specifically with respect to “who communicated with UCSO about coming out twice to refute Mrs. Comiskey.” The Village’s internal public records tracker indicates that a search for those records hit 10,233 pages of documents. But those documents were withheld for a “legal review.” To date, only approximately 4,520 pages have been produced, the number at which the Village’s tracker, as updated August 8, 2025, recorded the request complete on April 15 and April 21, 2025. A companion request submitted the same day (PRR030), seeking records of who authorized the Village to assume the liabilities associated with Kim Vandenberg’s conduct, hit 10,892 pages according to the same tracker, all of which were placed in “legal review” and, upon information and belief, none of which has been produced.

76. Similarly, on November 7, 2024, Christopher Comiskey submitted a request (PRR038) for “records of communications involving Kim Vandenberg, Christina Amos, and/or the Union County Sheriff’s Office (UCSO) concerning the Trail Easement project and related discussions on crime reporting at Village of Marvin council meetings on 2/22/2024 and 3/28/2024” for January 1, 2024, through the present. The Village’s tracker recorded 278 pages, with approximately 45,000 pages “in legal review,” per the Village’s January 17, 2025 inventory. The Village produced the 278 pages and then, on May 6, 2026, 545 days after the request, a delivery of six files totaling approximately 19,584 pages that it certified as fulfilling

the request, with no privilege log, index, or identified exemption for anything withheld.

77. The email, for example, in which Amos solicited Maye to attend the February meeting to rebut Victoria's comments was not produced until May 6, 2026, 545 days after the November 7, 2024 request, and one day before the Magistrate Judge's May 7, 2026 order denying the Village's counsel leave to withdraw (Doc. No. 32).

78. Other requests have gone completely unanswered. For example, Christopher Comiskey submitted a request on October 24, 2024 (PRR033), requesting that the Village search records from between May 2018 and May 2021 utilizing certain specific search terms, including "Mary Shkut," "Shkut," "Mary S.," "Christopher Smith," "Chris Smith," "Smith," or "Chris S." The Village told Plaintiffs that they would need to pay an IT Consultant, at Plaintiffs' costs, to complete that request. Plaintiffs did not pay the consultant, so the Village closed the request.

79. Similarly, on September 11, 2024, Christopher Comiskey asked the Village (PRR025) for records created between September 11, 2022, and September 11, 2024, that referenced certain terms related to social media accounts. The Village advised that it would need to retain an IT Consultant to complete that request at Plaintiffs' expense. Plaintiffs did not pay the consultant, so the Village closed out the request. Of the thirty-nine requests on the Village's own tracker, those two were the only two on which the Village conditioned production on the requester funding an outside information technology consultant.

80. The Village's public records tracker indicates that it received numerous requests from numerous residents, including extremely voluminous requests, during the same time period as Plaintiffs' requests. But Plaintiffs are the only persons who, according to the Village's tracker, were ever asked to pay the costs of an IT Consultant before the Village would complete the request, at least in 2024.

V. The Litigation

81. Plaintiffs filed the lawsuit denominated *Chris Comiskey and Victoria Comiskey v. Village of Marvin and Kim Vandenberg*, 25CV000445-890, on January 24, 2025, in the Superior Court of Union County, North Carolina ("Original Action"). The complaint in the Original Action sought a judicial declaration that the Trail Agreement was void. The complaint in the original action also alleged claims against the Village and Kim Vandenberg for defamation related to the Marvin Messenger post, against Kim Vandenberg for intentional infliction of emotional distress, for violation of open meetings and public records laws, for violation of Plaintiffs' free speech rights, and for civil conspiracy.

82. The complaint included a motion for temporary restraining order and preliminary injunction.

83. On February 5, 2025, the Village removed the Original Action to this Court (proceedings in this Court after February 5, 2025, are referred to as the "Federal Action," whereas proceedings in state court after February 5, 2025, are referred to as the "State Court Action").

84. On February 6, 2025, the Court *sua sponte* declined to exercise supplemental jurisdiction over Plaintiffs' state law declaratory judgment claim and remanded that claim to state court.

85. Plaintiffs thereafter supported a stay of the Federal Action at the Court's direction—the Village and Vandenberg opposed the stay.¹⁹

86. On March 14, 2025, the Village and Kim Vandenberg, through their attorney Jake Stewart with the law firm of Cranfill Sumner, LLP, moved to dismiss Plaintiffs' claims in the Federal Action.

87. Plaintiffs amended their complaint on March 28, 2025. As a result, the Court denied Defendants' first motion to dismiss as moot.

88. On April 11, 2025, the Village moved to dismiss Plaintiffs' amended complaint in the Federal Action. Kim Vandenberg also filed a motion to dismiss on June 3, 2025..

89. Meanwhile, in the State Action, the trial court entered a temporary restraining order in February 2025, prohibiting any construction activity on the Easement. Plaintiffs added the MC Association as a party by amendment on March 19, 2025, and on May 21, 2025, the trial court, on the Village's and Vandenberg's motion, ordered the joinder of several Marvin Creek lot owners. After that was done,

¹⁹ On February 6, 2025, in the remand order, the Court directed the parties “to provide the Court with their respective positions on whether the Court should stay litigation on Plaintiffs' remaining claims” (Doc. No. 2 at 8). Plaintiffs supported a stay “pending final adjudication of the remanded portions of this case by the courts of Union County.” (Doc. No. 7); the Village and Vandenberg opposed any stay. (Doc. No. 8, February 20, 2025). No stay was entered, and the Village and Vandenberg moved to dismiss on March 14, 2025. (Doc. No. 10).

the trial court heard Plaintiffs' motion for preliminary injunction and the Village and the MC Association's motions to dismiss for failure to state a claim. The trial court granted the Village and the MC Association's motion to dismiss for failure to state a claim and denied Plaintiffs' motion for preliminary injunction as moot. The trial court heard the motions on June 30, 2025, and entered its dismissal order on July 21, 2025.

90. On July 24, 2025, Plaintiffs filed their notice of appeal of the order dismissing the State Court Action.

91. That same day, Plaintiffs sought an injunction pending appeal.

92. On September 9, 2025, the trial court entered its order granting Plaintiffs' motion for an injunction pending appeal and prohibiting any construction activity on the Easement, reciting that the court "considered Plaintiffs' likelihood of success on the merits."

93. Plaintiffs appeal in the State Court Action has been fully briefed and is pending further ruling or disposition by the North Carolina Court of Appeals.

VI. Settlement Interference

94. Plaintiffs have been attempting since February 2024, and by written settlement offer since August 8, 2024, when Plaintiffs offered to resolve the matter with the Village for no money, to settle and resolve their dispute with the Village.

95. In 2024 and 2025, however, the Village was controlled by a majority of its council that was largely in favor of the heritage district and the Trail Project and, therefore, not only reluctant to settle, but also willing to weaponize the Village's

power and influence to discredit and defame Plaintiffs for their resistance to the council's pet projects.

96. That changed with the November 2025 election. By a landslide, the Village voted to fill a majority of council seats with individuals who ran on campaign promises including promises to slow development and maintain the rural suburban quality of the Village.

97. From December 2025, when the new councilmembers took office, to now, a majority of the Village Council, like Plaintiffs, have wanted to settle and resolve their dispute with Plaintiffs.

98. But Kim and Mike Vandenberg have interfered with those efforts.

99. On April 20, 2026, the Court ordered the parties to provide a status report in the Federal Action.

100. On April 24, 2026, the parties reported, among other things, that they had “exchanged settlement offers and may be close to an agreement that would result in Plaintiffs’ dismissal of all claims against the Village in this action, the dismissal of all claims against Vandenberg in her official capacity in this action, and the resolution of Plaintiffs’ claims at issue in the Superior Court action.”

101. A few weeks later, Mr. Stewart informed the undersigned that a conflict had arisen in his representation of the Village and Kim Vandenberg and that he would seek to withdraw. Mr. Stewart ultimately filed a motion to withdraw that was denied without prejudice to refile a “revised motion that fully complies with the Local

Rules and provides a more fulsome explanation of the need to withdraw and what has changed since the parties' status report." (Doc. No. 32).

102. Mr. Stewart never filed a motion with that more fulsome explanation; instead, Mr. Stewart filed a notice of substitution of counsel for Kim Vandenberg and new counsel appeared for the Village. To date, the Court has not entered any order authorizing Mr. Stewart's withdrawal as counsel for the Village.

103. In any event, Mr. Stewart's withdrawal from representation of the Village resulted in substantial delays in continued efforts to settle the case as the Village's new counsel attempted to get up to speed. Making matters more confusing, on at least one occasion, June 1, 2026, a member of Village Council stated on the record at an open meeting that the Village had voted "to settle" the claims with Plaintiffs. But Plaintiffs have yet to receive any settlement offer from the Village that had not been previously reviewed and rejected during Mr. Stewart's tenure as the Village's attorney in this case.²⁰ On June 15, 2026, the Village Council suspended finalization of the settlement discussions, "pending further analysis."

104. This is all to do with Kim Vandenberg. From the moment she left office through the present, Kim Vandenberg has publicly characterized Plaintiffs' efforts to settle and avoid litigation as bribing the new members of Village Council and

²⁰ Also making matters more confusing, the Village recently voted to hire Patrick Flanagan, a partner at Cranfill Sumner, LLP, as Village Attorney. That is, the same law firm that tried to withdraw in this case due to a conflict of interest—and that is also representing the Union County Sheriff's Office in litigation with Plaintiffs—now represents the Village as, effectively, its general counsel.

extorting the Village. She has used her local connections and influence, both of which are substantial, to threaten current Village officials with lawsuits and other personal and political consequences if they vote to settle with Plaintiffs.

105. Plaintiffs believe that Kim Vandenberg's anger and threats over a potential settlement between Plaintiffs and the Village created the "conflict" that Mr. Stewart claimed required him to withdraw and is the only reason that Plaintiffs have, to date, been unable to secure a deal with the Village for the return of the Easement and the resolution of, at least, Plaintiffs' claims against the Village in both the Federal Action and State Action.

106. On June 19, 2026, Defendant Vandenberg sued Defendant Village in Union County Superior Court, Case No. No. 26CV003346-890, styled *Vandenberg v. Village of Marvin*. In that case, Defendant Vandenberg alleges that the Village failed to fully produce public records sought by Vandenberg based on specific search terms, including "Comiskey" and lawsuit." (Case No. 26CV003346-890, Doc. No. 2 ¶¶ 6, 15, 18, 24, and 26.) According to Vandenberg's allegations, the Village's failure to satisfy Vandenberg's public records request was the result of neglect, concealment, or tampering. (Case No. 26CV003346-890, Doc. No. 2 ¶¶ 25, 27, 28, and 29.)

107. Although she is no longer a sitting councilmember, Kim Vandenberg wields outsized influence over the council, including, specifically, Defendant Robert Nunnenkamp. Unlike his colleagues, Nunnenkamp was not elected to the council by a vote of Village residents. Instead, after Lein resigned on November 4, 2025,

recommending Vandenberg as his successor, the outgoing Council appointed Nunnenkamp on December 8, 2025, to fill the seat of Defendant Jamie Lein.

108. Upon information and belief, that appointment was arranged by Kim Vandenberg, with Lein's agreement and consent, specifically so that Kim Vandenberg would continue to have an ally on the council that would resist any settlement with Plaintiffs. Lein had been living in Florida since August 2025. By operation of law, Lein's seat was vacant from that time. But Lein's residency was not publicly disclosed. Kim Vandenberg, Lein, and the outgoing majority of Village Council kept it secret so that they could handpick a successor out of the public eye. That was necessary because of shifting political winds: Kim Vandenberg and her development agenda had become so unpopular that it was clear she could not win reelection in November—so much so that she decided not to run. Lein and Kim Vandenberg's plan was initially to appoint Kim Vandenberg to the seat, but, without Lein, they lacked the votes to make that happen. So Lein and Vandenberg picked Nunnenkamp.

109. Nunnenkamp has participated in the Council's consideration of Plaintiffs' settlement offers and, upon information and belief, has relied on false information, including information furnished to him by Kim Vandenberg, about the legal consequences of any such settlement, including the false claim that a settlement with Plaintiffs would expose the Village to liability to Kim Vandenberg, the MC Association, or both. Nunnenkamp has shared such information with his fellow councilmembers, who have been persuaded by such information and as a result have refrained from making or accepting settlement offers as a result.

110. Upon information and belief, since the outgoing majority seated him at the December 8, 2025 special meeting, (the day before Kim Vandenberg's last day in office, December 9, 2025, when, leaving that final meeting on a microphone left open, she asked the Village Attorney to 'keep me out of jail,') Nunnenkamp has voted against every offer by Plaintiffs to settle with the Village alone: the Mayor Pro Tempore and one Council member have said publicly that they supported settlement, no offer has been accepted, and a settlement the Council announced on June 1, 2026 was never executed, which on a 6-member Council means Nunnenkamp voted with the three remaining members against it each time; and, upon information and belief, until Plaintiffs' notice that a member who voted against separating the Village from Kim Vandenberg would be added as a defendant, he spoke in closed session against resolution with Plaintiffs and for protecting her, consistent with the public statements described above by which she has attacked every newly elected member and never him.

Claim 1, 42 U.S.C. § 1983 (Fifth and Fourteenth Amendments)

111. Plaintiffs incorporate the above allegations by reference.

112. Plaintiffs bring this claim against the Village, only, and only as an alternative claim to Plaintiffs' assertion, in the State Court Action, that the Easement is void and ineffective.

113. The Fifth Amendment to the United States Constitution prohibits the governments from taking private property for public use without paying just compensation.

114. The Fifth Amendment’s just compensation requirement is incorporated in the Fourteenth Amendment’s Due Process Clause and therefore applies with equal force to States and their political subdivisions.

115. Plaintiffs, as owners of a lot within the MC Association, have a protected property interest in the common area of Marvin Creek, including in the use and enjoyment of such common area.

116. When the Village took the Easement, it took Plaintiffs’ property without paying just compensation.

117. When the Village accessed the MC Association to begin construction activity on the Easement—including through the cutting and removal of plants and other activities—the Village took Plaintiffs’ property without paying just compensation.

118. As a direct and proximate result of the Village’s conduct, Plaintiffs have suffered damages in an amount to be proven at trial.

Claim 2, 42 U.S.C. § 1983 (Free Speech Retaliation)

119. Plaintiffs incorporate the above allegations by reference.

120. Plaintiffs bring this claim against the Village, Kimberly Vandenberg, Derek Durst, the Union County Sheriff, Brandon Christian, Jamie Lein, and Robert Nunnenkamp.²¹

²¹ These claims as to the Union County Sheriff and Brandon Christian are already pending in the civil action denominated *Christopher M. Comiskey v. Union County Sheriff Eddie Cathey, in his official and individual capacity, and Donald Brandon Christian, individually and in his official capacity as Sheriff’s Legal Counsel and member of the Sheriff’s “Executive Command Staff,”* 3:26-cv-00159 (W.D.N.C.).

121. From mid-2023 through the present, Plaintiffs have voiced opposition to the heritage district, the Trail Project, and the Easement.

122. The Village and Kim Vandenberg retaliated against the Plaintiffs in at least the following ways:

a. By delaying the release or failing to release public records to Plaintiffs in response to Plaintiffs' requests while simultaneously expediting responses to requests in favor of individuals whose interests were adverse to Plaintiffs; and

b. By aiding and abetting Michael Vandenberg, Adam Kuykendall, and Marnie Black's efforts to defame and discredit Plaintiffs.

123. At all times relevant, Vandenberg was acting under color of law as a councilmember of the Village.

124. At all times relevant, the Village was acting under color of law.

125. On October 23, 2025, Christopher Comiskey sent an email in which he accused Lieutenant Maye and Mayor Joseph Pollino of certain improper behavior.

126. The Union County Sheriff and Brandon Christian retaliated against Christopher Comiskey for such speech by sending a letter that threatened Christopher Comiskey with frivolous counterclaims and criminal prosecution and

Plaintiffs have moved to consolidate that action with this one and have further proposed that this amended pleading, if permitted to be filed, be the operating pleading with respect to both actions going forward. The MC Association, a defendant in the State Action, is not sued here.

that restricted Christopher Comiskey's access to law enforcement services. To date, the Union County Sheriff has not rescinded or disavowed Christian's statements in the letter.

127. The letter bars Plaintiffs' household from contact with the Sheriff's Office, excepting 911. That includes, for example, a bar of contact with the School Resource Officers at their children's schools.

128. All such conduct was engaged in because of Plaintiffs' protected speech.

129. All such conduct would chill a person of ordinary firmness from engaging in protected speech.

130. As a direct and proximate result of such conduct, Plaintiffs have suffered damages in an amount to be determined at trial.

Claim 3, 42 U.S.C. § 1983 (Equal Protection and Due Process)

131. Plaintiffs incorporate the above allegations by reference.

132. Plaintiffs bring this claim against the Village, the Union County Sheriff, and Christian.

133. The Village has violated Plaintiffs rights to equal protection of the law in that the Village has, based on Plaintiffs status as individuals opposed to the Easement and the Trail Agreement, arbitrarily and capriciously failed to treat Plaintiffs' public records requests in the same manner as other requests received by the Village during the same period of time. Whereas other requests are promptly answered, records responsive to Plaintiffs' requests are withheld for an unreasonable time or not produced at all. The Village has also arbitrarily and capriciously

demanded that Plaintiffs pay the cost of IT Consultants whereas the Village imposes no such obligation on similar requests from other persons.

134. The Union County Sheriff and Brandon Christian have violated Christopher Comiskey's rights to equal protection of the law by arbitrarily and capriciously denying Christopher Comiskey the same access to law enforcement services on the same terms as other members of the general public.

135. As a direct and proximate result of such actions, Plaintiffs have suffered damages in an amount to be determined at trial.

Claim 4, Civil Trespass

136. Plaintiffs incorporate the above allegations by reference.

137. Plaintiffs bring this claim against the Village and Derek Durst.

138. As owners of a lot within the MC Association, Plaintiffs have a protected property interest in the common area of Marvin Creek, including the right to the use and enjoyment of such common area. While there are limitations on such right, none of those limitations make Plaintiffs rights subject to the rights of members of the public, or of the Village, to access the common area for any purpose. And the Declaration gives each member of the MC Association the right to enforce its terms.

139. The Trail Agreement was not effective to give the Village any right of access to the MC Association common area because:

a. The Declaration expressly provides that notwithstanding any of its other provisions, Association common area shall remain private property.

That is, the MC Association could not lawfully make its common area subject to a perpetual public trail easement.

b. Chapter 47F of the North Carolina General Statutes required, prior to the grant, that the Easement be approved by a vote of 80% of the lots. No such vote was ever taken (and, had it been taken, the MC Association membership would have overwhelmingly disapproved of the Easement). Failure to comply with Chapter 47F rendered the Easement void.

c. The Trail Agreement does not sufficiently describe the Easement and, therefore, does not actually convey any easement.

140. That is, when the Village accessed the Easement in December 2023 and January 2024 and on other occasions for the purpose of engaging in construction activity on the Easement, the Village was trespassing.

141. Similarly, when the Village permitted and, in fact, posted signs inviting members of the general public to access the Easement, beginning by January 1, 2024 and going forward, and members of the general public walked on the Easement due to such permission, the Village trespassed.

142. Finally, when Derek Durst came onto Marvin Creek common area on January 1, 2024, and threatened Christopher Comiskey in front of his children, Durst trespassed.

143. As a direct and proximate result of the above, Plaintiffs have suffered damages in an amount to be determined at trial.

Claim 5, Interference with Contract and Prospective Contract

144. Plaintiffs incorporate the above allegations by reference.

145. Plaintiffs bring this claim against the Village and Kim Vandenberg.

146. Plaintiffs have a contract with the MC Association, that is, the Declaration.

147. The Village and Kim Vandenberg knew of the existence of such contract.

148. The Village and Kim Vandenberg nevertheless induced the MC Association to breach that contract by executing the Trail Agreement and then interfered with Plaintiffs efforts to correct such breach by defeating Plaintiffs' effort to remove the directors at a special meeting in 2024.

149. The Village and Vandenberg had no justification for inducing the MC Association to do something the law does not permit and then interfering with Plaintiffs' efforts to have the MC Association correct its unlawful conduct.

150. As a direct and proximate result of such conduct, Plaintiffs have suffered damages in an amount to be determined at trial.

Claim 6, Defamation *Per Se/Per Quod*

151. Plaintiffs incorporate the above allegations by reference.

152. Plaintiffs bring this action against Kim Vandenberg, Michael Vandenberg, and Adam Kuykendall.

153. Michael Vandenberg published the following statements of and concerning Plaintiffs to persons other than the Plaintiffs:

- a. On November 2, 2024, on the "Marvin Messenger" Facebook page, Michael Vandenberg or a person acting at Michael Vandenberg's

direction reproduced the Settlement Email beneath the statement that Plaintiffs were “attempting to use litigation to extort money from the town or to pressure the local government into meeting personal demands” and that “[t]he Village of Marvin does not have \$3 million to meet this demand.”

- b. On November 8, 2025, by Nextdoor direct message to a Marvin Creek resident, that the resident should “call the Sheriff” on Plaintiffs and “make sure to call 911, not sure they’ll take the call otherwise.”
- c. On December 5, 2025, on the Village’s public comment platform, under his own name and, upon information and belief, under other screen names from the same device, that the Village “has a handful of loud people with way too much time on their hands,” that Plaintiffs’ litigation was “[o]nly more waste of tax payer resources,” and, in his own name, “Good to know the cowards,” referring to Plaintiffs.
- d. on April 17, 2026, to the same recipients, “let’s run an investigation for pay to play and see how your story shakes out,” implying that Plaintiffs had bribed or were actively bribing members of Village Council;

- e. On May 13, 2026, to a WSOC-TV reporter, copying Kim Vandenberg, that Plaintiffs are “documented donors to the current Council majority.”

154. All such statements are false.

155. All such statements were published at Kim Vandenberg’s urging.

156. Adam Kuykendall published the following statement of and concerning Plaintiffs to persons other than the Plaintiffs:

- a. In or about late October 2025, to Christopher Comiskey’s employer, RTX Corporation, through its ethics reporting channel, that Christopher Comiskey was using his position as an RTX attorney improperly and unethically in his dealings with the Village of Marvin.
- b. On November 6, 2024, on Nextdoor, that the Settlement Email was “fraud by way of attempting to gain \$3MM to \$6MM from taxpayers.”
- c. (c) On March 1, 2024, on Nextdoor, addressed to Victoria Comiskey and published to the neighborhood: “Luckily for the community, most if not all of this was disproved directly by the Sheriff’s office. Unfortunately this and other distributed crime statistics seem fabricated.” That is, Kuykendall was telling the community that Victoria Comiskey had made up information related to the use of trails in the commission of crimes.

- d. On August 19, 2024, on Nextdoor, that Christopher Comiskey was “less than stable.”
- e. On June 20 and 21, 2026, on Nextdoor, in a thread concerning a treehouse on Marvin Creek common area, under the display name “Adam K., Providence Hills”: “It’s no secret that a small minority thinks they own the trails and common areas there, despite what the courts have told them”; “this is a case of an entitled neighbor wanting control. The police had already been called and visited, confirming that the boys weren’t in the wrong”; “the people fighting for private trails in that neighborhood use the argument that that Marvin Creek HOA property is considered private for all MC residents to use”; “this neighborhood has a history of people calling the police over land that they have no authority over”; and “there is a family in that neighborhood who a judge has already told doesn’t have ownership over land deemed public use.”
- f. On June 21, 2026, in the same thread: “Stacey when you have neighbors who aren’t even allowed to call the Union County sheriffs office because they have abused the system so much specifically regarding trails and common area, yeah I’d say it kind of is the point. The kids were threatened by an entitled adult. If you were unaware of that previous history then now you know.”

That statement asserted as fact that Plaintiffs' access to the Sheriff's Office had been restricted because Plaintiffs "abused the system," and that a member of Plaintiffs' family had threatened children.

- g. On July 23, 2026, on Nextdoor, in a statement referring to Plaintiffs: "It's a standard playbook in Marvin - if you don't get your way you first throw a tantrum, spread lies as often as possible and then resort to breaking the law."

157. All such statements are false.

158. All such statements were published at the urging of Kim and Michael Vandenberg.

159. All of the above statements are defamatory *per se* or *per quod*.

160. The persons making such statements knew, at the time they made the statements, that the statements were false. Alternatively, the statements were made with reckless disregard of their falsity.

161. All such statements resulted in damages to Plaintiffs, including special damages in the form of the attorney's fees and costs of the internal employer investigation and of this litigation, medical and therapeutic expense, and the loss of Victoria Comiskey's prospective Board service, in an amount to be determined at trial.

Claim 7, Interference with Contract

162. Plaintiffs incorporate the above allegations by reference.

163. Christopher Comiskey brings this claim against Kim Vandenberg, Michael Vandenberg, and Adam Kuykendall.

164. Plaintiffs are informed and believe that Kim Vandenberg and Michael Vandenberg urged Adam Kuykendall to make the report to Christopher Comiskey's employer.

165. Plaintiffs are informed and believe that Adam Kuykendall made that report to Christopher Comiskey's employer.

166. Christopher Comiskey has a contract of employment with his employer.

167. Kim Vandenberg, Michael Vandenberg, and Adam Kuykendall knew about that contract.

168. As a result of their conduct, Christopher Comiskey was subjected to an internal investigation.

169. That is, Kim Vandenberg, Michael Vandenberg, and Adam Kuykendall interfered in Christopher Comiskey's relationship with his employer and his contract of employment.

170. Kim Vandenberg, Michael Vandenberg, and Adam Kuykendall lacked any justification for such conduct.

171. As a result of such conduct, Christopher Comiskey has suffered damages in an amount to be determined at trial.

Claim 8, Unfair and Deceptive Trade Practices

172. Plaintiffs incorporate the above allegations by reference.

173. Christopher Comiskey brings this claim against Michael Vandenberg, Kimberly Vandenberg, and Adam Kuykendall.

174. Section 75-1.1 of the North Carolina General Statutes prohibits unfair and deceptive acts or practices in commerce.

175. Kuykendall's report to Christopher Comiskey's employer, as described above, was an unfair act or practice in commerce.

176. As a direct and proximate result of such report, Christopher Comiskey suffered damages in an amount to be determined at trial.

Claim 9, Violations of Chapter 132

177. Plaintiffs incorporate the above allegations by reference.

178. Plaintiffs bring this claim against the Village.

179. The Village has violated Chapter 132 of the North Carolina General Statutes by failing to respond, within a reasonable period of time, to Plaintiffs' requests for public records.

180. Thus, Plaintiffs have been denied access to public records within the meaning of section 132-9 of the North Carolina General Statutes and the Court should enter an order directing the production of such records and granting appropriate relief under section 132-9, including an award of costs and attorney's fees.

Claim 10, Breach of Fiduciary Duty

181. Plaintiffs incorporate the above allegations by reference.

182. Plaintiffs bring this claim against Marnie Black, Rich Valenti, and Milan Damani.

183. Black, Valenti, and Damani owed fiduciary duties to Plaintiffs directly due to the special harm that would be inflicted on Plaintiffs by (1) the unlawful creation of the Easement and (2) the failure to terminate the Easement.

184. Black, Valenti, and Damani breached such duties when they approved of and caused the MC Association to execute the Trail Agreement.

185. Black, Valenti, and Damani breached such duties when they intentionally spread false information of and concerning Plaintiffs within the MC Association community, including to the effect that Plaintiffs were attempting to extort money from the Village through litigation and that Plaintiffs intended to use community resources to continue to pursue litigation against the Village as part of some personal vendetta.

186. Black, Valenti, and Damani breached such duties when they intentionally withheld information and records from the Comiskeyes concerning negotiations with the Village or the execution or recording of the Trail Agreement.

187. Finally, Black, Valenti, and Damani have breached such duties by continuing to spread false or misleading information to the community about the purposes and status of the State Court Action.

188. As a direct and proximate result of such breach, Plaintiffs have suffered damages in an amount to be determined at trial.

Claim 11, Civil Conspiracy

189. Plaintiffs incorporate the above allegations by reference.

190. Plaintiffs bring this claim against all Defendants.

191. Defendants have at various points agreed with one another to injure Plaintiffs through unlawful acts or through lawful acts committed in an unlawful manner, as set forth above. Specifically, Defendants agreed that they would, among other things, defame, intimidate, harass, bully, retaliate against, threaten, and otherwise harm Plaintiffs in order to interfere with Plaintiffs' efforts to oppose the Trail Project and the Easement. Defendants have, at various times, acted in coordination with one another or at the urging or solicitation of one another, as set out above. And finally, as set out above, Defendants have engaged in one or more overt acts in furtherance of their agreement.

192. As a result, Defendants are each jointly and severally liable to Plaintiffs for the harm that Plaintiffs sustained as the result of conduct forming part of or done in furtherance of such conspiracy.

Prayer for Relief

Wherefore, Plaintiffs respectfully pray the Court award them the following relief:

1. Trial by jury as to all matters so triable;
2. Compensatory damages from Defendants in an amount to be determined at trial;
3. Extra-compensatory and punitive damages from Defendants in an amount to be determined at trial;

4. Pre- and post-judgment interest on any award of damages to the extent the law allows;

5. Reasonable costs, including reasonable attorney's fees, to the extent the law allows;

6. An order directing the Village to produce all records response to Plaintiffs' outstanding public records requests;

7. Preliminary and permanent injunctive relief prohibiting the enforcement of Christian's letter by the Union County Sheriff or the continued unequal treatment of Plaintiffs with respect to their public records requests; and

8. All such other relief as the Court deems just and proper.

This ___ day of _____, _____.

Respectfully,



By: EXHIBIT
Bo Caudill
N.C. State Bar No. 45104
Nicholas Williams
N.C. State Bar No. 61968
P.O. Box 18186
Charlotte, NC 28218
bocaudill@villmercaudill.com
nickwilliams@villmercaudill.com
VILLMER CAUDILL, PLLC
P.O. BOX 18186
Charlotte, NC 28218
Tel: 704-216-8120
Fax: 704-705-8191
Counsel for Plaintiffs

